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CITATION.

NEW JERSEY, TO WIT, THE STATE OF NEW JERSEY, TO
ANNA BERTOLINO DAMARIO AND DANIEL DAMARIO,
GREETINGS:

Whereas a bill of complaint has lately
been exhibited against you in our Court
(Seal) of Chancery by Elizabeth Bertolino to be
relieved touching the matters therein 10
contained.

Therefore, we command you, if you intend to
make a defense, that you file an answer to said bill
in the office of the clerk of our said Court at Tren-
ton, on or before the expiration of twenty days from
and after the twenty-first day of December, 1928,
and in default thereof such order or decree will be
made against you as the Court shall think equitable
and just.

Witness, his Honor, EDWIN ROBERT WALKER, 20
Chancellor of our said State, at Trenton, the thir-
teenth day of December in the year of our Lord one
thousand nine hundred and twenty-eight.

THOMAS BARBER,
Clerk.

THOMAS G. TUSO,
Solicitor.

[ENDORSEMENT]

30

Defendant not found; see affidavit of
non-residence.

Walter T. Gross,
Sheriff.
By J. M. Ackley,
Under Sheriff.

BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

10 The complainant, Elizabeth Bertolino of Blackwood, Camden County, New Jersey, says:

1. On March 17th, 1919, complainant was living separate and apart from her husband, Charles Bertolino.

2. On or about that date, complainant agreed to purchase from Thomas A. C. Baker, *et ux.*, a certain tract of land and premises, situate in the City
20 and County of Camden, and State of New Jersey.

3. On that date, Anna Bertolino, daughter of complainant, and unmarried, was living with complainant, and it was agreed between complainant and her said daughter, that the property hereinafter described should be conveyed by the said Thomas A. C. Baker, *et ux.*, to Anna Bertolino with the express agreement that the consideration therefore should be paid by complainant and the said Anna Bertolino should convey the said property to complainant
30 or her nominee at any time thereafter, and that the said Anna Bertolino should have no beneficial interest in the said property and that the title should be taken in the name of the said Anna Bertolino because of the fact that the complainant was not living with her husband and would, therefore, be unable to dispose of the property.

4. Accordingly, complainant paid to Thomas A. C. Baker, *et ux.*, the sum of eleven hundred dollars (\$1100.00), and the said Thomas A. C. Baker, *et ux.*, did on March 17th, 1919, by deed of that date, convey to the said Anna Bertolino, all that certain tract or parcel of land and premises, situate in the City and County of Camden, State of New Jersey, bounded and described as follows, to wit:

BEGINNING in the Northerly line of Stevens Street in the middle line of partition wall between premises Nos. 221 and 223 Stevens Street, at a point distant thirty-four and forty-five one-hundredths Eastwardly, from the Northeast corner of Channing Terrace (twenty-one feet wide) and Stevens Street, and extending thence (1) Eastwardly along said Northerly line of Stevens Street, eleven and fifty-three one-hundredths feet to the center line of partition wall between premises Nos. 223 and 225 Stevens Street; thence (2) Northwardly at right angles to Stevens Street, partly along said centre line and along the same extended, fifty-two feet to the Southerly line of a three and eighty-five hundredths feet wide alley opening into Channing Terrace; thence (3) Westwardly along the same, parallel with Stevens Street, eleven and fifty-three one-hundredths feet to the extended middle line of partition wall between premises Nos. 221 and 223 Stevens Street; thence (4) Southwardly at right angles to Stevens Street, partly along the extended centre line of said last mentioned partition wall, and partly along the centre line thereof, fifty-two feet to the place of beginning.

BEING premises known as No. 223 Stevens Street.

The said deed was recorded in the office of the register of deeds of the County of Camden on the 19th day of March, 1919, in Book 441, at page 79, &c.

5. Complainant thereafter exercised the right of ownership of the said property, occupied the same, paid the taxes, insurance and building and loan dues and has collected rents for the same.

10 6. On or about September 5th, 1925, complainant filed a petition for divorce against her husband and afterwards such proceedings were taken, resulting in a final decree of divorce being granted to her on or about September 21st, 1926, ever since which time complainant has endeavored in the most friendly terms and by repeated requests to persuade her daughter, Anna Bertolino to re-convey the above described property to the complainant.

20 7. The said Anna Bertolino, after the conveyance to her from Baker, married one Daniel Damario.

30 8. Complainant has asked many times, both her daughter, Anna Bertolino Damario and her husband, Daniel Damario to convey the said property to her, and the last time, as late as November 23rd, 1928, but both the said Anna B. Damario and her husband, Daniel Damario have refused and still refuse to convey the said property as in equity they should do.

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

1. That Anna Bertolino Damario and Daniel Damario, who are the defendants to this suit, may

answer this bill of complaint and each statement therein made.

2. That the said lands and premises may be ordered to be conveyed to the complainant.

3. That a writ of subpoena may issue, commanding said defendants to answer this bill of complaint and to abide by such a decree as this Court may make in the premises. 10

.....
*Solicitor for and of Counsel
with Complainant.*

ANSWER.

IN CHANCERY OF NEW JERSEY. 20

Between
ELIZABETH BERTOLINO,
Complainant,
and
ANNA BERTOLINO DAMARIO and DANIEL DAMARIO,
Defendants.)
On Bill, &c.
Answer. 30

The defendants, Anna Bertolino Damario and Daniel Damario, of Philadelphia, Pennsylvania, answering the bill of complaint say:

1. They admit paragraph one.

2. They admit paragraph 2 but aver that said agreement to purchase was made by the complainant for the benefit and on behalf of the defendant Anna Bertolino Damario.

3. They deny paragraph 3 except the statement that Anna Bertolino Damario the defendant, daughter of the complainant on that date was unmarried and was living with the complainant. Defendants aver that the fact is that the defendant Anna Bertolino Damario, was, on the date mentioned in said paragraph, about to marry the defendant Daniel Damario who was and had been prior to said date a boarder in the home of the complainant; that complainant declared to defendants her intention of purchasing from the said Tromas A. C. Baker and wife, the tract of land and premises mentioned in the bill of complaint and to make a wedding gift of said land and premises to the defendant Anna Bertolino Damario, and that her contribution toward said gift should be the amount of money she had laid aside for the purpose of such gift, which amount of money was \$175.00 and that the balance should be paid by the defendants, and that the deed should be given to the defendant, Anna Bertolino Damario, then known as Anna Bertolino, and said property should be the property of said defendant in fee simple; there were no secret trusts or reservations concerning said title whatever.

4. They deny paragraph 4 but aver that the complainant paid the sum of \$175.00 and no more toward the purchase price of the said property, that the balance was raised by a building and loan mort-

gage of \$800 and by payments made by the defendant Daniel Damario to the complainant as agent for said Daniel Damario under an agreement between said defendant and the complainant, at the rate of \$13.00 per week from January 22, 1919, to May 15, 1919, and \$60.00 additional on March 21, 1919, in a United States Liberty Bond. The agreement was that complainant should apply said payments on the purchase price of said land and premises. Said payments by said defendant to the complainant were made as part of a payment of \$20.00 per week of which \$7.00 per week was the agreed amount of board paid by the defendant, to the complainant. These payments of \$13.00 each made by the defendant Daniel Damario to the complainant amounted to \$281.00 in addition to his board, and were paid by said defendant as his contribution to the wedding gift to his future wife, and also for the establishment of their future home. The purchase price of the said property was \$1100.00 but the expenses of settlement were approximately \$156.00 and toward this expense the complainant had borrowed for the use of the defendants, \$150.00 in order to make the settlement, and this amount was repaid by the defendant, Daniel Damario, as part of the \$281.00. The wedding of the two defendants took place on March 24, 1919, approximately a week after the said conveyance was made, and the defendants continued to live with the complainant until May 15, 1919, during which time the defendant Anna Bertolino Damario contributed her earnings averaging \$10.00 to \$12.00 per week, to the complainant in addition to that paid by the defendant, Daniel Damario. That portion of paragraph 4 concerning the execution of a deed on March 17, 1919, by Thomas A. C. Baker, *et ux.*, to Anna Bertolino, the defendant,

conveying the premises described therein and recorded as therein stated, is true.

5. They deny paragraph 5, but state the fact to be that the house in question being too small for the defendants' requirements, the defendants did not occupy the same but rented it and permitted the complainant to act as their agent in the collection of rents, from which the taxes, insurance and building
10 and loan dues were paid, and the small balance remaining was given by the defendants to the complainant for her services as said agent, and when the said rentals were not sufficient to pay said charges these defendants paid the deficit from their own funds.

6. Defendants have been informed and believe the statements made in paragraph 6 concerning the divorce of the complainant to be true but deny the
20 balance of said paragraph.

7. They admit paragraph 7.

8. They deny paragraph 8.

.....
Solicitor of Complainant.

ORDER OF REFERENCE.

(Filed May 8th, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH BERTOLINO,
Complainant,
and

A N N A BERTOLINO DA-
MARIO, *et als.,*
Defendants.

On Bill to Foreclose.
Order of Reference.

10

This matter being opened to the Court by Thomas
G. Tusso solicitor of the petitioner, and upon due
notice to the defendant; it is on this 7th day of
May, 1929, ordered that the above stated cause be
referred to Honorable R. H. Ingersoll, one of the
Vice-Chancellors of this Court, to hear the same for
the Chancellor and to report thereon to him and
advise what order or decree should be made therein.

20

E. R. WALKER,
C.

30

I consent to the making of the above order.

E. H. REEVES,
Solicitor of Defendant.

A true copy
FERD GARRETSON,
Clerk.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

10	Between ELIZABETH BERTOLINO, <i>Complainant,</i> and A N N A BERTOLINO DA- MARIO, <i>et als.,</i> <i>Defendants.</i>	}	On Bill, &c. Final Hearing.
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Atlantic City, N. J., September 24, 1929.

TESTIMONY.

Before HON. ROBERT H. INGERSOLL, Vice-Chancellor.

30

APPEARANCES:

For the complainant, THOMAS G. TUSO, Esq.

For the defendants, EDMUND H. REEVES, Esq.

ELIZABETH BERTOLINO, SWORN.

Direct examination.

By Mr. Tuso:

Q. Where do you live?

A. I live in Blackwood.

Q. In 1919, in March, 1919, where did you live? 10

A. Philadelphia.

Q. Who were the members of your family?

A. My children.

Q. Anna was one?

A. Anna is the oldest, yes, sir.

Q. Who were the others?

A. There is Amel, Anthony, Rose, Theresa, Marie
and Frank.

Q. Where you living with your husband at the
time? 20

A. No.

Q. In March, 1919, did you purchase a property?

A. Yes, sir.

Q. From whom?

A. From the real estate man, Mr. Felton.

Q. Where is the property located?

A. 223 Stephen.

Q. What city?

A. Camden.

Q. How much was the price for the property? 30

A. Eleven hundred.

Q. How much money did you pay?

A. Well, I had saved of my own savings \$193, I
drawed out of the Federal Trust Company, then I
got \$80 check from alimony from my husband, then,
of course, I had saved some on the side beside that,

and what I was doing, boarding, and knew that he had come from service and didn't have nothing, he handed his \$60 check.

Q. Did you, in addition to the amounts which you have mentioned, borrow?

A. Then I was to my brother that I didn't have enough, and my father, and let them give the same, and drew a hundred dollars out of the National Bank, I think, in Vineland.

10 Q. How much money did you pay on account of the property all together?

A. Four hundred.

Q. You paid eighty, a hundred and ninety-three and one hundred of your own money?

A. Yes, sir.

Q. And you said that your son-in-law gave you, loaned you or gave you sixty dollars?

A. Yes, sir.

20 Q. How was the balance of the money raised? Is there a mortgage on the house?

A. Yes, sir, \$800.

Q. At the time that this property was purchased, why did you purchase it in your daughter's name?

A. To keep my husband out of it.

Q. What is that?

A. To have my husband out of it, in case I didn't like the location and I wanted to sell, I didn't have no trouble getting my husband to sign and sell this property.

30 Q. What did you say to your daughter before you put this property in her name?

A. Well, I says, "You must room some place, we can live together you save money on your side and it will make it better for either side."

Q. What did your daughter say concerning the property?

A. Well, she seemed satisfied—she didn't—you know, didn't have much to say, things seemed satisfactory because if they weren't, she wouldn't, you know move with me.

Q. Did you make any agreement with your daughter as to the property?

A. No, we didn't make no agreement.

Q. Did she agree that the property should be placed in her name?

A. Yes, sir, on that reason, that if I ever get a 10 divorce or wanted to sell, the father was clean out of it, and I wouldn't have the trouble to sell.

Q. Did you give her the property?

A. I guess not. If I only had her, maybe I would have done it, but she ain't the only child.

Q. Did you buy another piece of property in the same way?

A. Yes, sir.

Mr. Reeves: Objected to.

20

The Court: I will permit that question.

Q. In whose name did you buy this time?

A. Antonio Novarro.

Q. Who is he?

A. Brother-in-law.

Q. Where was that property?

A. 700 Clinton, Camden.

Q. After the property was purchased, where did 30 you all live?

A. Well, we lived in the property three years myself, this 700 Clinton Street house.

Q. Right after the property was bought did you and your daughter and the rest of your children live in this particular property?

- A. No, my daughter she left me August 15th.
Q. Yes, but until then did you all live together?
A. No, we didn't, not until I moved. She moved on August the 15th, 1919, I lived in the house 223 Stephen until the following April, and I moved on April 1st, moved to 700 Clinton.
Q. Where was the money borrowed from, the building and loan?
A. Yes, sir.
10 Q. How long did you live in that property yourself, did you say?
A. 223?
Q. Yes.
A. A year.
Q. What became of the property after that?
A. I rented it.
Q. You rented it?
A. Yes, sir.
Q. Who collected the rents?
20 A. I did.
Q. Is it now rented?
A. Yes, sir.
Q. You still collecting the rents?
A. Yes, sir.
Q. From 1919 to the present time?
A. Yes, sir.
Q. Who has been paying the building and loan?
A. I did.
30 Q. The insurance?
A. I paid the insurance, I paid all.
Q. Taxes?
A. All bills, I paid them all myself.
Q. Repairs to the house?
A. I have done them all.
Q. When did you get your divorce?

A. 1925, it has been three years this September, I got the divorce.

Q. Well, after you got the divorce, did you ask your brother-in-law to convey the property to you?

A. Yes, sir.

Q. That is, individually?

A. Yes, sir.

Q. Did he convey to you?

A. He conveyed it to me, it will be three years January.

10

Q. Did you ask your daughter and your son-in-law to convey this property to you?

A. I did.

Q. What did they say?

A. Well, I didn't go to them. I made the real estate man, Mr. Bartell, write to them and they write a card and said when they got \$250 that is the time they would convey the property because Mr. Varga showed me the card, see.

20

Q. You haven't got that card?

A. No, I remained it in the office.

Q. Who was present, Mrs. Bertolino, when you told your daughter, "I will put this property in your name?"

A. Well, it has been in the family, was only the children there, and Rose was the oldest of the rest.

Q. How old was she at the time?

A. She was twelve.

Q. Do you owe your daughter any money?

30

A. Nothing that I know of.

Q. Why do you say, "Not that I know of?"

A. Well, really, I don't think I owe them anything, because he boarded there and they only lived there a few months after they were married, they were in that house two months that they didn't say

a word to me, just turned their back to me like this, worse than a stranger.

Q. How many times have you personally asked your daughter and son-in-law to convey this property to you?

A. The last time I asked them was a year ago the fourth, they were staying over to my father's, and he just got up a while, and I believe if my father wasn't there he would have just turned at
10 me, because he said, "I will do the same thing as I done to my mother to you?"

Q. Now, did you send Mr. Reed?

A. Afterward I sent Mr. Reed to try and put a good word in and settle this without bringing it to court.

Q. Your son-in-law gave you sixty dollars, you said, why did he give you \$60?

A. Well, all the trouble I done for him, all what
20 I done for him, he came home the 10th of January from the service, he didn't have anything, he didn't have no home to go, and I told him I didn't have no room, but he said he was satisfied to stay in the kitchen long as I got a cot for him and just put it up at night.

Q. And that was done?

A. And that was done, yes, sir.

Q. He was going with your daughter at this time?

A. He was going with my daughter.

30 Q. Did your daughter or her husband at any time ever claim that the property was theirs?

A. He claimed it right after he got married, he wanted to put me out about a month or two after that.

Q. Why did he want \$200 or \$250 for it?

A. I couldn't tell you.

Q. You have seven children, have you bought any houses for any other children?

A. No.

Q. Did you ever talk with your son-in-law about conveying this property to you?

A. Yes, a year ago the 4th I just went to them in a nice way and he got up in the air.

Q. What did he say?

A. Well, he said the property belonged to him, he says he put most all the money in it and if I didn't 10
be careful and done what was right why he was going to do the same thing as he done to his mother, he meant that he beat his mother and he was going to beat me.

Cross-examination.

By Mr. Reeves:

Q. He said he put most of the money in the prop- 20
erty. Do you suppose he had reference to that when you say that he asked for \$250?

A. I don't see where.

Q. How much rent were you getting for the prop-
erty?

A. Fourteen at the beginning.

Q. How much are you getting now?

A. Twenty.

Q. How much did you say the property cost all
together? 30

A. Eleven hundred.

Q. And you got an eight hundred dollars mort-
gage?

A. Yes, sir.

Q. And put four hundred dollars into it?

A. Yes, sir.

Q. That would make \$1200, what was the additional hundred dollars for?

A. Well, for the search.

Q. Expenses?

A. Expenses of the search, deeds and all.

Q. The settlement at the time the building and loan mortgage was placed?

A. Yes, sir.

Q. Were you present at that settlement?

10 A. I was present, yes, sir, with my daughter.

Q. You knew that the deed was put in her name?

A. Yes, sir.

Q. You say you didn't have any agreement with her, what do you mean, any agreement in writing about whether she was to return the property to you?

A. Well, I thought I would trust her. She was my own child.

Q. You say there is no agreement in writing?

20 A. No.

Q. And when you talked this over, you say she didn't say very much to you about it?

A. She didn't say much, no.

Q. She didn't say yes or no?

A. She seemed to be satisfactory. She just thought, well, it was right between mother and daughter.

Q. You took an agreement in writing from Mr. Novario, didn't you?

30 A. Yes, sir.

Q. What did that agreement say?

A. Mr. Novario just held the title on it.

Q. That he was holding it for you?

A. Yes, sir.

Q. What relation was he to you?

A. Brother-in-law.

Q. Didn't you trust him like you did your daughter?

A. I certainly did trust him, but I wasn't put wise to it when I bought the small property as I bought the other, and you wouldn't think that your own child would work things against you.

Q. And why did Mr. Damario, your son-in-law, want to put you out of the house?

A. Because owners of property, says on account of being my daughter's name. 10

Q. How long after the wedding was this?

A. About two months.

Q. Why didn't he put you out of the house?

A. Because she wouldn't —

Q. What stopped it?

A. She stopped him.

Q. His wife, your daughter?

A. My daughter stopped him.

Q. She is your oldest daughter?

A. She is my oldest child. 20

Q. How long after the settlement when you first purchased the property and put the deed in your daughter's name, how long after that was the wedding?

A. We didn't have no wedding, just got married on the quiet.

Q. Just got married on the quiet?

A. Yes, sir.

Q. How long after was the time that they were married? 30

A. Well, they got married on the 24th of March, and we moved on —

Q. Just a week, wasn't it?

A. And we moved on the first of April.

Q. You were afraid that your husband might have

some right in this property if you took it in your name?

A. Yes, sir.

Q. And yet did you have any idea that your daughter's husband might not have some claim on the property if you put the property in your daughter's name; did you think about that?

A. Didn't think of that.

10 Q. You knew that they were going to be married in a week, didn't you?

A. I think I did.

Q. And your son-in-law, before he was married to your daughter, came to live with you, after he left the service, you say?

A. Yes, sir.

Q. And that was when, when was it he came?

A. Well, he was discharged 1919, January the 10th.

20 Q. And he married your daughter on March 24th of the same year?

A. Yes, sir.

Q. 1919?

A. Yes, sir.

Q. What arrangement did you make with him as to the payment of board when he came to live with you in January, 1919?

A. Well, we didn't made any arrangement on the board.

30 Q. Did he offer to pay for it?

A. He didn't offer no board, either.

Q. Did he pay for it?

A. Oh, he gave what he felt like.

Q. In addition to the \$60?

A. In addition to the \$60.

Q. That \$60 was a liberty bond, wasn't it?

A. Yes, sir.

Q. He didn't give you cash when he gave you the \$60, he gave you a bond, wasn't that right?

A. Yes, sir.

Q. In addition to that, he paid what he felt like, isn't that right?

A. Yes.

Q. How much was that?

A. I don't recollect.

Q. You can tell me about what it was?

A. How can I?

10

Q. I don't know. You can't remember?

A. He kept one thing, he said that he drew his week wages in twelve days after he was discharged from service where he was out of work a week or so before he did get a job, and he turned around and claims that he gave me \$20 a week, of course, that is not so.

Q. Did he give you what he felt like every week?

A. There was weeks that he didn't work, and he stayed there and had his hospitality just the same as the rest of the family.

20

Q. Did he pay you something every work?

A. When he work, and if he didn't work he pay nothing.

Q. How much of the time didn't he work?

A. I couldn't recollect on that, because it has been so long ago.

Q. Isn't it true that you arranged that the board should be \$7 a week?

A. No.

30

Q. You deny that?

A. He didn't arrange no seven dollars a week with me.

Q. Did he pay you as much as \$7 a week?

A. Well, I don't say he didn't, but whatever he

could afford, times he only gave me four or five dollars.

Q. Did he ever give you more than ten dollars?

A. No, he didn't give me more than ten dollars.

Q. Never?

A. No, he didn't, only the time of the check of the \$60.

Q. You deny that he gave you \$20 a week, do you?

10 A. Deny it when he didn't give it to me, how can I say he gave me \$20? I know that he didn't.

Q. I don't want you to say it if it isn't true. Is it true or not that he gave you as much as \$20 a week?

A. No, it is not true.

Q. Did your daughter give you any money after she was married?

A. No, she didn't give me any money after she was married.

20 Q. Did she give you any money before she was married?

A. Until the time of the flu.

Q. How much money was she paying you?

A. She wasn't paying me—we don't—Italian people don't believe in board, we collect, we get their wages of them all, or what they need, buy their clothes, get them everything.

Q. Isn't it true that your daughter gave you her wages?

30 A. Yes, it is the truth my daughter gave me her wages.

Q. And isn't it true that you said that you wanted to do something for her, because she had been good to you?

A. How could I done it only to her, when I had six children besides her?

Q. Answer the question.

The Court: Just answer the question, you did or not.

A. I didn't say nothing of the kind. I said, "We will live together and it will make it much cheaper upon the both of the family than to be separated."

Q. Isn't it true that you decided not to give your daughter an expensive wedding although you had 10 first thought you would?

A. Well, I couldn't give her the wedding, it was her husband's place to give the wedding, how can I give her the wedding, when I have four small children?

Q. Did her intended husband give you any money toward the expenses of that wedding?

A. He did not give me a thing.

Q. Now, the money that your son-in-law gave you from week to week, is that some of the money that 20 you saved to put in this house?

A. No, I had saved \$193, I drew out of the Federal Trust Company, Broad and Federal, and \$80 was from my husband, a hundred dollars I borrowed in Vineland Bank.

Q. And the rest of it?

A. And then he says, "Well, you can have this \$60 because I have been here boarding with you," and he says, "You try to do all you can for me, and I do all I can for you." 30

Q. Did your daughter ever say to you that if you would collect the rent on the property if you didn't want to live in it that you could collect the rent and pay the building and loan and the taxes, and whatever was left over you could have?

A. They never said a word.

Q. Did your daughter ever say that to you?

A. Because they went away and left me without saying a thing at the time. And they never mentioned that property.

Q. You and your son-in-law didn't get along very well, I guess?

A. No.

By Mr. Tusso:

10

Q. Did your son-in-law and your daughter board with you, or, rather, did you all eat together while you lived together?

A. We all eat together.

Q. And you furnished everything?

A. Yes, sir.

Q. How long did you all live together after the marriage?

20 A. Well, from April, we ate together from April until May, and then the quarrel started and they ate by their selves and they stayed there until August the 15th.

By Mr. Reeves:

Q. Where did you get the money to pay for the table?

A. I worked.

30 Q. While they were living together?

A. We worked.

Q. How much were you making?

A. And I got my husband support besides.

Q. How much were you making?

A. I was making eighteen or nineteen dollars a week.

Q. Didn't Mr. Damario, your son-in-law, pay anything to you after that time?

A. No, he didn't pay me nothing.

Q. Didn't your daughter pay you any wages that she made after she was married towards the support?

A. Didn't give me nothing.

Q. You got nothing whatever from either of them after they were married and while they were living with you? 10

A. They handed me a little before the quarrel, but after the quarrel they didn't give me a cent.

Q. Now, before the quarrel you say they handed you a little, how much?

A. Well, sometimes six, sometimes seven dollars a week.

Q. Which one would do that?

A. My daughter.

Q. You say you never got any money from your son-in-law? 20

A. No, he didn't give me any more money after he got married there, he only gave me a little money before he was married.

Q. Are you sure he gave you nothing after he was married?

A. After he was married he didn't gave me nothing.

ROSE B. PASSER, SWORN.

Direct examination.

By Mr. Tusó:

Q. What is your age now?

A. Twenty-two.

10 Q. Do you remember when your mother bought this house in Camden?

A. Yes, I do remember it.

Q. Do you remember what your mother said when this property was bought?

A. Yes, I do.

Q. What did she say?

A. She says that she would buy the property in my sister's —

20 Mr. Reeves: May we have the time and circumstances fixed?

The Court: Yes, and it must be shown to be in the presence of the sister as well.

Q. When your mother said this, was it before the house was bought?

A. Yes, before the house was bought.

Q. Was your sister present?

30 A. Yes.

Mr. Reeves: Which sister?

A. Anna.

Q. How long before the house was bought was it that you all talked together about this property?

A. About a week or two.

Q. What did your mother say?

A. My mother said she would buy the property and put it into my sister's name so that my father wouldn't come into this property, because mother and father were not living together and if she wanted to sell she would need for his signature and he wouldn't give it on account of them being separated, so she thought she would put it in my sister's name and then she wouldn't have no trouble. 10

Q. What did your sister say to that?

A. She didn't say anything. She just seemed willing.

Q. Do you remember when your sister got married?

A. I do.

Q. When was it?

A. In March, 1919.

Q. Did you all live together after the marriage?

A. Yes, we did. 20

Q. Who was the head of the family?

A. Mother was.

Q. Who furnished all the food?

A. Mother furnished everything.

Mr. Reeves: I object unless this girl knows, at twelve years of age.

The Court: Yes.

Q. Do you know who furnished all the food? 30

A. I do know.

Q. Who did?

A. My mother did.

Q. Was Damario living with all of you before his marriage?

A. Yes, he was.

Q. When did he come back from the service, do you recall that?

A. He came back in January and he came to live with us when he came back from service until he was married, and then they lived with us after they were married for a while, and then they left without saying anything, mother went out to work in the morning, when she went home at night she
10 found that they were gone, and that is all she knew.

Q. Do you know what moneys, if any, your brother-in-law and sister paid to your mother for their board?

A. They didn't pay any board only once in a while maybe they would hand my mother a few dollars, but that was all.

Q. Do you know anything about the liberty bond for \$60?

A. Yes, well, he gave that to my mother because
20 my mother was just like a mother to him, when he came home from the service. My mother treated him just like she treated us.

Q. Until when, after the house was bought did you all live together?

A. Until August the 15th, 1919.

Q. In the same house?

A. In the same house.

Q. During the time that they lived there after the marriage, do you know of your own personal
30 knowledge what moneys they gave to your mother for board?

A. Well, they never gave her any money for board only when they felt like it they would hand her a couple of dollars.

Q. What became of the property after August the 15th?

A. My mother lived in it until the following April, and then we moved out and she rented it.

Q. Who collected the rent?

A. Mother collected the rent.

Q. Have you ever collected any rent?

A. Yes, I have went over and collected the rent many a time.

Q. How about the building and loan, who has been paying the building and loan?

A. Mother paid everything, she paid all building and loan, all taxes and all bills and repairs, bills and everything.

Q. Were you ever present when your mother asked your sister or her husband or either of them to convey this property back to her?

A. No, I wasn't present, but I know all about it.

Mr. Reeves: Objected to.

Q. Do you remember when your mother secured 20 the divorce?

A. Yes, I do.

Q. When was it?

A. In September, 1925.

Q. Is the property now rented?

A. Yes.

Q. And your mother is collecting the rent?

A. Yes.

Q. Who has made the repairs?

A. My mother has made all repairs.

30

Cross-examination.

By Mr. Reeves:

Q. Did you ever see Mr. Damario pay your mother any money when he was living there?

A. No, he never gave my mother no money.

Q. Didn't you say he gave her some money when he felt like it, two dollars at a time?

A. Not him, his wife did. Not him.

Q. You never saw him give your mother any money?

A. No, never.

Q. What was it you say your mother said before the wedding to her daughter about the property?

10 A. She said that she would put the property in her name so that in case anything would happen she would want to sell the property she could sell it without my father's signature.

Q. Are they just the words that she used?

A. Well, I can't remember the exact words.

Q. How old were you at that time?

A. Twelve years old.

Q. Did you understand what they were talking about at that time?

20 A. Yes, I understood everything.

Q. You have talked it over a good many times since with your mother?

A. Talked what over?

Q. The reason that she put the property in her daughter's name?

A. Yes, we have talked it over.

Q. Didn't your mother ever say anything about putting the deed in her daughter's name because she wanted to make a present to her?

30 A. No, she did not.

Q. Instead of a wedding?

A. No, she did not.

Q. You never heard her say that?

A. No.

Q. That is all.

ANTONIO NOVELLO, SWORN.

Direct examination.

By Mr. Tuso:

Q. What relation are you to Mrs. Bertolino?

A. Brother-in-law.

Q. Did she buy a piece of property while she was living apart from her husband — 10

Mr. Reeves: Objected to.

Q. —which she placed in your name?

A. She did.

The Court: Sustain the objection.

Q. Do you remember when Anna, Mrs. Bertolino's daughter, got married? 20

A. I remember her getting married, but I wasn't at the wedding.

Q. Do you remember when your sister-in-law secured the divorce against her husband?

A. Well, that has been about three years ago.

Q. Since her divorce did you ever talk with Anna or her husband about this property?

A. Yes, I did.

Q. Where and when? 30

A. In Philadelphia.

Q. When?

A. Well, right after she got her divorce.

Q. What did you say to them or either of them?

A. Well, I asked them if they would convey that property back to his mother-in-law, get his wife and

he to go over and convey this property back to her. Well, he says, "Not want to convey it to her long as she owe me money." I says, "How much money she owe you?" He says, "She owes me \$200." I didn't know she owed him any money. Well, he says, "She can have it any time she gives me \$200."

Q. Is that the only time you ever talked to them about this property?

A. That is the only time I ever spoke to him.
10 Never spoke but once.

Q. At whose request did you go to them?

A. He came to me at my house, you see, his mother-in-law lived in the neighborhood there for a while, and he came to me about his car, had it all smashed up, and he wanted the bill reduced over at the agency because I knew them, they had cheated him on the work and that is how I came to mention the property to him.

20 Cross-examination.

By Mr. Reeves:

Q. Did you ever hear Mrs. Bertolino say anything about making a present, a wedding present of this property to her daughter?

A. I did not.

Q. Did you ever hear her say that she thought her
30 daughter and her husband did not treat her right after they were married and for that reason she thought she ought to have the property back?

A. No, sir.

Q. Never heard her say anything like that?

A. No, sir.

Q. That is all.

FRED DE LAZZERO, SWORN.

Direct examination.

By Mr. Tuso:

Q. Do you remember when your sister bought this property in Camden?

A. I do.

10

Q. When was it?

A. Some time in 1919.

Q. Did she borrow \$100?

A. Yes, sir.

Q. With your endorsement?

A. Me and my father endorsed the note.

Q. Is this the note or is this a renewal?

A. That is a renewal note, that has been renewed.

That is my signature on the back there and my father made his mark. She needed that money for this home.

20

(Note offered, received in evidence and marked Exhibit C1.)

Q. Did you ever talk with Damario or his wife concerning this property since your sister secured the divorce?

A. What do you mean?

Q. Did you ever talk with Anna about this property?

30

A. Yes, we had different little talks about the property, the way I always understood her talk to me that the property belonged to her mother.

Q. Who told you that?

A. Anna herself and Damario, both of them.

Q. How did you come to talk about it?

A. Why, got talking about different things when he was on the outs with his mother-in-law, and he was talking about this property, about how it was coming into value, that they were building back of this property, and ever since then I heard that he was beginning to get noisy over the property.

Q. Did he or she ever claim that there was any money due to them?

10 A. Yes, they told me they had money due, but they told me two or three different amounts, I didn't know which was which.

Q. What amounts did they mention to you?

A. One time I heard \$250, next time I heard what I seen them bring up to Mr. Reed was around \$400.

Q. Was that the only time that you talked with them?

20 A. We talked to them a lot of different times but, of course, we didn't count the number of the times, this was only when they got on the outs with his mother-in-law.

Cross-examination.

By Mr. Reeves:

30 Q. Did you ever hear your sister say anything about making a present of this property to her daughter?

A. No, sir.

Q. Never?

A. Never.

Q. That is all.

EMIL BERTOLINO, SWORN.

Direct examination.

By Mr. Tuso:

- Q. You are the son of Mrs. Bertolino?
A. Yes, sir. 10
- Q. Do you know where this property is located?
A. 223 Stephen Street, Camden.
- Q. Have you gone there yourself?
A. Yes, sir.
- Q. Lots of times?
A. Plenty of times, I have gone there every month.
- Q. What for?
A. To collect rent for my mother.
- Q. Who has made the repairs at this house? 20
A. Mother.
- Q. Who has collected the rents?
A. I have collected the rent for my mother.
- Q. Who has been paying, since the house was bought, the taxes and the building and loan and the insurance and water rents and everything?
A. My mother.
- Q. What is your age now?
A. Twenty-five; will be twenty-five in February.
- Q. Were you present when—before the purchase 30
of this property —
A. No, sir.
- Q. You were not present when your mother said that?
A. No, sir.
- Q. Did you ever talk with your sister or brother-

in-law concerning this property since your mother secured the divorce?

A. No, sir.

(No cross-examination.)

10 DOUGLAS REED, SWORN.

Direct examination.

By Mr. Tuso:

Q. I show you a deed, Mr. Reed, and ask you if you have seen it before?

A. Yes, sir.

Q. Who prepared that deed?

20 A. I did.

Q. From whom to whom is it?

A. Anna Damario, nee Bertolino, and Daniel Damario, her husband, to Elizabeth Bertolino.

Q. Why did you prepare that deed?

A. At the suggestion of Mrs. Bertolino.

Q. Did you talk with Mr. and Mrs. Damario about this property?

A. I did.

Q. When was it, the date here is —

30 A. When I took the deed down there to get them to sign it.

Q. When was it, about?

A. I couldn't just recall just what time it was, last spring, I assume; no, it was later than last spring, it might have been around last fall, because they moved away this last spring, I think.

Q. What did you say to them when you went there with this deed?

A. I understood that they claimed that Mrs. Bertolino owed them \$200, which we was willing to pay them, as we didn't want to go to court for the matter, and then he said he owed more money, and I asked them to make us a bill, which I think he eventually did and brought it up to my house.

Q. What did they claim there was money due to them for? 10

A. Money that he had gave his mother-in-law.

(Deed offered, received in evidence and marked Exhibit C2.)

Q. I show you a statement, did you ever see that before?

A. I believe so, yes.

Q. Who gave it to you?

A. Daniel Damario. 20

Q. Is that the amount of money that he claimed was due to him from his mother-in-law?

A. Yes, sir.

Q. Did he sign the deed?

A. He did not.

Q. Why?

A. He said he would sign it when he got this amount of money with interest.

(Paper offered, received in evidence and marked 30 Exhibit C3.)

Q. Did they ever claim to you that they were the owners of the property?

A. No, I believe not. I don't think they ever did.

Q. And the only reason that they did not sign the deed was because that money was due?

A. That was the reason they gave me.

Cross-examination.

By Mr. Reeves:

10 Q. Did you go to both Mr. Damario and his wife?

A. They were both in the house at the same time.

Q. She didn't sign the deed, either?

A. Neither one.

Q. Did you ever hear Mrs. Bertolino say anything about having made a present of this property to her daughter?

A. I never did, no, sir.

Q. Never discussed that with you?

A. No, sir.

20

COMPLAINANT RESTS.

JOSEPH DE LAZZERO, SWORN.

Direct examination.

By Mr. Reeves:

30 Q. You are a brother of Mrs. Bertolino, the complainant?

A. Yes, sir.

Q. Where do you live, Mr. de Lazzero?

A. Why, I live 2434 South Poal, Philadelphia.

Q. Where were you living in 1919 before your niece's wedding?

A. 1319 Thompson Street, Philadelphia.

Q. Did your sister, Mrs. Bertolino, visit with you at that time?

A. Yes, sir, very often.

Q. Did you use to visit with them?

A. Yes, sir.

Q. Who was living with Mrs. Bertolino before her daughter's marriage?

A. Why, Mr. Damario.

Q. And the daughter?

10

A. Yes, sir.

Q. Do you recall a conversation that you had with your sister, Mrs. Bertolino, concerning the wedding of her daughter?

A. We had several conversations on the subject.

Q. Several conversations?

A. Certainly.

Q. When was this, before the wedding or after?

A. Before and after. My sister always came to me for advice, very often. 20

Q. Do you recall any time that she came to you for advice before the wedding in which she discussed this property?

A. In January or February of 1919.

Q. Where was this conversation?

A. At 1319 Thompson Street.

Q. Who was present?

A. My wife, I, myself and my wife, I, my wife and my sister. 30

Q. What was said?

A. Why, she says, we were speaking of the coming wedding and she said that didn't intend to give an elaborate wedding because cost too much money, but we intend to buy a home together and present it to my daughter for a wedding present.

Q. When she said to buy a home together, who else did she mean?

A. She meant this Mr. Damario and her daughter.

Q. Her son-in-law?

A. And her son-in-law and her daughter and herself.

Q. What else was said at that time?

A. Well, she always spoke about ——

Q. Did she say how much money she was putting
10 into it?

A. She said she was putting in \$175.

Q. Did she say how much her son-in-law was putting into it?

A. She said he was putting in a Liberty Bond and some money he had and then he was contributing every week towards the home.

Q. Did she mention any amount to you?

A. Not any specified amount.

Q. Did she say whether or not he was paying
20 board?

A. She said he was paying board at the time.

Q. That was in January or February, 1919?

A. January or February, 1919.

Q. Were there any other conversations that you recall in which this property was mentioned?

A. Several.

Q. Did Mrs. Bertolino say anything to you about this property after they were married?

A. Yes, sir.

30 Q. Do you recall any such conversation?

A. She came to me about four months after the marriage and she says, "I wish you would speak to Dan and Anna, as we don't get along very well together," and she says, "I wish they would deed the property to me." I said, "I thought you made a present of the property to your daughter?" She

says, "Well, I did, but they are not living up to the agreement and I would like to have the property back." So I said, "How about the money you owe them?" She said, "I will pay that back to them."

Q. Do you recall any other occasion when Mrs. Bertolino mentioned this property to you?

A. Why, about a year ago.

Q. When was that and where?

A. Why, it was in Glendora, she lived at the time in Glendora, New Jersey. I went there with my niece, that is her daughter, to try to settle this out of court, to try to persuade her that it wasn't very nice for a mother to bring her daughter up in court, and she refused to do it. I says, then she spoke about the property again, and I said, "Isn't it true that you made a present of this property?" She said, "Yes, but they didn't live up to their agreement."

Q. What did she mean by their agreement?

A. Well, she said the agreement was that they were to take care of her children.

Q. Do you have any knowledge of whether your niece was working before the wedding and after?

A. My niece was working before and after the wedding, before the wedding she was working at the American Can Company in Philadelphia, and she used to bring all her wages home and her mother thought a whole lot of her daughter bringing her pay envelope to her, and she says at the time about her daughter being so good, I am going to buy five shares of building and loan stock for her, but I never heard anything about them afterwards.

Q. Do you know how much—how often Damario was employed during the time preceding his wedding?

A. Why, he was employed very regular.

Q. Regularly?

A. Yes, sir.

Q. Did you ever visit the Damario's home and their mother when they were living together in the Stephen Street house?

A. I did.

Q. Was there any conversation while you were there concerning who owned the house?

10 A. Why, the conversation was about the house the same as after, at the time the conversation came up, mostly was when she told me to visit them and ask them whether they wouldn't convey the property back to her, and that is the time, the reason she wanted this property conveyed back to her, because they couldn't get along together, I asked her about the money she owed them, and she said, "Well, I will pay that back to her."

20 Cross-examination.

By Mr. Tusso:

Q. They had some trouble, didn't they, that is, the son-in-law with the mother-in-law, soon after the house was purchased?

A. Not to my knowledge.

Q. Weren't you present at one of the quarrels?

A. No, sir.

30 Q. Didn't you say to Damario, "You must convey this property to my sister because it belongs to her?"

A. No, sir.

Q. Did you threaten Damario for being abusive to your sister?

A. No, sir.

Q. When your sister came to you and complained

about Damario and wanted you to intercede and get Damario to convey the property back, did you not say to your sister, "Serves you right, if you placed this property in my name it would have been safe?"

A. I did not.

Q. You are not now on speaking terms with your sister, are you?

A. Always was.

Q. You are now?

A. Certainly.

10

Q. Did you speak to her here in court today?

A. I didn't speak to her. She didn't approach me.

Q. You used to go around and visit her quite often, didn't you?

A. Not of late.

Q. You used to before the break?

A. Very long while ago.

Q. How long since has it been since you have visited?

20

A. Last time was last year.

Q. But you have never spoken to your sister for over a year, isn't that true?

A. I speak to her when I meet her.

Q. How far did they live from you in Philadelphia before the marriage?

A. Before the marriage? Well, they lived at 750 South 10th, and I lived at 1230 Mercey Street.

Q. What street?

A. 1230 Mercey Street.

30

Q. How many blocks away?

A. Well, about twelve or fifteen blocks, something between that.

Q. Did you visit your sister and her prospective son-in-law every day?

A. Not every day.

Q. Every week?

A. I visited very often.

Q. Every week?

A. Yes, sir, and sometimes two or three times a week.

Q. Did you know where he worked, Dan worked?

A. No, sir.

Q. How did you know that he was regularly employed?

10 A. Why, speaking to him, I spoke to my sister.

Q. Do you know when he came back from the service?

A. I do not.

Q. When did your sister first converse with you about buying a property in her daughter's name to make her a wedding present?

A. Right after I got up from being sick, and that was in January or February of 1919.

20 Q. Don't you know that the property was not dreamed of until about a week or two before it was purchased?

A. Sir?

Q. Don't you know that the property was not dreamed of until about a week or two before it was purchased?

A. No, sir.

Q. Do you know when the property was purchased?

A. I do.

30 Q. When?

A. In March, 1919.

Q. The latter part or the early part?

A. I couldn't say.

Q. Do you remember that without anybody refreshing your memory?

A. No, sir.

- Q. What?
- A. I do remember that without anybody refreshing my memory.
- Q. Do you know how much Damario was earning?
- A. \$21 a week.
- Q. How do you know that?
- A. Why, because they told me.
- Q. Who told you?
- A. My sister and Damario.
- Q. Do you know how long they lived together? 10
- A. I think five or six months after he was married, and lived with them before that on 10th Street.
- Q. Who furnished Mr. and Mrs. Damario with board?
- A. They furnished themselves with board, as far as I can understand.
- Q. Where did you get that from?
- A. Why, from the folks when I went to visit them.
- Q. When? 20
- A. Several times.
- Q. They always furnished their own board?
- A. As far as I can understand.
- Q. You seem to know your sister's business pretty well, don't you?
- A. I should know. She came to me for advice, every time she wanted any advice.
- Q. Do you know what she paid for the property?
- A. I do not, only through hearsay. I am not going by hearsay. 30
- Q. Do you know who has been paying the building and loan?
- A. As far as I knew, they were paying fifty-fifty.
- Q. And the taxes and insurance and repairs for the house?
- A. I don't know anything about it.

Q. Where did you get the idea that they were paying fifty-fifty?

A. Through them speaking in my presence.

Q. Who said that they were paying fifty-fifty?

A. Sister and Damario.

Q. What about the other charges against the house?

A. I don't know anything about them.

Q. That wasn't mentioned at all?

10 A. Not in my presence.

Q. Who has been paying the building and loan since August 15th, 1919?

A. I couldn't say.

Q. And all the other charges?

A. I don't know.

Q. Didn't she keep right on coming to you for advice after August 15th, 1919?

A. No, sir.

20 Q. She quit you?

A. She came to me after August 15th, 1919, for different advice, but she didn't refer them things to me.

Q. Did you never try to find out what became of the property?

A. No, because it was none of my business.

Q. Who was carrying the property?

A. It was none of my business.

Q. Was it your business before August 15th?

30 A. If she asked me, certainly it was my business, to answer. If she came to me for advice and she asked me a question and it was my business to answer, but if she didn't ask me it wasn't my business to ask her.

Q. Do you deny after the quarrel she came to you about this property and you said to her, "Serves

you right, if you had placed this in my name you could have had it?"

A. I deny it.

Q. Did she ever try to get you to go to her daughter to convey this property back to her?

A. She did.

Q. Did you have any success?

A. I didn't go to them, I asked her why does she want the property conveyed back to her when she has made a present to her daughter. 10

Q. Didn't you want to see your sister protected?

A. Wasn't a protection. My place was for justice, not protection.

Q. Did you ever attempt, notwithstanding her unsound claim to the property, did you ever speak to your niece Anna about conveying this property back to your sister?

A. I did not.

Q. She asked you to, didn't she?

A. My sister did. She did. 20

Q. How many times?

A. Several times.

Q. And you never spoke to Anna about it?

A. No, because I thought it wasn't her property.

Q. How many times did she ask you to go to Anna?

A. I couldn't recollect.

Q. And each time you would argue with her that you wouldn't go to Anna because she made a present? 30

A. Certainly, she made a present to her daughter of the home.

Q. Did you ever talk with Daniel and his wife about this property?

A. On several occasions.

Q. Did your sister secure her divorce?

A. I don't know nothing about my sister's divorce.

Q. You kept on advising her about her business, and you didn't know anything about her divorce?

A. What she asked me, not what she didn't ask me.

Q. You don't even know that your sister secured a divorce from her husband?

A. I don't know; no.

10 Q. What did you do with Damario and his wife about this property, however?

A. Talked to him, for my sister asked me to go and speak to him.

Q. Did you speak to him?

A. Certainly.

Q. I thought you said you never did go to Anna or her husband?

A. I did tell you only what my sister asked me.

Q. How many times did she ask you?

20 A. I can't recollect.

Q. But each time you went to Anna?

A. Not each time, no.

Q. How many times did you go to Anna and her husband?

A. I couldn't say.

Q. Wouldn't you say two or three times?

A. I couldn't say.

Q. What did you go for? Did you ask them to convey the property back to your sister?

30 A. No, I didn't ask them to convey the property back to my sister.

Q. What did you ask them to do?

A. Because I thought it was their property.

Q. What did you ask them to do?

A. Asked them to do nothing of the kind. I told them the sister said she wanted the property conveyed back to her.

Q. And what did they say to you?

A. They said, "It is a present, how can we convey property back to somebody else when it is my own?"

Q. Didn't they say that they would convey the property if you would get \$200?

A. No, sir.

Q. No amount was ever mentioned to you by them?

A. Yes, sir.

10

Q. They never claimed to you that the reason for their refusal was because there was money due to them?

A. No, sir.

Q. That is all new to you?

A. All new at the present time.

Q. You never heard it before until you heard it this morning?

A. No.

Q. That is all.

20

By Mr. Reeves:

Q. What interest, if any, have you in this case?

A. No interest at all, just to see justice done, that is all.

(Recess taken until 2 o'clock P. M.)

30

AFTERNOON SESSION.

(Trial of the cause resumed at 2 P. M.)

DANIEL DEMARIO, SWORN.

10

Direct examination.

By Mr. Reeves:

Q. You are the husband of Anna Demario, the daughter of Mrs. Bertolino?

A. Yes, sir.

Q. When were you discharged from the army?

20 A. I was discharged from the army the 10th of January, 1919.

Q. When did you come to the home of Mrs. Bertolino?

A. The same day.

Q. Where were you employed after you were discharged from the army?

A. Two days after I was discharged from the army I was employed down Frank Trent Trust Company, a government job.

Q. How much were you making there?

30 A. I was making 44 hours a week, 46 cents an hour, would be twenty-two dollars and something.

Q. \$22 a week on the average?

A. Yes.

Q. How long were you employed at that job?

A. I employed at that job about two months.

Q. Two months?

A. Yes, sir.

- Q. After you married?
A. I was employed Philadelphia Navy Yard.
Q. What was the date of your wedding?
A. The date of the wedding, March, 4th of March.
Q. What year?
A. 1919.
Q. Now, after you left the employ by this company, where were you next employed?
A. Philadelphia Navy Yard, government.
Q. Philadelphia what? 10
A. Work for the government.
Q. How much were you making on that job?
A. Same thing.
Q. How many days were you out of employment between the two jobs?
A. Never.
Q. Never out of employment?
A. Never one minute.
Q. How long did you work on that job, second job? 20
A. I worked over there the last week May.
Q. Last of May?
A. Yes, sir.
Q. So that was after your wedding?
A. Yes, sir.
Q. You didn't lose any time on that time?
A. About two days.
Q. What was that?
A. Well, the second job, to try to find the third job. 30
Q. But that was after May?
A. In May, after May, yes, sir.
Q. How much time did you take off when you were married?
A. One minute I didn't take off. I was working night work, I got married eleven o'clock in the morn-

ing and I went to work half-past three or four o'clock down in the Navy Yard.

Q. When you came to Mrs. Bertolino's home in January, what did you say to her about staying at her home?

10 A. I said to her, I was, I have only got sixty dollars and thirty-five cents off the army after I came home, and I says, "Here is \$5, and I like a little board with you," I see the poor lady she have four children and have nobody, no man in the house to protect her, and I said, "Be best for me to live here and sleep in your property, I have to pay somebody else, I give it to you."

Q. What figure was arranged with Mrs. Bertolino about your board?

A. Was arranged, I told her, instead of giving \$7 to somebody else, I give it to you, and she arrange all right, she say.

Q. That was all right with her?

20 A. Yes.

Q. So you agreed to pay her \$7 a week?

A. Yes, sir.

Q. How much money did you pay her each week?

A. I started to give her \$20 a week for the full week just to keep myself two dollars and change.

Q. Talk louder.

30 A. I gave her \$20 a week, I kept myself only two dollars in change for something and carfare, and I said to her, "Keep the money to pay for the board and keep the rest, I have wedding, going to have wedding pretty soon, and want to get some money now for it."

Q. For the wedding?

A. Yes, sir.

Q. Now then, did you change that arrangement about giving her money after the wedding?

A. No, sir, I didn't change no arrangement.

Q. What arrangement did you make as to the \$13 a week after you started in to pay on the wedding?

A. Agreed after two weeks, well, Mrs. Bertolino came to me and she say, "Dan, I got \$175 in the bank, and this money you give me every week and my money instead of having a good time on the wedding, we spend all on one day, I going to buy a home and put on my daughter name a wedding present," and I consent to her, I say all right. 10

Q. You were willing to give the money for that purpose?

A. Yes, sir.

Q. How long did you pay her \$20 a week?

A. Seventeen week.

Q. So that you kept on paying \$20 a week after you were married?

A. Yes, sir.

Q. Until what day?

A. Until around about the 15th of May. 20

Q. Were there any weeks that you skipped making a payment to her?

A. No, sir.

Q. Was it always twenty dollars?

A. Always twenty dollars.

Q. Where was this property to be that she was going to join with you in buying for the daughter?

A. The property was going to be in Camden, 223 Stephen Street, because we went together to look for the property. 30

Q. How much was that property to cost?

A. Eleven hundred dollars.

Q. How much was to be placed on a mortgage?

A. Eight hundred.

Q. Eight hundred?

A. Yes.

Q. Now then, that let three hundred dollars cash to be raised on the house?

A. To be raised on the house.

Q. Was there some other expenses in addition to that?

A. Yes, sir.

Q. How much were they?

A. About a hundred and twenty-five.

Q. What were they for?

10 A. For the expense for the deed, for the record of the deed, and those things.

Q. Building and loan charges?

A. Yes, sir.

Q. So that that made \$425, about, to be raised in cash?

A. Yes, sir.

Q. How was that money raised?

A. That money got raised, I give my money, was about \$13 a week seventeen weeks, would be \$181.

20 Q. How much did she put in?

A. \$175.

Q. Now, didn't she borrow some money?

A. She borrow a hundred dollars.

Q. Were you present?

30 A. Yes, week before she went to borrow \$100, I got note from Mr. Bartell office, settlement was going to be ready around the 17th of March, and we went to Minatola, New Jersey, and see Fred de Lazzero and my wife and my mother-in-law went to see Fred de Lazzero and his father, Fred de Lazzero, and we told him about, my mother-in-law told him I got a property going to be settlement next week and need a hundred dollars.

Q. You told Fred, your uncle?

A. My mother-in-law told Fred de Lazzero, "I need \$100, I going to have settlement next week for the property, going to be bought on my daughter

name for wedding present," and Fred de Lazzero, he know this, and his wife, and everybody.

Q. They all knew that?

A. Yes, sir.

Q. So you got the hundred dollars from Fred de Lazzero?

A. Yes, my mother-in-law got a hundred dollars.

Q. So that was added to the hundred and seventy-five?

A. Yes.

10

Q. And you had a \$60 Liberty Bond?

A. Yes, sir.

Q. What did you do with that?

A. I gave to my mother-in-law, I told her to put enough together to put that \$100 back to Fred de Lazzero.

Q. \$13 a week?

A. Seventeen weeks.

Q. Seventeen weeks was after the wedding, how much at the time of the, at the time of settlement, 20 when did you begin to pay the \$20?

A. I begin to pay \$20 a week around the 22nd of January.

Q. So there would be about seven weeks up to the time of settlement?

A. Yes, sir.

Q. That is the way the \$425 was raised?

A. Yes, sir.

Q. Then you continued to pay the \$20 a week after the settlement until May 15th? 30

A. Until May 15th, and the time she told me, she said, "Now, you don't need to pay any more money because I paid \$100 back to Fred de Lazzero, now you and your wife, you can buy yourselves some clothes, because I wear uniform six months straight.

Q. Wore your uniform?

A. Because I couldn't get no money to buy clothes.

Q. Was your wife employed?

A. Yes, sir.

Q. Was she employed after the wedding?

A. Yes, sir.

Q. Where?

A. Down tin can and shoe factory, couple of places she was employed at that time.

10 Q. How much was she making?

A. Sometimes making twelve, sometimes ten, worked piece work.

Q. What would she do with her wages?

A. She give to her mother.

Q. That was after the wedding?

A. Yes, sir.

Q. Why did she give her mother the wages?

A. She give her mother the wages because want to see her mother get the hundred dollars together again, get it to give back.

20 Q. To Fred de Lazzero?

A. Yes, sir.

Q. After the wedding you all moved into this Stephen Street home, is that right?

A. Yes, sir.

Q. What was your arrangement with your mother-in-law about the expenses?

A. Well, the arrangements was we was going to move in Camden home and I told her, "You can come and live with me and stay over there and we going to live in Camden about six months, because I don't like to live in Camden very long because my work down Philadelphia Navy Yard, and I like to live near the job, and you can stay over there."

30 Q. What about the expenses while you were all living together, what was your arrangement with her?

A. Expenses she to pay half, four dollars a week to the building and loan every month.

Q. Did you pay four dollars toward the building and loan?

A. Yes, sir.

Q. That was eight dollars a month?

A. Yes, sir.

Q. How about the food and table?

A. Food and table every week went over together and buy enough food for all week.

10

Q. Who would buy that?

A. Out of my money, my wife's money.

Q. Now, when you had been there for some months you say you moved?

A. Yes, we moved from there around August.

Q. What arrangement did you make, you and your wife, as to your mother remaining in the property?

A. Arrangement I make, me and my wife told her we going to move back because things we get along 20
enough with the mother.

Q. You didn't get along with your mother-in-law at that time?

A. Yes, with my mother-in-law at the same time, and I say, "Let your mother stay here long as she pay the expenses for the home," we was going to live in the city.

Q. What did you say to your mother-in-law about staying in the house?

A. I said to my wife, because at the time I didn't 30
speak to her.

Q. What arrangement did you make, you and your wife make with your mother-in-law as to remaining in the house?

A. Remaining in the house long as she want to stay, long as she pay all the expenses.

Mr. Tuso: Your Honor please, I think he said he wasn't speaking to her.

The Court: Yes, no objection, but I will sustain the objection.

Q. Do you know what arrangement was made with your mother-in-law as to the payment of the expenses of the house?

10 A. Yes, was to pay half each.

Q. I mean after you moved out?

A. Move out, arrangements was for her to stay in and pay all the expenses.

Mr. Tuso: I object to the question and answer.

A. And if she didn't want to live —

20 The Court: It must be connected up that he heard the conversation, or something. He testified he wasn't talking to his mother-in-law at that time.

Q. Did you hear any arrangement made between your daughter and your mother?

A. The arrangement —

Q. Just answer that.

A. No, sir.

Q. Were you willing that your mother-in-law should collect the rent and pay the expenses?

30 Mr. Tuso: I object to the question.

The Court: What is the objection?

Mr. Tuso: It is leading, if your Honor please.

The Court: I will permit it.

A. Well, I give the promise to do that before we move in the place, and it was my mother-in-law, my wife's mother, and I figure to let things stay the way it is.

Q. Do you know how much your mother-in-law was making at that time?

A. She was making nine dollars a week.

Q. Nine dollars a week?

A. Yes, sir.

Q. How many children did she have to support? 10

A. Four.

Q. How much were you making at that time?

A. Twenty-two dollars and something.

Q. And you had a separate home in Philadelphia?

A. Yes, sir.

Q. Did you ever say that you were willing to sign a deed for this property if you got the money back?

A. Well, she came around to me, and she ask, she want the property back, and I told her, "Why 20
you want the property back, you gave the property
to your daughter for wedding present, I give you
money back if you want, if you not satisfied, for
don't believe in going to court," I said to her,
"Give me money back with the interest and I square
the things without having no trouble." She wouldn't
do that, and I say all right.

Q. How much money had you put into the property?

A. About \$280, I think.

Q. And you figured the interest on that would 30
bring it up to what?

A. Around four hundred dollars.

Q. Now, why were you willing to sign the deed if you got money paid back to you if it wasn't her property?

A. Because I say the mother, she tried to take

the property back, and I say I want to be independent myself, I said let her have it, if I get my money back what I give to my wife for a present.

Q. You were willing that she should get back the property, you didn't want a present, is that the idea, if she didn't want to give it?

A. Yes, sir.

10 Cross-examination.

By Mr. Tusó:

Q. How much were you making per hour?

A. 46 cents an hour.

Q. And you worked forty-four hours?

A. Forty-four hours a week, yes, sir.

Q. How much is that?

A. That would be twenty-two dollars and something, I can't tell you exactly.

20 Q. You are sure about that?

A. Yes, sir.

Q. Do you know that you were only making \$20.24?

A. What?

Q. Do you know that you were only making \$20.24?

A. Forty-eight hour work, I mean.

Q. Forty-four hours at 46 cents an hour.

30 A. I know I was making twenty-two something, because you can investigate Philadelphia Navy Yard, I ain't got no envelopes, because I tear them all up, see, that is all I can tell you, I don't be exact how many hour I was working a week, I know I was making twenty-two something.

Q. When you came back from the army, Mrs. Bertolino took you in as one of her sons, is that right?

A. Yes, I asked her, "If you want to take me in?"

Q. You had no money excepting this twenty-five

A. Thirty-five cents.

Q. And you gave her five dollars?

A. Yes, sir, because she didn't have no money, after I tried to help her out all I can because she have four children.

Q. Then, beginning the 22nd of January, 1919, you paid her \$20 per week?

10

A. Yes, sir.

Q. Every week?

A. Every week.

Q. Why did you do that?

A. I do that, I wanted, I told her to keep so much money out of the board, and the rest of the money save for me because in couple of months' time I want to have a wedding and get married.

Q. In a couple of months you wanted to have a wedding?

20

A. Yes.

Q. Why didn't you keep the money yourself?

A. Because was more safe in her hands because she was an old woman, I was a young fellow, and I know a young fellow don't take long to spend his money.

Q. You were afraid you would spend the money?

A. Yes, sir.

Q. Beginning the 22nd of January up until the time that you were married—when were you married, by the way?

30

A. I think was the 24th of March, 1919.

Q. How much money did you pay her?

A. I paid, I kept on giving her the same amount of money every week.

Q. Before the marriage how much money did you pay her, do you know?

A. I can't recollect how much I paid, I know what I give to her.

Q. Now then, you said that you agreed with her that you should pay \$7 a week board?

A. Yes, sir.

Q. For yourself?

A. Yes, sir.

Q. Did you fix the price or she fix the price?

A. I fix the price and she agreed, she said all
10 right.

Q. How long before the marriage did she start to talk about buying the property, was it a week or two weeks?

A. Was two weeks, after I come home from the army.

Q. Two weeks after you came home from the army?

A. Yes, around last week in January, 1919.

Q. Then the plan was changed, instead of saving
20 the money for the wedding, it was paid for the property, is that it?

A. That is it.

Q. Only one week after you came back?

A. Two weeks after.

Q. Two weeks after you came back? Had you made your first payment on account of the wedding or on account of the property, which?

A. No, I made the first payment, I told her to save the money for the wedding.

Q. How about the second payment?
30

A. Second payment same way, afterwards, when I gave her the second payment she say, "Dan," I said, "this way I got \$175 in bank and your money you give me every week going to get so much money together, instead of having a wedding I going to buy a little home and live together and we have half, I have building and loan, and we live cheaper,"

and she say, "I put this home on your wife's wedding present."

Q. You said that before. Did she buy this house as a wedding present to both of you?

A. No, to my wife.

Q. To your wife only?

A. Yes, sir.

Q. You heard your Uncle Joe say that it was to be a wedding present for both?

A. Why, I give the money, I say long going to 10 my wife's name, I save my money.

Q. After March the 24th, the day of your marriage, did you all live together?

A. Yes, sir.

Q. Did you pay any board?

A. I just give her the money every week.

Q. How much?

A. \$20 a week.

Q. That was to buy the property?

A. So much to buy the property, \$13 a week to 20 pay on the side and get \$100 together and the rest of the money, when I say I no ask her give me money, going to buy some stuff to eat and buy the food together.

Q. How long did you give her the \$20 a week?

A. I give it to her to the date she told me, second week in May she told me, "Dan, I got \$100 together now, going to give back to my brother, and you can start to buy some clothes, you and your wife."

Q. That is the reason why you stopped giving 30 her \$20 a week?

A. No, I didn't give no more after that.

Q. After that did you eat by yourself and buy your own food?

A. We eat together about two weeks longer. We still eat together two weeks after I stopped giving money and not buy the food together and eat to-

gether, and after we had a little scrap on account of the children.

Q. So on May 19th she told you she had enough money to pay the \$100?

A. Yes, sir.

Q. And you saved money to buy your clothes?

A. Save money to buy myself clothes.

Q. Do you know the hundred dollars wasn't paid, read the note dated May 19th, 1920, more than one
10 year after the time you stopped, payable three months after date, \$100.

A. She told me she had the money to go to pay back the note. I don't know if she did pay or not, or whether she did get the money herself, because I didn't go up over there to pay the note myself, the note wasn't in my name.

Q. Did you have any quarrel with your mother-in-law, you said you didn't get along?

A. Yes, didn't get along.

20 Q. Wasn't that the reason you stopped paying any money to her?

A. No, it was two weeks after I stopped paying her money, of course she told me she had enough, \$100 to pay that money back.

Q. How long after May 14th did you stay in the house?

A. We stay over there until August, around the middle of August.

Q. During that time who paid the building and
30 loan?

A. We paid half each.

Q. To whom did you give the money to pay the building and loan?

A. What? I went and pay.

Q. You went to the building and loan to pay?

A. Yes, I went and pay myself, my wife give the money was going to pay the building and loan.

Q. You went personally, or did you send your wife?

A. I went myself.

Q. What building and loan is it?

A. It is Third and Arch, Mr. Bartell office.

Q. Then you paid building and loan for June, July and August?

A. Yes, only pay every month.

Q. How many months did you pay building and loan? 10

A. Well, we pay while we was live together.

Q. After May the 14th?

A. No, before.

Q. Before May 14th did you pay four dollars, too?

A. Yes, I paid.

Q. You paid four dollars per month?

A. We paid everything together.

Q. Where did you get the money from?

A. The money that was to give her to save, I 20
say get so much money out for the building and loan, this was coming from my money.

Q. Then, out of the \$20 your board was to be paid?

A. Yes, sir.

Q. The building and loan was to be paid?

A. Everything, all the expenses.

Q. How about your wife's board?

A. My wife giving money, too.

Q. Your wife gave?

A. Gave her mother money. 30

Q. How much?

A. Ten or twelve dollars every week.

Q. Why didn't you claim that?

A. What is to say claiming, used to help each other.

Q. You made this statement, didn't you?

A. I make my own statement, no, my wife statement, I don't claim my wife's money.

Q. You made this statement?

A. Yes, sir.

Q. And you didn't include anything for your wife here, did you?

A. No.

Q. When you made this statement, why didn't you deduct your board?

10 A. I told Mr. Reed to deduct the board, seventeen weeks' board.

Q. You told Mr. Reed that?

A. Yes, I told him and I guess he forgot himself, he didn't understand.

Q. Did your mother-in-law say to you when you made a demand for money, "What about the money that you owe me for board?" Didn't she say that to you?

20 A. No, she didn't say about the money because told afterwards ready to take that money for board from seventeen weeks.

Q. Did she say, "If you want any money, you should pay me eight weeks' board until March 19th, 1919, and ten dollars a week, \$80?" Did Mr. Reed show you this statement here, read it and see.

A. No, I told Mr. Reed to take the board off.

Q. Did Mr. Reed —

A. She just read to me, she read them off to me, that statement.

30 Q. He read it off to you?

A. Yes.

Q. He said that there was \$80 board from January 22nd, 1919, to March 19th, 1919, and then from March 19th, 1919, for you and your wife \$15, \$120, and then she claimed three months' rent of rooms, \$45?

A. My own home.

- Q. Your own home?
- A. Yes.
- Q. And then she claimed board, one summer, for the child?
- A. That is all right.
- Q. Mr. Reed presented you with these figures, \$305?
- A. Yes.
- Q. What did you say to that?
- A. I said she is wrong. 10
- Q. What did you say, by the way, to Mr. Reed?
- A. I said she is wrong about that board, that is all.
- Q. Did you say, "I will sign the deed if she pays me the money?"
- A. I said Doug Reed, I said, "Long as she gives me what belong to me, gives the money I put in my home, I give my wife wedding present, I want to give to my wife, long as she give what belong to me, I sign the deed for her. I don't agree if didn't give her money back." 20
- Q. Isn't it true that you moved away from the property without saying anything to anybody?
- A. I moved away from the property because it was, I never was son to Mrs. Bertolino, and I move away.
- Q. Isn't it true while she was away working you moved away?
- A. No, because I was working in the night work at that time and I do things where we move today and I went to find a room and told my wife to follow me. 30
- Q. From there you moved to Philadelphia?
- A. Yes, sir.
- Q. And that was August the 15th, 1919?
- A. Yes, around that time.
- Q. That is more than ten years ago?

A. Yes, sir.

Q. What have you done towards the upkeep of this property, yourself, I mean? Have you done anything at all?

A. Yes, sir.

Q. What?

A. I hand the property, me and my wife, 1924, 1925, and I spent about \$300 to fix.

Q. About what?

10 A. \$300, I put the property all the way through inside, paint, paper, put new tile, new step and everything.

Q. What year was that?

A. 1924, 1925, I handled the property.

Q. Did you tell your lawyer that before?

A. What?

Q. Did you tell Mr. Reeves about that?

A. Mr. Reeves?

Q. Yes.

20 A. I don't remember.

Q. You don't remember telling him?

A. No.

Q. Why didn't you include that money in this statement you spent?

A. I didn't include it because we tried to do some good for my mother-in-law because my wife's mother.

30 Q. Isn't it true, Demario, that since you moved away from that property you haven't turned one finger either in the payment of taxes or building and loan, insurance or anything at all?

A. No, it isn't true.

Q. Your mother-in-law has been acting as if she owned the property, didn't she?

A. Yes.

Q. Collected the rent?

A. Collected the rent because my wife, she want let her do it because that is her mother.

Q. Do you remember receiving notice from a real estate man in Camden that your mother-in-law wanted the property back?

A. Yes, sir.

Q. What did you say to that real estate man?

A. I said to that real estate man, "You tell Mrs. Bertolino long as she give me my \$250 back with interest on, I will sign the deed because I don't want 10 the wedding present she give to her daughter."

Q. When was that?

A. That was 1926, I think.

Q. 1926?

A. Yes, sir.

Q. It was right after your mother-in-law secured the divorce, wasn't it?

A. Well, it was about, my mother-in-law went to get the trial for divorce in April, it was about ten months after she went to have divorce which she 20 wrote me the letter.

Q. Now, do you know whether she wanted divorce papers; you don't know that, do you?

A. She told me she wanted divorce papers, I think 1925 or 1926.

Mr. Tusó: If the Court please, in paragraph six I allege the petition was filed September 5th, 1925.

The Court: That is not proof unless it is ad- 30 mitted in the pleadings.

Mr. Tusó: It is admitted in the pleading.

The Court: It is in the pleading, not admitted. Is it admitted in the answer?

Mr. Tusio: Yes, with that statement in paragraph six concerning the divorce to be true.

Q. Anyway, it was in 1926 that this real estate man wrote you this letter?

A. Yes, sir.

Q. Now, when you sent a letter back to the real estate man, and you asked \$250, why didn't you put in the \$300 that you had spent for repairs in 1924 and 1925?

A. I didn't put that money because my wife at that time was working and she handed me the money to help the home, and I figured out good for her mother.

Q. Do you remember one time when you all met at your grandfather's house, that is Mrs. Bertolino's father, de Lazzero, in Minatola?

A. Yes, sir.

Q. Do you remember Fred asking you to give the deed back to your mother-in-law?

A. Nobody ever told me anything.

Q. Nobody ever asked you?

A. No.

Q. Is it true that you at that time wanted \$200?

A. I never said no \$200 business, my business to nobody.

Q. Only to the real estate man?

A. Only the real estate man when he come to me and I told him I give the figure to take the part out, I said that is the part I give, pay me my \$250 with the interest on, I say I will give the property back, if don't, if she want her money back with the interest, I give it to her when I pay.

Q. Assuming that you spent some money for the repair of the house in 1924 and 1925, since that time have you done anything toward the expenses of the property?

A. At that time my wife let her mother take care again, because her mother came back in the city.

Q. Answer the question, have you done anything?

A. Not after 1925.

Q. Now, truly, then, did you ever consider this property yours, didn't you always treat it as your mother-in-law's property?

A. No, I consider that property.

Q. And you only wanted some money back?

A. I consider that property belong to my wife, 10 wedding present.

Q. But you did nothing for four or five years toward the property?

A. No.

Q. Let's see, January 22nd, 1929; February 5th, February 12th, 19th, 26th, March 5th, March 12th, that was the last payment, eight times \$13 you contributed toward the purchasing of this property, is that right, before marriage?

20

The Court: The testimony was seven weeks.

Q. That is \$91 and \$60?

A. \$60, yes, sir.

Q. Did your mother-in-law regard you as a member of the family, and didn't you all eat together, and everything was peaceable and pleasant?

A. Yes.

Q. Until there was a quarrel, is that right?

A. Yes, sir.

30

Q. And whatever you did for her, you didn't take any account of, whatever she did for you, she didn't give account of?

A. We all try to help each other.

Q. Isn't that true?

A. Yes, sir.

Q. So much so that you sent your child for the entire summer to your mother-in-law's house, didn't you?

A. Yes, because my mother-in-law take the child away because in 1923 I keep her in my home and she didn't have no place to go for six months, and I charge only \$5 a week, and my mother-in-law tried to pay me back in the other way, you see that is why she keep my child all summer long.

10 Q. And so you each were doing things for the other?

A. Yes. Do a favor for the other.

Q. Then, when the quarrel arose, then you wanted some money back and then she wanted —

A. No, I never claimed money back, only I told her the home belongs to her daughter for wedding present, and got to be that way.

Q. Did you ever procure a tenant for that house?

20 A. Yes, I have a man in the real estate man put the tenant for me for two years.

Q. For how long?

A. Real estate man, I have put him in the real estate, you know, Mr. Bartell office.

Q. When, when you left?

A. No, 1924 and 1925.

Q. Did Bartell rent the property for you?

A. Yes, one man over there, Mr. Verd.

Q. Did you collect the rent?

30 A. I collect the rent, you know, and my wife, the money remain out of building and loan, my wife hand to her mother.

Q. So the money went to your mother?

A. Yes, to try to help her along all the time.

Q. What is that?

A. To try to help my mother-in-law along all the time.

Q. The first time she asked you for the property was in 1926, is that right?

A. Yes.

Q. Until then she never asked you for it, did she?

A. She asked me last year in July, year ago, in July.

Q. Yes, after that she asked you many times, is that right?

A. Only once last year came to my place and ask you, say what you going to do about that, and I told her you got a letter from Mr. Bartell, what I told Mr. Bartell that is what going to be. I said, "Didn't Mr. Bartell tell you I want \$250 and interest?" I say to her, "If you don't want to give me money back with interest, I give you?" She say, "No, I don't want it." I say, "What do you want to do, ain't all yours?" And she got mad and went away.

Q. You said to her, "You either give me money or I will give you your money?"

A. Yes.

Q. How much money were you going to give her?

A. I was going to give her \$175 with interest, ten years' interest back.

Q. That is all she has in the property?

A. That is all and no more.

Q. What is the matter with this hundred dollars, she paid that, didn't she?

A. She paid that with my money, hundred dollars.

Q. Oh, you are claiming it?

A. She paid \$100 back from my money, where I was working after the property owned.

Q. Do you know how much money she had in bank at the time the property was bought?

A. What? She had probably about a hundred and ninety, something like that.

Q. She said a hundred and ninety-three.

A. And she put only a hundred and seventy-five on the property.

Q. Do you know about the \$80 that she had received from her husband?

A. No, she didn't receive no money from her husband. She used to get no alimony from her husband after she move from Camden, she got four months' alimony, I think, \$30, \$60 check.

10 Q. Before you moved to Camden, she didn't have no money?

A. No, she didn't show me no check \$80 at all, she only told me the money she have in the bank.

By Mr. Reeves:

Q. What was the occasion of your paying the taxes and the building and loan during 1924 and 1925?

20 A. Well, while I was handling that property all at once I seen the sign on the home for sheriff's sale, and I went to find out and it was 1919 tax Mrs. Bertolino she didn't pay, you see the year we moved in the home, nobody got that bill to pay the taxes, and I went and pay 1919 tax, was about seven, six or seven dollar fine, I think.

Q. Do you know your wife's signature?

A. Yes, sir.

Q. Will you tell me whose signature that is?

A. That is my wife's.

30 Q. Have you seen this check before?

A. Yes, sir.

Q. What is this check?

A. That is the check for to pay the taxes.

Q. Taxes for 1919?

A. 1919 tax.

Q. Did you pay that tax?

A. My wife went to pay herself.

Q. Do you know whether this is the check that she used to pay it?

A. That is the check, because we have something to lend our money to pay the check.

(Check offered, received in evidence and marked Exhibit D1.)

Mr. Reeves: Bearing the endorsement of Anna 10
Demario and endorsement of the City of Camden.

ANNA B. DEMARIO, SWORN.

Direct examination.

By Mr. Reeves:

20

Q. You are the daughter of Mrs. Bertolino?

A. Yes, sir.

Q. You were living with your mother before your wedding?

A. I did, yes.

Q. How did you and your mother get along at that time?

A. We got along very well.

Q. You were working?

A. I was working, never missed working. 30

Q. What did you do with your money before you were married?

A. I always gave it to my mother.

Q. How much were you making?

A. I was piece work and always made different wages.

- Q. What would they average?
A. Before I was married or afterward?
Q. Before you were married.
A. Well, I made as high as thirty in tin can.
Q. \$30 a week?
A. \$30 a week.
Q. Do you remember when Mr. Demario came to live in your mother's home?
A. I do.
- 10 Q. Do you know what arrangement was made as to whether he should pay board?
A. Well, the arrangements were that he should pay, he said he pay \$7, he said, "I will pay five, I can get board anywhere else for five, but I will give you seven just to help you along.
Q. What did your mother say?
A. She agreed to it.
Q. Where was your husband working?
A. He was working at the blacksmith's, helper.
- 20 Q. How soon did he get work after he came back from the army?
A. The very same week he came home.
Q. You had known him before he went in the army?
A. I did.
Q. Do you know whether he had regular employment after he came home from the army?
A. He had regular employment.
Q. Did he lose any time?
A. No.
- 30 Q. Do you know how much he made?
A. He made \$22 steady.
Q. Do you know how much he paid to your mother?
A. He gave her his week's wages.
Q. Do you know how much?
A. Well, he gave her \$20 and he kept \$2 and odd

change for himself for something, and many a time he walked to work to save carfare.

Q. Did you know of any arrangement between your mother and Mr. Demario as to what would be done with the balance over the \$7 board?

A. It was to go for our wedding.

Q. How soon after that was it that those plans were changed?

A. Well, they kept up until maybe two or three weeks, something like that. 10

Q. How were those plans changed?

A. They were changed, he says why, instead of saving the money —

Q. Who said this?

A. My mother says instead of spending the money for a wedding, why not put it on a home, and she says the little I have and what you have we will put on a home and we will make it as a wedding present.

Q. To whom? 20

A. To me.

Q. Do you know whether Mr. Demario agreed to that?

A. Yes, he agreed to it, he thought it was a very good plan.

Q. Do you know whether he made the payments as he agreed to do of \$20 per week?

A. Yes, he kept on giving money right up.

Q. How long did he continue those payments?

A. He continued until middle of May. 30

Q. Do you know of any week that he failed to pay her?

A. No, I don't.

Q. Do you know whether he paid her every week?

A. Yes.

Q. Were you employed at the time you were married?

A. I was employed.

Q. How much time did you take off at the time of the wedding?

A. I kept right on working.

Q. Took off part of the day, you mean?

A. Just that day and went back the following day.

Q. After you were married, how much were you making?

10 A. I was making ten, and when I quit there, shoe factory, where I was making ten dollars a week, I went to work the tin can place where I made as high as \$16.

Q. How much time was there between those two jobs that you were out of a job?

A. Well, no more than a week.

Q. What did you do with the ten dollars or \$16 that you were making after you were married?

20 A. They went the very same place my husband's money went.

Q. Where was that?

A. My mother handled it.

Q. How long did you continue paying it to your mother?

A. Until the middle of May, of course I quit work before that.

Q. How soon—how much before that did you quit work?

30 A. I quit work just about the end of May, I quit work the end of May of this year to stay home a while, but of course we were not giving the money up any more then.

Q. When did you start giving the money to your mother?

A. I kept on giving my money to her.

Q. You kept on?

A. Yes.

Q. Until the end of May?

A. No, until the middle of May.

Q. Did your mother ever say to you that you were to give the property back to her?

A. No.

Q. What was your understanding of the reason that property was put in your name?

A. The property was put in my name for a wedding present, and it was never understood any different.

10

Q. Your husband and his mother-in-law did not get along very well, he says?

A. No, not after we were married.

Q. How did you and your mother get along after you were married?

A. I got along all right.

Q. Why was it if the property was yours that you were willing that your mother should come and live with you when you moved into it after you were married?

20

A. Because it was my mother and I, and if I could trust my mother I could trust anyone else.

Q. What was the arrangement as to who should pay the expenses of the table while you were living together?

A. What?

Q. Who paid for the food and so forth while you were living together?

A. We handed our money over to her. Of course, she took care of that part.

30

Q. Who paid the building and loan while you were living together?

A. That all came out of the same money.

Q. How was it that you came to leave the property and move to Philadelphia?

A. Why, my husband and my mother weren't getting along very well, what I said, well, before any

further trouble goes on, get quarrels, that we might as well move out and go for ourselves.

Q. When did you move?

A. In August.

Q. Of 1919?

A. Yes.

Q. What arrangement, if any, did you make with your mother as to who should remain in the property?

10 A. Arrangements were made when the property was bought as a promise that if, I was expecting to stay there no more than five or six months, which I told her, and after five or six months I wanted to go back to the city because I didn't like Camden.

Q. What was this arrangement that you made with your mother that you should move out in five or six months?

A. She should stay there long as she wanted to, as long as she pay the building and loan and taxes.

20 Q. How about repairs?

A. She was supposed to do everything.

Q. What arrangement was made if she wanted to move out?

A. The arrangements were made that she could rent it, as long as she pay the building and loan and taxes everything would be all right, because I trust her.

30 Q. What about the balance of the rent which might be left after she paid the building and loan, taxes, and so forth?

A. She should keep it.

Q. Why did you make that arrangement with her?

A. Because it was my mother.

Q. Did she collect the rent all of the time?

A. She collect the rent.

Q. How about the years 1924 and 1925, who collected the rent then?

A. She was in Jersey and we took care of the place during that time.

Q. She moved out of Camden, you mean?

A. She moved out of Philadelphia and went to Vineland.

Q. Who paid the building and loan, taxes and so forth while you were collecting the rent?

A. I paid it all out of the rent, and what was left I sent back to my mother.

Q. Did you ever agree to sign a deed to give the 10 property back to your mother?

A. I did not.

Q. Did your husband and you agree as to what you should do with the property in letting your mother have the use of it?

A. It was always mine —

Mr. Tuso: I object to it.

The Court: Sustain the objection.

20

Cross-examination.

By Mr. Tuso:

Q. Now, Anna, you have always felt good towards your mother, haven't you?

A. I did.

Q. You feel now good towards your mother, don't you? 30

A. I do.

Q. She raised a large family, didn't she?

A. She did.

Q. During this time when the property was purchased, it is true that your mother was not living with your father?

A. Yes, it is true.

Q. And isn't it true that the property was bought in your name so that she would not have to have your father's signature?

A. No, it is not true.

Q. When was your baby born?

A. My baby was born the 27th of December, 1919.

Q. 1919?

A. 1919.

10 Q. Did you ever go to Bartell's office in Camden with your mother before your baby was born?

A. I did not.

Q. What?

A. I did not.

Q. Didn't you say to your mother, "Mother, I want to give you that deed back," and didn't you and your mother go to Bartell's office in Camden, and you tried to sign a deed and Mr. Bartell said, "No, you cannot do that unless your husband signs,

20 too?"

A. I did not.

Q. You have always been ready and willing to convey this property, but your husband would not let you do it, isn't that true?

A. Why should I? When I —

The Court: That is not the question.

(Question repeated.)

30

A. Convey the property back? No, I was not.

Q. And you deny that you went to Mr. Bartell, or whatever his name is?

A. I didn't go.

Q. During what time did you take care of this property, was it 1924 or 1925?

A. While she was in the country two years, a little over two years, I wouldn't tell you the exact, no use of my trying to tell you when, I can't tell you exact.

Q. During that time you were all friends?

A. We were all friends, yes.

Q. Was this the time when a lot of repairs were made in the house?

A. Yes.

Q. Didn't your mother pay the money for those 10 repairs?

A. Not that I know of.

Q. What?

A. Not that I know of.

Q. Not that you know of?

A. No.

Q. Didn't your mother pay you and your husband for all the repairs that you did in that house in 1924?

A. I said not that I know of.

20

Q. Who paid for them?

A. We were buying paint and doing everything, my husband and I were working in the home together.

Q. How much money did you spend for those repairs?

A. I couldn't tell you the exact, my husband always took care of bills.

Q. Was it as much as \$300?

A. I couldn't tell you exactly.

30

Q. When your mother was living here in the country, you made a visit and you told her that the property was up for sale, didn't you?

A. Yes.

Q. For taxes?

A. Yes.

Q. And you told her that you paid the taxes?

A. I paid the taxes? I don't understand what you mean by that.

(Question repeated.)

A. You mean for that year?

Q. Yes, you told your mother that you paid the taxes so that the property would not be sold?

10 A. Yes.

Q. And didn't she pay you in cash the money that you paid for taxes?

A. No.

Q. She didn't pay you for the taxes?

A. No.

Q. And she didn't pay you for the repairs, either?

A. Not that I know of. I answered that before.

20 Q. Why do you say, "Not that I know of," wouldn't you know? You know whether she paid you for those repairs or not, why don't you tell the Judge?

A. I said I didn't know.

Q. Have you seen this paper before anywhere?

A. I did.

Q. Do you see anything there for taxes or for repairs?

A. No.

30 Q. Anna, there are other children besides the first one that testified, Rose, what is her name?

A. Rose.

Q. What?

A. Rose.

Q. Rose what?

A. I don't know what she calls herself now, but her name was Rose Bertolino, at the time I knew her.

Q. What do you mean, she is married now?

A. She was married.

Q. She was married?

A. Yes, sir.

Q. Did your mother make her a present of a house?

A. No.

Q. Did your mother make a present of any house to any other children?

A. No. 10

The Court: Why should we waste time on that?

PETER GRAZIANO, SWORN.

Direct examination.

By Mr. Reeves: 20

Q. Mr. Graziano, where do you live?

A. 106 South Packard Street, Hammonton, New Jersey, at present.

Q. Where are you employed?

A. I am a hauling contractor, I work for myself.

Q. Do you know the parties in this case?

A. Sir?

Q. Do you know the parties in this case?

A. Yes, sir. 30

Q. Do you know Mrs. Bertolino?

A. Known her for about eighteen years, I guess, or nineteen.

Q. Do you know Mr. and Mrs. Demario?

A. Yes, sir.

Q. Did you know them before they were married?

A. Yes, sir. Well, I was introduced to Mr. Demario through Emily.

Q. Did you have occasion to visit at the home of Mrs. Bertolino prior to the wedding?

A. Yes, sir.

Q. How often would you visit there?

A. I go by there maybe once a week, once every two weeks, sometimes a couple of times a week.

Q. You were close friends, is that the idea?

10 A. Yes.

Q. Did you ever have a conversation with Mrs. Bertolino concerning this property in this case?

A. Well, a couple of weeks before they got married, when they asked me to be best man for them, it was discussed, Mrs. Bertolino told me —

Q. Who was present at that time?

A. Anna, Dan and myself and Mrs. Bertolino.

Q. Where was this conversation held?

20 A. This here was held on 10th Street in Philadelphia, 700 block, I couldn't tell you the exact address.

Q. Mrs. Bertolino's home?

A. That is where she was living at the present date.

Q. What was said?

A. That she was going to give her \$175 for wedding present, and instead of having a good time it would be better thing, she said it would be better thing, I said that would be a good idea.

30 Q. What would be a better thing?

A. Would be a better thing to buy a home with that \$175 instead of putting it out on a good time, and they told me, "What do you think?" I said, "That is a good idea."

Q. Did she say anything about Mr. Demario contributing to that home?

A. What do you mean?

Q. Did she say anything about her son-in-law paying anything toward that home?

A. Yes, well, he was supposed to pay some on it.

Q. How many times did you hear her make remarks to that effect?

A. Well —

Q. More than once?

A. That one night we talked specially on that one question.

Q. What happened, say, the next day? 10

A. Why, Dan, Anna and I went to Camden to look at the property.

Q. Did Mrs. Bertolino go with you?

A. I don't remember whether she did or not, but the three of us went, I am sure.

Q. Now, did you ever have a conversation with Mrs. Bertolino as to who should pay the building and loan on that house?

A. Why, that night she said that they would pay half apiece instead of her paying rent somewhere else they would live together and they would pay that building and loan half apiece. 20

Q. Who did she mean by they?

A. Her daughter and her son-in-law and herself.

Q. Was there any other occasion that you recall Mrs. Bertolino said something about the property?

A. No.

Q. Have you any interest in this case?

A. No.

30

Cross-examination.

By Mr. Tuso:

Q. Why not?

A. Sir?

Q. Why haven't you any interest in this case?

A. Why should I have any interest in it? I know the whole family and I don't live anywheres near them, so why should I be in their trouble? This is what I have heard of their trouble.

Q. Do you know when they were married?

A. Yes, sir, I was best man for them.

Q. Do you remember the year?

A. Yes. I think it was March the 24th, 1919.

10 Q. How many weeks before the wedding was it that you had this conversation?

A. About two weeks, well, in the second week, about ten days, that was, before they got married.

Q. Only ten days or so before they got married the conversation was had, is that right?

A. That is the only time I had anything to do with it, when I went there, when we made our arrangement I was to be their witness when they got married.

20 Q. Until only about a week before they got married did you ever hear of any buying of any property?

A. No, not until she said it that night.

Q. Was the price for which the property was to be bought mentioned?

A. Sir?

(Question repeated.)

30 A. It was around eleven hundred.

Q. Answer the question.

A. About \$1100.

Q. It was mentioned, then?

A. Yes.

Q. Was the building and loan, the amount of the building and loan mentioned, too?

A. No.

Q. They hadn't seen the property yet, had they?

A. I don't know whether they did, I went out and seen it when they mentioned it to me the next day.

Q. Did they know or did they say in your presence what the building and loan was to be?

A. No.

Q. How did they come to say paying the building and loan half each, then?

A. Well, saying paying the building and loan half 10 each isn't saying how much the building and loan is.

Q. Who said that, Mrs. Bertolino?

A. Mrs. Bertolino told me.

Q. Who was present at this time?

A. Why, her son-in-law, her daughter and I, in the kitchen.

Q. That is all you know about this thing?

A. That is all I know about it.

Q. Did you know that they had trouble afterward? 20

A. No, sir.

Q. You can't be mistaken about this conversation, can you?

A. No, I am not mistaken.

Q. Over ten years ago?

A. That is the time he got married.

Q. You never knew that they had any trouble at all until just now, a little while ago?

A. No, I never knew they had any trouble.

Q. Now, when did you first find out that they had 30 trouble?

A. This trouble here?

Q. Yes.

A. About this here case?

Q. Yes.

A. Why, this morning.

Q. Not until this morning?

A. No, I was asked to come to this case, that is why I came.

Q. Did you ever talk with Damario or his wife about the property, about this conversation in March, 1919?

A. No.

Q. Never said a word?

10 A. No, never mentioned it to me, in fact, I don't bother with anybody else's business.

Q. Not even did they speak to you about it this morning in court, did they?

A. This morning in court, and they told me they had trouble with the property, that was all, and I want you as a witness, and I came.

Q. Did they tell you what you wanted to be a witness for?

A. No, I wasn't approached of anything.

20 Q. You didn't even talk to Mr. Reeves about it?

A. No, sir, didn't pay no attention to none of them, I didn't know nothing about it until now.

Q. How did Mr. Reeves know about this conversation, you never told anybody?

A. No, I never told anybody about it.

Q. And you never told Damario about it?

A. No, I never told him nothing about it.

Q. Or his wife?

30 A. No.

Q. You never told anybody?

A. No.

Q. Yet Mr. Reeves knew what to ask you about? Is that right?

A. What do I know what they have told him?

Q. That is all.

By Mr. Reeves:

Q. Mr. Graziano, did you know Damario at the time before he was married, as to whether he was working?

A. Why, at the time he was working down there at the foot of Synder Avenue, Delaware, somewheres in that neighborhood.

Q. Can you say as to whether he had steady employment? 10

A. Yes, he worked steady because I have seen him quite often, in fact, he used to come over to my house, I only lived a few blocks away from him at that time, you see, I used to live at 11th and Chelten, and they lived down 10th Street.

Q. Did I tell you what to testify in this case?

Mr. Tuso: No, that is not you, Mr. Reeves.

A. Not a word. 20

By Mr. Tuso:

Q. You say you have no interest in this case?

A. No, I have not.

Q. But you do admit that you were the best man for Damario?

A. Yes, sure.

Q. And you have been friends ever since?

A. Certainly. Why should I go against —— 30

The Court: Never mind.

DEFENDANT RESTS.

MRS. ELIZABETH BERTOLINO, recalled.

Direct examination.

By Mr. Tusso:

Q. Your son-in-law testified that he spent something like \$300 or more for repairs on this house, and that he paid the money for it himself. What have you to say about that?

A. They always came to me, Mr. Tusso, when they had done any repairing, and I paid them the money.

Q. Paid them the money?

A. Yes.

Q. Your son-in-law, as well as your daughter, testified that with the proceeds of this check they paid the taxes for 191 . What have you to say about that?

20 A. Well, when we bought the house they didn't give us the tax bill, so that place was going on sheriff's sale, and all at once they showed up down there and says, "What do you think, Mother, the place is going on sheriff's sale the first taxes, we bought the place in," I says, "All right, I will give you the money, when you go up you pay for it before the day comes in for sheriff's sale," so that is what they done.

Q. And you gave her the money?

30 A. I gave her the money, I lived down to my father's at the time.

Q. Your father lived where?

A. Landisville.

Q. Did you ever have any conversation with Graziano such as he has testified to?

A. Never that I can recollect of.

Q. Wouldn't you recollect if you had any such conversation?

A. I think I would. We never had any conversation of that kind, never did.

Q. After you had trouble with your son-in-law, did you go to your brother Joseph?

A. I did.

Q. What did you say to him?

A. I says, "Just think what they have done to me, they turned around and moved out without saying a word," and I was crying, and there was either two months or three months building and loan to be paid, and water rent to be paid, and \$100 to be paid at the Trust Company in Vineland, so he turned around and says, "Well, that is what you deserve, if you had put the house under my name," he says, "that wouldn't happen." 10

Q. Well, did he ever ask you to put this house in his name before you bought it?

A. Because I didn't have no place to go, he is jealous of the boys, not that he is older than myself, but I always went to him for advice, I never trusted myself with strangers, so he says to me, "Well, I can't help you now." 20

Q. Did you go to him for advice before you bought this house?

A. Yes, I was there.

Q. What did you say to him?

A. He says, "You are making a mistake to put it in Anna's name." 30

Q. What did you say?

A. I said, "Well, by heavens, if you can't trust your own child, who are you going to trust?" I said, "She is my own child."

Q. Did you ask him after you secured your di-

voiced to try to get your daughter to give a deed to the property?

A. I didn't go to him, Mr. Tuso.

Q. Didn't go to him?

A. No. We wasn't on good terms.

Q. No?

A. No.

Q. How long since you have not spoken to Joseph or Joseph has not spoken to you?

10 A. Well, since my third brother's father-in-law died.

Q. That doesn't tell me.

A. We met around there, but not that I went to his home. I haven't been to my brother's home for the last eight years.

Cross-examination.

20 By Mr. Reeves:

Q. Why is it you and your brother Joseph do not get along?

The Court: I don't think I am interested in that, not going to decide who is right or wrong on their quarrels.

30 Q. Isn't it true that your brother Joseph told you that you ought to stand by your gift to your daughter and that he would not advise you to do anything else?

A. No, he never said a word, he just told me that that is what I deserved.

Q. Isn't it true that you did not like your brother because he wanted you to stand by your promise?

A. No.

Q. About this gift?

A. No.

Q. Is it true Mr. Graziano used to call at your home before the wedding?

A. Now and then as a friend, a family friend.

Q. He was a friend?

A. Family friend through his mother and father.

Q. Who had the repairs made that were spoken of in 1925?

A. I did.

10

Q. You had them made yourself?

A. Yes, sir.

Q. Who did you see about it?

A. We was on good terms then.

Q. Who were the contractors?

A. With my daughter, so I told them, I was down to my father's at the time, and I told them to see whatever was to be done, and whatever the money was I was willing to pay them back.

Q. Then you didn't have the repairs made, they did the actual work of having the repairs made?

20

A. I paid for the money.

Q. How much were those repairs?

A. Really I couldn't recollect, but there was papering done.

Q. Would they amount to \$300?

A. No, I think was about a little over \$100.

Q. Where did you get the money to pay those repairs?

A. I was working on the farm at the time.

30

Q. How much were you making?

A. I was farming on shares with my father.

Q. If Mr. Damario was going to let you keep the rent and you paid the taxes and repairs and so forth, it was your business to pay them in 1925 just the same as in any other year, wasn't it?

A. I think it was.

Q. So that it was right for you to pay Mrs. Damarzio back of she paid the money for the repairs in 1925, wouldn't it be?

A. I did pay them back.

Q. That is all.

TESTIMONY CLOSED.

10

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

20 Between
 ELIZABETH BERTOLINO,
Complainant,
 and
 ANNA BERTOLINO DA-
 MARIO, *et als.,*
Defendants. }
 On Bill, etc.
 On Final Hearing.
 Conclusions (oral).

30 (These conclusions are not to be printed or published in the official or unofficial reports.)

MR. THOMAS TUSO, for the complainant.
 MR. HUGH L. REEVES, for the defendants.

INGERSOLL, V. C.:

In 1929, Elizabeth Bertolino, who is the mother of the defendant, Anna Damario, was living separate and apart from her husband. At or about that date a deed was made from one, Thomas Baker, to Anna then Bertolino, the daughter, conveying the premises known as 223 Steven Street, in Camden, New Jersey. The consideration for that conveyance was \$1,100, which with the expenses amounted to \$1,225. The complainant says that she furnished all of this consideration money except the sum of \$800, which was paid by a mortgage given by the present defendant to a building and loan association for the amount. Complainant insists that this was not in the nature of a gift, but the conveyance was made because she was not living with her husband and that in case of a desire to sell, or mortgage, as was done thereafter, it would be necessary to have her husband join if the title was taken in her name, and that to avoid that difficulty, title was taken in her daughter. There is some testimony that the entire amount of this consideration, \$425, consideration and expenses, was not paid by the complainant, but that the defendant, Anna, together with her husband, paid some parts of it. The prayer is that the property shall be conveyed to the mother. 10 20

The rule in this State is well settled when a parent procures real estate to be conveyed to his or her child, the parent paying the consideration, a presumption arises that he or she intends to settle the property on the child, and while such presumption may be rebutted by circumstances precedent to the transaction or contemporaneous therewith so as to form part of the *res gestae*, but that it cannot be rebutted by circumstances other than admissions of the parties, subsequent thereto, and that the proof 30

offered to accomplish such rebuttal must be certain, definite, reliable and convincing, and leave no reasonable doubt of the intention of the parties.

10 The legal situation is, therefore, that this was a gift by the mother to the daughter of such amount of the consideration as she, the mother, advanced. Now, considering this case by the rule I have just stated, I am satisfied the complainant has not overcome this presumption and that she must, therefore, fail in this case. The presumption is that it was a gift, and I find that the parties do not overcome that presumption.

The result is that I will advise a decree dismissing the bill.

Determined: September 24th, 1929.

20 FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

Between

ELIZABETH BERTOLINO,
Complainant,

and

30 A N N A BERTOLINO DA-
MARIO and DANIEL DA-
MARIO,

Defendants.

} On Bill, etc.
Final Decree.

This case coming on to be heard before the Court in Chancery Chambers in the City of Atlantic City

in the presence of Thomas G. Tusso, of counsel with the complainant, and Edmund H. Reeves, of counsel with the defendants, and the Court having read the pleadings and having heard the testimony of the witnesses produced by the complainant and by the defendants and the arguments of the respective counsel having been heard and considered by the Court and the Court being satisfied that the complainant is not entitled to the relief sought and prayed for by her in her bill of complaint. It is on this second day of Oct., 1929, by 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. 10

Respectfully advised.

I consent to the making of the above decree.

THOMAS G. TUSO, 20
*Solicitor for and of counsel
with Complainant.*
EDMUND H. REEVES,
*Solicitor for and of counsel
with Defendants.*

[ENDORSEMENT]

Due and legal service of copy of within notice is hereby acknowledged this 19th day of October, 1929.

Edmund H. Reeves,
Solicitor for and of
Counsel with De-
fendants.

10

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS AND
APPEALS.

20

Between

ELIZABETH BERTOLINO,
Complainant,
and
ANNA DAMARIO and DAN-
IEL DAMARIO,
Defendants.

} On Bill, etc.
Petition of Appeal.

30

The petition of Elizabeth Bertolino, appellant in the above stated cause, respectfully shows, that your petitioner finds herself aggrieved by certain final decree advised by the Honorable Robert H. Inger-

soll, Vice-Chancellor and made by his Honor, the Chancellor, bearing date on the second day of October, 1929, and filed in the Court of Chancery on that date in these respects to wit:

That the said decree doth order, adjudge and decree that the complainant's bill be and the same is hereby dismissed with costs, whereas, his Honor, the Chancellor, should have ordered, adjudged and decreed that the complainant and defendant, Anna Bertolino Damario, did make an express agreement that the property described in the bill of complaint be conveyed to complainant or her nominee at any time after the conveyance to Anna Bertolino Damario by Thomas A. C. Baker, as alleged in said bill, because the consideration therefor was paid by complainant and defendant, Anna Bertolino Damario had no beneficial interest in the said lands and, therefore, his Honor, the Chancellor, should have ordered, adjudged and decreed that the said lands and premises be conveyed to complainant pursuant to the prayer in the said bill of complaint.

Your petitioner, therefore, prays that the said final decree may be in all respects reversed, set aside and for nothing holden and that your petitioner may have such relief in the premises as to this Honorable Court may seem meet.

Dated: Vineland, October 17, 1929.

30

THOMAS G. TUSO,

*Solicitor for and of Counsel
with Complainant-Appel-
lant.*

[ENDORSEMENT]

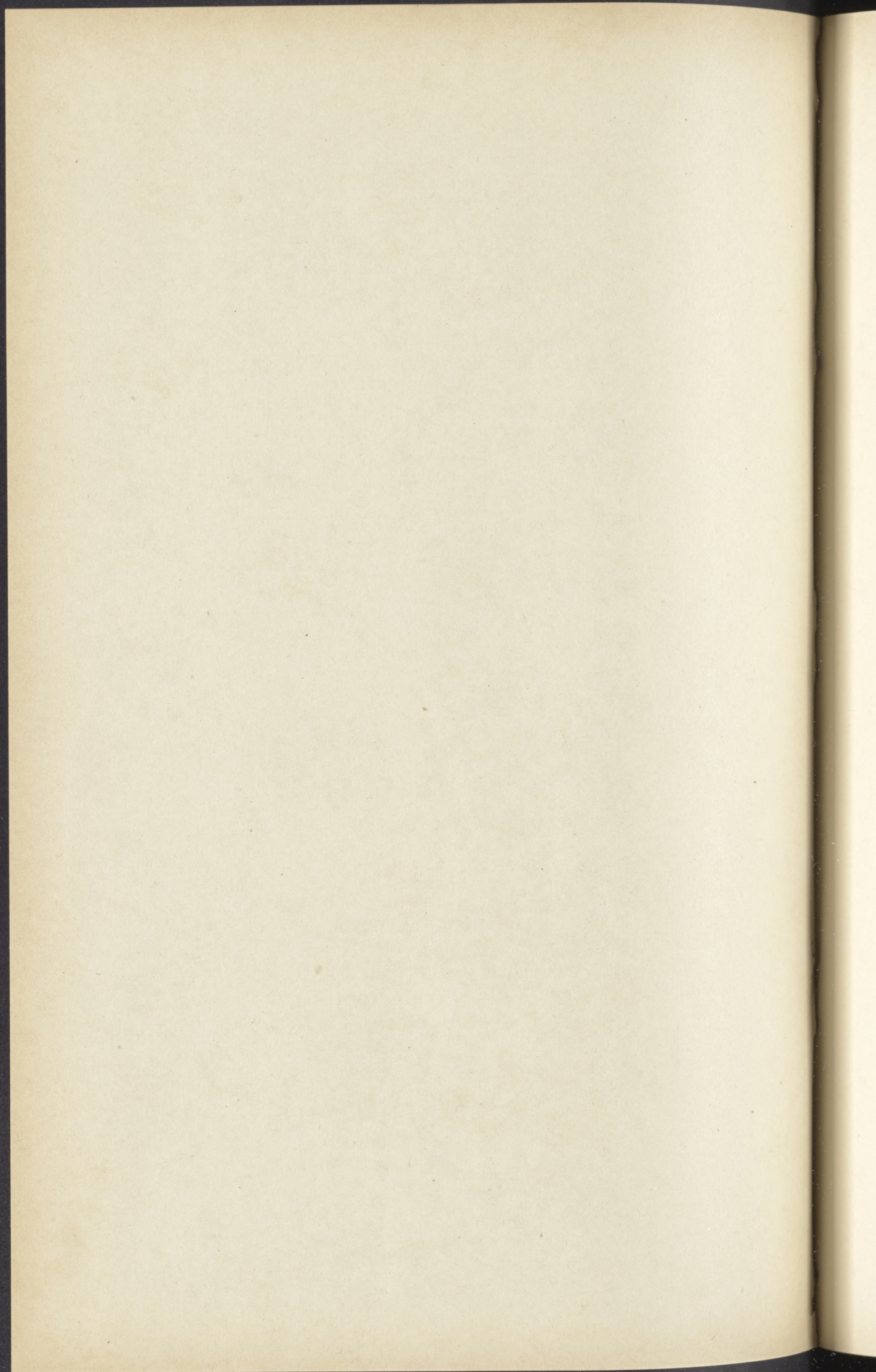
Due and legal service of the within petition of appeal on defendants-respondents, is hereby acknowledged this 19th day of October, 1929.

Edmund H. Reeves,
Solicitor of Defendants-
Respondents.

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20

30



NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

ELIZABETH BERTOLINO,
Complainant-Appellant,

and

ANNA BERTOLINO DAMARIO and DANIEL DAMARIO,
Defendants-Respondents.

ON BILL, &C.

ON APPEAL FROM FINAL DECREE.

BRIEF FOR COMPLAINANT-APPELLANT.

STATEMENT OF FACTS.

On March 17th, 1919, complainant was living separate and apart from her husband, Charles Bertolino. On that date, complainant purchased from one, Thomas A. C. Baker, the property described in the bill of complaint (Record 3), and she alleges that she placed the property in the name of her daughter, Anna Bertolino, afterward married to Daniel

Damario, for the sole purpose of placing the said property without the reach of Charles Bertolino, complainant's husband. Complainant claims that she made an agreement with her daughter, the defendant, Anna Damario, that just as soon as she, complainant, secured a divorce against her husband, the daughter, at the mother's request, would convey the property back. The property was purchased for eleven hundred (\$1100.00) dollars, and together with title fees, etc., its cost amounted to a little over twelve hundred (\$1200.00) dollars.

\$300.00 cash was paid on the date of purchase, one hundred and some dollars for expenses and \$800.00 was paid by a bond and mortgage to a certain building and loan, which mortgage has been fully paid by complainant.

Complainant secured her divorce in 1926, and having requested the re-conveyance of the said property from her daughter and husband to her, and because of their refusal, the bill was filed.

THE EVIDENCE.

About two weeks before the purchase of the property, the defendant, Daniel Damario, returned from military service with a \$60.00 bonus or check which he gave to complainant (Rec. 12).

Complainant had \$393.00 (Rec. 12). Defendant, Daniel Damario, after his return from service, commenced to board with complainant (Rec. 12). Marriage between Anna Bertolino Damario and Daniel Damario was then contemplated and the complainant said to her daughter, "You must room some place, we can live together, you save money on your

side and it would make it better for either side (Rec. 12).

“Q. Did she agree that the property should be placed in her name?

A. Yes, sir, on that reason that if I ever get a divorce or wanted to sell, the father was clean out of it and I wouldn't have the trouble to sell.

Q. Did you give her the property?

A. I guess not. If I only had her, maybe I would have done it, but she ain't the only child” (Rec. 13).

Later, another property was purchased by complainant and for the same reason, that is to say, to place the same without the reach of the husband until she secured her divorce, she purchased it in the name of one, Antonio Novarro (Rec. 13). As to the agreement made between complainant and her daughter, complainant is corroborated by another daughter, Rose B. Passer:

“Q. What did your mother say?

A. My mother said she would buy the property and put it into my sister's name so that my father wouldn't come into this property because mother and father were not living together, and if she wanted to sell, she would need for his signature and he wouldn't give it on account of them being separated, so she thought she would put it in my sister's name and then she wouldn't have no trouble” (Rec. 27).

“Q. What was it you say your mother said before the wedding to her daughter, about the property?

A. She said that she would put the property in her name so in case anything would happen she would want to sell the property, she could

sell it without my father's signature" (Rec. 30, line 10).

About two weeks after the purchase of the property, the complainant and her four or five children, as well as the defendants, went to Camden, from Philadelphia, to live at the property in question. Up until about the middle of May all the parties ate together and the defendants contributed toward the table. Complainant says that the defendants "boarded there and they only lived there a few months after they were married. They were in that house two months that they didn't say a word to me—just turned their back to me like this, worse than a stranger" (Record 15 and 16).

It appears that after May 15th, 1919, until August 15, the defendants lived in the premises but did their own cooking at their own expense and on August 15th, moved from the property to Philadelphia, abandoning everything and everybody (Record 14; 57, line 20; 79, line 35).

Complainant lived in the property until the following April, 1920, and then moved to No. 700 Clinton Avenue, Camden (Record 14). Complainant rented the property since that time, collected the rents, was and still is collecting the rents, paid all of the building and loan, insurance and taxes and made all repairs (Rec. 14). In this she is corroborated by her daughter, Rose B. Passer, and her son, Emil Bertolino (Record 35) and the defendants admit it (Rec. 57, line 22; 68, line 33; 72, line 30; 79, line 29; 80, line 30; and 81, line 8).

In September, 1926 (Rec. 4), complainant secured a divorce against her husband, whereupon, or soon thereafter she requested her daughter and husband, the defendants herein, to re-convey the property and complainant caused a Mr. Bartell (Rec. 15) to

write to defendants, and they, or one of them replied that there was \$250.00 coming to them and that upon the payment of that money, the deed would be executed (Rec. 15). When one, Antonio Novarra went to the defendants at the request of the complainant for the conveyance of the property, they demanded \$200.00 (Rec. 32). When Fred De Lazzero, a brother of the complainant, and uncle of defendants, was talking to the defendants about the property (Rec. 33, line 32; 34, line 13) the defendants demanded \$250.00 and another time \$400.00. When Douglas Reed went to the defendants with a deed, he presented a statement which was marked in evidence as Exhibit C3 (Rec. 37, line 30). The contents of which, however, did not appear in the case, but which were as follows:

January 22nd, 1919	\$20.00
January 29th, 1919	20.00
February 5th, 1919	20.00
February 12th, 1919	20.00
February 19th, 1919	20.00
February 26th, 1919	20.00
March 5th, 1919	20.00
March 12th, 1919	20.00
March 19th, 1919	20.00
March 21st, 1919	
(Government Bond)	60.00
March 26th, 1919	20.00
April 2nd, 1919	20.00
April 9th, 1919	20.00
April 16th, 1919	20.00
April 23rd, 1919	20.00
April 30th, 1919	20.00
May 7th, 1919	20.00
May 14th, 1919	20.00
Daniel Damarico	Total
	\$400.00

While I did not obtain the consent of my opponent, Mr. Reeves, in setting this forth, I am reasonably certain that he will agree that that was the statement and the defendant, Damario, said that he would sign the deed upon the receipt of the amount (Rec. 37, line 28). The defendant, Daniel Damario, himself, admits that he received a notice from a real estate man in Camden that his mother-in-law, the complainant, wanted the property back:

“Q. What did you say to that real estate man?”

A. I said to that real estate man, ‘You tell Mrs. Bertolino long as she give me my \$250.00 back, with interest on, I will sign the deed, because I don’t want the wedding present she give to her daughter’ ” (Record 69, line 7).

He also admits that when Mr. Douglas Reed went to him and asked him for the deed, he said:

“A. I said, long as she gives me what belongs to me—gives the money I put in my home, I give my wife wedding present, I want to give to my wife, long as she give what belong to me, I sign the deed for her. I don’t agree if didn’t give her money back” (Rec. 67, line 35).

And then again he said that his mother-in-law, the complainant, had asked him several times to convey the property to her and the first time was in 1926 (Rec. 73, line 1), and then again he claimed in 1928:

“A. Only once last year came to my place and ask you, say what you going to do about that, and I told her you got a letter from Mr. Bartell, what I told Mr. Bartell that is what going to be. I said, ‘Didn’t Mr. Bartell tell

you I want \$250.00 and interest?' I say to her, 'If you don't want to give me money back with interest, I give you?' She said, 'No, I don't want it.' I say, 'What do you want to do, ain't all yours?' And she got mad and went away.

Q. You said to her, 'You either give me money or I will give you your money'?

A. Yes.

Q. How much money were you going to give her?

A. I was going to give her \$175.00 with interest, ten years' interest back.'

The bill was filed and the defendants filed an answer setting up a gift made by the complainant to her daughter (Rec. 6).

THE LAW.

The writer is mindful of the law that where the parties are parent and child, the presumption is that the payment of the purchase money was a gift and this presumption must be overcome by proof in order to establish a resulting trust.

Hallenback v. Rogers, 57 Eq. 199.

Evidence held to warrant enforcement of trust under conveyance of land on trust to convey to purchaser on request of trustor.

Frank v. Pillsbury, et ux., 145 At. 725.

In this last-mentioned case, parents and children were also involved and the defense set up by the defendants was that the property was an absolute con-

veyance and that the agreement in that case was simply one for common enjoyment and that the defendants would not sell the bungalow during the parents' lifetime. Although there was nothing in writing, the Court in that case looked to the conduct of the parties following the making of the agreement for guidance in construing the contract between the parties.

ARGUMENT.

The defendants set up a gift from the complainant and they claim that the only gift complainant gave towards the purchase of the property was \$175.00 (Rec. 54). The truth of the matter is that Daniel Damario only had \$60.00 when he came back from the army (Rec. 12, 55), and that around the 22nd day of January, he paid \$20.00 per week to his mother-in-law, \$7.00 of which was for his board and \$13.00 towards the property (Rec. 55) and up to the time of the purchase of the property, according to his testimony, he had contributed \$91.00 and \$60.00 (Rec. 71, line 24), and from that time—that is March 17th, 1919, to the middle of May, up to which time they all ate together and the complainant paid for all the expenses of the table, as well as the renting of the house, he paid at the rate of \$13.00 per week for a further period of about seven or eight weeks when a quarrel ensued and while he continued to live in the premises until August 15th, he paid no more money to his mother-in-law. The complainant denies this and says that he did not give to her any more than \$10.00 per week while she was furnishing everything for him and his wife.

Defendants attempt to prove the gift by the testimony of one, Peter Graziano, who claims to have been present at a certain conversation in which the complainant said that she was going to give her daughter \$175.00 for a wedding present and instead of having a good time, it would be better thing, she said it would be better thing, I said that would be a good idea.

“Q. What would be a better thing?

A. It would be a better thing to buy a home with that \$175.00 instead of putting it out on a good time and they told me, ‘What do you think?’ I said, ‘That is a good idea’” (Rec. 86).

This witness was discovered ten years after the supposed conversation and he is not supposed to have talked with anybody about the case at all until the morning of the trial.

“Q. Now when did you first find out they had trouble?

A. This trouble here?

Q. Yes.

A. About this here case?

Q. Yes.

A. Why, this morning” (Rec. 89).

“Q. Did you ever talk with Damario or his wife about the property, about this conversation in March, 1919?

A. No.

Q. Never said a word?

A. No, never mentioned it to me. In fact I never bother with anybody else’s business.

Q. Not even did they speak to you about it this morning in court, did they?

A. This morning in court and they told me

they had trouble with the property, that was all, and I want you as a witness and I came" (Rec. 90, line 10, *et seque*—fully shows that he cannot be telling the truth).

Also they produced Joseph De Lazzero, brother of the complainant, and an uncle of the defendants, who claimed that he was complainant's advisor, who is supposed to have known about this gift and who claims that while the parties to this suit were all living together, because of the quarrel, complainant asked him to visit the Damarios and ask them to convey the property back.

"A. Why, the conversation was about the house the same as after, at the time the conversation came up, mostly was when she told me to visit them and ask them whether they wouldn't convey the property back to her, and that is the time, the reason she wanted this property conveyed back to her, because they couldn't get along together, I asked her about the money she owed them and she said, 'Well, I will pay that back to her'" (Rec. 42).

If it was true that he knew of the gift as he pretends he did, why did he say, "What about the money you owe to them?"

De Lazzero further claims that although he was requested to go to the defendants to make an effort to have the property conveyed by them to his sister he said:

"A. I didn't go to them. I asked her why does she want the property conveyed back to her when she has made a present to her daughter" (Rec. 47).

Another contradiction: For in the next breath he said that he did go to Damario and his wife and did try to induce them to convey the property (Rec. 48, line 10-25).

This advisor, who had not spoken to the complainant, his sister, for eight years (Rec. 94), and who did not speak to her even the morning of the trial in court (Rec. 43), when complainant was asking his aid in the difficulty in which she found herself only a few months after the marriage of her daughter, said, "Well, that is what you deserve. If you had put the house under my name, that wouldn't have happened" (Rec. 93).

The complainant not only denies in rebuttal that the defendants ever took care of the property but that when her daughter paid the taxes for 1919 by a check, because in the settlement the payment of taxes was overlooked and the property was listed for sale, I presume, by the tax collector, she paid the money back to them and her daughter was doing a few odds and ends in relationship to the property while complainant was living on her father's farm, in Landisville, New Jersey (Rec. 92).

She further states that at the time that this property was being purchased in the name of her daughter, she consulted Joseph De Lazzero and he was supposed to have said, "You are making a mistake in putting it in Anna's name" (Rec. 93, line 30).

Assuming, for the purpose of argument, that there is a serious dispute as to what the terms of the contract were and since there was nothing in writing and one may be uncertain as to what the terms of the contract actually were, because of the conflicting testimony, and let us say that it was an ambiguous contract, would we not naturally look to the con-

duct of the parties following the making of the contract for guidance as to what the terms really were?

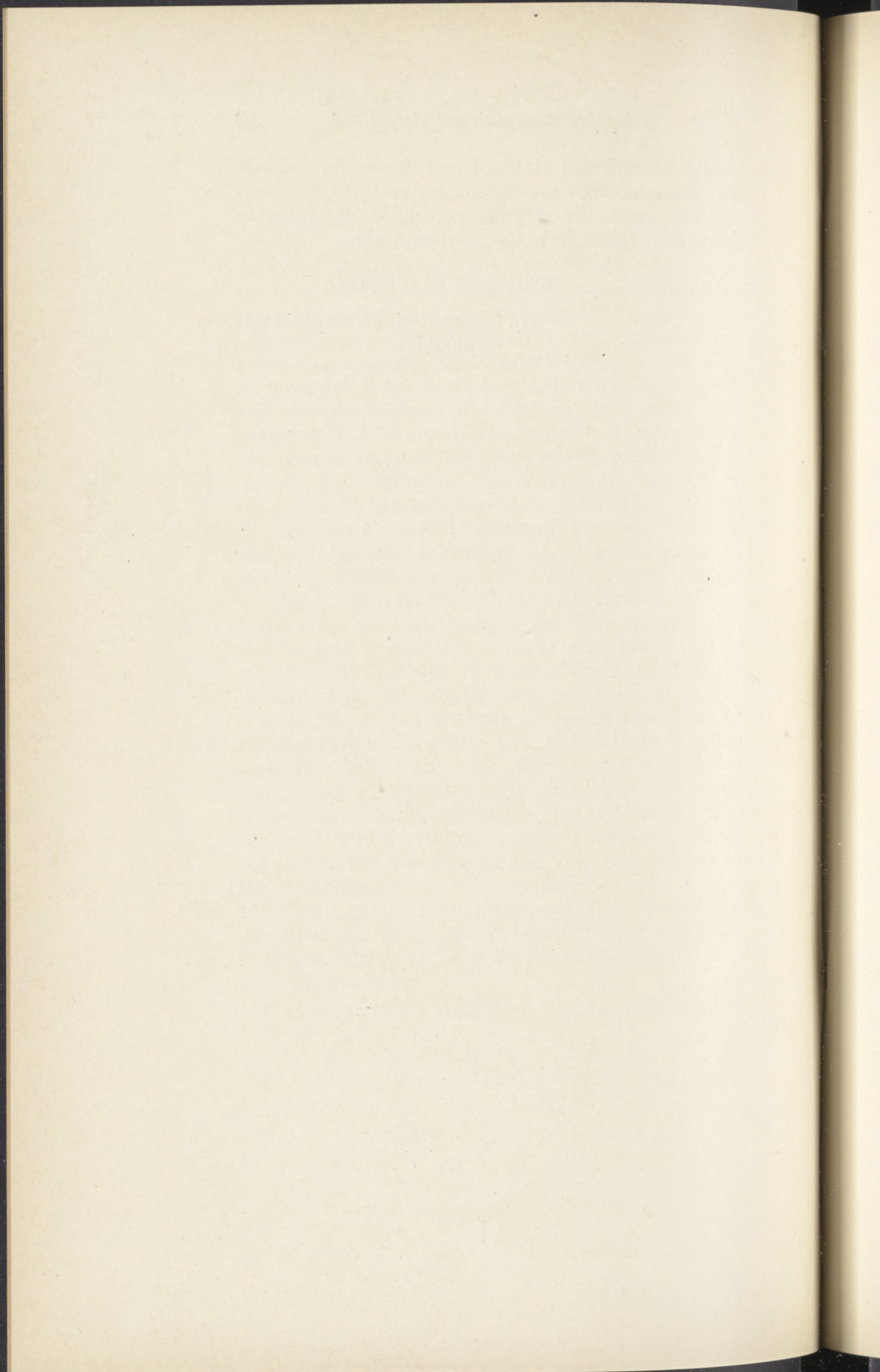
Complainant not only paid the purchase price but lived in the property, collected the rents after the property was rented, paid the building and loan, made all the repairs, remained in possession of the property and is still in possession of the property, collecting rents, and whenever her daughter did something towards the property, such as the payment of taxes for one year, which was overlooked, and making repairs in 1924 and 1925, while complainant was living at her father's farm and the defendants received all their money back, it is admitted that neither of the defendants has done a thing toward the property since 1925 (Rec. 71), and if defendants' story is believed, the only contribution towards the purchase of the property was seven weeks @ \$13.00 a week and a \$60.00 bond, making a total of \$151.00 (Rec. 71), and without any efforts at all on their part, it has been decreed that the property valued at a great deal more than it was in 1919, belongs to them. From 1919 to the present time, the complainant has been in possession of the property, made all repairs, paid all insurance, taxes and other liens, paid all the building and loan, and it has been decreed that she should lose all her efforts, her work and her money. Even if the Court should determine that primarily it was intended that a gift was made, it certainly should not mean after the quarrel and after the removal of the defendants from the property, to wit, August 15th, 1919, that the complainant should lose all that she spent on the property, together with all her labors and efforts to keep up the property and clear it of all the liens.

It is respectfully submitted that the decree below

should be reversed and a decree be made, compelling defendants to convey the property to the complainant or in the alternative, under the rules to grant such relief as is just and equitable.

THOMAS G. TUSO,

*Of Counsel with Complainant-
Appellant.*



NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

ELIZABETH BERTOLINO,
Complainant-Appellant,

and

ANNA BERTOLINO DAMARIO and DANIEL DAMARIO,
Defendants-Respondents.

ON BILL, &C.

ON APPEAL FROM THE COURT OF CHANCERY.

BRIEF FOR RESPONDENTS.

PRELIMINARY STATEMENT.

The statement of facts set forth in appellant's brief is substantially correct so far as it sets forth the allegations of the appellant. The respondents, however, claim that the property in question was purchased not by the appellant alone, but by the appellant and respondents together for the purpose

of making a wedding gift of it to the respondent, Anna Bertolino Damario, whose marriage occurred one week after the purchase (Case, page 79, lines 6-10, incl.); also that the mortgage, taxes and other carrying charges were not paid by the appellant, but by contributions from all the parties and during the greater part of the time out of the rent received from the property (Case, page 80, lines 1-36, incl.).

A very well balanced statement of the facts is given by the Vice-Chancellor in his conclusions (Conclusions, page 97, line 1-26, incl.).

ARGUMENT.

I.

A PRESUMPTION ARISES THAT THE CONVEYANCE WAS INTENDED TO BE A GIFT AND THAT NO RESULTING TRUST WILL ARISE UNLESS THAT PRESUMPTION BE OVERCOME BY PROOF.

In *Hallenback v. Rogers*, 57 N. J. Eq. 199, Vice-Chancellor Grey held that it is the well settled rule in this State that when a parent procures real estate to be conveyed to a child, the parent paying the consideration, a presumption arises that an advancement or settlement of the property on the child 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.

This opinion was unanimously affirmed by the Court of Errors in *Hallenback v. Rogers*, 58 N. J. Eq. 580.

The Court of Errors established the same doctrine in *Read v. Huff*, 40 N. J. Eq. 229, and in the same case further declared (page 234):

“The proof which shall raise a resulting trust, or rebut the presumption of a gift or settlement in the case of a child or wife, must be of facts antecedent to or contemporaneous with the purchase, or else immediately afterwards, so as to be, in fact, part of the same transaction; a resulting trust cannot be raised from matters arising *ex post facto*. 1 Lead. Cas. in Eq. 223; *Cutler v. Tuttle*, 4 C. E. Gr. 549. 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 case of *Frank v. Pillsbury, et ux.*, 145 Atl. 725, cited in the appellant's brief is not in point, and does not raise any issue involved in the case at bar.

II.

THE PRESUMPTION OF A GIFT HAS NOT BEEN OVERCOME.

The evidence produced by the complainant-appellant was not sufficient to overcome this presumption to the satisfaction of the Vice-Chancellor, who had the opportunity of listening to and observing the witnesses as they gave their testimony (Conclusions, page 98, lines 7-12, incl.).

There is but one issue, and that is whether the presumption of a gift by the parent to the child is overcome by the evidence. Much of the evidence is immaterial in that it deals with matters arising *ex post facto*, or is concerned with the relations existing between the appellant and the defendant, Daniel Damario and persons other than the daughter, Anna Bertolino Damario. None of the evidence offered in rebuttal of the presumption is certain, definite, reliable and convincing, and at best it leaves a reasonable doubt of the intention of the parties.

The appellant testified that she was present at the time of settlement when the purchase of the property was effected and knew that the deed was put in her daughter's name (Case, page 18, lines 9-12, incl.). Her testimony as to the agreement she alleges is far from certain.

“Q. You say there is no agreement in writing?”

A. No.

Q. And when you talked this over, you say she didn't say very much to you about it?

A. She didn't say much, no.

Q. She didn't say yes or no?

A. She seemed to be satisfactory. She just thought, well, it was right between mother and daughter” (Case, page 18, lines 19-27, incl.).

Testifying further concerning the alleged agreement appellant said:

“Q. What did you say to your daughter before you put this property in her name?”

A. Well, I says, ‘You must room some place, we can live together you save money on your side and it will make it better for either side.’

Q. What did your daughter say concerning the property?

A. Well, she seemed satisfied—she didn't—you know, didn't have much to say, things seemed satisfactory because if they weren't, she wouldn't, you know, move with me.

Q. Did you make any agreement with your daughter as to the property?

A. No, we didn't make no agreement.

Q. Did she agree that the property should be placed in her name?

A. Yes, sir, on that reason, that if I ever get a divorce or wanted to sell, the father was clean out of it, and I wouldn't have the trouble to sell.

Q. Did you give her the property?

A. I guess not. If I only had her, maybe I would have done it, but she ain't the only child'' (Case, pages 12, lines 30-36, incl., page 13, lines 1-15, incl.).

Again appellant testifies:

“Q. Who was present, Mrs. Bertolino, when you told your daughter, ‘I will put this property in your name?’

A. Well, it has been in the family, was only the children there, and Rose was the oldest of the rest.

Q. How old was she at the time?

A. She was twelve'' (Case, page 15, lines 22-28, incl.).

The appellant seeks to corroborate her testimony as to an agreement by the testimony of a younger daughter, Rose, who states that she was but twelve years of age when the conversation she alleges she

heard took place (Case, page 30, lines 16 and 17). Yet ten years later, when she gave her testimony, she asks the Court to believe that she heard and understood, while yet a child, the terms of an alleged agreement concerning the title to land. This witness further testified, when asked what the defendant daughter had to say in reply to the suggestion of her mother, "She didn't say anything. She just seemed willing" (Case, page 27, line 12). This witness, Rose Bertolino, is more than likely to have received her impression that such a conversation took place and what the meaning of it was, from talking with her mother, the appellant, in later years while she was reaching maturity (Case, page 30, lines 21-27, incl.), and naturally she would be prejudiced in favor of her mother.

None of the other witnesses produced by the appellant add any testimony whatever concerning the intention of the parent and daughter before and at the time of the purchase. The witness, Antonio Novello, admitted he spoke only with Daniel Damario about the property several years after the conveyance had been made, and that had reference only to terms on which Daniel Damario might be willing to sign a deed (Case, page 32, lines 7-10, incl). The witness, Fred De Lazzero is very indefinite as to any admission by the daughter. The testimony of the witness, Douglas Reed, establishes only that the respondents were unwilling to convey the property to the appellant and nothing in the nature of an admission.

On the other hand, the testimony of the witnesses produced by the respondents is clear cut and direct and establishes the basic fact that it was appellant's intention to settle the property upon her daughter as a wedding gift. Joseph De Lazzero, a brother of

the appellant, testified positively that the appellant had declared to him her intention of giving the property to her daughter as a wedding present (Case, page 39, lines 12-36, incl.). His testimony corroborates that of the respondents that the appellant and Daniel Damario before the marriage of the latter to the appellant's daughter, agreed to pool the money they each had planned for an expensive wedding and with it instead to purchase the property and give it to the daughter as a wedding present. Concerning one such conversation this witness had with the appellant preceding the purchase of the property the witness testified:

“Q. What was said?

A. Why, she says, we were speaking of the coming wedding and she said they didn't intend to give an elaborate wedding because cost too much money, but we intend to buy a home together and present it to my daughter for a wedding present.

Q. When she said to buy a home together, who else did she mean?

A. She meant this Mr. Damario and her daughter.

Q. Her son-in-law?

A. And her son-in-law and her daughter and herself.

Q. What else was said at that time?

A. Well, she always spoke about —

Q. Did she say how much money she was putting into it?

A. She said she was putting in \$175.

Q. Did she say how much her son-in-law was putting into it?

A. She said he was putting in a Liberty Bond and some money he had and then he was con-

tributing every week towards the home" (Case, page 39, lines 31-36, incl., page 40, lines 1-16, incl.).

That the wedding was in fact inexpensive was stated by the appellant (Case, page 19, line 5). Appellant admits that her son-in-law was claiming two months after the conveyance that his wife owned the property (Case, page 19, lines 7-12, incl.), and yet she waited ten years to bring this action.

The intention of the appellant preceding the conveyance is further directly testified to by Peter Graziano, a disinterested witness, to whom the appellant had stated in his presence, and in the presence of the respondents two weeks before the wedding and consequently a week before the purchase of the property, as follows:

"Q. Did you ever have a conversation with Mrs. Bertolino concerning this property in this case?

A. Well, a couple of weeks before they got married, when they asked me to be best man for them, it was discussed, Mrs. Bertolino told me—

Q. What was said?

A. That she was going to give her \$175 for wedding present, and instead of having a good time it would be better thing, she said it would be better thing, I said that would be a good idea.

Q. What would be a better thing?

A. Would be a better thing to buy a home with \$175 instead of putting it out on a good time, and they told me, 'What do you think?' I said, 'That is a good idea'" (Case, page 86, lines 11-15, incl., lines 25-34, incl.).

"Q. Now, did you ever have a conversation

with Mrs. Bertolino as to who should pay the building and loan on that house?

A. Why, that night she said that they would pay half apiece instead of her paying rent somewhere else they would live together and would pay that building and loan half apiece.

Q. Who did she mean by they?

A. Her daughter and her son-in-law and herself" (Case, page 87, lines 16-24, incl.).

Both the respondents, the daughter and her husband, were likewise as certain in their testimony concerning the intention of the parties. Speaking of the money contributed by the appellant and by the respondent, Daniel Damario, the respondent daughter testified:

"A. My mother says instead of spending the money for a wedding, why not put it on a home, and she says the little I have and what you have we will put on a home and we will make it as a wedding present.

Q. To whom?

A. To me" (Case, page 77, lines 15-21, incl.).

And again:

"Q. What was your understanding of the reason that property was put in your name?

A. The property was put in my name for a wedding present, and it was never understood any different" (Case, page 79, lines 6-10, incl.).

Daniel Damario, the respondent husband, testified that before his wedding the appellant had the following conversation with him:

"Q. What arrangement did you make as to

the \$13 a week after you started in to pay on the wedding?

A. Agreed after two weeks, well, Mrs. Bertolino came to me and she say, 'Dan, I got \$175 in the bank, and this money you give me every week and my money instead of having a good time on the wedding, we spend all on one day, I going to buy a home and put on my daughter name a wedding present,' and I consent to her, I say all right' '' (Case, page 53, lines 1-10, incl.).

Even the appellant's witness, Fred De Lazzero, knew of this arrangement before the purchase according to Damario in conversation with the appellant herself (Case, page 54, lines 25-37, incl., page 55, lines 1-4, incl.).

Together the testimony of the two respondents gives a clear story of what happened. The parties were living together before the wedding, they saved together for the home as a wedding present, and the appellant and her children continued to live with them for a time after the wedding and instead of paying rent the appellant contributed for a time to the carrying charges. The home was in Camden, N. J., and the respondent Damario's work was in Philadelphia, Pa., and it suited him better to live nearer his work in addition to which he was not getting on well with his mother-in-law. Thereupon the respondents moved to Philadelphia. The respondent daughter with her husband's consent permitted the appellant and her children to remain in the property so long as the appellant would pay the carrying charges, and subsequently when the appellant also moved from the property the daughter permitted her mother to have the income from the property after paying the carrying charges from the rent

(Case, page 80, lines 3-37, incl.). This was a very natural arrangement, made as the daughter testified (Case, page 80), for filial reasons. The respondents were making a good living and the daughter's mother had to work to support her family (Case, page 95, line 30). The wedding present was not being actually occupied by the daughter while the mother needed the income from the rent, which amounted to from fourteen to twenty dollars per month (Case, page 17, lines 26-28, incl.), and which was ample to pay the carrying charges and leave something over.

What claim the respondent husband made for a payment of money as a condition for his signing a deed or what money he contributed toward the purchase of the property is not important except as it corroborates the fact that it was the intention of the appellant to make a gift of the property. Counsel for the appellant has made much of this claim although it has nothing to do with the daughter's position. Yet the attitude of the respondent husband is entirely natural and consistent. He had paid twenty dollars per week to the appellant, seven dollars of which was for board and thirteen for his wife's present, and these payments had reached the sum of four hundred dollars. After deducting the board it left upwards of two hundred eighty dollars, which with interest made the amount approximately four hundred dollars. He was independent and his personal attitude was that if his mother-in-law had repented of the gift she had made, he didn't want it, but he did want the money he had in the property and which he had given to his wife, so that he could give the money to her, on which basis he, so far as he was concerned, was at one time willing to sign a deed. There is no testimony that the daughter was ever willing to sign a deed and considerable testimony,

including that given by appellant's witnesses, that she refused to sign a deed.

III.

THE APPELLANT IS NOT ENTITLED TO RELIEF.

Measured by the standard of evidence established in *Read v. Huff* (*supra*), the testimony produced by the appellant falls far short both in rebutting the presumption of a gift or in supplying the "equally satisfactory and explicit" proof required to establish a resulting trust. When counsel for the appellant in his brief (page 11, paragraph 5) assumes for the purpose of argument that uncertainty as to the terms of the contract exists because of its ambiguity and the conflicting testimony, he assumes that the standard of proof required, "leaving no reasonable doubt as to the intention of the party" has not been met.

Nor does the decree of the Court impose any hardship upon the appellant who first enjoyed a home in the property, rent free, and thereafter used the rents, from which she received a balance after the carrying charges were paid, as her reimbursement for her services in collecting them. After the building and loan shares matured this balance was thereby increased.

It is respectfully submitted that for the reasons above discussed the decree should be affirmed.

Respectfully submitted,

EDMUND H. REEVES,

*Solicitor for and of counsel with
Defendants-Respondents.*

February Term, 1930.

