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Notice of Appeal.

(Filed August 4, 1927.)

In Chancery of New Jersey

Between

CHARLOTTA E. OSTROM, *et als.*,
Complainants,

and

WARREN FERRIS, *et als.*,
Defendants.

On Bill, &c.

NOTICE OF APPEAL.

To William P. Martin, Solicitor for the Complainant-Respondent.

Sir:

PLEASE TAKE NOTICE that the Consumers' Coal and Ice Company, one of the defendants herein, hereby appeals from a final decree made in this cause on the 12th day of July, 1927, especially such parts thereof as decree that a certain final decree made in this cause in a cause wherein Warren Ferris and Charlotte Marie Keffer were complainants and Anton Hirschman and others were defendants, bearing date September 21st, 1922, be set aside and for nothing holden; that portion of said decree which orders, adjudges and decrees that the complainants herein are entitled to a two-thirds right, title and interest in the premises described in the bill of complaint; that portion which orders, adjudges and decrees that a certain

deed given by Warren Ferris and Annie Ferris, his wife and Charlotte Marie Keffer and John H. Keffer, her husband, to the appellant, dated October 5th, 1922, be declared null and void and of no effect upon the rights of the complainants therein; that portion of the said decree which orders the defendant in said cause to convey to the complainants therein two-thirds of the undivided right, title and interest to said premises; that portion which orders payment of the sum of $1,950.38 to the complainants therein from the rents, issues and profits thereof and that portion of said decree which awards to the complainants in the said cause, their costs to be taxed and counsel fee of $2,500.00; and directs the Receiver heretofore appointed by this court to pay said costs and allowance out of certain funds in his hands belonging to the defendants Warren Ferris and Charlotte Marie Keffer, as well as each and every part of said final decree hereinabove mentioned, to the Court of Errors and Appeals in the last resort in all causes.

BENNY & CRUDEN,
HUDSPETH & DEMAREST,
Solicitors for Defendant-Appellant.

I conceive there is good cause for appeal in the above stated cause.

ELMER DEMAREST,
Of Counsel with Defendant on Appeal.

Amended Notice of Appeal of Consumers' Coal & Ice Company.

(Filed Nov. 5, 1927.)

IN CHANCERY OF NEW JERSEY.

Between

CHARLOTTA E. OSTROM, *et als.*,
Complainants,

vs.

WARREN FERRIS, *et als.*,
Defendants.

On Bill &c.

AMENDED NOTICE OF APPEAL.

To: William P. Martin,
Solicitor of Complainants.

Sir:

PLEASE TAKE NOTICE that the Consumers' Coal & Ice Company, one of the defendants herein, hereby appeals from a final decree entered in the above entitled cause made by the Chancellor on the advice of Honorable John H. Backes, one of the Vice-Chancellors, dated the 12th day of July, 1927, especially such parts thereof as decree that a certain final decree made in this cause in a cause wherein Warren Ferris and Charlotte Marie Keffer were complainants and Anton Hirschman and others were defendants, bearing date September 21st, 1922, be set aside and for nothing holden; that portion of said decree which orders, adjudges and decrees that the complainants herein are entitled to a two-thirds right, title and inter-

est in the premises described in the bill of complaint; that portion which orders, adjudges and decrees that a certain deed given by Warren Ferris and Annie Ferris, his wife and Charlotte Marie Keffer and John H. Keffer, her husband to the appellant dated October 5th, 1922, be declared null and void and of no effect upon the rights of the complainants therein; that portion of the said decree which orders the defendant in said cause to convey to the complainants therein two-thirds of the undivided right, title and interest to said premises; that portion which orders payment of the sum of $1,950.38 to the complainants therein from the rents, issues and profits thereof and that portion of said decree which awards to the complainants in the said cause, their costs to be taxed and counsel fee of $2,500.00; and directs the Receiver heretofore appointed by this court to pay said costs and allowance out of certain funds in his hands belonging to the defendants Warren Ferris and Charlotte Marie Keffer, as well as each and every part of said final decree hereinabove mentioned, to the Court of Errors and Appeals in the last resort in all causes.

BENNY & CRUDEN,
HUDSPETH & DEMAREST,
Solrs. for Defendant-Appellant.

I conceive there is good cause for appeal in the above stated cause.

FRED W. RUGGE,
Of Counsel with Defendant on Appeal.

Amended Notice of Appeal by Charlotte Marie Keffer.

(Filed October 5, 1927.)

IN CHANCERY OF NEW JERSEY.

Between

CHARLOTTA E. OSTROM, *et als.*,
Complainants,

and

WARREN FERRIS, *et als.*,
Defendants.

On Bill &c.
AMENDED NOTICE OF APPEAL BY CHARLOTTE MARIE KEFFER.

To William P. Martin, solicitor of complainants, and James A. Butler, solicitor of defendants Warren Ferris and Annie Ferris, his wife:

PLEASE TAKE NOTICE that the defendant Charlotte Marie Keffer hereby appeals to the Court of Erros and Appeals in the last resort in all causes, from those portions of the final decree entered in the above entitled cause, made by the Chancellor on the advice of Honorable John H. Backes, one of the Vice Chancellors, dated the twelfth day of July, nineteen hundred and twenty-seven, which are hereinafter particularly stated, that is to say:

From that portion of said decree which directs that this defendant, together with the defendant Warren Ferris, do pay to the complainants or to their solicitors, the sum of one thousand nine hundred and fifty dollars and thirty-eight cents, which is therein stated to be the share to which the complainants are entitled of the moneys received by said defendants from the personal property of Anton Hirschman, together with interest; also

Amended Notice of Appeal by Charlotte Marie Keffer.

From that portion of said decree which directs that this defendant, together with the defendant Warren Ferris, do pay to the complainants, or to their solicitors, the sum of one thousand five hundred and forty-two dollars and eighty-eight cents, which is therein stated to be the share to which the complainants are entitled of the rents, issues and profits of the said Anton Hirschman, deceased, collected by the said defendants, together with interest; also

From that portion of the said decree which directs that this defendant, together with the defendant Warren Ferris, do pay to the complainants, or to their solicitor, the costs of this suit to be taxed, including a counsel fee of twenty-five hundred dollars, which was thereby allowed to the complainants; also

From that portion of said decree which directs that Horace Roberson, the receiver appointed by this court by order made the thirtieth day of April, nineteen hundred and twenty-four, out of the money, cash, securities and other property received or collected by him from the possession or control of this defendant and the defendants Warren Ferris and Annie Ferris, as therein specified and set forth, do pay unto the complainants or to their solicitor the sums aforesaid ordered to be paid to the complainants by the defendants.

ROBERSON & ROBERSON,
Solicitors of defendant, Charlotte Marie Keffer.
CHARLES L. CARRICK,
Of Counsel.

Dated September 21, 1927.

I conceive there is good cause for appeal in the above stated cause.

CHARLES L. CARRICK,
Of counsel with defendant Charlotte Marie Keffer.

Complaint.

(Filed December 23, 1922.)

IN CHANCERY OF NEW JERSEY.

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

The complainants Charlotta E. Ostrom, of the City of Johnson City, County of Broome, State of New York, Frank B. Rieber and Rose F. Rieber, his wife, of the City of Benton Harbor, County of Berrien, State of Michigan; George A. Rieber and Lucille Rieber, his wife, of the City of Binghamton, said County of Broome, New York; Frank O. Steffens and Marie Augusta Steffens, his wife, of the City of Miami, County of Dade, State of Florida, and Marie W. De Bussey of the City of Baltimore, State of Maryland, show that:

FIRST CAUSE OF ACTION.

1. Anton Hirschman was for upwards of forty-five years a resident of the City of Bayonne, County of Hudson and State of New Jersey, and died intestate in said Bayonne on May 19, 1920, his wife, Charlotte Hirschman, and his parents having predeceased him. Said Anton Hirschman had no child or children and never adopted any person as a child.

2. Anton Hirschman was, at the time of his death, the sole owner and was seized in fee of certain land situate, lying and being in the City of Bayonne, County of Hudson, State of New Jersey, bounded and described as follows:

FIRST PARCEL: Beginning at a point formed by the intersection of the easterly side of

Broadway with the northerly side of East 53d Street; thence running (1) Northerly along the easterly side of Broadway 100 feet; thence (2) easterly parallel with East 53d Street 100 feet; thence (3) southerly and again parallel with Broadway 100 feet to the northerly side of East 53rd Street; thence (4) westerly along said side of said street 100 feet to the point or place of beginning. Being also known as lots numbered 13, 14, 15 and 16 in block numbered 32 on the Tax Maps of the City of Bayonne, now in use.

Second Parcel: Beginning at a point on the northerly side of East 53rd Street distant thereon 150 feet easterly from its intersection with the easterly line of Broadway; thence running (1) northerly parallel with Broadway 100 feet; thence (2) easterly parallel with East 53rd Street 100 feet; thence (3) southerly and again parallel with Broadway 100 feet to the northerly side of East 53rd Street; thence (4) westerly along the northerly side of East 53rd Street 100 feet to the point or place of beginning. Being also known as lots 7, 8, 9 and 10 in said block on said map, both of said parcels being free and clear of all encumbrances and liens.

On the first mentioned property was a small one-family house and a three-family frame house, and on the second mentioned property were four frame houses which with said parcels of land described were, on March 10, 1922, and October 5, 1922, of the reasonable worth and value of upwards of $35,000 and that such value was on said dates well known to defendants and each of them.

3. Said property had been acquired by Anton Hirschman in part on May 19, 1873, and he lived on a portion of said premises for upwards of forty-five years. Anton Hirschman had three sisters, Francisca or Fannie Hirschman Steffens, Julia Hirschman Ferris and Anna Marie Hirschman Rieber, and no brothers and no other sisters. All of said sisters predeceased Anton Hirschman; Francisca or Fannie Hirschman Steffens, a sister of Anton Hirschman, died, leaving as her only heirs and next of kin two children, the complainants, Frank C. Steffens and Marie W. De Bussey; Julia Hirschman Ferris, a second sister, died leaving as her only heir and next of kin her son, defendant Warren Ferris; that Anna Marie Hirschman Rieber, the third sister, died leaving as her only heirs and next of kin her children, George A. Rieber, complainants Frank B. Rieber and Charlotte E. Ostrom, and that at the time of the death of Anton Hirschman said George A. Rieber has predeceased Anton Hirschman, leaving as his only child and next of kin a son, the complaintant George A. Rieber.

4. At the death of Anton Hirschman his heirs and next of kin were complainants Frank C. Steffens entitled to 1/6th of his estate, Marie W. De Bussey 1/6th, George A. Rieber 1/9th, Frank B. Rieber 1/9th, Charlotta E. Ostrom 1/9th and defendant Warren Ferris 1/3rd. Complainant Frank C. Steffens is married and his wife is Marie Augusta Steffens a complainant and she is entitled to an inchoate right of dower in the undivided share of Frank C. Steffens. Complainant George A. Rieber is married and his wife is Lucille Rieber a complainant and she is entitled to an inchoate right of dower in the undivided share

of George A. Rieber. Complainant Frank B. Rieber is married and his wife is Rose F. Rieber a complainant and she is entitled to an inchoate right of dower in the undivided share of Frank B. Rieber.

5. That well knowing that the complainants were some of the heirs and next of kin of Anton Hirschman with Ferris, and that complainants and each of them had the undivided interest in his estate and property hereinbefore alleged, defendants Warren Ferris of the city of Jersey City, county of Hudson, and Charlotte Marie Kiefer of the said city of Bayonne, unlawfully, fraudulently and wickedly conspired and agreed together and each with the other to deprive complainants and each of them of their said rights and of said property and all of their interests in and to the estate both real and personal of said Anton Hirschman and to divide the estate between them notwithstanding each said he was the sole heir of Anton Hirschman and Warren Ferris and Charlotte Marie Keffer made and entered into an agreement dated May 27, 1920 which is marked Schedule "2" and annexed to the bill of complaint to quiet title in an action hereinafter mentioned, and furthermore orally agreed to make, do and perform all the acts, execute the instruments, make the oaths and verifications, testify in court and any and all acts hereinafter alleged and to cooperate and perform whatever acts that were, or might thereafter appear to them or either of them to be necessary, desirable or expedient to accomplish such purposes.

6. Defendants knew at the time of such conspiracy as alleged and at all times subsequently

hereinafter mentioned that Anton Hirschman was born in the Village of Callicoon, County of Sullivan, State of New York; that complainants had been living in said Binghamton, Michigan, South Carolina, Florida and Maryland and were not within the said county of Hudson, except Warren Ferris; that said Charlotte Marie Keffer and Warren Ferris well knew that said heirs were widely scattered and believed that they probably would be more easily enabled to carry out the purpose of the conspiracy hereinafter mentioned.

7. That shortly after the death of Anton Hirschman defendant Warren Ferris falsely and fraudulently represented himself to be the sole heir and next of kin of Anton Hirschman, deceased, notwithstanding that he well knew of the complainants and each and every one of them, and that there were living children of deceased sisters of Anton Hirschman other than Julia Hirschman Ferris, mother of said Ferris and having been personally acquainted with and visited the children of Annie Hirschman Rieber, and also well knew all of the facts hereinbefore alleged and that he was not such sole heir, and defendant Charlotte Marie Keffer of said city of Bayonne, daughter of Katharina Daisetta Hadlich, falsely and fraudulently represented herself to be the sole heir of Anton Hirschman in that Anton Hirschman had in his lifetime adopted Katharina Daisetta Hadlich, the mother of Charlotte Marie Keffer, notwithstanding she also well knew of the existence of complainants as aforesaid, that Katharina Daisetta Hadlich never had been adopted by Anton Hirschman, and also well knew all of the facts hereinbefore alleged and that she was not such sole heir, Ferris and Charlotte Marie

Keffer thereupon took possession of the premises hereinbefore described and each and every part thereof, and collected the rents, issues and profits thereof. Katharina Daisetta Hadlich never was adopted by Anton Hirschman and Ferris also well knew, at the times aforesaid, the fact that Katharina Daisetta Hadlich had never been adopted by Anton Hirschman; that Charlotte Marie Keffer also well knew at the times aforesaid that there had been sisters of Anton Hirschman other than Julia Hirschman Ferris, that the sisters died leaving children them surviving, and immediately after the death of Anton Hirschman Charlotte Marie Keffer sent a telegram to Frank C. Steffens one of the complainants that Anton Hirschman died.

8. Thereafter and up and until October 5, 1922, said Charlotte Marie Keffer and Warren Ferris continued to collect the rents issues and profits of said premises and to enjoy the benefits thereof and to divide the same between them said Ferris and Charlotte Marie Keffer.

9. That on or about July 1, 1920, Warren Ferris applied to the Surrogate of Hudson County, State of New Jersey, for the issuance of letters of administration upon the goods, chattels and credits of Anton Hirschman, deceased, and alleged in such application that he was the sole heir and next of kin of Anton Hirschman deceased without the real heirs and next of kin of Anton Hirschman the complainants or giving them or any of them notice thereof, and Warren Ferris made oath to the petition before James F. Norton, Surrogate of Hudson County, and thereupon obtained the issuance of letters of administration upon the

estate of Anton Hirschman to Warren Ferris. That Warren Ferris took possession of the personal property of Anton Hirschman and on September 24, 1921, filed what purported to be an accounting of his administration of the personal property of said estate with the Surrogate of Hudson County, and the same was audited by the Surrogate of Hudson County and reported to the Orphans Court, and a decree was made by the Orphans Court of Hudson County on November 4, 1921, approving and passing the account, finding the balance of $3,301.53 in the hands of Warren Ferris, as administrator of the estate of Anton Hirschman, which sum was subsequently divided by and between Warren Ferris and Charlotte Marie Keffer in pursuance of such conspiracy and contract hereinbefore alleged.

10. On March 10, 1922, notwithstanding the defendant Warren Ferris had administered the said estate as aforesaid and apparently had been discharged from the performance of any and all duties as administrator, Warren Ferris as administrator of the estate of Anton Hirschman, Warren Ferris individually, and Charlotte Marie Keffer entered into a contract bearing date March 10, 1922, with the Consumers Coal and Ice Company, a corporation of New Jersey, whereby defendants Warren Ferris and Charlotte Marie Keffer each as sole heir of Anton Hirschman equally interested under the contract of May 27, 1920, hereinbefore alleged agreed to sell and convey the complete title of the premises hereinbefore described to the Consumers Coal and Ice Company for the sum of $21,000 and the Consumers Coal and Ice Company agreed to purchase said property hereinbefore described and located in the

said City of Bayonne and pay the said sum of $21,000. That the defendants Warren Ferris and Charlotte Marie Keffer well knew the actual value of the complete ownership of said property was $35,000.

11. Thereafter the Consumers Coal and Ice Company declined to accept deed of Warren Ferris and Annie, his wife, and Charlotte Marie Keffer and John H. Keffer her husband purporting to convey the said title and on the 14th day of June, 1922, the Consumers Coal and Ice Company commenced an action in the name of Warren Ferris and Charlotte Marie Keffer in the Court of Chancery of New Jersey against Anton Hirschman, Katharina Daisetta Hirschman, Katharina Daisetta Hadlich, Charles Hadlich, her husband, Julia Ferris, James Ferris, Michael Cooney, Susan B. Cooney, John Cooney, Mary A. Cooney, Richard M. Cooney, George W. Cooney, Agnes C. Cooney, Elizabeth C. Cooney, Julia F. Cooney, Julia F. Haines (or Julia F. Haynes) Edgar J. Haines (or Edgar J. Haynes), John Prout, Sr., John Prout, son of John Prout, Sr., Catherine Prout, Winifred Prout, Harry Zagalsky, Fannie Zagalsky, and each of their heirs, devisees and personal representatives, their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest of each of the above named, all of whom except Julia Hirschman Ferris, the mother of Warren Ferris, Katharina Daisetta Hirschman (or Hadlich), Charles Hadlich, and Anton Hirschman were known to Warren Ferris and Charlotte Marie Keffer not to have had any interest in the said property or entitled to any claim or right since May 19, 1873, and the said defendants and

each of them knew that Anton Hirschman had been in quiet and peaceable possession of said property hereinbefore described throughout the whole period since that date up to the time of his death; and that said suit in the Court of Chancery was to quiet title of the complainants therein these defendants Warren Ferris and Charlotte Marie Keffer and furthermore was brought by counsel selected by the Consumers Coal and Ice Company.

12. That defendants Warren Ferris and Charlotte Marie Keffer in their bill of complaint in said action in this Honorable Court that they were the owners in fee simple of the said lands and premises hereinbefore described; that Anton Hirschman did not have any children; that he did not leave any father or mother him surviving; that he did not leave any sisters or brothers him surviving; that he had a sister named Julia Ferris who predeceased Anton Hirschman and that her only heir at law was a son the defendant Warren Ferris one of the complainants therein and the defendant Charlotte Marie Keffer the other complainant therein a daughter of Katharina Daisetta Hirschman who resided with said Anton Hirschman from her childhood and who was adopted as his child.

13. That defendants Ferris and Charlotte Marie Keffer well knew at the time of filing said bill and prior thereto as hereinbefore alleged that Warren Ferris was not the only heir of Anton Hirschman and that complainants in this action and each of them had the interest in the property of Anton Hirschman hereinbefore alleged and that Katharina Daisetta Hirschman Hadlich mother of Charlotte Marie Keffer never had been adopted by Anton Hirschman.

14. That defendant Warren Ferris verified the bill of complaint in the said action by his affidavit which he made on the 12th day of June 1922, before John J. Hoffman, Master in Chancery of New Jersey, in which he stated that "Anton Hirschman died leaving him, this deponent, as he believed, his only heir-at-law, but that Charlotte Marie Keffer, wife of John H. Keffer of Bayonne claims that her mother Katharina Daisetta Hirschman was an adopted child of Anton Hirschman and that they had entered into an agreement to divide the estate equally between them and did not mention complainants or any of them or their interests or any of them and fraudulently concealed from this court the existence of complainants and their interests as hereinbefore alleged.

15. Thereafter process of this court was issued and served by the sheriff of Hudson County on John Prout and Catherine Prout his wife, but not on any other defendants in said action. Thereafter and on July 1, 1922, an order of publication of service of process upon the absent defendants was made, requiring them to appear and plead, answer or demur to the complainant's bill on or before the 2nd day of September, 1922.

16. That no notice of the commencement of such suit, or of the issuance of process or notice to appear and plead answer or demur to the bill of complaint was ever addressed and mailed to complainants in this action, or any of them, although they and each of them was an heir of Anton Hirschman and defendants Warren Ferris and Charlotte Marie Keffer knew them and each and every of them to be such heir, knew the addresses of some of them, and could readily have ascertained by

inquiry the addresses of each and every one of them.

17. Thereafter a notice in the usual form of notice in such case made and provided was printed and published for the usual times in the Bayonne Times, a public newspaper printed and published in Bayonne, County of Hudson, State of New Jersey. That none of these complainants in this action, the defendants named in the action within the description of the class of persons as heirs of Anton Hirschman, deceased, appeared therein or defended, and on the 6th day of September, 1922, a decree pro confesso was made and entered in said suit against these complainants.

18. Thereafter depositions were taken in said cause in this court wherein Warren Ferris and Charlotte Marie Keffer were complainants and Anton Hirschman, his heirs, etc., and others, were defendants, before Frederic E. Chamberlin, Master in Chancery on September 12th and 18th, 1922, and Charlotte Marie Keffer appeared and testified: "I knew Anton Hirschman in his lifetime and his wife Charlotte Hirschman. My mother's name was Katharina Daisetta Hirschman; she was adopted by Anton Hirschman when she was about four years of age. I have not been able, however, to find any papers or other documents relating to the adoption but she always said and I have always understood that Mr. Hirschman adopted her as a daughter. Mr. Hirschman always spoke of her as his daughter and I personally believe that she had been regularly adopted by him. Anton Hirschman did not have any children nor were any ever born unto him. His father and mother died prior to his death. He never had

any brothers or sisters so far as I ever knew except his sister Julia Ferris whom I have just mentioned and she is dead. When Mr. Ferris and myself agreed to convey the property to the Consumers Coal and Ice Company we insisted that we had a good title to the same and we still insist we have a good title to it.''

Warren Ferris testified: ''I was acquainted with Anton Hirschman in his lifetime. He died several years ago. I am the son of Julia Ferris. She is now dead. She was a sister of Anton Hirschman. I claim to be the heir-at-law of Anton Hirschman. His father and mother died before he did. I never heard of any brothers or sisters except my mother.''

19. That the said statements of defendants Warren Ferris and Charlotte Marie Keffer that there were no sisters and that they never heard of any sisters of said Anton Hirschman except as aforesaid, and that he died without leaving any heirs other than Warren Ferris and Charlotte Marie Keffer, were false and untrue and were known to each of them to be false and untrue; that they were made for the purpose of deceiving this Honorable Court and to obtain by fraud a decree of this Court forever barring the interests of the complainants in this action and each of them in the property, real and personal, of Anton Hirschman, deceased, and of quieting title to the same.

20. Thereafter and on the 21st day of September, 1922, this court upon the said false testimony of Warren Ferris and Charlotte Marie Keffer and each of them, there being no other evidence on that subject before it, made and entered a final decree reciting that complainant's bill ''has heretofore been taken as confessed against the defend-

ants Anton Hirschman, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest;'' and that ''proofs and depositions have been taken substantiating and proving the allegations in the bill of complaint, and ordered, adjudged and decreed that as to all the lands and premises in the said bill of complaint described, the defendants Anton Hirschman, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns, or successors in right, title or interest, and each of them, have no estate, interest in or encumbrance upon said lands and premises, and so far as relates to any claim thereon by or on behalf of any of the thereinbefore mentioned defendants, the title of the complainants (Warren Ferris and Charlotte Marie Keffer) of, in and to the said lands and premises and every part thereof is thereby determined, fixed, settled and declared to be good'' and the said decree was filed on September 25, 1922.

21. That the said decree of this court of Chancery in New Jersey dated September 21, 1922, and filed September 25, 1922, was knowingly procured by defendants Warren Ferris and Charlotte Marie Keffer complainants therein by false and fraudulent testimony as aforesaid with the intention and for the purpose of deceiving the court and obtaining the just, true and lawful interests of these complainants and each of them, in and to the property and estate of Anton Hirschman, and dividing the proceeds of such interests and each of them between them, these defendants Warren Ferris and Charlotte Marie Keffer.

22. That complainants and each of them never received or were served with any official legal or other process or information of or concerning said suit to quiet title; and they and each of them never had any knowledge of any kind or nature whatsoever concerning said suit until the 6th day of December, 1922, long after the filing of the final decree, and since said date complainants have secured counsel in New Jersey and communicated with one another, and have diligently endeavored to bring their rights and each of them to the attention of the Court that numerous defects appear in the said decree and that the same was procured by the fraudulent conduct and testimony of defendants Warren Ferris and Charlotte Marie Keffer upon their, and each of their false testimony.

23. Complainants are without adequate remedy in the courts of law and therefore pray:

(1) That Warren Ferris and Charlotte Marie Keffer who are defendants in this first cause of action in this suit may answer this first cause of action in the bill of complaint and each statement therein made.

(2) That the said decree dated the 21st day of September, 1922, and filed September 25, 1922, be reversed and set aside.

(3) That by the determination and final decree of this Court the rights of complainants in this suit and each of them in and to the said lands and premises hereinbefore set forth be restored and that the complainant Frank C. Steffens be declared to be the owner of 1/6th thereof, subject to the inchoate right of dower of Marie Augusta Rieber, his wife; Marie W. de Bussey the owner of 1/6th

thereof; George A. Rieber the owner of 1/9th thereof subject to the inchoate right of dower of Lucille Rieber, his wife; Frank B. Rieber the owner of 1/9th thereof, subject to the inchoate right of dower of Rose F. Rieber, his wife, and Charlotte E. Ostrom the owner of 1/9th thereof.

(4) That the defendants Warren Ferris and Charlotte Marie Keffer and each of them be enjoined from interfering with the rights and interests of complainants and each of them in and to the said property.

(5) That defendants Warren Ferris and Charlotte Marie Keffer and each of them shall make, do and perform each and every act, and make, execute and deliver any instrument which may be necessary or proper for the purpose of making restitution to the complainants of their and each of their rights in and to said premises.

(6) Complainants have such other and further relief as may be just and proper in the premises.

(7) That a writ of subpoena may issue commanding said defendants to this first cause of action to answer this first cause of action in bill of complaint, and to abide by such decree as this Court may make in the premises.

SECOND CAUSE OF ACTION.

24. Complainants repeat and reallege all of the allegations of this bill of complaint relating to and contained in the foregoing First Cause of Action in paragraphs 1 to 23 inclusive hereof and

each and every part thereof as if repeated herein at length and fully and at large set forth herein.

25. Thereafter and in furtherance of and in pursuance of the said conspiracy and on or about October 5, 1922, defendants Warren Ferris and Annie Ferris, his wife, and Charlotte Marie Keffer and John H. Keffer, her husband, made, executed and delivered a certain deed bearing date the 5th day of October, 1922, purporting to convey the premises hereinbefore described to defendant Consumers Coal and Ice Company and recited among other matters in said deed that they defendants Warren Ferris and Charlotte Marie Keffer, were the only heirs at law of Anton Hirschman deceased. Said deed was recorded in the office of the Register of Deeds and Mortgages in the County of Hudson on October 11, 1922, in Liber 1460, page 136.

26. That defendant Consumers Coal and Ice Company paid over the alleged purchase price of $21,000 to defendants Warren Ferris and Charlotte Marie Keffer and they did thereupon divide the same equally between them the defendants Warren Ferris and Charlotte Marie Keffer.

27. That the defendant Consumers Coal and Ice Company at the time of the delivery of said deed and prior to the delivery of such deed and before parting with said $21,000 had knowledge of or could have had knowledge of the facts by the exercise of reasonable diligence and by making reasonable inquiry of the existence of complainants, and their rights in the ownership of such property as the heirs of Anton Hirschman but no real inquiry was made by defendant Consumers Coal and Ice Company and it was charged with knowledge that the complainants and each of them were heirs with defendant Warren Ferris of Anton Hirschman and that there never was any adoption legal or otherwise of Katharina Daisetta Hirschman Hadlich. That notwithstanding Consumers Coal and Ice Company knew of complainants and that the price to be paid for said property was totally inadequate Consumers Coal and Ice Company received and accepted the said deed. That the rights if any of Consumers Coal and Ice Company are subject to all the said rights of these complainants and that defendant Consumers Coal and Ice Company enjoys the apparent ownership and has received property of which complainants and each of them was deprived by the conspiracy and fraud of defendants Warren Ferris and Charlotte Marie Keffer and that defendant Consumers Coal and Ice Company should return same to complainants.

28. Complainants therefore pray:

(1) That Warren Ferris and Annie Ferris, his wife, Charlotte Marie Keffer and John H. Keffer, her husband, and Consumers Coal and Ice Company who are defendants in this second cause of action in this suit, may answer this second cause of action in the bill of complaint and each statement therein made.

(2) That the said decree dated September 21, 1922, and filed September 25, 1922, be reversed and set aside.

(3) That by the determination and final decree of this Court the rights of complainants in this suit and each of them in and to the said lands and premises hereinbefore set

forth be restored and that the complainant Frank C. Steffens be declared to be the owner of 1/6th thereof, subject to the inchoate right of dower of Marie Augusta Steffens, his wife; Marie W. de Bussey the owner of 1/6th thereof; George A. Rieber the owner of 1/9th thereof subject to the inchoate right of dower of Lucille Rieber, his wife; Frank B. Rieber the owner of 1/9th thereof, subject to the inchoate right of dower of Rose F. Rieber, his wife, and Charlotte E. Ostrom the owner of 1/9th thereof.

(4) That the defendants Warren Ferris and Charlotte Marie Keffer and each of them be enjoined from interfering with the rights and interests of complainants and each of them in and to the said property.

(5) That defendants Warren Ferris and Charlotte Marie Keffer and each of them shall make, do and perform each and every act, and make, execute and deliver any instrument which may be necessary or proper for the purpose of making restitution to the complainants of their and each of their rights in and to said premises.

(6) That the defendants Warren Ferris and Charlotte Marie Keffer discover and account for and pay over to complainants their share of any personal property or estate coming into their possession not mentioned or described in said accounting approved by the Orphans Court.

(7) That the deed of defendants Warren Ferris and Charlotte Marie Keffer to the Consumers Coal and Ice Company dated the 5th

day of October, 1922, and recorded in the office of the Register of Deeds and Mortgages in the county of Hudson in Liber 1450, page 136, on October 11, 1922, be declared to be null and void and of no effect upon the said rights, title and interest of complainants and each of them in and to the premises hereinbefore described.

(8) If said deed be not set aside and held to be null and void as to complainants and each of them that this Court shall determine the question of the construction thereof in so far as the same affects the rights of complainants or any of them and that it be declared that the said deed did not and does not transfer or convey any of the rights or interests of these complainants or any of them in or to the property hereinbefore described.

(9) That defendants Consumers Coal and Ice Company be required to re-convey or restore the said property or interest of the complainants and each of them in said property to these complainants and each of them.

(10) That Warren Ferris and Charlotte Marie Keffer be required to account for the rents, issues and profits received from the use and occupation enjoyed by them or either of them, from the whole or any part of said property since the 19th day of May, 1920, and pay over the share of the balance thereof to the complainants and each of them to which they may be justly entitled.

(11) For such other and further relief as may be just and proper in the premises.

(12) That a writ of subpoena may issue, commanding the said defendants in this sec-

ond cause of action to answer the second cause of action in this bill of complaint and to abide by such decree as this Court may make in the premises.

WILLIAM P. MARTIN,
Solicitor for and of Counsel with
Complainants,
Office & Post Office Address,
763 Broad Street,
Newark, New Jersey.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

WILLIAM P. MARTIN, the agent for and solicitor of all the complainants mentioned in the foregoing Bill of Complaint, being duly sworn on his oath deposes and says:

I have read the foregoing Bill of Complaint and the same is true to the best of my knowledge and belief; that the matters therein stated on information or belief of the complainants I believe to be true; that I have information as to all the matters stated therein consisting of an examination of the records of the suit to quiet title referred to in the Bill of Complaint, report of the examination of the records in the Surrogate's office, the Register of Deeds and Mortgages in the County of Hudson, correspondence with the complainants, and from such information I believe such matters to be truly stated in the Bill of Complaint and that the allegations of said Bill of Complaint are true.

That I am the solicitor of the complainants for the purpose of filing the said Bill of Complaint

and obtaining the relief therein prayed, constituted and appointed by the said complainants by proper powers of attorney duly executed and delivered by them except Frank C. Steffens who authorized me to appear and act on his behalf by telegram, and that said Charlotte E. Ostrom, George A. Rieber and Lucille Rieber are residents of the county of Broome, State of New York, Frank B. Rieber and Rose F. Rieber his wife are residents of Benton Harbor, County of Berrien, State of Michigan, and Marie W. de Bussey is a resident of the City of Baltimore, State of Maryland, as alleged in the Bill of Complaint, and are now absent from the State of New Jersey.

WM. P. MARTIN.

Sworn to and subscribed before me, }
this 22nd day of December, 1922. }

FLORENCE A. TAKACS
Notary Public of New Jersey

Order Allowing Amendment of Bill of Complaint.

(Filed September 19, 1923.)

IN CHANCERY OF NEW JERSEY.

Between
CHARLOTTA E. OSTROM, FRANK B. RIEBER, *et al.*,
Complainants,

and

WARREN FERRIS, ANNIE FERRIS his wife, CHARLOTTE MARIE KEFFER, JOHN H. KEFFER her husband, and CONSUMERS COAL AND ICE COMPANY,
Defendants.

53-19

On Bill, &c.
Order Allowing Amendment of Bill of Complaint.

This matter being opened to the Court by William P. Martin, solicitor for and of counsel with complainants, and it appearing by the annexed consent that the parties have agreed that complainants may amend the paragraph of the Bill of Complaint marked "6", and the answers heretofore filed shall remain as denials of the amended paragraph,

NOW THEREFORE, on motion of complainants it is on this 19th day of September, 1923.

ORDERED that the amendment of the paragraph marked "6" of the Bill of Complaint set forth in the attached stipulation be and hereby is allowed

and directed to be filed and that the denials of each of the defendants to the sixth paragraph shall remain as denials of the allegations contained in the amended paragraph.

E. R. WALKER,
C.

Respectfully advised,

BAYARD STOCKTON, A. M.

Stipulation as to Amendment of Bill of Complaint.

IN CHANCERY OF NEW JERSEY.

Between
CHARLOTTA E. OSTROM, FRANK B. RIEBER, *et al.*,
Complainants,

and

WARREN FERRIS, ANNIE FERRIS his wife, CHARLOTTE MARIE KEFFER, JOHN H. KEFFER her husband, and CONSUMERS COAL AND ICE COMPANY,
Defendants.

53-19

On Bill, &c.
Stipulation as to Amendment of Bill of Complaint.

IT IS HEREBY STIPULATED AND AGREED that the paragraph marked "6" of the Bill of Complaint herein shall be amended to read as follows:

"6. Defendants knew at the time of such conspiracy as alleged and at all times subsequently hereinafter mentioned that Anton Hirschman lived for many years in the Village of Callicoon, County of Sullivan, State of New York, with his parents; that complainants had been living in said Binghamton, Michigan, South Carolina, Florida and Maryland and were not within the said County of Hudson, except Warren Ferris; that said Charlotte Marie Keffer and Warren Ferris well knew that said heirs were widely scattered and believed that they probably would be more easily enabled to carry out the purpose of the conspiracy hereinafter mentioned."

Stipulation as to Amendment of Bill of Complaint.

IT IS FURTHER STIPULATED that the denials of the allegations in this paragraph in the answers of all of the defendants shall remain as denials to the amended paragraph of the Bill of Complaint.

IT IS FURTHER STIPULATED that an order may be entered by the complainants to the above effect without notice by any party to another and without costs.

Dated, August 3rd, 1923.

JAMES A. BUTLER,
Solicitor of Warren Ferris and Annie Ferris his wife.

ROBERSON & ROBERSON,
Solicitors of Charlotte Marie Keffer and John H. Keffer her husband.

BENNY & CRUDEN,
Solicitors of Consumers Coal and Ice Company.

WM. P. MARTIN,
Solicitor of Complainants.

A true copy,
JESSE R. SALMON,
Clerk.

Petition and Further Amendment to Bill of Complaint.

(Filed April 30, 1924.)

IN CHANCERY OF NEW JERSEY.

Between
CHARLOTTA E. OSTROM, *et al.*,
Complainant,

and

WARREN FERRIS and ANNIE FERRIS his wife, CHARLOTTE MARIE KEFFER and JOHN H. KEFFER her husband, and CONSUMERS COAL AND ICE COMPANY,
Defendants.

53/19
On Bill, etc.

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

The complainants Charlotta E. Ostrom and others hereby respectfully petition that upon the testimony and facts presented at the hearing of this cause complainants' Bill of Complaint as amended be further amended by the addition of a third and inconsistent cause of action stated in the alternative and without prejudice to complainants as follows:

THIRD AND INCONSISTENT CAUSE OF ACTION IN THE ALTERNATIVE.

29: Complainants repeat and re-allege all of the allegations of the Bill of Complaint, as

amended, set forth and contained in the First Cause of Action in paragraphs 1 to 22 inclusive and in the Second Cause of Action in paragraphs 24 to 27 inclusive and each and every part thereof as if repeated herein at length and fully and at large set forth herein.

30: That defendant Warren Ferris received as the proceeds of the fraud and conspiracy hereinbefore alleged the sum of $9,961.59 from Consumers Coal and Ice Company and with a part of the said proceeds purchased from Nick Acciardi on the 11th day of November, 1922, the land and two-family building thereon known as Number 5386 Boulevard Avenue, Township of North Bergen, County of Hudson, New Jersey, bounded and described as follows:

"ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Township of North Bergen in the County of Hudson and State of New Jersey and which upon a certain map entitled 'Map of property belonging to the County Park Realty Company, in the Township of North Bergen, Hudson County, N. J. lying in County Block 2268 laid out by T. H. McCann and R. Beyer, Civil Engineers, Hoboken, N. J. December, 1906, and changed June 7th, 1920 by Robert Gaw, Civil Engineer and Surveyor'' and filed in the Register's Office of said County of Hudson on June 21st, 1920 is marked, known and distinguished as Lot numbered Five (5) in Block numbered Three hundred and Twenty-A (320-A) as shown on said map, being the same premises described in a certain deed of Nick Acciardi (single) to Warren Ferris and Annie Ferris his wife, dated November 11th, 1922 acknowledged the same day and re-

corded in the office of the Register of Hudson County November 15th, 1922 (3:51 P. M.) Liber 1462 of Conveyances at page 378."

taking title therefor in the name of himself, said Warren Ferris, and his wife Annie Ferris, and that said Annie Ferris, his wife, knew before and at the time of the purchase that all the moneys used by said Ferris for the purchase of the said premises were a part of the proceeds of the fraud and conspiracy as hereinbefore set forth. Said Annie Ferris personally did not contribute any part of said purchase price and no improvements or repairs have been made on the premises except those paid for by Ferris as aforesaid.

31: That the title held by defendant Warren Ferris and Annie Ferris his wife in said two-family house known as Number 5386 Boulevard Avenue, North Bergen, Hudson County, New Jersey, is held in trust for the benefit of the complainants.

32: That defendant Charlotte Marie Keffer received as the proceeds of the fraud and conspiracy hereinbefore alleged the sum of $9,961.59 from Consumers Coal and Ice Company and out of the said proceeds up to the time of the commencement of this suit and at the beginning of the hearing herein, said Charlotte Marie Keffer had in her possession or under her control in cash the sum of $2,551.00 and that out of the said proceeds at said times had in her possession under her control a United States Liberty bond for the sum of $500.00 together with other property purchased with a part of the proceeds of said fraud and conspiracy, and

That at the end of said allegations prayers for relief be allowed as follows:

(1) That by the determination and final decree of this Court the said premises known as Number 5386 Boulevard Avenue, North Bergen, Hudson County, New Jersey, be declared to be the property of complainants, and that Warren Ferris and Annie Ferris be directed to make, execute and deliver a proper deed of the same to complainants, or that the premises be sold and that all the proceeds thereof be paid over and delivered to complainants.

(2) That by the determination and final decree of this Court defendant Charlotte Marie Keffer be directed to transfer and deliver to the complainants the sum of $2,551.00 in cash and the United States Liberty bond in the sum of $500. remaining in her possession or under her control, together with all other property purchased with or in which the proceeds of the said amount obtained from the Consumres Coal and Ice Company may have been invested or re-invested.

(3) That complainants have such other and further relief as may be just and proper in the premises.

WM. P. MARTIN,
Solicitor for and of Counsel with
Complainants.

Order Allowing Amendment of Bill of Complaint at Hearing.

(Filed April 30, 1924.)

IN CHANCERY OF NEW JERSEY.

Between

CHARLOTTE E. OSTROM, *et al.*,
Complainants,

and

WARREN FERRIS and ANNIE FERRIS his wife, CHARLOTTE MARIE KEFFER and JOHN H. KEFFER her husband and CONSUMERS COAL AND ICE COMPANY,
Defendants.

52/19
On Bill, etc.

ORDER ALLOWING AMENDMENT OF BILL OF COMPLAINT AT HEARING.

This matter being opened to the Court at the hearing by counsel with complainants, in presence of counsel for defendants, and it appearing that leave to further amend the Bill of Complaint should be granted.

NOW, THEREFORE, on motion of complainants it is on this 30th day of April, 1924,

ORDERED that the Bill of Complaint as amended be further amended by the adding thereto of a third cause of action stated in the alternative in the form and manner as set forth in said petition, and that a copy of such amendment be served forthwith on solicitors for defendants Warren Ferris and Annie Ferris his wife and Charlotte Marie Keffer and that said defendants answer within ten days.

Respectfully advised.
JOHN H. BACKES,
V. C.

Answer of the Defendant Consumers' Coal and Ice Company.

(Filed July 24, 1923.)

IN CHANCERY OF NEW JERSEY.

Between

CHARLOTTE E. OSTROM, FRANK B. RIEBER, *et al.*,
Complainants,

and

WARREN FERRIS, ANNIE FERRIS, his wife, CHARLOTTE MARIE KEFFER, JOHN H. KEFFER, her husband, and CONSUMERS COAL & ICE CO.,
Defendants.

ANSWER OF THE DEFENDANT CONSUMERS' COAL AND ICE COMPANY.

The answer of the defendant the Consumers' Coal and Ice Company, a body corporate, organized under the laws of the State of New Jersey.

This defendant answering the Bill of Complaint says:

1. It admits all of paragraph one of the first cause of action of the bill, except the allegation that the said Anton Hirschman never adopted any person as a child, which allegation this defendant denies, and alleges it is informed that he did adopt Katharina Daisetta Hirschman, the mother of the defendant Charlotte Marie Keffer, as his child, and leaves complainants to their proof.

2. It admits all of paragraph two of said first cause of action of the bill of complaint, except

that part thereof which alleges that the said lands therein described were, on March 10, 1922, and October 5th, 1922, of the reasonable worth and value of upwards of $35,000, which part of said paragraph 11, this defendant denies, and says that said lands and the buildings thereon erected were not on said dates, nor at any other time, either before or since said dates, worth more than $21,000, the price paid by this defendant for said lands. That this defendant is ready and willing to sell and reconvey said lands to the persons from whom this defendant purchased them, or to the complainants, or to any other person, upon the payment to it of said sum of $21,000.

3. This defendant admits that said Anton E. Hirschman acquired part of said lands on May 19th, 1873, and that he lived on a portion of said premises for a great many years, as alleged in paragraph 3 of said first cause of action, but this defendant does not know for how many years he resides thereon. That this defendant denies all the rest of said paragraph 3.

4. This defendant denies paragraph 4 of the first cause of action of said bill of complaint.

5. This defendant denies paragraph 5 of said first cause of action.

6. This defendant denies paragraph 6 of said first cause of action.

7. This defendant admits that the defendant Warren Ferris represented himself to be the sole heir and next of kin of the said Anton Hirshman, deceased, and this defendant on the faith of such

representation, believed that he was the sole heir at law of the said Anton Hirschman, but this defendant has no knowledge whether the said Warren Ferris knew that the complainants were also heirs at law of the said Anton Hirschman, and this defendant also admits that the defendant Charlotte Marie Keffer represented herself to be the sole heir of Anton Hirschman in that the said Anton Hirschman in his lifetime adopted Katharina Daisetta Hadlich, the mother of said Charlotte Marie Keffer, but this defendant has no knowledge whether the said Charlotte Marie Keffer knew of the existence of the complainants, or whether she knew that they were also heirs at law of the said Anton Hirschman, or whether she knew that said Katharina Daisetta Hadlich, her mother, had never been adopted by said Anton Hirschman, or whether she knew all of the facts in said bill thereinbefore alleged, or whether she knew that she was not the sole heir of said Anton Hirschman; that this defendant has no knowledge or information sufficient to form a belief on the subject; nor has this defendant any knowledge or information sufficient to form a belief as to any of the statements in said paragraph 7 of said first cause of action.

8. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 8 of the first cause of action.

9. This defendant admits paragraph 9 of said first cause of action.

10. This defendant admits all of paragraph 10 of said first cause of action, except that the said

Warren Ferris and Charlotte Marie Keffer well knew the actual value of the complete ownership of said property was $35,000, and says that the said lands never were and are not now worth more than $21,000.

11. This defendant admits that it declined to accept the title to the said lands; that the reasons for its refusal to accept the said title were that an examination thereof revealed the fact that the title to a portion of said lands was derived through a deed made on or about the 19th day of January, 1903, and recorded January 21, 1903, in Liber 829 of Deeds for Hudson County, on page 156, to said Anton Hirschman by John Prout, the grantor in said deed, setting forth therein that he was the only heir at law of said John Prout, deceased; that the title to another part of said lands was derived through a deed made on or about the 19th day of October, 1886, and recorded October 20th, 1886, in Liber 427, p. 516, by Susan B. Cooney to said Anton Hirschman, and that on or about the 26th day of January, 1887, another deed was made to the said Anton Hirschman for the same lands described in a deed made to him by said Susan B. Cooney, recorded in Book 427, p. 516, as aforesaid, by John Cooney, Susan B. Cooney, Mary A. Cooney, Richard M. Cooney, Julia F. Haines and Edgar J. Haines her husband, George W. Cooney and Agnes E. Cooney his wife, and Elizabeth C. Cooney, which last mentioned deed was recorded January 31, 1887, in Liber 433, p. 120 of Deeds for Hudson County; that in said deed the said John Cooney, Susan B. Cooney, Richard M. Cooney, Julia F. Haines, George W. Cooney and Elizabeth C. Cooney describe themselves as the only heirs

at law and children by marriage of Michael Cooney, that the said deed was silent on the question whether John Cooney, Susan B. Cooney and Mary A. Cooney were married or single, and while it is true that it is set forth in said deed that Elizabeth C. Cooney was then unmarried this defendant had no knowledge of the facts, except as set forth in said deed, and could not ascertain whether they were married or single after due and careful inquiry for that purpose, nor did this defendant know, and could not obtain any information upon due inquiry why the said last mentioned deed was made, or whether the parties executing the same were all of the heirs at law of the said Michael Cooney, deceased, and also because the said Anton Hirschman in his lifetime entered into a contract to convey to Harry Zagalsky and Fannie Zagalsky a portion of the said lands and premises, to wit: the plot of land situated on the corner of Broadway and East 53rd Street; that this defendant was also unable to ascertain whether John Prout, who made the said deed to Anton Hirschman, dated January 9th, 1903, as aforesaid, was the only heir at law of John Prout, deceased, or whether the widow of the said John Prout, deceased, was still living or not; that there is no record of any release having been made by the said Harry Zagalsky and Fannie Zagalsky of their rights under the above-mentioned contract to convey said portion of said lands to them, and this defendant was unable after due and careful inquiry to ascertain the place of abode of said Harry Zagalsky and Fannie Zagalsky, or their post office address, and could not ascertain or determine whether their rights in said lands under said contract terminated or not, and that although the said

Answer of the Defendant Consumers' Coal and Ice Company.

Warren Ferris declared that he was the only heir at law of the said Anton Hirschman, and although the said Charlotte Marie Keffer declared that she was the only heir at law of the said Anton Hirschman, and notwithstanding the fact that the said Warren Ferris and the said Charlotte Marie Keffer had entered into an agreement dated May 27th, 1920, and recorded in Book , page of Hudson County, to divide the entire real and personal estate of the said Anton Hirschman equally between them, share and share alike, this defendant deemed it prudent to include the said Anton Hirschman, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest in order that all questions relating to the said title might be set at rest and quieted by the final decree of this Court when obtained. That when the conclusion of this defendant was made known to the said Warren Ferris, he requested that the attorneys of this defendant, who examined the said title, file a bill to quiet the title; he stated that he did not have any experience in such matters and the time for the passing of the title was thereupon extended as agreed upon in the contract made by this defendant with the said Warren Ferris and the said Charlotte Marie Keffer to purchase the same. Counsel was not selected by the defendant Consumers Coal and Ice Company.

12. This defendant admits paragraph 12 of the said cause of action.

13. This defendant has no knowledge or information sufficient to form a belief as to the statements in paragraph 13 of said first cause of action.

Answer of the Defendant Consumers' Coal and Ice Company.

14. This defendant admits all of paragraph 14, except that portion thereof which alleges that Warren Ferris and said Charlotte Marie Keffer fraudulently concealed from this Court the existence of the complainants and the estate they claim in said lands, on which subject this defendant has no knowledge or information sufficient to form a belief.

15. This defendant admits paragraph 15 of said first cause of action.

16. This defendant admits that no notice was addressed and mailed to the complainants, or any of them, and says that neither it nor the solicitors who conducted said suit had had any knowledge or information that the said complainants, or either or any of them, had any right, title or interest in and to the said lands and premises, or to any part thereof, and they did not know of the existence of the said complainants, or any of them, and did not know the address of them, or any of them, and this defendant denies that the said complainants, or any of them, were entitled to receive notice of the said suit, and it also denies that the said complainants or any of them ever had or now have any right, title or interest in and to the said lands and premises.

17. This defendant admits paragraph 17 of said first cause of action.

18. This defendant admits paragraph 18 of said first cause of action.

19. This defendant has no knowledge or information sufficient to form a belief as to the

statements in paragraph 19 of said first cause of action.

20. This defendant admits all of paragraph 20 of said first cause of action, except the allegation therein that said final decree was procured upon the false testimony of Warren Ferris and Charlotte Marie Keffer, and says that at the date of the acceptance of the deed made by the said Warren Ferris and Charlotte Marie Keffer, it believed the testimony given by them, as well as the statements and affidavits made by them to be true, and that it does not now know anything to the contrary.

21. This defendant denies paragraph 21 of the said first cause of action, except that it admits that said decree of the Court of Chancery dated September 21, 1922, was filed on September 25th, 1922.

22. This defendant admits that no notice was addressed and mailed to the complainants, or any of them, and says that neither it nor the solicitors who conducted said suit had any knowledge or information that the said complainants, or either or any of them, had any right, title or interest in and to the said lands and premises, or to any part thereof, and they did not know of the existence of the said complainants, or any of them, and did not know the address of them, or any of them, and this defendant denies that the said complainants, or any of them, were entitled to receive notice of the said suit, and it also denies that the said complainants or any of them ever had or now have any right, title or interest in and to the said lands and premises, but it has no knowledge or information sufficient to form a belief when the said complainants first obtained knowledge of the said suit to quiet the said title, or whether they employed counsel in New Jersey, and it denies that the said decree was procured by the fraudulent conduct and testimony of the defendants Warren Ferris and Charlotte Marie Keffer.

This defendant answering the second cause of action.

24. This defendant repeats its answer to paragraph 1 and 25 inclusive of the first cause of action and each and every part thereof as if repeated herein at length and fully and at large set forth herein.

25. This defendant in answer to paragraph 25 of said second cause of action admits that on or about October 5th, 1922, the defendants Warren Ferris and Annie Ferris, his wife, with Charlotte M. Keffer and John H. Keffer, her husband, made, executed and delivered the deed in said paragraph described, but it denies that said deed was delivered in pursuance of any conspiracy, and says that it was delivered to this defendant in pursuance of the terms of the said contract, and upon the payment of the contract price of $21,000 in cash.

26. This defendant admits paragraph 26 of the second cause of action.

27. This defendant denies paragraph 27 of the said second cause of action, and says that it never had any knowledge either at the time of the delivery of the said deed, or prior thereto, or before parting with said $21,000, of the existence of the complainants, or of any or either of them, or that they or any of them were heirs at law of said

Anton Hirschman, or that they or any of them had any right, title or interest in said lands, or any part thereof, nor was there any way by which it could ascertain the existence of the complainants, or of the facts alleged in said bill of complaint, that it did exercise diligence in making inquiries for the heirs at law of the said Anton Hirschman and relied upon the result of such inquiries and upon the statements, affidavits and testimony of the said Warren Ferris and Charlotte Marie Keffer, as to who were the heirs at law of the said Anton Hirschman, and upon the final decree of the Court of Chancery of New Jersey quieting the title of the said Warren Ferris and Charlotte M. Keffer to said lands, and on the faith of the said inquiries, statements, affidavits and testimony of the said Warren Ferris and Charlotte M. Keffer, and the said final decree of the Court of Chancery, it accepted said deed from said Warren Ferris and Charlotte Marie Keffer and paid to them said sum of $21,000; that it was advised that since both the said Warren Ferris and Charlotte Marie Keffer had agreed to convey and had executed the said deed, it was immaterial whether the said Katharina Daisetta Hadlich was legally adopted or not. This defendant says that the price of $21,000, paid by it for said property instead of being totally inadequate is a full and adequate price for the same, and more than any other person would pay for it, and more than it would bring in the market to-day, or at any time prior to to-day. This defendant says that it did not conspire with the said defendants Warren Ferris and Charlotte Marie Keffer to deprive the complainants of any right, title or interest in the said lands, but it purchased the same and paid the said

sum of $21,000, which is a full and adequate price for said lands, in good faith, believing that the said Warren Ferris and Charlotte Marie Keffer were the lawful owners of said lands and had full power and right to convey a good title thereto.

BENNY & CRUDEN,
Solicitors and of counsel with the defendant Consumers Coal and Ice Company.

Answer of Charlotte Marie Keffer.

(Filed July 19, 1923.)

IN CHANCERY OF NEW JERSEY.

Between
CHARLOTTE E. OSTROM and others,
Complainants,
and
WARREN FERRIS, ANNIE FERRIS, his wife, CHARLOTTE MARIE KEFFER and JOHN H. KEFFER, her husband, and CONSUMERS COAL & ICE COMPANY,
Defendants.
} On Bill, &c.

The answer of the defendant Charlotte Marie Keffer to the complainant's bill of complaint.

1. She admits the statements of paragraph 1 of the bill, except the allegation that Anton Hirschman never adopted any person as a child, which she denies.

2. She admits the statements of paragraph 2 of the bill, as to the ownership of land by Anton Hirschman, but denies that said property was reasonably worth upwards of $35,000.00 at the time of the sale herein mentioned. She states the value to have been then approximately $21,000.00.

3. She admits that Anton Hirschman had been, for many years, in possession of the premises in question, but she does not know the precise time when he acquired title. She has no knowledge or information sufficient to form a belief, as to the remaining allegations of the 3rd paragraph of the bill, except that she knew that Julia Hirschman Ferris was a sister of Anton Hirschman.

4. She has no knowledge or information sufficient to form a belief as to the accuracy of the statements of the 4th paragraph of the bill, except as above stated.

5. She denies the allegations of the 5th, 6th, 7th and 8th paragraphs of the bill, except as hereafter otherwise specifically stated.

6. She admits the statements of paragraph 9 of the bill, as to the administration on the estate of Anton Hirschman, but states that the amount of personal property received by her was $1,384.09, instead of the sum stated in said paragraph.

7. She admits the statements of paragraph 10 of the bill, but denies that the actual value of the property was $35,000.00, or was in excess of $21,000.00.

8. She admits that a proceeding was prosecuted in the Court of Chancery of New Jersey, as stated

in paragraphs 11 and 12 of the bill, but while such proceeding was conducted in the name of Warren Ferris and wife and this defendant and her husband, she had nothing to do with the preparation of the bill of complaint and the allegations thereof, the proceeding having been undertaken, as she was advised, by attorneys in the interest of the Consumers Coal & Ice Company. She believes the statements of the paragraphs of the bill of complaint in that cause are approximately correct, except that she denies the statement of the 11th paragraph of the bill of complaint, that she knew that the persons named as defendants to said bill of complaint, or any of them, had no interest in the property or any claim or right therein. This defendant had no knowledge whatever of the subject, nor did she know what the allegations of the bill in the former suit were, except the Solicitors informed her they were necessary parties.

9. She denies the statements of paragraph 13 of the bill.

10. She has no knowledge of the allegations of paragraphs 14, 15, 16 and 17 of the bill, but denies that she knew that the complainants, or any of them were heirs at law of Anton Hirschman, or knew their addresses. She is informed and believes that the proceeding referred to in the Court of Chancery was carried on in the orderly course of procedure in such cases, but had no knowledge, supervision or control of the proceeding.

11. She admits that she testified before the master in said proceeding as stated in paragraph 18 of the bill, and alleges that the testimony that she then gave was the truth as she then believed, and was informed.

12. She denies the allegations of paragraph 19 of the bill of complaint, so far as they relate to herself.

13. She had no knowledge or information sufficient to form a belief as to the allegations made in paragraph 20 of said bill, but denies that any statement made by her was false.

14. She denies the allegations of paragraph 21 of the bill.

15. She has no knowledge or information sufficient to form a belief of the allegations contained in paragraph 22 of the bill of complaint, but denies that her conduct and testimony in the cause were fraudulent or false.

16. She repeats the allegations contained in the foregoing paragraphs of this answer in answer to paragraph 24 of the bill of complaint.

17. She admits the allegations of paragraphs 25 and 26 of the bill of complaint, except that she denies that she then or at any time conspired with Warren Ferris and Annie Ferris, or with anyone, and she states that the amount received by her as her part of the proceeds of said sale was $9,951.69.

18. Further answering the bill of complaint, this defendant alleges that until a few weeks before the death of Charlotte Hirschman, the wife of Anton Hirschman, she had never heard, nor had any reason to suspect that her mother was not the daughter of Anton Hirschman and his wife. This defendant was brought up in the house of Anton Hirschman and his wife, and always supposed that she was their granddaughter. Anton

Hirschman died about six months after his wife. The only person whom she had ever met or knew of as a relative of her grandfather was Warren Ferris, whom she knew to be a son of Julia Ferris, a deceased sister of Anton Hirschman. When her grandmother died, at the direction of Anton Hirschman certain persons were notified of the death by John H. Keffer, her husband, this defendant being sick at the time. When Anton Hirschman died about six months later, defendant's husband John H. Keffer recalled the names to whom word had been sent, and this defendant thereupon caused notice to be given as had been done at the time of the death of her grandmother. Such notices were sent to Mr. Frank Steffens and Grace Gardner Raymond. She did not know, nor had any reason to believe, that any of the persons notified, with the exception of Warren Ferris, were of the blood of Anton Hirschman. Grace Gardner Raymond was a relative of Charlotta Hirschman, deceased, both she and Warren Ferris attended the funeral.

19. This defendant was assured by her grandfather after her grandmother's death that she was provided for, and that it was not necessary for him to make a will. She believed she was the sole heir of Anton Hirschman until after the funeral, when Warren Ferris represented to her that her mother was not of the blood of Anton Hirschman, and had not been legally adopted by him, whereupon, at his suggestion, it was agreed that the estate should be equally divided between them, this defendant believing at the time that there was no one else of the blood of Anton Hirschman who had any rights in the estate, real or personal. She has no information to the contrary, except

as brought to her notice by the allegations of the bill of complaint. Since the death of Anton Hirschman this defendant and Warren Ferris divided equally the net rents received from the premises.

This defendant prays to be hence dismissed with her costs.

ROBERSON & ROBERSON,
Solicitors of defendant
Charlotte Marie Keffer.

Answer of Charlotte Marie Keffer to Complainants' Third Cause of Action.

(Filed July 19, 1923.)

IN CHANCERY OF NEW JERSEY.

Between
CHARLOTTA E. OSTROM, *et al.*,
Complainants,
and
WARREN FERRIS and ANNIE FERRIS, his wife, CHARLOTTE MARIE KEFFER and JOHN H. KEFFER her husband, and CONSUMERS' COAL & ICE CO.,
Defendants.

On Bill, etc.

ANSWER OF CHARLOTTE MARIE KEFFER TO COMPLAINANT'S THIRD CAUSE OF ACTION.

The answer of this defendant to such portions of the third cause of action contained in the amendment to the bill of complaint made by the complainants under authority of an order made

in this cause April 30th, 1924, as concerns her interest therein says:

20. This defendant received the sum of $9,951.69 (not $9,961.59 as stated in said third cause of action) from the Consumers Coal and Ice Company as alleged in paragraph 32 of the amended bill of complaint, and has in her possession the cash and liberty bond therein referred to; but she denies that said money or any portion thereof was received by her as the proceeds of fraud or conspiracy as alleged in said paragraph.

21. This defendant alleges that the complainants have no concern or interest whatsoever in the portion of the proceeds of the sale of the property described in the bill of complaint to the Consumers Coal and Ice Company which came to her hands, but says that the same was paid to her by the vendee with knowledge of the fact that she then claimed to be an heir at law of Anton Hirschman because of the alleged adoption of her deceased mother by said Anton Hirschman, but was unable to establish said adoption by legal evidence, and that she had entered into an agreement with Warren Ferris, whom she then believed to be the nearest and only blood relation of said Anton Hirschman by which her rights in said property were recognized by said Warren Ferris; that the vendee purchased her rights in the property knowing at the time that they were subject to doubt and dispute, and that no portion of the money which came to her as the proceeds of said sale were derived from the complainants, or any of them, nor were the complainants or any of them interested in the said sale or the receipt by this

defendant of a portion of the proceeds of the sale. She is advised that the complainants have no legal interest or concern in her receipt of a portion of the proceeds of the sale from the vendee, and prays the same advantage of this answer as if she had moved to strike out such portions of the third cause of action in the complainants' amended bill of complaint as are herein answered, and as relate to the receipt by her of a portion of the proceeds of sale from the vendee, upon the ground that the same present no subject for equitable relief against this defendant.

This defendant renews her prayer to be hence dismissed with her costs.

ROBERSON & ROBERSON,
Solicitors for Defendant
Charlotte Marie Keffer.

Answer of John H. Keffer.

(Filed May 2, 1924.)

IN CHANCERY OF NEW JERSEY.

Between CHARLOTTE E. OSTROM and others, Complainants, *and* WARREN FERRIS and others, Defendants.	On Bill, etc. ANSWER OF JOHN H. KEFFER.

The answer of the defendant John H. Keffer to the second cause of action stated in the complainant's bill of complaint:

This defendant admits paragraphs 25 and 26 of the bill of complaint, except that he denies that he or his wife ever conspired with anyone to convey the premises referred to, or that his wife received one-half of the purchase price, $21,000.00. He is informed and believes that the amount which she actually received was $9,951.69.

This defendant prays to be hence dismissed with his costs.

ROBERSON & ROBERSON,
Solicitors of Defendant John H. Keffer.

Separate Answer of Warren Ferris and Annie Ferris.

(Filed February 14, 1923.)

IN CHANCERY OF NEW JERSEY.

Between Charlotta E. Ostrom, Frank B. Rieber and Rose F. Rieber, his wife; George A. Rieber and Lucille Rieber, his wife; Frank C. Steffens and Marie Augusta Steffens, his wife, and Marie W. De Bussey, Complainants, *and* Warren Ferris and Annie Ferris, his wife; Charlotte Marie Keffer and John H. Keffer, her husband, and Consumers Coal and Ice Company, Defendants.	On Bill, etc. Separate Answer of Warren Ferris and Annie Ferris.

The answer of the defendants Warren Ferris and Annie Ferris, his wife, answering the Bill of Complaint, say that:

First Cause of Action.

1. Paragraph 1 is admitted, except that defendants have no knowledge or information sufficient to form a belief as to the statements in said paragraph wherein it is alleged that Anton Hirschman had no child or children, and never adopted any person as a child.

2. Paragraph 2 is admitted, except the allegation that the premises described therein were of

the reasonable worth and value of upwards $35,000.00, and that such value was on said dates well known to defendants.

3. These defendants have no knowledge or information sufficient to form a belief as to the statements in paragraph 3, except that they admit the date when Anton Hirschman acquired premises in question and that he resided on said premises for forty-five years, and that Julia H. Ferris was a sister of Anton Hirschman, and the said Julia H. Ferris leaving as her only heir and next of kin her son defendant Warren Ferris.

4. These defendants have no knowledge or information sufficient to form a belief as to the statements in paragraph 4.

5. Paragraphs 5, 6 and 7 are denied.

6. Paragraph 8 is admitted.

7. Paragraph 9 is admitted, but defendants deny any conspiracy with Charlotte Marie Keffer, as therein alleged.

8. Paragraph 10 is admitted, but defendants deny that the premises mentioned were of the actual value of $35,000.00.

9. Paragraph 11 is admitted, but these defendants deny that defendants knew that Anton Hirschman had been in quiet and peaceable possession of the premises in question, or that the said Anton Hirschman had any heirs or personal representatives excepting defendant Warren Ferris.

Separate Answer of Warren Ferris and Annie Ferris.

10. Paragraph 12 is admitted.

11. Paragraph 13 is denied.

12. Paragraph 14 is admitted, except that defendants deny that they fraudulently concealed the existence of any of complainants as heirs of Anton Hirschman, as they believed that the said Anton Hirschman had no heirs except Warren Ferris.

13. Paragraph 15 is admitted.

14. Paragraph 16 is denied.

15. Paragraph 17 and 18 are admitted.

16. Paragraph 19 is denied.

17. Paragraph 20 is admitted, except that defendant Warren Ferris denies that his testimony was false or untrue.

18. Paragraph 21 is denied.

19. These defendants have no knowledge or information sufficient to form a belief as to the statements in paragraph 22.

20. Paragraph 23 is denied.

SECOND CAUSE OF ACTION:

1. The answers to the First Cause of Action are made a part hereof as if repeated herein at length.

Separate Answer of Warren Ferris and Annie Ferris.

2. Paragraph 25 is admitted, except that defendants deny any conspiracy.

3. Defendants deny that the Consumers Coal and Ice Company paid over to defendants Warren Ferris and Charlotte Marie Keffer the sum of $21,000.00, but admit that the Consumers Coal and Ice Company paid over the sum of $20,578.38 of which defendant Warren Ferris received one-half.

4. These defendants have no knowledge or information sufficient to form a belief as to the statements in Paragraph 27.

WHEREOF defendants pray that the complaint herein be dismissed.

JOHN J. HOFFMAN,
Solicitor for Defendants
Warren Ferris and Annie Ferris.

Order.

(Filed January 23, 1923.)

IN CHANCERY OF NEW JERSEY.

Between

CHARLOTTE E. OSTROM, FRANK B. RIEBER, and ROSE F. RIEBER, his wife, GEORGE A. RIEBER and LUCILLE RIEBER, his wife, FRANK C. STEFFENS and MARIE AUGUSTA STEFFENS, his wife, and MARIE W. DE BUSSEY,
Complainants,

and

WARREN FERRIS and ANNIE FERRIS, his wife, CHARLOTTE MARIE KEFFER and JOHN H. KEFFER, her husband and CONSUMERS COAL & ICE COMPANY,
Defendants.

On Bill, &c.
ORDER.

This matter being open to the Court by Messrs. Benny & Cruden, solicitors for the defendant, Consumers Coal & Ice Company, and it appearing that heretofore, to wit, on the 23rd day of December, 1922, an order was entered in the above entitled cause whereby it was ordered among other things, that the defendant show cause before the Chancellor at Chancery Chambers, at the Prudential Building, 763 Broad Street, Newark, New Jersey, on the 2nd day of January, 1923, at ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why an injunction should

not be issued restraining the defendants Warren Ferris and Annie Ferris, his wife, Charlotte Marie Keffer and John H. Keffer, her husband, and Consumers Coal and Ice Company, and each and every one of them from selling, transferring, conveying or otherwise disposing of or encumbering the premises described in the bill of complaint or any property or the proceeds of any property in their possession or control, belonging to Anton Hirschman, or a part of his estate upon his death or the proceeds thereof: AND IT IS FURTHER ORDERED, that said defendants and each and every one of them, their agents and attorneys, in the meantime and until further order of this court in the premises, desist and refrain from selling, transferring, conveying or otherwise disposing of or encumbering the premises described in the bill of complaint or any property or the proceeds of any property in their possession or control belonging to Anton Hirschman, or a part of his estate upon his death or the proceeds thereof:

AND IT FURTHER appearing that the hearing on the said order to show cause was by stipulation continued from time to time until the 30th day of January, 1923, and it being represented to the court that the defendants Warren Ferris, and Annie Ferris, his wife, Charlotta Marie Keffer and John H. Keffer, her husband, or one or more of them are the owners of certain real estate situate in the county of Hudson and state of New Jersey, or elsewhere in the state of New Jersey, which said real estate was purchased in whole or in part with the proceeds of the money derived out of the sale of lands mentioned in the bill of complaint filed in this cause.

IT IS THEREUPON on this 23rd day of January, 1923, on motion of Messrs. Benny & Cruden,

solicitors for the defendant, Consumers Coal & Ice Company, ORDERED, that the said Warren Ferris and Annie Ferris, his wife, Charlotta Marie Keffer and John H. Keffer, her husband, be, and each and every one of them are hereby restrained from selling, transferring, conveying, or otherwise disposing of, or incumbering any and all lands which they, or either of them may own in the county of Hudson, state of New Jersey, or anywheres in the state of New Jersey, in which lands the proceeds of the sale of the premises mentioned and described in the bill of complaint filed in this cause, or any part of said proceeds may be invested, until the further order of this Court,

AND IT IS FURTHER ORDERED, that a true, but uncertified copy of this order be served upon the said Warren Ferris, and Annie Ferris, his wife, Charlotte Marie Keffer and John H. Keffer, her husband, either personally, or by leaving same at their respective places of residence with a person upwards of the age of fourteen years, or by serving the same upon the solicitors of record of the said Warren Ferris, and Annie Ferris, his wife, Charlotta Marie Keffer and John H. Keffer, her husband, within 5 days from the date of this order.

E. R. WALKER,
C.

Respectfully advised.
JOHN H. BACKES,
V. C.

Order Appointing Temporary Receiver.

(Filed April 30, 1924)

IN CHANCERY OF NEW JERSEY

Between

CHARLOTTA E. OSTROM *et al.*,
Complainants,

and

WARREN FERRIS and ANNIE FERRIS his wife, CHARLOTTE MARIE KEFFER and JOHN H. KEFFER her husband, and CONSUMERS COAL AND ICE COMPANY,
Defendants.

53/19
On Bill, etc.
ORDER APPOINTING TEMPORARY RECEIVER.

This matter being opened to the Court at the hearing by counsel for complainants in presence of counsel for all defendants and its appearing by the amended pleadings and proofs submitted at the hearing that a temporary receiver should be appointed

NOW, THEREFORE, on motion of complainants it is on this 30th day of April, 1924,

ORDERED that Horace Roberson of the City of Bayonne, County of Hudson, State of New Jersey, be and he is hereby appointed Receiver to take charge of the land and premises in the Township of North Bergen, County of Hudson, State of New Jersey, known as 5386 Boulevard Avenue, mentioned and described in the Bill of Complaint as amended and to manage the same with full power

to sue for, collect and receive the rents, issues and profits thereof and to let the said premises or any part thereof at such time or times as may prove necessary or proper and for that purpose to make agreements or leases for the rental of said premises or any part thereof and otherwise to do all things necessary or proper for the due care and proper management of said lands and premises; and it is further

ORDERED that said Receiver shall take charge of and retain in his custody all moneys, cash, securities or other property in the possession or under the control of Warren Ferris or Annie Ferris his wife, which is the proceeds of moneys received by Warren Ferris from Consumers Coal and Ice Company on or about the 5th day of October, 1922, or purchased with the whole or any part of such proceeds and any and all investment or investments of the same in whatsoever form the same may be; and it is further

ORDERED that said Receiver shall take charge of and retain in his custody the sum of $2,551.00 in cash and the United States Liberty bond for $500.00 formerly in the possession of Charlotte Marie Keffer and placed in possession of Horace K. Roberson, Esq. her Solicitor, to be disposed of by order of this Court, together with any and all other property in the possession or under the control of said Charlotte Marie Keffer which is the proceeds of moneys received from the Consumers Coal and Ice Company on or about the 5th day of October 1922 or purchased with the whole or any part of said proceeds, and any and all investment or investments of the same in whatsoever form the same may be other than clothing; and it is further

ORDERED that the said defendants Warren Ferris and Annie Ferris, his wife, be and each of them hereby is restrained and enjoined from collecting or receiving all or any part of the rents, issues and profits of said lands and premises now due or to become due or from interfering with the said Receiver in any manner whatsoever in the performance of the duties of the Receiver under this order.

E. R. WALKER,
C.

Respectfully advised,
JOHN H. BACKES,
V. C.

Order to File a Bill of Review.

(Filed April 30th, 1924.)

IN CHANCERY OF NEW JERSEY.

Between

CHARLOTTA E. OSTROM, FRANK B. RIEBER and ROSE F. RIEBER, his wife, GEORGE A. RIEBER and LUCILLE RIEBER, his wife, FRANK C. STEFFENS and MARIE AUGUSTA STEFFENS, his wife, and MARIE W. DE BUSSEY,
Complainants,
against
WARREN FERRIS and ANNIE FERRIS, his wife, CHARLOTTE MARIE KEFFER and JOHN H. KEFFER, her husband, and CONSUMERS COAL AND ICE COMPANY,
Defendants.

ON BILL, etc.
ORDER,
53/19.

On reading and filing the petition of Charlotta E. Ostrom, Frank B. Rieber and Rose F. Rieber, his wife, George A. Rieber and Lucille Rieber, his wife, Frank C. Steffens and Marie Augusta Steffens, his wife, and Marie W. de Bussey, praying for leave to file their Bill of Review of the cause in this Court wherein Warren Ferris and Charlotte Marie Keffer are complainants, and Anton Hirschman, his heirs, etc., are defendants and the affidavit accompanying the same, it is on

Order to File a Bill of Review.

this 30th day of April, 1924, on motion of said petitioners

ORDERED with the same effect as if the same had been made and entered on the 23rd day of December, 1922, the date of filing the bill of complaint herein, that petitioners be at liberty to file a Bill of Review touching the several matters in said petition mentioned and such other relief in the premises as they may be advised.

E. R. WALKER,
C.

Respectfully Advised.

JOHN H. BACKES,
V. C.

Petition for Bill of Review.

IN CHANCERY OF NEW JERSEY.

Between

CHARLOTTA E. OSTROM, FRANK B. RIEBER and ROSE F. RIEBER, his wife, GEORGE A. RIEBER and LUCILLE RIEBER, his wife, FRANK C. STEFFENS and MARIE AUGUSTA STEFFENS, his wife, and MARIE W. DE BUSSEY,
Complainants,
against
WARREN FERRIS and ANNIE FERRIS, his wife, CHARLOTTE MARIE KEFFER and JOHN H. KEFFER, her husband, and CONSUMERS COAL AND ICE COMPANY,
Defendants.

ON BILL, etc.
PETITION.
53/19.

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

The petition of the above named complainants Charlotta E. Ostrom, Frank B. Rieber and Rose F. Rieber, his wife, George A. Rieber and Lucille Rieber, his wife, Frank C. Steffens and Marie Augusta Steffens, his wife, and Marie W. de Bussey, respectfully shows:

1. That on the 14th day of June, 1922, Warren Ferris and Charlotte Marie Keffer filed their Bill of Complaint in this court against Anton Hirschman and his heirs, which class includes

your petitioners, for the purpose of declaring the title of your petitioners to certain property consisting of eight lots in the City of Bayonne, New Jersey, described in said complaint, null and void and prayed that the heirs of Anton Hirschman including these petitioners be forever barred and that said Warren Ferris and Charlotte Marie Keffer be declared to have good title to the said property.

2. That your petitioners were never served with process of subpoena, did not appear in the said suit, and never had any information concerning said suit until the 8th day of December, 1922, long after the filing of the final decree mentioned in the Bill of Complaint, as more particularly appears by the allegation in the first cause of action in the proposed Bill of Complaint to review the proceedings commenced by Warren Ferris and Charlotte Marie Keffer.

3. That in said cause Warren Ferris and Charlotte Marie Keffer proceeded *ex parte* under a decree *pro confesso* and the testimony was taken without any notice to petitioners or any of them. That Warren Ferris and Charlotte Marie Keffer testified in said suit that there were no heirs of Anton Hirschman other than themselves. That by their conduct and the conduct of each of them and their and each of their false and fraudulent testimony said Warren Ferris and Charlotte Marie Keffer imposed upon this Honorable Court and obtained a decree barring the just rights of these complainants in and to the said premises. Said final decree bears date the 21st day of September, 1922, and was filed on September 25th, 1922.

4. That the said decree has been duly enrolled and the complainants and each of them are advised that the decree is erroneous and ought to be reviewed, reversed and set aside. That it was the product of false testimony of Warren Ferris and Charlotte Marie Keffer and their fraudulent concealment of the existence of the complainants, the other heirs of Anton Hirschman. That there are other apparent errors and imperfections in the record thereof.

5. That petitioners omitted formally to apply for leave to file the Bill of Review herein at the time of the commencement of this suit. That this suit came on duly to be heard on the 9th, 10th and 11th days of January, 1924, before his Honor Vice Chancellor John H. Backes in the presence of all of the parties and it appeared that all of the defendants had answered the Bill of Complaint containing a cause of action for Review, and petitioners allege that defendants, by answering and accepting notice of hearing, waived the usual formal application and order granting leave to file such Bill of Complaint in part a Bill of Review, if any be required in the peculiar circumstances of this cause, and that petitioners at the hearing were granted leave to file such petition and the Court stated that an order might be entered *nunc pro tunc* granting leave to file said Bill of Complaint.

6. Your petitioners furthermore state that defendants Warren Ferris and Charlotte Marie Keffer rested their case at the hearing and finished the presentation of evidence on their behalf and the proofs submitted show that these complainants had good cause for filing their said

Bill of Review and therefore the deposit of a sum as security for costs of defendants Warren Ferris and Charlotte Marie Keffer is unnecessary for their protection and your petitioners pray that the order *nunc pro tunc* granting leave to file the Bill of Review omit the usual requirement of a deposit.

WHEREFORE your petitioners desire an order granting them leave *nunc pro tunc* to file their Bill of Review to be relieved in the premises and granted leave for the purpose of having the said decree reviewed, reversed and set aside, and that no further proceedings may be had under the same.

And your petitioners, etc.

CHARLOTTA E. OSTROM
FRANK B. RIEBER
ROSE F. RIEBER
GEORGE A. RIEBER
LUCILLE RIEBER
FRANK C. STEFFENS
MARIE AUGUSTA STEFFENS
MARIE W. DE BUSSEY
All

By WM. P. MARTIN
their attorney and solicitor.

WM. P. MARTIN,
Counsel and Solicitors for Complainants,
Office and Post Office Address,
No. 763 Broad Street,
Newark, New Jersey.

STATE OF NEW JERSEY
COUNTY OF ESSEX, } ss.:

WILLIAM P. MARTIN, Agent for and Solicitor of all the complainants and petitioners in the foregoing petition, being duly sworn on his oath deposes and says: I have read the petition and know the contents thereof; that the same is true to my own knowledge except the matters therein stated to be alleged upon information and belief and that as to those matters I believe it to be true.

All of the petitioners are non-residents of the State of New Jersey and are not within this State. I refer to my affidavit verified the 22nd day of December, 1922, and by reference make the same part hereof. I have examined certified copies of the record of the case in the Court of Chancery between Warren Ferris and Charlotte Marie Keffer and Anton Hirschman, his heirs, etc., and such record discloses that the petitioners herein were never served with process or notice of publication in such action.

I have received communications from each and every one of the petitioners stating that no notice, information or knowledge of such suit was ever received by them until the investigation was made on their behalf on or about the 8th day of December, 1922, and each of the petitioners has made an affidavit in this cause which was used

on the application for an injunction and were duly filed in this cause, each and every one of which is by reference made part hereof.

WM. P. MARTIN.

Sworn to and subscribed before me this 30th day of April, 1924. }

FLORENCE A. TAKACS
Notary Public of New Jersey

Testimony.

IN CHANCERY OF NEW JERSEY.

January 9, 1924.

Between
CHARLOTTA E. OSTROM, FRANK B. RIEBER, *et al.*,
Complainants,

and

WARREN FERRIS, ANNIE FERRIS, his wife, CHARLOTTE MARIE KEFFER and JOHN H. KEFFER, her husband, and CONSUMERS COAL & ICE CO.,
Defendants.

On Bill, etc.

Transcript of shorthand notes of testimony taken in the above entitled matter before his Honor John H. Backes, Vice-Chancellor, at the Chancery Chambers, in the City of Newark, New Jersey, in the presnece of William P. Martin, for complainants, Mr. James A. Butler for defendant Warren Ferris and Annie Ferris, Messrs. Roberson & Roberson and Mr. Charles L. Carrick for defendant Charlotte Marie Keffer, and Messrs. Benny & Cruden, and Messrs. Hudspeth & Demarest, for defendant Consumers Coal and Ice Company.

Mr. Hudspeth: I desire to make a motion to dismiss this bill on the ground that these complainants in this bill, which is a fraud bill I assume from hurriedly looking it over, were brought in as unknown heirs in the original action, which was a bill filed to quiet title in this very

matter, in which the title of this property was concerned, and a decree went confirming the title as against these unknown heirs, and before the time to appeal from that decree expired under the statute they commenced this suit. Our insistment is that under the statute and under the authorities that they should have appealed in the original cause from the decree in that cause, and if they had not had time—I think about two days existed within which they could have taken the appeal—they could have applied to the Chancellor under the statute for an extension of six months. That they did not do.

The Court: The motion to dismiss comes entirely too late, after you have filed your answer.

FRANK B. RIEBER, sworn for complainants.

Direct examination by Mr. Martin:

Q. Where do you reside, Mr. Rieber? A. At the present time?

Q. Yes. A. Benton Harbor, Michigan.

Q. Benton Harbor, Michigan, 618 Speer street? A. No, 123 Apple avenue. I have moved since.

Q. How old are you? A. Fifty years and over.

Q. Where were you born? A. Callicoon, N. Y.

Q. Is that in Sullivan County? A. Yes, sir.

Q. How long did you live in Callicoon? A. Until I was seventeen years of age.

Q. And where did you go to from there? A. Binghamton, N. Y.

Q. How long did you stay there? A. I remained at Binghamton seven or eight years.

Q. Roughly? A. Seven or eight years.

Q. And from there where did you go? A. I

took one trip to Charleston, South Carolina for a few months. I went to Toronto, Canada for three years.

Q. Yes, and then from there? A. Returned to Lestershire, New York.

Q. That is now Johnston City, right near Binghamton, New York? A. Recently renamed Johnston City, N. Y.

Q. And from there where did you go? A. From Johnston City I went to Benton Harbor, Michigan.

Q. You have been there ever since? A. Yes, sir.

Q. And how long have you been in Benton Harbor, Michigan? A. Seven years last November.

Q. And were you there all the time in 1922—all that year excepting when you came East here along the latter part of November or early December? A. Yes, sir.

Q. And did you ever hear of this case of Ferris against Hirschman? A. No, sir.

Q. Until a certain date last December? A. No, sir.

Q. I do not mean last December, 1922? A. 1922.

Q. Your answer is the same, is it, as to 1922? A. 1922, yes, sir.

Q. Now, when did you first have any knowledge of the proceeding known as Warren Ferris and Charlotte Marie Keffer against Anton Hirschman, his heir and Charles Hadlick and other persons, an action to quiet title in the Court of Chancery in the State of New Jersey? A. December 6, 1922.

Q. When did you first see the papers in the case? That is the day you went to Hudson County and saw the lis pendens, wasn't it?

Mr. Martin: I do not want to lead the gentleman, but I assume there is no dispute about it.

Q. December 6th, is the day you went to the Hudson County Clerk's Office and saw the lis pendens, isn't it? A. Yes, sir.

Q. When did you go and see the papers themselves? A. I did not get that.

Q. When did you go and see the papers themselves? A. On December 6th.

Q. At Trenton, I mean? A. Oh, at Trenton? On the 7th or the 8th.

Q. 7th or 8th of December, 1922? A. Yes, sir.

Q. Now, what is the name of your mother? A. Anna Marie Hirschman Rieber.

Q. Where was she born? A. I believe in the old country, Austria.

Q. Where is that? A. Austria, or somewhere there; I am not sure exactly; only what I have heard them say.

Q. Not "They", what did you hear her say? A. Well, that she came from Austria.

Q. And is she dead? A. Yes, sir.

Q. When did she die? A. June 24, 1894, I think. 24th of June, but it was in 1904.

Q. 1904? A. 1904.

Q. Where did she live during the latter part of her life? A. Lestershire or Johnston City—recently renamed Johnston City.

Q. Was she in Callicoon? A. My mother?

Q. Yes. A. That is where she lived.

Q. How old were you when you say you moved from Callicoon, Sullivan County, New York, up to Binghamton? A. Seventeen years old.

Q. What year was that? A. That was in 1900.

Q. 1890 or 1900? A. 1890 about.

Q. About 1890? A. Yes, sir, about that.

Q. Who was your grandfather—who was your mother's father and mother? A. Anton Hirschman.

Q. Anton Hirschman? A. Yes, sir.

Q. Was the father of your mother? A. Yes, sir.

Q. And what was the name of the mother of your mother? A. Marie Newman Hirschman, I believe.

Q. Was it Marie or Marie Anna? A. Marie Anna, I guess there was an Anna in it, also.

Q. Marie Anna Newman Hirschman? A. Yes, sir.

Q. Marie Anna Newman being her maiden name? A. Yes, sir, before she was married.

Q. Where did Anthony Hirschman live? A. Bayonne City.

Q. I mean your grandfather? A. My grandfather, Beechwood.

Q. How far is that from—— A. Five miles from Callicoon.

Q. About five miles from Callicoon? A. About five miles from Callicoon, New York.

Q. When did he die? A. In the year 1881.

Q. When did your grandmother die? A. In the year 1882.

Q. Now, what brothers and sisters, if any, did your mother have? A. Francisco Hirschman Steffens.

Q. Francisco? A. Hirschman Steffens, Julia Ferris, or Julia Hirschman Ferris.

The Court: Is Francisco a man or a woman?

Mr. Martin: Francisco is a woman.

Witness: And one brother, Anton Hirschman.

Q. Is Francisco living, do you know? A. No, sir; she is not.

Q. She is dead? A. Yes, sir.

Q. Did she die before Anton Hirschman who died on May 19, 1920? A. Yes, sir.

Q. Now, when you say your mother had a brother by the name of Anton Hirschman, where did that brother live? A. Bayonne, N. J.

Q. And Julia Ferris, is she dead? A. I believe she is, I did not know that she was dead until this matter came up.

Q. Well, is Warren Ferris, this defendant, a son of Julia Ferris? A. Yes, sir.

Q. And what is his age? A. Well, I couldn't say positively, but I believe his age is about the same as mine. I believe he was born somewhere near the year 1873 or 1874.

Q. And when your mother died who were living of her children? A. Of my mother's children?

Q. Yes. A. Mrs. C. Ostrom and myself.

Q. That is Charlotta E. Ostrom, the complainant, and yourself, were the children? A. Yes, sir.

Q. Now, did you ever have any brothers and sisters? A. Yes, sir, one brother.

Q. And what was his name? A. George Anton Rieber.

Q. And was he living when your mother died? A. No, sir.

Q. Did he die leaving any children? A. Yes, sir.

Q. And what is the name—what are the names of the children? A. He left one son, George A. Rieber.

Q. George A. Rieber, Jr., isn't it? A. Yes, sir, junior.

Q. And is he one of the complainants in this matter with you and the rest? A. Yes, sir.

Q. Now, Francisco had how many children? A. Three.

Q. And what were their names? A. Mamie——

Q. What is her present name? A. Her present name is Mamie DeBussey.

The Court: Marie?

Q. Her real name is Marie Steffens? A. Yes, sir.

Q. Frank was married to a man by the name of Steffens? A. Yes, sir.

Q. And when she died she left what children now—you have mentioned Mamie as one, Mamie Steffens DeBussey. A. George W., Jr.

Q. George W. Steffens, Jr.? A. Yes, sir, Frank C. Steffens.

Q. Wasn't George Steffens the name of the husband of Francisco and wasn't the children's names Frank Steffens and William Steffens? A. Yes, sir.

Q. That is correct? A. That is correct. I made a mistake, his name was William.

Q. Is Frank Steffens here today? A. Yes, sir.

Q. And William, is he dead? A. William is dead.

Q. Was he married? A. No, sir.

Q. And Mrs. DeBussey is here today, is she? A. Yes, sir.

Q. Did he die before Anton Hirschman? A. Yes, sir.

Q. Do you know when William died? A. No, I do not.

Q. Anton Hirschman, your uncle? A. When he died?

Q. No. When I asked you that question and you answered it did you refer to Anton Hirschman your uncle or Anton Hirschman your grandfather? A. The first question?

Q. No, this last one? A. I do not remember what the question was.

Q. Just a moment. Did William Steffens die before Anton Hirschman your uncle? A. Yes, sir.

Q. Now, did you know Julia Ferris? A. Yes, sir.

Q. Did you ever see her personally? A. Oh, yes, yes, sir.

Q. Did you see her infrequently or often or how? A. Quite often.

Q. Your grandfather Anton Hirschman was living on a farm up there, was he, at Callicoon? A. My uncle, Anton Hirschman?

Q. No, your grandfather Anton Hirschman? A. Yes, sir.

Q. Was he living on a farm—you said Beechwood? A. Yes, sir.

Q. And what business was your father in? A. Carpenter and builder.

Q. Did Julia Ferris live in Callicoon at any time while you were there? A. I do not think she did.

Q. Did you ever see Warren Ferris up there? A. Yes, sir.

Q. Now, when was the first time that you remember that you saw Warren Ferris up in Callicoon? A. About the year 1882 or 1883.

Q. How old were you then? A. Ten years—nine or ten years.

Q. Was there anything at all that would make you remember that—that would recall the matter to your recollection? A. Yes, sir.

Q. What is it? Just state any incident that occurred that might bring it to your mind. A. On one occasion when Warren was up there we were out playing, my brother, him and I—we were in a vacant lot where there were some burdocks

that had nice burrs on. We made a nice big cap and put it up on his head and sent him in to show his mother how nice he looked. It caused quite a little excitement around there. The mother couldn't get the burdocks out, so I had to take him to the barbershop and have his hair cut. On one other occasion, but not at the same visit, at Callicoon, Warren and I got in a quarrel, which happened quite often. He picked up a stick of firewood and he hit me in the stomach and knocked me out. This caused quite an argument between his mother and mine. When my father came home that night and got the news he told her she better go home, so they packed up and left the next day.

Q. Where did the Ferrises live? A. Lived in Jersey City Heights, I believe, at that time.

Q. When they came up there did they come to see—to stay at the grandfather's or at the Rieber's? A. Both places.

Q. How long were these visits to the Riebers? A. A week or so.

Q. Where did Warren Ferris sleep when he was at the Riebers? A. Slept with me.

Q. Now, was this in the summer or winter when they came up there? A. Summer time.

Q. How long would be those visits. A. About a week or ten days; sometimes for less.

Q. Did you ever see uncle Anton up in Callicoon? A. Yes, sir.

Q. Now, how many times can you say that—do you say that Warren Ferris was up there in Callicoon? A. Well, several times, to my knowledge.

Q. Well, what do you mean by several times, one or two or what? A. Five times I am sure of.

Q. Now, is that all that you can recall in reference to anything that happened at Callicoon in

connection with you or between you and your brother and Warren Ferris? A. Why, there is lots of little things happened, but nothing but boy tricks, you know, playing and like of that. Those are the two principal ones that I remember, and I mentioned it.

Q. You spoke of your brother George A. Rieber, what does A stand for? A. Anton.

Q. Dou you know whom he was named after? A. My uncle Anton Hirschman.

Q. Now, when you went to Binghamton as you have stated—— A. Yes, sir.

Q. —who went there with you in the family? A. I went alone. My brother——

Q. Did the family come on up there after? A. My brother and sister were already living there when I went.

Q. Oh, Mrs. Ostrom and George? A. Yes, sir.

Q. How about your mother and father? A. Oh, shortly afterwards they moved there.

Q. Now, about when did your mother and father come to Binghamton? A. As near as I can remember it would be two years later. That is as near as I can——

Q. Later than when you went there? A. Yes, sir.

Q. And about when was that? A. Well, it would be—— (interrupted)

Q. You said you were fifty years old. You were born in 1873 or 1874, were you? A. 1873.

Q. And you went to Binghamton at what age? A. Seventeen.

Q. That was around 1891? A. 1892.

Q. They came up around 1892 or 1893? A. 1892, yes, sir.

Q. Now, did you ever see Aunt Julia Ferris? A. Yes, sir.

Q. And Warren Ferris up there in Binghamton? A. Yes, sir.

Q. You say they lived in Jersey City. Now, when did you see Julia up in Binghamton—your aunt Julia? A. Well, aunt Julia came there—— (interrupted)

Q. Speak a little louder so the gentleman can hear. If you do not remember the exact date say so. A. I do not remember exactly the date.

Q. How long after you went up there did aunt Julia appear there? A. I should say five years or six.

Q. What about Aunt Julia coming up to Binghamton? A. Well, she came there—her husband had died and she had some money, as I understood it, it was from insurance, but it may have been from the sale of a property that she owned. I am not certain which it was, but at any rate she wanted to locate in Binghamton or nearby. She stayed at our house there and kept running around, looking around, and finally she bought a lot on Laurel avenue, in kinda the outskirts of the city and she built a two family house there. After the house was completed she resided upstairs and rented the downstairs.

Q. Yes, go on. A. During the time she was building this Warren came up to see her three times—came up to Binghamton three times to my knowledge.

Q. What street did Aunt Julia build this house on? A. Laurel avenue.

Q. And it was a two family house? A. Yes, sir.

Q. Now, did Warren ever come up there to see his mother? A. Yes, sir.

Q. Did you see Warren up there? A. Yes, sir.

Q. Well, how often did you see Warren? A. Three times that I know of.

Q. How long did Aunt Julia, his mother—Warren's mother—stay up there in Binghamton? A. I don't know exactly, but I would say seven years.

Q. Well, now, when you saw Warren in Binghamton what did you do—what happened, if anything? A. Why, we walked around and went in, playing a few games of pool—we were both pool sharks at that time.

Q. What else? A. Stopped in and had a glass of beer. Liked that too.

The Court: At that time?
Witness: Yes, sir.

Q. Well, what else. Did Aunt Julia or Warren—did you go to their house or anything of that sort? A. Yes, sir. There is one occasion I remember real well. In the year 1898, November 24th, on Thanksgiving Day, my Aunt Julia gave a Thanksgiving dinner and at that dinner those that were present were Warren Ferris, her son, Annie Ferris his wife, and I believe Julia Ferris, his daughter, my father, Frank Rieber—Francis or Frank Rieber, my mother Anna Marie Rieber, Miss Rose Hemme, now my wife, and myself. We all ate dinner together. Very nice afternoon—day, as you might call it. During the day Warren went and got several pails of beer at a nearby hotel called the Riverside Drive Hotel.

Q. Yes. A. Well, that was all that happened on that day except that there was quite a snow storm that day.

Q. Well, you were shortly afterwards married, were you? A. Yes, sir, shortly afterwards I was married.

Q. Did you live in Binghamton at any time after your marriage in a two family house? A. In Binghamton, after I was married?

Q. Yes, or Lestershire? A. Lestershire, yes.

Q. Who was the other family in that house? A. My father and mother.

Q. Did you ever see Aunt Julia at your mother's home? A. Yes, sir.

Q. Did your mother, Marie Anna Hirschman Rieber, ever see Julia Ferris up there in Binghamton to your knowledge? A. Yes, sir.

Q. You were there and saw them together, did you? A. Yes, sir.

Q. Did you ever see Warren Ferris at your home? A. At my home?

Q. Yes. A. Yes, sir—well, my father's home. I didn't——

Q. Did you ever see Warren Ferris in the presence of your mother Marie Annie Rieber? A. Yes, sir.

Q. When was the last time? A. Well, probably was in the year of 1880—now wait just a second—1896 I believe.

Q. Wasn't he there at this Thanksgiving dinner on November 24, 1898? A. Yes, sir.

Q. Have you seen him since? A. Since then, no.

Q. Have you had any correspondence with Warren Ferris or his wife? A. Yes, sir.

Q. When was the last correspondence? A. Last correspondence was—I am not able to think when that last letter was written.

Q. Where were you? A. Just a minute now. I know when I got that last letter.

Q. Have you got the letter now with you? A. No, I have not.

Q. Where is it? A. We destroyed it. When we left Lestershire we destroyed all our old letters.

Q. When you moved to Benton Harbor, do you mean? A. Yes, sir.

Q. You had a lot of letters and what did you do with them? A. We burnt them up.

Q. Have you made a search to find any letters from Warren Ferris? A. Yes, sir, I have, but I knew——

Q. Did you find them? A. No, sir; I knew that I had none.

Q. Now, you say this letter was received by you at Benton Harbor? A. No, sir, at Lestershire.

Q. In Lestershire? A. Yes, sir.

Q. Well, what did it say—what was stated in it to the best of your recollection? A. He wrote and said that his wife was not feeling well and he wanted to know if she could come up and remain with us for a while as he thought it would do her good up there in the country. He called it country. It was on the outskirts. I answered the letter and told him that we could not take her in at that time as we had some of my wife's folks with us. And that is the last letter that I ever received from him.

Q. Now, when were you married? What is the date of your marriage? Take your time now and just try to recall. A. 1900.

Q. You were married in 1900? A. Yes, sir.

Q. Now, how long after you were married did you stay in Binghamton? A. About—oh, about twenty-four hours.

Q. Then you went to Canada, didn't you, to Toronto? A. Yes, sir.

Q. For how long? A. Three years about.

Q. And from Canada you went back to Binghamton, did you? A. Yes, sir.

Q. And you have been in Benton Harbor for six years? A. No, I have been in Benton Harbor seven years last November.

Q. Then it must have been about 1917 you went to Benton Harbor, and you got back to Binghamton in 1903, you say, three years after your marriage? A. Yes, sir.

Q. And this letter from Warren Ferris was received by you in Binghamton or Johnson City? A. Johnson City.

Q. Now, about when was that letter received from Warren Ferris? A. I think I can tell you right now. 1905 or 1906.

Q. When did your mother die? A. 1904.

Q. Was Warren Ferris at her funeral? A. No, sir.

Q. Who was there? A. His—my Aunt Julia Ferris.

Q. His mother? A. Yes, sir, his mother. Warren Ferris's wife.

Q. What is her name? A. Annie.

Q. Is she in court here today? A. I am looking to see if I can see her.

Q. (Will Annie Ferris please stand up) A. Yes, sir; that is her.

Q. This lady? A. Yes, sir.

Q. Was she there as your mother's funeral in 1904? A. Yes, sir.

Q. Now, about the date of this letter from Warren, when was that? A. About 1905 or 1906, I believe.

Q. When you were at Callicoon did you ever see Anton Hirschman, your uncle? A. Oh, yes, yes, sir.

Q. How often? A. Well, I don't know just how many times, but it was quite often. He used to come up to see his sister, my mother. Sometimes he would come for two summers and stay a week or so and sometimes he would skip a year.

Q. When you say he stayed, did he stay for a

meal or over night or for a day or two? A. Oh, yes, he remained some time——

Q. How were those visits——

The Court: For a week he said.

Witness: Week or ten days.

Q. Where did they live at that time? A. Bayonne, N. J.

Q. How long have you known your uncle Anton? A. As long as I can remember.

Q. And where did he live during that period? A. The only place I ever knew Uncle Anton to live is Bayonne City, New Jersey, 1070 Broadway.

Q. And was Uncle Anton married? A. Yes, sir.

Q. What is his wife's name? A. His wife was Charlotta Gardner.

Q. Charlotta Gardner Hirschman? A. Hirschman, yes, sir.

Q. Did they have any children? A. No, sir, not to my knowledge.

Q. Did Charlotta Hirschman, Uncle Anton's wife, ever go up to Callicoon? A. Not very often. Once is all that I remember of Auntie being there, that is at our house—our home—whatever you want to call it.

Q. Was Anton Hirschman, your uncle, at your mother's funeral? A. No, sir.

Q. Was your Aunt Charlotta Hirschman, his wife? A. No, sir.

Q. Did you ever go down to Bayonne? A. Yes, sir.

Q. Did you see Anton Hirschman there? A. Yes, sir.

Q. I refer to your uncle. How many times did you go there? A. Five times to my knowledge.

Q. Did you go alone or with somebody? A. No, sir; three times I went with my father and mother when I was young and twice by myself. I can only recall one date that I went there and that was the last trip, in 1894.

Q. Was Anton Hirschman at your grandfather's funeral, Anton Hirschman? A. Yes, sir.

Q. Uncle Anton was at grandfather Anton's funeral? A. Yes, sir.

Q. Your grandmother survived your grandfather you said? A. Yes, sir.

Q. Where did she live after the grandfather's death? A. After grandfather died on the farm grandmother couldn't stay there alone so Uncle Anton brought her to Bayonne City to his home.

Q. Yes. A. She remained there a short time only, a couple of months, and she wanted to get back to her sister or her daughter's home, my mother, Annie Hirschman Rieber. After mother got father's consent—it took quite a little while but she finally got consent from father to bring grandmother back home with us—my father, my mother and myself went to Bayonne, New Jersey, 1070 Broadway and brought grandmother back to Callicoon to her home. She was ill and had dropsy. She couldn't walk. Brought her, I believe, in a cab at Bayonne here to the station and they carried her—father made some kind of apparatus to carry her on from the station to our home. She remained at our home until her death which was probably six or eight months afterward.

Q. Now, are your grandfather and grandmother buried in the same plot? A. Yes, sir.

Q. Where? A. Hortenville, New York.

Q. That is near Callicoon? A. About two and a half miles.

Q. Sullivan County—up on the Erie Railroad? A. Hortenville is not on any railroad. Callicoon is.

Q. What is the name of the church where they are buried—churchyard? A. At that time we called it the German Church.

Q. Have you been there? Is there anything on any tombstone there? A. I believe there is a tombstone there but what is on it I don't know.

Q. You do not remember? A. No, sir.

Q. Now, who was at the funeral of your grandmother at your house? A. Well, I could name our relatives. I cannot tell——

Q. Don't tell us all. Tell us some of the important ones. A. Well—you say my grandfather?

Q. Your grandmother? A. Grandmother. My father, my mother, Anton Hirschman, her son.

Q. That is Uncle Anton Hirschman? A. Yes, sir.

Q. Now, I do not want any more unless the other gentlemen want it. A. And myself. I was there.

Q. What is the last time that you were down to see Uncle Anton? A. In 1894.

Q. Did your uncle—did you see Katharina Daisetta Hirschman there? A. Yes, sir.

Q. Or Daisy, as she was called? A. Daisy, yes, sir.

Q. Did your Uncle Anton say anything to you about Daisy? Now answer that question yes or no. A. No.

Q. Was Daisetta married to anyone? A. Yes, sir.

Q. What is his name? A. But not at the time I was there.

Q. Oh, that is since. All right. A. I have never seen her after she married.

Q. What business was your Uncle Anton in at the time you last visited them? A. My last visit?

Q. Yes. A. My last visit he had no—he was in no business. I believe he told me he was working for some newspaper.

Q. I show you a—I suppose you call it a tintype or daguerreotype—do you know who that represents? A. Yes, sir; I know.

Q. Who is it? A. My Aunt Julia Ferris.

Q. And did you produce that and hand it to me? A. Yes, sir.

Q. And where did you get it from? A. She brought it to our home.

Q. Well, now, when and where? What do you mean by "our home", you have got your own personal home you know and then you are talking about the Rieber family. A. Well, when I was living with my father and mother.

Q. She brought it to your mother's home? A. Yes, sir, gave it to my mother. When my mother died it came into my possession.

Mr. Martin: Now, this handwriting on here of course I do not offer but I want to offer this photograph.

Photograph marked Exhibit C1.

Q. I show you another photograph. What is that? A. This is Warren Ferris's wife Annie Ferris, the lady sitting right there.

Q. The lady you identified here a few minutes ago? A. Yes, sir.

Mr. Martin: I offer that in evidence.

Photograph marked Exhibit C2.

Q. When did you receive that? A. Shortly after my mother's death, probably in the year of 1905.

Q. And what is this picture I show you? A. This is their daughter, I believe her name is Julia.

Mr. Martin: I offer this picture in evidence.

Photograph marked Exhibit C3.

Q. What church were you baptised in? A. The Episcopal.

Q. Where? A. Callicoon, New York.

Q. Have you a certificate of your baptism? A. No, sir; I have not.

Q. Has your sister, Mrs. Ostrom? A. Of mine?

Q. Yes. A. I do not believe she has.

Q. Yes. Look at this and see what it is. A. Well, I never knew—I knew there was one somewhere but I never knew who had it or anything else. I didn't know whether——

Q. Tell us if you know what that is after you look at it. A. I have looked all over for it but I never could find it.

Q. Dou you now know what it is? A. Yes, sir.

Q. What is it? A. It is my sister's certificate, isn't it?

Q. Isn't it Charlotta with Francis? A. Francis Charlotta with Francis Annie—Anna.

Q. That is not your certificate of baptism? A. No, I thought it was when you handed it to me.

Q. Do you know Anton Hirschman—your Uncle Anton Hirschman's handwriting? A. I have seen it very often. I think I would recognize it.

Q. Are you able to say that you would recognize it or would not? A. Quite sure, yes, sir.

Q. I show you a paper and ask you if you know in whose handwriting that is. I am only asking with reference to this (indicating). The other part I am going to tear off. A. I would say that is Uncle's writing.

Mr. Martin: This is pasted to a paper with some handwriting on it which I do not suppose you want in. I offer that in evidence.

Paper marked Exhibit C4.

Q. Now, do you remember where your mother said she was born? A. All as I remember she said Austria. What part of Austria or anything else I do not know.

Mr. Hudspeth: Counsel went on and I don't know just what relevancy this paper writing has.

The Court: Do not let us take any time. It is in. If it does not belong in the case I will not regard it.

Cross-examination by Mr. Hudspeth:

Q. Mr. Rieber, I understand you are still living at Benton Harbor, Michigan. A. Yes, sir.

Q. How old did you say you were? A. Fifty and over.

Q. Fifty? A. Yes, sir.

Q. And your mother was Annie Marie Hirschman? A. Yes, sir.

Q. And she was the daughter of Anton Hirschman the—— A. Yes, sir.

The Court: No.

Mr. Hudspeth: Sister at least.

A. Anton Hirschman. I thought—I beg pardon—I thought you were referring to grandfather.

Q. I am referring to your uncle. A. Uncle. Brother and sister.

Q. When did you say your uncle Anton Hirschman died? A. I don't know.

Mr. Martin: It is admitted in the pleadings May 19, 1920.

Q. It is a question of his knowledge. A. I never was informed of his death.

Q. Were you at his funeral? A. No, sir.

Q. When did you hear that he was dead or that he had died? A. September 30, 1922.

Q. And when did you hear that he had died, what year? A. I did not hear until just a little—I heard about three years ago.

Q. You heard in 1922 that he had died? A. Yes, sir.

Q. But you did not hear when he had died? A. No, sir.

Q. And you made no inquiry as to when he had died? A. Yes, sir.

Q. What did you hear, if anything, as to when he had died? A. My sister wrote and told me that as soon as she could find out she would let me know.

Q. Did you finally hear when he had died? A. I heard but I do not remember the date.

Q. Now, who did you hear that from? A. When he died?

Q. Yes. A. My sister, Mrs. Ostrom.

Q. Which sister? A. Mrs. Ostrom.

Q. Now, how intimate were you during your lifetime with Charlotte Marie Keffer? A. How were I——

Q. How intimate were you with Charlotte Marie Keffer during your lifetime? How well did you know her? A. Keffer? I don't know her at all.

The Court: Kaffer, you mean?

Mr. Hudspeth: Kaffer.

Witness: I don't know such person.

Q. You never heard of her? A. Yes, sir, I heard of her.

Q. When did you first hear of her? A. First I ever heard of her was during the search of these records, searching title to property.

Q. When was that? A. December 6, 1922.

Q. What did you hear of her then? A. I found out that she had joined with my cousin Warren Ferris and had sold this property of my uncle's.

Q. Who told you that? A. Who told me? I went with Mr. Frederick Carruth, this gentleman sitting here, to the court house in Jersey City, and while going over the records we saw it—I saw it myself.

Q. And that is the first time you ever heard of that woman? A. That is the first time.

Q. Did you make any inquiries as to who she was? A. Why, sure I did.

Q. From whom and where? A. Who and where? From my sister and——

Q. What sister? A. Mrs. Ostrom.

Q. Anyone else? A. Yes, sir; Mrs. Moore.

Q. What did you hear of her or about her? A. We wrote and asked her if she knew anything about it. She said yes, she did.

Q. What did you hear of her? A. She said she knew there was such a person.

Q. Did she say who she was? A. Said her name was Keffer; said she was a daughter——

Q. Keffer or Kaffer? A. Kaffer I guess; said she was the daughter of Daisetta—Daisetta Hadlick—I believe Hadlick.

Q. Did she tell you who this Hadlick woman was? A. No.

Q. Did you know who she was? A. Yes.

Q. Who was she? A. She was a child that was at Uncle and Auntie's home.

Q. Did you meet her at your uncle's home on the occasions when you visited there? A. You mean——

Q. This Hadlick woman? A. Yes, sir, but her name was not Hadlick at that time.

Q. What was her name—what name did she go by? A. Well, Daisy Hirschman.

Q. Hirschman? A. Yes, sir.

Q. Did she appear to be a member of your uncle's family? A. Yes, sir.

Q. How old about was she when you first went to your uncle's house in Bayonne? A. How old?

Q. Yes. A. I should say about nine or ten years old.

Q. Did you see her on every occasion when you visited your uncle's home at Bayonne? A. No, sir.

Q. How often did you see her there? A. Two times.

Q. Did your uncle speak of her or refer to her in your presence? A. Yes, sir.

Q. How did he address her? A. Daisy.

Q. Did he say as to what her relations were to him or his to her? A. No, sir.

Q. Did his wife speak to her in your presence? A. Speak to her, why, yes.

Q. How did the wife address her? A. Daisy.

Q. Do you know what relation she bore to your uncle and aunt at that time? A. Why, she was no relation as I ever could understand.

Q. Did you speak to him about what the relation was? A. No, sir.

Q. Did you make any inquiry as to her relation? A. Not at that time.

Q. Well, she was going by the name of Charlotta Hirschman. A. Yes, sir.

Q. Didn't you inquire who she was, bearing

that name? A. Not to them. My mother told me who she was.

Q. How long after you had seen her at your uncle's house the first time was it that your mother told you who she was? A. Why, I believe it was about the same time.

Q. Who did your mother tell you that she was? A. She said that she was no relation of ours. I wanted to call her cousin. My mother said, "Do not call her cousin, she is not your cousin. She is only——"

Q. Go ahead. A. "——only a child taken in."

Q. Why did you call her cousin? A. Well, because I didn't know any different, thinking she lived there that she would be my cousin, going by the name of Hirschman.

Q. Why should you think she should be your cousin? A. Why, should I, because——

Q. Yes. A. Because she lived there.

Q. That is the reason you called her cousin, because she lived there? A. I did not call her cousin.

Q. Oh, you never called her cousin? A. No. I wanted to and my mother told me not to, that she was not my cousin.

Q. Did you ask your Uncle Anton Hirschman who she was? A. Not to my recollection.

Q. Why do you hesitate?

The Court: He did not hesitate.

Q. Did you ask your Aunt who she was? A. No, sir.

Q. Why not? A. Because my mother told me.

Q. Your mother didn't tell you until after you had seen her that she was not your cousin, but when you first saw her did you assume that she was your cousin? A. I did, yes, sir.

Q. Did you ask your uncle then who she was? A. No, I did not.

Q. Did you ask your aunt? A. No, sir.

Q. Why not? A. Because I didn't care to, that is all.

Q. When did she die, do you know? A. No, I do not know.

Q. Did you ever hear? A. No.

Q. Ever make any inquiries as to her death? A. No, not—only since this has came up, this trouble.

Q. And when did you first hear that this woman Charlotte Marie Keffer was her daughter—Kaffer? A. December 6, 1922.

Q. And that you heard through your sister? A. No, sir.

Q. Who through? A. Saw it on the records over at Jersey City.

Q. Now, were Warren Ferris and you on good terms? A. Yes, sir.

Q. All your life? A. With the exception of the little quarrels between us when we played.

Q. Little boy quarrels? A. Yes, sir.

Q. Besides that you were always friendly? A. Yes, sir.

Q. He visited you, or visited where you were, and you visited where he was at different times? A. No; I never visited him in Jersey City or Jersey City Heights.

Q. At any place did you ever visit him? A. Nowhere only at my home, his mother's home or my father and mother's home.

Q. When was it that you last saw him? A. 1898.

Q. Where? A. At his mother's home.

Q. Then he knew you were alive then at that time, did he? A. Yes, sir.

Cross-examination by Mr. Butler:

Q. Mr. Rieber, what was the last time you saw Mr. Ferris? A. 1898.

Q. Your memory is quite clear, is it, on that point? A. Yes, sir.

Q. And when was it that you—when was it you received the letter, as you stated, from him, asking you if you would take his wife to live with you or spend a vacation with you? A. I believe it was in 1895.

Q. Your memory——(interrupted) A. Wait a minute. Excuse me. 1905 or 1906.

Q. Well, your memory is pretty clear it was one of those two years, isn't it? A. Yes, sir.

Q. You took an affidavit, did you not, Mr. Rieber, before a man by the name of Clair, in Berrien County, Michigan? A. I did what?

Q. You took an affidavit to certain facts—signed your name. Is this name, Frank B. Rieber? A. B. Rieber, yes, sir.

Q. Is that your name on that—do you remember that man Clair—is that your name? A. Yes, sir.

Q. Do you remember taking that affidavit? A. What is the date on it? A. Where is the date?

Q. (Indicating) 27th day of December, 1922. A. Yes, sir.

Q. And at the time you took this affidavit the facts were read over to you, were they not? A. What?

Q. The facts in this affidavit read to you before you signed it? A. Yes, sir.

Q. And you knew what you were signing and everything in this affidavit was absolutely true, wasn't it? A. Yes, sir.

Q. Why, did you state then, "In 1914 we received a letter from our cousin, Warren Ferris

saying his wife wasn't feeling well, and if she could come to our home and stay with us for a while as he thought it would do her good in the country. I answered the letter telling them we couldn't take her in at present as we already had some of my wife's folks with us". What did you mean by that, in 1914? A. Well, I made a mistake, that is all.

The Court: What date did you say it was that you received the letter?

Witness: I said 1905 or 1906.

Q. This is not true then, 1914? A. Yes, sir.

Q. This 1914 is not true, that you received the letter in 1914 then, is it? A. Yes, sir.

Q. When did you receive the letter, 1905 or 1906 or 1914, which is correct? A. 1914.

Q. Is correct? A. Yes, sir.

Q. Well, you stated a few moments ago your mind was perfectly clear it was 1905 or 1906, didn't you? A. Yes, sir.

Q. You still say now your mind isn't clear on that point? A. I made a mistake.

Q. Now, you stated a little incident with you and Warren Ferris, in Beechwood, was it not, in reference to hitting you in the stomach—where was that? A. Callicoon, New York.

Q. Callicoon. How old were you at that time? A. About fourteen or fifteen.

Q. Sure of that too? A. Yes, sir.

Q. Mind is very clear on that point, isn't it? A. Yes, sir.

Q. What year was that? A. What year was it?

Q. Yes. A. What—just speak the question over.

The Court: He hit you in the stomach.

Mr. Butler: Well, we will get to it—I will just withdraw that.

Q. What did you say you put in Warren's hair that caused his hair to be cut off, burdocks, was it? A. I beg pardon, burdocks, yes.

Q. What year was that? A. What year was that?

The Court: You were nine years old you said.

Mr. Butler: I am asking him what year.

Q. What year was it? A. 1885 or 1886.

Q. And you were how old at that time, fourteen or fifteen? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. How old was Warren Ferris? A. I don't know his age. It would be about my own age.

Q. And your memory is clear and you know that is so, don't you? A. Well——

Q. Do you know how old Mr. Ferris is? Do you know when he was born? A. No, sir.

Q. When were you born? A. 1873.

Q. 1873. Now, this occasion of the burdocks and Warren's hair, you were very friendly with him, were you not? A. Sure.

Q. And you had met him a number of times? A. Yes, sir.

Q. And after that, when he hit you in the stomach with a club, that was an accident, was it not? A. Accident?

Q. Yes. A. No.

Q. He was mad at you, was he? A. Sure.

Q. Well, after it was over you were friendly? A. Yes, sir; well, they left the house the next day, but——

Q. Were you ever in touch with him after that? A. Oh, yes, yes, sir.

Q. How many times? A. Oh, several times.

Q. Very friendly? A. Yes, sir.

Q. Know where he lived in Jersey City? A. Did I know?

Q. Did you know where he lived in Jersey City? A. No.

Q. When you came down to Bayonne did you go to visit him? A. No.

Q. Go to visit his mother? A. Not in Jersey City or Jersey City Heights.

Q. You were very friendly with both him and your aunt, his mother, were you not? A. Yes, sir.

Q. And even more friendly than you were with your uncle Anton Hirschman, were you not? A. In a way.

Q. Yes. And when you came down to see your Uncle Anton with your mother and father wouldn't they go to see your Aunt Mrs. Ferris? A. No.

Q. How long did you stay at your uncle's house the first visit you and your father and mother were there? A. I do not remember.

Q. Your memory is clear about—— A. Well, I was young when we made the first trip there.

Q. Can you remember about the second trip? A. I do not remember.

Q. Don't you remember what year it was? A. No.

Q. Was it before or after Warren Ferris had gone to Callicoon and you put the burdocks in his hair? A. No, it was before.

Q. That was before that, all three visits? A. All three visits were before.

Q. And the visits you made by yourself, were they before or after this burdock incident? A. After.

Q. How long after? A. Well, the last visit was eight or nine years.

Q. Nine years after? A. Yes, sir.

Q. And you were married at that time, were you? A. No, sir.

Q. How old were you? A. 23 I believe.

Q. Did you meet Mr. Ferris there? A. Where, at Anton's?

Q. Yes. A. No, sir.

Q. On either occasion? A. Never.

Q. Did you ask Anton where he lived? A. Not to my recollection.

Q. Didn't make any inquiries at all, did you? A. No.

Q. Now, after you left, on these particular visits that you speak of to your Uncle Anton, did you communicate with him, your uncle? A. With my uncle?

Q. Yes. A. Not myself; my mother did.

Q. Did you? A. No, sir.

Q. Did you ever go to see him after that? A. After what?

Q. After the last visit in Bayonne that you speak of when you were 24 years of age? Did you ever go after that? A. To see my uncle?

Q. Yes. A. The last time I was there was in 1894.

Q. You never went to see him after that, did you? A. No.

Q. Now, after your mother died did you get into communication with your Uncle Anton? A. Only at the time of her death.

Q. Not after? A. No, sir.

Q. And you say your mother died when? A. 1904.

Q. And you knew your Uncle still lived in Bayonne? A. Yes, sir.

Q. Did you—did any member of your family as far as you know get in touch with Anton Hirschman after the death of your mother? A. Not that I know of.

Q. Now, these pictures that were shown of Mrs. Ferris and Mrs. Ferris' child, when did you say you received those pictures? A. 1905 or 1906.

Q. 1905 or 6? A. Yes, sir.

Q. And how did you come in possession of them? A. They were mailed to us.

Q. Do you know who mailed them? Was there a letter with them or just the pictures? A. I believe there was a letter with them. I don't know that there was. I wouldn't say. I wouldn't say. Mrs. Ferris was up at the funeral of my mother and shortly after that she mailed those pictures.

Q. After you learned of the death of your uncle did you try to get in touch with Ferris or any of these people—with Warren Ferris or any of these people? A. Did I try?

Q. Did you endeavor to get in touch with Warren Ferris or his wife or his children? A. After my uncle's death?

Q. When you learned of your uncle's death? A. Did I? No, sir.

Q. Have you seen Warren Ferris since the last time that you saw him in Bayonne or the last time you saw him in New York? A. I saw him in Binghamton, New York, was the last time.

Q. Up until you saw him in court today? A. Yes, sir.

The Court: That is years ago?

A. Yes, sir.

Q. And the same applies to Mrs. Ferris, does it not? A. Yes, sir.

The Court: How did you hear of your uncle's death and the leaving of this property? How did you hear of it?

Witness: My sister telegraphed me.

The Court: I mean of the leaving of the property.

Witness: Of the leaving——

The Court: How did you come to hear of your uncle's death and that he left this property?

Witness: My sister telegraphed to me on the 30th day of September.

The Court: 1922?

Witness: Yes.

Re-direct:

Q. Mr. Rieber, when the Vice Chancellor asked you that question, he asked you when did you hear of Anton Hirschman's death and that he left any property.

The Court: Left this property.

Q. Left this property. Now, you have answered, September 30, 1922. I call your attention to that question and ask you if anything was said in September 30, 1922, by your sister about his leaving property? A. Yes, sir.

Q. Did you know whether he died leaving a will? A. She did not mention property. I can tell you exactly what she wired.

Q. What was it? A. She wired, "Uncle is dead and we are heirs, look for letter"—no, didn't say "look for letter" either, but letter came the next day.

Q. All right. Now, did you come on East here or look into the matter? A. No, sir; I wired right

back to my sister and asked if I should come at once. She replied and said, "No, I will look after the matter and will let you know when to come."

Q. Finally when did you come? A. Finally when I came I came to Bayonne on the 4th or 5th—it was the 4th.

Q. 4th of what? A. 4th of December, 1922.

Otto Solansky, sworn for complainant.

Direct examination by Mr. Martin:

Q. Where were you born? A. In Zubria, Moravia, Czecho Slovachia.

Q. Did you graduate from a college at Prague? A. Yes, sir.

Q. Took a regular academic course there? A. Yes, sir.

Q. Did you study law? A. Yes, sir.

Q. For how many years? A. Two years.

Q. At a law school or college university—what was it? A. Charles University at Prague.

Q. Now, why didn't you finish your law school course? A. On account of the outbreak of the war?

Q. You had to go to war, did you? A. Yes, sir.

Q. When you came back from the war then you went into the Consulate & Diplomatic Service of Czecho Slovachia, did you? A. On my way home in 1920 with the Twentieth transport of the Siberian Army I was commanded to the Czecho Slovachia Consulate in New York and situated in Norfolk, Virginia,—and I came to New York on the 21st of July, 1920.

Q. So that you have been secretary of the Con-

sulate—(interrupted) A. Of the Consul General in New York.

Q. Of Czecho Slovachia, in New York? A. Yes, sir.

Q. For about three and a half years? A. Yes, sir.

Q. Now, what do you do besides being secretary? A. I am in charge of the legal department of the same consulate.

Q. You are in charge of the legal department? A. Yes, sir.

Q. Now, do you know the law of Czecho Slovachia in reference to the admission in evidence in the courts of Czecho Slovachia of the original records kept by the Catholic priests of births, deaths and marriages? A. Yes, sir. The Czecho Slovachia——

Q. Now, is a record kept by the Catholic priests of the church—the church and state are together there, they are not separated? A. Yes, sir.

Q. The church records, as I understand it, are public records? A. Yes, sir.

Q. And births, marriages and deaths—records of them—are kept by the priests, is that right? A. Yes, sir.

Q. Now, are those original records evidence in Czecho Slovachia in the courts? A. Yes, sir, they are.

Q. Of the contents? A. Yes, sir; they are.

Q. And are they—is a certified copy signed by the priest in whose custody the record now is, evidence in the Czecho Slovachia courts? A. Yes, sir, it is.

Mr. Martin: I offer in evidence the certificate of the birth of Anton Hirschman, September 18, 1815, at Englesdorf.

The Court: That was what government?

Witness: That was the Austrian Government at that time.

Mr. Martin: Birth of Marie Annie Newman, February 4, 1814, at Friedland Bohemia; the marriage of Anton Hirschman, a citizen and weaver of Friedland on November 20, 1838, to Marie Annie, the legitimate daughter of Francis Newman, merchant; the certificate of birth of Franzisce Newman on May 10, 1839; Anton Hirschman November 26, 1843; on February 16, 1841, birth of twins, Anton Jacob and Francis, Jr., and their death; they died one March 8, 1841, and the other on July 15, 1841. This is a still birth on November 29, 1849; and birth certificate of Julia, December 13, 1846, and a daughter, Marie Anna, April 25, 1845; and a certificate of the Dean that he has examined the records and finds no other births, marriage or death certificates in the family of Anton Hirschman in the records of the Parish.

Mr. Hudspeth: What is the date of that certificate?

Mr. Martin: August 19, 1923.

Certificate marked Exhibit C5.

Mr. Martin: I offer the translation in evidence subject to correction.

Translation marked Exhibit C6.

JOHN E. STRAUB, sworn for complainant.

Direct examination by Mr. Martin:

Q. You are a minister of what church, sir? A. I am minister of the reformed church in America,

installed in Callicoon Center Reformed Church, Sullivan County.

Q. What was that church called in 1881 and 1882? A. I make reference at this time to my home church. I have more than one church.

Q. You have two or three churches up there in the country? A. Yes, sir; five of them.

Q. Confining your attention to this particular church I want to inquire about what is the name of the church where—commonly called First Presbyterian Church. A. The seal of this church reads, "The Free German Presbyterian Church for Callicoon Depot." The church is located at Hortenville, however.

Q. Who was the pastor in 1881 and 1882? A. The Reverend Samuel Muery.

Q. Do you know his handwriting? A. Yes, sir; I can identify that.

Q. Are you, as pastor of this church at this time, the custodian under the customs and regulations of the church—— A. Yes, sir.

Q. —of the record book of birth, marriages, deaths, burials, baptisms and reception of members into the church? A. Yes, sir; I am the custodian.

Q. You are. Have you got that book here with you today? A. I have with me the book, yes, sir.

Q. Just show us the page that speaks of Anton Hirschman, if there is any such page, in 1881. A. There is a record here at the top of the page.

Mr. Martin: I ask that the book be marked for identification and I offer to read into the evidence the answer.

Q. That is in German, is it? A. It is in German.

Q. Will you kindly read it in English and will you write out a copy of it in German?

Book marked Exhibit C7.

Q. Read it? A. "1881, August 1st." That is the day of the burial of Anton Hirschman. Born on the 15th of September, 1815, in German Bohemia, married in 1839 to Marie Annie Newman, Died on the 30th of July, 1881, age sixty five years, eight months.

Q. What is the caption? A. Record of deaths.

Q. What is the caption, page 254? A. Records of deaths, continuation.

Q. What else on that register, if anything? A. Then there is added here, descendants, one son and three daughters; then follows something that is illegible. I believe seven died, sieben gestorben.

Q. The exact statement is figure 7 and the word in German "gestorben"? A. Yes, sir.

Q. What is the translation of that? A. Died.

Q. So that that says, Descendants, one son, three daughters and seven died? A. Seven died. Then there is added here, I suppose that is "Total eleven children".

Q. That is the sum total? A. Yes, sir.

Q. Is there any more about Anton Hirschman? A. This is a separate entry.

Q. What is the name in the book you have there at the front of it? A. Title page, "Record Book, or Church Book, of the Free German Presbyterian Congregation at Hortenville, Town of Cochecton, Sullivan County, State of New York".

Q. Have you read all that entry? A. Yes, sir, of this first entry, yes, sir.

Q. Will you kindly read—what was the date of the death of Anton Hirschman? A. Date of death, 30th of July, 1881.

Q. Examine the book and state whether or not there is any record in reference to Marie Annie Newman Hirschman, the widow of Anton Hirschman. A. On the same page, 254, there is a record, dated 1882, April 9, Marie Annie Hirschman, born 28th of May, 1817, in German Bohemia, died in Callicoon Depot, April 7, 1882, age 64 years ten months and ten days; children four, one son, three daughters. That is the end of that record.

Q. No other entry so far as you know? A. No entry with reference to that family whatever.

Q. No other record with reference to Annie Marie Hirschman? A. No, sir.

Not cross-examined.

CHARLOTTA E. OSTROM, sworn for the complainant.

Direct examination by Mr. Martin:

Q. What is your name, please? A. Charlotta E. Ostrom.

Q. Charlotta E. Ostrom? A. Yes, sir.

Q. Where do you live, Mrs. Ostrom? A. Binghamton or Johnson City, N. Y.

Q. What street and number? A. No. 8 Orchard avenue, Johnson City.

Q. When were you born—how old are you? A. 1868.

Q. And what is your birthday? A. April 28th.

Q. 1868? A. 1868.

Q. You will be fifty-five—fifty-six in this April, is that it? A. Yes, sir, fifty-eight.

Q. Now, where were you born? A. Callicoon Depot—it was then Callicoon Depot.

Q. Sullivan County, N. Y.? A. Yes, sir.

Q. And what was your mother's name? A. Annie Marie Hirschman Rieber.

Q. And do you know where she was born? A. Yes, sir.

Q. Whereabouts? A. In Austria, Bohemia.

Q. Austrian Bohemia, is that your answer? A. We have always heard—she always called it—she was born in Austria.

Q. And do you know the names of her father and mother? A. Yes, sir.

Q. What are they? A. Grandfather's name was Anton Hirschman and grandmother's was Marie Annie Hirschman.

Q. And did your mother have any brothers or sisters? A. Yes, sir.

Q. And what are their names? A. There was Mrs. Steffens, was Francisco Hirschman Steffens, and Julia Ferris, Julia Hirschman Ferris, and Uncle Anton Hirschman of Bayonne.

Q. Now, your mother died when? A. Somewhere around 1903, I think, or four.

Q. And when she died what children were living of your mother? A. Myself and my brother.

Q. That is Frank Rieber the first witness on the stand? A. Yes, sir.

Q. And had you had a brother by the name of George Anton Rieber? A. Yes, sir.

Q. And was he dead at that time? A. Yes, sir; he died in 1895.

Q. And did he leave any children? A. Yes, sir; one son.

Q. And how long did you live in Callicoon?

The Court: Follow that son down.

Q. Is he still living, George Anton Rieber? A. Yes, sir.

Q. And he is one of the complainants in this action? A. Yes, sir.

Q. He isn't here today? A. No, sir; he had sickness home.

Q. And who was your brother George Anton Rieber named after, if you know? A. Uncle Anton Rieber was his godfather.

Q. Now, taking the first sister—first aunt that you mentioned—Francisco—Aunt Fanny, did you call her? A. Yes, sir.

Q. Did Aunt Fanny have any children? A. Yes, sir.

Q. What are their names? A. Mrs. Marie Steffens De Bussey and George William Steffens, Jr., and Frank B. Steffens.

Q. Now, what about William Steffens? A. William, we always supposed died an old bachelor.

Q. He was a sailor, was he? A. Yes, sir.

Q. He was a bachelor? A. Yes, sir.

Q. And is Frank Steffens here today? A. Yes, sir.

Q. And is Mamie Steffens——

The Court: You mean the bachelor?

Mr. Martin: No, William is the bachelor and he is dead. Frank Steffens is here in court, is he?

Witness: Yes.

Q. And Mamie Steffens De Bussey is here in court, is she? A. Yes, sir.

Q. Now, Julia Ferris had a son by the name of Warren Ferris, did she? A. Yes, sir.

Q. When did Aunt Fanny—Francisco Steffens die? A. I cannot recall the date.

Q. Well, was it before May 19, 1920, before Uncle Anton died? A. Yes, sir.

Q. And did William Steffens die before Uncle Anton? A. Yes, sir.

Q. And Aunt Julia, is she dead? A. I found out she was. I didn't know she was.

Q. And did she die before Uncle Anton? A. That I couldn't tell you.

Q. Now, how old were you when your family moved from Callicoon up to Binghamton, about. We do not expect you to be absolutely certain if you do not remember exactly. A. When I was nineteen years old.

Q. That was about 1887? A. Yes, sir, along there.

Q. And before you moved to Binghamton, at Callicoon, did you ever see your Aunt Julia there? A. Yes, sir.

Q. Did you ever see Uncle Anton there? A. Yes, sir.

Q. How often did you see Aunt Julia in Callicoon? A. Well, the last I remember Aunt Julia was after she was married to Mr. Ferris, they came to our house and made us a visit. That is not the last I seen Aunt Julia, but the first time.

Q. A little louder. A. She and Mr. Ferris came to the house. We made quite a remark because Mr. Ferris was such a tall man and Aunt Julia was such a short woman. I remember that well.

Q. Was Warren living at the time they came up to Callicoon? A. N ot then, no, sir.

Q. Did you ever see Warren Ferris at Callicoon? A. Yes, sir.

Q. What was his age? A. Well, he is somewhere the age of my youngest brother.

Q. That is Frank? A. Yes, sir, brother Frank. They were very near the same.

Q. And how many times was Aunt Julia up there in Callicoon with Warren Ferris—to bring

her boy Warren Ferris? A. Well, several times. I guess three or four times that I can remember of in Callicoon.

Q. How long did they stay? A. Well, they stayed part of the time with us and part of the time on the farm.

Q. That is to say part of the time with the Riebers and part with the grandfather? A. Yes, sir; back and forth.

Q. How long a time did they stay with you? A. Oh, I couldn't recall that exactly.

Q. Well, about how long was it, a matter of a day or two or a week or month or several months? A. Week sometimes, week or so.

Q. Do you recall any incident in which Warren Ferris and Frank your brother were concerned? A. Yes, sir.

Q. What are they? Just tell use about it, at Callicoon. A. At Callicoon, yes, sir. Well, they were always I remember that because they had quite a time over it between my people and Aunt Julia—the boys got out palying and they—Warren hadn't been used to being in the country—they were going to show him what they could do up there and they made this burdock cap for him, put it on—his hair was kinda curly—couldn't get it out. My aunt got angry and papa said "you will have to take him to the barbershop and cut his hair off, that is the only way to get them out," so they went to the barbershop with him and had his hair cut; so papa said to Aunt Julia, "You better take your son and go home," so they went home the next day.

Q. Was there anything else that you remember that comes back to your attention? A. I can't recall anything else much, but they were right on the river and things like that——

Q. Were your mother and Aunt Julia friendly? A. Yes, sir.

Q. Now, after you went up—after the whole family went up to Binghamton, which you previously told us was when you were nineteen, in the neighborhood of 1887, did Aunt Julia come up there afterwards? A. Yes, sir; she was up there several times.

Q. Did she ever come to the Rieber house, your own home? A. Yes, sir. I was home with papa and mamma then; she came there and stayed with us.

Q. How long did she stay there? A. She stayed there a week or two I think. That time she came up to buy some property.

Q. Did Warren come with her then? A. No.

Q. Now, subsequently, when she lived at Binghamton, did Warren come up there then? A. Yes, sir.

Q. Did she buy a piece of poperty on Laurel avenue? A. Yes, sir.

Q. Two family house? A. And she built a two family house.

Q. She built it? A. Yes, sir.

Q. And how many times, do you know, that Warren Ferris was up there and saw you or your brother or your mother? A. He came up once with his wife and then after the baby came they came up again. They have been up—oh, four or five times. They were at mother's house while auntie was there. Warren came and stayed over Sunday or came and spent the week-end with Auntie.

Q. I don't suppose you know what he and Frank did? A. No; I do not, then. They went out together. Frank belonged to the Hose Room and they were with them together.

Q. Where were you living at the time that Aunt Julia came up there? A. With my mother and father.

Q. You lived—— A. 128 Front street.

Q. When was the last time you remember seeing Warren Ferris? A. Well, I cannot recall that because he often came to see his mother when he didn't come to see us while she lived there. She lived there seven years in this new home.

Q. Well, was he at the funeral of your mother in 1904? A. No, sir, not that I know of.

Q. Was any member of his family there? A. Aunt Julia and Annie were there, his wife.

Q. Did they bring the little girl with them? A. That I cannot recall.

Q. Now, where were you Christened? A. St. James Church, in Callicoon.

Q. What is this paper that I show you? A. That is my certificate.

Q. Of Baptism? A. Yes, sir, baptism. We were all baptized at the same time, my brother and myself, and papa had just finished that church.

Q. You mean he built the church? A. Yes, sir.

Q. Now, what is the name of Uncle Anton's wife? A. Charlotte.

Q. Charlotte—speak out loud. A. Charlotte Newman.

Mr. Martin: I offer this in evidence, this certificate of baptism.

Certificate marked Exhibit C8.

Q. This shows that there was a Charlotte Rieber there as a sponsor; who is Charlotte Rieber? A. Why, that was my grandmother on my father's side; my father's mother.

Q. And there was a Charlotte Hirschman that was a sponsor. A. That was the only time that

Aunt Charlotte and Uncle saw the chuch. They were there that day of this christening.

Q. This was Uncle Anton's wife? A. And his wife.

Q. And there is an Anthony Hirschman here as a sponsor; who is that Anthony Hirschman? A. That is Uncle Anton Hirschman and Charlotte.

Q. Of Bayonne? A. Yes, sir; they were there at our christening. Papa just finished the church and they were there at our christening.

Q. What is this picture I show you? A. Cousin Annie Ferris, Warren Ferris' wife.

Q. Where did you get that picture? A. She gave it to me when she came to see us on Front street.

Mr. Martin: I offer it in evidence.

Paper marked Exhibit C9.

Q. I show you another picture and ask you what that is? A. That is Annie Ferris too, that is cousin Annie Ferris.

Q. That is the wife of Warren Ferris? A. Yes, sir.

Q. And where did you get that? A. She gave it to me. That was the time she came up with Aunt Julia. She gave me that picture.

Mr. Martin: I offer it in evidence.

Paper marked Exhibit C10.

Q. Were you ever at 1070 Broadway, Bayonne? A. Yes, sir.

Q. When? A. Went ther to see my uncle.

RECESS.

Mr. Hudspeth: We have a couple of real estate men we would like to put on.

Mr. Martin: I will consent to putting them on.

WILLIAM E. HUTCHINSON, sworn for defendant.

Direct examination by Mr. Benny:

Q. What business are you in? A. Real estate and insurance.

Q. And where are you engaged in that business? A. Bayonne, New Jersey.

Q. How long have you been so engaged in it? A. Since January 1, 1899.

Q. And have you had occasion to buy and sell property to any extent during that time? A. Yes, sir.

Q. Are you familiar with the property throughout the City of Bayonne? A. Yes, sir.

Q. Have you bought and sold property in the third ward of Bayonne? A. Yes, sir.

Q. Are you acquainted with the property described in the bill of complaint known as the Anton Hirschman property? A. I am.

Q. Where is it located? A. It is on the northeast corner of Broadway and E. 53rd street, and another plot on East 53rd street.

Q. Have you examined that property recently? A. I have.

Q. For what purpose did you make the examination of it? A. For appraisal purposes.

Q. Have you made such an appraisal of it? A. I have.

Q. Are you familiar with the market value of property in that neighborhood? A. I am.

Q. What does the property consist of? A.

There are two parcels; parcel No. 1 consists—known as house No. 1070 and 1072 Broadway—this is located at the northeast corner of Broadway and East 53rd street—consists of a plot of ground, 100 by 100 and on it there are—there is a two story, flat roof, frame dwelling. There are four rooms on each floor.

Q. What, in your opinion, is that parcel of land worth? A. You mean taking it total or separately?

Q. Taking it total. A. The total of both parcels is $19,400.

Q. Have you separated the values? A. I have.

Q. Can you give the total—— A. Parcel No. 1, the Broadway parcel, $13,400; parcel No. 2 on East 53rd street, $6,000.

Q. Is that the present value? A. Yes, sir.

Q. What, if anything, is the difference between the present value and on June 30, 1922?

The Court: What was the value on that date, if that is the date you are after?

Q. What was the value on June 30, 1922? A. There hasn't been any material change.

Q. What was the value October 5, 1922? A. No material change. They are about the same.

The Court: $19,500?

Witness: $19,400.

Cross-examination by Mr. Martin:

Q. Do you know that this property sold for $21,000 October 5, 1922? A. I do.

The Court: Private or public sale?

Witness: Private sale.

Q. Do you knows lot 7, 8, 9 and 10 on the tax map of the City of Bayonne, East 53rd street? A. On what block?

Q. Do you know those lots? A. No.

Q. On East 53rd street, on the tax map? A. I cannot recall the lot numbers.

Q. What is that paper you have in your hand? A. This is by appraisal.

Q. Now, put that away, will you, in your pocket, and just tell me what land you did appraise? A. I appraised the corner of 53rd street and Broadway, taking out two lots of fifty foot and then running down 100 by 100.

Q. What are those lots known as on the tax map of the City of Bayonne? A. They are known as lots Nos. 41,—40, 41, 42 and 43, block 37.

Q. What other numbers on Broadway? A. Lots 46, 47, 48 and 49.

Q. What other street numbers on Broadway? A. The house numbers, 1070 to 1072 Broadway.

Q. Is that all? A. Well, that is the number.

Q. 1070? A. And 1072.

Q. Didn't you appraise 1074 and 1076 Broadway? A. Yes, sir; those are the vacant lots.

Q. What do you appraise the vacant lots at on Broadway? A. On Broadway, $2,200.

Q. Apiece? A. Yes, sir.

Q. What is the size of those lots? A. 25 by 100.

Q. What do you appraise the corner lot at? A. $2,800.

Q. And that makes a total of $9,400, is it? A. $9,400.

Q. For the land? A. For the land.

Q. You do not give any added value by reason of the fact that those lots are joining one another, commonly called plottage value? A. Yes, sir; I have taken that into——

Q. What have you given on that? A. I have made the price $2,200 a lot for the frontage a hundred by a hundred. Single lot I would say $2,000, with the four lots adjoining, a hundred by a hundred, they would be worth, taking them as a whole, $2,200 apiece.

Q. Except the corner? A. Except the corner, yes, sir.

Q. Then there are two lots in behind these lots which you have just referred to as facing on Broadway? A. On East 53rd street?

Q. On East 53rd street; and what are the street numbers there, the house numbers as you say? A. The house numbers are 7, 13, 15, 17 and 19.

Q. Houses on those lots? A. Yes, sir.

Q. That is 13, 15, 17 and 19? A. No. 7 is a little house on the rear of the corner of the Broadway property. There is a little one family house that is known as No. 7 on the corner parcel.

Q. What is the value you give the lots facing on East 53rd street? A. $1,000 apiece.

Q. Have you any knowledge of any sales on Broadway in the same block? A. Not that same block, only this present sale on that same block, that is block 37.

Q. Have you any knowledge of any other sales on 53rd street? A. On W. 53rd street, yes, and on Broadway.

Q. On E. 53rd? A. No.

Q. Then there are two lots between the butt end of the Broadway lots? A. Yes, sir.

Q. And the lots facing on E. 53rd street? A. Yes, sir.

Q. What houses are there on the Broadway property? A. There is a sort of a double house on the fifty—the corner property, cold water improvements, about four rooms to each flat.

Q. Isn't it a fact that the houses are two and a half story frame buildings with finished basements? A. The houses on Broadway are two stories.

Q. Not two and a half? A. No, sir.

Q. And they are not occupied by two families? A. Why, it is a four family house.

Q. What is the rental of those apartments? A. I figured the rental $20 a floor.

Q. That is $40 altogether? A. That would be $80.

Q. And are there any stores below on Broadway? A. No.

Q. Now, what houses are on the other lots in the rear? A. Why, on the butt end of the Broadway property there is a little one family house, just a small little shingled roof house, has about —either five or six rooms—that rents for $20 a month.

Q. And that is adjoining four houses on the fifty feet? A. Why, the corner.

Q. Then adjoining on 53rd street? A. There are two double houses on 53rd street property. This is just a little house on the butt end of the lot.

Q. On the rear of the Broadway lot? A. Yes, sir.

Q. So that the total rental on the Broadway property is $100 a month? A. Be about $100 a month.

Q. What is the width of the back lot? A. 53rd street, a hundred by a hundred.

Q. Each lot? A. You mean the little house?

Q. No, the Broadway property is a hundred by a hundred? A. A hundred by a hundred.

Q. Now, the dimensions of the lot in the rear on 53rd street? A. 25 by 100 each.

Q. How many? A. Four.

Q. What buildings are on those lots? A. There are two semi-attached two family houses, or you could call it four houses in all. They are attached.

Q. How many families? A. Eight families.

Q. What is the total rent? A. Why—what I could get going through, some floors rent for twenty and some rent for eighteen.

Q. Isn't it a fact that the total rental is $127 a month? A. I will see what they gave me there.

Q. Well, do you know or not? A. I don't know exactly, only what the tenants say and about what they are worth—about eighteen and twenty dollars a month.

Q. The Consumers Coal & Ice Company own the land adjoining these properties, don't they? A. Yes, sir.

Q. And the total rental then would be in the neighborhood of $2,700 a year, wouldn't it? A. Around that, yes, sir.

Q. Do you mean to say that property that produces $2,700 a year is worth only $19,000? A. Yes, sir, that particular piece of property, because the condition and buildings are such; they are old and dilipidated buildings, and the 53rd street building just—I value those buildings just what you can get out of them for rent without putting in any repairs, because if you start to repair them up it is really—you could hardly tell where you would come out.

Q. Don't you know the tenement house commission had been after this property and it has recently been put in very good condition? A. I examined it Saturday and it is in a very bad condition.

JOHN EDSALL JOHNSON sworn for defendant.

Direct examination by Mr. Benny:

Q. Where do you live, Mr. Johnson? A. 108 Broadway, Bayonne.

Q. And what is your business? A. Real estate and insurance.

Q. And how long have you been engaged in that business? A. Over twenty-five years.

Q. Are you familiar with the valuation of property throughout Bayonne? A. Yes, sir.

Q. Are you acquainted with the property known as the Hirschman property on the corner of Broadway and 53rd street? A. Yes, sir.

Q. Are you also acquainted with the property on 53rd street to the extent of 150 feet east of Broadway? A. Yes, sir.

Q. Have you bought and sold property in the City of Bayonne? A. Yes, sir.

Q. To what extent? A. To—oh, a large extent; hundreds of thousands of dollars.

Q. How much? A. Amounting to in the aggregate of hundreds of thousands of dollars.

Q. Are you familiar with the value of property in the neighborhood of Broadway and 53rd street? A. Yes, sir.

Q. And are you acquainted with the value of property on 53rd street? A. Yes, sir.

Q. Did you examine the property involved in this suit? A. Yes, sir.

Q. When did you make the examination? A. Last Monday.

Q. And for what purpose did you examine it? A. For the purpose of appraising it.

Q. Have you made such an appraisal? A. Yes, sir.

Q. And what in your opinion is the parcel on

Broadway, corner Broadway and 53rd street, being a hundred feet square, worth? A. $9,000.

Q. And what does that property consist of? A. It consists of a plot of ground a hundred by a hundred and on it is erected a frame two story building occupied by four families and on the rear of the lot facing on 53rd street, a small frame dwelling occupied by one family. There is five rooms, one and a half stories high, I would call it.

Q. Have you separated the value of the house from the valuation of the buildings? A. Yes, sir.

Q. And what is the valuation of the land without the buildings? A. Why, I just testified $9,000 for that corner. I should have said $9,000 for the land instead. My total valuation of that property is $13,000—corner property.

Q. And what is the valuation of the plots of land beginning 150 feet east from Broadway? A. I value that at $7,500.

Q. Does that include the buildings or the land only? A. That includes the buildings.

Q. And what is the value of the land without the buildings? A. $4,000.

Q. What is the value that you have testified to mean, the present valuation? A. Yes, sir.

Q. What was the value on June 30, 1922? A. In my opinion it was about the same value as now.

Q. How long have you known those buildings, Mr. Johnson? A. Over thirty-five years—possibly forty.

Q. The question I asked first was what was the value on June 30, 1922. You said the same. Now, what was the value on October 5, 1922? A. No different.

Q. How long have you known the buildings on the property? A. Over thirty-five years.

Q. And how did you know them? A. Because I have lived at 44th street and Broadway, Ba-

yonne, until I was about thirty-five years of age, from childhood.

Q. What is the condition of the buildings now? A. They are in poor condition.

Q. What is the character of them, are they frame or brick? A. They are frame.

Q. When you say they are in poor condition can you describe what that means?

The Court: That will all be developed on cross-examination.

Cross-examination by Mr. Martin:

Q. What value do you give to the inside lots on Broadway? A. The E. 53rd street lots?

Q. No, facing on Broadway? A. As one lot I would value it at $1,800.

Q. Each lot is $1,800, that is three of them? A. Yes, sir.

Q. And what do you value the corner lot at? A. I value it at the difference—no, I have put a plottage in there. My figure includes plottage and an additional cost for the corner.

Q. The value that you have given us of $9,000 on the corner property is your net value? A. Yes, sir.

Q. And you have not sub-divided? A. The value as given of $9,000 is total value of those four lots, being a corner.

Q. You do not ascribe any particular value to each lot for plottage value? A. I have added the plottage value when I have considered the $9,000 —or when I make that as my opinion of the value of the property.

Q. There are three lots $1,800 you say? A. Yes, sir.

Q. That is $5,400? A. $5,400.

Q. Now, what is the corner lot? A. The corner lot is $2,500, I would say.

Q. That is $7,900? A. Seventy-nine.

Q. How much do you give us for plottage? A. I give you $1,100 for plottage.

Q. On what theory? A. That is not one-third.

Q. No, on what theory? A. On what theory?

Q. What basis of reasoning? How do you get $1,100? A. Why, in round figures ten percent for plottage. It is a little less than that.

Q. Is it not because of the fact that you have given these particular values on each lot and subtracted that from the $9,000 you give and that is the result? A. No, sir, it is not.

The Court: To make the figures square.

Mr. Martin: Yes.

Witness: When I considered that value I considered the plottage value for that plot.

Q. Now, how much rental did these houses bring on the front lot there, the four lots? A. I believe from information received from the tenants, the four families in there each pay $20.

Q. And the other little house around the corner? A. $20 also.

Q. That is a hundred? A. That is a hundred.

Q. And what kind of buildings are they? A. These are frame buildings, flat roof.

Q. Two and a half stories? A. I would call them two story for the front.

Q. Aren't the basements finished? A. Cellar in the corner property and no cellar in the little house in the rear of the corner plot.

The Court: Does it make any difference in this case what the properties are worth?

Mr. Martin: I don't know as it makes much difference if we get the property back.

Q. The rental value you give to the rear houses, what do you say as to that? A. That the tenants that are in the houses—there are a number of vacancies—are paying eighteen and twenty dollars, they told me when I inquired from them.

Q. That is about $127. If the total rental value is twenty-six or twenty-seven hundred dollars a year could not you give this property a little more value than merely twenty thousand five hundred? A. No, sir; I would not.

Charlotta E. Ostrom resumed the stand for further direct examination by Mr. Martin.

Q. Can you fix the date a little more definitely? A. No, I cannot fix the date.

Q. Now speak up, because these gentlemen cannot hear you. Well, how old were you when you were married? A. 32.

Q. When did your husband die? A. In 1912.

Q. When were you married? A. In 1900.

Q. Did you go, before or after you were married, down to see your Uncle Anton? A. Before I was married.

Q. Did you see him—did you see Uncle Anton? A. Yes, sir.

Q. And who else was in the household? A. Why, Aunt Charlotte was there.

Q. Who? A. Aunt Charlotte.

Q. His wife? A. And Daisetta.

Q. And Daisy? A. Yes, sir.

Q. And was anybody else there? A. No, I think not at that time.

Q. Now, did you have a conversation with Charlotte Hirschman in the presence of Anton? A. Yes, sir.

Q. Or of Daisy? You did have a conversation? A. Yes, sir.

Q. Now, which was it, Anton or Daisy, do you remember? A. It was Aunt Charlotte and uncle and I, Daisy was there.

Q. So that all three of you—— A. Yes, sir.

Q. Now, was anything said at that time by Charlotte in the presence of Daisy and Anton in reference to Daisy? A. I can't recall that now.

Q. Did you say anything to them about Daisy? A. Yes, sir.

Q. What did you say? A. Auntie wanted me to stay down. I said I couldn't very well because mamma wasn't well, and so we got talking about Daisy. I said, "You have got a daughter here I should think it would be all right." She says—we got talking about things then and she says, "Well, you know Daisy isn't my daughter." I said, "No." I didn't know, and of course I had heard things at home but I didn't say anything to Auntie because I didn't just know about things, but when I went home mamma and I talked about it.

Q. I do not think what your mother said and did will be helpful. Did Warren Ferris say anything to Frank Rieber in Binghamton about where he was working, in your presence? A. Yes, sir.

Q. Where did he say? A. He was a railroad man running from Jersey City to Port Jervis.

Q. Did he say anything about his being up there pretty frequently? A. No, I didn't—brother wondered what he was doing and I heard him say that. That is all I can recollect.

Q. I show you Exhibit C4 and ask you if you produced that paper here today? A. Yes, sir.

Q. Where did you get that? A. Uncle wrote me that after mamma's death. I asked him for mamma's birthplace in the old country and that was the nearest he could send me.

Q. Do you know your Uncle Anton's handwriting? A. Yes, sir, I would——

Q. Well, do you? A. Yes, sir, that is his.

Q. Is this Exhibit C4 in his handwriting? A. That is his handwriting.

Q. Well, now, do I understand you correctly that you after your mother died wrote your Uncle Anton? A. Yes, sir.

Q. For the birthplace of your mother and this was a part of his answer? A. Yes, sir.

Q. Now, when did you first hear of Anton Hirschman's death? A. The latter part of September I think it was—well, it was the latter part of September.

Q. What year? A. 1922.

Q. And from whom? A. My cousin Annie Feurstbacker.

Q. Where does she live? A. Callicoon.

Q. Did you get this by word of mouth from her? A. By letter.

Q. Have you got the letter? A. No, sir, I haven't. I have it at home though.

Q. Did you bring it down here? A. No, I did not. I am sorry.

Q. Well, when was the first time you heard about the commencement of this suit of Ferris against Hirschman which resulted in a judgment to quiet title? A. Why, cousin Annie told me to write and find our from Mr. Gardner, that Mrs. Raymond was trying to get something for her work at uncle's and she couldn't get anything,

unless we heirs would come in because our property had been sold by our cousin Warren Ferris.

Q. Yes— A. And so as to help Grace—I knew how Grace had been there since she was fourteen years old with Auntie working, and worked very hard, and we thought she was entitled to something, and I took it up—I wrote to brother and I wrote to my cousin—I had a time to find my cousins because they lived so far away, but finally did and then I went to my attorney at Binghamton and told him what little I did know about it and he said if my own cousins——

Q. Never mind what your attorney said. You went to Hinman, Howard & Kattell? A. Yes, sir.

Q. That is Senator Hinman, over there, is it? A. Yes, sir.

Q. And did Mr. Kattell show you a letter dated November 22, 1922, from the Surrogate of Hudson County, N. J.? A. No; I have never seen it.

Q. Well, now, let me call your attention again to this question. When did you first hear of this suit of Ferris against Hirschman, not that your uncle was dead, but when did you first hear of the suit? A. I do not think I learned of that until brother came back from here.

Q. You mean by that, Frank Rieber? A. Yes, sir, that the property had——

Q. Did he stop at Binghamton after he had been here in New York? A. Well, he didn't stop off when he went back.

Cross-examination by Mr. Hudspeth:

Q. Where are you living now, Mrs. Ostrom? A. In Johnson City, New York.

Q. Any of your relatives live there in the same place? A. Not now, no.

Q. How long since you lived in Callicoon? A.

Well, it is since 1880 something; it was in eighteen hundred——

Q. I can't hear you. A. Well, since 1880 something—eighty-six or eighty-seven, I think I came away from there.

Q. Were you born there? A. Yes, sir.

Q. How old were you when Ferris first appeared there with his mother Julia? A. Why, that I can't recall.

Q. Well, about how old?

The Court: About fifteen.

Q. About fifteen, as the court suggests? A. Well, I should think it was about fourteen or fifteen.

Q. About fourteen or fifteen? A. Yes, sir.

Q. And about how old was your brother? A. Brother Frank?

Q. Yes. A. Well, he was—he must have been ten or twelve I guess; he was a little younger than I was, about a year and a half younger.

Q. Now, you remember that during the time you were in Callicoon, from the time Ferris first appeared up to the time you left—moved away—he was there several times? A. Yes, sir.

Q. About how many times in all? A. Well, I couldn't recall that but I know they came up quite often during the summer.

Q. Well, he was a sensible boy, wasn't he? He had all his wits and he, so far as you knew—so far as you observed him—had all his wits about him, did he not? A. I think so.

Q. He knew where he was? Knew who you were and knew who your brother was? A.Yes; he called my mother Aunt Annie. He ought to know who we were.

Q. Did you ever speak to him or did he ever

speak to you about your Uncle Anton Hirschman in Bayonne and his uncle? A. I hardly think I did, to him.

Q. Was the name Anton Hirschman ever mentioned in his presence and in your presence? A. It was in my presence. I cannot remember whether he was there or not. I cannot recall.

Q. Was your uncle Anton Hirschman ever talked about when he was there present? A. That I cannot recall.

Q. Was Bayonne ever referred to? A. Not to my recollection, not that I can recall, before him.

Q. Was there any reference made to your uncle Anton Hirschman at any time? A. Oh, yes.

Q. When Ferris was present and his having property in Bayonne? A. By his mother only that I know of.

Q. His mother Julia? A. Yes, sir.

Q. Where was that spoken of, at Callicoon? A. At our home, yes, sir.

Q. When, about? A. Well, I don't know as I can recall the date.

Q. You know the reason I am hesitating is because I cannot hear you at all. You drop your voice and talk to yourself. A. I cannot recall the dates way back there.

Q. I beg your pardon? A. I cannot recall the dates, it is so far back.

Q. Was it talked about by her more than once? A. Yes, sir.

Q. Or by you more than once with her? A. Not myself, but my mother.

Q. Your mother, in your presence? A. Yes, sir.

Q. And the talk was with Julia? A. Yes, sir.

Q. And more than once? A. Yes, sir.

Q. About your uncle Anton Hirschman having property in Bayonne? A. Yes, sir.

Q. What did Ferris call your mother when he was in Callicoon? By what name did he address her? A. Aunt Annie.

Q. And by what name did he address you? A. He always called me Lottie.

Q. Never called you cousin or Auntie? A. That I do not recall.

Q. By what name did he address your brother? A. Frank and George.

Q. Then you moved to Binghamton, did you? A. Yes, sir.

Q. And you lived in Binghamton up till what time? A. Well, we had lived in Binghamton until 1902, then we moved to Johnson City.

Q. Now, while you were in Binghamton you have said that your Aunt Julia and Ferris came there? A. Yes, sir.

Q. On several occasions. Sometimes Ferris came alone? A. No, his mother alone.

Q. His mother alone? A. Yes, sir.

Q. But he always with her? A. Well, he came once with his wife.

Q. Once with his wife? A. Yes, sir.

Q. And at all times with his mother? A. Not always. He was with his mother, and then he could come up by himself.

Q. How many times, about in all, was he there? A. Well, I couldn't tell you that because his wife was up more than he was.

Q. Did you ever hear him refer to your Uncle Anton Hirschman when he was in Binghamton on any of these occasions?

The Court: I understood counsel to say that they did not dispute the relationship.

Mr. Hudspeth: We do not.

The Court: Then why all this cross-examination?

Mr. Hudspeth: It is very important, if your Honor please.

The Court: All right.

Q. Will you please answer the question? A. Pardon me, but I did not quite get that question.

Q. (Question read.) A. No, sir.

Q. Did you ever refer to your Uncle Anton Hirschman on any of these occasions in his presence? A. Not to Warren Ferris.

Q. Was he ever talked about or his property? A. Not by Warren Ferris.

Q. I beg pardon? A. Not by Mr. Ferris.

Q. If so, by whom? A. By his mother.

Q. In Ferris' presence? A. No, not that I remember of.

Q. Now, when did you say you heard of your Uncle Anton's death? A. Latter part of September, 1922.

Q. 1922? A. Yes, sir.

Q. How long before you commenced this suit? A. Well, that was—it went on in November because I had—I wrote to my cousins and asked them what they thought about it.

Q. You heard of his death in November—September, 1922? A. The latter part of September.

Q. And this bill was filed in December, so that it was about a month before this bill was filed you heard of Anton Hirschman's death? A. Yes, sir.

Q. When did you first hear of the alleged sale of the property of your uncle?

The Court: Three months.

Mr. Hudspeth: Three months.

Q. When did you first hear of the alleged property of your uncle Anton Hirschman in Bayonne? A. Well, I think Mr. Kattell told me that.

Q. When was that? A. I think Mr. Kattell told me of that first.

Q. When—about when? A. When I went to him because I asked him if I better let my cousins know about this and he says, "Well"—he advised me to do so. I wrote them—I had quite a time finding my cousins, the Steffens and Mr. DeBussey because we hadn't been corresponding and it took me some time to find them.

Q. Then your impression now is that you first heard of the sale of this property through Mr. Kattell? A. Yes, sir.

Q. Your lawyer? A. Yes, sir; I went to my lawyer about it.

Q. And about when was that? A. I cannot just recall—I think it was in November.

Q. About a month? A. Yes, sir.

Q. November, prior to filing this bill?

The Court: November, 1922?

Witness: Yes, sir; it was in 1922.

Q. How long after you had heard about the selling of this property—first how long after the hearing of the death of your uncle and the selling of this property was it that you engaged Judge Martin as solicitor in this matter? A. Well, I cannot just recall that now but——

Q. Well, about? A. I talked to Mr. Kattell and he said he couldn't take this up for me because he had always been our attorney at home—He said I would have to have a Jersey attorney or someone who could take it up here. I asked him if he knew of anybody here that I could get and so he —through him I got Judge Martin and Mr. Carruth.

Q. Now, that was when? A. Why, it seems to me that was in November, 1922.

Q. Did you come to New Jersey to see Judge Martin or did you see him in New York? A. No; I hadn't seen him at all.

Q. How did you reach him? A. I hadn't—all I knew I saw Mr. Kattell and was talking to him, but I had a sick spell——

Q. Did you act through Mr. Kattell? A. Yes, sir; I acted through Mr. Kattell.

Q. You acted through Mr. Kattell? A. Yes, sir, the attorney.

Q. From whom did you hear of the death of your uncle Anton Hirschman? A. Mrs. Annie Feurstbacker of Callicoon, a cousin on my father's side.

Q. Did she tell you personally? A. She wrote me a letter and told me.

Q. From Callicoon? A. Yes, sir.

Q. And you were in Binghamton? A. Johnson City.

Q. And told you of the death of your Uncle Anton Hirschman? A. Well, she told me one of my uncles or aunts in Bayonne had died without leaving a will and she said if I would write to Mr. Henry Dardner that I would find out the particulars.

Q. What, if anything, did you then do to apprise your family of the death of Anton Hirschman? What did you do, if anything, when your aunt told you those things? A. Why, I went to my attorney to see what I could do.

Q. Did you inform any of your relatives of the death of your uncle? A. Yes, sir; after I saw my attorney I had written my cousins and my brother —I telegraphed my brother that uncle had died without leaving a will and was going to let my cousins, the Steffens, know, and see what there was to do.

Q. Now, there is no doubt in your mind at all, is there, but that at the time that Warren Ferris and your Aunt Julia called or visited your home in Callicoon and in Binghamton and at other places where you were and met you on various occasions but that she knew who you were and what the relations were that existed between Julia and yourself and Ferris and yourself? You have no doubt about that, have you? A. I was right with papa when she come to papa and said, "I want to buy some property in Binghamton". My father was a builder and she says, "I think I will move up here," she said; so through my paper she bought this piece of land in Binghamton and built this house there, and while she was building it she stopped with us part of the time and some friends that lived near where she was building, and she built this two family house and she came up there and lived there for about seven years, I think, and then she sold this property to a girl friend of mine that I went to school with, a Mrs. Neary.

Q. Now, you have no doubt in your mind, have you, but that Mrs. Julia Ferris and Warren Ferris at all times knew that your mother was the sister of Anton Hirschman who lived in Bayonne, have you? A. Sure, they knew it.

Q. They knew you were a daughter of your mother, didn't they? A. Yes.

Q. And they knew you were related to them? A. Yes, sir.

Q. And you were a niece to Anton Hirschman? A. Yes, sir; they did.

Q. Do you know whether or not they knew you were alive at the time of this alleged sale to the Consumers Coal & Ice Company? A. Well, they should have known. They could have found us easily if they had wrote to Binghamton.

Q. Now, let me ask you, what was the last address that you know they knew was yours? A. Binghamton.

Q. Binghamton? A. Johnson City, after we moved to Johnson City they were——

Q. (By the Court) What do you say after you moved? A. After we moved to Johnson City they were up there. It was then called Lestershire. Warren and his wife were up there—were up there with Aunt Julia when my father died—or when my mother died I should say, to my mother's funeral.

Q. What is the last address that you knew they knew of yours? A. Johnson City.

Q. And when? A. In 1881, when mother was buried.

Q. About 1881? A. 1894.

The Court: 1904?

Witness: When mother was buried, that is the last we seen of Aunt Julia.

Q. That is what? A. That is the last time we seen Aunt Julia.

Q. When you were in Johnson City? A. Yes, sir; she came to the funeral.

Q. The last time you saw Warren Ferris was when? A. That I cannot recall, because auntie said he was on the train and couldn't come up only on week-ends.

Q. Now, you referred to Daisy Keffer or Daisy Hirschman as being in the house with your uncle Anton Hirschman when you visited there? A. Yes, sir.

Q. When did you first meet her in that household? A. Well, I cannot recall. That is way back when I used to go down to New York to meet my other cousins I would go over to uncle's and see

Daisy there. But I have always known her as Daisy Gardner until I got word she was going to be married.

Q. You knew at that time, when you first met this girl in your uncle's house, she was not his daughter, didn't you? A. Yes, sir.

Q. So you were not surprised later on when you had this talk with Mrs. Hirschman about who she was, were you? A. No, but we never had talked this over with her because——

Q. You said she asked you, "didn't you know she isn't my daughter?" A. I didn't answer.

Q. You said, "Yes" or words to that effect. You knew a long time before though that she wasn't the daughter, didn't you? That was a matter of repute amongst you all, was it not, that she was not the daughter of Anton Hirschman and Charlotte his wife? A. Yes, sir; we did.

Q. Yes. Did you know in what capacity she lived in that family? A. No; because I never was there long enough.

Q. Hadn't you heard? A. No. I didn't even know they called her their daughter until she was to be married.

Q. Until what? A. Until when she was married.

Q. Until after she was married? Was that before or after your uncle's death? A. No, before.

Q. That was before his death? A. Oh, yes.

Q. Then you knew before his death that she claimed to be the adopted daughter of your uncle? A. I didn't know that she claimed that, but her wedding invitations showed it, that she was taking uncle's name.

Q. Did you make any inquiries then of your uncle? A. No, sir.

Q. Of his wife or anyone else as to what her relation really was with your uncle's family? A. No, sir.

Q. Was it after that or before that that Charlotte had said to you, "This is not my daughter." A. I was after. It was after grandma came to her house, when we brought grandma for a time to Uncle Anton's.

Q. Now let me ask you, when did you first meet Charlotte, her daughter? A. I haven't seen Charlotte since a tiny baby—she was a little baby.

Q. I asked you when you first met her? A. I cannot recall when that was.

Q. Was her mother alive when you first met her? A. I think not; I think she was about four years when I seen her.

Q. Her mother was dead? A. Yes, sir.

Q. Did she have any nickname in the family? A. Not that I know of. I just called there.

Q. What did they call her? A. Charlotte.

Q. Charlotte? A. Yes, sir.

Q. Do you know who she took that name from? A. No, sir.

Q. Don't you know she was named after your uncle's wife? A. No, sir.

Q. Hadn't you ever heard so? A. No, sir.

Q. Did you ever hear that she was adopted? A. No, sir.

Q. Did she ever talk about being adopted in your presence? A. No, sir.

Q. Did she ever say she was a child of your uncle? A. No, sir.

The Court: Do you mean Daisy or Charlotte?

Mr. Hudspeth: Charlotte.

The Court: That is Charlotte, the daughter of Daisy?

Mr. Hudspeth: Yes.

The Court: That is one of these defendants.

Q. When did you last see Charlotte? A. When I last seen her? I never saw her but that once.

Q. When was that? A. Well, that was when she was about four years old.

Q. Did she know where you lived at the time she was married, to your knowledge? A. Mrs. Keffer?

Q. Yes. A. I couldn't tell you to my knowledge.

Q. Did she send you an invitation? A. No, sir.

Q. Do you know whether she ever knew where you lived? A. Not to my knowledge.

Q. Do you know whether she ever knew where your mother lived? A. Not to my knowledge.

Q. Do you know whether she ever knew where your brother lived? A. Not to my knowledge. I never saw her after that.

Q. Now, after hearing about this alleged sale of this property of your uncle in Bayonne following his death did you see this girl Charlotte Marie Keffer or Warren Ferris? A. No, sir.

Q. Neither one of them? A. No, sir.

Q. Hadn't any communication with them? A. No, sir.

Q. Or they with you? A. No, sir.

Cross-examination by Mr. Butler:

Q. Are you acquainted with a Mrs. Gardner Raymond? A. Yes, sir.

Q. How long have you known her? A. From childhood.

Q. Seen her very lately? A. Yes, sir.

Q. When was the last time you saw her? A. She was here with me today.

Q. Did you see her up at Johnson City? A. Mrs. Grace Raymond?

Q. Mrs. Raymond who was formerly—I don't know what her name was formerly. Grace Raymond that is here in court—Grace Raymond—yes, Gardner Raymond? A. Yes, sir.

Q. Did you see her in Johnson City? A. Yes, sir.

Q. When? A. Why, she came up there with me.

Q. How long ago? A. I cannot just recall the date.

Q. Was it during the month of November, 1922? A. I think it was in November, 1922, yes, sir.

Q. Was she the one that gave you the information about the death of this uncle of yours in Bayonne? A. No, sir.

Q. Not directly. What did she go to see you for? A. I asked her to come.

Q. What about? A. Because I knew she had worked at uncle's for a good many years and I went to Callicoon myself to see if I could find Grace—I heard she was living in Callicoon—when I got down there I found she was married, because I had known her people from childhood.

Q. What did you talk to her about was the question? A. So I went to her and she told me how she had worked there for——

Q. Is that all you talked about, about her working there? A. That is all.

Q. That is all, you are sure of that? A. I think so. I don't know what else?

Q. Your memory doesn't recall anything else except that she worked there. Will you tell me why you went purposely to see her and searched her up in Callicoon if all you wanted to talk about was how she worked for your uncle? A. Because I was told that Grace tried to get something and Mr. Gardner told me she couldn't get anything, it was outlawed, unless she would get the heirs together—they might do something for her.

Q. Yes, but that was her bill, that wasn't yours, was it? A. That is all right.

Q. Then why did you search her out to have her collect the bill? A. I didn't have her collect the bill.

Q. You said the only thing you talked to her about was what was due her by your uncle. Now, why were you so anxious to find out that? A. I didn't ask her that. She told me that it was.

Q. What else did you talk about? A. And that she was paid very weak while she was there.

Q. What else did you talk about? A. I don't know as there is anything else, not that I know of. I did ask her—what was it? If we took this up why, we would see what we would do for her—I did tell her that.

Q. And as a result of your telling her if you took it up that you would do something for her did she give you some information that you were looking for? A. No; I didn't ask her anything at all that day.

Q. What were you going to give her something for if you took it up if she didn't give you any information? A. If we got what belonged to us we might help her out.

Q. Why should you want to help her out if she hadn't any information that was of benefit to you? A. I didn't ask her for any information.

Q. You said—without any information you said, "If we win we are going to give you something", is that right? A. She told me that is all we can do. I said, "Well, if we take it up—I don't know whether we will—why," I said, "perhaps we can do something for you".

Q. Without any information? A. Now, ——

Mr. Martin: What is the answer?

Q. Without any other information you said that, is that right? A. Yes, sir.

Q. Now, this incident of the hitting—of this putting the burdocks on top of Warren Ferris' head, that occurred in 1882, is that right? A. I cannot just remember the date.

Q. Well, your brother said it was 1882 or 1883. A. Yes, sir; I cannot just recall that.

Q. How long was it before you left Callicoon? A. Well, I came up there in 1887, I think.

Q. Do you know how old you were at the time? A. Fourteen years.

Q. You were fourteen years old—when were you born? A. In 1864.

Q. Sixty-four, fourteen, that would be sixty-eight— A. Oh, 1868.

Q. That would make it 1882, wouldn't it, fourteen years old? Now, how old—you remember that incident very clearly, do you not, Mrs. Ostrom? A. No, I don't.

Q. Well, you said you remembered— A. I remember the day of the burdocks. I do.

Q. I say, that incident you remember very distinctly? A. Yes, sir.

Q. How old was Ferris at the time, or how old would you judge he was at that time? A. I don't know.

Q. As old as your brother? A. Well, he was—he and brother were just about the same age.

Q. About the same age? A. Yes, sir.

Q. And your brother was how much younger than you, two years—year and a half? A. Year and a half.

Q. That would make Ferris about eleven and a half or twelve years old, is that right? A. Yes, sir, about ten or eleven years old.

Q. Now, you stated after this little incident he was told—the mother Julia was told to take the boy home, after this burdock incident? A. Yes, sir.

Q. You remember that very incident? A. Yes, sir.

Q. Your brother said it was after hitting him in the stomach with a stick? A. After that.

Q. It was after the burdocks? A. No, it was after they had a little fuss over hitting with the stock.

Q. Why did you say—you never mentioned that, hitting with the stick, in answer to Judge Martin. You simply mentioned the burdock incident. A. I remembered that because brother laid there in the yard and papa went and got him and brought him in.

Q. You took an affidavit, did you not, on December 20th, in Johnson City—did you or did you not? A. On what?

Q. With reference to this matter—with reference to this case. A. Not in Johnson City. I took it in Binghamton.

Q. Where? A. Binghamton.

Q. I beg pardon. Maybe it is in Binghamton. In Binghamton you took—you made this affidavit, did you not? Did you or did you not? A. I don't know what the affidavit is.

Q. I didn't ask you that. Did you take an affidavit? A. I cannot remember just what about it was.

Q. Do you remember taking an affidavit before a man by the name of Ockkinan? Do you remember taking that affidavit? A. I have taken some affidavits there but I do not remember.

Q. How many affidavits did you take with reference to this case there? A. That I cannot recall.

Q. Do you remember taking an affidavit in which you stated that you resided in 8 Orchard avenue, Johnson City, Broome County, N. Y., and lived in Broome County for some thirty years

past. Do you remember taking—saying that? A. Yes, sir.

Q. "I am a niece of Anton Hirschman late of Hudson County, New Jersey, deceased, my mother Anna Marie Hirschman Rieber being a sister of the said Anton Hirschman, deceased?" A. Yes, sir.

Q. Now, did anything ask you questions at the time that affidavit—the making of that affidavit—any lawyer? A. I cannot just recall whether some one went with me or not.

Q. Was Mr. Kattell there at the time you took it? A. Yes, sir; Mr. Kattell did that for me.

Q. Do you remember whether or not he asked you if you could give any information in reference to one Warren Ferris? A. Yes, sir.

Q. And do you remember at that time answering, "In or about the year 1897 the above mentioned Julia Hirschman Ferris, mother of the said Warren Ferris, came to the City of Binghamton to visit my mother at 128 Front street?" A. Yes, sir.

Q. "Shortly after she came to Binghamton she bought up a piece of real estate on Laurel avenue in the City of Binghamton of one Shappe." Do you remember that? A. Yes, sir.

Q. And you spoke about his visits to that place? A. Yes, sir.

Q. Did Mr. Kattell ask you if you knew—could give him any other information with reference to Warren Ferris? A. Not then, no.

Q. Did he ask you to give him all the information you could about the visits to you or the meetings between you and Warren Ferris? A. Yes, sir.

Q. Then why didn't you mention in your affidavit that you met him in Callicoon? A. Our

first meeting with Warren Ferris was in Callicoon.

Q. Why didn't you mention it in the affidavit? A. Because at the time when this come up I was home sick with nervous prostration and it was all I could do to get over to Mr. Kattell's office.

Q. But you did make an affidavit covering four pages and a half and you did not mention, did you, about seeing Warren Ferris in Callicoon? A. Well, Warren Ferris knows that I seen——

Q. I didn't ask you that. Answer my question.

Mr. Martin: You asked her why. I submit she had a right to answer why.

The Court: Make your objection.

Mr. Martin: I object to the question.

The Court: Objection overruled.

Mr. Martin: On the ground that it is argumentative.

Q. You did not make any statement at that time about having seen Warren Ferris at Callicoon, did you? Yes or no. A. I do not recall that.

Q. And you did not make any reference about this burdock being in his hair and being taken to the barber's did you? Did you? A. I cannot recall that at all. That wasn't brought up just then.

Q. It wasn't brought up just then. Now, these pictures that I show you that have been offered in evidence, did you say that picture marked C10 —where did you say that came from? A. That cousin Annie Ferris gave me when she came up with Aunt Julia to see us.

Q. Gave it to you in person, didn't she? A. Yes, sir.

Q. You are positive of that? A. Yes, sir.

Q. I show you the picture marked C9 and ask

you where you got that picture? A. Cousin Annie gave that to me.

Q. At the same time that she gave this other picture? A. No; this was another time.

Q. Which picture did you get first, C9 or C10? A. Now, that I cannot recall.

Q. You do not remember which? A. No, it is so long ago.

Q. And where were you living at the time you got these pictures? A. 128 Front street.

Q. And that is—— A. Binghamton. We were in Binghamton then.

Q. Did you ever see those pictures before, this one marked C2? A. Only at my brother's house. I haven't any like that.

Q. And marked C3? A. Only at my brother's house. I haven't any.

Q. Now, you don't know of your own knowledge when those reached your brother, do you? A. No, because I had been married in the meantime.

Q. And you had gone away from the house? A. And he lived home, yes, sir.

Q. But they came to you after you were married, you are sure of that, aren't you? A. Yes, sir.

Q. Now, I show you a picture marked C1. Do you recognize that picture? A. Yes, sir, I guess I do remember it, at my brother's house. That is not mine. I had a better picture than that but I cannot find it.

Q. You saw that at your brother's house? A. Yes, sir.

Q. You don't know who gave it to your brother, do you? A. No, I do not. He was married then and I was married.

Cross-examination by Mr. Carrick:

Q. I call your attention to this paper which has been offered in evidence, Exhibit C4, that I understood you to testify was in the handwriting of your Uncle Anton. A. Yes, sir; that is uncle's writing.

Q. Now, it is quite evident from an inspection of this paper that it has been torn from something else? A. Yes, sir.

Q. From what was that torn? A. From a letter he wrote me. After mamma died we were buying a stone.

The Court: Answer the question. From what was it torn?

Witness: From a letter that uncle wrote to me.

Q. Where is the rest of the letter? A. I couldn't tell you. I tore that up because I was going in my new home. I got rid of a lot of letters. I always kept that because I always wanted to know my mother's birthplace, and after mamma passed away I wanted to know so that we could do something about the headstone.

Q. Now, didn't this letter indicate to you that your Uncle Anton had adopted Daisetta who was living with him? A. No, sir; there was nothing ever written about that.

Q. You never had heard of that? A. No.

The Court: This Warren Ferris you speak of, is he in the court room?

Witness: Yes, sir.

The Court: Do you recognize him?

Witness: Yes, sir.

The Court: Where is he?

Witness: Right present there.

Cross-examination by Mr. Butler:

Q. Wasn't Mr. Ferris pointed out to you by Mrs. Gardner in the courtroom today? A. No. I asked Mrs. Gardner if she seen Warren come in. She says, "Where". I said, "He just came in the door." I knew him as soon as I seen him.

Re-direct:

Q. You have answered Judge Hudspeth that there were no other relatives in Binghamton here recently. Probably he was asking you about the fall of 1922. Was George A. Rieber, Jr., up there at that time? A. George, he is in Binghamton.

Q. You answered with reference to Johnson City only? A. I meant Johnson City.

Q. It is just across the river, isn't it? A. No.

Q. How long have you lived at 8 Orchard street, Johnson City? A. I have lived there since 1902.

Q. And how large a town is it? A. Oh, it is——

The Court: Is that the shoe factory headquarters?

Witness: Yes, sir.

Q. It is across the river from Binghamton, is it? A. Yes, sir.

The Court: Eighteen miles away.

Witness: No, about three miles away. I live just this side on the line between Johnson City and Binghamton.

Q. Now, did you correspond with Anton Hirschman after your mother's funeral? A. Just this one letter. I wrote for my mother's birthplace.

Q. Did you correspond with Daisy Gardner Hirschman? A. No, sir; not after my mother's death.

J. J. Hoffman, for Complainants—Direct—Cross.

JOHN J. HOFFMAN, sworn for complainant.

Direct examination by Mr. Martin:

Q. Where do you live? A. 67 Beech street, Jersey City.

Q. You are an attorney and counsellor of the State of New Jersey? A. I am.

Q. And in this transaction of the sale of the property on Broadway and 53rd street in Bayonne formerly owned by Anton Hirschman to the Consumers Coal & Ice Company by Warren Ferris and Charlotte Keffer, did you represent any party? A. I represented Warren Ferris.

Q. Who represented Mrs. Keffer? A. Firm of Benny & Cruden—oh.

Q. Mrs. Keffer? A. Mrs. Keffer? I forget the gentleman's name, he is sitting in the rear there.

Q. Whereabouts is he? A. Mr. Sanborn.

Q. Ralph B. Sanborn? Did he represent Mrs. Keffer? A. Yes, sir.

Q. Who made the objections to the title? A. The firm of Benny & Cruden. They were the attorneys——

Q. Did Benny & Cruden represent Charlotte Keffer or Warren Ferris? A. No.

Cross-examination by Mr. Hudspeth:

Q. Do you know who Benny & Cruden represented? A. They represented the Consumers Coal & Ice Company.

Q. They did not pretend to represent anyone else, did they? A. No.

Corunda M. Tombs, for Complainants—Direct.

CORUNDA M. TOMBS, sworn for complainant.

Direct examination by Mr. Martin:

Q. Where do you live? A. 27 Pearne street, Binghamton, New York.

Q. How old are you, please? A. Forty-nine.

Q. You were married before, were you not—there was a first marriage? A. Yes, sir.

Q. And to whom and when were you married? A. George Anthony Rieber, 20th of November, 1893.

Q. 1893? A. 1893.

Q. And is he dead? A. Yes, sir.

Q. When he died were there any children living? A. Left one child.

Q. George A. Rieber, Jr., and where does he live? A. 30 Amsbury street, Binghamton, N. Y.

Q. Did you and your husband when you were first married come down to New York on your wedding trip? A. Yes, sir.

Q. Did you go over to Bayonne? A. Yes, sir.

Q. Who did you find there? A. Mrs. Hirschman, Mrs. Hirschman and Daisy Hadlick. Mrs. Hadlick and her husband came there the same day I was there at Bayonne. They were living then in New York.

Q. And was there anything said by Daisy to you or by you to Daisy? A. Yes, sir; we were out walking—we were there talking and she told me the instance—she was feeling quite bad because Mrs. Hirschman had just told her that she was not her own daughter. She supposed she was her own daughter, but she just told her she wasn't.

Q. Did Daisy tell you anything about whether or not she had recently been married? A. She married two weeks before I was.

Q. So that you were both brides then at that time, is that it? A. Yes, sir.

Q. Did you ever see Aunt Julia Ferris, as we all call her? A. Yes, sir.

Q. Whereabouts? A. At her home on Laurel avenue, and she has been to my home.

Q. Did you ever see Warren Ferris in Binghamton? A. No, sir.

Q. When was the last time that you saw Julia Ferris? A. About 1897.

Q. Did she say anything about having a son? A. She said she had a son, yes, sir.

Cross-examination by Mr. Hudspeth:

Q. Mrs. Tombs, when was this visit you paid to Anton Hirschman's home in Bayonne on your wedding trip? A. When was it?

Q. What was the date? A. Well, it was about the 22nd or 23rd.

Q. Of what? A. Of November, 1893.

Q. 1893? A. Yes, sir.

Q. And that was on your wedding trip? A. Yes, sir, we came to New York.

Q. With your husband. What was his name? A. George Anthony Rieber.

Q. He was related to Hirschman, was he not? A. Yes, sir, nephew.

Q. Hirschman was his uncle? A. Yes, sir; he was named after his uncle.

Q. Were you ever at Anton Hirschman's home before that occasion? A. No, sir.

Q. Had you ever visited him or he you before that occasion? A. No, sir.

Q. Then you were strangers? A. Yes, sir.

Q. Met for the first time? A. Yes, sir.

Q. Never had met Daisy before? A. No, sir.

Q. And when was it you and Daisy had this walk when she made this disclosure to you? A. That same day.

Q. That Mrs. Hirschman had said she was not the daughter? A. Same day, in Bayonne.

Q. First time you had ever met her? A. Yes, sir.

Q. First time you ever visited there? A. Yes, sir.

Q. You and she went for a walk? A. The four of us went together.

Q. She was out walking and she without any solicitation made this statement? A. We were talking of things.

Q. During the talk she voluntarily made this statement that Mrs. Hirschman—— A. Yes, sir.

Q. Didn't say "mother"? A. No, sir.

Q. Had told her she was not her daughter? A. Yes, sir.

Q. She felt very sorry for it? A. Yes, sir.

Q. Then you went back home? A. Yes, after——

Q. You walked around. A. Walked home.

Q. How long did you stay there? A. That day; went to New York in the evening.

Q. Did you notice how Mr. and Mrs. Hirschman treated the girl? A. Very pleasant.

Q. No friction between them? A. No.

Q. No misunderstanding apparently? A. No.

Q. By what name did they call her? A. Daisy.

Q. And what did she say to them—how did she address them? A. Well, I don't know about that.

Q. Eh? A. I don't know about that. I heard them say Daisy, that is all I know.

FRANK C. STEFFENS, sworn for complainant.

Direct examination by Mr. Martin:

Q. Where were you born? A. In South Carolina.

Q. When? A. September 19, 1869.

Q. What is your mother's name? A. My mother's name was Francisco Hirschman Steffens. My father usually called her Fanny.

Q. And when were your father and mother married? A. When?

Q. About? A. I think about, as near as I can remember, 1854.

Q. Well, what children were there—what children besides yourself? A. Living children, sister, brother and myself are the living ones.

Q. And their names? A. George W. Jr., Mrs. Marie De Bussey and myself, Frank C.

Q. Is George W., Jr., the one you call William? A. Yes, sir.

Q. Is he living? A. No, sir.

Q. When did he die? A. He died in September about 1916.

Q. Was he married? A. No, sir.

Q. Is your sister Mamie De Bussey? A. Yes, sir.

Q. Is she in court today? A. Yes, sir.

Q. When did your mother die? A. She died in March, 1893.

Q. What business was your father in? A. Wholesale grocery business.

Q. Now, did your mother have any brothers and sisters? A. Had one brother and two sisters.

Q. And their names? A. Anton Hirschman was the brother and Mrs. Ferris was a sister and Mrs. Rieber was the other sister, Annie Rieber.

Q. Do you recall Mrs. Ferris' name? A. Julia.

Q. And do you know whether Anton Ferris left any children at the time he died in May 19, 1920? A. Anton Hirschman?

Q. Yes. A. No; he left no children.

Q. And did Julia Ferris have any children? A. She had one boy.

Q. Did she die before Uncle Anton? A. Yes, sir.

Q. That boy you refer to is Warren Ferris, isn't it? A. Yes, sir; I presume so.

Q. And Marie Annie or Aunt Annie as you call her, Mrs. Rieber, she was dead at the time your uncle died? A. Yes, sir.

Q. Do you remember your grandfather's name? A. Anton.

Q. And his wife's name, your grandmother? A. Annie—Annie Newman Hirschman.

Q. When you were a boy were you in Callicoon? A. Yes, sir.

Q. Well, did you live there or did you go there to visit? A. No, we went there on visits. We had a farm up there where my grandparents lived on.

Q. That is to say your father owned the farm? A. Yes, sir.

Q. And grandpa Hirschman and grandma Hirschman were on the farm, were they? A. Yes, sir.

Q. Did you see Frank Rieber up there? A. Little Frank Rieber? I met him in Callicoon, yes, sir, a number of times.

Q. Did you see Mrs. Ostrom? A. Yes, sir.

Q. Did you see Aunt Julia? A. Aunt Julia? I never met Aunt Julia.

Q. Did you ever see Warren Ferris up there? A. No, sir.

Q. How often did you go up there? A. To Callicoon—I don't know, I guess a dozen times

maybe, maybe more. We would frequently alternate, go up in the mountains of North Carolina one season and Callicoon the next season and live on the farm.

Q. Your father was fairly well to do down there at one time, wasn't he, in Charleston? A. Yes, sir.

Q. Did you attend your grandfather's funeral? A. No, sir.

Q. Did you attend your grandmother's funeral? A. No, sir.

Q. Did you ever live up in Binghamton? A. In Binghamton? Yes, sir.

Q. Or Johnson City? A. Binghamton.

Q. Did you see Aunt Julia or Warren up there? A. No, sir.

Q. Did you ever go to Anton Hirschman's home? A. Yes, sir.

Q. When? A. Oh, a number of times.

Q. Commencing when? A. The first time I went to Anton's home was, as near as I can remember, was in about 1874—1874, when I was quite a little fellow.

Q. With whom did you go? A. Mother and father and family, our family.

Q. Was your sister Mamie there? A. Yes, sir, she was there; and brother, father and mother and myself.

Q. Well, did you go down to Bayonne? A. Yes, sir; we visited them.

Q. And who was in the household? A. Why, Uncle Anton and Aunt Lottie—Aunt Charlotte as we called her—we called her Charlotte. Those are all that I can remember now.

Q. That is Anton's wife? A. Yes, sir.

Q. Well, how often did you visit? A. You mean how often at that time or at any time?

Q. Yes. A. Well, at that time possibly every two years or so, and later years——

Q. Then it would be your father and mother going to see Anton and his wife? A. Yes, sir.

Q. When was the last time that you can remember being there? A. 1914.

Q. And who were there in the household at that time? A. Why, Uncle Anton and Aunt Lottie and Charlotte Hadlick and Daisy Gardner was there too.

Q. Well, did you see Charlotte Hadlick—do you mean by that Charlotte Keffer? A. Charlotte Keffer, yes, sir.

Q. Where is she? A. Sitting right over there.

Q. Well, did you talk to her? A. Yes, sir.

Q. Did Uncle Anton speak to you in her presence? A. Oh, yes. I took supper there and they had a little recital after that. She played the violin—some musical instrument there—had quite a nice time. She had quite a lot of company, and Aunt Lottie took me into the parlor and introduced me to a number of her friends as her nephew, as a matter of course; Aunt Lottie's nephew, not Charlotte Hadlick's nephew.

Q. Well, do you know Charlotte's mother? A. If I knew her? Yes, sir.

Q. Was she a daughter of Anton Hirschman and Charlotte? A. No, sir; she was no daughter.

Q. How many times have you seen Charlotte Keffer? A. I presume half a dozen times at least.

Q. Well, now, the last time that you mention was in—— A. 1914.

Q. In 1914. When was the time just before that? A. The first time I saw her, as near as I can remember, was about 1902.

Q. Then when was the next time? A. And from the time—I cannot just recall the date, but I visited up there—I come to New York and I would go up to see Uncle Anton and she would be around

there. I would take supper there. Several times I stayed there over night.

Q. Do you know when Mrs. Hadlick, her mother, died? A. I cannot recall the exact date.

Q. Did you say that Mrs. Hadlick, Daisy, was at this home in 1914? A. No, she was dead then.

Q. Now, did you receive a telegram about May 20, 1920, from Mrs. Keffer? A. Yes, sir.

Q. Have you got it? A. No, sir; I haven't got it.

Q. Charlotte Marie? A. Yes, sir; I received a telegram.

Q. Have you got it in your possession now? A. No, sir.

Q. What did you do with it? A. I destroyed it.

Q. Where were you living then? A. Living in Charleston.

Q. What was stated in her telegram? A. "Uncle Anton died today."

Q. What did you do about it? A. I answered, letter of condolence—wrote a letter of condolence, and I never heard any more from her on it.

Q. Did Uncle Anton ever say anything to you about Daisy in Daisy's presence? A. We had—in Daisy's presence? A. No, sir.

Q. Did he ever say anything to you alone about Daisy? A. Yes, sir; I was there, as near as I can remember, it was on Sunday afternoon—I was visiting him. Out in the yard, and in our general conversation he mentioned to me that Daisy was not their child.

Q. Did he say anything else to you? A. No; we were just talking casual that way. I don't remember anything important at the time that he said.

Q. Did he tell you whose child Daisy was? A. No; I didn't ask him.

Q. Didn't he say anything else to you? A. No, sir, not in that line.

Q. Was there any other conversation about whether or not he had done anything in connection with Daisy? A. No; I didn't consider it any of my business and I never ask any questions unless I am interested with them; that is my nature.

Q. Well you started in with the statement that in 1902 was the first time you ever saw Charlotte Marie Keffer? A. Yes, sir.

Q. And the last time you can remember her was in 1914? A. Yes, sir.

Q. And then you got a telegram from her in May, 1920, that Uncle Anton was dead? A. Yes, sir.

Q. Now, are there any other times that you had seen Charlotte Marie Keffer? A. In between that interim, yes, sir.

Q. What did you say to her—what did you talk about? A. Why, I never spoke to her very much at any time because she—I always considered her a child and I never passed any conversation with her. My conversation was always with Uncle Anton and Aunt Lottie.

Q. Did you have any conversation with Charlotte Keffer in reference to your daughter Theodora Moore? A. Had a conversation, yes, sir. I just recall on that that we spoke of corresponding. I told her—suggested to her that she should write my daughter, and I got them in correspondence. Now, how much they corresponded I couldn't tell you.

Q. Did she say anything more about that? Did she say whether she had or had not corresponded? A. Not at that time. I think later on that she did correspond.

Q. Did she say anything to you about corresponding with her? A. At that time?

Q. Yes. A. No, sir—she said she would, yes, but she didn't say she had.

Q. Well, did she ever say whether or not she was corresponding with your daughter? A. I do not recall that now, whether she did or not.

Q. Well, now, Mr. Steffens, when did you first hear about this suit in the Court of Chancery of Ferris against Hirschman? A. First suit against Ferris—against Hirschman?

Q. Yes; not this suit you are bringing. A. I never heard any of that at all.

Q. What? A. I do not recollect hearing at any time of a suit of that kind.

Q. You heard about it when you obtained counsel in this matter? A. Yes, sir, here since I same here.

Q. When did you first hear that that suit was brought in the Court of Chancery to quiet title and practically oust you of any right if you had any in this property? A. I do not remember the date of that. In fact——

Q. Well, from whom did you hear it? A. I heard it here this morning; that is about——

Q. No, from whom did you hear it when you retained me as counsel? A. Oh, from Mrs. Ostrom. She wrote me.

Q. She didn't write you about the suit, did she? A. No.

Q. Now, when did you first hear about the suit? A. That I can't recall, Judge; I do not remember that.

Q. Well, from whom did you first hear about the suit? A. I think I heard from you.

Q. It was a telegram from me, wasn't it? A. Yes, sir, that is how it was, from you.

Q. And that is the first time you ever heard anything about there being a suit? A. Yes, sir.

Q. You had heard that Uncle Anton was dead before that? A. Yes, sir.

Q. Now, did you get any letter or telegram from Charlotte Marie Keffer or from John H. Keffer, her husband, or from Anton Hirschman that Charlotte Hirschman, Anton's wife, had died? A. No, sir.

Q. Do you know as a fact that she died around Christmas, 1919? A. No, sir; I didn't know it until this last fall of 1922.

Q. Then at the time you got the telegram from Mrs. Keffer that Uncle Anton was dead did you know whether or not Aunt Charlotte Hirschman was living, his wife? A. I did not. I thought she was.

Cross-examination by Mr. Hudspeth:

Q. About when was it you received this telegram from Mrs. Keffer that Anton was dead? A. About May 19th or 20th, 1920.

Q. Did it indicate when he had died? A. It said "today".

Q. Are you sure that she referred to Hirschman as your uncle or as Uncle Anton Hirschman? A. Uncle Anton Hirschman.

Q. Did the telegram state Uncle Anton Hirschman is dead—nothing else? A. Yes, sir; that is all.

Q. And what did you do? A. Why, I wrote a letter of condolence, as I said.

Q. To this girl? A. Yes, sir.

Q. Not to his widow? A. Not to his widow.

Q. You didn't know his widow was dead at that time? A. No, I don't know. He was dead.

Q. By talking—you had always talked to Anton and his wife because they were older, in preference to talking to this girl whom you thought was a child—— A. Yes, sir.

Q. —yet you did not write a letter to the widow. A. Because the telegram was signed by the girl, that is the reason I acknowledged the telegram.

Q. But nothing to the widow if she was alive? A. In my general conversation—I may have said something in there. I couldn't tell you just exactly what I said.

Q. Did you hear of the funeral of Anton Hirschman? A. Heard no more of it.

Q. Did you try to find out when the funeral was? A. No.

Q. Did you attend the funeral? A. No.

Q. Did any of your family attend the funeral? A. My immediately family, you mean? No, sir.

Q. Did your sister? A. I couldn't tell you; I don't know.

Q. Did you ever hear that she did? A. I didn't hear.

Q. Did not ask, did you? A. No.

Q. Any of your sisters? A. Only have one.

Q. Only one. Any brothers? A. Have no brother.

Q. When did you first hear this property had been attempted to be sold? A. When did I hear of it? This last fall of 1922.

Q. Who told you? A. Mrs. Ostrom.

Q. Where? A. Where she told me? She wrote me. She wrote me a letter.

Q. Where were you then? A. I was in Florida.

Q. Then you knew at that time, didn't you, by the telegram of Mrs. Keffer, that your uncle was dead? A. Yes; sure.

Q. How long after you received that telegram was it that you were told that an attempt had been made to sell the property? A. Something over two years.

Q. Two years? A. 1920 to 1922 would be a little over two years.

Q. Then from the time you received the telegram apprising you of the death of your uncle—— A. Yes, sir.

Q. —up to the time you got this letter from your sister—Mrs. Ostrom—— A. My cousin.

Q. Your cousin, Mrs. Ostrom, apprising you that an attempt had been made to sell the property—— A. Yes, sir.

Q. —you had done nothing to ascertain what had become of your uncle's property, had you? A. Yes; I had done nothing.

Q. Made no inquiries about it? A. Made no inquiries about it.

Q. Yet you knew he had died intestate? A. No; I didn't know he had died intestate.

Q. Did you make any inquiries to find out whether he had left a will? A. No.

Q. Did you know he had property in Bayonne? A. Yes, sir.

Q. Why didn't you? A. Because I thought Aunt Lottie was still living. That is what I said just now.

Q. What? A. I thonght Aunt Lottie was still living, Mrs. Hirschman.

Q. Did you think she took the property? A. She would be entitled to it, wouldn't she?

Q. I am not advising you. Did you think she would take the property? A. I didn't think anything. I presumed she did take it.

Q. Have you ever heard of a widow succeeding to an estate in dower? Did you know what dower was? A. Yes, sir.

The Court: Try this case, Judge.

Witness: I know what dower is but I thought possibly— —

The Court: Stop.

Q. Then you supposed that the widow had taken this property, if any, that your uncle had left? A. The Judge says I was to stop.

Q. Answer the question. A. I naturally would be under the impression that Anton left a will.

Q. Didn't you have some suspicion—(interrupted) A. No, I am not of a suspicious character.

Q. Wait a minute, please. Didn't you have some suspicion that the property had gone to this girl as the adopted daughter? A. No.

Q. Sure of that? A. I said no.

Q. Are you sure of it? A. I said no.

Q. Had you any suspicion that it had gone to Warren Ferris? A. No. I didn't know Warren Ferris.

Q. When were you first told, if you were told at all, that you had an interest in it? A. In the fall of 1922.

Q. Through your cousin? A. Yes, sir.

Q. Then what did you do? A. I told her to look into the matter and advise me—keep me posted.

Q. You didn't take any further interest than to tell her to go and look after it? A. Yes, sir.

Q. You finally engaged Judge Martin, didn't you? A. Through her advice, yes, sir.

Q. To commence this suit? A. Yes, sir.

Q. Did you know when you engaged Judge Martin that there was a suit already pending or had been brought in this court to remove any cloud from the title? A. No.

Q. You hadn't heard of it? A. No.

Q. When did you first hear of it? A. When Judge Martin advised me of it.

Q. When? A. I couldn't tell you the exact time now.

Q. Before you commenced this suit? A. Which suit?

Q. This suit now that we are trying? A. Why, no. I must have heard of it afterwards.

Q. You must have heard of it afterwards. Then you didn't know that that suit had been commenced and had gone to a decree when you commenced this suit through Judge Martin? A. No, I did not.

Q. Sure of that? A. That is what I said.

Cross-examination by Mr. Butler:

Q. When did you first learn that Warren Ferris was related to you? A. When I first learned he was related to me?

Q. Yes. A. Why, I knew that Mrs. Ferris had a boy.

Q. I ask you again, when did you first learn that Warren Ferris was related to you as a cousin? A. Oh, I presume that must have been—must have been about—let's see—I was quite a small child, come to New York, my mother would visit.

Q. Hadn't heard of him from that time until when? A. Possibly for twenty years, maybe thirty years.

Q. When was the next time you heard of Warren Ferris? A. After I was apprised of this case.

Q. Up to that time you never heard of him? A. Didn't know there was such a man living.

The Court: Don't know whether he knew you were living?

Witness: No. I don't know him at all.

Cross-examination by Mr. Carrick:

Q. I want you to bring your mind back to that telegram that you say you received on the 18th or 19th day of May, 1920. A. Yes, sir.

Mr. Martin: He didn't say that. I object upon the ground of wrongful assumption.

The Court: Objection overruled.

Q. When did you destroy that telegram? A. When I destroy it? I couldn't tell you that. Sometimes I go through my mail and destroy a bunch of it maybe, spasmodically. I couldn't recall that time.

Q. Now, don't you recall that telegram was sent to you not by Mrs. Keffer but by Frank Keffer her husband? A. No, sir.

Q. And don't you recall that the telgram stated, "Mr. Anton Hirschman died today"? A. No, sir.

Q. Are you certain about that? A. Yes, sir.

Re-direct:

Q. I show you a paper—have you got the telegram that you say you received from Mr. Martin? A. I have it up in the hotel, I think, yes, sir.

Q. You have? A. In the room there, I think.

Q. Look at that night letter of December 9, 1922. Did you ever receive that? A. Yes, sir.

Q. Well, now, having looked at that can you now state that your memory is refreshed and that you can tell us when it was that you first heard about this suit of Ferris against Hirschman? A. No. It has slipped my memory entirely. I cannot recall it.

Q. I am not asking you what happened a few minutes ago. I am asking you now if after looking at that telegram or copy of a telegram, can you now say when you were first informed of the Ferris and Hirschman case? Let me call your attention to a statement you made to Judge Hudspeth. You said to him that you never heard of the case of Ferris against Hirschman, the action

to quiet title in the Court of Chancery of New Jersey, until after this suit was begun, of yours against Charlotte Keffer and Warren Ferris and the Consumers Coal & Ice Company. Is that a correct statement? A. You started your suit in the fall of 1922, is where I had the inference.

Q. Now, I am asking you if you knew at the time this suit was begun that there had been a suit of Ferris against Hirschman? A. I do not remember that. I cannot remember.

Q. Look at that telegram and see if that refreshes your memory? A. No, I cannot recall that now. It may come to me later, but you got me puzzled now.

Mr. Martin: Is there any objection to my offering this telegram in evidence?

Mr. Carrick: I understand that he has no recollection of receiving it.

Witness: I remember receiving that telegram but I cannot recall the condition and circumstances. I remember receiving a telegram of that kind, yes, sir.

Q. You say you got the telegram up in your room? A. I don't know whether I have that special one, Judge.

Q. Look at it and let us see tomorrow morning.

Mr. Carrick: I think it is immaterial. That is the only objection I have.

Mr. Martin: I am only putting it in on the question of time and whether he had notice.

May I ask your indulgence. There is a George Anthony Rieber, son of the George we have heard about. He is in Binghamton, working on small wages and I didn't

want to bring him down. I ask the other side to consent that if he were called he would come here and state what is in his affidavit verified the 20th of December, 1922.

Mr. Carrick: I have no objection to it at all.

The Court: Affidavit in connection with what?

Mr. Martin: In connection with the order to show cause why injunction should not be granted.

The Court: Annexed to the bill?

Mr. Martin: Yes—I think it was an additional affidavit.

Mr. Hudspeth: There is a little more in this than I would like to consent to.

The Court: Will you consent that he would swear to that if he came here?

Mr. Hudspeth: I will agree to that.

STATE OF NEW YORK, }
COUNTY OF BROOME, } ss.:

GEORGE ANTHONY RIEBER, Jr., being duly sworn says: I am 27 years of age; I reside in the City of Binghamton, N. Y. and have resided in Binghamton, N. Y. upwards of 27 years last passed; I am a grandnephew of Anton Hirschman of Hudson County, New Jersey, now deceased, my father George Anthony Rieber, Senior, having been a nephew of said Anton Hirschman and the son of Anna Marie Hirschman Rieber, a sister of said Anton Hirschman. My said father died on or about August 10, 1895, I being the only child.

I received no notice or information of any kind of any proceedings for the administration or settlement of the estate of said Anton Hirschman, deceased.

I did not receive any notice or information of his death until on or about November 15th, 1922, when I learned in a casual way that my aunt, Charlotta Rieber Ostrom had learned in an indirect way that Anton Hirschman and his wife had both died but not as to which one died first nor as to whether he died with or without a will. I had no knowledge or information that Warren Ferris and one Charlotta M. Keffer claiming to be the only persons entitled to the estate of said Anton Hirschman, had recently sold all or substantially all of the real estate belonging to said decedent to some corporation until after my uncle, Frank B. Rieber had been to Jersey City and New York City investigating the facts concerning said estate and returned therefrom which date as I recall, was on or about the 10th day of December, 1922. I did not know and had heard nothing concerning an action which had been recently brought in the Chancery Court of New Jersey by said Warren Ferris and Charlotta M. Keffer to quiet the title to the real estate left by said decedent, until the said 10th day of December, 1922.

(signed) GEORGE ANTHONY RIEBER.

Subscribed and sworn to before me }
this 20th day of December, 1922. }

(signed) THOMAS B. KATTELL,
Notary Public.

THEODORA STEFFENS MOORE, sworn for complainant.

Direct examination by Mr. Martin:

Q. You are a daughter of the last witness, Frank Steffens? A. Yes, sir.

Q. What is your husband's name? A. Dempsey Otis Moore.

Q. Where do you live? A. Toledo, Ohio, 928 Oakwood avenue.

Q. How old are you? A. Thirty.

Q. Did you ever correspond with a person on Broadway in Bayonne? A. Yes, sir.

Q. Hudson County, New Jersey? A. Yes, sir.

Q. You never saw that person? A. Never.

Q. Did you write any letters to her? A. A number of times.

Q. And to whom were those letters addressed? A. They were always addressed to Miss Charlotte M. Hadlick, 1070 Broadway, Bayonne, N. J.

Q. That was Charlotte Keffer? A. At that time when I wrote why, she was known as Charlotte Hadlick.

Q. Did you receive any answers from her? A. Yes, sir; corresponded for about 15 years or more.

Q. Did you father say anything to you about Charlotte? A. Why, he had been there——

Mr. Hudspeth: I object to what the father said about Charlotte.

The Court: The question is perfectly proper. Answer yes or no.

A. Yes, sir.

Q. What did your father say?

Mr. Hudspeth: I object.

The Court: Objection sustained.

Q. Well, what was stated in the letters received by you or any of them?

Mr. Hudspeth: I object.

Q. Have you got the letters? A. No, sir.

Q. Where are they? A. Why, at the time I got married I destroyed all the mail. Moving away I didn't want to take it all with me.

Q. Well, how were these letters signed? A. They were always signed—opened by "Dear Cousin Theo" and signed "Your cousin Charlotte M. Hadlick."

Q. Did you make a search for the letters? A. Yes, sir.

The Court: She said she destroyed them.

Witness: I destroyed them.

Q. Do you remember anything that was said in any of these letters? A. Why, Charlotte had been telling me about—(interrupted).

Mr. Carrick: I do not think you ought to permit this.

The Court: Objection overruled.

Q. Do you remember anything that was said in any of these letters or written to you? A. Why, Charlotte—we had just written about girlish things and she was quite a musician and she was telling me how she would compose music and wrote music. At the time my little brother Frank, Jr., was quite a singer himself and we planned to try to get together. We tried to——

The Court: Get down to the point. Guide your witness.

Q. Well, was anything said about her relationship to you excepting in the address? A. No.

Q. Did she speak of her composing music or translating music? A. Yes, sir.

Q. Did you see any telegram from Charlotte Keffer to your father? A. Yes, sir: I was there when the telegram came.

Q. Where? A. Charleston, S. C.

Q. Have you got that telegram? A. No, sir.

Q. What did it state? A. Said, "Uncle Anton died today", signed "Charlotte Keffer".

Cross-examination by Mr. Carrick:

Q. Mrs. Moore, did you address your—Mrs. Keffer or Miss Hadlick as she was at that time, as cousin? A. Yes, sir.

Q. Invariably? A. Yes, sir.

Q. How would you address your letters? A. "Dear Cousin Charlotte."

Q. Let me show you a letter. Is that written by you? A. Yes, sir.

Q. How is that addressed? A. "Dear Charlotte, I am writing——"

Q. This is a letter dated—— A. 9 Perry street, Charleston, S. C., before we moved to 90 Rutledge avenue.

Mr. Carrick: I ask that that be marked for identification.

Paper marked Exhibit D K-1.

Q. Mrs. Moore, I show you another letter dated February 17, 1918, was that written by you? A. Yes, sir, that is my handwriting.

Q. How is that addressed? A. "Dear Charlotte".

Q. How is it signed? A. "Theodora R" It is

a mistake. I thought I had addressed them all as cousin. It is just a mistake on my part.

Q. And this first letter I showed you, how is that signed? A. "Ted", nickname.

Mr. Carrick: I offer this letter in evidence, February 17, 1918.

Paper marked Exhibit D K-2.

Q. I show another correspondence card which seems to be dated March 18, 1918. Is that written by you? A. Yes, sir.

Q. How is that directed? A. "Dear Charlotte".

Q. How is it signed? A. "Theodora R".

Mr. Carrick: I ask that that be marked for identification.

Paper marked Exhibit D K-3.

Q. I show you a postal card, which is postmarked Charleston, April something. A. April 6th.

Q. 1917? A. Yes, sir.

Q. Is that written by you? A. It is my handwriting.

Q. How is that addressed? A. "Charlotte Hadlick."

Q. And how is it signed? A. "Theodora."

Mr. Carrick: I ask that that be marked for identification.

Paper marked Exhibit D K-4.

Q. Is that in your handwriting? A. No.

Q. That is all.

Cross-examination by Mr. Hudspeth:

Q. Now, as I understand, this correspondence was commenced between you and Charlotte because of the suggestion of your father? A. Yes, sir

Q. And it continued for about fifteen years? A. Well, on or about.

Q. On or about. During all that time she was living in the family of your uncle—of Anton Hirschman in Bayonne? A. Yes, sir.

Q. You knew that, didn't you? A. Yes, sir.

Q. And she always addressed you as cousin? A. Why, I thought she had and I think some letters were, but I see——

Q. Did your father know that? A. Why, my father has travelled so much.

Q. Did your father know? A. Why, no, I don't think he ever has seen any of the letters. I never showed him any.

Q. Do you mean to say, young lady, that your father got you to correspond with this unknown woman and that you got letters from her covering a period of nearly 15 years, living home all the time with your father, and that he did not know what these letters contained or any of them? A. I certainly do.

Q. What did he do? A. I certainly say he doesn't.

Q. He does not? A. No.

Q. And he never knew that she addressed you as cousin? A. I have never shown him a letter.

Q. And you never spoke of it? A. No.

Q. And you never asked who she was? A. I knew she was just as he told me a number of times.

Q. You never asked who she was? A. No.

Re-direct:

Q. What were you about to say? A. I just knew she was a little girl left there, my uncle and aunt had taken to raise. I just merely called her cousin and nothing was ever said about it.

Q. Can you fix the time when you first began to correspond?

The Court: Fifteen years ago she said. What difference does it make?

Adjourned until ten o'clock tomorrow morning.

Appearances as Before.

Wilhelmina Julian Mary de Bussey, sworn for complainant.

Direct examination by Mr. Martin:

Q. What is your name? A. Wilhelmina Julian Mary DeBussey, but I just call it Mary W. Steffens DeBussey.

Q. Your maiden name was Steffens? A. Yes, sir.

Q. Are you a sister of Frank, who was here in court? A. Sister of Frank.

Q. And you said among the numerous names that you have that part of them was Annie Marie? A. Wilhelmina Julianna Marie.

Q. Now, this Anna Marie, is that—were you named after anybody in particular? A. I was named Wilhelmina after my father and Julia.

Q. Only the Anna Marie? A. Julia after Julia Ferries and Anna after Frank's mother and Mary after both grandmothers.

Q. Your mother's name was Francisco, was it? A. Francisco.

Q. When was she born? A. She was born in 1839.

Q. And when did she die? A. She died 1893.

Q. She was married to George William Steffens? A. George William Steffens, 1858.

Q. When were you born? A. 1864.

Q. Your father died—he is dead? A. Yes, sir.

Q. And your mother, when did you say she died? A. 1893.

Q. Now, was it 1893 or later? A. 1893.

Q. Your mother, not your father, but your mother, when did your mother die? A. She died 1893 on the 15th of March.

Q. How many children were there? A. Three children.

Q. And what are their names? Yours and Frank you have named. A. Myself, and William George—William, Jr., who died and Francis C.—and Frank C. Steffens.

Q. Was your brother married? A. He never married.

Q. Who was your mother's father and mother? A. My mother's mother?

Q. Yes. A. Was Mary Anna Hirschman.

Q. And what was her father's name? A. Her father, Anton Hirschman, Sr.

Q. Do you know where he died? A. He died in Beechwood near Callicoon, Sullivan County, N. Y.

Q. And did your grandmother die there too? A. She died—I think it was Aunt Annie 1882.

Q. That is up in Callicoon? A. Yes, sir.

Q. Did your grandparents have any other children? A. They had some that died. I only know two of the four.

Q. You haven't named the four. You have only named Francisco, your mother— A. Francisco.

Q. Now, were there any brothers and sisters of your mother? A. Yes, sir; Annie Marie Rieber and Julia Ferris and Anton Hirschman.

Q. Anton Hirschman died on May 19, 1920? A. Yes, sir.

Q. Before that had Mrs. Annie Marie Rieber died? A. She died before.

Q. Yes. And how about Julia Ferris? A. She died before.

Q. Did she leave any children? A. She left Warren Ferris, all that I know.

Q. How about Anna Marie Rieber? A. Anna Marie, she left Charlotta Rieber Ostrom and George—no, George was dead—and Frank Rieber.

Q. And George died leaving any children? A. He left one son.

Q. What is his name? A. George Rieber, Jr.

Q. He is living up in Binghamton now? A. In Binghamton.

Q. Now, did your mother have any brother? A. None but Anthony, Uncle Anton.

Q. Where did he live? A. When did he die?

Q. No, where did he live? A. Bayonne, N. J.

Q. Did you ever know him to live anywhere else? A. Not that I can remember.

Q. And how long—did you know your Uncle Anton? A. Oh, yes, from a child up. He used to visit us every time we came out to the Bushes Hotel, Hoboken, he and his wife both.

Q. Where did the Steffens family—your family live? A. Charleston, S. C.

Q. Was your father in business there? A. Wholesale grocery and rice merchant.

Q. How long was he in business in Charleston? A. He was quite a number of years, about forty-five or fifty years.

Q. How often did he come up here to New York?

A. Every few years—every three years—something like that. He had a farm in Sullivan County. My grandparents were on that, and Uncle Anton would always come to see us at the hotel, and we went a good many times to see him, about five or six times.

Q. Which grandparents was that that lived there? A. Anton Hirschman, Sr., Uncle Anton's father; my mother's father and mother.

Q. You say he had a farm and it might refer to Mr. Steffens or might refer to grandfather Anton. Which one did you mean? A. My father, Mr. Steffens, but my grandfather may have had an interest in it. I am not sure of that.

Q. Well, was it the same farm? A. The same farm.

Q. You say your father, Mr. Steffens, had some kind of interest or owned this farm and your grandfather also had an interest? A. He may have had.

Q. But he lived there anyway? A. Yes, sir; he lived there.

Q. How far is that from Hortenville? A. Only a couple of miles; I believe. It is in Beechwood, Sullivan County, New York State.

Q. Have you been there? A. Been there, yes, sir.

Q. You say Sullivan County, you mean Sullivan? A. Isn't that Sullivan County?

Q. Now, how often did you see Uncle Anton? A. In all the years?

Q. Yes. A. Quite often. I can't just say.

Q. That don't mean anything. Can't you be a little more definite? Was it once every two years or every five years or ten years? A. Well, once every three or four years.

Q. Did you go to Europe? A. I went to Europe.

Q. With Frank? A. With Frank and my other brother and mother and father. I went ahead.

Q. How long did you stay on the other side? A. I was there longer than they were. I was educated at—had some education in Dresden, Saxony, and they came for me and we remained in Austria for two years.

Q. Well, did you get to Englesdorf? A. Oh, yes; all those villages.

Q. Did you get near Friedland? A. That is where we resided.

Q. You lived there? A. Lived there.

Q. Well, was there a town by the name of Reichenberg? A. Weisberg.

Q. No, Reichenberg? A. That is right two or three miles from Friedland, very fine town, Reichenberg.

Q. That is in Bohemia, Austria? A. That is in Bohemia, Austria.

Q. Do you know Uncle Anton's handwriting? A. I may, he and my mother corresponded.

Q. I want to ask you a little more definitely whether you do know it. If you are not sure say so. A. I am not sure.

Q. Was there any particular incident about your being over there in Bohemia that you can recall? A. Grandfather died in 1881. My mother had mass said for him and the Catholic Bells—the church bells rang an acknowledgment of his death.

Q. What church was that? A. Very beautiful Catholic Church. Friedland is a very fine city—very fine town and there was a castle—beautiful castle.

Q. Did you ever see Aunt Julia Ferris? A. Oh, yes. When I was very small. Not of late years.

Q. Did you ever see Anna Marie Rieber? A. Yes, sir, quite often.

Q. Did your family ever live in Binghamton? A. Never lived in Binghamton, only in Charleston, S. C.

Q. Has your brother Frank a son who is now living in Binghamton? A. Yes, sir, George Steffens.

Q. How long has he been up there? A. He has been up there, I should think about five or six years, maybe longer. They were all to see me at Cockeysville, Maryland.

Q. You married a Mr. DeBussey? A. Robert DeBussey, yes, sir.

Q. He was a member of the bar of the state of Maryland? A. He was mayor and real estate lawyer and state attorney for eight years.

Q. Is he dead? A. He is dead.

Q. When did he die? A. The 27th of March, 1918.

Q. And how long have you lived in Maryland? A. I lived in Maryland since I have been married, twenty-four years ago—no, twenty-eight years ago.

Q. Whereabouts in Maryland? A. Cockeysville, Baltimore County.

Q. That is right in Baltimore, isn't it? Isn't that a suburb of Baltimore? A. Yes, sir, fourteen miles from Baltimore. We have frequent trains.

Q. You have been all these years there? A. I have been in Baltimore some times, boarding in Baltimore.

Q. You haven't been in Bayonne or New Jersey or New York? A. Yes, sir; I have been to see Uncle Anton there.

Q. When was the last time? A. I think—I am not sure if we went there in 1881, but he was to see us.

Q. 1881 is the time grandfather Anton died, isn't it? A. That is it, and we were up at the farm and came back to Hoboken and Uncle Anton came to see us there with his wife.

Q. Now, you have told us when your grandfather died you were in Friedland and your mother had mass said for him? A. Yes, sir.

Q. Now, you are saying that in 1881 you were in Callicoon. A. We came over in September—October.

Q. I see, all right. A. And went back to Charleston, S. C.

Q. When did you first hear of this suit of Warren Ferris and Charlotte Marie Keffer against Anton Hirschman, his heirs and devisees and assignees and a number of other defendants—when did you first hear of that? A. December 10, 1922.

Q. And then did you retain counsel in New Jersey to look after your interests? A. In New Jersey?

Q. Yes. A. I wrote to Bayonne, N. J.

Q. No. Did you secure a lawyer here? A. No. I had began but I didn't get word from him.

Q. Did you obtain a lawyer here in New Jersey? A. No; you were the first I engaged.

Q. When did you secure my services—when did you finally obtain a lawyer here? A. When did I what?

Q. Finally obtain a lawyer here, was it shortly after the 10th of December, 1922? A. Did I pay you, you say?

Q. No; don't worry about that. A. Engaged one.

Q. When did you get a lawyer to represent you? A. December the 10th or 11th, 1922.

Not cross-examined.

GRACE GARDNER RAYMOND, sworn for complainant.

Direct examination by Mr. Martin:

Q. What is your name please? A. My name?
Q. Yes. A. Grace Gardner Raymond.
Q. When were you married to Mr. Raymond? A. October 20, 1920.
Q. Might I inquire when you were born? A. March 20, 1872.
Q. Where were you born? A. Hortenville, N. Y.
Q. In the town of Callicoon, Sullivan County? A. Yes, sir.
Q. What is your father's name? A. Charles Gardner.
Q. Charles Gardner, and did he have a sister? A. Yes, sir.
Q. What was her name? A. Charlotte Gardner Hirschman.
Q. Was she Mrs. Anton Hirschman of Bayonne? A. Yes, sir.
Q. When did she die? A. I think it was the 22nd of December, somewhere around that time, 1919.
Q. Did she die before or after her husband Anton? A. Before.
Q. It was only a few months, wasn't it? A. Yes, sir; about five months.
Q. Did your father have a brother by the name of Frank Gardner? A. Yes, sir.
Q. Did he go to war in the Union Forces? A. Yes, sir.
Q. The Civil War? A. Yes, sir; they told me about it.
Q. Now, did you ever go down to Bayonne to live? A. Yes, sir.

Q. How old were you? A. A little over fourteen.
Q. With whom did you live? A. My aunt and uncle, Mr. and Mrs. Hirschman.

The Court: Where does she come in?

Mr. Martin: She is a niece of Mrs. Charlotte Hirschman. She was born in Callicoon. She has been in this household for years. I think she can tell us some interesting things.

Q. How long did you live there? A. About 29 years.
Q. What did you do there? A. The work.
Q. What kind of work? A. Housework and general work.
Q. Were you paid anything for your services? A. No, was never paid.
Q. Keep your voice up. A. I was never paid, no.
Q. You were not paid anything? A. Not money, no.
Q. You just had your food and your clothes, is that it? A. Yes, sir; and when I was sick they paid the doctor bills.
Q. Member of the family, were you? A. Well, I worked there.
Q. Did you do the entire household work? A. Washing——
Q. And you received no compensation in money? A. No.
Q. And all you did get is, I think you said, is your board and lodging and clothing, is that right? A. Yes, sir.
Q. Now, you say you got sick. Did you leave there then? A. The second time I was advised to go in the country on account of my health and I got worse up there.

Q. When was it that you left there then? A. The last time was in 1915.

Q. Now, you were born March 20, 1872, and you were fourteen or thereabouts when you went to this household, that was in 1886? A. Yes, sir.

Q. And when did you leave there? When did you go away on account of your health from the Hirschmans? A. 1915.

Q. How long did you stay away? A. I didn't come back. My people thought I better stay.

Q. Well, I don't care about the reason so much, but you did come back? A. I did, yes, sir, when they sent for me to come back.

Q. How long did you stay there then? A. In 1919 they sent for me and I stayed pretty near two months.

Q. Was Mrs. Hirschman ill at that time? A. Yes, sir.

Q. You say she died December 22nd? A. She was in poor health then.

Q. Did you remain there until her death? A. No, my mother took sick and my mother sent for me and I came back.

Q. Now, of whom did the household consist? A. My aunt and uncle, Mr. and Mrs. Hirschman—at that time, do you mean?

Q. Yes.

The Court: At what time?

Q. When you first went there in 1886, down to 1915. When you went there who was in the household? A. My aunt and uncle, Mrs. Hirschman and Daisetta Hirschman.

Q. Daisy Hirschman? A. Yes, sir.

Q. Is that lady the mother of Mrs. Keffer? A. Yes, sir.

Q. And did she subsequently get married? A. Yes, sir.

Q. To whom? A. Charles Hadlick.

Q. And is Mrs. Charles Hadlick, Daisy Hirschman—is she living now? A. She died in 1908, I believe.

Q. And where did she live before her death? A. After she married?

Q. When she was first married where did she live? A. She lived for a while in New York City and then come back to Bayonne to live.

Q. What did Charles Hadlick do? A. He was in the General Postoffice, New York.

Q. New York City? A. Yes, sir.

Q. Did they live over in New York or in Bayonne or what?

The Court: For a while in New York and came back to Bayonne to live.

Witness: For a while in New York and came back to Bayonne to live.

Q. Where did they come back to live in Bayonne? A. First in a house about two blocks away, about six months, then they came and took part of my aunt's house.

Q. Now, you say that Mrs. Hadlick, Daisy Hirschman, died in 1908, then what became of Charlotte Keffer? A. Why, she stayed right there with my aunt.

Q. She continued to live with Anton and Charlotte Hirschman, did she? A. Yes, sir.

Q. Is that right? When you shake your head the stenographer cannot hear you. A. Yes, sir; that is right.

Q. And how long did she stay there, Charlotte Keffer? A. She was there when I left.

Q. And was she married before you left? A. No.

Q. Did Mr. Hadlick stay there? A. Until he married again, yes, sir.

Q. And then where did he go to live? A. In Brooklyn.

Q. Do you know where? A. In Nostrand avenue; I do not just know the number.

Q. Do you recall the number? A. 5 something, a little over five hundred Nostrand avenue.

Q. Nostrand avenue, Brooklyn? A. Yes, sir.

Q. Did you ever see Mrs. Keffer talking to her father Charles Hadlick after her mother's death and after he moved to Brooklyn? A. Yes, sir; he come over some times.

Q. Did he come over to see Charlotte? A. Yes, sir; some times.

Q. Mrs. Keffer. Well, was Daisy Hirschman, as she was called, a daughter of Mr. and Mrs. Anton Hirschman? A. I never knew she was a daughter.

Q. Did you know who she was? A. Yes, sir. They told me she was Frank Gardner's child.

Q. Do you know her mother's name? A. They told me, Katherine Friedenstein. They called it Kate.

Q. Katherine or Kate Friedenstein? A. Kate Friedenstein.

Q. When did your uncle Frank Gardner die? A. They told me he died when she was two years old. I was the same age.

W. When did Kate Freidenstein, the mother of Daisy, die? A. They told me she died when she was two weeks old.

Q. When who was two weeks old? A. Daisetta.

Q. When was Daisy taken in the household, if Mrs. Charlotte Hirschman or Anton Hirschman

told you? A. I understood she was taken after the father died.

The Court: Frank Gardner was what relation to Mrs. Anton?

Mr. Martin: Frank was a brother of Charlotte Hirschman. The father of Daisy was the brother of Charlotte Hirschman the wife of Anton Hirschman. This lady is the niece of Charlotte Hirschman who was a Gardner.

Q. Your father's name was Henry, was it? A. Charles.

Q. Did you attend the funeral of Anton Hirschman? A. Yes, sir.

Q. Was Charlotte Keffer there? A. Yes, sir.

Q. Who else of all these nephews and nieces that we have heard about here was there? A. Mr. and Mrs. Ferris.

Q. None of the rest, so far as you could see? A. No.

Q. You didn't see any of the rest? A. No, not on uncle's side.

Q. Now, when was the funeral. He died May 19th, everybody agrees to that—May 19, 1920—when was the funeral? A. A few days later.

Q. Can you be a little more definite than that, was it a day later or three? A. About two or three days later.

Q. The 21st or 22nd of May? A. Yes, sir.

Q. Did you observe Ferris doing anything there, Warren Ferris? A. Seemed to have conversation with Mrs. Keffer. I didn't hear nothing of it.

Q. You didn't hear the conversation? A. The conversation, no.

Q. Well, were others in the conversation between Mrs. Keffer and Warren Ferris? A. No.

Q. Did you observe how long the conversation was? A. Quite a while, half an hour or more, I should judge.

Q. Were there others in the house at that time? A. Yes, sir; my other cousins.

Q. Was this before or after—what do you mean by your other cousins? A. The Gardners.

Q. The Gardner family? A. Yes, sir.

Q. All right. Was this conversation between Mrs. Keffer and Warren Ferris before or after the funeral service? A. I am quite sure it was after.

Q. The body had been taken to the cemetery, had it? A. Yes, sir.

Q. And they returned? A. Yes, sir.

Q. Well, did you have any conversation with either Warren Ferris or Mrs. Keffer after that conversation between Warren Ferris and Mrs. Keffer? A. I?

Q. Yes. A. No.

Q. Did you have any conversation with Mrs. Keffer on the day of the funeral or when you got to the house there to go—while you were there for the purpose of attending the funeral? A. Not very much. I asked her if the Steffenses had been sent for and relatives.

Q. Now, what did she say? A. I think she said she sent them a telegram, but others she didn't know their addresses, in Binghamton, and she didn't think the Southern people would come, Steffens.

Q. At that time were the Steffenses living in Charleston? A. Yes, sir; as far as I know.

Q. You thought they did. Did you know who were living in Binghamton. I mean of these relatives of Anton Hirschman? A. Well, I thought Mrs. Charlotta Ostrom if she was living—— (interrupted).

Q. What? A. I thought Mrs. Charlotta Ostrom, if she was living, ought to be up there, and she had a brother Frank. I knew the other one had died—the other brother.

Q. What did you know about Frank? A. I knew she had a brother—two brothers, and I knew one died.

Q. Did you know where Frank was? A. No, I did not.

Q. Did you know whether he was living? A. I didn't know whether he was living, no.

Q. Had you ever seen Frank at Anton Hirschman's house? A. I do not remember. I saw his brother and wife.

Q. You saw Mrs. Corunda Tombs here on the witness stand, didn't you? A. Yes, sir.

Q. Did you ever see her at Anton Hirschman's home? A. One time.

Q. When? A. Why, soon after they were married they stopped in at uncle's house.

Q. After who were married, you say "they"? A. Mrs. and Mrs. Rieber or Mrs. Tombs now.

Q. Mr. and Mrs. George Rieber? A. Yes, sir.

Q. Now, with reference to them when was Daisy Hirschman Hadlick married to Charles Hadlick, before or after? A. Before. I think they were married on the 5th of November.

Q. How long before the George Rieber marriage? A. Couple of weeks.

Q. Have you ever seen Frank Steffens before yesterday or today? A. Yes, sir.

Q. When did you see him? A. Quite a few times at uncle's.

Q. When was the first time that you saw Frank Steffens at your Uncle Anton's? A. Oh, I couldn't just give the date of the first time. Quite a while ago.

Q. Well, about when? A. Oh, about in the nineties.

Q. Did you see him after that? A. Yes, sir.

Q. About how many times did you see him there altogether? A. Oh, I should judge four or five times.

Q. You were working in the kitchen most of the time, were you? A. Yes, sir.

Q. Where was the kitchen with reference to the living room and parlor where the people in the household gathered generally? A. Downstairs.

Q. In the basement? A. Yes, sir.

Q. Now, after the funeral of Anton did you go back home to Callicoon? A. I went back to Rockshelf, where I was working.

Q. How did you go, on what railroad? A. On the O and W—Ontario & Western.

Q. Where did that start from down here in Jersey City? A. Weehawken.

Q. Well, did anybody go down there to the station with you? A. I think Mrs. Keffer went with me. I am not quite sure. One time, either at my aunt or uncle's funeral—I think my uncle's funeral—she went with me.

Q. Did Mrs. Keffer at that time have a conversation with you? A. Yes, sir; she did.

Q. What do you say? A. She did.

Q. Do you remember that conversation? A. Part of it, yes, sir.

Q. Now, tell us what you remember of it. A. Part of it. She told me she was glad she found out who she was, that——

Q. Anything more? A. She found out her mother was adopted.

Q. Anything more? A. No; I wouldn't—I couldn't tell the rest particularly.

Q. Did you know the handwriting of Anton Hirschman? A. Yes, sir.

Q. Look at Exhibit C4 and state whether or not that is in his handwriting. A. I should have my glasses, judge, but I guess I can see.

Q. Can you see that well enough? A. Yes, sir.

Q. Whose handwriting is it? A. I am quite sure it is my Uncle Anton's writing.

Q. Did you call him Uncle Anton? A. Yes, sir.

Q. Did you ever see Charlotte Marie Keffer in Sullivan County? A. After I had—after I left.

Q. Did you ever see her up there at any time, that is the question I am asking you. A. She was up there after she was married, stopped at my people's home.

Q. Mrs. Keffer? A. Mr. and Mrs. Keffer, yes, sir.

Q. Where is your people's home that you refer to? A. Then they lived in Damascus, Pa.

Q. Did you ever see her up in Sullivan County, N. Y., Callicoon, Hortenville, Beechwood—any of those places up there? A. Her trip I believe was in Sullivan County in the old town where we lived, in Cochocton.

Q. You say you think, did you or not? A. The first time I saw her was at my people's home in Cochocton.

Q. Where is Cochocton with reference to this place we are talking about, Callicoon? A. About five miles away.

Q. How far is that from Hortenville? A. Cochocton?

Q. Yes. A. About seven.

Q. Did you see Mrs. Keffer up in that neighborhood in October or November, 1922? A. 1922?

Q. Yes; that is the year before last. A. No, I did not.

Q. Year before last fall? A. I didn't see her. She had wrote to me she was coming on a trip to Susquehanna and then I got word after that the roads were bad and didn't intend to stop or couldn't stop at my place.

Q. Now, in this household did you ever see Frank Rieber—in Anton Hirschman's house? A. Frank Rieber?

Q. Frank here? A. I do not remember, I may. I do not remember, it is so long.

Q. Did you ever see Mrs. Ostrom there? A. I think I have, when I first went there.

Q. Were you ever in Binghamton? A. No, sir.

Q. I mean during the time that it is testified to that Julia Ferris was up there? A. No.

Q. Did you see Warren Ferris ever in any place excepting Bayonne? A. No.

Cross-examination by Mr. Carrick:

Q. Mrs. Raymond, you left your aunt's home in 1919, before she died? A. Yes, sir.

Q. Did you come back to her funeral? A. Yes, sir.

Q. And how long after you had gone from the household were you summoned back to the funeral? A. In about two weeks.

Q. And how were you summoned—who sent for you? A. For the funeral.

Q. Who told you of your aunt's death? A. Why, telegram I got—I think a telegram.

Q. Telegram from whom? A. I am not sure whether my uncle or whether it was Mrs. Keffer. I am not sure about that because I didn't save it.

Q. You did not save the telegram? A. No.

Q. And then you came back and attended your aunt's funeral in Bayonne? A. Yes, sir.

Q. And that was in December, 1919. Who else

was present of the family at the funeral—your aunt's funeral? A. All the cousins, Gardners.

Q. Any of the other cousins? A. Cousin in Bayonne. A few neighbors.

Q. You say the cousins in Bayonne, who do you mean by that? A. Mrs. William Gardner.

Q. Those were all on the Gardner side, were they? A. Yes, sir.

Q. Was there anybody on the Hirschman side there of the relatives? A. I do not think so; I do not remember.

Q. Was Mr. Ferris there? A. I couldn't say if he was or not; I am not sure.

Q. And you did not stay there after the funeral, you returned home, did you? A. I stayed a short time.

Q. And you then came back to attend your uncle's funeral in May, 1920? A. Yes, sir.

Q. And how were you summoned to attend that funeral? A. Another telegram.

Q. How were you summoned? A. Telegram.

Q. From whom? A. Why, I think it was Mrs. Keffer.

Q. You didn't keep that telegram? A. No.

Q. Wasn't it from Frank Keffer, her husband?

Mr. Martin: Isn't her husband's name John H.?

Q. Wasn't it from her husband? A. I am not sure how the telegrams were.

Q. Now, did you communicate in any way with the relatives on the Hirschman's side, Mrs. Rieber or Mrs. Ostrom or any of the others, of the death of your uncle?

The Court: Did she what?

Q. Communicate the death of the uncle to the relatives. A. Not until Mrs. Ostrom came down and had a conversation with me and found out the aunt and uncle was dead.

Q. When you received word of the death of your uncle did you communicate at all—did you telegraph or send word in any way? A. To any of the relatives?

Q. Yes. A. No; I did not.

Q. You knew who they were? A. Yes, sir.

Q. You knew Mrs. Ostrom was a niece, didn't you? A. Yes, sir.

Q. And you knew about the Riebers? A. Yes, sir.

Q. And you knew about the Steffens down in the south—in fact you knew all these relatives, didn't you—who your uncle's relatives were? A. I knew some by name. Mrs. DeBussey I never met until now.

Q. But you knew her by name? A. By name, yes, sir.

Q. You knew she was a niece? A. Yes, sir.

Q. And you sent no word to any of these people? A. No.

Q. Did not correspond with them at all? A. No.

Cross-examination by Mr. Hudspeth:

Q. Mrs. Raymond, all the time you were living with your aunt in Anton Hirschman's house, was that at 1070 Broadway, Bayonne? A. Yes, sir.

Q. How many years? A. About 29.

Q. You must have gone into the household very young, did you? A. Little over fourteen.

Q. Fourteen? A. A little over fourteen.

Q. Was Daisy Hadlick there then? A. Yes, sir.

Q. And how old was she when you went into the

household? A. A few days younger than I was, her age.

Q. Both about the same age? A. Yes, sir.

Q. Did she go to school? A. At that time she did, yes, sir.

Q. Did you? A. No.

Q. What did you do in the household when you first went there? A. Done the housework.

Q. And continued doing that? A. Yes, sir.

Q. And Daisy continued going to school, did she? A. Until she finished, yes, sir.

Q. Did you know what relation Daisy bore to your aunt Charlotte Hirschman or Mrs. Anton Hirschman at the time you went into the household and found her there? A. Yes, sir; my mother had told me at home that it was Frank Gardner's child.

Q. Did your aunt ever speak about the relation of Daisy to the family? A. Yes, sir; she said it was Frank Gardner's child.

Q. Who was Frank Gardner? A. Brother to my father.

Q. Where did he live? A. She told me they lived in New York when the child was born.

Q. Did Mr. Anton Hirschman ever speak to you about Daisy? A. Not particularly. He heard her tell me that same.

Q. Did you hear her talked about—in the neighborhood there—as to what relation she bore to the family, as to whether she was an adopted child or a natural child? A. Several times I heard that people knew she was a brother's child.

The Court: Mrs. Hirschman's brother's child?

Witness: Yes, sir.

Q. Several times you heard what? A. That Daisy was her brother's child.

Q. Did you ever hear her spoken of as an adopted child of the family? A. No.

Q. Sure of that? A. Yes, sir.

Q. By no one? A. No.

Q. Did she ever mention being an adopted child? A. No.

Q. Did your aunt ever mention that she was an adopted child? A. No, not to me.

Q. Nor Anton? A. No.

Q. Was it ever mentioned in your presence? A. No.

Q. Didn't you think it strange that they would keep that child there at school, not a relative, while you, a relative of the people, were required to do the domestic work? A. I did think it strange sometimes.

Q. You did think it was strange sometimes? A. Yes, sir.

Q. Did you speak of that to your aunt? A. No.

Q. Why not? A. I thought it was their business.

Q. Now, when you were performing the domestic work there and this child going to school you were naturally doing work for her, were you not, as well as for your aunt and uncle? A. Yes, sir.

Q. Didn't you find fault with that? A. No.

Q. Why not? A. Because I knew from mother there were, when I came there, there were three to work for.

Q. And you continued in that capacity all these years, did you? A. Yes, sir.

Q. And the Hadlick girl was enjoying favors there, was she not, that is going to school, not doing domestic work yet being taken care of, is that true? A. Yes, sir.

Q. And you never found fault? A. No.

Q. Now, was Charlotte born when you were there? A. Yes, sir.

Q. And was she kept there as a baby in the household, brought up as a baby in the household? A. She was brought up in her mother's house. They lived next door.

Q. Who? Daisy lived next door? A. Yes, sir.

Q. Didn't live in the house of Anton Hirschman? A. They joined on together—the houses joined.

Q. Well, she wasn't married then was she? A. She wasn't married.

Q. Then, was she; she was a widow, wasn't she? A. Who?

Q. Daisy?

Mr. Martin: The evidence is that Daisy married Charles Hadlick and she died and he survived.

Q. Oh. This house adjoining, where Daisy Hadlick lived and this child, at the time you mentioned, that beyonged to Anton Hirschman, did not not? A. Yes, sir.

Q. And the houses were connected? A. Yes, sir.

Q. You and your aunt lived in the one side of the partition wall and they lived on the other, is that right? A. Yes, sir.

Q. Now, when you were living in the household of Anton did Charlotte, Daisy's child, become an inmate of that family? Did she live in the house? A. Daisy's child?

Q. Yes. A. Yes; they went back and forth from one house to the other.

Q. After her mother died, didn't she come into the Anton Hirschman house? A. Yes; after.

Q. And lived there? A. Yes, sir.

Q. Was she educated by Anton Hirschman and your aunt? A. Yes, sir.

Q. Went to school, did she not? A. Yes, sir.

Q. And you still continued to do the domestic work and she lived there all the time up to her marriage with Keffer, didn't she? A. Yes, sir.

Q. Now, you said something, Mrs. Raymond, in answer to Judge Carrick's question about notifying relatives of Anton Hirschman of his death—that you had not done so but that Mrs. Charlotta Ostrom came and found out about his death. What did you mean by that?

The Court: She didn't say that.

Witness: I didn't say that. I said——

The Court: She said she came there later.

Mr. Hudspeth: I understood her to say she found out about it.

Witness: No.

Q. When did Mrs. Charlotta Ostrom come there? A. During the fall of 1922.

Q. And that was the first time you had seen her after the death of Anton Hirschman? A. Yes, sir.

Q. After the death of Charlotte Hirschman his wife? A. Yes, sir.

Q. How long before the death of Charlotte had you seen her? A. How long before the death——

Q. Of your aunt? A. Had I seen Mrs. Ostrom?

Q. Yes. A. 1919 to 1922.

Q. Now, what was Mrs. Ostrom doing there?

The Court: I did not get the meaning of that. When did you see Mrs. Ostrom prior to 1922?

Witness: 1922?

The Court: Prior to that time—before that time?

Witness: No.

The Court: When had you last seen her before 1922?

Witness: Oh, before. When she was down to my aunts.

The Court: At the aunt's funeral?

Witness: No; years before.

Q. What was she doing there this last time that you saw her there in 1922, do you know? A. She called on me. She found out I was married and lived in Callicoon. She called.

Q. Did she have a talk with you? A. Yes, sir; she did.

Q. Say anything about the death of Anton Hirschman? A. She said she found it out her uncle and aunt had died.

Q. Did she say she found out how? A. She said she found out from a cousin.

Q. From a cousin? A. Yes, sir.

Q. Did she say anything about his property? A. I do not remember that, if she did.

Q. Did she say anything about his heirs? A. She said she was going to write to her cousins in the south. She didn't think they knew. To see if they knew about it.

Q. Did she say anything about any suit in the courts affecting the property or concerning the property? A. Not then, no, sir.

Q. Did she ever say anything to you about it? A. No.

Cross-examination by Mr. Butler:

Q. When did you first know that the Riebers were relatives of this man Hirschman that died. A. I knew that from small.

Q. Small—you were small. Did you know the Steffens were relatives when you were small? A. Yes, sir. After going to my aunts they told me that Steffens were relatives.

Q. And how old were you at that time? A. Around fourteen.

Q. Was the daughter married to Steffens at that time?

Mr. Martin: Which daughter?

Mr. Butler: One of the daughters was the wife of Steffens.

Mr. Martin: Mr. Steffens and Mrs. DeBussey are the children of George and Francisco.

Q. Who did George Steffens marry?

The Court: What did you say judge?

Mr. Martin: I say Frank and Mrs. DeBussey are the children of George Steffens and Francisco, the sister of Hirschman.

Q. Was Francisco Hirschman and Steffens married at the time you were fourteen? A. You are asking me that?

Q. Yes. A. I don't know.

Q. Well, if you don't know how did you know that Steffens were relatives of Hirschman? A. You mean the father of Mrs. DeBussey and mother?

Q. Yes. A. I knew they were brother and sister.

The Court: He wants to know how you knew it.

Witness: Said he had a sister in the south, Fanny.

Q. Sister in the south. Did he tell you the sister's name? A. Fanny Steffens—called her Fanny.

Q. Said it was Mrs. Steffens? A. Yes, sir.

Q. That was when you were fourteen. Did you ever see any of those folks after that time until this suit was begun? A. I saw Mr. Steffens, the father of these——

Q. When? A. Soon after I came down there. He came once in a while. I never saw the mother.

Q. Where did you say you saw them? A. At my aunt and uncle's.

Q. At Bayonne? A. Bayonne, yes, sir.

Q. And when was the first time you saw them after you had been told by your uncle that they were relatives? A. Soon after. I couldn't just remember the year—the date.

Q. Couple of years after, was it? A. Yes; something like that—might have been.

Q. The next time you saw them, how many years after that? A. Why, they would come about every year or two.

Q. Every year or two, you are sure of that? A. For a while.

Q. Well, how many times would you say the Steffenses called at the house of your uncle in Bayonne while you were there, ten times? A. About that, or a little less, might have been.

Q. How many times did you see Mrs. Ostrom there? A. Only the once.

Q. And that was what year? A. Soon after I went there, I think.

Q. Well, how old were you when you went there? A. A little over fourteen.

Q. Fourteen? A. Yes, sir.

Q. And you didn't see Mrs. Ostrom after that

until the time she searched you out after your uncle had died, did you? A. Yes, sir.

Q. Now, what conversation did you have with Mrs. Ostrom when you saw her after the death of your uncle? A. Nothing; only she told me she found out through Henry Gardner or through her cousin that uncle and aunt had died.

Q. Well, she said something else, didn't she? A. She was going to notify the others, the cousins; said she would write to them.

Q. Is that all? A. Yes, sir.

Q. Where did you meet her? A. Came to my house.

Q. Where? A. Callicoon.

Q. What time of day? A. Afternoon.

Q. Do you remember about the time?

The Court: What difference does it make?

Q. How long did she stay there? A. Not very long.

Q. About. Did she stay there half an hour? A. Half an hour, no more.

Q. Now, during that half an hour do you want the court to believe all she told you was she learned of the death of the uncle and was going to notify the relatives? What else did you talk about? A. Talked about me—she hadn't seen me in so long, and if I attended the funeral and few other things.

Q. What were the few other things? Did you talk about the property and who was entitled to the property? A. Well, she talked as though she was an heir. She said she was uncle's niece as well as——

Q. Did she ask you if you knew anything about

the death of your uncle and the property? A. I am not sure whether she did or not.

Q. Didn't she ask you whether he owned any real estate and whether there was any money in the bank?

The Court: She talked about what your uncle left? What Uncle Anton left, didn't she?

Witness: I am not sure if she did.

The Court: That is what she came there to talk to you about, wasn't it, as you understood it, Eh? Of course that was it.

Mr. Butler: Mrs. Ostrom said there was no such talk. There was no talk about property at all.

The Court: What was there other than that?

Q. Mrs. Ostrom said something about taking care of you, didn't she? A. Taking care of me?

Q. Yes. A. No.

Q. Didn't she tell you that if they started this suit that they would see that you were taken care of? A. No.

Q. She didn't say that—didn't ever mention that? A. No.

Q. Did she mention anything to you about the estate owing you money? A. She never mentioned it.

Q. What did you say, yes or no? A. No.

Q. Now, you tried to collect some money from this estate, didn't you? A. I tried to collect money for my wages, my services.

Q. Now, you were a niece of the wife of Anton Hirschman, were you not? A. Yes, sir.

Q. But you worked as a domestic? A. Yes, sir.

Q. For any agreed wages? A. My mother took me there. She and my aunt talked. My mother said she'd give me what she thought—I was young —for a while.

Q. And you, after the death of your uncle, asked for $3,000 of wages, did you not? A. I wrote Mr. Ferris, yes, sir.

Q. You told him you hadn't been paid? A. Yes, sir.

Q. Your uncle never paid you anything for any of the work you did, did he? A. No.

Q. Didn't pay you a cent? A. Nothing more than clothes and board.

Q. You didn't ask him for anything? A. No.

Q. Did you expect any money from him? A. Yes, sir; because he promised me money.

The Court: What is the purpose of this in this case, to prepare for some other action?

Mr. Butler: I want to show that this woman isn't telling the truth about anything she is testifying to—to attack her credibility.

Q. You never spoke to him about any money, did you?

Mr. Martin: To whom?

Mr. Butler: Anton Hirschman.

A. No.

Q. Did you? A. No.

Q. And you didn't talk to Mrs. Ostrom about this claim either, did you? A. I told her that I hadn't been paid.

Q. You left your uncle when? A. 1919.

Q. You had finished your domestic work as far

as the house was concerned—— A. 1915 I went home, when I was sick.

Q. Well, you went back again several times? A. When they sent for me.

Q. And you worked there till 1919, did you not? A. Yes, sir.

Q. I show you a paper and ask you if that is your handwriting. A. I should have my glasses.

Q. I ask you again is that your handwriting, yes or no? A. All this?

Q. Is this your signature? A. Yes, sir.

Q. Can you read? A. Yes, sir.

Q. Did you read this before you signed it? A. Yes, sir.

Q. You see the date? A. Yes, sir, 23rd.

Q. Did you know when you were signing that this read: "This day Miss Grace Gardner has left 1070 Broadway with all her belongings and was paid in full two months' services, $53.00 in cash. I received the above from Mrs. A. Hirschman." Did you sign that? A. Yes, sir.

Q. Is that your signature?

Mr. Butler: I offer it for identification. Paper marked Exhibit D F-1.

Q. Do you recognize this? A. Yes, sir.

Q. Is that your signature? A. Yes, sir.

Q. Did you read the date of that? A. July 14, 1915.

Q. And you knew when you were signing this paper that it read, "Grace Gardner, Bayonne, New Jersey, December 1, 1917, till August 15, 1917. I have received all my belongings from Mr. and Mrs. Hirschman and therefore have no further claim. Miss Grace Gardner." You signed that? A. Yes, sir.

Mr. Butler: I offer it in evidence for identification.

Paper marked Exhibit D F-2.

Q. (Showing witness paper.) Is that your signature? A. Yes, sir.

Q. And you read that paper before you signed it? A. Yes, sir.

Q. And you knew when you were signing it that it read, "August 8, 1913, paid in full to Miss Grace Gardner September 18, 1914—paid in full to Miss Grace Gardner." You knew what that contained when you signed it? A. Yes, sir; I signed it with a good promise.

The Court: What?

Witness: I signed it with a good promise.

The Court: What was the good promise?

Witness: My aunt would leave me something at her death.

Q. That the aunt would leave you something at her death? A. Yes, sir.

Q. But you knew that she hadn't left you anything at her death?

Mr. Martin: She wasn't dead yet.

A. She wasn't dead yet.

Q. After she died you knew she hadn't left you anything, did you? A. Yes, sir.

Mr. Martin: I object. The date of the papers shown to the witness is back in 1914. The question assumes it was after the death of Charlotte Hirschman who died December 1919.

The Court: Objection overruled.

Q. And after your uncle died you knew there was no money from the estate coming to you, did you not?

The Court: That he had left her nothing, is that what you mean?

Mr. Butler: Yes.

Q. You knew that he left you nothing, didn't you? A. I didn't know until the thing was settled —I didn't know right away.

Q. How long was it after his death you asked Mr. Ferris for $3,000? A. Nine months after.

Q. About nine months after? A. Yes, sir.

Q. And you settled that claim, didn't you? A. He wrote back I had been paid—receipts to show that I had been paid, and I wrote in answer I would be satisfied with a smaller amount. I didn't deny I had signed receipts and he never answered.

Q. Now, before you had been refused payment by Mr. Warren Ferris of the moneys that you had asked for you hadn't bothered about any of these relatives, had you? A. I didn't know their —no, I didn't.

Q. You didn't bother about looking up Mrs. Ostrom? A. No.

Q. The Riebers? A. No.

Q. The Steffenses? A. No.

Q. Did you do anything in reference to these relatives after Mr. Warren Ferris had refused to honor your claim for $3,000? A. I didn't do anything for myself. I went to Henry Gardner to collect something for me.

Q. Did you ask him anything about these relatives that have been mentioned? A. No, sir.

Q. Did you try to locate them? A. I asked where they lived.

Q. You asked where they lived? Who did you ask? A. Conversation with Mrs. Feurstbacker. She said they lived in Binghamton.

Q. Did you then go to Binghamton to look them up? A. No, I didn't go to Binghamton until Mr. Kattell called me there for an affidavit.

Q. Did you go to Mr. Kattell to make this affidavit before or after you saw Mrs. Ostrom? A. After.

Q. Did you look up Mrs. Ostrom or did she look you up? A. She came to my house in Callicoon.

Q. But you had looked her up previous to that, hadn't you and tried to locate her? A. I did not look for her. Mentioned to Mrs. Feurstbacker that—we had a conversation that aunt and uncle died.

Q. Did you tell Mrs. Feurstbacker that you had some valuable information to give to these relatives if you could get in touch with them? A. No.

Q. Tell her that you had any information—I will repeat—Did you tell Mrs. Feurstbacker that you had any information that you could give these relatives if you could get in touch with them in reference to Anton Hirschman? A. I only said that aunt and uncle died.

Q. That is all you said to her? A. Yes, sir.

Q. What did you want to see the relatives for, Mrs. Raymond? A. I didn't say I wanted to see them.

Q. You didn't want to see them?

The Court: She didn't say she wanted to see them.

Mr. Butler: She said she went looking for them after she found out. She said she did try to look her up after.

Q. I ask you again, after Warren Ferris refused to honor your claim for $3,000 didn't you go—didn't you try to locate these relatives? A. It was two years after.

Q. Did you try to locate them? A. Only what I mentioned to Mrs. Feurstbacker, nothing more.

Q. Did you ask Mrs. Feurstbacker where they lived? A. I asked her where they lived, that is all.

Q. What did you want to find out where they lived for? A. I asked if Lottie Rieber, as I have known her, was living.

Q. And the only reason you asked the address from Mrs. Feurstbacker was to find out if they were living? A. No; I didn't think it was right for Warren Ferris, their cousin, to do his own cousins out of something.

Q. And that is what you wanted to tell them, wasn't it? Yes or no. A. I forgot the question.

Q. (Question read.) A. Yes, sir.

Q. And did you ever mention to anybody outside of Mrs. Feurstbacker the fact that the Reibers, Steffenses and Mrs. Ostrom were relatives of the deceased Anton Hirschman? A. Nothing outside of the attorney Henry Gardner.

Q. That is the only one? A. Yes, sir.

The Court: Did you get word to Mrs. Ostrom about Uncle Anton's death and about the property he left?

Witness: Get word to her?

The Court: Yes; get word to her somehow.

Witness: No. She said her cousin wrote to her, Mrs. Feurstbacker.

The Court: Did you tell Mrs. Feurstbacker to tell these cousins?

Witness: No, sir; I didn't tell her.

The Court: Did you suggest to her?

Witness: No; I don't think I did.

The Court: Except to tell her that it was wrong for Warren to do them out of the property, is that what you mean?

Witness: Yes, sir.

Q. Now, that was about nine months, was it not, after the death of Anton? A. That I put in my claim to Warren Ferris?

Q. When was it you told Mrs. Feurstbacker? How long—— A. It was over two years.

Q. How long was it after the death of Anton Hirschman that you knew that Warren Ferris, as you have told, was trying to do his relatives out of this money? A. The time I put in my claim I found out he was sole heir.

Q. And you knew in 1922, the early part of 1922, that Warren Ferris had no right to that money and had no right to be administrator, did you not? A. Yes, sir.

Q. And yet, knowing that, you signed a release, did you not, to Warren Ferris for $250 from the estate? Is that your signature? A. Yes, sir.

Q. And you knew when you signed this paper, did you not, that it was a release to Warren Ferris acknowledging the receipt of $250 in full for any claims you might have against the estate of the late Anton Hirschman? A. I haven't made any claims since I received that.

Q. You knew when you signed this paper just what it was, did you not? A. Yes, sir. Our attorney——

Q. Was it read to you? A. Yes, sir.

Q. And you knew that when you received this $250 and you signed this paper it was a release

from all claims against the estate, wasn't it? A. Yes, sir.

Mr. Butler: I offer the paper in evidence.

Paper marked Exhibit C-F-4.

Q. And you knew that this Charlotte M. Keffer had no claim on this money, did you not?

The Court: How would she know?

A. I didn't know.

Q. Well, didn't you know she was not the adopted daughter of Anton Hirschman? A. The paper calls for a present, don't it?

Q. You knew that the Charlotte was not the adopted daughter and was no relative, did you not? A. Yes, sir.

Q. And you did know, not from the legal standpoint, but you knew as a thinking person that she had no right to any money, didn't you? A. Yes, sir.

Q. And knowing that you still took $250 from her, did you not and signed a release of claim against the estate of Anton Hirschman? A. My attorney—at his advice.

Q. But you tell me, do you, that—tell the court here, that she did not have any right to any of this money, didn't you? A. I didn't know the money was coming from the estate or her in the way of present or where.

Q. But this paper was read to you? A. Yes, sir.

Mr. Butler: I offer that paper in evidence.

Paper marked Exhibit D-F-5.

Re-direct:

Q. Did you know that the money, $250——

The Court: Why spend time.

Mr. Martin: It is very important.

The Court: Why?

Mr. Martin: This is our witness and we had to put her on the stand, but I want to show—(interrupted).

The Court: She worked for thirty years; she got no pay and she did the best she could to get what she could out of the estate.

Mr. Martin: There is a great deal more in this case than that.

The Court: I mean as far as this witness is concerned.

Mr. Martin: My friend on the other side has brought out a lot more than that and I want to bring out the rest of the story.

The Court: Go ahead.

Q. Did you know when you received this $500 that $250 of it came from Warren Ferris and $250 from Charlotte Marie Keffer? A. Yes, sir.

Q. When did you get it? A. About the middle of November, 1922.

Q. Now, what is the name of this—Feurstbacker—now, did you go to her and ask her to tell Mrs. Ostrom to see you or anything like that? A. No, sir.

Q. Did you send word that you wanted to see her? A. She send word?

Q. Did you send through Mrs. Feurstbacker, or whatever it is—send word to Mrs. Ostrom to come and see you? A. No, I did not.

Q. Who was your attorney in this claim? A. Henry Gardner.

Q. Is he the District Attorney up there in Sullivan County? A. Yes, sir.

Q. Now, your claim was eight dollars a month for 29 years? A. Yes, sir.

Q. Was it? A. Yes, sir.

Q. Talk up out loud. That is $3,784? A. Yes, sir.

Q. And did you answer Mr. Butler that you never thought you signed those receipts and that they had receipts in full for the money? A. Mr. Butler?

Q. Mr. Butler. This gentleman, Judge Butler. A. I have never wrote to Mr. Butler.

Q. No. Did you answer in looking at those receipts that you had given receipts in full to the Hirschman family for your services? A. I don't quite understand, Judge.

Q. Did you have a conversation with Mrs. Charlotte Gardner Hirschman, the wife of Anton Hirschman, in reference to what if any compensation you would ever get for your services there in that household? A. Nothing more than she told me at death they would leave me something.

Q. She told you at her death she would leave you something? A. Yes, sir.

Q. Now, you were asked by Judge Butler the question. Did you ever mention the names of any of these relatives to anybody and you answered no. Did you have this conversation to which you referred at the funeral or shortly after the funeral with Mrs. Keffer? A. I asked her if she had sent word south and to Binghamton.

The Court: What?

Mr. Martin: Sent word south and to Binghamton.

Q. Who did you mean by south and Binghamton? A. Steffens family and Rieber in Binghamton.

Q. Who did you mean by south? A. Steffens family.

Q. Who did you mean by that? A. Mrs. DeBussey and Frank Steffens.

Q. Did you at that time know their names? A. Yes, sir; knew their names.

Q. Who did you refer to at Binghamton? A. Mrs. Ostrom and her brother Frank.

Q. Did you know at that time their names? A. Knew their names.

Q. You haven't learned them since you have been here? A. No.

Q. Did you mention any names to Mrs. Keffer at that conversation? A. I don't think so; just south and Binghamton or Steffens, I mentioned.

Q. Did you mention Steffens? A. Steffens, yes, sir.

FRANK C. STEFFENS, recalled for further direct examination by Mr. Martin.

Q. You have testified, Mr. Steffens, that you received a telegram that Mr. Anton Hirschman was dead? A. Yes, sir.

Q. Now, did you at that time know that Mrs. DeBussey your sister was living? A. Oh, yes.

Q. Did you know her address? A. No, sir.

Q. Did you know where she was? A. I knew about where she lived, yes, sir.

Q. Where? A. I thought she lived in Baltimore somewhere.

Q. How did you know she was living at that time? A. I hadn't been notified of her death, and it would be perfectly natural——

Q. Did you know anything about the Riebers at that time? A. Yes, sir.

Q. Who did you know of the Riebers at that time? A. I knew Mrs. Ostrom and Frank Rieber.

Q. Did you know they were living at that time? A. Yes, sir.

Q. Did you at that time know? A. Yes, sir.

Q. How did you know? A. We kept in communication, indirectly.

Q. Where did they live, as you then knew, or understood them to live? A. Why, Binghamton or Benton Harbor. Mrs. Ostrom was in Binghamton or Johnson City and I think Frank Rieber at that time was in Benton Harbor.

Q. Did you then think at that time that they were there? A. I did not give it much thought.

Q. As you now look back didn't you know that they lived there? A. Yes, sir.

Q. You had a son living in Binghamton? A. Living in Binghamton.

Q. I do not think I asked you—I intended to ask you your wife's name? A. Mary Augusta.

The Court: There was Frank Rieber, Mrs. Ostrom and then George Rieber who is dead leaving George, Jr.

Q. Did you know anything about George, Jr., at that time? A. Not very much.

Q. Did you know at that time he was living? A. What date was that?

Q. May 19, 1920, did you know that George was living or dead? A. Yes, sir; I knew he was living.

Q. You knew he was living where? A. Binghamton.

Q. George, the brother? A. No, George Rieber, Jr., George's son.

Q. I am talking about George Rieber's son, known in this record as George A. Rieber, Jr. That is the man I am speaking of. A. Yes, sir.

Q. What is your wife's name? A. Mary Augusta, Mary A.

Q. Did you see Grace Gardner Raymond at the house of Anton Hirschman? A. If I ever saw her there?

Q. Yes. A. Yes, sir.

Q. How often did you see her there? A. Oh, I presume a half dozen times, anyhow.

Q. Did you see her every visit you made there? A. Not every visit, no.

FREDERICK C. CARRUTH, sworn for complainant.

Direct examination by Mr. Martin:

Mr. Martin: I offer in evidence the session laws of the State of New York, chapter 830 of the laws of 1873, June 25, 1873, and the amendment of that law in 1887, chapter 703. These are the first adoption laws of the State of New York.

The Court: Any other laws you want to introduce, domestic relation laws?

Mr. Martin: I offer in evidence the session laws and call attention to volume 1, laws of 1896, chapter 272.

Q. Now, Mr. Carruth, you are the son of my associate here, Mr. Charles R. Carruth? A. Yes, sir.

Q. You are a law student, are you? A. Yes, sir.

Q. Did you make a search in the office of the County Clerk of Sullivan County, New York, for

adoption of Daisetta or Katharina Hirschman or Katharina Daisetta Hirschman and of Katharina Daisetta Gardner or Daisetta Gardner?

The Court: What are you doing, negativing something?

Mr. Martin: Yes, sir. I assume the responsibility. I do not think it is necessary.

The Court: If they attempt to prove that she is an adopted daughter I will let you put it in but I do not see any reason for your negativing something.

Q. Have you been to the Hortenville Cemetery? A. I have.

Q. What cemetery? A. Known as the Hortenville Cemetery in Hortenville. I think it is the only one right near Hortenville.

Q. Is it of the same church that the Reverend Mr. Straub came from that he told us about yesterday? A. Yes, sir.

Q. Did you see a monument there? A. I did.

Q. What is on that monument? A. I cannot tell you from my memory. "A. Hirschman" it began.

Q. Did you make a memorandum of it? A. Yes, sir, I did.

Q. Does that refresh your recollection now? A. It does.

Q. And what is on that monument? A. "A. Hirschman, born September 15, 1815 in Englesdorf, Bohemia Austria, died July 30, 1881." That was all that was on that monument.

Q. The order to show cause advised by Vice Chancellor Church in this case is signed December 23, 1922. Did you go with your father to serve that order to show cause upon the Consumers Coal & Ice Company on December 23, 1922? A. I did.

Q. Upon whom did you serve it? A. Terrance

Brady, as president of the Consumers Coal & Ice Company.

Q. Did you have a conversation with Mr. Brady at that time? A. I did.

Q. I do not want all the conversation unless my friends insist on it. Did he say anything about who had given the matter attention? A. He did.

Q. What did he say about that? A. I asked him—either I or my father asked him if Benny & Cruden were their lawyers; he said yes, they had been for many years; then we asked him about this real estate transaction on East 53rd street with Warren Ferris and Charlotte Marie Keffer and he said that Tom Brady really handled the matter, but they put it up—the corporation put it up to Benny & Cruden to pass on the title etc., which they usually did in their real estate transactions and that Benny & Cruden undertook to pass on the title and when they did why, they handed over the money. He said that Benny & Cruden made some objection to the title, said that they would fix it up, as he put it, which took about four months.

Q. I do not care about all the conversation.

The Court: Let him tell.

Witness: And right after this objection was fixed up, as he put it, they paid over $21,000 in cash. He said that was about all he knew about that phase of the matter.

Q. Now, did you also see Charlotte Marie Keffer that day with your father? A. Yes, sir, the same day.

Q. And who was present then? A. My father and myself, Mr. Hadlick, father of Charlotte Marie Keffer, Charlotte Marie Keffer and her

husband, John H. Keffer, and I believe either two or three little children. I think there was a little girl about twelve or fourteen.

Q. I mean old people. A. That is all that were there of the older people.

Q. Now, what happened on that occasion? A. We came in and I—we asked about this—lets see, what first.

Q. Where, at her home? A. Yes, sir, at Charlotte Marie Keffer's home. I believe the number is 616 Avenue E, Bayonne. We asked, either I or my father asked Charlotte Marie Keffer if she knew any of the heirs or any brothers or any uncles or aunts of Mr. Ferris—any brothers or sisters of Anton Hirschman—if she knew there were any. She said she didn't know of any until the funeral of Anton Hirschman when she met Warren Ferris; that is the first she heard of any relatives of Anton Hirschman. Then I served the—I cannot tell just the order this happened. I served the bill and the order to show cause with restraint and explained what it was all about, and we did not have an extra copy because it was gotten out in a hurry, but her husband John H. Keffer was bound by it because he knew all about it, and I explained to him at the same time that I did to his wife, and we asked what she done with the money, she had received, the proceeds of this sale, and she said it was all gone—all spent, she said. We said something about $11,000. I think she said it did not come to that much; said the transfer tax was excessive. I think that was about all. Oh, right after we served—after I served these papers Mr. Keffer went out, said he was going to get a lawyer, and he brought in a Mr. Ralph Sanborn, I believe his name is. Mr. Sanborn looked the papers over and he said it

looked somewhat complicated to him. He thought they had to get counsel.

Cross-examination by Mr. Hudspeth:

Q. Mr. Carruth, may I ask you again what did Mrs. Keffer say when you asked her about knowing as to whether there were heirs of Anton Hirschman? A. She said that she knew of no heirs, no relatives of Anton Hirschman until she met Mr. Ferris at Anton's funeral.

Q. Did she intimate that that was the first time she met Ferris? A. That is what she intimated to me. That is the way I understand it.

Q. Did she say as to whether or not she knew of Ferris' existence before that funeral? A. No, she did not.

Q. Did you ask her? A. I did not ask her. I do not think I asked her that exact question.

Q. Did she tell you who Ferris was? A. Why, no.

Q. What relation he bore, if any, to Anton Hirschman? A. No; I cannot say she did.

Q. Did she say anything about her being an adopted child of Anton Hirschman? A. I do not think that came up.

Q. Did she say anything about the suit to quiet title? A. Why, only as I have stated before when we questioned her it seems to me—I think I did ask her at that time who was her lawyer in that proceeding to quiet title.

Q. The decree had been entered in that proceeding, hadn't it? A. You mean in the proceeding at that time—yes, it had been.

Q. Did you speak of that—say anything about the decree? A. Why, not the decree, no.

Q. About the suit? A. About the proceeding, yes, sir.

Q. What did you say? A. I think I asked her, either I or my father asked her who was her attorney in the proceedings.

Q. Is that all? A. That is all.

Q. Made no further inquiry as to why she had been a party to that suit or why it was brought or the necessity for it? A. No.

Q. Nor spoke of it after she had told you that she had learned at the funeral of Anton Hirschman through Ferris that there were heirs and that she had brought this suit against unknown heirs—did you ask her anything about that, why she did it? A. She didn't say she knew of heirs. She said the only heir she knew was Mr. Ferris.

Q. She knew no others. Then Ferris didn't tell her there were any other heirs. All he told her was that he was the only one, is that it? A. Yes, sir; she didn't know of any heirs until she met Ferris at the funeral, she said.

Q. When you asked her who her lawyers were did she say? A. Mr. Sanborn, I believe.

Q. Did she say anything about Benny & Cruden, anything in particular? A. No.

Q. Mention their names? A. I do not think so, not at that time.

Q. You knew at that time that Benny & Cruden were the solicitors in the suit to quiet title, didn't you? A. I had seen their name on the paper, yes, sir.

Q. You knew Benny & Cruden were the solicitors? A. Yes, sir.

Q. Then didn't you assume that they were the solicitors for her when you asked her the question as to who her attorneys were? A. Well, at that time I did not have it in mind at all.

Q. She said that all the money was spent that she had received from the sale of the property? A. Yes, sir; very emphatic about it.

Q. Did you inquire what she did with it? A. Yes, sir, I did, and she gave no definite answer.

Q. You did not follow it up very closely then? A. I believe her father cut her off, her father Mr. Hadlick was there.

Q. What did he say to her if anything? A. Why, he told her she shouldn't say anything at this time, she should get a lawyer.

Q. Then she shut up, did she? A. Yes, sir.

Re-direct:

Q. Did you know this Charles Hadlick—had you ever seen him before? A. Yes, sir; I had.

Mr. Martin: I ask for the contract between Ferris and Keffer dated May 27, 1920.

(Paper produced by Mr. Carrick.)

Mr. Martin: I offer this in evidence.

Paper marked Exhibit C12.

Mr. Martin: The contract of March 10, 1922, between Ferris and Mr. Keffer and the Consumers Coal & Ice Company.

(Paper produced by Mr. Benny.)

Mr. Martin: I offer this in evidence.

Paper marked Exhibit C13.

Mr. Martin: Both the contracts have been recorded. I ask for the deed. Deed dated the 5th day of October, 1922, from Warren Ferris and his wife and Charlotte Marie Keffer and John H. Keffer her husband to the Consumers Coal & Ice Company. I ask that that be marked in evidence.

Paper marked Exhibit C14.

Mr. Martin: Now, the wife of George A. Rieber, Jr., and Mrs. Frank Rieber and Mrs. Frank Steffens, all of whom are complainants in this case, and they are not here, but I ought to have their depositions that they never heard of this case before December 10, which is the date everybody talks about, or the 7th or 8th.

The Court: You mean the wives.

Mr. Martin: The wives. I do not know that they are necessary parties. They probably are proper parties complainant. I suppose my friends will do the same thing with that matter as they did with George A. Rieber, stipulate that if they were here they would testify that they had not heard of this suit before December 10, 1922. Can we agree on that, the day of taking the depositions?

Mr. Benny: Have you any affidavits?

Mr. Martin: Yes, there are affidavits to that effect, but one of them is an affidavit saying more than that so I did not want to ask you to agree to it.

Mr. Hudspeth: You want us to agree that they would testify—these various witnesses you refer to—that they did not know of the death?

Mr. Martin: No; that they did not know of this suit of Ferris against Hirschman until December 10, 1922.

Mr. Hudspeth: To quiet title.

Mr. Martin: Yes.

Mr. Hudspeth: That they would swear to that.

Mr. Martin: Yes. Is that satisfactory?

Mr. Hudspeth: Yes.

Mr. Martin: I assume that the whole of the record in the case of Ferris against Hirschman is before your Honor, not only

because you take judicial notice of your own record but because of the fact that this is in part a bill of review, but if there is any question about it I would like to put it in evidence.

The Court: I do not know how your bill reads.

Mr. Martin: Then I offer in evidence the case of Warren Ferris, et als., complainants and Anton Hirschman, his heirs, devisees and personal representatives, et als., defendants, 52-23 of this court.

The Court: I have not examined your bill but if it is not in the form of a bill to review and it is in substance one to review you may have leave to reform it. In other words we waive the technicality.

Mr. Martin: Then I may take an order granting leave to file a bill of review?

Mr. Demarest and I have agreed that because Mr. Brady is ill that his deposition should be taken before somebody who is satisfactory to your Honor. He is the man that has charge. I was going to prove by him the payment of these moneys.

The Court: They will admit that.

Mr. Hudspeth: We admit it.

Mr. Carrick: I have admitted it in the pleadings.

COMPLAINANT RESTS.

WARREN FERRIS sworn for defendant.

Direct examination by Mr. Butler:

Q. Mr. Ferris, you live where? A. 5386 Boulevard, North Bergen.

Q. How old? A. Past 48.

Q. You are the party that is mentioned in these proceedings as administrator of the estate of the late Anton Hirschman? A. Yes, sir.

Q. This Anton Hirschman was an uncle of yours? A. Yes, sir.

Q. In other words your mother Julia was the sister? A. Yes, sir.

Q. Were you in the habit of visiting Anton Hirschman in Bayonne? A. Well, yes; once in a while I went down to see him.

Q. How long have you lived in Jersey City? A. Close—I was just going on six years of age.

Q. Were you ever in Callicoon, N. Y.? A. Not that I remember.

Q. Was there any time in Callicoon or any place in New York that one Frank Rieber put burdocks in your hair and then took you to the barber's to have your hair shaved? A. Not that I remember.

Q. Yes or no? A. No.

The Court: No; he says, "Not that I remember."

Q. Not that you remember. Well, don't you know whether it took place or not? A. No, sir.

Q. When was the first time that you met this man Frank Rieber who was on the stand yesterday? A. Well, I don't remember meeting him, but probably I have met him in Binghamton.

Q. Did anybody ever tell you that he was your cousin or that he was related to you in any way? A. No, sir.

Q. Did you ever call him cousin? A. No, sir.

Q. Did he ever call you cousin? A. No, sir.

Q. When was the first time that you saw Mrs. Ostrom previous to yesterday? A. I do not remember ever seeing her before.

Q. This man Steffens that was on the stand, did you ever see him? A. No, sir.

Q. At the time of the death of Anton Hirschman did you know of any relatives of Anton Hirschman that were alive at that time? A. No, sir.

Q. Had your mother ever told you of any—having any nieces or nephews or any relatives? A. No, sir.

Q. Your mother owned a house in Binghamton, did she not? A. Yes, sir.

Q. During the time that she owned that house how many times would you say that you visited her? A. Oh, probably seven or eight or ten times; somewhere around there.

Q. Do you remember what year your mother purchased the house? A. It must have been somewhere around in 1900, I believe; somewheres in there.

Q. And you were a full grown man then? A. Yes, sir.

Q. Did you ever stay at the house of any of the Riebers or the Ostroms when you went to Binghamton? A. No, sir.

Q. Did your mother ever take you over to their house to have any meals? A. No, sir.

Q. Did Mrs. Ostrom have any meals at your mother's house while you were there? A. That I couldn't say. I didn't know——

Q. That is not definite, either. A. Well, I don't know.

Q. If you don't remember say so. A. I don't remember, no, sir.

Q. When was the first time that you learned of the relationship of Mrs. Ostrom to the deceased Anton Hirschman? A. Only after the property was sold.

Q. From whom did you get this information? A. I got it from some gentleman that come over

with some papers for me and said, why, I had heirs—the only place I got it—some gentleman here served me.

Q. When Mr. Carruth served you? A. Yes, sir.

Q. When was the first time that you learned that the Steffenses were heirs of the late Anton Hirschman? A. At the same time.

Q. And that applies to these other people who claim relationship? A. Yes, sir.

Q. What did you do if anything after these papers had been served on you stating that there were other relatives living of the late Anton Hirschman? A. Well, I didn't do anything then.

Q. Had the property been sold? A. The property had been sold, yes, sir.

Q. And you had received your money? A. Yes, sir.

Q. Did you go to see anybody? A. Well, I had a lawyer then, yes; I seen Mr. Nichols, I believe it was—or not Nichols, but Hoffman.

Q. How much money did you receive in total from the estate of the late Anton Hirschman? A. I should judge it was in the neighborhood of a little of $11,000.

Q. What if anything did you do with that money that you received? A. Well, I layed some in a piece of property.

Q. How much? A. $6,500.

Q. Where is the piece of property located? A. Located at 5386 Boulevard.

Q. Is that the property you are living in at the present time? A. Yes, sir.

Q. What did you do with the rest of the money? A. I spent the rest.

Q. How did you spend it? A. Well, I bought an automobile.

Q. How much did you pay for the automobile? A. $1,650.

Q. What kind of an automobile was it? A. Buick.

Q. What did you do with the remainder of the money? A. I used it up—spent it.

Q. How? A. Well, going around, not having been working—didn't take long to get rid of what —I had a car—I was sorry I bought the car after I seen how quick the money went.

Q. You know this woman that was on the stand, Grace Gardner? A. Well, I do not remember knowing her, but I probably seen her before.

Q. She made a claim, did she not, to the estate of the late Anton Hirschman? A. Yes, sir.

Q. Did you ever see her at the house of Anton Hirschman? A. Well, I couldn't say, probably she was there.

Q. Did she at any time ever mention to you about these relatives that were living? A. No, sir.

Q. Did she at any time tell you that you had no right to this money? A. No, sir.

Q. Now, these receipts that were marked for identification.

The Court: They are admitted in evidence.

Q. You received those from whom? A. Mrs. Gardner.

Q. Where did you get those receipts? A. I got them off of Mrs. Keffer.

Q. And those releases you received—releases made out by Gardner—Mrs. Raymond—to you, you received from—— A. Mrs. Keffer.

Q. You received that from Mrs. Raymond, the release for $250? A. Oh, yes, Mrs. Raymond.

Q. Where did that $250 you paid her come from, your own pocket? A. It come from the estate.

Q. Did you get anything out of the estate except the money you got from this property? A. Yes, sir; there was about $3,000 in the bank I belive.

Q. Did you divide that with Mrs. Keffer? A. Yes, sir.

Q. And that you spent as well? A. Yes, sir.

Mr. Martin: Wasn't there some rents?

Witness: Well, the rents didn't amount to much.

Q. Now, you filed an account, did you not, as administrator? A. Yes, sir.

Q. And in that accounting you account for the moneys in the bank and any other moneys received from this estate, did you not? A. Yes, sir.

Q. And that record is on file? A. Yes, sir.

Q. Also the expenses that you were put to as administrator of the estate? A. Yes, sir.

Q. You say you never met Mrs. Ostrom that you know of? A. Yes, sir.

Q. Did you ever have any communication with her through the mail? A. No, sir.

Q. Did you ever have any communication through the mail with Mr. Rieber? A. No, sir.

Q. Or with the Steffenses? A. No, sir.

Cross-examination by Mr. Hudspeth:

Q. Mr. Ferris, when you applied for that administration on your uncle's estate you represented, did you not, that you and this Keffer woman were the only next of kin? A. Yes, sir.

Mr. Martin: I submit the paper itself shows the fact. I make the objection that the petition is the best evidence because it distinctively states he is the only heir and Mrs. Keffer is not mentioned.

The Court: Objection overruled.

Q. You secured letter of administration, did you not? A. Yes, sir.

Q. Did Mrs. Keffer renounce her rights, if any, to be administrator, that you know of? A. Well, only what she said, she thought she was entitled to as much as I was, so before we would have any trouble over it why, we thought we would do what was right between the two of us and divide it up.

Q. And it was agreed then between you that you should go on—— A. Yes, sir.

Q. And you would administer the estate? A. Yes, sir.

Q. And that you and she would divide the proceeds? A. Yes, sir.

Q. That is right, isn't it? A. Yes, sir.

Q. Now, who negotiated, if any one, the sale of this Broadway property, that is the property now that is in dispute, the real property, with the Consumers Coal & Ice Company? A. Who was in connection with it?

Q. Who started to sell this property to the Consumers Coal & Ice Company? A. Well, I believe Mr. Sanborn.

Q. Who was Mr. Sanborn? A. He is a real estate man in Bayonne here.

Q. And who employed him? A. Well, I should think the two of us employed him.

Q. You and Mrs. Keffer? A. Yes, sir.

Q. And through him the sale of this property was brought to the attention of the Consumers Coal & Ice Company? A. Yes, sir.

Q. What were you asking for it? A. Well, I was asking for $27,000.

Q. And what price did you finally agree upon? A. $21,000.

Q. And was that the price that you agreed to sell it for to the Consumers Coal & Ice Company? A. Yes, sir.

Q. Now, you made a contract, did you not? A. Yes, sir.

Q. You and Mrs. Keffer. Before you made the contract to sell this property to the Consumers Coal & Ice Company you and she had made the arrangement in writing between you to divide the estate, hadn't you? A. Yes, sir.

Q. You and she had agreed that you were heir and that she claimed to be an heir by reason of being the child of an adopted daughter? A. Yes, sir.

Q. And you had that contract or arrangement drawn up between you, didn't you? A. Yes, sir.

Q. In typewriting. Who did it? A. Why, Mr. Nichols.

Q. Where was that done, in whose office? A. In his office, Summit avenue.

Q. Jersey City? A. Yes, sir.

Q. Who was present? A. Mrs. Keffer, I and my wife and Mr. Keffer.

Q. Well, now, after you had made the contract to sell to the Consumers Coal & Ice Company this property in question, there was some question raised as to the title, was there not? A. Well, there was something, yes, sir, but I couldn't say what it was.

Q. Did you seek to remove that question, any cloud from the title? A. No, sir.

Q. Didn't you commence a suit in the Court of Chancery to quiet the title? You knew there was a suit brought for that purpose, didn't you, that held up the closing of the title for some time? A. Oh, yes.

Q. Who were your solicitors in that suit—who were your lawyers? A. Why, Mr. Hoffman, I believe, was my lawyer then.

Q. Well, did Benny & Cruden have anything to do with it? A. Yes, sir; they did.

Q. Who got them to do it? A. Mr. Hoffman, probably.

Q. Did you? A. No.

Q. Did Mrs. Keffer, to your knowledge? A. No, sir.

Q. At that time, or just before that suit was brought did Mr. Benny or Mr. Cruden see you regarding the title? A. No, sir.

Q. Did they ever have a talk with you regarding the title? A. No, sir.

Q. Did they ever ask you if you were the sole heir? A. No, sir.

Q. Did they ever ask you what, if any, relation Mrs. Keffer bore to Anton Hirschman in his lifetime? A. No, sir.

Q. Whether she was an adopted daughter or not? A. No, sir.

Q. Whether she was an heir or not? A. No, sir.

Q. Nothing was done, you are sure of that, by them, to ascertain who the heirs were, if any, of that property? A. Yes, sir.

Q. Or who were entitled to sell it? A. Yes, sir.

The Court: What is your business?

Witness: I haven't been doing anything. I was a brakeman, the last I was doing, railroading.

The Court: Railroad brakeman?

Witness: Yes, sir. I lost my job in the strike.

Q. Now, at any time, Mr. Ferris, did Messrs. Benny & Cruden or either of them make any attempt to find out from you by questioning you as to who the heirs were? A. No, sir.

Q. Did they ask you if you were the only heir? A. No, sir.

Q. Did they ask Mrs. Keffer in your presence whether she was the only heir? A. No, sir.

Q. Or joined her with you? A. No, sir.

Q. Or that she claimed to be such? A. No, sir.

Q. At no time? A. At no time.

Q. Up to the time of giving the deed. Are you sure of that? A. Outside of the contract we made with them. Of course, it was all in that.

Q. Outside of that contract nothing else was done? A. No; that is all.

Q. No other steps taken—no questions asked you? A. Yes, sir.

Q. Or proof sought from you as to the heirship? A. Yes, sir.

Q. Is that your signature? (Showing witness paper) A. Yes, sir.

Q. Do you know Mrs. Keffer's signature? A. Yes, sir.

Q. Is that her signature? A. Yes, sir.

Q. Do you know where that paper was signed by you and she? A. Yes, sir.

Q. Where? A. Broadway, I believe it was.

Q. Whose office, if any office? A. Some real estate—I couldn't say. Was it drawn up by Mr. Hoffman?

Q. I don't know. I am asking you in whose office? A. Give me my glasses please.

Q. Refresh your recollection. It was in the office of Benny & Cruden? A. Benny & Cruden?

Q. You remember that now? A. Yes, sir.

Q. Do you know what this contains? Was it read over to you at the time? A. I believe it was.

Mr. Hudspeth: I offer it in evidence.
Paper marked Exhibit D-C-1.

Q. I show you this paper, written and typewritten paper, whose signature is at the bottom of that? A. Mine.

Q. Do you know in whose office this was signed by you, Benny & Cruden's? A. Mr. Hoffman's, I believe.

Q. Mr. Hoffman's office? A. Yes, sir.

Mr. Hudspeth: I offer both those papers in evidence.
Paper marked Exhibit D-C-2.

Q. Now, I show you bill of complaint in the Chancery suit of yourself and Mrs. Keffer against Anton Hirschman's heirs, etc., being the bill to quiet title referred to, and ask you if you did not swear to that bill. You swore to that bill, didn't you, in Mr. Benny's office? A. I do not understand you on that.

Q. You remember the bill? You remember the suit that was brought in the Court of Chancery to quiet the title that held up the closing of the transaction some time? A. Yes, sir.

Q. You signed said papers in Mr. Benny's office in that suit, did you not? A. Yes, sir.

Q. And you signed an affidavit to the bill, didn't you? A. Yes, sir.

Q. And that was done in Mr. Benny's office? A. Yes, sir.

Q. Now, after you had signed these various papers and after you had proceeded with this suit to quiet the title and after decree was entered in that cause you were advised of that decree, were you not, by Messrs. Benny & Cruden? A. Yes, sir.

Q. And you then closed the title with the Consumers Coal & Ice Company, didn't you? A. Yes, sir.

Q. You received, did you not, through some one a deposit on account of the contract for sale, didn't you? A. Deposit?

Q. Some advance money was paid on the purchase price, was it not? A. I believe there were.

Q. Paid to you, was it not? A. No, sir.

Q. To whom? A. To Mr. Sanborn.

Q. Mr. Sanborn? A. Yes, sir.

Q. And then Mr. Sanborn was representing you in this transaction at that time, was he? A. Yes, sir.

Q. Was he also representing Mrs. Keffer? A. Yes, sir.

Q. Now, after the decree was entered in this suit to quiet the title you closed the title out, delivered the deed, you and Mrs. Keffer, to the Consumers Coal & Ice Company? A. Yes, sir.

Q. And you received the balance of the purchase price. How much of the balance? A. Somewhere around——

Q. What was it in all? A. No, it was around $19,000.

Q. $21,000 in all? A. Yes, sir.

Q. Where did you split up the moneys as between yourself and Mrs. Keffer after you got them all? A. Right there.

Q. In Messrs. Benny & Cruden's office? A. Yes, sir.

Q. Was Mr. Sanborn present? A. I believe he was.

Q. Was Mr. Thomas Brady there of the Consumers Coal & Ice Company? A. Yes, sir.

Q. How often had you met Mr. Thomas Brady? A. That is the first time I ever met him.

Q. That is the first time? A. Yes, sir.

Q. Now, Mr. Benny—didn't he—if you try now to refresh your recollection after I have shown you these papers—— A. Surely.

Q. Didn't Mr. Benny ask you on more than one occasion before the suit to quiet the title was commenced, as to who were the sole heirs or the only heirs or the heirs of Anton Hirschman? A. Yes, sir.

Q. He did? A. Yes, sir.

Q. Why do you say yes at one time and no at another? A. I didn't understand that, Judge.

The Court: Now, be a little more cautious and consider what is being asked you and then testify.

Q. You have said to the court when the court asked you why you said no one time and yes another, that you had made a mistake. Haven't you said yes now because I have shown you affidavits which you have recognized—(interrupted).

The Court: He hasn't read the affidavit because he hasn't his specks here to read it.

Q. You knew what those paper were when I showed you them? A. Yes, sir.

Q. And you knew that those papers were affidavits made by you, did you not? A. Yes, sir.

Q. And you knew in those papers that you had been asked the question as to who the heirs were and that you had made statements under oath in reply to those inquiries? A. Yes, sir.

Q. That is the reason you say yes now, isn't it? A. Well, I certainly would have to do that if I wanted to sell the property, that is sure.

Q. You would have to do that now if you told the truth, wouldn't you? A. Yes, certainly.

Q. Now, Mr. Ferris, how old a boy were you when you first went up to Callicoon? A. I don't never remember going to Callicoon.

Q. You don't remember ever being in Callicoon? A. No, sir.

Q. Do you know where Callicoon is? A. Well, I do know about where it lays.

Q. Well, where does it lay? A. It lays just the other side of Port Jervis.

Q. And how do you get there? A. Either get there by automobile or train.

Q. By what train? A. Erie railroad.

Q. How do you know? A. Because I was up to Binghamton and I passed through there.

Q. You passed through Callicoon to go to Binghamton? A. Yes, sir.

Q. When did you first go to Binghamton? A. Well, somewhere around 1900.

Q. 1900? A. Somewhere around that I should judge.

Q. Where did you go to? A. My mother's.

Q. Where did she live? A. Lived on Laurel avenue.

Q. Where? A. Binghamton.

Q. Binghamton? Was Mrs. Ostrom living in Binghamton at that time? A. That I couldn't say.

Q. You didn't know whether or not Mrs. Ostrom lived in Binghamton at that time? A. No, sir.

Q. Your mother was Lily Ferris, was she not? A. Julia Ferris.

Q. Julia Ferris. She was some relation of Mrs. Ostrom, was she not? A. That I don't know; I couldn't say.

Q. She never mentioned it? A. No, sir.

Q. Never referred in her lifetime or your lifetime to Mrs. Ostrom? A. No, sir.

Q. Never heard that name, did you? A. No, sir.

Q. When did you first hear of it? A. I never heard of it.

Q. Never heard the name mentioned? A. I heard of it in this suit—case, yes, sir.

Q. When did you first hear it? A. It must have been here right after I sold the property.

Q. From whom did you first hear the name? A. She wrote to me, I believe.

Q. What? A. I believe she wrote to me.

Q. After you sold the Anton Hirschman property? A. Yes, sir.

Q. And that is the first time you ever heard from Mrs. Ostrom? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. Did she write you a letter? A. Wrote a letter, yes, sir.

Q. Where is the letter? A. I haven't got it with me any more.

Q. Where did you get it? A. When did I get it?

Q. Where did you get it? A. Right there where I live.

Q. In Bayonne? A. In Jersey City.

Q. In Jersey City? A. In Jersey City.

Q. Is Mrs. Ostrom here? (Standing up.) Do you recognize her? A. No, sir.

Q. You never saw her before? A. Not as I remember.

Q. You saw her in this courtroom? A. Yes, sir.

Q. Mr. Steffens. Did you ever see him? A. No, sir.

Q. Never saw him before you saw him in this courtroom? A. No, sir.

Q. Mr. Rieber? A. I probably might have seen him.

Q. When? A. Around 1900.

Q. Where? A. Binghamton.

Q. At what place? A. Well, I think it was at a saloon, if I am not mistaken, the first time I seen him.

Q. Yes, and the second time? A. Up in my mother's house.

Q. And in Binghamton? A. Yes, sir.

Q. What was he doing there? A. I suppose he was just calling; I suppose friends and went visiting.

Q. How old were you then? A. I was around twenty—I don't know—around nineteen.

The Court: Born 1871?

Witness: I was born in 1875, was—must have been about twenty-one or twenty-two.

Q. When did you see him, in 1900 or 1890? A. About twenty-four year ago, about twenty-five.

Q. About twenty-four or twenty-five years ago; and was he about the same age? A. Well, I couldn't say. I couldn't say whether—probably he is older than I am.

Q. That is the first time you ever saw him? A. Yes, sir.

Q. And he was visiting at your mother's house? A. Yes, sir.

Q. And you were viting there? A. Yes, sir.

Q. And you went around a little together? A. No, not as I know of.

Q. Did he go in a saloon with you? A. No. I was in the saloon with a man named Ritz, an old man.

Q. Was he there in the saloon? A. That I couldn't say.

Q. Did you go in the place with him? A. No, not as I know of.

Q. Did you have any talk with him? A. Yes, I had a talk with him.

Q. Did you know who he was? A. No, sir.

Q. And he didn't tell you? A. I was made acquainted with him by Mr. Ritz; he says, "Here is a friend of mine, Mr. ——" how is the name now? Rieber.

Q. He introduced Rieber to you? A. Yes, sir.

Q. That is the first you ever saw of him or heard of him? A. Yes, sir.

Q. Did he tell you who he was? A. No, sir.

Q. Just chance acquaintance and chance introduction? A. Well, he knew the gentleman and he made me acquainted with him.

The Court: I thought you said he was visiting your mother.

Witness: Oh, not the first time. I seen him at the corner down at where there is a bridge, and the next time I seen him was in my mother's.

Q. But it was at the bridge, this corner, you are referring to? A. Yes, sir.

Q. That this man introduced him to you? A. Yes, sir.

Q. And who was this man? A. Man by the name of Ritz.

Q. Was he a friend of yours, Ritz? A. Friend of my mother's.

Q. Friend of your mother's? A. Yes, sir.

Q. Did Ritz tell you who Mr. Bieber was? A. Just said Mr. Rieber.

Q. Didn't say he was any relation of yours? A. No, sir.

Q. And Rieber didn't say he was any relation of yours? A. No, sir.

Q. Rieber didn't intimate he knew you at all until introduced on this occasion? A. Yes, sir.

Q. And you certainly didn't know him? A. No, sir.

Q. It was after that he met you at your mother's? A. Yes, sir.

Q. How did he happen to go to your mother's? A. I couldn't say.

Q. Only chance acquaintance of yours, first introduced by this man on the street corner, and the next time you met him at your mother's? A. Yes, sir.

Q. How was that? A. I couldn't say.

Q. What was he doing there? A. Was visiting, I suppose.

Q. Did your mother know him? A. Friends of hers.

Q. Oh, your mother knew him before you were introduced to him? A. Yes, sir.

Q. Did she tell you that? A. No.

Q. How did you know it? A. Well, I didn't know it.

Q. Did you say they were friends? A. They must have been friends when he went visiting there, that is sure.

Q. Oh, I see. It is simply you conclude they were friends because he visited there? A. Yes, sir.

Q. Did your mother tell you anything about him? A. No.

Q. Didn't say who he was? A. No.

Q. And you didn't ask? A. No, sir.

Q. That is the second time you ever saw him? A. Yes, sir.

Q. And that is the last time you ever saw him until now in court? A. Yes, sir.

Q. Did you know or ever hear before this title

was made to the Consumers Coal & Ice Company of the property in question that Anton Hirschman had three sisters, one known as Francisco Hirschman Steffens, another known as Julia Hirschman Ferris and the third known as Annie Marie Hirschman Rieber—did you ever know that before that? A. No, sir.

Q. And you have only heard it since this case was commenced? A. Yes, sir.

Q. Never knew it before? A. Never knew it before.

Q. Did you know that those alleged sisters of Anton Hirschman had died before him? A. I don't know as he had any.

Q. You never heard that before this suit was commenced? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. Did you know that Mrs. Steffens, a sister of Anton Hirschman, left, when she died, as her only heirs, and next of kin, two children, Frank C. Steffens and Mary W. DeBussey; did you know that? A. No, sir.

Q. You never heard of that before this suit was commenced? A. No, sir.

Q. Is that true? A. That is true.

Q. Did you know that Annie Marie Hirschman Rieber, the third sister of Anton Hirschman, died leaving as her only heirs and next of kin her children George A. Rieber, Frank B. Rieber and Charlotta E. Ostrom—did you know that? A. No, sir.

Q. You never heard of that before this suit was commenced? A. No.

Q. That is true, isn't it? A. Yes, sir.

Q. Did you know that at the time of Anton Hirschman's death that George A. Rieber had predeceased him—had died before him leaving an

only child his heir and next of kin, George A. Rieber—did you know that? A. No, sir.

Q. Never heard of it before this suit was commenced? A. No, sir.

Q. So that your statement is, Mr. Ferris, that at the time you made this sale of this property to the Consumers Coal & Ice Company—yes, at the time that Anton Hirschman died, you believed and insist you were the only heir? A. I do.

Q. And next of kin to Anton Hirschman, deceased? A. Yes, sir.

Q. Now, that it true, isn't it? A. Yes, sir.

Q. And you didn't know of any other heir? A. No, sir.

Q. You didn't know of any other next of kin or any other person that had any claim or interest in his property than yourself at that time? A. Yes, sir.

Q. Nor at any other time until this suit was commenced? A. Yes, sir.

Q. When you got the information, is that right? A. Yes, sir.

Q. That the only person that made any claim or that you thought had any interest or estate in Anton Hirschman's property either real or personal or both, was this girl Charlotte Keffer? A. Yes, sir.

Q. Who claimed her mother had been adopted by Anton Hirschman in his lifetime. Is that right? A. Yes, sir.

Q. Now, did you believe that that girl was adopted by Anton Hirschman? A. Well, I did.

The Court: You mean Daisy or Charlotte?

Mr. Hudspeth: I mean the mother—I am talking about Charlotte, that is the name of this present girl.

Witness: Yes, sir.

Q. Did you ever know the mother of the present Charlotte Keffer? A. No.

Q. Did you ever know her? A. No, sir.

Q. Had you ever seen her? A. I do not remember.

Q. Do you remember when she died? A. I couldn't say.

Q. Do you know where she lived in Bayonne when she did live there? A. Yes, sir.

Q. Where? A. With Anton Hirschman.

Q. Had you ever seen her in the house? A. Not as I remember.

Q. Had you ever been told that she lived there? A. Yes, sir.

Q. By whom? A. By my mother.

Q. What did she say? A. Well, she just said she lived there, that was all.

Q. Did she say what her relations were with Anton Hirschman or Anton Hirschman's wife? A. She said she was their child, that is all.

Q. What kind of a child, natural child or adopted child? A. She didn't exactly say.

Q. Just simply said she was a child? A. Yes, sir.

Q. Did you make any inquiry about it? A. No, sir.

Q. Neither of Anton Hirschman or his wife or anyone else? A. No, sir.

Q. Did you believe it? A. I did.

Q. Continued to believe it? A. I do, yes, sir.

Q. And you do up to the present time, do you? A. I do, yes, sir; well——

The Court: Believe what?

Witness: I believed it at the time.

The Court: What?

Witness: That she was her child.

The Court: Who was?

Witness: Why, Mrs. Keffer's mother.

Q. You believed that Mrs. Keffer's mother was a child of Anton Hirschman and his wife Charlotte, did you? A. Of her mother, I did, that it was their child.

Q. How did you think you came in as an heir? A. Well, that was it, because she didn't find out—of course, what it is now it is different.

The Court: At that time.

Witness: Oh, at that time I thought it was, yes.

The Court: How did you think you were an heir?

Witness: Not now, of course.

The Court: How, at that time, did you think you were an heir and had any right in this property if you thought this woman was a child of Anton?

Witness: Well, of course——

The Court: Of course what?

Witness: Being so, the way it turned out —they found out she was not an adopted child.

The Court: When did you find out that?

Witness: Just now, when this trial went on.

Q. So that you are perfectly honest, Mr. Ferris, when you made this arrangement with this girl, that you believed she was an heir? A. Entitled, yes, sir.

Q. And you wanted to be fair and generous by dividing the swag with her, didn't you? A. Yes, sir.

Q. And it was swag in your judgment, wasn't it? A. No, sir.

Q. What was it? What was it that you were dividing? A. I thought she was entitled to half of it anyway.

Q. You did? A. Yes, sir.

Q. And you never thought to the contrary until you found out in this suit, is that it? A. Yes, sir.

Q. Are you sorry now you made the division? A. Well, I don't know.

Q. Now, let me ask you, what was your business at the time you started to sell this property to the Consumers Coal & Ice Company? A. I wasn't doing anything.

Q. How long is it since you have been a non-worker? A. Must be four years.

Q. Four years; that is since you got this money, isn't it? A. A little before.

Q. A little before. How long before you got this money did you cease to earn your living? A. About three months.

Q. About three months. Well, prior to that three months what did you do? A. I was laid up with rheumatism and wasn't working.

Q. Before you had that rheumatism—serious attack of rheumatism, what did you work at? A. Railroading.

Q. What railroad? A. Erie Railroad.

Q. What as, brakeman? A. Yes, sir.

Q. Up to three months before you made this sale? A. Yes, sir.

Q. Then after you made the sale you became a gentleman of leisure, didn't you? A. Yes, sir.

Q. What are you doing now? A. Nothing.

Q. Haven't been doing anything for the last four years? A. Yes, sir.

Q. Where do you live, in your own apartment house, do you? A. Yes, sir.

Q. Is that an apartment house? A. It isn't an apartment house, it is a two family house.

Q. Two family house. I beg pardon, I thought it was an apartment house. A. Oh, no.

Q. How much did you pay for it? A. $13,500.

Q. Up on the Boulevard? A. Yes, sir.

Q. Where? A. Near Hamilton avenue.

Q. Who did you buy it from? A. Real estate man by the name of , I think his name was.

Q. Did he own it? A. No, he just sold it.

Q. Who was the owner? A. I couldn't say; some Italian.

Q. How much did you pay for it? A. $13,500.

Q. All from the proceeds from the sale of this property and the money you found in the bank of the estate of Anton Hirschman? A. Yes, sir.

Q. You didn't put a dollar of your own money in it, did you, outside of that fund? A. I didn't have it then.

Q. Put the title in your name? A. My wife's and mine.

Q. Your wife and your name. It is still in that situation? A. Yes, sir.

Q. Did she put any money in it? A. She didn't have any to put in.

Q. She didn't put any in it, did she? A. No.

Q. The whole purchase price was paid by you? A. Yes, sir.

Q. From these moneys I have referred to. A. Yes, sir.

Q. How much mortgage on the property? A. $8,500.

Q. Sixty-five hundred? A. Eighty-five hundred.

Q. How much did you pay for it? A. $13,500.

Q. Then you put five thousand of this money in it, did you? A. Well, I made a little improvement on it; spent about $1,000 on it.

Q. How much did you put in? A. Spent about $1,000 after I got there.

Q. You said to me that you, out of the money you got from this estate, invested $6,500 in this property. A. After I moved there, of course, I had to fix it up a little bit, decorating.

Q. You only spent a thousand? A. Yes, sir.

Q. Then the mortgage is eight thousand, is it? A. Eighty-five hundred.

Q. Eighty-five hundred, and what do you consider the equity in that property worth? A. Well, $14,500.

Q. How much? A. $14,500.

Q. Above the mortgage? A. Oh, no, sir.

Q. What do you consider it's worth above the mortgage of eighty-five hundred? A. $8,000.

Q. $8,000? A. No, $6,000.

Q. $6,000. You put a second mortgage on that property, didn't you, since you got it? A. Yes, sir.

Q. How much? A. $2,500.

The Court: How much in all. You were asked before how much in all is on the property.

Witness: $8,500.

Q. And you put another mortgage on? A. No, sixty-five—six thousand first then the second mortgage twenty-five hundred.

Q. You bought the property for $13,500? A. Yes, sir.

Q. Gave a mortgage for six? A. For six.

Q. Where did you get the other seventy-five hundred? A. No; I have layed down $6,500 on the property when I got it and then spent a thousand dollars on it when I got the property.

Q. Well, you bought it for $13,500, you layed sixty-five hundred in cash and gave a mortgage for seven thousand? A. No, a mortgage for seven—no.

Q. That would leave a balance of seven thousand. Did you lay down seventy-five hundred? A. I layed down sixty-five hundred.

Q. And you paid $13,500? A. I believe that is what it was.

Q. How much did you lay down? A. Sixty-five hundred.

Q. How much in the mortgage? A. Then I got a second mortgage for twenty-five hundred.

Q. A first mortgage? A. First mortgage, six thousand.

Q. That would only make twelve thousand. A. How much did I pay for that?

The Court: Never mind. All right. Go ahead.

Q. How much money besides what you got from the Consumers Coal & Ice Company for the property in question did you get out of the estate of Anton Hirschman? A. At the time of the sale?

Q. No, no. Outside of the sale of this property what did you get from the estate of Anton Hirschman? A. I believe it was somewheres around thirteen or fourteen hundred dollars.

Q. Then was that all the money you got out of the estate and what you got from the Consumers Coal & Ice Company? A. Yes, sir.

Q. And did you divide equally with this woman Keffer? A. Yes, sir.

Q. The moneys that you got? A. Yes, sir.

Q. She got thirteen or fourteen hundred? A. She got the same as what I got.

Q. She got half of fourteen hundred dollars?

The Court: No, she got fourteen hundred dollars; total around three thousand.

Witness: Somewheres around that I should judge.

Q. Besides these affidavits I have already spoken of, and your affidavit to the bill of complaint in the suit to quiet title, you testified under oath, did you not, before the Master in the proceedings under that suit to quiet title—you were before the Master and gave that there? A. Yes, sir.

Q. Judge Chamberlin, down in Bayonne? A.

Cross-examination by Mr. Martin:

Q. Now, isn't it a fact that when you bought this piece of property at 5386 Boulevard that the purchase price was thirteen thousand five hundred and there was a first mortgage of eighty-five hundred dollars? A. There was a mortgage on the property but I paid that off.

Q. Well, when you bought the property there was a mortgage on it, wasn't there? A. Yes, sir.

Q. How much was there? A. Sixty-three hundred dollars I think it was. I probably made a mistake on that property being $13,500. It might have been $12,500. That is where I think I made a mistake on that; I think it was $12,500.

Q. When you got through and got the title—first how much mortgage was there on the property? A. Sixty-three hundred dollars I think it was, or sixty-five.

Q. Now, on December 25th, not Christmas day, but about the 26th or 27th you got a second mortgage on the property of $2,500, didn't you? A. Of what date?

Q. 1922. A. What day of the month was it?

Q. About December 26th or 27th. A. I got the mortgage? No, sir, I got the mortgage December —I believe it was I got the mortgage on the 21st.

Q. Didn't you get the money shortly after you were served with the injunction in this case to restrain you from paying out any proceeds? A. No, sir.

Q. Of the funds received from the Consumers Coal & Ice Company? A. No, sir; it was after.

Q. Are you sure about that? A. Yes, sir.

The Court: It was after what?

Witness: It was after I got the papers from this gentleman here.

The Court: What did you do after you got the papers?

Witness: Well, then the day—couple of days after I went down and seen Mr. Hoffman, showed them to Mr. Hoffman.

Q. Mr. Hoffman was there when you got the papers, wasn't he? A. No, sir, he come to my house.

Q. Did you get this twenty-five hundred dollars after the papers were served? A. No, sir; I had the $2,500 two or three days before I got the papers.

Q. What did you do with it, did you put it in the bank? A. No, sir; I used it up, paid some debts.

Q. You didn't get it cashed, did you? A. Yes, sir; I got a check for it.

Q. Where did you cash the check? A. In the Hudson Trust Company.

Q. Did you have an account there? A. No, sir.

Q. Did your wife have an account there? A. No, sir.

Q. Was the check drawn on the Hudson Trust Company? A. That I couldn't say because the gentleman I got the mortgage from why, he come around with me and got the check cashed for me.

Q. You didn't have it in your possession when you were served with the order to show cause and injunction advised by Vice Chancellor Church,

the $2,500 or any part of it? A. When I got them papers?

Q. You didn't have it? A. No, sir.

Q. Look at Exhibit D-1 and state if you recognize who that is? A. Yes, sir.

Q. Who is it? A. That is my mother.

Q. Julia Ferris? A. Yes, sir.

Q. Look at Exhibit C-10 and state if you recognize who that is? A. It looks like my wife, yes, sir.

Q. Well, isn't that Annie Ferris your wife? A. Yes, sir, it looks that way. It is a peculiar looking picture. Look at the face, of course, I have to laugh at it.

Q. Now laugh at it and when you are through tell me do you know whether or not that is Mrs. Ferris, your wife? A. Yes, sir.

Q. This is Exhibit C-9. Do you recognize that? A. No; I do not recognize that.

Q. Don't know who it is? A. No, sir.

RECESS.

Q. Are you certain Mr. Ferris, that on the 21st day of December, 1922, you borrowed $2,500 on a second mortgage on the house owned by you and Mrs. Ferris? A. I don't say twenty-one or twenty-two; somewheres around that.

Q. Are you sure it was before Christmas, 1922? A. Yes, sir.

Q. There can't be the slightest doubt in your mind about that? A. Yes, sir.

Q. Do you mean by yes that there is some doubt? A. No; there ain't no doubt about it.

Q. And you are quite certain that you received the mortgagee's check, the party who loaned you the money? A. Yes, sir.

Q. And that you endorsed it and you went to the

bank and got the money on the date of the check, is that right? A. Yes, sir.

Q. Now, are you sure about that? A. Yes, sir.

Q. Who was the mortgagee, somebody with an Italian name? A. I think it is, yes.

Q. Euretta? A. Some name like that.

Q. M. Balient? A. Some name like that.

Q. Was it Jacob J. Stores the notary public before whom you acknowledged the mortgage? A. That is who I got the check from.

Q. The check was payable to you? A. Yes, sir.

Q. Your wife didn't have to sign it? A. No, sir.

Q. Who is the maker of the check? A. I couldn't say.

Q. Was it Stores or Balient? A. I couldn't say that.

Q. You say you got the money in cash, $2,500? A. Yes, sir, or twenty-one hundred and something. I had to pay three hundred and seventy-five I belive to get the check—to get the money.

Q. You mean to say you borrowed $2,500? A. I gave a $2,500 mortgage which they took $375 I think, bonus, I think, something like that.

Q. How much did you get as the net proceeds of the whole thing? A. Around twenty-one hundred or twenty-one hundred and twenty-five dollars, I think it was.

Q. Did you acknowledge the mortgage before the notary public on the day you got the money? A. The notary public?

Q. Did you acknowledge the mortgage on the day that you got the check or did you leave the mortgage up there with him for a day or two? A. No—I signed it, yes, sir.

Q. Did you hold up your hand before the notary and say you acknowledged it? A. Yes, sir.

Q. When was that? A. The same day I got the check.

Q. The same day you signed it? A. Yes, sir.

Q. The same day you signed the mortgage, is that what you mean? A. That was the time I got the check, I believe, yes, sir.

Q. On the day you got the check you signed the mortgage, did you? A. Yes, sir.

Q. And held up your hand before the notary and acknowledged it? A. Yes, sir.

Q. Now, you spent this money right away on the same day you got it? A. Yes, sir.

Q. Doing what? A. A few bills I owed.

Q. What bills? A. Well, I owed the bill four hundred and forty or four hundred and sixty to one party and four hundred and thirty-five to another and twelve hundred to a lady.

Q. What did you owe the four hundred and forty for? A. Well, through a little rum bill and few odds that I wanted to use.

Q. What is the name of the party? A. Kolach was one man's name.

Q. That was a rum bill? A. Rum and a few odds I got off of him.

Q. What is the address? A. I don't know his address. He kept a saloon—he was running a saloon on Central avenue.

Q. Jersey City? A. Yes, sir.

Q. And what is the other sum you mentioned you paid out that day? A. To a painter and paper hanger.

Q. What is his name? A. Well, I got the bill home. I couldn't exactly say his name.

Q. Painting your house? A. Yes, sir.

Q. And how much was it? A. I think it was four hundred and sixty or four hundred and seventy. I wouldn't be sure.

Q. Four sixty or four seventy? A. Yes, sir.

Q. And what is the lady's name to whom you paid $1,200? A. Mrs. Ruthkowsky.

Q. What is that for? A. I needed money at the time and I just used it up before that.

Q. What was that $1,200 for that you owed that woman? A. Oh, I got that around September. I wanted to use the money on account of having the car I had no money and she let me have the money. I was going to start in a little business and I didn't make out very well and I had to stop and I used the money up otherwise.

Q. Did you pay that in check? A. No, sir.

Q. Now, do you mean to say that in September you borrowed $1,200 from this lady? A. Yes, sir.

Q. Have you given us her name and address? A. Yes, sir.

Q. What is it? A. Well, the name I can, but the address I don't know.

Q. Why not? A. Because—I know it is on Woodward street but I don't know the number.

Q. You don't know the number of the person that loaned you $1,200? A. I don't know whether it is 128 or 228.

Q. Jersey City? A. Yes, sir.

Q. 128 what? A. Woodward street.

Q. What was her name again? A. Ruthkowsky.

Q. Is Ruth her first name? A. No; first name is Josephine.

Q. Married woman? A. No, sir; widow.

Q. And how much did you give her? A. $1,200.

Q. When did you see her last? A. I seen her day before yesterday.

Q. Living at that address? A. Yes, sir.

Q. Do you mean to say that you got $9,951 from the Consumers Coal & Ice Company and you owed

$1,200 and you didn't pay it right away? A. Yes, sir.

Q. Now, you do not understand my question or else you are not thinking about what you are answering. On the 5th day of October you got $9,951 and some cents from the Benny & Cruden office. A. 1922, yes, sir.

Q. The 5th day of October, 1922? A. Yes, sir.

Q. And you owed $1,200 to this Mrs. Josephine Ruthkowsky—— A. This was in 1923.

Q. This mortgage was put on the property? A. That part of it was, yes, sir, but I didn't use that money then.

Q. I am asking you what you did with the $2,200 that you got as the proceeds of the mortgage on the property? A. Yes, sir; I paid four hundred and forty or four hundred and fifty to this gentleman, that I know, and the paper hanger and the painter, and this Ruthkowsky I gave $1,200 to.

Q. You just said you gave it to her in 1923. A. I gave it to her in 1923.

Q. Then you gave it to her after you were served with the injunction of Vice Chancellor Church? A. No, sir, before I was served with the papers I got the check.

Q. Did you go home at noon on December 28, 1922, and did your wife hand to you the summons, the subpoena, the bill of complaint and affidavits used on the order to show cause and the order to show cause and restraining order advised by Vice Chancellor Church? A. No, sir; not as I know of.

Q. You know this young gentleman here, Frederick Carruth? A. Yes, sir.

Q. He served you with those papers? A. Yes, sir.

Q. One afternoon or evening about six or seven o'clock, didn't he? A. Yes, sir.

Q. Now, didn't you receive the same set of papers, that is similar papers from your wife at noon on the same day that had been served by him in the morning on her? A. I do not remember.

Q. Was your wife served before you were served? A. I guess she was.

Q. Don't you know? A. I couldn't say.

Q. You can read and write, can't you? A. Yes, sir; a little.

Q. Didn't you read those papers and didn't you go down and get a lawyer that very afternoon before Mr. Carruth was there? A. No, sir, not before Mr.——

Q. Before Mr. Carruth was there to serve you? A. No, sir; not before he was there; no, sir.

Q. Did you tell Mr. Carruth that evening or did your wife tell him in your presence that you had received the papers and gone down to get the lawyer that afternoon? A. No, sir. I didn't receive the papers from my wife. I received them off this gentleman one evening and then the next day or so why, then I went down and seen Mr. Hoffman.

Q. Now, the fact of the matter is that this mortgage is dated December 27, 1922, isn't it? A. I couldn't say. I didn't look at it.

Q. And it was recorded on December 29, 1922, isn't it? A. Probably.

Q. But you are absolutely certain that before Christmas, 1922, that you got this money on that mortgage? A. Yes, sir.

Q. Now, you told us that you paid out to a couple of people four hundred and sixty or seventy-five dollars and some other sum, about three hundred and sixty, and you have told us that you paid Josephine Ruthkowsky the $1,200 in 1923? A. Yes, sir.

Q. Now, what did you do with the rest of the $2,250 that you got on the second mortgage besides the four hundred and sixty and three hundred and sixty that you said you paid out?

Mr. Butler: He said twenty-one hundred and twenty-five.

A. I didn't have anything left from that but what I could spend.

Q. Three hundred and sixty and four hundred and sixty, that is $820. A. I said four hundred and forty or fifty and four hundred and sixty or seventy and twelve hundred.

Q. No. You said afterwards, I think, that you paid that money to Josephine Ruthkowsky in 1923. A. Around September; it was 1923.

Q. Didn't you know that this order of Vice Chancellor Church's restraining you from—— (interrupted). A. I got—that is the time I got this money off of her, in September. That was it.

Q. When did you pay her? A. Just as soon as I got the check.

The Court: In September, 1922?

Witness: Yes, sir.

The Court: September, 1922?

Witness: Yes, sir; around September, 1923 I borrowed the money and when I got that money in December——

The Court: Just think what you are saying. Borrowed from her September, 1923—this last September?

Witness: Yes.

The Court: And you paid it back to her—

Witness: Oh, no. Right before I got that check off that man I paid her. When did I get them papers, in twenty-three or twenty-two?

The Court: Never mind about that.

Witness: I know it was in September, whether it was twenty-two or twenty-three, now, I am not absolutely sure.

The Court: The mortgage was made in December, 1922?

Witness: 1922.

The Court: Now, when did you borrow the money from this woman?

Witness: Then it must have been September, 1922, or either in September——

The Court: When did you pay her?

Witness: I paid her around December 21 or 22nd.

The Court: You said you paid it in 1923?

Witness: I didn't get that right on the date, that was all.

The Court: How soon after you got the money on the mortgage——

Witness: Because I didn't have to pay her——

The Court: Did you pay it?

Witness: The same day.

The Court: Is she related to you?

Witness: No, sir.

The Court: Did she have your note?

Witness: Didn't need no note.

Q. In what sums did you borrow the money from her? A. In two sums.

Q. How much? A. Six and five. I told her I would give her $100 extra.

Q. You mean six hundred and five hundred? A. Yes, sir.

Q. When did you borrow the six hundred dollars? A. It was about seven or eight days after. It was around in September—or—it was in Sep-

tember when I got the first six hundred and around October I got the other five.

Q. What part of October? A. I couldn't say; somewheres around the 8th or 9th.

Q. Do you mean to say you borrowed $500 on the 8th or 9th of October, 1922? A. Yes, sir.

Q. After you had $9,951 from the Consumers Coal & Ice Company? A. Oh, well, that I used up, the biggest part of that you can say, in the property I bought and then the other few dollars I got I spent.

Q. You got $10,000 practically, and you paid $6,500 for that property, didn't you? A. Yes, sir.

Q. And how much did you pay for the automobile?

The Court: $5,000.

Mr. Martin: It was $5,000 or $6,500.

The Court: Layed down five thousand in cash.

Witness: Sixty-five hundred was paid down.

The Court: In cash?

Witness: Yes, sir.

Q. Didn't you say this morning you layed down $5,000 and you put up another thousand in repairs and improvements? A. Sixty-five hundred and then put another thousand for improvements.

Q. How much did you pay down for the property? A. Sixty-five hundred dollars first.

Q. And when did you buy the property? A. I bought it somewheres in September.

Q. You didn't buy the property before you got the money from the Consumers, did you? A. No, sir; surely not.

Q. Do you know when you got that money? A. I couldn't exactly say.

Q. I show you a check of Benny & Cruden on the Union Trust Company of New Jersey to your order for $9,951.69 dated October 5, 1922. Is that the check that you received on account of the Consumers Coal & Ice Company? A. Yes, sir.

Q. Is that your name endorsed on the back? A. Yes, sir.

The Court: When was it paid?

Mr. Martin: 10-6-22.

Q. That was the day after the date of the deed you got this money? A. Well, I don't know whether it was on or before that. I know darn well that I got the money around in September or October.

Q. Yes, but you know very well also that you couldn't have had any money with which to buy the Boulevard street property? A. No, certainly.

Q. Until you got it out of this check? A. Yes, sir.

Mr. Martin: I offer the check in evidence.

Check marked Exhibit C15.

Q. Now, when did you buy the Boulevard property? A. That I couldn't say now.

Q. Where did you keep this money until you bought the property? A. We had it in the bank.

Q. What bank account? A. Central avenue.

Q. What is the name of the bank? A. I don't know whether the Hudson Bank or not, corner of Central avenue and Bowers street.

Q. In Jersey City? A. Yes, sir.

Q. And you don't know the name of the bank? A. No, sir.

Q. Have you got the bank account with you here today, the pass book and your check book? A. I believe so.

Q. Is it here today? A. No, no. They must have the books there because I took it out.

Q. When did you close that account? A. I don't know, just before we bought the property, while we were buying the property.

Q. Well, was that account in your name? A. Yes, sir.

Q. How soon did you buy the property after you got the check? A. I couldn't say. It was a few weeks or a month probably, along there.

Q. And did they close out the account when you paid for the property? A. Closed out the account.

Q. Did the bank close out the account when you paid for the property? A. Surely.

Q. You drew the last money out to buy the property? A. Yes, sir.

Q. You mean to say you spent about $4,000 in a month? A. I don't know how much I spent.

Q. What? A. I don't know how much I spent. I must have spent it.

Q. Well, you not only had $4,000 but you borrowed $500 from Josephine Ruthkowsky and you had part of the $600 you previously borrowed from her, didn't you? A. Yes, sir.

Q. That is all true, is it? A. Well, the way I have it certainly it is all—(interrupted).

Q. Now, did you buy this property from a man named Nick Acciardi? A. Yes, sir.

Q. And did you buy it on the date of the deed, November 11, 1922? A. Why, I don't know as that was right or not.

Q. You don't know that that is the right date, but did you buy it on the date that the deed is dated, or thereabouts? A. It must be.

Q. Yes. Now, then, you must have had at least $6,500 of the proceeds of the check of Consumers Coal & Ice Company in that bank when you say you borrowed $500 from Josephine Ruthkowsky, isn't that so? A. I know I didn't have any money at that time but a few dollars in my pocket when I did borrow the money.

Q. Well, now, there is $1,200 and four hundred and fifty and four hundred and sixty dollars, that is nine hundred and ten, that is $2,150. Where did the rest go out of the proceeds of the second mortgage? A. There wasn't any left I believe.

Q. Well, out of the whole check you paid $6,500 you are now sure? A. Yes, sir.

Q. To pay for the house? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, what did you do with the rest of that money that you received from the Consumers Coal & Ice Company? A. I spent it.

Q. For what? A. Well, I got an automobile and one thing another.

Q. Let us see, what automobile did you get? A. I got a Buick car.

Q. What kind? A. Seven passenger.

Q. What did it cost you? A. $1,650.

Q. And the night you were served it was standing out in front of the house, wasn't it? A. That was well and good enough.

Q. I don't understand you. A. Yes, sir; it was standing out.

Q. The night you were served by Mr. Carruth on December 28th, that automobile was right out in front of the house? A. Yes, sir.

Q. And Mr. Carruth asked you, "Do you own that automobile?" and you said "No", didn't you? A. Yes, sir.

Q. Yes. Why did you lie to him about it? A. Well, I sold the automobile.

Q. Oh, you sold it then? A. Yes, sir.

Q. But the automobile was there? A. Yes, sir.

Q. To whom did you sell it? A. Mrs. Ruthkowsky.

Q. Did she pay you for it? A. Yes, sir.

Q. With what? A. Cash money.

Q. How much? A. $500.

Q. Now, after October 5, 1922—— A. Yes, sir.

Q. I want you to get this straight because I do not want you to misunderstand me. You bought an automobile, Buick car, for $1,650 and you sold it to Josephine Ruthkowsky on what date? A. Well, I couldn't say.

Q. Before December 28th of the same year? A. Oh, yes; yes, sir.

Q. For $500? A. Yes, sir.

Q. Yes. And that was the total purchase price of the automobile now, are you sure? A. Yes, sir.

Q. Have you got any doubt about it? A. No, sir.

Q. And you owed her $1,200 then? A. She loaned me $1,200.

Q. You owed her $1,200? A. I thought you said I loaned her.

Q. No, you owed her? A. Yes, sir.

Q. And then she paid you $500? A. I got $1,200 off of her after that.

Q. She paid $500 for that automobile, didn't she? A. Yes, sir.

Q. And you bought an automobile in October and you sold it in December of exactly the same year, buying for $1,650 and selling it for $500? A. Yes, sir.

Q. What was the matter with it? A. I had a couple of little wrecks with it.

Q. What business were you engaged in then? A. I wasn't in any business at all then.

Q. Did you borrow $1,200 from her after she bought the automobile? A. Yes, sir—no.

Q. Eh? A. I believe it was—no, no, I got the $1,200 before I sold the automobile to her.

Q. And did she—did you sell the automibile to her before you raised the $2,500? A. Yes, sir.

Q. And did she give you $500 in cash? A. Yes, sir.

Q. At a time when you owed her $1,200? A. Yes, sir.

Q. How did that come about? A. Because I needed the money.

Q. Well, how did you spend this $4,000 outside of the $1,650 you spent for the automobile? A. I suppose I spent it foolish. That is all I can say.

Q. Well, how? A. Well, going around I suppose and having a good time. It don't take long.

Q. Doing what? You had been a brakeman on the Erie Railroad, hadn't you? A. Yes, sir.

Q. And you went out on strike two or three years ago? A. Yes, sir.

Q. And you were not asked to come back to work for them after you went out on strike, were you? A. No, sir.

Q. How long had you worked for the Erie Railroad? A. Going on 24 years.

Q. Where did you run, up Port Jervis or around here? A. No, sir; just around here.

Q. You had a pass in 1897, didn't you? A. Yes, sir.

Q. You could go anywhere on the Erie Railroad then, couldn't you? A. Yes, sir.

Q. Up until 1904—to 1900, right? A. Yes, sir.

Q. And you used to go to Binghamton very frequently, didn't you? A. Well, I should judge seven or eight or ten times.

Q. A year or a month? A. I suppose—well, within a year. I only went there for about a year.

Q. You went there from 1904 to 1907, didn't you? A. No, sir. I only went there during one year about seven or eight or ten times, I should judge.

Q. Now, how did you go around and spend this difference between whatever you say you paid buying that property, five thousand or sixty-five hundred and the $9,951.69 that is represented by that check, excepting the sum that you just say you spent, $1,650, for the Buick automobile—how did you spend it? A. Well, foolishness, going around.

Q. What kind of foolishness, where? A. Having a good time, drinking and one thing another. You want to be as good as the next, and that is how it went.

Q. You can't spend $2,000 drinking in a month, can you, with rheumatism? A. $2,000?

Q. Can you? Did you? A. Well, I didn't exactly spend $2,000 in a month but I spent very close to it, if it did take a little over a month.

Q. You never had in your lifetime before $2,000 at one time, did you? A. In my pocket?

Q. Yes, at one time, in your possession, under your ownership or control? A. Well, I don't remember. I had thirteen or fourteen hundred at times.

Q. You never had $2,000—never had nine or ten thousand dollars, did you? A. Yes, I did, when I went to get the check I had that.

Q. I mean before that? A. Before that—well, yes, I had a few times fourteen or fifteen hundred dollars in my pocket.

Q. And that is the biggest sum you ever did have? A. Yes, sir.

Q. And you want us to understand that you say that you went around from October 5th until December 28, 1922, and spent all of two or three thousand dollars in rum shops and having a good time, is that right? A. Yes, sir.

Q. You can't give us any better explanation than that, can you? A. No, sir.

The Court: How much did you spend on women?

Witness: What is that?

The Court: How much did you spend on women, if any?

Witness: Quite some: They were the dearest.

The Court: What?

Witness: They were the dearest.

Q. How old was your wife when you met her—first met her? A. Twenty-seven.

Q. What? A. About seventeen; I think seventeen.

Q. Is this picture C9 a picture of your wife during any time that you knew her? A. Not as I know.

Q. You won't deny that that is Annie, your wife, will you? A. No; I couldn't very well. I don't know. It don't look like her.

Q. Isn't that Annie, Annie Ferris, your wife? A. I couldn't say for sure. It don't look like it to me.

Q. Taken by Burswitz, 343 Central avenue, Jersey City Heights. Isn't that a picture of your wife Annie since you were married? A. Not as I know of. It don't look like it to me.

Q. Look at this picture C2 and see whether or not you recognize that picture? A. Yes, sir.

Q. That is your wife, surely? A. Yes, sir.

Q. Look at this picture C3, is that your daughter? A. Yes, sir.

Q. What is your daughter's name? A. Julia.

Q. What is the date of your birth? A. April 6th.

Q. What year? A. 1875.

Q. Where were you born? A. New York City.

Q. When did you move to Jersey City? A. I was only a child when I moved to Jersey City.

Q. What was the time when your father died, around 1896 or '97? A. Around 1897 or 1898.

Q. Your mother had no other relatives? A. Not as I know of.

Q. Than her sister in Binghamton, did she? A. She didn't ever say anything that she haw a sister in Binghamton.

Q. You didn't know of the existence of any relatives at all in Binghamton? A. No, sir.

Q. Did you know of any reason why she went to Binghamton other than the fact that she had some relatives there? A. No, sir.

Q. Did you live with your mother at the time of your father's death? A. No, sir; I lived in Bayonne.

Q. Had you been married then? A. Yes, sir.

Q. There were no other children—you got no brothers and sisters? A. No, sir.

Q. Where was your mother living then with your father, at 63 Beech street, Jersey City? A. Yes, sir.

Q. After your father's death she went up to Binghamton? A. To Binghamton, yes, sir.

Q. And she stayed there for a while? A. For a few years, I believe.

Q. Did she tell you that she had gotten some life insurance on your father? A. No, sir.

Q. Did she? A. No, sir; I do not remember.

Q. Did she get any life insurance on your father? A. That I couldn't say.

Q. Well, you were the only son when your father died, didn't you know how your mother was going to live? A. I don't know whether she did or not. She never told me any of her business.

Q. You do not mean to give the court, his Honor, that impression, that you did not pay any attention whatever to your mother's affairs after your father died? A. No, sir.

Q. Did she own the house she lived in at 63 Beech street? A. Yes, sir.

Q. What was the value of that house? A. At that time I should judge about twenty-five hundred.

Q. Didn't you know what was going to happen to your mother—what was going to become of her? A. No, sir.

Q. Did you ask her to come and live with you? A. I do not remember.

Q. You do not remember that you did anyway, do you? A. No, sir.

Q. You do know that she went up to Binghamton? A. Yes, sir.

Q. When did you hear about her buying property or a lot on Laurel avenue, Binghamton? A. Why, she went up there and then she come back and told me that she had friends up there and she is going to build a place, she would think she would like it up there.

Q. She didn't say anything about Aunt Annie, did she? A. No, sir.

Q. You didn't know Aunt Annie, did you? A. No, sir.

Q. You didn't ever call any woman Aunt Annie, did you? A. No, sir.

Q. You are sure about that, eh? A. Yes, sir.

Q. This lady, Charlotta Ostrom, in 1897 or 1898, when your mother first went to Julia Ferris was then Charlotta Rieber—you didn't know anything about her then, did you? A. No, sir.

Q. Now, isn't it a fact that you did know her but you said you did not know that she was your cousin? A. I did not know her.

Q. You never saw her? A. Not as I remember, no, sir.

Q. Now, you never saw Frank Rieber. Do you now say that you saw Frank Rieber in a saloon? That is what you said this morning? A. I saw Frank Rieber on the corner near the bridge, the saloon was on the other side of the bridge.

Q. Didn't the saloon keeper, Mr. Ritz, introduce you to Mr. Rieber? A. He wasn't the saloon keeper. Mr. Ritz and I was coming along and he introduced me to Mr. Rieber.

Q. Didn't you go in the saloon? A. Mr. Ritz and I went in the saloon.

Q. Didn't you take Rieber in? A. I do not remember whether he came in or not.

Q. Now, you made an affidavit in this matter, didn't you? A. Yes, sir.

Q. Which was verified on the 24th day of January, 1923, an affidavit in this case? A. Yes, sir.

Q. Which was intended to be used in opposition to this motion for the continuance of the temporary stay that Vice Chancellor Church had issued, didn't you? A. Yes, sir.

Q. On January 24th? A. January 24th.

Q. 1923. A. I believe so.

Q. Are you sure?

The Court: He said yes.

A. Yes, sir.

Q. Now, in this affidavit you say, "I have read the affidavit of Charlotta Rieber Ostrom and say that I never knew that Charlotta Rieber Ostrom was a niece of Anton Hirschman; nor did I know that her mother, Anna Marie Hirschman Rieber, was a sister of Anton Hirschman." Is that right? A. Yes, sir.

Q. Why did you say you never knew she was a niece without saying that you never knew Charlotta at all? A. It didn't make any difference what name it would be, I would never know.

Q. Didn't you ever meet Annie Marie Hirschman Rieber? A. Who is Anna Marie Hirschman Rieber?

Q. The sister of your mother. A. No, sir, not as I know of.

Q. Now, you are quite sure also that you never were at Callicoon? A. Never in Callicoon, no, sir, not as I remember.

Q. Your memory is as good now if not better than it was in January, 1922, isn't it? A. Yes, sir.

Q. In this affidavit you say, "Deponent further says, that in or about 1897 or 1898 I frequently visited my mother Julia Ferris, who resided at Binghamton, New York, and I do not remember having any conversation with Charlotta Rieber Ostrom." Is that true? A. Yes, sir.

Q. You say that you "do not remember ever being introduced to Charlotta Rieber Ostrom as being a cousin to me". A. No, sir.

Q. Well, if you didn't remember her at all why didn't you say you did not remember meeting her at all? A. I didn't remember meeting her.

Q. Now, you say, "I have read the affidavit of Frank B. Rieber and also the additional affidavit which he filed in this cause, and say, that I do not remember Frank B. Rieber being related to me as

a cousin; nor did I know that his mother, Anna Marie H. Rieber, was a sister of Anton Hirschman. I do not remember visiting the home of Frank B. Rieber's mother at Callicoon, New York." Is that right? A. Yes, sir.

Q. You do not remember? A. At their home?

Q. Yes. A. No, sir.

Q. You do not remember being in Callicoon? A. At Callicoon. I was never in Callicoon.

Q. Were you ever at Hortenville? A. No, sir.

Q. Ever at Beechwood? A. No, sir.

Q. Were you ever at your grandfather's place, Anton Hirschman? A. I don't know where that is.

Q. You know you had a grandfather named Anton Hirschman, don't you? A. Well, probably I did. I do not know. I never heard—I never heard my wife mention any names belonging to him.

Q. I shouldn't think your wife would tell you who your grandparents were? A. Or my mother.

Q. Didn't ever hear your mother? A. No, sir.

Q. Didn't you know you were an Austrian in part by blood? A. No, sir.

Q. Never heard that. Did you ever know your mother had a brother? A. I knew she had a brother, yes, sir.

Q. By what name? A. Anton Hirschman.

Q. You didn't know that she had sisters? A. No, sir.

Q. Did she never tell you? A. Never told me.

Q. You say in this affidavit you don't remember of sleeping with Frank B. Rieber or eating at the same table or playing with him, "nor do I remember the incident when I am supposed to have struck him in the stomach with a stick of firewood. I do not remember the incident when he

and his brother George made a hat of burdock burrs." Is that right, you do not remember? A. No, sir.

Q. Do you mean by that that you won't deny it? A. I wouldn't deny it if I knew it.

Q. You mean by that that you won't deny it but you can't now remember that such a thing as that happened? A. No; I don't think it ever happened.

Q. Well, now, which do you say?

The Court: No use wasting time on it. He said he doesn't remember.

Q. You say now you do not remember ever being in the saloon with Frank B. Rieber? A. No, sir.

Q. Didn't go with him and with Ritz into that saloon? A. I went with Mr. Ritz in the saloon but I don't know whether what—say went with us or not.

Q. Your former counsel in this matter was Mr. John J. Hoffman, wasn't it? A. Yes, sir.

Q. And you felt, after talking this matter over with Mrs. Keffer, that Mrs. Raymond, who had worked for 29 years for Mr. and Mrs. Hirschman and who wanted $8.00 a week or $3,784, had been fully paid, didn't you? A. It was fully paid on account of the receipts, yes, sir.

Q. And you felt that with the possession of the receipts there could be no claim, but what she was not entitled to anything, isn't that right? A. Yes, sir.

Q. And yet you did pay her $250, didn't you? A. Yes, sir.

Q. Now, did you have a conversation with Mrs. Keffer after the funeral of Anton Hirschman? A. Not as I remember.

Q. Why, didn't you and Mrs. Keffer come back

from the cemetery and sit down and talk? A. No; we didn't sit down, and talk, but she——

Q. Well, stand up and talk? A. Well, when I was going to the door she says, "Well, it is only you and I, Warren," that is all she said to me. Didn't hold any more of a conversation than that.

Q. Didn't she say to you, "Warren, everything is ours"? A. That I don't say, no. All I remember is, "You and I is alone."

Q. Now, in this affidavit you state, "Shortly after the decease of my uncle Anton Hirschman I had a conversation with defendant Charlotte M. Keffer. She said Charlotte M. Keffer said, 'Warren, everything is ours.' I was surprised that she should have had any interest in the estate as I believed I was the only heir at law of Anton Hirschman. She then explained to me that her mother Katharina Daisetta Hadlick, known as Daisy Gardner Hirschman Hadlick, had been an adopted daughter of Anton Hirschman, and that the said Charlotte M. Keffer was a daughter of Katharina Daisetta Hadlick." Is that true? A. Yes, sir.

Q. This affidavit states the facts, does it, in so far as I have just quoted? A. Yes, sir.

Q. Now, then, Mr. Ferris, this thing got on your nerves the early part of January—you got sort of uncomfortable about it? A. It did, yes, sir.

Q. In 1923? A. Yes, sir.

Q. You knew that the charge was that you and she had forgotten all my clients and were trying to take the estate or had taken—— A. We didn't know there was anybody else.

Q. You knew that was the charge, didn't you? A. Yes, sir.

Q. And then did you write this letter to Mrs. C. Ostrom, 8 Orchard avenue, Johnson City, Broome County, N. Y.? A. Yes, sir.

Mr. Martin: I offer it in evidence.

Paper marked Exhibit C16.

Witness: Let me read that again.

Q. Do you want to read it again? A. Yes, sir.

Q. You didn't sign it, did you? A. Didn't I sign that?

Q. Didn't you notice you didn't sign it? "May 16, 1923, Mrs. C. Ostrom" (reading). Is that right? A. Yes, sir.

Q. At that time you had Mr. John J. Hoffman as lawyer? A. Yes, sir.

Re-direct:

Q. How did you come to write that letter, Mr. Ferris? A. Well, when I seen there was somebody interested in the real estate why, I wanted to find out who they were.

Q. How did you know there was anyone interested? A. They wrote me a letter.

Q. Who wrote you a letter? A. Mrs. Ostrom.

Q. Was it in answer to that letter of Mrs. Ostrom that you wrote this letter? A. Yes, sir.

Q. And was that the first time you knew the address of Mrs. Ostrom? A. Yes, sir.

Q. And was the address of Mrs. Ostrom on that letter that you received from her? A. Yes, sir.

Q. Now, in answer to Judge Martin's question as to how you spent the money on drinking and foolishness, and then the court asked you on women—by foolishness what did you mean, did you gamble? A. Gambled and going around.

Q. Did you have any bad habits at that time? A. Yes, sir.

Q. Well, what were they? A. Gambling.

The Court: Gambling, women and booze.

Q. And these things all cost you money, didn't they?

The Court: Sure. You need not prove those things.

Q. Now, in reference to this $250 which you paid to Mrs. Gardner, Judge Martin asked you, although you had receipts and knew no money was due to her, you paid $250. Why did you pay her this $250? A. Well, she pleaded that she wasn't paid enough for her services with Mrs. Hirschman, so then I seen Mrs. Keffer and asked her if she was willing to give her something; she said, "Yes, I think we better help her out a little bit." She was in pretty bad circumstances at the time

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ANNIE FERRIS sworn for defendant.

Direct examination by Mr. Butler:

Q. Mrs. Ferris, what was the price paid for this property on the Boulevard? A. Thirteen thousand.

Q. That was the price paid? A. Yes, sir.

Q. How much cash was paid? A. Well, it was $12,500 and we paid sixty-five hundred and there was $12,000 mortgage on it.

Q. $12,000 mortgage? A. Or $6,000 mortgage on it.

Q. Was any money spent on improvement of that property after? A. Yes, sir, almost $1,000.

Q. There are some pictures introduced as evidence, Mrs. Ferris. Do you know whose picture that is, marked Exhibit C9? A. That must be a picture of mine. Very young. I cannot identify it myself, but it looks like me.

Q. I show you a picture Exhibit C2. A. That is my picture, yes, sir.

Q. I show you picture marked C3. A. Yes, sir; that is my daughter.

Q. I show you picture marked C10. A. Yes, sir, that is my picture, too.

Q. And I show you picture marked C1. A. That is my mother.

Q. That is your mother-in-law? A. Yes, sir, my mother-in-law.

Q. Now, these two pictures marked C2 and C3. Did you give those pictures to Mrs. Ostrom? A. No, sir; I never did.

Q. Just yes or no? A. No, sir.

Q. Did you send them to Mrs. Ostrom? A. No, sir.

Q. Did you ever have any talk with Mrs. Ostrom? A. No, sir.

Q. Do you know Mrs. Ostrom? A. No, sir.

Q. Did you ever see Mrs. Ostrom? A. No, sir.

Q. Where did she get those pictures, if you know? A. Well, at the home of Uncle Anthony—(interrupted).

Mr. Martin: Is she speculating?

The Court: If you know. Yes or no.

Witness: No, sir, I do not know.

Q. Did you give a picture the same as C2 to your uncle Anthony Hirschman? A. Yes, sir; I gave a picture——

Q. Did you give one like C3? A. Yes, sir.

Q. Now, this picture marked C9, did you ever give that to Mrs. Ostrom? A. No, sir; I never gave it to her.

Q. Do you know how she came into possession of it? A. I couldn't say; no, I do not know.

Q. I show you this picture marked C1, and did you ever give that to—— A. No, sir.

Q. Did you ever have that picture? A. I had one exactly the same home.

Q. Do you know where it went to? A. No, sir; I couldn't say. I missed one of them out of the album. I don't know.

Q. But you never sent it to anybody? A. No, sir.

Q. I show you picture marked C10. Did you ever give that picture to anybody? A. I don't think I did, because it wasn't good enough to give. I don't know how that ever got out of the album, it is such a very bad picture.

Q. I understand you to say that you gave none of these pictures? A. No, sir.

Q. That you sent none of them to Mrs. Ostrom? A. No, sir.

Cross-examination by Mr. Martin:

Q. Did you see your mother-in-law, Julia Ferris, up in Binghamton? A. I went there to visit her now and then at her home, to stay with her.

Q. How long did you stay there. Up on Laurel avenue, do you mean? A. What is that?

Q. On Laurel avenue? A. Yes, sir.

Q. Did you stay there very long? A. Week at a time; sometimes ten days, sometimes less.

Q. Did you ever meet Anna Marie Rieber over there? A. No, sir.

Q. The sister of Julia Ferris? A. No, sir.

Q. Did you ever meet Frank Rieber? A. No, sir.

Q. Or George Rieber? A. No, sir.

Q. Or Mrs. George Rieber, Mrs. Corunda M. Tombs that is here to day? A. No, sir.

Q. Did you know Mr. Rieber, the father of Frank? A. No, sir.

Q. Did you know the name of Julia Ferris' father and mother? A. No, sir, I did not.

Q. Did you attend the funeral of Anna Marie Rieber in 1904? A. No, sir.

Q. You did not see Frank Rieber and Mrs. Ostrom at that funeral at all? A. No, sir.

Q. You never went on Thanksgiving to dinner at Julia Ferris' home when Frank Rieber or any other people were there? A. No, sir; nobody there but my immediate family, my children and my husband come up now and then at week-ends and then go back to work.

Q. I am talking about Thanksgiving day. A. No, never did; never.

Q. Did you ever hear anyone in Binghamton address your mother-in-law, Mrs. Ferris, as Aunt Julia? A. No, sir.

Q. Were you sick in 1914? A. No, sir.

Q. Didn't you want to go away on a vacation? A. No, sir. It was only these few years back I haven't been feeling right.

Q. How many years back? A. About a year or two, been under the doctor's care.

Q. Didn't you want to go up to Binghamton and didn't you talk it over with your husband and have him write a letter to Frank Rieber to take up there? A. No, sir.

Q. You are sure about that? A. Yes, sir, positive.

JOHN H. KEFFER, sworn for defendant.

Direct examination by Mr. Carrick:

Q. You live in Bayonne, Mr. Keffer? A. I do.

Q. What is your age? A. 27 years old.

Q. How long have you lived in Bayonne? A. Since September, 1910.

Q. What is your employment? A. Wax refiner, Tidewater Oil Company.

Q. How long have you been with them? A. I have been with the Tidewater since about 1915. Of course, I have gone to school in between and I was away at war for a year and a half.

Q. You are the husband of Charlotte Marie Keffer? A. I am.

Q. And when were you married to her? A. In the early part of 1919.

Q. What was her maiden name? A. Charlotte Marie Hadlick.

Q. And where was she living at the time you were married? A. She was living with Mr. and Mrs. Hirschman at 1070 Broadway, Bayonne.

Q. After you were married where did you live? A. Why, we didn't go to housekeeping for a while but when we went to housekeeping we went into 1070 Broadway when he changed the big house over into a four family apartment.

Q. In the period before you went to housekeeping, where did you live? A. I lived at the time home and my wife lived with Mr. and Mrs. Hirschman.

Q. Were you living in the adjoining house to the Hirschman's at the time when Mrs. Hirschman died? A. Yes, sir.

Q. And that was in December, 1919? A. December, 1919.

Q. Did you know of any telegram or telegrams being sent on the occasion of Mrs. Hirschman's death? A. Yes, sir.

Q. What did you know about that? A. I went to the telegraph office with Mr. Hirschman when he sent these telegrams.

Q. What telegrams did he send? A. He sent a telegram to Mr. Steffens.

Q. Where was that? A. At Charleston, S. C., 9 Rutledge avenue, I believe the address is; he sent one to Grace Gardner and one to Mr. Gardner in Union Hill.

Q. Where was Grace Gardner? A. As I remember she was in Rockshelf Lake or Cochochton.

Q. Did you have a memorandum of those addresses? A. I had the one that was given to me by Mr. Hirschman at that time.

Q. You were there at the funeral of Mrs. Hirschman? A. I was.

Q. And who attended that funeral of those to whom the telegrams had been sent? A. Only Grace Gardner and Mr. Gardner and his family.

Q. He lived in Union Hill? A. Union Hill, yes, sir.

Q. Mr. Steffens was not there? A. No, sir.

Q. Now, when Mr. Anton Hirschman died, which was, as I recall it, May 18th or 19th, 1920, that is the following May—— A. Yes, sir.

Q. Were there any telegrams sent? A. I sent telegrams to the same people.

Q. That is to Steffens? A. Steffens, Grace Gardner and Mr. Gardner.

Q. And did you have—where did you get these addresses? A. I had the same memorandum which I had at the time Mrs. Hirschman died.

Q. In whose name did you send those telegrams? A. I sent them in my wife's name.

Q. Now, what was the telegram that you sent to Mr. Steffens in South Carolina? A. "Anton Hirschman died last night."

Q. Is that all? A. That is all.

Q. Did you use the word "Uncle" at all? A. No, sir. I signed it "Anton Hirschman".

Q. Did you during the time that you knew the Hirschman family, while you were courting your wife or after your marriage, know of any relatives of Mr. Hirschman? A. I met Mr. Ferris once, I believe.

Q. That is Mr. Warren Ferris? A. Mr. Warren Ferris, during that time.

Q. And how were you introduced to him? A. Why, as near as I recollect, "Mr. Ferris".

Q. Were you introduced as relative? A. No; just he introduced me to him as Mr. Ferris.

Q. Did you know of any of the other people, the Riebers? A. No, sir; I had never heard of them.

Q. Or the other people who have come here and testified, Steffens? A. I heard of a girl by the name of Theodora whose letters I saw that come to my wife.

Q. What did you know about Theodora? A. Just that she was a friend of the family.

Cross-examination by Mr. Hudspeth:

Q. How long did you know Mr. Hirschman before you married your wife? A. I met Mr. Hirschman in about May, 1914.

Q. Did you live in the same neighborhood where they lived? A. He lived 53rd and I lived 36th street in Bayonne.

Q. What year did you marry your wife? A. 1919.

Q. Where did you visit her before you married her? A. At 1070 Broadway; never any other place.

Q. And did you frequently see Mr. Hirschman at the time you were courting your wife? A. Yes, sir; very often, because he used to do my German lessons when I was in High School.

Q. Now, did you ever inquire from him or have

any discussion with him about the members of his family? A. No, sir.

Q. That is up to the time you and your wife were married? A. Yes, sir.

Q. Then it was after your marriage that you referred to Mr.— A. No, sir.

Q. Before? A. Before.

Q. And after you and your wife lived together —oh, how long did your wife continue to live with Mr. Hirschman after you and she were married? A. Well, I think we went to keeping house in September, 1919, around there.

Q. And after you were married and while she was living at the Hirschman's did you frequently call to see her there? A. Every day.

Q. Every day. Now, were there any discussions with Mr. Hirschman during that period about his relatives? A. No, sir.

Q. And after you and your wife lived together how often did you see Mr. Hirschman or were you at his house? A. Every day, because he practically took his meals with us. His wife was ill at the time and was not able to make his meals and my wife made his meals and I used to take Mrs. Hirschman's in to her when she lay in bed in the house next door.

Q. Then you were all very friendly? A. Yes, sir.

Q. Spent your evenings together? A. Yes, sir.

Q. Was there never any discussion about the relatives? A. No, sir.

Q. Had you ever heard of any of these people whom you sent the telegrams to—to whom the telegrams were sent after Mrs. Hirschman's death, before that time? A. The only one was Theodora.

Q. And what did you understand about Theo-

dora? A. That she was just a friend of my wife or friend of the family through Mr. Steffens who visited there, I believe, in 1914.

Q. So that, although your wife had been an intimate of Mr. Hirschman's house many years before you married her and although you had seen a great deal of Mr. and Mrs. Hirschman after your marriage there was never any discussion between you and them as to who composed their family? A. No, sir.

Q. Nor was there any talk about who were the members of Mrs. Hirschman's family? A. I knew this Grace Gardner and I met some of the Gardners.

Q. So that you knew that they were relatives of Mrs. Hirschman? A. Mrs. Hirschman, yes, sir.

Q. Do I understand that you did not know who Mr. Hirschman's relative were? A. No, sir; I never heard him speak about it.

Q. You say you went to the telegraph office with Mr. Hirschman after the death of his wife and sent these various telegrams? A. I went with him.

Q. Did you inquire at that time who Steffens was? A. No, sir; the only thing I knew him as was a friend of Mr. Hirschman's.

Q. Had you heard of the Steffenses before then? A. Not Mr.; I have heard of Theodora, and how I come to know her was through my wife who said that Mr. Steffens was there during 1914.

Q. Now, when Mr. Steffens sent these telegrams —Mr. Hirschman sent these telegrams and one of them to Steffens did you make any inquiry as to why he was notifying Steffens when you knew that the other telegrams were addressed to members of the family? A. Why, no, sir.

Q. Didn't it occur to you that Mr. Steffens must

be a relative or very close friend in order to require a telegram to notify him of Mrs. Hirschman's death? A. I imagined he was a close friend to Mr. Hirschman in some connection.

Q. Now, although you had married your wife, who was so close to the Hirschmans, did you never afterwards make any inquiry as to who Mr. Steffens was or why he should be telegraphed to? A. No, sir.

Q. And what did you understand to be the relation, if any, between your wife and Mr. Hirschman? A. I had heard it rumored, that her mother was adopted but I never questioned her because I didn't want to hurt the girl's feelings.

Q. Did you never ask Mr. or Mrs. Hirschman about it? A. No, sir; because they were peculiar people; people that you couldn't talk to.

Q. Did you believe that your wife was related by the adoption of her mother by the Hirschmans? A. As far as I knew I always thought that she was their own granddaughter.

Q. Then how did it come that if you believed that your wife was a relative of the Hirschmans either by blood or adoption that you did not make any inquiry when you found Mr. Hirschman telegraphing to these various people as to the death of his wife as to their relationship? A. Why, I didn't think it was necessary.

Q. How did it come then that upon the death of Mr. Hirschman you wired Mr. Steffens? A. Because I had this memorandum of the people that we wired at the time of Mrs. Hirschman's death and thought it was just that I should wire them, when Mr. Hirschman had.

Q. Who had made up that memorandum? A. Mr. Hirschman. He got the addresses from my wife at the time Mrs. Hirschman died. He gave

them to me in the telegraph office when we telegraphed the relatives at the time of Mrs. Hirschman's death and I carried it with me.

Q. You knew at that time that he got those addresses from your wife? A. Well, he told me he did.

Q. Did you ever inquire from your wife then what the reason was for notifying Steffens? A. No, sir.

Cross-examination by Mr. Martin:

Q. Did your wife—was your wife a pupil over at the Carnegie Institute of Music? A. She took music lessons there, yes, sir.

Q. When she was married was there an article in the paper saying that New York will miss Miss Hadlick or get her back—New York is calling Miss Hadlick back? A. Not to my knowledge.

Q. Didn't you see that? A. No, sir.

Q. Didn't see that cut out of the paper? A. No, sir.

Q. You knew Theodora Moore as—knew of her as Theodora Steffens, didn't you? A. Theodora Steffens, yes, sir.

Q. And when you sen this telegram down to 9 Rutledge avenue, Charleston, S. C., you addressed it to what Steffens? A. To Mr. Frank.

Q. Frank B.? A. I couldn't say his middle initial. I do not remember that.

Q. You only sent those two telegrams, one to Grace Gardner and one to Frank B. Steffens? A. No, three telegrams.

Q. Who was the other? A. Will Gardner, Union Hill.

Q. Will Gardner? A. Will Gardner of Union Hill.

Q. Now, you did have a doubt in your mind before Anton Hirschman died as to whether or not Katherine Daisetta Hadlick had been adopted by Anton Hirschman, didn't you? A. Why, it was just—you might call it a doubt, because I heard one person tell me so.

Q. Who was that? A. Oh, some old lady in Bayonne. I don't just recall her name.

Q. Wasn't the old lady in Bayonne Mrs. Charlotte Hirschman? A. No, sir.

Q. It wasn't Anton? A. No, sir.

Q. Never talked to Grace Gardner? A. Said a few words to her.

Q. On that subject? A. Never on that subject.

Q. And knew she had been in the family there 29 years, didn't you? A. Sure I did.

Q. She usually sat with the other members of the family when she finally got through with her work, didn't she? A. Surely.

Q. She would talk with the family about family matters? A. Very little.

Q. Now, didn't you hear from Mrs. Hirschman and Anton Hirschman that the Steffenses were a little high toned and a little bit well to do down south there? A. No, sir.

Q. You didn't know that Steffens was at one time very well to do, did you? A. I did not.

Q. Did you know that he had been to Europe with his family and educated his children? A. I did not.

Q. You don't know that that was family talk around? A. Not to my knowledge.

Q. I mean in the Hirschman household? A. I never heard it though.

Q. You signed your name as a witness to this contract of March 27, 1920, didn't you between your wife and Warren Ferris? A. I did.

Q. You remember that without my showing it to you? A. Yes, sir; I do.

Q. You read that contract at the time, didn't you? A. I read the contract.

Q. Yes. A. I read the contract, yes, sir.

Q. You were very much concerned in the contract? A. Naturally I would be, she being my wife.

Q. And you knew what the contract said, something to the effect that there wasn't any real legal evidence of the fact that she had been adopted? A. Yes, sir.

Q. You sent this telegram to Frank Steffens? A. In my wife's name.

Q. How was that, Charlotte Marie Keffer? A. Charlotte Marie Keffer.

Q. And did you ever know of a letter being received by your wife or at the address where she lived from Frank Steffens, letter of condolence? A. Not to my knowledge.

Q. Did you ever hear Anton Hirschman say that he was born in Austria? A. Why, he showed me a little picture——

Q. Born in Bohemia? A. It seems to me it is Bohemia.

Q. Did he say Friedland? A. No; he told me some part of Bohemia. I do not just recall. He wrote on the back of it the date of his birth and his name, picture of the village.

Q. He didn't have a family bible, did he? A. I don't think he did.

Q. Did his wife? A. There is a family bible around the house.

Q. Any entries in it concerning the family of Anton Hirschman? A. I never read it.

Q. What kind of a bible is it, big bible or little bit of a tiny one like the one in front of the Vice Chancellor? A. Big bible.

Q. What? A. Fairly good sized bible.

Q. You don't know whether there were any entries in that? A. Not to my knowledge.

Q. Because you never looked at it? A. I never looked at it.

Q. Well, did he say that where he was born was at Reichberg? A. He said he was born in some part of Bohemia.

Q. Didn't say Friedland? A. He may have said it. I do not remember it.

Q. Did he say he was an Austrian? A. He said he was born in Bohemia.

Q. Did he tell you that his father was buried in Hortenville? A. No, sir; he never spoke of his relatives to amount to anything at all, if he had any.

Q. Well, didn't you know who his father was? A. No, sir; I never knew anything about it.

Q. Didn't you know who his mother was? A. No, sir.

Q. Didn't you ever ask him whether he came over here alone as an immigrant or whether he came with his family? A. I never asked him that question.

Q. Did you ask him whether he came when he was young or after he had received his education? A. He told me he'd come over here when he was young.

Q. You didn't inquire whether he came here when he was very young or came alone or with somebody? A. No; I did not.

Q. Well, now, you have been in Hortenville, haven't you? A. I was in Hortenville once.

Q. When? A. About October, 1921.

Q. Wasn't it October, 1922? A. Yes, sir.

Q. Wasn't it shortly after this property was sold? A. No, sir.

Q. Do you know Mrs. Theobold up there? A. No.

Q. Were you with your wife in Hortenville? A. Yes, sir, wife and child.

Q. How long did you stay there? A. About forty minutes.

Q. Did you get to Beechwood? A. No, sir.

Q. Did you get to the Free German Presbyterian Church? A. No, sir.

Q. Or the German Free Presbyterian Church? You never saw that monument of old Anton Hirschman, the grandfather, up there? A. No, sir.

Q. What did you go there for? A. To see a party by the name of Gardner. I think it was the father of the District Attorney, if I am not mistaken.

Q. Wasn't it the District Attorney, Frank Henry Gardner? A. The old gentleman, Henry Gardner.

Q. Wasn't it the gentleman to whom Mrs. Raymond placed her claim against the estate? A. No; this man was about 90 years old that I saw.

Q. Then this is the father then of the man in whose hands Mrs. Raymond placed her claim? A. It might have been. I couldn't say. I don't know the family well enough.

By the Court:

Q. When you sent these telegrams announcing Anton's death did you know that his wife was a relative of the Gardners? A. Yes, sir, because Grace Gardner was her cousin.

Q. Is that the reason you sent telegrams to the Gardners? A. At the time of Mr. Hirschman's death?

Q. Yes. A. I sent telegrams to the same people.

Q. Is that the reason you sent to the Gardners?

A. No; I sent them to them because we sent them at the time of her death.

Q. At that time you knew—at the time you sent them you knew that they were relatives of your wife, didn't you? A. That is on the Gardner side.

Q. And knew they were relatives of the Hirschmans? A. Of Mrs. Hirschman, yes, sir.

Q. And you didn't know that Steffens was a relative? A. No, sir.

Q. Of Mr. Hirschman? A. Never had been told so.

Q. Tell me why it was that you sent the telegram in your wife's name instead of your own? A. I thought if I sent them in my name they would not know who they come from because they didn't know my name.

Q. The Gardners knew your name, didn't they? A. Yes, sir; the Gardners knew my name.

Q. Didn't you send the telegrams to the Gardners because they were related to your wife? A. Yes, sir.

Q. And didn't you send to Steffens in the name of your wife because you thought Steffens was related to the Hirschmans? A. No, sir; I sent him one because Mr. Hirschman sent him one at the time Mrs. Hirschman died.

Q. Well, if it was because Mr. Hirschman sent him a telegram announcing his wife's death that you sent the telegram announcing Mr. Hirschman's death, and just because he had done the same thing, why didn't you sign your name instead of your wife's name? A. To the Gardners or Steffenses?

Q. Both; both Steffens and Gardner? A. Well, they knew her better than they knew me.

Q. Didn't you send them because you thought they were somewhat or somehow related to the Hirschmans? A. Well, she knew them.

Q. Didn't you send these telegrams in the name of your wife because you regarded both the Gardners and the Steffenses somehow related to the Hirschmans? A. No, sir.

Q. Hadn't you that in mind at all when you sent the telegrams in your wife's name instead of your own name? A. Not that they were relatives, only the Gardners, not Mr. Steffens.

Further cross-examination by Mr. Martin:

Q. Mr. Keffer, you knew Charles Hadlick, didn't you? A. Yes, sir.

Q. He was the father of your wife? A. Yes, sir.

Q. And how often did you and your wife see Charles Hadlick? A. Before we were married or after?

Q. Well, up to the time of the serving of these papers on you, December 23, 1922? A. The total number of times I seen him?

Q. No, how often, twice a month or once a year or what? A. Once a year, about.

Q. And you know he was living at 517 Nostrand avenue? A. Yes, sir.

Q. Brooklyn? A. Yes, sir.

Q. And you knew that he worked in the Post Office Department in New York City, did you? A. Yes, sir.

Q. And did your wife know it too? A. Why, surely.

Q. And did you know that in June or May, 1922, that Charles Hadlick was living at 517 Nostrand avenue, Brooklyn? A. May, 1922?

Q. May or June, 1922. About June—did you know it then as well as knowing it all other times? A. Yes, sir.

Q. Now, Mr. Hadlick was there the evening or the afternoon when Mr. Frederick Carruth and his father Charles R. Carruth served these papers on your wife? A. Yes, sir.

Q. That is December 23, 1922? A. Yes, sir.

Q. The Saturday before Christmas 1922? A. 1922.

Q. Mr. Carruth said to you they didn't have papers enough to give you one but you better consider the injunction, didn't he? A. Yes, sir.

Q. And that he would give your wife the set of papers, is that what he said? A. That is what he said.

Q. Did your wife read those papers? A. Sure she did.

Q. Didn't Frederick Carruth or his father say to your wife, "What have you done with this money?" A. Yes, sir.

Q. And didn't she say, "I have spent it; I haven't got it now." A. That is what she said.

CHARLOTTE MARIE KEFFER, sworn for defendant.

Direct examination by Mr. Carrick:

Q. You are one of the defendants, Mrs. Keffer? A. Yes, sir.

Q. And you were born in Bayonne? A. Yes, sir.

Q. Your maiden name was Hadlick? A. Yes, sir.

Q. Do you recall your mother? A. Yes, sir.

Q. How old were you at the time of your mother's death? A. About thirteen.

Q. When did she die? A. August 22, 1908.

Q. And where were you living at that time? A. 1070 Broadway, Bayonne, N. J.

Q. At that time in the household of Anton Hirschman? A. No, sir. Two attached houses, 1070 and 1072 were attached and we had a door cut through from one house to the other that we could go back and forth.

Q. Now, were you living in that way at your earliest recollection as a child, Mrs. Keffer? A. Yes, sir.

Q. And how were you addressed by Anton Hirschman and his wife? A. They always called me Lottie. When they mentioned me to persons outside they always called me granddaughter.

Q. What did you call them? A. I called them grandma and grandpa.

Q. How did they address your mother? A. They called her Daisy.

Mr. Martin: I object upon the ground stated in the case of Dawson *v.* , 89 Equity, which holds that there can be no evidence of adoption, which is a legal act, excepting the records.

The Court: Objection overruled. He simply asked how she was addressed.

Q. And how did your mother address Mr. Anton Hirschman and his wife? A. As ma and pa.

Q. Was that uniformly so? A. Yes, sir.

Q. During the life of your mother? A. I believe so.

Q. Now, Mrs. Keffer, what relations did you know of that your uncle or your grandfather Anton Hirschman had? A. Why, only Aunt Julia, as we called her—Julia Ferris—and Warren her son.

Q. Do you remember Aunt Julia, Julia Ferris? A. Yes, sir; very well.

Q. After she died did you see anything of Mr.

Ferris, Warren Ferris? A. Once in a while. I attended her funeral with my grandfather.

Q. Where was the funeral of Aunt Julia? A. At the home of Warren Ferris, 186 Manhattan avenue.

Q. Jersey City? A. Yes, sir.

Q. Was that after or before your mother's death? A. That was after my mother's death.

Q. Did you ever hear your grandfather or grandmother refer to any of the relatives of Aunt Julia Ferris and Warren Ferris? A. No, sir.

Q. Mrs. Raymond, or Grace Gardner, as she then was, was living in the house during all the time that you remember? A. Well, up until about 1914 or 1915. She was taken very sick—it was my last year in High School and she was very sick. I came home from High School one day and grandma said she was dying. We got a couple of specialists—(interrupted).

Q. Then she went away for some time? A. After she became well enough she went away to the country to regain her strength.

Q. She came back? A. She came back different intervals after that. I believe her mother wouldn't let her come back.

Q. Did you ever hear her refer to any of the Hirschman relatives? A. No, sir.

Q. Now, there has been some reference to the visits from time to time—rather periodical visits—of Frank Steffens. Do you know anything about Mr. Frank Steffens coming into the household? A. I can recall one time when he came. I do not believe I saw him in the evening. I saw him in the morning and played the mandolin for him and my former music teacher accompanied me on the piano and he said at that time—he spoke of his daughters and said he would like me to correspond

with them, he said when he got home he would tell them to correspond with me, and this one did correspond with me.

Q. Now, was that after your mother's death? A. Yes, sir.

Q. How old were you at that time? A. Oh, I was about twenty.

Q. And how was he introduced to you? A. Just as Mr. Steffens.

Q. Who introduced you? A. Why, it wasn't really introduced. They called him Frank Steffens and grandfather didn't take much notice of him, just spoke to him there that morning when I played. They said how nice I played. They all spoke about my musical talent and how it would be if I should go on and study, and what I should do.

Q. Well, was anything said then to indicate that he was related to the Hirschmans? A. No, sir.

Q. Was there anything said in his request that you should correspond with his daughters to indicate that he was a relative? A. No, sir.

Q. Did you after that time correspond with his daughters or one of his daughters? A. Yes, sir.

Q. With whom? A. With Theodora.

Q. Did he give you the address of Theodora? A. No, sir; she wrote to me first.

Q. How did she address you? A. "Dear Charlotte".

Q. And how did you address her in reply? A. Sometimes I called her "Dear Theo", as she signed herself and sometimes as "Theodora".

Q. Was there any occasion when you ever saw a letter from her in which you were addressed as "cousin"? A. No, sir.

Q. Or was there anything in the correspondence that you received from her that claimed relationship or indicated relationship? A. No, sir.

Q. Did you ever address her as "cousin"? A. No, sir.

Q. I show you, Mrs. Keffer, the four pieces of correspondence, two letters and two cards which have been marked in evidence or marked for identification as Exhibits D K-1 to 4 inclusive and ask you where you got these papers? A. They were correspondence just between Miss Theodora and myself.

Q. Are these all that you have been able to find? A. That is all I have been able to find. They were among some war time letters of mine.

Q. Have you made a search among all your papers to see if there are any others? A. Yes, sir.

Q. Are you very sure you never were addressed by Theodora as "cousin"?

The Court: She said so.

Mr. Carrick: I offer the letters and cards in evidence.

Q. Mrs. Keffer, I show you a printed paper contained in an inner envelope and another envelope, will you tell me what that is? A. That is an invitation to the marriage of my mother.

Q. Where did you get that? A. That was among some personal papers that I found in the house after Mrs. Hirschman's death and I have always kept it.

Mr. Carrick: I offer it in evidence.

Mr. Martin: I object on the same ground as stated.

Paper marked Exhibit D K-5.

Q. I show you, Mrs. Keffer, another paper, contained in an envelope and ask you what that is?

A. That is a certificate of marriage of my father and my mother.

Q. Where did you find that? A. With these other papers, in the name of Hirschman.

Q. Charles Hadlick and Miss Daisetta Hirschman?

Mr. Carrick: I offer that in evidence.

Paper marked Exhibit D-K-6.

Q. Now, Mrs. Keffer, at one time, if at all, prior to your grandmother's death, did you hear anything of an adoption of your mother? A. Well, there was an old lady that told me that mother was adopted.

Q. Now, when was that? A. Well, that was while grandma was very sick.

Q. You mean her last illness? A. Yes, sir; and I spoke to her about it and she——

Mr. Martin: I object.

Q. Who was the person who told you about it? A. Why, I just can't recall her name; just an old lady that lived in the town there; that was all.

Q. Had you heard at any time before that that your mother was an adopted daughter? A. No, sir.

Q. Had you ever had any doubt cast upon the fact that she was the daughter of Mr. and Mrs. Hirschman? A. No, sir.

Q. Now, did you speak to your grandmother about that? A. Why, she was very ill at the time and I thought of saying something to her but she went off into a spell of faintness and I never approached her upon the subject again.

Q. You never spoke to your grandfather about it up to that time? A. No, sir.

Q. And after your grandmother's death did you speak to your grandfather at all on the subject? A. No, sir.

Q. Did you ever speak to your grandfather about making provision for you? A. Yes, sir.

Mr. Martin: I object.

Mr. Carrick: I ask that it be taken and strike it out if it turns out to be irrelevant. I think statements that he makes, what his intentions are and his relations to her and what her relations are to him will be relevant as being family pedigree.

The Court: Go on. Let us hear what it is.

Q. (Question read) What was it and what was the occasion? A. Yes, sir, it was during thrift week—it was make a will day.

Q. When was that? A. It was after grandma had died. I imagine it was in February or March.

Q. 1920? A. 1920. I said to him, "Pa, why don't you make a will?" He says, "Well, Lottie, everything is yours, why should I make a will?"

Q. Was there any other occasion that you had spoken to him about provision for you or your status in the family? A. No, sir.

Q. Now, did you know about the sending of the telegrams after your grandfather's death to Steffens and the Gardners? A. Well, I had known Mr. Keffer had sent them for me.

Q. You were sick? A. Not at the time Mr. Hirschman died, grandfather; at the time of Mrs. Hirschman's death I was.

Q. At the time of grandmother's death, that was shortly after the birth of your child? A. Yes, sir.

Q. Did you ever hear any question or discus-

sion up to that time that Frank Steffens was a relative of the Hirschmans? A. No, sir.

Q. When did you confer—or hear of Warren Ferris—of his claim to be the sole heir? A. When, after the funeral, we had a little talk.

Q. On the same day? A. Yes, sir, after Mr. Hirschman's funeral—grandfather Hirschman's funeral we had a little talk. He said, "Well, now, there is none of them left, mother has gone—just between us." I said, "Well, Warren I think I am heir" I said, "I am granddaughter." He says, "Well," he says, "I am not sure about that, but" he said, "I think I am heir." I said, "Why?" He said, "My mother was Mr. Hirschman's sister", and I said, "Well, I think mother was the daughter; I don't see why I shouldn't come in for something." And he said, "No, mother was not the daughter. Of course, she was an adopted daughter," and finally after that he said, "Well, meet me again." And soon after that he came.

Q. He came again to see you? A. Yes, sir.

Q. Within what time was that? A. Within two or three days.

Q. Did he come alone? A. No, he came with Mrs. Ferris.

Q. With Mrs. Ferris? A. Yes, sir.

Q. And what was the talk then? A. Why he said that we would draw up this agreement. He thought it best that we both would share equal. He thought I had lived in the household there and thinking I was granddaughter I should come in for something and he thought that mother was not adopted exactly by law—he wasn't sure and I wasn't sure, as far as we could find out, so this agreement—he took me to this Mr. Nickle's home on Summit avenue, Jersey City, and Mr. Nickle had already been outlined.

Q. Who went to Mr. Nickle's home then? A. Mr. and Mrs. Ferris and Mr. Keffer and myself.

Q. You say the agreement had been outlined—you mean it had been put in type? A. No, just a rough sketch drawn of it—the backbone of it—and then read to us.

Q. Who read it to you, Mr. Nickle? A. Mr. Nickle.

Q. What was done after that? A. Why, he said he'd have it typewritten and we should come and sign it.

Q. And did you all meet again? A. Yes, sir.

Q. Some time later and signed it? A. Within two or three days after that.

Q. And this agreement which has been marked Exhibit C12 in evidence is the agreement that was afterwards signed, is it? A. Yes, sir.

Q. And this bears date of the 27th day of May, 1920. Was that the day when it was signed? A. Yes, sir.

Q. Now, up to that time had you had any information other than this claim which had been made to you by Warren Ferris that he was the sole heir? A. No.

Q. Did you know of any other blood relatives of the Hirschmans? A. No, sir.

Cross-examination by Mr. Demarest:

Q. How old were you when you first remember being a member of Mr. Hirschman's household? A. Why, after mother died we still kept up mother's home at 1072 and father and I had our meals and went back and forth in the house as we always had done.

Q. How old were you? A. When mother died or when——

Q. At that time? A. Well, that was—I was thirteen years old.

Q. About thirteen? A. Yes, sir.

Q. Had you seen as much of Mr. Hirschman before your mother died and you were thirteen years old? A. Oh, yes; we were back and forth all the time.

Q. Did you before the date of your mother's death suppose that you were the daughter—that you were the daughter of the adopted daughter of Mr. Hirschman? A. No such thing ever came into my head. I never had any such information.

Q. You had no suspicions about it then? A. No, sir.

Q. Nor didn't trouble your mind about it? A. No, sir.

Q. When did that notion begin to interest you, whether you were Mr. Hirschman's blood relative or not? A. Why, after the funeral when Mr. Ferris spoke of it.

Q. Never before that? A. Why, no, only the time that this old lady said something about it and I didn't bother about it after that.

Q. How old were you at the time the old lady spoke to you about your relationship to Mr. Hirschman? A. 23.

Q. You were married at that time? A. Yes, sir.

Q. And previous to the time that this old lady spoke to you about it, did you suppose that Mr. Hirschman was your grandfather or was not your grandfather? A. Was my grandfather.

Q. Never had any doubt about it? A. No, sir.

Q. Well, now, you talked with this old lady—it had produced a doubt in your mind? A. Well, no, it didn't produce a doubt in my mind.

Q. How long was it before Mr. Hirschman died did you talk with this old lady? A. Eight months.

Q. Then it was only two or three months before the death of Mrs. Hirschman? A. Yes, sir.

Q. Well, now, didn't you after years of supposition that you were a member of the family make inquiry from Mr. and Mrs. Hirschman as to whether or not you were a blood relative or whether your mother had been adopted by them? A. No, sir; only at that time, Mrs. Hirschman was very very ill and she fainted away and I never mentioned it to her after.

Q. How long was it before Mrs. Hirschman's death that you say she fainted? A. Oh, two months and a half.

Q. Did you speak to her about it the day she fainted? A. That is the day I spoke to her.

Q. What did you say to her? A. I said, "Well, ma, I just heard mother has been adopted." She said, "Don't pay any attention" and she went off.

Q. Did that stupor your mind as to the situation? A. Why, yes, because I never give it another thought.

Q. You didn't think of it again until after your so-called grandmother was dead? A. Yes, sir.

Q. But then did you speak to Mr. Hirschman about it? A. No, sir.

Q. Why not? A. He was a very irrational man to talk to; fly up in the air at anything.

Q. How long was it before Mr. Hirschman's death that you had your talk with him about the promise to leave you something at the time of his death? A. Two or three months.

Q. Well, now, upon that occasion didn't you have in mind the question of your relationship to him? A. No, sir, because we lived in the house together all the time there as one of the family; never thought of such a thing.

Q. And did you continue in your belief that, without any doubt at all in your mind, that you were his granddaughter up to the date of his death? A. Yes, sir.

Q. And Mr. Ferris' information to you that your mother had never been adopted was the first that you had ever received to that effect except from the old lady? A. Yes, sir.

Q. Now, you saw a great deal of Mr. and Mrs. Hirschman before their death, didn't you? A. Yes, sir.

Q. Saw them almost every day, didn't you? A. Yes, sir.

Q. Spent your evenings with them? A. Yes, sir.

Q. Both before and after your mother's death? A. Well, of course, before why—before mother's death, why, where mother went I went. We didn't spend every evening there.

Q. And you did know about the relationship of these several people with Mrs. Hirschman, did you not—you knew her relatives? A. Why, yes.

Q. And you knew who they were? A. Yes, sir.

Q. And where they lived? A. Yes, sir.

Q. Well, now, did you never make any inquiry from either Mr. or Mrs. Hirschman as to who Mr. Hirschman's relatives were? A. No, sir.

Q. Why not? A. Why, I never was interested in it.

Q. Didn't you know who his grandfather was? A. No, sir.

Q. Did you know of what nationality his forefathers were? A. He spoke of coming from Austria so I imagined they were Austrians.

Q. Now, didn't that interest you to ask some questions when you found they came from Austria? A. Well, it wouldn't have done any good to ask questions of Mr. Hirschman, he wouldn't answer them for you if you did ask questions.

Q. You heard Mr. Hirschman had been born in Austria, didn't you? A. Yes, sir.

Q. Now, didn't, after you learned that, it become a question of interest to you where his relatives were, how many on this side of the water and how many in Austria? A. He never spoke of relatives.

Q. Well, didn't that occur to you? A. No, sir.

Q. Didn't you ask him how many relatives he had in this country and how many were over there? A. No, sir.

Q. Did you never hear him speak of going back to Austria to see his relatives on the other side? A. No, sir; never knew he went back to Austria.

Q. Did he ever mention about taking or liking to take a trip to Austria? A. No, sir; never spoke of any relatives in Austria.

Q. And you, knowing he had been born in Austria and come here, were not enough interested in his family to ask him who his relatives were or where they were? A. No, sir.

The Court: Did he tell you that he had a sister?

Witness: Nothing more than Mrs. Ferris. He visited her very frequently. I knew she was his sister.

Q. Did he ever mention his father as being dead or alive? A. No, sir.

Q. Ever say whether his mother was dead or alive? A. No, sir.

Q. And do you mean to say, Mrs. Keffer, that being in that house all those years, so intimately acquainted with Mr. and Mrs. Hirschman, and believing yourself to be a blood relative, that you never made a single inquiry of either of them as to who Mr. Hirschman's relatives were? A. I never did.

Q. But you did know that Mr. Ferris was a relative? A. Yes, sir.

Q. Now, where did you learn that? A. Why, his mother frequented us very often—visited us.

Q. You knew her very well? A. Yes, sir, because I called her Aunt Julia.

Q. And were very friendly with her? A. Yes, sir.

Q. And she was a very nice dispositioned woman, wasn't she? A. Seemed to be.

Q. She didn't have any of the excitable qualities that Mr. Hirschman had? A. No.

Q. Why didn't you ask her about who the relatives were? A. I never thought about asking anybody who the relatives was.

Q. Weren't you enough interested, if she were a woman with whom you were friendly and could talk freely, if Mr. Hirschman was such peculiar man, to ask her who the membsrs of the family were? A. Why, I was only a girl. I wasn't interested in who the members of the family were.

Q. How old were you when Mrs. Ferris died? A. Why, Mrs. Ferris died in 1918. I must have been 22 years old.

Q. Now, you were 23 when Mrs. Hirschman died? A. 1919 that was.

Q. So that you never knew any of these various clients represented by Judge Martin, whose names you have heard read today and who have testified upon this stand—never heard anything about any of them? A. Never heard of them, no, sir.

Q. Did you after Mr. Hirschman's death, when you talked with Mr. Warren Ferris, understand that if your mother were the regularly adopted daughter of Mr. Mirschman that you were entitled to the entire estate? A. Yes.

Q. Where did you get that idea from? A. Because I think if she was the adopted daughter she should get everything.

Q. So that up to the time that Mr. Warren Ferris spoke to you you supposed you were the heir and only heir at law of Mr. Anton Hirschman? A. Yes, sir.

Q. Well, now, when Mr. Ferris told you that your mother hadn't been adopted did you believe him? A. Why, I didn't know what to think, and I finally looked up—looked around the house to see if there were any papers, and had it looked up, and no papers could be found.

Q. Did you know that if your mother had not been legally adopted that Mr. Ferris or Mr. Hirschman's heirs at law would be, to the exclusion of you, entitled to his entire estate? A. I did not know, because mother was married and brought up under their name and I supposed I should come in for something as long as I was her daughter.

Q. Let me put it in another way. Did you appreciate that if your mother had not been adopted that you as her daughter were not entitled to any part of Mr. Hirschman's estate? A. I thought I lived there and I deserved something for living with real old people.

Q. Did you know that if your mother hadn't been legally adopted that in sharing the estate with Mr. Ferris you were taking from him one-half of what belonged to him? A. Why, he agreed to give me half.

The Court: Answer the question.

Q. (Question read.) A. No.

Q. How did you reason out then, that you were either morally or legally entitled to one-half of Mr. Hirschman's estate? A. Why, because he called me granddaughter and I thought I should come in for something.

Q. You say that Mr. Ferris had the contract between you and him prepared at the time that you called at the office of Mr. Nickle? A. It was already outlined, yes, sir.

Q. Had the terms of that contract been agreed upon before the conversation you had immediately before you went with Mr. Ferris to Nickle's office? A. Not that day; it had been before that time.

Q. It had been before that time? A. And apparently he had gone ahead and had it done.

Q. Well, had you agreed with him? A. Yes, sir.

Q. To divide the estate and have such a contract drawn? A. Yes, sir.

Q. Did you see the Consumers Coal & Ice Company—any officer or director of the Consumers Coal & Ice Company regarding the sale of this property? A. No, sir.

Q. Did you employ an agent to sell the property? A. Mr. Sanborn was employed by Mr. Ferris and myself.

Q. You both employed him? A. Yes, sir.

Q. And he was your agent? A. Yes, sir.

Q. What did you at first place as the asking price upon that property? A. About $26,000.

Q. I show you a paper dated January 6, 1921, and ask you whether that is your signature? A. Yes, sir.

Q. And also the signature of Mr. Ferris? A. Yes, sir. That was taken at 616 Avenue E.

Q. By this paper you made Mr. Sanborn your exclusive agent to sell the property for $26,000 cash and gave him an option for ninety days, didn't you? A. Yes, sir.

Q. Now, who procured the Consumers Coal & Ice Company as a purchaser for the property? A. Mr. Sanborn.

Q. Did you have a conversation with any of the officers of the Consumers Coal & Ice Company concerning the purchase of the property? A. No, sir.

Q. Did you know Mr. Thomas Brady? A. I have seen him and been down to the 22nd street office and seen him.

Q. Did you know him very well? A. Not to go talk with, other than when grandfather worked for him I went there quite often to see him.

Q. Did you know Mr. Terrance Brady? A. He was only a block away, I used to see him every day.

Q. Did you know him intimately? A. Nothing particulaly.

Q. Did you talk with either Thomas Brady or Mr. Terrance Brady at any time before the sale of this property about the sale? A. No, sir.

Q. I show you a letter dated February 24, 1922, addressed to Ralph Sanborn by the Consumers Coal & Ice Company and ask you whether that was shown to you by Mr. Sanborn? A. I believe it was.

Q. And after the receipt of that letter you agreed to accept the sum of $21,000, did you not? A. Yes, sir.

Q. Were there any other offers besides the offer of the Consumers Coal & Ice Company for this property submitted to you by Mr. Sanborn? A. Why Mr. Sanborn didn't submit any handwriting but spoke of others.

Q. Did he tell you that he had offers? A. Well, I don't believe he had offers.

Q. Did he mention any amount he was offered for this property? A. Not that I can recall.

Q. Eventually the offer of the Consumers Coal & Ice Company of $21,000 was accepted by you

and Mr. Ferris for the property, was it not? A. Yes, sir.

Q. Now, do you remember being told that—oh, who was your attorney? A. I had no attorney.

Q. Did Mr. Hoffman represent you? A. He represented Mr. Ferris.

Q. Not you? A. Not me.

Q. After you had agreed to accept $21,000 for the property were you told that the title was not suitable to the purchaser? A. Why, I believe Mr. Benny or Mr. Cruden told us that the title would have to be quieted by Chancery, but that is all I can recall until the time when we were taken to Judge Chamberlin's office.

Q. Did you talk to Mr. Benny or his partner, Mr. Cruden, at the time you were told that the title did not—was not acceptable? A. No, sir.

Q. Did you hear from Mr. Benny or Mr. Cruden or Mr. Sanborn or anybody else what the objection to the title was? A. Why, I understood about these Cooney people, and it was also in the papers.

Q. Did you understand that the relatives of Mr. Hirschman had anything to do with the objections made to the title? A. Why, no, sir; I didn't know there was any relatives except Mr. Ferris.

Q. Now, you appeared before Mr. Chamberlin? A. Yes, sir.

Q. Master in Chancery, and made certain depositions, did you not? A. Yes, sir.

Q. And after the conclusion of the suit to quiet title did you sign your name to the paper that I show you? A. Yes, sir.

Q. Is that Mr. Ferris' signature also? A. Yes, sir.

Q. That was taken before Mr. Cruden? A. At the time of the purchase of the property.

Q. At the time the title was passed, was it not? A. Yes, sir.

Q. Did you read that affidavit over at the time you signed it? A. I think I did.

Q. Was the affidavit dictated by Mr. Cruden to the stenographer in your presence? A. I do not recall.

Q. Do you know that in that affidavit you stated that you were one—that—let me quote it, "That the said Anton Hirschman and Charlotte Hirschman's only blood relative was Warren Ferris, one of these deponents". Did you know that was in that affidavit? A. No, sir; I do not recall of reading that.

Q. You knew you were swearing? A. Yes, sir.

Q. To who Mr. Hirschman's relatives were, did you not? A. Yes, sir.

Q. You understood what the affidavit contained at the time you took it, didn't you? A. I believe I did.

Q. Now, I show you another affidavit in printed form which is not marked and I ask you whether that is your signature? A. Yes, sir; that is my signature.

Q. Do you know who prepared that affidavit? A. No, sir.

Q. Did you know that it came from Mr. Hoffman's office? A. No, sir.

Q. Where did you sign that affidavit? A. Benny & Cruden's office, Bayonne.

Q. And you know that this affidavit was given in relation to the title and that it states that, "Deponent makes this affidavit to induce the Consumers Coal & Ice Company to accept the bargain and sale deeds for the premises aforesaid and to pay the consideration therefor knowing that the Consumers Coal & Ice Company relies upon the truth

of the statement contained herein". Did you see that? A. Yes, sir.

Q. At the time you took the affidavit? A. I must have.

Q. And you knew that that affidavit was given for the purpose of inducing the Consumers Coal & Ice Company to pay $21,000 consideration for this property, did you not? A. I understood it to be.

Paper offered in evidence, marked Exhibit D-C-3.

Adjourned until tomorrow morning at ten o'clock.

January 11, 1924.

Appearances as Before.

CHARLOTTE MARIE KEFFER resumed for further cross-examination by Mr. Demarest.

Q. Mrs. Keffer, I show you a paper and ask you whether your signature is on it? A. Yes, sir.

Q. And you recognize the signature of Mr. Ferris also upon that paper? A. Yes, sir.

Q. That is the contract that you signed for the sale of real estate to the Consumers Coal & Ice Company, is it not? A. Yes, sir.

Q. I refer to Exhibit C13. You were present at the office of Benny & Cruden the day that the title to this property was passed, were you not? A. Yes, sir.

Q. Mr. Ferris was also there? A. Yes, sir.

Q. Mr. Sanborn? A. Yes, sir.

Q. And the title was passed by Mr. Cruden? A. Yes, sir.

Q. Do you remember there being presented to you for payment on that occasion a bill of Benny & Cruden for the sum of between three and four hundred dollars for their work for filing a bill to quiet title? A. I believe so.

Q. And do you remember Mr. Ferris upon that occasion stating that he didn't think that the work would cost so much and objected to the payment of the bill? A. Yes, sir.

Q. He did that, didn't he? A. Yes, sir.

Q. And were you also asked to pay the amount of that bill? A. Being as partner with him why, I was.

Q. Did you also object to the payment of the bill? A. Why, yes, sir.

Q. Thought it was too high? A. Yes, sir.

Q. And what was the final outcome of that objection, do you remember? A. Why, it was agreed upon to, I believe, $100 as the payment for that.

Q. That you and Mr. Ferris were to pay $100, you mean? A. Why, in the contract I believe it called for $100 allowed as an expenditure.

Q. No, you are wrong about that. Your contract called for a hundred dollars to be allowed for search fees and surveys in case the title is rejected. There is nothing said about the cost of the bill to quiet title. But did you discuss it at that time, the question of the hundred dollars and insist that there was such a provision in the contract? A. Why, I believe Mr. Ferris did ond of course I believed what he said was all right.

Q. And the reason then that you insisted upon paying only $100 to Benny & Cruden for their services in that suit was because you believed the contract so provided? A. Yes, sir.

Q. Now, I show you a check and ask you

whether the endorsement on the back of that check is your signature? A. Yes, sir.

Q. And that is the check dated October 5, 1922, drawn to your order for the sum of $9,951.69, signed by Benny & Cruden payable upon the Union Trust Company of New Jersey, is it not? A. Yes, sir.

Q. Doesn't that represent your share of the purchase of this property? A. Yes, sir.

Mr. Demarest: I offer it in evidence.
Paper marked Exhibit D-C4.

Q. I show you bill of Benny & Cruden dated September 28, 1922, in the sum of $330, two hundred and twenty-five of which is for services in preparing bill of complaint and prosecuting the suit to quiet title and $105.14 for disbursements. That is the bill, is it not, that was presented to you and Mr. Ferris the day the title was closed and which you were asked to pay? A. I didn't see the bill.

Q. You didn't see the bill? A. No, sir.

Cross-examination by Mr. Martin:

Q. Mrs. Keffer, I think you said yesterday that you were thirteen in 1908 when your mother died? A. Yes, sir.

Q. Were you born then in 1895? A. Yes, sir.

Q. And you are now 28? A. I will be 29 next month.

Q. And did you attend high school—go through high school and graduate? A. Yes, sir.

Q. And after that did you immediately commence to study music or did you——

The Court: Why go into all those things?
Mr. Martin: I think it is important.
The Court: Go on.

Q. Did you go to the Conservatory of Music in New York? A. I went to the Institute of Music Art in New York.

Q. Did you learn to speak German? A. Why, I studied a year of German in high school.

Q. And did you hear your uncle—did you hear Mr. Annton Hirschman speaking German? A. Yes, sir; he spoke frequently at the table.

Q. Did he speak German to you? A. Yes, sir.

Q. Did he speak German to Charlotte Hirschman, his wife? A. Yes, sir.

Q. Did he speak German to Frank Steffens when he was there? A. I could not say.

Q. Didn't you hear him talking with Frank Steffens? A. I did not.

Q. You never heard Anton Hirschman talk with Frank Steffens? A. I don't believe I ever did.

Q. What is your earliest recollection of having seen Mr. Frank Steffens? A. In the year 1913 or 14 he came at night and stayed over night, I believe, and I saw him the next morning and played the mandolin for him in the morning.

Q. Is that the only time? A. Yes, sir; that I can recollect of having seen him.

Q. Did Frank Steffens speak in German to you? A. No, sir.

Q. Well, did you know that Mr. Anton Hirschman was born in a country where German was spoken, in other words that that was his native language? A. Why, I understood he come from Austria or some part of Bohemia. He always spoke of that as his birthplace.

Q. Before the commencement of this suit you didn't tell that to Benny & Cruden, did you, or Benny or Cruden? A. I was never asked that.

Q. Did you never have any talk with them at all? A. No, sir.

Q. Prior to the preparation to this bill of complaint? A. Nothing more than the affidavit which was taken at Judge Chamberlin's office.

Q. That was on October 5th, or October 6th, wasn't it? A. That is the only time I ever had any talk with Mr. Benny or Mr. Cruden in any matter at all.

Q. Well, were you ever in Benny & Cruden's office for the purpose of closing this title? A. Yes, sir.

Q. Before they made objection to the title? A. I believe I was once when they were down near Cottage street on Broadway. That was at the time when—I just can't say what it was, but I signed a paper there.

Q. Well, I want to get this clear in my mind. As I understand it on the 5th day of October, 1922, you and Mr. Ferris went to the office of Benny & Cruden to close this title? A. Yes, sir.

Q. And this closing of the title lasted over until October 6, didn't it? A. No, sir.

Q. Did you clear it all up that day, October 5th? A. Yes, sir; that afternoon.

Q. These affidavits are dated October 6, aren't they—this affidavit of yours? A. No, sir; not that I know of. I took no affidavit on October 6th.

Q. Well, now, were you ever in Benny & Cruden's office? A. Yes, sir.

Q. Or anywhere else, for the purpose of closing that title prior to the date of October 5th? A. I cannot recall just why I was there, but I wasn't there from June, I am sure, until October 5th.

Q. And you don't know—you do not remember clearly whether or not you were there in June? A. Yes, sir; I was there in June.

Q. Were you there with Mr. Sanborn? A. I

connot recall whether Mr. Sanborn was there or not.

Q. He was your attorney in that transaction, wasn't he? A. I had no attorney.

Q. Didn't he examine the contract prepared by Benny & Cruden and tell you it was a proper contract to be signed? A. I had no advice from anyone.

Q. Did he tell you that? A. No, sir.

Q. Did Mr. Ferris have Mr. Hoffman as his attorney? A. I believe he did.

Q. You didn't have anyone representing you in this transaction? A. No, sir.

Q. When Mr. Benny stated to you that there was some three hundred dollars or thereabouts due him for his services in this suit was Mr. Benny's attention called by Mr. Hoffman to the provision in the contract that in the event that the title was rejected that $100 was to be paid for the services and survey? A. Why, I believe that—I just can't recall what Mr. Hoffman did say.

Q. Now, all that actually was paid was $100 by you and Mr. Ferris? A. Yes, sir.

Q. Now, the purchase price was $21,000 and $500 down, paid at the time the contract was signed on March 10, 1922, isn't that right? A. Yes, sir.

Q. And it was paid by Mr. Sanborn and held by Mr. Sanborn until the taking of the title, wasn't it? A. Yes, sir.

Q. And there was $25 due Mr. Sanborn for his commission in addition to $500, was there not? A. Yes, sir.

Q. And was there an amount due to the State of New Jersey for inheritance or transfer tax? A. Why, that was all deducted at the time when the accounting was made to the Orphans Court.

Q. Well, there was an amount—excuse me. Have you finished? A. That was all finished up in November, 1921.

Q. But you did not get one-half of $21,000 less Mr. Sanborn's commission. There was a thousand dollars or so taken out of the twenty-one thousand, wasn't there? A. Why, I believe so.

Q. What was that? A. I couldn't tell you what that was for.

Q. Did you say to Mr. Carruth on December—Frederick Carruth and his father on December 23, 1922, when these papers were served on you that you did not receive $10,000, that you had received slightly less than one-half and that there had been a thousand dollars held up for taxes and some other expenses? A. No, sir, no such remark was made.

Q. You never made that? A. No such remark was made at the time when these papers were served on me, and I believe these papers were served on me for this property matter as far as I could read through it.

Q. When the papers were served on you you read through them, didn't you? A. Why, partially, I didn't study them very clearly.

Q. You understood that the accusation in the papers was that these other heirs hadn't been taken into account and that you had their share and this was a suit against you to restore that share to them, didn't you? A. I didn't know there was other heirs until this time.

Q. But didn't you understand that was the accusation in these papers? A. Why, as I glanced through them, why, I thought it was.

Q. And didn't Mr. Carruth ask you if you got $10,000? A. No, sir; he asked me what I did with the money that I got, and he said it was $11,000, and I said, no, there was no $11,000.

Q. You said it was less than ten, didn't you? A. I didn't mention any sum.

Q. And you didn't say anything about transfer taxes? A. I may have mentioned an inheritance tax, but that was taken out before the property matter——

Q. Well, did you also say to Mr. Carruth that the money had all been spent? A. Yes, sir. I didn't see why he should ask me anything as I didn't know him.

Q. He didn't ask you to explain it? I ask you if when you learned that that was the accusation you did say to Mr. Carruth that the money had all been spent? A. Yes, sir; I did.

Q. And how was this $9,951.69 figured? A. What do you mean?

Q. Well, out of the $21,000 there was first taken out $525 to Mr. Sanborn? A. Out of the $21,000?

Q. Yes. A. Yes, sir.

Q. Then you paid Benny & Cruden $100 for these services that you told us about? A. Yes, sir.

Q. And that is $625. Now, what else was taken out? A. I couldn't really say.

Q. Well, no other money went to Benny & Cruden or anybody else? A. All I know is that I got a check for $9,951.69. The rest I cannot account for.

Q. Where did you put that money? A. I cashed the check and put it in the bank of South Hudson, Bayonne, N. J.

Q. Did you put all of it in the bank? A. Why, I put $5,951.69 in my checking account and $4,000 in the personal account—savings account.

Q. In your own name? A. Why, in my savings account it is in my husband and my name, my checking account was in my own name.

Q. The savings bank account is in your husband's name and your name? A. Yes, sir.

Q. And what is this checking account, is that in your own name? A. Yes, sir.

Q. And have you drawn any of that money out? A. Why, yes, sir.

Q. Before December 23, 1922, please state what you drew out? A. I drew all out except $20.

Q. What did you do with it? A. Spent it on different things.

Q. What? A. Why, I gave my brother-in-law $1,500; he was very much handicapped, as he had the sight of only one eye, and I gave him that as a gift.

Q. What is his name? A. John B. Keffer.

Q. Where does he live? A. He lives at New Haven, Conn., but he is attending college just at present.

Q. What is his address? A. In New Haven?

Q. Yes. A. 1046 Whitney avenue.

Q. When did you give that to him? A. I gave that to him around the 6th of December, 1922.

Q. Did you give him a check? A. No, sir, I gave him three five hundred dollar liberty bonds.

Q. Then you bought liberty bonds with this money? A. Yes, sir.

Q. And what else did you spend this money for? A. Why, I spent about $3,000 on German marks.

The Court: What is that?

Witness: I spent about $3,000 on German marks.

Q. How many did you buy? A. Why, $3,000 worth, paid—10,000 for a dollar.

Q. From whom did you buy these German marks? A. From a German friend of ours who

was very much interested in me and I knew for quite some time.

Q. His name? A. H. Pieterman.

Q. Where does he live? A. 39th street and Broadway, Bayonne, N. J.

Q. Which corner? A. Northwest.

Q. What is the number of the house where he lives? A. 845 I believe it is.

Q. Broadway? A. Yes, sir.

Q. Where is his place of business? A. Right there.

Q. And did you give him a check? A. No, sir.

Q. What is his business? A. Delicatessen.

Q. Well, did you pay cash? A. Yes, sir.

Q. Did you have anybody with you when you paid this cash? A. My husband.

Q. Anybody else? A. No, sir.

Q. Was anybody else present when this money was turned over? A. No, sir.

The Court: Where are the marks now?

Witness: Home.

Q. How many are there? A. Oh, I couldn't count them all.

The Court: How much did you get?

Witness: $3,000 worth.

The Court: How much in marks?

The Witness: Well, I got 10,000 for a dollar.

The Court: How much did you get for the $3,000?

Witness: About thirty million.

Q. And where are they now? A. Home.

Q. You didn't bring them here this morning? A. No, sir.

Q. Whereabouts at home? A. My home, 616 Avenue E.

Q. You didn't put them in the safe deposit box? A. No, sir.

Q. Do you own one? A. Not just now.

Q. Did you have one? A. Yes, sir.

Q. When did you have it? A. Up until the 1st of January of this year.

Q. And where was it? A. Bank of South Hudson, Bayonne, N. J.

Q. What number is the box? A. I think it was 1021. I gave the keys back. I just can't remember now.

Q. You haven't got the keys now? A. No, sir.

Q. Did you take anything out on January 21st when you closed the box? A. No, sir; there was only an old bank book in it and Mr. Keffer closed the box.

Q. What did you have in this box on the 5th day of October, 1922? A. Why, I couldn't really say; I had some personal papers in there and some of Mr. Keffer's personal papers, what, just, they were, I cannot just recall.

Q. In whose name was this box? A. In both Mr. Keffer's an my own.

Q. And when you closed the box on January 1, 1923, did you take out any other box? A. No, sir.

Q. Did your husband take a box? A. I couldn't tell you.

Q. Did you close it January 1, 1924 or 1923? A. 1924.

Q. Did your husband take out any other box? A. I couldn't tell you.

Q. Is there any box, safe deposit or storage box in which you have any securities now? A. No, sir.

Q. Well, when did you get this box—when did you first take it? A. I believe in 1922; just the exact date I cannot say.

Q. Was it before October 5, 1922? A. Yes, sir.

Q. What did you put in it before October 5, 1922? A. Why, I had some personal things that I wished to keep in it.

Q. What personal things were they? A. Why, christening papers and my brother's; gold which had been given to me by my father.

Q. How much? A. $20 gold piece.

Q. What else? A. I do not recall anything else.

Q. So that you mean to tell us that you took out a safe deposit and storage box for the purpose of putting in only a $20 gold piece and your certificate of christening and that of your brother? A. And life insurance papers and fire insurance papers.

Q. Life insurance? A. Yes, sir.

Q. What life insurance? A. Mine and my husband's and my baby's.

Q. Any of them taken out after October 5, 1922? A. I believe so.

The Court: You mean insurance papers on the Industrial plan, weekly payments?

Witness: No, every three months we paid.

The Court: What?

Witness: We paid every three months.

The Court: Three or four hundred dollars insurance?

Witness: More than that.

Q. Well, what life insurance policies were there before October 5, 1922? A. Mr. Keffer's.

Q. How much? A. Well, his policy was valued at $4,000.

Q. That is a $4,000 policy? A. Yes, sir.

Q. In what company? A. Metropolitan.

Q. And what else is there? A. Mine for two thousand.

Q. And what else? A. My baby's.

Q. Policy on the life of your baby? A. Yes, sir. When she is twenty-one years old she will get $250 or five hundred; I am not sure which it is now. It is a weekly policy.

Q. Now, you spoke of your brother who died in infancy, didn't you? A. Yes, sir.

Q. You have no other brothers or sisters? A. No, sir.

Q. Well, then, after October 5, 1922, did you put in any securities or other property or anything else that belonged to you? A. I do not recall putting anything in.

Q. Nothing at all? You are sure of that? A. I believe so.

The Court: What was the rental of the box per year?

Witness: $3.00.

Q. Very small box was it? A. Yes, sir.

Q. This bunch of thirty million marks must have been pretty big, wasn't it? A. Well, they were not bought until December, 1922. They were not in that box.

Q. Yes, but you put them in the box? A. No, I didn't put those in the box.

Q. Didn't you tell me a little while ago you put them in the box and then closed the box up and took them out? A. No, sir; I did not.

Q. You are sure of that? A. Yes, sir.

Q. Can't be any doubt about it.

The Court: Where are they?

Witness: I have them home, in a box.

Q. What did you do with them when you bought them from this delicatessen store keeper? A. Took them home and just put them in this tin box I have home.

Q. $3,000 worth? A. Yes, sir.

Q. And still you kept life insurance, fire insurance and christening papers in the safe deposit box? A. Those insurances were put in there before we went away and I was afraid of fire.

Q. You weren't afraid fire would burn up the $3,000 marks? A. Well, I was home most of the time after the marks were bought.

Q. Now, what other ways did you spend the $9,951.69? A. I took a trip, cost me about $600; in October.

Q. Where did you go? A. We went from here to Pennsylvania.

Q. What part of Pennsylvania? A. Susquehanna, Pa.

Q. Where is Susquehanna, Pa.? A. It is on the Erie, 194 or 197 miles from New York.

Q. Yes; where else did you go? A. From there we went to Harrisburg.

Q. Yes, where else? A. From Harrisburg home.

Q. And that cost you $600? A. Well, we stayed at relatives and I gave them gifts of money because they wouldn't take——

Q. How much did you give to any relation? A. I give about $200 to my husband's grandmother and aunt.

Q. And what is the grandmother's name? A. Mrs. John Graham.

Q. What is her address? A. 428 Grand Street, Susquehanna, Pa.

Q. What county is that in in Pennsylvania? A. I couldn't tell you. I guess Susquehanna County. I don't know.

Q. That is Mr. Keffer's grandmother? A. Yes, sir.

Q. How much did you give her? A. $200.

Q. And what else did you do. What was the name of the other party to whom you gave money? A. Mrs. John J. Keffer.

Q. And what is her address? A. 9238 North Fourth street, Harrisburg, Pa.

Q. And how much did you give her? A. Around $200.

The Court: Don't you know?
Witness: Yes, $200.

Q. Why do you say "around" then? A. Because I think it was $200.

Q. Well, if you know it was $200 why do you say it was around $200? A. It was $200.

Q. Well, what else did you do to make up this $600 on this trip? A. I spent the rest. We had to stop along the road and buy meals.

Q. How long were you on the trip? A. A month.

Q. What did you do, go on the Erie Railroad, by train or in an automobile? A. I went in my husband's car.

Q. And did you buy that car? A. No, sir; I didn't buy that car.

Q. No part of any of this money went into that car? A. No, sir; that car was bought long before this money was ever thought of.

Q. The night Mr. Carruth—the afternoon that Mr. Carruth was there at your house there was a new Dodge car out in front of the house, wasn't there? A. That was my husband's car.

Q. Was there a new Dodge car out in front of the house? A. I believe so.

Q. Is that the car that you say you went on this trip in? A. Yes, sir.

Q. And how long were you away? A. A month.

Q. Well, that is $600. Now, what else?

The Court: Was your husband with you?
Witness: Yes, sir.

Q. You say yes, your husband was with you? A. Yes, sir.

Q. And the baby? A. Yes, sir.

Q. Is there only one child? A. Yes, sir.

Q. Well, your husband was engaged at the Standard Oil Company wasn't he, as a workman over there in their plant? A. Tidewater.

Q. Tidewater Oil Company? A. Yes, sir.

Q. And he left business for a whole month? A. Yes, sir, part of his vacation.

Q. And there were only you two, you and your husband and your child on this trip? A. Yes, sir.

The Court: You stopped at relatives all the time?
Witness: Yes, sir.

Q. What were his wages at that time, your husband's wages at that time? A. I couldn't tell what they were at that time.

The Court: Just tell counsel what they were.
Witness: You will have to ask my husband that question.
The Court: You ought to know.
Witness: Well since then he has had a raise.
The Court: You live with your husband?
Witness: Yes, sir.
The Court: Take care of his household. Now, how much did he earn before you fell into this inheritance?

Witness: I believe about 72¢ an hour. I couldn't say for sure.

The Court: Did you have any other means before your uncle died?

The Witness: No, sir.

The Court: You had no means at all except your husband's wages?

Witness: No, sir.

The Court: Had no other means, did he?

Witness: No, sir.

Q. Except what he saved from his wages? A No, sir; that is all.

Q. How much did he usually earn each week. Now, you can tell me about. I am not insisting—— A. About $50.

Q. How many hours a day did he work? A. He earned more than that—pardon me. He worked eight hours a day.

Q. 72¢ an hour? A. Yes, sir; he earned about thirty-five at that time.

Q. About $35 a week? A. Yes, sir.

Q. That is all you had to get along on? A. Yes, sir.

Q. And you mean to say when you got this money you gave it away, the poor woman you had been—you gave your money away? A. I have a very sympathetic heart.

Q. I see, and spent $3,000 in German marks? A. Yes, sir.

Q. That were on the decline at that time? A. I didn't know they were on the decline.

Q. You bought thirty million dollars, German marks, for $3,000. You knew then they were on the decline? A. Yes, sir; but I expected they would come up again.

Q. You don't know the rate of exchange at that time? A. No, sir; I do not remember.

Q. Well, what else did you spend this money on? A. Why, I sent Mrs. Raymond $250 because I thought she was in need of it, and I persuaded——

Q. I didn't ask you why you gave it to Mrs. Raymond. I asked you what else you spent the money on. You gave $250 to Mrs. Raymond? A. Yes, sir.

Q. You had receipts in your possession in full, didn't you? A. Yes, sir.

Q. Showing that the estate did not owe her a nickel? A. Yes, sir.

Q. And Mr. Anton Hirschman was one of the most careful men, wasn't he, about his money affairs? A. Yes, sir; very careful.

Q. Very careful; and he never paid out a cent without taking a receipt, did he? A. No, sir.

Q. And he put everything down in his books that he paid out, didn't he? A. I couldn't say that.

Q. Well, now, $250 to Mrs. Raymond. Now, what else? A. About $150 to my husband for taking care of the cemetery there. He took care of it for three years.

Q. That is the cemetery plot where Anton Hirschman is buried? A. Yes, sir.

Q. What else? A. Then I gave about $200 to different things; I gave $100 to the college fraternity.

Q. What college fraternity? A. Lambda Chi Alpha.

Q. Where is this college fraternity? A. New Brunswick, N. J.

Q. What college is that? A. Rutgers.

Q. Why did you give a hundred dollars to Rutgers College fraternity? A. Why?

Q. Yes. A. Because my husband was a member of that fraternity.

Q. What is the name of the treasurer who received it? A. I couldn't tell you that. I gave it to a gentleman that visited us at the house that was a member of the fraternity.

Q. Did you give it to him in cash? A. Gave it to him in check.

Q. Have you the check here? A. Yes, sir—no, I haven't it here.

Q. You didn't bring your check book? A. No, sir.

Q. What is his name? A. P. R. Smith.

Q. What is the P for? A. Preston.

Q. Where does he live? A. Why, his home is in Bayonne, but he lives—he works near Summit and resides at the Summit Y. M. C. A.

Q. The street address of his home address in Bayonne? A. 93 W. 34th street.

Q. What does he do in Summit? A. I couldn't say just what he does.

Q. Is he secretary of the Y. M. C. A. up there? A. No, sir, he works outside of Summit but he resides at the Y. M. C. A.

Q. Now, what else did you do with your money? A. Well, $200—I gave that hundred dollars to the fraternity and I had a very poor women who lived always in the houses in East 53rd street and she could never meet her accounts with us, that is, rentals, and she——

Q. Tell us what you did with it? A. I gave to this woman $75 of it.

Q. What is her name? A. Mrs. E. Morrow.

Q. What is "E" for? A. Elizabeth.

Q. Where does she now reside? A. 13 W. 52nd street, Bayonne, N. J.

Q. Has she any place of business? A. No, sir.

Q. Where is she now, do you know? Can she be found at that address that you gave us? A. That is where she lives now.

Q. All right. Now, what else did you do with your money? A. Why, I gave $500 to Mr. John Ruroede.

Q. What for? A. Why, he advanced that money to us when our daughter was born.

Q. How much? A. Five hundred.

Q. What is his address? A. 1046 Broadway.

Q. Bayonne, I suppose? A. Yes, sir.

Q. What business is Mr. John Ruroede in? A. Why, they have a confectionery store there at the present time, but he works in New York and his wife attends it in the day time.

Q. Whereabouts does he work in New York? A. I believe he works for the Southern Pacific Steamship Company.

Q. Did you give that to him in check? A. No, sir.

Q. Did you give—had you given him a note for this money that you got from him when the baby was born? A. No, sir.

Q. When was the baby born? A. December 10, 1919.

Q. Well, what did you do with the $500 that you got from Mr. Ruroede at the time the baby was born? A. Why, goodness, I had sickness.

Q. What did you do with it? A. Spent it, buying things for the baby. I was sick at the time, paid the doctor and nurse.

Q. What doctor? A. Dr. Stevens.

Q. What is his first name and address? A. I cannot tell, P I think is the first name; I couldn't say. It was Dr. P. Stevens.

Q. Well—— A. He doesn't live in Bayonne any more. I don't know where he lives now.

Q. You don't know where he has gone? A. No, sir.

Q. Where did he have his office when you had him? A. 38th street and Avenue C.

Q. How much did you pay him? A. Mr. Keffer paid it, I really do not know what that was.

Q. Was it drawn—did you put the $500 in the bank? A. No, sir, Mr. Keffer——

Q. Was the doctor Pleney S. Stevens? A. I guess that was what his name was. I don't know what his first name was.

Q. How much did you pay him? A. I really do not know. Mr. Keffer paid the bill.

Q. About how much, do you know? A. I couldn't say.

Q. You didn't see the bill? A. Oh, I may have seen it but since that time I have discarded all those things.

Q. Was it $250, $100 or $250? A. I really do not know what it was.

Q. What? A. I really cannot recall what it was, just now. I would have to think it up.

Q. Well, were you sick at the time—unusually so? A. Yes, sir.

Q. How long? A. Oh, I was sick for over three weeks; then Mrs. Hirschman died and I was sick after that for over a month.

Q. And this was for the doctor's services during that birth? A. Yes, sir.

Q. Now, when was it that you borrowed this money from John Ruroede? A. In December, 1919.

Q. You didn't give him any note for it? A. No, sir; he was a good friend.

Q. Your husband did not give him any note for it? A. I do not believe so.

Q. And you paid him in check or by check or in cash? A. Cash.

Q. Didn't give him a check? A. No, sir.

Q. You thought you were paying a debt, didn't you? A. Yes, sir.

Q. Didn't deem it necessary to pay him by check so as to have a receipt for money? A. Well, we were always very very close friends. I didn't believe it necessary.

Q. Did you get a receipt from him for the $500? A. No, sir.

Q. Who were present when you paid this $500 to him? A. Mr. Keffer and Mr. and Mrs. Ruroede and myself.

Q. Are they here in court today? A. No, sir.

Q. What else did you do with this $9,951.69? A. I spent about $700 on clothes before we took our trip. I spent $450 on a fur coat.

Q. Who did you buy that from? A. I bought it in one of these big stores in New York.

Q. Which one? A. I think it was Macy's or Sacks. I can't just recall.

Q. Did you ever have a good fur coat before that? A. I had a fur coat before that, yes, sir.

Q. Did you ever buy a coat that cost $450? A. No, sir; I never had.

Q. You cannot tell where you bought it? A. Why, Sacks, I believe.

Q. Don't you know? A. I think that is where I bought it.

Q. Well, don't you know where you bought it? A. Sacks.

Q. Yes. Where is Sacks? A. 34th Street and Broadway, New York.

Q. Did you have an account with them? A. No, sir.

Q. Did you pay for the coat by check? A. No, sir.

Q. Where is the coat now? A. Home.

Q. You didn't bring that to court today either? A. I didn't deem it necessary.

Q. Now, what day did you buy that fur coat? A. Along in October, 1922.

Q. To go automobiling? A. Not necessarily to go automobiling, to keep myself warm.

Q. You had a closed car, didn't you? A. Yes, sir.

Q. And you bought a fur coat in October—— A. Yes, sir.

Q. ——to go in a closed car? A. I didn't say I was going to wear it to go in a closed car.

Q. Now, let us have the best date that you can give us about this. A. October.

Q. Can't give us any more?? A. No, sir.

Q. You are sure? A. Yes, sir.

Q. Now, where is the rest of the money that went into clothes? A. I couldn't specify all that. $250, my goodness, when you go to buy clothes for a woman it costs money.

Q. Don't argue with me. I know a lot about that. What did you do with the $250 for clothes? A. Bought odds and ends of things, clothing.

Q. Speak out? A. Odds and ends of clothing.

Q. From whom? A. Different stores. I couldn't say.

Q. Can't you mention any particular stores? A. No, sir, I cannot.

Q. Or any particular dates? A. No, sir, because when I did my shopping I went in a number of times and got quite a good many things when I went. I always go in all the stores when I go to New York, such as Gimbels, Sacks, and Macy's.

Q. I am not asking you what you always do. I only want to know about October? A. That is the same thing.

The Court: Pass that along.

Q. When did you get back from your trip out in Harrisburg? A. Middle of November.

Q. And you left here the 15th of October? A. Somewhere along in there.

Q. So that you bought the fur coat between the 5th of October and the 15th of October? A. I believe I did.

Q. Well, now, what else did you do with the money? A. I gave $500 to Judge Roberson.

Q. When? A. At the time when this case was brought up, after I engaged him.

Q. After December 23, 1922? A. Yes, sir.

Q. A part of the money that you received from the Consumers Coal & Ice Company you paid out after you got the restraining order from Vice Chancellor Church? A. Why, I didn't think it was restraining order for that.

Q. Didn't? A. No, sir.

Q. Well, that was for his retainer in this case? A. Yes, sir.

Q. Now, what else did you spend? A. The rest of the money I have.

The Court: Take the restraining order from the files and see.

Mr. Martin: Why, injunction should not be issued restraining, "Warren Ferris and Annie Ferris, his wife, Charlotte Marie Keffer and John H. Keffer, her husband, Consumers Coal & Ice Company, and each and every one of them, be restrained and enjoined from selling, transferring, conveying or otherwise disposing of or encumbering the premises described in the bill of complaint or any property or proceeds of any property in their possession or control belonging to Anton Hirschman, or a part

of his estate upon his death, or the proceeds thereof, in whatever form the same may be until the final hearing and determination of this cause unless otherwise ordered by the court.''

Q. Did you read that? A. I do not remember reading it.

The Court: Just look that over and see. If you did not your lawyer did before he got the money.

Q. Did you read that the night Mr. Carruth was there with you? A. No, sir. Mr. Carruth came—I was very much excited—I didn't know what he came for. I read hardly anything.

Q. You sent for Mr. Sanborn? A. My husband sent for Mr. Sanborn.

Q. Sanborn came there? A. Yes, sir.

Q. And didn't Mr. Carruth, the elder, the father, Charles R., tell you on that night, December 23rd, that this restrained you from disposing of any of the property or the proceeds of any of the property, and didn't he say that he didn't have a copy to give to your husband but he wanted to tell him too that he must regard the injunction, and would furnish him with a copy of it later? A. I do not recall him telling him.

The Court: You read the paper that was handed to you, didn't you?

Witness: Not thoroughly, no. I just glanced through it. There was very much excitement that night—it was the night before Christmas.

Q. Wasn't this the first time that you had ever been brought into court? A. Yes, sir.

Q. Do you mean to say you did not read the paper carefully? A. Not that night.

Q. Did you read it the next day carefully? A. I do not remember only reading the one with the affidavit on.

The Court: Before you went to your lawyer did you not read the injunction carefully?

Witness: No, sir.

The Court: You took it to your lawyer?

Witness: Yes, sir.

The Court: Mr. Roberson?

Witness: Yes, sir.

The Court: Did he read it? Did he tell you what it was?

The Witness: I do not recall.

The Court: And after you gave it to Mr. Roberson you gave him the $500, did you?

Witness: Yes, sir.

The Court: After you gave him the paper?

Witness: Yes, sir.

Q. Well, what else did you do with the money? A. I have the rest at home.

Q. How much have you got? A. $2,551.

Q. And in what form is it? A. In cash.

Q. Where? A. Home in my own home.

Q. That is in American money, not German? A. Yes, sir, American money.

Q. $2,551? A. Yes, sir.

By the Court:

Q. When did you draw the money out of the bank? A. Last 1922, December.

Q. Why did you draw it out? A. I wanted to invest it in these bonds—these marks.

Q. You told me you deposited the $9,000 in the bank? A. Yes, sir.

Q. When did you draw all of the $9,000 out? A. Why, I drew it out different times.

Q. When did you draw the balance out? A. There was only a balance of $125 in.

Q. You say you got over $2,000 in cash? A. I have that home ever since.

Q. When did you draw that out? A. December.

Q. How much did you draw out in December, 1922? A. Well, at one time there was $4,000 drawn out.

Q. Was that after these papers were served on you? A. No, sir.

Q. No money has been touched or nothing done since these papers have been served excepting the $500 that you paid Judge Roberson? A. Yes, sir.

Q. How did you pay him? A. Five hundred dollar liberty bond.

Further cross by Mr. Martin:

Q. Well, then, you must have bought $2,000 of liberty bonds? A. Yes, sir.

Q. You told us a little while ago that you gave him $500? A. Yes, sir.

Q. You gave me the impression that you had given it to him in money or check. A. I didn't say anything.

Q. Now, do you mean to say that on December 23rd, when these papers were served on you that it just happened that you only had $20 in that bank? A. Yes, sir, in my checking account.

Q. How much did you have in the savings account? A. I don't know just how much there was in it.

Q. How much was in the savings account? A. Oh, I couldn't tell you.

The Court: Tell us.

Witness: I cannot tell you. I would have to stop and think back two years ago.

The Court: Well, stop and think. I do not want an off-hand answer either.

Witness: Why, I would have to look back at my books and see.

Q. Why, didn't you tell me deliberately here this morning that every nickel—every last cent except $20 was drawn out of the bank before December 23rd? A. Yes, sir.

Q. And now you say that there was only $20 of this money left in your bank account on December 23rd? A. I couldn't say that it was of this money. I had kept a checking account.

Q. That is your checking account? A. Yes, sir.

Q. You also say there was some money in the savings bank account? A. I do.

Q. Then your answer is that on December 23rd, there was no money whatever in the savings bank account? A. I do not think there was.

The Court: Why did you draw the money out of the savings account in December, 1922, when you had only put it in there—(interrupted).

Witness: For these bonds.

The Court: —a few months before.

Witness: That $4,000 was drawn out of the savings account some time before that.

Q. Well, why? A. And put into the checking account.

Q. Why? A. Because I had a mortgage.

Q. What? A. I had a mortgage.

Q. Mortgage on what? A. On a house in 36th street.

Q. How much? A. $4,000.

Q. Well, did you invest $4,000 in mortgage? A. Yes, sir, and I sold the mortgage.

Q. To whom? A. To a man by the name of Hellenger, but I couldn't say——(interrupted).

Q. Well, what is his name and address? A. I don't know.

Q. What mortgage was it? What is the date of the mortgage? A. October 13th or 14th.

Q. 1922? A. Yes, sir.

Q. And you invested $4,000 of this money in that mortgage? A. Yes, sir.

Q. Where is the property located? A. East 36th street.

Q. Who was your attorney in looking over the mortgage for you? A. Mr. Sanborn.

Q. What is the name of the party? A. Leon Jarrow.

Q. What is the address of this party? A. Oh, I don't know where they live now, whether they live in the house yet or no. That was on East 36th street.

Q. Did you ever see the property? A. Yes, sir.

Q. Did you look at it before you took the mortgage? A. Yes, sir.

Q. And what is the date again of that mortgage? A. October 13th or 14th, 1922.

Q. Well, when did you assign the mortgage? A. What do you mean?

Q. When did you sell it? A. December, 1922.

Q. When? A. Around the 2nd.

Q. Was it a mortgage at 6 per cent? A. I do not remember now what it was.

Q. Was it a first mortgage? A. I think it was.

Q. What part of December was it that you sold it? A. Early part.

Q. You bought it for an investment, didn't you? A. Yes, sir, but this gentleman talked about marks and different things and I thought I would invest it that way, so I drew it out—sold it and deposited the check and then drew out the money to pay for the marks.

The Court: You deposited that check?
Witness: Yes, sir.

Q. You mean to say that you sold that mortgage in the early part of December? A. Yes, sir.

Q. Did you assign it by signing a paper over to somebody?

The Court: Who did you sell it to?
Witness: Mr. Hellenger.

Q. Got the full amount on it? A. Yes, sir.

Q. And did you acknowledge the paper before a notary public or anybody else? A. Before Mr. Sanborn.

Q. Did you acknowledge it before him on the day that you assigned the conveyance of the mortgage? A. I believe so.

Q. Did you put the money in the bank right away after receiving it? A. Yes, sir.

Q. And will it show in your deposit book that you put in $4,000 in the early part of December, 1922? A. Yes, sir.

Q. Who sold the mortgage for you? A. Sanborn.

The Court: Who is Hellenger?
Witness: This gentleman that Mr. Sanborn told us about.
The Court: Not the delicatessen man?
The Witness: No, sir.

Q. Now, you got this $2,551 in cash at home? A. Yes, sir.

Q. Why did you have that cash out of the bank on December 23, 1922? A. Why, because part of that money was the money that we received—we had left from what we drew out of that $4,000 when we paid out these marks.

Q. Well, you got $4,000 when you sold the mortgage? A. Yes, sir.

Q. And you put that $4,000 in the bank? A. Yes, sir.

Q. That was a check? A. Yes, sir.

Q. And then you drew out $4,000 to buy marks with? A. Yes, sir.

The Court: $3,000?

Witness: $4,000.

Q. And then you bought actually $3,000 worth of marks? A. Yes, sir.

Q. So that that left you a thousand dollars? A. Yes, sir.

Q. Now, how did you have the other $1,251 or $1,551? A. Why, I lived a distance from the bank and I never could get out with my baby to go up to the bank, and I was very, very nervous and we were away most of the time from October to November—to the middle of November.

Q. You being nervous and being away and all this other stuff that you are telling me—where did you keep this money in your house? A. In my tin box.

Q. You weren't nervous about that? A. Why, no.

Q. Weren't worried about the danger of somebody stealing it? A. Oh, yes, I was worried about that.

Q. Did that make you nervous? A. Yes, sir.

Q. When did you draw out the four thousand to buy the marks with? A. Around the 4th of December, 1922.

Q. Was that immediately after you received the $4,000 from the proceeds of the sale of the mortgage to somebody? A. No, one or two days after.

Q. Notwithstanding your nervousness you kept this $2,500 in your home ever since December? A. Yes, sir.

Q. 1922—the early part of December? A. Yes, sir. Why should I put it in the bank?

Q. Don't ask me. You kept it there ever since? A. Yes, sir.

Q. And it is still there? A. Yes, sir.

Q. Did you see it there this morning? A. Yes, sir.

Q. Went to see if it was there? A. Not specially went to see if it was there.

Q. Whereabouts is this box—what form is it? A. In hundred dollar bills.

Q. Twenty-five one hundred dollar bills? A. I couldn't say just twenty-five. There are hundred dollar bills and five hundred dollar bills.

Q. There is $2,551 there? A. Yes, sir.

Q. And there is twenty-five hundred of it in large bills—mostly one hundred dollars bills, and fifty-one dollars besides? A. Yes, sir.

Q. You didn't think of having that money there when you paid Judge Roberson $500 by giving him a bond, did you? A. No, sir, because I gave him a bond. I had the bond and I gave him that.

Q. Whereabouts—what kind of a house do you live in? A. Two-family house.

Q. How many rooms? A. I have five rooms. I live on the first floor.

Q. And where in your house do you keep this box? A. I have a cedar chest and I have it locked in that.

Q. One of your bedrooms? A. Yes, sir.

Q. What is the address? A. 616 Avenue E.

Q. Bayonne? A. Yes, sir.

Q. There is another family in the house? A. Yes, sir.

Q. Of whom does your family consist now, you and your husband and baby? A. Yes, sir.

Q. Anybody else? A. My mother-in-law is staying with us just while this trial is going on to take care of my baby.

Q. Mrs. Keffer is there now? A. Yes, sir.

Q. Do you own any real estate at all? A. No, sir.

Q. You haven't got any other property of any kind or nature whatsoever, have you? A. I have not.

Q. Than what you have described you purchased with this money? A. Yes, sir.

Q. And still retain?

The Court: Any liberty bonds?

The Witness: Only the one that Mr. Robson has.

Q. Have you any liberty bonds? A. No, sir.

Q. What have you got left? A. Just the marks and the money.

Q. What has your husband got of this estate? A. Just what I have.

Q. Is anyone holding any part of this estate for you? A. No, sir.

Q. Let me see, you got a fur coat you got from Sachs.

The Court: Do not let us rehearse it.

Q. Where did your husband buy this Dodge car? A. September.

Q. Where? A. Bayonne.

Q. From whom? A. Mr. Nann.

Q. What is his address? A. I just couldn't tell you the address, but it is 12th street and Boulevard, Bayonne.

Q. Now, Mrs. Keffer, there can't be any mistake about what you told Mr. Demarest yesterday that you never heard and never had any inkling that there was any question about your mother being the daughter of Mr. and Mrs. Anton Hirschman except from this old lady once? A. No, sir.

Q. Until Warren Ferris appeared there and told you that your mother was not adopted? A. Yes, sir.

Q. Now, that is true? A. Yes, sir. I still believe it to be true.

Q. So that you never had discussed the question with your mother of whether or not she had been adopted? A. No, sir.

Q. And she never told you that she had been adopted by Mr. and Mrs. Hirschman? A. No, sir.

Q. And your father never told you? A. No, sir.

Q. And when you asked your grandmother, as you supposed, Mrs. Charlotte Hirschman—— A. Yes, sir.

Q. —she was ill and she fainted and did not answer? A. Yes, sir.

Q. And you never discussed it with Anton Hirschman? A. No, sir.

Q. Well, you knew your mother was not the daughter of Anton? A. I really didn't know it, no, sir, until this time this old lady spoke to me. Always believed that I was the granddaughter.

Q. You said that you always supposed that there wasn't any question about it at all? A. Yes, sir.

Q. That you were the granddaughter? A. Yes, sir.

Q. And that your mother was the daughter of Anton Hirschman, isn't that so? A. I believed.

Q. That is what you told Mr. Demarest and that is what you told me a moment ago. Now, is that true? A. Yes, sir.

Q. Now, do you recall going to the office of Frederick E. Chamberlin, Master in Chancery, on the 12th day of September, 1922, and going back there on the 14th day of December, 1922, and reading over your testimony and signing it? A. Yes, sir, but——

Q. And this paper that I show you here is your signature? A. Yes, sir.

Q. And you swore to that before Chamberlin? A. Yes, sir; but there is a mistake in that testimony.

Q. (Showing witness depositions taken in the case of Warren Ferris against Anton Hirschman filed in the Court of Chancery and now in evidence.)

The Court Depositions?

Mr. Martin: Yes, sir, depositions in the original suit.

Q. You say, "I knew Anton Hirschman in his lifetime and his wife Charlotte Hirschman who was also known as Lottie Hirschman. I have lived with them practically all my life up to the time of their death." That isn't quite true. You did not live with them until you were thirteen, did you? A. Why, we resided right next door and a door was cut through that we went back and forth.

Q. But you say, "I have lived with them practically all my life up to the time of their death." A. Practically.

Q. "My mother's name was Katharina Daisetta Hirschman. She was commonly known as Daisy." A. Yes, sir.

Q. "She was adopted by Mr. Anton Hirschman when she was about four years of age. I haven't been able, however, to find any papers or other documents relating to the adoption, but she always said and I have always understood that Mr. Hirschman had adopted her as a daughter." Now, which statement is correct? A. That is a mistake.

Q. The one you make here today that you never heard anything about it from your mother or this one that you made in the Court of Chancery in the—— A. I believe that testimony was wrong.

Q. Oh, that is wrong? A. Because it was "said". I never said she had "said". It was said that she was adopted, not she had said as the testimony is there.

Q. Who said "it"? A. I said "it".

Q. You never heard from anybody that your mother was adopted because you thought she was the—— A. I heard so then.

The Court: When?

Q. —because you thought she was the real daughter of Mr. and Mrs. Hirschman, didn't you? A. Only what I heard from this old lady that she was adopted.

Q. You never heard your mother say anything about it at all, did you? A. No, sir; my mother never mentioned it.

Q. And yet you testified before Mr. Chamberlin—— A. I never said that to Mr. Chamberlin.

Q. You did go before Mr. Chamberlin and testify, didn't you? A. Yes, sir.

Q. And you read it over again two days later and you signed it, didn't you? A. Well, I believe that——

Q. Did you? A. I spoke to the girl about that there.

Q. Did you sign it? A. Yes, sir; I signed it.

Q. And swore to it? A. Yes, sir.

Q. Now, in this bill of complaint one of the defendant's name is Charles Hadlick; your father? A. Yes, sir.

Q. After your mother's death in 1908 you and your father continued to live in the same place, didn't you? A. Yes, sir.

Q. And then he got married again? A. Yes, sir.

Q. Did you see him after he was married? A. About once a year.

Q. Did you know that he lived at 517 Nostrand Avenue, Brooklyn? A. Yes, sir.

Q. Did Benny & Cruden ask you where your father was? A. No, sir.

Q. Did Mr. Sanborn? A. No, sir.

Q. Did Mr. Carruth? A. No, sir.

Q. Or Mr. Hoffman? A. No, sir. None of them. Mr. Ferris saw him at my grandfather's funeral.

Q. So that you brought a suit against your own father, his heirs, devisees and personal representatives when you knew that he was right over in Brooklyn, 517 Nostrand Avenue? A. I never brought a suit against my father.

Q. Well, this suit of Warren Ferris and others against Anton Hirschman and his heirs is a suit naming your father as defendant, brought by you

and Ferris. Didn't you know that? Didn't you know that? A. No, sir.

Q. Did you know also that it was brought against your mother——

The Court: Didn't you know you and Ferris brought a suit to clear up this title?

Witness: No, sir.

Q. You didn't swear to that complaint, did you? A. I must have signed it.

Q. Mr. Anton Hirschman never told you where his mother and father lived, did he? A. I never asked him.

Q. I didn't ask you that. A. No, sir.

Q. Did he ever tell you? A. No, sir.

Q. Well, did he ever tell you that they were dead? A. No, sir.

Q. You never asked Aunt Julia? A. No, sir.

Q. Never asked your mother whether she had any sisters or brothers? A. No, sir.

Q. Never talked about your family affairs? A. My mother died when I was thirteen.

Q. Even so, you never asked her whether you had an auntie or uncle? A. No, sir, because we always called Aunt Julia auntie.

Q. Now, did you say to Mr. Carruth and his son on December 23, 1922, that—(interrupted)

The Court: Did you never ask your grandparents of family history?

Witness: No, sir.

The Court: Were you with them right along?

Witness: Yes, sir, but I was always very much engaged in study.

The Court: You were in most intimate relations with them?

Witness: Yes, sir.

The Court: Never talked about the family?

Witness: No, sir.

The Court: Don't you think that is strange?

Witness: Well, no, we never saw anybody but Aunt Julia.

The Court: No, but sitting around in the day time and at night with your grandmother and grandfather.

Witness: I was always studying, or if I wasn't studying they were playing——

The Court: You were sometimes eating at the table?

Witness: Yes, sir.

The Court: And yet you never spoke of any aunts, uncles or cousins?

Witness: I lived under a very heavy strain there—forced study.

Q. And you didn't want to study? A. I liked to study but I had a good many things to study which was imposed upon me to study.

Q. Did you say at that time to Mr. Charles R. Carruth and his son, on December 23rd, that you didn't know anything about my relatives of Anton Hirschman until the funeral of Mr. Anton Hirschman? A. No, sir; I did not.

Q. And that then Warren Ferris appeared? A. No, sir.

Q. That was the first time you ever saw or heard of him? A. No, sir. I saw Warren Ferris frequently.

Q. I am asking you if that is not what you said to Mr. Carruth? A. No, sir; that is not what I said to Mr. Carruth.

Q. What relation did you understand Warren to be to you? A. Nephew to Mr. Hirschman. I never questioned——

Q. Did you regard him as your cousin? A. Yes, sir.

Q. For how long? A. Oh, as long as I can remember, I can remember Warren's mother coming and Warren coming.

Q. Well, then, the very first time that really the question was agitated in your mind as to whether or not your mother was the real daughter of Anton Hirschman and Charlotte Hirschman was at the funeral, wasn't it? A. After the funeral, yes, sir.

Q. When Warren Ferris said to you that your mother never was adopted? A. Yes, sir.

Q. Now, Anton Hirschman died on May 19, 1920? A. Yes, sir.

Q. And what day was the funeral? A. On the 22nd of May.

Q. And so that afternoon when you got back from the cemetery on May 22, 1920, was the first time that the question ever really came up in your mind as to whether or not your mother was adopted? A. Yes, sir.

Q. Well, you were very greatly startled, weren't you? A. Yes, sir.

Q. You didn't say to Warren Ferris when you got back from the funeral, "Warren, everything is ours," did you? A. No, sir; I did not.

Q. You heard him say that the other day? A. Yes, sir; I did not.

Q. That did not refresh your memory on that point? A. I did not say that.

The Court: What did you say?

Witness: I said, "Well, Warren, there is just the two of us now. I don't know—

as long as you say mother was not adopted I don't know what to do." So he says, "Well, we will make an agreement and see what we can do."

Q. Did he say that at that time? A. Yes, sir.

Q. Or later? A. No, sir; that was at that time.

Q. About making an agreement, eh? A. Yes, sir.

Q. Do you mean to say that you thought you were the real granddaughter—— A. Yes, sir.

Q. ——and that this Warren Ferris comes in there to this funeral and says to you that you are not the real granddaughter, and you immediately sit down and talk to him about dividing up this estate? A. Why, he spoke about it, not I. He started to talk.

Q. What did you say? A. Well, I don't just recall what I said.

Q. Well, anyway, did you start right in looking for adoption papers in that house? A. Well, all the papers that were—(interrupted).

Q. Did you start right in looking for adoption papers in that house? A. Yes, sir; I did.

Q. And you didn't find them? A. No, sir.

Q. And did you find some old papers of Anton Hirschman's? A. I don't know whether I did or not. I don't think I did.

Q. Didn't find any letters from Frank Steffens, did you? A. No, sir.

Q. Or Mrs. DeBussey? A. No, sir.

Q. Or Frank Rieber? A. No, sir. Mr. Hirschman lived with me at the time of his death. I lived not in his house—not in his home.

Q. Well, but he brought his papers and everything with him? A. No; he had the old desk that he always kept everything in, but there was no papers.

Q. He didn't have an office? A. No, sir.

Mr. Hudspeth: We are very fearful unless this court take some action regarding that money in this house of this woman that it will disappear.

The Court: I will appoint a receiver.

Mr. Hudspeth: I think the receivership should cover Warren Ferris also.

The Court: If you will amend your pleadings, and you can upon the disclosures here, I will appoint a receiver.

I understand the money will be passed over to Mr. Roberson, is that right?

Witness: Yes, sir.

The Court: I am going to hand it over to Mr. Roberson. Are you satisfied?

Mr. Hudspeth: That is satisfactory.

Q. Well, did you find any papers that gave you any information as to your mother or her parents—or perhaps during this interval your mind has got off the subject. I asked you if when you talked to Warren you were startled about any question about your mother being the real daughter of Anton and Charlotte and you said you were, and then that you made an examination of this old desk? A. Yes, sir.

Q. To find papers of Anton Hirschman. Now, did you find any papers at all which disclosed any information to you as to your mother's birth or her parents? A. Why, I found a paper which was a sort of—just a note of where her mother was buried, in Newton Cemetery.

Mr. Carrick: I have that in my possession.

Q. Do you know the name of Daisetta's mother, your mother? A. Only from what I had seen.

Q. Did you know what her maiden name was? A. I think it was Friedenstein.

Q. Didn't you know that your mother's name, your mother's mother's name was Kate Friedenstein? A. I couldn't say for sure.

Q. And that she lived in Hortenville? A. No, sir, I didn't know.

Q. Do you know that your mother's father's name was Frank Gardner? A. After I had looked up this matter I understood it to be such.

Q. When did you look it up? A. Since this suit.

Q. Since this particular suit? A. Yes, sir. I wanted to know who I was.

Q. Well, did you find when you looked through the records of Anton Hirschman that your mother had made application to the Government for a pension on the ground that she was a daughter of Frank Gardner, who was a veteran of the Civil War? A. I do not recall that my mother made—

Q. You don't know whether she did or not? A. My mother? I do not think she did.

Q. Well, did you hear about anybody having made an application for a pension on the ground that Frank Gardner was a veteran of the Civil War? A. I do not recall that.

Q. Frank Gardner was your grandfather? A. My mother's father.

Q. And this paper which Judge Carrick has just handed to me, certificate of burial of Katharina Gardner, is the only paper that you could find that related to your mother or her parents? A. Yes, sir.

Mr. Carrick: Mrs. Keffer turned over to me quite a number of papers that she

found and here is another paper that apparently throws some light on the situation, although just what its bearing is I don't know. I have had these papers for a year or more (producing papers). I am perfectly willing that counsel should see them all.

Mr. Martin: This is a consent for Anton Hirschman to be appointed guardian in New York of this child.

Mr. Carrick: I supposed there had been an adoption in New York, but I looked it up and can't find it there. I produce a paper which appears to be signed by people by the name of Friedenstein consenting to the appointment of Anton Hirschman as guardian for the infant child, Katharina Daisetta, dated 1876. It doesn't appear ever to have been used so far as the paper itself discloses and it is in rather fragmentary condition. I had the records in New York County looked up thinking there might be an adoption there, but I have been unable to obtain any records.

The Court: You haven't been able to find any adoption papers anywhere?

Mr. Carrick: No.

The Court: You made a thorough examination of the records?

Mr. Carrick: Yes, sir. We found that the law of adoption of New York was only passed in 1873, which was quite surprising to me. I supposed it was much earlier than that. We have had the records looked up but they haven't been able to find anything by the name of Friedenstein, and I have relied upon the investigation which my

friends have made in Sullivan County, and I understand they have found no record of adoption there. There are no records of adoption that we can produce.

Q. Now, you did know that Charlotte Hirschman, the wife of Anton Hirschman, was a Gardner, didn't you? A. Yes, sir.

Q. And did you know her father's name? A. Her father's name?

Q. Yes. A. Gardner.

Q. Charlotte Hirschman, Anton Hirschman's wife, did you know her father's name? A. No, sir.

Q. Didn't you know it was Gardner? A. Only Gardner.

Q. Well, did you ever ask Grace Gardner? A. No, sir.

Q. You knew that Grace Gardner Raymond was a niece of Mrs. Charlotte Hirschman, didn't you? A. Yes, sir.

Q. And did you know where the Gardners came from? A. Yes, sir.

Q. Where did they come from? A. Hortenville, N. Y.

Q. Have you ever been up there? A. Yes, sir.

Q. How many times? A. When I was small I was up there quite a few times with Grandma Hirschman to visit her brother, Henry Gardner, Hortenville; also visited Mrs. Raymond's father, Cochecton.

Q. Well, did you go to this Dutch Free Presbyterian Church or Reformed Church? A. No, sir.

Q. You never saw the cemetery there at Hortenville? A. Yes, sir.

Q. Did you see the monument of A. Hirschman born in 1815? A. Not that I recall.

Q. September 15, 1815, in Englesdorf? A. I cannot recall that. We only went to the Gardner plot and I didn't go with my grandmother, I went with Elsie Gardner, my cousin, as I called her.

Q. When were you there before the property was sold on the 5th of October, 1922? A. At Hortenville cemetery?

Q. Yes. A. About 1916 or 1917.

Q. Were you there in 1921, weren't you? A. Not at the cemetery.

Q. You were in Hortenville in 1921? A. 1920.

Q. Well, does it refresh your memory for me to state to you that your husband said yesterday that you were there in September, 1921, or thereabouts? A. We were twice there.

Q. What? A. We were twice at Hortenville visiting this Henry Gardner's girl.

Q. Well, were you there in 1921? A. Yes, sir.

Q. And were you there in 1920? A. Yes, sir.

Q. And in 1919? A. I do not recall being there in 1919.

Q. Did you visit the mother of Mrs. Grace Gardner when—while you were up in Hortenville at any time? A. I didn't stay at Hortenville any time. We just called there.

Q. Answer the question. Did you see the mother of Mrs. Grace—— A. Yes, sir.

Q. Did you see Grace Gardner up there? A. Yes, sir; she went with us to Hortenville.

Q. Did you ever ask Grace Gardner anything about the relatives? A. No, sir, I did not.

Q. Did you ever ask any member of the Gardner family if they knew anything about the Anton Hirschman family? A. No, sir.

Q. Why not? A. Why, I didn't think of such a thing.

Q. But this property belonged to the heirs? A. Why, I didn't know there were heirs.

Q. You knew that Anton Hirschman died without a will and that the property went to the heirs? A. Yes, sir.

Q. Didn't you take the trouble to find out from Grace who had been a member of his family for many years? A. No, sir.

Q. As to who possibly could be the heirs? A. No, sir.

Q. It never suggested itself to you to make inquiries? A. No, sir.

Q. Before you divided this estate between yourself and Warren, you knowing that you were not entitled to any part of it? A. No, sir.

Cross-examination by Mr. Hudspeth:

Q. Mrs. Keffer, as I understand you to say you had, owing to your financial situation when your baby was born—— A. Yes, sir.

Q. You required to borrow $500. That is true, isn't it? A. Yes, sir.

Q. And you borrowed that from some friend in Bayonne? A. Yes, sir.

Q. Also a friend of your husband's, wasn't he? A. Yes, sir.

Q. Was he the better friend of you or of your husband? A. Why, his wife is a very good friend of mine.

Q. And he is an old friend of your husband's, is he not? A. Why, through me only he knows him.

Q. Oh, through you? A. Yes, sir.

Q. Well, how long after your baby's birth did you get this $500? A. Why, it was gotten before my baby's birth.

Q. Before your baby's birth? A. Yes, sir.

Q. In anticipation of the baby's birth? A. Yes, sir.

Q. Now, none of that money was paid back up to the time you got the moneys from the sale of this property? A. No, sir.

Q. Through the Consumers Coal & Ice Company, and then you suddenly conceived the desire to pay it back, isn't that right? A. Yes, sir.

Q. Now, before this $500 was paid back your husband had bought an automobile, had he not? A. Yes, sir.

Q. A Dodge Sedan? A. Yes, sir.

Q. Notwithstanding this $500 was due to this friend of both of you because of the birth of your child? A. Yes, sir.

Q. Why hadn't you paid some of it before? A. Why, we asked them if they needed it and they said no, when they needed it they would ask us for it.

Q. Why hadn't your husband paid any part of it before, did he say? A. He didn't say.

Q. But he went and bought this automobile, did he not? A. Yes, sir.

Q. In view of this outstanding indebtedness of $500 with this friend, is that true? A. Yes, sir.

Q. How much did he pay for the automobile? A. Mr. Keffer bought the automobile. I can't just——

Q. How much did he pay for it, Keffer? A. I can't just tell you how much he paid for it, sixteen——

Q. He told you, how much did he tell you he paid for it? A. I don't know whether it was twelve or sixteen.

Q. Do you know who he bought it from? A. Mr. Nann.

Q. Where did he get the money? A. His savings.

Q. From what? A. His earnings.

Q. Thirty-five dollars a week, that is what you say he earned? A. Yes, sir.

Q. And he saved enough money to buy this automobile from his wages—no other source, is that right? A. Yes, sir.

Q. And bought the automobile notwithstanding you and he owed this $500 to his friend? A. Yes, sir.

Q. Did he pay cash for it? A. I believe he did.

Q. Had you any of the money of the Consumers Coal & Ice Company at that time? A. No, sir.

Q. How long after this automobile was bought was it before you had got any money from the Consumers Coal & Ice Company? A. Two or three months.

Q. Two or three months?

The Court: Where is the machine now—where is the automobile?

Witness: Home—no, it is here in Newark, pardon me. We came in it.

Q. Does your husband still own it? A. Yes, sir.

Q. Has he a license for this year? A. Yes, sir.

Q. Have you a driver's license? A. Not for this year.

Q. Where is it in Newark? A. It is right around——

Q. You mean you came in it this morning? A. Came in it this morning.

Q. While Judge Martin was examining you you were asked about this suit and your knowledge of it, particularly with regard to your father being made a defendant in a suit to quiet title so that you could make the conveyance to the Consumers Coal & Ice Company?

The Court: She said she didn't know anything about it.

Q. She said she didn't know anything about the suit? A. Yes, sir.

Q. You said you knew nothing about the suit, is that right? A. Yes, sir.

Q. And was it true that you knew nothing about the suit? A. Only that I took the affidavit.

Q. What did you take an affidavit for if you understood it? A. As to quiet title in the Chancery Courts.

Q. You understood that to be a suit—— A. Why, I didn't know it to be a suit.

The Court: Did you?

Witness: No, I didn't know.

Q. I have the original bill of complaint here in which you are one of the complainants, in which you say, "I live at 616 Avenue E, Bayonne, New Jersey, I am one of the complainants in this case. The other complainant is Warren Ferris." Did you know that you gave that statement in that bill of complaint? A. No, sir.

Q. Is this the first that you knew of it? A. First I have seen it.

By the Court:

Q. You knew that a suit was to be brought or had been brought in the Court of Chancery to clear up this title, didn't you? A. Why, I didn't know this was a suit. I didn't know what it really was. I knew quiet title. I didn't know it was a suit or what it was.

Q. What did you think you had to do? A. I didn't know anything about law business. I

didn't know what it was. I thought it was just quieting title, whatever that meant.

Q. What did you understand by quieting title? A. Why, I understood that these people by the name of Cooney, etc., had had it under a will, whatever they had left, hadn't made provision for the other folks, for their people, and that Mr. Benny & Cruden wished to see that that was settled.

Q. And bring suit? A. I don't know anything about bringing suit.

Q. You didn't understand that? A. I didn't understand that, no, sir.

Further cross:

Q. Do you remember attending before former Judge Chamberlin?

The Court: She said she was there.

Q. I have your deposition here? A. Yes, sir.

Q. You remember testifying there before him, do you not? A. Yes, sir.

Q. In that suit to quiet title? A. Yes, sir.

Q. Did you not say, "I live at 616 Avenue E, Bayonne, New Jersey, I am one of the complainants in this case and the other complainant is Warren Ferris"; didn't you so testify? A. No, sir; I do not remember testifying to that.

The Court: You so testified as it appears of record.

A. That must have been read to me. I do not remember reading it.

Q. You signed the affidavit and swore to it? A. I do not remember reading that, just the affidavit I made.

Further cross-examination by Mr. Martin:

Q. You read it over before you swore to it? A. Just that.

Q. Now, is this car that you have now a Hudson car or a Dodge car? A. Hudson car.

Q. So you haven't got a Dodge car here. You turned that in and bought a new car? A. Yes, sir.

Q. How much did you pay for that? A. Mr. Keffer knows.

Q. How much was paid for it? A. We turned in the Dodge car.

Q. How much money? A. I think $800.

Q. How much did you have to pay for the Hudson? A. I don't know whether it was twelve or sixteen.

Q. Did you pay that money out of this fund? A. Mr. Keffer paid it.

Q. Out of this money though, did he? A. Why, no; Mr. Keffer had access to his own money, not to mine.

Q. What is that? What was the money that Mr. Keffer paid—used to pay for this Hudson car? A. Why, I don't recall what he used to pay for that car.

Q. Was it your money out of this estate? A. No, sir.

Q. He only earns fifty dollars a week, doesn't he? How could he save that money, six or seven hundred dollars to pay for a new car. How much was it? A. Thirty-five or forty, I don't know, at that time. He earns more money than that now.

Q. Yes, but when was his salarly raised? A. Quite some time ago.

Q. When? A. Oh, I couldn't give you the exact date of when.

Q. About when? A. (No answer.)

Q. You received one-half the rent of this property between the time of Mr. Anton Hirschman's death on May 19, 1920, until the 5th of October, 1922, didn't you? A. After the repairs, etc., were paid out.

Q. Yes; you paid the taxes and the repairs on it and you divided equally with Warren Ferris what was left, is that right? A. Yes, sir.

Q. Now, did you know that Warren Ferris had made an application to the Surrogate of Hudson County to be appointed as administrator of the estate saying that he was the only heir? A. Yes, sir.

Q. And that this was in June or July, 1920, long before you testified before Mr. Chamberlin, did you know that? A. I knew he applied for the administration papers. I didn't know just what they were.

Q. Did you know he applied for it on that ground? A. No, I did not.

Further cross-examination by Mr. Hudspeth:

Q. Why, when you were interrogated about this car, you remember that it was referred to as the Dodge car, both yesterday and today, yet you never stated that you turned it in for a Hudson car until Judge Martin referred to it? A. I didn't think of it. I understood Sedan; I didn't understand the name.

Q. Didn't you know all the time when we were asking you about the Dodge car you didn't have that car now but had a new Hudson car? A. I didn't understand you, Judge, to say Dodge car, excuse me.

JOHN H. KEFFER, recalled for further cross-examination by Mr. Martin:

Q. When did you turn in the Dodge car—when did you buy the Dodge car? A. I put the order in in March, 1922.

Q. What? A. I put the order in about March, 1922.

Q. When did you get the car? A. Well, I got the car in September, 1922.

Q. When was it paid for? A. Paid for the day I got it.

Q. How much did you pay for it? A. The Dodge stood about sixteen hundred and some odd dollars.

Q. How did you pay for it? A. Cash.

Q. What cash? A. My own money.

Q. Where did you have it? A. Where?

Q. Yes. A. About my person.

Q. Where did you get it from the day you paid it? A. Where did I get it from, saved it.

Q. Where did you have it before you took it to the place to pay for the Dodge car? A. On my person.

Q. Where did you get it from? You didn't carry it around all this time, did you? A. Pardon me.

Q. You didn't carry this money around in your pocket, did you? A. Yes, sir, I had it about my person or home.

Q. You didn't have it in any savings bank account? A. No, sir. I very seldom—I never had any money in the bank to amount to anything.

Q. Never had any savings account at all? A. I had a savings account in the Bayonne Trust Company for about five or six years but I never put any money into it.

Q. You didn't take the sixteen hundred dollars,

whatever it was, for the Dodge car from any savings bank? A. No, sir.

Q. And you had saved $1,600? A. Well, got it here and there.

Q. You had saved it? A. Yes, sir.

Q. Well, had you saved it out of your earnings? A. Out of mine?

Q. Yes. A. Some of it, yes.

Q. You earned about thirty-five or forty dollars a week, didn't you? A. Yes, sir.

Q. What do you mean by some of it? A. Do I have to go into the details about how I got this money?

Q. What do you mean by some? A. Some of the money I paid for the Dodge car was out of my earnings.

Q. Where is the rest? A. Do I have to tell?

Q. Yes; I am asking you. A. Lucky bet on the horses.

Q. Now, didn't some of it come out of the rents of the Anton Hirschman property? A. The only money that came out of Anton Hirschman's property that went into that car I earned collecting those rents and taking care of the property.

Q. You mean to say you charged your wife commission for collecting rent? A. Why shouldn't I?

Q. What? A. Why shouldn't I?

Q. Do you mean to say you did? A. I did, yes, sir.

Q. Didn't your wife collect the rents herself? A. Between the two of us; I did most of the collecting. She kept the books.

Q. Didn't your wife collect some of the rents of Anton Hirschman in his lifetime? A. In his lifetime she did, yes, sir.

Q. When was this personal estate distributed so that your wife got $1,500 from Warren Ferris as

administrator? A. Why, I believe in 1921, I think, right after the account was filed.

Q. Was any of this money that went into the Dodge car—— A. No, sir.

Q. From that? A. No, sir; the wife kept that money separate. It was her own money, not mine.

Q. So that you had $1,600 part of which you saved from $35 a week. How much was that? A. I couldn't say.

Q. Well, about how much? A. Why, maybe eight or nine hundred—about half of it.

Q. And when was this lucky horse bet? A. Along in 1922. I played them on and off.

Q. In 1922. You bought the car in 1921. A. No; I bought the car in 1922.

Q. What time of the year? A. All through the year. I played them more or less all my life.

Q. You said a lucky horse bet. A. That is just the lucky one, that is the one you win on.

Q. Which one, I mean the one you won on, that you got the money? A. I couldn't remember.

Q. Don't you remember the name of the horse?

The Court: The one lucky horse.
Witness: Yes, sir.
The Court: Don't you remember it?
Witness: Yes, sir; "You Need."

Q. Where was the race? A. Latonia I believe.

Q. Latonia? A. Latonia, Ky.

Q. When? A. I couldn't say the date.

Q. What meeting? A. I couldn't say the meeting.

Q. In what time of year? A. There is spring meeting and fall meeting.

Q. Well, spring meeting or fall meeting of 1922? A. It may have been one or the other. The spring meeting, probably.

Q. What were the odds? A. Eight to one.

Q. And what did you lay? A. Pardon me.

Q. What did you lay? A. $100.

Q. That made $800? A. $900 I got back.

Q. Who did you lay it with? A. Man by the name of Campbell in Bayonne.

Q. What is his first name? A. I couldn't tell you.

Q. What is his address? A. Address? Down on the railroad track at 22nd street.

Q. What railroad track? A. East Jersey.

Q. Whereabouts on 22nd street? A. Anywhere on the railroad track there.

Q. Don't you know anything more than that about it? A. That is all I know about it.

Q. When was the last time you saw him? A. I stopped playing the horses. You can lay bets anywhere. I will bet you can go on this street and lay a bet in front of this building.

Q. Do not argue with me. I want to know where this man is now? A. He may be in jail.

Q. What? A. He may be in jail.

Q. Then there is $800 that you got out of the lucky horse. I don't suppose you lost? A. Sure I lost.

Q. Any money since you got that lucky horse? A. No, because I quit playing to any great extent.

Q. Well, did you play to any little extent and lose some of the eight hundred? A. Since then?

Q. Yes. A. Maybe one or two odd bets.

Q. Did you lose any of the $800? A. Maybe twenty or thirty of it.

Q. All right. Then you had about $800 from the horse bet, and how much did you save from your wages? A. About eight hundred.

Q. And how much did you save from commissions that you charged your wife for collecting the rents on her property? A. Well, I think during the year I probably got about $300—two or three hundred dollars.

Q. That makes $1,900. A. I needed some money to run the car.

Q. Well, now, how long did you keep that Dodge car? A. Until September, 1923, I believe.

Q. 1923? A. Yes, sir.

Q. And then you—— (interrupted).

The Court: When you bought that car in March—ordered it in March——

Witness: Ordered it in March.

The Court: ——did you buy it for cash?

Witness: Bought it for cash.

The Court: You did not have this bet money at that time.

Witness: Oh, no; I didn't get the car until September.

The Court: Well, how much money did you have in March?

Witness: Well, if I made the bet in March I had——

The Court: You hadn't won the bet when you ordered the car, had you?

Witness: No, sir.

The Court: And you were going to pay for this car in cash?

The Witness: I wasn't at that time, no.

The Court: You bought it for cash, you just told me.

Witness: I ordered it for cash—it wasn't specified on the order how it was to be paid for.

Q. Well, when did you turn it in for the Hudson car? A. Around September, 1923.

Q. What year? A. 1923.

Q. What was the purchase price of the Hudson car? A. About $1,700.

Q. And what was the valuation allowed on the Dodge car? A. Eight hundred, I believe.

Q. So that there was $900 to pay? A. That included all extra shoes and extras, the price of the Hudson is $1,595 delivered.

Q. What you paid for the car with all the extras and everything was $1,700, wasn't it? A. I should imagine $1,700.

Q. And they credited you with the Dodge car $800? A. Yes, sir.

Q. And that left nine hundred to pay, didn't it? A. Yes, sir.

Q. Now, did you pay that? A. I paid it.

Q. In cash? A. Yes, sir.

Q. Where did you get that money? A. Money for a second mortgage that I owned on my father's house.

Q. What? A. I owned on my father's house.

Q. What mortgage was that? A. My father gave me a second mortgage on his house for the money I gave to him during the time I was working and lived home. That is the way he paid me.

Q. When did he give you the mortgage? A. He gave me the mortgage in 1923 some time.

Q. Well, what was the name of your father? A. Thomas H. Keffer.

Q. And the mortgage was a second mortgage on what property? A. 119 W. 36th street.

Q. Does your father live there now? A. No, sir.

Q. Did he live there then? A. He did then, yes, sir.

Q. Where is your father now? A. 1546 Whitney avenue.

Q. Does your father live with your mother? A. Yes, sir.

Q. She lives out in Harrisburg, Pa., doesn't she? A. No, sir.

Q. Did she live out there? A. Never.

Q. Didn't you go out to see your mother in Harrisburg, Pa.? A. No, sir.

Q. Who was that you went to see? A. My father's sister.

Q. That was a Miss Keffer, was it? A. No, sir; Mrs. Keffer.

Q. Your father's sister's name is Mrs. Keffer? A. Yes, sir.

Q. She married a Keffer? A. Yes, sir.

Q. How much was this mortgage for? A. $2,000.

Q. How much? A. Two thousand.

Q. Where did you get the two thousand you let your father have? A. That money?

Q. Yes. A. My father gave me that mortgage in payment of moneys that I had given him while I was living there before I was married.

Q. He gave you the money in—— A. In payment.

Q. In 1902? A. No, sir.

Q. Or 1922? A. 1922.

Q. When in 1922? A. In the fall some time.

Q. And when did he pay it off? A. It was paid off some time in 1923 when the house was sold.

Q. By your father? A. By the parties that bought the house.

Q. Put the mortgage on record? A. Yes, sir.

Q. How was it paid off, in cash? A. Paid off in cash.

Q. No check? A. Well, there was a check from lawyer Kennedy in Bayonne.

Q. Did you put the check in your bank? A. I cannot recall. I think I did—no, I didn't. I put

$1,500 in and took $500 in cash from the bank.

Q. You did what? A. I deposited $1,500.

Q. In the bank? A. In the bank and took $500 in cash.

Q. How could you do that with a two thousand dollar check? A. That makes $2,000.

Q. Did you put the check for $2,000 in? A. I put the check in the bank account.

Q. For $2,000? A. For $2,000.

Q. And you drew out five hundred? A. Had my account credited with $1,500 and I got $500 from the bank.

Q. Which bank? A. Bayonne Trust Company.

Q. Still got it there—still got the $1,500? A. No, sir.

Q. Where is that? A. I had to pay it for the Hudson.

Q. What? A. I had to pay for the Hudson.

Q. Took $900 out? A. I can't tell you the round figures.

Q. Don't you know the difference between eight hundred and seventeen hundred? A. Yes, sir, but I made so many transactions I can't remember them all.

Q. Do you mean to tell the court you had a check for $2,000 and the bank only credited your account with $1,500? A. Yes, sir. Look in my bank book, I believe that is the way it is. They gave me $500—or you can say, cashed the check for two thousand and put fifteen hundred in the bank.

Q. You carried fifteen or sixteen hundred dollars in your pocket for several years, did you? A. Not several years, no.

Q. How many years? A. How many years?

Q. Yes. A. I never said I carried $1,500 in my pocket for several years.

Q. What was the biggest sum of money you carried? A. $500.

Q. For how long a time did you carry $500? A. Two days.

Q. Did you do this before Uncle Anton Hirschman's death? A. Yes, sir, before I was married even.

Q. You always had a lot of money? A. No, sir, I did not.

Q. Well, did you always have some money? A. I always had some money, yes, sir.

Q. You never had less than five or six hundred dollars, did you? A. Yes, sir, lots of times.

Q. For how long a period of time? A. Well, that is too much in detail. That is too far back. I cannot recall it.

Q. Why not? A. Well, I might have had a dollar today and fifty tomorrow.

Q. How old are you? A. 27.

Q. In 1920 you carried a thousand or fifteen hundred, didn't you? A. Eight or nine hundred probably.

Q. And in 1921 a couple of thousand? A. In 1921 I carried some money. I cannot tell you exactly.

Q. How about 1919? A. 1919, the year I was married, I had very little money because all I could get was going into buying things for a home.

Q. Have you bought a home? A. No, sir, furniture and things.

Q. Didn't you have always with you two or three thousand dollars? A. No, sir, not that much.

Q. $500? A. Carried some money.

Q. You always carried some and you always had plenty, didn't you? A. Well, you couldn't call it plenty.

Q. Your wages were always the same? A. No; my wages have varied quite a bit, up and down.

Q. You mean to tell us that you borrowed—that your wife borrowed $500 from John Ruroede in 1919? A. Yes, sir.

Q. When you had all this money with you? A. I told you in 1919 I had very little money.

Cross-examination by Mr. Hudspeth:

Q. Why didn't you pay this $500 in 1920 when you did have it? A. What for?

Q. Why didn't you pay Ruroede the $500 when you did have it in 1920? A. Because he didn't need it.

Q. Is that your explanation? A. Didn't need it or didn't want it.

Q. Why didn't you pay it in 1921? A. Didn't ask me for it.

Q. Why didn't you pay it in 1922? A. My wife paid it in 1922.

Q. Why did you allow her to pay it if you had the money? A. Why?

Q. That is what I asked you? A. Well, it was borrowed between the two of us, wasn't it? We borrowed it.

Q. She borrowed it and therefore she had to pay it? A. Not exactly, no, sir.

Q. Why didn't you pay it? A. Well, at that time she had more money than I did.

DEFENDANT KEFFER RESTS.

RALPH B. SANBORN sworn for defendant.

Direct examination by Mr. Demarest:

Mr. Martin: Yesterday it was asked if we charged fraud on the part of the Consumers Coal & Ice Company. I said no actual fraud. Now, I want to emphasize the proposition that I do not charge any actual fraud or any fraud in fact by the Consumers Coal & Ice Company at all, but that the bill charges a constructive fraud in that they joined in the fraud started by C. Keffer and Ferris.

Mr. Demarest: I do not know what Judge Martin means by that.

The Court: Did you mean they were innocent purchasers? Innocent in fact?

Mr. Martin: No. I think they undertook the duty of clearing up this title and they knew that Anton Hirschman's heirs would have a right to come in.

The Court: That is a legal proposition.

Mr. Martin: I do not charge actual fraud in fact.

Mr. Demarest: Then you do not require me to call Mr. Brady?

Mr. Martin: I do not know about that but you asked me what I charged and I do not charge that.

The Court: Your point is that they had not notice of the existence of other heirs but that they were charged with notice, is that right?

Mr. Martin: They assumed the duty and objected to the title on the ground that there might be other heirs and that they

knew that there might be such a claim, and they are chargeable with the duty.

The Court: They did not know there was such a claim but that they were chargeable with notice.

Mr. Martin: I do not charge that they actually knew that there was a Frank Steffens.

The Court: You do not charge conspiracy.

Mr. Martin: Oh, no.

Q. Where do you live? A. 74 W. 36th street, Bayonne.

Q. And your profession? A. Counsellor at law.

Q. And real estate? A. And real estate.

Q. Do you know Mr. Warren Ferris and Mrs. Keffer? A. Yes, sir.

Q. Did they place in your hands for the purpose of sale this Hirschman property in 1920? A. No, sir, in 1922, January 6, they gave me authorization in writing.

Q. What steps did you take to make sale of that property? A. Right after I got the authorization I advertised the property as a whole in one of the Bayonne papers and after that, since I was not very successful in obtaining offers——

Q. Did you obtain any offers in response to that advertisement? A. Nothing to speak of at all excepting that I think I got an offer for one of the lots of $2,000.

Q. What did you do then? A. Then I advertised the property separately, that is the East 53rd street and the Broadway property.

Q. What became of that? A. I received no offers anywhere near the amount named in the authorization.

Q. What was the amount named in the authorization? A. $26,000.

Q. What offers did you receive? A. I received offers, after I had given the property or listed the property with other brokers—I have a number of brokers with whom—I have a number of brokers with whom I placed the property at that time.

Q. What was the best offer you received after the second advertisement? A. The best offer I received after the advertisement—do you mean in the end, or——

Q. After you—— A. I received several offers.

Q. What was the best offer you received? A. $21,000.

Q. From the Consumers Coal & Ice Company? A. Yes, sir.

Q. Now, you have had considerable experience in the sale of real estate? A. Yes, sir.

Q. And you know the value of real estate in the portion of Bayonne where this property is located? A. Yes, sir.

Q. Do you consider $21,000 a fair value for the property that was sold by the defendants in this case to the Consumers Coal & Ice Company? A. Yes, sir.

Q. Did you negotiate the sale of a mortgage owned by Mrs. Keffer in the year 1922—Mr. Keffer? A. Mr. Keffer?

Q. Mrs. Keffer, $4,000 mortgage on some property in 36th street? A. Yes, sir; I think that property was in the name—two names. You asked me about Mrs. Keffer. Mr. and Mrs. Keffer I think, that name was.

Q. Did you know that Mrs. Keffer held a $4,000 mortgage on some property in 36th street, Bayonne? A. I placed that mortgage.

Q. You placed it? A. Yes, sir.

Q. Where did the money come from? A. From Mrs. Keffer.

Q. Was the transaction closed in your office? A. Yes, sir.

Q. And she paid the money to you in your office? A. Yes, sir.

Q. And you saw her receive a $4,000 mortgage? A. Yes, sir; that was a purchase money mortgage.

Q. Were you Mrs. Keffer's attorney at that time? A. I represented her in closing the mortgage.

Q. When was that mortgage loan made? A. I think it was in the latter part of October.

Q. What year? A. 1922.

Q. Do you know the rate of interest? A. 6%, payable semi-annually for three years.

Q. Do you know whether that was an investment made by her? A. Yes, sir.

Q. Did you have anything to do subsequently with the sale and assignment of that mortgage? A. Yes, sir.

Q. Who purchased it? A. Man by the name of William, I think it is L. Hellenger.

Q. Was the money for the purchase of that mortgage paid in your office? A. Yes, sir.

Q. How much? A. $4,000, check.

Q. To whom? A. To Mrs. Keffer.

Q. Now, when was that mortgage assigned and sold? A. I am very sure the date was December 1st.

Q. Which year? A. The same year.

Q. 1922? A. Yes, sir.

Q. Why was it sold, do you know? A. Sir?

Q. Why was it bought in October as an investment and sold in December? A. I knew that Mrs.

Keffer had some money and my business was placing mortgages and I went to Mrs. Keffer and asked her if she had any money to invest and she told me——

Q. Why was it sold so soon after? A. Why, I don't know. They come in one day shortly after, about two or three weeks after it was placed, and asked me if I could dispose of it for them and I told them I would see what I could do and about a couple of days later I told them I had a man that would take it over for them and they said all right, and the transaction was put through.

Q. What did you do with the $4,000? A. Why, this check that was given was not the check of the mortgagee.

Q. What did you do with the money for the mortgage? A. I passed the money over to Mrs. Keffer, $4,000 check.

Q. Whose check was it that paid for the assignment of this mortgage? A. I cannot remember.

Not Cross-Examined.

Percival G. Cruden sworn for defendant.

Direct examination by Mr. Demarest:

Q. Mr. Cruden, do you live in Bayonne? A. I do.

Q. And are a member of the firm of Benny & Cruden? A. I am.

Q. Practiced law how many years? A. I think something like eighteen. I wouldn't be sure about it.

Q. In 1922, you had charge of the real estate business of that firm? A. I did have then and have now.

Q. Did the Consumers Coal & Ice Company of Bayonne come to your concern with reference to the purchase of the Hirschman property in 1922? A. They came to Mr. Benny, I believe.

Q. And did you examine the title? A. I examined the title—contract was handed to me by Mr. Benny.

Q. Now, after the examination of the title what objection if any did you raise to it? A. There are a number of objections and if the court will permit me I will refer to my original notes.

Q. State what they were. A. I found that the title came—it was divided into three parts—came through one party through a man name of Michael Cooney; deed was made by Susan Cooney to Hirschman, and the next year following there was a deed recorded from Susan Cooney and a number of others, stating that they were the heirs and only children by marriage of Michael Cooney, deceased. Another part of the title came through Prout—man by the name of Prout—John Prout and deed was made after the lapse of a long number of years from the time he got the title to Hirschman by John Prout, Jr. and wife, who stated—alleged in the deed that he was the only heir at law of John Prout deceased. I also found a contract which was recorded made by Anton Hirschman to a man by the name of Harry Zayalsky. I could find no release. In my examination I also found the application for letters of administration on the estate of Anton Hirschman deceased, the petition being sworn to—the affidavit being sworn to by Warren Ferris to the effect that he was the only heir and next of kin of Anton Hirschman who had died intestate. I made inquiries—first I went to Mr. Mungle Corey who was then living and who was a counsellor of

this court and had taken the acknowledgment to the original Susan Cooney deed to Hirschman and asked him if he could explain to me why this deed was subsequently made by a number claiming to be the heirs at law if, as a matter of fact the title was vested in Susan. I also asked him if he knew any of the Cooneys. He said no, he couldn't explain the reason, that the Cooneys as he recalled them lived in that neighborhood of the property, that they lived across the line in Greenville, and he said that they came to him for this transaction, that he had never had any business with them and he didn't know whether Cooney died intestate or whether those who were alleged to be his heirs were his heirs at law or whether——

The Court: Can't you shorten it up?

Q. Shorten it up and give your reason.

Mr. Martin: May I make a suggestion? Mr. Cruden testified in the case of Ferris against Hirschman and my recollection of the evidence is that he said then just about what he is now saying, and that is in evidence in this case.

The Court: No, it is not in evidence.

Mr. Martin: I offered it in evidence. I offered the file of the case of Ferris against Hirschman.

The Court: While the files are in I do not think that the testimony is in.

Q. Go ahead and shorten it as much as possible. Give the court your reasons for objecting to this title or being dissatisfied. A. I also made inquiries from Mr. Insley, who had passed the title to the Provident Institution of Saving as to this

same question. Mr. Insley got out his original file in person and could not explain it, but he said his recollection was that Susan Cooney did not actually own that property but that she had it in trust because her father Michael had judgments or was in some kind of financial difficulty and that he required the deed from the heirs, he thought, so that there will be set at rest any question of the equitable title being vested in the heirs.

Q. What other lawyer did you consult with regard to the title? A. I went to the office of Mr. Hudspeth, who had passed this title for the Greenville Building & Loan Association and made inquiries there and was told that they had no recollection of it. I did not see the Judge himself. The old files were at the Judge's country home and were not accessible.

Q. Now, after the investigation you had made and after your examination of the records, were you willing to pass that title? A. I was not.

Q. Did you raise any objection to the title because of the uncertainty of the heirs of Anton Hirschman deceased? A. That never entered into the title at that time.

Q. Now, who conducted the suit to quiet title, did you or—— A. Mr. Benny. I closed it. Mr. Benny tried it.

Q. You then examined the title and raised these objections to the title? A. Yes, sir.

Q. Mr. Benny, your partner, then conducted the suit to quiet title and you finally closed the title? A. I closed it.

Q. Now, when was the title closed? A. The title was closed October 5th in the afternoon, 1922.

Q. 1922. I call your attention to the fact that two of the affidavits of title that have been introduced in evidence are dated the 6th instead of the

5th, when you say you closed the title. Can you explain that discrepancy in date? A. I can.

Q. What was it? A. The title was closed in the afternoon and it was around between five and half past when it was finished. I had another closing with a group of people waiting outside and as soon as I had finished with this title the papers were all put together and put in the file and I proceeded to close my second title and signed up acknowledgments and the affidavits the following morning, and inadvertently put in the new date in the affidavit when I should have put in the date of the 5th. Actually the affidavit was taken on the afternoon of the 5th day of October before me.

Q. Had the two affidavits that I have referred to been actually sworn to by the affiant before you closed that title? A. Oh, absolutely.

Q. Now, did you see the balance of the purchase price paid over? A. I paid it over. Drew the checks.

Q. Drew the checks? A. Yes, sir.

Q. Paid them to whom? A. I took out the taxes.

The Court: Paid it to whom. Answer the question.

Q. Who did you pay them to? A. I paid part to the City of Bayonne, part to Ralph Sanborn, part to John J. Hoffman, part to Benny & Cruden and divided the balance between Warren Ferris and Mrs. Keffer.

Q. Did you give Mrs. Keffer and Warren Ferris their checks in the office at the same time that you passed title? A. Same time.

Q. Now, do you remember a bill for services in this suit to quiet title being presented at that time? A. I do.

Q. Who had made up that bill? A. Mr. Benny.

Q. I show you a bill and ask you whether you can identify that as the bill that was presented on that occasion. A. That is a carbon copy of it.

Q. And that bill is dated September 28, 1922; it is to Warren Ferris and Mrs. Charlotte Marie Keffer for the sum of $225 services and $105.14 disbursements, making a total of $330.14.

Mr. Demarest: I offer it in evidence.
Paper marked Exhibit D-C-5.

Q. Do you remember any discussion between you and Ferris and Mrs. Keffer that took place in your office upon the presentation of that bill? A. Yes, sir; there was. When I handed the bill to them I told them this was the bill as prepared by Mr. Benny and Mr. Hoffman looked at it, and I believe that both of the parties in interest, Mrs. Keffer and Mr. Ferris, looked at it. They said the bill was very high and I said, "Yes, that may be so"; and there was some discussion as to the—they didn't think they should pay so much and that the contract said $100 was to be paid.

Q. In fact the contract—provision of the contract is only in regard to search fees and survey, isn't it? A. Yes, sir. There was no provision, but they were under that impression and Mr. Brady entered into the argument at that time, and I didn't say anything further, and finally I turned to Mr. Brady and asked him how he thought about it.

Q. Mr. Brady was the general manager of the Consumers Coal & Ice Company—he was present. A. And he said that he wanted to be fair about the thing but he thought they should pay the bill. It was work that was performed for them, and they

finally said no, they wouldn't pay it—didn't want to pay any more than $100, and they were willing to pay that and Mr. Brady said, "All right, you can bill me for the balance."

Q. Was that because they said they hadn't ordered the work? A. No, sir.

Q. Did they deny they had ordered the work? A. No; there was no question about that.

Q. Do you know how the firm of Benny & Cruden came to file that bill? A. I do not. When I completed my examination I have nothing to do with the Chancery Court matters. I handed the papers to Mr. Benny.

Q. And he conducted that suit? A. Yes, sir.

Q. What you have described then are all your relations with these transactions—you have covered everything? A. Excepting the preparation of the affidavit.

Q. I first show you the affidavit, typewritten in form, which has been marked Exhibit D-C-1 which was taken before you as a Master in Chancery? A. Yes, sir.

Q. Who prepared that affidavit? A. I did—I dictated it.

Q. And it was sworn to before you? A. It was dictated in the presence of both Warren Ferris and Mrs. Keffer and sworn to by them before me.

Q. Where did you get the information? A. From them. They gave me the information.

Q. From whom? A. From Warren Ferris and Charlotte Marie Keffer.

Q. From whom did you get the information as to Mrs. Keffer's affidavit? A. They were both joined in one affidavit, and they gave me the facts and I dictated as I went along to the young lady who I called in.

Q. And that affidavit was made on the day you

passed title and sworn to by them before title was finally passed? A. Yes, sir, before the papers were delivered.

Q. Now, were the affidavits read to them? A. Yes, sir, read.

Q. Before they signed them? A. Before. They heard it dictated, was read to them and handed to Mr. Hoffman who also read it over.

Q. He was there representing them? A. He was there and Mr. Sanborn was also present.

Q. He was representing who? A. I don't know who he represented. He was there and Mr. Sanborn and I don't know which represented the other.

Q. Now, I show you another affidavit made by Warren Ferris dated the 5th of October, 1922, and taken before John J. Hoffman in regard to the title, did you prepare that affidavit? A. I did not.

Q. Who did? A. I don't know. Mr. Hoffman presented it.

Q. Was that affidavit taken in your office? A. It was.

Q. Do you know whether it was read to Ferris before it was taken? A. I cannot swear to that. Hoffman presented it there and it was signed in front of me at that time, but as to whether he read it out loud to them again I don't know.

Q. Hoffman was Ferris's attorney, was he not, in the matter? A. I think so.

Q. And was Ferris present at the time Hoffman handed you the affidavit? A. They were all sitting at the table in my room.

Q. Now, I show you another affidavit marked Exhibit D-C-3, and same form as the Ferris affidavit, which I also showed you, taken by Charlotte Keffer and sworn to before Percival G. Cruden.

A. That was presented by Mr. Hoffman at the same time.

Q. But you took the affidavit of Mrs. Keffer? A. Mrs. Keffer, yes, sir, and signed it inadvertently the 6th, when it was taken on the 5th.

Q. Now, did you make known the contents or read that over to Mrs. Keffer before it was sworn to? A. Yes, sir.

Q. Which did you do, tell her what it was or read it to her? A. I informed her of the contents of the affidavit.

Cross-examination by Mr. Martin:

Q. When was the deed from Prout to Anton Hirschman? A. It bears date January 19, 1903.

Q. What is the date of the deed from Susan Cooney to Anton Hirschman? A. October 19, 1886, from Susan Cooney.

Q. What is the date of the contract with Harry Zayalsky—between Anton Hirschman and Harry Zayalsky? A. July 16, 1917, recorded August 14, 1917.

The Court: Counsel will file what pleadings may be necessary to make this testimony competent and serve on the other side and have all those things in order before you come back.

Adjourned until March 12, 1924.

April 30, 1924.

Continuation of examination pursuant to adjournment at the place and in the presence of the parties as before.

PERCIVAL G. CRUDEN resumed the stand for further cross-examination by Mr. Martin.

Q. Mr. Cruden, in the Spring of 1922 on until October, 1922, who were the members of your law firm of Benny & Cruden? A. James Benny, Burgess H. Cruden and myself.

Q. And you have stated that your part of the examination of this title was merely preliminary to the date fixed for the closing? A. Well, I examined the title for the Consumers Coal & Ice Company before the time for the closing. When the contract had been drawn it was turned over to me for the examination of the title, I having charge of all of the real estate matters in the office.

Q. And then you actually closed it after the suit to quiet title was completed? A. After the decree had been obtained, yes, sir.

Q. And you had nothing else to do with it? A. Nothing else except to examine the title and run up these questions which I raised—or rather, run down the questions which I raised, and reached the conclusions which I reached in trying to settle them up.

Q. You had no conference with Mrs. Keffer or Warren Ferris, or interview with either of them, excepting at the time of closing on October 5, 1922, did you? A. I do not recall ever having met them prior to the date set for the closing, no.

Q. And they made no statement in reference

to the matter excepting those statements which were put in the affidavit form and subscribed to by them, did they? A. That is all. I dictated the statements from information given to me by them at the closing, and dictated them in their presence, and their counsel, Mr. Hoffman and Mr. Sanborn, read them over and they signed them there at that time.

Q. Now, the title to part of these eight lots in question in this suit was derived through Michael Cooney, in 1886, was it not? A. Yes, sir.

Q. And he deeded the title to Susan Cooney? A. Susan Cooney, yes, sir.

Q. In 1886? A. No, he dated—the deeds are just a little earlier. The title went to Michael Cooney in 1873 from Mungo Currey and others, executors, and Michael Cooney, without mentioning whether he was single or married, conveyed to Susan B. Cooney by deed dated July 1, 1879.

Q. 1879? A. 1879, yes, sir.

Q. And then what other deed was there on record that you stated you found from a number of different persons who appeared to be Cooneys? A. Then Susan B. Cooney, without stating whether she was married or single, made a deed to Anton Hirschman dated October 19, 1886, and under date of January 26, 1887, John Cooney, Susan B. Cooney, Mary A. Cooney, Richard M. Cooney, Julia F. Haines, Edward Haines and George W. Cooney and Agnes, his wife, and Elizabeth C. Cooney, unmarried, only heirs at law and children by marriage of Michael Cooney, made another deed to Anton Hirschman.

Q. Now, what was the objection to that that you stated to Ferris or Mrs. Keffer or to their counsel? A. I made no statements to them, judge. I made the statement to Mr. Benny.

Q. What was your objection to that? What was the trouble with that? A. The objection was this: that if Susan B. Cooney held the title clear from any claims of anybody from Michael, by deed from said Michael, then why this additional deed from the heirs at law from Michael? The question in my mind arose immediately whether Susan did not as a matter of fact hold this title in trust for Michael.

The Court: She might have been his wife.

Witness: She was his daughter, as a matter of fact, your Honor. I found out from inquiries after. That raised the question as to what interest Michael had. He died in the meantime, apparently, and a number claiming to be his heirs at law made a deed—another deed to Anton Hirschman which was acknowledged before William F. Kitlidge, a Master in Chancery of this state.

Q. But from 1886 to 1922 no suit had been brought by any of these Cooneys against Susan to enforce any theoradical trust that you had in mind, was there? A. No; as a matter of fact Susan joined in the deed—in this additional deed. But the other question which arose from this deed was that the deed states that these are the only heirs at law and children by marriage, and the question arose in my mind if these are the only children and heirs at law by marriage, why insert that statement, unless they were children by adoption, and it raised that question in my mind.

Q. Now, when did John Prout die who held title once to a part of this property—I am talking now of John Prout, Senior? A. I cannot tell you the date of his death because I was never able to ascertain it, but I can tell when he took title. John Prout took title from Mungo Currey—from the Currey executors on May 19, 1873. There was no application for letters of administration either in the Cooney case or in the Prout case, at the Surrogate's office, but I found a deed made by John Prout, only heir at law of John Prout, deceased, on January 19, 1903, so that he died between those dates. I cannot tell you when.

Q. Did you find Zayalsky, who filed a contract for the purchase of one lot from Anton Hirschman? A. I was unable to locate him. I made inquiries from Mr. Seclow, who took the acknowledgment and apparently drew the contract and he said he didn't know the whereabouts at all and he was unable to help me, and I looked in the directories in Bayonne and could not find him.

Q. This was 1917 that the contract was made? A. Yes, sir, July 16th, it is dated, 1917.

Q. No suit to enforce it? A. There is no lis pendens. I know of no suit. There wasn't any lis pendens on file.

JAMES BENNY sworn for defendant.

Direct examination by Mr. Demarest:

Q. Mr. Benny, you are a member of the bar of New Jersey? A. Yes, sir.

Q. Have been for how many years? A. I think I was admitted in 1879.

Q. And are a member of the firm of Benny & Cruden? A. I am.

Q. Did you have the notes of the examination

of the title made by Mr. Percival Cruden, the last witness, before you in this matter? A. I did.

Q. And what objection, if any, did you find with the title? A. Well, there were several objections. One of the objections was, as detailed by Mr. Cruden, concerning the deed made by Cooney and persons claiming to be the heirs of Cooney, whether they were married or single or whether Michael Cooney did not have some interest in the land. That was one of the questions.

Q. What were the others? A. There was another question about whether John Prout, who died apparently intestate, left any other persons as his heirs at law except the John Prout who made the deed, and whether his widow survived him or not—whether there was any wife living or not, and then there was the contract on record made to a man named Zayalsky, or some such name, by which a portion of the property was to be conveyed to him, and I do not remember whether there were any other questions raised at that time or not except as to the heirs at law of Anton Hirschman.

Q. In view of that condition did you consider it safe to pass the title as it then stood of record? A. No. I advised that a bill be filed to quiet the title.

Q. Who did you represent at that time? A. I represented the complainants in the Ferris and Keffer——

Q. I mean at the time the notes were brought to you and you passed upon the title? A. We originally represented the Consumers Coal & Ice Company for the purpose of examining the title. I have represented that corporation for a great many years, as far as real estate was concerned.

Q. Had you ever previously been acquainted with or represented either Mr. Ferris or Mrs. Keffer? A. No; I never met them before.

Q. Never knew them? A. Never knew them.

Q. Now, after you raised the objections to this title what caused you to file the bill—who directed you to? A. My impression—my recollection is that I talked with Mr. Cruden and with Mr. Sanborn and with Mr. Hoffman about the matter. It was provided in the contract that if it became necessary in the judgment of the attorneys of the purchasers to have any proceedings for the perfecting of the title that five days after such proceedings were terminated should be added to the time to pass the title. And that was done for this reason, that in case it should, in their judgment, be necessary to have such proceedings, that the time of the passing of title would not be passed in the meantime.

Q. Now, did you have any talk with Mr. Ferris or Mrs. Keffer before you filed the bill to quiet title? A. No; not with them. I had correspondence with Mr. Hoffman, the attorney of Mr. Ferris; I had conversations with Mr. Sanborn, the lawyer—I think he represented Mrs. Keffer—at any rate, he was the agent who negotiated the sale—and got information from him and also from Mr. Hoffman concerning the questions that were raised and set forth in the bill of complaint in that suit to quiet the title.

Q. Who drew the bill to quiet title? A. I did.

Q. Based upon the information that you had received from these two attorneys? A. And from notes of Mr. Cruden as to the record.

Q. Now, when did you first meet either Mr. Ferris or Mrs. Keffer? A. The first time I met Mr. Ferris was the day that he testified before Special

Master Chamberlain, and the first time, so far as I now recollect, that I met Mrs. Keffer, was at the hearing before the Master.

Q. Now, did you have any conversation with Mr. Ferris before he testified before Special Master Chamberlain? A. Yes, sir; he called at my office and we went together from my office, to the Master's office, and at my office I questioned him as to heirs at law of Anton Hirschman and he told me that his mother, Julia Ferris, was his sister —of Anton Hirschman—that he, Anton Hirschman, did not have any other sisters and did not have any brothers, that his father and mother were dead and that his wife was dead. Whether she died before him or not I do not now remember.

Q. What was the purpose of you talking with him that time, to prepare yourself for the hearing of the case? A. So that I might examine him before the Special Master to whom the matter had been referred.

Q. Did you have any talk with Mrs. Keffer before the examination before the Special Master? A. No; not that I recall. I relied upon the information I had obtained from Mr. Ferris for my examination of Mrs. Keffer.

Q. Now, did you hear Mr. Ferris testify before Special Master Chamberlain? A. Yes, sir; he testified in response to my questions.

Q. And you have read the pleadings and affidavits in this case? A. Yes, sir.

Q. And did you hear him give the testimony that is there set out? A. He testified as set out in the Master's report.

Q. Now, did Mrs. Keffer testify at that hearing? A. She did.

Q. And was her testimony that which is set out

in the Master's report? A. Exactly the same. I think they both signed their testimony.

Q. Did you have any reason to disbelieve the testimony of these witnesses? A. None whatever.

Q. Did you have any suspicion that there were heirs of Anton Hirschman who were not parties to these proceedings? A. Not the slightest.

Q. And who prepared the final decree? A. I did.

Q. And did you at the time that final decree was prepared and filed believe that the testimony of these witnesses was true and that the final decree represented the true situation? A. I did.

Q. When did you first hear of any claim on the part of the complainants in this suit that they were the heirs at law of Anton Hirschman? A. After the filing of the bill in the present suit.

Q. In the present suit? A. Yes, sir. The Consumers Coal & Ice Company, by Mr. Thomas Brady, brought the papers that had been served upon them to me and from the contents of those papers—that was the first information I had that there were any heirs at law of Anton Hirschman other than these named in the case—in the pleadings of Ferris—or than those named in the deed.

Q. Who is Thomas Brady? A. Thomas Brady is the active manager of the Consumers Coal & Ice Company.

Q. Did Thomas Brady take any active part in passing this title or deciding what should be done to secure the title? A. No; except that he, when Mr. Cruden reported to him the questions that he raised, and that we would not advise that the title be taken unless there was a decree obtained to quiet the title, he says, "All right, we will wait until that is done".

Q. Did Mr. Thomas Brady take any other active part than that in the transaction? A. No; he didn't know anything about it otherwise than that.

Q. Now, at the time the title was passed, which was some time after the final decree had been entered in your suit to quiet title, had you received any information whatever, or were you at all suspicious about the regularity of your proceedings in the Chancery suit? A. No, sir; I hadn't the slightest idea but what everything was regular up to that time.

Q. How many years experience have you had, Mr. Benny, as a conveyancer? A. Well, I have been at it all my professional life, since 1879, if that is the date I was admitted—my principal business has been examining and passing titles. I have done a very large part of it. I am at the present time solicitor, and have for twenty-two years been solicitor of the Bayonne Building Association No. 2, which is one of the largest associations in Bayonne.

Q. In the state, is it not? One of the largest in the state? A. Perhaps it is, I do not know.

Cross-examination by Mr. Martin:

Q. The objections that were in your mind at the time when the contract provided for the closing of title, possibly May or June, 1922, were these that Mr. Cruden mentioned here this morning, were they not? A. No, sir; that was before Mr. Cruden had anything to do with the title. The reason for inserting that clause was because Mr. Sanborn told me that Mrs. Keffer was an adopted daughter and that she had an agreement with Mr. Ferris by which she was to have half interest

in the title, and it occurred to me that there might some complication arise growing out of that that would necessitate some court proceedings, and for that reason that clause was inserted in the contract, because my experience had been that where contracts were drawn fixing specified day for passing title and it became necessary in the opinion of the lawyers examining the title to have court proceedings that the questions immediately arose whether or not the contract could be enforced after the time named therein, and that is the reason of that, and that only.

Q. Possibly I did not make myself clear, Mr. Benny. The grounds stated to Homan and Sanborn on behalf of Ferris and Mrs. Keffer, the vendors, were those stated here this morning by Mr. Cruden, namely, the Cooney situation, the Zayalsky contract and the question as to the title of the property derived through Prout, is that so? A. If your question relates to the time when the contract was drawn those questions were not in my mind, because—(interrupted)

Q. No; my question relates to the time when the contract provided that title should be closed and before you commenced the suit to quiet title? A. When the title was examined and Mr. Cruden gave me his notes of the search and stated the questions that arose in his mind, then I interviewed the parties that I named for information.

Q. Were those the objections that you made? A. Whether they were all the objections I cannot now say. The objections are set forth in paragraph 11 of the answer of the Consumers Coal & Ice Company to the present suit.

Q. What is your recollection of it? You were the one who stated it? A. Yes, sir, but it is a year ago now and during that time I have had a

great deal to do and I would not say positively whether all the objections that were then made known have been included in my answers here today.

Q. Is your recollection clear enough to say positively that you did object on the ground that it was not clear that they were all the heirs of Anton Hirschman? A. Yes, sir.

Q. The only conversations that you ever had with either Ferris or Mrs. Keffer was at the time of the appearance before Mr. Chamberlain, the Special Master, to take the testimony in the suit to quiet title, wasn't it? A. The only time I had any personal interview with Mr. Ferris was the day at which the examination took place. Prior to that I communicated with Mr. Hoffman, his lawyer.

Q. You never had any conference with Mrs. Keffer? A. Not until in the Master's office.

Q. You made no inquiries as to the birthplace of Anton Hirschman from either of them? A. Not that I recall.

Q. Have you stated all the conversation you had with Ferris? A. Probably not. I could not attempt to relate that conversation.

Q. Did you rely on the fact that Ferris was the sole heir, or upon the fact that Mrs. Keffer was the daughter of the adopted daughter of Anton Hirschman? A. I relied upon the fact that if Ferris was the only heir that if Mrs. Keffer, having a contract from Ferris by which they were both to have the right to the property—make a deed—that we would receive the title to the whole.

Q. You never found any records of any adoption of the mother of Mrs. Keffer? A. No, sir, because I relied upon the fact, as I have stated, that if Ferris was the only heir at law his deed

conveyed the whole property. If Mrs. Keffer was the adopted daughter and she signed the deed, then we would acquire her interest in the property. So I didn't care either way, whether she was the legally adopted daughter or not.

Q. I asked you which one you relied on? A. We relied on both.

Q. You mean, of course, Mrs. Keffer's mother was the adopted daughter? A. Yes, sir, but the contract, as I recall it, was with the young Mrs. Keffer, as heir at law of her mother.

Q. You say you had correspondence with Mr. Hoffman? A. Yes, sir.

Q. Did you have any correspondence with anybody else in connection with trying to ascertain the facts? A. Yes, sir; I wrote letters to all the Cooneys, directing the letters—(interrupted)

Q. I do not mean anybody excepting heirs of Anton Hirschman. A. I do not recall any other person—I didn't know any other person to apply to.

Q. Did you make any other inquiries? A. I do not recall making any other inquiry except from Mr. Ferris or Mr. Hoffman.

Q. Have you that correspondence with Hoffman here? A. I am not sure whether I have or not.

Q. Perhaps I can ask you a question and save us the trouble of reading it. Is there any inquiry in that correspondence concerning the birthplace of Anton Hirschman? A. No, sir.

Q. Is there any inquiry as to where he lived in this country? A. Not prior to the time he lived in Bayonne. I personally knew the man.

Q. Was there any inquiry as to when he came to this country? A. No, sir.

Q. Is there any inquiry in regard to the family of Anton Hirschman? A. No.

Q. You had known Anton Hirschman yourself, hadn't you? A. For quite a number of years, yes, sir.

Q. Had you ever been to his house? A. No, sir.

Q. Did you ask Mr. Hoffman if there was any relatives other than Ferris, or old servant in the household who could give any information? A. I do not think I did. I know I did not.

Q. Well, this correspondence, you say, was in part an inquiry of Mr. Hoffman as to the heirs of Anton Hirschman. Now, what did you really ask? A. I think my correspondence with Mr. Hoffman related principally to the heirs at law of Mrs. Ferris, the mother of the young man Ferris. He said he was the only heir at law.

Q. Whether or not Ferris had any brothers and sisters? A. Yes, sir.

Q. And that was all? A. I think that was the extent of my inquiry.

Q. You drew this bill, didn't you? A. I did, sir.

Q. Let me try to refresh your memory a little bit. You did go to the surrogate's office and find that an application by Warren Ferris—(interrupted). A. Mr. Cruden had found that in his search. I did not.

Q. You did not find that? A. No.

Q. Did you find this agreement where Ferris and Keffer agreed to divide the property on record? A. It was in the record and among the papers that were handed to me by Mr. Cruden. Whether I inspected the record or not I do not now remember, but I have seen the copy of the agreement.

Q. And you cannot now recall that you made any inquiry other than what you have stated? A.

As to the heirs at law of Ferris or to the heirs at law of Anton Hirschman?

Q. Yes. A. No. No inquiries that I recall.

Q. Why did you make Charles Hadlick a party? A. It must have been because I was informed that he was the husband of some person. I do not now remember.

Q. Have you got any recollection about it? A. None, except that which is contained in the bill of complaint, and that is here.

Q. You know that Mrs. Keffer's mother, Daisetta or Daisy — Katherine Daisetta, or Daisetta Katharine Hirschman, as she is known, died in 1908, didn't you? A. I suppose that the thing that was in my mind then, if she was the legally adopted daughter of Anton Hirschman, that her husband—if the person you have inquired about was her husband—might have a possible interest and since we were filing the bill to quiet title we might as well include every person who could have any possible claim to it.

Q. Did anybody tell you that Charles Hadlick lived at 517 Nostrand Avenue, Brooklyn, that he had been married again? A. No, sir.

Q. And that his wife never had any title at all to this property? A. No, sir.

Q. Anton Hirschman died long after she did? A. No, sir.

Mr. Demarest: Judge Martin says the original papers of the suit to quiet title are in the record. I do not remember whether they are or not. In order to make certain of that I should like at this time to offer the final decree. If the papers are in, all right.

At the last hearing we thought it would be possibly necessary to call Mr. Thomas

Brady, the president of the Consumers Ice & Coal Company, or the manager of that corporation who had charge of this transaction. Mr. Brady is very ill and I do not believe he will ever arise from his sick bed. We do not care to examine him unless it is absolutely necessary. I do not think it is necessary if it is noted on the record that the Consumers Coal & Ice Company was not actively parties to the fraud; that is, there was no intention on their part to commit any fraud. If that is admitted we will not call Mr. Brady.

Mr. Martin: At the first part of the hearing there was some statement with reference to this made on the record. I have not had a copy of the record and I don't know exactly what it was, but what I do intend to say is that the complainants will not contend on this evidence that the Consumers Coal & Ice Company actually and intentionally participated in this fraud but we do contend they are guilty of constructive fraud.

Mr. Demarest: And that includes Mr. Brady personally. That is enough. We rest.

PERCIVAL G. CRUDEN recalled for further cross-examination by Mr. Martin:

Q. Mr. Cruden, have you a copy of the application for letters of administration by Warren Ferris upon the estate of Anton Hirschman? A. I have.

Q. Is it correct? A. This is a true copy as it appears on the records in the Surrogate's office of Hudson County.

Mr. Martin: If there is no objection I would like to offer it in evidence.

Paper marked Exhibit C1, April 30, 1924.

Mr. Martin: I think this is the proper time to ask leave to file an application *nunc pro tunc* for leave to file a bill for review.

Mr. Demarest: I do not see how Judge Martin can very well make that motion now.

The Court: I think I will permit the filing. Nothing to prevent you taking advantage of your position.

On motion of Mr. Martin Mr. Roberson was appointed receiver for both Mr. Ferris and Mrs. Keffer.

Exhibit C-4.

(Part of letter from Anton Hirschman to Charlotta E. Ostrom, one of the complainants.)

"The address to our birth place:

to Mr. or Frau so so .....
No. Strajba
Stadt Friedland
by Reichuberg, Boehmien
Oegterreich, Austria
Europa."

Exhibit C-6 (a).

#118

RECORD OF BIRTHS AND CHRISTENINGS.

The register of births of Engelsdorf in the judicial and political department of Friedland, Bohemia, Volume II. Folio #92, shows that on September 18, 1815, Anton Hirschmann was born at Engelsdorf, No. 6 and that on September 19 of the same year he was christened in the Roman Catholic faith by Ignatz Klinger, Chaplain. He was the legitimate son of lawfully wedded parents who were both Catholics.

Father: Hirschmann, Anton. Gardener of Engelsdorf, No. 6.

Mother: Koenig, Apollonia. Daughter of Anton Koenig, Gardener of Engelsdorf, No. 10 and of Therisia born Blumrich of Engelsdorf, No. 45.

Godparents: Laurenz Kretschmer, Farmer of Engelsdorf, Anton Posselt, Gardener of Engelsdorf.

Midwife: Theresia Arlt licensed in Engelsdorf.

Given at the Parish House in Wiese, April 13, 1923.

Signed AUG. LANG, Parson.

Exhibit C-6 (b).

#405

RECORD OF BIRTHS AND CHRISTENINGS.

Country: Bohemia.
District: Friedland.
Place of Birth: Friedland.
Copied from the Register of Christenings of Friedland, Vol. XII, P. #114.
Born November 29, 1849.
Christened—November 29, 1849.
Child's name—girl still born.
Religion—Catholic. Legitimate.
Father—Anton Hirschmann, citizen and weaver of Friedland, No. 128, son of Anton Hirschmann, Gardner of Engelsdorf, No. 6 and Apollonia born Koenig of Engelsdorf, No. 10.
Mother—Maria Anna, Daughter of Franz Neumann, merchant and baker of Weisbach, No. 198 and Rosina, born Effenberger of Weisbach No. 25.
Godparents—None.
Midwife—Theresia Munn of Friedland.

Done at the Deaconry of Friedland, Bohemia, April 25, 1923.

Signed JOHANN RÖTTIG, Deacon.

Exhibit C-6 (c).

#404

Record of Births and Christenings.

Country: Bohemia.
District: Friedland.
Place of Birth: Friedland.
Copied from the register of Christenings of Friedland.
Vol. XII. Folio #57.
Born: December 13, 1846.
Christened: December 14, 1846.
Name of Child: Juliana.
Name of Priest: Franz Timm, Deacon.
Religion: Catholic.
Legitimate child.
Father: Anton Hirschmann, citizen and weaver of Friedland, No. 128 son of Anton Hirschmann, Gardener of Engelsdorf, No. 6 and Apollonia, born Koenig of Engelsdorf, No. 10.
Mother: Maria Anna, daughter of Franz Neumann, merchant and baker of Weisbach No. 198 and of Rosina, born Effenberger of Weisbach No. 25.
Godparents: Franziska Ritter, farmer's wife of Kummersdorf.
Josef Bergmann, farmer of Mildenan.
Midwife: Theresia Munn, of Friedland.

Given at the Deaconry of Friedland, Bohemia, April 25, 1923.

Signed Johann Rőttig, Deacon.

Exhibit C-6 (d).

#403

Record of Births and Christenings.

Country: Bohemia.
District: Friedland.
Place of Birth: Friedland.
Copied from the register of christenings of Friedland, Volume XII. Folio #27.
Born: April 25, 1845.
Christened: April 27, 1845.
Name of Child: Maria Anna.
Name of Priest: Jos. Heinrich, Deacon.
Religion: Catholic.
Legitimate child.
Father: Anton Hirschmann, citizen and weaver of Friedland, No. 128, son of Anton Hirschmann, Gardener of Engelsdorf, No. 6 and Apollonia born Koenig of Engelsdorf, No. 10.
Mother: Maria Anna, daughter of Franz Neumann, merchant and baker of Weisbach No. 198 and of Rosina, born Effenberger of Weisbach No. 25.
Godparents: Genoresa Hirschmann, laborer's wife of Friedland.
Josef Adler, weaver of Friedland.
Midwife: Theresia Munn of Friedland, Bohemia.

Given at the Deaconry of Friedland, Bohemia. April 25, 1923.

Signed Johann Rőttig, Deacon.

Exhibit C-6 (e).

♯402

RECORD OF BIRTHS AND CHRISTENINGS.

Country: Bohemia.
District: Friedland.
Place of Birth: Friedland.
Copied from the register of Christenings of Friedland, Vol. XI. Folio #354.
Born: November 26, 1843.
Christened: November 27, 1843.
Child's Name: Anton.
Priest's Name: Josef Heinrich.
Religion: Catholic.
Legitimate child.
Father: Anton Hirschmann, citizen and weaver of Friedland, No. 128, son of Anton Hirschmann, Gardener of Engelsdorf, No. 6 and Apollonia, born Koenig of Friedland, No. 10.
Mother: Maria Anna, daughter of Franz Neumann, merchant and baker of Weisbach, No. 198, and of Rosina, born Effenberger of Weisbach, No. 25.
Godparents: Jakob Lang, weaver of Friedland.
Lurburn Adler of Friedland.
Midwife: Theresia Munn of Friedland.

Given at the Deaconry of Friedland, Bohemia. April 25, 1923.

Signed JOHANN RŐTTIG, Deacon.

Exhibit C-6 (f).

#401

RECORD OF BIRTHS AND CHRISTENINGS.

Country: Bohemia.
District: Friedland.
Place of Birth: Friedland.
Copied from the register of Christenings of Friedland. Vol. XI. Folio #287.
Born: February 16, 1841.
Christened: February 17, 1841.
Name of Child: (Twins) Anton Jakob, Franz Julius.
Name of Priest: Carl Seibb, Deacon.
Religion: Catholic.
Legitimate children.
Father: Anton Hirschmann, citizen and weaver of Friedland. No. 128 son of Anton Hirschmann, Gardener of Engelsdorf, No. 6 and Apollonia born Koenig Engelsdorf, No. 10.
Mother: Maria Anna, daughter of Franz Neumann, merchant and baker of Weisbach No. 198 and of Rosina, born Effenberger of Weisbach No. 25.
Godparents: I. Jakob Lanz, weaver of Friedland. Marie Sommer, wife of a weaver of Friedland.
II. Franz Hubner, taylor in Ringenheim. M. Anna Blumenrich, farmer's wife of Riespenen.
Midwife: Theresia Schwartzbach of Friedland.

Given at the Deaconry of Friedland, Bohemia, April 25, 1923.

Signed JOHANN RŐTTIG, Deacon.

Exhibit C-6 (g).

321

WEDDING CERTIFICATE.

County: Bohemia
District: Friedland
Copied from the record of marriages in Weisbach Vol. III. Folio #25, Page 49.
Date of Marriage: November 20, 1838.
Place of Marriage: Parish House of Haindorf.
Groom: Anton Hirschmann, citizen and weaver of Friedland No. 144, legitimate son of Anton Hirschmann, gardener of Engelsdorf No. 6 and of Apolnia born Koniginn of Engelsdorf No. 10 District of Friedland.
Religion: Roman Catholic.
Age: 23 years, 2 months, born according to his birth certificate September 18, 1815. Single.
Bride: Marie Anna legitimate daughter of full age of Franz Neumann merchant and baker of No. 198. Her mother is Rosina born Effenbergerinn of No. 25, district of Friedland.
Religion: Catholic.
Age: 24 years, 10 months, born February 4, 1814. Single.
Marrying Priest: P. Hermann Thamkop.
Witnesses: Franz Bergmann, Gardener in Ebersdorf No. 69. Joseph Hirschmann of Ebersdorf No. 10.

Given at the Pastorate in Haindorf, April 17, 1923.

Signed JOSEPH HOPFINGER, Parson.

Exhibit C-6 (h).

#400.

RECORD OF BIRTHS AND CHRISTENINGS.

Country: Bohemia.
District: Friedland.
Place of Birth: Friedland.
Copied from the register of Christenings of Friedland. Vol. XI. Folio #225.
Born: May 10, 1839.
Christened: May 11, 1839.
Name of Child: Franziska.
Name of Priest: Carl Seibb, Deacon.
Religion: Catholic.
Legitimate Child.
Father: Anton Hirschmann, citizen and weaver of Friedland, No. 128, son of Anton Hirschmann, Gardener of Engelsdorf, No. 6 and Apollonia born Koenig of Engelsdorf, No. 10.
Mother: Marie Anna, daughter of Franz Neumann, merchant and baker of Weisbach No. 198 and of Rosina, born Effenberger of Weisbach No. 25.
Godparents: Franziska Appelt, daughter of a master weaver of Friedland. Wenzel Hausmann, merchant of Leibwerda.
Midwife: Therisia Sxhwarzbach of Friedland.

Given at the Deaconry of Friedland, Bohemia April 25, 1923.

Signed JOHANN RŐTTIG, Deacon.

Exhibit C-6 (i).

#320

Record of Births and Christenings.

Country. Bohemia.
District: Friedland.
Place of birth: Weisbach, No. 198.
Copied from the register of Christenings of Weisbach, Vol. II. Folio #35.
Born: February 4, 1814.
Christened: February 5, 1814.
Name of Child: Maria Anna.
Name of Priest: Johann Kausler.
Religion: Roman Catholic.
Legitimate child.
Father: Franz Neumann, landowner and merchant of Weisbach No. 198.
Mother: Rosina, Daughter of Michel Effenberger of No. 25 Mother Apolonia born Nase of Haindorf, district of Friedland.
Godparents: Lev. Maria Anna, wife of Franz Pelz of Weisbach. T. A. Maria wife of Wenzel Neumann, householder of Weisbach. T. Joseph Bergmann, householder.
Midwife: Veronika Wildner.

Given at the pastorate in Haindorf.
April 17, 1923.

Jos. Hoffinger, Pastor.

Exhibit C-6 (j).

No. of Exhibit 749 in 1923

Record of Death

Country: Bohemia.
District: Friedland.
Copied from the Register of Deaths for Friedland, Volume X, Folio 30.
Day, month & year of death June 15, 1841.
Day, month & year of burial June 17, 1841
Place & House number: Friedland #128.
Name of Priest officiating at funeral: Franz Salomon, Dean.
Name and rank of the deceased—Anton Jacob Hirschmann, born February 16, 1841, legitimate son of Anton Hirschmann, citizen and master weaver of Friedland, #128.
Religion: Catholic.
Sex: Male.
Age: 17 weeks.
Sickness & cause of death: Catanbal attack.
Name of cemetery: Buried at the cemetery of Friedland.

Given at the *Deanery* Friedland
August 19, 1923.

Exhibit C-6 (k).

No. of Exhibit #748 in 1923

Record of Death

Country: Bohemia.
District: Friedland.

Certificate of Death

Copied from the register of deaths for Friedland, Volume X, Page #23.

Day, Month & year of death: March 5, 1841.
Day, month & year of burial: March 8, 1841.
Place & house number: Friedland, #128.
Name of officiating Priest: Joseph Heinrich, Deacon.
Name & rank of deceased: Franz Julius Hirschman—Born February 16, 1841, in Friedland, son of Anton Hirschmann, citizen and weaver of Friedland #128.
Religion: Catholic.
Male: Male
Age: 16 days.
Sickness & Cause of Death:—
Buried in the cemetery in Friedland.

Given at the Deanery Friedland in Bohemia, August 19, 1923.

Johann Röttig, Dean.

Exhibit C-6 (l).

#750

Certificate

This is to certify that there are no further birth, marriage, or death certificates of the family of Anton Hirschman in the records of the parish.

Deanery of Friedland in Bohemia

August 19, 1923.

John Röttig
Dean.

Exhibit C-7.

Calicoon Central Reformed Church Record book of births, marriages, deaths, burials, baptisms and reception of members. (Read into record.) Probably at page 43.

Exhibit C-8.

Certificate of Baptism

In the Name of the Father, and of the Son and of the Holy Ghost.

Charlotte Wilh. Frances Anna

Baptized into the Church of Christ

In the year of our Redemption Sept. 16, 1877.
Parents: Francis and Mary Anna Rieber
Sponsors: Charlotta Rieber, Charlotte Hirschmann,
Anthony Hirschmann.
St. James Church, Callicoon
Diocese of New York

Geo. A. Chambers, Rector.

Exhibit C-11.

(Night letter via Western Union Telegraph Co.)

"December 9, 1922.

Mr. Frank C. Steffens,
Royalton Hotel,
Miami, Florida.

Preliminary investigation indicates Warren Ferris Charlotte Keffer claiming only heirs Anton brought suit their false testimony obtained decree barring other heirs stop desirable heirs join suit endeavor obtain proceeds and rights stop we secured William P. Martin forty five Cedar Street New York New Jersey lawyer stop wire him authority act for you and give your wifes full name.

FRANK B. RIEBER."

Exhibit C (unmarked) (b).

(Filed June 14, 1922)

IN CHANCERY OF NEW JERSEY.

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

The complainants Warren Ferris of the City of Jersey City, in the County of Hudson and State of New Jersey, and Charlotte Marie Keffer of the City of Bayonne, County and State aforesaid, are the owners in fee simple of certain lands, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey, bounded and described as follows:—

Exhibit C (unmarked) (b).

First Parcel: Beginning at a point formed by the intersection of the Easterly side of Broadway with the Northerly side of East 53rd Street; thence running (1) Northerly along the Easterly side of Broadway, one hundred (100) feet; thence (2) Easterly, parallel with East 53rd Street, one hundred (100) feet; thence (3) Southerly and again parallel with Broadway, one hundred (100) feet to the Northerly side of East 53rd Street; thence (4) Westerly along said side of said street, one hundred (100) feet to the point or place of beginning. Being also known as lots numbered 13, 14, 15 and 16 in block numbered 32 on the Tax Maps of the City of Bayonne, now in use.

Second Parcel: Beginning at a point on the Northerly side of East 53rd Street, distant thereon 150 feet Easterly from its intersection with the Easterly line of Broadway; thence running (1) Northerly parallel with Broadway one hundred (100) feet; thence (2) Easterly parallel with East 53rd Street, one hundred (100) feet; thence (3) Southerly and again parallel with Broadway 100 feet to the Northerly side of East 53rd Street; thence (4) Westerly along the Northerly side of East 53rd Street, one hundred feet (100) to the point or place of beginning. Being also known as lots 7, 8, 9, and 10 in said block on said Map, a diagram showing both tracts made from said Tax Map is hereto annexed and made a part hereof, and marked "Schedule No. 1."

2. That on or about the 19th day of May, 1873, one Anton Hirschman purchased a portion of the said lands and premises from Ellen Currie, Executrix, William Currie and Robert Currie, Execu-

tors of the Last Will and Testament of James Currie, late of Hudson County, New Jersey, deceased, for a full and valuable consideration, and the said Executrix and Executors by a deed dated May 19th, 1873, conveyed the said lands to said Anton Hirschman, the consideration paid by him to them being $1000., which deed was recorded on June 3rd, 1873, in Liber 257, p. 175; that said lands in said deed are described as lots 13 and 14 in Block 117, on a Map entitled "Map Numbered One of Partition of the Estate of James Currie, situated in the Third Ward of the City of Bayonne, and are now known as Lots Nos. 13 and 14 in Block No. 32, as the same are shown on the Tax Map of the City of Bayonne now in use, and as appears in Schedule hereto annexed marked "Schedule #1"

3. That the said Ellen Currie, the Executrix of the said last will and testament, was the widow of the said James Currie, and she by a deed under her hand and seal released her dower in said lands, which deed bears date the same day as the deed by her and the said Executors to the said Anton Hirschman, and was recorded on the same day in Liber 257, page 175.

4. That the said two lots are a part of the first parcel described in this bill of complaint.

5. That on or about the 19th day of December, 1894, the said Anton Hirschman and Lottie Hirschman, his wife, conveyed the said two lots to Charles H. Weller, by deed dated December 19th, 1894, and recorded December 20th, 1894, in Liber 613, p. 177, and he on the same day by deed bearing the same date conveyed the said two lots

to the said Lottie Hirschman, whose proper name was Chorlotte Hirschman, the wife of the said Anton Hirschman, which deed was recorded in liber 613, p. 179.

6. That the said Charlotte Hirschman and Anton Hirschman by deed dated November 23rd, 1897, and recorded on November 26th, 1897 in liber 687, p. 246, again conveyed the said two lots to Charles H. Weller, and he, by deed bearing the same date as the last mentioned deed, and recorded in liber 687, page 249, conveyed the said two lots to Lottie Hirschman (whose proper name was Charlotte Hirschman), and Anton Hirschman, her husband.

7. That on or about the 19th day of January, 1903, the said Anton Hirschman and Charlotte Hirschman his wife, for a full and valuable consideration, to wit, the sum of $700., purchased from John Prout and Catherine Prout, his wife, who conveyed to them by a deed containing full covenants of warranty and seizen, a certain other portion of the said lands described in paragraph No. 1 of this bill, and being the remainder of the first parcel, which portion is known as lots 15 and 16 in said Block 32, as shown on the Tax Maps, and as appears in said Schedule #1 annexed hereto.

8. That the said John Prout in the said deed described himself as the only child and heir at law of John Prout, deceased.

9. That on or about the 19th day of October, 1886, the said Anton Hirschman purchased from Susan B. Cooney, for a full and valuable consideration, to wit the sum of $597.43, a portion of the

said lands described in paragraph #1 of this bill, and the said Susan B. Cooney by deed dated October 19, 1886, and recorded October 20th, 1886 in Liber 427, p. 516, containing full covenants of warranty and seizen, conveyed the said lands which are therein described as lots 7, 8, 9 and 10 in book 117, "Map Numbered One of a portion of the Estate of James Currie, situated in the 3rd Ward of the City of Bayonne, New Jersey, which lots and block are designated on said city Tax Map as lots 7, 8, 9 and 10 in block #32, as appears by the diagram hereto annexed and marked Schedule #1.

10. That the said Anton Hirschmann and Lottie Hirschman his wife (her proper name being Charlotte Hirschman) included the said lots in their conveyance heretofore set forth to Charles H. Weller, by deed recorded in Liber 613, p. 179, and he, the said Charles H. Weller conveyed the same to said Lottie Hirschman, wife of Anton Hirschman, by deed bearing the same date, and recorded in Liber 613, p. 179, and the said Lottie Hirschman and Anton Hirschman her husband again conveyed the same lots to said Charles H. Weller by deed dated November 23rd, 1897, and recorded November 26th, 1897, in liber 687, p. 246, and the said Charles H. Weller conveyed the same to Lottie Hirschman, (whose proper name was Charlotte Hirschman) and Anton Hirschman her husband, by deed dated November 23rd, 1897, and recorded on November 26th, 1897, in Liber 687, p. 249.

11. That the said Charlotte Hirschman, wife of the said Anton Hirschman, died before the date of his death, and by her death he became seized in severalty of said lands and premises.

12. That by virtue of the aforesaid deeds, and the death of the said Charlotte Hirschman, the said Anton Hirschman became seized and possessed of a good marketable title to said lands in fee simple.

13. That the said Anton Hirschman died seized of the said lands and premises intestate on or about the 19th day of May, 1920, and at the time of his death he was a resident of the City of Bayonne, in the County of Hudson and State of New Jersey, and letters of administration on his estate were issued to the complainant Warren Ferris, by the Surrogate of the County of Hudson, on July 1st, 1920.

14. That the said Anton Hirschman did not have any children; that his wife predeceased him; that he did not leave any father or mother him surviving; that he did not leave any brothers or sisters him surviving; that he had a sister named Julia Ferris, who predeceased the said Anton Hirschman; that she died intestate, leaving as her only heir at law, her son Warren Ferris, one of the complainants. That Charlotte Marie Keffer, the other complainant, is a daughter of Katharina Daisetta Hirschman, who resided with the said Anton Hirschman from her childhood and who was adopted as his child by the said Anton Hirschman.

15. That the said Warren Ferris and the said Charlotte Marie Keffer entered into an agreement dated May 27th, 1920, in writing, with each other, wherein it is recited as follows: "That the said Anton Hirschman late of Bayonne died May 19th, 1920, leaving as his only next of kin and heir at

law the said Warren Ferris, son of Julia Ferris, deceased, who was a sister of the said Anton Hirschman, and that it appears that the said Charlotte Marie Keffer may be an heir at law of the said Anton Hirschman by reason of the adoption of her mother, who was known as Katharine Daisetta Hirschman, and who married Charles Hadlich on or about November 5th, 1893, and who died August 22nd, 1908, leaving the said Charlotte Marie Keffer, as sole living issue of her marriage, and that while no direct evidence of said adoption has been presented, the said Warren Ferris is willing, in view of all the circumstances, to recognize the moral right of said Charlotte Marie Keffer to share in the estate of the said Anton Hirschman, and said Charlotte Marie Keffer is willing to agree that even if she is the heir at law of the said Anton Hirschman by reason of the supposed adoption of her mother, she still is willing to have the said Warren Ferris share in said estate. And it is therein mutually agreed by the parties thereto, that they, the said Warren Ferris and Charlotte Marie Keffer shall and will divide the entire estate, real and personal of the said Anton Hirschman equally between them, share and share alike without exception, restriction or reservation, all of which will more fully appear by a copy of said agreement hereto annexed and made part hereof, and marked 'Schedule #2'.''

16. That the said John Prout from whom the said Anton Hirschman purchased the lots mentioned in paragraph 7 of this bill, was the son of John Prout, who died intestate leaving as his only heir at law his son, the said John Prout.

17. That complainants recently entered into a contract in writing, with the Consumers Coal & Ice Company, a corporation organized under the laws of the State of New Jersey, having its principal office in the City of Bayonne, in and by which the complainants agreed to sell and convey the said lands to the said Consumers Coal & Ice Company, and it, the said Consumers Coal and Ice Company agreed to purchase the said lands and to pay for the same the sum of $21,000, but the said Consumers' Coal & Ice Company refuses and declines to accept the said title because of the claims of the said defendants, and the complainants by reason of the claims of the said defendants have been unable to sell and dispose of the said lands.

17. That the said Anton Hirschmann and Charlotte Hirschman, his wife, during their lives had the actual and peaceable possession of the said lands and premises, and entered upon the same and rented the buildings thereon, and paid the taxes levied against the said property and negotiated and procured loans and executed mortgages covering the said lands to secure the said loans, and continued in the peaceable possession of the said lands until the date of their respective deaths, and that the said Anton Hirschman and Charlotte Hirschman believed that they bought and acquired a good title to the said two parcels of land described in paragraph 1 of this bill, and they always in their life time claimed to own the same accordingly.

18. That on the death of the said Charlotte Hirschman, the said Anton Hirschman acquired title by survivorship to said lands which were held by the said Anton Hirschman and Charlotte

Hirschman his wife as tenants by the entirety, and he continued in the peaceable possession thereof, and exercised the same ownership over the said lands as is set forth in the preceding paragraph of this bill until the day of his death.

19. That on the death of the said Anton Hirschman intestate as aforesaid, and the execution of the agreement marked "Schedule #2", hereto annexed, as aforesaid, the complainants acquired a good title in fee simple to the said lands described in paragraph one (1) of this bill, and that they have been and still are in the peaceable possession of said lands, ever since the date of the death of the said Anton Hirschman, and have collected the rents of the buildings erected thereon, and have paid the taxes and assessments and other municipal liens levied and imposed against the said lands, and they claim to own the same in fee simple, and that their title to the same is good.

20. That complainants' title to the said land, or some part therof is denied or disputed by Katharina Daisetta Hirschman, her heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Katharina Daisetta Hadlich, her heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Charles Hadlich, husband of the said Katharina Daisetta Hadlich, his heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Julia Ferris, her heirs,

devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; James Ferris husband of said Julia Ferris, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or succeesors in right, title or interest; Anton Hirschman his heirs, devisees and personal representatives, and their or some of their heirs, divisees, executors, administrators, grantees, assigns or successors in right, title or interest; Michael Cooney, his heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Susan B. Cooney, her heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; John Cooney, his heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Susan B. Cooney, her heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Mary A. Cooney, her heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Richard M. Cooney, his heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; George W. Cooney, his heirs, devisees

and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Agnes C. Cooney, her heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Elizabeth C. Cooney, her heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Julia F. Cooney, her heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Julia F. Haines (or Julia F. Haynes) her heirs, devisees or personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Edgar J. Haines (or Edgar J. Haynes) his heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; John Prout, Sr., his heirs, devisees or personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Harry Zagalsky and Fannie Zagalsky, Winifred Prout, her heirs, devisees and personal representatives, and their or some of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; John Prout, son of said John Prout, Senior, and Catharine Prout, his wife.

21. That by reason of such claims by the above named defendants the complainants' property in said lands is greatly affected, and the same cannot be sold, as it otherwise could.

22. That complainants entered into a contract in writing with the Consumers Coal and Ice Company, a corporation organized under the laws of the State of New Jersey, having its principal office in the City of Bayonne, County of Hudson and State of New Jersey, which contract is dated the 10th day of March, 1922, in and by which the complainants agree to sell and convey the said lands to the said Consumers Coal & Ice Company, and the said Consumers Coal & Ice Company agreed to purchase the said lands and to pay for the same the sum of $21,000, but the said Consumers Coal and Ice Company refused and declined to accept the said title because of the claims of the said defendants, and the complainants have been unable to sell and dispose of the said lands.

23. Complainants allege that they have made and caused to be made careful inquiry to ascertain whether the said Katharina Daisetta Hadlich, Charles Hadlich her husband Julia Ferris, James Ferris her husband, Anton Hirschman, Michael Cooney, Susan B. Cooney, John Cooney, Susan B. Cooney, Mary A. Cooney, Richard M. Cooney, George W. Cooney, Agnes C. Cooney, Elizabeth C. Cooney, Julia F. Cooney, Julia F. Haines (or Julia F. Haynes) and Edgar J. Haines (or Edgar J. Haynes) John Prout Senior and Winifred Prout, his wife are living or dead, and they have been credibly informed in such manner as they believe it to be true that the said Katharina Daisetta Hirschman, Katharina Daisetta Hadlich,

Exhibit C (unmarked) (b).

Charles Hadlich her husband, Julia Ferris and James Ferris, her husband, Michael Cooney and Susan B. Cooney his wife, and Anton Hirschman, John Prout Senior and Winifred Prout his wife are dead, but that they have no positive information on the subject, except as to the said Katharina Daisetta Hirschman, who was afterwards known as Katharina Daisetta Hadlich, she having married said Charles Hadlich, Julia Ferris and James Ferris, her husband, Anton Hirschmann, John Prout Senior and Winifred Prout his wife, that the information they have is that each of the above named persons are dead. That they have not been able notwithstanding the said inquiries to ascertain whether the said Susan B. Cooney, John Cooney, Susan B. Cooney, Mary A. Cooney, Richard M. Cooney, George W. Cooney, Agnes C. Cooney, Elizabeth C. Cooney, Julia F. Cooney, Julia F. Haines (or Julia F. Haynes) and Edgar J. Haines (or Edgar J. Haynes) are living or dead, nor have they been able, notwithstanding such diligent inquiry to ascertain the names and addresses of the respective heirs, devisees and personal representatives, and their, or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest of any or either of the above named persons, except as in this bill set forth, and also except that in a deed made by the said John Cooney, Susan B. Cooney, Mary A. Cooney, Richard M. Cooney, all of whom are described in said deed as being unmarried, Julia F. Haines (or Haynes) and Edgar J. Haines (or Haynes) her husband, dated January 26th, 1887, and recorded January 31st, 1887, in Liber 433 of Deeds for Hudson County, on page 120, to said Anton Hirschman, for a portion of the lands described in the bill of

Exhibit C (unmarked) (b).

complaint, being lots 7, 8, 9 and 10 in block 32, they are all described as being of Far Rockaway, in the County of Queens and State of New York, and also except that in the said last mentioned deed said George W. Cooney and Agnes C. Cooney, who is described as the wife of the said George W. Cooney, and Elizabeth C. Cooney, who is described as being unmarried, are stated in said deed to be of the State of New York, without naming any town, city or other place, and who in said deed describe themselves as being "the only heirs at law and children by marriage of Michael Cooney, deceased."

That they have been informed and believe that the only child and heir at law of the said John Prout Senior is the defendant John Prout who complainants believe resides in Jersey City.

24. That each and every of the aforesaid persons are necessary parties defendant in this bill to quiet the title to the said lands, and that said defendants claim and are claimed and reputed to own the said lands, or some part thereof, or some interest therein, and no suit or action of any kind whatsoever is pending to enforce or test the validity of such title or claim, and the complainants charge that the claims so made by the defendant are wholly without foundation, unjust and vexatious, and by reason of such claims the complainants' property in such lands is greatly affected and cannot be sold as they otherwise could.

25. Complainants are without adequate remedy in Court at law and therefore pray: 1. that Katharina Daisetta Hirschman, her heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, gran-

tees, assigns or successors in right, title or interest; Katharina Daisetta Hadlich, her heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Charles Hadlich, husband of the said Katherina Daisetta Hadlich, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Julia Ferris, her heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; James Ferris, husband of the said Julia Ferris, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Anton Hirschman, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Michael Cooney, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Susan B. Cooney, her heirs, devisees and personal representatives, and their, or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; John Cooney, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Susan B. Cooney, her heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, adminis-

trators, grantees, assigns or successors in right, title or interest; Mary A. Cooney, her heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Richard M. Cooney, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest: George W. Cooney, his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Agnes C. Cooney, her heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Elizabeth C. Cooney, her heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Julia F. Cooney, her heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Julia F. Haines (or Julia F. Haynes) her heirs, devisees or personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Edgar J. Haines (or Edgar J. Haynes) his heirs, devisees and personal representatives, and their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; John Prout, Senior, his heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators,

Exhibit C (unmarked) (b).

grantees, assigns or successors in right, title or interest; John Prout, son of John Prout, Senior, and Catherine Prout, his wife, Winifred Prout, her heirs, devisees or personal representatives, or their or any of their heirs, devisees, executors, administrators, grantees, assigns or successors in right, title or interest; Harry Zagalsky and Fannie Zagalsky, who are the defendants in this suit, may answer this bill of complaint without oath, and each statement made therein, and that each and every of them may in manner aforesaid answer and set forth specifically their claim or title to said lands, or any part thereof, or any interest therein, they or either of them may make or claim as to what part or what interest they may make in and to said lands, and further how, and by what instrument such claim or title is derived or was created.

2. That by the determination and final decree of this Court, the rights of all the parties to this suit, in and to said lands hereinbefore set forth, and every part thereof, may be fixed and determined, and that the complainants may be decreed to have a perfect title thereto, and the defendants to have no estate in or encumbrance upon the said lands, or any part thereof, and that their claims to the same are unjust, vexatious and void, and that the complainants may have such other and further relief in the premises, as the nature of the case may require, and as they may be entitled to pursuant to the statute in such case made and provided, and as shall be agreeable to equity and good conscience.

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

.....,

Solicitors and of counsel with the complainants.

Affidavit.

IN CHANCERY OF NEW JERSEY.

Between

WARREN FERRIS, *et al.*,
Complainants,

and

ANTON HIRSCHMAN, his heirs, etc., KATHARINA DAISETTA HIRSCHMAN, her heirs, devisees and personal representatives,
Defendants.

Affidavit.

STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } ss.:

Warren Ferris, being duly sworn on his oath says: I reside in the City of Jersey City, in the County of Hudson and State of New Jersey. I am one of the complainants in the above entitled cause; I have read the said bill of complaint, and say that the facts set forth therein are true; that I am a son of Julia Ferris (she being now deceased); that she, my mother, was a sister of Anton Hirschman, who owned the lands and premises described in the within bill; that my mother, said Julia Ferris, predeceased the said Anton Hirschman; that said Anton Hirschman was married, that his wife's name was Charlotte; that she died some years prior to the said Anton Hirschman; that he, the said Anton Hirschman, died on or about the 19th day of May, 1920, intestate, leaving me, this deponent, as I believe, his only heir-at-law, but Charlotte Marie Keffer, the wife of

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NEW JERSEY

Court of Errors and Appeals

Writ of Error

(*Filed, July 6, 1911.*)

NEW JERSEY COURT OF ERRORS AND APPEALS

NEW JERSEY, SS:

(L. S.)

The State of New Jersey to our Justices of our Supreme Court, Greeting:

Because in the record and proceedings, and also in the giving of judgment in a plaint, which was in our said Supreme Court before you, between Mildred Lynch, by Freda Lynch her next friend, plaintiff, and Public Service Railway Company, defendant, manifest error hath intervened to the great damage of the said Mildred Lynch, as is said, we being willing that the error, if any there be, should in due manner be corrected and full and speedy justice be done to the parties aforesaid in this behalf, do command you that if the judgment be therefore given, then you send distinctly

and openly, under your seal the record and proceedings aforesaid with all things touching and concerning the same to our Court of Errors and Appeals, in the last resort of all causes, before the judges thereof on the tenth day of July, Nineteen hundred and Eleven, together with this writ, that the record and proceedings aforesaid, being inspected, we may cause to be further done for correcting that error what of right and according to law ought to be done.

Witness, Mahlon Pitney, our Chancellor and Presiding Judge of said Court of Errors and Appeals, at Trenton, the Twentieth day of June, Nineteen hundred and Eleven.

S. D. DICKINSON,
Clerk.

Benjamin M. Weinberg,
Attorney of Plaintiff in Error.

Return

The answer of the Justices of the Supreme Court of the State of New Jersey within named. The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State, in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,
C. J.

Judgment of Nonsuit

NEW JERSEY SUPREME COURT

MILDRED LYNCH, by FREDA LYNCH, her next friend, vs. PUBLIC SERVICE RAILWAY COMPANY.	In tort. On postea.

Lefferts S. Hoffman, attorney.

As yet of the fifteenth day of August, A. D., nineteen hundred and ten.

Witness, William S. Gummere, Esquire, Chief Justice.

William Riker, Jr., Clerk.

Essex County, ss:

Public Service Railway Company, a corporation, the defendant in this suit, was summoned to answer unto Mildred Lynch, the plaintiff therein in an action in tort, and thereupon the said plaintiff, by Charles Lynch, who is admitted by order of the Court, to prosecute as the next friend of the said Mildred Lynch, she being an infant under the age of fourteen years, by Benjamin M. Weinberg, her attorney, complains; for that whereas the said defendant, before and at the time of committing the grievances hereinafter mentioned was the owner and possessor of a certain passenger car which was propelled and run along by electric power in and upon certain tracks of the said defendant, said tracks being situate upon and extending along Mt. Prospect avenue, a public street or highway in the City

of Newark, in the County of Essex aforesaid. And the plaintiff avers that it thereby became and was the duty of the said defendant to use due and proper care in the management and control of said passenger car, while being operated and run along said street or highway and upon said tracks as aforesaid, so as to avoid colliding with and running into persons lawfully riding along said public street, and crossing the said tracks thereon, with sleds and other vehicles; and to operate, propel and run said car so as to keep the same within safe control. Yet the said defendant not regarding its duty in that behalf did not use due and proper care in the use, management and control of said car, while said car was being operated, propelled and run along said street or highway upon said tracks; and did not use due and proper care to avoid colliding with and running into persons lawfully riding along said public street, and crossing the said tracks thereon, with sleds and other vehicles, and did not operate and run said car at such rate of speed so as to keep the same within safe control; but wholly failed and neglected to do so; and did on the seventh day of January, nineteen hundred and ten, on Mt. Prospect Avenue in the said City of Newark, in the County of Essex aforesaid, by its servants, so carelessly, negligently and improperly propel, operate and run said car in, upon and along said street or highway and upon said tracks, so as to lose the safe control of the same and thereby collided with and ran into a certain bobsled upon which said plaintiff was then and there seated, and which said bobsled was then and there lawfully crossing said Mt. Prospect avenue and the said tracks thereon at the intersection of the said

Mt. Prospect avenue and Montclair avenue, public streets in the City of Newark, in the County of Essex aforesaid, with such force and violence as to hurl the said plaintiff to the ground, and to then and there severely, permanently and painfully injure the said plantiff in and about her head and body, causing her leg to be fractured and splintered and to otherwise bruise, wound and injure the said plaintiff.

And also by means of the premises the said plaintiff became sick, sore, lame and disordered and so remained and continued for a long space of time, to wit, from thence hitherto, during all which time the said plaintiff suffered and underwent great pain, and in the future will suffer and undergo great pain, and was hindered and prevented, and in the future will be hindered and prevented from transacting and attending to her necessary and lawful affairs by her during all that time to be performed and transacted; and lost and was deprived of, and in the future will lose and be deprived of, divers great gains, profits and advantages which might and otherwise would have derived and acquired, to wit, at Newark, in the County of Essex aforesaid, wherefore the said plaintiff says that she is injured and has sustained damages to the amount of twenty thousand dollars, and therefore she brings her suit, etc.

And the said defendant, by Lefferts S. Hoffman, its attorney, comes and defends the wrong and injury, when, etc., and says that it is not guilty of the said supposed grievances above laid to its charge, or any or either of them in manner and form as the said plaintiff hath above thereof complained against it and of this it, the said defendant, puts itself upon the country, etc.

Judgment of Nonsuit

Therefore let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Newark, in and for the County of Essex, on the second Tuesday of December, in the year of our Lord, one thousand nine hundred and ten, by whom, etc., and the same day is given in the parties aforesaid there etc.

And now at this day, to wit, before our said Supreme Court at Trenton, come the said parties by their attorneys aforesaid, and the Judge before whom, etc. having first sent hither his record had before him in these words, to wit:

Afterwards, that is to say, on the ninth day of March, nineteen hundred and eleven, at the Circuit of the Supreme Court held at Newark, in and for the County of Essex, before his Honor, Frederic Adams, a Circuit Court Judge, to whom the said cause was duly referred for trial according to the form of the statute in such case made and provided, come as well the within named plaintiff as the within named defendant, by their respective attorneys within mentioned; and the jurors of the jury whereof mention is within made being summoned also come, who, to speak the truth of the matters within contained, were chosen, tried and sworn; and the evidence of the plaintiff being given to them, thereupon for certain causes moving the said Judge having determined from the said evidence that the plaintiff hath not made out a case for the consideration of the jury, and the said plaintiff being called upon to produce further evidence and coming not, discharged the said jury from giving any verdict of and upon the premises within mentioned

Judgment of Nonsuit

Dated March 13, 1911.

Therefore it is considered that the said plaintiff, Mildred Lynch, by Freda Lynch, her next friend, take nothing by her said writ, and that the said defendant Public Service Railway Company, do go thereof without day, etc.

And it is further considered that the said defendant, Public Service Railway Company, do recover against the said plaintiff, Mildred Lynch, by Freda Lynch, her next friend, the sum of thirty-nine dollars and ten cents, for its costs and charges by it about its defense in this behalf laid out and expended by the Court now here adjudged to the said defendant, Public Service Railway Company, and with its assent, according to the form of the statute in such case made and provided, and that the said defendant, Public Service Railway Company, have execution thereof, etc.

Judgment signed this sixth day of June, A. D., nineteen hundred and eleven.

WM. S. GUMMERE, C. J.

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court at Trenton, this third day of July, A. D., nineteen hundred and eleven.

(L. S.)

WM. RIKER, JR.,
Clerk.

Assignment of Error

(Filed July 17, 1911)

NEW JERSEY COURT OF ERRORS AND APPEALS

MILDRED LYNCH by next friend, vs. PUBLIC SERVICE RAILWAY COMPANY a corporation.	In Tort

Afterwards to wit, on the fifteenth day of July, nineteen hundred and eleven, and within the time prescribed by law, in the Court of Errors and Appeals, in the last resort in all causes, of the State of New Jersey, comes the said Mildred Lynch, by her next friend, by Benjamin M. Weinberg her attorney, and says that in the record and proceedings aforesaid, be reversed, the bill of exceptions aforesaid and in giving the judgment aforesaid there is manifest error in this, to wit:

For that the said Judge before whom etc., at the trial aforesaid, granted a nonsuit against the said plaintiff and in favor of the said defendant, to the prejudice and damage of the said plaintiff.

Therefore the said Mildred Lynch prays that the judgment aforesaid, by reason of the aforesaid error, and other errors appearing in the record and proceeding aforesaid, be reversed, annulled, and held for nothing and that the said Mildred Lynch may be restored to all things that she has lost on occasion of the said judgment of nonsuit.

BENJAMIN M. WEINBERG,
Attorney for and of counsel with
plaintiff in Error.

Common joinder in error filed Aug. 8th, 1911.

Testimony

NEW JERSEY SUPREME COURT

ESSEX CIRCUIT

Tuesday, March 7, 1911.

MILDRED LYNCH, by next friend, vs. PUBLIC SERVICE RAILWAY COMPANY.	In Tort

Before Hon. Frederic Adams, J., and a Jury.

For plaintiff appears Benjamin M. Weinberg.

For defendant appears Howard MacSherry.

Plaintiff's counsel asks that the transcript be amended so as to show the next friend of the plaintiff to be Freda Lynch, instead of Charles Lynch, who died after the beginning of the suit.

Motion granted.

A jury is called and sworn.

Mr. Weinberg opens for plaintiff.

MILDRED LYNCH, sworn in behalf of plaintiff.

Direct-examination by Mr. Weinberg:

Q. Mildred, how old are you? A. Thirteen.

Q. And when were you thirteen? A. Last April.

Q. Your father's name was—? A. Charles Robert Lynch.

Q. Is he living? A. No. sir.

Q. Your mother's name is—? A. Freda Lynch.

Q. You live at home? A. Yes, sir.

Q. Where do you live? A. 773 Mt. Prospect avenue.

Q. And where did you live in January, 1910? A. The same address.

Q. Do you recollect the day of January 7th? A. Yes, sir.

Q. Where were you on that day? A. I was on the hill.

Q. What hill? A. Montclair avenue.

Q. How far is Montclair avenue from your home? A. Half a block.

Q. Montclair avenue crosses Mt. Prospect avenue, does it not? A. Yes, sir.

Q. Had you been to school that day? A. Yes, sir.

Q. What school did you attend? A. Elliott street school.

Q. What time did you come out of school? A. Three o'clock.

Q. What did you do after that? A. I stayed on the corner.

Q. On the corner of what? A. Montclair and Mt. Prospect.

Q. Avenue? A. Avenue.

Q. What were you doing on the corner? A. I was watching them sleigh-riding.

Q. Were there many persons sleigh-riding? A. Yes, sir.

Q. What time was this? A. That was right after school.

Q. I understand you to say that you came out of school about three o'clock? A. Yes, sir.

Q. And from there you went home, did you, first? A. Yes, sir.

Q. And then you went to this corner? A. Yes, sir.

Q. And you arrived there about what time? A. About half-past three.

Q. How long did you remain on the corner? A. Until after the accident.

Q. I mean until you went sleigh-riding yourself, how long did you stand there? A. Quite a long while.

Q. Well, about how long? A. About an hour and a half.

Q. You stood there about an hour and a half? A. Yes, sir.

Q. And during that time was there sleigh-riding on the hill? A. Yes, sir.

Q. Much of it? A. Yes, sir.

Q. During that time did you notice the trolley-cars? A. Yes, sir.

Q. What did the trolley-cars do that went north, towards Forest Hill? A. They stopped on the south side.

Q. On the south side? A. Yes, sir.

Q. That would be the first crossing they would come to? A. Yes, sir.

Q. And the trolley cars that came south, coming from Forest Hill, where would they stop? A. On the north side.

Q. On the north side? A. Yes, sir.

Q. How many cars did you see do that? A. Quite a few, mostly all.

Q. What is it? A. Mostly all.

Q. After that, after about an hour and a half, what did you do? A. I went on the sled.

Q. On whose sled? A. Walter Winterbottom's.

Q. What sort of a sled was this? A. The bob-sled.

Q. Long? A. Quite long.

Mr. MacSherry: I should prefer that she would describe it without leading.

Q. How long was this sled, if you can tell us? A. I can't tell you.

Q. About how many persons could be seated on it? A. About five.

Q. And where did you start to ride from? A. Ridge street.

Q. How many blocks is that from Mt. Prospect avenue? A. Two blocks.

By the Court: Q. That is, two blocks above? A. Yes.

By Mr. Weinberg: Q. How far would your ride carry you? A. Down to Summer avenue; that is, two blocks below Mt. Prospect.

By the Court: Q. What point did you mention? A. Summer avenue.

By Mr. Weinberg: Q. Was this bobsled fitted with anything? A. I don't understand you.

Q. Did it have any attachment to it? A. We had a bell on it.

Q. What kind of a bell did it have? A. Oh, a big bell.

Q. Where was that bell attached, to what part of the sled? A. That I couldn't tell you.

Q. I mean where was it, the front or back of the sled? A. Towards the front.

Q. What was the bell used for? A. Well, we were ringing it all the way down, in case we saw anybody in the road.

Q. What is that? A. In case we saw anybody in the road.

Q. What would happen? A. We would ring the bell.

Q. You were hurt that afternoon, were you? A. Yes, sir.

Q. How long had you been riding before you were hurt? A. Two times.

Q. You mean you made two trips? A. This was my third trip coming down.

Q. It was the third trip coming down? A. Yes.

Q. And what time was it? A. About half-past five.

Q. How light was it? A. Just beginning to get dusk.

Q. Were the electric lamps lit? A. Yes, sir.

Q. And was it light or dark? A. Light.

Q. At that point? A. Yes, sir.

By the Court: Q. You said it was light, did you? A. Yes, sir .

By Mr. Weinberg: Q. Now, on this trip where you met with your injury, you left at the corner of Ridge street, did you? A. Yes, sir.

Q. The same as before? A. Yes, sir.

Q. You left on that trip from the corner of Ridge and Montclair avenue? A. Yes, sir.

Q. Now, during that trip what can you say about the gong on the sled? A. We were ringing it all the way down.

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

Q. Now, what happened to you as you came down that hill? A. Well, I don't just remember.

Q. What do you remember? You came down the hill on the bob? A. Yes, sir.

Q. Do you recollect the streets as you come to Mt. Prospect avenue from Ridge street? A. Yes, sir.

Q. What are they? A. Ridge, Clifton and Mt. Prospect.

By the Court: Q. Clifton avenue, I suppose? A. Yes, sir.

By Mr. Weinberg: Q. Now, during your coast down from Ridge street to Mt. Prospect avenue did you or not see a trolley car? A. When I got below Clifton avenue I saw the light of the car.

Q. Where did you see the light of the car? A. Quite a distance from the corner.

Q. Quite a distance which way from the corner? A. Going up, this way (indicating).

Q. You mean towards your home? A. Yes, sir.

Q. That would be south? A. Yes, sir.

Q. And when you say quite a distance from the corner, how far would you indicate? A. About forty-five feet, forty feet.

By the Court: Q. You saw the light of the car quite a distance towards your home. That was south, was it? A. Yes, sir.

Q. And you mentioned some distance, forty-five or forty feet? A. Yes, sir.

Q. From what? A. From the corner.

Q. That is, the corner— A. Of Mt. Prospect and Montclair.

Q. —of Montclair avenue? A. Yes, sir.

A map produced by the defendant is, by consent, placed upon the wall.

By Mr. Weinberg: Q. At that time, Mildred, how fast was your sled going? Do you understand that map? A. No, I don't quite.

The Court: Take a little time to look at it.

Mr. MacSherry: There is a laundry place and there is a grocery (indicating on map).

Mr. Weinberg: (Indicating on map.) As I understand the map, this points generally toward the north; Forest Hill is in that direction; this is north and this is south; this is up Montclair avenue; Ridge street would be up here, Clifton avenue here, and Ridge street up higher.

Mr. MacSherry: Yes.

Mr. Weinberg: That is correct?

Mr. MacSherry: Yes.

Q. You would coast in this direction, towards

Mt. Prospect avenue (indicating). Your home, then, would be where? A. Somewheres around there (indicating).

Q. Somewheres in here (indicating)? A. Yes, sir.

By the Court: Q. On which side of the street was your home. east or west? A. East.

By Mr. Weinberg: Q. East or west? A. East (indicating).

Mr. Weinberg: That is the west side.

Mr. MacSherry: Which way is the car coming?

By the Court: Q. Which way was the car coming, if you know?

Mr. Weinberg: Look at the map and see if you can indicate.

A. I think the car was going this way (indicating).

By Mr. Weinberg: Q. Do not think. This is absolute. Which direction was it, according to this map, which direction was the car going? A. This way (indicating).

Mr. Weinberg: Yes.

The Court: If it is clear to you without the map, say nothing about the map. You can say which way the car was going.

Witness: It was going north.

Q. When you said that the car was some distance from the corner when you saw it as you left Clifton avenue, which direction did you mean, some distance where? A. Going that way (indicating).

Q. Take the pointer. A. Going up this way (indicating).

Q. And the car was coming which direction? A. Coming north.

Q. And you saw it some distance up this way (indicating)? A. Yes.

By the Court: Q. That is, to the south of the crossing? A. Yes.

By Mr. Weinberg: Q. And you place the distance at something like forty or forty-five feet south of the crossing? A. Yes.

Q. At that time can you tell me about how far from Clifton avenue you were? A. That I couldn't tell.

Q. You could not tell? A. No.

Q. But you know you had passed Clifton avenue? A. Yes.

Q. Now, on this corner, on the southwest corner, what is there there? A. There is a vacant lot there.

Q. And on the southeast corner? A. There is a lot there, too.

Q. A vacant lot there? A. Yes, sir.

Q. And this is a house marked here (indicating). I presume that means the first house on the street. Now, after passing Clifton avenue and seeing the car where you put it, do you recollect seeing the car again? A. No, sir.

Q. Did I ask you whether the bell of the sled was ringing at that time? A. Yes, sir.

Q. I asked you that? A. Yes, sir.

Q. And what was your answer? A. Yes, sir.

Q. Do you recollect how long that gong was kept ringing? How long was the bell kept ringing, if you can recollect? A. No, I don't.

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

Q. Now, you say that was the last your recollect seeing the car? A. Yes, sir.

Q. What is the next you know that something happened? A. I was in my brother's arms.

Q. Do you recollect how your sled and the car came together? A. No, sir.

Q. You do not know anything after that point? A. No, sir.

Q. Now, at the time when you saw this trolley car coming, Mildred, was there anything you could have done yourself? A. No, sir.

Q. Could you have left that sled? A. That I can't—

Q. I say could you have gotten off of the sled? A. No, sir.

Q. You were going pretty fast at that time, I suppose? A. Yes, sir.

Q. Now, after you found yourself in your brother's arms, what did you find was the matter with you? A. My leg was hanging down; I had a broken leg.

Q. And where were you taken? A. To my father's office.

Q. Were you there long? A. Until the doctor set my leg.

Q. And then where were you taken? A. Home.

Q. And about what time did you get home? A. About half-past seven or seven o'clock, around there.

Q. Just before I proceed with that. When you say you saw this car, did you say anything to the person in charge of the sled at all? A. Yes, sir.

Q. Did you call his attention to it? A. Yes, sir.

Mr. MacSherry: That is very leading.

Mr. Weinberg: Well, strike it out.

The Court: Strike it out.

Q. What did you say? A. I said, "Walter, there is a car." He said, "Never mind, it is going to stop, like the rest of the cars do.

Mr. MacSherry: I ask that the reply go as irrelevant. We are not bound by what he said.

Mr. Weinberg: (After argument.) Now, if counsel is serious in this objection,

I am satisfied to have the latter half of the answer go out, leaving merely what she said to him: "The car is coming."

Mr. MacSherry: That I do not object to.

Mr. Weinberg: Perhaps we had better let the other half go out.

The Court: Strike it out.

Q. Now, I was at the point after you got home, which, you say, was about half-past seven. Did you have a physician? A. Yes, sir.

Q. Any doctor? A. Yes, sir.

Q. Who? A. Dr. Holler.

Q. Any other doctor? A. Not that night.

Q. Was anything else done that night to you? A. He set my leg.

Q. Dr. Holler set it? A. Yes, sir.

Q. At home or in the office? A. At home.

Q. Was that the second time it was set? A. Yes, sir.

By the Court: Q. Was the leg set the first time by the same physician? A. Yes, sir.

Q. He set it both times? A. Yes, sir.

By Mr. Weinberg: Q. Now, the next day whom did you have, what physician called upon you? A. I had Dr. Holler.

Q. Well, now, you had other physicians, did you? A. Yes, sir.

Q. Just name the physicians. A. Dr. Ill, Dr. Hawkes and Dr. Wilson.

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

By the Court: Q. Dr. Ill? A. Yes, sir.

Q. Dr. Hawkes? A. Yes, sir.

Q. And Dr.—

Mr. Weinberg: Dr. Holler and Dr. Wilson.

Q. Wilson? A. Wilson.

By Mr. Weinberg: Q. You say you had an operation on your leg? A. Yes, sir.

Q. How long after the accident, as near as you can recollect it? A. About a week.

Q. Who performed that operation? A. Dr. Ill and Dr. Holler.

Q. Do you know what they did? A. No, sir.

Q. Did you have any other operations? A. Yes, sir.

Q. Who performed them? A. Dr. Holler and Dr. Hawkes and Dr. Wilson.

Q. How many operations did they perform? A. Two.

Q. So that you had all together— A. Three operations.

Q. Three operations. Do you know what was done at either of those three operations? A. No, sir.

Q. Do you know if anything was removed? A. Well, the last operation bone was removed.

Q. Did you see it? A. Yes, sir.

Q. How much bone did you see removed? A. About three pieces, I think.

By the Court: Q. Three pieces? A. Three pieces big (indicating).

Q. Three pieces that length? A. Yes, sir.

Q. Show me again what you think the length is. A. (Witness indicates.)

Q. All together? A. Yes, sir.

Q. Or each piece? A. Each piece.

The Court: The witness thinks that there were three pieces removed of the length of three inches.

By Mr. Weinberg: Q. Did you suffer any pain? A. Yes, sir.

Q. During the period of your severe injury? A. Yes, sir.

Q. The severe part of the trouble? A. Yes, sir.

Q. How long were you kept in bed? A. Four months.

Q. And after four months did you get out of bed? A. I only sat on a chair.

Q. What kind of a chair? A. An arm-chair.

Q. How long before you got out of the house? A. That I couldn't say.

Q. About? A. I used to be carried up and down for quite a long while.

By the Court: Q. Up and downstairs? A. Yes, sir.

By Mr. Weinberg: Q. Do you recollect going about in a wheeled chair? A. Yes, sir.

Q. How long were you in a wheeled chair? A. Oh, till after September.

Q. After September of 1910? A. Yes, sir.

Q. When were you first able to leave the house without a wheeled chair? A. About October.

Q. And then how did you get out? A. On crutches.

Q. One or two? A. Two.

Q. How long was it before you could drop the one crutch and go along on one? A. I couldn't say that.

Q. Well, in other words, how long have you been walking with one crutch? A. Just had it a little bit.

Q. What is that? A. I couldn't say.

Q. Are you able to walk without a crutch? A. In the house, just hobble around a little bit, that is all.

Q. Do you go out in the street without a crutch? A. No, sir.

Q. Have you started back to school? A. This February.

Q. This last month? A. Yes, sir.

Q. And how do you go to school, what do you use to aid you? A. Well, the girls come around, and my crutch.

Q. Can you walk far? A. Not so very far.

Q. So far as you can see, Mildred, is that leg cured? A. No, sir.

Q. So far as you can see, tell us what is the matter with it. A. Well, it hasn't all healed up yet.

Q. What is the trouble with it? A. Well, there is no skin on it.

Q. No skin there? A. No, sir.

Q. And how is it with regard to thickness, comparing it with the other one? A. I don't know.

Q. I say is it stouter or thicker than the other leg, or thinner, or what? A. Stouter.

Q. Much? A. Quite a bit.

By the Court: Q. Stouter, you say? A. Yes, sir.

By Mr. Weinberg: Q. Is there any difference in the length of the two legs? A. Yes, sir.

Q. How can you tell? A. I was measured.

Q. Well, aside from measuring, how do you know? A. Oh, I go down on that side.

Q. You go down on that? A. Yes.

Q. What do you mean by going down? A. That foot goes down on me.

Q. Do you limp? A. Yes, sir.

Q. How were you before the accident? A. I was healthy.

Q. Was anything the matter with any of your legs then? A. No, sir.

Q. Had you had any accident before this one? A. No, sir.

Q. Have you any pain in that limb? A. Yes, sir.

Q. Does the limb require any attention now? A. Yes, sir.

Q. And who attends to it? A. My mother.

Q. What does she do? A. Has to dress it every day.

Q. By dressing you mean what, what does she do? A. Well, she has to bathe it with salt water and put a dressing on.

Q. And bandage it up? A. Yes, sir.

Q. When did you last have a doctor treat you? A. I have one coming yet.

Q. Who is it? A. Dr. Hawkes.

Q. He still comes? A. And Wilson sometimes.

CROSS-EXAMINATION by Mr. MacSherry:

Q. Have you any brothers and sisters, Miss Lynch? A. I have a brother.

Q. How old is he? A. Nineteen.

Q. Now, where did you live at the time of the accident? A. 773 Mt. Prospect avenue.

Q. What was your father's business? A. Superintendent of the Benfield & Milne Company.

Q. What business was that? A. Enameling.

Q. Where was their place of business? A. Montclair avenue.

Q. And you went to what school? A. Elliott street school.

Q. Did your brother go there, too? A. He graduated from it.

Q. Was this a clear day that you got hurt? A. Yes, sir.

Q. And that hill was very icy, was it not? A. Yes, sir.

Q. Slippery? A. Yes, sir.

Q. It was good coasting? A. Yes, sir.

Q. But a good deal of ice? A. Yes, sir.

Q. And you got out of school about half after

three, eh? A. Three o'clock we get out of school.

Q. And where did you go after you got out of school? A. Right home.

Q. And then you went over to the hill? A. Yes, sir.

Q. Were there children, boys and girls, coasting down there? A. Yes, sir.

Q. And that was in the afternoon? A. Yes, sir.

Q. Well, after awhile it got dark, did it not? A. It got dusk.

Q. And by the time you started to coast it was dusk? A. Yes, sir.

Q. The lights were lit? A. Yes, sir.

Q. The lights in the street? A. Yes, sir.

Q. The lights in the trolley cars? A. Yes, sir.

Q. (Indicating on map.) Here at this corner—I am pointing here to the southwest corner of Mt. Prospect avenue and Montclair avenue—there is a rise in the ground there, is there not? Are there not some woods there and a rise in the ground? (No response.) As you reach Mt. Prospect avenue is there not on the right, the first corner you come to, a woods and some rise in the ground? A. Yes, sir.

Q. And that would be there (indicating)? A. Yes, sir.

Q. That shuts off your view of the trolley car, does it not? A. No, sir.

Q. At that point? A. No, sir.

Q. Does it not a little bit? A. No, sir.

Q. You can see the trolley car coming all the way along, then, can you? A. Yes, sir.

Q. To Montclair avenue? A. Yes, sir.

Q. That hill is pretty steep as you come down Mt. Prospect avenue, is it not? A. Not so very steep.

Q. Well, you run down two blocks before you stop below it, do you not? A. Yes, sir.

Q. Now, when you started with your friends, when you went on the bobsled, how many other sleighs were on that hill at that time, do you think? A. Quite a lot.

Q. Most of them had gone home, though, had they not? A. No, sir.

Q. Still sleigh-riding in the dark, eh? A. Yes, sir.

Mr. Weinberg: She did not say it was dark. I object.

Mr. MacSherry: Well, it was dusk and the lights were lit in the street.

Mr. Weinberg: That is right, but you said "riding in the dark." There is no evidence of that.

Q. Where did you start from? A. From Ridge street.

Q. About how long do you think your bobsled was? A. I couldn't tell.

Q. From where you are sitting, pointing out towards Mr. Weinberg here. A. I couldn't tell.

Q. Well, was it as long as that, as between where you are sitting and where Mr. Weinberg is sitting? A. I never noticed it.

Q. Had you ever been on the sled before? A. Yes, sir.

Q. How many times? A. Two times before.

The Court: Do you now refer to the two trips you took that day or on two other days?

The Witness: That day.

Q. Can't you tell us about how long it was? A. No, sir.

Q. You had been on it before? A. I know I had.

Q. Haven't you any idea how long it was? A. No, sir.

Q. Well, was it as long as your crutch? A. Longer, I guess.

Q. How much longer do you think? A. Oh, I don't know.

Q. You can not help us at all on that, eh? A. No, sir.

Q. Was it as long, do you think, as from where you are sitting to the second juryman here (indicating)? A. I never noticed it; I can't tell you.

Q. How many people would it carry? A. I don't know.

Q. About how high from the ground was it? A. That I never noticed.

Q. What was it made of? A. Wood.

Q. Do you know what kind? A. No, sir.

Q. Did you ever notice the runners? A. No, sir.

Q. Have you ever seen other people on it? A. Yes, sir.

Q. What is the least number you have ever seen on it? A. Oh, I couldn't say.

Q. Well, give us some idea. I only want to know; I am not trying to catch you; I just want to know what you know, that is all. A. I never noticed it; I never noticed how many people.

Q. Have you seen five people on it? A. Yes, sir.

Q. Have you seen six? A. That I couldn't say.

Q. Have you seen more than five, do you think? A. I couldn't say.

Q. Whom have you seen ride on it before you did? A. I saw my brother.

Q. When? A. That afternoon.

Q. Well, how many people were on it then? A. I couldn't say.

Q. Who was riding with him? A. The boy that owned the bob.

Q. Who else? A. I never noticed.

Q. Well, you know the boys there, do you not? A. Not all of them.

Q. Well, do you know some of them? A. Why, I never noticed.

Q. Can't you tell me who else you saw ride on that hill? A. No, sir.

Q. On that sled? A. No, sir.

Q. You can not give me the names of anyone except your brother, eh? A. I can't just remember now.

Q. Who asked you to ride? A. My brother told me I could go down.

Q. Where were you when he told you? A. I was on the corner.

Q. The corner where? A. Montclair and Mt. Prospect.

Q. Had the bobsled been down before? A. Yes, sir.

Q. How many times? A. That I couldn't say.

Q. Was there any policeman there on the corner? A. Yes, sir.

Q. What was he doing there? A. Well, he stopped the cars.

Q. Stopping the cars? A. Yes.

Q. That is right? A. Well he looked out that the cars didn't—

Q. He was there to stop the cars? A. Well, and anything that came up.

Q. Or any wagons? A. Yes, sir.

Q. Now, was the policeman there when your brother told you you could ride? A. Yes, sir.

Q. And was he there when you went up the hill to ride? A. I don't remember.

Q. Or had he gone away? A. I don't remember that.

Q. As you came down the hill you did not see any policeman there, did you? A. I don't remember.

Q. He had gone away, had he not? A. I don't remember.

Q. When you came down the hill there was not anybody to stop the cars, was there? A. Yes, sir.

Q. Who? A. There was a boy that flagged.

Q. Whom was he working for, do you know? A. I don't think he was working then.

Q. He was not working for anybody, was he? A. I don't know.

Q. Well, when you came down on the bobsled did you see the boy there? A. Yes, sir.

Q. Did he have a flag? A. Yes, sir.

Q. Did he flag the car? A. Yes, sir.

Q. You are sure of that, eh? A. Yes, sir.

Q. You could see that, could you? A. Yes, sir.

Q. How could you see that at that time of the afternoon? A. Well, it was plain enough for me to see.

Q. Who was this boy? A. Raymond Martin.

Q. What is his name? A. Raymond Martin.

Q. How old is he? A. I don't know.

Q. Is he in court today? A. Yes, sir.

Q. Where is he? A. In the back of the room.

Mr. MacSherry: Will you stand up, please?

A boy arises.

Q. Is that the young man? A. Yes, sir.

Q. Who put him there at the corner with a flag? A. I couldn't say.

Q. Well, if you saw this young man with a flag there to flag the cars, why did you say to your friend, "Why, there is the car"? A. Well, I just saw the light of the car.

Q. You saw some cars pass there without stopping before that, did you not? A. No, sir.

Q. What did you mean by saying, Miss Lynch, that some of the cars stopped? A. Well, all of them stopped.

Q. What do you say? A. All of them stopped.

Q. What made them stop? A. Well, I don't know what made them stop, but they all stopped.

Q. The policeman was there to make them stop, was he not?

Objected to as incompetent.

Q. Did you not see the policeman signal the car to stop?

The Court: The form of the question is objectionable. The witness is not expected to speak as to the purpose the policeman was there for, but merely as to what he did.

Mr. MacSherry: I do not press that.

Q. Did you see the policeman stop the car? A. Well, I don't just remember now.

Q. Well, what did you mean by saying, Miss Lynch, that the policeman was there to stop the car? A. Well, in case any didn't stop.

Q. What do you say? A. In case any of the cars didn't stop; but they all stopped.

Q. Well, you do not know what he was there for, do you? A. No, sir.

Q. And he was not there when you started up to take your seat? A. That I don't remember.

Q. You got on this sled where? A. At Ridge street.

Q. Who took the first seat? A. Walter Winterbottom.

Q. Was there anything to steer this sled with? A. Yes, sir.

Q. He was the steersman? A. Yes, sir.

Q. Who was next to him? A. Alzada Husk.

Q. Who came next? A. I did.

Q. Who after you? A. That I don't remember.

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

Q. You went down twice? A. I know I did.

Q. This is not the time you got hurt; this is the first time? A. I don't remember.

The Court: You are not speaking of the time she got hurt?

Mr. MacSherry: No.

By the Court: Q. Understand that in answering the question, that Mr. MacSherry is asking you not as to the time you were hurt, but as to the first time you went down. Who took the first seat the first time you went down? A. Walter.

Q. And who sat nearest to him? A. Alzada.

Q. And then you? A. Yes, sir.

Q. The order was the same, then, the first time? A. Yes, sir.

By Mr. MacSherry: Q. And who after you? A. That I can't remember.

Q. And who last? A. That I can't remember.

Q. How many were on the sled the first time? A. I never counted them.

Q. Did you know them all? A. That I can't remember.

Q. Did you start from the centre of the street? A. Yes, sir.

Q. And you went straight down? A. Yes, sir.

Q. Did you meet any car coming down the first time? A. Yes, sir.

Q. Where was it? A. That stopped on the south side.

Q. The south side? A. Yes, sir; going north.

Q. Going north? A. Yes, sir.

Q. That is the first corner? A. Yes, sir.

Q. And that is the first time you came down? A. Yes, sir.

Q. Was there any policeman there then? A. That I can't remember.

Q. Was there any boy there with a flag then? A. Yes, sir.

Q. That is the first time. Then when you came down the second time did you occupy the same positions on the sled? A. Yes, sir.

Q. You say you saw the car about forty feet from the corner, the car was? A. Forty-five feet from the corner.

Q. Well, what is your idea of forty-five feet? How long do you think this room is? A. I couldn't say.

Q. Well, haven't you any idea? A. No, sir.

Q. Well, how did you get the idea that it was forty-five feet that you saw the car from the corner? A. Well, I measured it.

Q. You measured it? A. Yes, sir.

Q. How could you measure it? A. By my feet.

Q. What? A. By my feet.

Q. When did you measure it, about when? A. That I couldn't say.

Q. Well, about how long ago, how many months ago was it that you measured it? A. I couldn't say.

Q. Oh, yes, you can say about. A. I can't remember.

Q. Was it six months ago? A. I can't remember.

Q. Was it in the spring? A. In the spring I was in the invalid's chair.

Q. Well, I know, but I only want to know, my young lady, about the time, that is all; I just want to get the information you have, that is all. A. I can't remember.

Q. Well, can't you tell us whether it was in the spring, summer, autumn or winter? A. About in the winter.

Q. What? A. In the winter.

Q. Which winter? A. This winter.

Q. This winter? A. Yes, sir.

Q. Who was with you? A. A girl friend of mine.

Q. What is her name? A. Catherine Ghirlanda.

Q. What day of the week was it that you measured it? A. Oh, I don't know.

Q. Did you have a tape measure? A. No, sir.

Q. How did you measure it, then? A. By my foot.

Q. Well, did you call one of your feet a foot? A. Yes, sir.

Q. Well, your foot is not twelve inches long, is it? (No response.)

Q. Well, it was forty-five of your feet, was it? A. Yes, sir.

Q. And how long are your feet, if you will pardon me? A. I don't know.

Q. Won't you tell me about how long your foot is? A. I never measured it.

Q. What size shoe do you wear? A. Fours.

Q. Fours? A. Yes, sir.

Mr. MacSherry: I would like the young lady to take that foot rule and tell me how long her foot is, if you will, please.

Q. Won't you just take this and measure it?

Defendant's counsel measures the witness's shoe.

Q. Is that about right? A. I guess so.

Q. Well, that is about ten inches, your shoe there, you see. Is that about right? A. Yes, sir.

Q. Where did you measure from that day? A. The corner.

Q. Which corner? A. The south corner.

Q. This corner (indicating on map)? A. Yes, sir.

Q. And where did you start, what position did you take in the street to measure from? A. Straight.

Q. Did you go down to the car track? A. No, sir.

Q. Did you measure from the corner here (indicating)? A. Yes, sir.

Q. Along this way (indicating)? A. Yes, sir.

Q. And how did you measure, by putting one foot in front of the other, going that way (illustrating)? A. Yes.

Q. Who told you to do that? A. I told myself.

Q. Did not somebody else tell you? A. No, sir.

Q. And nobody suggested your making that measurement, eh? A. No, sir.

Q. Just did it yourself? A. Yes, sir.

Q. And you made the measurement from the corner to the point that you recollected that night that you saw the car? A. Yes, sir.

Q. You were hurt on the 7th day of January, 1910, and did you make the measurement before this last Christmas or after? A. After.

Q. Did you make it this year, after New Year's? A. Yes, sir.

Q. Do not answer this unless you follow it clearly. Then a year after you were hurt you remember about where the car was when you first saw it? A. Yes, sir.

Q. And you made the measurement from that point? A. Yes, sir.

Q. Did you measure it in the daytime or night? A. Just beginning to get dusk.

Q. About the same time as when you were hurt? A. Yes, sir.

Q. And you mean to say that you did that without a suggestion from anybody? A. Yes, sir.

Q. Did you tell your mother you were going to do it? A. No, sir .

Q. Or did you tell your lawyer you intended to do it? A. No, sir.

Q. You did not tell anybody? A. No, sir.

Q. Now, how long did it take you? A. That I couldn't say.

Q. About how long? A. That I couldn't say.

Q. Did it take you an hour? A. I don't know; I couldn't say.

Q. Did you see any cars running at the time? A. That I couldn't say.

Q. Now, did you put it down on a piece of paper—the measurement? A. No, sir.

Q. Just kept it in your mind, eh? A. Yes, sir.

Q. Who kept the tally as you stepped it off, you or your friend, or both? A. Myself.

Q. Did she step it off, too? A. No, sir.

Q. Where did she stand? A. That I couldn't say.

Q. Did she follow along with you? A. Yes, sir.

Q. Was there snow on the ground? A. No, sir.

Q. Ice? A. No, sir.

Q. Were the lights lit in the street? A. No, sir.

Q. Lights in the trolley cars? A. I didn't notice.

Q. What time of the day was it? A. I couldn't tell you.

Q. About? A. I couldn't say.

Q. Was it four? A. Around that.

Q. Was it after four? A. I couldn't say.

Q. Was it as late as five? A. I don't think so.

Q. What do you say? A. No, sir.

Q. Was it dusk? A. It was beginning to get dusk.

Q. And the lights were not lit? A. Not as I remember.

Q. Wouldn't you remember, don't you think? It is only about two months ago, you know. Don't you remember whether the lights were lit when you made the measurement? A. No, sir.

Q. You do not remember? A. No, sir.

Q. Do you remember whether the lights were lit in the trolley cars? A. No, sir.

Q. You do not remember that? A. No, sir.

Q. What is the name of the girl who was with you? A. Catherine Ghirlanda.

Q. How do you spell the last name? A. G-h-i-r-l-a-n-d-a.

Q. Where does she live? A. 769 Mt. Prospect avenue.

Q. Is she in court today? A. No, sir.

Q. Have you seen her lately? A. Yes, sir.

Q. Have you subpoenaed her here, do you know? A. What do say?

Q. Have you subpoenaed her here? A. No, sir.

Q. How old is she? A. I don't know her age.

Q. About? A. I couldn't say.

Q. Is she as old as you, do you think? A. A little older, I think.

Q. How long have you known her? A. Oh, for twelve years.

Q. Does she go to the same school with you? A. No, sir.

Q. Is she in business anywheres? A. No, sir.

Q. Does she live with her parents? A. Yes, sir.

Q. Now, the night of the accident where was your bobsled when you saw the trolley car coming? A. A little below Clifton avenue.

Q. How much below? A. That I couldn't say.

Q. Can't you point out some object across this room? A. No, sir.

Q. You can not tell us at all? A. No, sir.

Q. Well, Clifton avenue is one block away from— A. Mt. Prospect avenue.

Q. Mt. Prospect avenue? A. Yes, sir.

Q. And your bobsled ran that block, or, rather, from where you were, near Clifton avenue, and met the car right at the corner of Montclair avenue and Mt. Prospect avenue; is that so? A. I couldn't say; I was unconscious.

Q. Well, don't you remember going into the side of the car? A. No, sir.

Q. Your bobsled? A. No, sir.

Q. Now, let us see. You were coming down, and when you saw this car coming, was it coming fast or slow? A. I don't just remember.

Q. Did you notice who was on the corner of Montclair avenue and Mt. Prospect avenue at that time? A. No, sir.

Q. You did not see anybody, because you were looking at the car; isn't that so? A. Yes, sir.

Q. So with your bobsled leaving Clifton avenue, you saw the car, as you say, forty-five of your feet, which would be about thirty-seven feet, away from the corner. You do not recollect anything after that, do you? A. No, sir.

Q. And you are sure of that? A. No, sir.

Q. Well, now, aren't you mistaken about that? (No response.)

Q. You do recollect something after that, do you not? A. No, sir.

Q. Don't you recollect saying to the man who was steering the sled, "There is a trolley car"? A. Well, I said that as soon as I saw the car, that is all.

Q. Yes, I know you did. Well, you were going very fast then, were you not? A. I couldn't say.

Q. Why not? A. I can't just remember.

Q. Can't you remember when you saw the trolley car whether your bobsled was going fast or slow? A. I don't remember.

Q. It was going as fast as an express, was it not, at that time? A. I couldn't say.

Mr. Weinberg: I object to that. Expresses run at various speeds.

Q. Is it not so that at the time you said, "There is a trolley car," that your bobsled was coming down that hill at a very fast rate? A. I couldn't say.

Q. Well, was it going slow? A. No, not slow.

Q. You could not have got off of it, could you? A. I don't believe I tried.

Q. Wait a minute. At the time you saw the trolley car do you think you could have gotten off the sled? A. I couldn't say.

Q. How were you seated on the sled? A. I was the third one.

Q. Well, how were you seated, down as I am seated now (illustrating), that way? A. I can't remember.

Q. Oh, tell us, please. A. I can't remember.

Q. Well, were you lying out flat, one lapping over the other? A. We were sitting up.

Q. Sitting up? A. Yes, sir.

Q. And you were facing the back of the second person in front of you? A. Yes, sir.

Q. Now, I ask you again, do you think you could have gotten off of that sled when you first saw the trolley car? A. I can't remember.

Q. You can't remember what? A. I don't remember if I could have got off.

Q. Did you try? A. No, sir.

Q. Why not? A. I never thought of it.

Q. Didn't you think you were in any danger? A. No, sir.

Q. Why did you tell the boy steering the boy, then, that there was a trolley car? A. I just told him there was a car.

Q. Could you make yourself heard, going down so fast, with the gong ringing? A. Yes, sir.

Q. Did you shout it to him? A. We rang the bell.

Q. But the gong was ringing at the time and you were going fast. How could you get that word to him? A. Why, just spoke to him.

Q. How loud? A. Not so very loud.

Q. Who was ringing the gong? A. That I can't remember.

Q. What part of the bobsled was the gong on? A. I don't remember.

Q. Did you see it? A. No, sir.

Q. How do you know it was there? A. Because I heard it ringing.

Q. What do you say? A. I heard it ringing.

Q. How could you ring the gong on that bobsled, do you know? A. No, sir.

Q. Was there any light on your sled? A. I don't remember.

Q. Don't you remember whether there was a lantern on the sled or not? A. No, sir.

Q. Were there any brakes on your sled? A. I can't remember that.

Q. Do you know how that sled could be stopped? A. No, I don't.

Q. You do not know that, eh? A. No.

Q. You were up there nearly a block away when you saw the trolley car, were you not? A. Yes, sir.

Q. Now, as you came on towards the trolley tracks did you still see the car? A. I don't remember.

Q. Why not? A. I was unconscious.

Q. Well, you were within three-quarters of a block and not hit yet. A. Well, I don't remember anything.

Q. You did not get hit up near Clifton avenue, did you? A. No, sir.

Q. Nothing happened to you until you got down to Mt. Prospect avenue; isn't that so? A. Yes, sir.

Q. Now, just follow me, please. There is the bobsled up here at Clifton avenue (indicating on map). While you were going down this hill what

was going on on that sled? A. The bell was ringing.

Q. What else? A. I can't remember.

Q. Was anything being said? A. I can't remember.

Q. Didn't you see the trolley car at that time coming nearer the corner? A. Yes, sir.

Q. You saw it coming nearer? A. Yes.

Q. Then you were quite mistaken when you said you did not remember anything after you said "There is the trolley car"? You saw the trolley car nearer than forty-five of your feet from the corner; did you not? A. No, sir.

Q. Well, have you not just said, if you will pardon me, young lady, that you did see the trolley car after that? (No response.)

Q. Didn't you? (No response.) You saw the trolley car near the corner, did you not? A. No, sir.

Q. Where was the trolley car when you got down to the corner before you went on the track? A. I was unconscious.

Q. Oh, you have not been struck yet? A. Well, I was unconscious; I don't remember anything.

Q. You did not get unconscious until you got struck, did you? A. I don't know. I don't remember anything.

Q. Well, just let us see again. You said to the boy in front, "There is a trolley car"; is that all you said? A. Yes, sir.

Q. What else did you say? A. That is all I said.

Q. And you said it about in the tone of voice that you are talking in now, or louder? A. About the tone of voice I am saying it now.

Q. And the gong was ringing? A. Yes, sir.

Q. And you were coming down on that bobsled? A. Yes, sir.

Q. And the car was moving towards the corner? A. Yes, sir.

Q. Now, can't you tell us what happened after that? A. No, sir.

Q. What did the young man do—not what he said—what did the young man do when you said "There is a trolley car"? A. I can't remember.

Q. You can not remember that? A. No, sir.

Q. You can not remember a single thing, you can not tell us anything that happened after you said "There is a trolley car"? A. No, sir.

Q. And you do not recollect anything until you found yourself in your brother's arms? A. No, sir.

Q. You do not remember seeing the trolley car after that? A. No, sir.

Q. You do not remember what efforts, if any, the boy made to stop the sled? A. No, sir.

Q. None at all? A. No, sir.

Q. When was the last you heard the gong ring? A. Until I was unconscious.

Q. Well, that was when you left Clifton avenue; that was at the time you first saw the trolley car. Did you hear the gong ring after that? A. After I said that to the boy.

Q. Did you hear it ring after that? A. Yes, sir.

Q. How could you hear it if you were unconscious? A. Well, I heard it until I said that to the boy.

Q. You heard it until you said that to the boy? A. Yes, sir.

Q. And you did not hear it after? A. No, sir.

Q. And you said that to the boy just after you left Clifton avenue? A. A little after; yes, sir.

Q. Then, so far as you know, the gong was not ringing after that? A. So far as I know.

Q. So far as you know, yes? A. So, far as I know, no.

Q. You did not hear it? A. No, sir.

Q. You did not hear any bell on the trolley car? A. No, sir.

Q. And you did not hear any warning from anybody? A. No, sir.

Q. And you did not see anybody at the corner? A. I saw the boy that flagged.

Q. When? A. After—just before I said that to the boy.

Q. But after you said that to the boy you did not see anybody? A. I can't remember anything else.

Q. Where were you looking? A. That I can't remember.

Q. Were you frightened? A. No, sir.

Q. Well, why is that you can not tell us a single thing you saw or heard after that? A. I don't know.

Q. You can not explain, can you? A. No, sir.

Q. Can't you give us some idea with your hand about how high the sled was from the ground? A. No, sir.

Q. Oh, yes, you can, come. A. No, sir.

Q. Was it as high as this counsel table here (indicating)? A. I couldn't say.

Q. Was it as high as that? A. I don't remember.

Q. Was it as low as a foot from the ground? A. I don't remember.

Q. Was it as wide as this table, the counsel table, that we are sitting at? A. I don't remember.

Q. Was it twice as wide as that table (indicating)? A. I don't remember.

Q. What was the color of it, have you any idea? A. No, sir.

Q. Was there anybody going down that hill at

the time you were going? A. What do you mean by that?

Q. Anybody coasting down the hill at the time that you were coasting? A. Yes, sir.

Q. Ahead of you or behind you? A. Ahead of us.

Q. Ahead of you. How far ahead of you? A. Oh, I couldn't say.

Q. About? A. I couldn't say.

Q. Who were they? A. I don't remember.

Q. Bobsleds or small sleds? A. That I couldn't say.

Q. Girls or boys? A. Boys, I think.

Q. Well, about how far ahead of you? A. I couldn't say.

Q. Well, how do you know they were ahead of you? A. Well, they started off ahead of us.

Q. How many minutes or seconds ahead of you, about? A. I couldn't say.

Q. How many on a sled? A. I don't just remember.

Q. Did they have any light on their sled? A. I don't remember that.

Q. Was there anybody on that hill at dusk that night having a light on the sled, that you know of? A. I don't remember.

Q. Did you see anybody with a lantern on the sled that night? A. I don't remember.

Q. Did you see anybody carrying a light of any kind? A. I don't remember.

Q. How were you dressed? A. I had a red coat on.

Q. Sweater? A. No, sir.

Q. Did you have a sweater hat? A. No, sir.

Q. Gloves? A. Yes, sir.

Q. How was the boy in the front of the sled dressed, I mean as to color? A. I couldn't say.

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

Q. Whether he had a red or a white sweater or coat on? A. I couldn't say.

Q. Did he have any cap on at all? A. I couldn't say.

Q. Did he have anything on his head? A. I couldn't say.

Q. How was the person in front of you dressed? A. I couldn't say.

Q. Did he have a sweater on? A. I don't just remember.

Q. Was it a girl or boy in front of you? A. A girl.

Q. Anything on her head? A. Yes, sir.

Q. What? A. A hat.

Q. What kind of a hat? It is pretty hard to describe ladies' hats in these days, but was it a round hat or a stiff hat or a thick hat? A. I couldn't say.

Adjourned until tomorrow, March 8, 1911, at ten o'clock, a. m.

SECOND DAY

Wednesday, March 8, 1911.

Met pursuant to adjournment.

Present: Counsel as before stated.

MILDRED LYNCH, resumes the stand in behalf of plaintiff:

Cross-examination (continued) by Mr. MacSherry:

Q. When you were on the sled at the time you

say you called the attention of the steerer of the sled to the fact that you saw a trolley car, did you see anybody down there at that corner? A. I saw the boy that flagged.

Q. What was his name? A. Raymond Martin.

Q. Did he have anything in his hand? A. He was signalling with his hand.

Q. What do you say? A. He was putting his hand up.

Q. He did not have any flag in his hand, did he? A. That I don't remember.

Q. What was his name? A. Raymond Martin.

Q. He was not the boy that had been there during the afternoon flagging the cars and the sleds, was he? That boy had gone away, had he not? A. He flagged the car—there were two cars he flagged.

Q. But the boy that had been there in the afternoon, he had gone away, had he not, and this other boy had taken his place? A. Yes, sir.

Q. The boy that had been flagging the cars and the bobsleds, he was sliding himself, isn't that so? A. I couldn't remember.

Q. You keep saying that you do not remember. Why do you say that? Don't you remember? A. Well, I don't know who was on the hill.

Q. But you do know the boy that had been flagging the cars and the sleds had gone away, and a new boy had taken his place; isn't that so? A. Yes, sir.

Q. And this new boy was whom? A. Raymond Martin.

Q. How long had he been there? A. He had been there two cars.

By the Court: Q. What do you mean by "two cars?" A. Two times up and down.

By Mr. MacSherry: Q. Two trips up and down? A. Yes, sir.

Q. Not two cars, but your two trips? A. Yes, sir.

Q. And you did not see him signal the cars; he signalled the sleds, isn't that so? A. Yes, sir.

Q. How would he signal the sleds? A. Why, I don't just remember now.

Q. Well, you are telling us that he signalled the sleds; can't you tell us how he did it? A. He put one hand up and two hands up sometimes; I don't just remember how they stand.

Q. On the trip that you got hurt, did he signal your sled? A. That I can't remember.

Q. At the time you were coming down the hill, at the time you got hurt, you did not see him signal any car in any way, did you—any street car? A. I didn't take that much notice.

Q. Did he signal your sled in any way? A. That I didn't take any notice.

Q. Then so far as you know, as the sled was coming down that hill that night, or late in the afternoon, there was not any signal made by anybody at the corner either to the car or to your sled; isn't that so? A. Well, I saw him run up to the car.

Q. What do you say? A. I saw him run up to the car.

Q. What do you mean by, "I saw him run up to the car?" A. I saw him signal the car.

Q. Well, you just said that you did not remember. Why do you say over and over again that you do not remember, and then finally say that he did so and so, Miss Lynch? (No response.)

Mr. Weinberg: Well, what is the question?

Q. What do you say, did he signal the car or not?

Objected to as repetition.

The Court: The witness previously

made a statement that she did not know whether he signalled the car or not. That raises an apparent inconsistency and counsel has a right to pursue it.

Q. Why do you say now that he ran up and signalled the car, after you have said several times that you do not remember whether he did or not? (No response.)

Q. an you answer that question? (No response.)

Mr. MacSherry: Of course, if I can not get a reply—

By the Court: Q. What is your recollection about it? (No response.)

Q. Are you able to answer the question? Do you remember what the question was? A. No, sir.

Q. (Question read.) (No response.)

Q. The question is whether you can explain that? A. Well, I remember now I see him signal the car.

By Mr. MacSherry: Q. How? A. He went up to the car.

Q. Where was the car when he ran up to it? A. That I couldn't say.

Q. Why not? A. I don't know why I can't say it.

Q. Well, it was after you saw it about 45 feet away, as you say, was it not? A. What was the question again?

Q. (Question read.) A. No sir.

Q. Did he run up to the car before you saw the car? A. Before I saw the car?

Q. Yes. (No response.)

Q. Can you answer that question? A. No, sir.

Q. You do not remember much about this accident, do you? A. No, sir.

Q. Where did he run to? A. What was your question?

Q. Where did this boy run to?

The Court: Run to or from?

Mr. MacSherry: Where did he run to?

The Court: To?

Mr. MacSherry: Yes, sir.

By the Court: Q. Where did the boy run to? A. He ran up this direction (indicating).

Mr. MacSherry: What direction?

Q. Which direction is that? A. South.

By Mr. MacSherry: Q. Did he pass out of your sight? A. Well, I didn't notice that.

Q. Where was your bobsled then, when you saw the boy run away? A. A little below Clifton avenue.

Q. That was the time you saw the car, was it not? (No response.)

By the Court: Q. Can you answer that, whether that was the time when you saw the car? A. No, I believe I can't answer it.

Q. You can or can not? A. I can't.

By Mr. MacSherry: Q. How near to the corner was the car when the boy ran up to it? A. That I couldn't say.

Q. Did the boy make any signal to your bobsled? A. I didn't notice.

Q. Had he made any signal to you on the other trip? A. What do you mean by that?

Q. In what way did he signal your bobsled at any time—your bobsled? A. With his hands.

Q. How? A. One up.

Q. Show me. A. This way (illustrating).

Q. What did he mean by that? A. Well, I don't remember just what the signals were.

Q. You did not understand them? A. I did at that time but I don't now.

Q. In any event on this trip that you got hurt you did not receive any signal from that boy, did you? A. When we started off we did.

Q. Why, could you see from the point that you started off? A. Yes, sir.

Q. In the dusk that night? A. It wasn't very dark.

Q. The lights were lit? A. Well, it wasn't dark.

Q. What was the signal? A. As I told you, two hands or one hand.

Q. What was it, to come ahead? A. Yes.

Q. Then when you boys and girls started down that hill you received from this boy down on the corner of Mt. Prospect avenue and Montclair avenue—

The Court: Let us be a little more definite. The witness will want to know which trip you are speaking of.

Q. The trip that you got hurt on. Now, on the trip that you got hurt on, before you started off, you got a signal from a boy. What is his name? A. Raymond Martin

Q. You got a signal from Raymond Martin, from the corner of Mt. Prospect avenue and Montclair avenue, to come ahead; is that right? A. Yes, sir

Q. And after getting that signal you started; is that right? A. Yes, sir.

Q. Now at the time you started you did not see any car, did you? A. What do you mean by that?

Q. You did not see any trolley car? A. The time I started?

Q. Yes, from the beginning of the hill, the top of the hill.

The Court: Ridge street.

Mr. MacSherry: Ridge street.

A. No, sir.

Q. You did not see a trolley car until after you passed Clifton avenue; isnt that so? A. Yes, sir.

Q. And you did not receive any signal from this boy to stop, did you? A. I couldn't say.

Q. You do not remember receiving any signal except the one that you received at Ridge street to come ahead; isnt that so? A. I didn't notice any other signal.

Q. You told that boy to be down there at the corner, do you know?

Objected to.

Mr. MacSherry: If you know.

Mr. Weinberg: One moment. I do not see how that is immaterial, who told him. He might volunteer. It would be just as valid as a signal.

The Court: You may answer the question yes or no, as to whether you know who told him. Say either yes or no to that question.

By the Court: Q. Do you know who told him? A. No, sir.

By Mr. MacSherry: Q. Was it one of your party?

Mr. Weinberg: Who?

Mr. MacSherry: This boy.

Mr. Weinberg: The one who was signalling?

Mr. MacSherry: Yes.

Q. Was he one of your party? A. What do you mean by that?

Q. Well, one of your friends, one of your playmates there sledding on the hill? A. No, sir.

Q. How long had you known him at that time? A. Oh, I couldn't tell.

Q. Well, several years? A. Not that long.

Q. Did he go to your school? A. I couldn't tell.

Q. Did he live near there? A. Yes, sir.

Q. He was one of the boys sleighing on that

hill that afternoon, was he not? A. I couldn't say that.

Q. Do you remember a policeman being there that afternoon? A. Yes, sir.

Q. Do you remember when he went away? A. No, sir.

Q. Do you remember him warning anybody there not to sled on the hill?

Objected to as irrelevant and immaterial.

Objection overruled.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Circuit Court Judge.

(Question read.)

By the Court: Q. That is, did you hear it? A. No, sir.

By Mr. MacSherry: Q. Did you see him do anything while he was there? A. No, sir.

By the Court: Q. Can you tell us, Miss Lynch, the names of the boys who had been there before Raymond came? A. No, sir.

Q. You said he took the place of another boy? A. Yes, sir.

Q. But you do not know the name of the other boy? A. No, sir.

By Mr. MacSherry: Q. Do you see him here in court? A. What do you say?

Q. Do you see the boy in court that the Judge spoke about, the boy that was first signalling? Do you see him here anywhere? A. Yes, sir.

Q. Whereis he? A. There (indicating).

Q. Is that the boy? A. Yes, sir.

(Dr. W. Stockton Wilson and Dr. Henry G. Holler are sworn and testify as to the physical injuries of the plaintiff.)

FLORENCE M. MAWER, sworn in behalf of of plaintiff:

Direct-examination by Mr. Weinberg.

Q. Miss Mawer, what is your profession? A. Trained nurse.

Q. You are a graduate— A. From the Newark City Hospital.

Q. Do you know Miss Lynch? A. Yes, I do.

Q. Did you act as a nurse for her at any time for an injury sustained by her? A. Yes, on January 16th.

Q. When did you start to attend her? A. On January 16th.

Q. January 16th of what year? A. Last year.

Q. January 16, 1910? A. Yes.

Q. And how long did you continue in attendance? A. Up until April, and then on until July.

Q. During the period you were there what services did you perform for the child? A. Why, I took care of her.

Q. What did that consist of? A. Well, I assisted at the operations of the doctors, two operations but not the first.

Q. Did you have anything to do about dressing the wound? A. I assisted at the dressing.

Q. Up to the time you left what was Miss Lynch's condition with regard to her ability to get around? A. Why, had to carry her down to the wheeling chair. Of course, she wasn't able to walk around.

Q. She was not able to walk at the time you left her in July? A. No.

Cross-examination waived.

ALZADA M. HUSK, sworn in behalf of plaintiff's.

Direct-examination by Mr. Weinberg:

Q. Miss Husk, where do you reside? A. Mt. Prospect avenue.

Q. What number? A. 764.

Q. Near what street is that? A. It is between Montclair and Grafton avenue.

Q. Are you acquainted with Mildred Lynch? A. I am.

Q. What is your age? A. Seventeen.

Q. Do you recollect the 7th of January, 1910? A. I do.

Q. What sort of weather was prevailing at that time? A. Why, we just had had a terrible storm of sleet, and everything was covered with ice.

Q. Snow on the ground, too? A. Yes, sir.

Q. Was there any sled riding on Montclair avenue? A. Yes, there was

Q. On the 7th of January? A. Yes.

Q. During what period during the day do you know that therewas sled riding? A. Why, after school, after three o'clock.

Q. During the school hours, of course, you do not know what was going on? A. No.

Q. Was there much sled riding or little? A. Yes, there was quite a good deal.

Q. Were you sled riding that afternoon? A. A little.

Q. Before sled riding, before you actually went sled riding, did you observe any of the sled riding that was going on? A. Yes, I did.

Q. For how long did you notice sled riding going on there? A. Oh, I couldn't say that.

Q. About what time did you go to Montclair avenue after school that day? A. I think it was around four o'clock.

Q. Did you immediately start to go sled riding? A. No, sir; I didn't.

Q. How long did you wait before starting out? A. I don't know that.

Q. Well, approximately about? A. Well, it may have been three-quarters of an hour, perhaps an hour.

Q. During that time did you observe if there was sled riding going on? Yes, sir; there was.

Q. Was there? A. Yes.

Q. Now, during the time that you were there, Miss Husk, did you observe the action and movement of the trolley cars on Mt. Prospect avenue? A. I did.

Q. What did the trolley cars do with reference to that point, Montclair avenue and Mt. Prospect avenue, when they reached that point? A. You mean with regard to stopping.

Q. Yes. A. Why, the cars stopped on the first crossing.

Q. Going which way? A. Why, the north car stopped on the south crossing and the south car stopped on the north crossing.

Q. All of them? A. All that I noticed.

Q. All that you saw, I mean? A. Yes.

Q. And do you know how they came to stop there on these crossings? A. Why, they were supposed to stop when there was sliding on the hill.

Mr. MacSherry: I ask that go out.

Mr. Weinberg: Not what they were supposed to do.

The Court: Strike it out.

Mr. Weinberg: That is out by consent.

Q. Did you know what caused them to stop? A. No, I didn't.

Q. But you did see them stop? A. Yes, sir.

Q. Did you see any cars go by without having first stopped at the first crossing? A. No, sir.

Q. Did you observe anybody at the crossing at any time? A. Why, yes, there was a boy there to signal.

The Court: During that afternoon, you mean?

Q. During that afternoon? A. Yes, there was a boy there to flag for us.

Q. And when the boy flagged, did you notice what the cars would do? A. Well, the cars stopped anyway.

Q. And did they then stop, when they were flagged? A. Yes, sir.

Q. And when you say they stopped anyway, do you mean that they stopped even if they were not flagged? A. I think they did.

Q. So that all the cars stopped whether flagged or not? A. Yes, sir.

Mr. MacSherry: That she saw.

Q. Yes, those cars that you saw? A. Yes.

Q. Now, I believe you were on this sled at the time when it came in collision with the trolley cars, were you not? A. Yes, sir.

Q. Whose sled was this? A. Why, I believe it belongs to Walter Winterbottom.

Q. A young man that you were acquainted with? A. Yes, sir.

Q. What kind of a sled was it? A. Well, it was a bob, but I don't know anything about the make of bobs.

Q. You know it was a bobsled? A. Yes, sir.

Q. About how big a bobsled was it, would you say? A. I don't know anything about the size of it.

Q. Well, can you give us any notion of it? Can you point to anything in the courtroom that would

give us an idea of the length of it? A. No, sir; I can't.

Q. Well, it was not as long as the courtroom itself, was it? A. No, sir.

Q. Well, now, that is some notion. Was it as long as from where you are sitting to where I am sitting? A. Perhaps.

Q. You think it might have been that long? A. Yes.

Mr. MacSherry: Well, that is how long?

Mr. Weinberg: About 12 or 14 feet. We will get it exactly after awhile.

Q. On this occasion when the collision occurred where were you seated on the bob? A. I was second one on the bob.

Q. And where was Mildred Lynch if you know? A. She was right in back of me.

Q. So that she was the third person? A. Yes, sir.

Q. First Winterbottom, the steersman then yourself and then the plaintiff? A. Yes, sir.

Q. Do you know who else was on the sled at that time? A. I know there were boys on, but I don't know the names of them.

Q. There were some boys on there? A. Yes, sir.

Q. About how many were on there altogether? A. I haven't the least idea.

Q. How many trips had you made on this bob that afternoon? A. I had made two before the one we hit the car.

Q. This was the third trip you made, then? A. Yes.

Q. Did you start sled riding at the same time that Mildred did? A. Yes, sir.

Q. Both made the first trip together? A. Yes, sir.

Q. Now on your previous trips before this accident did you observe any trolley cars at the corner of Montclair and Mt. Prospect avenues in passing at any time? A. I don't understand your question.

Q. I say on the other two trips that you made before the accident, as your sled came down or as you went up the hill, did you notice any trolley cars that came to this corner? A. I didn't notice any, no.

Q. You did not notice any before? A. No, sir.

Q. Now, on this occasion did you notice a trolley car when you came down the hill, on this fatal trip on this trip where the injury took place? A. Well, I didn't notice it until the accident almost happened.

Q. And where was the car when you first saw it? A. It was almost to the crossing.

Q. Almost to what crossing? A. To the first crossing.

Q. That would be the crossing on the south side? A. Yes, sir.

Q. And at that time where would you think your sled was? A. Well, I think we were almost to Mt. Prospect avenue from Clifton.

Q. You think you were almost to Mt. Prospect avenue at that time? A. Yes, sir.

Q. How was your sled going with regard to speed at that time? A. I couldn't say anything about the speed.

Q. Well, were you going pretty fast or otherwise, or can't you recollect? A. I didn't notice.

Q. Do you know anything about the collision between the bob and the car? A. No, sir; I don't remember very much of it.

Q. Were you hurt at the time? A. Well, I received a terrible shock and one of my legs was bruised.

Q. Were you rendered unconscious, I mean? A. I think I was unconscious for a few minutes.

Q. Can you tell us anything more about this accident after you saw this car approaching the corner? Can you tell us what happened after that? A. No, I don't believe I can.

Q. Can you tell us what direction your sled took as it came down the street A. Why, Walter turned it so that we would go out of the way of the car.

Q. And which way did he turn? A. Why, turned off the same way that the car was going, in that direction.

Q. He turned north, then? A. Yes, sir.

Q. And can you tell about where the sled was when it started to turn, whereabouts in the street was the sled, near what place was it when he started to turn? A. I think we were near the corner.

Q. Can you tell what direction your sled was running in when it met the car, or the car met it, when it came in collision with the car? A. Why, the same way that the car was going.

Q. It was running about the same way that the car was going? A. Yes, sir.

Q. Can you tell us about what part of the car and the sled came in collision with each other? A. Why, that top—the front part of the car and the front part of the bob locked.

Q. They what? A. They locked.

Q. What was their position, one with regard to the other? A. Why, one was alongside of the other.

Q. Parallel to each other? A. Yes, sir.

Q. Have you any recollection of the shock at the time of the actual collision, have you any recollection of it? A. Very little.

Q. Do you know how far either the bob or the car went after they came in contact with each other? A. No, I do not.

Q. After the accident what did you do, did you go home? A. I was assisted home.

Q. Did you see what became of Mildred? A. Mildred's brother took care of her.

Q. Do you know a young man by the name of Raymond Martin? A. I know of him.

Q. Did you see him that afternoon of this accident? A. Yes, sir.

Q. Where was he? A. Why, he was flagging at the time of the accident.

Q. When did you first notice him that afternoon? A. I think I noticed him the trip before the accident.

Q. And what was he doing there? A. He was flagging at the foot of the hill.

Q. Flagging whom? A. Why, he would tell us whether the coast was clear.

Q. Could you see him from your starting point on the hill? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. On this last ride, you mean? A. Yes, sir.

Q. Did you get a signal from him to come down? A. Yes, sir.

Q. Do you know whether he made any signal to the oncoming car or not?

The Court: Just what you saw.

Mr. Weinberg: Yes.

A. I really didn't notice whether he made any signal to the car or not.

CROSS-EXAMINATION by Mr. MacSherry:

Q. You got on the hill, that neighborhood there, about what time? A. Well, I think it was a little after four when I went on.

Q. Was Miss Lynch there at the time? A. Yes, sir.

Q. About how many people were around there, how many young boys and girls? A. Oh, there was quite a few.

Q. Was there a policeman there? A. There was a policeman there before the accident.

Q. What was he doing? A. Why, he was just standing there on the corner.

Q. Well, did he pay any attention to the cars or to the sleds? A. Well, he stopped vehicles from going in that way.

Q. Did he stop the cars? A. I didn't notice.

Q. Well, was there any boy doing any signalling work there while the policeman was there? A. Yes, the boy was doing some work.

Q. Do you know who told the boy to stand there? A. No, I do not.

Q. Did you see him sledding any? A. No, sir; I didn't notice.

Q. Well, the policeman went away after awhile, did he not? A. Yes, sir.

Q. Well, did the same boy do the signalling all the time you were there? A. Well, I wasn't on the hill very long.

Q. How long were you on the hill? A. Oh, I don't think I was on the hill any more than an hour, between an hour and an hour and a half.

Q. Well, you were there from four o'clock, about, to quarter to six, were you not? A. Well, I wasn't sliding all the time.

Q. You got hurt about quarter to six, did you not? A. Yes, sir.

Q. And it was getting pretty dark then, was it not? A. It wasn't dark.

Q. Well, it was pretty dark, was it not—January 7th? A. No, sir; it wasn't dark.

Q. The lights were lit in the street? A. Yes. sir, I believe they were.

Q. And the cars were lit? A. Yes, sir.

Q. How long before you were hurt were the lights lit in the street, do you think? A. I didn't notice.

Q. Well, half an hour?

Mr. Weinberg: I object to your suggesting to witness, putting the words in her mouth.

Q. Were the lights lit about half an hour before you got hurt? A. Perhaps they were.

Q. Now, you made two trips in safety before you made the third trip? A. Yes, sir.

Q. And the hill was covered with ice, was it not? A. Yes, sir.

Q. And as you came down on that bobsled it went two blocks beyond Mt. Prospect avenue before it stopped? A. Very nearly two blocks.

Q. Went down to what street? A. Summer avenue.

Q. Now, can't you tell us how many people were on the sled? A. No.

Q. Now, when you came back from Summer avenue to make this last trip, the trip on which you were hurt, was there a boy on the corner? A. Yes, sir.

Q. He had a flag in his hand? A. I don't think he had a flag.

Q. When you use the word "flag" you mean making signals with his hands? A. With his hands and occasionally with a handkerchief.

Q. What kind of signals did he make? A. Why I believe one hand meant that it was all right and two hands meant—no, I believe I have that twisted; two hands meant it was all right and one hand meant to stay up.

Q. That was to the people on the bob? A. Yes, sir.

Q. Now, in what way would he signal a car? A. I didn't know anything about his signals to the car.

Q. Now, was there a policeman there when you started up the hill the last time? A. Not the last trip.

Q. He had gone? A. Yes, sir.

Q. While he was there did you see him stop anyone from running the bobsled on the hill? A. No, sir.

Q. Now, you got up to the top of the hill and you got your positions on the sled? A. Yes, sir.

Q. Now, can't you tell us how many people were on that sled? A. No, sir; because I sat down among the first; Mildred and I sat down, and I don't know how many got on afterwards.

Q. How many would the sled hold, do you know? A. No, I don't.

Q. Well, I know, but about? A. Perhaps it would hold eight and perhaps more.

Q. Was it full? A. I don't know; I never looked back.

Q. Well, how many were up there getting on the sled? You can tell us that, certainly, young lady. A. Well, there were a good many that were leaving; that were going home, because it was supper time.

Q. I have not ask you that, now, have I? How many were getting on that sled? You are a bright young girl; you certainly ought to be able to tell us about how many people were getting on a bodsled. A. No, I can't; I don't know how many were getting on.

Q. Were there seven? A. Well, there weren't any more than seven.

Q. But there may have seven and there may have been six? A. There may have been.

Q. Now, you got all ready and you were ready to start. Now, that is about two blocks away, at the top of the hill, from Mt. Prospect avenue? A. Yes, sir.

Q. Now, from that point could you see down to the corner of Mt. Prospect avenue at that time? A. Yes, sir.

Q. Could you see people there? A. Yes, sir.

Q. Could you see the little boy there? A. Yes, sir.

Q. Pretty small, is he not? A. Well, I think he was then.

Q. Who was the boy that you could see down there at that corner? A. I believe his name was Martin; I don't know the boy.

Q. Do you see him in court today? A. Yes, sir.

Mr. MacSherry: Just stand up, will you?

(A boy arises.)

Q. Is that the young man? A. Yes, sir; I believe it is.

Q. Is he the one that had been signalling all the time you were there? A. Well, he was signalling at the time of the accident.

Q. Now, you could see him down at that corner? A. Yes, sir.

Q. Where was he standing? A. Well, I believe he was standing in the centre of the car tracks.

Q. Well, do you know? A. I think that was where he was.

Q. And which way was he looking? A. Why, he was watching both directions for cars.

Q. Well, did he signal your sled? A. Yes, sir.

Q. How? A. He told us to come on.

Q. What did he do? A. Why, he put up both hands.

Q. Just show us, please. A. (Witness illustrates.)

Q. And on that signal you started? A. Yes, sir.

Q. Was he an acquaintance of yours? A. No, sir.

Q. Was he an acquaintance of the young man that was steering the sled? A. I don't know whether he was or not.

Q. Do you know who told him to stand there? A. No, sir.

Q. Anyhow, he gave the signal for you to come on? A. Yes, sir.

Q. And you started off? A. Yes, sir.

Q. Now, it is downhill all the way, is it not? A. Yes, sir.

Q. Did you start from the middle of the road or the side of the road? A. The middle, I think.

Q. Do you remember when your sled crossed Clifton avenue? A. No, sir.

Q. Do you remember just after you crossed Clifton avenue hearing Miss Lynch say, "Oh, Walter, there is a trolley car"? A. Yes, sir.

Q. Where was your sled then? A. Why, it was between Mt. Prospect avenue and Clifton avenue.

Q. Was it nearer Mt. Prospect avenue than it was Clifton avenue, or the other way? A. Nearer Mt. Prospect.

Q. Nearer Mt. Prospect? A. Yes, sir.

Q. Then she said that at the time your sled was near Mt. Prospect avenue? A. Yes, sir.

The Court: She said nearer to Mt. Prospect avenue than to Clifton avenue.

Q. Well, how far from Mt. Prospect avenue was it? A. Why, I couldn't say that.

Q. Well, is that the time you said—did you say, "Here comes a trolley car," too? A. Yes, I believe we both made a remark.

Q. What did he say, if anything, to you? A. Well, he made some remark, that the car would stop, as the others had done.

Q. But did he not say to you, "Sit still and hold on"? A. I don't remember.

Q. Do you remember giving a statement to this gentleman here, Mr. Bodecker, on the 8th day of January, 1910, at your house, as to how you got hurt? A. I believe I did.

Q. And did you say in that conversation that as the bobsled was near Mt. Prospect avenue, "I said, 'Oh, Walter, there is a car.' He replied, 'Sit still and hold on;' and then he steered the bob to the left." Did you say that to him? A. I think I did.

Q. What is that? A. I did.

Q. Is that so? A. Yes, sir.

Q. Now, where was the car when you first saw it? A. Why, it was almost to Montclair avenue.

Q. How far away from Montclair avenue? A. Oh, I couldn't say anything about the distance.

Q. And when you saw the car where was the boy that had signalled you? A. I don't know.

Q. Did you see him? A. I didn't notice.

Q. You did not see him. As you came down the hill did you see him? A. I don't remember.

Q. Do you remember seeing that boy at all after he signalled you to come on by putting up his hands? A. I didn't take any notice of him.

Q. I say do you remember seeing him? A. I do.

Q. You were looking straight ahead, were you not? A. Yes, sir.

Q. Looking right down in the direction where he stood when he signalled you? A. Yes, sir.

Q. Your bobsled ran into the side of the car, did it not? A. No, sir.

Q. What part of the car did it run into? A. The front.

Q. What do you mean by "the front"? A. Well, right a short distance from the fender.

Q. Did it strike the fender or back of the fender? A. In back of the fender.

Q. Well, that is the side of the car, is it not? A. (No response.)

Q. It struck the car about the front of the step, did it not? A. I believe so.

Q. The car was nearly to a standstill when it struck you, was it not? A. No, sir.

Q. Well, was it moving? A. I don't remember that, because I was so frightened that I couldn't remember it.

Q. Did anybody after you said to Walter, "There is the car," get off the sled? A. Not that I noticed.

Q. Do you remember saying, or did you say, rather, to Mr. Bodecker at the conversation I referred to, January 8, 1910, these words: "I am quite sure at least nine or ten were on the sled when it started, but some of them on the rear slid off when they saw the danger of the collision." Did you say that? A. I don't know whether I said that or not.

Q. Well, is there any doubt in your mind about it? A. I don't remember.

Q. What is that? A. I don't know.

Q. Well, your statement was written out in your presence, was it not? A. I believe so.

Q. Did you read it over? A. I don't remember whether I did or not.

Q. Did you sign it? A. I believe so.

Q. I am showing you two pieces of paper and

ask you if you signed those (shown to witness)? A. Yes, sir; that is my signature.

Q. Well, you did not sign them without reading them, did you? A. Well, I don't remember whether I read it or not. It is some time ago.

Q. Well, you just said that you did. Just look at it, won't you please?

The Court: The only question now is whether those are your signatures?

Witness: Yes, sir; those are my signatures.

Q. Well, you signed your name voluntarily to those papers, did you not? That is, no one forced you to sign your name? A. No, sir.

Q. And in whose presence was this conversation between you and Mr. Bodecker? A. My father's.

Q. And was your father present when you signed the papers? A. I think he was.

Q. And was the statement written down in the presence of you and your father? A. Yes, sir.

Q. Did you say in this conversation to Mr. Bodecker, "The hill was covered with ice, and the bodsled skidded along as he tried to steer to the left"? Did you say that? A. Yes, sir.

Q. And did you say, "Just a moment or two before the car came to a stop the sled crashed into the front left step of the car a little north of the north crossing"? Did you say that? A. I believe I did.

Q. Did you say, "I did not see anyone standing near the car track waving at the approaching car as we came down the hill"? Did you say that? A. I don't remember.

Q. Well, this is in the statement that you signed, is it not? A. Yes, sir.

Q. Now, on the other two trips that you made coming down the hill that night previous to the

one that you got hurt on did you have a signal to come on from the same boy?

The Court: That is, did you observe it?

Mr. MacSherry: Did you observe it, yes.

A. No, sir; I didn't observe it.

Q. What do you say? A. No, sir; I didn't observe it.

RE-DIRECT-EXAMINATION by Mr. Weinberg:

Q. Now, Miss Husk, I neglected to ask you where on the street did the car and the bob come in collision with each other, near what point? A. Why, on the farthest crossing.

Q. On the farthest crossing? A. Yes, sir.

Q. By "the farthest" you mean the north crosswalk? A. Yes, sir.

Q. And was it north of the crosswalk or on the crosswalk or south of the crosswalk? A. I don't remember that, because I was stunned.

Q. But you know it was near the crosswalk? A. Yes, sir.

Q. You said also that the sled would go to Summer avenue. Is there a grade on Montclair avenue between Mt. Prospect avenue and Summer avenue? A. I don't know what you mean by that.

Q. Does the street decline, does it go down towards Summer avenue, or not? A. It is but very slight, if it does.

Q. Could your sled go from Mt. Prospect avenue to Summer avenue even without a start from Ridge street or Clifton? A. No, I don't think it would.

Q. Now, Miss Husk, regarding this statement. In answer to counsel's question, you said in an-

swer to one question that he, Walter, said the car would stop at the other side; you also said in the statement, which apparently has been signed by you, "He said, 'Sit still and hold on tight.'" Now, what did he say, one or both or either or neither? A. Yes, I believe he made both remarks.

Q. So that they are both true, are they? A. Yes, sir.

Q. And when was this statement signed? A. I don't remember the date.

Q. Well, the date has been given, January 8th. How soon after the accident would that be? A. That would be the next day.

Q. And where were you at the time when you signed this statement? A. I was at home.

Q. Whereabouts at home were you? A. In the kitchen.

Q. Where did Mr. Bodecker take your statement? Where were you when he took the statement? A. In the kitchen.

Q. And what did you do, answer questions or tell your story and then have him write it down afterwards? How was it done? A. Why, I believe he took it down as I told it to him.

Q. And then when it was all through what did he say to you? A. He had me sign it. I don't remember whether I read it or not.

RE-CROSS-EXAMINATION by Mr. MacSherry:

Q. Did the bodsled skid as he steered it to the left? A. I don't remember.

By Mr. Weinberg: Q. Do you know what he means by skidding? A. Well, I think he means to go over ice very easily.

Mr. MacSherry: No, slide.

By the Court: Q. Slide sideways. A. I don't remember that.

Q. Let me ask you, Miss Husk, a question as to what you meant by an expression you used. You said that the boy would stand at the foot of the hill and signal when to come on. What did you mean by "the foot of the hill"? A. At Mt. Prospect avenue.

Q. Now, you have told us the name of the boy who was signalling on your last trip, Raymond Martin. Was Raymond Martin also engaged in signalling, say, between four and five o'clock, before you began to coast, or was that another boy? A. I don't know anything about that.

(Dr. Edward Zeh Hawkes is sworn in behalf of plaintiff and testifies as to plaintiff's physical injuries.)

WALTER GHIRLANDA, sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Where do you live, Mr. Ghirlanda? A. 769 Mt. Prospect avenue.

Q. What is your occupation? A. Engineer.

Q. For whom? A. Benfield & Milne.

Q. And where are they located? A. Montclair and Woodside avenues.

Q. Where is that with relation to the corner of Mt. Prospect avenue and Montclair avenue? A. Well, the boiler room and engine house is about 150 feet in from Mt. Prospect avenue.

Q. What do you mean by that, east? A. East of Mt. Prospect avenue.

Q. From there have you any view of the corner of Mt. Prospect avenue and Montclair avenue? A. I have from a window in the fire room;

I can stand on the engine-room floor and look straight out at the corner of Mt. Prospect and Montclair avenues.

Q. How many men attend that engine? A. Two, myself and an assistant.

Q. Do you recollect the 7th of January, 1910? A. I do.

Q. Do you know whether there was any sled riding on Montclair avenue that afternoon? A. Well, there was quite a few children sleigh riding there.

Q. Did you observe any of them? A. None outside of Miss Lynch.

Q. I mean did you notice sleds on the street? A. Yes.

Q. Well, what hours do you recollect having seen sled riding? A. Well, it was after school.

Q. In the afternoon? A. Yes, sir.

Q. Do you recollect noticing the movements of the trolley cars in those times when you were looking out? A. Yes, sir.

Q. What was the movement with regard to trolley cars as they approached the corner of Montclair and Mt. Prospect avenues? A. Well, they stopped; the cars going north stopped on the south side, and the cars going south stopped on the north side.

Q. Was that so with regard to the cars that you saw? A. While I stood there the cars had stopped.

Q. Can you tell me what caused the cars to stop there? A. That I don't know.

Q. Did you see anything at those times? A. I did not; that is, I don't remember seeing anybody.

Q. You simply saw the cars come to those corners and stop there? A. Yes, sir.

Q. Did you see any car that failed to do that? A. Not while I was there.

Q. And you were there what hours? A. Well, about fifteen or twenty minutes, around four o'clock or after; I couldn't say the time that I would be looking out of the window there, because it would be uncertain.

Q. Well, you recollect about the time when this accident occurred. Do you know about what time that occurred? A. No, I didn't know of the accident happening until after I shut down.

Q. How late in the afternoon do you suppose you saw cars that came to these corners and stopped? A. Well, about half-past four.

Q. Anything later than that? A. No, sir.

Q. After that— A. I don't remember seeing any more.

Q. You were not paying any attention after that? A. No.

Q. What time did you shut down? A. Six o'clock.

Q. You do not know anything about this accident? A. No, sir.

CROSS-EXAMINATION by Mr. MacSherry:

Q. You were there about fifteen or twenty minutes, Mr. Ghirlanda? A. Yes, sir.

Q. On the corner? A. No, I was in the shop.

Q. Oh, in the shop? A. Yes, sir.

Q. Now, that is how far away? A. I should judge about 150 feet.

Q. What were you doing standing there at the window? A. Well, there is a doorway leading from the fire room to the engine room, and I would take up my time between those two rooms.

Q. Just looking out? A. Just looking out.

Q. Well, about how many cars do you think you saw? A. Well, I couldn't tell you the number of cars.

Q. It could not have been many, could it? A. Well, several.

Q. Within fifteen or twenty minutes? A. I couldn't tell you the exact number.

Q. Did you see any policeman there? A. No, sir; I did not.

Q. Did you see any boy standing in the middle of the tracks? A. No, sir.

Q. Did you see any boy making any signals at all? A. No, sir.

Q. Did you see any sleds coming down the hill? A. Yes, sir.

Q. Any bobsleds? A. I couldn't tell you bobsleds, but there was sleigh riding on that hill.

Q. While there was coasting on there did you see anybody make any signal at all? A. No, sir; I did not.

Q. Either to a car or to a sled? A. I did not.

Q. What time did it get dark that afternoon? A. That I couldn't say.

Q. Was it dark at half-past five? A. Well, I sir.

Q.Was it dark at half-past five? A. Wel, I couldn't say if it was or not.

Q. Well, you were there, you know? A. Well, I wasn't looking out of the window at that time

Q. Was it dark when you went home at six o'clock? A. It was dusk; it wasn't dark.

Q. The lights were lit? A. Yes, sir.

Q. Were the lights lit in any of these cars that you saw? A. No, sir.

Q. And you were there for fifteen to twenty minutes? A. In the engine room; yes, sir.

Q. Do you know on what headway those cars ran? A. No, I do not.

Q. Don't you know that they only ran on about ten minutes headway? A. No, sir; I do not.

RAYMOND W. MARTIN, sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Martin, how old are you? A. Seventeen; I will be eighteen on August 25th.

Q. Where do you live? A. 804 Mt. Prospect avenue.

Q. What is your occupation? A. Learning finishing.

Q. With whom? A. Tiffany & Company.

Q. Were you employed in January, 1910? A. I was, but I happened to be home that day.

Q. Home all day? A. Yes, sir.

Q. What did you do during the day on January 7th? A. Well, in the morning I helped my mother do some work around the house, and then in the afternoon I was out watching them coast a little while, and then I started coasting myself.

Q. When did you start to watch them coasting? A. Well, right after school, about three o'clock.

Q. You didn't go to school that day? A. No, sir; I wasn't going to school; I was working.

Q. You had already quit school? A. Yes, sir.

Q. So that you went out about three o'clock. Where did you go to? A. On the corner of Montclair and Mt. Prospect avenue.

Q. What did you do when you first got there? A. I watched them coasting for a while.

Q. How long did you watch them coasting? A. For about half an hour.

Q. And were there many coasting at that time? A. Quite a few.

Q. During the half hour that you were standing there did you notice the movement of trolley cars along Mt. Prospect avenue? A. Yes, sir.

Q. What would they do when they got to Montclair avenue? A. Every car I saw would stop.

Q. Stopped where and how? A. On the first crossing they come to.

Q. Both sides, from both directions? A. Yes, sir.

Q. How many cars do you suppose you saw do that? A. I saw about five or six before I went coasting.

Q. Do you know how they came to stop on that corner, or at those crossings? A. I don't remember.

By Mr. MacSherry: Q. You do not remember? A. No, sir.

By Mr. Weinberg: Q. I mean during the half hour that you say you had been standing there, do you know what brought them to a stop? A. Well, they stopped there whether they were flagged or not, as far as I could see.

Q. When you saw them stop, did you see them stop at any time when they were not flagged? A. I didn't take any particular notice to that part.

Q. Well, did you see them stop when they were flagged? A. Yes, sir.

By the Court: Q. What do you mean by "flagged"? A. Why, flagged is when a fellow stands there and flags a car—flags the bobsleds

Q. I wanted to know what meaning you attached to the word "flagged." A. Signalled.

Q. Can't you be a little more particular? A. Signalled.

By Mr. Weinberg: Q. What kind of signals do you refer to? A. One hand danger and two hands mean all right.

Q. Whose signal was that? A. That was the coasters' signal.

Q. Who was giving those signals then, I mean?

A. I wasn't there when the first boy started to signal.

Q. You do not know what his signals were, then, do you? A. No, sir.

Q. Can you fasten your mind on any of these stoppings of the cars during that first half hour, and tell me whether any signals were given by anyone on the street to those cars to have them stopped? A. I didn't see anybody signal those cars. All I see was a boy standing down at the bottom of the hill and signal for the bobsleds to come ahead, and the smaller sleds.

Q. But you did not see anybody signal the cars to stop? A. No, sir.

Q. But they did stop at those crossings?

Objected to as leading.

A. Yes, sir.

Q. Well, you say the boys were signalling to the sled riders? A. Yes, sir.

Q. The cars that came along at that time did what? A. All stopped.

Q. Now, after observing the sled riding and the movements of the cars for half an hour, what did you do? A. I started coasting.

Q. And how long did you coast? A. Until about fifteen minutes before the accident.

Q. How many trips did you make coasting, about? A. I have no idea.

Q. Well, do you mean that you have no idea or that you can not tell us exactly? A. I can't tell you exactly.

Q. On your trips as you came down, did you come down at any time when there were cars approaching the crossing? A. Yes, sir.

Q. What did those cars do? A. They stopped and let the bobbers go by.

Q. Do you know if anybody was signalling at

that time? A. I didn't take any particular notice.

Q. You do not know whether they were signalled or not? A. No.

Q. Now, after sled riding what did you do? A. I volunteered to flag.

Q. You volunteered to flag? A. Yes, sir.

Q. And by flagging what do you mean? A. I was signalling the coasters.

Q. Signalling to the coasters? A. Yes, sir.

Q. Could they see you from your stand?

Mr. MacSherry: How can he tell that?

The Court: He can say whether he could see them and he can say whether there was any obstruction. He could not exactly say whether they saw him.

Q. Could you see the coasters starting? A. Yes, sir.

Q. At the top of the hill? A. Yes, sir.

Q. Where would you stand? A. In the middle of the car track.

Q. And where did these sleds come from? A. From Ridge street.

Q. And what would you do to start them? A. Raise two hands.

Q. And then what would the sled or the sled riders do? A. They would start to come down the hill.

Q. How long had you been doing this before the accident? A. About fifteen minutes.

Q. During that time did any cars come up to Montclair avenue? A. Yes, sir.

Q. What did they do? A. Stopped.

Q. Which direction did they come from? A. One came north and one came south.

Q. They stopped at what crossing? A. Why,

the north car stopped at the south crossing and the south car stopped at the north crossing.

Q. Did you or not do anything to cause them to stop on those two trips? A. Well, perhaps they might have seen me there, but I didn't raise no hands to them.

Q. No, but they stopped without you doing that? A. Yes, sir.

Q. Now, do you recollect the trip when the collision occurred—the trip of the sled? A. No, sir.

Q. I say do you remember the trip? A. I remember it; yes, sir.

Q. Where were you at that time? A. I was in the middle of the car tracks on Mt. Prospect avenue.

Q. And Montclair? A. Montclair.

Q. Now, tell us what happened. A. Well, I was standing in the middle, and after I had signalled, the smaller sleds came first, and I didn't particularly take any notice of the car, because it was under the grade there; you couldn't see it—

Q. One moment. At the time when you signalled the sled where was the car on Mt. Prospect avenue? A. Below the grade.

Q. There is a grade going south from that point, is there? A. Yes, sir.

Q. And when the car is beyond that point can you see it or not? A. No, sir.

Q. How far away is that from the corner? A. That is one block.

Q. One block? A. Yes.

Q. So that at the time when you signalled you did not see any car coming? A. No, sir.

Q. Now, when did you see that car coming, where was it when you first saw it coming? A. Corner of Grafton avenue and Mt. Prospect.

Q. And what did that car do? A. That car came right straight down.

By the Court: Q. Is Grafton avenue the next avenue south from Montclair avenue? A. South —north.

Mr. Weinberg: South.

Q. Which way was the car going? A. North.

Q. And when you first saw it it was— A. South, at the corner of Grafton and Mt. Prospect.

Q. Now, I asked you if Grafton avenue is the first avenue south of Montclair avenue? A. Yes, sir; it is.

By Mr. Weinberg: Q. Now, what did that car do after you saw it? A. Why. that car came quite speedily down.

Q. What did you do when you saw that? A. I saw the car, and the bob was already down, and so I run up the track; I couldn't exactly tell the right distance of it, but, anyhow, the car seemed to slow up to me, and when I jumped off the track he put on a burst of speed again.

Q. You say you ran up the street. You ran from where to where?

The Court: He said he ran up the track.

Q. Up the track, on what street? A. On Mt. Prospect.

Q. Where did you run from? A. From the corner of Montclair.

Q. Montclair avenue? A. Yes, sir.

Q. To what point, as nearly as you can remember, on Mt. Prospect avenue? A. The end of the lot.

Q. To where? A. The end of the lot.

By the Court: Q. You ran from the end of the lot: is that right? A. Yes, sir.

Q. The end of what lot?

Mr. Weinberg: Where is the lot that you refer to?

A. On the southeast corner.

By Mr. Weinberg: Q. (Indicating on map.) This lot here? This is Montclair avenue, coming down, Clifton avenue, and this is Mt. Prospect avenue, going north. A. On this corner (indicating).

Q. This not (indicating)? A. Yes, sir.

Q. You ran about to the end of that lot? A. Yes, sir.

Mr. MacSherry: Which lot.

The Court: The southeast corner.

Q. When you got to the end of the lot, how far away was the car at that time from you? A. I should think, by looking at it, it was about fifty or fifty-five feet away from me.

Q. And how was it coming at that time? A. It was coming quite speedily.

Q. And where did you take your position? A. Right in the middle of the car track.

Q. In the same track the car was running on? A. Yes, sir.

Q. What did you do to the motorman? A. I flagged him to go back; I flagged for him to stop his car.

By the Court: Q. Just tell us with what you made your signal? A. My hand.

Q. Just repeat your signal with your hand. A. I signalled with my hand like that; that is, going back (illustrating).

Q. That is, you waved your right hand? A. Yes, sir.

Q. In the direction of the car? A. Yes, sir.

By Mr. Weinberg: Q. And at that time, I understand you to say, you were standing in the car track? A. Yes, sir.

Q. How far away from the corner at that time was the car, do you think? A. I have no idea how far away that was; it must have been somewheres over a hundred feet away from the corner.

Q. You were about the end of the lot and the car was about fifty feet further south from you? A. Yes, sir.

The Court: The witness has not told us what the end of the lot was. Perhaps we had better not assume anything upon that subject. I think we had better strike out this question, because it contains an assumption as to the depth of the lot that is not yet in the evidence.

(Question read.)

The Court: I thought that contained an assumption that is not yet in evidence as to the depth of the lot.

Mr. Weinberg: Is this answer in now?

The Court: I think the question was a leading question, so I think the answer is not in. If you want the witness to state how deep the lot was, he can tell you what he knows about that.

Q. I will ask this question. How far from the end of the lot south was this car at the time when you signalled to it? A. About—I have no idea about how far a distance it was, but when I first started to signal—

Q. No, just answer my question. When you say you ran up about the end of the lot and waved to the car, how far away from you to the south was the car at that time? A. About fifty-five feet.

Q. How do you fix that? A. I can't explain how I fix it, but I ain't got the exact measurement.

Q. Is there anything in this room that you can point to to indicate that distance? A. No, sir; I have no idea of the distance.

Q. Then why do you fix fifty-five feet? A. It is about from me to the end of this room or more.

Q. That is about your notion of it? A. Yes.

Mr. Weinberg: How much is that, your Honor, the distance of this court room?

The Court: This room is about fifty feet long.

Q. So that you have a pretty good notion of fifty feet. You say you stood in the middle of the track at that time. How long did you continue to stand in that position? A. I continued to stand there until I seen that he wasn't going to pay any attention to me, so I jumped aside.

Q. And what did the car do about that time? You started to say before. A. Well, after I had jumped aside he put on a burst of speed.

Q. Before you jumped aside what did he do? A. He kind of slowed up.

Q. And then what did the car proceed to do? A. It slowed up, and after I jumped aside off the tracks he proceeded to go ahead again.

Q. And did you see how far he went? A. Well, he went clear across the tracks.

By the Court: Q. Clear across what? A. Montclair avenue.

By Mr. Weinberg: Q. You change from saying that he went across the tracks to "He went across Montclair avenue"? A. Yes, sir.

Q. Did you hear the sled coming down the street? A. Yes, sir.

Q. How did you hear it? A. I heard the bell ringing.

Q. Do you know that sled? A. No, sir; I can't remember the sound of the bell; I had never seen the sled before until that day.

Q. Well, on that day did you see any bell on it? A. No, sir; I heard the bell.

Q. What sort of a bell was it; that is, the sound? A. Kind of a loud bell.

Q. Do you remember hearing that? A. No, sir.

Mr. MacSherry: When?

Witness: I remember hearing it, I know, but I don't remember of how the sound of it is.

Mr. MacSherry: When did he hear it ring?

Q. When did you hear the bell ring? A. On the three trips coming down.

Q. How about the trip when the accident occurred, did you hear it? A. Yes, sir.

Q. Where was the sled from you when you heard the gong ringing—the bell ringing? A. I heard the bell ringing all the way down the hill.

Q. Was it distinct from the point where you were? A. Yes, sir.

Q. Is that a noisy neighborhood or not? A. Why, I don't see where it is so noisy.

Q. What is it? A. I don't see where it is so noisy.

Q. Well, it is a residential neighborhood mostly, is it not? A. Yes, sir.

Q. Did you hear a signal on the car? A. No, sir.

Q. Was there any? A. I didn't pay any attention; I didn't hear any.

Mr. MacSherry: If he did not pay any attention, how can he say whether there was any, your Honor?

The Court: He was asked if he heard it, and he said no. Isn't that it?

Mr. Weinberg: Yes.

(Last two questions and answers read.)

The Court: He first said he did not hear anything, and then he said he was not paying attention.

Q. Did you see the actual collision between the car and the bobsled? A. No, sir.

Q. How did you miss that? A. I was up the track.

Q. Did you see the bobsled and the car after the collision? A. Yes, sir.

Q. What were their positions? A. Well, I didn't take any notice of the way they were seated on, but, as far as I could see, the way the bob and the car met together, they came like a triangle.

Q. Now, before you were flagging, Raymond, did you see anybody else on the corner, or signalling, we will say? A. I don't remember; no, sir.

Q. You do not remember seeing anybody at all? A. No, sir.

The Court: That is, at the time when you were signalling? Is that the question?

Mr. MacSherry: No, before.

Mr. Weinberg: Before he started.

Q. How was it with regard to being able to see at that hour? A. Well, it was just beginning dusk. I don't see why they couldn't see; I could see plainly.

Q. Is that corner well lighted? A. Well, it is a well lighted line there.

CROSS-EXAMINATION by Mr. MacSherry:

Q. Raymond, whom have you been talking with about this accident since it happened, do you think? A. Why, I haven't been talking to anybody, only one man.

Q. Only who? A. Mr. Weinberg.

Q. No one else? A. No one else.

Q. Well, you talked to your parents at home, did you not? A. No, sir.

Q. Not a word? A. Not a word.

Q. You saw a young lady seriously hurt on the hill when you were coasting and you never said a word at home about it, did you? A. No, sir.

Q. Why not? A. Because I didn't think it was right for my mother to know; she is very nervous.

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

Q. Did you speak to your father about it? A. No, sir.

Q.Why not? A. Because I didn't think it was right for anyone to know; I didn't want them to know, anyhow.

Q. Have you spoken to any of your play fellows about it, any of your friends? A. No, sir.

Q. Do you mean to say you are a young man seventeen years of age there at the time this girl got hurt, and you did not say anything about it to any of the boys that you were playing with? A. No, sir.

Q. Or any of the girls? A. No, sir.

Q. And no one of your shop? A. No, sir.

Q. And have not talked to anybody about it except Mr. Weinberg? A. No, sir.

Q. You do not mean that, do you? A. No, sir.

Q. Why, you were talking about it in the toilet room of this court house yesterday, were you not? A. No, sir.

Q. While you and your friends were in there? A. No, sir.

Q. Did you not talk with this young man who is standing up yesterday in the toilet room at the court house (indicating)? A. No, sir.

Q. And did you not come out of the toilet room with him through the hallway? A. Yes, sir.

Q. And did you not hear this gentleman here to my right, Mr. Orsor, upbraid your friend for talking with you? A. No, sir.

Q. You did not hear that? A. I heard that, but he wasn't upbraiding him for talking to me; he was upbraiding him for talking to another boy.

Q. But you were there talking, too, were you not? A. No, sir; not on that subject.

Q. When did you first talk to Mr. Weinberg? A. I just don't remember the first time I started to talk to him.

Q. Were you alone when you talked to him? A. Yes, sir.

Q. You had not talked to anybody else? A. No, sir.

Q. Then you have been with these boys in the court room here all day yesterday and this morning and never said a word about this case? A. Yes.

Q. And never said a word to any of the young ladies here? A. No, sir.

Q. Well, you got to the hill about three o'clock. A. Yes, sir.

Q. And it was glassy, was it not, covered with ice? A. I don't know as it was so glassy.

Q. Well, that hill was very slippery, was it not? There had been a sleet storm before and it had frozen? A. Well, I don't think it was so slippery there.

Q. Isn't it true that the hill was covered with ice? A. Yes, sir.

Q. Well, ice is slippery, is it not? A. Well, coming down, you know, there may be some snow or something put on it to make it slippery.

Q. Did you have a sled? A. No, sir.

Q. What sled did you have when you were coasting? A. I was coasting with a friend of mine.

Q. What is his name? A. Soffel.

Q. How many bobsleds were there on the hill when you came there? A. I didn't take any notice.

Q. Why not? A. Because I was so busy sleigh riding.

Q. How many bobs were there at any time in the afternoon? A. I only seen one.

Q. How long was that? A. I couldn't tell you how long it was.

Q. About, from where you are sitting? A. About from here to Mr. Weinberg's desk there, if not longer.

Q. How was it built, do you know? A. Built of wood.

Q. How high from the ground was the platform? A. I haven't any idea.

Q. Not as high as this room, was it? A. No, sir.

Q. Then you have an idea, have you not? A. I have no idea as to the perfect size of it.

Q. Well, it was a foot and a half from the ground, was it not? A. A foot and a half, if not more.

Q. Did it have a steering apparatus? A. Yes, sir.

Q. Did it have a brake? A. Yes, sir.

Q. What? A. No, sir.

Q. It did not have a brake, did it? A. No, sir. I didn't examine it to find out what it had.

Q. Did it have a bell? A. Yes, sir.

By the Court: Q. Which bob are you speaking of now?

Mr. MacSherry: The bob in the accident.

Q. I am asking the witness, which bob are you speaking of? A. The accident bob.

By Mr. MacSherry: Q. Where was the bell? A. I couldn't tell you.

Q. Why not? A. I didn't examine it to find out where it was.

Q. How many would the sled hold? A. I should say it would hold about six or seven or eight; I don't know how many it would hold.

Q. Would it hold ten? A. I don't think so.

Q. When you got there did you see a policeman at the corner? A. Yes, sir.

Q. What was he doing? A. He was talking.

Q. What was he doing? A. He was talking to another policeman.

Q. What was the other policeman doing who he was talking to? A. They were both talking together.

Q. Were they stopping trolley cars? A. No, sir.

Q. Where they signalling sled riders? A. No, sir.

Q. Just standing there? A. Yes, sir.

Q. How long did they stay there? A. I couldn't tell you.

Q. Did you see him stop anybody from sliding down the hill? A. No, sir.

Q. Did you see him stop the owner of the bobsled? A. No, sir.

Q. Was anybody signalling the sled riders when you got there? A. Yes, sir.

Q. Who? A. I don't know the boy's name.

Q. Do you se him in court? A. No, sir.

(By request of defendant's counsel, a young man arises.)

Q. Is that the young man? A. No, sir.

Q. Did you see him there? A. I seen him there just before I started to signal, but you said the first—when I first went there. There was eight or nine of them signalled before this young man and me.

Q. Did you not see this young man that stood up standing there in the road making signals for the sleds? A. Not when I first went there.

Q. No, afterwards? A. Yes, sir; before me.

Q. And did he not say to you, "I am going to take a slide," and you said, "Go on and I will signal the sleds"? A. No, sir.

Q. And isn't that the way you got in that road doing that? A. No, sir.

Q. Did you not have such a conversation with this boy? A. No, sir.

Q. How did you come to take up the task of signalling the sleds? A. Well, I didn't see anybody there, and so I signalled myself.

Q. How long was the sledding going on without anybody signalling? A. I can't remember just how long it was.

Q. Well, about? A. About five minutes or so.

Q. Did the bobsled come down during that time? A. No, sir.

Q Did the other sleds come down? A. Yes, sir.

Q. Without anybody being there at all? A. Yes, sir.

Q. What had become of the other boy that was signalling? A. He must have went home.

Q. He went away? A. Yes, sir.

Q. Well, the cars were stopping on the corners, were they not? A Yes, sir.

Q. What was the idea of signalling the sleds? It was always safe if the cars were stopping at the corners? A. The use of signalling was in case the cars didn't stop.

Q. Then you thought maybe the cars would not stop? A. Yes, sir.

Q. And that is the reason you signalled? A. Yes, sir.

Q. Did you go down on this sled? A. Not the bob.

Q. On the bob? A. No, sir.

Q. How long do you think it took the bobsled to leave the starting place and get to Montclair avenue? A. I have no idea of the time.

Q. Well, what do you say? A. I couldn't exactly tell you how long it took; I didn't have no watch and I didn't time it.

Q. It didn't take many seconds, did it? A. I couldn't tell you how many seconds it took and how many it didn't take.

Q. Can't you give us an idea? You were there when you saw this bob coming down? A. Well, I can't give you no idea of the time.

Q. Now, you signalled this bob to come down without seeing any car, did you not? A. Well, I signalled the small sleds first, and then they came down—

Q. What is that? A. I signalled the small sleds, and the small sleds came down, and as they started down, they were most of them down, and when I discovered the car coming the bob had already started.

Q. Then had the bob started down the hill without a signal from you? A. Well, I gave the signal to the small sleds; that meant all of them.

Q. That meant all of them? A. Yes, sir.

Q. That meant the bob, too? A. Yes, sir.

Q. And at that time had you seen the car? A. After the bob started.

Q Won't you answer my question? When you gave the signal for these sleds, including the bobsled, to come down, had you seen any car? A. No, sir.

Q. But after the little sleds had started you did see the car? A. No, sir, not until the bob had started.

Q. Did you do anything to stop the bob? A. How could I stop the bob?

Q. Just answer my question, will you? A. No, sir.

Q. Did you make any signal to stop the bob? A. No, sir.

Q. Where was the bob when you saw the trolley car? A. The bob had just started from the hill when I seen the trolley car.

Q. And it made that two blocks by the time the trolley car got to the corner, did it not? A. Yes, sir.

Q. Then the bobsled went two blocks while the trolley car was going one? A. Yes, sir.

Q. Why did you not make an effort to stop the bobsled, to give them a chance to steer to left or right? A. Well, that there hill is pretty icy; I don't see how he could steer over in the gutter or anywhere else.

Q. He could not have stopped it, could he? A. No, sir.

Q. Why not? A. He was going so fast.

Q. And the hill was so slippery and so steep? A. Yes, sir.

Q. Isn't that so? A. Yes, sir.

Q. And it is a fact that as you saw that hill, with the ice on it, on that day, that after the bobsled once got started, it could not stop until it got to the end of its ride? A. Yes, sir.

Q. That is nearly two blocks beyond Mt. Prospect avenue; isn't that so? A. Yes.

Q. Could you see the car at Grafton avenue, a block away? A. Yes, sir.

Q. Did it stop there? A. I don't remember.

Q. Why not? A. When I first seen the car, I don't remember whether it was stopped there or not.

Q. Why not? A. Well, I don't know.

Q. Now, is it not true that you were excited just then, Raymond? I would be myself, possibly. A. I don't remember seeing the car stop there.

Q. Isn't that the reason that you thought there might be a collision, and that you got excited? A. Yes, sir.

Q. And you started up to meet the car? A. Yes, sir.

Q. And you met the car about how far, do you suppose, from the corner of Montclair and Mt. Prospect avenues? A. Well, a hundred feet or more.

Q. Well, it was more than that, was it not? It was the end of the lot, and fifty feet beyond the end? A. Well, I don't think the lot measures a hundred feet, not over a hundred feet.

Q. Well, you rushed up there to stop the car, did you not? A. Yes, sir.

Q. And when you motioned to the motorman he seemed to slow up? A. Well, he didn't slow up until he seen I wasn't going to move, and then as soon as I moved out of the way he put more speed on.

Q. Did you say anything to him? A. I hollered to him to stay back.

Q. At that time you could not there hear any bells from the bobsled, could you? A. Yes, sir.

Q. Up there? A. Yes, sir.

Q. How could you? A. That bell is a loud sounding bell.

Q. What is that? A. That bell is a loud sounding bell.

Q. Were there any other sleds with bells there? A. No, sir.

Q. The motorman was in the vestibule, was he not? A. Yes, sir.

Q. And the vestibule was closed, was it not? A. Yes, sir.

Q. And the car was moving? A. Yes, sir.

Q And moving pretty fast? A. Yes, sir.

Q. When you started up to meet this car where was the bobsled then? A. On its way down the hill.

Q. How far down had it got? A. A little below Clifton avenue.

Q. A little below Clifton avenue? A. Yes.

Q. Well, was it nearer Mt. Prospect avenue than it was Clifton or nearer Clifton than Mt. Prospect? A. It had just passed Clifton.

Q. How far did you run before you met the car? A. To the end of the lot.

Q. Well, by that time your bobsled must have been down near Mt. Prospect avenue, was it not? A. Not as I can remember.

Q. Why not? A. Well, I don't know why, but it wasn't there. The car can go faster than the bob, can't it?

Q. You think that car went faster than that bob? A. Yes, sir.

Q. How was that, if the bob went two blocks while the car was going one? A. Well, the bob was going two blocks while the car was going one. Two blocks is longer than one block.

Q. Well, this is downhill. A. Well, that doesn't make any difference. The electricity is behind the car.

Q. That is true, but this bobsled had left Clifton avenue? A. I can't say just where it was. I said it just left Ridge street when I seen it.

Q. You say when you started to run for this car the bobsled had left Clifton avenue? A. I said about that; I didn't say exactly.

Q. That is one block, is it not? A. Yes, sir.

Q. The car when you started to run for it was one block away? A. No, sir.

Q. Well, pretty near it, was it not? A. No, sir; about half a block.

Q. Have you not stated that when the bobsled left Ridge street the car was at Grafton avenue? A. Yes, sir.

Q. Have you not testified to that? A. Yes, sir.

Q. And you do not know whether it was standing still or not? A. No, sir.

Q. And when you started to run for the trolley car the car then was about at Clifton avenue? A. No, sir.

The Court: The bob, you mean.

Q. The bob was at Clifton avenue? A. I couldn't exactly tell you where the bob was; I am only just guessing where it was.

Q. Well, wherever it was, it had passed Clifton avenue, had it not? A. I didn't take any notice where it was; I am telling you I am only surmising it was there.

Q. Then it went the distance from about Clifton avenue down to the corner while the trolley car was passing from the point where you saw it when you rushed for it to the corner; isn't that so? A. Yes, sir.

Q. Where did the trolley car stop? A. On the north side of Montclair avenue.

Q. Which part of the car went to the north side, the front or rear? A. Both.

Q. Well, this trolley car blocked the street when it stopped, did it not? A. No, sir.

Q. Did it get all the way across? A. Yes, sir.

Q. All the way across? A Yes, sir.

Q. And where did the bob run into it, do you know? A No, sir; I didn't see the collision at all.

Q. Do you say that there were no bells rung on

that trolley car as it approached that street? A. Yes, sir.

Q. Or that you don't remember? A. There were no bells; I didn't hear no bell.

Q. Were you not thoroughly excited by that time? A. No, sir; I had my head about me.

Q. What do you say? A. I had my head with me.

Q. Have you got it with you today? A. Yes, sir.

Q. How far from the corner of Mt. Prospect avenue and Montclair avenue was it that the car passed you? A. When the car passed me?

Q. Yes. A. How far the car was or the bob?

Q. No, how far were you? A. When the car passed me?

Q. Yes? A. About the end of the lot.

Q. If the cars all stopped at the first corner, why did you when the car was nearly a block away run up to stop it? A. Well, I didn't say the car was a block away when I first stopped—

Q. Nearly a block away?

Mr. Weinberg: He did not say that; he said half a block.

Q. Well, if the car was half a block away, why did you run up to stop it? A. Because it didn't stop at the signal. Most cars stopped at the signal. I ran up that way to see if it wasn't going to stop, and I was there in case the car didn't stop.

Q. But you say the cars were all stopping? A. All I saw, yes.

Q. Now, I say, if you were relying on these cars stopping, why did you run up the track to stop the car when it was over half a block away? A. Because I seen it was coming quite swift.

Q. Is that the reason? A. Yes, sir.

Q. There is no other reason, now? A. No, sir.

Q. Over half a block away? A. Yes, sir.

Q. And how many feet is that, about? A. I have no idea.

Q. Oh, you have some idea, have you not? A. No, sir.

Q. Now, I understood you to say, but I want to be right about it, that there was no one signalling the cars? A. Yes, sir.

Q. The only signalling done was to the sleds? A. Yes, sir.

By the Court: Q. Raymond, as you stood where I understand you to say you did stand, in the centre of the tracks at Montclair avenue and Mt. Prospect avenue I suppose you mean about in the middle of Montclair avenue? A. Yes, sir.

Q. And looked south? A. Yes, sir; looked south.

Q. You say you saw the car at Grafton avenue? A. Yes, sir.

Q. Did you see the whole of the car? A. No, sir; just the front, just the light as it came up over the hill.

Q. How much of the front? In other words, did the hill cut off the lower part of the front, or did you see the whole of the front? A. I could see almost all the front.

Q. What do you say? A. I could see about half way at least.

Q. About the upper half of the front? A. Yes, sir.

Q. Are you able to say when standing at that point you could see in that direction that the car was coming; that is, where standing at that point the car would be when you first saw any part of it, say the roof of it? A. Oh, I could see the roof of it. I couldn't say the bob—

Q. I am speaking of the car? A. I didn't take any notice until the car came up over the hill.

Q. I am asking for information. Can you tell us where the car would be as it came along up the hill when you, standing in the middle of the track there at the centre of Montclair avenue, would first see it or see some part of it, if you did not see the whole of it? You would naturally see the roof first, I suppose? A. Yes, sir.

Q. Where would the car be when you would see some part of it? A. Right near Grafton avenue.

Q. Somewhat beyond it? A. Yes, sir.

Q. You say you saw about the whole of it at Grafton avenue? A. At Grafton avenue.

Q. And you would see some part of it near Grafton avenue, but beyond Grafton avenue; is that it? A. Yes, sir.

Q. But you did not, in fact, notice it until it was at Grafton avenue? A. Yes, sir.

Q. That is right, is it? A. Yes, sir.

Q. And you did not start to go and meet it until it had gone about half a block? A. Yes, sir.

Q. Am I right about that? A. Yes, sir.

Q. Now, you gave the signal for the bob to start? A. I didn't signal the bob; I signalled the smaller sleds that came first.

Q. Well, if I understood you, your signal was intended for— A. All.

Q. For all of them? A. Yes, sir.

Q. Was there more than one bob on the hill? A. Not as I can remember.

Q. And standing as you did and looking up towards Ridge street, up the hill, what could you see when you gave the signal, immediately after you gave the signal? Did you see anything? A. No, sir.

Q. When did you first see that any sleighs were

coming or that the bob was coming? A. I didn't see the bob coming until I seen the car. I was looking up the hill, and then when the smaller sleds all went by the bob started, and then I looked up that way and I seen the car at Grafton avenue.

Q. Had the small sleds got by? A. Yes, sir.

Q. Before you saw the car? A. Not all of them.

Q. Was there anything to obstruct your eyesight of the bob when the bob started? A. No, sir; I don't remember anything about that.

Q. I mean to say was there anything in the way, taking into consideration the time of night and everything? Was the bob visible to you when it started? A. I could see the bob pretty plainly at the top of the hill.

Q. You could see the bob up there? A. Yes, sir.

Q. And if you did not see it until it got down part of the way down the hill it was because you did not pay attention to it? A. I didn't pay attention to it.

Q. Where do you think it was then you first saw it? A. At the top of the hill.

Q. I mean after it started? A. I haven't any idea; I wasn't paying attention; after the bob started I was watching the car.

Q. At the time you turned to meet the car you were aware that the bob had started? A. Yes, sir.

Q. What gave you that idea? A. I heard the bell ringing.

Q. And when you heard the bell ring did you look? A. No, sir.

Q. Did you see where it was? A. No, sir; my attention was drawn to the car.

By Mr. MacSherry: Q. How many sleds were there ahead of this bobsled? A. I couldn't tell you; I didn't count them.

Q. I know you did not count them, but about how many? A. Well, there was a continuous string there all the time.

Q. Were there twenty? A. I couldn't tell you.

Q. Was there fifty? A. I don't think there was that many.

Q. Well, were there thirty? A. I couldn't tell you what there was or how many.

Q. Had they all passed Mt. Prospect avenue before the bobsled passed? A. No, sir.

Q. Then when you left to stop the car there were some of these sleds ahead of the bobsled coming down the hill? A. Yes, sir.

Q. They got over safely, did they not? A. Yes, sir.

Q. Then several crossed right ahead of the trolley car, did they not? A. No, sir.

Q. They did not cross behind it, did they? A. No, sir; they crossed before the trolley car got down to the corner.

Q. How long before? A. I guess about three seconds.

Q. Then the trolley car could not have been very far off when the sleds went ahead of it, could it? A. The car was about the end of the lot.

Q. When all the sleds went by? A. Not all of them.

Q. When the trolley car got to the first corner were there any sleds going over? A. No, sir.

Q. Had they all passed? A. Yes, sir.

Q. The last sled that passed before the bobsled came down, how near was the trolley car to the corner, do you think? A. About the end of the lot.

Q. You just said a moment ago that they nearly all had passed when the car got to the end of the lot. What do you mean by that? A. I said all passed.

Q. All had passed by the time the trolley car had got to the end of the lot? A. Yes, sir.

Q. All had passed except the bobsled? A. Yes, sir.

Q. Well, were you looking towards the corner? A. No, sir.

Q. Well, if you were not looking, how do you know all this? A. I could only see the bob; I was looking at the car; I didn't see any of the sleds go by.

Q. Then why do you keep testifying under oath and answering my questions as to what the sleds were doing when the trolley car was getting near the corner? A. All I am testifying to is that I flagged the car.

Q. That is all you remember. You do not know if any other sleds went by, do you? A. Yes, sir.

Q. Do you know where the trolley car was when these other sleds went by, most of them? A. No, sir.

Q. Then why do you say so? You are on record here as saying that the trolley car was at the end of the lot. Now, you do not know whether it was or not when the other sleds went by, do you? A. I haven't said it was there when all of them went by.

Q. I said you said most of them. A. No, sir; I didn't say most all of them; I said most all by.

Q. Now, I will ask you again: Do you know of your knowledge from what you saw there that day that all the sleds were down with the exception of the bobsled, when the trolley car got to the first corner of Montclair avenue? A. Yes, sir; they were all past.

Q. You saw them pass? A. Yes, sir.

Q. When the last one passed whereabouts was the trolley car? A. I don't remember.

HAROLD WINTERBOTTOM, sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Harold, how old are you? A. Fifteen.

Q. When were you fifteen? A. January 28th.

Q. Where do you live? A. 807 Ridge street.

Q. You are a brother of Walter Winterbottom? A. Yes, sir.

Q. You are familiar with the corner of Montclair avenue and Mt. Prospect avenue? A. Yes, sir.

Q. Were you in that neighborhood on the 7th of January, 1910? A. Yes, sir.

Q. What were you doing there? A. I was coasting on the hill.

Q. Coasting on what hill? A. Montclair avenue.

Q. When did you start to coast on that day? A. About half-past three.

Q. You were to school that day? A. Yes, sir.

Q. Were you on or near the hill before you started to coast? A. No, sir.

Q. As soon as you got there you started to cost, did you? A. Yes, sir.

Q. And what sort of a sled were you riding on? A. Flexible flyer.

Q. How big a sled were you riding on, how long? A. I don't know how long it was; it is a No. 4.

Q. That is about three or four feet long, is it not? A. I guess so. There was somebody else on with me.

Q. How many would it hold? A. Two.

Q. Now, whom did you have on the sled with you? A. Dick Hetherton.

Q. You were riding with Dick Hetherton? A. Yes, sir.

Q. Now, you started to ride about what time, did you say? A. Half-past three.

Q. How long did you continue sled riding that afternoon? A. Until the accident happened.

Q. Have you any notion as to how many trips you made down that hill? A. No, sir.

Q. Did you make a great many? A. Quite a few.

Q. Now, during the time that you sled riding, Harold—that was about two hours or so, was it? A. Yes, sir.

Q. Well, you began at half-past three and kept on until the accident happened. We know when that was. Do you know about what time the accident occurred? A. About quarter of six.

Q. During that time did you notice the movement of the trolley cars on Mt. Prospect avenue? A. Yes, sir.

Q. At Montclair avenue? A. Yes, sir.

Q. What did they do when they got to the corner? A. The cars going south stopped on the north crossing and the cars going north stopped on the south crossing.

Q. How many cars did you see do that, do you suppose? A. All that I saw.

Q. And how many do you suppose you saw? A. I don't know how many.

Q. Well, many or few? A. Quite a good many.

Q. Do you know how the cars came to stop on those crossings? A. They stopped of their own accord.

Q. Why do you say they stopped on their own accord? A. Well,—

Q. Why do they say they stopped on their own accord? A. Because there was somebody to flag them if they didn't stop.

Mr. Weinberg: That is not responsive. I ask that that go out.

Q. What do you mean by stopping on their own accord? A. Well, they knew that they were coasting there, and so they stopped.

Q. That is what you think, because they knew there was coasting they stopped? A. Yes, sir.

Q. At this time you say they stopped of their own acord did you see anybody in the street stop them? A. No, sir.

Q. Did you see at any time anybody on the street signalling to the sled riders or to the cars or to anybody? A. Signalled for them to come on, come on and stay back.

Q. Signalled for whom to come on? A. The sleigh-riders.

Q. You recollect the accident, do you not? A. Yes, sir.

Q. How soon before the accident did you last come down the hill? A. Just before the bob.

Q. How much in advance of the bob do you think your sled was? A. Oh, about four minutes, four or five minutes.

Q. Well, how far in front of the bob were you? A. We got down to the—we got in a rut and were thrown in the curb, and were coming back just as they come down.

Q. You got caught in a rut and ran into the curb? A. Yes, sir.

Q. Where was that? A. Below Mt. Prospect avenue.

Q. How far below Mt. Prospect avenue? A. The second telephone pole.

Q. Was that a block or two blocks or over? A. About half a block.

Q. And I suppose you got off your sled? A. Yes, sir.

Q. And turned around and started to go up towards Mt. Prospect avenue? A. Yes, sir.

Q. Well, when you got there where was the bob? A. Coming down the hill.

Q. When you got to Mt. Prospect avenue about how far from you was the bob, if you know?

Mr. MacSherry: Coming up or going down?

The Court: No, as they were going back, as they were walking back up the hill and reached Mt. Prospect avenue, where then was the bob?

A. Well, it was coming down hill.

Q. Whereabouts on the hill, did you notice? A. Below Clifton.

Q. Now, did you see a car at or near that time? A. I didn't see a car, but I saw Raymond run up the track.

Q. You mean Martin? A. Yes, sir.

Q. How far did you see him run up the track, how far did he run that you saw? A. Well, he was about two car lengths, or the width of that vacant lot.

Q. That is how far Raymond ran? A. Yes, sir.

Q. Did you see what he was doing? A. He tried to stop the car.

Q. What did he do?

The Court: What was he doing?

A. He put up his hand.

Q. Anything else? A. That is all I know.

Q. At that time did you see the trolley car? A. Yes, sir.

Q. Where was it at that time when you saw him put up his hands? A. It was coming, coming north.

Q. It was coming north? A. Yes, sir.

Q. How far away from Raymond was it at that time, when you saw him put up his hand? A. I don't know how far it was.

Q. Well, about how far away was it to the south of him? A. It was pretty near up to that signal. There is a signal in the middle of the block.

Q. There is a signal in the middle of the block? A. Yes, sir.

Q. And you think it was pretty near up to that? A. Yes, sir.

By the Court: Q. What do you mean by "signal"? A. A trolley station.

By Mr. Weinberg: Q. You mean those signs that hang over the street? A. Yes, sir.

Q. Denoting a stopping place? A. Yes, sir.

Q. What did you notice the car do as it came towards Raymond? A. Well, it kind of slacked up until it got to him; then when he got out of the way it started up again.

Q. Where was he standing? A. In the middle of the track.

Q. And what do you mean by "when he got out of the way"? What did he do? A. He got out of the way so that the car wouldn't run over him.

Q. What did he do? A. Stepped to one side.

Q. And then how did the car pass him? A. What do you mean, the speed?

Q. Yes? A. It was going quite fast.

Q. Where were you at that time? A. I was up there—run up on the track, too.

Q. You were on the track, too, at what point? A. That was on the corner of Mt. Prospect avenue and Montclair avenue, on the corner.

Q. And what did you do? A. After it came to me I got out of the way, too.

Q. And how was the car coming when it go to where you were? A. Going quite fast.

Q. And you were in the middle of the street, the middle of Montclair avenue? A. Yes, sir.

Q. Now, did you notice the bobsled at that time? (No response.)

At one o'clock p. m., the court takes a recess of one hour.

After recess.

HAROLD WINTERBOTTOM, resumes the stand in behalf of the plaintiff:

Direct-examination (continued) by Mr. Weinberg:

Q. Harold, did you notice whether or not there wer many sleds on the street— A. Yes, sir.

Q.—at that time when you were sliding there in the afternoon? A. Yes, sir.

Q. What would you call many, how many, how many would you think? A. Between twenty-five and fifty.

Q. Now, I think when we took recess I had asked you the question whether you had noticed the bobsled at the time when you saw Raymond jump out of the way of that trolley car. Did you notice where the bobsled was at that time? A. Well, it was on its way down from Clifton avenue.

Q. And how was it coming? A. Good speed.

Q. Did I ask you or did you testify before as to how the car was going just before Raymond stepped off the tracks? A. It slowed down and then started up again.

The Court: He said it kind of slacked up and when he got out of the way it started up again.

Mr. Weinberg: Then I have been over that.

The Court: That is what he said.

Q. About what point in the street were you when the car slacked down? A. About—up above where Raymond was standing.

Q. Can you tell me whether there was any appliance on this sled? A. Any what?

Q. Any appliance to give warning, or anything of that sort? A. Yes, sir.

Q. What was there? A. A bell.

Q. Did you hear the bell? A Yes, sir.

Q. When did you hear the bell? A. When I was coming back.

Q. Perhaps that is confusing. Where was the sled when you heard the bell? A. The bobsled, you mean?

Q. Where was the bobsled when you heard the bell ringing? A. Just heard it ever since they started.

Q. How long did it keep on ringing, that you heard? A. It was ringing yet when it went to make the turn.

Q. What was the tone of the gong?

Mr. MacSherry: What turn does he mean?

Mr. Weinberg: There is only one turn testified to, and that is just before it was struck.

Q. What turn do you refer to? A. Turn around the corner to the left.

Q. What corner? A. Mt. Prospect avenue and Montclair.

Q. When he turned around to the left. Where was the bob when you last heard the bell ring? A. It was making the turn.

Q. Do you know where the car was at the time the bob was making the turn? A. It was just about ready to cross Montclair avenue.

Q. And by that you mean what, that it was ready to cross? Whereabouts was it? A. That was below the second crossing going north when they came together.

Q. No, I didn't ask you where it was they came together. I said when the bobsled started to make the turn about where was the trolley car? A. About in the middle of Montclair avenue.

Q. And they came together about where? A. Past the north crossing.

Q. How much past the north crossing? A. It hit it in the front part of the car.

Q. It hit what? A. The bob hit—

Mr. MacSherry: Hit the front part of the car, he said.

Mr. Weinberg: That is not an answer to my question. I ask that that be stricken out.

The Court: You asked him how far past, did you not?

Mr. Weinberg: Yes, sir.

By the Court: Q. How far past the north crossing did they get before they struck? A. About the length of a car.

By Mr. Weinberg: Q. And what part of the car and what part of the sled came together, if you know? A. The front part of the bob and the front part of the car.

Q. And what were their positions when they came together? A. They were parallel.

CROSS-EXAMINATION by Mr. MacSherry:

Q. Why, Harold, when they started to make the turn on the bobsled the car was right in front of them, was it not? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Do you understand this map? The bobsled was coming down this hill, you see (indicating on map)? A. Yes, sir.

Q. Here is your car coming along there, and when they made the turn to go to the left the car was in front of them—trying to get out of the way of the car, were they not (indicating)? A. Yes, sir; but they came together past the corner.

Q. How far past the corner? Had all the car passed the corner, had all the trolley car passed

this south corner, or the front part of it (indicating)?

Mr. Weinberg: That is the north corner.

Q. I mean this north corner (indicating). The car is coming this way, you understand? A. Yes, sir.

Q. And your bobsled is coming down there (indicating). Had all the trolley cars passed this corner? A. Well, they stopped on the other side, all the rest of them but this one.

Mr. MacSherry: I have not asked you that, have I? I ask that that go out, because that is not responsive.

The Court: Strike it out.

By the Court: Q. The question is—whether you can answer it or not I do not know; if you can, do so—had the whole of the car passed the north corner of Montclair avenue when the car and bob came together? A. Yes, sir.

By Mr. MacSherry: Q. All of it passed? A. Yes, sir.

Q. Then the rear end of this car was at the corner, then (indicating)? A. A little past that.

Q. A little past that corner? A. Yes, sir.

Q. And the bobsled ran into the car at the front of the car; do you mean that? A. I don't know. They was both coming down the hill together, and the car pulled in front of the bob.

Q. Why, how is that? Have you not said already that the car was in front of the bobsled when the bobsled made the turn? A. Yes, but they were both going.

Q. Yes, I know that, of course they were both going. Whom have you talked with about this case since the accident? A. Mr. Weinberg.

Q. Whom else? A. I have spoken some about it, not much.

Q. Who else? A. My parents.

Q. You have stated upon your examination this morning, to Mr. Weinberg, that there was someone there to stop the cars if they did not stop. who was it? A. There was different ones there.

Q. Who? A. Norman Becker and Martin; that is all I seen that is all I remember.

Q. Then they would stop the trolley cars if they did not stop at the corner? A. Yes, sir.

Q. Now, you are sure of that? A. If they didn't stop at the south crossing.

Q. If they did not stop at the first corner, there was someone there to stop them? A. Yes, sir.

Q. And how would they stop them? A. They would put their hand up.

Q. Just show me. A. (Witness illustrates.)

Q. Then it is not true that the cars stopped there without being stopped, is it?

Mr. Weinberg: I object to that. That is a conclusion of the counsel asked of this witness.

The Court: It is a question.

Mr. Weinberg: Well, I object to the form of that question.

The Court: Well, I think myself that the question is rather better when it is asked in the form of a question than when it is asked in the form of an assertion. It is very common to ask it either way. It is a question, of course. I will not interfere with it; I will allow it.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Circuit Court Judge.

(Question read.)

Q. What do you say? Do you understand the question? A. No, sir.

Q. You do not understand it? A. I don't know what he said.

Q. (Question read.) A. Yes, sir; they stopped without being stopped, all but this one.

Q. What do you say? A. They stopped without being stopped, all but this one.

Q. Have you not already said that there were men there to stop the cars, and that they stopped them by holding up their hands? A. That is what I said, if they didn't stop.

Q. But have you not already said that they did it? A. I said they did it if they didn't stop, they put up their hands if they didn't stop.

Q. How many cars did they stop in that way, by holding up their hands? A. All of them stopped but this one; they didn't have to put up their hands.

Q. But have you not already stated that there were men there to stop the cars and they signalled them if they didn't stop by holding up their hands? Did not say that? A. I said it.

Q. And that was true, was it not? A. Yes, sir.

Q. Well, this boy did not stop this car that came in collision with the bobsled by standing at the corner and holding up his hands; he ran up to meet the car, did he not? A. Yes, sir.

Q. This boy did not run up the track to meet this car until the bobsled had passed Clifton avenue, did he? A. I don't know when he ran up.

Q. Did you not say this morning that Raymond Martin had run up the track to stop the trolley car and that when he did the bobsled had passed Clifton avenue? A. Yes, sir.

Q. What do you say? A. I said that.

Q. That is right, is it not? A. Yes, sir.

Q. And that when he stood in the track to wave at the trolley car the bobsled at that time had got very near the corner of Mt. Prospect avenue; isn't that so? (No response.)

Q. Do you understand that question? A. No, sir.

Q. Why not? When the boy ran up the track and met the trolley car where was the bobsled then? A. About half way down Clifton avenue.

Q. When the trolley car got to the first corner of Montclair avenue, the first corner, where was the bobsled then? A. About ready to make the turn.

Q. Now, let me see. Then when the trolley car had got to the one corner of the avenue and bobsled had about reached the avenue, ready to make the turn? They both came to the corner about the same time, did they not?

Mr. Weinberg: I object to the question as being double.

Mr. MacSherry: Well, I will eliminate the last part of it. Read the first of it.

(Question read as follows: "Now, let me see. Then when the trolley car had got to the one corner of the avenue the bobsled had about reached the avenue, ready to make the turn?")

Q. Is that right? A. I don't understand what you mean.

Q. Why don't you understand. What is there about that that you do not understand? (No response.

Q. Now, I ask you again, when the trolley car got to the first corner of Montclair avenue was not the bobsled ready to make the turn? A. Yes, sir.

Q. And it was in the middle of Montclair avenue

—the bobsled—was it not? A. The middle of Mt. Prospect avenue and Clifton avenue.

Q. What? A. The middle of Mt. Prospect avenue and Clifton avenue.

Q. When the bobsled made the turn was it toward the side of the street or the middle of the street? A. It was in the middle of the street.

Q. When it made the turn did it skid any? A. Yes, sir.

Q. Slip any? A. Yes, sir.

Q. Which way did it slip, towards the car or away from it? A. Towards the car.

Q. What do you mean by slipping, sliding? A. Yes, sir; sideways.

Q. What do you say? A. Skidding.

Q. How far did it skid? A. I don't know how many feet.

Q. Did it skid until it struck the car? A. No, sir.

Q. How near the car did it get? A. I couldn't tell you.

Q. What made it skid, do you know? A. He tried to turn, and it was so slippery it couldn't turn, it slid.

Q. And going so fast? A. Yes, sir.

Q. What? A. Yes, sir.

Q. Did you see any people get off the bob before it got down to Mt. Prospect avenue? A. One boy.

Q. What? A. You mean off the bobsled?

Q. Yes? A. One boy.

Q. What part of the bobsled did he get off of? A. The back end.

Q. How did he get off? A. I don't know.

Q. Where was the bobsled when he got off? A. About half-way down, when he first saw the car.

By the Court: Q. Is that your answer, about half way down when you saw the car? A. No, when the boy saw it.

The Court: Do you know what the boy saw. Strike that out.

Q. Try to tell us where on the road the bob was when the boy got off, as nearly as you can.

Mr. Weinberg: Do you know what the question is? A. I don't know exactly where he got off.

Q. Can you come anywhere near it? A. No, sir, all I know is he got off.

By Mr. MacSherry: Q. Now, did you see the bobsled when it started from the top? A. Yes, sir.

Q. You could see from where you were, eh? A. Yes, sir.

Q. You were ahead of it, were you not? A. Yes, sir

Q. You had come down ahead of it? A. Yes, sir.

Q. And gone by this corner and gone near the telegraph pole and stopped? A. Yes, sir.

Q. Now, was there anybody to give a signal for that bobsled to come down? A. Yes, sir.

Q. Who was it? A. Raymond Martin.

Q. Did he give the signal? A. He had already given it.

Q. Did you see him give it? A. Yes, sir.

Q. What kind of a signal did he give? A. Two hands.

Q. Just show us. A. (Witness illustrates.)

Q. Then the bobsled started? A. Yes, sir.

Q. Did you see it come down? A. Yes, sir.

Q. Did you see any car when the signal was given? A. No, sir.

Q. What did that signal mean, do you know? What did you understand it to be? A. What he gave?

Q. Yes. A. To come on.

Q. Where was he standing when he gave the signal? A. In the middle of the car tracks.

Q. About in the middle of the corner there, was he not? A. About in the middle of all the street.

Q. How long did the bobsled take from the time it started until they got down to that corner, until the time of the collision? How long did it take, do you know? A. No, sir.

Q. Have you any idea? A. Anywher from half a minute to five minutes.

Q. What do you say? A. Anywhere from half a minute to five minutes.

Q. Anywhere from half a minute to five minutes, eh? A. Yes, sir.

Q. It was going pretty slow, then, was it not—the bobsled? A. No, sir.

Q. What do you say? A. No, sir.

Q. Was it going fast? A. Quite fast.

Q. Well, it only had to go two blocks, did it not? A. Yes, sir.

Q. I am going to call the start of that bobsled, and you tell me when you think it has got down to the corner, will you? Just follow me. Now, I am going to start that bobsled for you, and I want you to tell me when it has got down to the corner of Mt. Prospect avenue and Montclair avenue. (With watch in hand.) Now.

Objected to.

The Court: The witness has disclamied any exact knowledge of the time. He gives himself a very wide margin; he says it took anywhere from half a minute to five minutes. Now, it seems to me hardly fair to ask him, in view of that very general statement, to make so definite a statement as he is now called upon to make.

Mr. MacSherry: Well, now, I would like to ask this witness what he considers half a minute.

The Court: You may ask that question.

Q. I will start you. When I tap my hand, that is the beginning, and I want you to tell me when I have made half a minute, according to your idea. (Rapping on desk.) Now, tell me when half a minute is up. A. (After a pause.) Now.

Mr. MacSherry: That is twenty seconds.

D. WALTER WINTERBOTTOM, sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Mr. Winterbottom, how old are you? A. Twenty.

Q. When were you twenty? A. Last October.

Q. Where do you live? A. 807 Ridge street.

Q. Where do you spend most of your time now? A. Out in the country.

Q. Where is that? A. Near Newfoundland.

Q. You came down from Newfoundland to attend this trial? A. This morning.

Q. When did you move up to Newfoundland? A. Last June.

Q. In January, 1900, you lived on Ridge street? A. Yes, sir.

Q. With your brother, the young man who was just on the stand? A. Yes, sir.

Q. What was your occupation, if any, in January of last year? A. I was to high school.

Q. So that you have no occupation? A. No.

Q. Were you the owner of a bobsled, Walter? A. Yes, sir.

Q. The bobsled that was used on the 7th of January? A. Yes, sir.

Q. Can you tell us about the bobsled? How long a sled was it? A. Well, I don't exactly

know how long it is, but I took a twelve foot board, and it was split at both ends, and I sawed it at both ends so as to take the split out, so that it was between ten and twelve feet.

Q. And composed of one or more sleds? A. Two sleds.

Q. What sort of sleds did you have for runners? A. Low sleds, iron runners.

Q. The old-fashioned flat coaster?

Mr. MacSherry: Do not lead.

Q. What sort of a sled was it that the boards were attached to, or what sort of sleds were they? A. It was a low oak sled, made of oak, and the side of the sled was about three inches wide—a piece of wood; those were placed upright, like that (illustrating); and I had some cross-pieces across, and they were braced well, and for runners I had this—I don't know what kind of iron you call it; you use it for hoops.

Q. Round iron? A. No, it was flat. And then on top of this sled I had a block, and on the front I had a T on the bottom, with a rod through the T, and on top of this I had an upright coming up in the middle of the wheel, and on top of this I had a freight car wheel to steer with, and then I had an oak board across the front of the sled besides this to steer with, so that in case either one broke I could use the other to steer with; I could steer with either one without any assistance of the other; for instance, I could steer with the wheel alone or with my feet alone.

Q. Was the sled fitted up with anything else besides the steering gear? A. Yes, sir, the sled was on rockers, and then I had a good bell to ring in case anyone was in the way, to tell them that I was coming.

Q. Where was the bell kept? A. Under the board.

Q. What portion of the sled? A. Well, between the front and the rear sled.

Q. Is that bell here in court? A. Yes, sir; it is right there in my coat. (A package is handed to witness, from which he produces a gong.) Shall I ring it?

Q. Not yet; just place it down on the desk in front of you. Tell me, where did you get that bell from? A. It was a present to me.

Q. What did you say, it was made a present to you? A. It was a present to me.

Q. What did you do with it? A. I put it on the bob.

Q. How long was that bell on the bob? A. Ever since it was made.

Q. And when was it taken off of the bob? A. About—let us see. Last Tuesday night; not yesterday; a week ago Tuesday.

Q. And where was it when it was taken off of the bob, where was the bob? A. Where was the bob?

Q. Yes? A. Out near Newfoundland.

Q. You had the bob up there with you? A. Yes, sir.

Q. Is that the same bell that you had on the sled on the 7th of January? A. Yes, sir.

Q. Did you have more than one bell? A. No, sir.

Q. What did you use the bell for on the sleigh? A. To ring in case anyone was in the way, to ring to let them know we were coming, so that they would get out of the way.

Q. On the 7th of January was that bell in use? A. Yes, sir.

Q. How long had you been riding on the 7th of January? A. You mean how long that afternoon.

Q. Yes. A. We started about four o'clock and we rode until the accident.

Q. And how many people did you carry with you on your various trips? A. Well, that was according to the size of them.

Q. Sometimes you did better business than others?

The Court: No, the size of the people. Is that what you meant?

Witness: Yes, sir.

Mr. Weinberg: Oh, I thought you meant the size of the crowd.

Q. What did you carry there, grownups as well as young folks? A. Well, anyone that wanted to ride down.

Q. Anybody that wanted to ride down? A. Yes, sir.

Q. On that afternoon what were you carrying, grownups or school children? A. Well, there was a mixed crowd; some were grown up, some were high school fellows and some went to grammar school.

Q. Where would you start to ride from? A. Ridge street.

Q. Ridge and what? A. Ridge and Montclair.

Q. And you would coast down how far? A. To Summer avenue.

Q. Summer avenue is the second street below Mt. Prospect, is it? A. Yes, sir.

Q. Woodside avenue first and then Summer avenue. What, in your judgment, was the weight of the sled? A. About a hundred pounds.

Q. Now, during the various times that you arrived at the corner of Mt. Prospect and Montclair avenue did you notice any trolley cars? A. Yes, sir.

Q. What were the movements of the trolley

cars as they reached that corner? A. The north-bound cars stopped at the south crossing before they crossed the street, and the cars going down-town—that is, the south-bound cars—stopped at the north crossing before they crossed the street.

Q. Do you know how they came to stop at those crossings? A. No, but I heard that—

Objected to.

Q. No, not what you heard. What did you see there to indicate to you how they came to stop there? A. Well, the winter before different streets had been—

Q. No, not the winter before, but on that particular day. A. Well, you want to know why they stopped?

Mr. Weinberg: Yes.

The Court: Only what you know about it, not what somebody told you, but what you saw.

Witness: Well, they knew we were coasting; that was why they stopped.

Mr. MacSherry: I ask that that go out.

The Court: Strike it out.

Q. Tell us what you saw the cars do? A. They stopped before they crossed the street.

Q. When they did that was there anything that you could see to cause them to stop? A. They would stop of their own accord.

Q. Did you see boys on the corner? A. Yes, sir.

Q. What did those boys do? A. They told us whether there was any car coming or not.

Q. And how did they tell you? They would raise one arm or two arms; one arm was "All right," and two "Danger, stay back" and wait until the car went past.

Q. How many cars do you suppose you saw come up to that corner and stop?

The Court: That afternoon.

Mr. Weinberg: That afternoon.

The Court: While you were there.

A. Oh, nine or ten.

Q. Both directions? A. Yes, sir. Oh, there would be more than that, counting both directions.

Q. And at those different times, so far as you could see, what was the occasion for their stopping there? A. What?

Q. What was the occasion for their stopping there? A. They knew we were coasting and they stopped before they crossed the street.

Q. How long had this coasting been going on that afternoon? A. Well, it was going on when I brought my bob out; I think since half-past three. I didn't come out until about four o'clock.

Q. Now, you know the plaintiff in this case, Mildred Lynch? A. Yes, sir.

Q. She rode on your bobsled? A. Yes, sir.

Q. Do you know how many trips you made with her as a passenger? A. No, sir.

Q. Do you recollect the particular trip when there was an accident? A. Yes, sir.

Q. Do you know how many you had on your sled on that trip? A. No, sir.

Q. Do you know about how many? A. Well, there was more than five and less than ten.

Q. More than five and less than ten? A. Yes, sir.

Q. How did you come down that hill, as to the speed? A. Well, I am no judge of speed; I can't tell.

Q. Did you come slow or fast? A. Well, we came quite fast.

Q. Came pretty fast? A. Yes, sir.

Q. In coming down the hill there did you make any use of that bell? A. It was ringing all the way down.

Q. On this particular trip? A. Yes, sir.

Q. When you say "ringing all the way down," what do you mean, how far, from what point to what point? A. It was ringing—started to ring when we left Ridge street and rang until we struck the car.

Q. Who did the ringing? A. One of the boys on the bob.

Q. How was it rung, by what means? A. By a chain, one of these little sash chains.

Q. And how often was it kept ringing? A. Well, as fast as he could ring it.

Q. Well, will you just pull on that thing once or twice and let us see what it sounds like? A. (Witness rings gong several times.) Is that enough?

Q. That will do. Is that the way it was kept ringing? A. Yes, sir. It was faster than that; they had a chain and they could ring it quicker than you can holding it in your hands this way.

Q. Did you see Raymond Martin that afternoon? Do you know who he is? A. Yes, sir.

Q. What was he doing that afternoon, or part of the afternoon? A. When I saw him he was standing there in the middle of Montclair avenue on Mt. Prospect avenue.

Q. When did you first see him there? When that afternoon did you first notice him there? A. One or two trips before this trip.

Q. Now, what was he doing? A. Flagging.

Q. Flagging whom? A. Sleds, telling whether there was a car coming or not.

Q. Now, on this trip where the accident occurred did he signal to you? A. Yes, sir.

Q. What did he do? A. Held up one hand.

Q. And then what did you do? A. I left Ridge street.

Q. Could you see him distinctly? A. Yes, sir.

Q. How was it with regard to being light or dark? A. Well, it was about dusk; but he stood right—there is an electric light on the corner, and you could see him plainly.

Q. It was quite light where he was standing? A. Yes, sir.

Q. After he raised his hand what did you do? A. I left Ridge street.

Q. Did any sled start ahead of you? A. Yes, sir.

Q. How many? A. A whole string of them.

Q. How far behind the last small sled was your bob? A. Well, the last sled before my bob was just a little above Clifton avenue when we left Ridge street.

Q. About a block ahead of you? A. Yes, sir.

Q. Now, in coming down that hill did you see anything of a trolley car coming from the south? A. Yes, sir.

Q. Where did you see that car? A. You mean where was I or where was the car?

Q. I will split that question. Where was the car when you first saw it after leaving Ridge street? A. It was nearing the south crossing of Montclair avenue.

Q. When you say "nearing the south crossing," what do you mean, about how far away, about how far? A. I should judge between thirty and fifty feet south of the south crossing, coming on.

Q. Where was your bob at that time? A. We were leaving Clifton avenue.

Q. How was the gong working at that time? A. Working well.

Q. Was it being rung? A. Yes, sir.

Q. How was the sled going at that time? A. You mean how fast?

Q. Yes. A. I don't know; I am no judge of speed.

Q. Going pretty fast? A. Yes, sir.

Q. What part of the road were you in? A. In the middle of the road.

Q. And how fast, if you know, was this car coming when you saw it approaching the north crossing? A. You mean how many miles an hour?

Q. Well, if you can give it all right. A. No, sir. I should say it was going at a moderate rate of speed.

By the Court: Q. What was going at a moderate rate, the car? A. The car.

By Mr. Weinberg: Q. Can you tell whether it continued at one speed or not? A. Well—

Q. If you know?

The Court: While you saw it within your own observation.

Mr. Weinberg: What is your answer.

The Court: The question is, Can you tell? You can answer that either yes or no. A. Yes.

Q. Yes what? A. I think I can tell about the way the car was going.

Q. Well, how was it going? Well, when the boy ran up to the car I saw the car, and the girls said at the same time I saw the car, "There is a car"—

Mr. MacSherry: That is not answering the question at all.

Q. (Question read.) A. It was going north.

By the Court: Q. How as to the rate, whether the rate was uniform or not uniform? A. Where do you mean, where do you mean the car was when it was going this speed?

Q. When it was within your observation. A. It was going at a moderate rate of speed.

By Mr. Weinberg: Q. Then I ask you whether you know if it changed its speed from the time your first saw it? A. It slowed down and went up again and went down again.

Q. Did you notice that? A. Yes, sir.

Q. Where was your bob when it started up again, about? A. About in the middle of the block between Clifton avenue and Mt. Prospect avenue.

Q. What did you do with your bobsled as to guiding it? A. Well, if I had went on straight I would hit the car right in the middle, so that I tried to make the corner; that is, turn up Mt. Prospect avenue.

Q. Turn to your left? A. Yes, sir. And I would have made the turn, but the car—when he saw the bobsled he put on another burst of speed, and that brought him right on into us.

Q. How far away was he from your bobsled when he put on the other burst of speed? A. Right in the middle of the block—I mean right in the middle of Montclair avenue.

Q. And how far away from your bob was that at that time? A. Oh, as far as from here to the end of the room.

Q. Were you at any time in making this turn ahead of the car, I mean further north? A. I don't know.

Q. You do not know? A. I can't say to that; I wouldn't want to say one way or the other.

Q. How did the sled and the car come together, in what position? A. Like a figure A; we were coming this way and the car was coming this way, and we came right on this way together (indicating.)

Q. What part of the car did you strike? A. The step, the front platform. I had the steering wheel here, like this, and the front step hit the board right like that of the bob (indicating.)

Q. The front step hit the board of the bob? A. Yes, of the bob.

Q. What part of the bob? A. Right where I sat.

Q. Where you sat or behind where you sat? A. Where I sat, hit right where this leg was (indicating.)

Q. How did you have your legs on that bob? A. I had one foot on each side of the sled, like that, and my hands on the wheel (indicating.)

Q. Whereabouts on Mt. Prospect avenue with regard to the north crossing was it where the bob and the car hit? A. What is that.

Q. Where on Mt. Prospect avenue with regard to the north crossing of Montclair avenue—that is, this far crossing here (indicating on map)—was it when the bob and the car hit? A. It was north of the north crossing.

Q. How much north of the north crossing? A. About the length of the bob.

Q. Well what do you mean, the front or the rear of the car was north that much? A. The front. I think the rear of the car was right at the crossing, right about.

Q. You think the rear of the car was right about on the north crossing? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. What was the position, you say, of the sled and the bob as they came together? A. A figure A.

Q. Not quite right angles? A. No, sir. You see, when the bob came around it skidded a little. If we came on straight it would bring us at right angles, but it skidded a little, so that it came in in the form of an A.

Q. Was there anything the matter with your steering gear after the accident? A. After the accident?

Q. Yes. A. You mean after I made the turn and hit the car or before?

Q. No, after the bob struck was there anything the matter with the steering bar, was it affected? A. It was bent.

Q. Now, you were the first person seated on the sled? A. Yes.

Q. And behind you was whom? A. Miss Husk.

Q. And behind her was— A. Miss Lynch.

Q. And who was behind her? A. I don't know.

Q. Do you know who all got hurt on that sled? A. I got hurt and Miss Lynch got hurt and Walter Hatch got hurt.

Q. How were you hurt? That is, I do not mean what injuries did you sustain, but how did you meet with your injuries? A. The step hit the board right where my leg was.

Q. The step of the car hit the board? A. Yes, sir.

Q. Where your leg was? A. Yes, sir.

Q. Well, then what occurred? A. I became unconscious.

Q. Do you know what struck you? A. No, sir.

Q. Did you know if you hit the car? A. Yes, sir.

Q. Did you? A. Well, the car and the bob came together, because there was a nick in the board of my bob right where I sat, and that shows where the car hit the bob, because if we had run straight on into it the front—you see what I mean; if the car had been ahead of us the front sled would have been smashed.

Mr. MacSherry: I ask that all that go out, all that argument and conclusion, beyond the nick on the bobsled.

The Court: I think the nick is the fact and the resa is reasoning. Strike out the reasoning and leave the fact.

Q. How far from the front of the bob was the nick? A. Oh, about between two and three feet.

Q. And after you came together did the sled and the car proceed any distance, or don't you know? A. I don't know.

Q. Were you knocked out? A. Yes, sir.

Q. Unconscious? A. Yes.

Q. And you were unconscious for some days, were you not? A. Nine days.

Q. So that after the collision you do not know what occurred there? A. No, sir.

Q. How far the car or the bob went, or anything else? A. No, sir.

CROSS-EXAMINATION by Mr. MacSherry:

Q. You were about nineteen years of age when this accident happened, Mr. Winterbottom? A. Yes, sir.

Q. Did you know the young lady, the plaintiff in this case, at the time? A. Yes, sir.

Q. How long had you known her? A. Oh, I don't know; more than three years.

Q. Had you been sliding on that hill before? A. Yes, sir.

Q. Had you ever been stopped by a policeman? A. No, sir.

Q. Had you ever been spoken to by a policeman? A. Yes, sir.

Q. When? A. That same day.

Q. What time of the day? A. About half-past four.

Q. In reference to what? A. I don't understand your question.

Q. What did he speak to you about? A. He said it was all right to sleigh ride.

Q. What officer was that? A. Niblo.

Q. What is his first name? A. I don't know.

Q. Was he there at that time?

The Court: What time?

A. What time?

Q. That he spoke to you. He was at the hill? That is what I mean. A. Was he there at the time the accident happened?

Q. He was with you when he spoke to you, but was he there at the hill, did he speak to you at the hill? A. Yes, sir.

Q. How long did he stay there? A. A few minutes.

Q. And then did he go away? A. Yes, sir.

Q. What did he do while he was there? A. Just rode down the hill on his horse.

Q. What? A. We were going up with the bob and he was riding down the hill with his horse.

Q. Did he give any signals? A. What do you mean by "signals?"

Q. To anybody on the sled? A. No, sir.

Q. Was there anybody at the time you were there giving signals to the sled? A. Where do you mean?

Q. Why, I am talking about the hill. I want to know at the time the officer was there at the hill, at this junction of Montclair avenue and Mt. Prospect avenue, whether there was anybody there at that time while the officer was there giving signals to the sleds? A. Yes, sir.

Q. Who was it? A. One of the boys.

Q. What was his name? A. I don't know whether it was Norman Becker or not. There was one boy there all the time.

Q. How did the officer come to speak to you? Did you speak to him first? A. No. One of the kids riding on my bob asked him if it was all right to ride, and he said yes.

Q. Were you there with him at the time? A. I was going up with the bob.

Q. And you heard him say that, did you? A. Yes, sir.

Q. And had you been there the day before? A. I don't remember.

Q. Had you been there two days before? A. I don't know whether I was there two days before or not.

Q. Had you ever ridden on the hill before with that bob? A. Yes, sir.

Q. How long before? A. All that winter.

Q. Had you ridden there at night? A. On that hill?

Q. Yes. A. I don't know.

Q. Or after dusk, or about dusk, I should say, after the lights were lit? A. I don't know about that hill.

Q. Now, that trip started from Ridge street, did it not? A. Yes, sir.

Q. What was the condition of the hill as to whether or not it was slippery? A. Well, it rained and froze on the cobblestones.

Q. It was icy, was it not? A. Yes, sir.

Q. Was this a cold or warm night? A. Well, it was cold enough to freeze.

Q. Then the hill was icy and slippery, was it not? A. Yes, sir.

Q. It was good coasting? A. Yes, sir.

Q. Very good coasting, was it not? A. Well, it was good coasting.

Q. It was faster than it would be if it was just snow? A. Yes, sir.

Q. Did you make the sled? A. Yes, sir.

Q. How long have you had it? A. Up to that time?

Q. How long had you had the sleigh? A. I don't know; three or four months, I guess.

Q. Did you have the bell that length of time, too? A. No, sir.

Q. At the time of this accident how long had you had this bell? A. About a month.

Q. Where did you get it from? A. One of the fellows gave it to me.

Q. What is his name? A. Gray Cuttriss.

Q. Have you got the package that you had it in? A. Yes, sir (producing paper.)

Q. Now, will you tell me briefly how this sled was constructed again? A. Well, there were two sleds made about that long (indicating); the front sled was about two feet long and the rear sled was about three feet long; and the side was built of inch oak, about three or four inches high, and then on the sides I had crosspieces of oak, and on top of this crosspiece I had two blocks, with an iron bar across, and then this block that was on the board was on this iron bar, so that it would rock when it went over bumps.

Q. What was the platform of the sled, if I may use that expression? A. Inch and a half spruce, light.

Q. And the whole thing weighed about a hundred pounds? A. Yes, sir.

Q. Did you ever weigh it? A. No, sir.

Q. About how long were these two blocks, do you think? A. I don't know.

Q. These blocks in the street, as you went down? From Ridge street you went to Clifton, and then down to Mt. Prospect. I want to know about how far it is from Ridge street down to Mt. Prospect avenue? A. About 200 or 250 yards.

Q. Now where was your gong on this sled? A. Between the front sled and the rear sled; one chain went to the front and one to the back.

Q. Who operated it? A. Anyone on the bob could operate it.

Q. Who operated it this night? A. I don't remember.

Q. Why not? A. Well, I didn't know who was ringing it; it was ringing.

Q. You did not ring it? A. No, sir.

Q. You had to steer your sled? A. Yes, sir.

Q. How was it operated? A. The chain was fastened to this end of this, and then they would pull on it and ring it (indicating on gong.)

Q. Was one of the girls operating that? A. I don't think so.

Q. Well, don't you know whether the second or third or the fourth or fifth person behind you was attending to that gong? A. Well, the one next to the last was ringing it, I think.

Q. Who was that? A. I don't know.

Q. A girl or boy? A. I don't know.

Q. You have not any idea? A. No, sir.

Q. A stranger to you? A. No, sir.

Q. Do you know how old the person was who was ringing that gong? A. Anywhere from fifteen to seventeen.

Q. How do you know? A. Well, most everyone on the bob was that age, except two, and I knew they didn't ring it.

Q. What two? A. Walter Hatch and George Beck.

Q. This young lady in this case was only twelve. A. Well, I didn't know her age; I thought she was older than that.

Q. What kind of a steering gear did you have? A. Had a freight car wheel to steer with; that is what I took hold of. You mean how was that fastened on the sled?

Q. Yes. A. Well, that is set on top of an inch iron bar, this wheel, and this bar went down and fastened in a T down in the bottom of the sled, the bottom of this—you see, this iron bar fastens in the T this way (indicating), and the bar that went across the rocker of the sled went through this T, so that it couldn't come loose.

Q. What kind of metal runners did you have? A. Iron, a sixteenth of an inch thick.

Q. Where did you get those? A. McElroy's garage.

Q. Had they been worn any? A. No, sir.

Q. Well, you had used them for how long here? A. Three or four months.

Q. Well, I mean to say, they were smooth, were they not? Your sled was in good condition? A. Well, it wasn't used much, so it couldn't have been —there was a little rust on the runners.

Q. Well, your sled was in good condition to make good speed that day, was it not? A. Yes, sir.

Q. That sled was built for speed, was it not? A. Well, I built it to ride down hill with.

Q. Going down such a hill as you went down that night, you went down at what rate of speed, do you think? A. I don't know; I am not a judge of speed.

Q. Well, you are a judge of speed, are you not? A. No, sir; I can't tell whether a thing is going thirty miles an hour or fifty miles an hour.

Q. When you started you had how many people on? A. More than five and less than ten. I told you a little while ago, didn't I?

Q. What with your sled and the people on it, how many pounds do you think you carried all together before you started? How many pounds do you think you had on that sled; nearly a thousand, did you not? A. I don't know. You could add it up.

Q. There were about eight of them on the sled, were there not? A. No, sir.

Q. Were there seven? A. Six or seven.

Q. Did you have any break on the sled? A. No, sir.

Q. After you got started at the top of the hill that night how could you stop your sled? A. Couldn't stop it.

Q. Could not stop it? A. No.

Q. There was not any way to stop it at all? A. No, sir.

Q. If a pedestrian had been crossing at Clifton avenue or a wagon was crossing at Clifton avenue as you came down there— A. Clifton avenue or Mt. Prospect?

Q. Clifton; that is half way down. —you could not have stopped for them, could you?

Objected to as irrelevant and immaterial.

The Court: It does not make any difference whether it was Clifton avenue or any other avenue. The question is whether the apparatus was susceptible of being brought to a halt.

Mr. MacSherry: Yes, sir.

Mr. Weinberg: I object to it on the ground that he stated that when he started away his sled could not stop. Anything else, I think, is irrelevant.

The Court: I think the question is already answered. If you want to ask it again, you may do so.

Mr. MacSherry: All right.

Q. Did you have any light on the sled? A. No, sir.

Q. Did you start from the middle or the side of the road? A. From the middle.

Q. Was there any way of turning that sled into the side of the road to stop it? A. How would you get up the curb?

Mr. MacSherry: I don't know; I am asking you.

Mr. Weinberg: Just answer the question, if there was a way of turning it.

Witness: Turning the sled?

Q. Suppose you saw a wagon or a trolley car or a pedestrian down at Mt. Prospect avenue, a block away, could you get into the side of the road? A. Yes, sir.

Q. How? A. Steer there.

Q. Did you do that that night? No, sir.

Q. Why not? A. There wasn't anyone in the way. Clifton avenue—there is woods on one side there, and it is very seldom there is anyone crosses the street there.

The Court: I think the question related to Mt. Prospect avenue.

Mr. MacSherry: Mt. Prospect avenue.

Witness: Well, they would look before they crossed.

Q. What do you say? A. People looked up the hill before they crossed.

Q. Then when you started off with this bobsled you are depending on what people will do, are you?

Objected to as incompetent.

Objection overruled.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Circuit Court Judge.

Q. You are dependent upon what other people will do in crossing the street?

Objected to as irrelevant.

The Court: The question relates to the character of the mechanism and what the operator could do it, what was the limita-

tion of his capacity. You may answer the question.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Circuit Court Judge.

A. Not altogether; I could steer out of the way, too.

Q. What do you say? A. I could steer out of the way, too.

Q. When you saw this trolley car, then, why did you not steer to the side of the street, out of the way? A. What is the use of steering right on into the trolley car?

Q. Oh, no, you were half a block away from the trolley car when you saw it—more than that; you were just leaving Clifton avenue when you saw this trolley car coming. Why did you not steer your sled into the side of the street? A. I thought the best way was to try to turn the corner.

Q. Now, when you came down and you saw this trolley car was going across the street, why did you not turn to the right instead of the left and go around the rear of the car? A. Two seconds is a long time to think of all these things. I thought I had better chance to go in front of the car than I did the rear; that is why I went that way.

Q. You were fifty feet away from the corner of Mt. Prospect avenue when this trolley car was blocking the way in front of you and moving, were you not? A. About fifty feet.

Q. Why did you not go around the rear of the car, then, instead of trying to go around the front

of it? A. It seemed more natural to turn to the left.

Q. You were a little excited? A. A little.

Q. Were the people on the sled excited with you? A. Yes, sir.

Q. Did one of them tell you there was a trolley car? A. Yes, sir.

Q. Which one? A. Both of the girls.

Q. They were right behind you? A. Yes, sir.

Q. Now, I understood you to say that before you started you got a signal of the hand up that way (illustrating), to come down? A. Yes, sir.

Q. That was the signal to stay back, was it not? A. No, sir.

Q. Was not the signal to stay back one hand and the signal to go ahead, "All right," two hands? A. Let us see. Two hands to go ahead and one to stay back. But when I started at the top of the hill he waved a clear road; he put up two hands.

Q. Have you not already stated, and is it not a fact, that you started off from the top of that hill on the signal of one hand? A. No, sir.

Q. Have you not already said so twice—three times? A. No, sir. I said it, but it was a clear road, two hands, when I left the top of the hill.

Q. You admit that you did say that you got a signal first of one hand when you started? A. No, sir.

Q. Have you not said that? A. That ain't right.

Q. Why did you say it, then? (No response.)

The Court: You may answer.

A. I said it before I thought.

Q. Have you not already stated just a minute ago that you first got a signal of one hand, and after that two hands? A. He didn't change his signal; it was two hands.

Q. Did you not state to me about three or four questions back that you first got a signal of one hand and you started off, and then you got a signal of two hands? A. That aint right.

Q. Well, why did you say it? Don't you realize that this is an important case— A. Yes, sir.

Q. —to this girl and to this company? A. Yes, sir.

Q. Don't you realize that you are under oath? A. Yes, sir.

Q. Now, pray, tell me again why you have been stating to us from the time that you were on the stand that you started off on a signal of one hand, if it was not so? A. You have been asking the questions so fast that I didn't have a chance to think.

Q. Did you not say that you started off on the one hand signal in response to Mr. Weinberg's question?

Mr. Weinberg: I do not think as a matter of fact, I asked him at all; I didn't ask him what signal he got.

Mr. MacSherry: Oh, yes, we have got it here: "Starting off on the signal of one hand."

Q. Do you say that you did not in answer to Mr. Weinberg's question say— A. I did answer it, but it was wrong.

Q. It was wrong? A. Yes, sir; we started at the signal of two hands, signifying a clear road.

Q. Then he never gave you a one-hand signal at all? A. He never did?

Q. He did not, did he? A. I don't remember it.

Q. Could your sled go down that hill faster than the smaller sleighs? A. Yes, sir.

Q. Faster? A. Yes, sir.

Q. And these little sleighs, one of them denominated some kind of a flyer, a flexible flyer, number something or other, these little sleighs started ahead of you? A. Yes, sir.

Q. Did you pass them on the way down? A. No, sir.

Q. Did they get down ahead of you? A. What do you mean by "down"?

Q. I mean did they get to Mt. Prospect avenue ahead of you? A. Yes, sir.

Q. All of them? A. All ahead of me.

Q. All ahead of you? A. Yes, sir.

Q. So when you got down to Mt. Prospect avenue you were the last of the bunch; is that right? A. Yes, sir.

Q. Well, now, how long do you suppose it took you that night, the trip you got hurt on, from the time that you started at Ridge street until you got to Mt. Prospect avenue? How long did it take you? A. I don't know.

Q. Haven't you any idea? A. No, sir; I am no judge of speed, I don't know.

Q. Do you remember having a conversation with Mr. Bodecker, this gentleman here (indicating), on the 17th day of March, 1910, at 7 Central avenue, the trolley office, respecting this accident? A. Yes, sir.

Q. You came there voluntarily, did you not? A. My father told me to go.

Q. Well, you did go down alone, did you not? A. With my father.

Q. You went down with your father? A. Yes, sir.

Q. And did you make a statement to Mr. Bodecker, in the presence of your father? A. Yes, sir.

Q. And did you sign the statement? A. Yes, sir.

Q. Did you read it before you signed it? A. Yes, sir.

Q. Was it written out in your presence? A. Yes, sir.

Q. Did you tell Mr. Bodecker at the time and place I have mentioned that your bobsled was about 12 feet long and weighed about a hundred pounds? A. No, sir; I said it was 10 or 12—about 10 or 12 feet long.

Q. Did you tell Mr. Bodecker that at Mt. Prospect avenue crossing there was a lad who would hold up one hand if everything was all right, and two hands up indicated danger? Did you say that? A. Well, it has been so long since that accident and now—it is over a year ago—that I don't remember just which way the signal was, whether it was one hand up "All right" or not; but that is right.

Q. That is right, is it? A. Yes, sir.

By the Court: Q. What is right? A. That statement.

By Mr. MacSherry: That statement? A. Yes, sir.

Q. Just look at it, will you (paper shown to witness)? Just look at the four pages here. (Witness examines paper.) That is your signature, is it not (indicating)? A. Yes, sir.

Q. This statement to Mr. Bodecker, at 7 Central avenue, on March 17th, was made voluntarily by you down there, was it not—that is, no one compelled you to make it? A. Only my father.

Q. And the statement that you did make was correct, and you signed it, did you not? A. Yes, sir.

Q. Then you did say to Mr. Bodecker down

there that the boy was signalling at the Mt. Prospect avenue crossing; "I don't know his name or where he lives; and the lad would hold one hand up if everything was all right, and two hands up indicating danger"? That is right, is it not? That is what you said? A. That is what I said.

Q. And this statement is right? A. Well, that was made so near after I was hurt—I don't remember just how those signals were. I was unconscious for nine days, so that you can't bring me right down to the scratch like that.

Q. I know, but haven't you already stated that this statement was correct? Do you want to change that or do you want to stand by that? A. Well, whatever the signal was, I don't just remember now, but he gave us a signal for a clear road, whether it was one hand or two.

Q. And whatever this statement that you made here and signed say you believed it to be correct at the time you made it, or you would not have signed it? A. I thought it was correct, yes.

Q. Did you say to Mr. Bodecker at the time and place I mentioned: "It was not quite dark when I started down on my last ride, and the boy at the foot of the hill had one hand up, indicating that everything was clear"? Did you say that? A. I said that.

Q. "He was standing at the car track, at the centre of Montclair avenue crossing;" did you say that? A. Yes.

Q. "And I could see him plainly, although it was quite dark;" did you say that? A. Yes, sir.

Q. "When I started there were about seven or eight children on the bob;" did you say that? A. Yes, sir.

Q. "I started to ring my gong, and continued all the way down, with a loud gong;" did you say that? A. I said that, but I didn't ring it; someone else on the bob rang it; I said it.

Q. "Everything went along O. K. until we reached a point about one-third of a block east of Clifton avenue when I saw the front end of a north-bound car come in view;" did you say that? A. Yes, sir.

Q. "The car was approaching within a few yards of the southerly crossing of Montclair avenue;" did you say that? A. Yes, sir.

Q. "The car at that moment was travelling at a medium rate of speed;" did you say that? A. Yes, sir.

Q. "The motorman made no attempt to stop the car;" did you say that? A. Yes, sir.

Q. "And as the car crossed Montclair avenue my bob was going down this hill at the average express train speed, I should judge thirty to forty miles an hour;" did you say that? A. Yes, but I never rode on any express trains, only the Erie.

Q. I am asking you if you said it? A. If you have been on a farm all your life you are no judge of speed.

Q. No, I know. Did you say: "I realized at once that I must steer to the left to avoid crashing head on into the side of this car"? Did you say that? A. Yes, sir.

Q. "And I partially succeeded in turning north into Mt. Prospect avenue, when the front of my bob crashed into the front left side of the car;" did you say that? A. Yes, sir.

Q. "I was bobbing down this hill the day before this happened;" did you say that? A. I must have said it if he wrote it down.

Q. "But I do not recall that any officer warned me to keep off;" did you say that? A. Yes, sir.

Q. Now, when you were within 50 feet of Mt. Prospect avenue and this car was in front of you, you turned to your right— A. No, I turned to my left.

Q. You turned to your left, I should say. Excuse me! Why, if you know, did your sled skid? A. Because it was icy.

Q. And because of the speed it was going, too, was it not? A. Well, that would make some difference.

Q. What part of the car did you go into or did you come in contact with? A. The front part.

Q. Was the car moving when you came together? A. Yes, sir.

Q. How, fast or slow? A. Coming to a stop.

Q. Just coming to a stop? A. Yes.

Q. On the north corner of Montclair avenue? A. Beyond the north corner.

Q. Well, it was just about beyond, was it not, as I understand? A. Well, according to what you mean by "about."

Q. Well, a few feet, I mean. A. A few feet—a car length, I should judge, beyond the north crossing; I should think the rear of the trolley car was right even with the crosswalk when we struck the front end of the car.

Q. The rear of the car had just about reached the crossing, the north crossing? A. Yes, sir.

Q. You had got around the corner, then? A. Yes, sir.

Q. And skidded? A. Skidded before we got around.

Q. Oh, did you? A. Yes, sir.

Q. I did not know that. You skidded before you got around? A. As soon as you begin to turn your bob is going to skid.

Q. I am not asking you that. You skidded. Which way did your bob skid, to your left or right? A. Down the hill.

Q. Down the hill? A. Yes, sir.

Q. Straight towards the car—or not straight towards, but in the direction of the car? A. Yes, sir.

Q. Did you make any move to steer your sled before you got to the corner? A. Yes, sir; I was turning the corner.

Q. I say before you got to the corner did you make any move to steer your sled?

The Court: Did you change your direction?

Q. Did you change your direction any? A. Yes, sir.

Q. In what way? A. So as to turn up Mt. Prospect avenue.

Q. And then you started to skid there as soon as you changed your direction? A. Where do I change my direction?

Q. I am asking you. I was not there; you were there, you know. A. Well, when I came down the hill I changed my direction so as to turn around the corner, and after that I didn't change it.

Q. How far away from the corner were you when you started to change your direction? A. About fifty feet.

Q. Fifty feet? A. Yes.

Q. Did your sled begin to skid then? A. As soon as I turned.

Q. Turned where? A. To go up Mt. Prospect avenue.

Q. But you said you started to skid before you got to that corner, when you started to change your direction, did you not? A. Say that again will you, please?

Mr. MacSherry: I am not trying to catch you. You think I am. That is the trouble.

Mr. Weinberg: What do you mean by the corner, the line of Mt. Prospect avenue?

Mr. MacSherry Yes.

Witness: The bob didn't skid as long as I was going straight ahead, but as soon as I turned it began to skid.

Q. But did it skid before you got to the corner? A. Yes, sir.

Q. Did it skid? A. Yes, sir.

Q. How many feet away from the corner did it start to skid? A. Oh, about 50 feet from the middle of Mt. Prospect avenue.

Q. Well, then, at that time you people on that sled were pretty well excited, were you not? A. Yes, sir.

Q. Was there any ringing of the gong then? A. Yes, sir.

By Mr. Weinberg: Q. Which gong? A. This one (indicating the gong produced by witness).

By Mr. MacSherry: Q. Any ringing of the gong on your sled or bob? A. You mean this one?

Q. Yes, A. Yes, sir.

Q. With the trolley car right in front of you? A. Yes, sir.

Q. Did anybody get off your sled coming down the hill? A. I don't know.

Q. Now, I would like to ask you once more, if you please, if you can not give us some idea as to how long it took that bobsled to make that trip from Ridge street to Mt. Prospect avenue? A. I can't tell; but Mr. Bodecker timed them; I expect he ought to know.

Q. Were you present? A. No, sir; I was unconscious.

Q. Timed who? A. Timed their sleds coming down the hill.

Q. Bobsleds? A. I don't know.

Q. Were they sleds that went slower than yours? A. A little.

RE-DIRECT-EXAMINATION by Mr. Weinberg:

Q. Just a question or two, Walter. I do not know whether you were asked in all this maze of questions when you started to turn your bob where the trolley car was. Where was the trolley car when you started to turn your bobsled at a point 50 feet away from Mt. Prospcet avenue? A. The rear of the trolley car was at the south crosswalk.

Q. At the time when you started to turn? A. Yes, sir.

Q. Now, with regard to all this talk about signals, one hand or two hands. Whatever the signal was at that time, do you remember whether you got the signal which meant to come ahead? A. Yes, sir.

Q. That you recollect without knowing now whether it was one or two hands? A. Yes, sir.

Mr. Weinberg: I offer this bell in evidence at this time (the gong produced by witness). Marked Exhibit P-1.

RICHARD T. HETHERTON sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. How old are you? A. Sixteen.

Q. Where do you live? A. 779 Mt. Prospect avenue.

Q. That is near Montclair avenue? A. Yes, sr.

Q. How long have you been lving there? A. Sixteen years.

Q. You were born there, then, apparently? A. Yes, sir.

Q. Do you work? A. No, sir.

Q. Go to school? A. Yes, sir.

Q. High school? A. No, sir.

Q. What school? A. Newark Business College.

Q. In January, 1910, Richard, you lived on Mt. Prospect avenue? A. Yes, sir.

Q. Do you recollect any coasting on Montclair avenue? A. Yes, sir.

Q. On the 7th of January? A. Yes, sir.

Q. Were you coasting? A. Yes, sir.

Q. With whom? A. I was with Harold Winterbottom.

Q. That is the younger Winterbottom boy? A. Yes, sir.

Q. When did you start to sled ride? A. I started about five o'clock.

Q. About five o'clock? A. Yes, sir.

Q. Before you started to sled ride were you in that neighborhood? A. Yes, sir.

Q. What were you doing? A. I was standing on the corner.

Q. What were you doing on the corner? A. We were watching them sleigh-ride.

Q. How long had you been standing there watching them sled riding before you started in? A. I guess from about half-past three.

Q. Half-past three in the afternoon? A. Yes, sr.

Q. And you stood there how long, did you say? A. Until five o'clock.

Q. Before you started to ride? A. Yes, sir.

Q. Did you observe anything on Mt. Prospect avenue as to the cars during that period? A. Yes, sir.

Q. Coming and going? A. Yes, sir.

Q. North and south? A. Yes, sir.

Q. Will you tell me what they did when they got to the corner of Montclair avenue? A. The cars coming north stopped on the south side and the cars going south stopped on the north side.

Q. And what occasioned their stopping, do you know? A. Because we were coasting there.

Q. And how many cars do you think you saw stop that way? A. Oh, about twelve.

Q. About what headway were they running on, do you remember? A. You mean as to speed?

Q. No, how frequently did they run?

The Court: The period between the cars.

A. Every ten minutes.

Q. Every ten minutes? A. Yes, sir.

Q. Each way? A.Yes, sir.

Q. Did you see any boys on the crosswalk also? A. Yes, sir.

Q. What were they doing? A. Where do you mean?

Q. What were the boys doing that you saw on the corner? A. With me.

Q. What? A. Standing with me.

Q. Did you see any boys doing anything, special on the corner? A. Oh, signalling.

Q. Signalling for whom? A. The people up on the hill.

Q. Do you know what boys there were doing that? A. Norman Becker.

Q. Who else? A. And Martin.

Q. Anybody else? A. No, sir.

Q. Did you start to coast there? A. At five o'clock.

Q. How many trips did you make? A. I guess I made about four.

Q. And you were riding, you said, with young Harold? A. Yes, sir.

Q. When did you make your last trip? A. Right before the bob.

Q. Were you on this sled that got in a rut and struck the curb, with Harold? A. Yes, sir.

Q. Is that the one? A. Yes, sir.

Q. Now, after you struck the curb what did you do? A. Well, we got up and starting walking up the hill, walking up Montclair avenue towards Mt. Prospect.

Q. And what did you do as you walked up? A. We saw the bob coming down and we saw the car.

Q. Where was the bob when you saw it? A. When we were walking up it was around Clifton avenue.

Q. And did you see the car at that time? A. Yes, sir.

Q. And where do you think the car was at that time, when you saw the bob? A. It was right by the lot about the end of the lot.

Q. Did you see Raymond Martin? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. What did you see him do? Where was he? A. Well, he was standing, there until he saw the car, and then he ran up and signalled the car.

Q. How far did you see him run up? A. Ran up to the end of the lot; I couldn't see him any more.

Q. What? A. I just saw him standing up at the end of the lot, and then, I guess, he went up further.

Q. Something cut off your view above the end of the lot? A. Yes, sir.

Q. And then you could not see the car? A. A. No, sir.

Q. He ran up to about the end of the lot. Did you see the car at that time? A. The top of it; yes, sir.

Q. What? A. Yes, sir; I saw part of it.

Q. Where was that, how far from Raymond, at that time? A. It was right near him.

Q. And what did you see Raymond do? A. He put up his hand like that (illustrating).

Q. To whom? A. To the mortorman.

Q. Waving towards the car? A. Yes, sir.

Q. Which way was he facing when he went like that? A. He was facing the motorman.

Q. Did he say anything, did you hear? A. No, I didn't hear him.

Q. Could you hear the bob coming down? A. Yes, sir.

Q. How did you hear it? A. I heard the bell.

Q. Was it loud? A. It was ringing all the way. All the way down you could hear it plainly.

Q. What did you see Raymond do aside from waving to the car? A. Well, then he got out of the way.

Q. How did he get out of the way? A. He stepped aside.

Q. What did the car do at that time? A. Well, the car stopped—sort of stopped; I heard the air brakes; and then it started up again.

Q. What is that? A. The car sort of stopped and then started up again.

Q. What do you mean by "sort of stopped"? A. Slowed down.

Q. How far from the corner was it when it slowed down? A. It was right there by the end of the lot.

Q. The end of the lot on Mt. Prospect avenue? A. Yes, sir.

Q. Which lot are you speaking about? A. On the southeast corner.

Q. That is where the car was when it started to slow down? A. Yes, sir.

Q. And that is where it was when Raymond stepped out of the way? A. Yes, sir.

Q. And what did it do after it slowed down? A. Put on speed again.

Q. And what then did it do? A. It started across.

Q. Did you see the collision? A. I didn't see the bob hit; I was on this side of the car.

Q. You were on Montclair avenue? A. Yes, sir.

Q. On the other side of Montclair avenue? A. Yes, sir.

CROSS-EXAMINATION by Mr. MacSherry:

Q. Is your memory now as good as it was on the 8th day of January, 1910, do you think? A. Just as good.

Q. What do you say? A. I can remember things.

Q. You had been coasting there for some time, had you? A. Five o'clock.

Q. When you got there was there any policeman there? A. There was one standing over on the corner.

Q. Were the lights lit? A. When?

Q. When you got there, at five o'clock? A. Well, I was there before, but I started to sleigh-ride at five o'clock.

Q. When you started to sleigh-ride were the lights lit in the street? A. I don't believe they were then.

Q. Were they lit at half-past five? A. Yes, I guess they was.

Q. Were the lights lit in the car? A. I didn't notice.

Q. Was there anybody to signal cars? A. Yes, sir.

Q. Who? A. When I was sleigh-riding Martin was singalling them.

Q. And would they stop on his signal? A. Well, most of them—they stopped anyway.

Mr. MacSherry: I ask that that go out. It is not responsive.

Q. Would they stop on his signal?

The Court: The question is not answered. Answer it directly.

Q. Would they stop on his signal? A. They would stop on his signal.

Q. Who was the man who was signalling the cars? A. Martin.

Q. What is his first name? A. Raymond.

Q. Is this the young man (indicating)? A. Yes, sir.

Q. Then he was there signalling the cars and signalling bobsleds, too? A. Yes, sir.

Q. Have you been in court while the others have testified today? A. Yes, sir.

Q. You do not agree with them, do you? A. What? I don't know what you mean.

Q. About agreeing?

Mr. Weinberg: I submit that that question is improper. Agree on what, on all the testimony in the case?

The Court: The question is rather broad.

Q. You saw twelve or fourteen cars come up there and stop under the conditions that you have stated? A. Yes, sir.

Objected to as too broad.

Mr. MacSherry: Of course, I refer to the condition of the man standing there signalling.

The Court: Perhaps you had better point the conditions out.

Q. You saw twelve or fourteen cars come up and stop there while Martin was there signalling? A. No, sir; not while Martin was there; I didn't say that.

Q. Well, who was there? A. During the whole afternoon.

Q. And while Martin was there, too? A. Oh, I saw some of them then.

Q. What signal was given to this bobsled before it started? A. I don't know what signal was given to the bobsled.

Q. Didn't you see that? A. Our sled, it gave the same signal.

Q. What do you say? A. I am not sure the signal was given.

Q. Where were you when the bobsled started? A. Why, I guess I was on my way down the hill.

Q. Well, do not guess about it. Where were you? A. On my way down the hill.

Q. Riding down? A. Yes, sir.

Q. Going in the direction of Mt. Prospect avenue? A. Yes, sir.

Q. Didn't you see a signal given to the bobsled to start? A. Well, it didn't start at the same time I did.

Q. Won't you answer my question? Didn't you see a boy standing in the middle of the road giving a signal for the bobsled to start? A. Yes, he gave it to us all.

Q. While you were going down the hill? A. Well, we all went after each other.

Q. Won't you answer my question? Did you see any signal given after you started down the hill? A. No.

Q. Was the bobsled the one right after you, do you know? A. Yes, sir.

Q. How long did it take you to go down from Ridge street to Mt. Prospect avenue? A. I don't know.

Q. About? A. It might take a minute or more.

Q. Well, it would not take you a minute, would it? A. I don't know.

Q. You haven't any idea? A. No, sir.

Q. Did you see this accident? A. No, sir.

Q. You did not see it at all? A. I didn't see the bob hit; I was on the other side of the car.

Q. Did you see the car as you came down the hill? A. No, sir.

Q. You did not see it? A. No, sir.

Q. When you crossed the tracks you did not see the car? A. No, sir.

Q. How far ahead of the bob were you? A. I don't know.

Q. You do not know where the bob was. When you crossed there was not a car in sight, so far as you saw? A. We didn't have time to see whether there was a car in sight when we crossed.

Q. You did not see any, did you? A. No, sir.

Q. Did you see any boy there when you crossed the tracks? A. I didn't have time—

Q. Did you? A. I didn't see any boy when we crossed the tracks.

Adjourned until tomorrow, Thursday, March 9, 1911, at ten o'clock, a.m.

THIRD DAY

Thursday, March 9, 1911.

Met pursuant to adjournment.
Present: Counsel as before stated.

CHARLES R. LYNCH, sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Charles, where do you live? A. 773 Mt. Prospect avenue.

Q. What is your occupation? A. Surveyor.

Q. You are not a graduate surveyor yet, are you? A. No, sir.

Q. You are employed by whom? A. Borrie & Kreiner.

Q. You are a brother of Mildred Lynch? A. I am.

Q. Did you make, at my request, a measurement of the lot on the southeast corner of Mt. Prospect avenue and Montclair avenue? A. I did.

Q. What is the length of that lot? A. The length of that lot—to the house there is about 85, more or less, feet.

Q. Did you scale it also to this map? Did you make a measurement on this map? A. I scaled it off.

Q. Does that agree with measurements on this map? A. It does.

By the Court: Q. That is, you mean, to the line of the house prolonged? A. Yes, sir. I scaled it to the house with my own scale.

Q. About 85 feet? A. About 85 feet, a little less or a little more.

By Mr. Weinberg: Q. Did you make a measurement of the width of Monclair avenue? A. I did, from curb to curb.

Q. And what is the distance from curb to curb? A. Forty-seven and one-half feet.

Q. And did you make a measurement of the width of Mt. Prospect avenue from curb to curb? A. From curb to curb, 60 feet; it is a one hundred foot street, 60 feet between the curbs.

Q. Did you also, at my request, ascertain how far south of the south crosswalk on Mt. Prospect avenue you could see a boy crouching on Montclair avenue at Clifton avenue? A. I did.

Objected to as irrelevant and as not embracing the conditions that existed at the time of the accident.

The Court: You may ask your next question. Do not answer this question.

Witness: No, sir.

Q. When was it that you made this observation, when did you make the observation?

The Court: You may answer that.

A. I made that observation on January 16th.

Q. Of what year? A. This year.

Q. At what hour of the day or night? A. I made this observation about half-past five, twenty-five minutes to six, around there.

Q. In the evening? A. Yes, sir.

Q. And what kind of weather was it? A. Well, the weather was—

Q. Was it clear or stormy? A. It wasn't stormy; it was good weather, dry weather.

Q. Was the condition of the lot on the southwest corner of Mt. Prospect avenue and Montclair avenue the same as to rise and shrubbery as it was on the 7th day of January, 1910? A. Yes, sir; there wouldn't be much difference in the

shrubbery, a couple of days difference in the time.

Q. A difference of ten days in the season? A. Yes, sir.

By the Court: Q. What lot have you in mind? A. This lot here (indicating on map).

Q. That is the southeast lot? A. No, the southwest.

By Mr. Weinberg: Q. You were familiar with that lot in 1910? A. Yes, sir.

Q. I asked you if there had been any change in that lot, in the grading of it or anything else? A. No, sir.

Q. Or any trees planted since that time? A. No, sir.

Q. Or taken off since that time? A. No, sir.

Q. What is the nature of that lot, what is it used for? A. Why, it is just a vacant lot; it isn't used for anything. It runs up to a slope.

Q. It is unoccupied land? A. No, sir; never used.

Q. Where did you place the boy? A. Placed him on the centre of Montclair avenue and Clifton avenue.

Q. And who was the boy? A. Walter Winterbottom.

Q. What position did he take? A. Why, he crouched down; I asked him to crouch down—

Objected to as not embracing the conditions that existed at the time of the accident and as immaterial and irrelevant.

Objection overruled.

Defendant's Counsel prays an exception, and the same is allowed.

(Question read.)

Witness: What is that question?

By the Court: Q. What position did the boy take? A. On the hill?

Q. You say he was crouching? A. Yes, sir.

Q. What position did he take? A. Do you mean the looks of him?

By Mr. Weinberg: Q. What position did he take as he was crouching, what was his physical position? A. He got down low, crouching (illustrating), lower than I am now.

By the Court: Q. Standing and stooping? A. Yes, sir. I will show you.

Mr. MacSherry: You are not asked to show. Just state, please.

Q. Show us. A. Shall I show?

Q. Yes. A. Like that (illustrating).

By Mr. Weinberg: Q. Had you seen him on the bobsled on the day of the accident? A. Yes, sir.

Q. What would you say was his height the day that he crouched for you with regard to his height as he was on the bobsled? A. I tried to make both the same; that was my idea.

Q. According to your idea, was it about the same? A. Yes, sir.

Defendant's Counsel objects to all this line of testimony, and asks for a general exception, which is allowed.

Q. What were the conditions with regard to light in the street if any? A. When?

Q. When you made your observation, on the 16th of January, this year? A. You mean in the way of artificial light?

Q. In the way of artificial light, yes.

The Court: Artificial and natural, both.

A. I don't just remember; I didn't take quite notice whether the lights were lit or not; but I know it was getting dusk; that is all I can say. I can't say any more than I know.

Mr. MacSherry: Now, I object to any-

thing further on the subject, if your Honor please.

The Court: I was thinking whether it went to the value or to the competency of the evidence.

Mr. MacSherry: It strikes me it is a very great hardship if this company has got to be held by an observation made before the lights were lit, comparing the situation with the situation of an accident that happened after the lights were lit in the street.

The Court: I think that is so important a feature of the case that it goes to the competency rather than to the weight of the evidence.

Mr. MacSherry: Then I ask that all this evidence up to this point be stricken out, if your Honor please.

The Court: Strike it out.

Plaintiff's Counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Circuit Court Judge.

Q. Do you know how much of the lot on the southwest corner is on a level with the street? A. You mean the height of the curb?

Q. Yes. A. In the beginning it is a trifle higher in inches, if you want to get down to inches.

Q. I ask you whether if you were standing on the north-bound track of the Public Service Railway Company's tracks on Mt. Prospect avenue, at a distance of about 110 feet south of the south crossing at Montclair avenue, you could see an object

on Montclair avenue near Clifton avenue at dusk, about half-past five or quarter to six, on the 16th of January, 1911, the condition of the premises at the corner of Montclair avenue and Mt. Prospect avenue being the same as it was on the 7th of January, 1910, and the object which was viewed being of the same size and character as the one on January 7, 1910?

Objected to.

The Court: The answer must, of course, be founded on observation made at a time when the conditions were all the same, and it ought first to appear that there was an observation made when the conditions were all the same.

Mr. MacSherry: Another thing about it is that it is the case that when this bobsled was about at Clifton avenue this trolley car then was about 37 feet from the corner.

The Court: All I am considering now is the legality of this question.

Mr. Weinberg: I have embodied, so far as I can understand, all the conditions that existed on the 7th day of January, 1910, except that he says that he does not know whether the lights were lighted. I do not think that has anything to do with it.

The Court: That is so important a feature that, I think, it is incompetent.

Mr. Weinberg: That must go to the weight of the evidence, if your Honor please.

The Court: I have already considered the subject, and I have reached this conclusion. Perhaps I am wrong. I sustain the objection.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

Circuit Court Judge.

Q. Can you tell me, if you made an observation from the track of the Public Service Railway Company on Mt. Prospect avenue, whether you can see any part of Montclair avenue at any distance, south of the south crosswalk—is there anything to prevent a view anywhere on the street?

Objected to on the same ground.

Mr. Weinberg: I will add to that: Is there anything to prevent a view of Montclair avenue for any distance west of Mt. Prospect avenue?

The Court: If you want to ask whether there is a grade, or anything of that kind, that is proper enough, or whether there is any curve in the street or any obstruction in the street. If the question relates to permanent conditions, it is unobjectionable; but it is not clear. If it relates to transient conditions, the possibility of seeing at particular times, why then you meet the same difficulty we just had: that the comparison must be made under the same conditions that existed at the time of the accident. You had better reframe your question.

Q. I will ask this question generally now. I want to know whether generally and under the conditions which prevail now and which prevailed on the 7th of January the general conditions, whether there was anything about the nature of

the lot on the southwest corner of Mt. Prospect avenue and Montclair avenue—

The Court: That is this (indicating map)?

Mr. Weinberg: No, sir; that is that one (indicating).

Q. —to prevent a view up Montclair avenue—

The Court: Consider this to be north (indicating).

Witness: Yes, sir.

Q. —from a position taken by you on the northbound track, we will say 10 feet south of the south crossing of Montclair avenue and Mt. Prospect avenue?

Objected to.

The Court: You want to know whether there were any obstructions to view on this lot?

Mr. Weinberg: Yes, sir; whether there was anything on that lot.

Mr. MacSherry: Then I would like the question put that way.

The Court: All I have to consider is whether the question is proper. I think it is. Mr. Weinberg wants to know whether there are any obstructions to view on that lot.

Mr. MacSherry: The word "obstructions" is not in his question.

Mr. Weinberg: No, sir; anything in the nature of the lot.

Mr. MacSherry: All right, put it in.

Q. Can you answer that question? A. I would like to have it more plain.

By Mr. MacSherry: Q. Do you want it more plain? A. Yes, sir.

By Mr. Weinberg: Q. If you were to take a

position on the tracks of the trolley company, we will say 10 feet south of the south crossing of Montclair avenue, is there anything on this lot that would obstruct your view of a portion of Montclair avenue?

The Court: Was there anything at that time, on the night of the accident, on the 7th of January.

Q. Was there anything on the 7th of January? A. You could see any portion of Montclair avenue.

Q. Up to where? A. At any time of the year, all the way up. I have lived there all my life.

Q. At 10 feet? A. Yes, sir.

Q. Now, if it were 20 feet south of this crossing, how far could you see?

Objected to.

The Court: The question relates to any permanent obstruction standing on that lot. That is perfectly proper, in my opinion, if so understood.

Mr. MacSherry: It seems to me it is immaterial and irrelevant, because it is already in the case and admitted substantially by everybody that you could see nearly down from Clifton avenue a trolley car 50 feet away from the corner.

The Court: Mr. Weinberg may wish to prove it.

(Question read.)

Q. How far up Montclair avenue could you see? A. Twenty feet, I could see all the way up.

Q. If you were fifty feet? I am now speaking with regard to any obstruction on that lot, if there was any obstruction—

The Court: The question is not how far you could see, but whether there was any

obstruction on that lot that would prevent you from seeing. That is a very different question.

A. At fifty feet I could see up a little above Clifton avenue.

Mr. MacSherry: I want to get an objection in there. My objection is that the situation should be the same as on the night of the accident. Could he, fifty feet away, from twenty minutes to six to quarter to six on that night of the accident, see all the way up that avenue after the lights were lit?

The Court: No, that is not the question. The question is whether there were on that night of the accident any obstructions standing on that corner lot which would prevent a person standing 50 feet away from seeing up the avenue. Whether he could see or not would be dependent on the condition of the light. At midnight he could not see at all probably. The question is as to the permanent obstructions, that is all.

Mr. MacSherry: If the question were put that way I would not object to it.

Q. Now, what obstructions were there on the lot at the southwest corner of Montclair avenue and Mt. Prospect avenue on the 7th of January, 1910, what were they? A. You will have to say how many feet I was standing—

Q. I am asking you what permanent obstructions were there on the lot at the southwest corner of Mt. Prospect and Montclair avenues on the 7th day of January, 1910? A. Why, there is a slight grade; it is a slight grade for a distance,

and then it goes up; but it is according to how many feet I stand back.

Mr. Weinberg: Now, you are getting at what I want.

By the Court: Q. Tell us where the grade is. A. This is a scale of ten feet to the inch on this map. I think the grade is about 23 feet, about 23 feet; not on a level, but a slight grade; it is away below the average.

By Mr. Weinberg: Q. Twenty-three feet to what? A. In.

By the Court: Q. Rising? A. Rising.

By Mr. Weinberg: You mean it rises twenty-three fee? A. No, sir; I say there is a hill in here, in here is a hill (indicating).

The Court: Pointing to the interior of the southwest lot.

Witness: This hill doesn't start to go up until it is in further.

Q. How far in? A. I should say, a rough guess, about twenty-three feet.

Q. Did you measure it to find out? A. I did not.

Q. And for the twenty-three feet about what is the level of that lot above the street level? A. Well, I should say at the beginning of that twenty-three feet it isn't any more than two inches above the curb level, the top of the curb.

Q. And how does it continue? A. Of course, it is little ripples, like that (illustrating), but the average, I wouldn't say it was any more than six inches.

Q. Until it strikes what? A. Until it strikes this kind of a hill; what I mean, I would call it a hill.

Q. And then what? A. And then it goes up the hill, just like Montclair avenue would.

Q. Sort of a little bluff there? A. Yes, sir; the bluff keeps going up, you know, this way (indicating).

By the Court: Q. How is it with reference to the rising line of Montclair avenue? The lot rises and the avenue rises, too. What is their relative height as you go up? A. This hill goes up this way, and along here it goes in before it raises; the hill kind of sweeps towards this way (indicating).

Q. Towards the west? A. Towards the southwest, I would say.

By Mr. Weinberg: Q. Then for twenty-three feet south of the corner of Montclair avenue on Mt. Prospect avenue what is the nature of that lot with relation to grade? A. Twenty-three feet long there (indicating)?

Q. Yes. A. Twenty-three feet right along there is practivally level, I say.

Q. After you pass the 23 feet? A. It keeps on level all along there until it hits the grade. In here there is no obstruction whatever (indicating).

The Court: Pointing to the portion of the lot nearest to Mt. Prospect avenue.

Witness: What we call a lot, it is the lot right along.

Q. How long is that? A. That lot continues half-way up the block before it strikes a house, over half-way up the block.

By the Court: Q. What is, to the south or west? A. Half-way up the block— I would like to explain.

Q. Towards Grafton avenue? A. Grafton avenue is up quite a distance, I would like to explain.

Q. Well, in that direction? A. Yes, sir.

By Mr. Weinberg: Q. Is there anything on that

lot to obstruct the view of a person on the north-bound track a hundred feet from Montclair avenue?

Objected to on the grounds before stated.

The Court: No, this relates to a permanent obstruction. You may answer the question.

Objected to as immaterial and irrelevant. Objection overruled.

(Defendant's counsel prays an exception, and the same is allowed.)

(Question read.)

A. You mean how far I could see up?

Q. Is there anything on that lot?

The Court: Is there anything to cut off the view?

Mr. Weinberg: Up Montclair avenue?

A. A hundred feet in—

Q. To a person standing a hundred feet in on the north-bound track?

Objected to on the same grounds.

Objection overruled.

Defendant's counsel prays an exception, and the same is allowed.

A. I can see most of Montclair avenue.

Q. Is there any obstruction that would prevent your seeing Montclair avenue? A. No, sir.

By the Court: In other words, does the hill cut the view off? A. No, the hill don't cut my view off.

By Mr. Weinberg: Until you go how far south of the south crossing of Montclair avenue?

Same objection.

Same ruling.

Defendant's counsel prays an exception, and the same is allowed.

A. About 112 feet; then your view is cut off as far as Clifton avenue.

By the Court: Q. By what? A. By the hill.

By Mr. Weinberg: Q. Then you can not see above Clifton avenue? A. Well, a little bit, not much.

Q. Were you out on the street the day your sister was injured? A. Yes sir.

Q. Where were you at the time? A. At the time of the accident?

Q. Yes. A. I was a little below Mt. Prospect avenue on Montclair avenue.

Q. A little below; that is, east? A. That is, east of Mt. Prospect.

Q. Tell me what you saw of this affair. Did you see the bobsled? A. I did.

Q. Where was it when you saw it? A. The first time I seen it?

Q. Yes. A. I seen it before it started and I seen it—the next time I looked it was pretty near Clifton avenue.

Q. Where was it, what part of the street was it in? A. Well, about the centre.

Q. Could you hear it coming? A. Yes, sir.

Q. How could you tell it was coming? A. By the bell.

Q. Did you hear the bell? A. Yes, sir.

Q. And you were at that time on Montclair avenue how far from Mt. Prospect avenue? A. A few feet.

Q. Did you see anything of the trolley car before the accident? A. Not when I first saw the bob, I didn't see the trolley car; I didn't notice it; I was looking up the hill.

Q. Did you see Raymond Martin there that day? A. I did.

Q. What was he doing when you saw him? A. When I saw the bob?

Q. What was Raymond doing when you saw him? A. The first time I seen him he was standing in the car track. That wasn't the time of the accident, though; that was before the accident.

Q. I did not ask you that, did I? A. No.

Q. Just listen to what I am asking you. He was standing on the car tracks where, whereabouts? A. Can't I get this a little clear, please?

Q. You are getting a little excited and nervous? A. No, I am not nervous at all. Do you mean the time this particular—

Q. When you saw Raymond Martin—I don't know when you saw him, but you said you did see him. A. I did.

Q. That is plain English. When you saw Raymond Martin where was he? A. He was running up the tracks.

Q. And how far from Montclair avenue was he when you saw him running up the tracks? A. 45 or 50 feet, somewheres around there; it was about the lot—

Q. Did you see how far he ran to? A. It was to that first house, about to the first house there.

Q. Did you see him stop or didn't you? A. I didn't notice him stop.

Q. Did you see a car at that time? A. I did.

Q. Where was the car? A. Well, you mean the number of feet?

Q. There you are again, a young man studying surveying and asking that question. A. Forty or fifty feet away from him.

Q. What direction away from him? A. South of him.

Q. And he was near the end of the lot? A. Yes, sir.

Q. What else did you see? Did you see the car coming on or didn't you see it? A. I did.

Q. Well, tell us what happened. What did you see the car do, if anything? A. I saw the car come along; I saw the boy try to wave the car back.

Q. What did he do? A. He waved his hands.

Q. What do you say? A. He ran up the track that way (illustrating).

Q. He did not run up the track that way; he waved that way. A. He waved that way. Of course, he, naturally, ran up the track, as I said before.

By the Court: Q. Waving his hands in what direction? A. Towards the car, south. The car was coming north.

Q. You see, your gestures do not go down on the record, and so we have to describe them. A. That is all right. Ask me what you want; I am here to tell what I know.

By Mr. Weinberg: Q. What did you see the car do from that point on? A. I seen the car come and slow up.

Q. Whereabouts did it slow up, near what point was it when it slowed up? A. The car slowed up practically about pretty near the south crossing.

Q. And then what did the car do? A. The car kind of added on speed again.

Q. And then what did you see happen? Did you see the car and the bob come together, or didn't you? A. No, sir.

Q. You were on what corner? A. I was on this corner (indicating).

Q. Was the car between you and the bob then, at the time of the collision? A. Yes, sir; I only could see the east side of the car.

Q. Did you see the car stop, come to a stop, or after it was stopped? A. I seen it after it was stopped.

Q. Where was it after it stopped? A. The end of the car was about, I will say, 8 or 10 feet past the crossing, and maybe more.

Q. Past what crossing? A. Past the north crossing.

By the Court: Q. You mean the rear end? A. The rear end was 8 or 10 feet or more; it wasn't any less than that, I am sure of that.

By Mr. Weinberg: Q. Where was the sled when it stopped? What was the position of the sled and the car? A. Oh, they were practically parallel.

Q. How far from each other? A. When I seen them after the accident?

Q. Yes. A. I didn't quite notice that.

Q. You found your sister injured, did you? A. Yes, sir.

Q. What did you do with her? A. I picked her up and took her down to my father's office.

Q. And then she went home ? A. Then they carried her home.

Q. Then she was taken home? A. Yes, after they fixed the leg.

CROSS-EXAMINATION by Mr. MacSherry:

Q. How far is it from Clifton avenue to Mt. Prospect avenue? A. Oh, about 280 feet more or less.

Q. You are not sick this morning, are you? A. No, sir.

Q. You are in good health, are you? A. I think so.

Q. Where was the bobsled when this little boy, Raymond Martin, ran up after the car? A. I should say it was pretty near Clifton avenue. That is what I told Mr. Weinberg.

Q. Had it reached Clifton avenue? A. I don't think so.

Q. This boy ran about 45 feet up the road? A. Well, I say to the first house, about to the first house.

Q. And when he got up there the car was about 45 feet away? A. About 45 or 50 feet, I would judge.

Q. From him? A. From him.

Q. And how was the car coming? A. In the way of speed?

Q. Yes.

The Court: The trolley car.

A. I should think the car was coming quite speedy.

Q. Well, when it got near the boy it began to slow up, did it not? A. Yes.

Q. It began to slow up 45 feet away from the south corner of Mt. Prospect avenue and Montclair avenue, the end of the lot? A. Well, around the end of the lot there.

Q. And when the car was slowing up about that distance, 45 feet from the corner, where was the bobsled then? A. I can't answer that question.

Q. Why not? A. Because I don't recollect clear enough to answer the question.

Q. Why, didn't you see the bobsled coming? A. I did.

Q. Where was the bobsled? Didn't you see it leave Clifton avenue? A. I saw it about Clifton avenue; I didn't see it—

Q. When the trolley car got to the south corner of Montclair avenue and Mt. Prospect avenue where was the bobsled then? A. The bobsled was making the turn then.

Q. Well, that is right, is it? A. I think so.

Q. Are you sure of that? A. As far as I can recollect.

Q. Did you see it? A. I did.

Q. Was it skidding? A. I don't recollect.

Q. Then while the trolley car was running about 90 feet and slowing up within that distance, the bobsled only ran the length of that block, 280 feet? A. The car wasn't slowing up that distance.

Q. I didn't say that, did I? I said within that distance at one time it was slowing up. A. Well, it only slowed up for that minute; it only slowed up for that time; it didn't for any distance whatever.

Q. Then while the trolley car was going 90 feet the bobsled was going 280 feet? A. I told you I didn't notice the bob—

Q. Won't you answer my question. A. Well, I want to make clear; I want to answer what I know; I don't want to answer what I don't know.

Q. Haven't you said that the trolley car was about 45 feet from the end of the lot, which would make it about 90 feet from the corner—

Mr. Weinberg: That is wrong, in the first place. That would make it 135 feet from the corner.

Mr. MacSherry: He has testified that the boy ran up 45 feet to the end of the lot and waved to the trolley car, which was then about 45 feet away from him.

The Court: I thought the testimony was that the witness ran up to the end of the lot, which was 85 feet deep.

Q. Did you say he ran up to the end of the lot or ran up 45 feet along the lot? A. Well, he ran up around the end of the lot. It isn't exact; I don't know the exact step.

Q. Did you not say he ran up about to the house? A. About to the end of that lot, about.

Q. About to that house? A. About to the end of the lot.

Q. And when he got to the end of that lot the car was 45 feet away? A. About.

Mr. Weinberg: From him.

Mr. MacSherry: From him.

Mr. Weinberg: You do not say that.

Witness: That is understood.

Q. And when he started to run the bobsled was above Clifton avenue? A. When he started to run?

Q. Yes. A. Just about around Clifton avenue.

Q. And it ran down that distance of 280 some feet while the trolley car was coming from the point where you say it was when the boy waved his hand? A. What is that?

(Question read.)

Q. Do you mean to say that? A. I mean to say this—

Q. Just answer that question.

Mr. Weinberg: Yes or no.

A. Yes.

Q. How long did it take the boy to run this 45 feet, do you think? A. I haven't any idea.

Q. How long did it take the bobsled to run from Clifton avenue down to Mt. Prospect avenue? A. I didn't time it.

Q. What do you think? You are a surveyor. A. Well, if I had noticed it I might have told you, but I didn't notice it.

Q. About how long? A. Well, I should say it would take about—

Objected to as not cross-examination.

Objection overruled.

Q. About how long did it take that bobsled to run from Clifton avenue to Mt. Prospect avenue. A. I should say about a minute or a minute and a half, as near as I can remember; I don't know exactly; a minute or a minute and a half, I should judge.

Q. Ninety seconds? A. I should judge so.

Q. That bobsled? A. I should think so.

Q. How long did it take this trolley car to run this 90 feet, do you think? A. I couldn't see both of them at the same time; I don't know what time it made.

Q. It does not take that long to run from the top of Ridge street, does it—your bobsled? A. You are asking about the trolley car aren't you?

Q. I am asking about the bobsled. Don't you know that that bobsled ran down from Ridge street to Mt. Prospect avenue in about twelve or thirteen seconds? A. I certainly do not.

Q. How long do you think it took to run down there? A. The bob?

Q. Yes.

Mr. Weinberg: One moment. Is that at all competent, how long he thinks it takes a bob?

The Court: Not unless his thinking is founded on observation of this particular bob.

Q. Have you seen that bob start down from Ridge street? A. I have.

Q. How long does it take to run down from Ridge street to Mt. Prospect avenue? A. A minute or a minute and a half, I should judge.

Q. You have already said it took a minute or a minute and a half to run from Clifton avenue? A. I beg your pardon! I meant from Ridge street.

Q. How long did it take at the time of the accident to run down from Clifton avenue to Mt. Prospect avenue? A. About three-quarters of a minute.

Q. Don't you know that the trolley car was across Montclair avenue when the bobsled was 50

feet from the corner and was skidding? A. I do not.

Q. You do not know that, do you? (No response.) That is all.

By the Court: Q. You gave us your estimate of the distance from Clifton avenue to Mt. Prospect avenue. Have you any knowledge as to the distance from Ridge street to Clifton avenue? A. Yes, sir; I understand the lots—the lots there are a hundred feet deep; that would make it about say, 200 or 200 odd feet.

RE-DIRECT-EXAMINATION by Mr. Weinberg:

Q. Have you any idea as to the distance from Montclair avenue to Grafton avenue; that is, the street south? A. Why, the distance between Montclair to Grafton avenue is as much if not more than the distance from Mt. Prospect to Ridge street.

Q. About as big as those two blocks? A. Oh, yes; it is an extra long block.

By the Court: Q. Say 500 feet? A. Over 500 feet.

By Juror No. 5: Q. I did not quite understand that. Is it 500 feet from Mt. Prospect avenue to the lower point?

Mr. Weinberg: No, sir; from Montclair avenue to the street first south.

Juror No. 5: I would like to be enlightened on that. Is it over 500 feet from Mt. Prospect avenue, coming down, where there are no street car tracks?

The Court: Do you refer to the answer to the last question?

Juror No. 5: Yes, sir.

The Court: The 500 foot measurement?

Juror No. 5: Yes, sir.

The Court: It was a measurement, not on Montclair avenue, but on Mt. Prospect avenue, in the direction from which the car came, down to the next street; that was the 500 foot measurement.

Juror No. 5: Oh, I see now. If your Honor please, let us find out what the distance is from the street car tracks coming down this way down the hill. I don't know the names of those streets.

The Court: East of Mt. Prospect avenue?

Juror No. 5: Yes.

By the Court: Q. What comes next? A. First comes Mt. Prospect, Woodside avenue, then Summer avenue.

Q. How far is it to Woodside avenue from Mt. Prospect avenue, do you know? A. I can tell you about; I should say about 275 or 280 feet, about.

Q. Now let us have the next street, from Woodside avenue to Summer avenue.

Juror No. 5: The distance I would like to know is the incline, how much of the street inclines from the street car tracks at Mt. Prospect avenue to that end of the hill, where the sleds stopped when they were coasting.

Q. You may tell us what you know about that grade. A. It is a grade from Mt. Prospect avenue to Woodside avenue, so that a sled—

By Juror No. 5: Q. I don't care how many streets it is. I would like to know about where your sleds stopped when they got a good start. Where did they stop at the foot of the hill? A. They stopped around Summer avenue.

Q. Well, I don't know anything about the streets. A. Well, first comes Woodside—

Q. But I would like to know how many feet. You have given us the distance from Ridge street to Mt. Prospect avenue. Now we would like to know when you pass Mt. Prospect avenue how far your sled—how many feet do you go down? How much coasting is there there? A. This next grade coming here (indicating on map), that is about 275 feet; that is a block long.

Q. Now, you go to another street, do you not? A. Between Woodside avenue and Summer avenue it is practically level.

By Mr. MacSherry: Q. What is the length of it? A. Do you mean about?

Juror No. 5: Yes, that is my idea, and I believe it is very essential to know it.

Witness. 225, more or less, feet.

By Juror No. 5: Q. From Mt. Prospect avenue? A. From Woodside avenue to Summer avenue.

The Court: Let me make a suggestion. Your question is already answered. As you go down that hill below Mt. Prospect avenue you first come to Woodside avenue and then you come to Summer avenue. The witness has already said that from Mt. Prospect avenue to Woodside avenue is about 275 or 280 feet and from Woodside avenue to Summer avenue is 225 feet, more or less, which makes somewhere about 500 feet which the bob would run before it stopped after crossing Mt. Prospect avenue. That is your point, is it not?

Juror No. 5: That is my point. I simply wanted to say, when he mentioned the streets I haven't been in that neighborhood; I am not familiar with it.

RE-CROSS-EXAMINATION by Mr. MacSherry:

Q. About what is the width of Clifton avenue? A. I can't say that; I never took a good look at Clifton avenue.

Q. Well, about? A. No, I wouldn't say.

Q. Well, is it as wide as Mt. Prospect avenue? A. No, sir.

Q. Is it as wide as Montclair avenue? A. Well, that—I never took—

Q. Well, is it 50 feet wide? A. I never took a good look at Clifton avenue to say.

FURTHER DIRECT-EXAMINATION by Mr. Weinberg:

Q. Is there any grade between Mt. Prospect avenue and Woodside avenue, which is the street east of Mt. Prospect avenue? A. There is.

Q. So that, I think you started to say, a sled would go itself if it started at Mt. Prospect avenue and went down toward the bottom of the map, say, east, did you not?

Objected to.

A. Yes, sir.

The Court: The question is whether a sled would run. That question is too vague to be answered. Strike out both the question and the answer. It depends on the sled and on the weather, and on lots of things. If you can get the physical facts, as to the grade, as to the weather this bob would run, the conditions being the same.

Q. Do you know whether on that afternoon a sled or a bob would go from Mt. Prospect avenue to Woodside avenue without a start above?

Objected to.

The Court: Well, that is hypothetical. If the witness saw this bob started from Mt. Prospect avenue, coming down towards the east, he can answer what he saw; but I think the question is too hypothetical. I sustain the objection.

Q. Well, what was the condition of Montclair avenue east of Mt. Prospect avenue—that is down towards Woodside avenue—with regard to ice and snow that evening? A. The same thing as above.

Q. The same as above? A. Yes.

Q. And what, in your judgment, was the grade of Montclair avenue from Mt. Prospect avenue to Woodside avenue? A. Well, you mean the drop?

Q. Yes, the drop, the grade. A. Well, I just couldn't say that.

Q. You mean you can not state it in inches and feet? A. No, I can't state it, because I have never—

By the Court: Q. Well, was it more or less feet than up above? A. Oh, it is less in steepness, in grade, but there is a grade there.

Q. There is a grade? A. Yes, sir.

Q. But it is not so steep a grade as up above? A. Not so steep, but there is a grade.

Q. Now, the next block, from Woodside avenue to Summer avenue. A. It gradually slopes down until it gets to Summer avenue.

Q. Is the grade from Woodside avenue to Summer avenue about the same or does it differ from the grade between Mt. Prospect avenue and Woodside avenue? A. It is a good deal less.

Q. Not so much? A. No, it slopes right down; it isn't as much.

Q. It is not as much? A. No, sir; it isn't as much.

JEANNETTE FARRELL sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Miss Farrell, where do you reside? A. 357 Woodside avenue.

Q. Newark? A. Yes, Newark.

Q. And you have resided in Newark how long? A. About ten years.

Q. How far do you live from the corner of Mt. Prospect and Montclair avenues? A. One block east, and about half a block south on Woodside avenue.

Q. Are you familiar with the corner of Montclair avenue and Mt. Prospect avenue? A. I am.

Q. Do you recollect the 7th of January, 1910? A. I do.

Q. Were you in the vicinity of Montclair and Mt. Prospect avenues on that day? A. I was.

Q. At what hours? A. Between four and four-thirty and again between five-thirty and quarter of six, or, I should state, between six o'clock, because I was there between five-thirty and six.

Q. Between four and four-thirty what were you doing there? A. I was watching the coasters on the hill.

Q. And where were you standing? A. On the southeast corner of Montclair and Mt. Prospect avenues.

Q. Were there many coasters at that time? A. I should judge about between thirty and fifty.

Q. And what kind of appliances were used? A. Single sleds and a bobsled.

Q. How many bobs? A. Only one, that I noticed.

Q. Do you know whose bob that was? A. I do not.

Q. Between four and four-thirty o'clock did you observe the movements of the trolley cars on Mt. Prospect avenue? A. I did.

Q. What did you observe as to their stopping places? A. They stopped at both crossings, the near and the far crossing.

Q. Just explain that a little more. Cars that were going north would stop where? A. On the south crossing.

Q. And then, you mean to say, they would stop again when they reached the other side? A. Yes.

Q. And cars going south would stop where? A. On the north crossing first, and again—well, they don't often stop on the other crossing, because they—

Q. Cars going south would stop on the north crossing? A. Yes, sir.

Q. Now, between four and four-thirty o'clock how many cars do you think you saw do that? A. Approximately five or six, four or five.

Q. And those cars that you saw stop at that hour, can you tell we what caused them to stop at those crossings as they did, as you relate? A. The motorman stopped of his own accord.

Q. The cars that you saw stopping on those corners, were they stopped by reason of anything that you could see occurring in the street? A. No, sir.

Q. By the act of any person on the street? A. No, sir.

Q. Was there anything to prevent you from seeing if anybody would cause these cars to stop on the streets? A. No, sir.

Q. Now, you went away at half-past four? A. As nearly as I can judge.

Q. And you came back again at what time? A.

Between five-thirty and six, quarter of six, about twenty-five minutes of six, I should say.

Q. What was your intention when you came back to the corner at that time? A. I beg your pardon.

Q. What brought you back to the corner at that time A. To take a south-bound trolley car to the Delaware, Lackawanna station.

Q. And where did you take your position at that time? A. On the northwest crosswalk, on the street corner.

Q. On the northwest crosswalk. Will you point to it on the map, if you can show us? A. Let me see. Here (indicating on map).

Q. Right about where that little station box is? A. Yes.

Q. There is a sort of a station passenger box there? A. Not now; there was.

Q. There was? A. Yes, sir.

By the Court: Q. The northwest crossing? A. Yes, sir.

Q. You said the crosswalk. Is there a crosswalk there? A. Well, there is a crosswalk there. I was part of the time on the crosswalk and part of the time right there (indicating).

By Mr. Weinberg: Q. You say you were waiting for a car going south? A. South.

Q. And you stood on the first crosswalk? A. I did.

Q. Now, during the time you stood there did you see any trolley cars come in either direction, coming from either direction? A. One car came down, came southbound, filled with passengers; I couldn't get a seat, and I didn't board it.

By Mr. MacSherry: Q. Could not get a seat? A. No, sir; or, rather, I thought that I couldn't. The car was crowded with workmen.

By Mr. Weinberg: Q. Did that car stop, Miss Farrell? A. It did.

Q. And it stopped on what crossing? A. On the northwest crossing.

Q. On the north crossing? A. Yes sir.

Q. That is the first crossing? A. Yes, that is the first crossing.

Q. Did it stop again across the street? A. No, I think the passengers all boarded it there.

By the Court: Q. That was the car you did not take? A. That is the car I did not take.

By Mr. Weinberg: Q. Did you notice any car coming north while you were waiting there at that time? A. Only the one in question, of the accident.

Q. Did you see any other; that is, before the car that came in collision? A. No, sir, North-bound?

Q. North-bound? A. No, sir.

Q. This was the first car that came from the south? A. As I remember it.

Q. At that particular time? A. Yes.

Q. Did you at that time see anybody in the street, any boy, that you had your attention attracted to? A. I saw a boy who was stationed there signalling.

Q. Which way was he signalling? A. Signalling up the hill to the coasters.

Q. Did you observe this car in question coming from the south? A. I did.

Q. Where was this car when you first saw it? A. Well, I think it was just past the signal station in the middle of the block, south, south of the signal station.

Q. In the middle of the block between Montclair and Grafton avenues? A. Yes, sir.

Q. Do you know about how far that is from the corner of Montclair avenue? A. I have no idea.

Q. Quite some distance, is it not? A. Yes, sir.

Q. How was the car going at that time? A. Quite rapidly.

Q. Now, you say you saw this young man who was signalling the sleds? A. I did.

Q. Do you know who it was? A. I didn't at the time; I have since learned in court.

Q. The boy who was in court, Raymond Martin? A. Yes.

Q. What did you see him do? A. I saw him stand there and signal the coasters to come down the hill. As the car approached and gave no evidence of stopping at the south crosswalk, he ran down and signalled with his hand to the motorman, this way (illustrating), to stop. The car slowed slightly, put on a burst of speed as if to pass the sledders and came on.

Q. And at the time when Raymond made his motion to the car, about how far south of Motclair avenue was he at that time? A. I can't say the distance. I saw him run beyond the southbound crosswalk. I can't approximate distances, but he ran below that south-bound cross-walk.

Q. And how far he ran you do not know? A. How far he ran I do not know.

Q. Was there anything on the street that you could fix the distance by? A. No.

Q. Any object there? A. No.

Q. You did not notice how far down he ran? A. No, I did not notice how far down he ran.

Q. As the car cam over Montclair avenue what was its speed? A. It was going quite rapidly.

Q. Do you remember whether it rang any gong or sounded any bell? A. It did.

Q. The car? A. It did.

Q. And do you know if the bob rang a bell? A. It did.

Q. Where did the car start to ring the bell, where did the car sound the bell? A. Well, I noticed the bell ringing at it approached Montclair avenue.

Q. How far? A. Between the signal station and Montclair.

Q. Did you notice it after that? A. No, because the gong on the bobsled was so much closer to me that it prevented my hearing the gong on the car.

Q. Which was the louder? A. Well, as the bobsled neared me the gong on the sled was loudest in my ears.

Q. Where was the bob when you saw it? A. I can't say exactly; I think about at Clifton avenue.

Q. Did you keep your eye on it as it came down? A. Not entirely, no.

Q. You did not? A. I did not.

Q. Did you notice the bob turning? A. I did.

Q. Where, in your opinion, was the bob when it started to turn? A. Along about the sidewalk line of Montclair avenue and Mt. Prospect.

Q. That would be that first blue mark on the map there (indicating)? A. Yes.

Q. The blue line at the upper part of the map? A. Yes.

Q. At that time can you tell me about where the car was? A. I can't tell you the exact position of the car; it was somewhere between the signal and Montclair avenue. Oh—

Q. I do not think you understand my question. A. No.

Q. At the time the bob started to turn into Mt. Prospect avenue where was the trolley car? A. As near as I can judge, about the forward end of the car—they were about at the end of the south crosswalk.

Q. The forward end of the car was about at the south crosswalk? A. As nearly as I can remember.

Q. Did you see the bob and the car come together? A. I did.

Q. How did they come together? A. The bobsled turned north, crossing the south-bound track, and the car and the bobsled came together this way, locking (illustrating).

Q. V-shaped? A. Yes, sir; locking; the forward end of the car and the forward end of the bob locked; and they rode in that position until the sudden application of the brakes by the motorman, and they were carried about a car's length distance beyond the crossing, as near as I can approximate, almost opposite the house there.

By the Court: Q. Opposite what, opposite the house? A. Right next to the shed there (indicating on map.)

By Mr. Weinberg: Q. At what point was it that the bob and the car locked? A. At about the northwest crossing, the north crossing.

Q. You mean when the front of the car got to the north crossing, about that? A. Yes.

Q. And they went along in that position for about a car length? A. As nearly as I can remember.

Q. Of course you saw the children injured? A. I certainly did.

Q. Did you see the car when it came to a stop? A. I did.

Q. Did you notice the position of the bob at that time? A. I did.

Q. What were their positions? A. Close together. The application of the brakes shoved the bobsled back, removed the contact—

Objected to.

The Court: We have the cause of it. You may state the result, the situation that resulted, from whatever the cause was.

By the Court: Q. They were unlocked? A. They became unlocked; yes, sir.

CROSS-EXAMINATION by Mr. MacSherry:

Q. Where did you live at the time of this accident, Miss Farrell, please? A. 357 Woodside avenue, Newark.

Q. You are an actress by profession, I believe? A. I am.

Q. What line, tragedy, comedy or farce?

Objected to as immaterial.

The Court: Inquiries of this kind are always permissible.

Mr. MacSherry: I wanted to know what line of acting it was.

A. I have followed both comedy and dramatic.

Q. Are you engaged in any company now? A. I am not.

Objected to as immaterial.

The Court: Why, all these questions are quite within the usual practice.

Q. (Question read.) A. I am not.

Q. How long since you have been engaged by any company? A. Last November.

Q. What company was that, please? A. Thomas Jefferson.

Q. Playing in what? A. The Other Fellow, a farce-comedy, at the Bijou Theatre, New York City.

Q. At the time of this accident, were you engaged in any company then? A. I was.

Q. What company? A. His name on the door.

Q. Playing where? A. Brooklyn, New York.

Q. You were not playing this day, though, were you? A. Not during the day; no, sir.

Q. Playing at night? Yes.

Q. And did you at the time know this young lady, Miss Lynch? A. Not personally.

Q. Did you know her people? A. Not personally.

Q. Have you become acquainted with then since? A. I have.

Q. Have you talked with them about this case? A. Yes, sir.

Q. Have you talked with other people? A. Only my own family.

Q. Well, you have talked with somebody else, have you not? A. I may have; I can't recollect.

Q. Did you talk with anybody that came up to see you from the traction company? A. Oh, yes, with your traction representative; yes, sir.

Q. He was a young man, was he not? A. I can't state his age.

Q. Well, I know you can not state his age, but you can remember whether he was a young man. A. I don't think he was very young.

Q. He was not aged, like the rest of us here, was he? A. I don't know about that.

Q. Well, you gave a statement to a representative of the traction company? A. I did; yes, sir.

Q. Do you remember his name? A. I think it is Bodecker. I didn't remember it until I heard it here.

Q. You have seen him in court here, have you not? A. I think I saw him in the hall.

Q. Did you see him in court yesterday? A. I saw him outside.

Q. Well, you made a statement to him as to how this accident happened? A. I did.

Q. What you saw? A. Yes, sir.

Q. And did he reduce your statement to writing? A. I believe he did.

Q. In your presence? A. Yes, sir.

Q. Was anybody else with you? A. Not in the room; my father and mother were there.

Q. Did you sign it? A. I did.

Q. And did you read it over before you signed it? A. Yes, sir—he read it to me, I believe. I am not certain about that.

Q. Don't you think you read it before you signed it? A. I am not certain about that.

Q. You would, naturally, would you not? A. I think I would.

Q. Now, this was at your home, was it not? A. Yes, sir.

Q. On the 14th day of February, 1910? A. I couldn't tell you the date.

Q. This is the young man, is it not (indicating)? A. Mr. Bodecker; yes, sir.

Q. Do you remember telling him that on the 7th day of January, 1910, about quarter of six, you were standing at the north-west crossing of Montclair avenue and Mt. Prospect avenue? A. Yes, sir.

Q. Do you remember telling him you noticed a number of children coasting down the Montclair avenue hill? A. Yes, sir.

Q. Do you remember telling him it was dark at the time? A. I told him it was dusk at the time.

Q. Did you tell him it was dark at the time? A. I don't think I said "dark."

Q. Did you say you took particular notice of a boy of about sixteen who was stationed at the crossing and making signals? A. Yes, sir.

Q. Did you tell him that you noticed his code of signals was that one hand raised high meant danger, or "stay back," and when he held up two

hands it was a signal to come on, that everything was clear? A. I remember I gave him the signals, but I don't remember those signals now.

Q. Do you remember saying to Mr. Bodecker in this interview: "Just before this accident happened I noticed this boy hold up one hand, and I saw a north-bound car approaching then about at Grafton avenue, one block away"? A. I gave him some statement, but I don't remember what it was there—exactly those words.

Q. Do you remember telling him: "The bobsled was then at the top of the hill and it had not yet started"? A. I must have told him so.

Q. Do you remember telling him: "Then, regardless of the signal denoting danger, however, I was very much surprised to see this bobsled coming down the hill like a streak of lightning"? A. I must have told him so if it is there.

Q. Do you remember this: "When the bob was about midway between Clifton and Mt. Prospect avenue this north-bound car had then reached the south crossing of Montclair avenue and going along at a moderate rate of speed"? A. If it is there I must have said so; I don't know. I would like to read it myself, however.

Q. I am going to give you the pleasure, but I wouldn't read it if it was not here. Do you remember this: "I then realized that an accident would happen, and I screamed"? A. I know I told him I screamed at the motorman.

Q. "I screamed at the motorman to stop, but the combined noise of the car and the bob and the ringing of gongs, which I can't say came from the bob or car, served to deaden my screams at the motorman;" do you remember that? A. No.

Q. Do you remember saying: "The next in-

stant, as the front of the car was within eight or ten feet of the north crossing the bob crashed into the forward left trucks of the car, striking the trucks diagonally"? Do you remember telling him that? A. I remember making the statement. I can't remember all these things individually, Mr. MacSherry.

Q. Do you remember this: "As the boy tried to steer the bob to the left when he saw his danger, and the front of the bob seemed to lock in with the front trucks"? Do you remember telling him that? A. Yes.

Q. "And the sleigh was dragged along parallel with the car for a distance of about twenty feet;" do you remember that? A. Yes.

Q. Do you remember telling him that you did not know the boy who was acting as signal man? A. I did.

Q. Do you remember saying that the car appeared to be lighted up as it came along? A. Yes, sir.

Q. Do you remember saying this: "I am sure it was impossible for the boy steering the bob to observe the signal man at the foot of the hill before he, the boy, started down the hill"? Do you remember saying that? A. I must have said it; I don't remember it.

Q. Do you remember saying: "It was dark and the starting point was over two blocks away"? A. That is right.

Q. Do you remember saying: "I know the bell on the bob was ringing as it was coming down the hill, and I can not say whether or not the motorman rang his gong"? A. I don't remember that exactly.

Q. I will just show you the three sheets of paper and ask you if you recollect that—if that is your signature to that statement (shown to

witness)? A. That is my statement; yes, sir; I think that is my statement.

Q. Is it right, is it correct? A. As nearly as I can remember. Fourteen months have elapsed; it is hard to remember.

Q. Then you thought at that time that the boy had given the wrong signal? A. I don't know.

Mr. Weinberg: It does not appear that this witness knows what those signals were.

The Court: No, the question is what she then thought.

Q. You thought at the time that the boy had given the wrong signal, that the track was clear, when it was not, did you not? A. I must have thought so.

Q. Because you so stated? A. Yes.

Q. And signed the statement? A. Yes.

Q. Your recollection of what occurred that night was better, naturally, then, when you made this statement, on the 14th day of February, than it is today, after this length of time? A. My recollection of it is very vivid; it was a very horrible affair; it is very vivid.

Q. But you say your recollection in February, 1910, must have been much clearer than it is today, do you not? A. It may have; I couldn't say.

Q. You now say, on reflection, that the gong of the street car was ringing as it approached Montclair avenue? A. I think it was.

RE-DIRECT-EXAMINATION by Mr. Weinberg:

Q. Your statements this morning, as you have given them in court, Miss Farrell, are they statements of fact and are they true? A. They

are as nearly as I can remember the facts of the case, Mr. Weinberg.

Q. This statement from which extracts have been read—

Mr. MacSherry: I read all the statement.

Mr. Weinberg: When was it made?

Mr. MacSherry: February 10th.

Q. Those statements were made where? A. At my home.

Q. I presume Mr. Bodecker asked you questions? A. He did.

Q. And you gave answers? A. I did.

Q. They are not so stated in this statement, are they? A. No.

Q. In the form of question and answer? A. No.

Q. And he was doing the writing? A. Yes.

Q. And he formed this phraseology himself, did he? A. A portion of it; I don't know how much of my answer he took down, but a portion of it was his question.

Q. And after the statement was completed you signed it? A. I did.

Q. Do you know whether you read it all over? A. I don't remember whether I read it all through or not. My time was limited when Mr. Bodecker was there, and I don't remember whether I read it all or not.

Q. You said in there that you screamed at the motorman? A. I did.

Q. How far away was the car at that time? A. Well, it was either on the south crosswalk—I know that I was waiting, expecting him to stop, and he didn't, and when I saw that he didn't stop I screamed.

Q. And he was then on the south crosswalk? A. I think so.

Q. What portion of the car? A. I don't know; I think about the forward part of the car, the trucks, was at the south crosswalk.

Q. When you saw that he was not going to stop you screamed? A. Yes, when I saw he was not going to stop.

Q. Did you do anything besides scream? A. I didn't do anything; I couldn't.

Q. Did you show yourself there in the street? A. I was standing there; anybody could see me.

RE-CROSS-EXAMINATION by Mr. MacSherry:

Q. In order that there can be no discussion about it, Miss Farrell, will you be good enough to look at these three pages signed by you and tell me if there is anything there that is not correct (shown to witness)?

Mr. Weinberg: What do you mean by "not correct"?

Mr. MacSherry: Not true.

Mr. Weinberg: I do not understand that the purpose of these statements is to show anything else but contradictions here. To verify this statement and put it in would be putting in so much evidence in writing of a witness.

A. I think the word "dark" is used here where I used "dusk."

Q. Anything else?

The Court: There is nothing now before the Court. Therefore I do not rule on anything.

Mr. Weinberg: I object to it.

The Court: I did not catch your objec-

tion; I did not know you made an objection.

Mr. Weinberg: Yes, sir; I did. I object to the witness examining the statement in answering this question—verifying this statement.

The Court: I overrule the objection. Of course, the statement is not evidential.

Q. Well, is that correct? A. The main incidents of it are correct, Mr. MacSherry.

FREDA LYNCH, sworn in behalf of plaintiff:

Direct-examination by Mr. Weinberg:

Q. Mrs. Lynch, you are the mother of Mildred Lynch? A. I am.

Q. And have been appointed as next friend of Mildred Lynch? A. I am.

Q. In place of your husband, Charles Lynch, deceased? A. I am.

Q. And Mildred is how old? A. Thirteen.

Q. When was she thirteen? A. The 25th of April.

Q. Of last year? A. Yes.

Cross-examination waived.

Plaintiff rests.

Defendant's counsel moves that plaintiff be nonsuited on the following grounds:

(1) That there is no proof of negligence on the part of the defendant company.

(2) That there is proof of contributory negligence on the part of the plaintiff.

(3) That the bobsled in question was a public nuisance and that the plaintiff participated in the nuisance, and so was injured.

(Counsel argue.)

Charge

ADAMS, J.

The motion is to nonsuit.

The declaration alleges that the plaintiff while seated upon a bobsled, which was lawfully crossing Mt. Prospect avenue at its intersection with Montclair avenue, in the City of Newark, was injured by a collision of the bobsled with a car of the defendant company, and that the collision was caused by the negligent operation of the car.

On a motion to nonsuit two questions arise in this case. First, is there evidence tending to show that there was want of due care in the operation of the car which was a cause of the accident? Secondly, does it appear that the plaintiff by her own fault contributed to her injury? In this question the word "fault" is used, not in a popular sense, but in a legal sense. There is evidence to go to the jury on the question whether the car was operated with due care. I pass at once to the other question, which is this: Does it appear from the plaintiff's own case that her own fault was a proximate, direct and immediate contributing cause of the injury? The declaration alleges that the bobsled was lawfully crossing Mt. Prospect avenue. If this be true, the plaintiff was not at fault. Is it true? The decision of the motion to nonsuit turns on the answer to this quesion.

An act which seriously interferes with the legitimate use of a public highway and endangers the safety of travellers upon it is a public nuisance. One who voluntarily and intelligently participates in such an act is, in a legal sense, a wrongdoer. A person incapable of legal discretion, for example, of immature years, such as a

baby, would not be within the rule. Another definition of a nuisance is quoted in the case of *Mayor, &c., of Wilmington vs. Vandergrift,* Court of Errors and Appeals of the State of Delaware, decided in 1893, and to be found in 29 *Atlantic Reporter, page* 1047. The opinion contains this statement: "A learned writer on the subject defines a common or public nuisance 'to be an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of a right common to all.' "

The evidence shows that the bobsled on which the plantiff, a girl not quite twelve years old, with several other persons, was seated was between ten and twelve feet long, constructed of oak and spruce, with some metal, and weighed about 100 pounds. The sled and its load together at the time of the accident probably weighed about 800 pounds, more or less. It was equipped with no apparatus with which it could be stopped or its speed diminished. It had a bell to give notice of its coming, and this was in use. The direction of its course could be controlled and changed by the use of a steering wheel, although the liabilty to skid at high speed made this a somewhat uncertain reliance.

On January 7, 1910, this bob, thus loaded, was in use by its owner, a young man by the name of Walter Winterbottom, who took successive parties down the hill for pleasure. The plaintiff at the time of the accident, which occurred at dusk, was on her third trip that afternoon upon the bobsled. She was familiar with the hill and with coasting upon it. The course over which the bobsled ran was on Montclair avenue, a straight

public highway, crossed by other streets at right angles, which descends rapidly toward the east from Ridge street to Clifton avenue, and then to Mt. Prospect avenue—a total distance estimated by one of the witnesses at from 200 to 250 yards and by another witness at about 500 feet. The grade then flattens. This bobsled, starting at Ridge street, would, under the conditions existing at the time of the accident, about reach Summer avenue, which is two blocks east of Mt. Prospect avenue and about 500 feet below it, thus covering four blocks in all, about a total of 1000 feet. There had been a heavy sleet storm just before the day of the accident, which had given to the hill an icy coating, favorable to high speed in coasting. It is apparent that the speed attained by the bob at Mt. Prospect avenue, which was a half-way point, was very great. The collision occurred at Mt. Prospect avenue, where a double track road of the defendant company crossed Montclair avenue. The collision was between the bobsled and a north-bound car. Several of the parties on the bob was injured, among them the plaintiff.

The cases which I have consulted (and I have read all that I could find) do not say that coasting on a public highway is always and necessarily a public nuisance. Some cases say, and I agree with them, that it depends on circumstances. I refer to three casese in which this view is taken: *Hutchinson vs. Concord,* 41 *Vermont,* 272; *Faulkner vs. City of Aurora,* 85 *Indiana,* 130; *Burford vs. Grand Rapids* (a Michigan case), 18 *N. W. Rep.* 571—each case decided by the Supreme Court of its state.

The streets are as open to sleighs as to wheeled vehicles. Nobody thinks that it is a public nuisance to coast downhill on a bicycle, which is

a wheeled vehicle, if the bicycle is absolutely under control, and I see no reason why it should be thought a public nuisance to coast downhill upon runners, provided it is in the power of the person who guides the vehicle to check and to stop it if occasion requires; but it seems to me plain that it is an example of an improper, and therefore an illegal, use of a public highway in a great city to launch upon it a travelling body of great weight, which attains under the law of gravity very high speed, and which is incapable of control as to its speed, and capable only of somewhat imperfect control as to its direction. It is inherently and essentially a wrongful act; and the quality of the act is not altered by giving notice of it or by improvising some partial provision at some point for the protection of persons rightfully on the public highway. Such notice may cast upon a traveller the obligation of special care for his own safety; it can have no further legal effect. The case, therefore, does not present, to my mind, the question whether the plaintiff was negligent, in the ordinary and proper sense of that word, but whether she voluntarily, intelligently, and most unfortunately for herself, participated in an act in itself unlawful.

In *Joyce on Nuisances,* at *Section* 44, it is said that "Negligence is not ordinarily an essential element where the subject-matter under consideration is a nuisance. The essential feature of the act is its wrongful character in creating or maintaining a nuisance, and negligence, except in such cases, is not material. No degree of care will excuse the creator of a nuisance." I have looked at the case cited by the learned counsel for the plaintiff, the case of *Chicago & Rock Is-*

land vs. Still, 19 *Illinois,* 449, which does not, as I see, apply to this case. I have also looked at the *Trautwein* case, upon the question of the plaintiff's liability for participation. I think there is a distinction between the *Trautwein* case and the case of *White vs. Long,* there cited, and this case. The *Trautwein* case involved an injury received while traveling on Sunday, and it was objected to the plaintiff's right to recover that it was unlawful to travel on Sunday, and therefore he could not recover—the Court very properly saying that, while it was true that if the plaintff had not travelled on Sunday he would not have been hurt, nevertheless the act of travelling was a condition and not a cause of the injury. But in this case the act of travelling was a proximate, direct and immediate cause of the injury; and that fact, in my opinion, distinguishes this case from the case of *Delaware, Lackawanna & Western Railroad Company vs. Trautwein, 23 Vroom,* 169, and the case of *White vs. Long,* there cited.

My conclusion, then, is that the illegal quality of the act, in the performance of which the plaintiff participated, and the doing of which was one of the proximate causes of her injury, disentitles her to recover in this case. The motion to nonsuit is therefore granted.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.
(Seal)

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Plaintiff's counsel prays an exception to this ruling of the Court.

Exception allowed; let it be sealed, and it is sealed accordingly.

FREDERIC ADAMS,
Circuit Court Judge.
(Seal)

New Jersey Court of Errors and Appeals

MILDRED LYNCH, BY NEXT FRIEND, *Plaintiff in Error,* vs. PUBLIC SERVICE RAILWAY COMPANY, *Defendant in Error.*	*In Tort.* *On Writ of Error.*

Brief for Defendant in Error

The accident upon which the above cause is based occurred at about 5:30 o'clock in the afternoon of January 7, 1910, in the City of Newark, at the corner of Montclair and Mt. Prospect Avenues. Mt. Prospect Avenue, one of the principal residential streets of the city, runs north and south, and is intersected by Montclair Avenue running east and west. The plaintiff, who was in her thirteenth year, was one of a number of persons riding on a bobsled which slid down hill from west to east and came into collision with a northbound Mt. Prospect trolley car on Mt. Prospect Avenue. The cause was tried at the Essex Circuit on March 7, 1911, before Mr. Justice Adams and a jury, and at the end of the plaintiff's case a nonsuit was entered by direction of the trial judge. The opinion of Judge Adams granting the nonsuit is to be found on pages 195 to 199 of the printed book. The trial judge refused to grant the motion for a nonsuit on the ground that there was no evidence of negligence on the part of the defendant, but did grant the motion on the ground that plaintiff did not sustain that part of

her declaration which alleged that she was legally on the highway. The allegation of duty contained in the declaration is that the defendant should so run its cars "as to avoid colliding with and running into persons lawfully riding along said public street, and crossing the said tracks thereon, with sleds and other vehicles," etc., and that the defendant was negligent in running "into a certain bobsled upon which said plaintiff was then and there seated, and which bobsled was then and there *lawfully* crossing said Mt. Prospect Avenue."

We claim that the nonsuit should be sustained not only for the reason given by the trial judge, but also because the defendant was free from negligence, as urged at the trial, and for other reasons as set forth in this brief.

STATEMENT OF THE CASE.

Mt. Prospect Avenue, on which the accident occurred, is one of the principal residential streets of the City of Newark, is 100 feet wide (p. 154), has two electric car tracks, upon both tracks of which electric cars were running at the time of the accident under ten minutes headway (p. 146), so that a car crossed Montclair Avenue, at the intersection of it with Mt. Prospect Avenue where the accident occurred, on an average of every five minutes.

Montclair Avenue is not so much built up as Mt. Prospect Avenue, and on the southwest corner of the intersection of these two avenues there is a vacant lot, and in this lot there is a hill or rise in the ground (p. 163) which, to some extent, interferes with a view of Montclair Avenue.

A day or two before the accident occurred there had been a sleet storm so that Montclair Avenue was in a very slippery condition. The coasters started from Ridge Street (p. 12) two blocks west of Mt. Prospect

Avenue, and ended their ride at a street two blocks east of Mt. Prospect Avenue.

The bobsled upon which the plaintiff was riding was 10 to 12 feet long (p. 115) and weighed 100 pounds (p. 117), had no light (p. 132), had no brake (p. 131); it was fitted with a steering apparatus but could not be turned to any extent without skidding (p. 141); and on the sled there were five to ten persons, ranging in age from 12 to 20 years (p. 119).

On the day of the accident, January 7, 1910, the sun set at 4:49 in the afternoon. This does not appear in the testimony, but we presume that the court will take judicial notice of such fact.

I.

The Bobsled and its occupants were unlawfully on the street.

We claim that at the time of the accident the bobseld and its occupants were, under the conditions above recited, unlawfully upon the street, and that to launch a vehicle such as this bobsled, the total weight of which with its occupants being in the neighborhood of 800 pounds, (allowing about 100 pounds for each occupant) three-quarters of an hour after sunset, without a light or brake or adequate steering facilities, was a nuisance and unlawful, as it endangered the lives, safety, health and comfort of the traveling public, and obstructed the public "in the exercise or enjoyment of a right common to all."

In support of this contention defendant submits the following authorities:

City of Wilmington vs. Vandegrift, 29 Atl., 1047. This was a case decided by the Supreme Court of Delaware in 1893, wherein the plaintiff sought to hold the City of Wilmington liable on account of his being injured by being struck by a coaster in the City of

Wilmington, the contention of the plaintiff being that the city owed the plaintiff the duty to prevent coasting. In relation to whether or not coasting was a nuisance the court said: "We have no doubt that it was, for it answers to and contains all the elements necessary to constitute a nuisance indictable at common law and punishable under the law of this state. A learned writer on the subject defines a common or public nuisance 'to be an unlawful act or omission to discharge a legal duty, which act or omission endangers the lives, safety, health, or comfort of the public, or by which the public are obstructed in the exercise or enjoyment of a right common to all.' Seventh street is a well-known public highway in the city of Wilmington, and for the purpose of travel the people had a right to the free and uninterrupted use thereof. The occupation of said street by persons indulging in the sport of coasting, as described in the declaration, was unlawful, independently of any ordinance; and certainly endangered the lives and safety of the people and constituted a serious obstruction to the public in the exercise and enjoyment of a common right."

This case held that the city had done all that it was required to do in passing an ordinance providing for penalties for commissions of nuisances.

Rensch vs. Licking Rolling Mill Co., 80 S. W., 1168, 118 Ky., 369, decided in 1904 by the Court of Appeals of Kentucky. It appeared that the plaintiff, coasting with others on a large sled, ran into a wagon negligently left standing on the street by the defendant. The accident occurred about 8:30 in the evening of January 5th, at Covington, Kentucky. The street had been used for coasting many evenings prior to the night of the accident. There was a demurrer to the petition and the court in sustaining the demurrer said: "The said street is constructed for public travel. Any use of the street which rendered it unsafe to the traveling

public is a nuisance, for the traveling public have a right to pass back and forth upon it and have a right to presume that it will be reasonably safe for this purpose. The large sled loaded with several persons, rushing rapidly over the ice down the declivity in the dark endangered the safety of other travelers upon the highway in its course. The purposes for which the street was made and for which it was used were inconsistent with said use. The sled loaded as it was, and run over the ice down the declivity gathering momentum as it went was *per se* a nuisance. *One who creates a nuisance and is himself injured thereby cannot recover.*"

Weller vs. City of Burlington, 12 Atl., 215, decided by the Supreme Court of Vermont in 1888, was a case where it was held that the city was not liable on account of an injury received by one run into by a sled. But the court has this to say in relation to coasting: "On the evening the plaintiff was injured several persons other than those whose sled injured him were coasting down Main Street and the street had been similarly used by many persons, mostly residents of the city, for three or more evenings within the last ten days; and the practice of coasting on the street had become and was a dangerous public nuisance."

Taylor vs. City of Cumberland, 20 Atl., 1027, decided in 1885 by the Maryland Court of Appeals, was a case in which the city was held liable on account of injuries sustained by reason of being run into by a coaster, on the ground of the city not using reasonable care to prevent coasting. It appeared that the street where the accident occurred had been used for coasting with bobs, etc., and that some fifty or sixty people would be coasting at the same time. In relation to this condition the court said: "This sport as described was a nuisance of a very serious character."

Schultz vs. Milwaukee, 49 Wis., 254, 39 Am. Rep., 799. In this case the Court has this to say in relation to coasting: "The coasting or sliding down Poplar street to the extent charged in the complaint was, while being indulged in, a grievous public nuisance which the city authorities ought to have prevented or suppressed."

Faulkner vs. City of Aurora, 85 Ind., 130. This case was decided in 1882 on a judgment on demurrer, where the plaintiff attempted to hold the city liable for injuries received by being struck by a coaster, the plaintiff claiming that coasting amounted to a defect in the highway. In relation to this claim the Court said (p. 139): "It is obvious that in the case before us the injury did not result from any defect in the highway. It was produced by the act of those *improperly and unlawfully* using the highway, which was at the time and but for the *unlawful* acts of those improperly using the street, in a reasonably safe and convenient condition for public travel." It will be noticed in this Faulkner case that the Court characterized coasting as "the act of those *improperly and unlawfully* using the highway."

Sheppard vs. Chelsea, 4 Allen, 113. In this case the plaintiff sought to hold the City of Chelsea because of being struck by a coaster. A verdict was directed for the defendant, and in sustaining this direction of a verdict Chief Justice Bigelow, speaking for the Court said: "It does not appear that the injury * * * was occasioned by the alleged defect in the way but, taking the view most favorable to the plaintiff, it is very clear that the accident happened in part from the *unlawful* or careless act of a third person." It will be noted that the Court used the word "unlawful" in connection with coasting.

The plaintiff in his brief on pages 12 and 13 cites several cases in support of his contention that the question as to whether or not sled riding in public streets

is a nuisance has been decided in several jurisdictions in the negative. These cases are as follows:

Burford vs. Grand Rapids, 56 Mich., 98, 18 N. W., 571.

Hutchinson vs. Concord, 41 Vt., 272.

Faulkner vs. City of Aurora, 85 Ind., 130.

Jackson vs. Castle, 80 Me., 119, 13 Atl., 49.

In the Burford case, decided in 1884, it appears that the City had authorized coasting on a certain street, and that one of the coasters ran into and injured the plaintiff's horse. Plaintiff contended that the authorizing by the city of a nuisance made it liable as though the injury was caused by its agents. On demurrer to the declaration the court held that it did not state a cause of action. It does not appear in the case what kind of a street it was on which the coasting took place, and it may well have been a street which was not being used as such, because the court says: "Streets are dedicated to the public which there may for many years be no occasion to improve for travel and may become for sometime mere open spaces for the sports and recreation of those who may see fit to use them." The court also says it seems eminently proper, if the street *is not put to other public use* that this diversion be allowed, if not expressly sanctioned.

Evidently the reason why the court sustained the demurrer in the Burford case appears to be, therefore, that in some instances coasting on the streets may not be a nuisance, as for instance where the street is not put to other public use, and we submit that had such facts been before that court as appear in our present case the judgment, very likely, would have been different, as the court recognized the fact that coasting may be a nuisance, and said that if it was a nuisance there would be much plausibility in the contention of the plaintiff, and perhaps, it should be accepted as sound.

It may be said in passing that in New Jersey a municipality cannot authorize the creation of a nuisance in the highway. Opdycke vs. Public Service Railway Co., 76 Atl., 1032.

In the *Hutchinson* case the only thing that was decided was that towns are not liable on account of injuries received by travelers on the highway being run into by coasters under statutes making towns liable for injuries received on account of defects in the highways, and the verdict directed for the defendant was affirmed; but as to the opinion of the Supreme Court of Vermont in relation to coasting, see the case of Weller vs. Burlington, cited above.

The *Faulkner* case was also an action against a city, based on an injury received by a traveler being run into by a coaster, the action being based on the statutes making towns liable for injuries received on account of defects in the highway. There a judgment for the defendant on demurrer was sustained by the upper court, and, in giving its opinion sustaining the demurrer, the court, as stated above in this brief, characterized coasting as "the act of those improperly and unlawfully using the highway." This Faulkner case also cites the Schultz case heretofore referred to, in which the court characterized coasting as "A grievous public nuisance."

The *Jackson* case is based on damage resulting from a horse running away, due to fright occasioned by coasters. The declaration alleged merely the fact that defendant was sliding down the street and making a loud noise by outcries and hallooing. The court said: "Sliding in a city accompanied with boisterous conduct calculated to frighten horses lawfully traveling therein may be a public nuisance; but there is no such averment in the declaration. * * * If the plaintiff would recover he must show negligence or unlawful conduct to *be the proximate cause of his injury.*"

We, therefore, submit that none of the cases cited by the plaintiff supports his contention that the courts deciding the cases referred to decided that sled sliding in a public street was not a nuisance. Thompson in his Commentaries on the Law of Negligence, Volume 5, Section 5867, discusses the question of the liability of the municipality for damages resulting from collisions of coasters with persons using the public highways, due to the municipality's authorizing, or permitting, or failing to prevent the use of the highways for coasting purposes. In the treatment of the topic, coasting is spoken of as a nuisance, and no suggestion to the contrary appears.

II.

The plaintiff being unlawfully on the street, is not entitled to recover.

In the case of Guinn vs. B. & A. Telephone Co., 43 Vr., 276, the telephone company sought to set up the defense to an action involving an injury to the plaintiff by coming in contact with a telephone wire on private property by saying that the plaintiff was a trespasser on the land of a third person on whose land the wire was strung; the wire had become loosened from its fastenings and swung loose. It was held that the fact that the plaintiff may be a trespasser against the land owner involved no wrong to the defendant, but the court says on page 278: "The right to maintain the pole and wire did not involve the right to have the wire swing loose or occupy another portion of the field. Whoever interfered with the pole and wire in place might be a trespasser, but he would not be a trespasser upon the defendant's rights if he came in contact with the wire elsewhere."

We contend in the present case that the plaintiff interfered with our rights upon the public street, and, therefore, as against us she was a trespasser, and the

defendant's duty to the plaintiff was such as is due to any trespasser, to wit, merely to refrain from willfully injuring her.

It might be added that the sled containing the plaintiff actually crossed two metal rails, comprising one track, property of the defendant, that was lawfully in the street, and that the collision occurred only through the sled entering, or attempting to enter, the zone of travel of the defendant's car at a time when that zone of travel was occupied and belonged exclusively to the defendant. It might be argued that although at the moment of such actual private trespass no duty of care was owed by the defendant to the plaintiff, still a duty of care might have arisen before such actual private trespass took place; but under a principle similar to that in the doctrine of trespass ab initio, we submit that this was not so.

If a man who lawfully enters a building becomes a trespasser from the time he has entered, by reason of a subsequent unlawful act, then certainly a man who casts a missile at our property would be a trespasser as to us, not merely from the time the missile touched our property but from the time the missile was launched.

In the case of Dudley vs. Northampton Street Ry. Co., 23 LRA (NS) 561, (202 Mass., 443, 89 N. E., 25,) decided by the Supreme Court of Massachusetts in 1909, it appears that the unlicensed automobile of the plaintiff came into collision with the street car of the defendant. There was a direction for the defendant by the trial court, which direction was sustained by the Supreme Court. In this case there is a discussion of the distinction between an unlawful act of the plaintiff which would contribute to the accident and an unlawful act of the plaintiff which was merely a condition and not the cause of the accident. In our present case we submit that the unlawful act in which the plaintiff participated was one of the moving and vital causes of

the accident, and appears to be to us a much stronger instance of where the unlawful act is the cause of the accident than the case where an unlicensed automobile is being operated upon the highway.

As between the relative rights of travelers lawfully using the highway and travelers unlawfully using the highway, the court in the Dudley case has this to say (p. 563):

> "The plaintiff as a mere trespasser upon the highway was there not only against the owner of the soil and so liable to an action by him but also against the rights of all other persons who were lawfully using the highway. He was violating a law made for their protection against him; accordingly he was a trespasser as to them. It follows that the defendant, which was lawfully using the highway with its case, owed to the plaintiff no other or further duty than which it would owe to any trespassers upon its property."

In the case of *Chase vs. New York Central R. Co.*, and *Hancock vs. same,* reported in 94 N. E., 377, decided by the Supreme Court of Massachusetts, March, 1911, it appeared that an unlicensed automobile was damaged by a train of the defendant at a crossing, and also the occupants of the automobile were injured. The court, by Chief Justice Knowlton, after discussing as to whether or not the unlawful act of running an automobile without a license contributed to the injury says: "While in the cases just supposed it might be held that the unlawful part of the conduct taken by itself was not a cause of the injury * * *, it is not so in the present case. Under the decisions, the operating of an unregistered automobile is decided to be unlawful in every feature and aspect of it. Everything in the conduct of the operator that enters into the propulsion of the vehicle is under the ban of the

law. In going along the way and entering upon the crossing the machine is an outlaw. The operator in running it there and thus bringing it into collision with the locomotive engine is guilty of conduct which is permeated in every part by his disobedience of the law, and which directly contributes to the injury by bringing the machine into collision with the engine."

The case of *Bourne vs. Whitman,* 95 N. E., 404, is a later case than the Chase case, decided by the Massachusetts Supreme Court in May, 1911, in which the trial judge instructed the jury that the defendant, who was running an unlicensed automobile, was a trespasser upon the highway and that the plaintiff owed him no duty of care. Chief Justice Knowlton in speaking of an unlicensed automobile upon the highway, and the relation of its owners and occupants to other travelers upon the highway says: "That the having of such a machine in operation on a street without a license was the very essence of the illegality and that the illegality was inseparable from the movement of the automobile upon the street at any time, for a single foot; that in such movement the machine was an outlaw and any person on the street, as an occupant of the automobile, participating in the movement of it was, for the time being, a trespasser."

In the case of Menger vs. Laur, 26 Vr., 206, decided by our Supreme Court in 1893, it appeared that the plaintiff set up a surveyor's instrument in the roadway of a public street and that the defendant ran into and injured it as he was driving along that street. It also appeared that at the time of the accident the defendant's attention was taken up by some houses on the side of the street, for the roofing of which he had contracted. The street was unobstructed except for the plaintiff's instrument. It was held that the instrument standing in the traveled way of a public street was a nuisance and that it was an act of negligence on the part of the employe of the plaintiff to leave the in-

strument in the street, and that no recovery could be had for injury to it.

In the case of Brown vs. De Groff, 21 Vr., 409, decided by our Court of Errors and Appeals in 1888, it appears that the plaintiffs planted oysters in natural clam beds and that the defendants in taking clams as they had a right to do, injured some of the plaintiffs' oysters. It was held there could be no recovery on the part of the plaintiff. The Court said page 411: "The planting of these oysters constituted a public nuisance and unless it could be abated by the defendants so far as was necessary to enable them to enjoy their right of fishing, that right will be subordinated to and swept away by a claim which has its foundation in a trespass upon the public domain"; and again: "The individual citizen may not lawfully abate every public nuisance; his right to abate arises only when the nuisance becomes an obstruction to the exercise of his private right. It makes no difference that the right is one which all other citizens may enjoy in common with himself; otherwise the traveler on the public highway could not remove the barrier which hindered his further progress."

The rule is well stated by Chief Justice Shaw, in Brown vs. Perkins, 12 Gray 100: "The true theory of abatement of nuisances is that an individual citizen may abate a private nuisance injurious to him when he could also bring an action; and also when a common nuisance obstructs his individual right, he may remove it to enable him to enjoy that right, and he cannot be called in question for so doing."

Again page 412 in the Brown case the Court says: "If a carriage is left in a highway so as to constitute a public nuisance, an injury unnecessarily done to it by the carelessness of one in driving along the public way would be actionable, but if the injury is unavoidably done in the reasonable use of the right of passage, there could be no recovery."

Page 413: "If the traveller, in the public highway, found it necessary, in the pursuit of property, which he might lawfully take and remove, to drive where the carriage was unlawfully left, he would not be responsible for damage unavoidably done."

The expression "unavoidably done" must mean any damage not willfully done by the traveler merely for the purpose of doing injury and that the traveler would not be liable for any injury necessarily done if done "in the pursuit of property which he might lawfully take and remove."

According to the doctrine laid down in this Brown case, we submit that the nuisance participated in by the plaintiff had become, as to this defendant, a private nuisance in so far as it interfered with the running of its cars over its tracks, and that defendant, under such circumstances, would have a right to abate it. We do not claim that we would have a right to deliberately abate it by causing grievous bodily injury to those who participate in the nuisance, but that in the absence of actual knowledge of the presence of the bobsled this defendant ought not be held liable for the personal injuries which unintentionally resulted in the defendant's pursuing its right of passage along its tracks.

III.

The nonsuit was proper as plaintiff could not maintain an action to which she must trace her right to recover through her own breach of the law.

In order to prove her case it was necessary for the plaintiff, of course, to show how the accident occurred, and the conditions and circumstances surrounding it, and in showing these things it appears that she herself was committing a breach of the law which would prevent her recovery.

In the case of Gregg vs. Wyman, 58 Mass., 322, de-

cided in 1849, it appeared that defendant injured the plaintiff's horse while driving it for pleasure on Sunday. It was held there could be no recovery on account of the illegality of the defendant's act, and while we do not contend that the mere driving of a horse on Sunday contrary to a statute would prevent a recovery, the general principle laid down in that case is applicable to our present case and is as follows: "It is also a well settled principle of law that if the plaintiff cannot make out his claim without showing an illegal act on his own part he cannot maintain his action. If the plaintiff's own illegal act forms one of the links in the chain of title, that is a defective link, which cannot hold the chain together and the whole must fall." The court in the Gregg case quotes from the case of Wheeler vs. Russell, 17 Mass., 258, as follows: "No principle of law is better settled than that no action will lie upon a contract made in violation of a statute or of a principle of the common law."

In the case of Way vs. Foster, 83 Mass., 408, is also one where the plaintiff sought to recover for the injury to his horse, which he had rented to the defendant on Sunday, in which the court has this to say in relation to the law that one cannot recover in an action where it is necessary to prove his case by proving his own illegal act: "But the general doctrine that courts of law will not permit a party to prove his own illegal acts in order to establish his case is well established. They cannot listen to such proof consistently with the respect which they owe to the law and to themselves as its officers. Nor has the party who acts in defiance of law any just claim to its agency in obtaining redress for the damage he may have sustained in the course of his illegal transactions."

"It is said the doctrine is harsh in its application in this case but it is no more harsh than in the common case of the conveyance of property made without consideration and for the purpose of hindering creditors in

the collection of their debts. In such cases the vendor often loses his whole estate because the law will not aid him to recover it."

Whether or not this doctrine was properly applied in these cases, involving driving on Sunday (these cases have been overruled in Massachusetts) undoubtedly the doctrine as stated is correct, and has been applied in our own state in relation to fraudulent conveyances of property. Eyre vs. Eyre, 19 N. J. Eq., 42; Walker vs. Hill, 22 N. J. Eq., 513; Ruckman vs. Conover, 37 N. J. Eq., 583.

And the doctrine is applicable as well to suits in law as to suits in equity: Church vs. Muir, 33 N. J. L., 318; Eisner vs. Heileman, 52 N. J. L., 378.

In our state the doctrine that the violation of the Sunday law will prevent the recovery of damages sustained by one traveling for a purpose other than that of necessity or charity, for injuries received while so traveling, on account of the negligence of another, has been considered and expressly repudiated in the cases of D., L. & W. R. R. Co. vs. Trautwein, 23 Vr., 169, decided by this court in 1889, and in the case of Newbury vs. Luke, 39 Vr., 189, decided by the Supreme Court in 1902.

The reason given in both these cases why the fact of the plaintiff's violation of the Sunday law was no defense was because such violation was not a cause of the injury. In the Trautwein case Mr. Justice Depue, speaking for the court, says in relation to the violation of the Sunday law that "It was only the occasion for an injury by the defendant's wrongful act, and hence her wrongdoing did not contribute to the injury in such a sense as to deprive her of her right of action; it was merely a condition and not a contributory cause of the injury." And the court quotes with approval from the case of White vs. Lang, 128 Mass., 598, as follows: "If a person, who is at the time acting in violation of law, receives an injury caused by the wrong-doing or neg-

ligent duty of another, he may recover therefor if his own illegal act was merely a condition and not a contributory cause of the injury." And in the Luke case Mr. Justice Pitney, speaking for the court, says: "The Sunday hiring and the Sunday driving happened to furnish the conditions under which the death of the horse was occasioned. But its death was the direct and natural result of the overdriving and abuse, and of these alone. These causes would have produced the same result if they had occurred on any other day of the week, just as they would have produced it had they occurred without any contract of bailment whatsoever."

Now, we insist in our present case that the illegal act of running the bobsled down the hill at express train speed across the intersecting streets, without a light and without any means of stopping it or checking its speed, was one of the vital and proximate causes of the accident.

The distinction between a cause and condition is well illustrated by the charge to the jury by Mr. Justice Depue in the case of Dickey vs. Kurzenberger, 8 N. J. L. J., 306, in which it appeared that the plaintiff's wagon while standing on the wrong side of the road for the purpose of delivering goods was negligently run into and struck by another person driving on that side of the street, and it was sought to defeat the action by showing that plaintiff's team was on the wrong side of the street. Mr. Justice Depue said: "The law of the road is that where two persons are engaged in traveling on the highway and meet, each must turn to the right in order to allow the other to pass; and if an accident happens because of a person being on the wrong side of the road he is without redress." So that it would appear that a person traveling on the wrong side of the road cannot recover for being run into by a person traveling on the proper side of the road. When the team was merely standing on the wrong side of the road it formed only a condition of the accident, but when it was in motion on the

wrong side of the road it was a cause of the accident, for which no recovery should be allowed even though the defendant was negligent.

IV.

The defendant was not guilty of negligence.

In the first place it is claimed by the plaintiff that for several hours before the accident occurred, the defendant had stopped its cars before crossing Montclair Avenue in order to give the coasters the right of way. There is no evidence, however, that this was done with the knowledge or by the instructions of the defendant company, and so far as appears the stopping of cars was the individual act of the motormen.

The acts of the motormen in stopping cars before crossing the street previous to the accident could no more make this defendant liable because the particular car involved in the accident did not stop, than the act of the conductors in holding trains for persons using a path leading to the track near a station, involved the liability of the railroad company for injuries received by a person desiring to become a passenger, while crossing the track.

> Deickman vs. D., L. & W. R. R. Co., 79 Atl., 310, decided by this Court in 1911.

In any event, the stopping of the cars was not an act of the company upon which the coasters depended, because it appears to be the claim of the plaintiff that "A policeman for a short time and a number of boys during the balance of the time signalled the cars to stop." And it seems that Martin, one of those who had been coasting but who was signalling the sleds at the time of the accident, ran south some distance from the corner of the two streets for the purpose of signalling the car which figured in the accident.

The very fact that the motorman of the car which was in the accident did not stop his car as it is claimed other motormen did, would as well indicate that the cars were being stopped by the individual act of the motormen and not through instructions from the defendant, as it would indicate that the particular motorman of the car which figured in the accident was disobeying orders in not stopping. It is fair to assume that if he did not stop he had received no instructions to stop, and that the company had promulgated no rule in relation to stopping. Of course, it would be unreasonable to expect the defendant company to stop its cars before crossing every street where coasting might be going on, as otherwise cars would have had to stop at every street crossing Mt. Prospect Avenue on which there was a grade sloping toward that avenue. Certainly if there was no actual knowledge on the part of the motorman that there was danger ahead, he was not obliged to anticipate the illegal act of the plaintiff.

When the sled was one-third of the way east of Clifton avenue between that avenue and Mt. Prospect avenue, the front of the car was within a few yards of the southerly crossing of Mt. Prospect avenue (p. 140) and as it appears (p. 169) that the distance between these two avenues is 280 feet, the sled was about 187 feet from Mt. Pleasant avenue when the car was a few yards from the southerly crossing (p. 140). It also appears that Mt. Prospect avenue is 100 feet wide (p. 154) and as the tracks are in the middle of the street, at the time the car had practically reached Montclair avenue the sled was distant from the track on which the car was running, at least 187 feet plus 50 feet or 237 feet.

Again, when the rear of the car was at the southerly crossing, thus blocking Montclair avenue, the sled was 50 feet from Mt. Prospect avenue, or about 100 feet from the car track; see testimony of Winterbottom (p. 134) the owner and operator of the sled as follows: "Q. Now, when you came down and you saw this trol-

ley car was going across the street, why did you not turn to the right instead of the left and go around the rear of the car? A. Two seconds is a long (short) time to think of all these things. I thought I had better chance to go in front of the car than I did the rear; that is why I went that way. Q. You were fifty feet away from the corner of Mt. Prospect avenue when this trolley car was blocking the way in front of you and moving, were you not? A. About fifty feet. * * * (p. 144) (Re-Direct Examination.) Q. Just a question or two, Walter. I do not know whether you were asked in all this maze of questions when you started to turn your bob where the trolley car was. Where was the trolley car when you started to turn your bobsled at a point 50 feet away from Mt. Prospect avenue? A. The rear of the trolley car was at the south crosswalk. Q. At the time you started to turn? A. Yes, sir."

Certainly under the rule laid down in the case of Knox vs. N. J. St. Ry. Co., 70 N. J. L., 348, the defendant was not negligent in our present case. In the Knox case the plaintiff was the driver of a fire truck and in attempting to avoid a trolley car which, traveling at a reasonable speed had first reached the crossing, the truck, in attempting to turn into the street on which the car was running, struck the car and the plaintiff was injured. The court held a nonsuit was proper, and Chief Justice Gummere, speaking for the court, says: "The rule of the road with relation to vehicles approaching a street crossing, is that the first to reach the crossing traveling at a reasonable rate of speed, has the right to pass over first * * * this rule is a part of the common law of the state and applies to vehicles of every character."

Whatever may have been the speed of the car when it was a block or more away from Montclair avenue, when it approached that avenue it was proceeding at a reasonable rate of speed. Martin says (p. 77) that when it was some distance from Montclair avenue it slowed up

for him to get off the track and then started up again. Winterbottom, who was steering the bobsled, testified (p. 122) that the car approached the crossing at a moderate rate of speed.

It also appears that the motorman was ringing his gong as the car approached Montclair avenue (p. 183-184).

So far as any warning to the motorman is concerned that there was danger ahead, because of the signal given by Martin, this signal only served to distract the attention of the motorman from the bobsled; Martin says that the car slowed up as he stood on the track raising his arms and that after he got off the track the car continued on its way. Under these circumstances, it would appear as though the motorman had a right, having a clear track ahead, to proceed. It was the duty of the motorman to use care in not striking Martin who was on the track, just as it was the duty of the motorman in the case of Perkins vs. Trenton St. Ry. Co., 78 Atl., 666, decided by our Supreme Court in 1911, where it appeared that a flock of hens crossed a track in front of the car, to look over the side of the car to see if any of the hens had got into the running gear of the car. The court held that it was strictly within the line of his duty to do this, and he was not negligent in not seeing an obstruction ahead.

Even if Martin's signal, given when the car was some little distance from Montclair Avenue, should have put the motorman on his guard, can it be said that the motorman would have no right to proceed with his car if looking ahead and a reasonable distance on each side of the track, he found everything clear? Even when the head of the car got to Montclair Avenue was it the duty of the motorman to look up Montclair Avenue a distance of 237 feet from the car track in order to ascertain what travelers were on that street traveling toward the track? If such is the law then the rule heretofore so well settled, that the rights of the defendant and the rights of others of the traveling

public in the streets are equal and reciprocal, is no longer law.

Whatever the motorman's duty may have been regarding ordinary vehicles, was it his duty to observe this dark, low-lying object in the cross-street in the dusk at such a distance from his track?

The "last clear chance" doctrine does not enter into this controversy unless the motorman actually knew of the presence of the bobsled, and that it could not be stopped, and the mere fact that he might have discovered the plaintiff's predicament is not sufficient to charge him with the duty of trying to avoid the consequences of the plaintiff's wrongful act any more than it was the duty of the motorman in the case of Young vs. Camden, &c. Ry. Co., 60 N. J. L., 193, to avoid running into the plaintiff with his car; the plaintiff at the time of the accident was crossing a trestle belonging to the railway company, and it was held that no duty arose from the defendant toward the plaintiff until the motorman actually knew of the presence of the plaintiff in his dangerous position. As the plaintiff in this case was unlawfully on the street, and subsequently came into contact with our car, and committed a trespass as against us, she was a trespasser against us from the minute the sled started from the top of the hill, and, therefore, the doctrine of the "last clear chance" could have no application until we actually knew of her dangerous position.

In the case of Rensch vs. Licking Valley Rolling Mill Co., (supra) where the plaintiff on a bobsled was injured by the sled running into a wagon negligently left standing in the street, in which the plaintiff claimed "that the defendant by exercising ordinary care would have known of the danger of leaving the wagon in the street," it was held that "actual knowledge must be shown."

See also the case of Thompson vs. Bridgewater, 27 Mass., 187, in which it appeared that the plaintiff's

horse was drowned by being swept off a causeway which was covered with water, and it appeared that from an eminence some distance from the causeway the condition of the causeway could have been seen by the traveler. In relation to this fact the court said: "The carelessness supposed to be sufficient to defeat the right of action is in not having seen from the eminence on the approach to the causeway that it was not possible without hazard; but surely travelers are not required to be constantly on the lookout for difficulties which they have a right to presume will not occur." And we insist in our present case that the motorman of the car which figured in the accident was not obliged to be "constantly on the lookout" for the unlawful acts of others.

Referring again to the case of Menger vs. Laur, where the defendant ran into the plaintiff's surveying instrument left standing in the street, in which it was held that the instrument left standing in the public street was a nuisance, we beg to call attention to that part of the opinion found on page 216, as follows: "Nor was there any evidence of negligence on the part of the defendant. * * * The only evidence tending to show carelessness by the defendant was that at the time of the collision he was looking at some houses on the side of the street to see how the slaters in his employ were getting on with the work. He was driving slowly; the street was unobstructed except by the plaintiff's instrument. The defendant did not see the instrument and he *had no reason to expect to encounter an obstacle of that or any other character.*"

Under the principles of the Menger case, we submit that in our present case the motorman of the car was not only not negligent but also that he was not bound to anticipate the presence of a nuisance in the street, and the mere fact that a boy ran up the track waving his arms was not notice of the presence of such a nuisance. As we said above, the act of the boy intended to give warning of the nuisance was more apt to distract

the attention of the motorman from the actual danger of the sledriders than to serve any other purpose, and unless it is shown that the motorman actually knew of the presence of the bobsled and its flight, and the dangerous condition surrounding its flight, there can be no application of the doctrine of the "last clear chance," nor did any duty arise whereby the defendant was obliged to avoid the negligence and unlawful acts of the sledriders.

V.

The plaintiff was guilty of negligence.

During the afternoon of the day on which the accident occurred, the plaintiff had stood at the corner of Montclair and Mt. Prospect Avenues, and watched the coasters for more than an hour (p. 11). She knew that one of their party stood at the corner for the purpose of signaling sleds, and, as she says, signaling the cars when they did not stop; and that (p. 44) she paid no attention to any signals given for the sled to start on the trip on which it collided with the car. She testified that mostly all the cars stopped (p. 11), which would indicate that there was a question, in her mind at any rate, as to whether or not the cars all stopped, although she says later in her testimony that all the cars she saw did stop before crossing Montclair Avenue, but she says she did not know why they stopped (p. 28). She had ridden on the bobsled on its two trips immediately preceding the accident, and, therefore, is chargeable with a knowledge of its equipment and the absence of a light on it and of any means of stopping it in case of danger. The knowledge of these facts on her part, we submit, charges her with negligence or assumption of the risk of injury, and precludes her recovery.

Were not the persons on the sled negligent in relying on a signal from the boy below them that no cars

were coming, when the boy's view to the south (pp. 76 and 94) was so restricted that, considering the distance that the sled would have to travel, the boy apparently could not see cars approaching from the south in time to make his signal that no cars were approaching a signal that could safely be relied upon?

Were not the persons on the bobsled negligent in waiting, after the boy's signal was given, until the small sleds had gone ahead? As to these small sleds, the signal of the boy that no cars were approaching was effective, as they all crossed the track safely before the car reached Montclair Avenue (pp. 96, 97, 98). If the bobsled had started at the same time as these smaller sleds did, the accident would not have occurred. But the bobsled waited so long before starting that the boy's signal was no longer one on which the coasters on the bobsled had any right to rely.

VI.

Comments on plaintiff's brief.

It is, unfortunately, necessary to accept very guardedly the statements of alleged fact contained in the brief of the counsel of plaintiff in error. On pages 2 and 3 of his brief no less than six misstatements of the evidence appear. He says (p. 2) speaking of the existence of the coasting "that the trolley company was aware of this fact and that it caused all of its cars at that time * * * to stop" before crossing Montclair Avenue. He refers to a number of pages of the printed book at which this alleged fact is supposed to appear, but the court will find on those pages no evidence that the company itself knew of the coasting or that it caused its cars to stop, as the testimony referred to the acts of individual motormen. And on page 3 of his brief he says that the sled "was fitted with a brake and gong, and could be steered." The evidence on the subject of the brake appears at page

85 of the case, as follows: "Q. Did it have a brake? A. Yes, sir. Q. What? A. No, sir. Q. It didn't have a brake, did it? A. No, sir; I didn't examine it to find out what it had." P. 131, l. 39. "Q. Did you have any brake on the sled? A. No, sir." At p. 132: "Q. After you got started at the top of the hill that night how could you stop your sled? A. Couldn't stop it. Q. Could not stop it? A. No. Q. There was not any way to stop it at all? A. No, sir."

On the subject of the allegation that the sled could be steered, note testimony p. 141, l. 37. "Q. I did not know that. You skidded before you got around? A. As soon as you begin to turn your bob is going to skid." This testimony shows that whatever evidence there may be about the possibility of steering the sled, the fact remains that it could not be steered effectively to turn this corner as was attempted because it skidded as soon as it began to make so extensive a turn.

On page 3 of his brief he says, speaking of the attention of Winterbottom having been called to the car "and on that account he did not start to turn into Mt. Prospect Avenue sooner than he did." This is clearly a wrong inference to be drawn from the facts, because it appears on page 142 that he did start to turn about as far back from the corner as was in any way practicable, so that even though he had known that the car was not going to stop he could not, to any purpose, have started to turn sooner. The following appears on page 142 of the book: "Q. How far away from the corner were you when you started to change your direction? A. About fifty feet. Q. Fifty feet? A. Yes. Q. Did your sled begin to skid then? A. As soon as I turned. Q. Turned where? A. To go up Mt. Prospect Avenue." As Mt. Prospect Avenue is 100 feet wide he, in making this turn, had 100 feet to go before reaching the center of Mt. Prospect Avenue and the zone of danger of the approaching car.

On page 3 of his brief the plaintiff in error says "that at the time he started to turn into Mt. Prospect

Avenue the car was somewheres about at the first or south crosswalk." If it is meant by this that the rear end of the car was about at the south crosswalk it is a correct statement, but if he means that the head of the car was at the south crosswalk it is incorrect, because it appears at page 134, "Q. You were fifty feet away from the corner of Mt. Prospect Avenue when this trolley car was blocking the way in front of you and moving, were you not? A. About fifty feet," and it appears again at page 144: "Q. Just a question or two, Walter. I do not know whether you were asked in all this maze of questions when you started to turn your bob where the trolley car was. Where was the trolley car when you started to turn your bobsled at a point 50 feet away from Mt. Prospect Avenue? A. The rear of the trolley car was at the south crosswalk. Q. At the time when you started to turn? A. Yes, sir."

On page 3 of his brief the plaintiff in error says "and that after the small sleds started the bob followed and that it didn't go any faster than the smaller sleds, (as it did not catch up with them)." This statement on the part of the plaintiff in error is only a surmise, because it appears (p. 136): "Q. Could your sled go down that hill faster than the small sleighs? A. Yes, sir. Q. Faster? A. Yes, sir." It is true, as the plaintiff in error says, that the bob did not overtake the smaller sleds, but that was so because the bob evidently delayed so long in starting, after the signal of the boy had been given, that it could not overtake the smaller sleds which started on the signal.

The plaintiff in error in his brief, on page 5, attempts to develop a theory that the action of the motorman constituted a "willful and wanton act." Of course, we have no right, in the absence of proof, to assume that the motorman was guilty of criminal conduct, particularly where other and more reasonable inferences arise. It seems more fair to assume that he did not understand the boy's warning and that when

he had slowed up for the boy to get out of the way, he believed that he had done all that was necessary. It is more fair to assume that he considered the boy's warning a false alarm, for on looking ahead he could see "all clear" even a greater distance up the cross street than there was any reasonable need for his looking. The premises upon which the counsel for plaintiff in error bases his argument, therefore, largely falls, and there is no need of any detailed criticism of this argument thus based upon false premises.

The statement on page 6 of his brief, that the motorman "forced his car into the sled on which the plaintiff was riding," is absurd, and needs no comment in view of the evidence of the distance that the sled was up the cross-street when the car reached the crosswalk, and in view of the evidence of the distance the sled was up the cross-street even when the car was directly in the cross-street.

The failure on the part of the motorman to understand what the boy meant could not at most be more than negligence; and the defendant claims in view of the status of the plaintiff that negligence in this case is not actionable.

As one of the justices stated at the argument of this case, there could be no claim based on willfulness, as the declaration contains no such charge, and in any event the doctrine of respondent superior would not apply to a willful act of the motorman.

Under point 2 the plaintiff in error on page 11 said: "While the fact does not directly appear in the evidence that Montclair Avenue was such a street, yet there is sufficient evidence * * * from which a jury could find that Montclair Avenue was an unfrequented street for travel, and that it would not be a nuisance to use the street in question for the purpose which the children put it to." We submit that in view of the fact that Mt. Prospect Avenue with its two car tracks and frequent cars, its important character as a thoroughfare, etc., was the scene of this accident, the

counsel of plaintiff in error in his attempt to direct attention to the character of Montclair Avenue is making an unfair departure from the facts of the case, or loses sight of the fact that the street whose character is to be taken into consideration is Mt. Prospect Avenue, where the accident occurred, and not Montclair Avenue.

In relation to point 3, as already pointed out, there was no acquiesence on the part of this defendant in the acts of the coasters, and it is assuming entirely too much from any facts proved for the plaintiff's counsel to state that the defendant "publicly gave them notice * * * that the coasters could depend upon the assistance of the company" in maintaining a public nuisance. A mere glance at the case of Chaffee vs. Tel. Co. cited on page 15 of the plaintiff in error's brief will show that it has no application to the conditions existing in this case.

Referring to the Dimes case, cited in point 4 of the plaintiff's brief, it has no application to our present case, for the Dimes case merely decided that a traveler cannot abate a public nuisance if he can go around it, but, of course, in our present case the trolley car was confined to its rails, and, in fact, the Dimes case decides that a traveler may abate a nuisance if necessary in order that he may proceed, and if "necessary to exercise his right of passing along the highway."

Counsel of plaintiff in error cites several cases such as Steele vs. Burkhardt and Spofford vs. Harlow, in which the unlawful act of the plaintiff created a *condition,* and was not a contributing cause of the accident. Such cases, of course, are inapplicable.

As to point 5 of the brief of the plaintiff in error, we submit that it is not *imputable* negligence with which we charge the plaintiff. We do not claim that because the steersman was clearly negligent such negligence should be imputed to this girl. We claim that the girl herself was negligent as a participator in this nuisance, and that she assumed the risk of the injury

which she received. The paragraph at the bottom of page 20 of the brief of plaintiff in error contains several misstatements, and several unfair inferences from the evidence. The sled was not, as there stated, "capable of being steered" without skidding; it was not "equipped with a brake"; it is not true that its flight "was protected" by any regulation of the company made public as alleged. Furthermore, as has already been referred to in our brief, if the boys were posted at the corner to signal the cars, that very fact is a refutation of the proposition that the company had a regulation, upon which the riders could depend, that the cars should stop at the first crossing.

Furthermore, instead of it being a regulation of the company to stop the cars, the counsel of the plaintiff in error himself appears to arrive at a contrary conclusion on page 2 of his brief when he says "that a policeman for a short time and a number of boys during the balance of the time stood on the corner of Montclair and Mt. Prospect Avenues and signalled to the sleds *and also to the cars.*" A number of pages are referred to in this connection. We call attention merely to the first one, at page 26, where the plaintiff herself said: "Q. Was there any policeman there on the corner? A. Yes, sir. Q. What was he doing there? A. Well, he stopped the cars. Q. Stopping the cars? A. Yes. Q. That is right? A. Well, he looked out that the cars didn't—— Q. He was there to stop the cars? A. Well, and anything that came up."

Miss Husk, one of the coasters on the bob, at p. 60 states that when they started up the hill the last time the policeman had gone.

As to the proposition advanced on page 21, of the brief of plaintiff in error, that "we are dealing with children," etc., we submit that the accident happened January 7, 1910, that the trial took place March 7, 1911, and that the plaintiff then testified as follows (p. 9): "Q. Mildred, how old are you? A. Thirteen. Q. And when were you thirteen? A. Last

April." This would refer to April, 1910, so that she was nearly thirteen years of age at the time of the accident. She was old enough to be chargeable with negligence, and with participation in a nuisance, as a matter of law; and furthermore, this case does not rest on that one point alone, but also on the fact that the defendant was free from negligence.

Respectfully submitted,

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New Jersey
Court of Errors and Appeals

MILDRED LYNCH, by next friend, Plaintiff, Plaintiff-in-Error, vs. PUBLIC SERVICE RAILWAY COMPANY, Defendant, Defendant-in-Error.	In tort. On Writ of Error to Supreme Court.

BRIEF OF BENJAMIN M. WEINBERG, FOR PLAINTIFF IN ERROR

Statement of the Case

On the seventh day of January, nineteen hundred and ten, the plaintiff, then a child thirteen years of age, was sled riding on Montclair avenue in the city of Newark. Montclair avenue is a street which intersects Mt. Prospect avenue, upon which the defendant company runs and operates trolley cars. On the day in question about 5:30, in the afternoon, the plaintiff with other children while riding down Montclair avenue on a bobsled, belonging to one Winterbottom, a young man twenty years of age, was injured by reason of the bobsled and trolley car coming into col-

lision on Mt. Prospect avenue about a car's length north of the north crossing of Montclair and Mt. Prospect avenues.

It appears that Montclair avenue was a street used by childern for coasting, and that a large number had been taking advantage of the sport on the afternoon in question (pages 24, 51, 69, 72); that the trolley company was aware of this fact and that it caused all of its cars at that time which were going north, to stop on the first or southerly crossing, and all cars which went south to stop on the first or northerly crossing, (pages 11, 12, 52, 69, 73, 75, 100, 118, 119, 146, 180 etc.); that a policeman for a short time and a number of boys during the balance of the time, stood on the corner of Montclair and Mt. Prospect avenues and signalled to the sleds and also to the cars (pages 26, 27, 28, 53, 57, 75-80, 108, 118, 146 etc.); that the plaintiff had made two trips down on the bobsled in question and was on her third trip about half past five (page 12); that the sled was equipped with a bell which was kept ringing all the way down the hill; (pages 12, 96, 105, 118).

It further appeared that on the trip in question when the accident occurred, a young man, by the name of Martin stood on the corner of the avenues in question flagging or signalling to the sleds; that he was standing in the middle of Mt. Prospect avenue and, gave the signal to the sleds, of which there were many, to come down the hill; that a short time after he did so, he observed a car coming along Mt. Prospect avenue from the south, which was at that time about a block away from him; that he feared the car was not going to stop, so ran toward it the length of a lot, (size given on page 153, as 85 feet) at which time the car was then about fifty-five feet further south of him; that he signalled it to stop and that

the car slowed up as it got to him and as he jumped from the track, the motorman put on a "burst of speed" and ran his car across Montclair avenue (given on page 154 as 47½ feet wide) and collided with the sled (page 75-80 etc.) at a point about a car's length north of the north crossing of Montclair avenue; the motorman thereby running the distance of fifty-five feet to the boy, 85 feet (the length of the lot) to the corner, 47½ feet, the width of Montclair avenue and about forty feet the length of the car, or a total of over 225 feet, from the time he received the signal to stop until he crashed into the sled.

It further appears from the evidence, that the sled, while a long one (12 feet) was fitted with a brake and gong, and could be steered; that the steersman, from the fact that the cars had hitherto stopped on the first crossing, believed that this car which came along would also stop there and so informed the plantiff and another girl when his attention was called to the car (page 63) and that on that account he did not start to turn into Mt. Prospect avenue sooner than he did; that at the time he started to turn into Mt. Prospect avenue the car was somewheres about at the first or south crosswalk; that his gong was kept constantly ringing all the way down the hill (pages 12, 96, 108, 118); that the steersman saw the car slow up and then start again, and that he started to turn his sled to the left up Mt. Prospect avenue and would have made the turn, but the car put on another "burst of speed" which brought it right into the sled (pages 122-123).

It does not appear that there was any other bob on the hill in the afternoon in question, and that after the small sleds started, the bob followed, and that it did not go any faster than the small sleds, (as it did not catch up with them) and that

it did not get down ahead of the other sleds (page 137).

The plaintiff received severe and permanent injuries as a result of the collison, for which suit was brought in the Supreme Court.

Upon the conclusion of the plaintiff's case, the evidence in which is substantially set forth, the defendant moved for a nonsuit, which was granted by the Court and judgment entered thereon. The plaintiff thereupon sued out a writ of error, which brings the matter before this Court for review.

The learned Court found that there was evidence of defendant's negligence, but decided as a matter of law, that the plaintiff at the time of meeting with her injury, was engaged in an unlawful act, which was the proximate cause of the accident. It is respectfully submitted that this was error, and that the judgment of nonsuit should be reversed for the following reasons:

First: The defendant was guilty of a willful and wanton act, and could not therefore raise the question of plaintiff's contributory negligence.

Second: The Court erroneously found the plaintiff guilty of being a wrong-doer.

Third: Even if the plaintiff was engaged in an act of nuisance, the defendant by reason of its acquiescence, can not now take advantage of the situation.

Fourth: The defendant can not excuse its negligence by showing that the plaintiff, at the time of the injury was in the commission of a nuisance.

Fifth: The defendant being guilty of negligence, the question of plaintiff's contributory negligence was for the jury.

POINT I

The defendant was guilty of a willful and wanton act, and could not therefore raise the question of the plantiff's contributory negligence.

From the opinion of the learned Court (page 193) it appears that he was satisfied that there was evidence to go to the jury on the question of the defendant's negligence. The plaintiff however insists that the conduct of the defendant amounted to willfulness in law.

A public street in the outskirts of the city, was used for sled-riding all the afternoon of the day of the accident. Coasters in large numbers were taking advantage of the weather conditions and enjoying the sport. The trolley company knew this, and adapted itself to the situation by publicly regulating the stoppage of its cars at the intersecting corner, thereby creating a situation where sled-riders were safe from collision. To have proceeded to run its cars, thereafter, in violation of this custom would have constituted negligence.

In *Hayward vs. N. J. Street Ry. Co., 45 Vr., 678*, the plaintiff was struck by a trolley car while crossing a public street at a point where there was a sign placed over the tracks by the defendant, requiring cars to "run slow." This Court held that this requirement adopted by the defendant corporation previous to the accident for the guidance of its servants in matters relating to the safety of the public and made public created a duty as to such persons as would be likely to be injured by a failure to observe the

precautions prescribed, and that proof of a violation of such requirements by the motorman directly resulting in injury to the plaintiff, was evidence, although not conclusive, from which the jury would be warranted in finding the motorman negligent and the defendant therefore liable.

In *Buttelli vs. J. C. H. & R. Ry. Co., 30 Vr., 302,* it appeared that the plaintiff was walking along the path over a car track, and was struck by a trolley car. Magee, J. said, "If the motorman deliberately, in broad daylight with full opportunity to perceive that the plaintiff did not heed any signals of the gong, if it was rung, or any notice derived from the rumbling of the car, ran the plaintiff down and did him an injury, it can not be contended that such conduct was not negligent."

In the present case not only did the motorman fail to perceive the plaintiff on her sled, but he failed and refused to govern and control his car, after having received special notice that someone was in danger if he persisted in running his car. As pointed out, one of the witnesses rushed up the street a considerable distance waving at the car and signalling the motorman to slow up or stop, but that the motorman only temporarily slackened the speed of the car, in order no doubt to avoid hitting the boy, then put on a "burst of speed," and forced his car into the sled on which the plaintiff was riding. He must have known that his failure to heed the boy's warning would have been productive of injury or death; for in addition to the particular warning which he received, he saw, or ought to have seen, the continuous line of sleds which just preceded the appearance of the bobsled. Such recklessness and heedlessness, in my opinion, is converted from mere negligence, or neglect—and rises to the degree of willfulness, and wantonness.

Thompson on Negligence, Vol. 1, Sec. 20, in defining willful conduct says:

> "It may consist of a degree of carelessness and inattention which proceeds in gross disregard of the rights of others, without involving any willful or intentional purpose of injuring them. 'The true conception of willful negligence involves a deliberate purpose not to discharge some duty necessary to the safety of the person or property of another, which duty the person owing it, has assumed by contract, or which is imposed upon the person by operation of law.' "

The same author in *Sec. 21 same vol.* says:

> "In a given situation, slight care might suffice to ward off an injury to a third person, and if we adhere to the division of negligence into ordinary and gross, the failure to exercise the slight care would be gross negligence; but this failure might arise either from carelessness, or inadvertence or from wilfulness. In both cases the degree of care required to ward off the injury, and hence the degree of negligence involved in failing to exercise such care, would be the same. But the quality of the neglect would be essentially different: the one would proceed from mere neglect or inadvertence, the other would proceed from a willful determination not to perform a known duty,"

and in *Vol. 2, Sec. 1596,* in commenting on a particular case said:

> "The sound doctrine is, that if the railroad company in the keeping of that vigi-

> lant and constant look-out which is demanded by the principle of the common law, and imposed in so many cases by the statute law, might have discovered the traveller in time by the exercise of such care, as his perilous situation demanded, in checking the speed of the train or otherwise to avoid injury to him, and failed to do so, the railroad company is liable in damages. Under this rule where the servants of the railroad company driving the train could have seen the perilous positon of the traveller, the liability of the railroad company will be practically the same as though they had seen it and had nevertheless negligently run over him. It is an apt illustration of the doctrine arising everywhere in the law of negligence, that negligent ignorance operates for judicial purpose, the same as actual knowledge—''

My contention is, that the motorman's failure to look after being warned, is tantamount in law, to his actually seeing, (which he must have because of the numerous sleds) and recklessly proceeding, unmindful and indifferent of the consequences, which must have appeared imminent and dire, thus not permitting his conduct to escape from the characterization of willful and malicious.

Mr. Thompson, on this branch of the law (Vol. 1, Sec. 207) states that:

> ''The books justify the conclusion that mere careless ness or heedlessness may be so gross and reckless as to rise to the grade of willfulness or wantonness such as will exclude the defense of contributory negligence. This will often happen where the engineer driving a railway train sees a person on the track in front of him exposed

> to imminent danger, under circumstance where he could easily prevent injury to him by the usual precautions of sounding the steam whistle or checking the speed of the train of both, and utterly fails so to do—such conduct, it has been well held, accruing after the engineer becomes aware of the danger to which the person is exposed, rises to the grade of wanton or reckless conduct, and renders immaterial the inquiry as to the contributory negligence of the person exposing himself."

Taking what is said here in connection with what the learned writer says in Vol. 1, Sec. 20,—*supra,* the recklessness and willfulness of the motorman is made out from his inattention which proceeded:

> "in gross disregard of the rights of others without involving any willful or intentional purpose of injuring them."

In the case of *Bittle vs. Camden & Atl. Rlrd. Co., 26 Vr., 615,* the plaintiff charged that the defendant's engineer wantonly blew his whistle while passing him while he was leading his horse near the railroad track. In passing upon the question of the defendant's negligence, Lippincott, J. speaking for this Court said (page 621):

> "The question here is whether this whistle was so negligently, needlessly or wantonly blown as to have caused injury to the plaintiff. Abstractly this question in any given case where an inference of this character may be reasonably drawn from the evidence, should be committed to the jury for its decision and not assumed by the Court."

It is therefore respectfully insisted that the Court erred in refusing to send the case to the jury on the question of the defendant's wantonness, there being sufficient evidence from which such an inference could reasonably be drawn.

POINT II

The Court erroneously found the plaintiff guilty of being a wrongdoer.

The learned Court, while declaring that the plaintiff was guilty of negligence which directly contributed to the accident, did not base its decision on that point, but directed the nonsuit because the plaintiff was engaged in an unlawful act—in riding upon a sled—that such an act was a nuisance, and that "the quality of the act is not altered by giving notice of it, or by improvising some partial provision at some point for the protection of persons rightfully on the public highway. *Such notice may cast upon a traveller the obligation of special care for his own safety; it can have no further legal effect," p. 198.* (Italics mine.)

Fortunately there is no such harsh doctrine in the law. The plain effect of such a principle would be to permit one, who observes another in the commission of an unlawful act, to conduct himself in such a criminally reckless manner as to injure or even kill him. I quote the following:

In *Chic. & R. I. R. Co. vs. Still, 19 Ill., 499 p. 508,* the Court said:

> "Neither has one the right, because the other has omitted to use due care, to cease the efforts on his part to avoid occasioning injury to the other. That would be to permit the party guilty of the first negligence

to be wantonly killed by the other. The parties must be held on both sides to the use of every reasonable effort to avoid such a result."

In our own State, the law is well settled that even wrongdoers—trespassers—can not be willfully injured.

Phillips vs. Library Ass'n., 26 Vr., 307.
Fitzpatrick vs. Glass Co., 32, Vr., 378.
D. L. & W. vs. Reich, 32 Vr., 635.

This subject will be pursued further under Point 4.

Coming back to the finding of the Court that the plaintiff was in the commission of an act of nuisance and therefore a wrongdoer, I submit that there is no such thing in law as a nuisance *per se* generally. Circumstances are required to make it so. Thus it is a nuisance *per se* to discharge fireworks in a public street, *(Jenne vs. Sutton, 14 Vr., 257)* but obviously would not be so in some isolated field.

While it would be a nuisance *per se* to ride a sled on a busy thoroughfare, would it be a nuisance to do so on a not frequented street in the suburbs of a city? While the fact does not directly appear in the evidence that Montclair avenue was such a street, yet there is sufficient evidence, such as the number of vacant lots, the consent to indulge in sled riding by a police officer (page 126) their knowledge of local topography and other facts, from which a jury could find that Montclair avenue was an unfrequented street for travel, and that it would not be a nuisance to use the street in question for the purpose which the children put it to.

The question of nuisance, except nuisance *per se*, is for the jury who must determine whether

or not the particular thing, act, omission, or use of property complained of, is in fact a nuisance. *Am. & Eng. Ency. Vol. 21, p. 691.* The precise question however, of whether sled riding in a public street is a nuisance, has been decided in several jurisdictions in the negative. The opinion, which, to my mind, is the most logical and which seeks to grant and preserve to children, some rights in the highways of our cities, is that of the learned Justice Cooley, in the case of *Burford vs. Grand Rapids, 53 Mich., 98, (18 N. W., 571)* in part as follows:

> "Coasting does not necessarily interfere with the customary use of the street, and might be indulged in with no serious inconvenience to any one, not only in many places in the country towns, but even within the limits of incorporated cities and villages. We are accustomed to make our public ways four rods in width, but it is not expected that the whole four rods will be occupied for travel and it is possible to make use of parts of the public highways without encroaching at all upon the portions kept in repair and used for passage. It is also true throughout the interior and Western States, if not in all those bordering on the Atlantic, that in laying out towns, streets are dedicated to the public which there may for many years, be no occasion to improve for travel, and they become for some time mere open spaces for the sports and recreation of those who may see fit to make use of them. It could not be seriously contended that, for the municipal authorities to permit coasting upon such a street, would be to license a public nuisance. On the contrary as the

> sport itself is healthful and exhilarating, it seems eminently proper, if the street is not put to other public use, that this diversion be allowed, if not expressly sanctioned. The sport itself is not entirely foreign to the purposes for which public ways are established, for the use of these ways for pleasure riding is perfectly legitimate, and coasting is only pleasure riding in a series of short trips repeated over the same road, not differing essentially from the riding in sleighs of which so much is seen on some of the streets of Northern cities, when suitable weather and proper conditions invite to this enjoyment."

See also *Hutchison vs. Concord, 41 Vermont, 272; Faulkner vs. City of Aurora, 85 Ind., 130.*

In *Jackson vs. Castle, 80 Me., 119, (13 Atl., 49)* which was a suit for damages, it appeared that defendant and a number of others were sliding and coasting with a contrivance in the nature of a bob, which was composed of two or more sleds connected together, upon and down the sidewalk of a public street, and that the coasters then and there made loud noises and hallooing and frightened plaintiff's horses which ran away and were injured etc. In passing upon the question of negligence, the Court said "sliding in a street, accompanied with boisterous conduct, is not necessarily unlawful. Nor is it necessarily a public nuisance."

The only case that I can find which seems to differ in principle from the cases cited is that of Mayor etc. of *Wilmington vs. Vandergrift, 29 Atl. page 1047, (Delaware).* The question whether sled riding generally was a nuisance or not, was not what interested the Court, for it appeared that the sliding was done on a street in

Wilmington which the Court characterized as "a well-known public highway." It is this fact no doubt which caused the Court to agree with counsel on both sides that sled riding was a nuisance. The question therein considered was not combatted, and even if it should be found that the question was settled by the Court, it seems to me that the propriety of the decision is open to considerable doubt.

It is therefore respectfully insisted that the Court erred in finding as a matter of law, that the plaintiff, because of having ridden a few times on a sled was a wrongdoer and without the pale of protection from persons either ordinarily or criminally negligent.

POINT III

Even if the plaintiff was engaged in an act of nuisance, the defendant by reason of its acquiescence, can not take advantage of the situation.

The defendant knew that children were using Montclair avenue for coasting. It knew that the sleds crossed Mt. Prospect avenue upon which its cars were run. Instead of objecting to the interference with the running of its cars at that point by the coasters, if there was such interference, it, on the contrary, acquiesced in the sport of the children, and publicly gave them notice, by means of stopping its cars on the first crossing that they came to, that they were not only aware of the coasting, but that the coasters could depend upon the assistance of the company, thereby lulling the children into a belief that there was no danger. To now permit this defendant to take advantage of that situation, after being guilty of a negligent act, would be to allow them to create a

trap for the children. By consenting to the wrongful acts of the children, if they were such, the defendant could not raise the point, that they suffered damage from such acts.

Chaffee vs. Tel. Co., 43 N. W., 1064 (Mich).

POINT IV

The defendant can not excuse its negligence, by showing that the plaintiff, at the time of the injury, was in the commission of a nuisance.

Thompson on Negligence Vol. 1, p. 254, lays down the rule that "although a person places his property in the public highway, or in a navigable stream so that it constitutes a nuisance, yet this does not warrant its destruction by one to whom the nuisance occasioned no special damages."

In the case of *Dimes vs. Petley, 15 Q. B., 275,* the plaintiff constructed and maintained a wharf, from which projected a jetty, a part of which extended into the Thames a considerable distance, so that persons navigating vessels up the river would be interfered with. The defendant's vessel was going up the river under tow, and as she passed by the wharf, the defendant's vessel in some manner struck the jetty and tore it away, doing much damage, to recover for which, the plaintiff brought suit.

The defendant entered four pleas, the fourth plea of which alleged that the plaintiff wrongfully constructed the wharf and jetty, which obstructed and prevented navigation over that part of the river and was a common nuisance. That the plaintiff had notice of the premises and willfully continued the nuisance. That defendant had occasion to pass with the vessels over the

said part of the bed and course of the river, and in so passing did the acts complained of; and that he managed the vessels with all the skill and care which would have been due and proper for the navigation, had not the said part and course of the river been so obstructed; and that he did no unnecessary damage.

The decision was by Campbell C. J., who in the course of his opinion said:

> "We think it (the plea) bad in not alleging that there was n necessity for the defendant to navigate the ship over that part of the river where the nuisance was, nor even that this part of the river was his course and that it would have been inconvenient and difficult to have taken any other course by which the nuisance might have been avoided. * * * If there be a nuisance in a public highway, a private individual can not of his own authority abate it, unless it does him a special injury, and he can only interfere with it as far as is only necessary to exercise his right of passing along the highway; and, without considering whether he must show that the abatement of a nuisance was absolutely necessary to enable him to pass, we clearly think that he can not justify doing any damage to the property of the person, who has improperly placed the nuisance in the highway, if, avoiding it, he might have passed on with reasonable convenience."

Assuming, but not admitting, that riding on the bobsled was a public nuisance, nothing appears in the case to show that any special damages resulted to the defendant or that it could not run its trolley cars without necessarily coming into contact with the sleds, thereby justifying it-

self in removing it from its path. The sled riding gave rise to no injury to the defendant, and in no wise interfered with the running of the trolley cars; all that was necessary in order to enable the trolley car to pass along the highway with safety to itself and without causing injury to the sledriders, was to have observe such care as the law calls upon the user of a highway such as a street railroad company, when approaching a street intersection, to observe, and in this particular case to continue with the careful system which is adopted, without inconvenience to itself and with safety to the children.

In the case above cited, the learned Court held that it was not shown that the accident could not have been avoided, therefore, the defendant could not excuse his negligent act on the ground that the nuisance was the direct cause of the plaintiff's damage.

In *Steele vs. Burkhardt, 104 Mass., 59,* the facts of the case were that plaintiff left his horse and wagon standing across a public street in the City of Boston, instead of parallel with the sidewalk, which was in violation of a city ordinance, and that while it was in that position, it was carelessly run into by a team belonging to the defendant which was carelessly driven by his servant. On an attempted defense that plaintiff could not recover or account of his having been in violation of the law at the time of sustaining the injury and damage, Chapman C. J., said:

> "It is true generally that while no person can maintain an action to which he must trace his title through his own breach of the law, yet the fact that he is breaking the law, does not leave him remediless for injuries wilfully or carelessly done to him, and to which his own conduct has not contributed."

In *Spofford vs. Harlow, 3 Allen, 176,* it was held that though plaintiff's sleigh was on the wrong side of the street, in violation of law, the defendant was liable if his servant ran into the plaintiff carelessly and recklessly, the plaintiff's injury not contributing to the injury, and in *Brown vs. Lynn, 31 Pa. St., 510* it was said that "A defendant by whose negligence the property of another has been injured, can not excuse his negligence by showing that plaintiff's property was placed where it received the injury by an act of trespass on the part of the plaintiff."

In *Cyc. Vol. 29, p. 443,* the rule is stated thus "A person can not escape liability from negligence merely because the person injured was a trespasser, where before the commissions of the negligent act, the presence of the trespasser was known to him, or ought to have been known, and where, by the use of ordinary care, defendant might have avoided the injury." See also *Elliott on Rys. Vol. 3 (2nd Ed.) Sec. 1253* and notes to same: *Oleary vs. El. Co., 75 N. W.* and cases therein cited and discussed.

A rather interesting proposition is involved in the thought which was expressed by the learned trial Court to the effect that "There is evidence to go to the jury on the question whether the car was operated with due care," and then "The declaration alleges that the bobsled was lawfully crossing Mt. Prospect avenue. If this be true, the plaintiff was not at fault. Is it true? *The decision of the motion to nonsuit turns on the answer to this question"* (page 195). Then the Court goes on to characterize the plaintiff's action in sled riding as a wrongful one and says of the warning given the motorman, that "such notice may cast upon a traveller the obligation of special care for his own safety; *it can have no further legal effect"* (p. 198). If this be true,

then, what process of reasoning did the learned Court indulge in when he found that there was evidence of negligence on the part of the defendant. Negligence implies neglect to perform a duty. What duty did the defendant owe the plaintiff? If there was negligence on the part of the defendant, then it admittedly owed the plaintiff some duty.—As was said in *D. L. & W. vs. Reich (supra, p. 637)* by the present Chief Justice:

> "If there was no duty in the case, there can be no negligence; there can not be such a thing as the negligent performance of a non-existent duty."

The evidence showed negligence. It was therefore the duty of the Court to submit the matters discussed under this point to the jury.

POINT V

If the defendant was guilty of negligence, the question of plaintiff's contributory negligence was for the jury.

It is first submitted however, that inasmuch as the owner and steersman of the bobsled was neither the agent nor under the control of the plaintiff, the question of the plaintiff's contributory negligence was out of the case entirely.

Shearman and Redfield, Vol. I, Sec. 65 (5th Ed.) say:

> "It is only the contributory fault of the injured party, or of some one whose fault is imputable to him, that can excuse the defendant. The fault of a mere stranger, however, much it may contribute to the injury, is no defense for one whose negligence was its proximate cause."

The plaintiff having received her injury while riding by invitation on a sled managed and owned by another, the negligence of the steersman is not imputable to her.

Consol. Tr. Co. vs. Hoimark, 31 Vr., 456.

Same vs. Noonan, 35 Vr., 579.

The question of the plaintiff's contributory negligence was not considered by the trial Court, although the contrary might seem to appear from some of the language employed by it. It might be a fact *de hors* the record, but it is nevertheless true, that the learned Court did not listen to argument upon that subject by either counsel, but passed at once to what the court considered the only question aside from defendant's negligence, to wit, whether the plaintiff's riding on the bobsled was lawful or not (p. 195).

Assuming that the negligence of the defendant was not willful or wanton (the contrary of which is insisted upon under Point 1) and that it could defend on the ground of contributory negligence, and that the negligence of the owner of the sled who was managing it, could be imputed to the plaintiff, the inquiry now arises as to whether the conduct of the steersman was such as to become a matter for the consideration of the Court or for the jury.

Here was a sled admittedly a fast runner, capable of being steered and equipped with a brake and gong, which was kept ringing all the time, the flight of which was protected; first by the regulation of the company, made public, in stopping all of its cars on the first crossing to which they came, and secondly, by the added care of the riders in having boys posted at the corner of the avenues to signal both the riders and cars, which regulation and signal had been up to the time

of the accident, observed and recognized by the men in charge of the defendant's cars.

In this case we are dealing with children who are not held by the courts, to regulate their conduct by the same standard as is observed by adults; but even if they should be so held, it is at least a question for the jury whether a reasonable man in the observance of due care would not have placed himself upon a sled, if he were so inclined, knowing that the defendant had notice of its flight, and was so controlling and regulating its cars, as to protect the riders from collision with the same.

It seems to me, that a person who, under such circumstances, would fear to risk enjoying so exhilirating and healthful a pastime, is more discreet that he whom the law has created and styled "a reasonable man."

A case was presented, which under the decisions in our State, should have been submitted to the jury, for its consideration.

Newark Pass. Ry. vs. Block, 26 Vr., 605.
Tr. Co. vs. Glynn, 30 Vr., 432.
Zolpher vs. Camden Ry. Co., 40 Vr., 417.
Conrad vs. Eliz. Ry. Co., 41 Vr., 676.
Bauer vs. N. J. St. Ry. Co., 45 Vr., 624.
Hayward vs. N. J. St. Ry. Co., 45 Vr., 678.
Zindler vs. P. S. Ry. Co., 49 Vr., 536.

It is there fully respectfully submitted for the reasons above set forth, that the judgment of nonsuit should be reversed.

Respectfully submitted,
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Atty. for and of counsel with
Plaintiff, Plaintiff-in-Error.