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**Bill of Complaint.**

(Filed Dec. 2, 1915; 10:30 A. M.)

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**In Chancery of New Jersey.**

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

The complainant, William H. Warren, of Newark, New Jersey, respectfully shows:

1. That on the 4th day of June, 1890, he was married to Cora B. Warren, the defendant, and continued to live with the said Cora B. Warren, as her husband, until on or about November, 1909, when there was a separation between the parties, and on or about the 2nd day of June, 1915, in a suit pending, the complainant and the defendant, commenced by the said defendant to obtain a decree for divorce on the ground of desertion on or about August, 1914, there was entered a decree *nisi* in favor of the said defendant, Cora B. Warren and against the said complainant herein.

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2. That on or about the 23rd day of August, 1900, the complainant entered into a certain contract, a copy of which is hereto annexed and made a part hereof and marked Exhibit 1, with Elias G. Heller, under the terms and conditions of which said contract the said Elias G. Heller agreed to convey to the said complainant, his heirs and assigns, by bargain and sale deed, free

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*Bill of Complaint.*

from all encumbrances, etc., the property hereinafter described, to wit:

10 "All that certain tract or parcel of land hereinafter particularly described, situate, lying and being in the City of Newark, County of Essex and State of New Jersey.

20 "BEGINNING at a point formed by the intersection of the southerly line of Verona Avenue with the easterly line of Mt. Prospect Avenue; thence running along the line of Mt. Prospect Avenue southerly one hundred feet; thence south sixty-one degrees twenty-five minutes east two hundred feet more or less to the line of property now owned by the Emanuel Baptist Church; thence northerly and along the line of said Emanuel Baptist Church one hundred feet more or less to the said southerly line of Verona Avenue and thence westerly and along the said southerly line of Verona Avenue two hundred and six feet more or less to the point of intersection and place of beginning.

30 "Being part of Lots 50, 51, 52, 53, 54, 55, 56 and 57 on map of property owned by Michael Gorman, deceased. Said premises being also the same premises as conveyed to said Elizabeth Carragher by the heirs at law of said Michael Gorman, deceased, excepting thereout premises conveyed by said Elizabeth Carragher and husband to the Emanuel Baptist Church by deed recorded in the Essex County Register's office, January 23, 1915, in Book U28, page 497."

40 This conveyance was to be made for and in consideration of the sum of \$4,200, together also with all taxes and assessments for the year 1900, in the manner stated in said agreement, to wit,

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\$750 upon the signing of the agreement, \$750 on September 15th, 1900, and the balance of the unpaid purchase price in semi-annual installments of not less than five hundred dollars per installment and all accrued interest on the unpaid balance until the full purchase price with accrued interest should have been paid in full; all as will more fully appear by said contract. 10

3. That the said defendant had no money of her own at the time she married the complainant, nor did she, during the time she was living with the complainant, make any money from her own exertions nor did any money come to her from any sources except such as was contributed to her by the complainant; that the complainant from time to time turned over to the said defendant moneys in excess of the amounts needed for the family use and turned over to her regularly amounts of money for the use of the family; that he permitted her to deposit such moneys as he turned over to her out of his savings and also such moneys as she might save out of the household allowance, in her name upon the express understanding and agreement that the moneys so turned over should be considered as much his as hers. 20 30

4. That when the said complainant informed the said defendant that he was about to purchase the property hereinbefore set forth she advised the complainant that she had in the bank, of his savings as aforesaid, the sum of \$2300 and suggested that instead of purchasing the property upon the terms set forth in the said agreement, to wit, upon the installment plan, that they should pay cash for the said prop- 40

*Bill of Complaint.*

erty and use the money which was in her name, to wit, the said \$2300 and asked the said complainant that the deed to the said property should be made in her name, she to hold the same for the joint benefit of the said complainant and the said defendant.

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5. That the complainant agreed to this suggestion and said defendant turned over to the said complainant the said \$2300 and the said complainant out of his own funds made up the difference between that sum and the purchase price and the deed was made by the said Elias G. Heller and wife to the said defendant, Cora B. Warren, of the said property hereinbefore referred to, upon or about the 17th day of September, 1900, which said deed was duly recorded in the office of the Register of the county of Essex upon the 13th day of June, 1902, in Book Q35, page 84; that the complainant permitted the said deed to be put in the name of the said Cora B. Warren only upon the express understanding and agreement that the said complainant and defendant should have equal rights in said property.

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6. That the said property at the time of the transfer to the said defendant was unimproved and in the year 1901 the said complainant proceeded to build upon said property a three story, stone front, corner building, six apartments and three stores; that to finance the said building operations this complainant gave his own notes to Elias G. Heller, and finally on or about the 12th day of June, 1902 in order to pay the said Elias G. Heller, he and his said wife made a

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*Bill of Complaint.*

mortgage covering said property to the Woodside Building and Loan Association, which said mortgage is recorded in Book I 16 of mortgages for Essex County, page 591, to secure the principal sum of \$14,000; that out of this \$14,000 the notes made by the said complainant to the said Elias G. Heller were taken up; that the Building and Loan shares upon which this loan of \$14,000 was based were originally in the name of the complainant, whether when the loan was obtained it was changed to the name of the defendant, the complainant has no knowledge, but the complainant says that from the time said loan was taken out until about the month of December, 1912, he paid out of his own earnings, assisted in part by receipts of rent from the premises, the building and loan dues so that upon or about December, 1912, the series was paid off which resulted in the cancellation of the loan and the said mortgage hereinafter referred to was satisfied of record upon the 21st day of December, 1912.

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7. That the complainant made further improvements upon said property, to wit, building a barn, etc. and in payment of the cost of such improvement gave to Elias G. Heller his own notes so that there was due to the said Elias G. Heller upon or about the month of March, 1908, the sum of approximately \$5,700 for principal and interest on these notes; that in order to pay the said Elias G. Heller at that time the complainant withdraw from the Building and Loan Association the value of twenty-five shares of stock of said Association which had always been in the complainant's name, and upon which

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*Bill of Complaint.*

10 the complainant had always paid the dues and  
also obtained a second mortgage from the Wood-  
side Building and Loan Association for the sum  
of \$3,000, which said mortgage is dated March  
19th, 1908, and is recorded in Book G22 of Mort-  
gages for Essex County, page 250; that with the  
moneys realized from said mortgage and from  
said shares of stock as aforesaid and moneys  
paid by the complainant from his own funds,  
the notes held by the said Elias G. Heller were  
satisfied; that said mortgage is still outstand-  
ing, but there is not the sum of \$3,000 due there-  
on as the dues to the said Building and Loan  
Association have been kept up. Just the amount  
that is due upon the said mortgage the com-  
20 plainant does not know.

30 8. That up to the time the complainant and the  
said defendant separated, the complainant paid  
the dues to the said Building and Loan Associa-  
tion on both of said mortgages hereinbefore set  
forth out of his own funds; that when the separa-  
tion came, the complainant paid to the said de-  
fendant twenty-five dollars a week for her own  
use; also the sum of sixty dollars a month so  
that it might be applied to the payments of the  
Building and Loan mortgage and kept that up  
until the month of August, 1914, or until after  
the commencement of the suit by the defendant  
against the said complainant, and complainant  
says that all of the moneys which have gone into  
said property have been moneys paid by the  
complainant plus moneys, the result of the re-  
ceipt of rents, etc., of said proerties; and that  
the said defendant never invested in said prop-  
erty a single cent of her own.  
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*Bill of Complaint.*

9. That from the time of the purchase of said property, up to the time of the separation between the parties, the complainant had full and complete charge of said premises, collected the rents, income and profits thereof and used the rents, income and profit for the purpose of reducing the mortgage encumbrances thereon and keeping the property up, paying taxes, etc., besides contributing moneys of his own which were necessary to make up the deficit; that the said defendant exercised no right of dominion over said property, and no right of ownership therein up to the time of the separation; that when the separation took place, the complainant, because of his refusal to live with the said defendant at the house of her father and mother, went to live over the drug store in said premises, and said defendant collected the said rents, issues and profits and has collected said rents, issues and profits from that time until the present time and has used the same for the purpose of the upkeep of the property and her own uses; that the complainant continued to pay his said wife the sum of twenty-five dollars a week and also the sum of sixty dollars a month as hereinbefore set forth and complainant says that the rents, issues and profits of said lands and premises, the said defendant has taken and has used for the purpose of building a house on Clifton Avenue, in the City of Newark, worth approximately the sum of \$10,000. That the said defendant has rendered no account to the said complainant of the said rents, issues and profits so collected; that up to the time the complainant and defendant separated and while the complainant was collecting the said rents, issues

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*Bill of Complaint.*

10 and profits every dollar went back into the prop-  
erty as well as other moneys of the complainant,  
but complainant says that since the said defend-  
ant has been collecting the said rents, the charges  
against said property have been less and the re-  
ceipts from said property exceed the expend-  
itures to a great extent, with the result that the  
said defendant has taken the rents and profits  
of said property and used for her own benefit.

20 10. The complainant says that said property  
is worth approximately the sum of \$50,000 and  
is encumbered only by the mortgage to the  
Woodside Building and Loan Association for  
the principal sum of \$3,000, upon which there is  
considerable less than \$3,000 due; that the said  
defendant now claims and insists that she is  
the sole owner of said lands and premises al-  
though she never so insisted heretofore; and  
claims to be entitled as of her own right to all  
of said lands and premises and the rents, is-  
sues and profits thereof, but the complainant  
says that the said property was put in the name  
of the said defendant only under the circum-  
stances hereinbefore set forth, and upon the ex-  
press terms and agreement that the said com-  
plainant and the said defendant should have  
30 equal rights therein, and that under the circum-  
stances there was a resulting trust in favor of  
the said complainant; that the said complainant  
did not make of said property nor of the profits  
thereof, a gift.

The complainant is without adequate remedy  
in the courts of law and therefore prays:

40 1. That the defendant, Cora B. Warren, may

*Bill of Complaint.*

answer this bill of complaint, without oath, and the statements therein made.

2. That a decree may be made either that the said property is the property of the complainant and that the said Cora B. Warren be directed to convey said property to the said complainant or that the said complainant and defendant have equal rights in said property, and that the said Cora B. Warren be directed to execute such proper instruments as to secure to the said complainant his equal rights therein.

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3. That an account may be taken of the rents, issues and profits of said lands and premises collected by the said Cora B. Warren and that either the said Cora B. Warren should be directed to pay over said amount to the said complainant or to pay over one-half of said amount to the complainant as the case may be.

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4. That a writ of subpœna may issue commanding the said defendant, Cora B. Warren, to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

MERRITT LANE,  
Solicitor for and of Counsel  
with Complainant.

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**Answer.**

The answer of Cora B. Warren, defendant:

The said defendant, answering said bill of complaint, saith:

1. Paragraphs One and Two are admitted.

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2. Defendant denies the allegation that she had no money of her own at the time she married complainant; and further denies the allegation that during the time she was living with complainant; but the defendant insists and her own exertions; and further denies the allegation that no money came to her from any source except such as was contributed by the complainant; but the defendant insists and charges the truth to be that she had a little money of her own at the time she married complainant and that while she was living with him she made money by her own exertions and particularly while working with her brother and that in addition to these sources she was in receipt of some moneys from friends and relatives. Defendant admits that complainant, from time to time, turned over to her moneys in excess of the amounts needed for the family use, but denies that he turned over to her regularly moneys for family use; but as to the allegation that complainant permitted the defendant to deposit moneys in her name upon the express understanding and agreement that the moneys so turned over should be considered as much his as hers, this defendant denies the same, but complainant at all times knew this defendant had her own private bank account.

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3. Defendant denies the allegations in the

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*Answer.*

fourth paragraph in the answer except as hereinafter admitted and says that at the time complainant was about to purchase the property as alleged, and during the period that payment was being made for the same, defendant had certain moneys of her own which she had accumulated in manner aforesaid and during the period from the execution of the agreement as alleged in said bill to the time of the delivery of the deed by the vendor, this defendant contributed to the payment of the real estate so purchased as aforesaid. Defendant denies that she asked that the deed to the property be in her name, but insists and charges the truth to be that the said complainant suggested and volunteered to have the deed for the said premises made to this defendant as a settlement upon her. Defendant denies the allegation that she was to hold the property "for the joint benefit of the said complainant and the said defendant."

4. Defendant denies the allegation in the fifth paragraph to the effect that "the complainant permitted the said deed to be put in the name of the said Cora B. Warren only on the express understanding and agreement that the said complainant and defendant should have equal rights in said property;" but defendant admits all the other allegations in said fifth paragraph.

5. Defendant admits that said property at the time of the transfer was unimproved and that in the year 1901 complainant proceeded to build thereon, as alleged in the sixth paragraph; that as to the alleged giving of notes by complainant to Elias G. Heller, this defendant has no knowl-

*Answer.*

10 edge or information thereof sufficient to form a  
belief; defendant admits the execution of the  
mortgage to the Building and Loan Association  
as mentioned in said sixth paragraph; but as  
to the allegation that certain notes were taken  
up out of the proceeds of said mortgage this de-  
fendant has no knowledge or information thereof  
sufficient to form a belief; and defendant denies  
that the Building and Loan Association shares  
upon which said loan was based were originally  
in the name of the complainant, but defendant  
insists and charges the truth to be that the said  
Building and Loan shares were originally in  
20 the name of this defendant and continued so  
to remain until the shares matured and the  
mortgage was liquidated; defendant denies that  
from the time the loan was taken out until the  
maturity of the shares complainant paid out of  
his earnings, assisted in part by receipts of rent  
from the premises, the building and loan dues,  
but defendant admits that the complainant, from  
the time the loan was taken out to the month of  
July, 1909, the complainant paid up the building  
and loan dues, but insists that same were paid  
entirely out of the rents from the premises,  
30 and charges that subsequently to July, 1909, com-  
plainant allowed the dues to become greatly in  
arrears so that the Building and Loan Associa-  
tion threatened foreclosure and that thereupon  
this defendant paid to the Building and Loan  
Association such sums of money as were neces-  
sary out of her own funds to re-instate the loan  
and that thereafter to the time of the maturity of  
the shares this defendant paid all the building  
and loan dues until upon the maturity of the  
40 shares the loan was cancelled; and defendant

*Answer.*

admits that the series was paid off about December, 1912, which resulted in the cancellation of the loan and of the mortgage, which was satisfied of record as in said bill alleged.

6. Defendant admits that complainant made further improvements upon said property; that as to the giving of notes in payment of the costs of such improvements this defendant has no knowledge or information sufficient to form a belief; that as to the withdrawal from the Building and Loan Association of twenty-five shares of stock as in the seventh paragraph alleged this defendant has no knowledge or information thereof sufficient to form a belief; and defendant admits that the second mortgage from the building and loan association was obtained as alleged in said paragraph; and that as to the allegation that with the moneys realized from said mortgage and from said shares of stock the notes were satisfied as alleged in the seventh paragraph this defendant has no knowledge or information thereof sufficient to form a belief; and defendant admits that said mortgage is still outstanding and that there is a lesser sum than three thousand dollars due thereon, but the exact amount necessary to liquidate said mortgage is unknown to this defendant. Defendant insists and charges the truth to be that since July, 1909, this defendant has paid up the dues upon said building and loan mortgage and is still paying the same as they grow due.

7. Defendant admits that up to the time of their separation complainant attended to the payment of the dues to the Building and Loan Association on both of said mortgages, but de-

*Answer.*

10 nies that such payments were made out of his own funds; and insists that such payments were made entirely out of rentals; and defendant denies that when the separation came, complainant paid her twenty-five dollars a week for her own use, and also denies that complainant paid her the sum of sixty dollars a month so that it might be applied to the payments of the building and loan mortgage and denies that he kept that up until the month of August, 1914, or until after the commencement of suit by this defendant against complainant; but this defendant insists and charges the truth to be that she received only a meagre sum of money from the complainant after their separation at irregular intervals, and 20 further insists that the complainant occupied a portion of the lands and premises in the bill mentioned, and paid small sums of money irregularly to this defendant by way of rent for use and occupation of the said premises; defendant denies the allegation that all the moneys, in addition to rents, which have gone into the property have been moneys paid by complainant and denies the allegation that this defendant never invested in said property a single cent of 30 her own.

8. Defendant denies that from the time of the purchase of said property up to the time of separation complainant had full charge of the said premises as in the ninth paragraph alleged, and this defendant insists that the said complainant had neglected the said property and allowed the building and loan dues to become in arrears as hereinbefore alleged before the separation took place; defendant denies the allegation that

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*Answer.*

she exercised no right or dominion over said property or ownership up to the time of separation; and defendant denies that when the separation took place complainant went to live over the drug store in said premises, and charges the truth to be that complainant has lived over the drug store for only approximately two years last past; defendant admits that she has collected the rents from that time to the present and has used the same for the purposes of the upkeep of the property and her own uses; but defendant denies the complainant continued to pay this defendant the sum of twenty-five dollars per week and the sum of sixty dollars a month, as alleged in the ninth paragraph of the answer; and defendant denies that this defendant has taken and used rents, issues and profits of said lands for the purposes of building a house on Clifton Avenue in the City of Newark, as in said ninth paragraph alleged, and insists that the said house is the property of her father; defendant admits that she has rendered no account to the complainant of the said rents collected by her and insists that he is entitled to no accounting, for the same are the property of this defendant; and defendant denies that up to the time of separation and while the complainant was collecting rents every dollar went back into the property as well as other moneys of the complainant, as alleged in said bill; and defendant admits that since she has been collecting the rents the charges against the property have been less and that the receipts exceed the expenditures with result that this defendant has taken the rents and profits for her

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*Answer.*

own benefit as alleged in said bill and she insists that she was and is entitled so to do.

10 9. Defendant saith as to the allegation that said property is worth approximately fifty thousand dollars she has no knowledge or information thereof sufficient to form a belief as to its value; but defendant admits that the property is encumbered only by the building and loan mortgage upon which there is considerably less due than three thousand dollars; and defendant admits that she now claims and insists that she is the sole owner of said lands and premises and denies the allegation that she never so insisted heretofore and insists and charges the truth to be that she has always claimed to own 20 said premises since the making and execution of the deed therefor to this defendant as aforesaid; and this defendant admits that she claims to be entitled as of her own right to said lands and premises and the rents, issues and profits thereof; and defendant denies that said property was put in her name under the circumstances therein before set forth in said bill, and this defendant denies that the same was put in her name upon the express terms and agreement 30 that complainant and this defendant should have equal rights therein as alleged in the tenth paragraph of said bill; and this defendant denies that there was or is a resulting trust in favor of the complainant; and this defendant denies the allegation that complainant did not make of said property nor of the profits thereof a gift as alleged in the tenth paragraph of said bill.

40 10. Defendant further answering says that

*Answer.*

after the making and execution of the contract between the said Elias G. Heller and the complainant, the complainant caused the property to be conveyed to this defendant and that conveyance thereof was made by deed from the said Heller and wife to this defendant which was dated on or about the seventh day of September, nineteen hundred and acknowledged the same day and recorded as in the said bill of complaint mentioned; that the said complainant of his own voluntary act and free will caused the said premises to be conveyed to this defendant and that the title thereof has always remained in this defendant from the making of the said deed to this time. Said premises were conveyed to this defendant by said complainant as a settlement upon her, and as his free and voluntary act and that the said premises have never been held under any agreement whatsoever recognizing any right or interest of the complainant in said premises; and that the defendant has never made or entered into any agreement whatsoever to hold the said premises for the benefit of the complainant, nor has she recognized any rights of the complainant either legal or equitable in and to the said premises, but has always since the making of said deed held the same as her own separate estate and property and that the said complainant, up until the time of their separation, recognized this defendant as the sole owner thereof.

LUM, TAMBLYN & COLYER,  
Solicitors for and of Counsel with Defendant.

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*Augustus M. Scott, direct.*

Mr. Lum: Were you present?

The Witness: No, sir.

Mr. Lum: I ask to have that stricken out. Kindly confine yourself to your own knowledge.

Q. Just state what you know as far as Dr. Warren himself is concerned? A. We went there and my wife hired the rooms from Dr. Warren.

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Mr. Lum: I move to have that stricken out.

Q. Were you present when the rooms were hired? A. No, sir.

Q. When did you first see Dr. Warren about it if you saw him at all. A. I did not see Dr. Warren myself.

20

Q. Did you pay the rent for the apartment? A. I furnished the money, yes, sir.

Q. Did you ever see any rent paid out? A. Not to Dr. Warren, no, sir.

Q. Do you recollect an occasion when trouble arose about whom to pay the rent to, were you present on any such occasion? A. I certainly was, yes, sir.

Q. Was Mrs. Warren present? A. She certainly was.

30

Q. When was that? A. That was some years ago, about seven years ago. One evening I came home from business and I stopped in the kitchen to wash up a little bit and my wife called to me. That was the first I ever met Mrs. Warren. She told me what the business was and I simply objected to paying the money or the rent or having it paid to Mrs. Warren, as I certainly had done business with the doctor and we would continue

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*Augustus M. Scott, direct.*

it so until further notice. Mrs. Warren, she spoke right there, during the subject, she said, "Mr. Scott, the property belongs to me as much as it does to Mr. Warren" or "the Doc" that is the way she spoke.

10 Q. What else was said, what was she there for?

A. As near as I could understand it she understood the rent was somewhere about due. It was the first of the month. I told the lady, told Mrs. Warren, that my rent came due on the 15th, and I told her I think—yes, I said in the presence of herself that I would let my wife see the doctor and see what the doctor said about it.

The Vice-Chancellor: When was this?

20 The Witness: This was about seven years ago. I don't just know the date.

Q. How do you fix that occasion, that it is seven years ago? A. On account of my wife being sick and she died shortly after. And my wife was not very well at the time and she was sitting in the house at the time Mrs. Warren was there.

Q. Who was present besides yourself, your wife and Mrs. Warren? A. Mrs. Aldridge.

30 Q. You say that you had never seen Mrs. Warren around there before that time? A. I never met her.

Q. Have you seen Dr. Warren around there before? A. Oh, most assuredly.

Q. What had you seen Dr. Warren around there doing? A. I saw him doing his business around there as a doctor and going in and out attending to business.

40 Q. With respect to the house, had you seen

*Augustus M. Scott, cross.*

him doing anything? A. No, I did not see him do anything around the house.

Q. Do you work in the day time? A. Yes, sir.

Q. And were at that time out at your business during the day time? A. Yes, sir.

Cross examination by Mr. Lum:

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Q. The doctor's office was in this property?  
A. Yes, sir.

Q. And he had a drug store downstairs in the property? A. I believe he did, yes, sir.

Q. You know he did, don't you? A. Well, I know, yes; there was a drug store there and it was called Dr. Warren's drug store.

Q. You spoke to Mrs. Warren about this case this morning here in court, did you not? A. What about?

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Q. Answer the question, please. A. I did, yes. She asked me what I was here for and I told her.

Q. You told her the doctor has said something to your wife, did you not? A. No, I didn't. I did not.

Q. Did you not say that you knew nothing about the case? A. I said that—what I stated was this, that she had told my wife that the property belonged as much to Mrs. Warren as it did to the doctor.

30

Q. But that you yourself, knew nothing about the case. A. I did not hear Mrs. Warren say that myself, that is what I said.

Q. Then what you testified to as to Mrs. Warren having said you did not hear? A. No, that is what I am saying, that is what I am saying.

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*Augustus M. Scott, redirect.*

Redirect examination:

Q. Were any statements made in respect to this by your wife in the presence of Mrs. Warren?

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Mr. Lum: I object to that as leading.  
The Vice-Chancellor: I will allow it.

Q. Were any statements made in respect of this by your wife in the presence of Mrs. Warren and in your presence? A. No.

Q. How did you know what Mrs. Warren was there for? A. My wife called me as I was in the kitchen and asked me what I thought about paying the rent to Mrs. Warren.

20

Q. Was Mrs. Warren there when she asked you? A. Yes, sir.

Q. Then? A. Yes, sir.

Q. What did your wife say that Mrs. Warren had told her, if anything? A. What is that?

Q. (Last question repeated.)

Mr. Lum: I object to that.

The Vice-Chancellor: I will allow it.

Mr. Lum: Your Honor, I understand that Mrs. Warren was not present.

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The Vice-Chancellor: I understand she was present.

The Witness: Yes, she was present.

The Vice-Chancellor: He is asked what his wife said Mrs. Warren stated in the presence of the witness, and of Mrs. Warren.

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The Witness: My wife called me as I stated before, she called me and asked me what I thought about paying Mrs. Warren the rent. I told her that we had

*Augustus M. Scott, recross.*

nothing to do with Mrs. Warren, we had hired, or my wife had hired the property of Mr. Warren and we would continue on doing business with the doctor until we saw further, and my wife spoke right there, during the subject, and said, "Well, Mrs. Warren says the property belongs as much to her as it does to the doctor." 10

Q. Was Mrs. Warren there then? A. Yes, sir.

The Vice-Chancellor: Did Mrs. Warren say anything?

The Witness: No, sir, she did not say anything to me then.

Recross examination:

Q. Where are you living now? A. 859 Mt. Prospect Avenue, Newark. 20

Q. You know the doctor pretty well? A. I am acquainted with the doctor, yes, sir.

Q. Who is this Mrs. Aldridge you referred to? A. She is a lady who has been living around Newark there.

Q. Where does she live now? A. I understand she lives in Bloomfield, I don't know that she does, I understand it.

Q. She is here now? A. Yes, sir. 30

Q. She is here today? A. Yes, sir.

Q. What was she doing in your house? A. What was she doing in my house? She was a friend of ours and as my wife was sick she was looking after my wife.

Q. Don't you know where she lives now? A. I don't know nothing where she lives now, I said. I did not know she lives in Bloomfield until this morning. 40

*Augustus M. Scott, recross.*

Q. Do you remember saying this morning to Mrs. Warren that you knew nothing at all about this case yourself? A. Only what my wife had told me in regard to the property belonging to Mrs. Warren.

10 Q. You did not speak to Mrs. Warren about her having been present when your wife made that statement did you? A. I did not. Well, I don't know as I really had to tell Mrs. Warren that.

Q. What room did that talk take place in? A. In our dining room.

Q. And you were out in the kitchen when your wife first spoke? A. When my wife called to me I stepped from the kitchen to the dining  
20 room.

Q. Did you go in the dining room? A. Yes, I went in the dining room and took a seat in the dining room, yes.

Q. How long did Mrs. Warren remain there? A. Well, that part I could not say, she possibly might have been there fifteen minutes or twenty minutes or half an hour I could not say.

Q. You have no remembrance about it at all? A. Somewhere along there the conversa-  
30 tion went on.

Q. You were subpoenaed to be here? A. Yes, sir.

Q. When did you tell the doctor about this? A. I have not told the doctor a thing.

Q. Who did you first tell about this? A. I have not told anybody anything about it.

Q. You never spoke of it to anybody? A. No, sir.

Q. You don't know how the doctor knew you  
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*Lillian L. Aldridge, direct.*

could give this testimony? A. No, sir, that I don't know anything about.

Q. You have no explanation to give? A. No, sir.

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LILLIAN ALDRIDGE sworn for the complainant.

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Direct examination by Mr. Lane:

Q. Where do you live? A. Bloomfield.

Q. Do you know Dr. and Mrs. Warren? A. I know the doctor as being the doctor in our family.

Q. How long have you known him? A. In the neighborhood of ten years.

Q. Do you know Mrs. Warren? A. I met Mrs. Warren at the apartment.

20

Q. Did you live in these apartments? A. I lived there I think for about two months with my son-in-law.

Q. With whom? A. My son-in-law and my daughter.

Q. Did you have anything to do with the running of the house or paying the rent or anything like that? A. No.

Q. Your son-in-law did that? A. No, his father, Lawyer Hill, Lawyer Charles Hill.

30

Q. Do you know Mr. Scott the last witness? A. Yes, sir.

Q. Do you recollect being at his house on the occasion when Mrs. Warren was there? A. Yes, sir.

Q. When was that? A. Mrs. Scott is dead six years this last April and it was just before she died. She died the 24th of April.

40

*Lillian L. Aldridge, direct.*

Q. And it was just before her death? A. It was shortly before, I could not tell just what month it was.

Q. But just before she died? A. Yes, sir, shortly before she died.

10 Q. Were you there when Mrs. Warren came in? A. Yes, sir.

Q. Who else was there when Mrs. Warren came in? A. When Mrs. Warren came in only Mrs. Scott and I.

Q. State what took place from the time Mrs. Warren got there until the time she went as far as you can remember. A. When Mrs. Warren came in she asked Mrs. Scott for the rent, and Mrs. Scott said she could not pay the rent until Mr. Scott came in, and Mrs. Warren thought she was going to collect the rent because—I think she said that the building and loan had got behind and that she had to collect rent, to pay on the property, to keep it up, and in the meantime Mr. Scott came in, and then in the meantime Mrs. Scott said to her, “Who owns this property?” she was angry because she had to pay the rent and she said that it belonged to her, to Mrs. Warren, just as much as it did to the doctor, but she was going to collect the rent and then Mr. Scott came in, and stopped in the kitchen to wash himself, and there is a little hallway in between and Mrs. Scott called him in, and he came in; and then Mrs. Scott told him that Mrs. Warren wanted the rent and she said she didn’t know about that—about paying Mrs. Warren the rent, and Mr. Scott said he would not pay the rent because the rent had always been paid to the doctor. Then  
30 Mrs. Warren, she got nervous, and she com-  
40

*Lillian L. Aldridge, cross*

menced to cry, and then Mr. Scott said he would not pay the rent that night but that he would see the doctor in the morning and Mrs. Scott—I stopped with her all night and in the morning she went down and met the doctor in—

Q. Were you there? A. When she met the doctor. 10

Q. Yes. A. No, sir.

Q. Only state what was said when you were there and Mrs. Warren was there. A. Mrs. Warren stayed quite a while to talk with Mr. Scott about the rent and then she went home.

Cross examination by Mr. Lum:

Q. When did you go to live in the apartments? A. I could not tell you just exactly. We lived in Belleville. My daughter just got over a sickness with a little one. 20

Q. What was her name? A. Mrs. Hill, it was Charles Hill, the lawyer, daughter-in-law.

Q. What were you doing in Scott's apartment at that time? A. I was up there taking care of Mrs. Scott. I took care of her until a week before she died, when they took her to the hospital.

Q. What time of day was it when Mrs. Warren came in? A. In the evening around supper time, just before Mr. Scott came home from work to his supper. 30

Q. And Mrs. Scott went out to speak to Mr. Scott? A. No, sir, she was sick and she was on one side of the room just like this and called Mr. Scott in.

Q. Did he come in the kitchen? A. He came and stood in the doorway to the kitchen. 40

*Lillian L. Aldridge, cross*

Q. How long did he stay there? A. A very few minutes, and walked in as far as the couch.

Q. Tell us what conversation took place, as far as you can remember while Mr. Scott was there? A. While Mr. Scott was there?

10 Q. Yes. A. Mr. Scott came in and stood by the couch, Mrs. Warren stood alongside the dining room table and Mrs. Scott sat in the chair and I stood there and then she asked Mr. Scott what he thought about paying the rent to Mrs. Warren and he said no, that he would not pay the rent to Mrs. Warren until he saw what the doctor said about paying the rent, and then he told Mrs. Warren that she should come back again and he would have his wife see the doctor in the  
20 morning, and Mrs. Scott said to him "Well, Mrs. Warren says the property is as much hers as it is the doctor's" and then Mrs. Warren commenced to tell Mr. Scott some of her own affairs and Mr. Scott said he did not care to hear anything about what the trouble was between her and the doctor, it was the rent she came about, and he didn't care to hear anything further.

Q. The doctor is your physician? A. He doctors our children. We have three little ones.

30 Q. He is your family doctor? A. Yes, sir.

Q. When did you first speak to him about this matter? A. Mrs. Scott told him about Mrs. Warren stating that the—I was with her in the office, she was getting some medicine and she told Dr. Warren that Mrs. Warren said that the property belonged to both.

Q. When did she tell the doctor this? A. That was the next day after she had been in for the  
40 rent.

*Lillian L. Aldridge, cross*

Q. Then she told the doctor that as much as seven years ago? A. Yes sir, and I have never spoken about it since that time. I had really forgotten myself about it.

The Vice-Chancellor: What did he say when she told him that? 10

The Witness: He said that she should pay the rent so that there would be no trouble.

Q. Pay the rent to Mrs. Warren? A. He said so that there would be no trouble, that is all he said. He never said one word about Mrs. Warren or anything and he never referred to it again.

The Vice-Chancellor: What did he say? 20

The Witness: She said to the doctor "I didn't want to pay the rent" and he said, "You had better pay it so that there will be no trouble" that is all he said. He never said another word, never spoke a word about Mrs. Warren or about the affair at all.

Q. You say that Mrs. Scott cried? A. Mrs. Warren got nervous I said and cried. 30

Q. She cried? A. Yes, sir.

Q. She was wrought up? A. Yes, sir.

Q. And worried? A. Yes, sir.

Q. And excited? A. She got nervous.

Q. She said the Building and Loan was away back? A. She did not say how far back.

Q. She said it was back? A. Yes, sir.

Q. Are you sure that Mrs. Warren did not say "I have as much right to collect the rent as 40

*Lillian L. Aldridge, cross*

anybody"? A. No, sir, she did not say that. She said that the property belonged to her as much as it did to the doctor.

By the Vice-Chancellor:

10 Q. When Mrs. Scott told Dr. Warren of that remark which Mrs. Warren had made the day before, did he, the doctor, say anything about the ownership of the property? A. All he said was that it belonged to them both, that was all.

Q. Give us his exact language as nearly as you can recollect. A. About paying the rent?

20 Q. No, about the ownership of the property. A. About the rent he said "Well it belongs to us both" so to pay the rent and there will be no trouble.

Q. He said to Mrs. Scott, "It belongs to us both"? A. To us both.

Q. "So you pay the rent to her"? A. Yes, sir, so that there would be no trouble. Those are the exact words he said.

Q. Is your recollection distinct about this statement the doctor made of the ownership of the property? A. Yes, sir.

30 Q. Give us his exact language as nearly as you can recall; you can go back to the last thing Mrs. Scott said if you will. A. Just a minute.

Q. Take your time and think carefully. A. Mrs. Scott said "Mrs. Warren"—this is the way she brought it up, she said "Mrs. Warren says the property belongs to both," and she said "I did not want to pay rent to her," and the doctor said "You pay the rent" he said "to her so that there will be no trouble. It belongs to both." That is what he said.

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*Peter T. MacLager, direct.*

Further cross examination:

Q. Did you make any notes of this conversation. A. Did I make any note of it?

Q. Yes. A. What do you mean on paper?

Q. Yes. A. No, sir, I did not.

Q. You did not expect this matter was going to come to court? A. I never thought it would come to court.

10

Q. How do you come to remember that conversation? A. The same as anybody remembers anything. I was there with Mrs. Scott.

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PETER T. MacLAGER, sworn for the complainant.

Direct examination by Mr. Lane:

20

Q. Where do you live? A. 522 Summer Avenue, Newark.

Q. What is your business? A. Architect.

Q. Did you have anything to do with the construction of the buildings, 857, 859, 861 and 863 Mt. Prospect Avenue, Newark? A. I did.

Q. What? A. I designed the building and superintended it.

Q. When was that? A. 1901, I think it is, I know it was about fifteen years ago.

30

Q. With whom did you have all of your dealings? A. Dr. Warren.

Q. You say with Dr. Warren—in what capacity? A. Dr. Warren engaged me to draw the plans.

Q. Yes. A. I submitted the plans to him and he approved them.

Q. Yes. A. And we drew up a contract.

40

*Peter T. MacLager, direct.*

Q. What? A. We drew up a contract.

Q. Yes, what else? A. We completed the building.

Q. You were on the job there off and on while the building was being put up? A. I was.

10 Q. Was Dr. Warren around there at all? A. Oh, yes, yes.

Q. What doing? A. Kind of looking after things.

Q. How were you paid for your services? A. Do you mean what commissions was I paid.

Q. No, I mean how were you paid, who paid you? A. Oh, the doctor paid me.

Q. How? A. By check.

20 Q. When, in reference to the putting up of the building? A. When the plans were completed he gave me a check.

Q. For what? A. For one half of the amount as near as I can remember, and when it was completed he paid me the balance.

By the Vice-Chancellor:

Q. Who was the contractor? A. Who were the contractors? There were four or five different contractors.

30 Q. Did you draw the contracts? A. Yes, sir.

Q. A separate contract for the carpenter work and the plumbing, etc.? A. Yes, sir.

Q. Did you attend to the execution of them? A. I did.

Q. Do you know whether those contracts were put on file? A. They were.

Further Direct Examination:

40 Q. Who was present at the time these con-

*Peter T. MacLager, direct.*

tracts were executed or entered into? A. The different contractors.

Q. And who else? A. The doctor, the doctor and I and the different contractors.

Q. Do you know whether or not those contracts were taken out in Mr. Warren's name or Mrs. Warren's name? A. When I came to draw the contract I asked the doctor in whose name I should put them and he said to put them in his wife's name. 10

Q. The contract you mean? A. Yes, sir.

Q. Did you know in whose hands the property was at that time? A. I knew nothing at all about it.

Q. Where were the contracts signed do you know? A. In the doctor's office. 20

Q. Where? A. On Verona Avenue, within a block of where the building was to be erected.

Q. Was that in his house? A. In his office.

Q. He had an office separate from his house then, did he? A. Yes, sir.

Q. Was his wife there? A. No, sir.

Q. Did you— A. Now, wait a minute, I think I am wrong about that. I drew up the contracts there and the contractors signed them and then I turned them over to the doctor. 30

Q. For what purpose? A. To have his wife sign them.

Q. How much did those buildings cost to construct, about? A. I think about \$14,000.

Q. What kind of buildings are they? A. It is a frame building veneered with brick.

Q. How many floors? A. Three stories.

Q. How many buildings are there? A. It is one building.

Q. How many lots? A. Three lots, I think. 40

*William H. Warren, direct.*

Q. Three different buildings practically, excepting that they are all built together is that right? A. Yes, sir, that is the idea.

Cross examination by Mr. Lum:

10 Q. So the doctor asked you to have the contracts drawn in the name of Mrs. Warren? A. He did.

Q. And you did that? A. I did.

Q. And gave them to him? A. Yes, sir.

Q. And when he gave them back to you they were signed by his wife? A. Yes, sir.

Q. You saw her at the premises once in a while while the work was going on? A. Yes, sir.

20 Q. The doctor said nothing at that time about any interest he might have in the property, did he? A. It was never mentioned.

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WILLIAM H. WARREN, the complainant sworn.

Direct examination by Mr. Lane:

Q. Where do you live? A. 863 Mt. Prospect Avenue, Newark, N. J.

30 Q. Were you married to the defendant? A. I was.

Q. When? A. On June 4th, 1890.

By the Vice-Chancellor:

Q. Did you have any children? A. One.

Q. How old? A. She was born in 1894.

Further direct examination:

Q. Is she married or unmarried? A. Married.

40 Q. When was she married? A. In January, 1916.

*William H. Warren, direct.*

Q. After you were married where did you live?  
A. The first time at 181 Verona Avenue.

Q. Are you still living with the defendant? A.  
No.

Q. Was there a divorce? A. Yes.

Q. When? A. In 1915. 10

Q. Did you have any talk with your wife about purchasing this property in question? A. I did.

Q. I show you an agreement between Elias D. Heller and William H. Warren, dated August 23, 1900, and ask you if that is the contract for the purchase of the property? A. It is.

The Vice-Chancellor: Three lots or four?

Witness: There were eight lots. 100 feet on Mt. Prospect Avenue and about 105 feet on Verona. 20

The Vice-Chancellor: 100 by 105?

The Witness: 100 by 200.

Q. What is built on the property at the present time? A. A three-story frame and brick building.

Q. On how many lots? A. On two lots and a half, sixty-five feet.

Q. On sixty-five feet? A. Yes, sir.

Q. Is there anything built on the rest or is it vacant? A. There is a stable in the rear on the rear of 857. 30

Contract between Elias B. Heller and William H. Warren, dated August 23, 1900, offered and received in evidence and marked Exhibit C No. 1, October 31st, 1916, H. W. K.

Q. Just state what led up to the purchase of the property? A. I had a drug store, at 181 40

*William H. Warren, direct.*

Verona Avenue and lived upstairs, first off, and finally Mrs. Warren's parents built a house on Summer Avenue and she requested me to go down and live with them. They moved up from Napoleon Street, down in Newark. So in 1894, when the building was completed on Summer Avenue I went there to live with her. In 1894, in February, the building 181 Verona Avenue was burned down and I was living on Summer Avenue at the time. It was burned down on a Sunday morning and I went down home and I was going to college at that time—had not graduated—so I set up a temporary drug store on Verona Avenue and the building on Verona Avenue was rebuilt, and when it was finished I had a drug store there. But I still lived in Summer Avenue from that time until November—October or November—1909.

Q. What was the talk about the purchase of this property, that is what I want to get down to, please, between you and your wife, was there any arrangement or how did you come to buy the property, or what did you buy it for?

A. I had a drug store there until about 1900. For the last two years there was a vacant corner at the corner of Mt. Prospect Avenue and Verona Avenue, and I thought it would be a better place for a drug store and I have my office to suit myself. When the building was put up by Heller, I had to have my office upstairs. So I thought of getting this lot and putting up a building with an office and with apartments in it and start business there. I had some money in the bank and I had a chance to get the property for \$4,200 from Mr. Heller, and I thought it was a growing neighborhood that

*William H. Warren, direct.*

I would have a chance to build up, build the whole property up. So I made this agreement with Mr. Elias Heller—he is dead now—and I was to pay him in installments on the lot. I believe the agreement was \$700 down and various sums at times until it was paid for; when the lot was paid for I was to get a deed. I spoke to Mrs. Warren about it and she said that she had \$2,300 in the bank, that she would put with it and it would be for both of us and we would pay cash for the lot. So I thought everything was all right—we were living happily together—so I acquiesced in it and the deed was made out in her name, in that way. In 1901 I consulted an architect and had the plans drawn and the contract made and the building completed.

Q. At the time she said she had \$2,300, did she say where she had it, where she got it from, or what it was—represented? A. I thought she had it in the bank.

Q. Did she say? A. Yes, she said she had it in the bank.

Q. What did she say as nearly as you can recollect? A. She said she had saved up \$2,300 since we were married.

Q. Is that what she told you? A. Yes, sir.

Q. Where did the other \$1,900 cash come from? A. I paid that myself. I had it in the bank.

Q. After you got the property what did you do with the deed of that property? A. With the deed?

Q. Yes. A. I had it in my safe.

Q. Until when? A. 1912.

*Ernest A. Geoffroy, direct.*

Q. Was 1912 after you were separated or before? A. After.

Q. When were you separated? A. In 1909.

Q. What did you do with the deed in 1912?  
A. I think I turned it over to Mr. Ten Eyck of  
10 the Building and Loan.

By consent the examination of this witness was here suspended.

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ERNEST A. GEOFFROY, sworn for the complainant.

Direct examination by Mr. Lane:

Q. Where do you live? A. Newark.

20 Q. What business are you in? A. I am in the steel business.

Q. What other business are you in? A. File business.

Q. What? A. Steel and file business.

Q. Did you have any other business? A. I am Treasurer of the Woodside Building and Loan.

Q. Are you in any real estate company? A. No.

30 Q. Do you know Dr. and Mrs. Warren? A. I do.

Q. Did they have dealings with the Woodside Building and Loan? A. Yes.

Q. When? A. Do you want to know what dealings they had?

Q. Yes. A. June 11th, 1902, Mrs. Warren borrowed from the Woodside Building and Loan \$14,000.

40 Q. What other transactions were there? A. She made another loan on the same property.

*Ernest A. Geoffroy, direct.*

Q. How much? A. \$3,000.

Q. What else? A. That is all, as far as borrowing.

Q. Did you personally know anything about these loans? A. I wrote out the checks for them as treasurer of the Building and Loan. 10

Q. Have you the checks there? A. Yes, sir. There are two checks. The premium is taken out, you know, and that makes them a little bit less.

Q. What other checks have you there? A. This check here (indicating) was a balance coming to Mrs. Warren at the time the \$14,000 matured.

Q. What is this? A. That is a check payable to Mrs. Warren who had twenty-five shares. 20

The Vice-Chancellor: You have the checks confused on the record, the witness said "this" and "that."

Mr. Lane: I wish to show the witness a check to the order of R. Arthur Heller, solicitor, for \$2,970, and ask him what that represents.

The Witness: That represents a loan she made on March 18th, 1908. 30

Check to the order of R. Arthur Heller, solicitor, for \$2,970, marked C2 for identification.

Q. I show you another check dated June 11th, 1902, to the order of R. Arthur Heller, for \$13,860, and ask you what that check represents? A. That represents a loan of \$14,000 from the Woodside Building and Loan, less the premium.

*Ernest A. Geoffroy, direct.*

Check dated June 11th, 1902, to the order of R. Heller for \$13,860, marked C No. 3 for identification.

10 Q. With respect to the placing of this loan of \$14,000, did you have any dealings yourself personally, in connection with that? A. No, sir.

Q. Did you ever see Dr. Warren or Mrs. Warren about it? A. No, sir.

Q. Who did, do you know, of your association? A. I could not say, that is thirteen or fourteen years ago.

Q. Are you positive that you did not have any? A. I had nothing to do with it any more than to give the check when the loan was granted.

20 By the Vice-Chancellor:

Q. What about the time when the loan was paid if it was paid? A. I will tell you when the loan was paid; that is when the loan was paid, a \$14,000 loan (producing a paper).

Q. When? A. December, 1912. Here is a little balance that came to her you know, it never comes out exactly even. When the loan was taken off the record.

30 Further direct examination:

Q. Who had charge of it, June 11th, 1902, when the check for \$13,860, Exhibit C-3 for identification was paid? A. Who had what, charge of what?

Q. Charge of the matter. Did you? A. I do not quite understand what you mean.

Q. Did you pay that check out, yourself? A. Yes, sir.

40 Q. To whom? A. To our solicitor, Mr. R. Arthur Heller.

*Ernest A. Geoffroy, direct.*

Q. Do you know the property, Nos. 857, 859, 861 and 863 Mt. Prospect Avenue? A. Yes, sir.

Q. When did you have any dealings in connection with that property? A. All the dealings I ever had was when I draw checks for the loan.

10

Q. Did you examine the property at that time? A. Well, I did, yes.

Q. Did you place a value on the property? A. At that time or at the present time?

Q. At that time, did you? A. Yes, we appraised the property, certainly.

Q. Do you know the value of the property at the present time, approximately? A. That property is worth about \$20,000.

Q. You mean the houses? A. I mean the land and the building on it.

20

Q. The eight lots you mean? A. I mean the eight lots and the building yes. Are there eight lots or four lots,—wait a minute.

By the Vice-Chancellor:

Q. Suppose there are eight lots? A. The eight lots are worth there \$1,500 apiece, the eight lots, the market value, and then there is a building on them. I was figuring on four lots. It is worth more than that.

30

Q. What would you say is the correct value for the eight lots and that building? A. About \$25,000.

Further direct examination:

Q. Do you know who paid the moneys on this Building and Loan matter when it was running? A. That is a pretty hard question to answer.

40

*Ernest A. Geoffroy, cross.*

Q. Do you know how it was paid? A. It was generally paid by check, up to a certain time.

Q. Whose check, do you know? A. The doctor's. Dr. Warren, William H. Warren.

10 Q. Have you any of the old Building and Loan books? A. Yes, we have some.

Q. I mean with you? A. Yes.

Q. Let me see them? A. I have not got them here. They are down in the auto. We would have to have two or three men to carry them all up here.

Q. Did you ever go to see Dr. Warren in respect to these loans? A. These loans?

Q. Yes. A. That is while he had the loans?

20 Q. Yes. Before he got the loans, while he was getting the loans? A. Not that I know of, no, I should say no.

Two checks heretofore marked for identification Exhibits C-2 and C-3, offered and received in evidence.

Cross examination by Mr. Lum:

30 Q. Sometimes the dues to the Building and Loan were paid by Dr. Warren, and at other times they were paid by Mrs. Warren were they not? A. Well, you know it is pretty hard for me to tell who paid them ten years ago when we were taking in anywhere from twelve to fifteen thousand dollars, all kinds of money, I cannot tell you whose check came in right along, but as near as I can recollect, the doctor generally used to send the checks.

Q. Sometimes they were Mrs. Warren's checks? A. No, I don't recollect Mrs. Warren's checks only in the latter part.

40

*Ernest A. Geoffroy, redirect.*

Q. Beginning about when? A. As near as I can remember about 1909. Somewhere around 1909.

Redirect examination:

Q. I show you a check dated November 30th, 1907, to the order of William H. Warren, for \$1,388.75. A. That was a withdrawal of stock shares he had in his own name.

10

Q. Without any loan on them? A. Yes, sir. I believe that is so. The secretary could answer that better than I can. I do not think there was anything borrowed on that.

Check of November 30th, 1907, to the order of William H. Warren for \$1,388.75, offered in evidence and marked Exhibit C-4, October 31st, 1916, H. W. K.

20

Q. I show you a check to the order of Cora B. Warren, dated December 10th, 1912, for \$23.10; I understand that was for some balance that was outstanding? A. Yes, sir, when the mortgage was paid off that was the balance.

Check dated December 10th, 1912, to the order of Cora B. Warren, for \$23.10, offered and received in evidence and marked Exhibit C-5, October 31st, 1916, H. W. K.

30

Q. I notice that this check for \$138.60, Exhibit C-3, is endorsed by your solicitor to William H. Warren, can you explain that in any way? A. No, I could not.

The Vice-Chancellor: Are all of these checks made to the same payee?

Mr. Lane: No, there is one to William

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*Charles W. Ten Eyck, direct.*

H. Warren, Exhibit C-4, is made to William H. Warren.

The Vice-Chancellor: Do I understand aright that R. Arthur Heller was solicitor for the Building and Loan Association?

10

Mr. Lum: Was and is, yes, sir.

CHARLES W. TEN EYCK, sworn for the complainant.

Direct examination by Mr. Lane:

Q. What office do you hold in the Woodside B. and L., if any? A. Secretary.

20

Q. How long have you held that office? A. About seven years, I guess, six or seven years.

Q. Did you have any dealings with Dr. Warren in connection with this property 857 to 863 Mt. Prospect Avenue? A. Yes, sir.

Q. What? A. I received checks for dues and interest.

Q. From whom? A. From Mr. Warren sometimes, sometimes from Mrs. Warren.

Q. Up to when did you receive them from Dr. Warren? A. That I cannot tell.

30

Q. When you had dealings in connection with the property with whom did you have them in the beginning with Dr. Warren or Mrs. Warren? A. I had nothing to do with them in the beginning.

Q. When was the first that you had anything to do with them? A. Seven years ago.

Cross examination by Mr. Lum:

Q. For the last five or six years at least the dues were paid almost entirely by Mrs. Warren,

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*Armand G. Heller, direct.*

were they not? A. Well, for sometime. I could not say how long.

Q. When she started to pay she paid continuously. Is that your recollection? A. Yes, sir.

Q. You do not recall just when she did begin?  
A. No.

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ARMAND G. HELLER, sworn for the complainant.

Direct examination by Mr. Lane:

Q. Are you a son of Elias Heller? A. Yes, sir.

Q. You are not the Heller, solicitor for this Building and Loan association—any relation to him? A. Brother.

20

Q. Is your father dead? A. Yes, sir.

Q. Was your father the owner of this Mt. Prospect Avenue property? A. Yes, sir.

Q. Do you recollect the time that this property was conveyed to the doctor? A. Yes, sir.

Q. And the time that the buildings were put up on it? A. Yes, sir.

Q. Do you recollect whether moneys were borrowed from your father by Dr. Warren? A. Yes, sir.

30

Q. Will you state what those transactions were?  
A. In the first instance we sold the property to the doctor on agreement and he paid us for the lots on account of the agreement and then my father advanced the money to build the house as he did not care to go in the building and loan and get the lump sum and pay interest on the full amount from the beginning. When

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*Armand G. Heller, direct.*

the house was erected he secured the loan, and paid father off.

Q. With whom did your father have dealings with Dr. Warren or Mrs. Warren? A. With the doctor.

10 Q. By whom were the notes given? A. The doctor.

Q. By whom were the notes paid off? A. The notes were paid at maturity, or I imagine the doctor took them up. They were his notes.

Q. Were you present at the time of the transfer of the title, at the time the deed went through? A. No.

20 Q. Did you know that the title was taken in the name of Mrs. Warren at that time? A. I understood it was in her name.

By the Vice-Chancellor:

Q. Do I understand that your father advanced the money that was used in the construction of the large brick house or building which is now on the property? A. Yes.

30 Q. Do you know the total of the advances thus made by him? A. It was somewhat more than the cost of the house. I think it was around seventeen or eighteen thousand dollars. That is my recollection of it.

Q. Was any mortgage given back to your father as his security? A. No. Notes.

Q. He simply took the doctor's notes? A. The doctor's notes, yes, sir. The doctor took the notes up afterwards.

Q. Do you know personally of the payment of the notes? A. Yes.

40 Q. Were all of the notes paid at once? A.

*Armand G. Heller, direct.*

No. They ran along until 1907, when I think the last one was paid.

Q. Was there one large payment from the proceeds of the mortgage? A. Yes, sir.

Q. This mortgage was given to the Building and Loan Association? A. Yes.

10

Q. You recollect that transaction do you? A. Yes.

Q. Do you know the amount of the note or notes thus paid off? A. About \$3,500.

Q. Was that the largest payment on account of those notes that you know of? A. I think it was, outside of the original \$14,000 that he paid when he got the loan.

Q. That is what I am inquiring about. Let me see if I understand aright. The doctor borrowed from your father the money that he used to erect this building? A. Yes, sir.

20

Q. And that I understand was somewhere around thirteen or fourteen thousand dollars? A. No. It was more than that. About seventeen or eighteen thousand dollars. Then when he borrowed from the Building and Loan \$14,000, he paid the notes as far as the loan went, and for the balance father carried him on the notes.

Q. For how long a period? A. Until 1907.

30

Q. Can you fix the time when the large payment was made from the mortgage loan? There are checks here perhaps indicating it. A. Yes, that was in 1902, June, 1902.

Q. I show you a check dated June 11th, 1902, from the Building and Loan Association to the order of R. Arthur Heller, who is he? A. My brother, solicitor for the Building and Loan Association.

Q. Just look at the endorsements on the back

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*Armand G. Heller, direct.*

and state if you know what those endorsements are. A. I recognize both of them.

Q. What is the first one? A. R. Arthur Heller.

Q. The next? A. William H. Warren.

10 Q. And the next? A. There are only two there. The first is "Pay to the order of William H. Warren."

Q. You think the proceeds of this check were applied to the payment of the notes your father held? A. I felt very positive they were.

20 Q. Do you know whether the notes—or rather that large payment on account of the note was made by check through Dr. Warren? A. I imagine that check was deposited to his credit and the notes charged up to his account as they came due.

Q. You know nothing about that personally? A. Nothing whatever.

Further direct examination:

Q. Have you a list of all the notes that were given and when they were paid? A. No, I have not. As the buildings progressed the doctor brought his notes over and we discounted them for him or at least, father did.

30 Q. Where did you get the record of the payment made in June, 1912? A. From Heller Bros. Company's books.

Q. What other records have you got from those books as to the payments made? A. The original payments on the loan.

Q. They were made when? A. On August 31st, 1900, \$1,000 was paid, October 16th, 1900, \$2,500, June 21st 1902, \$803.79.

40 Q. Do you know by whom that \$803.79 was paid? A. By the doctor.

*William H. Warren, direct.*

Cross examination by Mr. Lum:

Q. You say it was paid by the doctor; do you know of your own knowledge that was so? A. It was the doctor's check.

Q. For \$803.79? A. Yes, sir.

Q. Was not that paid out of the proceeds of the Building and Loan Mortgage? A. That might be, I don't know about that, but it was the doctor's check that paid it.

10

Redirect examination:

Q. I show you a bundle of notes and ask you to look through them and see if they are some of those notes?

Mr. Lane: Is there any question that those notes were given by the doctor?

20

Mr. Lum: I think not. Just arrange them in order and we will look at them.

Dr. WARREN resumes the stand.

Direct examination resumed by Mr. Lane:

The Witness: In 1912 I knew that the building and loan, that the \$14,000 was run out and that the property had to be transferred at that time, that is the mortgage cancelled, so I turned the deed over, as I understand, to Mr. Ten Eyck and I believe the mortgage must have been cancelled at that time.

30

By the Vice-Chancellor:

Q. Do I understand that you thought it was necessary to send the deed in order to have the mortgage cancelled? A. Yes, sir.

40

*William H. Warren, direct.*

Q. Who was Mr. Ten Eyck, what relation was he to you or anybody else? A. He was secretary of the Building and Loan.

Q. He represented the Building and Loan? A. Yes, sir.

10 Q. Did you receive back the mortgage, cancelled? A. I did not. I believe Mrs. Warren got that

Further direct examination:

Q. In 1912 were you living separate from your wife? A. Yes, sir.

Q. What were you doing with the deed? A. I had had it ever since we had gotten the property.

20 Q. At the time you purchased this property—  
A. Mrs. Warren came to me and wanted the deed. She knew the mortgage was going to be cancelled and I either gave it to her or to Mr. Ten Eyck. I don't remember just which.

Q. At the time you purchased this property and had the deed made in Mrs. Warren's name did you make any statement to her as to giving her the property? A. Why, she said, when she had this money, she told me that she had this  
30 money in the bank and that we would pay cash for it, that the property would be all the same, that the property would be for both of us, and I considered that everything was the same. I knew nothing about law at that time.

Q. Did you at that time state that you were giving her that for her separate property?

Mr. Lum: I objected to that as leading.

A. I never did.

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*William H. Warren, direct.*

Mr. Lum: I objected to that as leading.  
The Vice-Chancellor: How is that proper at this stage of the proceeding?

Mr. Lane: I am endeavoring to find out just what conversation was had at that time.

10

The Vice-Chancellor: Has the witness had opportunity to give all the conversation?

Mr. Lane: No, sir.

The Vice-Chancellor: Ask him to give all the conversation, then you can suggest a topic and ask if anything was said about such a subject. You should not put the words in his mouth.

20

Q. At the time you were married to the defendant did she have any money of her own?

A. She told me she got \$100 when she was married. I do not know of any other.

Q. And from 1890 up until 1900 when you purchased this property had you been giving your wife any money at all? A. I was giving her money all the time.

Q. What is that? A. I was giving her money all the time.

30

By the Vice-Chancellor:

Q. Who paid the living expenses of the household? A. I gave her \$25.00 a week to run the house with and various sums at other times for clothing and different things, jewelry and so forth.

Q. Prior to your marriage was your wife in any employment in which she earned money?

A. No.

40

*William H. Warren, direct.*

Q. Was she trained to any business that you know of? A. No.

Q. What was her father's business? A. He was a machinist.

10 Q. What was her age when you married her?  
A. I think it was 18.

Q. Was she at that time living with her parents? A. Yes, sir.

Q. Not employed anywhere? A. Not employed anywhere.

20 Q. After your marriage was she ever employed anywhere? A. No. I know shortly after we were married that she started a bank account in the Howards Savings Bank and it was made out in both our names. I know I signed a card for it. How much she put in I don't know.

Q. Did you know of her saving money from this money you gave her? A. Yes, I know she had been saving money for years.

Q. Was that a matter of conversation between you and her? A. Between her and I, yes.

30 Q. Did she ever tell you the amount she had saved? A. She never told me, not until this time when I started to buy the property then she said she had \$2,300.

Q. Tell us what she said. A. Why she said: "I have \$2,300 that I have saved up since we were married and we will put that in and pay cash for the lot." Those are just the words she said.

Q. What drew that from her, what had been the prior conversation between her and you, had you told her you had made a contract for the purchase of the lot? A. Yes, sir.

40 Q. What did you tell her? A. I told her I had made an agreement to buy this property

*William H. Warren, direct.*

and I wanted to put a house there that her daughter and she and I could live there. I was living with her parents at that time and expected to have this for a home for myself. I built the apartments over the drug store and my offices were downstairs and I thought it would be nicer for me to do my work in that way.

10

Q. You said you told your wife you had signed a contract for these lots? A. Yes, sir.

Q. And what you proposed to do? A. Yes, sir.

Q. What did she say then? A. She said "we had better pay cash for them and not do it that way. I have money in the bank and we will pay cash for them, and you put it in my name and it will be for both of us."

20

Q. What did you say? A. I said "All right, as long as it is for both of us, I will do that." She said: "You might die or might have an accident and I would be protected that way."

Why did you not say to her "Let us put it in both of our names"? A. Well, I did not know anything about that, I did not think of that, that it was necessary to do anything like that.

30

Q. Did you think of what would happen if she died first? A. No, I don't suppose I did.

Q. Your wife called your attention to the fact that you might die first and she wanted to be protected and she could accomplish that object by having the property conveyed to her; didn't you then think you ought to look out for yourself? A. I don't suppose I did, I don't think so.

Q. You are sure nothing was said on that subject? A. I know I said—before I got the

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*William H. Warren, direct.*

10 money I said this to her, at that time, when she said she had this money and I wanted to put up the building and she said "I don't want you to put up such a large building, I want you to put up just one building alone on the lot." And I said I thought it would be better to put this up and it would be an income coming in and she said—I am away ahead of my story. The way this thing came, when she started about the deed I said—I knew that both of us would have the benefit of whatever the thing developed, see? That was my whole thought all the time. I always spoke to her about that every time.

Q. At that time you were running a drug store?

A. Yes, sir.

20 Q. Were you in debt? A. I was not at that time, no. I had money lying in the bank to pay for part payment on the land.

Q. Did you contemplate engaging in any business at that time excepting in your usual business of running a drug store? A. No, sir.

Q. Have you been in any other business since then? A. No.

30 Q. In conducting your drug store or apothecary business do you incur large debts? A. Yes.

Q. Is there any difficulty about paying them as they become due? A. Yes, there was lots of times.

Q. Did it occur to you that the putting of the property in your wife's name would protect it from claims of creditors? A. No, sir, I never thought of that. You see that was all before I started, before I had the building put up.

40 Q. But you were running a drug store? A. Yes, sir.

*William H. Warren, direct.*

Q. And you contemplated running it in the new building? A. Yes, but I had no debts in the one I had. That was all paid up and making money.

Further direct examination:

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Q. Were you in any financial difficulties or embarrassment at the time you purchased the property? A. No, sir, I was not.

Q. After you purchased this property, did you, yourself have anything to do with the erection of the building on it? A. I had everything to do with it.

Q. What did you have to do with it? A. I engaged the architect and signed the contracts for the building and paid for the building when it was finished. 20

By the Vice Chancellor.

Q. Did you borrow money for that purpose? A. I did.

Q. From whom? A. From Elias Heller.

Q. On what security? A. I gave Mr. Heller my notes. He said he would put the building up for me on my notes and I took out 70 shares of Building and Loan Stock to start it with at the time of the building, when the building was started I borrowed on those seventy shares I had had in for a year, I borrowed \$14,000 and I had to pay \$140 a month on that. 30

Q. Did Mr. Heller know the title was in your wife's name at the time he gave those loans to you? A. He did.

Q. Had you any other property besides this? A. No. 40

*William H. Warren, direct.*

Q. Have you any other real estate except this?

A. No.

Q. Have you any property outside of your business at the present time? A. No.

10 Q. Are you carrying on your business in the building now? A. I am.

Q. Paying any rent? A. Under a lease to the druggist.

Q. What? A. I am paying rent to the druggist.

Q. Are you not engaged in the drug business now? A. No.

Q. Only in your professional business? A. Only professionally.

20 Q. You have your office there? A. My office is there, yes, sir.

Further direct examination:

Q. Mr. Heller, the man you have spoken of, was he the man who conveyed title to you, who executed the deed to your wife? A. Yes, sir, him and his wife.

Q. Was the deed from Heller taken directly to your wife or was it taken to you and from you through somebody else to your wife?

30 Mr. Lum: I object. The deed speaks for itself. It is right here.

Mr. Lane: All right, if the deed is here.

Q. What arrangement did you have with Heller in reference to his security for any money that he loaned to you? A. As the contracts became due, why, when they were brought to me I went over there and made out a note for the

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*William H. Warren, direct.*

amount of each contract, for each one of the builders and gave him a note for that amount and they gave me the money to pay the contractor.

By the Vice Chancellor:

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Q. Have you expressed yourself accurately there? You went over there when the payments were due and made a note to Mr. Heller or the contractor? A. Mr. Heller and he gave me the money.

Q. He gave you a check? A. Yes, sir.

Q. And you endorsed it over to the contractor—A. No, I—

Q. Deposited it? A. Gave him a note, yes, I certainly did.

20

Q. You deposited Mr. Heller's check? A. No, not Mr. Heller's check. Let me see. He gave a check to the contractor I think. I used to give my check to the contractor I know so he must have given me the money and I put it in my bank and drew on it. That is the way I did it.

Q. That is, Mr. Heller gave you his check? A. Yes, sir.

Q. You gave Mr. Heller your note for the amount of the check? A. Yes, sir.

30

Q. Then you came away and deposited the check in your own bank account? A. Yes, sir.

Q. And checked it out to the contractors? A. Yes, sir.

Further direct examination:

Q. What security, if any, besides notes did Mr. Heller have? A. He did not have any secur-

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*William H. Warren, direct.*

ity except the Building and Loan—well, he had the Building and Loan stock.

10 Q. What do you mean by the Building and Loan stock, how did he have that? A. Well, I say, he put the money up for me to put the building up and asese came due we finally made a total note of \$14,000 which was paid off when the Building and Loan was paid.

Q. Who had all the dealings with Heller, you or Mrs. Warren, or both of you? A. I did.

Q. Outside of these moneys from Heller were any other moneys put into the building? A. Money that I got in my practice, sure.

20 Q. Did you put any money in yourself? A. I did, everything I got.

Q. What? A. All the money I got in that I did not use for expenses.

Q. How much were you earning at that time in your profession? A. From five to eight thousand dollars a year.

Q. Have you any idea as to how much these buildings cost? A. When the barn was put up it amounted to about \$21,000.

30 Q. Including the barn? A. The house and the barn. The barn was \$3,000 and the house I think, was about fourteen to sixteen thousand dollars. I took out twenty-five shares in the—Mr. Heller had a note for \$5,000 besides this note for \$14,000 which I took out from the twenty-five shares of building and loan stock and that was to go on and pay for the \$5,000 extra that I had borrowed; that was \$19,000 I borrowed from him and that was secured by shares in the Building and Loan, twenty-five shares. In 1908, at the time of the panic they

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*William H. Warren, direct.*

withdrew my shares and took thirteen hundred and some dollars—they have it in their records, and put that on the \$5,000 note and Mrs. Warren and I—we had a mortgage for \$3,000 drawn up and I paid him \$5,700 between December and June in 1908.

10

Q. Who took charge of the collection of all the rent of this property? A. I did up until 1909.

Q. Then what happened? A. Then in January, I had settled a case with Mrs. Warren with the Traction Company and they sent a check for \$1,000 to us which was made out in both our names. I told her that I was back in the Building and Loan and I asked her to give me one-half of that to pay up the Building and Loan. She refused and said she wanted it for Norma. So the Building and Loan went on and got three months behind in November, I paid the last back, I think. In June and in November it was along about seven hundred dollars and then I signed a check and paid up the loan—she paid up the loan and then she said she would collect the rents and run the building. That was not until 1909.

20

Q. After that did you continue to pay any money towards the building? A. I did. I paid her \$20 a week for support and Norma \$5 a week and I gave her \$60 a month up until 1912 to pay on the Building and Loan.

30

Q. Which Building and Loan? A. On the \$14,000—on the \$18,000—the \$17,000 loan.

Q. Up, until when did you give her that? A. Up until Dec. 12th.

Q. Until when? A. I paid it up until 1914. After the loan was out I paid her \$60 a month

40

*William H. Warren, direct.*

just the same because after that she claimed that much for rent. She said "Pay that in lieu of rent."

By the Vice Chancellor:

10 Q. When did you and your wife separate?

A. 1909.

Q. What month? A. In October or November.

Q. Do I understand that you were then attending to the business of collecting rents? A. I was, up until that time.

20 Q. Then what occurred? A. Then we had trouble over a loan and there was trouble down at the house, there had been trouble there for sometime and I told her if she would come and live in my apartment over the store, her and Norma—I would not live with her parents any more, I was not on good terms with them, with my mother-in-law, my mother-in-law did not speak to me about it.

Q. You separated then? A. Yes, sir.

Q. Why was any change made then in the collection of rents? A. On account of this building and loan going back.

30 Q. Why didn't you continue to pay the rents and pay the money to the building and loan? A. Because she said that she was going to take the rent, that I had nothing to say.

Q. And you submitted to that? A. I couldn't do anything else.

Q. How long did she continue collecting the rents? A. Until the present day.

Q. From 1909? A. Yes, sir.

40 Q. I thought you said something about a change being made in 1912. A. That was when

*William H. Warren, direct.*

the Building and Loan—when my note matured and the Building and Loan was paid off.

Q. But there was no change in the collection of the rent as I understand it, from 1909 down to the present time, is that right? Your wife was getting the rent all the time? A. No, no. 10

Q. Now, straighten that out, doctor. Perhaps I can help you a little. You say you and your wife disagreed—A. Yes sir.

Q.—about where she should live and where your daughter should live? A. Yes, sir.

Q. In 1909? A. Yes, sir.

Q. And the result was a separation? A. Yes, sir.

Q. And at that time your wife took the collection of the rents away from you? A. Yes, sir. 20

Q. Now the question is, has she collected the rents ever since? A. Yes.

Q. Without any change? A. Without any change.

Q. At that time you were renting a drug store in the building? A. Yes, sir.

Q. And did you begin to pay rent to your wife? A. I paid—I gave her money every week, yes, sir, up until 1914.

Q. Did you pay rent? A. It was considered as rent. 30

Further direct examination:

Q. Did you get any receipt from her each month for money you paid to her? A. No, I might have got some. In the drug store it was run by the manager and he got receipts, that is all the receipt I got.

Q. Do you still own the drug store? A. No, I do not, I sold it. 40

*William H. Warren, direct.*

Q. When did you sell it? A. I sold the drug store in October of last year.

Q. That was after this suit was started? A. Yes, sir.

10 Q. Up to that time were you paying rent for that store each month and getting receipts from Mrs. Warren? A. The store was, yes.

Q. What do you mean, by the store was, did you run the store? A. I had a man, a manager, who ran the store.

Q. You did not have the active management of the store yourself? Were you in the store yourself? A. I was in the office. No, I did not run the store. I had clerks there to run it.

20 Q. At that time—the time this property was first built and you went in there with the drug store did you not? A. Yes, sir.

Q. Was that under your name? A. Yes.

Q. Did you have the management of it? A. Yes.

Q. Did you at that time—A. I had clerks, but I managed it.

30 Q. Did you at that time charge yourself rent, or how did you figure the rent? A. I did not figure the rent then. That was not until 1909. I did not pay rent until 1909, and after 1909 to 1912, I didn't pay any rent.

Q. You didn't pay any? A. No, I just simply gave her money and gave her \$60 to pay on the Building and Loan until 1912.

Q. How much does the property rent for a month? A. For about I should judge \$220 a month.

40 Q. How much did it rent for at that time you took charge of the rent? A. From \$220 to \$240.

*William H. Warren, direct.*

Q. Do you include in that anything for the store? A. Yes. No, that is not including the store. What do you mean?

Q. Does that \$220 include any rent for the store or not? A. Yes, sir, it does.

Q. How much rent does it include for the store? A. It includes \$50. 10

Q. At the time, up until 1909 when the separation took place, who took charge of the payment of the water bills? A. I did.

Q. Did Mrs. Warren up to that time have any separate account of her own that she deposited her moneys in and gave you checks to transact the business with? A. No.

Q. Did you render accounts to her every month? A. No. 20

Q. As to the conduct of this property as to the rentals? A. I did not.

Q. Did you make any statements to her? A. No.

Q. Did you have any conversation with her as to accounting to her or anything of that kind with reference to the store? A. No.

By the Vice Chancellor:

Q. What did I understand you to testify to with reference to your wife's bank account. Did you know of any account that she had except the savings bank account? A. After 1909 I did. 30

Q. Prior to that did you know of any? A. Oh yes, I knew that she had taken one out.

Q. Taken what out? A. The bank account.

Q. What kind? A. That she made one, had an account there. I don't think it was until after 1909 that I knew it. 40

*William H. Warren, direct.*

Q. In what sort of a bank, a bank of deposit or a savings bank? A. A national bank.

Q. What national bank? A. National Newark Banking Company.

10 Q. When did she open that account, do you know? A. No, I do not.

Q. When did you first learn of it? A. I think in 1909.

Q. What did you do with the collection of rents in this building as long as you had charge or down to 1909? A. I deposited the money in my bank and paid the Building and Loan.

Q. The money you gave your wife, did you give in the shape of cash or check? A. Cash usually. I gave her some checks.

20 Q. Did you keep any books or book in which an account of the receipts of the property was kept? A. No, except the bank book and check books.

Q. Did you collect the rents in the shaps of checks or cash. A. Cash usually, some checks.

30 Q. Could you state the amount of the rentals you received, the rents you received from that building down to 1909 and the disbursements you made in respect of it, could you state an account now? A. No, I could not now. I know it was a whole lot of money. I paid up the Building and Loan and—

Q. Did you pay for repairs from time to time? A. I did, I paid for them all the time.

Q. Did you enter the amounts so paid in any book or books? A. In any books?

Q. Yes, keep a record of them. A. I kept the bills, all the bills and things.

40 Q. What? A. I kept the receipted bills.

*William H. Warren, direct.*

Further direct examination:

Q. Where are those receipted bills? A. They must be up there.

Q. Up where? A. You mean the bills for the building and things like that?

Q. Yes. A. I could not tell you now. 10

Q. Have you got them? A. Not all of them.

Q. At any time did you attempt to keep any account of this property. A. No, I never did, not any direct account.

Q. Did you keep the moneys from this property separate from your own moneys or your own moneys separate from them, did you put them in different banks? A. No.

Q. In what banks did you have accounts during this time? A. In the Newark City National—the National Newark Banking Company, the Federal Trust, the North Ward and the First National Bank of Belleville. 20

Q. During this time, up to 1909, did Mrs. Warren take any active management in respect to the property? A. No.

Q. What did she do in reference to the property? A. What is that?

Q. What did she do in reference to the property? A. She did not do anything, she left it all to me to take care of. 30

Q. Did she pay any bills? A. Not on the property. She paid one assessment—on one assessment she gave me some money, an assessment for a street.

Q. When was that, before 1909? A. Yes, sir, before 1909.

Q. Who paid the rest of the assessment, streets? A. I did. 40

*William H. Warren, direct.*

By the Vice Chancellor:

Q. In what shape did she pay you the money check of cash? A. Cash.

Further direct examination.

10 Q. Do you recollect that distinctly that occasion? A. Yes, sir.

Q. How much was it? A. I think she paid one hundred and some odd dollars and I paid the balance of it I know. It was a payment that was due on one of the assessments.

20 Q. Up to the present date have you had any conversations with Mrs. Warren in respect to an account on the property, or she with you? A. I have had through lawyers. I spoke to her about it several times and wanted to know what she was going to do about it. I thought I would let it go until after Norma got married, I didn't want to make any trouble until after she got married.

30 Q. Can you recollect when was the next time after you purchased the property that any conversation came up between you and your wife with respect to the ownership of the property? A. Every time we talked about it she said "It is half yours and mine together."

Q. When were those times? A. All during the putting up of the building and right through up until 1909.

Q. How did you come to talk about it? A. We talked about how things were getting on with it.

40 Q. How did she come to make any such statement as you have testified to; why would she say that, what would lead up to it? A. She was

*William H. Warren, direct.*

interested in the building and how things were going.

Q. Did you talk over financial matters with her at all? A. Yes, I told her in what trouble I was and how hard it was to keep the Building and Loan going and all. I had to pay out so much money after the loan was paid off. 10

Q. Are you speaking now of the time after you were separated or before you were separated? A. After

Q. What is that? A. After.

Q. I want to know before, did you have any talk on financial matters at all with respect to the property at any time. A. Oh, yes, all during the years from 1909 we talked about it.

Q. Before 1909? A. Yes, all through there. 20

Q. What did you talk about? A. Oh, about what I was paying off, how the loan was and all that. That is all I can tell you.

Q. Did Mrs. Warren at any time have any conversation with you in which she told you positively that the property was hers and you had nothing to do with it?

Mr. Lum: I object to the question.

The Vice Chancellor: I will take it. 30

A. She never told me that.

The Vice Chancellor: Did Mrs. Warren at any time, in your presence say that the property was hers exclusively?

Witness: Oh, yes, she has.

Q. When was the first time, that is what I am trying to get at? A. In 1912, when the loan came due. 40

*William H. Warren, direct.*

Q. What was that conversation about—you were there? A. I sure was.

Q. Where? A. In the office.

Q. The office of what? A. My office.

10 Q. Who else was there? A. I was with her alone then.

Q. Was your wife there? A. I wrote her a letter in 1912 and I never heard anything from her.

Q. Did you have a conversation in your office with your wife in 1912? A. Yes, I did.

Q. What was it about, what was the conversation if it referred to this property? A. I spoke to her about all the money I had put into it and I thought she ought to divide it up or give me my share out of it.

20 Q. Just state what that was, that conversation.

The Vice Chancellor: Go on. What did she say?

(The witness did not reply)

The Vice Chancellor: Do you remember what was said, if anything, doctor?

Witness: She said she would not give me anything out of it.

30 Q. How did you come to have that talk? A. Why it was when the thing came due, and I thought that she ought to turn over part of it to me.

By the Vice Chancellor:

Q. Were your relations with her friendly at that time? A. Not very.

Q. You were not living together? A. No.

40 Q. Had you had any relations as man and wife since 1909? A. No.

*William H. Warren, direct.*

Further direct examination:

Q. When was the last time you had any relations as man and wife? A. 1902.

Q. But you lived continuously in the same house up until when? A. I did.

Q. Up until when, I say? A. Up until 1909. 10

By the Vice Chancellor:

Q. You occupied the same room? A. No, sir.

Q. You occupied different rooms in her father's house? A. In her father's house, yes.

Adjourned until Thursday, February 8th, 1917, at ten o'clock A. M., at Chancery Chambers, Jersey City, N. J.

Note: If the case is not finished on Feb. 8th., 1917, it is to go over until May 15th, 1917, which day has been reserved for it. 20

30

40

**Testimony.**

## IN CHANCERY OF NEW JERSEY.

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 Between

 WILLIAM H. WARREN,  
 Complainant,

and

 CORA B. WARREN,  
 Defendant.
 

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10

Jersey City, N. J., Wednesday, February  
 8th, 1917.

Before Honorable Eugene Stevenson,  
 Vice Chancellor.

20

Trial resumed pursuant to adjournment.

Mr. Harry Lane for the complainant.

Mr. Ralph Lum, (Lum, Tamblin and Colyer)  
 for the defendant.

(By consent the examination of Dr. Warren  
 was suspended.)

ARMAND G. HELLER, recalled for the com-  
 plainant.

30

Mr. Lane: While this witness was on  
 the stand before, if the court please, I  
 had some notes which I was going to offer  
 in evidence given to Heller Brothers, and  
 Mr. Lum I think consented to their going  
 in, in a bunch.

Mr. Lum: At page 42 it says "Just ar-  
 range them in order and we will look at  
 them."

40

*Armand G. Heller, direct.*

(Notes handed to Mr. Lum.)

Mr. Lane: I offer in evidence a package of notes—I presume they can all be marked as one exhibit—they are notes given at different times by William H. Warren to Heller Brothers and marked "paid." 10

By Mr. Lane:

Q. Does the account of Heller Brothers with William H. Warren appear in full on the books of your company? A. No.

Q. Is there any way in which you can get a full transcript of the account to show the full transactions between William H. Warren and Heller Brothers, showing the actual amounts loaned and the actual payments made and the number of notes given and at what times they were given and the amounts they were given for? A. I think it is possible, it is certainly long drawn out and we would have to pick out all the cash items out of the cash book. We did not have a personal account with Dr. Warren, it was a bills receivable account and they were renewed and paid on and paid off and it would be pretty difficult to get an exact transcript of all the transactions. 20 30

Q. Did you, yourself, keep all these books? A. No.

Q. In your testimony you were asked in reference to how your company came to loan Dr. Warren this large sum of money solely on notes. Have you any recollection as to whether or not the deed for this property was held in the possession of Heller Brothers until after 40

*Armand G. Heller, cross.*

the Building and Loan mortgage was taken and the account paid? A. That is my impression.

Cross examination by Mr. Lum:

10 Q. Many of these notes I notice are way after this transaction, 1907, 1910, etc., after 1906, for various amounts, some small and some large; they prove the fact do they not, that your father was a kind of private banker for the doctor at various times and helped him out with various loans in connection with his transactions independent of the property? A. Very little. All the notes were connected with the real estate transactions.

20 Q. Are you sure about that? A. I am positive.

Q. Tell us what real estate transactions there was in 1910. A. The note was carried over.

Q. I show you a five hundred dollar note made by Dr. Warren to his own order? A. Yes.

Q. Do you mean to say that note had anything to do with this property.

The Vice Chancellor: Dated when?

Mr. Lum: January 15th, 1910.

30 A. Well, now, I could not say offhand. But I know all the business we did with the doctor was in connection with his house and the notes were given in connection with that.

Q. I show you a note of June 25th. 1907 for \$600, made by Dr. W. H. Warren to his own order and endorsed by your company. You have no recollection that that had anything to do with the property at all, have you? A. Why no, no particular recollection as to that one note, no.

40 Q. And it might have been they were notes

*Armand G. Heller, cross.*

made by the doctor and discounted by your father for the purpose of helping him? A. No, that was not possible at that stage of the game because the doctor's credit at that time was not very good, we would not loan him money.

Q. I call your attention to the fact that some of these notes are made by Dr. Warren to the order of Heller Brothers and not endorsed at all. Those were the ones that had to do with the property were they not? A. I could not say about it; I do not know whether or not they were. 10

Q. Can you give the court any reason why some of the notes were made to the order of Dr. Warren and signed by him, and others signed by him and made to the order of Heller Brothers Company? A. I imagine—December 23rd, that is when we had a house cleaning with him, I imagine he agreed to pay \$75 a month on the old indebtedness and these run regularly, one of June 15th, another May 15th. I imagine there was a larger note taken up by these, and he was to pay that piece meal. 20

Q. Here is a thousand dollar note made May 10th, 1907, to the order of Heller Brothers Company. Do you remember anything about that? A. No, sir. 30

Q. You have no distinct recollection then as to which of these notes represent individual transactions? A. All I know is that at that time Dr. Warren's credit—we would not loan him any money and the chances are they are old notes that we had been carrying along, bearing on this property.

Q. Who is Charles A. Baker? A. A local painter. 40

*Armand G. Heller, cross.*

Q. Do you recall this note given in August 1901, by Dr. Warren to Charles A. Baker? A. I certainly do not, but it is very possible we got that note in from Mr. Baker.

10 Q. It may have been it had nothing to do with your concern? A. Yes, sir.

Q. So that there is nothing definite you can tell us with reference to these notes? A. Only that I know the notes we handled for Dr. Warren were all in connection with his property.

By the Vice Chancellor:

20 Q. How in connection with his property, explain that a little more fully. A. When the doctor built his house in the first instance we made him advances on his note and when we took up the notes, he got a Building and Loan mortgage and paid us back with the exception of a balance which was carried on through years.

Q. Do you recollect what that balance was after the proceeds of the Building and Loan mortgage had been turned over in part or in whole to your father in satisfaction of those notes? A. I think it was around \$5,000.

30 Further cross examination:

Q. The doctor had some building and loan shares of his own? A. Yes, sir.

Q. Separate from these fourteen thousand dollars worth of shares? A. Yes, sir.

Q. Do you know whether money was sometimes loaned to him in order that he might pay on those? A. No.

Q. You have no knowledge of that? A. No.

40 Q. You do not know the amount of the con-

*Armand G. Heller, cross.*

tract for this building? A. I do not at the present time, no. It is a good many years ago.

Q. Have you any books or anything that would show the amount of money that was paid on the purchase of this property before the mortgage was given? A. It will show on our books if you pick it out. 10

Q. But you have not them here? A. No, sir.

Mr. Lum: I object to these notes only because I do not think they throw any light on, but only tend to confuse the issue. If your Honor thinks they are of any importance—

The Vice Chancellor: My recollection is that the testimony taken heretofore tended to show that the building was paid for by Dr. Warren and not by Mrs. Warren, that his money went into it, and it was done in this way—that Mr. Heller Senior, now deceased, made direct advances to Dr. Warren or the contractors and Dr. Warren gave him notes in this way as the building was going on, and a large indebtedness on notes was created, notes of Dr. Warren held by Mr. Heller. Then the loan came from the Building and Loan Association of \$14,000 the mortgage loan and that paid off most of the notes and reduced the indebtedness of notes according to this witness's present statement to about \$5,000. These notes are offered as the notes, as I understand it, are they not? 20 30

Mr. Lum: Yes, they are offered without being identified. 40

*Armand G. Heller, cross.*

The Vice Chancellor: That was by consent. I would not allow a package of papers to be marked as one exhibit if counsel did not consent to it. The genuineness of the notes I understand you admit.

10

Mr. Lum: Yes, that is admitted.

The Vice Chancellor: They are genuine notes, made for value at the time they respectively bear date.

Mr. Lum: Yes, sir.

The Vice Chancellor: That would seem to corroborate testimony taken heretofore as to the manner in which these moneys were paid. Of course, it may be shown, or may be argued, that the money which paid off these notes came from Mrs. Warren or came from rents of the property or from other sources. I will admit the notes.

20

(Package of seventeen notes received in evidence and marked as one exhibit Ex. C. 6, February 8th, 1917, H. W. K.)

Mr. Lane: I offer also, if the court please, two receipts, one dated August 31st, 1900, signed by Elias C. Heller, for one thousand dollars "Received on account of agreement from William H. Warren" (marked Ex. C No. 7, February 8th, 1917, H. W. K.)

30

Mr. Lane: The other one is dated October 19th, 1900 is signed by Elias G. Heller, and is a receipt for \$2,500, received from William H. Warren on account of land.

Marked Ex. C, No. 8, February 8th, 1917, H. W. K.

40

*Paul M. Fischer, direct.*

PAUL M. FISCHER, sworn for the complainant.

Direct examination by Mr. Lane:

Q. You are an attorney and counsellor at law of this state? A. Yes, sir.

10

Q. Did you represent Dr. Warren in certain matrimonial actions that were pending in this court? A. Yes, sir.

Q. During what period of time did you represent him? A. Between the year 1915, until late in sixteen; I should say about May 1915—from the time of the filing of the petition to the time of the divorce, when the final decree was entered.

Q. Did you represent him in connection with the selling of the drug store? A. Yes, sir.

20

Q. And in all of the incidental arrangements in reference thereto? A. Yes, sir.

Q. Will you just state what the arrangements were in reference to the obtaining of a lease of the store premises to the purchaser.

Mr. Lum: Objected to as immaterial and irrelevant and also on the ground that it is not shown how it can bind the defendant in this suit.

30

The Vice Chancellor: I have no way of passing on it; I do not recall any such testimony before.

Just explain briefly Mr. Lane, what you have shown about a lease, a lease from whom and by whom.

Mr. Lane: Mr. Fischer being an attorney I thought I would endeavor to get him away. I am anticipating a little because of

40

*Charles A. Baker, direct.*

the remark Mr. Lum made as to the rental from this store—

The Vice Chancellor: What store?

Mr. Lum: The drug store formerly conducted by the doctor.

10 The Vice Chancellor: Is that drug store in the premises in question here?

Mr. Lane: Yes.

The Vice Chancellor: I remember that Dr. Warren kept a drug store there. Now, you want to offer testimony in regard to obtaining a lease from his wife?

20 Mr. Lane: The obtaining of a lease from the wife to the purchaser of the drug store. I want to show the reason for it. I will withdraw the witness if Mr. Lum objects at the present time.

I will withdraw the witness and withdraw the question.

---

CHARLES A. BAKER, sworn for the complainant.

Direct examination by Mr. Lane:

30 Q. Where do you reside? A. Forrest Hill.

Q. What is your business and what was your business from 1900 down? A. Decorating.

Q. Did you do any work on this building out in Newark on Mt. Prospect Avenue? A. Yes, sir.

Q. What work did you do? A. I had the contract for painting them when they were built.

Q. And decorating them inside? A. I believe they were not decorated at that time.

40 Q. How much was your contract for? A. I

*Charles A. Baker, cross.*

have really forgotten exactly; I think it was about \$800.

Q. With whom did you have your negotiations for the entering into of that contract and doing the work? A. Dr. Warren.

Q. Was Dr. Warren around on the job at any time or not? A. Yes, sir. 10

Q. Did you have any dealings whatsoever with Mrs. Warren or see her there on the job at that time? A. No, sir.

Q. Who paid you? A. Dr. Warren.

Q. By check or by cash? A. Various ways, both ways, I think; I think a note was given for some and a check for some and I think I got some cash. I am uncertain as to that just now.

20

Cross examination by Mr. Lum:

Q. You had a written contract? A. Yes, sir, I think it was, if I remember right.

Q. That written contract was signed by Mrs. Cora B. Warren was it not? A. No, sir, not to my knowledge.

Q. Will you swear that it was not? A. No, I—Well, yes I will swear, I never had any dealings with Mrs. Warren and never had any conversation with her about the job. 30

Q. You had a written contract? A. I am not so sure about that, I think there was though.

Q. That written contract was in the name of Cora B. Warren was it not? A. No, not to my knowledge.

Q. Will you swear it was not? A. I don't think it was.

Q. Where is that contract? A. I couldn't tell

40

*Theodore L. Wittebottom, direct.*

you now. I have sold out and been out of business some time, two or three years.

Q. Don't you know that a contract is on file in the name of Cora B. Warren? A. No, sir.

10

Mr. Lane: I might say that Mr. Lum and I are going to agree to stipulate the provision of contracts on file, on the record.

Mr. Lum: Make an abstract of them for the convenience of the Court and agree on the amount stated in the contracts as to the cost of the building.

20

Mr. Lane: No, as to the amount of the contract. If there were any extras Dr. Warren paid for—I don't exactly know.

It is stipulated Mr. Wittebottom would testify he was the carpenter and the contract was \$6,990, and his testimony would be the same as Mr. Baker, the last witness. There is just one question though—

The Vice Chancellor: Then the witness must be sworn if you are going to interrogate him.

30

THEODORE L. WITTEBOTTOM, sworn for the complainant.

Direct examination by Mr. Lane:

Q. Were arrangements made in the negotiations and plans for this building for a drug store? A. Yes, and two other stores with the drug store on the same floor.

40

Q. Was it specially fitted up for a drug store? A. Yes, sir, on the corner.

*Theodore L. Wittebottom, cross.*

Q. In back of the drug store what rooms were there? A. There was an office and then a private office in between, a waiting room, rather; a waiting room and the office, two rooms back of the drug store.

Q. An office for what? A. For the doctor— well, his instruments and chairs and so on whatever he had in there. 10

Q. And there was an apartment over the drug store and office? A. There were two apartments over, one fitted up for himself, or intended to be used by himself and another one above that.

Q. How do you know it was intended for himself? A. He had speaking tubes put in to go up there, and bell calls from downstairs up there so if there was any one there they would call him upstairs. 20

Cross examination by Mr. Lum:

Q. Are there any different speaking tubes in that apartment than any other apartment? A. Not that I know of.

Q. The fact of the matter is there were the same speaking tubes for every one of the apartments, was there not? A. How is that? 30

Q. The same speaking tubes were arranged for every single apartment? A. The same speaking tubes?

Q. Yes, the same kind. A. Yes, the same kind, similar.

Q. And the same kind of call bells went to every single apartment didn't they? A. To the flats?

Q. Yes. A. They were bells to the flats, yes.

Q. And there was no difference whatever in 40

*Theodore L. Wittebottom, cross.*

the apartment over the drug store so far as speaking tubes and bells were concerned from any other apartment? A. Yes, I think there was, I don't think there is a speaking tube in any other apartment at all.

10 Q. Would you swear there was not? A. I do not remember putting in any at the time.

Q. You have no recollection of it at all? A. Well, that was not in my contract, and of course that was sometime ago, you see this was eleven years ago.

Q. All you remember is you were called on two days ago and asked to be a witness in this case? A. I live in the neighborhood and have known Dr. Warren for the last twenty years.

20 Q. You were asked to say here that the apartment over the drug store was specially fitted up? A. He intended to move there.

Q. He told you that a little while ago? A. He told me he was fitting it up for a drug store.

Q. He told you that a few weeks ago? A. I knew that a long time ago.

30 Q. You were told he was fixing up this apartment to live in a few weeks ago? A. No, sir, that was before he started to build the place. I was down to see him then and he had the plans made up before he started to build the place. He was paying rent, down the street on the other side.

Q. Your contract was in writing? A. Yes, sir.

Q. Who was it with? A. It was with Warren.

Q. Which one? A. Well, the agreement between him and I—of course it was filed in her name, but the agreement and all the business was done between Dr. Warren and I.

40 Q. Your contract was done in writing? A. The

*Theodore L. Wittebottom, redirect.*

contract had her name on, but I didn't have anything to do with her, and I didn't know—

Q. She was the person who agreed to pay you? A. She was not there.

Q. She was the person in the contract who agreed to pay you your money? A. No, sir, she didn't agree to pay me. 10

Q. She didn't agree to pay you not in the contract? A. That is all.

Redirect examination:

Q. Who was to pay you? A. Dr. Warren, and his checks will show when he paid me and the amounts and dates and everything.

Q. Were there any extras, besides this contract? A. Yes, sir. 20

Q. Can you tell how much? A. I can tell by looking at the books, there was not so very much that is my recollection.

Q. Yes. A. There was something like four or five hundred dollars that's all.

The Vice-Chancellor: Is there any dispute as to how this building was erected and paid for?

Mr. Lum: Not the slightest.

The Vice-Chancellor: The only question to which this testimony relates seems to be who furnished the money, where the money came from. The doctor negotiated the contracts I understand. 30

Mr. Lum: Yes, sir.

The Vice-Chancellor: The title being in the wife, of course she signed them and they were filed with her name signed to them. That was probably so in every case. 40

*Theodore L. Wittebottom, redirect.*

Mr. Lum: In every case.

The Vice Chancellor: The doctor did the business and called in the men.

Mr. Lum: In every case.

10 The Vice-Chancellor: I do not see that we get any light from this testimony. You can go on if you please, but precisely the same course of procedure would have been adopted if the lot had been the original property of this lady before she was married and the project had been made then of putting a building upon it. Some women manage their own business, other women do not. Perhaps in the majority of cases, the carpenters, decorators and  
20 painters never meet the owner at all where the property is that of the wife, all the contracts being negotiated by the husband and all the payments made by him and the only point of contract between the owner, the wife and the different contractors, would be that contracts naturally would be drawn in her name and she would go to some place and perhaps not even meet the men, got at a different time from that  
30 at which the contractors signed, and sign her name. That seems to be the way the business is done here.

I do not wish to limit the testimony at all, counsel may proceed.

Mr. Lum: It is stipulated the mason contract was for \$3,300, that including the contract and extras.

The Vice-Chancellor: What was the contractor's name?

40 Mr. Lane: Mr. Traverse.

*William H. Warren, direct.*

Mr. Lum: And that the business was done as in the other cases, the mason not being brought in contact with Mrs. Warren in any way?

Mr. Lane: Yes.

The Vice-Chancellor: The payments being made by Dr. Warren? 10

Mr. Lum: Yes.

---

WILLIAM H. WARREN resumes the stand.

Direct examination continued by Mr. Lane:

Q. Have you got all of your checks covering this entire space of time? A. No.

Q. Were you able to find any of them? A. I found quite a few. 20

Q. Where did you find them? A. In the safe, in the old books there.

Q. I show you a number of checks drawn by you from 1905 to 1908, to the order of the "Woodside Building and Loan Association" and ask you if those checks were paid by you to that association? A. They were.

Q. Some of those checks are for the sum of \$25; were those checks paid on separate shares of your own? A. They were. 30

Q. Outside of those checks what were these other checks paid on? A. On the Building and Loan.

Mr. Lane: I offer these checks in evidence.

The Vice-Chancellor: How many are there of them?

Mr. Lane: Thirty-two.

The Vice-Chancellor: Is there any objec- 40

*William H. Warren, direct.*

tion to their being marked together as one exhibit?

Mr. Lum: No, sir.

10 Package of thirty-two checks from Dr. Warren to Woodside Building and Loan Association received in evidence and marked Ex. C9, February 8th, 1917, H. W. K.

Q. In addition to payments on this building and loan mortgage did you make any payments for coal and other expenses of the—

20 Mr. Lum: The doctor made all of the payments that were made in connection with the running of this building during such time as he collected the rents, with perhaps a few exceptions.

The Vice-Chancellor: And that was down to 1909?

30 Mr. Lum: According to the doctor's testimony, if it is true, until 1904. Then there was a break for sometime and he did not collect the rent. The time is not definitely fixed yet, but it will be fixed. After that break he did collect them from 1906 or 1907 until 1909.

You need not take any time to prove any of the checks, I know the doctor's signature.

Q. I show you one check, dated September 20th, 1910, to E. A. Jeffery, had that check anything to do with this business or is that a private loan of your own? A. That is private. That has nothing to do with this.

40

*William H. Warren, direct.*

The Vice-Chancellor: Is that one of the checks you put in evidence?

Mr. Lane: No.

The Vice-Chancellor: Let it be marked for identification.

(Check dated September 20th, 1910, made by Dr. Warren to the order of E. A. Jeffrey, marked C10 for identification.)

10

Mr. Lane: It is stipulated, if the Court please, that the record of the signature cards by which the joint account in the Howard Savings Bank of Newark was opened, is shown by two papers, copies which I now produce.

Mr. Lum: And the account is annexed to that.

20

Mr. Lane: I will offer the signature card of William H. Warren in said account, the signature card of Mrs. Warren and the transcript of the account as one exhibit.

The Vice-Chancellor: What account?

Mr. Lum: In the Howard Savings Bank of William H. Warren and Cora B. Warren.

30

The Vice-Chancellor: Opened When?

Mr. Lum: Opened February 21st, 1896, and closed October 15th, 1900.

(Signature cards and transcript of account in Howard Savings Bank marked as one Exhibit, Exhibit C11, February 8th, 1917, H. W. K.)

Q. What was your understanding as to the moneys which were deposited by Mrs. Warren

40

*William H. Warren, direct.*

from moneys which at times she saved from the amount of money you gave her in the course of your—providing for the home—savings.

10 Mr. Lum: Objected to. In the first place because his understanding is immaterial; we would only be entitled to what was said and in second place it is repetition inasmuch as the doctor testified to that on page 46 of the testimony before. Well, that does not cover it, but it is repetition. I think the conversation is permissible.

Mr. Lane: I will re-frame the question.

20 Q. What was the conversation in reference to such money? A. When we took the account out, all I knew about it was that we opened it up there and whatever went in there I never questioned her about it because we thought—

Mr. Lum: I object to what he thought. What was said.

30 The Witness: I think we talked about it when the account was opened that it was to be in our names.

Q. Have you finished your answer? A. Yes, sir.

Q. Were the speaking tubes in the apartment over the drug store the same as the speaking tubes in every other apartment? A. No.

Q. They were not? A. No.

Q. What difference was there? A. From the door of the drug store a speaking tube went to

40

*William H. Warren, cross.*

a rear bed room, it was not connected with those in the hall at all.

Q. Were there any speaking tubes from the drug store to any other apartment than this one?

A. No.

Q. This barn that was erected on this property, what was that erected for? A. I had to have a place to keep my horses and carriages in and the apartment above was the apartment for the janitor and his wife to live in, finished off rooms and bath. 10

Cross examination by Mr. Lum:

Q. When was the barn built? A. I do not remember the year it was built. It was after the building was put up. 20

Q. About what was the cost? A. Over three thousand dollars.

Q. You remember making an agreement with Mr. Heller for the purchase of the property? A. I do.

Q. Do you remember the deed he made? A. I do.

Q. What was done with the deed after it was made? A. When Mr. Heller loaned me the money to put up the building they kept the deed as security. 30

Q. Now, wait a minute. You did not borrow the money until later, after the deed was made? A. Well, yes.

Q. When the deed was first made to you did you keep it? A. I had an agreement deed with them.

Q. What is that? A. I had an agreement deed with him. 40

*William H. Warren, cross.*

Q. An agreement to purchase you mean, you had an agreement to purchase? A. I thought it was an agreement deed, an agreement to purchase, yes.

10 Q. Under that agreement to purchase you were making installment payments? A. Yes, sir.

Q. You did not buy it according to the agreement, did you? A. No.

Q. You changed the payments? A. Yes, sir.

Q. And a deed was made to you, I believe? A. Yes, sir.

Q. Do you recall when that was—or rather, no deed was made to you, was there? A. What is that?

20 Q. No deed was made to you? A. It was not made to me, no.

Q. It was made to your wife? A. Yes, sir.

30 Q. Do you remember when? A. I do not know the exact date, but I know that when Mrs. Warren spoke to me about it, that I was buying the lot, she said that she had some money, had twenty-three hundred dollars, and if I would like to put that in, to pay cash for the lot instead of putting a mortgage on the land that she would give me that twenty-three hundred dollars and then she asked me to put it in her name as a protection.

Q. You agreed to it? A. I agreed to it.

Q. That was all that was said at that time? A. That was all that was said at that time.

Q. Was the deed made before Mrs. Warren gave you the money or after she gave you the money? A. After she gave me the money the deed was made.

40 Q. The deed was made after she gave you the money? A. Yes, sir.

*William H. Warren, cross.*

Q. Are you very sure about that? A. I am quite sure.

Q. The fact of the matter is that you have no recollection about what took place at that time at all, have you? A. Well, I remember it; yes, very well, indeed.

10

By the Vice Chancellor:

Q. Do you know where she had the money? A. I do not know where she had the money.

Q. Did she tell you where she had it? A. No, she said she had it in the bank, as I remember.

Q. Did you learn what bank it was in? I know she had an account in the Howard Savings. I did not know how much she put in or how much she saved. She kept the books.

20

The Vice-Chancellor: Is Exhibit C11 an account in the Howard Savings Bank?

Mr. Lum: Yes, in the joint names.

The Vice-Chancellor: Nothing was said on the exhibit about what bank it is.

Mr. Lum: It is stipulated on the record in connection with it.

Further cross examination:

Q. You say you remember something about this matter? A. Yes.

30

Q. Who drew the deed? A. I think the lawyer from the Building and Loan.

Q. Who was that? A. R. Arthur Keller.

Q. Who gave him the instructions as to how to draw the deed? A. I think I did.

Q. You told him to put the deed in your wife's name? A. Yes, sir.

Q. And you had the money, you think, from your wife at that time? A. I cannot remember

40

*William H. Warren, cross.*

all of that. Just exactly how it was. I know the loan was paid off, and the deed was made out and the Hellers kept that on the notes until I paid off in the Woodside Building and Loan.

10 Q. Please listen to my question if you will, and do not just travel along in your own way. A. Very well.

Q. Was the deed from the Hellers to your wife made before you got the money from your wife or after you got the money from your wife? A. I do not remember that.

Q. You do not remember that at all? A. No.

Q. When the deed was made to your wife—do you remember what year it was? A. 1900.

20 Q. Did you get the deed then? A. I had the deed, yes.

Q. In your possession? A. Yes.

Q. What did you do with it? A. Why, when—I gave it to Mr. Heller.

Q. When did you give it to Mr. Heller? A. As security for the—when he gave me the money to pay for the putting up of the building.

Q. That was 1902? A. I think so.

30 Q. How long did you have the deed in your possession? A. When the loan was paid off, taken up—

Q. No, after the deed was first made to your wife you say you got it? A. Yes.

Q. And had it? A. Yes, sir.

Q. Where did you keep it? A. In the safe.

Q. How long did you keep it in the safe A. For a good many years; I think it was up until 1912, when the—

40 Q. No, are you sure about that? A. I could not say the exact year, but I know I expected the \$14,000 loan to mature and that—

*William H. Warren, cross.*

Q. Well, now, when the deed was first made in 1900, you say you got it and put it in your safe? A. Yes, sir.

Q. You did not give it back to Mr. Heller? A. I gave it to Mr. Heller when the loan—I gave it to Mr. Heller, he had it all the time until after the loan was paid and then he gave it to me, and that is when I put it in the safe. 10

Q. Why did you tell me just a moment ago that you got it right after it was made and kept it until 1912? A. Well, it is a long way back to remember. I know the Building and Loan had it until that loan was paid off.

Q. I will go back once more and give you another chance, doctor. When the deed was first made in 1900, did you get it? A. (Not answered.) 20

Q. You do not remember anything at all about it, do you? A. I do not remember that.

Q. You do not remember anything at all about it A. I know I had it.

Q. When was the deed recorded? A. 1902.

Q. How do you remember that? A. That is when the—when Mr. Heller had the notes or the deed.

Q. You were shown this morning a copy of the record showing the date of the recording of the deed A. Yes, sir. 30

Q. And that is all that enables you to say it was in 1902, is it not? A. I know that is when it was recorded.

Q. But you had no recollection independent of seeing this record? A. No, I had bought the property the year before and I did not start the building until the following year, and that is when the deed was recorded. 40

*William H. Warren, cross.*

By the Vice-Chancellor:

Q. Did you get the Building and Loan mortgage for \$14,000 as soon as the building was completed? A. After the building was completed.

Q. Immediately after? A. Yes, sir.

10

Further cross examination:

Q. And you gave instructions to Mr. Heller as to the making out of the deed? A. Yes, sir.

Q. How much did you pay to Mr. Heller the first time? A. \$1,000.

Q. Where did you get that money? A. From the bank.

Q. What bank? A. The bank I was banking with at the time.

20

Q. Just answer the question if you will. A. I think the Newark City Bank.

Q. The Newark City National Bank A. Yes, sir.

Q. Is there such a bank in New Jersey? A. Well, it was consolidated with the National Newark Banking Co.

Q. Have you that book? A. I have.

Q. Will you produce it?

30

Mr. Lane: We will produce everything we have.

Q. When did you make the next payment? A. In October, 1900.

Q. How much did you pay then? A. \$2,500.

Q. Where did you get that money? A. From Mrs. Warren.

Q. When did you make the next payment? A. For the balance?

Q. Yes. A. Later than that.

40

*William H. Warren, cross.*

Q. Do you know when? A. I do not remember just the date we paid.

Q. You did not pay any more at all until you went on with the buildings, did you? A. I may not have.

Q. You have no recollection of doing it though, have you? A. I know it was paid up for the whole thing. 10

Q. You knew how to make out a joint account, didn't you? A. Yes.

Q. You had a bank account made out in 1896 when the money was put in the bank in the name of yourself and your wife? A. Yes, sir.

Q. Or the survivor, didn't you? A. Yes, sir.

Q. You made a will before Norma was born, didn't you? A. Yes, sir. 20

Q. Mr. McGowan drew that will? A. Yes, sir.

Q. In that will you left your wife everything, absolutely, didn't you? A. Yes, sir.

Q. You showed that will to your wife? A. Yes, sir.

Q. You say you had a conversation with your wife at the time of purchasing that property? A. Yes, sir.

Q. What did she say? A. I cannot remember just what was said at the time. 30

Q. Tell us as nearly as you can give it. A. Well, that she had twenty-three hundred dollars and if I put that in the property, why—and put it in her name it would be for the both of us the same as—everything was all right and we were getting on all right.

Q. What else? A. Why, that was to protect her.

Q. Anything else? Protect her in what? A. In case anything should happen to me. 40

*William H. Warren, cross.*

Q. Doctor, if you had made a will leaving all of your property to your wife absolutely— A. Yes.

10 Q. —she would be no more protected in case anything happened to you by the deed being in her name? A. Yes.

Q. What? A. No.

Q. So, as a matter of fact, there was not anything of the kind ever said, was there? A. No.

Q. You just thought it up afterwards as something good to say? A. No, I was just trying to remember what was said.

20 Q. Of course she did not say anything about your protecting her when she knew you had a will leaving her everything? A. Well, that is what I understood her to say.

Q. You were living very happily together then? A. Yes, sir.

Q. And had been for ten years? A. Yes, sir.

Q. You had married young, had you not? A. Yes, sir.

Q. And during your married life you went to college? A. Yes, sir.

30 Q. And while you went to college in order to help you, your wife had assisted in the drug store as well as she could with her family duties? A. Yes, sir.

Q. You had co-operated together? A. Yes.

Q. And you did know how to have property in the name of both of you, didn't you? A. No, I did not.

Q. You and she, in 1896, had gone down together to the Howard Savings Bank, had you not? A. Yes, sir.

40 Q. And opened an account in your joint names? A. Yes, sir.

*R. Arthur Heller, direct.*

Q. So that you did know, as a matter of fact, didn't you? A. (Not answered.)

Q. Answer. A. (Not answered.)

Q. What are you waiting for? A. I don't remember that.

Q. Don't remember what? A. I know that we went down but I can't remember how the thing was done. 10

Q. You told us the other day—last October—that the account was taken out in your joint names, didn't you? A. Yes, sir.

By consent the examination of this witness was here suspended.

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R. ARTHUR HELLER, sworn for the defendant. 20

Direct examination by Mr. Lum:

Q. You are a son of Elias Heller? A. Yes, sir.

Q. And you are a member of the bar? A. I am.

Q. Did you attend to the legal end of the Warren transaction? A. I did.

Q. I show you what purports to be a deed from Elias G. Heller to Cora B. Warren, do you recall that instrument? A. I do. 30

Q. Who drew that? A. My stenographer, at my request and dictation.

Q. It was executed before you? A. It was.

Q. From whom did you receive the instructions as to whom to make the grantee? A. Dr. Warren.

Q. Did you receive any other instructions with reference to any other agreement, interest or anything of the kind? A. None whatever. 40

*R. Arthur Heller, direct.*

Q. You were given instructions to draw it just as it is there? A. Absolutely.

Q. And did you so draw it? A. I did.

10 Q. What was done with the deed after it was executed? A. It remained in my physical possession, in my vault in my office, up to the time of the loan from the Woodside Building and Loan Association which was about two years after.

Q. When was it executed with reference to the date? A. It was executed at the time of the date which is September 17th, 1900.

Q. Do you recall whether any payment was made at that time? A. I have no personal recollection.

20 Q. You spoke of a bond and mortgage—

The Vice-Chancellor: One moment. Is this instrument to be offered in evidence?

Mr. Lum: I offer the deed in evidence. A deed from Elias G. Heller, *et ux.*, to Cora B. Warren, wife of William H. Warren, dated September 17th, 1900, recorded on June 13th, 1902, at eleven-ten o'clock A. M., in Book O35 of Deeds for Essex County, pages 84 and so forth.

30

Marked Exhibit D No. 1, February 8th, 1917, H. W. K.

Q. Do I understand you to say that you had possession of that deed? A. I did.

Q. Did the doctor take it away at all up until the time it went on record? A. He saw it at the time it was drawn, he did not take it in the legal sense of delivery.

40 Q. I show you a mortgage dated June 12, 1902; do you recognize that? A. I do.

*R. Arthur Heller, direct.*

Q. I show you a bond of the same date, both from Cora B. Warren and William H. Warren to the Woodside Building & Loan Association; do you recognize them? A. I do.

Q. By whom were they drawn? A. By me at my office, with the assistance of my stenographer. 10

Q. When were they recorded?

The Vice-Chancellor: We have not the date yet.

Q. When were they executed? A. As of the 12th day of June, 1902.

Q. When were they recorded? A. The 13th day of June, 1902, the day following.

Q. And the time of recording? A. At eleven-eleven A. M. 20

Mr. Lum: I offer the bond and mortgage in evidence, being both from Cora B. Warren and William H. Warren to the Woodside Building & Loan Association.

Bond marked Exhibit D No. 2, February 8, 1917, H. W. K.

Mortgage marked Exhibit D No. 3, February 8, 1917, H. W. K.

Q. The bond and mortgage were cancelled, were they not? A. At the maturity of the shares, yes. 30

Q. It was a building and loan mortgage? A. It was.

Q. You know about the payments on this building that was erected on the property, in a general way, I assume? A. I have a general recollection of it as I do more or less with matters pertaining to my office.

Q. Your father, according to the testimony, 40

*R. Arthur Heller, direct.*

took notes and advanced money for the completion of the building? A. He did.

10 Q. You holding the deed all the time? A. During the period of time from the drawing of the deed up to the time it was recorded simultaneously with the mortgage.

Q. Will you tell us briefly how the contractors were paid? A. The contractors in general were paid somewhat in this method, Mr. Warren would get a check from my father, or more properly Heller Brothers Company, which was my father's way of doing business, he did not do business in his own name, every check was drawn by Heller Brothers Company, at the time Dr. Warren had payments to make a corresponding check was drawn by Heller Brothers Company to Dr. Warren and charged to my father on Heller Brothers Company's book. That accumulated to quite a large extent to the substantial sum of about eighteen or nineteen thousand dollars which represented the cost of the building, and that continuing from the time of the starting of the building, which was about one year after the purchase of the property, up to the time of this building and loan mortgage which was given substantially at the time of the completion of the building. At that time the net proceeds of this \$14,000 mortgage were paid over directly or indirectly by Dr. Warren to my father and liquidated that portion of the debt, leaving approximately a \$5,000 balance.

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30

By the Vice-Chancellor:

40 Q. Do I understand that after you had drawn the deed to Mrs. Warren and the same had been executed you kept it in your safe? A. Absolutely.

*R. Arthur Heller, direct.*

Q. So that the title remained in your father for his protection? A. As the deed was to be delivered for the purpose of building this building, that was the purpose, that was all anticipated—the building of the building, and it was the only method I, as my father's attorney, thought it practical to protect him with regard to his large advances.

10

Further direct examination:

Q. The doctor was your family physician at that time? A. My own physician.

Q. You were acting as his attorney, too? A. In a general way. I was very well acquainted with the doctor and had been for years before; I knew him well and saw him very often.

20

Q. You say the \$19,000 represented the building; are you sure that about \$900 of that was not the balance of the purchase price? A. That I could not say.

Q. In other words, the doctor, according to his testimony, got \$2,300 from Mrs. Warren—\$2,300 or \$2,500—and made one payment of a thousand dollars. The price of the land was \$4,200, was it not? A. It was, according to the contract which I drew.

30

Q. You have no recollection of the doctor ever making a payment of the other \$900? A. None whatever.

Q. When these contractors were paid you took care to see that the payments were made, so as to make sure that the money which was paid out went into the building, didn't you? A. Oh, yes.

Q. And the checks were merely your father's checks to the doctor, and endorsed right back.

40

*R. Arthur Heller, direct.*

You saw actually to the payment, did you not?

A. In general, yes; that is the larger ones.

Cross examination by Mr. Lane:

Q. You were the solicitor for the Building & Loan Association? A. I was and am.

10 Q. You had some negotiations with Dr. Warren at the time the agreement to purchase the property was entered into, did you not? A. In general, yes.

Q. At that time was the idea of building on the property before you? A. Absolutely

20 Q. In other words the property was purchased by the doctor with the idea in mind of building on the property? A. More properly my father purchased the property for the doctor for the very purpose of building this very building on it. That was all in anticipation before the actual title was passed.

By the Vice-Chancellor:

30 Q. Are you referring to the conveyance of the property to your father? A. There was a conveyance preceding this by possibly a few days by Mrs. Carrigan who was one of the legatees under the Michael O'Gorman will, and it also happened I was counsel for Mrs. Carrigan also, and my father purchased it in pursuance of an understanding with the doctor from Mrs. Carrigan and within a few days—I have not the record before me—the deed placed in evidence, to the doctor, was drawn. Answering your question perhaps a little more in detail the building of this large building was in contemplation and the property was purchased by my father for that purpose at the time we speak of.

40 Q. Was this whole situation, that is to say

*R. Arthur Heller, cross.*

in its broad features, created before your father purchased the land? A. It was formed in pursuance to an understanding with the doctor. The doctor at that time was a tenant of ours, and had been for many years in a drug store he had about 500 feet from this location and it was the purpose of my father, and also the purpose of the doctor to better the doctor and come from a side street to this more conspicuous and commercial corner, and my father was desirous of helping the doctor, which he did. 10

Q. Did your father have any profit in the affair further than the interest on his money? A. No. I might say the doctor was also my father's family physician, and our whole family's physician and also the physician for our large plant, which is located on the opposite side of the street from this building so that the doctor's personality was very much in contact with my father's life; we had come in contact with the doctor day in and day out for a long time. 20

Cross examination:

Q. Most of the arrangements though were made with Dr. Warren and not with Mrs. Warren? A. All of the business arrangements were with the doctor. 30

Q. The arrangement about the mortgage also, was it not? A. As far as I know the application was signed by Mrs. Dr. Warren—or Mrs. Cora Warren.

Q. Yes, signed by her, but I mean the negotiations leading up to the giving of the mortgage. A. It was contemplated that when the business was finished the loan should be taken out and as 40

*R. Arthur Heller, cross.*

I was solicitor for the Building & Loan and represented my father and in a general way represented the doctor it was all done by myself. It was rather unfortunte I represented all three.

10 Q. At the time the deed was given was Mrs. Warren present with Dr. Warren—at the time it was executed I mean? A. That was executed in my father's own home because my father and mother signed it. No one was present other than myself.

Q. Was Mrs. Warren present at the time Dr. Warren instructed how the deed should be given?

A. No. That was in our main offices, across the street from the drug store.

20 By the Vice-Chancellor:

Q. What is that place, what is the plant you refer to? A. A large steel and file works directly across the street from the building in question.

Q. Was that the business of the corporation the name of which you have given? A. Heller Brothers Company.

Q. That is the corporate name? A. Yes, sir.

30 Q. And the Company was in the steel and file business? A. Yes, sir. There were no checks at any time given by my father personally; all the checks were of Heller Brothers Company and charged to his personal account. That is merely to explain how my father does not appear as giving any checks.

Q. Will you tell my why Dr. Warren's name was put on the bond? A. I may explain now briefly that my custom has always been since

40

*William H. Warren, cross.*

I have been a member of the Bar in case the title being in the wife to have the husband join in the bond. That is my professional custom. I have followed that rule during my active career.

Q. Did Mrs. Warren have any conversation with you prior to the time of the execution of the deed with reference to having the deed in her name? A. None whatever. 10

Q. Did she personally pay money to you, or to your father in your presence, for the consideration of this deed? A. Only so far as it has been testified to. No actual money was paid to me, and it would not be from the very nature of the matter. 20

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WILLIAM H. WARREN resumes the stand.

Cross examination continued by Mr. Lum:

Q. This money which you got from your wife, what did you do with it, give it to Mr. Heller?

A. I used it to pay off on the lots.

Q. What form did you get this money in from your wife? A. I think—she gave it to me I know, I don't know what form it was now, I cannot remember. 30

Q. Cash or checks? A. I cannot remember now.

Q. You have no recollection? A. No.

Q. When you got it what did you do with it, give to to Mr. Heller? A. Yes, sir.

Q. Right away, in just the same check as she gave it to you in? A. I cannot remember that. I know I put it on the lots, that's all I know. 40

*William H. Warren, cross.*

Q. Have you no recollection at all about what you did with the money? A. (Not answered.)

Q. Eh? A. I want to think for a minute. I think that that was put in the bank that I was in at that time, the Newark City Bank.

10 Q. You have no definite recollection of it? A. I have not. And it was probably given out in checks.

Q. You have no remembrance now as to in what form it was given to you by your wife? A. I have not.

Q. Don't you remember that she drew \$1,313.54 from your joint account in the Howard Bank, do you remember that? A. I do not remember it now.

20 Q. Don't you remember that she had another account in her own individual name, separate and apart, from which she drew \$1,006? A. I don't remember.

Q. You don't remember that at all? A. No, sir.

Q. It may be so? A. It might be so.

Q. And you might have forgotten all about that? A. Yes.

30 Q. In fact you are just as hazy about everything that happened back of that time as you can be? A. Well, it is a long time.

Q. You never anticipated any trouble then? A. No.

Q. And expected to live happily with your wife all your life? A. Yes, sir.

Q. And you gave no thought to the situation at all? A. What's that?

Q. You gave no thought to the situation, that

40

*William H. Warren, cross.*

it would ever arise such as this? A. Certainly not.

Q. The purchase price of the lot was \$4,200?

A. Yes, sir.

Q. You got \$2300 or \$2400 from your wife?

A. Yes, sir.

10

Q. And you paid \$1000 on August 31st? A. Yes, sir.

Q. You have no recollection about what happened about the balance, have you? A. I think—I know that was paid later; whether it was when we were going to erect the building or when the loan was paid down I don't remember.

Q. So that when you testified last October that you paid the balance with \$1900 which you had in the bank you testified to what was false, didn't you? A. I thought I had it at the time.

20

Q. You thought you did? A. Yes, sir.

Q. You didn't have any \$1900 in the bank at that time, did you? A. I don't know what I had then.

Q. You had your bank book all that time, you have had it, have you not? A. Yes, sir.

Q. Let me refresh your recollection, show you that when your book was balanced in January, 1900, your balance was \$341—I am not using the cents? A. Yes, sir.

30

Q. In March of that year it was \$521? A. Yes, sir.

Q. In June it was \$635? A. Yes, sir.

Q. In August it was \$690. That was your average running balance. November \$454; January of the next year \$490. That was your average balance, was it not? A. Yes, sir.

Q. You did not have any \$1900 in the bank at

40

*William H. Warren, cross.*

all until you got this item of October 15th, \$2445.54, which represented the amount of money which came from your wife? A. Yes.

10 Q. Why did you make that statement in this Court last October? A. That was the way I remembered the transaction.

Q. Why did you testify last October that after you bought the property you got the deed and put it in your safe and kept it there until 1912? A. Well, I know I had it in my safe for a good many years, until Mrs. Warren came to me and asked me for it.

Q. You were just guessing, were you, last time, about when you got the deed? A. Yes, sir, I—

20 Q. You say in 1912 Mrs. Warren asked you for the deed? A. I think it was 1912 when she came in and wanted the deed.

Q. You gave it to her? A. Yes, sir.

Q. You did not make any question about it? A. I did not give it to her, I left it over in Heller's office.

30 Q. You did not make any question of it? A. Yes, sir, I had refused her the deed before, when she had asked me for it before and that is the reason I took it over to Hellers and left it there.

Q. Why did you take it to Hellers? A. Because I thought they needed it.

Q. Why did they need it? A. On the Building & Loan.

Q. Why did they need it on the Building & Loan? A. I don't know.

40 Q. What did you think they needed it for?

*William H. Warren, cross.*

A. I thought when the loan came due they would need that, in cancelling it.

Q. Why would they need the deed in cancelling the mortgage?

Mr. Lane: I object to that as calling for a conclusion. 10

Mr. Lum: He said he thought they wanted it and I have a right to probe his memory as to why they did.

The Vice-Chancellor: I will allow it, if you think it is worth while.

Mr. Lum: No, I think not.

Q. Do you remember, in 1910, receiving a letter from me with reference to paying rent?

A. I don't remember, no. 20

Q. You have no recollection of it at all? A. (Not answered.)

Q. Can you answer a little more quickly, doctor? A. I might have got one from you; I don't remember now.

Q. You know Henry W. Egner? A. Yes, sir.

Q. He acted as your counsel at one time? A. Oh, yes, that was when you wanted me to sign a paper about Norma. 30

Q. But you remember in January, 1910 that Mr. Egner was acting as your lawyer? A. Yes, sir.

Mr. Lum: I ask for the production of a letter from Lum, Tamblyn & Colyer to Dr. William H. Warren dated January 11, 1910, having given notice to produce.

Mr. Lane. I have not any letter away back there. If you have a copy of it you can use it. 40

*William H. Warren, cross.*

10 Q. Let me refresh your recollection. Do you remember receiving a letter about the middle of January, 1910 addressed to you at 863 Mt. Prospect Avenue, City: "Dear Sir: Mrs. Warren has consulted us with reference to the amount of your indebtedness for the occupation of a drug store, stable and premises at 863 Mt. Prospect Avenue belonging to her. We must ask that you call here and see us in reference to this matter at your very earliest convenience. Yours truly, Lum, Tamblyn & Colyer." Having heard that letter is your recollection refreshed?  
A. Well, I don't remember.

Q. What is the matter with your memory, doctor? A. I don't know.

20 Q. See if I cannot refresh it a little further. Do you remember a couple of days after receiving that letter going in to see Mr. Henry W. Egner? A. Yes.

Q. Do you remember his taking up with you the matter of the amount you should pay, it being agreed that you should pay \$60? A. No, I do not.

30 Q. Don't you remember you did begin, immediately thereafter, to pay \$60 a month and continued it up to the time of the divorce action? A. I know I paid the money ever since.

Q. Was it not after that interview with Mr. Egner you began, do you recall that? A. Yes.

Q. You do remember it? A. Yes, sir.

Q. You remember now it was in the early part of 1910, the winter of 1910? A. I know it was about that time, yes.

40 Q. Do you remember, doctor, two or three

*William H. Warren, cross.*

years before Norma was married, her coming to the drug store for money? A. Yes, sir.

Q. Do you remember saying to her on some occasion that she should not ask you but should ask her mother for the money because her mother owned the property? A. No, sir, I do not. 10

Q. Will you swear you never did say that to your daughter? A. Yes, sir.

Q. Doctor, I believe you have been quite popularly sued from 1900 on down to date? A. I have.

Q. A great many times? A. Yes, sir.

Q. Summons out of the District Court would come with almost weekly regularity, would they not? A. No, sir, not weekly.

Q. Not quite weekly, very frequently, however? A. Yes. 20

Q. The summons were frequently served by being left at your home, would they not? A. Yes, sir.

Q. Do you remember that they sometimes at first used to cause some worry and disturbance to Mrs. Warren and Mrs. Soden, do you remember that they did? A. No, I don't remember anything like that. 30

Q. Do you mean to say that the leaving of summons at the house did not worry them at all? A. I did not know any were left at the house.

Q. Don't you know that summons were served at your house very frequently? A. At my office.

Q. At your house, too? A. I do not remember that they were.

Q. In the early part they were not so frequent, in 1900, as they became later? 40

*William H. Warren, cross.*

Mr. Lane: Were there any in 1900?

Mr. Lum: Yes, there were.

Q. They were not so frequent in 1900 as later?  
A. 1900? I didn't have any in 1900.

10 Q. Do you mean that? Will you swear you were not sued in 1900? A. No, I would not swear to it.

Q. You would not swear you were not sued by the Norwich Pharmaceutical Company in 1900? A. No, I would not swear to it.

Q. And you would not swear that case was not adjourned until October 16th, the very day you made the payment of your wife's money? A. No, sir.

20 Q. Do you recall your wife and also Mr. Soden and Mrs. Soden, speaking to you about these suits and did you not say to them—to your wife: "You need not worry about it; do not give it any concern, they cannot bother the property, I have given that to you and that is in your name." Do you recall that? A. No, I never did.

30 Q. Will you swear that you did not on more than one occasion say that or words equivalent to that, to Mrs. Soden and to Mr. Soden, and to your wife? A. I never did.

Q. Executions were frequently returned against you, were they not?

Mr. Lane: In what year?

Mr. Lum: In the various years down on through to date.

Q. Yes or no? A. Executions were returned to me.

40

*William H. Warren, cross.*

Q. Yes, the Sheriff made a levy on your property? A. Yes, sir.

Q. And sometimes those levies were returned unsatisfied, were they not?

Mr. Lane: I think they ought to be confined to a certain period.

10

The Vice Chancellor: The testimony has not much force; it is indefinite.

Mr. Lum: I am just leading up to something.

Q. You say executions were sometimes returned unsatisfied? A. (Not answered)

Q. Well? A. What do you mean by not satisfied?

Q. They did not make the money out of the levy on your property? A. They never did, no.

20

Q. Do you remember being brought up under supplementary proceedings? A. Yes.

Q. And examined as to your property, under oath, as to what you had; you remember that, don't you? A. Yes.

Q. On how many different occasions? A. One, I think.

Q. Do you remember swearing in that proceeding—

30

The Vice Chancellor: Before whom was it?

Q. Before whom?

The Vice Chancellor: In whose suit, who had sued you?

Q. Do you remember Paul Hedinger, trading as the Artistic Advertising Company? A. Yes, sir.

40

*William H. Warren, cross.*

Q. That was one? A. Yes, sir.

Q. Do you remember on your examination testifying you had no property held in trust for you?

10

Mr. Lane: When was that?

Mr. Lum: April, 1911.

A. Yes.

By the Vice Chancellor:

Q. Who was the master or officer before whom you gave that testimony? A. I do not remember.

20

Q. Do you remember what office it was you went to when you were examined and gave that testimony? A. I think it was an office on Clinton Street.

Q. What? A. In Clinton Street.

Q. Whose office was it, do you know? A. I do not remember now.

Q. A lawyer's office? A. Yes.

Further cross examination:

Q. Did you think of what might happen in case your wife should die with this property in her name after Norma was born? A. I did.

30

Q. What did you think about it? A. What?

Q. What did you think about it? A. (Not answered.)

Q. Answer the question will you please, doctor? A. Well, I wanted to do everything I could for her and Norma, I know.

Q. You wanted to do everything you could for her and Norma? A. Yes, sir.

40

Q. Why did you not have the property put in both of your names? A. I did not know anything about it at the time I bought the lot.

*William H. Warren, cross.*

Q. How do you mean, you did not know anything about it? A. I did not know that I wouldn't have any equal right in it, at the time I bought it.

Q. Why did you have a bank account put in both of your names, or of the survivor? A. 10  
Simply opened the account, that was all.

Q. And you signed the slip? A. Yes.

Q. That slip recited it was in both your names?  
A. Yes, sir.

By the Vice Chancellor:

Q. Did you and your wife both go down to the bank together when you opened that account? A. I think we did.

Q. Do you remember whether you had a conference with an officer of the bank about the way the account should be opened? A. I think I must have. 20

Q. You do not recollect it? A. No.

Q. Do you, or do you not recollect how this account came to be opened in the way it was opened, who planned it; do you remember anything about that? A. (Not answered)

Q. Well, Doctor, do you recollect, or not? A. I do not, no. 30

Further cross examination:

Q. Will you try to explain this doctor, how it is you cannot recollect such things as that at all, and many other things I have asked you about at all and yet you can recollect the words that were used by your wife seventeen years ago? A. (Not answered)

Q. Have you any answer? 40

*William H. Warren, cross.*

I will relieve you from the necessity of answering. Why did you testify last October that you signed the contract for the building?

10 A. I did not testify to that, that I know of.

Q. You do not realize that you testified to that on page 51: "I engaged the architect, signed the contract for the building and paid for the building." Do you say you did not so testify? A. I might have. I don't remember it. I don't think so.

20 Q. You were under the impression at that time that you did sign the contracts and you found out differently by being told the record shows they were signed by your wife, since the last day you were here; is that true? A. It probably is, yes.

Q. You are paying rent to the druggist there now? A. Yes.

Q. The druggist has a lease from your wife for the whole premises? A. Yes.

Q. And you are sub-renting a part of it from him? A. Yes, sir.

Q. Is that correct? A. Yes, sir.

30 By the Vice Chancellor:

Q. Do I understand you are a sub-tenant? A. What?

Q. You are a sub-tenant? A. No, I am not a sub-tenant, I simply rent the office from the druggist.

Q. What is the druggist's name? A. I suppose Rubin, I suppose now. Mr.           bought the store.

40 Q. Bought it from you? A. Yes, sir.

*William H. Warren, cross.*

Q. Are you practicing your profession? A. Yes, sir.

Q. In the office in the rear? A. Yes, sir.

Further cross examination:

Q. You started to manage this property, collect the rents, pay the Building & Loan, the coal and janitor, and all the expenses, after it was completed, did you not? A. Yes, sir. 10

Q. And you continued that up until 1904? A. Yes, sir.

Q. Do you remember the Talcot incident that arose in 1904? A. No, sir.

Q. Did not your wife accuse you of infidelity at that time? A. Oh, yes.

Q. And she then said that she would take hold of the collection of the rent from the property? A. Not at that time, it was the time—that Talcot matter was in 1902; it was two years afterward. In 1902 that letter came and in 1904, at the time they broke into the house upstairs, why I collected the rents right along. 20

Q. In 1904 your wife broke into a house where she thought you were for immoral purposes? A. Yes, she thought so.

Q. And immediately after that she undertook the collection of the rents? A. She did. 30

Q. And continued it for two years practically? A. Between one and two years.

Q. During that time you asked her for no accounting? A. What is that?

Q. You asked her for no accounting during that time, did you? A. No, I asked her for no accounting. She came—

Q. In 1906 or 1907 you and your wife were 40

*William H. Warren, cross.*

reconciled to a certain degree were you not? A. We were reconciled before that.

10 Q. And did you not ask for permission to be permitted to continue the management of the property as you thought it affected your business or dignity to have her come to the property to collect rent—that is true, is it not? A. No. The taxes came due in 1905 or 1906, and she was short, she did not have the money to pay the taxes and I gave her a check for \$500, see, and then she told me she could not carry on the place and for me to take it and pay the bills up.

Q. That was in 1904? A. 1905 or 1906.

20 Q. It might have been 1907, might it not? A. It might have been; I know it was around there anyway.

Q. In 1909 there came some more difficulty between you, didn't there, she accused you of infidelity with another woman, didn't she, in 1909? A. She did.

Q. And then she again took the management of the property away from you, didn't she, and collected the rents herself? A. When I left her she did.

30 Q. That was in 1909? A. When I left her, yes.

Q. And she continued to collect them and to manage the property entirely during 1909, and 1910 and 1911, on, didn't she? A. Yes, sir.

Q. And you had never had anything to do with the management of it in any way, from that time to this, have you? A. No, sir.

By the Vice Chancellor:

40 Q. When you left in 1909 had you been cohabiting with your wife? A. I had not, not since 1902.

*William H. Warren, cross.*

Q. Did you occupy, at any time, the same room with her after 1902? A. No: 1902 was the time when she got this letter from Mrs. Talcot, or the letters. The way that happened, one morning I was driving up to Brookdale, and I was going up the Bloomfield road and met Mrs. Talcot; she had had an attack of scarlet fever. I said "Get in, I will take you up to Brookdale and leave you at your home when we come back." I left her at her home on Mt. Prospect Avenue on the way back. On the following Friday in my office she came in—

Q. Who did? A. Mrs. Talcot, and she handed me a letter and I put it in my pants pocket and went on with my cases and never thought anything about it. I never opened the letter and went down home and went to bed and Mrs. Warren was sleeping in the other room—no, at that time she was with me. She had a habit of going into my clothes for money and different things and in the morning when I got up she had disappeared and said she had gone to the office. I went up to the office and found her in the office and she had this letter which she refused to show me what was in it, and asked me who it was that signed by the letter L. So I told her it was Mrs. Talcot, and she sent the boy up and brought Mrs. Talcot down and Mrs. Warren asked her why she wrote that letter to me, in the office.

Q. Mrs. Talcot subsequently got a judgment against you for a substantially large amount? A. That was some time after.

Mr. Lane: I think if the Court please

*William H. Warren, cross.*

he ought to finish the answer he was giving before.

Mr. Lum: I do not think it is very material.

10 The Vice Chancellor: I think he started to explain in answer to some questions from the Court.

Mr. Lum: Yes, that is correct.

The Vice Chancellor: Very well, proceed.

Q. Now let me see if I cannot refresh your recollection once more. In 1909, in the early part, you were collecting the rents? A. Yes, sir.

20 Q. And in 1909 the Building and Loan ran some months behind? A. Yes, sir.

Q. A foreclosure was threatening? A. No foreclosure—

Q. Foreclosure was threatened, was it not, if it was not paid up? A. Yes.

Q. And your wife at that time took the management of the property away from you and paid up the Building & Loan, did she not? A. Not all of it; I paid \$300 of it.

30 Q. It was at that time she said she would collect the rents and run the building, in 1909? A. Yes. She had a check for \$1,000, which was made out in both our names, from the Traction Company in 1909, in January, which she kept until the time of this trouble in 1909, when this thing came up, and I let the Building & Loan run back on account of that, because I knew she had this money.

40 Q. And then she took the management of it away from you? A. I considered that was part mine. I had settled the case for her.

*William H. Warren, cross.*

By the Vice Chancellor:

Q. Was she injured on the trolley car? A. Yes, sir.

Q. And this payment was in settlement of her claim for damages? A. Yes, sir.

Q. Was a suit brought? A. No suit, no; it was settled without that. 10

Further cross examination:

Q. If you considered you had any interest in this property why didn't you bring this suit years ago? A. Because I knew Norma was growing up and I did not want any trouble.

Q. You were awfully considerate of Norma, were you not? A. I always did everything I could for her. 20

Q. You did not go to her wedding, did you doctor? A. I was not invited.

Q. A suit for divorce was brought against you by your wife before Norma was married, was it not? A. No. Was it?

Q. Just think again. A. Yes.

Q. When was Norma married? A. In January, 1914, was it not? I cannot remember just the date.

Q. You think so? A. I thought it was 1914. 30

Q. You thought it was 1914? A. Yes, sir.

Q. You did not bring this suit because of waiting for her to be married and you do not know within a year when she was married, do you? A. No.

Q. As a matter of fact you were sued for divorce several months before Norma was married, were you not? A. (Not answered)

40

*William H. Warren, cross.*

By the Vice Chancellor:

Q. Was the divorce suit between you and your wife proceeding when your daughter was married? A. I do not remember the date.

10 Q. You do not remember whether it was or not? A. I think she was married in January, 1914.

Further cross examination:

Q. You testified the other day that your wife never earned any money; that was not true, was it? A. Not that I know of.

Q. Don't you know that she was employed in certain business from which she received quite a little money? A. No.

20 Q. You never knew that? A. No.

Q. You swear to that? A. That was a business her brother started, or rather her brother and I started, and when he commenced advertising what he was going to give with the sale of the stuff I told him I would not have anything more to do with it and would turn my share over to Mrs. Warren and she could do what she liked with it.

30 Q. Did you not know she earned money from that concern? A. I did not know what she got from it.

O. You know she got some—yes? A. I suppose she did.

Mr. Lum: I will ask that the letter book of Lum, Tamblyn & Colyer be marked for identification.

Marked D No. 4 for identification.

*William H. Warren, redirect.*

Redirect examination.

Q. Why did you let Mrs. Warren, in 1904, commence to collect the rents? A. After the trouble she came in and claimed the right to.

Q. Did you have any conversation with her about it? A. I remember objecting, I cannot remember any conversation about it. 10

Q. Do I understand that you and your wife did not sleep together from 1902 on? A. Yes, sir.

Q. What time in the year 1902? A. About the time of that Talcot letter.

Q. Did she insist then, in 1902, on collecting the rents? A. No.

Q. Did she say anything to you about it—her owning the property and that she was going to take charge of it? A. I don't remember that. 20

Q. You recollect that this mortgage was given in 1902, do you not, in June? A. Yes, sir.

Q. Was this trouble in 1902 with your wife prior to the date of that mortgage or after?

Mr. Lum: I think I ought to state to the court that this matter of his wife refusing to have intercourse with him after 1902, was the subject of a cross petition by this complainant, and is now *res adjudicata* by a decision of Vice Chancellor Stevens in which the conclusion has been found against him. 30

The Vice Chancellor: I have glanced through the pleadings before me and I do not know that there is anything in the record which makes anything *res adjudicata* with regard to the marital relations of the couple, or the cessation of it. 40

*William H. Warren, redirect.*

10 Mr. Lum: That issue was litigated in that suit. Constructive desertion was the basis of that cross petition and it was based on that solely. The wife always lived in the same house, there is no doubt about that.

The Vice Chancellor: You may be allowed to show that if it is important. Often times you can show it *res adjudicata* by judgment or decree in a cause when the record does not show that at all.

Q. Why did you agree to pay rent to the purchaser of your drug store from 1915 or 1916, whenever it was purchased from you?

20 Mr. Lum: I object to that. I do not see how that is material.

The Vice Chancellor: I will take it.

30 A. When I sold the drug store I had an agreement drawn up with—when I sold the drug store I had to do that because I was—I owed a lot of money and I had to sell the store to pay my debts and so that I could pay my alimony. So I did not relinquish my right that I thought I had in the building, and this agreement was made on that basis. I could not sell the store, they would not let me; they would not give me a lease for it, and that was the only way I could pay up my alimony and debts.

Q. Were you being threatened by your wife or her attorneys at that time with court proceedings against you? A. I was always threatened by her.

Q. At that time. A. Yes, I was.

40 Q. Was that the reason why you were anxious

*William H. Warren, redirect.*

to sell this business and get the money, or was not that the reason? A. It was, sure.

Q. Do you know of any court order that provided anything about the sale of this drug store by you? A. I do.

Q. What was that? A. The only thing I know is that the agreement was drawn up. 10

Q. What do you know about a court order? Did you have that in view when you sold this drug store or not? A. I did.

Q. What part of it? A. The alimony and what I should do.

A recess was then taken.

After recess, February 8, 1917. 20

WILLIAM H. WARREN resumes the stand.

Further redirect examination by Mr. Lane:

Q. What was this suit that was brought by Mrs. Talcot against you about? A. That was about some mining stock.

Q. It had nothing to do with the relations between you and her? A. Nothing at all, no.

Q. Were you represented by counsel in that case? A. I was not. I had counsel to file an answer and they were a day late and they took judgment by default. 30

Q. Do you recollect having at any time testified in any proceedings before anybody, that you had no interest in this property? A. I never did.

Mr. Lum: The witness has testified directly on this point.

The Vice Chancellor: What is the objection? 40

*William H. Warren, redirect.*

10 Mr. Lum: The first objection is that the question is extremely leading and I do not think that the subject should be allowed to be touched at this time. The second is that it is his own witness and is an attempt to secure, apparently, a direct contradiction of his evidence given before.

Mr. Lane: If Mr. Lum has any record here in court of any such examination I will immediately withdraw that question. But to state to a man what he did, the way the question was put to him without putting in the whole testimony, might raise an assumption that I would like to clear up.

20 The Vice Chancellor: How do you improve it when you ask a question so different in character from the one which the witness answered in response to the counsel of the defendant? Counsel for the defendant asked the witness whether he had been brought up on supplemental proceedings; the witness said he had, and remembered it and then he was asked whether he testified before the Master, or  
30 whatever officer it was, in the supplemental proceedings that no property was held in trust for him and the witness answered that he so testified. There the examination ended. I will say that is a very imperfect, a very unsatisfactory way of leaving testimony because a witness may answer that question, particularly a witness that is as forgetful and unacquainted with legal matters as this man is, and not  
40

*William H. Warren, redirect.*

know that that covered a resulting trust. Now on your side you asked him whether he ever testified in any place that he had no interest in this particular property. No one has said that he has so testified.

I do not think that there is much in either the testimony produced on one side by cross examination or in this effort to patch up the case, on the other, I am going to let it in simply because, while I think it is hardly relevant, it can do no harm. 10

You can answer the question subject to objection.

Witness: I never did. 20

Q. Did you at any time make any agreement with your wife to pay rent for any portion of this property? 20

Mr. Lum: I object to this question as leading. I object to it as a matter already covered both on direct and cross examination.

The Vice Chancellor: Has it not been covered on the prior examination, Mr. Lane? 30

Mr. Lane: I think it probably has up to the time when this arrangement was made in reference to sub-letting from the new tenant, the druggist, and I am leading up to testimony showing just why that arrangement was made.

Mr. Lum: That was covered this morning by the doctor on the matter of the selling of the drug store. 40

*William H. Warren, redirect.*

The Vice Chancellor: I will allow it, it will take less time to take it, even if it is repetition, than to find out how far it has been covered.

10 A. I never did.

By the Vice Chancellor:

Q. What fixed the rent which you did pay?

A. I paid her \$60 a month; I told her I would give her \$60 towards the Building and Loan a month when she took hold of the property. She came and took possession of everything and claimed that she was going to take the whole business, and run it. To help pay that loan, I paid her \$60 a month, simply to pay off this building loan. That was my idea.

20

Q. Was not anything said about the rent?

A. She always wanted rent for it.

Q. Did she, when she came and took possession, demand rent? A. She demanded me to pay her money every time.

Q. Did she use the word "rent"? A. She may have used the word "rent," but I never considered it as rent.

30

Q. But you fixed the amount you would pay her at \$60? A. Yes, sir.

Q. Every month? A. I fixed the matter to pay her \$60.

Q. Every month? A. Every month up to the—

Q. One moment. On the first day of the month? A. No, I paid her whenever I could. I did not have the money to pay her. She collected all the rent, and—

40

Q. Did you agree to pay it on the first day of every month? A. I did not.

*William H. Warren, redirect.*

Further redirect examination:

Q. Did you ever get any receipts from her for rent? A. No.

Q. Did you make out these checks to her or to the Building and Loan Association? A. I gave her the money, sure.

10

Q. Cash, do you mean? A. Sure.

Q. In addition to that you were paying money for her support? A. I was. I paid her—she came up and demanded—I paid her \$25 a week; at 441 Summer Avenue, \$20, her father, he demanded \$20 for rent for her and Norma, until finally I refused to pay the rent to him and he had suit brought up that I fought and contested and which was carried to the Court of Appeals and I did not have to pay rent after that.

20

Q. Why didn't you in 1909, when your wife wanted to take possession of this property, prevent her from doing it? Did you do anything to try to prevent her? A. I did not. I had no lawyers, or anything about it and she came up there and was trying to ruin my practice by shouting and hollering and violent temper in my office. She simply was demanding money all the time.

30

Q. You spoke of some business relation you had with your brother-in-law, what was that? A. Why, we had a—started a mail order, business, that is selling a prescription of mine—

Mr. Lum: I object to this, I do not think it is material or relevant to this issue.

The Vice Chancellor: How is it material?

40

*William H. Warren, recross.*

Mr. Lane: They claim she got a lot of money from this, and I want to show what it was.

10 The Vice Chancellor: It has only been proved that there was a business that the Doctor started with his brother-in-law and afterwards turned over his interests to his wife, and the testimony is she got some money from it whether \$10 or \$1,000, does not appear.

Mr. Lane: I will withdraw the question if your Honor please.

20 Q. During the period from 1900 to 1909, what was your income, approximately each year? A. I should say it was—I could not tell exactly—from \$2,000 up or a little more.

Q. How much? A. From \$2,000 up probably.

Recross examination:

Q. Did you not testify before that your income was five, six or seven thousand dollars a year? A. Five, six or seven? Some years I don't know how much it was.

30 Q. Why do you testify now it was \$2,000? A. I said from two, up.

Q. Why do you testify differently today than you did last October on that subject? A. (Not answered)

Q. What is the answer? A. I testified according to my recollection.

Q. What is there that has changed your recollection from the 31st of last October, until today as to the amount that you earned? A. I don't know.

40 Q. All right. Doctor, you paid rent until the

*William H. Warren, redirect.*

time—or \$60 a month until the time the divorce suit was started I believe. A. Yes, sir.

Q. And that was in 1914? A. Yes, sir.

Q. And the Building and Loan shares matured in 1912, didn't they? A. Yes, sir. Q. And you continued the \$60 a month after that time, didn't you? A. Simply because she was hounding me for money. 10

Q. At one time in the proceedings a division was made of the \$60 so that \$35 was paid by the drug store and \$25 by you, was there not? A. Yes, sir.

Q. And the druggist paid the rent regularly, that is \$35, to Mrs. Warren and got a receipt for it, didn't he? A. Yes, sir.

Q. That was the manager of your drug store? A. Yes, sir. It was all of my money though. 20

Further redirect examination.

Q. You stopped paying that for some time, didn't you? A. I did.

Q. When was that? A. 1914.

Q. Why did you stop paying it? A. Because I thought I had interests in the building that I had a right to as it was all my money that was put in it, and it was simply her nagging me all the time that I gave it to her. 30

Q. Had the Building and Loan been paid up at that time or not? A. It was paid I believe by 1912 and it was only \$30 a month she was paying in and yet demanding \$60 from me.

Q. When was the first time you had any intimation from Mrs. Warren that she claimed to own the property, that you had no interest in it? 40

*William H. Warren, recross.*

Mr. Lum: I object to that. It was covered on October 31 by a question asked by your Honor at page 68.

Mr. Lane: I will withdraw the question.

10 By the Vice Chancellor:

Q. You said this morning that a number of suits had been brought against you and judgment recovered? A. Yes.

Q. Were there any judgments against you in 1890 when you made this bargain with Mr. Heller? A. No, those judgments were all after she took possession of the building, or after 1909.

20 Q. Prior to that, did you suffer any judgments against you? A. Not that I know of, no.

Further recross examination:

Q. Do you mean to tell this Court there were not judgments against you before 1909? A. I don't remember. No, oh no.

Q. You remember being sued by the Norwich Pharmaceutical Co. in 1900 don't you. A. No, sir, I don't remember.

30 Q. Didn't you tell me this morning you did remember it? A. I did not know it was 1900, I thought it was long before. Didn't you tell me this morning you remembered being sued by them and the case came up on October 15, the very day you made the payment? A. I was never sued on it, I was not sued on any case.

Q. Were you not sued in 1901 by Robert Gayer? A. No, sir.

40 Q. Were you not sued in 1901 by Lazelle, Delvy and Co.? A. I settled all those claims before.

*William H. Warren, recross.*

Q. Were you not sued by them in 1902? A. There were suits brought against me; they were all cleared up.

By the Vice-Chancellor:

Q. Did any of them go to judgment? A. No. They might have gone to judgment, and paid up afterward. They were all by default, I never defended them. I had no lawyer, and never defended the suit.

10

Further recross examination:

Q. In August 1902, don't you remember being sued by by the Lord Chemical Company and execution being issued against you; do you remember that in 1902? A. No.

Q. Will you swear that you were not sued by them? A. I don't know who they are.

20

Q. You do not remember anything about it? A. No, sir.

Q. You have been sued so many times that it makes no impression any more. A. I know there have been executions but I always paid them up.

Q. It started back in 1902 did it not? A. I don't remember the date.

Complainant rests.

30

40

*Cora B. Warren, direct.*

DEFENDANT'S CASE.

CORA B. WARREN, the defendant sworn.

Direct examination, by Mr. Lum:

10 Q. You are the defendant in this suit? A. I am.

Q. You secured a divorce from your former husband, Dr. W. H. Warren? A. I did.

Q. Do you remember, back in 1900, when the property on Mt. Prospect Avenue became a matter of importance? A. I do.

20 Q. Will you tell us what you first knew about it? A. Why the Doctor said that he was going to buy a piece of property from Mr. Elias Heller on the corner of Mt. Prospect Avenue and Verona Avenue, so that he could have a drug store there and then he came to me one day and said he had bought the property on the corner of Mt. Prospect Avenue, and Verona Avenue, and he had given it to me.

Q. That was about when? A. In the early fall of 1900.

30 Q. When did he next speak of this matter, or you speak of it to him, which ever it was? A. Then he said that he was buying it on notes, and I said—we talked it over between us—about a week or so afterwards, that I had some money in the bank and instead of buying on notes, it would be better to pay the cash money so as to put up the property, the house, the building, so as to get something out of it.

40 Q. About how long after he had told you he had given you the property was the matter of money spoken of? A. Oh, I suppose a couple of weeks afterwards.

*Cora B. Warren, direct.*

Q. What did you do with reference to the money? A. I drew the money out of the bank, the Howard Bank. I had one account jointly with the Doctor, both our names; then I had one all by myself, and I drew it out and gave it to the Doctor.

10

Q. Do you recognize Ex. C-11 as a transcript of your joint account from which you drew out the \$1,313? A. Yes, sir.

Q. And the balance you gave him you got from where? A. From my own account in my own name, Cora B.

Q. You had that where? A. In the Howard.

Q. And that \$1,000 was whose money? A. It was my own money.

Q. Did the Doctor make any claim to that at all? A. No, sir.

20

The Vice Chancellor: Where did it come from?

Witness: What I saved from the household expenses that the Doctor had given me, and I worked for my brother in this mail order business at our own house 441 Summer Avenue.

Q. I show you a Howard Savings Bank book, do you remember it? A. Yes.

30

Q. I direct your attention to a withdrawal on Oct. 15, 1900 of \$1,006? A. Yes, sir.

Q. Do you recall that? A. Yes, sir.

Q. And a withdrawal on Oct. 15 from the joint account of \$1,313.54, do you recall that? A. I do.

Q. Will you tell me whether or not the Doc-

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*Cora B. Warren, direct.*

tor was with you when these sums were withdrawn? A. He was at the Howard Bank.

Q. Were they drawn in cash? A. In cash.

Q. You gave them to him? A. I did.

10 Q. This money that was in the Howard Bank in your own name, did that have anything to do with your housekeeping money? A. Well, what I saved—no, this is mostly what I got from my brother.

Q. Will you tell us, Mrs. Warren, whether at that time, or later, anything was said with reference to an interest of the doctor in this property? A. Nothing was ever said.

20 Q. Did he claim any interest in that property? A. Not until after the Building and Loan had been paid out—the \$14,000 Building and Loan was paid out; then he asked me to give him something for what he had paid in.

Q. Give him what? A. Some of the money he had paid in on my property.

Q. At that time did he make any claim in the property, or any interest in it? A. No. He asked for his money.

30 Q. How long after the Building and Loan was paid was it before he first asked you to give him any money? A. How long after?

Q. Yes. A. I do not know exactly how long after it was paid off.

Q. Some weeks or months? A. Yes, it was. It was nine hundred—

Q. 1912? A. In 1912 it was paid off, and I think 1914 was the first time he asked me for money.

40 Q. Will you tell us whether or not at the time he told you he had given you this property any-

*Cora B. Warren, direct.*

thing was said about your holding it for both of you, or anything like that? A. No; he said he gave it to me.

Q. At that time were you living happily together? A. Yes, sir; very happily together.

Q. And expected to continue to do so? A. 10  
Yes, sir.

Q. Did you know at that time he had ever made a will in your favor? A. He had; he made it before Norma was born.

By the Vice-Chancellor:

Q. When was your daughter born? A. In 1894—November, 1894—the 29th.

Q. Did he make any will after that that you know of? A. Since that? 20

Q. Yes. Since that one will?

Q. Yes. A. No, sir; I do not know.

Further direct examination:

Q. Did he ever ask you to make any will? A. No, sir.

Q. Or ever speak to you about leaving the property to him? A. No, sir.

Q. Or signing any paper in connection with it, at all? A. No. 30

Q. He never asked you? A. No, sir.

Q. Now, tell us, if you will, about this joint bank account, that was opened in 1896. Did you go down together when the account was opened? A. We did.

Q. Who made the suggestion that it should be done? A. I think the Doctor must have made the suggestion.

*Cora B. Warren, direct.*

By the Vice-Chancellor:

Q. Do you recollect anything about it? A. Well, yes—I think we had some money to—

10 Q. Did you have a talk with the clerk or manager in the savings bank as to how the account should be opened? A. Both of us.

Q. You did have such a talk? A. Yes, sir.

Q. He advised putting it in this shape, did he? A. Well, the doctor and I talked it over, too, before we went there, that we were going to have it that way.

Further direct examination:

20 Q. Do you remember Mrs. Scott and Mrs. Aldridge, who testified in this case? A. Mrs. Aldridge lives in my flat on Mt. Prospect Avenue.

Q. Did you ever say to her this property was as much the Doctor's property as yours? A. I never did.

Q. Did you ever make that statement, or any such statement, to Mrs. Aldridge? A. I never did.

Q. Will you tell us whether or not you ever saw Mrs. Lillian Aldridge at the Scott apartment in 1909? A. I never saw Mrs. Aldridge at Mrs. Scott's in my life.

30 Q. Do you remember seeing Mrs. Scott there? A. Mrs. Scott, yes; Mrs. Scott was living there at the time.

Q. There was a conversation with her? A. Yes, sir.

Q. Was Mr. Scott present? A. No.

Q. During any part of the conversation? A. No.

40 Q. Do you remember having a talk with Mr. Scott last October, the first day this case came

*Cora B. Warren, direct.*

up in court? A. Yes, sir, I do.

Q. What did he say? A. Well, I was surprised to see Mr. Scott, and I sat on that side of the seats in the back, and he sat in the seat next to the back, and when I saw the gentleman, of course, I was surprised to see him, and he slid over towards the center, and I said, "How do you do, Mr. Scott?"—or rather, "Good morning. What are you doing here?" He said, "I don't know what I am doing here. I was subpoenaed by the Doctor at half-past five this morning." I said, "That is too bad, to bring you here on nothing that concerns you; this is just our own affair, between the Doctor and I." And he said, "Yes, I ought to have been"—

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Q. I do not care about these details. What did he say about his testimony? A. He said that when I came to collect the rent the first time, after the Building and Loan had gone behind, he said, "You met my wife, who is now dead, and you said to her that you had as much right to collect the rent as the doctor did." I said, "I said that to your wife? I never said that, Mr. Scott." And he said, "Well, you did not say it to me—you said it to my wife, who is now dead." And I said, "I never said that to Mrs. Scott, because I knew better." And he said, "That is all I know, that you told my wife."

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30

Q. Do you know whether summons in suits brought against the Doctor, were ever left at the house? A. Were left at 441 Summer Avenue?

Q. Yes. A. Yes, sir. Many times.

By the Vice-Chancellor:

Q. Before you leave the subject, state what the conversation was that you had with Mrs.

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*Cora B. Warren, direct.*

10 Scott when you went to collect the rent for the first time. A. I rang the bell down stairs. You know, there are speaking tubes and bells, so that when you push the button up-stairs you can let anybody in, and she lived on the third floor of 859, and they must have pushed the button; the door opened, and I went up in 859 on the third floor. A lady let me in who I found out afterwards was Mrs. Scott herself, and I said that I was Mrs. Warren and that I had come to collect my own rent; that the Doctor had let the Building and Loan go behind and I was going to collect my own rent, and she said, "Well, I don't know; I rented the place from Dr. Warren." I said, "You might as well pay me, for I am now going to collect my own rent, so you might as well pay it to me." And with that some man's voice from the back—I cannot tell you whether it was in the kitchen or bedroom—there is a bedroom back there too—he called out and said, "Who is in there?" And she said, "It is Mrs. Warren come to collect her rent." And he said, "You cannot pay it. I rented from the Doctor, and am going to pay him." I spoke to Mrs. Scott, and said, "What are you going to do?" And she said to let the rent go until tomorrow morning, and she would go down to the Doctor's office, which was just down-stairs, and see what he said. I said, "I am willing." And she said, "All right." And I said, "What time will I come to get the rent?" And she said, "come tomorrow night, and I will pay you then, if it is all right." And I said, "Very well." And I went the next evening at the same time, but only Mrs. Scott was there.

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*Cora B. Warren, direct.*

Q. And you collected the rent? A. Yes, sir.

Further direct examination:

Q. Is that all the conversation? A. Yes, sir.

Q. Are you sure that Mrs. Aldridge was not there? A. Mrs. Aldridge I never saw in Mrs. Scott's house. 10

Q. Do you know Mrs. Aldridge? A. I saw Mrs. Aldridge, I could not tell you just the time, but when Mrs. Hill lived there. Mrs. Hill was Mrs. Aldridge's daughter. I found out and I had to go and give Mrs. Hill notice to move. That is the only time I met her.

Q. Did you recognize Mrs. Aldridge here in the court room when she was here on the stand last October? A. Did I recognize her? 20

Q. Yes. A. I knew where I had seen her.

Q. Was she in the room at all in that house when you went to Mrs. Scott to collect the rent, the first time? A. No, sir; only Mrs. Scott.

Q. Did you see Mr. Scott on that occasion, or only hear him? A. I only heard him.

Q. Did Mr. Scott see you and tell you what his wife said you had said to her? A. Did he see me? He saw me here.

Q. No; on that occasion, then. A. No; I did not see Mr. Scott. 30

Q. And he did not undertake to repeat to you what his wife had told him you said at any time? A. Only when I saw him here that day.

Further direct examination:

Q. You say the Doctor was sued frequently and summons left at the house? A. Yes, sir.

Q. Did that cause you any inconvenience or concern? A. Well, I worried about it, and I used to say to the Doctor, "What is the use of 40

*Cora B. Warren, cross.*

acting so and what did they mean," and he said, "What is the use of your worrying and stewing; they cannot touch your property, that is all yours. I will attend to that." He said that two or three times.

10 Q. Did he say that on more than one occasion? A. Oh, yes; most every time they came to the house.

Q. When the matter of this money was spoken about by the Doctor, did you say to him that the property would be all the same; that the property would be for both of you? A. Did I say that?

Q. To the Doctor. A. No.

Q. Or anything like that? A. No, sir.

20 Q. Did you ever say to the Doctor at any time, talking about this property, "It is half yours and half mine, together"? A. No, sir.

Q. Did the Doctor, at any time until the bringing of this suit, ever claim half or all of this property? A. No, sir.

Cross examination by Mr. Lane:

30 Q. Did you have any conversation with your husband when he made the agreement to purchase this property and told you he was going to do it and put the property in your name, whereby he said that the property was to be yours alone? A. He said he gave it to me; there was nothing said then.

Q. Just what words did he use when he told you this; tell us what the conversation was? A. He said he had bought a piece of property from Mr. Elias Heller, on the corner of Mt. Prospect and Verona Avenues, because he wanted a drug store there, and his patients generally

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*Cora B. Warren, cross.*

at 181 Verona Avenue, had to go upstairs and he didn't want the patients to go up there, so he said he bought this property on the corner of Mt. Prospect and Verona Avenues, and when he came to me he said, "I have bought the property and I have given it all to you." That is all that was said. 10

Q. Did he say anything about his not having any interest in it at that time? A. No. We were living congenially together.

Q. And you considered from what he said, that the property was to be both of yours, did you not, at that time? A. No. I thought he gave it to me.

Q. You thought that you had it at that time, separate and apart from him? A. I knew he gave it to me. 20

Q. Did you put any particular significance on the word "gave" at that time? A. Just like he gave me anything else.

Q. You knew at that time that he was buying that property for his own purposes, so far as his business was concerned, did you not? A. No, I didn't think so; I think that I knew he bought it for me.

Q. You had an idea at that time that he bought the property for you? A. He said so, yes, sir. 30

Q. And for no other reasons? A. No.

Q. At the time you married the Doctor he was a drug clerk, was he not? A. No; he owned his own store.

Q. He was not a practising physician then? A. No, sir.

Q. And he and you, from that time on, began 40

*Cora B. Warren, cross.*

endeavoring to better his circumstances; is that right? A. He went to college; yes.

Q. And you helped him? A. All I could, yes.

Q. When he was going to college? A. Yes, sir.

10 Q. Had you had any trouble at all with him before 1900, when he bought this property?

A. No. Oh, no, no.

Q. Were you living at your mother's house, or separate from her? A. At the time, at 441 Summer Avenue, with my mother.

Q. At your mother's house? A. Yes, sir.

Q. Was anything said about how he wanted a house of his own to live in? A. Never.

20 Q. Do you know anything about his having built the apartment over the store for you and he to live in? A. No, I never knew that; he never said anything.

Q. When did you first have any dealings with reference to this property? A. When did I first have any dealings?

Q. Yes. A. Why, I used to go up and see them build, different things about it.

Q. He took full charge of that? A. Yes. He managed my property.

30 Q. Did he, at that time, say he was managing your property? A. Did he say?

Q. Yes. A. There was not anything to say; we were both congenial at the time; what was the use of saying anything.

Q. You say that after you heard about the agreement being entered into, you took \$2,300 of your own from the bank? A. From my own and from the joint account.

40 Q. The Doctor had some interest in the joint account, had he not? A. His name was on to it.

*Cora B. Warren, cross.*

Q. What? A. His name was on to it.

Q. Is that all the interest he had, just his name being on it? A. We both put it in.

Q. Was it not considered as a fund of both of yours? A. Yes, sir.

Q. To be used as you needed it? A. Yes, sir. 10

Q. As a matter of fact, when this deed was taken in your name, was it not considered between you and the Doctor; that it was for the benefit of you and the Doctor? A. Well, I don't know. I suppose at that time we might—we were both congenial and there was nothing said about that.

Q. There was nothing particular said—A. No; he just gave it to me. That is what he said.

Q. There was nothing particularly said—A. 20  
Yes. He said he gave it to me.

Q. —whereby you got the opinion at that time that you were holding it separate and apart and hostile to him? A. At that time?

Q. Yes. A. There was not anything said about it.

Q. Were you present when the deed was executed? A. No, sir.

Q. When the deed was turned over, were you present? A. No. 30

Q. When did you first have the deed? A. After the building and loan.

Q. After that was paid? A. Yes, sir.

Q. You never had the deed before that? A. No, sir.

Q. You did not know much about the property up until 1909 when you started to take charge of it, did you? A. Well, I took charge of it before, you know.

*Cora B. Warren, cross.*

Q. Did you go and live in this property? A. No, sir.

Q. As a matter of fact, when did the first trouble between you and the Doctor take place?

A. The first trouble?

10 Q. Yes. A. Well—I thought that was all done with.

Mr. Lum: I object to this as not cross examination. I did not touch on that subject at all. The witness has said there was no trouble in 1900 and not until later, and I do not think it can throw any light on the situation and I object to it as not cross examination and not having been opened on the direct.

20 The Doctor has covered that subject fully and I have not controverted it and I do not intend to controvert it. I will call no witness to controvert it.

The Vice-Chancellor: What is the object?

Mr. Lane: To lead up to the first time when Mrs. Warren made any allegation or any attempt to say that this property was entirely hers.

30 The Vice-Chancellor: The particulars of the quarrel or disagreement that arose between this couple, I do not suppose it is necessary to go into.

Mr. Lane: I am not going into that.

The Vice-Chancellor: We cannot avoid the cross examination of the witness as to the facts of her taking possession and how she came to do it.

40 I understand the first trouble arose be-

*Cora B. Warren, cross.*

tween her and the Doctor, her husband, in 1902, or possibly 1904, when it appeared, I think, this morning, that this witness, Mrs. Warren, took charge of her property for a time. I think it appears that they were separated. Then, from 1906, the Doctor took charge again for a time, until 1909. That is my recollection.

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Mr. Lum: That is correct.

The Vice-Chancellor: I will allow testimony bearing on the time when the Doctor was displaced.

Mr. Lum: You don't want to contradict the doctor's testimony, do you?

Q. As a matter of fact, when did the first trouble between you and the Doctor take place? A. The first trouble, I think, in 1904.

20

By the Vice-Chancellor:

Q. As the result of that trouble did you separate for a time? A. Separate, no. I talked to him, and talked to him, and he promised to do better.

Q. Did he remain living in the house with you? A. Yes, sir.

30

Q. Were you living together at that time? A. Yes, sir.

Q. I only want to know when you first took possession of the collection of rents yourself—was it then? A. Yes. I found that he was not doing what was right, because I had let him manage it all before, and collect the rents.

Q. Now tell us about your taking possession. A. Well, when I found out that he was not as nice and loving as he used to be, I knew there

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*Cora B. Warren, cross.*

was some cause why; I had to find out the cause, and I found it was a woman.

Q. You need not go into the details of that, but as a result of it— A. I collected my own rents.

10 Q. Tell us what took place between you and the Doctor when you undertook to do that? A. There was nothing place. I just took and collected my own rents and paid the building and loan.

Q. Was anything said between you about it? A. No, sir.

Q. Did you give him any notice of it? A. I just said that I was going to collect my own rents. Is that what you mean?

20 Q. What did he say to that? A. He didn't say anything; he said, all right.

Further cross examination:

Q. Where were you when you first told Dr. Warren you were going to collect your own rents? A. Where was I?

Q. Yes. A. What do you mean—just exactly the place?

30 Q. Yes; were you in the house, in his office, or where? A. I don't know as I can remember just where I was.

Q. Where were you living at that time? A. 441 Sumner Avenue.

Q. Still with your mother? A. Yes, sir.

Q. When did the Doctor move from that house— A. Move?

Q. —to the house on Mt. Prospect Avenue? A. He did not move from our house to Mt. Prospect

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*Cora B. Warren, cross.*

Avenue; the Doctor moved to a house on Broad Street with a woman.

Q. Were you there? A. I saw her there.

Q. Was it before or after you collected those rents? A. About the same time—1909.

Q. When were the apartments over the store first occupied by anybody? A. About 1902, I think. 10

Q. The Doctor's apartments were? A. The Doctor's apartments—what do you mean?

Q. Were there not apartments over the store that were specially built for the occupancy of yourself and Dr. Warren? A. No, sir.

Q. Were they specially fitted up for communication with the drug store? A. No, sir. 20

Q. Didn't the Doctor, in 1904 or thereabouts, want you to live in this house? A. The Doctor never asked me to leave my mother or father, because he always wanted to save expenses.

Q. Was it the object in view to live in this house at the time the house was being built? A. No. 863?

Q. Yes. A. No, sir.

Q. Never, at any time? A. Never said anything about it, no, sir. 30

Q. When did you first tell Dr. Warren that he had no interest in this property? A. When did I first tell him?

Q. Yes. A. After the \$14,000 building and loan was paid off, he asked me to give him some of my property; that he had put some money into it, and that he wanted some of it out of it, and I said no.

Q. As a matter of fact, up to that time there had never been any dispute between you and 40

*Cora B. Warren, cross.*

the Doctor in reference to this property except when he seemed to be going behind a little in the payment of the building and loan, you took it in charge with his consent? A. I took it in charge with his consent?

10 Q. Yes. A. Why, I just took it in charge; there was nothing said.

Q. Did he object to your taking charge? A. No.

Q. Did you have any quarrel about it? A. No, sir; no.

Q. Did he say he did not want you to do it? A. No, sir.

20 Q. In 1909, just what did you say to him when you first took charge of the property? A. In 1909?

Q. Yes. A. Just what did I say?

30 Q. Yes; and what did he say; just state the conversation. A. Why, I got a notice from the building and loan people that the building and loan had run back about four or five months, and that if I did not pay up, why, of course, they were going to foreclose; so I telephoned up to the Doctor. I was at my mother's house, 441 Sumner Avenue, and I telephoned up to the Doctor's office, which was 863 Mt. Prospect Avenue, and told him that I had received this notice, and he said, "Oh, have you got a notice at last"? and I said, "What have you done with my rents; you have not paid my building and loan, and it is four or five months behind," and he said, "Well, what of it?" and I said, "Well, now, don't you leave the office until I come up; I will take the next car"—the car on Mt. Prospect Avenue—"and I will come right up." And I took the trolley car

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*Cora B. Warren, cross.*

and went up to his office before he got out in the morning, and I talked to him and he said, "I don't care; you can go to work and pay it yourself if it is not paid," and I said, "I think that is kind of mean for you have collected the rents."

The Vice-Chancellor: Were you living with him then? 10

The Witness: Yes, at 441 Summer Avenue.

Q. Do you recollect whether this was in the first part of the year or the latter part of the year 1909? A. I think, in September.

Q. September, 1909? A. Let me see; just let me think a bit. No, I am mistaken; excuse me, Vice-Chancellor, I think the doctor had left the house at that time and I got the notice in October—I think I am correct there—1909. 20

By the Vice-Chancellor:

Q. Did he leave the house because of a quarrel with you? A. No, sir; he just left because he was infatuated with a woman.

Q. Did you know it, or had you heard it, at the time? A. Yes, sir.

Q. Why did you let him continue collecting the rent of your property, then? A. Why did I? 30

Q. Yes. A. He seemed to pay the building and loan and seemed to collect the rents, and seemed to be doing what was right, otherwise, so what was the use of saying too much to him, because it only made him worse?

Q. This separation about September, 1909—that was the end of your living with him? A. Yes, sir. 40

*Cora B. Warren, cross.*

Q. Did you live with him as his wife up to that time? A. Yes.

Q. Did you cohabit together? A. Yes, sir.

10 Q. Occupy the same room? A. Yes, sir; but he would not come home at any time; he would be out and come in at four or five o'clock in the morning.

Q. Was there any period prior to this separation about September, 1909, when you ceased to live with the Doctor as his wife? A. No, sir.

Q. Your marital relations continued, did they, down to that time? A. Yes, sir; as long as he was home.

Further cross examination:

20 Q. As a matter of fact, you and the Doctor had not had sexual intercourse since 1902? A. I beg your pardon, Mr. Lane, that it not true.

By the Vice-Chancellor:

Q. Did your husband, when you complained of his conduct with these other women, or any of them, at any time ask your forgiveness and promise he would not do it again? A. Yes, he did, when he went with that woman first.

30 Q. You forgave him? A. Yes; that is the reason I tried him again in 1906, or so; he said to me, he said, "Why not let me collect the rents? I am up here in the office, and it looks small for me to be up here and have patients come in and out," and he said, "Let me collect the rents; I will do all right then." So I tried him again.

Further cross examination:

40 Q. Did any part of this \$2,300 which you have

*Cora B. Warren, cross.*

testified about, accrue from any of your earnings prior to your marriage? A. No.

Q. And all of that money, with the exception of some small proportion of the one thousand dollars, was the result of the proceeds of moneys which you and the Doctor had saved together? Well, I worked for my brother, and I got quite a lot then. 10

Q. That was part of the thousand dollars, was it not? A. What thousand?

Q. Of the one thousand dollars in your separate account in the Howard Savings Bank. A. Yes, sir.

Q. In other words, all the moneys in that joint account came from that? A. Well, I would not want to say. I know we put them in together. 20

Q. You would not put the money you got from your brother in the joint account, would you? A. Well, I would not want to say; I don't know. I might have, but I would not want to say.

Q. After 1909, after you found that the building and loan was behind, did the Doctor pay up any of the building and loan? A. He might have helped me, but I could not say. 30

Q. Do you recollect, particularly, if he paid the building and loan? A. If he paid up?

Q. Yes. A. I do not think so.

Q. How much was being paid to the Building and Loan at that time every month? A. Every month?

Q. Yes. A. Right on the property, you mean?

Q. Yes. A. That would be \$170 on the property.

Q. \$170 a month? A. Yes, sir. 40

*Cora B. Warren, cross.*

Q. From that time, September, 1909, the Doctor did not collect any of the rent, did he? A. No, sir.

10 Q. When did you get that check, the thousand dollar check; was it before the time you collected the rents, or after? A. Before.

Q. When was it, do you remember? A. No, I do not remember.

Q. Two or three months before, or a considerable length of time before? A. I really do not remember, Mr. Lane.

Q. You and the doctor had a little discussion about that check, didn't you; what should be done with the proceeds? A. No, sir.

20 Q. Never mentioned it? A. No; he signed it, that was all.

Q. And you collected the money? A. I paid it on the building and loan.

Q. When did you do that? Did you pay the thousand dollars all at once on the building and loan? A. \$900 and something, it was.

Q. You had absolutely no discussion as to half of it belonging to the Doctor? A. No, sir.

30 Q. You knew that there was due to Heller Brothers, after this building and loan mortgage was taken out, considerable money for the erection of the building, in addition, did you not? A. I do not understand your question. Please say it again.

Q. (Last question read to the witness,) A. No, I did not.

Q. How much did the building cost to build; have you any idea? A. I think they said about \$16,000; that was not included in the barn.

Q. That did not include the barn? A. No, sir.

40 Q. The barn was an addition? A. Yes, sir.

*Cora B. Warren, cross.*

Q. Do you recollect when the barn was built?  
A. Yes, sir; about a couple of years after.

Q. About 1904 or 1905? A. I think, before that.

Q. Before you took charge in 1904, was it not? A. I think it was. 10

Q. Did you and the Doctor have any talks together about why the barn should be built?  
A. Why?

Q. Yes. A. Because he wanted to put his horses there; he had four or five horses and some carriages.

Q. It was built for his special benefit, was it not? A. Well, I don't know; of course, it would be nice for him.

Q. Was there any talk then about his paying any rent for the barn? A. At that time? 20

Q. Yes. A. No.

Q. When was the first talk about his paying rent for any portion of this property? A. Well, he used to give me money at different times to pay for different things that had to be paid, the same as when he was managing it. He said, "Well, this bill has to be paid, or that," and, if I had any money, I would give it to him so as to pay the bill. And when the bills— let me see, what is that question again? 30

Q. I asked you when was the first time there was any talk about his paying rent to you for any portion of this property? A. In 1910, I think it was.

Q. Up until that time, nothing had ever been said about his paying rent for any portion of the property? A. No, sir.

Q. Is that right? A. Yes, sir.

Q. During the time between 1904 and 1906, 40

*Cora B. Warren, cross.*

was anything said about how much he should pay for rent of the drug store? A. No, sir.

Q. Did he pay any rent during that time? A. No.

10 Q. Did the Doctor ever make any accounting to you? A. No, sir.

Q. At no time? A. No, sir.

Q. Did you ever ask him for one? A. No, sir.

Q. He just took charge of the property the same as if it was his own, did he not? A. He took charge of the property for me.

Q. The same as if it was his own, did he not? A. Well, we were congenial.

20 Q. Did he say he was taking charge of it particularly for you, at any particular time? A. He always said that nobody could touch the property, he gave me that long ago. "That is all yours; what is the use of your worrying"; he always said that.

30 Q. So that, from his conversations with you, the only reason you have for thinking he gave you the property was because he said, when pushed by his creditors, that it was your property and not his? A. Well, he always said it was mine.

Q. Was there any other reason? A. Yes. He told me he gave it to me.

Q. Did he tell you why? A. Why, I suppose because he liked me so much. Why did he give me anything?

Q. Did you know that the doctor was paying money on this property all the time, out of his own pocket? A. Did I know it? What do you mean by that, pardon me.

40 Q. In addition to rent what was collected by

*Cora B. Warren, cross.*

him? A. I did not know what he paid. I knew he had collected the rent and paid the bills; he was managing it for me.

Q. Had he any other property than this? A. No, sir.

Q. This was the only venture he ever was in, was it not; real estate venture? A. Yes, sir. 10

Q. You know that he put practically all of his money into this property, do you not? A. That he put all his money?

Q. Yes. A. Why, I took a mortgage of \$14,000 out of it and there is a mortgage yet of \$3,000 that I am paying off.

Q. Who made all the arrangements for the \$14,000? A. Who made them?

Q. Yes. A. Why, it was put in my name; is that what you mean? 20

Q. When did you first know the \$14,000 mortgage was going to be put on; did the Doctor tell you? A. Yes, sir; he told me there was a mortgage of \$14,000.

Q. He just told you you had to sign that paper to take that mortgage? A. Mr. Heller came down about that mortgage; is that what you mean?

Q. Yes. A. Mr. Heller came down to my house. 30

Q. That is all you had to do with the giving of the mortgage? A. Sign?

Q. Yes. A. And pay off.

Q. You did not pay off anything, as a matter of fact; the doctor attended to all that until 1904, didn't he? A. What do you mean by that? He collected my rent.

Q. Did you say to him at any time during that time that he was collecting your rents, or 40

*Cora B. Warren, cross.*

did you let him go on and act as if it was his own property? A. No; he collected my rent just as though he was my agent; and paid my bills.

10 Q. Did he consult you as to how much should be charged for a certain apartment? A. Yes, sir; he did.

Q. Every time a tenant came he got your O. K. before he put them in, did he? A. Well, we did not have anything in writing like that.

Q. Did you ever ask him for the deed? A. Did I ask him for the deed?

Q. Yes. A. No, I did not ask him, but he said the deed was in his safe. I did not ask him for it.

20 Q. Did you keep any books, showing the rents, during this time that the Doctor was collecting rents? A. No, sir.

Q. You kept no account of it whatsoever? A. No, sir.

Q. You cannot show anything in any of your bank accounts where any special moneys were paid out of this property into your bank account, can you, during this time? A. What do you mean, the Building and Loan?

30 Q. No; profits from the building. A. I did not keep any accounts.

By the Vice-Chancellor:

Q. When you took charge of the collection of the rents in October, 1909, did you continue to keep a bank account? A. Yes, sir; paid the building and loan with checks. Is that what you mean?

Q. Yes. A. Yes, sir.

40 Q. And did you put the rent into the bank? A. Yes, sir.

*Cora B. Warren, cross.*

Q. What bank is it? A. It is the National Newark or the Newark National; I forget, now.

Mr. Lum: The National Newark.

Q. That is not a savings bank? A. No, sir; they have checks and like that.

10

Q. Referring to these accounts which have been produced, both in the Howard Savings Institution, I call your attention to the account in your name alone, which seems to have been opened in February, 1900. A. February, 1909, yes.

Q. And the joint account was opened in 1896, and closed, apparently, October 15th, 1900. Referring to the account in your own name alone, the first deposit which opened the account on February 5th, seems to be for \$275. Do you recollect where that money came from? A. Yes, sir.

20

Q. Where? A. I got it from my brother.

Q. From what? A. From the business of my brother that I worked in; in this mail order business that was carried on at our house, 441 Summer Avenue, he carried that on, himself.

Q. What do you mean by a mail order business? A. I kept the books and directed packages and things. It was Golden Brick Tablets.

30

Q. A medicine? A. Yes, sir; a patent medicine.

Q. Do you recollect that this \$275 came from that business? A. Yes, sir.

Q. In what shape did you have it, check or cash? A. No, sir; cash. He paid me in cash.

Q. You recollect this substantial payment, do you? A. Yes, sir.

Q. \$275? A. Yes, sir.

40

*Cora B. Warren, cross.*

Q. Was that the reason you opened the account? A. Was that the reason?

Q. Yes. A. Well, because I was working for my brother, yes.

10 Q. You had not had any such payment before that? A. Well, I don't think so, unless I put it on the joint account of the Doctor and myself; I would not want to say.

20 Q. The next deposit in the individual account of yours is under date of March 14th, \$130; do you recollect what that was, the next month after the \$275? A. Well, I will tell you. The mail business, you see, was busiest in the Fall and Spring of the year and I did not get regular wages every week. I got so much of the profit, whatever there was; if he had good business, of course I got more, and if not, I got less.

Q. Did you have a partnership agreement? A. No.

Q. Any agreement about how you should divide the profits? A. No, I was not in that. I was only at work there and I would get whatever he thought I deserved.

30 Q. Then, on May 28th, in the same year, the next deposit following is \$600; do you recollect that? A. Well, that, you see, was the busiest time then, and I suppose that was the money I got.

Q. Do you recollect the fact of that deposit? A. I know I got it.

40 Q. Was that an accumulation you had made in a box or bureau drawer, or something like that? A. I don't think so. I think, maybe, it might have been some I saved from the household expenses, but I think it was all from there.

*Cora B. Warren, cross.*

Q. I call your attention to the fact that you seem to have deposited \$1,005 altogether in February, March and May, beginning February 5th and ending May 28th, in one year. Is not that a pretty large sum for you to have gotten from this patent medicine business? A. Well, I might have saved some from the household expenses, but I would not want to say for sure. 10

Q. Did you have a place, a bureau drawer or something like that, where you put sums of money until they accumulated? A. Well, I don't know; I kept it.

Q. In a pocketbook? A. Yes, but not around the house. I would have to be careful, you know.

Q. Take the deposit of May 28, of \$600. Have you any recollection of how you kept that money before you deposited it? A. No. I think I got it from my brother, because it is not likely I would keep \$600 in the house like that. 20

## Further cross examination:

Q. Did you tell Dr. Warren you were going to open this separate account in February, 1900? A. He knew about it.

Q. Did you tell him, I asked you, that you were going to open a separate account? A. Well, in talking, I just spoke about it. I would not want to say I told him. 30

Q. Why did you tell him you were going to open this account? A. Because he knew I was doing work for my brother.

Q. When did you start to work for your brother? A. Well, I could not tell you just the year, but I know he started down at the house, and I worked with him. 40

*Cora B. Warren, cross.*

Q. Was it in 1895? A. 1895?

Q. Yes. A. Now, let me see—where was I in 1895?

10 Q. The year after your child was born? A. I would not want to say, Mr. Lane, but I know I worked different times.

Q. What? A. 1895; that was after Norma was born, was it not? No, I don't think—I don't know.

Q. How long before you opened this account was it you started to work for your brother? A. How long was it before?

Q. Yes. A. Well, maybe I—now, I would not want to say, but maybe I put some money in the other bank book.

20 Q. Didn't you say a minute ago you opened this separate account solely for the purpose of putting in moneys you earned from your brother? A. I might have.

Q. And that you had not opened the separate account until just after you started to work for your brother? A. Did I say that?

Q. Is that so or is it not? A. That I said that I—

30 Q. No; is it so that you did not open this account until just after you started working for your brother, this separate account? A. I would not want to say.

Q. Then why was it that you said before that you told Dr. Warren you were opening this separate account because you were going to work for your brother? A. Well, I knew it was my money that was in there, and he knew about the bank account.

40 Q. Then at the time you started to open this

*Cora B. Warren, cross.*

account you were not working for your brother, were you? A. When was it opened?

Mr. Lum: February, 1900, the separate account.

The Witness: Yes, I was working for him then. 10

Q. When did you stop getting any income from this business, when was the last? A. When my brother got married.

Q. When was that—was it in 1900? A. Oh, no; my brother has not been married as long as that. It is 1917 now, and my brother has been married about twelve years.

Q. Did you continue to work for your brother in the mail order business up until 1905 or 1906? A. Well, of course, I did as long as he was at the house, as long as he carried on the mail business at the house I worked there. 20

Q. Did he carry on the mail business at the house right up to the time you left the house? A. I cannot tell you that.

Q. Don't you know whether the mail order business was stopped while he was still living at the house with you, or not? A. It was not, no sir. 30

Q. When was it stopped? A. After he was married and lived on Central Avenue.

Q. Did you have anything to do with it at the time it was stopped? A. No, sir; I did not.

Q. I show you a check dated November 11th, 1909, signed by Dr. Warren, payable to the order of the Woodside Building and Loan Association, for \$300; have you any recollection of that amount being paid by Dr. Warren after you say 40

*Cora B. Warren, cross.*

you took charge of the property? A. November 11th, 1909?

Q. Yes.

10

Mr. Lum: You know, the Doctor had another series of his own.

Mr. Lane: Yes, but that is a three hundred dollar check.

A. I never remember seeing the check.

Q. Do you remember any such payment being made by Dr. Warren after you took charge of the property? A. I do not.

Q. Will you testify that no such payment was made from the time you had charge of the property? A. I will. I never knew that he did.

20

Q. Did you know that the Doctor, during all these years, was putting all of his savings into this property? A. Did I know it?

Q. Yes. A. I did not know it.

Q. You knew that this was all he had in the world, didn't you? A. He had the drug store and he had his practice.

Q. During all these years you had not lost your affection for your husband, had you? A. What years do you mean?

30

Q. From 1902 until 1912? A. 1912?

Q. Yes. A. Why 1912? I don't understand the question, 1902 to 1912. 1902, Mr. Lane, was a different proposition from what it was in 1912.

Q. During all that time, Mrs. Warren, Dr. Warren had been going out with you—had been buying you clothes and supporting you? A. 1912.

Q. Up until 1909, had he?

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Mr. Lum: I object to that as immaterial and irrelevant to this issue. I do not think we are justified in going so far afield.

*Cora B. Warren, cross.*

The Vice-Chancellor: It is rather far afield, but I will not stop it.

A. At different times, he had.

Q. Dr. Warren, during all of these early years, worked very hard, did he not, to build up his business and to get this house? A. Why, he worked hard for his practice, and everything, yes.

10

Q. And went to college and worked nights in the drug store?

Mr. Lum: I object to that. The doctor has testified to it and Mrs. Warren has testified to it, and it is needless repetition.

Mr. Lane: I will withdraw it.

Q. Was it in the evening when you went up to Mr. Scott's house? A. Evening, yes.

20

Q. The first time? A. Yes.

Q. Was it on the first day of the month? A. No, he did not pay on the first day of the month.

Q. On what day did he pay? A. The 15th.

Q. As a matter of fact, did you not go there on the first day of the month and they told you that they did not pay until the 15th? A. No, sir.

Q. Did you tell Dr. Warren you were going there? A. Tell Dr. Warren?

30

Q. Yes. A. I don't think I did.

Q. You just went— A. I told him I was going to collect my own rents.

Q. Did you have a quarrel then? A. I beg your pardon?

Q. Did you have a quarrel at that time when you told him you were going to collect your own rents? A. I told him he let the Building and Loan

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*Norma C. Jube, direct.*

go behind, and I told him I was going to collect my own rents and manage my own business.

Q. Since you have been collecting the rents you have also built another house, have you not?

A. Built another house?

10 Q. Yes. A. What do you mean?

Mr. Lum: I object to that as having no materiality.

Mr. Lane: I think that is in our pleadings, if the Court please.

The Vice-Chancellor: How is it material to this case?

Mr. Lane: Well, that is all. I thought there was a prayer in the bill relating to that.

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NORMA C. JUBE, sworn for the defendant.

Direct examination by Mr. Lum:

Q. You are the daughter of Dr. and Mrs. Warren? A. I am.

Q. You were married when? A. January 20th, 1915.

30 Q. Do you recall, before your marriage, ever going up to your father's drug store and office?

A. Yes, sir, I do.

Q. Did you on different occasions ask him for money? A. Yes, I did.

Q. Will you tell us whether or not on any of these occasions he stated to you that you should ask your mother for the money; that she owned the property? A. Yes; father said that to me when he did not have the money to give me.

40 Q. On more than one occasion? A. Yes, sir; very often.

*Norma C. Jube, cross.*

Cross examination by Mr. Lane:

Q. When were those occasions? A. I went, on the average, once a week.

Q. When? A. During the years I was in high school. Let me see—I graduated from high school in 1908—between 1908 and 1913.

10

Q. Was it while you were going to school? A. Yes, sir; and the last year in grammar school, too.

Q. When did you graduate from the grammar school? A. 1908.

Q. What part of the year? A. June.

Q. You are positive that the last year you were in grammar school this conversation took place? A. Well, I never remember any conversations about the property until I was in high school, but I went up there in 1908 when I was in high school.

20

Q. You said it was while you were in grammar school. No; I only got about 50 cents, and then finally a dollar, a week, but then when I went to high school my expenses were more, and it was \$5.00 a week, and I suppose it was harder to give me the money.

Q. How old were you when you graduated from grammar school? A. Thirteen.

30

Q. You can remember this quite well? A. Yes, sir.

Q. What did you say the first time you went up there and he made any such remark to you? A. The first time I ever went to the store?

Q. No; to ask him for money, and he said to go to your mother. A. Well, that was about the first year of high school; it must have been about 1910, the first beginning of it.

40

*Norma C. Jube, cross.*

By the Vice-Chancellor:

Q. At that time were your father and mother living together? A. Up to that time Father was home.

10 Q. I asked you about this particular time. A. At the time I went up there they were not.

Q. The first time he said anything to you, were the doctor and his wife living together then? A. No, they were not.

Q. What was it he said? A. Well, he did not have the money.

20 Q. That particular time—that first time? A. He said, “Why don’t you go to her for money?” and I said, “You promised to give me an allowance.” He said, “Why don’t you get it from your mother?” I said, “Mother has not got it to give to me,” and he said, “Oh, yes, she has; she has got all this property, and she can give you this allowance.”

Further cross examination:

Q. Those are the exact words he used? A. Those are just exactly, as near as I can remember, the words he used; I cannot be absolutely positive.

30 Q. Did he use those same words while you were in grammar school? A. No, he never said that to me then; he always gave me my allowance.

Q. Didn’t you say that during the last year you were in grammar school he also said that? A. No, sir; I did not. You asked me when I went there, and I told you the year.

Mr. Lum: I object to counsel trying to

*Norma C. Jube, cross.*

put into the witness's mouth something she did not say. That is unfair.

Mr. Lane: I am not unfair, and if I am I am subject to censure by the Court and not by counsel.

Q. You knew at that time your mother was collecting rents from the property, didn't you?

10

A. No, I did not. I did not know anything about the property.

Q. Was not what your father said at that time, that your mother was collecting the rents of the property and she had money to pay it. A. No, it was not, Mr. Lane; it was just what I told you, just exactly.

By the Vice-Chancellor:

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Q. Were your relations friendly with both your father and mother at that time? A. Yes, they were friendly in this way, that Father and I talked when I went up there for my allowance and when we met on the street, but when I began to realize more about things, of course, we have not been friendly since, naturally.

Q. How many times do you think you had conversations with your father when you went for your allowances, similar to what you have reported? A. Well, I would say maybe three times in a year. Very often he was not there when I went up for it, and then, of course, there would be no conversation.

30

Further cross examination:

Q. He said this more than once, did he? A. Yes, sir.

Q. Those exact words? A. Just the same thing,

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*George W. Soden, direct.*

about the property is mother's, any why does she not give me the money.

10 Q. Did you know at that time that Dr. Warren was paying your mother money every week? A. Well, no, I did not know. I heard that mother got some money, but I did not know where.

Q. Did not he, as a matter of fact, say to you that he was giving your mother money every week to take care of you and your mother? A. No, sir, because he made the agreement for my allowance alone with me. I asked him if he would give me an allowance, I needed it in school, and he said he would, and he usually did.

20 Q. When did you ask him that? A. I asked him when I was in grammar school the last year, when I began to really get an allowance.

Q. As a matter of fact, he was always very good to you during all of this time? A. He always gave me the allowances when he had it; of course, when he was not up there I would not get it, and sometimes he did not have it for me, at least, he said he did not.

30 Q. Those were the only occasions when you ever heard your father or mother say anything about the property? A. Absolutely. I never heard it at any other time.

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GEORGE W. SODEN, sworn for the defendant.

Direct examination by Mr. Lum:

Q. You are the father of Mrs. Warren? A. Yes, sir.

Q. Did she and the Doctor live with you for some time? A. Several years.

40 Q. Do you remember in the early part of 1902-

*George W. Soden, cross.*

3 or 4 summonses were left at your house in suits brought against the Doctor? A. Yes, sir; quite often.

Q. Do you recall whether they occasionally caused conversations or remarks? A. From me?

Q. From anyone—from the doctor? A. Well, yes; he got a notice from a life insurance company. 10

Q. At any of these times when suits were brought against him, did he speak of the title of the property? A. Well, at the time of the life insurance that he got in trouble with, he got a notification from them and I spoke to him; I said, "Will, what is the matter with you; what the deuce ails you?"

Q. About when was that? A. About a year or two after they built that there new property. 20

Q. What did he say? A. He said, "Pop, you don't need to worry about that; everything will be all right; that property is in Cora's name; of course the deed is made out to her and I will get out of it all right." On another occasion, after we had been—oh, well, I don't know—there had been quite a number of summonses left at the house, I don't know what for, some kind of bills, I don't know what they were, and I know the folks spoke about it in the house. 30

Q. Did he say anything? A. No, he did not.

Q. You did not hear the Doctor say anything at that time? A. No, he did not.

Cross examination by Mr. Lane:

Q. The only conversation you had was in reference to some life insurance notification, is that right? A. With reference to life insurance, a 40

*Elizabeth Soden, direct.*

notification, and I spoke to him once when these here numerous summonses had been left at the house in the different suits that had been instituted against him; I spoke to him out on the stoop after dinner, because that is the only way I saw him, because I was away early in the morning and would be in bed before he came home at night, as a rule, because he would not come home to dinner very often.

Mr. Lum: What did you say?

The Witness: I said, "What the deuce is the matter with you? Can't you keep straight with your business? All these summonses here coming to the house, it looks funny to have these men running here," and he said, "That is all right; you know Cora has got all that up there and I have got nothing at all; they can't touch me; let it go ahead."

Q. Did he say that at the time you were talking to him about the life insurance? A. At that time he said that the property was in Cora's name and that he would take care of himself. I suppose he meant from that—I inferred from that—that he would take care of these insurance policies.

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ELIZABETH SODEN, sworn for the defense.

Direct examination by Mr. Lum:

Q. You are the mother of Mrs. Warren? A. Yes, sir.

Q. Do you recall that some time after 1900 suits were brought against the Doctor? A. I do.

*Elizabeth Soden, cross.*

Q. In connection with that matter, do you recall any conversation with him, or his saying anything? A. Yes, sir.

Q. How soon was it after the property was built up in Mt. Prospect Avenue? A. I don't know as I can tell exactly, because I don't remember dates, but I should judge it was, I guess, five years or something like that.

10

Q. What was said? A. They would leave the summonses at the house, and Mr. Soden would get very much excited, and the Doctor came in and said, "Cora, what is the use of your getting worried or excited"—that was a common occurrence—"What is the use of your getting worried or excited—I will see to these things. I gave you the property long ago, and why should you worry; I will attend to these things."

20

Q. What did the Doctor say to you? A. Once or twice when those cases came, I would say to him, "Doctor, what does this mean?" and he said—he would look at it and say, "That is nothing; I will see to that." I said, "It worries Cora and worries me," and he said, "Well, the property is all right; I gave it to Cora long ago and nobody can touch it. I will see to these things." And that happened very frequently down in our house.

30

Cross examination by Mr. Lane:

Q. And you were very anxious, you and your husband were very anxious to see that the property was taken care of, is that right? You were very much interested in the property? A. What property; hers or mine?

Q. Hers. A. Why, no; we didn't think anything about that.

40

*Elizabeth Soden, cross.*

Q. Was it Doctor Warren's custom to talk over his personal relations before you and your husband? A. Sometimes.

10 Q. How long did Doctor Warren stay at your house; up to when, what year? A. Well, Norma was born the last year after I built my house, and now you want to know how long he stayed there from that time on?

Q. Yes. A. Well, I think he was there—he must have been there ten or twelve or fifteen years—I cannot tell you.

Q. Up to nineteen hundred and what; five, six, eight, nine? A. I don't know; I could not tell you.

20 Q. Have you no recollection as to what year he left the house there? A. I could not say.

Q. When did you first know that the house was in your daughter's name? A. Why, when he bought the property, he told us.

By the Vice-Chancellor:

Q. Who told you? A. The Doctor.

Q. What did he say? A. He came down one day to dinner, and he did not tell me, but he told Mrs. Warren.

30 Q. You did not hear it? A. I didn't hear that, but afterwards I heard it.

Q. What did he tell you? A. He told me that he told my daughter that he had put the property in Cora's name and he had given it to her. That was all there was about it, everything was congenial, everything was just as happy in our house as one could wish, at that time.

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*Elizabeth Soden, cross.*

Further cross examination:

Q. And continued so up until when? A. Until this trouble came.

Q. Until 1904 do you mean? A. Well, I could not tell you just the time that he had trouble with this Talcot woman.

10

Q. As a matter of fact, these summonses did not begin to come in until 1906 or 1907, did they? A. I could not tell you.

Q. You have no idea as to what year it was? A. No, I do not.

Q. And you have no idea as to how many there were, or what they were for, or what amounts they were for? A. Well, I think I knew some of them at the time, but I don't know that I can remember now.

20

Q. Who left them there? A. Some constable. I got so that I would accept them and send them up to his office.

Q. As a matter of fact, even though this house that you say was owned by your daughter, subsequently, you and your husband sued Dr. Warren for rent for his wife in your house, did you not? A. Well, the Doctor had all this paid—

30

Mr. Lum: I object to that as not a subject of direct examination and immaterial. There is no claim Mrs. Warren owned the house of her father and mother.

The Vice-Chancellor: How is it at all relevant? It does not follow because they sued the Doctor, they deemed he owned this property.

Mr. Lum: I offer in evidence our letter

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*Paul M. Fischer, direct.*

book which has been marked for identification, D. No. 4.

The Vice-Chancellor: Which letter?

10 Mr. Lum: Letter-press copy of a letter of January 11th, 1910, to Dr. William H. Warren, 853 Mt. Prospect Avenue, from Lum, Tamblyn and Collyer as attorneys of Mrs. Warren, as found on page 619 of letter book of Lum, Tamblyn and Collyer, marked D. 4 for identification.

Defendant rests.

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PAUL M. FISCHER, recalled for the complainant in rebuttal.

20 Direct examination by Mr. Lane:

Q. At the time of the sale of the drug store and the lease of the drug store by Mrs. Warren, did you represent Dr. Warren in the transaction? A. I did.

Q. Just state the arrangement.

Mr. Lum: Objected to as immaterial, irrelevant and improper.

30 Mr. Lane: It is in reference to the rent and particularly in view of this letter which has just been offered and which provides for the rent of the drug store. I want to show that Dr. Warren at no time recognized any right to compel him to pay rent for the drug store.

Mr. Lum: But Mrs. Warren was not present at any conversation of this kind,

40 Mr. Lane: She knew all about it; I can connect it with other conversations with her direct.

*Paul M. Fischer, direct.*

The Vice-Chancellor: You are offering apparently self-serving declarations of your own client.

Mr. Lane: No, I am showing the reasons why Dr. Warren, in making the sale, seemed to have recognized the right of Mrs. Warren that he could not sell his drug store until the purchaser got a lease from Mrs. Warren and, therefore, in order to sell his drug store, he had at that time, as I shall attempt to prove, without prejudice, to consent to this arrangement. 10

The Vice-Chancellor: I cannot tell from my recollection of the testimony whether there is anything in this which is competent or not. You seem to be trying to show the declaration of the client. You can show the situation. 20

You can show what the facts were. We all know how this title was held; we can easily understand that no tenant who had any common sense would go in there and buy out a drug store without being protected by a lease, and he could not take the lease from the Doctor because the title was not in his name. I do not think there is room for anything more than the mere proof of the condition of things at that time, the situation, and the proof on that subject seems to be pretty near complete. 30

Have the other side attempted to show the declaration of the Doctor at this time?

Mr. Lane: No: They have attempted to

40

*William H. Warren, direct.*

show a condition of facts at that time. that he was paying rent.

10           The Vice-Chancellor: I do not understand there is any evidence in this cause which goes to show that what the Doctor did at the time he sold his business indicated that he was bound to pay rent, or throws any light on the question of his paying rent. If there is, you may explain it. I should think anybody could see what the situation was.

Mr. Lane: That is my only purpose. I will withdraw the witness at this time.

20           (At this point, it being past the hour for adjournment, it was agreed upon between counsel that, in order to finish the taking of the testimony today, further testimony should be taken before the stenographer, or the absence of the Vice-Chancellor, all objections to be reserved until the final argument.)

---

Dr. WILLIAM H. WARREN, recalled in rebuttal.

30           By Mr. Lane:

Q. Did you, at any time, have any conversation with your daughter, in which you said that the property was her mother's?

Mr. Lum: Objected to on the ground that it is repetition, the Doctor being asked by me on his direct examination to lay the foundation for the contradiction.

40           A. Never.

*William H. Warren, direct.*

Q. Do you recollect those occasions when your daughter came up there to your office to ask you for her allowances? A. Many times, yes; very many times.

Q. What did you tell her at those times? Did you give her the money, or tell her you did not have it, or what? A. I always gave her money every time I had it; I don't think I ever told her to get it from her mother until later, when she went on vacations. She asked me to buy her a victrola and I told her I would not. 10

Q. Did you, at the time you entered into the agreement, or at any time prior to the passing of the title of this property, tell your wife in so many words that you gave her the property? A. I never did. I always thought it was for both of us and she knew it, too, during all these years I paid for it. 20

Q. Did you know of the opening of this separate account in the Howard Savings Bank by your wife? A. I did not.

Q. In 1900? A. I never knew it.

Q. And did you tell her at that time to open a separate account because she told you she was going into business with her brother? A. She never told me anything about it. The business she went into with her brother was a matter I would not have anything to do with, because—we were in it together when he commenced his mail order business which I thought was crooked. I told her if she wanted to go on and help him to go ahead, and I told her it was not right, it was not square, and they would get in trouble, and he was held by the Federal authorities and fined for misusing the mails. 30

Q. Did you have a conversation with Mr. Soden 40

*William H. Warren, direct.*

at a time when a notice for life insurance had come in, in which you said everything would be all right, the property was in your wife's name, in Cora's name? A. I never did, I never had a conversation about any of my business with Mr. Soden.

10

Q. At no time? A. At no time.

Q. Did you have any conversation with Mrs. Soden? A. I never did. I never brought my business to her.

Q. Did he or she at any time ever talk to you about the different summonses coming to that house? A. They never did; it was all between Mrs. Warren and I; it was generally at my office, too.

20

Q. Did you at any time consent to the collecting of the rents by Mrs. Warren? A. I consented for her to collect them, yes.

Q. Was there any talk between you at that time about it being her property and not yours?

Mr. Lum: Objected to as repetition and already covered.

A. Why, she always had told me it was for both of us. She said that all during the whole transaction until this time in 1909, when we had trouble, and then she claimed the whole thing, and then it was that I did not agree with her.

30

In November, 1909, according to one of your checks, there seems to have been a payment of \$300 to the Woodside Building and Loan Association? A. Yes, that was the time—

Q. Was that payment made by you after Mrs. Warren had taken over the collection of the rents, or not?

40

*William H. Warren, direct.*

Mr. Lum: I object to that as not proper rebuttal.

A. It was given at the time the loan had run behind seven hundred and some odd dollars, in 1909, and to pay that up I signed the check that she had received—that we had both received in both our names, from the traction company. I signed that check and she collected five hundred dollars that was mine, and I gave a check for the building and loan for \$300 for the balance. That paid \$800 on the back payments. Then after that she collected rents.

10

Q. Was the trouble about the one thousand dollar check at the same time that she collected the rents herself, or started to collect the rents herself?

20

Mr. Lum: Objected to as repetition and not proper rebuttal.

A. That was just at the time.

Q. There was no other trouble between you at that particular time?

Objected to as repetition and not proper rebuttal.

A. Only the conditions at the house. I refused to stay there any more; if she would come and live with me over the drug store, I would take care of her.

30

Adjourned for argument until March 26th, 1917.

40

*Exhibits.***Exhibit C1.**

Contract between Elias G. Heller and William H. Warren, for the purchase of the property mentioned in the bill of complaint.

10 "AGREEMENT MADE THIS Twenty-third day of August, Nineteen Hundred, Between ELIAS G. HELLER of the first part and WILLIAM H. WARREN of the second part, both of the City of Newark, County of Essex and State of New Jersey,

20 WITNESSETH for and in consideration of one dollar and other valuable considerations and the mutual promises and covenants herein contained, upon the ensealing and delivery of these presents, the said Elias G. Heller agrees to sell unto the said party of the second part, William H. Warren, his heirs and assigns by Bargain and Sale deed free from all incumbrances, except taxes for the year Nineteen Hundred and assessments for said year, and taxes and assessments to be hereafter levied and assessed, all that certain tract or parcel of land hereinafter particularly described, situate, lying and being in the City of Newark, County of Essex and State of New Jersey.

30 (Describes property mentioned in Bill of Complaint and described in second paragraph.)

The said party of the second part, William H. Warren, agrees to pay the sum of Forty-two hundred dollars for said above described tract or parcel of land, with interest on all unpaid balances of the rate of six per cent. payable semi-annually together with all taxes and assessments for the year of Nineteen Hundred, and

40

*Exhibits.*

hereafter to be levied and assessed, in the following manner Seven hundred and fifty dollars upon signing of these presents, Seven hundred and fifty dollars on September 15th, Nineteen hundred and the balance of the unpaid purchase price in semi-annual installments of not less than Five Hundred dollars per installment and all accrued interest on the unpaid balance until the full purchase price with accrued interest shall have been paid in full. 10

The said party of the first part covenants and agrees to execute a Bargain and Sale deed free from all incumbrances, except as heretofore mentioned, when the entire purchase price with accrued interest shall have been paid in full.

IN WITNESS WHEREOF the said parties to these presents have hereunto set their hands and seals the day and year above written. 20

Elias G. Heller, (L. S.)

WM. H. Warren, (L. S.)

Signed, sealed and delivered }  
 in the presence of }  
 Arand G. Heller.

30

40

*Exhibits.***Exhibit C2.**

Check of Woodside Building & Loan Association of Newark, New Jersey, as follows:

"No. 2294 Newark, N. J. March 18th, 1908

10

National Newark Banking Co.

Pay to the order of R. Arthur Heller, Solicitor  
Twenty-nine hundred & Seventy 00/100 Dollars  
\$2970.00

Ernest A. Geoffray,  
Treasurer.

Elias G. Heller,  
President.

Chas. W. TenEyck,  
Secretary."

20

(ENDORSED)

R. Arthur Heller, Sol.

R. Arthur Heller.

and stamped "Paid."

30

40

*Exhibits.***Exhibit C3.**

Check of Woodside Building & Loan Association of Newark, New Jersey, as follows:

"No. 1471 Newark, N. J. June 11, 1902.

Newark City National Bank 10

Pay to the order of R. Arthur Heller  
Thirteen thousand eight hundred sixty—00/100  
Dollars

\$13860 .00/100

Ernest A. Geoffray,  
Treasurer,  
Elias G. Heller,  
President,

Arand G. Heller, 20  
Secretary."

(Endorsed)

Pay to the order of  
William H. Warren  
R. Arthur Heller  
Wm. H. Warren

and stamped "Paid."

30

40

*Exhibits.***Exhibit C4.**

Check of Woodside Building & Loan Association  
of Newark, New Jersey, as follows:

"No. 2175 Newark, N. J. Nov. 30, 1907.

10

National Newark Banking Company

Pay to the order of Wm. H. Warren  
Thirteen hundred eighty-eight & 75/100 Dollars  
\$1388.75

Ernest A. Geoffray,  
Treasurer,  
Elias G. Heller,  
President.

Arand G. Heller,  
Secretary."

20

(Endorsed)

Wm. H. Warren  
Pay Essex County Nat'l Bank  
Newark, N. J. or Order  
Heller Bros. Co.

and stamped "Paid."

30

40

*Exhibits.***Exhibit C5.**

Check of Woodside Building & Loan Association of Newark, New Jersey, as follows:

"No. 3501 Newark, N. J. Dec. 12th, 1912.

National Newark Banking Co. 10

Pay to the order of Cora Warren  
Twenty-three 10/100..... Dollars  
\$23.10

Ernest A. Geoffray,  
Treasurer.  
Elias G. Heller,  
President.

Chas W. TenEyck,  
Secretary."

20

(Endorsed)

Cora B. Warren

and stamped "Paid."

**Exhibit C6.**

Package of blank promissory notes, made by William H. Warren to the order of Heller Bros. Company and fully paid up and stamped "Paid". Endorsed by Elias G. Heller, Heller Bros. Company and William H. Warren, and being given on the following dates, and for the following amounts:

30

September 27, 1901 four months	\$14,000.00
September 15, 1905 four months	50.00
September 15, 1905 five months	50.00
September 15, 1905 six months	50.00
September 15, 1905 seven months	50.00

40

*Exhibits.*

	September 15, 1905	eight months	50.00
	September 15, 1905	nine months	50.00
	September 15, 1905	ten months	50.00
	October 25, 1905	six months	3,500.00
	October 15, 1904	four months	50.00
10	October 15, 1904	five months	50.00
	November 25, 1903	four months	600.00
	November 25, 1904	four months	450.00
	January 8, 1906	four months	1,400.00
	January 10, 1907	four months	1,100.00
	March 1, 1906	three months	440.00
	May 10, 1907	four months	1,000.00
	May 8, 1906	four months	1,300.00

**Exhibit C7.**

20

“Newark, N. J. Aug. 31, 1900

RECEIVED from W. H. Warren  
 on a/c of agreement  
 One thousand..... Dollars  
 \$1000.

Elias G. Heller,  
 A. G. H.”

**Exhibit C8.**

30

“Oct. 15, 1900.

RECEIVED from W. H. Warren  
 on a/c of lots  
 Twenty five hundred ..... dollars  
 \$2500.

Elias G. Heller,  
 A. G. H.”

40

*Exhibits.***Exhibit C9.**

Thirty-two checks, drawn by William H. Warren to the order of the Woodside Building & Loan Association and stamped "Paid," bearing the following dates and following amounts:

February 2nd, 1905	\$25.00	10
June 5th, 1905	25.00	
July 6th, 1905	25.00	
Aug. 3rd, 1905	25.00	
Dec. 7th, 1905	25.00	
May 3rd, 1906	25.00	
Sept. 6th, 1906	25.00	
Jany. 3rd, 1907	25.00	
March 7th, 1907	175.00	
April 4th, 1907	25.00	20
May 2nd, 1907	25.00	
June 6th, 1907	25.00	
July 5th, 1907	175.00	
Aug. 8th, 1907	175.00	
Oct. 3rd, 1907	175.00	
Nov. 7th, 1907	175.00	
Jan. 9th, 1908	350.00	
Febry. 6th, 1908	175.00	
March 5th, 1908	175.00	
April 2nd, 1908	180.00	30
May 7th, 1908	180.00	
June 4th, 1908	180.00	
Aug. 6th, 1908	180.00	
Sept. 3rd, 1908	183.00	
Oct. 8th, 1908	180.00	
Nov. 5th, 1908	180.00	
Dec. 3rd, 1908	180.00	
Febry. 4th, 1909	360.00	
March 4th, 1909	180.00	40

*Exhibits.*

April 8th, 1909	180.00
June 3rd, 1909	378.00
Nov. 11th, 1909	300.00

10

**Exhibit C10.**

“The First National Bank

Belleville, N. J., Sept. 20/1910.

Pay to the 00/100  
 Order of E. A. Geoffray.....\$200  
 Two hundred &.....and 00/100 dollars  
 No. 1242

Wm. H. Warren.

20

(GOOD, When properly endorsed  
 J. F. Brown, Cashier,  
 First National Bank,  
 Belleville, N. J.)”

(Endorsed)

R. T.

Pay to any Bank  
 Sept. 26, 1910

National Newark Banking Co.  
 Newark, N. J.

30

Ernest A. Geoffray.

40

*Exhibits.***Exhibit C11.**

Feby. 8, 1917, H. W. K.

The depositor by following signature assents  
to the Regulations and By-Laws of the Insti-  
tution.

10

106696

Signature, Wm. H. Warren

Residence, 441 Summer Ave.

Occupation, Physician

Age, 28

Birthplace, Newark, N. J.

Father's name, Adam Warren

Mother's maiden name, Louisa Martin

Husband's name

Brothers

20

Wife's name, Cora B. Warren

Sisters

---

The depositor by following signature assents  
to the Regulations and By-Laws of the Insti-  
tution.

106696

Signature, Mrs. W. Warren

Residence, 441 Summer Ave.

Occupation, Physician

Age, 24

Birthplace, Newark, N. J.

Father's name

Mother's maiden name

Husband's name, Wm. H. Warren

Brothers

Wife's name, Cora B. Warren

Sisters

40

*Exhibits.*

106696 William H. Warren and Cora B. Warren  
Payable to either or survivor.

	1896		
	Feb. 21		100.
10	May 27		60.
	June 1		.75
	Aug. 14		75.
	Nov. 30		50.
	Dec. 1		2.96
	1897		
	June 1		75.
	June 1		4.32
	Oct. 20		100.
	Dec. 1		5.52
20	1898		
	Apl. 22		200.
	June 1		7.09
	Oct. 24		125.
	Dec. 1		10.20
	1899		
	Jan. 16		100.
	May 24		150.
	June 1		12.97
	Aug. 7		200.
30	Dec. 1		16.78
	1900		
	June 1		17.95
	Oct. 15		1313.54
			<hr/>
			1313.54 1313.54

*Exhibits.***Exhibit D1.**

## DEED.

Elias G. Heller and Sophia C. Heller, his wife,	}	Dated Sept. 17, 1900. Ack'd Sept. 17, 1900. Rec'd June 13, 1902.	}	10
to		O 35 of Deeds, pp. 84 & 85.		
Cora B. Warren, wife of William H. War- ren.	}	Bargain & Sale Deed. Cov. v. Grantor.		

Conveys property situated in the City of Newark, in the County of Essex and State of New Jersey.

BEGINNING at a point formed by the intersection of the Sly line of Verona Avenue with the Ely line of Mt. Prospect Avenue; thence running along the line of Mt. Prospect Avenue Sly 100'; thence Sly 61° 25' E 200' more or less to the line of property now owned by the Emanuel Baptist Church; thence Nly and along line of said Emanuel Baptist Church 100' more or less to said Sly line of Verona Avenue; and thence Wly and along said Sly line of Verona Avenue 206' more or less to the point of intersection and place of Beginning.

BEING the same premises as heretofore conveyed to said Elias G. Heller by Elizabeth Carragher by deed dated August 22, 1900, and recorded in Essex County Register's Office on September 15, 1900.

*Exhibits.***Exhibit D2.**

10 Cora B. Warren and  
 William H. Warren,  
 to  
 10 Woodside B. & L. Assn. } BOND.

Given to secure the sum of \$28,000 conditioned for the payment of \$14,000 by payment of \$1.00 on each of seventy shares of capital stock of said Building & Loan Assn. owned by the said Cora B. Warren and William H., her husband, and standing in their names on the books of said association and assigned to it as collateral security for the payment thereof.

20 Containing an assignment to said Building & Loan Assn. of the said seventy shares of stock executed on June 12, 1902.

**Exhibit D3.**

30 Cora B. Warren and } MTGE.  
 William H. Warren, } Dated June 12, 1902.  
 her husband, } Ack'd June 12, 1902.  
 to } Rec'd June 13, 1902.  
 30 Woodside B. & L. Assn. } Amount \$14,000.

Covering premises same as described in D1. BEING the same premises as conveyed to said Cora B. Warren by Elias G. Heller and wife by deed dated September 17, 1900.

40 This mortgage is given to secure part of the purchase price of the above premises conveyed by Elias G. Heller and wife to said Cora B. Warren and advanced by the Woodside Building & Loan Assn., which deed of conveyance is dated the 17th day of September, 1900, and delivered

*Conclusions.*

and recorded on the same date as mortgage herewith.

**Exhibit D4.**

January 11, 1910.

10

William H. Warren, Esq.,  
863 Mt. Prosepct Avenue, City.

Dear Sir:

Mrs. Warren has consulted us with reference to the amount of your indebtedness for the occupation of the drug store, stable and premises at 863 Mt. Prospect Avenue belonging to her. We must ask that you call here to see us with reference to this matter at your very earliest convenience, and oblige,

20

Yours truly,  
LUM, TAMBLYN & COLYER.

ECL/C

**Conclusions.**

Bill to establish a resulting trust in respect of land or a half interest therein in favor of complainant, the husband, the land having originally been conveyed by the vendor to the defendant, the wife, by the complainant's express direction.

30

Mr. HARRY LANE for Complainant.  
Mr. RALPH E. LUM for Defendant.

Stevenson, V. C.

In the above stated cause my conclusion is that the complainant has failed to establish his case, and that the bill must therefore be dismissed.

40

The equitable principles applicable to the sit-

*Conclusions.*

uation presented by the pleadings and proofs, are well settled—so well settled that there was no dispute in regard to them in the argument of counsel.

10 As to the facts, I think I may say that the evidence not only failed to rebut the presumption of a settlement or gift, but convinced my mind that there was a gift—that this was the common case where a man buys land and has it conveyed to his wife with the natural expectation that the settlement will be advantageous to both parties. When the relations of the man and his wife cease to be harmonious, when divorce or separation comes, the man finds himself disappointed in his expectations, and he very much regrets  
20 the disposition of property which he theretofore made. No doubt there are situations of this kind where there is hardship, and some future laws may provide for the readjustment of family settlements in case of divorce. Under our present system of laws the destruction of harmonious and confidential relations between the man and wife, their complete estrangement and even divorce, create no new equity in favor of the husband with respect to land which he originally  
30 donated to his wife when both parties contemplated that their affectionate and confidential relations would endure throughout their lives, and that both would therefore share in the benefits of the donated property.

I am disposing of this case without considering the origin of the money which paid for the land, or some other questions of fact. I am assuming for the purposes of this decision that the full price of the land came from money which be-  
40 longed to the husband alone, together with the

*Final Decree.*

rents which the land yielded through a course of years.

**Final Decree.**

This cause coming on to be heard before the Court in the presence of Harry Lane, Esq., of counsel with the complainant, and Ralph E. Lum, Esq., of counsel with the defendant, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, 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 him in his bill of complaint; 10 20

It is on this eighteenth day of May, One Thousand Nine Hundred and Seventeen, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey,

Ordered, adjudged and decreed that the complainant's bill be and the same is hereby dismissed with costs, and the complainant pay to the defendant a counsel fee of two hundred and fifty dollars to be included in the taxed bill of costs. 30

And it is further ordered and decreed that the complainant pay to the defendant the costs of this suit to be taxed as aforesaid and that execution issue therefor according to the practice of this Court.

Respectfully advised,

E. R. WALKER,  
C.

EUGENE STEVENSON,  
V. C. 40

**Notice of Appeal.**

(Filed May 26, 1917.)

To Messrs. Lum, Tamblyn & Colyer,  
Solicitors for Defendant:

Sirs:

10 William H. Warren, the complainant in the  
above entitled cause, hereby appeals from the  
final decree made herein, by his Honor, the  
Chancellor, on the eighteenth day of May A. D.,  
nineteen hundred and seventeen, 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.

Yours, etc.,

20

ZIEGENER & LANE,  
Solicitors for Complainant,  
William H. Warren.

Dated May 25, 1917.

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

HARRY LANE,  
Of Counsel with William H. Warren,  
Complainant.

(Copy duly served.)

30

40

**Petition of Appeal.**

(Filed June 12, 1917.)

To the Honorable Court of Errors & Appeals of  
New Jersey:

The petition of William H. Warren, the appellant in the above-entitled cause, respectfully shows that your petitioner finds himself 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 May, A. D. 1917, wherein the parties were as set forth in the foregoing title, in this respect, to wit: 10

That said decree adjudged and decreed that the complainant is not entitled to the relief sought and prayed for by him in the bill of complaint, and that his bill be and the same is hereby dismissed. 20

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 of Chancery should have adjudged and determined that the complainant was entitled to the relief prayed and sought for by him in his bill of complaint and that the Court should have adjudged and determined that the property mentioned in the bill of complaint was the property of the complainant, and that the said defendant, Cora B. Warren, be directed to convey said property to the said complainant, or that the said complainant and defendant have equal rights in said property, and that the said defendant, Cora B. Warren, be directed to execute such proper instrument as to secure to the said 30

40

*Petition of Appeal.*

10 complainant his equal rights therein; and that the Court of Chancery should have adjudged and determined that an account be taken of the rents, issues and profits of the said lands and premises, collected by the said Cora B. Warren, defendant, and that either the said defendant be directed to pay over said amount to the said complainant, or to pay over one-half of said amount to the said complainant as the case may be.

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 this Court shall seem meet.

ZIEGENER & LANE,  
Solicitors for Appellant.

Harry Lane,  
Of Counsel.

(Service duly acknowledged.)

30

40

**Answer to Petition of Appeal.**

The answer of the above named respondent to the petition of appeal of the above named appellant.

The respondent not acknowledging all or any of the matters which in said petition of appeal are contained to be true in answer thereto nevertheless says and admits that a final decree was on the eighteenth day of May, nineteen hundred and seventeen, made and entered in the Court of Chancery as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. 10

And this respondent is advised and believes that the said decree is agreeable to equity and she prays that the same may be affirmed, with costs to be adjudged to this respondent. 20

LUM TAMBLYN & COLYER,  
Solicitors for and of Counsel  
with Respondent.

[415]

30

40

The first part of the book is devoted to a general  
 survey of the history of the world, from the  
 beginning of time to the present day. The author  
 discusses the various stages of human civilization,  
 from the primitive state of nature to the  
 establishment of the first societies. He then  
 traces the progress of the human mind, from  
 the earliest attempts at philosophy to the  
 development of the sciences and the arts. The  
 second part of the book is devoted to a  
 detailed account of the history of the world,  
 from the beginning of the Christian era to the  
 present day. The author discusses the various  
 events and movements of the world, from the  
 rise of the Roman Empire to the fall of the  
 last of the great empires. He then traces the  
 progress of the human mind, from the  
 earliest attempts at philosophy to the  
 development of the sciences and the arts.

10

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## Court of Errors and Appeals of New Jersey.

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Between,

WILLIAM H. WARREN,  
Complainant-Below,  
Appellant,

and

CORA B. WARREN,  
Defendant-Below,  
Respondent.

---

On Bill, &c.  
On Appeal  
from Chan-  
cery.

### **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 prays that a decree may be made either that the property mentioned therein is the property of the complainant, or that the complainant and the defendant have equal rights in the property, and for incidental relief.

Complainant and defendant were husband and wife at the time of the purchase of the property. On June 2nd, 1915, a decree *nisi* for divorce was entered in the Court of Chancery in favor of the defendant and against the complainant.

The questions presented are:

First.—As to whether the presumption of a settlement upon the wife by the husband arose and applies in this case.

Second.—As to whether the presumption, if it did arise, has been rebutted.

## ARGUMENT.

### Facts.

The property in question at the time of the filing of the bill consisted of eight lots on the corner of Mount Prospect Avenue and Verona Avenue, Newark, and has a frontage of one hundred feet on Mount Prospect Avenue. Complainant and defendant were husband and wife. They were married on June 4th, 1890, and were divorced in 1915. At the time that the property was purchased it was vacant. The testimony of the complainant, which is not contradicted in any way whatever and is corroborated by the defendant, shows what led up to the purchase of the property. At the time of his marriage, complainant was a young man, struggling along and he studied to educate himself and better his position. He went to college after his marriage. He described how he had a drug store on Verona Avenue until October, 1900. That there was a vacant corner at the corner of Mount Prospect Avenue and Verona Avenue, and he thought it would be a better place for a drug store and also for him to have an office. He thought of getting the lots and putting up a building with an office for himself and with living apartments in it and start business there. He had saved up some money in the bank and had a chance to get the property for forty-two hundred (\$4200) dol-

lars from Mr. Heller, the then owner. He thought it was a growing neighborhood and that he would have a chance to build up the whole property. He made an agreement with Mr. Heller on August 23rd, 1900, which agreement was offered in evidence and marked "Exhibit C1." By this agreement he agreed to pay seven hundred and fifty (\$750) dollars on September 15th and the balance in semi-annual installments of not less than five hundred (\$500) dollars per installment. He then spoke to his wife about it and she said that she had twenty-three hundred (\$2300) dollars in the bank that she would have put with it and that it would be for both of them, and in that way he could pay cash for the property. She said that she had saved twenty-three hundred (\$2300) dollars since they were married. A very significant fact is that the bank account in the savings bank had been taken out in both the complainant's and defendant's names (see Exhibit C11). The twenty-three hundred (\$2300) dollars in addition to nineteen hundred (\$1900) dollars, which the complainant had, making up the forty-two hundred (\$4200) dollars, was paid in cash for the property. A deed was executed and Mr. Heller loaned money to the complainant as he needed it to pay for the erection of the building. While the deed was put in the name of the defendant, there was at that time absolutely no delivery of it to the defendant, and in fact there has been shown no delivery at any time of the deed to the defendant. The deed was kept by Mr. Heller, and the record title was kept in the name of Mr. Heller in order to protect him, for the money, which he was loaning to the *complainant* from time to time to pay for the erection of the building. There is no question but that the defendant had no supervision over the

work whatsoever and that all of the arrangements were made by the complainant, and that he treated the property as his own, while it was being erected and at all other times. After the building was erected and the complainant had expended considerable moneys of his own in addition to the money, which was loaned to him on *his* notes by Mr. Heller, a mortgage of fourteen thousand (\$14,000) dollars was given to the building and loan, and upon this money being turned over to Mr. Heller, the deed was delivered to the complainant. He positively swears, and it is uncontradicted, *that he then had the deed recorded and that he kept it in his safe* until the time when the building and loan mortgage was paid off. This is corroborated by defendant. That then the building and loan people wanted the deed at the time the mortgage was canceled and he let them have it and in some way the deed got into the possession of the defendant. The defendant did not attempt to show that she at any time treated the property as her own individual property, *or that there was at any time any express delivery of the deed to her by the complainant.*

There is no question but that the complainant had all to say about the property; that he built it specially for his own accommodation; a drug store with offices for him being specially arranged; that subsequently he built a barn on the property for his own horses and wagon, and that the defendant had little or nothing to do with it. *A reading of the answer of the defendant and also a due consideration of her testimony is positive proof* of this. The most of her answer is made up by a general denial and a statement that she has no knowledge or information in respect to the matters contained in the bill of com-

plaint sufficient to form a belief. Mrs. Warren's testimony, starting at page 134, is very important. It proves conclusively that there was no delivery of the deed to her at any time. She was not present when the deed was executed; nor was she present when the deed was turned over in 1902. She corroborates the complainant that he had the deed and not she, until after the building and loan was paid in 1912. There is no attempt on her part to show, and in fact it would be impossible for her to make the Court believe that at that time, after they had had several years of trouble, the complainant then gave her the property. It may seem strange that the building and loan wanted the deed for any reason when the mortgage was cancelled, but her testimony absolutely corroborates the complainant's testimony in this matter. At this time, in 1912, complainant and defendant were living separately (p. 50, line 15). It may perhaps be that it was a plan of the defendant to get the deed as then was the first time she claimed the property was hers exclusively (p. 66, line 35).

There is no question but that this transaction occurred exactly the way complainant testified. There is no question but that what money was in the banks was money which had been saved from the complainant's earnings. In her answer defendant admits that the complainant from time to time turned over to her moneys in excess of the amounts needed for the family use. It is very significant that she denies in her answer that complainant permitted her to deposit moneys in her name upon the express understanding and agreement that the moneys so turned over should be considered as much his as hers. In her answer (Paragraph 2), defendant asserts that the twenty-three hundred (\$2300) dollars *were moneys which*

*she had at the time of her marriage, and also moneys which she made by her own exertions, and particularly while working with her brother, and that in addition to these sources, she was in receipt of some moneys from friends and relatives. When confronted with the absolute proof that over thirteen hundred (\$1300) dollars of the twenty-three hundred (\$2300) dollars were moneys which were in a joint savings account of the complainant and the defendant (see p. 135, line 1), she admits, and particularly, on cross examination, on pages 145, line 8, that at least this fund was considered for the benefit of both. On page 153, line 1, she admits that no portion of the twenty-three hundred (\$2300) dollars was from any earnings prior to her marriage, although in her answer she infers that there was some considerable amount of this money which she had at the time of her marriage. Although in her answer she sets up that she received moneys from relatives and friends, nevertheless she does not offer one scintilla of evidence to sustain this. Her attempts to show that the one thousand (\$1,000) dollars in her own separate account, which was opened in February, 1909, came from earnings for work she did for her brother are very significant (see pp. 159-161). She winds up by saying, on page 161, that she might have saved some from the household expenses. See also her testimony on pages 162-163. On page 163, line 25, she cannot even say whether or not her brother carried on the mailing business at the house where she was living, right up to the time she left the house.*

There is no question but that the moneys which paid for the property and the erection of the building came from moneys of complainant, together with rents of the building.

The defendant did not substantiate the allegations in her answer as to the origin of some of the moneys, which paid for the land. She made allegations in her answer in respect to the moneys which she admitted on the stand were not true. Even though part of the moneys were earned by defendant in helping her brother in the mail order business, and it could only have been a small portion, still it would be moneys earned by the wife during coverture and the husband would be entitled to it. *Persons v. Persons*, 25 N. J. Eq., 259.

The Vice-Chancellor assumed "for the purpose of his decision that the full price of the land came from money which belonged to the husband alone, together with the rents, which the land yielded through a course of years" (p. 196, line 37).

The testimony of the defendant can be searched and there is nothing whatsoever to show that there was any gift, or any intention to give the property to the defendant in 1900, when the deed was executed, or in 1902, when the deed was actually delivered to the complainant by Mr. Heller. *No further testimony would be necessary than that of Mrs. Warren herself to show that there was no actual gift or intention to make a gift of the property to defendant.*

The evasive character of the defendant's testimony is shown on pages 144-145.

"Q. The doctor had some interest in the joint account, had he not? A. His name was on to it.

"Q. What? A. His name was on to it.

"Q. Is that all the interest he had, just his name being on it? A. We both put it in.

"Q. Was it not considered as a fund of both of yours? A. Yes.

“Q. To be used as you needed it? A. Yes.”

On page 145, line 10, she testified as follows:

“Q. As a matter of fact, when this deed was taken in your name, was it not considered between you and the doctor that it was for the benefit of you and the doctor? A. *Well, I don't know, I suppose at that time we might—we were both congenial and there was nothing said about that.*”

Taking this question and answer by itself, there is no doubt but that it was thoroughly understood between the complainant and the defendant that the property was for the benefit of both.

On page 145, line 25, she testified that there was nothing said about her holding the property separate and apart from her husband. She was not present when the deed was executed, or when it was first turned over. She never had the deed until after the building and loan was paid (p. 145, line 30).

On page 153, she testified:

“Q. After 1909, after you found that the building and loan was behind, did the doctor pay up any of the building and loan? A. He might have helped me, but I could not say.”

On page 155, she testified that the barn was built for the special purpose of housing the doctor's horses and wagon. On page 156, defendant testified that the complainant took charge of the property the same as if it were his own as they were congenial.

On page 157, her testimony shows that she had nothing to do with the getting of the mortgage except that she signed it.

On page 158, she testified that she did not ask complainant for the deed, but that he said it was in his safe.

The examination by the Vice-Chancellor, on pages 158-161, discredits defendant's testimony as to where the one thousand dollars came from, particularly in view of the statements contained in her answer.

The testimony of Augustus M. Scott, a disinterested witness, commencing on page 18, shows that he was a tenant in the property and lived there for nine years; that the rooms were hired from complainant. He testified to an occasion when defendant came to the home and said that she desired to collect the rent as the property belonged as much to her as it did complainant.

"She told me what the business was and I simply objected to paying the money or the rent, or having it paid to Mrs. Warren, as I certainly had done business with the doctor and we would continue it so until further notice. Mrs. Warren, she spoke right there, during the subject she said: '*Mr. Scott, the property belongs to me as much as it does to Mr. Warren' or 'the Doc.'* That is the way she spoke."

He also testified to the same effect on page 23.

Mrs. Aldridge testified that she was present at the conversation with Mrs. Warren in the Scott's apartment, *and that Mrs. Warren stated that the property belonged to her just as much as it did to the doctor* (p. 26). See her testimony on page 28 and also on page 29, line 40. On page 30 in response to a question by the Vice-Chancellor, she testified that *Doctor Warren the next day told Mrs. Scott in her presence, that the property belonged to them both.*

Peter T. MacLager, testified that he was the architect, and that the house was built entirely under the supervision of complainant (pp. 31-34).

The testimony of Doctor Warren is quite voluminous, but shows that there was no intention of the property being a gift to the defendant, but that it was for the benefit of both of them. On Page 37, Dr. Warren testified:

"I spoke to Mrs. Warren about it and she said that she had \$2,300 in the bank that she would put with it and it would be for both of us and we would pay cash for the lot," etc.

It is not feasible to pick out portions of the testimony of Dr. Warren and set them forth in this brief as it would result in recopying practically all of his testimony, as it all bears upon the case. A reading of his testimony *in toto* shows conclusively that he exercised absolute control over the property; attended to all transactions; made all payments by his own personal checks; issued his own personal notes and in every way treated the property as his own.

Complainant appeared to the Vice Chancellor to be a man "unacquainted with legal matters" (p. 126, line 39).

The testimony of the other witnesses for the complainant corroborates complainant and shows that the venture was entirely his, and that the property was treated by both complainant and the defendant as the complainant's own property.

When the evidence in this case is summed up, there does not seem to be much question as to the actual facts. At the time of his marriage, the complainant was a struggling clerk. He worked hard; went to college and obtained a license as a physician. He bought this property

with the idea of obtaining a good stand for a drug store; obtaining offices where he could be near his drug business and also to secure an apartment for himself and wife over the store; thus relieving himself from living with his wife's parents and also being near to his business and practice. This property was all he had and has, and was the result of his life's work. *The evidence is all against the idea that this man intended, or actually did, make a gift of everything he had worked for, to his wife.*

Much was made of the fact that defendant collected the rents in 1904 and 1905. The testimony shows that defendant discovered some letter, which she claims involved him with some woman. It shows that he claimed to be innocent of the charge made against him by her. Nevertheless he had let the building and loan get behind. She had a lever on him. He was endeavoring to do everything he could to pacify her. What more natural and what more proper for him to do than to let her handle his business and moneys and see that the building and loan was paid up from the proceeds of the property and from what moneys she could get from him. In 1906, he undoubtedly had gotten over the scandal and he again took charge of the property. During all of this time and right up until 1912, he had the possession of the deed and \* \* \* there had been absolutely no delivery.

*Every point in the case shows that there was no intention on the part of the complainant to settle this property on the defendant. His actions all show that this was furthest from his mind. The testimony of the defendant proves conclusively that there was no such idea in her mind until after she had become estranged from her husband and conceived the idea of taking*

*advantage of a technical point of law and secure the property for her own individual purpose.*

Cases of this kind are hard to determine. It is impossible to say upon just what particular facts the Vice-Chancellor based his conclusions. Every case of this character must be decided on its own peculiar facts. There are decisions in this State both ways. They all hold that the presumption of a gift by a husband to a wife may be rebutted.

*Furthermore, the fact of the husband keeping the deed and exercising full ownership of the property tends to rebut the presumption.*

There was absolutely no proof of any turning over of the deed to the defendant. As a matter of fact from her own testimony, she never had the deed until 1912, when she obtained it from the building and loan association, after the mortgage was cancelled, and there is no attempt on her part to show that there was any gift at that time. Neither can it be said that in 1900, when the deed was executed that he gave the property to his wife, for at that time it was not his to give. The deed was not delivered; the record title was held in the name of Heller to secure loans made to the complainant in his own name and on his own notes (see Exhibit C6).

*To say now that the complainant has no interest in this property would be most inequitable and would be more detrimental to the confidential relations existing between husband and wife.*

*While the presumption, arising from the fact that the record title was in the name of the wife, if it applies in this case, is a presumption of law, nevertheless it raises solely a question of intent. When we look into the facts in this case, there is no question but that there was no*

intention on the part of the complainant or defendant, at the time the title was taken in the name of the wife, that it was a settlement upon her and to be her own separate property. Practically every nickel that the complainant earned was put into this property. We need not go any further than the testimony of the defendant herself. It demonstrates that there was no such intention in the mind of either one. It seems to me that it is hard to find a stronger case where the presumption of law, if it applies in this case, is rebutted than the case at bar.

## THE LAW.

### I.

**The property in question being all the property complainant had, the presumption of a settlement upon the defendant did not arise.**

*This case comes within the operation of the general principle that a deed or a gift by a husband to a wife of all his property would be held inoperative in equity and law.*

The whole theory of the decision of the vice-chancellor is that the presumption of a gift by the husband to his wife has not been rebutted.

In equity the property is the property of the husband, he having paid for it, except where the law presumes a gift by the husband to the wife.

In a case where the husband places the title to all of his property in the name of his wife the presumption of a gift or settlement does not arise and she holds it in trust for him.

The general principle is stated in 2 Story Eq. Jur., Par. 1374, as follows:

“In respect also to gifts or grants of property by a husband to his wife, after marriage, they are, ordinarily (but not universally) void at law. But courts of equity will uphold them in many cases where they would be held void at law; although in other cases, the rule of law will be recognized and enforced. Thus, for example, if a husband should, by deed, grant all his estate or property to his wife, the deed would be held inoperative in equity, as it would be in law; for it could in no just sense, be deemed a reasonable provision for her (which is all that courts of equity hold the wife entitled to); and in giving her the whole, he would surrender all his own interests.”

The English Case.

*In re Beard v. Beard*, 33 Atk., 72 (April 5, 1744), is cited. That case holds as follows:

The plaintiff's husband, a freeman of London, being at variance with his wife, in January, 1739, by his will executed at a tavern, gives all his estate real and personal to his brother and makes him executor.

In November, 1740, by a deed poll, he gives and grants unto his wife all his substance which he now has, or may hereafter have.

The bill was brought by the wife who insists upon the deed poll, that the will is revoked by this subsequent act of the husband in his lifetime.

The counsel for the plaintiff's cited *Boughton v. Boughton*, the 5th of December, 1739, 1 T. Atk., 625, and *Harvey v. Harvey*, November the 12th, 1739. Lord Chancellor *Vide*, 1T. Atk., 561.

A man here has done two very unreasonable acts; if it should happen to trip up the heels of the other, it is a very fortunate thing to set everything right again.

A wife appears here to be unprovided for, both before and after marriage.

A will is made at a tavern, probably in a passion, for the husband was parted from his wife at that time, by which he gives his whole estate to his brother. Afterwards he is guilty of another unreasonable act, a gift to his wife by deed poll of all his substance.

The question is which is to take effect.

The latter cannot take effect as a grant or deed of gift to the wife because the law will not permit a man to make a grant or conveyance to the wife in his lifetime, neither will this Court suffer the wife to have the whole of the husband's estate while he is living, for it is not in the nature of a provision, which is all the wife is entitled to.

The general principle is in force in this State.

It was quoted by this Court in *Fretz v. Roth*, 70 N. J. Eq., 768. The Court held that that case did not come within the operation of this general principle because "the conveyed house and lot constituted but a portion in value of the husband's entire property."

*The decision would undoubtedly have been otherwise had the property constituted the husband's entire property and the product of his whole life work.*

There is no question but that in the case at bar the property in question is the result of the entire life work of the complainant.

The testimony shows that this is all the property he had.

If a gift direct from the husband to the wife would be held inoperative because it is all his property, then a gift by presumption can be of

no greater strength and would likewise be held inoperative.

In any event, in a case of this kind a court of equity should upon slight evidence hold that the presumption of a gift or settlement is rebutted. It seems to me that upon such strong evidence as in the case at bar, there is no question but that the presumption of a gift or settlement had been rebutted.

## II.

**The presumption of a settlement arising by reason of the title being taken in the name of the defendant, if it arose and applies in this case, has been rebutted.**

The law is so well settled that it is hardly necessary to cite any of the cases.

In the case of *Linker v. Linker*, 32 N. J. Eq., 74, the Chancellor, on page 177, says:

“Where a purchase of land is made by a husband in the name of his wife, it is presumed, in the first instance to be a provision and settlement, though the presumption may be rebutted.”

In that case the Court based his conclusion on the ground that the husband testified that he gave the title to his wife to satisfy her and that his will indicated a disposition to favor her and to give to her all he had.

“Whether a purchase in the name of a wife is a settlement or not, is a question of pure intent, though presumed in the first instance to be a provision and settlement, but any antecedent or contemporaneous acts or facts may be received, either to rebut or support the presumption.”

*Persons v. Persons*, 25 N. J. Eq., 260.

To the same effect is *Duvale v. Duvale*, 56 N. J. Eq., 374. *Lister v. Lister*, 35 N. J. Eq., 49; *Reed v. Huff*, 40 N. J. Eq., 229; *Magee v. Magee*, 81 N. J. Eq., 190; *Hood v. Hood*, 83 N. J. Eq., 695.

In *Fretz v. Roth*, 68 Eq., 516, Garrison, V. C., on page 53, says:

“It is too elemental to require citation that where the question of gift is being investigated the intention controls.”

The case at bar is different from a case of a direct conveyance by a husband to a wife and requires a lesser degree of proof to rebut the presumption of a gift.

In the case of *Fretz v. Roth*, 70 N. J. Eq., 764, this Court, on an appeal from a decree advised by Vice-Chancellor Garrison, by a vote of nine to six, reversed the decree of the Court of Chancery, setting aside a conveyance by a husband to his wife, through an intermediary, *and held that the husband, having conveyed direct to the wife*, there was no evidence of any kind, which rebutted the presumption of a gift and the principle of improvidence did not apply.

In *Duvale v. Duvale*, 56 N. J. Eq., 357 (Court of Errors and Appeals—Opinion by Chief Justice McGee), it is said:

“Where a husband purchases and pays for land and takes the title in the name of his wife, such a trust does not necessarily result. On the contrary, a presumption arises that the husband has caused the conveyance to be made to his wife by way of a settlement upon her. Such a presumption may be rebutted and overcome by proof or facts accompanying the transaction, which show that the intention of the parties was that the lands should not be held by the wife or settled upon her, but in trust for the husband. Her subsequent acknowledgment and

recognition by words or acts may be given in evidence. If, from all the evidence, it is clear that the presumption of settlement is rebutted, a trust will then result which can be enforced. This well settled doctrine is illustrated in many cases in our courts. *Peer v. Peer*, 3 Stock, 432; *Persons v. Persons*, 10 C. E. Gr., 250; *Lister v. Lister*, 8 Stew. Eq., 49; S. C. 10, Stew Eq., 331; *Read v. Huff*, 13 Stew. Eq., 229."

The Court of Errors and Appeals in the case of *Beck v. Beck*, 77 N. J. Eq., 544, reversed the Court of Chancery, opinion by Vice-Chancellor Garrison, on the ground that the doctrine "of a common hoard" does not apply in this State, and also on the ground that the evidence shows an attempt to secure the property from creditors. The decision was by a divided court of eight to three.

In that case, however, the Court recognized the doctrine that payment of part of the purchase money will create a resulting trust to the extent of that payment, but that the amounts paid by the different parties must be shown with certainty, etc.

The Court held in that case that the test is as to whether the circumstances are convincing and leave no reasonable doubt as to the intention of the parties.

This case shows that each case must be decided on its own peculiar facts.

In the case of *McGee v. McGee*, 81 N. J. Eq., 190, this Court, opinion by Mr. Justice Bergen, lays down the rule to be applied as follows:

"The rule in this state is well settled that where a husband procures real estate to be conveyed to his wife, he paying the consideration, a presumption arises that he intends to settle the property on her, and

while such presumption may be rebutted, the proof offered to accomplish it must be certain, definite, reliable and convincing, leaving no reasonable doubt of the intention of the parties. *Midmer v. Midmer's Executors*, 26 N. J. Eq. (11 C.E.Gr.) 299; *S. C.* 27 N. J. Eq. (12 C. E. Gr.) 548; *Lister v. Lister*, 35 N. J. Eq. (8 Stew.) 49; *Beck v. Beck*, 78 N. J. Eq. (8 Buch.) 544; *Read v. Huff*, *supra*; *Duvale v. Duvale*, *supra*."

In the *McGee* case this Court laid great stress on the fact that the wife had been insane for a long term of years and that the husband in applying for appointment as committee for the property of his wife, set forth the particular property in dispute as the property of his wife (p. 194).

In the case of *Cutler v. Tuttle* (Court of Errors and Appeals), 19 N. J. Eq., 549, the court held that part payment of the purchase money, if that part be shown with certainty will create a resulting trust to the extent of that payment.

In the case of *Black v. Black*, 30 N. J. Eq., 215, this Court set aside a gift by a wife to her husband under the peculiar circumstances of that case. In that case, the Court, on page 220, says: "I think his conduct exhibits a case of grievous wrong which calls loudly for redress, and which the Court, in the exercise of its undoubted power, is bound to give."

There could be no greater case of grievous wrong calling for redress, than the case at bar. A reading of the testimony shows that the defendant after a period of twenty-five years, became estranged from her husband and obtained a divorce. She then endeavored to strip the complainant of all the property which is the result of his entire life's work, by taking advan-

tage of the fact that the record title is in her name. The only way that she could do this is through the presumption of law of a settlement or a gift. The testimony in the case and particularly her testimony shows that there was absolutely no intention of a gift or a settlement in the mind of either party. *If that be so, the question of intention ruling under the cases the presumption of a gift or a settlement is rebutted.*

In determining as to whether or not the presumption of a gift or presumption has been rebutted the fact that the property in question is all of the property of the husband and represents his entire life's work becomes very important.

### III.

#### Statute of Frauds.

There is no question of the application of the statute of frauds in this case, as it was not pleaded and was not raised at the trial.

#### Conclusion.

It is respectfully submitted that:

*First:* The presumption of a gift or settlement, arising by reason of the title being taken in the name of the wife, did not arise and does not apply in this case, as the property in question is all of the property of the complainant and represents his entire life work.

*Second:* This case comes within the operation of the general principle that a deed or a gift by a husband to a wife of all of his property would be held inoperative in equity and law.

*Third:* The presumption of a gift or settlement, if it did arise and applies in this case, has been rebutted.

It is respectfully submitted that the decree of the Court of Chancery should be reversed and a decree entered in favor of the complainant, No. 29, November Term, 1917.

HARRY LANE,  
Of Counsel with Complainant.

ZIEGENER & LANE,  
Solicitors for Complainant.

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## New Jersey Court of Errors and Appeals

WILLIAM H. WARREN, <i>Complainant-Appellant,</i>	} <i>On Appeal</i> <i>On Bill, etc.</i> <i>from</i> <i>Chancery.</i>
<i>vs.</i>	
CORA B. WARREN, <i>Defendant-Respondent.</i>	

### Brief for Respondent.

#### Statement of Facts.

The bill in this case was filed by the complainant against his wife, praying therein that certain property standing in the wife's name be decreed to be the property of the complainant and that the defendant be directed to convey the same to him or that the said complainant and defendant have equal rights in said property and that the defendant be directed to execute such proper instruments as would secure to the said complainant his equal rights therein.

The complainant alleges that the property was purchased with his money and upon an agreement made with the defendant that it was to be held by her "for the joint benefit of said complainant and the said defendant."

The defendant contends that the property was bought mostly with her own money and that the complainant made a voluntary settlement thereof upon her.

The parties were married on June 4th, 1890, and continued to reside in the City of Newark until November, 1909, when a separation occurred.

Suit was subsequently instituted by Mrs. Warren against Dr. Warren asking for a divorce, alleging therein that the doctor had been guilty of both desertion and infidelity.

On June 2nd, 1915, a *decree nisi* in favor of Mrs. Warren was entered, the absolute decree for divorce having been made on December 3, 1915.

The property in question was located on the corner of Mt. Prospect and Verona avenues in the City of Newark and at the time of the purchase consisted of a vacant lot.

An agreement of sale was entered into between the appellant and Elias G. Heller on August 23rd, 1900, (Exhibit C. 1, page 182).

The deed for the property was made by Elias G. Heller and Sophia C. Heller, his wife, to Cora B. Warren, the respondent, which was dated and acknowledged on September 17th, 1900, but was not recorded until June 13, 1902, (Exhibit D. 1, page 193).

A bond and mortgage was made and given by the respondent and the appellant to the Woodside Building & Loan Association for \$14,000, both dated June 12th, 1902, the mortgage being acknowledged on the same date and recorded June 13th, 1902, simultaneously with the deed, (Exhibits D. 2 and 3, page 194).

The purchase price of the property was \$4,200, of which sum the respondent paid \$2,300 in cash.

The case was tried before Vice-Chancellor Stevenson who found that the complainant had failed to establish his case and consequently dismissed the bill, saying in his opinion, page 196:

“As to the facts I think I may say that the evidence not only failed to rebut the presumption of a settlement or gift but convinced my mind that there was a gift—that

this was the common case where a man buys land and has it conveyed to his wife with the natural expectation that the settlement will be advantageous to both parties.”

The Vice-Chancellor assumed for the purpose of his decision that the full purchase price of the land came from the moneys belonging to the appellant, although the facts clearly show that practically all of the money was supplied by the respondent.

From the findings of the Vice-Chancellor the appellant now appeals.

## I.

**The evidence not only fails to rebut the presumption raised by law but establishes that there was a settlement upon and a gift of the property to the defendant.**

An analysis of the testimony shows clearly and convincingly that there was a gift of and a settlement upon the defendant of the property in question.

The burden of proof being upon the complainant, and the law, which is well settled, requiring him to overcome the presumption by proof which is certain, definite, reliable and convincing, his testimony as to the transaction becomes of paramount importance.

### THE COMPLAINANT'S CASE.

According to the complainant's version of the situation, which changes at every recital of the details involved, an agreement was first entered into between himself and Elias Heller for the purchase of the property in question, a copy of which said agreement is attached to the com-

plaint and admitted in evidence (Exhibit C. 1, p. 82).

According to the agreement, dated August 23, 1900, the purchase price was \$4,200, payable in installments, the first of \$750 on the signing of said contract and the balance in semi-annual installments of not less than \$500 each.

That after the making of this agreement and before the deed for the property had been executed by Elias Heller, the complainant's wife suggested that she pay as part of the purchase price \$2,300, which she had saved since their marriage, and that they pay cash for said property instead of making payments by installments as provided for in the agreement of sale.

That he, the complainant, agreed to this suggestion and the deed was subsequently made out in the wife's name.

The title to the property in question was conveyed to the defendant by instructions given to the scrivener by the complainant and no mention was made at the time of the execution thereof of the fact that he had any interest therein whatsoever (p. 97, l. 30).

The cost of the building was about \$14,000 (page 33, l. 34). On June 11, 1902, the defendant borrowed \$14,000 from the Woodside Building & Loan Association (p. 38, l. 36) and on March 18th, 1908, a further loan of \$3,000 was made to the defendant (p. 39, l. 1), which sums of money paid for the cost of erecting the building which was placed upon the property.

The contracts for the building were all signed in the name of the defendant, Mrs. Warren (p. 33, l. 10).

After the completion of the building the complainant collected the rents thereof and managed the property, paying the building and loan asso-

ciation dues with the rents so collected and received. In 1904 the defendant took the management of the property from the complainant and collected the rents (p. 117, l. 30) and continued in charge thereof for one or two years when she again permitted the complainant to collect the rents and run the property, she again assuming charge thereof and taking care of the collections in 1909, from which time she has continued to collect the rents, manage and run the property. From this time on the complainant occupied a portion of said premises and paid to the defendant the sum of sixty dollars (\$60) as rent for the same.

The complainant first relates the particulars of the preliminary transactions on page 37, line 11, in which he says:

“I spoke to Mrs. Warren about it and she said that she had \$2,300 in the bank that she would put with it and it would be for both of us and we would pay cash for the lot. So I thought everything was all right—we were living happily together—so I acquiesced in it and the deed was made out in her name in that way.”

The next time that the complainant refers to the conversation, which took place prior to the purchase of the property, is on page 50, in which he says:

“Why she said, when she had this money, she told me that she had this money in the bank and that we would pay cash for it; that the property would be all the same; that the property would be for both of us and I considered that everything was the same. I knew nothing about the law at that time.”

The defendant on page 52, line 30, for the first time attempts to quote the exact words of the defendant as to what she agreed to do in reference to the property. He says:

“Why she said: ‘I have \$2,300 that I have saved up since we were married and we will put that in and pay cash for the lot.’ Those are just the words she said.”

It will be noticed here that the complainant lays emphasis upon the fact that the recitation which he has just made gives exactly the words that the defendant used, and it will also be noticed that no reference whatsoever is made by the defendant in this statement that the property would be held for both parties.

The complainant again refers to what the wife said on page 53, line 16.

“She said: ‘We had better pay cash for them and not do it that way. I have money in the bank and we will pay cash for them and you put it in my name and it will be for both of us.’”

The complainant again refers to what was said on page 52, line 22.

“I said: ‘All right, as long as it is for both of us, I will do it.’ She said: ‘You might die or you might have an accident and I would be protected that way.’”

The above quotations of testimony are taken entirely from the direct examination of the complainant.

He proceeds further on cross examination and in reference to the same situation gives testimony which contradicts that heretofore given and is at variance with it in every detail. On page 90 he says:

“She said that she had some money, had \$2,300 (page 90, l. 25) and if I would like to

put that in to pay cash for the lot instead of paying a mortgage on the land that she would give me that \$2,300 and then she asked me to put it in her name as a protection.”

Q You agreed to it?

A I agreed to it.

Q That was all that was said at that time?

A That was all that was said at that time.”

This is the first time on cross examination that the complainant attempts to tell what occurred.

On his own case in reply to direct questions of his own counsel the complainant has on four or five occasions endeavored to tell exactly what occurred and with each recital a more elaborate description is obtained, containing a few more details which were at first omitted. Yet on cross examination in reply to the first question in reference to the same situation he says that the property was to be put in the defendant's name “as a protection” and that he agreed to it and that was all that was said.

It will be noticed that this information is not the result of cross examination, but as a fact is volunteered by the complainant in making a reply which was not even responsive to the question asked. It is given freely, willingly and voluntarily and, if what the complainant says is true and it must be taken to be true being his own statement, there can be no resulting trust or any agreement existing by which he had an interest in the property in question.

If the testimony of the complainant on page 53 (heretofore set out) be true and this must be assumed, then also there can be no resulting

trust or any interest in the property for the complainant for there nothing is said by the defendant in reference to any interest the complainant was to have and the complainant lays stress upon the fact that he has recited the entire conversation verbatim.

The testimony above given is practically all which appertains to what was said and done at the time or immediately prior to the conveying of the property in question.

The complainant's testimony varies, contradicts and supplements itself in so many respects and details that its ramifications are absolutely dispositive of any favorable conclusion and fall far short of the rule laid down by this Court that to sustain the complainant's contention the proof must be certain, definite, reliable and convincing, leaving no doubt of the intentions of the parties.

The deed was retained by Mr. Heller from the time of its execution until 1902, when it was recorded.

In 1912, when the building and loan mortgage matured the deed was delivered to the defendant.

There are numerous instances testified to by the complainant which instead of corroborating his contention bear out and confirm the testimony of the defendant.

In spite of the evidence given by the complainant and his insistence that the property was held by an agreement, whereby he had an equal interest, he admits that in 1912 he requested the defendant for a share of it because of the money he had put into it (p. 68).

“Q What was it about? What was the conversation if it referred to this property?”

A I spoke to her about all the money I had put into it and I thought she ought to divide it up or give me my share out of it.

Q Just state what that was, that conversation.

*The Vice-Chancellor.* Go on, what did she say? (p. 69).

(The witness did not reply.)

*The Vice-Chancellor.* Do you remember what was said, if anything, doctor?

*Witness.* She said she would not give me anything out of it.

Q How did you come to have that talk?

A Why it was when the thing came due, and I thought that she ought to turn over part of it to me."

This conversation occurred in 1912 when the parties because of their matrimonial difficulties were living separate and apart and almost hostile to one another.

(Page 68, by the Vice-Chancellor.)

"Q Were your relations with her friendly at that time?

A Not very.

Q You were not living together?

A No.

Q Had you had any relations as man and wife since 1909?

A No."

Although they had not lived together for years, were unfriendly and hostile, with animosity existing, caused by the accusations of the defendant of the infidelity of the complainant which had occasioned their separation, yet the complainant meekly, mildly and affectionately suggested to the defendant that he "thought" he should have a share of the property because he had put so much money into it.

If there was an agreement existing, or if the complainant thought there was, why did he not demand his share of the property as he had a right to do? Why did he think that "she ought to divide it," and why did he preface his request by an explanation as to why it was made, to wit, because he had put so much money into it. What difference would it have made whether he did or not? If such an agreement existed he would nevertheless be entitled to it.

This is not the demand or request of one who is asserting ownership by any right or authority, but a weak, limp, apologetic intimation by one who secretly admits the unworthiness of the request for compensation for services or advances made in the long ago.

This conversation with its requests and explanations clearly corroborates and substantiates the fact that the complainant at this time recognized that no agreement existed and that he was only entitled to get what the defendant out of the goodness of her heart was willing to give him.

Another incident which points strongly to the truth of the situation is the conduct of the parties in collecting the rents and managing the property after the erection of the building.

After the completion of the building the complainant took charge thereof, managed the same and collected the rents therefrom and continued so to do up to 1904 (p. 147). In 1904 the defendant had broken into a house in which the complainant was, thinking he was there for immoral purposes (p. 117, l. 28), immediately after which she took charge of the property and the collection of the rents.

In 1906 or 1907 the parties became reconciled and the complainant again resumed charge of the

property and the collection of the rents (p. 117, bottom).

In 1909 the defendant again accused the complainant of infidelity with another woman, and the defendant consequently again took charge of the property and collected the rents therefrom (p. 118, l. 21) continuing in complete control thereof ever since and down to the present time (p. 118, l. 34, and p. 60, l. 37).

It will be noted from the testimony that whenever the relation of the parties was harmonious and friendly the husband had charge of the property and collected the rents therefrom, which is quite customary and usual, the business end of the partnership being looked after by the male or business member thereof.

The development of the situation which is unusual and out of the ordinary, and therefore of evidentiary value, is that whenever any matrimonial difficulties arose, or the defendant had reason to doubt the good faith and fidelity of the complainant, she immediately took complete charge of the property in question and collected the rents therefrom without ever giving an accounting to the complainant, or even being asked for one.

Nothing could be more significant than these transactions, and the value thereof is so apparent from the mere recitation of the testimony that there seems to be no necessity to make any comment as to their indications.

The Court itself seeks light as to why these transactions occurred as they did and as to why the complainant raised no objection and permitted them.

On page 60, line 30:

“Q Why didn't you continue to pay the rents and pay the money to the building and loan?

A Because she said that she was going to take the rent, that I had nothing to say.

Q And you submitted to that?

A I could not do anything else.

Q How long did she continue collecting the rents?

A Until the present time.

Q From 1909?

A Yes, sir."

This reply of the complainant's "that he could not do anything else" indicates his view and attitude of mind at that time, because it is perfectly inconceivable to imagine one claiming title to a property having it taken from him, submitting to it and saying "I could not do anything else."

While the relationship between the parties was harmonious, pleasant and friendly the complainant was given the privilege of collecting the rents of the property and managing it, and naturally while this condition existed the defendant made no demand for an accounting of any kind, and it would have been extremely unusual and abnormal if she had, but when anything occurred which caused a breach in the affable attitude which the parties had toward one another and the defendant had reason to doubt the good faith and honesty of the complainant she immediately exerted her right to the property and insisted upon and actually took complete and full control thereof, to which the complainant submitted because as he says "he could not do anything else."

If the complainant had had any interest in the property it would have been the most logical and probable thing in the world for him at this time and while the parties were in this inimical state to have insisted upon his interest and proclaimed his right to control the property.

His silence, acquiescence and submission are all indicative of the fact that he recognized that the defendant was simply exerting her legal right to have her own property to which he could make no well-founded objection, morally or legally.

Another fact which proves almost conclusively that this was the situation is that the complainant actually paid rent to the defendant for that portion of the premises which he occupied, and the relationship of landlord and tenant existed between the parties.

Page 59, l. 39:

“A Paid it up until 1914. After the loan was out I paid her \$60 a month just the same because after that she claimed that much for rent. She said ‘pay that in lieu of rent.’”

Page 61:

“Q And did you begin to pay rent to your wife?

A I paid—I gave her money every week, yes, sir; up until 1914.

Q Did you pay rent?

A It was considered as rent.

Q Did you get any receipt from her each month for money you paid to her?

A No, I might have got some. In the drugstore it was run by the manager and he got receipts, that is all the receipt I got.”

On page 62, line 10:

“Q Up to that time were you paying rent for that store each month and getting receipts from Mrs. Warren?

A The store was, yes.”

On top of page 110 the complainant is shown a copy of a letter written to him by Lum, Tam-

blyn & Colyer, of which the following is a true copy:

“January 11, 1910.

William H. Warren, Esq.,  
863 Mt. Prospect Avenue, City.

Dear Sir:—

Mrs. Warren has consulted us with reference to the amount of your indebtedness for the occupation of the drugstore, stable and premises at 863 Mt. Prospect avenue belonging to her. We must ask that you call here to see us with reference to this matter at your very earliest convenience, and oblige,

Yours truly,

LUM, TAMBLYN & COLYER.”

ECL/C

The witness then admits that a few days after receiving this letter he went to see Henry W. Egner, who was at that time his attorney (p. 110, l. 20), and immediately thereafter he began to pay \$60 a month as rent for the premises he occupied, which continued up to the time of the divorce action instituted by the defendant against him (p. 110, l. 30).

On bottom of page 130, line 40, the complainant again testifies in reference to his payment of rent.

“Q All right. Doctor, you paid rent until the time—or \$60 a month until the time the divorce suit was started I believe?

A Yes, sir.

Q And that was in 1914?

A Yes, sir.

Q And the building and loan shares matured in 1912, didn't they?

A Yes, sir.

Q And you continued the \$60 a month after that time, didn't you?

A Simply because she was hounding me for money.

Q At one time in the proceedings a division was made of the \$60 so that \$35 was paid by the drugstore and \$25 by you, was there not?

A Yes, sir.

Q And the druggist paid the rent regularly, that is \$35, to Mrs. Warren and got a receipt for it, didn't he?

A Yes, sir.

Q That was the manager of your drugstore?

A Yes, sir. It was all of my money though."

The complainant on page 131, line 26, in reply to the question as to why he stopped paying the rent in 1914, says:

"A Because I thought I had interests in the building that I had a right to as it was all my money that was put in it, and it was simply her nagging me all the time that I gave it to her."

The situation created by the complainant is so novel that it has probably never been heard of before. For a period of seven years he recognized the legal right of the defendant and her ownership, continues in possession of a portion of the premises and pays rent therefor to the defendant and obtains a receipt for the same. After a divorce has been secured by the defendant against him, and he is obliged to pay her alimony, the idea that he has an interest in this property suddenly dawns upon him and he proceeds in this miserable attempt to substantiate his new-born contentions.

If the complainant had an equal interest in the premises why did he pay rent to the defendant?

Why did he continue to pay it after he had received a letter from the attorneys representing the defendant, demanding the payment of it? Why did he after consulting his own counsel, upon the receipt of this letter, make payments of rent without ever intimating or suggesting that he had any interest or right in the property whatsoever?

Another incident arises which shows that the complainant never claimed to own or have any interest in this property.

In the year beginning 1900 the complainant became a very litigious individual and was the recipient of numerous summonses and complaints issued out of various and divers courts. He admits that he was served with papers with almost weekly regularity; that numerous judgments were obtained against him; executions issued and levies made, yet though all these proceedings were taken and the complainant was being hounded by a pack of judgment creditors, levies being made right and left upon all of his available assets, not one of the pursuing crowd ever attempts to make a levy upon the property which then stood in the wife's name.

It is impossible to imagine this condition existing if this complainant had an interest in a valuable piece of real estate.

The complainant goes further than this and testifies to the fact that he was examined in supplementary proceedings (page 114, line 2) and that in that examination he testified that he had no property held in trust for him. It has been impossible to obtain a copy of the testimony taken at this hearing because of the non-existence thereof at the present time, but this in no wise diminishes the admission made by the complainant that such a proceeding occurred.

The complainant even specifies the office where the examination was held (p. 114, l. 20) and says that it was in Clinton street in a lawyer's office.

The only portion of the complainant's testimony which is clear and definite and which is not varied by his own contradictions is the testimony which tends to prove the contention of the defendant's rather than the complainant's. The contradictions of his own testimony are so numerous that it would require a fine-tooth comb and reams of paper to note them all.

On the bottom of page 37 he says that he received a deed to the property immediately after it was made and that he kept it in his safe until 1912.

On top of page 93 he says that he had the deed in his possession in 1900, while as a matter of fact the deed remained in the possession of R. Arthur Heller from the time of its execution until the time it went on record (p. 108, l. 27).

On page 53, line 22, he testified to the fact that his wife made the suggestion that the deed be put in her name for her protection, and on top of page 96 he admits that this conversation never occurred, there already having been a will made by him leaving all to his wife.

On page 55, line 18, he says that he signed the contracts for the erection of the building, while on cross examination he admits that they were signed by the defendant.

Prior to the time of this transaction the complainant and the defendant had a joint account in the Howard Savings Institution which amounted to approximately \$1,000 and on page 95, line 12, he admits that he knew how to make out a joint account.

The most fertile imagination could not conceive of a situation where the complainant as

early as 1896, having knowledge of the meaning of a joint account and the protection which it afforded him, and taking advantage of that situation and securing his interest by having a joint account made, would in 1900 invest as he says practically all of his savings in a piece of real estate and put it in the name of the wife with simply an oral understanding that it was to be for the benefit of both.

And the *ex post facto* subterfuge that he placed the title in the name of his wife for her protection in case of anything happening to him, is utter nonsense, for page 95, line 20, shows that he made a will of which she had knowledge long before this title transaction, and on page 96, line 10, he admits that nothing of the kind was ever said.

This testimony is in direct contradiction to his statement (line 30, p. 90), "She asked me to put it in her name as a protection."

The complainant finally admits (p. 106, l. 30) that he is as hazy as can be about anything that happened at the time, and he never anticipated any trouble, and gave no thought to the situation at all.

In other words this testimony alone is sufficient to make it perfectly clear that this was an ordinary case of a husband and wife, at the time living happily, and a settlement made on the wife. In this case, however, there was a particular reason for it, inasmuch as the wife at the time paid considerable of the money, which made the matter possible.

Page 107, line 20, the complainant makes it apparent that his testimony is as worthless as can be, and that he never had \$1,900 in the bank. See also page 108, line 20, where he admits that in his former testimony he was "just guessing."

We call the Court's particular attention to the letter set out on top of page 110. This not only brought to the doctor's attention the necessity of his paying rent, but referred to the property as "belonging to her," (Mrs. Warren).

Page 110, line 20, the witness recalls that it was right after the receipt of this that he saw his counsel and then began to pay \$60 a month. This was six years before the bringing of this suit, and it is utterly inconceivable that if the doctor at that time thought he had even a shred of legal claim that his right should not have been preserved by some act, some word or some claim on his behalf or that of his lawyer. He took legal advice at the time so the plea of ignorance can be no help to him, and the only possible explanation is the one which gives the real solution to the present litigation, that is, after the divorce and after the order for alimony, the complainant laid about to find some way to bolster up his falling resources and could think of nothing other than this eleventh-hour contention.

Again on page 115, line 32, the witness is asked to explain his inability to recollect things of somewhat recent date, yet attempting to testify to words used by his wife seventeen years ago. He could not even attempt to give an answer, and is finally after a long hesitation and delay relieved from the necessity. Throughout that page (115) contradictions, material and important, are called to his attention, and the witness shows his utter unreliability.

Top of page 123, line 4, the witness admits that his wife back in 1904 claimed the right to collect the rents. Page 130, line 30, he can offer no explanation as to why he testified on the first hearing to an income two or three times as much as he admitted on the second hearing, and he cannot even tell what had caused him to change his recollection.

Page 131, line 27, he is asked why he stopped paying rent and he answered "Because I thought I had interests in the building that I had a right to as it was all my money that was put in it, and it was simply her nagging me all the time that I gave it to her."

In other words at this time the witness was not basing his claim on the only ground upon which he could have recovered, that is, the agreement made at the time, under which the wife held title for him, but his contention was merely that he should have an interest in the property because of the money he put in it. This, however, is legally insufficient.

The only reference made in the appellant's brief as to the testimony of the complainant is that it showed "conclusively that he exercised absolute control over the property." It is difficult to conceive how this can possibly be contended when one considers that the defendant as a matter of fact collected the rents at such times as she deemed most advisable to do so and that the complainant never raised any question as to her right to do so.

No gain can come from further analyzing this worthless testimony. According to all our cases in order to overcome the presumption of law which arises in this case, the proof must be convincing and leave no reasonable doubt, for Vice-Chancellor Van Fleet said: "Nothing short of certain, definite, reliable and convincing proof will justify the Court in divesting one man of title to lands evidenced by a regular deed and putting it in another."

If, then, no testimony was offered by the defendant the complainant would nevertheless have fallen far short of the proof necessary to establish his case.

## THE DEFENDANT'S CASE.

The defendant's testimony, however, is full, definite and explicit.

Mr. R. Arthur Heller was sworn for the defendant, out of turn by consent, at page 97. He testified that he drew the deed in question at the instruction of the doctor and received no other instructions with reference to any other agreement or interest or anything of the kind. He drew it just as he was told to. The doctor was his own physician; he was acting as the attorney for the doctor, too (p. 101, l. 15). He represented all three, (p. 104, l. 4) and Mrs. Warren was not present when the doctor gave instructions as to the drawing of the deed (p. 104, l. 16). It is utterly unbelievable that this man who before this had gone to a bank and opened a joint account in his own name and that of his wife, who had made a will leaving everything to his wife, intending to reserve to himself a half interest in contradiction to the express terms of this deed, had never mentioned the subject to his own lawyer at the time, nor in fact at any other time.

The defendant sworn on page 134 said that the first she knew of the matter was when the doctor came to her and told her that he had already bought the property and had given it to her. This was in the early fall of 1900. He then told her he was buying it on notes, and a short time later she thought it would be better to pay cash so as to put up the building sooner. She drew money she had out of the bank and gave it to her husband, who deposited it to his account and later made the payments. The bank books of both parties absolutely corroborate this and show that the deed was made to this defendant at the request of the complainant several days

before he received any money from her, and of course it overwhelmingly proves the falseness of all the complainant's testimony.

It will be noticed that Scott, on cross examination, admitted that he did not hear the defendant make the statements which he says she made (p. 21, l. 32).

The deed was made September 17th, 1900 (p. 98, Exhibit D. No. 1). The money was not drawn from the defendant's bank account until the 15th of October, 1900 (p. 135, l. 33) and it does not appear in the doctor's bank book until October 16th. Nothing at this time was said with reference to the complainant having any interest in the property and he did not claim any interest (p. 136, l. 27). He never even asked for any interest until the building and loan was paid up in 1912. Even then he made no claim against the property but merely asked for some money (p. 136, l. 27). The building and loan was paid off in 1912 and he did not ask for any money until 1914. At the time the parties were living happily together the complainant gave the property to the defendant (top of page 137); the defendant knew he had made a will in her favor before her daughter was born, which was in 1894 (p. 137, l. 18). The witness denies the testimony of Scott and says that she never made the statement that the property was as much hers as the doctor's (p. 138, l. 21).

In cross examination, at page 142, the defendant repeats that the complainant told her he had bought the property and given it all to her, and that is all that was said at the time.

Although she permitted the complainant at times to collect the rents and have charge of the property nevertheless when she found that things were not going right she simply took charge and

collected her own rents (p. 148). The doctor made no objection (p. 148). This would, of course, have been impossible had he not been merely acting as business manager or agent for his wife and if their interest in the property had been equal.

It was after the \$14,000 mortgage was paid off that the doctor said he put some money into it and wanted some out of it. The defendant then said "no" (p. 149, l. 38).

It is inconceivable that thereafter the complainant should be sued for divorce and yet should remain quiescent and make no legal effort to establish his right.

The complainant was permitted to collect the rents again in 1916 for appearance sake at his own request (p. 152, l. 30).

It was in 1910 that the doctor was first met with a demand for payment of rent. At that time the building and loan had nearly matured, and his equity in the property, if he had any, would have been substantial, and at the time he had a letter in which the defendant referred to her property and demanded rent, and he then went to a lawyer and immediately thereafter started to pay rent, and continued to do so, and until the divorce litigation (p. 110, l. 30).

The defendant's testimony is absolutely consistent and supported by every written record.

The next witness was the daughter of the parties, who was sworn on page 166. She testified that when she went to the drugstore at various times to ask her father for money he told her that she should ask her mother for the money, as she owned the property. This was from 1910 on down (p. 168, l. 21).

The next witness was George W. Soden, the father of the defendant. He was sworn at page

170, and testified that summonses and suits against the doctor were left at the house the early part of 1902, 1903 or 1904. He spoke to the doctor about it and was told not to worry; the property was in Cora's name (p. 171, l. 25). He said that he had no interest in it.

Elizabeth Soden, the mother of the defendant, was sworn at page 172. She testified that after the summons were left at the house, he said to her daughter in her presence, "What is the use of your getting worried or excited, I will see to those things. I gave you the property long ago and why should you worry. I will attend to those things" (p. 173). The witness says that the doctor told her soon after the transaction that he had put the property in Cora's name and had given it to her (p. 174, l. 34).

The appellant places a great deal of stress and emphasis upon the testimony of the defendant (appellant's brief, page 8) which appears on page 145 of the state of case.

The defendant there in answer to the question of counsel for the appellant admitted that she thought the property would be a benefit to both of the parties.

The word "benefit" simply means and undoubtedly to the mind of the defendant meant advantage or profit.

The parties were living congenially together at this time and there can be no doubt but that both thought that it would be a benefit to them, otherwise the property would never have been bought.

If, however, the solicitor for the appellant had asked as to whether or not the appellant and the respondent were to have an equal interest in the property he would probably have received a much different answer, as the testimony shows

clearly and conclusively that there was no such agreement existing between the parties.

Not only did the complainant make direct admissions to four different people at various times of the fact that the property was not his and that he had no interest therein, but by his very acts, as shown by his testimony, confirmed the fact that the property belonged entirely to the defendant.

It is respectfully insisted that the evidence not only fails to overcome the presumption raised by law but that it proves conclusively that there was a settlement upon and a gift of the property to the defendant.

## .II.

### **There was a legal presumption of a settlement upon the defendant.**

The appellant under Point I of his brief contends that the property in question was all of the estate or property of the appellant and consequently the presumption of a settlement did not arise.

This contention is erroneous for two reasons: First, the facts in the case do not show any such situation, and secondly, even though they did the presumption of a gift or a settlement would nevertheless have arisen.

It will be noticed that the appellant under this point of his brief simply states the conclusion (p. 15) that this was all of the estate or property which the complainant owned.

Nowhere is testimony quoted to show that this condition of affairs existed. On the contrary a cursory examination shows that practically all of the purchase money for the property in question

was supplied by the respondent and that the large sum required for the erection of the building was obtained by a building and loan mortgage which was paid off by the rents received from the property.

The complainant at the time in question was the owner of a drugstore located at No. 181 Verona avenue (p. 35, lines 39 and 40; p. 54, line 18) and also carried on the practice of a physician and surgeon, and according to his own testimony was earning from \$5,000 to \$8,000 a year (p. 58, l. 20).

“Q How much were you earning at that time in your profession?”

A From \$5,000 to \$8,000 a year.”

It is quite true that this was all of the real estate which the complainant owned, but it is absolutely absurd, in view of the testimony, to contend that it was his entire estate.

He was in receipt of an income, according to his own testimony, of at least \$5,000 to \$8,000 a year, while the purchase price of the property was only \$4,200, practically all of which was paid by the respondent.

There is no allegation in the Bill of Complaint that this was all of the property or estate of the complainant and that issue was not raised at the trial of this cause. In fact no such contention arose until the present time.

It is respectfully insisted, however, that the testimony clearly shows what the situation was, and that the property involved was not all of the estate of the complainant, he owning and operating a profitable drugstore and in addition being in receipt of \$8,000 a year from his practice as a physician.

It hardly seems necessary, in view of the facts, to discuss the question of law, yet that, too, is

so well settled that there can be no doubt of the rule as determined by our Courts.

The appellant contends that where the conveyance involved all of the property of the husband the presumption of a gift or settlement does not arise.

There is absolutely no authority for this contention and the citation of 2 Story's Eq. Jur., Par. 1374, has no application.

It will be noticed that the author in making the remark quoted by the appellant had reference only to conveyances made directly by the husband to the wife, and that likewise was the situation in the case of *Beard v. Beard*, 33 Atk., cited by the appellant.

The situation has been fully covered by Vice-Chancellor Leaming in the case of *Herbert v. Alvord*, 75 Eq., page 428, in which the Court on page 431 says:

"It appears, however, that the property conveyed to the wife represented all of complainant's savings during his entire married life, except, perhaps, his household goods. The question therefore arises whether that fact may not rebut the presumption of a settlement on the theory that it would be deemed an unreasonable provision for the wife. In support of this view my attention is directed to the language used in the opinion of our Court of Errors and Appeals in *Fretz v. Roth*, 79 N. J. Eq. (4 Robb.) 764 (at p. 768). The opinion referred to quotes a portion of section 1374 of 2 Story's Eq. Jur., to the effect that if a husband conveys all of his estate to his wife the deed will not be enforced in equity, because it could in no just sense be deemed a reasonable provision for her. The section there

quoted from Story's Equity Jurisprudence is a section treating of instances in which the Court of Equity may sustain deeds which are void at law by reason of the legal disability of a husband and wife to contract with each other, and refers to conveyances made directly from a husband to a wife. The case of *Beard v. Beard*, 3 Atk. 72, referred to by the learned author in support of the text, was such a case. Although a Court of Equity may enforce a deed from a husband to his wife which is void at law because of the legal unity of the parties, and may possibly refuse to enforce such a deed as a settlement when it appears that the deed conveys all of the husband's property, I am not prepared to hold that a conveyance to the wife from a third person, based on a pecuniary consideration moving from the husband to the wife, and hence valid at law on its face, will be set aside by a Court of Equity because it appears that the pecuniary consideration moving from the husband to the third person included all or nearly all of the property of the husband. The preceding portion of the opinion of the Court of Errors and Appeals in *Fretz v. Roth* adopts the general view that a legal conveyance supported by a consideration of love and affection will stand on its own inherent strength if made voluntarily and with a full understanding of its effect. When these conditions exist the improvidence of the gift is of little, if any, importance, for, as there stated, the law permits anyone to dispose of his property gratuitously, if he pleases, provided the rights of creditors are not injuriously affected thereby. While a transfer through an intermediary from a

husband to his wife of all of his property may appear unreasonable, and may logically operate in a measure to rebut the presumption of a settlement, when it still appears that a gift was in fact intended, I can see no grounds upon which such a conveyance can be relieved against at the instance of the husband, in the absence of any proof of incapacity, fraud or undue influence."

The case at bar falls exactly within the rule laid down by Chief Justice Gummere in the case of *James v. Aller*, 68 N. J. Eq. 666, as cited in *Fretz v. Roth*, 70 Eq. 764, in which the Chief Justice said:

"A voluntary settlement by a father, after a second marriage, on the children of the first marriage, covering substantially all his property but executed when he was steadily accumulating money, with knowledge of the effect of the instruments, is not subject to revocation in equity at his instance as improvident."

It is respectfully contended that there is no merit in the appellant's contention either in law or in fact; that the evidence shows conclusively that this was not all of the property of the complainant and that even though it was the presumption would arise unless there was evidence to show some undue influence or unequitable advantage taken by the defendant.

## III.

**Where a husband procures real estate to be conveyed to his wife, he paying the consideration, a presumption arises that he intends to settle the property on her. The proof offered to overcome this presumption must be certain, definite, reliable and convincing.**

This is the law as definitely determined and fixed by a long line of adjudications.

The rule in reference to conveyances by husband to wife and as to the presumption which are raised thereby is fully discussed and considered in *Persons v. Persons*, 25 N. J. Eq. 250, which is one of our first cases on this subject.

The same situation is involved in the case of *Lister v. Lister*, reported in 35 Eq. 49. The Court there on page 52 says:

“The deeds to the defendant express no trust nor is there any written evidence of any. The complainant claims that a trust resulted in his favor from the payment of the purchase money by him. When a man purchases land and causes it to be conveyed to his wife, the presumption is that it is a settlement upon her, but it is a question of intention, and the presumption may be rebutted. The burden of proof is upon him.”

The case is affirmed by the Court of Errors and Appeals, 37 Eq. 331, by *per curiam* opinion.

The case of *Persons v. Persons*, *supra*, is cited and followed in *Read v. Huff*, 40 Eq. 229, a Court of Errors and Appeals case, opinion by J. Depue, in which he says on page 233:

“Where upon the purchase of property a conveyance of the legal estate is taken in the name of one person and the consideration of the purchase is paid by another—the

parties being strangers to each other—a presumptive or resulting trust immediately arises in virtue of the transaction and the legal estate will be held in trust for the person by whom the purchase money was paid, unless the presumption of a resulting trust be overcome by proof that it was the intention of the party from whom the consideration proceeded that the person to whom the conveyance was made should take beneficially. *Hill on Trustees*, 92, 94, 97. But where the parties hold to each other the relation of parent and child or husband and wife, a contrary rule prevails. Where a parent or husband pays the consideration of the purchase of lands and has the conveyance made to a child or wife, no resulting trust will arise from the payment of the consideration. In such cases the presumption is that an advancement or settlement was intended and a resulting trust will not arise unless the presumption that the transaction was intended to be a gift be overcome by proof. *Hill on Trustees*, 97-98; 1 *Lead Cas*, *Neq.* 216, 217, 345; *Peer v. Peer*, 3 *Stock* 432; *Persons v. Persons*, 10 *Cegr.* 250.”

The case of *Lister v. Lister*, *supra*, is cited and followed in the case of *Duvale v. Duvale*, 56 *Eq.* 375.

The rule as laid down in the last two cases is followed in the case of *Herbert v. Alvord*, 75 *Eq.* 428, in which the Court on page 429 says:

“Where, however, the conveyance is not made to a stranger, but is made to a person, whom the purchaser is under legal obligation to maintain such as a wife or child of the person who pays the price, a good considera-

tion of blood or love and affection will support the conveyance, and no resulting trust will arise from the payment of the consideration. In such cases the presumption is that a settlement or advancement was intended."

The Court continuing on page 430 says:

"The proof must be convincing and leave no reasonable doubt as to the intention of the party. *Peer v. Peer*, 11 N. J. Eq. 432; *Persons v. Persons*, 25 N. J. Eq. 250; *Linker v. Linker*, 32 N. J. Eq. 174; *Lister v. Lister*, 35 N. J. Eq. 49; 37 N. J. Eq. 331; *Read v. Huff*, 40 N. J. Eq. 229; *Duvale v. Duvale*, 56 N. J. Eq. 375."

All of the above cases are cited and followed in the case of *Beck v. Beck*, 78 N. J. Eq. 544, a Court of Errors and Appeals case, opinion by Justice Swayze, page 548:

"In *Midmer v. Midmer's Executors*, 26 N. J. Eq. (11 Cegr.) 299 (at p. 304) Vice-Chancellor Van Fleet said: 'Nothing short of certain, definite, reliable and convincing proof will justify the Court in divesting one man of title to lands evidenced by a regular deed and putting it in another.' The rule was applied by Chancellor Runyon in a case of great hardship, where the effect was to leave \$60,000 worth of property in the name of the wife, the money for which had been furnished by the husband, although they had been divorced for the adultery of the wife and was so permitted to enjoy the property with her paramour. *Lister v. Lister*, 35 N. J. Eq. (8 Stew 49) affirmed on Chancellor Runyon's opinion, 37 N. J. Eq. (10 Stew 331). In *Read v. Huff*, 40 N. J. Eq. (13 Stew) 229, where the heirs of the husband

sought to establish a resulting trust in lands, the title to which was in the wife, we said (at p. 234): 'It is also well settled that the proof which shall rebut the presumption of a gift in favor of a child or wife shall be equally satisfactory and explicit with the proof required to establish a resulting trust. The circumstances relied on must be convincing and leave no reasonable doubt as to the intention of the party.' The same rule was recognized in *Duvale v. Duvale*, 56 N. J. Eq. (11 Dick) 375, although in that case the Court held that the proof showed that the settlement upon the wife was not of the whole estate in the lands, but a limited estate therein. The present case falls far short of the established standard of proof. It seems rather that the intent of the parties was to vest the absolute title in the wife free of any trust, perhaps with the natural expectation on the part of the husband that they would share the benefits."

The decree in this case was reversed and an order made by the upper court dismissing the bill.

A similar Court of Errors and Appeals case is that of *McGee v. McGee*, 81 N. J. Eq. 190, in which practically all of the preceding cases are cited and followed, and the same rule recognized and laid down. The Court there through Justice Bergen on page 194 says:

"The rule in this State is well settled that where a husband procures real estate to be conveyed to his wife, he paying the consideration, a presumption arises that he intends to settle the property on her and, while such presumption may be rebutted, the proof offered to accomplish it must be

certain, definite, reliable and convincing, leaving no reasonable doubt of the intention of the parties." Citing *Midmer v. Midmer's Executors*, *Lister v. Lister*, *Beck v. Beck*, *Read v. Huff*, *Duvale v. Duvale*, *supra*.

The same rule was laid down and followed in the case of *Yetman v. Hedgeman*, 82 N. J. Eq. p. 221, in which Vice-Chancellor Backus on page 223 says:

"Assuming and which I find to be the fact, as will appear hereafter, that the complainant paid the purchase price, he is at the outset confronted by the presumption that he paid it and caused the fee to be vested in his wife as a gift or settlement upon her and to overcome this presumption, the proof must be equally satisfactory and explicit with the proof required to establish a resulting trust, and the circumstances relied upon must be certain, definite and convincing, leaving no reasonable doubt as to the intention of the parties." Citing *Peer v. Peer*, *Read v. Huff*, *McGee v. McGee*, *all supra*.

Practically all of the above cases are cited and the general rule as found therein is followed in the case of *Hood v. Hood*, 93 Atl. 797, in which the Court of Errors and Appeals affirms the decree for and upon the reasons given by Vice-Chancellor Stevens.

In this case the contentions of the husband were much more strongly developed and evidenced than in the case at bar. The Vice-Chancellor nevertheless held that they were not sufficient to overcome the presumption which arose against him.

The deed in the case at bar was not delivered immediately to the defendant but was retained, first, by Mr. Heller for the purpose of security and subsequently delivered to Mrs. Warren.

The appellant lays great stress upon this fact and insinuates that this was some evidence of the fact that no gift was intended.

As a matter of fact it signifies nothing. The deed was ultimately delivered to the defendant by the complainant and the record title immediately put in her name as the deed itself shows.

The appellant's contention, however, has already been disposed of by the Court of Errors and Appeals in affirming the opinion of Vice-Chancellor Stevens in the above case of *Hood v. Hood*.

The fact that the complainant kept the deed, etc., was given little importance by the Vice-Chancellor, he saying on page 800:

"I attach little importance to the fact that Mr. Hood received one-quarter's rent after his purchase; that he paid taxes; and that he took charge of the deeds, kept we would say, for a considerable part of the time at least in a box standing in their joint names. These were facts that would probably have been done in any event by a husband situated as he was. His wife had little, if any, independent income."

Practically the last case upon the subject is the case of *Andreas v. Andreas*, 84 N. J. Eq. 375, the opinion being by Vice-Chancellor Howell, citing the majority of the cases above referred to and following the rule of law as therein established.

## IV.

**Improvements follow the title and expenditures made by a husband are presumed to be a gift to the wife.**

This rule is laid down in *Selover v. Selover*, 62 Eq. 761, in which Chief Justice Gummere on page 763 says:

“The same reasons which support the presumption that by purchasing property and taking title thereto in the name of his wife, a husband intends to make a settlement, apply with equal force to expenditures made by him in the improvements of her separate estate; (*Black v. Black*, 3 Stew. Eq. 215; *Lister v. Lister*, 8 Stew. Eq. 49, *S. C.* on Appeals 10 Stew. Eq. 331) and particularly is this so when the property upon which the expenditures are made has previously been conveyed by the husband to the wife by way of a settlement upon her.”

This case is followed in *Hood v. Hood*, 93 Atl. 796, opinion by Vice-Chancellor Stevens, in which on page 800 he says:

“Mr. Hood spent, he says, between \$50,000 and \$60,000 in improving the property. The improvements follow the title. *Selover v. Selover*, 62 N. J. Eq. 761; 48 Atl. 522, 90 Am. St. Rep. 478.”

The case closely in point is that of *Bacon v. Devinney*, 55 Eq. 449.

When a husband and wife both make payments to meet the demands of building associations stock standing in the name of the wife, the presumption is that his payments were gifts to her and a resulting trust in favor of the husband because of his payments will not arise unless this presumption is rebutted by evidence

sufficient to establish such trusts. On page 453 the Court says:

“The admission in the pleadings show that the husband and wife arranged that this title to the lands should stand in the name of the wife and the funds of both were used indiscriminately to pay off the principal and interest of the mortgage debt without any understanding or agreement that the payments of the husband should secure to him any rights in the property.”

And the Court further on the same page says:

“Under this indefinite situation when the husband made some payments out of his separate estate and the wife some out of hers and there is no evidence that the money was paid on any agreement or belief that the husband was to be benefited, no trust arose in his favor nor could he rightfully claim to be entitled either at law or in equity to any interest in the property the title to which he knew stood in his wife’s name when he made the payments. In cases where the parties stand in such intimate relationship to each other the presumption is that the payments were intended to be a gift until by satisfactory proof the contrary is established.”

It is respectfully insisted that equity and good conscience demand the affirmance of the decree below; that the facts clearly show that the respondent supplied practically all of the money used to purchase the property and build the house; that even assuming the appellant paid the entire sum, the evidence not only fails to rebut the presumption raised by law but conclusively proves that there was a gift of and a settlement

upon the defendant of the property in question  
and that the decree below should therefore be  
affirmed with costs.

Respectfully submitted,

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