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New York Supreme Court

Appellate Division--First Department

MARTIN L. UNGRICH,

Plaintiff-Respondent,

against

HENRY UNGRICH Jr., and MARTIN UNGRICH,
Individually and as Executors of and Trustees under the Last
Will and Testament of Henry Ungrich, deceased,

Defendants-Appellants.

Case on Appeal

KELLOGG & ROSE,

Attorneys for Plaintiff,

115 Broadway,

New York City.

EDWARD P. ORRELL,

Attorney for Defendant Henry Ungrich, Jr.,

49 Chambers Street,

New York City.

JOHNSTON & JOHNSTON,

Attorneys for Defendant Martin Ungrich,

256 Broadway,

New York City.

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New York Supreme Court

NEW YORK COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MARTIN UNGRICH, individually, and as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,
Defendants.

2

Statement Under Rule 41.

This action was begun by service of the summons and complaint on the defendant Henry Ungrich, Jr., on December 6, 1906, and on the defendant Martin Ungrich on December 6, 1906. The answer of Henry Ungrich, Jr., was served on January 15, 1907. The answer of Martin Ungrich was served on January 14, 1907. The reply of the plaintiff to the answer of Henry Ungrich, Jr., was served on January 21, 1907. The supplemental answer of Henry Ungrich, Jr., was served on May 13, 1907. The supplemental answer of Martin Ung-

3

4 rich was served on May 13, 1907. The second supplemental answer of Henry Ungrich, Jr., was served on December 10, 1907. The second supplemental answer of Martin Ungrich was served on December 10, 1907.

The names of the original parties appear in the above caption.

The plaintiff appeared by Kellogg & Rose, his attorneys. The defendant Henry Ungrich, Jr., appeared by Isaac P. Hubbard, his attorney. The defendant Martin Ungrich appeared by Johnston & Johnston, his attorneys. Edward P. Orrell was substituted as attorney for the defendant Henry Ungrich, Jr., by order of June 12, 1908.

5 There has been no further change of parties or attorneys.

NEW YORK SUPREME COURT,
COUNTY OF NEW YORK.

7

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MAR-
TIN UNGRICH, individually,
and as Executors of and
Trustees under the Last Will
and Testament of Henry Un-
grich, deceased,
Defendants.

8

You will please take notice that the defendant Henry Ungrich, Jr., individually and as executor of and trustee under the last will and testament of Henry Ungrich, deceased, hereby appeals to the Appellate Division of the Supreme Court for the First Department, from the judgment herein, bearing date May 23, 1908, and entered in the office of the Clerk of the County of New York on that day, and adjudging and decreeing as follows: “(1) That the transactions resulting in the sale to the defendant Henry Ungrich, Jr., of the premises be-
longing to the estate of Henry Ungrich, deceased, referred to in the complaint, including each and all of the contracts of sale, the deeds of conveyance, mortgages, confirmatory deeds and quit claim deeds, were and are, and each of them was and is fraudulent as to the plaintiff, and the plaintiff is entitled to the proceeds and benefits thereof received by the defendant Henry Ungrich, Jr., to the extent of the interest therein created for his bene- 9

- 10 fit under the terms of the will of Henry Ungrich, deceased. (2) That the net proceeds received by the defendant Henry Ungrich, Jr., from the sale of the said premises belonging to the estate so transferred to him as aforesaid was the sum of Two hundred and sixty thousand two hundred and fifty and $89/100$ dollars (\$260,250.89; (3) That the sum of One hundred and thirty thousand one hundred and twenty-five and $45/100$ dollars (\$130,125.45), one-half of the said net proceeds of the sale of said premises, together with sum of Three thousand two hundred and twenty-four and $11/100$ dollars (\$3,224.11), the amount on deposit in the Knickerbocker Trust Company, amounting together to the
- 11 sum of One hundred and thirty-three thousand three hundred and forty-nine and $56/100$ dollars (\$133,349.56), are impressed with a trust in favor of the plaintiff under the terms of said will, and constitute and are hereby adjudged to be the trust fund created under the terms of said will for the benefit of the plaintiff; (4) That the plaintiff recover from the defendants as the amount of income on the trust fund created for his benefit under the terms of said will remaining due and unpaid the sum of Twenty thousand seven hundred and forty-four and $39/100$ dollars (\$20,744.39), together with interest thereon from the date of this decree; (5)
- 12 That the defendants be and they hereby are removed as trustees for the plaintiff under the terms of said will, and The New York Trust Company is hereby appointed in the place and stead of the said defendants, as trustees of the trust created under the will of the said Henry Ungrich, deceased, for the benefit of the plaintiff; (6) That the defendants pay over to The New York Trust Company, as their successor, the said sum of One hundred and thirty-three thousand three hundred and

forty-nine and 56/100 dollars (\$133,349.56), the 13
 principal of the trust fund created for the benefit
 of the plaintiff under the last will and testament
 of Henry Ungrich, deceased; (7) That the plain-
 tiff recover from the defendants Henry Ungrich,
 Jr., and Martin Ungrich, personally, the sum of
 Twenty-one hundred and sixty-seven and 89/100
 (\$2,167.89) dollars, his costs and allowance as
 taxed by the Clerk of this Court, and said plaintiff
 is entitled to judgment and execution therefor,"
 and from each and every part thereof.

Dated New York, May 29th, 1908.

Yours, etc.,

14

ISAAC P. HUBBARD,
 Attorney for Defendant Henry
 Ungrich, Jr., ind., and as exr.,
 etc.,
 132 Nassau Street,
 Manhattan Borough,
 New York City.

To

KELLOGG & ROSE, Esqs.,
 Attorneys for Plaintiff,
 115 Broadway,
 Manhattan Borough,
 New York City.

and

15

PETER J. DOOLING, Esq.,
 Clerk of the County
 of New York.

16 NEW YORK SUPREME COURT,
COUNTY OF NEW YORK.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MAR-
TIN UNGRICH, individually,
and as Executors of and
Trustees under the Last Will
and Testament of Henry Un-
grich, deceased,

17

Defendants.

You will please take notice that the defendant Martin Ungrich, individually and as executor of and trustee under the last will and testament of Henry Ungrich, Jr., deceased, hereby appeals to the Appellate Division of the Supreme Court for the First Department, from the judgment herein, bearing date May 23, 1908, and entered in the office of the Clerk of the County of New York on that day, and adjudging and decreeing as follows: “(1)
18 That the transactions resulting in the sale to the defendant Henry Ungrich, Jr., of the premises belonging to the estate of Henry Ungrich, deceased, referred to in the complaint, including each and all of the contracts of sale, the deeds of conveyance, mortgages, confirmatory deeds and quit claim deeds, were and are, and each of them was and is fraudulent as to the plaintiff, and the plaintiff is entitled to the proceeds and benefits thereof received by the defendant Henry Ungrich, Jr., to the extent of the interest therein created for his

benefit under the terms of the will of Henry Ung- 19
rich, deceased. (2) That the net proceeds received
by the defendant Henry Ungrich, Jr., from the sale
of the said premises belonging to the estate so
transferred to him as aforesaid was the sum of
Two hundred and sixty thousand two hundred and
fifty and 89/100 dollars (\$260,250.89); (3) that the
sum of One hundred and thirty thousand one hun-
dred and twenty-five and 45/100 dollars (\$120-
125.45), one-half of the said net proceeds of the
sale of said premises, together with sum of Three
thousand two hundred and twenty-four and 11/100
dollars (\$3,224.11), the amount on deposit in the
Knickerbocker Trust Company, amounting to- 20
gether to the sum of One hundred and thirty-three
thousand three hundred and forty-nine and 56/100
dollars (\$133,349.56), are impressed with a trust
in favor of the plaintiff under the terms of said
will, and constitute and are hereby adjudged to be
the trust fund created under the terms of said will
for the benefit of the plaintiff; (4) That the plain-
tiff recover from the defendants as the amount of
income on the trust fund created for his benefit
under the terms of said will remaining due and un-
paid the sum of Twenty thousand seven hundred
and forty-four and 39/100 dollars (\$20,744.39), to-
gether with interest thereon from the date of this
decree; (5) That the defendants be and they here- 21
by are removed as trustees for the plaintiff under
the terms of said will, and The New York Trust
Company is hereby appointed in the place and
stead of the said defendants, as trustees of the
trust created under the will of the said Henry Ung-
rich, deceased, for the benefit of the plaintiff; (6)
That the defendants pay over to The New York
Trust Company, as their successor, the said sum
of One hundred and thirty-three thousand three
hundred and forty-nine and 56/100 dollars (\$133,-

22 349.56), the principal of the trust fund created for the benefit of the plaintiff under the last will and testament of Henry Ungrich, deceased; (7) That the plaintiff recover from the defendants Henry Ungrich, Jr., and Martin Ungrich, personally, the sum of Twenty-one hundred and sixty-seven and 89/100 (\$2,167.89) dollars, his costs and allowance as taxed by the Clerk of this Court, and said plaintiff is entitled to judgment and execution therefor," and from each and every part thereof.

Dated New York, May 29th, 1908.

Yours, etc.,

23 JOHNSTON & JOHNSTON,
Attorneys for Defendant Martin
Ungrich, ind., and as exr., etc.,
256 Broadway,
Manhattan Borough,
New York City.

To

KELLOGG & ROSE,
Attorneys for Plaintiff,
115 Broadway,
Manhattan Borough,
New York City.

and

24 PETER J. DOOLING, Esq.,
Clerk of the County
of New York.

SUPREME COURT OF THE STATE OF 25
NEW YORK.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MARTIN UNGRICH, individually, and as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,
Defendants.

Trial desired to
be had in New
York County.

Summons.

26

To the above-named Defendants:

You are hereby summoned to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff's Attorneys, within twenty (20) days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated New York, December 5th, 1906.

27

KELLOGG & ROSE,
Plaintiff's Attorneys,
Office and Post Office Address,
120 Broadway,
Borough of Manhattan,
New York City.

28 NEW YORK SUPREME COURT,
NEW YORK COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MARTIN UNGRICH, individually, and as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased, } Complaint.
29 Defendants.

The plaintiff, appearing herein by Kellogg & Rose, his attorneys, complains of the defendants, and respectfully shows to this Court:

First: That heretofore and on or about the 1st day of March, 1901, Henry Ungrich died in the City, County and State of New York, leaving him surviving his sons Martin Louis Ungrich, this plaintiff, and Henry Ungrich, Jr., one of the defendants, and leaving a last Will and Testament
30 and codicil thereto, of which the following are true copies:

In the Name of God, Amen: I, Henry Ungrich, of the City, County and State of New York, being of sound mind and memory, and mindful of the uncertainty of this life, do hereby make, publish and declare this my last Will and Testament in manner following, that is to say:

After the payment of all my just debts and funeral expenses,

I give, devise and bequeath unto my executors,

hereinafter named, and the survivors or survivor 31
 of them, all my estate, real, personal and mixed of
 every kind and nature and wheresoever situate, of
 which I die seized, possessed of, or entitled to, at
 the time of my decease, IN TRUST, nevertheless,
 to and for the following uses and purposes, to
 wit:

1st. To enter upon and take possession thereof,
 and manage and conduct the same and collect the
 rents, issues, income, interest and profits thereof,
 until the division of my estate, as hereinafter pro-
 vided for.

2nd. Out of such income, to pay and disburse all 32
 taxes, assessments, water rents, interest, insur-
 ances and repairs, and all other lawful charges,
 that may be levied, assessed, imposed, charged or
 made thereon.

3rd. To sell and convert my entire estate into
 cash, as soon after my decease as my Executors,
 hereinafter named, and the survivors and survivor
 of them deem best, in such manner and upon such
 terms, as my Executors think proper.

4th. To set apart, out of the proceeds of such
 sale of my estate, the sum of five thousand dollars
 and invest and re-invest the same, until the arrival
 of my grand-daughter Florence E. Ungrich at the 33
 age of twenty-one years, and upon her so arriving
 at the age of twenty-one years, I give, devise and
 bequeath to my said grand-daughter Florence E.
 Ungrich, the said sum of five thousand dollars and
 all interest or income, which has accumulated
 thereon, to her, her heirs, and assigns forever.
 And in the event of my said grand-daughter Flor-
 ence E. Ungrich, departing this life, before reach-
 ing the age of twenty-one years, then and in that

34 event, I direct that said legacy to her shall lapse and become void, and the sum or sums which would have been due her thereunder, shall be disposed of, in the manner hereinafter provided, for the balance of my estate.

5th. To divide the balance of my estate, into two equal one-half parts, and to pay over to my son Henry Ungrich one of such parts, which equal undivided one-half part I hereby give, devise and bequeath to my said son Henry Ungrich, to him, his heirs and assigns forever.

35 6th. To hold the remaining equal undivided one-half part, of said balance of my estate and keep the same invested and re-invested, and to pay over to my son Martin Louis Ungrich, in quarter-yearly payments, during his natural life, the net income received from the investment of such one-half part of my estate.

7th. Until the sale and division of my estate as provided in the 3rd, 4th, 5th and 6th clauses of this my Will, I direct my executors, and the survivors or survivor of them to divide and pay the net income, which is received from my estate, to my two sons Henry Ungrich and Martin Louis Ungrich in equal parts, one-half to each of them, in quarter-yearly payments.

36 8th. Upon the death of my said son Martin Louis Ungrich, then I give, devise and bequeath said one-half part of my estate (the net income of which I have hereinbefore directed shall be paid to my said son Martin Louis Ungrich during his natural life), with such accumulations of interest as may not then have been paid to my said son Martin Louis Ungrich, to my son Henry Ungrich, to him, his heirs and assigns forever.

9th. In the event of the death of my said son 37
 Henry Ungrich, without leaving lawful issue, prior
 to the death of my said son Martin Louis Ungrich,
 then and in that event, upon the death of my said
 son Martin Louis Ungrich, I give, devise and be-
 queath all said one-half of my estate, real, per-
 sonal and mixed as follows:

a. To my daughter-in-law Emily A. Ungrich,
 wife of my son said Henry Ungrich, the sum of ten
 thousand dollars which amount I give and be-
 queath to her, her heirs and assigns forever.

b. To my nephews Martin and Henry Ungrich,
 sons of my deceased brother Martin, the sum of
 five thousands dollars each, which amount I give 38
 and bequeath to each of them, their heirs and as-
 signs forever.

c. All the rest, residue and remainder of said
 one-half of my estate, I give, devise and bequeath
 to Maria Rodenbach, the only daughter of my de-
 ceased brother Jacob Ungrich, of the town of
 Kreuznach in Rheinisch Prussia, Germany.

10th. I hereby nominate, constitute and appoint
 my said son Henry Ungrich and my nephew Mar-
 tin Ungrich Executors of this my last Will and
 Testament, and Trustees of my estate until the
 final distribution thereof, with full power to them 39
 and to their survivors and survivor of them to do
 and perform all, each and every act and thing
 whatsoever requisite and necessary, to the due and
 proper execution, of this my Will and of all the
 powers, trusts and duties hereby reposed, given
 and devolved upon them and their survivors and
 the survivor of them; also with full power and
 authority, to sell or lease, any or all of my real
 estate, or any portion thereof, and to dispose of
 my personal estate, when in their sound discretion.

40 it will be for the best interests and benefit of my estate so to do, and to sign, seal, execute and deliver good and sufficient conveyances, leases, releases, bills of sale and all other instruments of writing and record necessary or proper therefor.

11th. I hereby revoke and annul, all other and former wills by me at any time heretofore made.

In Witness Whereof, I have hereunto set my hand and seal this fourteenth day of February, in the year of our Lord, one thousand, eight hundred and ninety-six.

(Signed) HENRY UNGRICH. (Seal.)

41 The foregoing instrument consisting of five pages, was at the date thereof signed, sealed, published and declared by the said Henry Ungrich as and for his last Will and Testament, in the presence of us, who at his request and in his presence and in the presence of each other have subscribed our names as witnesses thereto.

R. A. Havenor, No. 281 Lenox Avenue, N. Y. City.

James Demarest, No. 448 Macon Street, Brooklyn, N. Y.

Whereas, I, Henry Ungrich, of the City, County and State of New York, have made my last Will
42 and Testament in writing bearing date the fourteenth day of February, in the year of our Lord one thousand eight hundred and ninety-six (1896) and am now desirous of making a Codicil to my said last Will and Testament:

Now therefore, I, said Henry Ungrich, do hereby make, publish and declare this instrument to be a codicil to my said last Will and Testament aforesaid.

I do hereby revoke, annul and cancel the pro-

vision made for my grand-daughter Florence E. Ungrich, in the fourth clause, on page 2, of my said last Will and Testament, and I direct that the said sum of five thousand dollars therein mentioned, shall be disposed of by my executors, in the manner provided in my said last Will and Testament, for the balance of my estate, and as if the provision for my said grand-daughter, had not been inserted in my said last Will and Testament. 43

I make this revocation because I believe that my said grand-daughter will be provided for by her mother.

In all other respects I hereby confirm and ratify my said last Will and Testament aforesaid, to all intents and purposes. 44

In Witness Whereof I have hereunto set my hand and seal this twenty-eighth day of July, in the year of our Lord, one thousand eight hundred and ninety-seven.

HENRY UNGRICH. (Seal.)

The foregoing instrument consisting of two pages, was at the date thereof, signed, sealed, published and declared by the said Henry Ungrich as and for a Codicil to his last Will and Testament, dated February 14th, 1896, in the presence of us, who, at his request and in his presence and in the presence of each other, have subscribed our names as witnesses thereto. 45

Thomas J. McPherson, 90 Bristol Street, Brooklyn.

James Demarest, 448 Macon Street, Brooklyn, N. Y.

Second: That thereafter and on the 11th day of April, 1901, said will and codicil was duly admitted to probate by the Surrogates of the County of New York, and the defendants Henry Ungrich, Jr.,

46 and Martin Ungrich duly qualified as executors and trustees thereunder and ever since have acted as such executors and trustees.

Third: That the said defendants as such executors and trustees have wholly failed to carry out and perform their duties as such executors and trustees in that, among other things, they have wasted and improperly applied the moneys and property in their charge and keeping, have invested the trust funds in their possession improperly and improvidently, have delegated their active duties as such trustees to their attorney; have fraudulently and entirely failed to account for the
47 moneys in their possession; have falsely, fraudulently and improperly certified the amount of said trust estate for the purpose of taxation, and have fraudulently converted the trust property to the use of the defendant Henry Ungrich, Jr., one of the said executors and trustees; have fraudulently bought for his individual use and benefit all the real property held in trust for an improper, inadequate and insufficient consideration, and much below the true worth and value thereof, and which said wrongful acts are more particularly described as follows:

(a) The said defendants as such executors and
48 trustees wholly failed to have appraised and to account for certain personal property belonging to said estate, of the value of Twenty-five thousand dollars (\$25,000), and fraudulently, dishonestly and secretly converted the same to the use and benefit of the defendant Henry Ungrich, Jr., one of said executors and trustees, and in fraud of said estate and of the rights of this plaintiff thereunder.

(b) The said defendants as such executors and trustees wholly failed and neglected to properly

and lawfully carry out and perform their duties 49
 as such executors and trustees in the management
 and investment of certain moneys of said trust
 estate, for the benefit of this plaintiff as a bene-
 ficiary under said will, by depositing in the Knick-
 erbocker Trust Company the sum of upwards of
 Three thousand dollars (\$3,000) at a wholly in-
 sufficient and inadequate rate of interest, to the
 damage and loss of said trust estate, and this
 plaintiff as a beneficiary thereunder.

(c) That among other assets the estate of said
 Henry Ungrich consisted of the following de-
 scribed real estate, to wit:

All those certain lots, pieces or parcels of land 50
 with the buildings and improvements thereon
 erected, situate, lying and being in the Twelfth
 Ward, Borough of Manhattan, City, County and
 State of New York, bounded and described as fol-
 lows, to wit:

Parcel No. 1. All that certain lot, piece or
 parcel of land, with the buildings thereon,
 situate, lying and being in the Twelfth Ward
 of the City of New York, Borough of Man-
 hattan, County and State of New York, known
 and distinguished as lot number 359 (three
 hundred and fifty-nine), on a map entitled
 "Map of property belonging to Samson 51
 Adolph Benson, living in the Twelfth Ward
 of the City of New York," New York, May,
 1848, compiled and surveyed by Francis
 Nicholson, City Surveyor, and filed in the of-
 fice of the Register of the City and County of
 New York, and numbered Map 180 (one hun-
 dred and eighty) bounded and described as
 follows:

Beginning at a point on the Northerly side
 of One Hundred and Twenty-fourth street dis-

- 52 tant Seventy-five feet westerly from the westerly side of Sixth Avenue (now Lenox Avenue), as widened by an Act of the Legislature of the State of New York, entitled "An Act for the improvement of part of the City of New York between One Hundred and Tenth street and the Harlem River" passed April 24, 1865, Laws of 1865, Chapter 564, page 1133 (which point was distant One hundred feet westerly from the westerly side of Sixth Avenue (now Lenox Avenue) before said widening); thence running Northerly parallel with said Lenox Avenue (formerly Sixth Avenue)
- 53 One hundred feet and eleven inches; thence Westerly parallel with One Hundred and Twenty-fourth street Twenty-five feet; thence Southerly again parallel with Lenox Avenue (formerly Sixth Avenue) One hundred feet and Eleven inches to the Northerly side of One Hundred and Twenty-fourth street; thence Easterly along said Northerly side of One Hundred and Twenty-fourth street, Twenty-five feet to the point or place of beginning, being the same premises conveyed by John L. Strang and Sarah Strang, his wife, to Henry Ungrich, by deed bearing date November 18, 1872, and recorded in the office of the Register of the City and County of New York, in Liber 1227 of Conveyances, page 688, November 18, 1872.
- 54

Parcel No. 2. All that certain parcel of land, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, bounded and described as follows:

Beginning at a point at the intersection of the westerly line or side of Lenox Avenue

(formerly Sixth Avenue) with the Northerly 55
 line or side of One Hundred and Twenty-fourth Street; thence running westerly along said northerly line or side of One Hundred and Twenty-fourth Street Seventy-five feet; thence Northerly parallel with Lenox Avenue (formerly Sixth Avenue) Fifty-six feet; thence Easterly parallel with One Hundred and Twenty-fourth Street and part of the distance through the centre of a party wall Seventy-five feet to the Westerly line or side of Lenox Avenue (formerly Sixth Avenue); thence Southerly along the said Westerly line 56
 or side of Lenox Avenue (formerly Sixth Avenue) Fifty-six feet, to the point or place of beginning, be the said several dimensions more or less, being the same premises conveyed by Rudolph Wyman and Yette, his wife, and Bernhard Hamburger and Rebecka, his wife, to Henry Ungrich, by deed bearing date March first, 1869, and recorded in the office of the Register of the City and County of New York, in Liber 1023 of Conveyances, page 245, March 1, 1869.

Parcel No. 3. All that certain lot, piece or parcel of land, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New 57
 York, bounded and described as follows:

Beginning, at a point formed by the intersection of the Westerly side of Pleasant Avenue (formerly Avenue A) with the Southerly side of One Hundred and Twenty-third Street, running thence Southerly along said Westerly side of Pleasant Avenue (formerly Avenue A) Twenty-five feet Eleven inches; thence Westerly and parallel with One Hun-

- 58 dred and Twenty-third Street, One hundred feet; thence Northerly and parallel with Pleasant Avenue (formerly Avenue A) Twenty-five feet Eleven inches, to the Southerly side of One Hundred and Twenty-third Street, and thence Easterly along said Southerly side of One Hundred and Twenty-third Street, One hundred feet to the place of beginning, being the same premises conveyed by Henry Ungrich, Jr., and Emily A., his wife, to Henry Ungrich, Sr., by deed bearing date the twenty-eighth day of March, 1894, and recorded in the office of the Register of the City and County of New York, on the twenty-ninth day of March, 1894, in Block Series (Conveyances), Section 6, Liber 19, page 266, Block Number 1810, on the Land Map of the City of New York.
- 59

Parcel No. 4. All that certain lot, piece or parcel of land, with the building thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, bounded and described as follows, viz.:

- 60 Beginning at a point on the southerly side of One Hundred and Twenty-sixth Street, distant One Hundred and Thirty-five (135) feet Easterly from the corner formed by the intersection of the Southerly side of One Hundred and Twenty-sixth Street, with the Easterly side of Third Avenue, running thence Southerly and parallel with the Third Avenue Ninety-nine (99) feet and Eleven (11) inches to the centre line of the block; thence Easterly along the same Thirty (30) feet; thence Northerly and again parallel with the Third Avenue Ninety-nine (99) feet and Eleven

inches to the Southerly side of One Hundred and Twenty-sixth Street aforesaid, and thence Westerly along the same Thirty (30) feet, to the point or place of beginning, being the same premises conveyed by Stephen J. Wright and Susan A., his wife, to Henry Ungrich, by deed bearing date the 30th day of December, 1882, and recorded in the office of the Register of the City and County of New York, in Liber 1696 of Conveyances, page 278, January 4th, 1883. 61

That by falsely and fraudulently misrepresenting to this plaintiff the value of said above described real property, and other illegal and unlawful acts, the said defendants as such executors and trustees induced this plaintiff to consent to a sale of said real estate to the said defendant Henry Ungrich, Jr., for the sum of One hundred and fifty-seven thousand dollars (\$157,000), said sum being a totally insufficient and inadequate consideration and out of all proportion to the fair and reasonable value of said real estate, and by and through such false and fraudulent representations and said illegal and unlawful acts, the said defendants as such executors and trustees conspired and contrived to convey and to convert, and did convey and convert all of said trust real property to the use and benefit and to the large profit and advantage of one of said executors and trustees, to wit: said Henry Ungrich, Jr., all to the waste, injury and spoliation of said trust estate, in violation of their powers and duties as such trustees and all to the great loss and damage of this plaintiff. 62 63

(d) The said defendants, as such executors and trustees improperly, illegally, improvidently and

64 wastefully invested a part of the interest or share
 of this plaintiff in said trust estate in three separate mortgages aggregating the sum of Seventy-eight thousand five hundred dollars (\$78,500), given by one Harry K. Davenport, a dummy and representative of the defendant Henry Ungrich, Jr., one of the said executors and trustees, to the said executors and trustees Henry Ungrich, Jr., and Martin Ungrich at an entirely insufficient and inadequate rate of interest to wit: at the rate of four per cent. per annum, which said interest was paid by the said defendant Henry Ungrich, Jr., to said executors and trustees for the individual use
 65 by said Henry Ungrich, Jr., of said trust funds loaned as aforesaid, and all to the loss, detriment and damage of this plaintiff, as a beneficiary of said trust estate.

(e) Said defendants as such executors and trustees instead of exercising their individual judgment as to the proper management and investment of said trust estate delegated their duties in that regard to their attorney, to the waste of said trust estate, all to the loss and damage of this plaintiff. That said defendants as such executors and trustees falsely and fraudulently certified, for the purpose of reducing the tax thereon, the value of the trust estate created by said will for the benefit
 66 of this plaintiff, at the sum of Twenty-five thousand dollars (\$25,000), said sum being an untrue and false representation of said trust estate.

Fourth: That the said wrongful acts of said defendants above set out, as well as other unlawful acts and things in connection with said estate done, wastefully, incompetently and negligently and for their own individual uses and benefit, have resulted and will result in and to the great detri-

ment, loss, waste and spoliation of said trust estate, and to the great loss and damage of this plaintiff, and in violation of his rights as a beneficiary under said will. 67

Fifth: That this plaintiff is willing to return and restore and hereby offers to return and restore any and all moneys received by him or for his benefit under and by virtue of or in consequence of the said illegal and unlawful acts above complained of, and hereby consents that any sums of moneys received by or credited to him shall be taken into account in settling and adjusting the accounts of said defendants of the amounts for which they or either of them shall be held liable 68 in this action.

Wherefore, plaintiff demands judgment.

1. That the defendants account for all property, whether real or personal, in any way belonging to said Henry Ungrich, deceased, and coming into their hands, or which should have been taken possession of by them as such executors and trustees.

2. That the proceeds received by the defendant Henry Ungrich, Jr., from the sale of all the real property belonging to the said estate and conveyed to him unlawfully and illegally as set out in the complaint be accounted for by him as assets of said estate and be held impressed with the trust 69 in the plaintiff's favor to the extent of the interest therein created for his benefit under the terms of said will.

3. That the defendants be removed as such executors and trustees under the said will of Henry Ungrich, and that other and suitable persons be appointed in their place and stead.

- 70 4. That the plaintiff may have such other or further relief, or both, as may be just and equitable, together with the costs and disbursements of this action.

KELLOGG & ROSE,
Plaintiff's Attorneys,
Office and Post Office Address,
No. 120 Broadway,

Borough of Manhattan, New York City.

City and County of New York, ss.:

- 71 MARTIN L. UNGRICH, being duly sworn, says that he is the plaintiff in this action. That he has read the foregoing complaint and that the same is true to his own knowledge, except as to the matters which are therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.

MARTIN L. UNGRICH.

Sworn to before me this 5th }
day of December, 1906. }

THOS. A. HEALY,
Notary Public,
New York County.

72

NEW YORK SUPREME COURT,

73

COUNTY OF NEW YORK.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MAR-
 TIN UNGRICH, individually,
 and as Executors of and
 Trustees under the Last Will
 and Testament of Henry Un-
 grich, deceased,
 Defendants.

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The above named defendant Henry Ungrich, Jr., individually and as executor of and trustee under the last Will and Testament of Henry Ungrich, deceased, separately answering the complaint of the above named plaintiff, alleges and avers as follows:

First: He admits that among other assets, the estate of Henry Ungrich consisted of the real estate mentioned and described in subdivision "C" of the paragraph of the said complaint numbered "Third," but this defendant denies each and every other allegation contained in the said paragraph of the said complaint so numbered "Third."

75

Second: This defendant denies each and every allegation contained in the paragraph of the said complaint numbered "Fourth."

Third: This defendant denies any knowledge or information sufficient to form a belief as to the al-

76 legations contained in the paragraph of the said complaint numbered "Fifth."

Fourth: And for a further, separate and distinct defense, and also as a partial defense, this defendant alleges that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Martin Louis Ungrich, the plaintiff, and this defendant Henry Ungrich, Jr., and leaving a last Will and Testament and Codicil thereto, which is set forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said Will and Codicil thereto were
 77 duly admitted to probate by the Surrogates' Court of the County of New York, and the defendants herein duly qualified as executors of and trustees thereunder, and ever since have acted as such executors and trustees, and now are acting as such executors and trustees. That among the other assets the estate of the said Henry Ungrich consisted of the real estate mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered, "Third." That thereafter the said plaintiff made numerous complaints to this defendant Henry Ungrich, Jr., and the defendant Martin Ungrich that sufficient income was
 78 not realized from such real estate, and repeatedly requested this defendant and the said defendant Martin Ungrich, as such executors and trustees of the said last Will and Testament of the said Henry Ungrich, to act under the power of sale conferred upon them by the said last Will and Testament of the said Henry Ungrich, deceased, and sell the said premises for the best price that they could get therefor. That at that time this defendant Henry Ungrich, Jr., expressed his desire to purchase said premises at a price that

would be satisfactory to the plaintiff, and it was 79
 then and there mutually agreed between the plain-
 tiff and the defendants that an appraisal of the
 properties of the said estate as mentioned and
 described in subdivision "C" of the paragraph of
 the complaint herein numbered "Third" should
 be made by Philip A. Smyth, a well known auc-
 tioneer and appraiser and real estate agent and
 broker, doing business for many years past in the
 Borough of Manhattan, City of New York, and
 well conversant with the values of properties
 therein and well conversant with the values of
 the properties as mentioned and described in the
 said subdivision "C" of the said paragraph of 80
 the said complaint so numbered "Third." And
 thereupon the said Philip A. Smyth duly ap-
 praised the first and second of the parcels men-
 tioned and described in the said subdivision "C"
 of the said paragraph of the said complaint so
 numbered "Third" at the sum of \$110,000 and the
 third parcel mentioned and described in the said
 subdivision "C" of the paragraph of the said
 complaint so numbered "Third" at the sum of
 \$22,000, and the fourth parcel of the property so
 mentioned and described in the said subdivision
 "C" of the said paragraph of the said complaint
 so numbered "Third" at the sum of \$20,000, and
 the whole four parcels at the aggregate sum of 81
 \$152,000. And thereupon this defendant Henry
 Ungrich, Jr., offered to the plaintiff and the de-
 fendant Martin Ungrich to purchase said four
 parcels mentioned and described in subdivision
 "C" of the said paragraph of the said complaint
 numbered "Third," at the sum of \$157,000, and
 thereupon an agreement, in writing, was entered
 into, bearing date May 16, 1902, between this de-
 fendant and the said defendant Martin Ungrich as

- 82 such executors and trustees as aforesaid, the plaintiff, and one Harry K. Davenport, acting on behalf of this defendant Henry Ungrich, Jr., wherein and whereby this defendant and the said defendant Martin Ungrich agreed to sell and convey the said premises so mentioned and described in the said subdivision "C" of the paragraph of the said complaint numbered "Third" to the said Harry K. Davenport, acting on behalf of this defendant Henry Ungrich, Jr., for the said sum of \$157,000. And thereafter the said plaintiff in writing, duly executed and acknowledged by him, declared and affirmed to this defendant and the defendant Martin Ungrich, as executors and trustees of the said
- 83 last Will and Testament of the said Henry Ungrich, deceased, that the sale of the said real estate for the aggregate consideration of \$157,000 was made at his request, with his consent and approval, and with the full knowledge on his part that the said real estate was purchased for and was to be conveyed to this defendant Henry Ungrich, Jr., who was one of the executors of and trustees under the Will of the said Henry Ungrich, deceased, and he therein and thereby ratified and confirmed the same and all of the acts of this defendant Henry Ungrich, Jr., and defendant Martin Ungrich, as such executors of and trustees under the last Will
- 84 and Testament of Henry Ungrich, deceased, done in connection therewith. That this defendant acted and relied upon the written declaration, affirmation, ratification and confirmation so made by the said plaintiff and joined with the said defendant Martin Ungrich in a conveyance of the said premises mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to the said Harry K. Davenport, which deed bears date May 22, 1902,

and was duly recorded in the office of the Register 85
of the County of New York on May 24, 1902, in
Section 6, Liber 66 of conveyances, at page 419, and
indexed under blocks Nos. 1790, 1810 and 1909 on
the Land Map of the City of New York, as by refer-
ence thereto being had will more fully and at
large appear. And the said Harry K. Davenport,
on the same day, duly conveyed the said premises
so mentioned and described in the said subdivision
"C" of the said paragraph of the said complaint
numbered "Third," to this defendant Henry
Ungrich, Jr., by deed bearing date that day, and
duly recorded in the said office of the said Register
of the said County of New York, on the said 24th 86
day of May, 1902, in Section 6, Liber 68 of Convey-
ances, at page 299, and indexed under blocks Nos.
1790, 1810 and 1909 on the Land Map of the City
of New York, as by reference thereto being had
will more fully and at large appear.

Fifth: And for a further separate and distinct
defense, and also as a partial defense, this defend-
ant alleges that the said Henry Ungrich men-
tioned and described in the complaint, died on
March 1, 1901, leaving him surviving his sons Mar-
tin Louis Ungrich, the plaintiff, and this defendant
Henry Ungrich, Jr., and leaving a last Will and
Testament and Codicil thereto, which is set forth 87
in the paragraph of the said complaint numbered
"First," and that thereafter and on April 11,
1901, the said Will and Codicil thereto were duly
admitted to probate by the Surrogates' Court of
the County of New York, and the defendants
herein duly qualified as executors of and trustees
thereunder, and ever since have acted as such ex-
ecutors and trustees, and now are acting as such
executors and trustees. That among the other as-
sets the estate of the said Henry Ungrich consisted

88 of the real estate mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third." That thereafter the said plaintiff made numerous complaints to this defendant Henry Ungrich, Jr., and the defendant Martin Ungrich, that sufficient income was not realized from such real estate, and repeatedly requested this defendant and the said defendant Martin Ungrich, as such executors and trustees of the said last Will and Testament of the said Henry Ungrich, to act under the power of sale conferred upon them by the said last Will and Testament of the said Henry Ungrich, deceased, and

89 sell the said premises for the best price that they could get therefor. That at that time this defendant Henry Ungrich, Jr., expressed his desire to purchase said premises at a price that would be satisfactory to the plaintiff, and it was then and there mutually agreed between the plaintiff and the defendants that an appraisal of the properties of the said estate so mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third" should be made by Philip A. Smyth, a well known auctioneer and appraiser and real estate agent and broker, doing business for many years past in the Borough of Manhattan, City of New York, and well conversant

90 with the values of properties therein and well conversant with the values of the properties so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint so numbered "Third." And thereupon the said Philip A. Smyth duly appraised the first and second of the parcels mentioned and described in the said subdivision "C" of the said paragraph of the said complaint so numbered "Third" at the sum of \$110,000, and the third parcel mentioned and

described in the said subdivision "C" of the para- 91
graph of the said complaint so numbered "Third"
at the sum of \$22,000, and the fourth parcel of the
property so mentioned and described in the said
subdivision "C" of the said paragraph of the said
complaint so numbered "Third" at the sum of
\$20,000, and the whole four parcels at the aggre-
gate sum of \$152,000. And thereupon this de-
fendant offered to the plaintiff and the defendant
Martin Ungrich, to purchase said four parcels
mentioned and described in subdivision "C" of
the said paragraph of the said complaint num-
bered "Third," at the sum of \$157,000, and there-
upon an agreement in writing was entered into, 92
bearing date May 16, 1902, between this defendant
and the said defendant Martin Ungrich as such
executors and trustees as aforesaid, the plaintiff,
and one Harry K. Davenport, acting on behalf of
this defendant Henry Ungrich, Jr., wherein and
whereby this defendant and the said defendant
Martin Ungrich agreed to sell and convey the said
premises so mentioned and described in the said
subdivision "C" of the paragraph of the said
complaint numbered "Third" to the said Harry
K. Davenport, acting on behalf of this defendant,
for the said sum of \$157,000. And thereafter the
said plaintiff in writing, duly executed and ac-
knowledged by him, declared and affirmed to this 93
defendant and the defendant Martin Ungrich, as
executors and trustees of the said last Will and
Testament of the said Henry Ungrich, deceased,
that the sale of the said real estate for the aggre-
gate consideration of \$157,000, was made at his
request, with his consent and approval, and with
full knowledge on his part that the said real estate
was purchased for and was to be conveyed to this
defendant, who was one of the executors of and

94 trustees under the last Will of the said Henry Ungrich, deceased, and he therein and thereby ratified and confirmed the same and all of the acts of this defendant and the defendant Martin Ungrich, as such executors of and trustees under the last Will and Testament of Henry Ungrich, deceased, done in connection therewith. That this defendant acted and relied upon the written declaration, affirmation, ratification and confirmation so made by the said plaintiff and joined with the said defendant Martin Ungrich in a conveyance of the said premises mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to the said Harry K. Davenport, which deed bears date May 22, 1902, and was duly recorded in the office of the Register of the County of New York on May 24, 1902, in Section 6, Liber 66 of Conveyances, at page 419, and indexed under blocks Nos. 1790, 1810 and 1909, on the Land Map of the City of New York, as by reference thereto being had will more fully and at large appear. And the said Harry K. Davenport on the same day, duly conveyed the said premises so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to this defendant by deed bearing date that day, and duly

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96 recorded in the said office of the said Register of the said County of New York, on the said 24th day of May, 1902, in Section 6, Liber 68 of Conveyances, at page 299, and indexed under blocks Nos. 1790, 1810 and 1909 on the Land Map of the City of New York, as by reference thereto being had will more fully and at large appear. That the consideration paid by this defendant for the said conveyances of the said property to him was a proper, fair and reasonable consideration therefor, and

the act of this defendant and the defendant Martin Ungrich, as executor of and trustees under the last Will and Testament of the said Henry Ungrich, deceased, in the conveyance of the said parcels of real estate mentioned and described in the subdivision "C" of the paragraph of the said complaint numbered "Third" through the said Harry K. Davenport to this defendant was an act done for the benefit of the estate and within the terms of the power and trust given to this defendant and the said defendant Martin Ungrich, as such executors and trustees as aforesaid, and was in no respect in conflict with such power and trust.

Sixth: And for a further, separate and distinct defense, and also as a partial defense, this defendant alleges that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Martin Louis Ungrich, the plaintiff, and this defendant Henry Ungrich, Jr., and leaving a last Will and Testament and Codicil thereto, which is set forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said Will and codicil thereto were duly admitted to probate by the Surrogates' Court of the County of New York, and the defendants herein duly qualified as executors of and trustees thereunder, and ever since have acted as such executors and trustees, and now are acting as such executors and trustees. That among the other assets the estate of the said Henry Ungrich consisted of the real estate mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third." That thereafter the said plaintiff made numerous complaints to this defendant and the defendant Martin Ungrich that sufficient income was not realized from such real

100 estate, and repeatedly requested this defendant and the said defendant Martin Ungrich, as such executors and trustees of the said last Will and Testament of the said Henry Ungrich, to act under the power of sale conferred upon them by the said last Will and Testament of the said Henry Ungrich, deceased, and sell the said premises for the best price that they could get therefor. That at that time this defendant expressed his desire to purchase said premises at a price that would be satisfactory to the plaintiff, and it was then and there mutually agreed between the plaintiff and the defendants that an appraisal of the properties of the said estate so mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third" should be made by Philip A. Smyth, a well known auctioneer and appraiser and real estate agent and broker, doing business for many years past in the Borough of Manhattan, City of New York, and well conversant with the values of properties therein and well conversant with the values of the properties so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint so numbered "Third." And thereupon the said Philip A. Smyth duly appraised the first and second of the parcels mentioned and described in the said subdivision "C" of the said paragraph of the said complaint so numbered "Third" at the sum of \$110,000, and the third parcel mentioned and described in the said subdivision "C" of the paragraph of the said complaint so numbered "Third" at the sum of \$22,000, and the fourth parcel of the property so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint so numbered "Third" at the sum of \$20,000, and the whole four parcels at the aggregate sum of \$152,000. And thereupon this de-

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fendant offered to the plaintiff and the defendant 103
 Martin Ungrich to purchase said four parcels men-
 tioned and described in subdivision "C" of the
 said paragraph of the said complaint numbered
 "Third," at the sum of \$157,000, and thereupon
 an agreement, in writing, was entered into, bear-
 ing date May 16, 1902, between this defendant and
 the said defendant Martin Ungrich, as such execu-
 tors and trustees as aforesaid, the plaintiff, and
 one Harry K. Davenport, acting on behalf of this
 defendant, wherein and whereby this defendant
 and the said defendant Martin Ungrich agreed to
 sell and convey the said premises so mentioned and
 described in the said subdivision "C" of the para-
 graph of the said complaint numbered "Third" 104
 to the said Harry K. Davenport, acting on behalf
 of this defendant, for the said sum of \$157,000.
 And thereafter the said plaintiff, in writing, duly
 executed and acknowledged by him, declared and
 affirmed to this defendant and the defendant Mar-
 tin Ungrich, as executors and trustees of the said
 last Will and Testament of the said Henry Un-
 grich, deceased, that the sale of the said real es-
 tate for the aggregate consideration of \$157,000
 was made at his request, with his consent and ap-
 proval, and with full knowledge on his part that
 the said real estate was purchased for and was to
 be conveyed to this defendant, who was one of the 105
 executors of and trustees under the Will of the
 said Henry Ungrich, deceased, and he therein and
 thereby ratified and confirmed the same and all of
 the acts of this defendant and the defendant Mar-
 tin Ungrich, as such executors of and trustees un-
 der the last Will and Testament of Henry Un-
 grich, deceased, done in connection therewith.
 That this defendant acted and relied upon the
 written declaration affirmation, ratification and
 confirmation so made by the said plaintiff and

- 106 joined with this defendant in a conveyance of the said premises mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to the said Harry K. Davenport, which deed bears date May 22, 1902, and was duly recorded in the office of the Register of the County of New York, on May 24, 1902, in Section 6, Liber 66 of Conveyances, at page 419, and indexed under blocks Nos. 1790, 1810 and 1909 on the Land Map of the City of New York, as by reference thereto being had will more fully and at large appear. And the said Harry K. Davenport on the same day, duly conveyed the said
- 107 premises so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to this defendant by deed bearing date that day, and duly recorded in the said office of the said Register of the said County of New York, on the said 24th day of May, 1902, in Section 6, Liber 68 of Conveyances, at page 299, and indexed under blocks Nos. 1790, 1810 and 1909 on the Land Map of the City of New York, as by reference thereto being had will more fully and at large appear. That thereafter and on or about the second day of May, 1903, this defendant and the said defendant Martin Ungrich, as
- 108 such executors of and trustees under the last Will and Testament of the said Henry Ungrich, deceased, duly presented to the Surrogates' Court of the County of New York, having jurisdiction thereof, a true and accurate account of their proceedings as such executors of and trustees under the last Will and Testament of the said Henry Ungrich, deceased, and wherein they set forth the sale of the said premises so mentioned and described in the said subdivision "C" of the said paragraph of the complaint herein numbered "Third," for the

said sum of \$157,000, and wherein and whereby 109
they duly charged themselves with the receipt of
the said sum of \$157,000 as the consideration price
of the sale of the said premises. That the said
plaintiff was duly made a party to such proceed-
ings in the said Surrogates' Court of the County
of New York, so having jurisdiction thereof, and
such proceedings were thereafter duly had therein
on notice to the plaintiff, that a decree was duly
entered in the said Surrogates' Court of the
County of New York, bearing date the 13th day of
May, 1903, and filed in the office of the Clerk of that
Court on or about that day, wherein and whereby it
was duly adjudged that the said account of this de- 110
fendant and the said defendant Martin Ungrich,
as such executors and trustees as aforesaid, where-
in and whereby they had set forth the sale of the
said real estate so mentioned and described in the
said subdivision "C" of the said paragraph of the
said complaint numbered "Third" for the said
sum of \$157,000, and wherein and whereby they
had duly charged themselves with the receipt of
the said consideration price of the said premises,
should be and thereby was judicially settled and
allowed as filed and adjusted, and wherein and
whereby it was adjudged that out of the balance
so found in the hands of this defendant and the
said defendant Martin Ungrich, as such executors 111
of and trustees as aforesaid, that this defendant
and the said defendant Martin Ungrich, as execu-
tors of and trustees under the last Will and Testa-
ment of Henry Ungrich, deceased, should retain
the sum of \$867.18 for their commissions on the
accounting, and the sum of \$161.95 for their costs
and disbursements on the accounting, and that the
balance then remaining in their hands, being the
sum of \$78.984.07, should be held by them subject

112 to the provisions of the last Will and Testament of the said Henry Ungrich, deceased.

Seventh: And for a further, separate and distinct defense, and also as a partial defense, this defendant alleges that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Martin Louis Ungrich, the plaintiff, and this defendant Henry Ungrich, Jr., and leaving a last Will and Testament and Codicil thereto, which is set forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said Will and Codicil thereto
 113 were duly admitted to probate by the Surrogates' Court of the County of New York, and the defendants herein duly qualified as executors of and trustees thereunder, and ever since have acted as such executors and trustees, and now are acting as such executors and trustees. That among the other assets the estate of the said Henry Ungrich consisted of the real estate mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third." That thereafter the said plaintiff made numerous complaints to this defendant and the defendant Martin Ungrich that sufficient income was not realized from such real estate, and repeatedly requested
 114 this defendant, and the said defendant Martin Ungrich, as such executors and trustees of the said last Will and Testament of the said Henry Ungrich, to act under the power of sale conferred upon them by the said last Will and Testament of the said Henry Ungrich, deceased, and sell the said premises for the best price that they could get therefor. That at that time this defendant expressed his desire to purchase said premises at a price that would be satisfactory to the plaintiff,

and it was then and there mutually agreed between the plaintiff and the defendants that an appraisal of the properties of the said estate so mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third" should be made by Philip A. Smyth, a well known auctioneer and appraiser and real estate agent and broker, doing business for many years past in the Borough of Manhattan, City of New York, and well conversant with the values of properties therein and well conversant with the values of the properties so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint so numbered "Third." And thereupon the said Philip A. Smyth duly appraised the first and second of the parcels mentioned and described in the said subdivision "C" of the said paragraph of the said complaint so numbered "Third" at the sum of \$110,000, and the third parcel mentioned and described in the said subdivision "C" of the paragraph of the said complaint so numbered "Third" at the sum of \$22,000, and the fourth parcel of the property so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint so numbered "Third" at the sum of \$20,000, and the whole four parcels at the aggregate sum of \$152,000. And thereupon this defendant offered to the plaintiff and the defendant Martin Ungrich to purchase said four parcels mentioned and described in subdivision "C" of the said paragraph of the said complaint numbered "Third," at the sum of \$157,000, and thereupon an agreement, in writing, was entered into, bearing date May 16, 1902, between this defendant and the said defendant Martin Ungrich, as such executors and trustees as aforesaid, the plaintiff, and

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- 118 one Harry K. Davenport, acting on behalf of this defendant, wherein and whereby this defendant and the said defendant Martin Ungrich agreed to sell and convey the said premises so mentioned and described in the said subdivision "C" of the paragraph of the said complaint numbered "Third" to the said Harry K. Davenport, acting on behalf of this defendant for the said sum of \$157,000. And thereafter the said plaintiff in writing, duly executed and acknowledged by him, declared and affirmed to this defendant and the defendant Martin Ungrich, as executors and trustees of the said last Will and Testament of the said Henry Ungrich, deceased, that the sale of the said
- 119 real estate for the aggregate consideration of \$157,000 was made at his request, with his consent and approval, and with full knowledge on his part that the said real estate was purchased for and was to be conveyed to this defendant, who was one of the executors of and trustees under the Will of the said Henry Ungrich, deceased, and he therein and thereby ratified and confirmed the same and all of the acts of this defendant and the defendant Martin Ungrich, as such executors of and trustees under the last Will and Testament of Henry Ungrich, deceased, done in connection therewith. That this defendant acted and relied
- 120 upon the written declaration, affirmation, ratification and confirmation so made by the said plaintiff and joined with the said defendant Martin Ungrich, in a conveyance of the said premises mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to the said Harry K. Davenport, which deed bears date May 22, 1902, and was duly recorded in the office of the Register of the County of New York on May 24, 1902, in Section 6, Liber

66 of Conveyances, at page 419, and indexed under blocks Nos. 1790, 1810 and 1909 on the Land Map of the City of New York, as by reference thereto being had will more fully and at large appear. And the said Harry K. Davenport on the same day, duly conveyed the said premises so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to this defendant by deed bearing date that day, and duly recorded in the said office of the said Register of the said County of New York, on the said 24th day of May, 1902, in Section 6, Liber 68 of Conveyances, at page 299, and indexed under blocks Nos. 1790, 1810 and 1909 on the Land Map of the City of New York, as by reference thereto being had will more fully and at large appear. That thereafter and on or about the 24th day of April, 1903, the said plaintiff and his wife duly conveyed the first two of the parcels of the real estate, mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third" to this defendant by deed bearing date April 24, 1903, and duly acknowledged by them on or about that date.

Eighth: And for a further separate and distinct defense, and also as a partial defense, this defendant alleges that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Martin Louis Ungrich, the plaintiff, and this defendant Henry Ungrich, Jr., and leaving a last Will and Testament and Codicil thereto, which is set forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said Will and Codicil thereto were duly admitted to probate by the Surrogates'

- 124 Court of the County of New York, and the defendants herein duly qualified as executors of and trustees thereunder, and ever since have acted as such executors and trustees, and now are acting as such executors and trustees. That among the other assets the estate of the said Henry Ungrich consisted of the real estate mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third." That thereafter the said plaintiff made numerous complaints to this defendant and the defendant Martin Ungrich that sufficient income was not realized from such real estate, and repeatedly requested
- 125 this defendant, and the said defendant Martin Ungrich, as such executors and trustees of the said last Will and Testament of the said Henry Ungrich, to act under the power of sale conferred upon them by the said last Will and Testament of the said Henry Ungrich, deceased, and sell the said premises for the best price that they could get therefor. That at that time this defendant expressed his desire to purchase said premises at a price that would be satisfactory to the plaintiff, and it was then and there mutually agreed between the plaintiff and the defendants that an appraisal of the properties of the said estate so
- 126 mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third" should be made by Philip A. Smyth, a well known auctioneer and appraiser and real estate agent and broker, doing business for many years past in the Borough of Manhattan, City of New York, and well conversant with the values of properties therein and well conversant with the values of the properties so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered

"Third." And thereupon the said Philip A. 127
 Smyth duly appraised the first and second of the
 parcels mentioned and described in the said sub-
 division "C" of the said paragraph of the said
 complaint so numbered "Third" at the sum of
 \$110,000, and the third parcel mentioned and de-
 scribed in the said subdivision "C" of the para-
 graph of the said complaint so numbered "Third"
 at the sum of \$22,000, and the fourth parcel of the
 property so mentioned and described in the said
 subdivision "C" of the said paragraph of the
 said complaint so numbered "Third" at the sum
 of \$20,000, and the whole four parcels at the ag-
 gregate sum of \$152,000. And thereupon this de-
 fendant offered to the plaintiff and the defendant 128
 Martin Ungrich to purchase said four parcels
 mentioned and described in subdivision "C" of
 the said paragraph of the said complaint num-
 bered "Third," at the sum of \$157,000, and there-
 upon an agreement, in writing, was entered into,
 bearing date May 16, 1902, between this defendant
 and the said defendant Martin Ungrich, as such
 executors and trustees as aforesaid, the plaintiff,
 and one Harry K. Davenport acting on behalf of
 this defendant, wherein and whereby this defend-
 ant and the said defendant Martin Ungrich
 agreed to sell and convey the said premises so
 mentioned and described in the said subdivision 129
 "C" of the paragraph of the said complaint num-
 bered "Third" to the said Harry K. Davenport,
 acting on behalf of this defendant for the said sum
 of \$157,000. And thereafter the said plaintiff in
 writing, duly executed and acknowledged by him,
 declared and affirmed to this defendant and the
 defendant Martin Ungrich, as executors and trus-
 tees of the said last Will and Testament of the
 said Henry Ungrich, deceased, that the sale of the

- 130 said real estate for the aggregate consideration of \$157,000 was made at his request, with his consent and approval, and with full knowledge on his part that the said real estate was purchased for and was to be conveyed to this defendant, who was one of the executors of and trustees under the will of the said Henry Ungrich, deceased, and he therein and thereby ratified and confirmed the same and all of the acts of this defendant and the defendant Martin Ungrich, as such executors of and trustees under the last Will and Testament of Henry Ungrich, deceased, done in connection therewith. That this defendant acted and relied upon the written declaration, affirmation, ratification and confirmation so made by the said plaintiff
- 131 and joined with the said defendant Martin Ungrich in a conveyance of the said premises mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to the said Harry K. Davenport, which deed bears date May 22, 1902, and was duly recorded in the office of the Register of the County of New York on May 24, 1902, in Section 6, Liber 66, of Conveyances, at page 419, and indexed under blocks Nos. 1790, 1810 and 1909 on the Land Map of the City of New York, as by reference
- 132 thereto being had will more fully and at large appear. And the said Harry K. Davenport on the same day, duly conveyed the said premises so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to this defendant by deed bearing date that day, and duly recorded in the said office of the said Register of the said County of New York, on the said 24th day of May, 1902, in Section 6, Liber 68 of Conveyances, at page 299, and indexed under blocks Nos. 1790, 1810 and 1909 on the Land Map of the City of New York, as by

reference thereto being had will more fully and at large appear. That thereafter the said plaintiff and his wife duly conveyed the third of the parcels of the real estate mentioned and described in the subdivision "C" of the said paragraph of the said complaint numbered "Third" to this defendant by deed bearing date April 24, 1903, and duly acknowledged by them, and which deed was duly recorded in the office of the Register of the County of New York on or about the 31st day of July, 1906, in Section 6, Liber 79 of Conveyances, page 29, as by reference thereto being had will more fully and at large appear, and on which date this defendant duly conveyed the said premises to one Esther Eisenberg, by deed dated July 22, 1903, and recorded in the office of the Register of the County of New York in Section 6, Liber 79 of Conveyances, page 30, at a consideration which was less than the amount which this defendant paid to the defendant Martin Ungrich and this defendant Henry Ungrich, Jr., as such executors and trustees as aforesaid for the said premises.

Ninth: And for a further, separate and distinct defense, and also as a partial defense, this defendant alleges that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving his surviving his sons Martin Louis Ungrich, the plaintiff, and this defendant Henry Ungrich, Jr., and leaving a last Will and Testament and Codicil thereto, which is set forth in the paragraph of the said complaint numbered "First" and that thereafter and on April 11, 1901, the said Will and Codicil thereto were duly admitted to probate by the Surrogates' Court of the County of New York, and the defendants herein duly qualified as executors and trustees. That among the other assets the estate of the said

- 136 Henry Ungrich consisted of the real estate mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third." That thereafter the said plaintiff made numerous complaints to this defendant and the defendant Martin Ungrich that sufficient income was not realized from such real estate, and repeatedly requested this defendant, and the said defendant Martin Ungrich, as such executors and trustees of the said last Will and Testament of the said Henry Ungrich, to act under the power of sale conferred upon them by the said last Will and Testament of the said Henry Ungrich, deceased,
- 137 and sell the said premises for the best price that they could get therefor. That at that time this defendant expressed his desire to purchase said premises at a price that would be satisfactory to the plaintiff, and it was then and there mutually agreed between the plaintiff and the defendants that an appraisal of the properties of the said estate so mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third" should be made by Philip A. Smyth, a well known auctioneer and appraiser and real estate agent and broker, doing business for many years past in the Borough of Manhattan, City of New York, and well conversant with the
- 138 values of properties therein and well conversant with the values of the properties so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint so numbered "Third." And thereupon the said Philip A. Smyth duly appraised the first and second of the parcels mentioned and described in the said subdivision "C" of the said paragraph of the said complaint so numbered "Third" at the sum of \$110,000, and the third parcel mentioned and described in the said subdivision "C" of the para-

graph of the said complaint so numbered "Third" 139
 at the sum of \$22,000, and the fourth parcel of the
 property so mentioned and described in the said
 subdivision "C" of the said paragraph of the said
 complaint so numbered "Third" at the sum of
 \$20,000, and the whole four parcels at the aggre-
 gate sum of \$152,000. And thereupon this de-
 fendant offered to the plaintiff and the defendant
 Martin Ungrich to purchase said four parcels men-
 tioned and described in subdivision "C" of the
 said paragraph of the said complaint numbered
 "Third," at the sum of \$157,000, and thereupon
 an agreement, in writing, was entered into, bear-
 ing date May 16, 1902, between this defendant and 140
 the said defendant Martin Ungrich, as such execu-
 tors and trustees as aforesaid, the plaintiff, and
 one Harry K. Davenport, acting on behalf of this
 defendant, wherein and whereby this defendant
 and the said defendant Martin Ungrich agreed to
 sell and convey the said premises so mentioned
 and described in the said subdivision "C" of
 the paragraph of the said complaint numbered
 "Third" to the said Harry K. Davenport, acting
 on behalf of this defendant, for the said sum of
 \$157,000. And thereafter the said plaintiff in
 writing, duly executed and acknowledged by him,
 declared and affirmed to this defendant and the
 defendant Martin Ungrich, as executors and trus- 141
 tees of the said last Will and Testament of the
 said Henry Ungrich, deceased, that the sale of the
 said real estate for the aggregate consideration
 of \$157,000 was made at his request, with his con-
 sent and approval, and with full knowledge on his
 part that the said real estate was purchased for
 and was to be conveyed to this defendant who was
 one of the executors of and trustees under the Will
 of the said Henry Ungrich, deceased, and he

142 therein and thereby ratified and confirmed the same and all of the acts of this defendant and the defendant Martin Ungrich, as such executors of and trustees under the last Will and Testament of Henry Ungrich, deceased, done in connection therewith. That this defendant acted and relied upon the written declaration, affirmation, ratification and confirmation so made by the said plaintiff and joined with the said defendant Martin Ungrich in a conveyance of the said premises mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to the said Harry K. Davenport, which deed bears date May 22, 1902, and was 143 duly recorded in the office of the Register of the County of New York on May 24, 1902, in Section 6, Liber 66 of Conveyances, at page 419, and indexed under blocks Nos. 1790, 1810 and 1909 on the Land Map of the City of New York, as by reference thereto being had will more fully and at large appear. And the said Harry K. Davenport on the same day, duly conveyed the said premises so mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third" to this defendant by deed bearing date that day, and duly recorded in the said office of the said Register of the said County 144 of New York, on the said 24th day of May, 1902, in Section 6, Liber 68 of Conveyances, at page 299, and indexed under blocks Nos. 1790, 1810 and 1909 on the Land Map of the City of New York, as by reference thereto being had will more fully and at large appear. That thereafter and on or about the 24th day of April, 1903, the said plaintiff and his wife duly conveyed the fourth of the parcels mentioned and described in the subdivision "C" of the paragraph of the said complaint

herein numbered "Third" to this defendant by 145
 deed bearing date April 24, 1903, and duly ac-
 knowledged by them on that date, and which deed
 was duly recorded in the office of the Register of
 the County of New York on April 24, 1903, in
 Section 6, Liber 75 of Conveyances, page 152, as
 by reference thereto being had will more fully and
 at large appear, and on which date this defendant
 Henry Ungrich, Jr., duly conveyed the said prem-
 ises to one Charles Goldstein by deed bearing date
 that day, and which was duly recorded in the
 office of the Register of the County of New York
 in Section 6, Liber 75 of Conveyances, at page
 157, at a consideration which was less than the 146
 amount which this defendant paid to the de-
 fendant Martin Ungrich and this defendant, as
 such executors and trustees as aforesaid for the
 said premises.

Tenth: And for a further separate and distinct
 defense and also as a partial defense, this de-
 fendant alleges, that heretofore and on the 7th day
 of February, 1897, the said Henry Ungrich, in his
 lifetime, duly assigned to this defendant a certain
 indenture of mortgage, bearing date the 2nd day
 of November, 1896, made by one John D. Thees
 and wife to the said Henry Ungrich, since de-
 ceased, to secure the payment of the sum of \$12,000,
 and which was recorded in the office of the Regis- 147
 ter of the County of New York on November 5,
 1896, at two o'clock and eight minutes P. M. in
 Block Series of Mortgages, Section 6, Liber 56,
 page 483 and indexed under block number 1774
 on the Land Map of the City of New York, and
 also a certain other indenture of mortgage, bear-
 ing date the 23rd day of July, 1891, made by Noah
 Schwab and wife to the said Henry Ungrich, since

- 148 deceased, to secure the payment of the sum of \$5,000 and recorded in the office of the Register of the County of New York on July 30, 1891, at two o'clock and thirty-six minutes P. M. in Block Series, Section 7, Liber 5, page 267, and indexed under block No. 1909 on the Land Map of the City of New York, and also a certain other indenture of mortgage bearing date September 1, 1886, made by Alice Rohkohl to the said Henry Ungrich, since deceased, to secure the payment of the sum of \$10,000 and interest, and duly recorded in the said office of the said Register of the County of New York on September 2, 1886, in Liber 2027 of
- 149 Mortgages, page 400, by instrument of assignment bearing date February 17, 1897, and duly recorded in the office of the said Register of the County of New York on February 18, 1897, at twelve o'clock eight minutes P. M. in Block Series, Section 6, Liber 50 of Mortgages, at page 461, and indexed under block No. 1774, and also in Block Series of Mortgages, Section 7, Liber 70 at page 260, and indexed under block No. 1909, as by reference thereto being had will more fully and at large appear; and this defendant alleges that the aggregate amount of the said mortgages so assigned by the said Henry Ungrich in his lifetime to this de-
- 150 fendant by such instrument of assignment as aforesaid is the sum of \$25,000, which is mentioned and described in the subdivision "a" of the paragraph of the complaint herein numbered "Third," and that disputes having thereafter arisen between the said plaintiff and this defendant over the assignment of the said bonds and mortgages by the said Henry Ungrich, in his lifetime, to this defendant Henry Ungrich, Jr., as aforesaid, and over the conveyance of this defendant and the defendant Martin Ungrich, as the ex-

ecutors of and trustees under the said last Will 151
 and Testament of Henry Ungrich, deceased, for
 the sum of \$157,000 of the premises mentioned
 and described in subdivision "c" of the paragraph
 of the complaint herein numbered "Third," to
 Harry K. Davenport, by deed bearing date May
 22, 1902, and recorded in the office of the Register
 of the County of New York on May 24, 1902, in
 Section 6, Liber 66, page 416 of Conveyances, and
 indexed under blocks Nos. 1790, 1810 and 1909,
 as by reference thereto being had will more fully
 and at large appear, and the conveyance by the
 said Harry K. Davenport to this defendant of the
 said premises by deed bearing date May 22, 1902,
 and recorded on May 24, 1902, in the said office 152
 of the said Register in Section 6, Liber 68 of Con-
 veyances at page 299, and indexed under blocks
 Nos. 1790, 1810 and 1909, as by reference thereto
 being had will also more fully and at large appear,
 the said plaintiff, in consideration of the sum of
 \$6,000 to him in hand paid by this defendant by
 general release bearing date and duly executed
 and acknowledged by him on June 23, 1902, duly
 released, remised and forever discharged this de-
 fendant, said Henry Ungrich, Jr., his heirs, execu-
 tors and administrators of and from all manner
 of action and actions, cause and causes of action,
 suits, debts, dues, sums of money, accounts, reck- 153
 oning, bonds, bills, specialties, covenants, con-
 tracts, controversies, agreements, promises, vari-
 ances, trespasses, damages, judgments, extents,
 executions, claims and demands whatsoever, in
 law or in equity, which against him he ever had
 or which his heirs, executors or administrators
 thereafter could, should or might have, upon or
 by reason of any matter, cause or thing whatso-
 ever from the beginning of the world to the day
 of the date of the said presents.

- 154 Eleventh: And for a further, separate and distinct defense, and also as a partial defense, and also by way of counterclaim, this defendant alleges that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Martin Louis Ungrich, the plaintiff, and this defendant Henry Ungrich, Jr., and leaving a last Will and Testament and Codicil thereto, which is set forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said Will and Codicil thereto were duly admitted to probate by the Surrogates' Court of the County of
- 155 New York, and the defendants herein duly qualified as executors and trustees. That among the other assets the estate of the said Henry Ungrich consisted of the real estate mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third." That thereafter the said plaintiff made numerous complaints to this defendant and the defendant Martin Ungrich that sufficient income was not realized from such real estate, and repeatedly requested this defendant, and the said defendant Martin Ungrich, as such executors and trustees of the said last Will and Testament of the said Henry
- 156 Ungrich, to act under the power of sale conferred upon them by the said last Will and Testament of the said Henry Ungrich, deceased, and sell the said premises for the best price that they could get therefor. That at that time this defendant expressed his desire to purchase said premises at a price that would be satisfactory to the plaintiff, and it was then and there mutually agreed between the plaintiff and the defendants that an appraisal of the properties of the said estate so mentioned and described in subdivision "C" of the

paragraph of the complaint herein numbered 157
 "Third" should be made by Philip A. Smyth, a
 well known auctioneer and appraiser and real es-
 tate agent and broker, doing business for many
 years past in the Borough of Manhattan, City of
 New York, and well conversant with the values of
 properties therein and well conversant with the
 values of the properties so mentioned and de-
 scribed in the said subdivision "C" of the said
 paragraph of the said complaint so numbered
 "Third." And thereupon the said Philip A.
 Smyth duly appraised the first and second of the
 parcels mentioned and described in the said sub-
 division "C" of the said paragraph of the said 158
 complaint so numbered "Third" at the sum of
 \$110,000, and the third parcel mentioned and de-
 scribed in the said subdivision "C" of the para-
 graph of the said complaint so numbered "Third"
 at the sum of \$22,000, and the fourth parcel of the
 property so mentioned and described in the said
 subdivision "C" of the said paragraph of the said
 complaint so numbered "Third" at the sum of
 \$20,000, and the whole four parcels at the aggre-
 gate sum of \$152,000. And thereupon this de-
 fendant offered to the plaintiff and the defendant
 Martin Ungrich to purchase said four parcels men-
 tioned and described in subdivision "C" of the
 said paragraph of the said complaint numbered 159
 "Third," at the sum of \$157,000, and thereupon
 an agreement in writing, was entered into, bear-
 ing date May 16, 1902, between this defendant
 and the said defendant Martin Ungrich, as such
 executors and trustees as aforesaid, the plaintiff,
 and one Harry K. Davenport, acting on behalf of
 this defendant, wherein and whereby this defend-
 ant and the said defendant Martin Ungrich agreed
 to sell and convey the said premises so mentioned

160 and described in the said subdivision "C" of the paragraph of the said complaint numbered "Third" to the said Harry K. Davenport, acting on behalf of this defendant, for the said sum of \$157,000. And thereafter the said plaintiff in writing, duly executed and acknowledged by him, declared and affirmed to this defendant and the defendant Martin Ungrich, as executors and trustees of the said last Will and Testament of the said Henry Ungrich, deceased, that the sale of the said real estate for the aggregate consideration of \$157,000 was made at his request, with his consent and approval, and with full knowledge on his part that the said real estate was purchased for and

161 was to be conveyed to this defendant, who was one of the executors of and trustees under the Will of the said Henry Ungrich, deceased, and he therein and thereby ratified and confirmed the same and all of the acts of this defendant and the defendant Martin Ungrich, as such executors of and trustees under the last Will and Testament of Henry Ungrich, deceased, done in connection therewith. That this defendant acted and relied upon the written declaration, affirmation, ratification and confirmation so made by the said plaintiff and joined with the said defendant Martin Ungrich in a conveyance of the said premises mentioned and described in the said subdivision "C"

162 of the said paragraph of the said complaint numbered "Third," to the said Harry K. Davenport, which deed bears date May 22, 1902, and was duly recorded in the office of the Register of the County of New York on May 24, 1902, in Section 6, Liber 66 of Conveyances, at page 419, and indexed under Blocks Nos. 1790, 1810 and 1909 on the Land Map of the City of New York, as by reference thereto being had will more fully and at large appear.

And the said Harry K. Davenport at the time of 163
the conveyance to him, as aforesaid, executed and
delivered to this defendant and the defendant
Martin Ungrich, as executors and trustees as
aforesaid, three several mortgages bearing date
the 22nd day of May, 1902, and duly recorded in
the office of the Register of the County of New
York on May 24, 1902, viz, one for \$57,500, on the
first and second of the parcels mentioned and de-
scribed in subdivision "C" of the paragraph of
the said complaint herein numbered "Third;" one
for \$11,000, on the third of the parcels mentioned
and described in subdivision "C" of the para-
graph of the said complaint herein numbered 164
"Third" and one for \$10,000 on the fourth of the
parcels mentioned and described in subdivision
"C" of the paragraph of the said complaint here-
in numbered "Third." And the said Harry K.
Davenport on the same day, duly conveyed the
said premises so mentioned and described in the
said subdivision "C" of the said paragraph of
the said complaint numbered "Third," to this
defendant by deed bearing date that day, and duly
recorded in the said office of the said Register of
the said County of New York, on the said 24th
day of May, 1902, in Section 6, Liber 68 of Convey-
ances, at page 299, and indexed under blocks Nos.
1790, 1810 and 1909 on the Land Map of the City 165
of New York, as by reference thereto being had
will more fully and at large appear. That after
the conveyance of the premises to this defendant
as aforesaid, this defendant, relying upon the writ-
ten declaration, affirmation, ratification and con-
firmation so made by the said plaintiff, erected or
caused to be erected a stable and storage build-
ing at a cost of \$24,869.36 upon the premises men-
tioned and described in subdivision "C" of the

- 176 paragraph of the said complaint herein numbered
 "Third," as "Parcel No. 1." That the said plain-
 tiff, knowing that this defendant had erected said
 stable and storage building on said premises,
 thereafter and on or about the 24th day of April,
 1903, together with his wife, duly conveyed the
 said premises and all the other premises men-
 tioned and described in the said subdivision "C"
 of the said paragraph of the said complaint num-
 bered "Third" to this defendant, by three several
 deeds, bearing date April 24, 1903, and duly ac-
 knowledged by them on or about that date. That
 this defendant, relying upon the said written
 177 declaration, affirmation, ratification and confirma-
 tion so made by the said plaintiff and upon the
 said deeds made by the said plaintiff and his wife
 to this defendant, individually, paid to the plain-
 tiff interest on the said mortgages executed by the
 said Harry K. Davenport hereinbefore set forth to
 the amount of over \$13,000, and individually paid
 taxes on the several parcels in the said subdivision
 "C" of the said paragraph of the said complaint
 numbered "Third," amounting in all to \$5,829.88,
 assessments on the same amounting to \$69.40,
 water rents on the same amounting to \$570.10,
 premiums for Fire Insurance on the buildings on
 the same amounting to \$874.90, premiums for
 178 Plate Glass Insurance on the buildings on the
 same amounting to \$89.00, janitors' services for
 care of same amounting to \$1,770.44, commissions
 on rentals of same amounting to \$159.75, and
 necessary repairs on the buildings on the same
 amounting to \$3,626.12. That this defendant, re-
 lying upon the said written declaration, affirma-
 tion, ratification and confirmation so made by
 the said plaintiff and upon the deeds made by the
 said plaintiff and his wife to this defendant, on
 or about the 24th day of April, 1903, by deed bear-

ing date that day, sold and conveyed the fourth 169
of the parcels mentioned and described in sub-
division "C" of the paragraph of the said com-
plaint herein numbered "Third" to one Charles
Goldstein for the consideration of \$18,500, which
was the market value thereof at that time and
being \$1,500 less than the price this defendant paid
to the said executors and trustees for the same,
and paid for commissions on said sale the sum of
\$185.00. That this defendant, relying upon the
said written declaration, affirmation, ratification
and confirmation so made by the said plaintiff and
upon the said deeds made by the said plaintiff to
this defendant, on or about the 22nd day of July, 170
1903, by deed bearing date that day, sold and
conveyed the third of the parcels mentioned and
described in subdivision "C" of the paragraph
of the said complaint herein numbered "Third"
to one Esther Eisenberg for the consideration of
\$19,500, which was the market value thereof at
that time and being \$2,500 less than the price this
defendant paid to the said executors and trustees
for the same, and paid for commissions on said
sale the sum of \$195. That this defendant, rely-
ing upon the said written declaration, affirmation,
ratification and confirmation so made by the said
plaintiff, and the said deeds made by the said
plaintiff and his wife to this defendant, on or 171
about the 2nd day of July, 1906, by deed bearing
date that day, sold and conveyed the first and
second of the parcels mentioned and described in
subdivision "C" of the paragraph of the said
complaint herein numbered "Third" to one
George Ehret for the consideration of \$250,000,
and paid for commissions on said sale the sum of
\$2,500.

Wherefore this defendant demands judgment as
follows:

172 First: That the complaint of the plaintiff be dismissed, with the costs and disbursements of this action.

Second: That in the event that the Court shall adjudge that the conveyance by the defendants to Harry K. Davenport and by the said Davenport to the defendant Henry Ungrich, Jr., set forth in this answer are void or voidable and should be set aside and that the defendants are chargeable with the amount realized by the defendant Henry Ungrich, Jr., on a sale of the premises set forth in the complaint, or the value of said premises, that this defendant Henry Ungrich, Jr., be held to have
 173 an equitable lien on the amount with which the defendants may be charged to the amount of the purchase price paid upon the conveyance to said Davenport and said defendant Henry Ungrich, Jr., the cost of the erection of the stable and building, interest paid on mortgages, taxes, assessments, water rents, premiums for fire and plate glass insurance, repairs, loss on sales, janitor's services and commissions, as set forth in paragraph "Eleventh" of this answer.

ISAAC P. HUBBARD,
 Attorney for deft. Henry Ungrich,
 174 Jr., individually and as executor, etc.,

132 Nassau Street,
 Manhattan Borough,
 New York City.

City and County of New York, ss.: 175

HENRY UNGRICH, JR., being duly sworn, says: That he is one of the defendants herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

HENRY UNGRICH, JR.

Sworn to before me this 15th }
day of January, 1907. }

GUY C. FRISBIE, 176
Notary Public for Kings County,
Certificate filed in New York County.

178

NEW YORK SUPREME COURT,

COUNTY OF NEW YORK.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MAR-
TIN UNGRICH, individually,
and as Executors of and
Trustees under the Last Will
and Testament of Henry Un-
grich, deceased,

179

Defendants.

The above named defendant Martin Ungrich, individually and as executor of and trustee under the last Will and Testament of Henry Ungrich, deceased, separately answering the complaint of the above named plaintiff, alleges and avers as follows:

180 First: He admits that among other assets, the estate of Henry Ungrich consisted of the real estate mentioned and described in subdivision "C" of the paragraph of the said complaint numbered "Third;" but this defendant denies each and every other allegation contained in the said paragraph of the said complaint so numbered "Third."

Second: This defendant denies each and every allegation contained in the paragraph of the said complaint numbered "Fourth."

Third: This defendant denies any knowledge or information sufficient to form a belief as to the

allegations contained in the paragraph of the 181
said complaint numbered "Fifth."

Fourth: And for a further separate and distinct defense, and also as a partial defense, this defendant alleges that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Martin Louis Ungrich, the plaintiff, and the defendant Henry Ungrich, Jr., and leaving a last Will and Testament and Codicil thereto, which is set forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said Will and Codicil thereto were duly admitted to probate by the Surrogates' 182
Court of the County of New York, and the defendants herein duly qualified as executors of and trustees thereunder, and ever since have acted as such executors and trustees, and now are acting as such executors and trustees. That among the other assets the estate of the said Henry Ungrich consisted of the real estate mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered "Third." That thereafter the said plaintiff made numerous complaints to the defendant Henry Ungrich, Jr., and this defendant that sufficient income was not realized from such real estate, and repeatedly requested this defendant and the said defendant 183
Henry Ungrich, Jr., as such executors and trustees of the said last Will and Testament of the said Henry Ungrich, to act under the power of sale conferred upon them by the said last Will and Testament of the said Henry Ungrich, deceased, and sell the said premises for the best price that they could get therefor. That at that time the defendant Henry Ungrich, Jr., expressed his desire to purchase said premises at a price that would

184 be satisfactory to the plaintiff, and it was then
and there mutually agreed between the plaintiff
and the defendants that an appraisal of the prop-
erties of the said estate so mentioned and de-
scribed in subdivision "c" of the paragraph of
the complaint herein numbered "Third" should
be made by Philip A. Smyth, a well known auc-
tioneer and appraiser and real estate agent and
broker, doing business for many years past in the
Borough of Manhattan, City of New York, and
well conversant with the values of properties
therein and well conversant with the values of
the properties so mentioned and described in the
said subdivision "C" of the said paragraph of
185 the said complaint so numbered "Third." And
thereupon the said Philip A. Smyth duly ap-
praised the first and second of the parcels men-
tioned and described in the said subdivision "C"
of the said paragraph of the said complaint so
numbered "Third" at the sum of \$110,000, and
the third parcel mentioned and described in the
said subdivision "C" of the paragraph of the
said complaint so numbered "Third" at the sum
of \$22,000, and the fourth parcel of the property
so mentioned and described in the said subdivision
"C" of the said paragraph of the said complaint
so numbered "Third" at the sum of \$20,000, and
186 the whole four parcels at the aggregate sum of
\$152,000. And thereupon the said defendant Henry
Ungrich, Jr., offered to the plaintiff and this de-
fendant to purchase said four parcels mentioned
and described in subdivision "C" of the said para-
graph of the said complaint numbered "Third,"
at the sum of \$157,000, and thereupon an agree-
ment, in writing, was entered into, bearing date
May 16, 1902, between this defendant and the said
defendant Henry Ungrich, Jr., as such executors

and trustees as aforesaid, the plaintiff, and one 187
 Harry K. Davenport, acting on behalf of the defendant Henry Ungrich, Jr., wherein and whereby this defendant and the said defendant Henry Ungrich, Jr., agreed to sell and convey the said premises so mentioned and described in the said subdivision "C" of the paragraph of the said complaint numbered "Third" to the said Harry K. Davenport, acting on behalf of the said Henry Ungrich, Jr., for the said sum of \$157,000. And thereafter the said plaintiff in writing, duly executed and acknowledged by him, declared and affirmed to this defendant and the defendant Henry Ungrich, Jr., as executors and trustees of the said last Will and Testament of the said Henry Ungrich, deceased,, 188
 that the sale of the said real estate for the aggregate consideration of \$157,000 was made at his request, with his consent and approval, and with full knowledge on his part that the said real estate was purchased for and was to be conveyed to the said Henry Ungrich, Jr., who was one of the executors of and trustees under the Will of the said Henry Ungrich, deceased, and he therein and thereby ratified and confirmed the same and all of the acts of the said Henry Ungrich, Jr., and this defendant, as such executors of and trustees under the last Will and Testament of Henry Ungrich, deceased, done in connection therewith. 189
 That this defendant acted and relied upon the written declaration, affirmation, ratification and confirmation so made by the said plaintiff and joined with the said defendant Henry Ungrich, Jr., in a conveyance of the said premises mentioned and described in the said subdivision "C" of the said paragraph of the said complaint numbered "Third," to the said Harry K. Davenport, which deed bears date May 22, 1902, and was duly recorded in the office of the Register of the County

190 of New York on May 24, 1902, in Section 6, Liber 66 of conveyances, at page 419, and indexed under blocks Nos. 1790, 1810 and 1909 on the land map of the City of New York, as by reference thereto being had will more fully and at large appear. And the said Harry K. Davenport, on the same day, duly conveyed the said premises so mentioned and described in the said subdivision "c" of the said paragraph of the said complaint numbered "Third," to the defendant Henry Ungrich, Jr., by deed bearing date that day, and duly recorded in the said office of the said Register of the said County of New York, on the said 24th day of May, 1902, in Section 6, Liber 68 of Conveyances, at
 191 page 299, and indexed under blocks Nos. 1790, 1810 and 1909 on the land map of the City of New York, as by reference thereto being had will more fully and at large appear.

Fifth: And for a further separate and distinct defense, and also as a partial defense, this defendant alleges that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Martin Louis Ungrich, the plaintiff, and the defendant Henry Ungrich, Jr. and leaving a last Will and Testament and Codicil thereto, which is set
 192 forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said Will and Codicil thereto were duly admitted to probate by the Surrogates' Court of the County of New York, and the defendants therein duly qualified as executors of and trustees thereunder, and ever since have acted as such executors and trustees, and now are acting as such executors and trustees. That among the other assets the estate of the said Henry Ungrich consisted of the real estate mentioned and de-

scribed in subdivision "c" of the paragraph of 193
the complaint herein numbered "Third." That
thereafter the said plaintiff made numerous com-
plaints to the defendant Henry Ungrich, Jr., and
this defendant, that sufficient income was not
realized from such real estate, and repeatedly re-
quested this defendant and the said defendant
Henry Ungrich, Jr., as such executors and trustees
of the said last Will and Testament of the said
Henry Ungrich, to act under the power of sale
conferred upon them by the said last Will and
Testament of the said Henry Ungrich, deceased,
and sell the said premises for the best price that
they could get therefor. That at that time the
defendant Henry Ungrich, Jr., expressed his de- 194
sire to purchase said premises at a price that
would be satisfactory to the plaintiff, and it was
then and there mutually agreed between the plain-
tiff and the defendants that an appraisal of the
properties of the said estate so mentioned and de-
scribed in subdivision "c" of the paragraph of
the complaint herein numbered "Third" should
be made by Philip A. Smyth, a well known auc-
tioneer and appraiser and real estate agent and
broker, doing business for many years past in the
Borough of Manhattan, City of New York, and
well conversant with the values of the properties
therein and well conversant with the values of the 195
properties so mentioned and described in the said
subdivision "c" of the said paragraph of
the said complaint so numbered "Third." And
thereupon the said Philip A. Smyth duly
appraised the first and second of the parcels
mentioned and described in the said sub-
division "c" of the said paragraph of the
said complaint so numbered "Third" at the
sum of \$110,000, and the third parcel mentioned
and described in the said subdivision "c" of the

196 paragraph of the said complaint so numbered
"Third" at the sum of \$22,000, and the fourth
parcel of the property so mentioned and described
in the said subdivision "c" of the said paragraph
of the said complaint so numbered "Third" at
the sum of \$20,000, and the whole four parcels
at the aggregate sum of \$152,000. And thereupon
the said defendant Henry Ungrich, Jr., offered
to the plaintiff and this defendant to purchase
said four parcels mentioned and described in sub-
division "c" of the said paragraph of the said
complaint numbered "Third," at the sum of
\$157,000, and thereupon an agreement, in writing,
197 was entered into, bearing date May 16, 1902, be-
tween this defendant and the said defendant
Henry Ungrich, Jr., as such executors and trus-
tees as aforesaid, the plaintiff, and one Harry K.
Davenport, acting on behalf of the defendant
Henry Ungrich, Jr., wherein and whereby this
defendant and the said defendant Henry Ungrich,
Jr., agreed to sell and convey the said premises
so mentioned and described in the said subdivision
"c" of the paragraph of the said complaint num-
bered "Third" to the said Harry K. Davenport,
acting on behalf of the said Henry Ungrich, Jr.,
for the said sum of \$157,000. And thereafter the
198 said plaintiff in writing, duly executed and ack-
nowledged by him, declared and affirmed to this
defendant and the defendant Henry Ungrich,
Jr., as executors and trustees of the said
last Will and Testament of the said Henry
Ungrich, deceased, that the sale of the said
real estate for the aggregate consideration
of \$157,000 was made at his request, with his
consent and approval, and with full knowledge
on his part that the said real estate was purchased
for and was to be conveyed to the said Henry
Ungrich, Jr., who was one of the executors of and

trustees under the last will of the said Henry 199
 Ungrich, deceased, and he therein and thereby
 ratified and confirmed the same and all of the acts
 of the said Henry Ungrich, Jr., and this defend-
 ant, as such executors of and trustees under the
 last Will and Testament of Henry Ungrich, de-
 ceased, done in connection therewith. That this
 defendant acted and relied upon the written dec-
 laration, affirmation, ratification and confirma-
 tion so made by the said plaintiff and joined with
 the said defendant Henry Ungrich, Jr., in a con-
 veyance of the said premises mentioned and de-
 scribed in the said subdivision "c" of the said
 paragraph of the said complaint numbered 200
 "Third," to the said Harry K. Davenport, which
 deed bears date May 22, 1902, and was duly re-
 corded in the office of the Register of the County
 of New York on May 24, 1902, in Section 6, Liber
 66 of Conveyances, at page 419, and indexed un-
 der blocks Nos. 1790, 1810 and 1909 on the land
 map of the City of New York, as by reference
 thereto being had will more fully and at large
 appear. And the said Harry K. Davenport on
 the same day, duly conveyed the said premises so
 mentioned and described in the said subdivision
 "c" of the said paragraph of the said complaint
 numbered "Third," to the defendant Henry 201
 Ungrich, Jr., by deed bearing date that day, and
 duly recorded in the said office of the said Reg-
 ister of the said County of New York, on the said
 24th day of May, 1902, in Section 6, Liber 68 of
 Conveyances, at page 299, and indexed under
 blocks Nos. 1790, 1810 and 1909 on the land map
 of the City of New York, as by reference thereto
 being had will more fully and at large appear. That
 the consideration paid by the said defendant
 Henry Ungrich, Jr., for the said conveyance of

202 the said property to him was a proper, fair and
 reasonable consideration therefor, and the act of
 this defendant and the defendant Henry Ungrich,
 Jr., as executors of and trustees under the last
 Will and Testament of the said Henry Ungrich,
 deceased, in the conveyance of the said parcels of
 real estate mentioned and described in the sub-
 division "c" of the paragraph of the said com-
 plaint numbered "Third" through the said Harry
 K. Davenport to the said Henry Ungrich, Jr., was
 an act done for the benefit of the estate and within
 the terms of the power and trust given to this de-
 fendant and the said defendant Henry Ungrich,
 203 Jr., as such executors and trustees as aforesaid,
 and was in no respect in conflict with such power
 and trust.

Sixth: And for a further separate and distinct
 defense, and also as a partial defense, this defend-
 ant alleges that the said Henry Ungrich, men-
 tioned and described in the complaint, died on
 March 1, 1901, leaving him surviving his sons Mar-
 tin Louis Ungrich, the plaintiff, and the defendant
 Henry Ungrich, Jr., and leaving a last Will and
 Testament and Codicil thereto, which is set forth
 in the paragraph of the said complaint numbered
 "First," and that thereafter and on April 11,
 204 1901, the said Will and Codicil thereto were duly
 admitted to probate by the Surrogates' Court of
 the County of New York, and the defendants here-
 in duly qualified as executors of and trustees
 thereunder, and ever since have acted as such
 executors and trustees, and now are acting as such
 executors and trustees. That among the other as-
 sets the estate of the said Henry Ungrich consisted
 of the real estate mentioned and described in sub-
 division "C" of the paragraph of the complaint
 herein numbered "Third." That thereafter the
 said plaintiff made numerous complaint to the de-

fendant Henry Ungrich, Jr., and this defendant 205
 that sufficient income was not realized from such
 real estate, and repeatedly requested this defend-
 ant and the said defendant Henry Ungrich, Jr., as
 such executors and trustees of the said last Will
 and Testament of the said Henry Ungrich, to act
 under the power of sale conferred upon them by
 the said last Will and Testament of the said
 Henry Ungrich, deceased, and sell the said prem-
 ises for the best price that they could get therefor.
 That at that time the defendant Henry Ungrich,
 Jr., expressed his desire to purchase said prem-
 ises at a price that would be satisfactory to the
 plaintiff, and it was then and there mutually 206
 agreed between the plaintiff and the defendants
 that an appraisal of the properties of the said es-
 tate so mentioned and described in subdivision
 "C" of the paragraph of the complaint herein
 numbered "Third" should be made by Philip A.
 Smyth, a well known auctioneer and appraiser and
 real estate agent and broker, doing business for
 many years past in the Borough of Manhattan,
 City of New York, and well conversant with the
 values of properties therein and well conversant
 with the values of the properties so mentioned
 and described in the said subdivision "C" of the
 said paragraph of the said complaint so numbered
 "Third." And thereupon the said Philip A. 207
 Smyth duly appraised the first and second of the
 parcels mentioned and described in the said sub-
 division "C" of the said paragraph of the said
 complaint so numbered "Third" at the sum of
 \$110,000, and the third parcel mentioned and de-
 scribed in the said subdivision "C" of the para-
 graph of the said complaint so numbered "Third"
 at the sum of \$22,000, and the fourth parcel of the
 property so mentioned and described in the said
 subdivision "C" of the said paragraph of the said

208 complaint so numbered "Third" at the sum of \$20,000, and the whole four parcels at the aggregate sum of \$152,000. And thereupon the said defendant Henry Ungrich, Jr., offered to the plaintiff and this defendant to purchase said four parcels mentioned and described in subdivision "c" of the said paragraph of the said complaint numbered "Third," at the sum of \$157,000, and thereupon an agreement, in writing, was entered into, bearing date May 16, 1902, between this defendant and the said defendant Henry Ungrich, Jr., as such executors and trustees as aforesaid, the plaintiff, and one Harry K. Davenport, acting on behalf of the defendant Henry Ungrich, Jr., wherein and
 209 whereby this defendant and the said defendant Henry Ungrich, Jr., agreed to sell and convey the said premises so mentioned and described in the said subdivision "c" of the paragraph of the said complaint numbered "Third" to the said Harry K. Davenport, acting on behalf of the said Henry Ungrich, Jr., for the said sum of \$157,000. And thereafter the said plaintiff in writing, duly executed and acknowledged by him, declared and affirmed to this defendant and the defendant Henry Ungrich, Jr., as executors and trustees of the said last Will and Testament of the said Henry Ungrich, deceased, that the sale of the said real estate for the aggregate consideration of \$157,000
 210 was made at his request, with his consent and approval, and with full knowledge on his part that the said real estate was purchased for and was to be conveyed to the said Henry Ungrich, Jr., who was one of the executors of and trustees under the will of the said Henry Ungrich, deceased, and he therein and thereby ratified and confirmed the same and all of the acts of the said Henry Ungrich, Jr., and this defendant, as such executors of

and trustees under the last Will and Testament of 211
 Henry Ungrich, deceased, done in connection
 therewith. That this defendant acted and relied
 upon the written declaration, affirmation, ratifica-
 tion and confirmation so made by the said plaintiff
 and joined with the said defendant Henry Un-
 grich, Jr., in a conveyance of the said premises
 mentioned and described in the said subdivision
 "c" of the said paragraph of the said complaint
 numbered "Third," to the said Harry K. Daven-
 port, which deed bears date May 22, 1902, and was
 duly recorded in the office of the Register of the
 County of New York on May 24, 1902, in Section 6,
 Liber 66 of Conveyances, at page 419, and indexed 212
 under blocks Nos. 1790, 1810 and 1909 on the land
 map of the City of New York, as by reference
 thereto being had will more fully and at large ap-
 pear. And the said Harry K. Davenport on the
 same day, duly conveyed the said premises so men-
 tioned and described in the said subdivision "c"
 of the said paragraph of the said complaint num-
 bered "Third," to the defendant Henry Ungrich,
 Jr., by deed bearing date that day, and duly re-
 corded in the said office of the said Register of the
 said County of New York, on the said 24th day of
 May, 1902, in Section 6, Liber 68 of Conveyances,
 at page 299, and indexed under blocks Nos. 1790,
 1810 and 1909 on the land map of the City of New 213
 York, as by reference thereto being had will more
 fully and at large appear. That thereafter and on
 or about the second day of May, 1903, this defend-
 ant and the said defendant Henry Ungrich, Jr., as
 such executors of and trustees under the last Will
 and Testament of the said Henry Ungrich, de-
 ceased, duly presented to the Surrogate's Court
 of the County of New York, having jurisdiction
 thereof, a true and accurate account of their pro-

- 214 ceedings as such executors of and trustees under the last Will and Testament of the said Henry Ungrich, deceased, and wherein they set forth the sale of the said premises so mentioned and described in the said subdivision "c" of the said paragraph of the complaint herein numbered "Third," for the said sum of \$157,000 and wherein and whereby they duly charged themselves with the receipt of the said sum of \$157,000 as the consideration price of the sale of the said premises. That the said plaintiff was duly made a party to such proceedings in the said Surrogates' Court of the County of New York, so having jurisdiction thereof, and such proceedings were thereafter duly
- 215 had therein on notice to the plaintiff, that a decree was duly entered in the said Surrogates' Court of the County of New York, bearing date the 13th day of May, 1903, and filed in the office of the Clerk of that Court on or about that day, wherein and whereby it was duly adjudged that the said account of this defendant and the said defendant Henry Ungrich, Jr., as such executors and trustees as aforesaid, wherein and whereby they had set forth the sale of the said real estate so mentioned and described in the said subdivision "c" of the said paragraph of the said complaint numbered "Third" for the said sum of \$157,000, and
- 216 wherein and whereby they had duly charged themselves with the receipt of the said consideration price of the said premises, should be and thereby was judicially settled and allowed as filed and adjusted, and wherein and whereby it was adjudged that out of the balance so found in the hands of this defendant and the said defendant Henry Ungrich, Jr., as such executors of and trustees as aforesaid, that this defendant and the said defendant Henry Ungrich, Jr., as executors of and

trustees under the last Will and Testament of 217
 Henry Ungrich, deceased, should retain the sum
 of \$867.18 for their commissions on the accounting,
 and the sum of \$161.95 for their costs and dis-
 bursements on the accounting, and that the bal-
 ance then remaining in their hands, being the
 sum of \$78,984.07, should be held by them subject
 to the provisions of the last Will and Testament
 of the said Henry Ungrich, deceased.

Seventh: And for a further separate and distinct
 defense, and also as a partial defense, this defend-
 ant alleges that the said Henry Ungrich, men-
 tioned and described in the complaint, died on 218
 March 1, 1901, leaving him surviving his sons Mar-
 tin Louis Ungrich, the plaintiff, and the defendant
 Henry Ungrich, Jr., and leaving a last Will and
 Testament and Codicil thereto, which is set forth
 in the paragraph of the said complaint numbered
 "First," and that thereafter and on April 11,
 1901, the said Will and Codicil thereto were duly
 admitted to probate by the Surrogates' Court of
 the County of New York, and the defendants
 herein duly qualified as executors of and trustees
 thereunder, and ever since have acted as such
 executors and trustees, and now are acting as such
 executors and trustees. That among the other
 assets the estate of the said Henry Ungrich con- 219
 sisted of the real estate mentioned and described
 in subdivision "c" of the paragraph of the com-
 plaint herein numbered "Third." That there-
 after the said plaintiff made numerous complaints
 to the defendant Henry Ungrich, Jr., and this de-
 fendant that sufficient income was not realized
 from such real estate, and repeatedly requested
 this defendant, and the said defendant Henry Un-
 grich, Jr., as such executors and trustees of the
 said last Will and Testament of the said Henry
 Ungrich, to act under the power of sale conferred

220 upon them by the said last Will and Testament of the said Henry Ungrich, deceased, and sell the said premises for the best price that they could get therefor. That at that time the defendant Henry Ungrich, Jr., expressed his desire to purchase said premises at a price that would be satisfactory to the plaintiff, and it was then and there mutually agreed between the plaintiff and the defendants that an appraisal of the properties of the said estate so mentioned and described in subdivision "c" of the paragraph of the complaint herein numbered "Third" should be made by Philip A. Smyth, a well known auctioneer and appraiser and real estate agent and broker, doing business for

221 many years past in the Borough of Manhattan, City of New York, and well conversant with the values of properties therein and well conversant with the values of the properties so mentioned and described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third." And thereupon the said Philip A. Smyth duly appraised the first and second of the parcels mentioned and described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third" at the sum of \$110,000, and the third parcel

222 mentioned and described in the said subdivision "c" of the paragraph of the said complaint so numbered "Third" at the sum of \$22,000, and the fourth parcel of the property so mentioned and described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third" at the sum of \$20,000, and the whole four parcels at the aggregate sum of \$152,000. And thereupon the said defendant Henry Ungrich, Jr., offered to the plaintiff and this defendant to purchase said four parcels mentioned

and described in subdivision "c" of the said para- 223
graph of the said complaint numbered "Third,"
at the sum of \$157,000, and thereupon an agree-
ment, in writing, was entered into, bearing date
May 16, 1902, between this defendant and the said
defendant Henry Ungrich, Jr., as such executors
and trustees as aforesaid, the plaintiff, and one
Harry D. Davenport, acting on behalf of the de-
fendant Henry Ungrich, Jr., wherein and whereby
this defendant and the said defendant Henry Un-
grich, Jr., agreed to sell and convey the said prem-
ises so mentioned and described in the said sub-
division "c" of the paragraph of the said com- 224
plaint numbered "Third" to the said Harry K.
Davenport, acting on behalf of the said Henry Un-
grich, Jr., for the said sum of \$157,000. And
thereafter the said plaintiff in writing, duly exe-
cuted and acknowledged by him, declared and af-
firmed to this defendant and the defendant Henry
Ungrich, Jr., as executors and trustees of the said
last Will and Testament of the said Henry Un-
grich, deceased, that the sale of the said real estate
for the aggregate consideration of \$157,000 was
made at his request, with his consent and approval,
and with full knowledge on his part that the said
real estate was purchased for and was to be con-
veyed to the said Henry Ungrich, Jr., who was one 225
of the executors of and trustees under the will of
the said Henry Ungrich, deceased, and he therein
and thereby ratified and confirmed the same and
all of the acts of the said Henry Ungrich, Jr., and
this defendant, as such executors of and trustees
under the last Will and Testament of Henry Un-
grich, deceased, done in connection therewith.
That this defendant acted and relied upon the
written declaration, affirmation, ratification and
confirmation so made by the said plaintiff and

- 226 joined with the said defendant Henry Ungrich, Jr., in a conveyance of the said premises mentioned and described in the said subdivision "c" of the said paragraph of the said complaint numbered "Third," to the said Harry K. Davenport, which deed bears date May 22, 1902, and was duly recorded in the office of the Register of the County of New York, on May 24, 1902, in Section 6, Liber 66 of Conveyances, at page 419, and indexed under blocks Nos. 1790, 1810 and 1909 on the land map of the City of New York, as by reference thereto being had will more fully and at large appear. And the said Harry K. Davenport on the same day, duly conveyed the said premises so mentioned
- 227 and described in the said subdivision "c" of the said paragraph of the said complaint numbered "Third," to the defendant Henry Ungrich, Jr., by deed bearing date that day, and duly recorded in the said office of the said Register of the said County of New York, on the said 24th day of May, 1902, in Section 6, Liber 68 of Conveyances, at page 299, and indexed under blocks Nos. 1790, 1810 and 1909 on the land map of the City of New York, as by reference thereto being had will more fully and at large appear. That thereafter and on or about the 24th day of April, 1903, the said plaintiff and his wife duly conveyed the first two of the
- 228 parcels of the real estate, mentioned and described in the said subdivision "c" of the said paragraph of the said complaint numbered "Third," to the defendant Henry Ungrich, Jr., by deed, bearing date April 24, 1903, and duly acknowledged by them on or about that date.

Eighth: And for a further separate and distinct defense, and also as a partial defense, this defendant alleges that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Mar-

tin Louis Ungrich, the plaintiff, and the defendant 229
 Henry Ungrich, Jr., and leaving a last Will and
 Testament and Codicil thereto, which is set forth
 in the paragraph of the said complaint numbered
 "First," and that thereafter and on April 11, 1901,
 the said Will and Codicil thereto were duly ad-
 mitted to probate by the Surrogates' Court of the
 County of New York, and the defendants herein
 duly qualified as executors of and trustees there-
 under, and ever since have acted as such execu-
 tors and trustees, and now are acting as such
 executors and trustees. That among the other as-
 sets the estate of the said Henry Ungrich consisted
 of the real estate mentioned and described in sub-
 division "c" of the paragraph of the complaint 230
 herein numbered "Third." That thereafter the
 said plaintiff made numerous complaints to the
 defendant Henry Ungrich, Jr., and this defendant
 that sufficient income was not realized from such
 real estate, and repeatedly requested this defend-
 ant, and the said defendant Henry Ungrich, Jr.,
 as such executors and trustees of the said last
 Will and Testament of the said Henry Ungrich,
 to act under the power of sale conferred upon them
 by the said last Will and Testament of the said
 Henry Ungrich, deceased, and sell the said prem-
 ises for the best price that they could get therefor.
 That at that time the defendant Henry Ungrich, 231
 Jr., expressed his desire to purchase said prem-
 ises at a price that would be satisfactory to the
 plaintiff, and it was then and there mutually
 agreed between the plaintiff and the defendants
 that an appraisal of the properties of the said es-
 tate so mentioned and described in subdivision
 "c" of the paragraph of the complaint herein
 numbered "Third" should be made by Philip A.
 Smyth, a well known auctioneer and appraiser and

- 231 real estate agent and broker, doing business for many years past in the Borough of Manhattan, City of New York, and well conversant with the values of properties therein and well conversant with the values of the properties so mentioned and described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third." And thereupon the said Philip A. Smyth duly appraised the first and second of the parcels mentioned and described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third" at the sum of \$110,000, and the third parcel mentioned and described in the said subdivision "c" of the para-
- 233 graph of the said complaint so numbered "Third" at the sum of \$22,000, and the fourth parcel of the property so mentioned and described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third" at the sum of \$20,000, and the whole four parcels at the aggregate sum of \$152,000. And thereupon the said defendant Henry Ungrich, Jr., offered to the plaintiff and this defendant to purchase said four parcels mentioned and described in subdivision "c" of the said paragraph of the said complaint numbered "Third" at the sum of \$157,000, and thereupon an agreement, in writing, was entered into, bearing date May 16, 1902, between this defend-
- 234 ant and the said defendant Henry Ungrich, Jr., as such executors and trustees as aforesaid, the plaintiff, and one Harry K. Davenport, acting on behalf of the defendant Henry Ungrich, Jr., wherein and whereby this defendant and the said defendant Henry Ungrich, Jr., agreed to sell and convey the said premises so mentioned and described in the said subdivision "c" of the paragraph of the said complaint numbered "Third" to the said Harry K. Davenport, acting on behalf of the said

Henry Ungrich, Jr., for the said sum of \$157,000. 235
 And thereafter the said plaintiff in writing, duly
 executed and acknowledged by him, declared and
 affirmed to this defendant and the defendant
 Henry Ungrich, Jr., as executors and trustees of
 the said last Will and Testament of the said Henry
 Ungrich, deceased, that the sale of the said real
 estate for the aggregate consideration of \$157,000
 was made at his request, with his consent and ap-
 proval, and with full knowledge on his part that
 the said real estate was purchased for and was to
 be conveyed to the said Henry Ungrich, Jr., who
 was one of the executors of and trustees under the
 will of the said Henry Ungrich, deceased, and he 236
 therein and thereby ratified and confirmed the
 same and all of the acts of the said Henry Ungrich,
 Jr., and this defendant, as such executors of and
 trustees under the last Will and Testament of
 Henry Ungrich, deceased, done in connection
 therewith. That this defendant acted and relied
 upon the written declaration, affirmation, ratifica-
 tion and confirmation so made by the said plain-
 tiff and joined with the said defendant Henry Un-
 grich, Jr., in a conveyance of the said premises
 mentioned and described in the said subdivision
 "c" of the said paragraph of the said complaint
 numbered "Third," to the said Harry K. Daven-
 port, which deed bears date May 22, 1902, and was 237
 duly recorded in the office of the Register of the
 County of New York on May 24, 1902, in Section
 6, Liber 66 of Conveyances, at page 419, and in-
 dexed under blocks Nos. 1790, 1810 and 1909 on
 the land map of the City of New York, as by refer-
 ence thereto being had will more fully and at large
 appear. And the said Harry K. Davenport on the
 same day, duly conveyed the said premises so men-
 tioned and described in the said subdivision "c"
 of the said paragraph of the said complaint num-

bered "Third," to the defendant Henry Ungrich, Jr., by deed bearing date that day, and duly recorded in the said office of the said Register of the said County of New York, on the said 24th day of May, 1902, in Section 6, Liber 68 of Conveyances, at page 299, and indexed under blocks Nos. 1790, 1810 and 1909 on the land map of the City of New York, as by reference thereto being had will more fully and at large appear. That thereafter the said plaintiff and his wife duly conveyed the third of the parcels of the real estate mentioned and described in the subdivision "c" of the said paragraph of the said complaint numbered "Third" to the said defendant Henry Ungrich, Jr., by deed, bearing date April 24, 1903, and duly acknowledged by them, and which deed was duly recorded in the office of the Register of the County of New York on or about the 31st day of July, 1903, in Section 6, Liber 79 of Conveyances, page 29, as by reference thereto being had will more fully and at large appear, and on which date, as this defendant is informed and believes, the said defendant Henry Ungrich, Jr. duly conveyed the said premises to one Esther Eisenberg, by deed dated July 22, 1903, and recorded in the office of the Register of the County of New York in Section 6, Liber 79 of Conveyances, page 30, at a consideration which was less than the amount which the said defendant Henry Ungrich, Jr., paid to this defendant and the said defendant Henry Ungrich, Jr., as such executors and trustees as aforesaid for the said premises.

Ninth: And for a further separate and distinct defense, and also as a partial defense, this defendant alleges that the said Henry Ungrich, mentioned and described in the complaint, died March 1, 1901, leaving him surviving two sons Martin

Louis Ungrich, the plaintiff, and the defendant 241
 Henry Ungrich, Jr., and leaving a last Will and
 Testament and Codicil thereto, which is set forth
 in the paragraph of the said complaint numbered
 "First," and that thereafter and on April 11,
 1901, the said Will and Codicil thereto were duly
 admitted to probate by the Surrogate's Court of
 the County of New York, and the defendants here-
 in duly qualified as executors and trustees. That
 among the other assets the estate of the said
 Henry Ungrich consisted of the real estate men-
 tioned and described in subdivision "c" of the
 paragraph of the complaint herein numbered
 "Third." That thereafter the said plaintiff made 242
 numerous complaints to the defendant Henry
 Ungrich, Jr., and this defendant that sufficient in-
 come was not realized from such real estate, and
 repeatedly requested this defendant, and the said
 defendant Henry Ungrich, Jr., as such executors
 and trustees of the said last Will and Testament
 of the said Henry Ungrich, to act under the power
 of sale conferred upon them by the said last Will
 and Testament of the said Henry Ungrich, de-
 ceased, and sell the said premises for the best
 price that they could get therefor. That at that
 time the defendant Henry Ungrich, Jr., expressed
 his desire to purchase said premises at a price that
 would be satisfactory to the plaintiff, and it was 243
 then and there mutually agreed between the plain-
 tiff and the defendants that an appraisal of the
 properties of the said estate so mentioned and de-
 scribed in subdivision "c" of the paragraph of
 the complaint herein numbered "Third" should
 be made by Philip A. Smyth, a well known auc-
 tioneer and appraiser and real estate agent and
 broker, doing business for many years past in
 the Borough of Manhattan, City of New York,
 and well conversant with the values of properties

244 therein and well conversant with the values of the properties so mentioned and described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third." And thereupon the said Philip A. Smyth duly appraised the first and second of the parcels mentioned and described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third" at the sum of \$110,000, and the third parcel mentioned and described in the said subdivision "c" of the paragraph of the said complaint so numbered "Third" at the sum of \$22,000, and the fourth parcel of the property so mentioned and described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third" at the sum of \$20,000, and the whole four parcels at the aggregate sum of \$152,000. And thereupon the said defendant Henry Ungrich, Jr., offered to the plaintiff and this defendant to purchase said four parcels mentioned and described in subdivision "c" of the said paragraph of the said complaint numbered "Third," at the sum of \$157,000, and thereupon an agreement, in writing, was entered into, bearing date May 16, 1902 between this defendant and the said defendant Henry Ungrich, Jr., as such executors and trustees as aforesaid, the plaintiff, and one Harry K. Davenport, acting on behalf of the defendant Henry Ungrich, Jr., wherein and whereby this defendant and the said defendant Henry Ungrich, Jr., agreed to sell and convey the said premises so mentioned and described in the said subdivision "c" of the paragraph of the said complaint numbered "Third" to the said Harry K. Davenport, acting on behalf of the said Henry Ungrich, Jr., for the said sum of \$157,000. And thereafter the said plaintiff in writing, duly executed and acknowledged by him, declared and affirmed to this

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defendant and the defendant Henry Ungrich, Jr., 247
 as executors and trustees of the said last Will and
 Testament of the said Henry Ungrich, deceased,
 that the sale of the said real estate for the aggre-
 gate consideration of \$157,000 was made at his re-
 quest, with his consent and approval, and with full
 knowledge on his part that the said real estate
 was purchased for and was to be conveyed to the
 said Henry Ungrich, Jr., who was one of the ex-
 ecutors of and trustees under the will of the said
 Henry Ungrich, deceased, and he therein and
 thereby ratified and confirmed the same and all of
 the acts of the said Henry Ungrich, Jr., and this
 defendant, as such executors of and trustees un- 248
 der the last Will and Testament of Henry Ungrich,
 deceased, done in connection therewith. That this
 defendant acted and relied upon the written decla-
 ration, affirmation, ratification and confirmation
 so made by the said plaintiff and joined with the
 said defendant Henry Ungrich, Jr., in a convey-
 ance of the said premises mentioned and described
 in the said subdivision "c" of the said paragraph
 of the said complaint numbered "Third," to the
 said Harry K. Davenport, which deed bears date
 May 22, 1902, and was duly recorded in the office
 of the Register of the County of New York on
 May 24, 1902, in Section 6, Liber 66 of Convey-
 ances, at page 419, and indexed under blocks Nos. 249
 1790, 1810 and 1909 on the land map of the City
 of New York, as by reference thereto being had
 will more fully and at large appear. And the said
 Harry K. Davenport on the same day, duly con-
 veyed the said premises so mentioned and de-
 scribed in the said subdivision "c" of the said
 paragraph of the said complaint numbered
 "Third." to the defendant Henry Ungrich, Jr.,
 by deed bearing date that day, and duly recorded
 in the said office of the said Register of the said

- 250 County of New York, on the said 24th day of May, 1902, in Section 6, Liber 68 of Conveyances, at page 299, and indexed under blocks Nos. 1790, 1810 and 1909 on the land map of the City of New York, as by reference thereto being had will more fully and at large appear. That thereafter and on or about the 24th day of April, 1903, the said plaintiff and his wife duly conveyed the fourth of the parcels mentioned and described in the subdivision "c" of the paragraph of the said complaint herein numbered "Third" to the defendant Henry Ungrich, Jr., by deed, bearing date April 24, 1903, and duly acknowledged by them on that date, and which deed was duly recorded in the office of the
- 251 Register of the County of New York on April 24, 1903, in Section 6, Liber 75 of Conveyances, page 152, as by reference thereto being had will more fully and at large appear, and on which date, as this defendant is informed and believes, the said defendant Henry Ungrich, Jr., duly conveyed the said premises to one Charles Goldstein by deed, bearing date that day, and which was duly recorded in the office of the Register of the County of New York in Section 6, Liber 75 of Conveyances, at page 152, at a consideration which was less than the amount which the said defendant
- 252 Henry Ungrich, Jr., paid to this defendant and the said defendant Henry Ungrich, Jr., as such executors and trustees as aforesaid for the said premises.

Tenth: And for a further separate and distinct defense and also as a partial defense, this defendant alleges upon information and belief, that heretofore and on the 7th day of February, 1897, the said Henry Ungrich, in his lifetime duly assigned to the defendant Henry Ungrich, Jr., a certain Indenture of Mortgage, bearing date the 2d day of

November, 1896, made by one John D. Thees 353
 and wife to the said Henry Ungrich, since deceased, to secure the payment of the sum of \$12,000, and which was recorded in the office of the Register of the County of New York on November 5, 1896, at two o'clock and eight minutes P. M. in Block Series of Mortgages, Section 6, Liber 56, page 483, and indexed under Block Number 1774 on the land map of the City of New York, and also a certain other Indenture of Mortgage, bearing date the 23d day of July, 1891, made by Noah Schwab and wife to the said Henry Ungrich, since deceased, to secure the payment of the sum of \$5,000 and recorded in the office of the Register 254
 of the County of New York on July 30, 1891, at two o'clock and thirty-six minutes P. M. in Block Series, Section 7, Liber 5, page 267, and indexed under Block No. 1909 on the land map of the City of New York, and also a certain other Indenture of Mortgage, bearing date September 1, 1886, made by Alice Rohkohl to the said Henry Ungrich, since deceased, to secure the payment of the sum of \$10,000 and interest, and duly recorded in the said office of the said Register of the County of New York on September 2, 1886, in Liber 2027 of Mortgages, page 400, by instrument of assignment bearing date February 17, 1897, and duly recorded in the office of the said Register of the 255
 County of New York on February 18, 1897, at twelve o'clock eight minutes P. M. in Block Series, Section 6, Liber 50 of mortgages, at page 461, and indexed under block No. 1774, and also in Block Series of Mortgages, Section 7, Liber 70 at page 260, and indexed under Block No. 1909, as by reference thereto being had will more fully and at large appear; and this defendant is informed and believes that the aggregate amount of the said mortgages so assigned by the said

- 256 Henry Ungrich in his lifetime to the said Henry Ungrich, Jr., by such instrument of assignment as aforesaid is the sum of \$25,000, which is mentioned and described in the subdivision "a" of the paragraph of the complaint herein numbered "Third," and that disputes having thereafter arisen between the said plaintiff and the said Henry Ungrich, Jr., over the assignment of the said bonds and mortgages by the said Henry Ungrich, in his lifetime, to the said Henry Ungrich, Jr., as aforesaid, and over the conveyance by this defendant and the defendant Henry Ungrich, Jr., as the executors of and trustees under the said last Will and Testament of Henry Ungrich, deceased, for the sum of \$157,000 of the premises mentioned and described in subdivision "c" of the paragraph of the complaint herein numbered "Third," to Harry K. Davenport, by deed bearing date May 22, 1902, and recorded in the office of the Register of the County of New York on May 24, 1902, in Section 6, Liber 66, page 416 of conveyances, and indexed under Blocks Nos. 1790, 1810 and 1909, as by reference thereto being had will more fully and at large appear, and the conveyance by the said Harry K. Davenport to the said Henry Ungrich, Jr., of the said premises by deed bearing date May 22, 1902, and recorded on May 24, 1902, in the said office of the said Register in Section 6, Liber 68 of Conveyances at page 299, and indexed under Blocks Nos. 1790, 1810 and 1909, as by reference thereto being had will also more fully and at large appear, the said plaintiff, in consideration of the sum of \$6 000, to him in hand paid by the said defendant Henry Ungrich, Jr., by general release, bearing date and duly executed and acknowledged by him on June 23, 1902, duly released, remised and for-

ever discharged the said Henry Ungrich, Jr., his heirs, executors and administrators of and from all manner of action and actions, causes and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against him he ever had or which his heirs, executors or administrators thereafter could, should or might have, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of the said presents. 259

Wherefore this defendant demands judgment dismissing the complaint of the plaintiff, with the costs and disbursements of this action. 260

JOHNSTON & JOHNSTON,
Attorneys for Deft. Martin Ungrich,
as Executor, etc., and Individually,
8 and 10 Centre Street,
Manhattan Borough,
New York City.

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262 City and County of New York, ss.:

Martin Ungrich, being duly sworn, says:

That he is one of the defendants herein; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters, he believes it to be true.

MARTIN UNGRICH.

Sworn to before me this 3rd }
day of January, 1907. }

263 EDWARD P. ORRELL, Jr.,
Notary Public,
Kings County,
Ctf. filed in N. Y. Co.

264

NEW YORK SUPREME COURT,

265

NEW YORK COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MAR-
 TIN UNGRICH, individually,
 and as Executors of and
 Trustees under the Last Will
 and Testament of Henry Un-
 grich, deceased,
 Defendants.

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The plaintiff replies to the counterclaim stated and alleged in paragraph 11th of the answer of the defendant Henry Ungrich, Jr., and respectfully shows to this Court as follows:

First: He admits that the said Henry Ungrich mentioned in the complaint died on March 1st, 1901, leaving him surviving his sons Martin Louis Ungrich, this plaintiff, and the defendant Henry Ungrich, Jr., and leaving a last Will and Testament and Codicil thereto, which is set forth in paragraph of the complaint numbered First, and that thereafter the said will and codicil thereto were duly admitted to probate by the Surrogate's Court of the County of New York, and that the defendants herein duly qualified as Executors and Trustees thereunder. 267

That among other assets the estate of the said Henry Ungrich, deceased, consisted of real estate mentioned and described in subdivision "C" of

268 the paragraph of the complaints numbered Third.

That thereafter the said plaintiff made numerous complaint to the defendant Henry Ungrich, Jr., and the defendant Martin Ungrich that sufficient income was not realized from such real estate.

Second: He denies that he repeatedly requested the defendants Henry Ungrich, Jr., and Martin Ungrich as such Executors and Trustees of the last Will and Testament of the said Henry Ungrich to act under the power of sale conferred upon them by the said last Will and Testament of the said Henry Ungrich, deceased, and sell the said
269 premises for the best price that they could get therefor.

Third: He denies that at that time the defendant Henry Ungrich, Jr., expressed his desire to purchase said premises at a price that would be satisfactory to this plaintiff, and that it was then and there mutually agreed between this plaintiff and the defendants that an appraisal of the properties of the said estate mentioned and described in subdivision "c" of the paragraph of the complaint herein numbered Third should be made by Philip A. Smyth, a well-known auc-
270 tioneer and appraiser and real estate agent and broker, doing business for many years in the Borough of Manhattan, City of New York, and well conversant with the values of the properties so mentioned and described in the said subdivision "c" of the said paragraph of the said complaint so numbered Third.

Fourth: He denies any knowledge or information sufficient to form a belief as to the allegations contained in said answer, that the said Philip A. Smyth duly appraised the first and sec-

ond of the parcels mentioned and described in the 271
 said subdivision "c" of the said paragraph of
 the complaint so numbered Third at the sum of
 \$110,000, and the third parcel mentioned and de-
 scribed in the said subdivision "c" of the para-
 graph of the said complaint so numbered Third
 at the sum of \$22,000, and the Fourth parcel of
 the property so mentioned and described in the
 said subdivision "c" of the said paragraph of
 the said complaint so numbered Third at the sum
 of \$20,000, and the whole four parcels at the ag-
 gregate sum of \$152,000.

Fifth: He denies the allegations stated and
 contained in said answer, that the defendant 272
 Henry Ungrich, Jr., offered to the plaintiff and
 the defendant Martin Ungrich to purchase said
 four parcels mentioned and described in subdi-
 vision "c" of the said paragraph of the com-
 plaint numbered Third at the sum of \$157,000, and
 upon information and belief, he further denies
 that thereupon an agreement in writing was en-
 tered into bearing date May 16th, 1902, between
 the defendants Henry Ungrich, Jr., and Martin
 Ungrich as such Executors and Trustees as afore-
 said, this plaintiff and one Harry K. Davenport,
 acting on behalf of the defendant Henry Ungrich,
 Jr., wherein and whereby the defendants Henry
 Ungrich, Jr., and Martin Ungrich agreed to sell 273
 and convey the said premises so mentioned and
 described in the said subdivision "c" of the par-
 agraph of the complaint numbered Third to the
 said Harry K. Davenport acting on behalf of the
 defendant Henry Ungrich, Jr., for the said sum
 of \$157,000.

Sixth: He denies that thereafter this plaintiff
 in writing duly executed and acknowledged by
 him declared and affirmed to the defendants Henry

274 Ungrich, Jr., and Martin Ungrich, as Executors and Trustees of the Last Will and Testament of the said Henry Ungrich, deceased, that the sale of the said real estate for the aggregate consideration of \$157,000 was made at his request with his consent and approval and with full knowledge on his part that the said real estate was purchased for and was to be conveyed to the defendant Henry Ungrich, Jr., who was one of the Executors of and Trustees under the Last Will of the said Henry Ungrich, deceased, and that he therein ratified and confirmed the same and all the acts of the defendants Henry Ungrich, Jr., and Martin Ungrich,
 275 as such Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased, done in connection therewith. But he admits that this plaintiff was induced by fraud to sign some papers, the contents of which he did not know and to this day does not know.

Seventh: He denies any knowledge or information sufficient to form a belief as to the allegation that the defendant Henry Ungrich, Jr., acted and relied on the alleged written declaration, affirmation, ratification and confirmation so made by the said plaintiff and joined with the said defendant Martin Ungrich in the conveyance of the
 276 said premises mentioned and described in the said subdivision "C" of the said paragraph of said complaint numbered Third to the said Harry K. Davenport, which deed bears date May 22d, 1902, and was duly recorded in the office of the Register of the County of New York on May 24th, 1902, in Section 6, Liber 66 of Conveyances, at page 419, and indexed under Blocks 1790, 1810 and 1909 on the land map of the City of New York, as by reference thereto being had will more fully and at large appear.

Eighth: He admits that at some time one 277
 Harry K. Davenport, executed and delivered to
 the defendant Henry Ungrich, Jr., certain mort-
 gages in the sum of \$78,500, and begs leave to
 refer to the original of said mortgages on the trial
 for the contents thereof.

Ninth: He denies any knowledge or informa-
 tion sufficient to form a belief as to the allegations
 that the said Harry K. Davenport at the time of
 the conveyance to him as aforesaid, executed and
 delivered to the defendants Henry Ungrich, Jr.,
 and Martin Ungrich, as Executors and Trustees
 as aforesaid, three several mortgages bearing date
 the 22d day of May, 1902, and duly recorded in 278
 the office of the Register of the County of New
 York on May 24th, 1902, viz.: one of \$57,500 on
 the first and second of the parcels mentioned and
 described in subdivision "c" of the paragraph
 of the said complaint herein numbered Third; one
 for \$11,000 on the third of the parcels mentioned
 and described in subdivision "c" of the para-
 graph of said complaint herein numbered Third;
 and one for \$10,000 on the fourth of the parcels
 mentioned and described in subdivision "c" of
 the paragraph of the said complaint numbered
 Third.

Tenth: He admits that one Harry K. Davenport 279
 on the said day, namely, May 22d, 1902, duly con-
 veyed said premises so mentioned and described
 in the said subdivision "c" of the said paragraph
 of the said complaint numbered "Third," to the de-
 fendant Henry Ungrich, Jr., by deed bearing date
 on or about that date, and duly recorded in the
 office of the Register of the said County of New
 York on the 24th day of May, 1902, in Section 6,
 Liber 68 of Conveyances, at page 299, and in-

280 dexed under Blocks Nos. 1790, 1810 and 1909 on the land map of the City of New York, as by reference thereto had will more fully and at large appear.

Eleventh: He denies that after the conveyance of the premises to the defendant Henry Ungrich, Jr., as aforesaid, the defendant Henry Ungrich, Jr., relying upon the alleged written declaration, affirmation, ratification and confirmation so made by the plaintiff, erected or caused to be erected a stable and storage building at a cost of \$24,869.36 upon the premises mentioned and described in subdivision "c" of the paragraph of said com-
281 plain herein numbered Third, as parcel No. 1.

Twelfth: He denies that the said plaintiff knowing that the defendant Henry Ungrich, Jr., erected a stable and storage building on said premises, thereafter and on or about the 24th day of April, 1903, together with his wife, duly conveyed the said premises and all the other premises mentioned and described in the said subdivision "c" of the said paragraph of the said complaint numbered Third to the defendant Henry Ungrich, Jr., by several deeds bearing date April 24th, 1903, and duly acknowledged by them on or about that date.

282 Thirteenth: He denies upon information and belief that the defendant Henry Ungrich, Jr., relying upon the said alleged written declaration, affirmation, ratification and confirmation so made by the said plaintiff and upon the said deeds made by the said plaintiff and his wife, that the defendant Henry Ungrich, Jr., individually paid to the plaintiff interest on the said mortgages executed by the said Harry K. Davenport herein set forth to the amount of over \$13,000, and individ-

ually paid taxes on the several parcels in the said 283
 subdivision "c" of the said paragraph of the
 said complaint numbered Third amounting in all
 to \$5,829.88; assessments on the same amounting
 to \$69.40; water rents on the same amounting to
 \$570.10; premiums for fire insurance on the build-
 ings on same amounting to \$874.90; premiums for
 plate glass insurance on buildings on the same
 amounting to \$89.00; janitor services for care of
 same amounting to \$1,770.44; commissions on
 rentals of same amounting to \$159.75; and neces-
 sary repairs on the buildings on the same amount-
 ing to \$3,626.12.

Fourteenth: He admits that thereafter and at 284
 some time during the year 1903, the defendant
 Henry Ungrich, Jr., sold and conveyed the Fourth
 of the parcels mentioned and described in subdivi-
 sion "c" of the paragraph of said complaint
 herein numbered Third, to one Charles Goldstein
 for a valuable consideration, and that thereafter
 and during the year 1903 the defendant Henry
 Ungrich, Jr., sold and conveyed the Third of the
 parcels mentioned and described in subdivision
 "c" of the paragraph of the said complaint here-
 in numbered Third to a certain person for a val-
 uable consideration.

Fifteenth: He denies on information and belief 285
 that the defendant Henry Ungrich, Jr., relying
 upon the alleged written declaration, affirmation,
 ratification and confirmation so made by the said
 plaintiff and upon the deeds made by the said
 plaintiff and his wife to the defendant on or about
 the 24th day of April, 1903, by deed bearing date
 that day, sold and conveyed the Fourth of said
 parcels mentioned and described in subdivision
 "c" of the paragraph of said complaint num-

286 bered Third, to one Charles Goldstein for the consideration of \$18,500, which was the market value thereof at the time, and being \$1,500 less than the price the defendant Henry Ungrich, Jr., paid to the said Executors and Trustees for the same and paid for the commissions on said sale, the sum of \$185.00, and that the defendant Henry Ungrich, Jr., upon the said alleged written declaration, affirmation, ratification and confirmation so made by the said plaintiff, and upon the said deeds made by the said plaintiff to the defendant Henry Ungrich, Jr., on or about the 22d day of July, 1903, by deed bearing date that day, sold and conveyed the Third of the parcels mentioned and described in subdivision "c" of the paragraph of said complaint herein numbered Third to one Esther Eisenberg for the sum of \$19,500, which was the market value thereof at that time, and being \$2,500 less than the price which Henry Ungrich, Jr., paid to the Executors and Trustees for the same, and paid for commissions on said sale the sum of \$195.00.

Sixteenth: He denies upon information and belief that the defendant Henry Ungrich, Jr., relying upon the said alleged written declaration, affirmation, ratification and confirmation so made by the said plaintiff and the said deeds made by the said plaintiff and his wife to the defendant Henry Ungrich, Jr., on or about the 2d day of July, 1906, by deed bearing date that day, sold and conveyed the first and second of the parcels mentioned and described in subdivision "c" of the paragraph of said complaint herein numbered Third, to one George Ehret, for the consideration of \$250,000, and paid for commissions on said sale \$2,500. But he admits that on or about the 2d day of July, 1906, by deed bearing date on or

about that day, the defendant Henry Ungrich, Jr., 289
sold and conveyed the first and second of the parcels mentioned and described in subdivision "C" of the paragraph of the complaint herein numbered Third to one George Ehret for the consideration of \$250,000.

Seventeenth: He specifically denies each and every allegation in the counterclaim stated and alleged in paragraph Eleventh of the Answer of the defendant Henry Ungrich, Jr., not hereinbefore specifically admitted, controverted or denied.

Wherefore, the plaintiff demands judgment dismissing the counterclaim set up in the Answer of the defendant Henry Ungrich, Jr., and for judgment as demanded in the complaint, together with 290
the costs and disbursements of this action.

KELLOGG & ROSE,
Attorneys for Plaintiff,
Office and Post Office Address,
No. 120 Broadway,
Borough of Manhattan,
New York City.

292 City and County of New York, ss.:

Martin L. Ungrich, being duly sworn, says that he is the plaintiff in this action. That he has read the foregoing reply, and that the same is true to his own knowledge, except as to the matters which are therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.

MARTIN L. UNGRICH.

Sworn to before me this 21st }
day of January, 1907 }

293 THOS. A. HEALY,
Notary Public,
New York Co.

294

NEW YORK SUPREME COURT,

295

COUNTY OF NEW YORK,

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MAR-
TIN UNGRICH, individually,
and as Executors of and
Trustees under the Last Will
and Testament of Henry Un-
grich, deceased,
Defendants.

296

The above-named defendant Henry Ungrich, Jr., individually and as Executor of and Trustee under the last Will and Testament of Henry Ungrich, deceased, separately answering the complaint of the above-named plaintiff, by this his supplemental answer thereto, alleges and avers:

As a further, separate and distinct, and also as a partial defense, that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Martin Louis Ungrich, the plaintiff, and this de- 297
fendant Henry Ungrich, Jr., and leaving a last Will and Testament and Codicil thereto, which is set forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said will and codicil thereto were duly admitted to probate by the Surrogate's Court of the County of New York, and the defendants herein duly qualified as executors of and trustees thereunder, and ever since have acted as

298 such executors and trustees, and now are acting
as such executors and trustees. That among other
assets, the estate of the said Henry Ungrich con-
sisted of the real estate mentioned and described
in subdivision "c" of the paragraph of the com-
plaint numbered "Third." That thereafter the
said plaintiff made numerous complaints to the
defendant Martin Ungrich, and this defendant
that sufficient income was not realized from such
real estate, and repeatedly requested this defend-
ant, and the said defendant Martin Ungrich, as
such executors and trustees of the said last Will
and Testament of the said Henry Ungrich, to act
299 under the power of sale conferred upon them by
the said last Will and Testament of the said Henry
Ungrich, deceased, and sell the said premises for
the best price that they could get therefor. That
at that time this defendant Henry Ungrich, Jr.,
expressed his desire to purchase said premises at
a price that would be satisfactory to the plaintiff,
and it was then and there mutually agreed be-
tween the plaintiff and the defendants that an
appraisal of the properties of the said estate so
mentioned and described in subdivision "c" of
the paragraph of the complaint herein numbered
"Third" should be made by Philip A. Smyth, a
well-known auctioneer and appraiser and real es-
300 tate agent and broker, doing business for many
years past in the Borough of Manhattan, City of
New York, and well conversant with the values
of properties therein and well conversant with the
values of the properties so mentioned and de-
scribed in the said subdivision "c" of the said
paragraph of the said complaint so numbered
"Third." And thereupon the said Philip A.
Smyth duly appraised the first and second of the
parcels mentioned and described in the said sub-

division "c" of the said paragraph of the said 301
complaint so numbered "Third" at the sum of
\$110,000, and the third parcel mentioned and de-
scribed in the said subdivision "c" of the para-
graph of the said complaint so numbered "Third"
at the sum of \$22,000, and the fourth parcel of
the property so mentioned and described in the
said subdivision "c" of the said paragraph of the
said complaint so numbered "Third" at the sum
of \$20,000, and the whole four parcels at the ag-
gregate sum of \$152,000. And thereupon this de-
fendant Henry Ungrich, Jr., offered to the plain-
tiff and the defendant Martin Ungrich to pur-
chase said four parcels mentioned and described 302
in subdivision "c" of the said paragraph of the
said complaint numbered "Third," at the sum
of \$157,000, and thereupon an agreement, in writ-
ing, was entered into, bearing date May 16, 1902,
between this defendant and the said defendant
Martin Ungrich, as such executors and trustees as
aforesaid, the plaintiff, and one Harry K. Daven-
port, acting on behalf of this defendant, Henry
Ungrich, Jr., wherein and whereby this defend-
ant and the said defendant Martin Ungrich agreed
to sell and convey the said premises so mentioned
and described in the said subdivision "c" of the
paragraph of the said complaint numbered 303
"Third" to the said Harry K. Davenport, acting
on behalf of the said Henry Ungrich, Jr., for the
said sum of \$157,000. And thereafter the said
plaintiff in writing, duly executed and acknowl-
edged by him, declared and affirmed to this de-
fendant and the defendant Martin Ungrich, as
executors and trustees of the said last Will and
Testament of the said Henry Ungrich, deceased,
that the sale of the said real estate for the ag-
gregate consideration of \$157,000 was made at his

- 304 request, with his consent and approval, and with full knowledge on his part that the said real estate was purchased for and was to be conveyed to the said Henry Ungrich, Jr., who was one of the executors of and trustees under the Will of the said Henry Ungrich, deceased, and he therein and thereby ratified and confirmed the same and all of the acts of the said Martin Ungrich and this defendant, as such executors of and trustees under the last Will and Testament of Henry Ungrich, deceased, done in connection therewith. That this defendant acted and relied upon the written declaration, affirmation, ratification and confirmation so made by the said plaintiff and joined with the said defendant Martin Ungrich in a conveyance of the said premises mentioned and described in the said subdivision "c" of the said paragraph of the said complaint numbered "Third," to the said Harry K. Davenport, which deed bears date May 22, 1902, and was duly recorded in the office of the Register of the County of New York on May 24, 1902, in Section 6, Liber 66 of Conveyances, at page 419, and indexed under Blocks Nos. 1790, 1810 and 1909 on the land map of the City of New York, as by reference thereto being had will more fully and at large appear. And the said
- 305
- 306 Harry K. Davenport on the same day, duly conveyed the said premises so mentioned and described in the said subdivision "c" of the said paragraph of the said complaint numbered "Third," to the defendant Henry Ungrich, Jr., by deed bearing date that day, and duly recorded in the said office of the said Register of the said County of New York, on the said 24th day of May, 1902, in Section 6, Liber 68, of Conveyances, at page 299, and indexed under Blocks Nos. 1790, 1810 and 1909 on the land map of the City of New

York, as by reference thereto being had will more 307
fully and at large appear. That the consideration
paid by the said defendant Henry Ungrich, Jr.,
for the conveyances of the said properties to him,
was a proper, fair and reasonable consideration
therefor and the act of this defendant and the de-
fendant Martin Ungrich, as executors of and trus-
tees under the said last Will and Testament of the
said Henry Ungrich, deceased, in the conveyance
of the said parcels of real estate mentioned and
described in the subdivision "c" of the said para-
graph of the said complaint numbered "Third,"
through the said Harry K. Davenport to the said
Henry Ungrich, Jr., was an act done for the bene- 308
fit of the estate and was within the terms of the
power and trust given to this defendant and the
defendant Martin Ungrich, as such executors and
trustees as aforesaid, and was in no respect in
conflict with such power and trust. That there-
after and on or about the second day of May, 1903,
this defendant and the said defendant Martin
Ungrich, as such executors and trustees under
the last Will and Testament of the said Henry
Ungrich, deceased, duly presented to the Surro-
gate of the County of New York, having jurisdic-
tion thereof, a true and accurate account of their
proceedings as such executors of and trustees un-
der the last Will and Testament of the said Henry 309
Ungrich, deceased, and wherein and whereby they
set forth the sale of the said premises so mentioned
and described in the said subdivision "c" of the
said paragraph of the said complaint numbered
"Third," for the said sum of \$157,000, and where-
in and whereby they duly charged themselves with
the said sum of \$157,000 as the consideration price
of the sale of the said premises. That the said

310 plaintiff herein was duly made a party to such proceedings in the said Surrogate's Court of the County of New York, and such proceedings were thereafter and therein on notice to the plaintiff, that a decree was duly entered in the said Surrogate's Court of the County of New York, bearing date the 13th day of May, 1903, and filed in the office of the Clerk of that court on or about that day, wherein and whereby it was duly adjudged that the said account of this defendant and the said defendant Martin Ungrich, as such executors and trustees as aforesaid, should be and thereby are judicially settled and allowed as filed and ad-
 311 justed, and wherein and whereby it was adjudged that out of the balance so found in the hands of this defendant and the said defendant Martin Ungrich, as such executors and trustees as aforesaid, that this defendant and the said defendant Martin Ungrich, as executors of and trustees under the said will, should retain the sum of \$867.18 for their commissions on the accounting, and the sum of \$161.95 for their costs and disbursements on the accounting, and that the balance then remaining in their hands, being the sum of \$78.984.07, should be held by them subject to the provisions of the last Will and Testament of Henry Ungrich, deceased. That on or about the 24th day
 312 of April, 1903, the said plaintiff and his wife duly conveyed the first two of the parcels of real estate, mentioned and described in the said subdivision "c" of the said paragraph of the said complaint numbered "Third," to the defendant Henry Ungrich, Jr., by deed bearing date April 24, 1903, and duly acknowledged by them on or about that date, and all their right, title and interest therein and thereto. And thereafter the said plaintiff and his wife duly conveyed the third of the parcels of the

real estate mentioned and described in the sub- 313
 division "c" of the paragraph of the said com-
 plaint numbered "Third," to the defendant Henry
 Ungrich, Jr., by deed bearing date April 24, 1903,
 and duly acknowledged by them, and which deed
 was recorded in the office of the Register of the
 County of New York on or about July 31, 1903, in
 Section 6, Liber 39 of Conveyances, page 29. That
 on the same date, the said plaintiff and his wife
 duly conveyed the fourth of the parcels of real
 estate mentioned and described in the subdivision
 "c" of the said paragraph of the complaint num-
 bered "Third," to the defendant Henry Ungrich,
 Jr., by deed bearing date April 24, 1903, and duly 314
 acknowledged by them on that date, which deed
 was duly recorded in the office of the Register of
 the County of New York on April 24, 1903, in Sec-
 tion 6, Liber 75 of Conveyances, page 152. That
 between the first day of May and the first day of
 November, 1902, the plaintiff rendered and per-
 formed services for the defendant Henry Ungrich,
 Jr., as the then owner of the first of the parcels of
 real estate mentioned and described in subdivi-
 sion "c" of the paragraph of the complaint num-
 bered "Third" at the special instance and request
 of this defendant, Henry Ungrich, Jr., as an archi-
 tect in making and preparing preliminary studies, 315
 general drawings and specifications for a two-
 story and cellar brick garage contemplated by
 this defendant, Henry Ungrich, Jr., as such owner
 thereof, to be erected on the said plot or parcel of
 real estate first described in the subdivision "c"
 of the said paragraph of the said complaint so
 numbered "Third," at an estimated cost to the
 said defendant Henry Ungrich, Jr., of the sum of
 \$8,500; and thereafter and between the said first
 day of May and the first day of November, 1902,
 the plaintiff rendered and performed services for

- 316 the said defendant Henry Ungrich, Jr., as the owner of the said premises so first described in the said subdivision "c" of the said paragraph of the said complaint numbered "Third" at the special instance and request of the defendant Henry Ungrich, Jr., as an architect in making and preparing preliminary studies, general drawings and specifications for a two-story and cellar brick garage contemplated by the defendant Henry Ungrich, Jr., as such owner thereof, to be erected upon the said plot or parcel of real estate first described in the subdivision "c" of the said paragraph of the said complaint so numbered "Third,"
- 317 at an estimated cost of \$9,000; and thereafter and between the first day of May and the first day of November, 1902, the plaintiff rendered and performed services for this defendant Henry Ungrich, Jr., as the owner of the premises so first described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third" at the special instance and request of the defendant Henry Ungrich, Jr., as an architect in making and preparing preliminary studies, general drawings and specifications for a five-story warehouse contemplated to be erected by this defendant Henry Ungrich, Jr., as the owner thereof, on the said plot so first described in the said subdivision "c" of
- 318 the said paragraph of the said complaint so numbered "Third," at an estimated cost of \$20,000; and thereafter and between the said first day of May and the first day of November, 1902, the plaintiff rendered and performed services for this defendant Henry Ungrich, Jr., as the owner of the premises secondly described in the subdivision "c" of the paragraph of the said complaint numbered "Third" at the special instance and request of this defendant Henry Ungrich, Jr., as an archi-

tect in making and preparing preliminary studies, 319
 general drawings and specifications, and in mak-
 ing and preparing additional plans and alterations
 to the above plans and specifications, for the al-
 teration of three brick buildings with brownstone
 front on the said premises or parcel of land sec-
 ondly described in the said subdivision "c" of the
 said paragraph of the said complaint so numbered
 "Third," so owned by the said defendant Henry
 Ungrich, Jr., as aforesaid, at an estimated cost
 of \$10,000; and thereafter and at the time of the
 commencement of this action the said plaintiff
 commenced another action in the Supreme Court
 of New York for the County of Westchester, as 320
 plaintiff, against this defendant Henry Ungrich,
 Jr., as defendant to recover the sum of \$765, with
 interest thereon from November 15, 1902, as the
 reasonable value of such work, labor and services
 so rendered and performed by the said plaintiff
 for this defendant Henry Ungrich, Jr., at the said
 defendant Henry Ungrich, Jr.'s, instance as afore-
 said, in preparing such preliminary studies, gen-
 eral drawings and specifications and additional
 plans and specifications for the erection and alter-
 ation by this defendant Henry Ungrich, Jr., of the
 said buildings on the said pieces or parcels of land
 firstly and secondly described in the said subdi-
 vision "c" of the said paragraph of the said com- 321
 plaint so numbered "Third," and thereafter such
 proceedings were had subsequent to the com-
 mencement of this action that this defendant pur-
 suant to the statute in such case made and pro-
 vided, duly offered to allow judgment to be taken
 against him in the said action for the sum of \$465,
 with interest from November 15, 1902, with costs
 of the action to the date of that offer, and duly

- 322 subscribed such an offer in writing and caused the same to be duly subscribed by his attorney, and caused the same to be served upon the attorneys for the plaintiff therein, and thereafter such proceedings were had in said action, and after the commencement of this action, that the said plaintiff herein as plaintiff therein, in writing, and pursuant to the statute in such case made and provided, duly accepted the said offer of this said defendant Henry Ungrich, Jr., and served upon the attorney for the said defendant Henry Ungrich, Jr., therein, and defendant herein, a written notice subscribed by the said plaintiff therein and herein, accepting the said offer of the said defendant Henry Ungrich, Jr., to allow judgment to be taken against him for the said sum of \$465 with interest from November 15, 1902, together with the costs and disbursements of the action to the date of the offer of the said defendant Henry Ungrich, Jr., therein and herein; and thereafter such proceedings were duly had in said action, pursuant to law and pursuant to the statute in such case made and provided, that judgment was duly entered in that action in favor of the said plaintiff therein, the plaintiff herein, and against the said defendant Henry Ungrich, Jr., defendant therein and herein, for the sum of \$631.69, damages and costs, and the judgment roll in said action was only docketed in the office of the Clerk of the said County of Westchester, and thereafter the said defendant Henry Ungrich, Jr., duly paid to the plaintiff the whole amount of the said judgment and the said judgment was subsequently satisfied and discharged of record; and by reason thereof the said plaintiff has no right to have or maintain this action.
- 324

Wherefore this defendant demands judgment

dismissing the complaint of the plaintiff, with the 325
costs and disbursements of this action.

ISAAC P. HUBBARD,
Attorney for defendant Henry
Ungrich, Jr., individually and
as executor, etc.,
132 Nassau Street,
Borough of Manhattan,
New York City.

City and County of New York, ss.:

HENRY UNGRICH, Jr., being duly sworn, 326
says:

That he is the defendant above named; that he
has read the foregoing supplemental answer and
knows the contents thereof and that the same is
true of his knowledge except as to the matters
therein stated to be alleged on information and
belief, and as to those matters, he believes it to be
true.

HENRY UNGRICH, Jr.

Sworn to before me this 9th }
day of May, 1907, }

GUY C. FRISBIE,
Notary Public for Kings County. 327
Certificate filed in New York County.

328

NEW YORK SUPREME COURT,

COUNTY OF NEW YORK,

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MAR-
TIN UNGRICH, individually,
and as Executors of and
Trustees under the Last Will
and Testament of Henry Un-
grich, deceased,

329

Defendants.

The above named defendant Martin Ungrich, individually and as executor of and trustee under the last Will and Testament of Henry Ungrich, deceased, separately answering the complaint of the above named plaintiff, by this his supplemental answer thereto, alleges and avers:

330 As a further, separate and distinct, and also as a partial defense, that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Martin Louis Ungrich, the plaintiff, and the defendant Henry Ungrich, Jr., and leaving a last Will and Testament and Codicil thereto, which is set forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said will and codicil thereto were duly admitted to probate by the Surrogates' Court of the County of New York, and the defendants herein duly qualified as executors of and trustees thereunder, and ever since have acted as such execu-

tors and trustees, and now are acting as such 331
 executors and trustees. That among other assets,
 the estate of the said Henry Ungrich consisted of
 the real estate mentioned and described in sub-
 division "c" of the paragraph of the complaint
 herein numbered "Third." That thereafter the
 said plaintiff made numerous complaints to the
 defendant Henry Ungrich, Jr., and this defend-
 ant that sufficient income was not realized from
 such real estate, and repeatedly requested this de-
 fendant, and the said defendant Henry Ungrich,
 Jr., as such executors and trustees of the said last
 Will and Testament of the said Henry Ungrich, to
 act under the power of sale conferred upon them 332
 by the said last Will and Testament of the said
 Henry Ungrich, deceased, and sell the said prem-
 ises for the best price that they could get therefor.
 That at that time the defendant Henry Ungrich,
 Jr., expressed his desire to purchase said prem-
 ises at a price that would be satisfactory to the
 plaintiff, and it was then and there mutually
 agreed between the plaintiff and the defendants
 that an appraisal of the properties of the said es-
 tate so mentioned and described in subdivision
 "c" of the paragraph of the complaint herein
 numbered "Third" should be made by Philip A.
 Smyth, a well known auctioneer and appraiser and
 real estate agent and broker, doing business for 333
 many years past in the Borough of Manhattan,
 City of New York, and well conversant with the
 values of properties therein and well conversant
 with the values of the properties so mentioned
 and described in the said subdivision "c" of the
 said paragraph of the said complaint so numbered
 "Third." And thereupon the said Philip A.
 Smyth duly appraised the first and second of the
 parcels mentioned and described in the said sub-

334 division "c" of the said paragraph of the said
complaint so numbered "Third" at the sum of
\$110,000, and the third parcel mentioned and de-
scribed in the said subdivision "c" of the para-
graph of the said complaint so numbered "Third"
at the sum of \$22,000, and the fourth parcel of the
property so mentioned and described in the said
subdivision "c" of the said paragraph of the said
complaint so numbered "Third" at the sum of
\$20,000, and the whole four parcels at the aggre-
gate sum of \$152,000. And thereupon the said de-
fendant Henry Ungrich, Jr., offered to the plain-
tiff and this defendant to purchase said four par-
cels mentioned and described in subdivision "c"
335 of the said paragraph of the said complaint num-
bered "Third," at the sum of \$157,000, and there-
upon an agreement in writing was entered into
bearing date May 16, 1902, between this defend-
ant and the said defendant Henry Ungrich, Jr.,
as such executors and trustees as aforesaid, the
plaintiff, and one Harry K. Davenport, acting on
behalf of the defendant Henry Ungrich, Jr.,
wherein and whereby this defendant and the said
defendant Henry Ungrich, Jr., agreed to sell and
convey the said premises so mentioned and de-
scribed in the said subdivision "c" of the para-
graph of the said complaint numbered "Third" to
336 the said Harry K. Davenport, acting on behalf of
the said Henry Ungrich, Jr., for the said sum of
\$157,000. And thereafter the said plaintiff in
writing, duly executed and acknowledged by him,
declared and affirmed to this defendant and the
defendant Henry Ungrich, Jr., as executors and
trustees of the said last Will and Testament of the
said Henry Ungrich, deceased, that the sale of the
said real estate for the aggregate consideration of
\$157,000 was made at his request, with his consent

and approval, and with full knowledge on his part 337
 that the said real estate was purchased for and
 was to be conveyed to the said Henry Ungrich, Jr.,
 who was one of the executors of and trustees under
 the will of the said Henry Ungrich, deceased, and
 he therein and thereby ratified and confirmed the
 same and all of the acts of the said Henry Ungrich,
 Jr., and this defendant, as such executors of and
 trustees under the last Will and Testament of
 Henry Ungrich, deceased, done in connection
 therewith. That this defendant acted and relied
 upon the written declaration, affirmation, ratifica-
 tion and confirmation so made by the said plain-
 tiff and joined with the said defendant Henry Un- 338
 grich, Jr., in a conveyance of the said premises
 mentioned and described in the said subdivision
 "c" of the said paragraph of the said complaint
 numbered "Third," to the said Harry K. Daven-
 port, which deed bears date May 22, 1902, and was
 duly recorded in the office of the Register of the
 County of New York, on May 24, 1902, Section 6,
 Liber 66 of Conveyances, at page 419, and in-
 dexed under blocks Nos. 1790, 1810 and 1909 on
 the land map of the City of New York, as by refer-
 ence thereto being had will more fully and at large
 appear. And the said Harry K. Davenport on the
 same day, duly conveyed the said premises so 339
 mentioned and described in the said subdivision
 "c" of the said paragraph of the said complaint
 numbered "Third," to the defendant Henry Un-
 grich, Jr., by deed bearing date that day, and duly
 recorded in the said office of the said Register of
 the said County of New York, on the said 24th
 day of May, 1902, in Section 6, Liber 68 of Con-
 veyances, at page 299, and indexed under blocks
 Nos. 1790, 1810 and 1909 on the land map of the
 City of New York, as by reference thereto being

340 had will more fully and at large appear. That the
consideration paid by the said defendant Henry
Ungrich, Jr., for the conveyances of the said prop-
erties to him, was a proper, fair and reasonable
consideration therefor and the act of this defend-
ant and the defendant Henry Ungrich, Jr., as ex-
ecutors of and trustees under the said last Will
and Testament of the said Henry Ungrich, de-
ceased, in the conveyance of the said parcels of
real estate mentioned and described in the sub-
division "c" of the said paragraph of the said
complaint numbered "Third," through the said
Harry K. Davenport to the said Henry Ungrich,
341 Jr., was an act done for the benefit of the estate
and was within the terms of the power and trust
given to this defendant and the defendant Henry
Ungrich, Jr., as such executors and trustees as
aforesaid, and was in no respect in conflict with
such power and trust. That thereafter and on or
about the second day of May, 1903, this defendant
and the said defendant Henry Ungrich, Jr., as such
executors of and trustees under the last Will and
Testament of the said Henry Ungrich, deceased,
duly presented to the Surrogate of the County of
New York, having jurisdiction thereof, a true and
accurate account of their proceedings as such ex-
342 ecutors of and trustees under the last Will and
Testament of the said Henry Ungrich, deceased,
and wherein and whereby they set forth the sale
of the said premises so mentioned and described
in the said subdivision "c" of the said paragraph
of the said complaint numbered "Third" for the
said sum of \$157,000, and wherein and whereby
they duly charged themselves with the said sum
of \$157,000 as the consideration price of the sale of
the said premises. That the said plaintiff herein
was duly made a party to such proceedings in the

said Surrogates' Court of the County of New York, 343
 and such proceedings were thereafter had therein
 on notice to the plaintiff, that a decree was duly
 entered in the said Surrogates' Court of the
 County of New York, bearing date the 13th day
 of May, 1903, and filed in the office of the Clerk of
 that Court on or about that day, wherein and
 whereby it was duly adjudged that the said ac-
 count of this defendant and the said defendant
 Henry Ungrich, Jr., as such executors and trustees
 as aforesaid, should be and thereby was judicially
 settled and allowed as filed and adjusted, and
 wherein and whereby it was adjudged that out
 of the balance so found in the hands of this de- 344
 fendant and the said defendant Henry Ungrich,
 Jr., as such executors and trustees as aforesaid,
 that this defendant and the said defendant,
 Henry Ungrich, Jr., as executors of and trustees
 under the said will, should retain the sum of
 \$867.18 for their commissions on the accounting,
 and the sum of \$161.95 for their costs and dis-
 bursements on the accounting, and that the balance
 then remaining in their hands, being the sum of
 \$78,984.07, should be held by them subject to the
 provisions of the last will and Testament of Henry
 Ungrich, deceased. That on or about the 24th
 day of April, 1903, the said plaintiff and his wife 345
 duly conveyed the first two of the parcels of real
 estate, mentioned and described in the said subdi-
 vision "c" of the said paragraph of the said com-
 plaint numbered "Third," to the defendant Henry
 Ungrich, Jr., by deed bearing date April 24, 1903,
 and duly acknowledged by them on or about that
 date, and all their right, title and interest therein
 and thereto. And thereafter the said plaintiff and
 his wife duly conveyed the third of the parcels of
 the real estate mentioned and described in the sub-

- 346 division "c" of the paragraph of the said complaint numbered "Third," to the defendant Henry Ungrich, Jr., by deed bearing date April 24, 1903, and duly acknowledged by them, and which deed was recorded in the office of the Register of the County of New York on or about July 31, 1903, in Section 6, Liber 39 of Conveyances, page 29. That on the same date, the said plaintiff and his wife duly conveyed the fourth of the parcels of real estate mentioned and described in the subdivision "c" of the said paragraph of the complaint numbered "Third," to the defendant Henry Ungrich, Jr., by deed bearing date April 24, 1903, and duly
- 347 acknowledged by them on that date, which deed was duly recorded in the office of the Register of the County of New York on April 24, 1903, in Section 6, Liber 75 of Conveyances, page 152. That between the first day of May and the first day of November, 1902, the plaintiff rendered and performed services for the defendant Henry Ungrich, Jr., as the then owner of the first of the parcels of real estate mentioned and described in subdivision "c" of the paragraph of the complaint numbered "Third" at the special instance and request of the defendant Henry Ungrich, Jr., as an architect in making and preparing preliminary studies, general drawings and specifications
- 348 for a two story and cellar brick garage contemplated by the defendant Henry Ungrich, Jr., as such owner thereof, to be erected on the said plot or parcel of real estate first described in the subdivision "c" of the said paragraph of the said complaint so numbered "Third" at an estimated cost to the said defendant Henry Ungrich, Jr., of the sum of \$8,500; and thereafter and between the said first day of May and the first day of November, 1902, the plaintiff rendered and performed

services for the said defendant Henry Ungrich, 349
 Jr., as the owner of the said premises so first de-
 scribed in the said subdivision "c" of the said
 paragraph of the said complaint so numbered
 "Third" at the special instance and request of
 the defendant Henry Ungrich, Jr., as an architect
 in making and preparing preliminary studies, gen-
 eral drawings and specifications for a two story
 and cellar brick garage contemplated by the de-
 fendant Henry Ungrich, Jr., as such owner there-
 of, to be erected upon the said plot or parcel of
 real estate first described in the subdivision "c"
 of the said paragraph of the said complaint so
 numbered "Third," at an estimated cost of 350
 \$9,000; and thereafter and between the first day
 of May and the first day of November, 1902, the
 plaintiff rendered and performed services for the
 defendant Henry Ungrich, Jr., as the owner of
 the premises so first described in the said sub-
 division "c" of the said paragraph of the said
 complaint so numbered "Third" at the special in-
 stance and request of the defendant Henry Ung-
 rich, Jr., as an architect in making and preparing
 preliminary studies, general drawings and speci-
 fications for a five story storage warehouse con-
 templated to be erected by the defendant Henry
 Ungrich, Jr., as the owner thereof, on the said
 plot so first described in the said subdivision "c" 351
 of the said paragraph of the said complaint so
 numbered "Third," at an estimated cost of \$20,-
 000, and thereafter and between the said first day
 of May and the first day of November, 1902, the
 plaintiff rendered and performed services for the
 defendant Henry Ungrich, Jr., as the owner of
 the premises secondly described in the subdivision
 "c" of the paragraph of the said complaint num-
 bered "Third" at the special instance and re-

352 quest of the defendant Henry Ungrich, Jr., as an architect in making and preparing preliminary studies, general drawings and specifications, and in making and preparing additional plans and alterations to the above plans and specifications, for the alteration of three brick buildings with brown-stone front on the said premises or parcel of land secondly described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third," so owned by the said defendant Henry Ungrich, Jr., as aforesaid, at an estimated cost of \$10,000; and, thereafter and at the time of the commencement of this action the said
353 plaintiff commenced another action in the Supreme Court of New York for the County of Westchester, as plaintiff, against the defendant Henry Ungrich, Jr., as defendant to recover the sum of \$765, with interest thereon from November 15, 1902, as the reasonable value of such work, labor and services so rendered and performed by the said plaintiff for the defendant Henry Ungrich, Jr., at the said defendant Henry Ungrich, Jr.'s, instance as aforesaid, in preparing such preliminary studies, general drawings and specifications and additional plans and specifications for the erection and alteration by the defendant Henry Ungrich, Jr., of the said buildings on the said
354 pieces or parcels of land firstly and secondly described in the said subdivision "c" of the said paragraph of the said complaint so numbered "Third," and thereafter such proceedings were had subsequent to the commencement of this action that the defendant Henry Ungrich, Jr., pursuant to the statute in such case made and provided, duly offered to allow judgment to be taken against him in the said action for the sum of \$465, with interest from November 15, 1902, with

costs of the action to the date of that offer, and 355
 duly subscribed such an offer in writing and
 caused the same to be duly subscribed by his attorney,
 and caused the same to be served upon the attorneys
 for the plaintiff therein, and thereafter such proceedings
 were had in said action, and after the commencement
 of this action, that the said plaintiff herein as plaintiff
 therein, in writing, and pursuant to the statute in such
 case made and provided, duly accepted the said offer
 of the said defendant Henry Ungrich, Jr., and served
 upon the attorney for the said defendant Henry Ungrich,
 Jr., therein, and defendant herein, a written notice
 subscribed by the said plaintiff therein and 356
 herein, accepting the said offer of the said defendant
 Henry Ungrich, Jr., to allow judgment to be taken
 against him for the said sum of \$465 with interest
 from November 15, 1902, together with the costs and
 disbursements of the action to the date of the offer
 of the said defendant Henry Ungrich, Jr., therein
 and herein; and thereafter such proceedings were
 duly had in said action, pursuant to law and pursuant
 to the statute in such case made and provided, that
 judgment was duly entered in that action in favor
 of the said plaintiff therein, the plaintiff herein,
 and against the said defendant Henry Ungrich, Jr.,
 defendant therein and herein, for the sum of \$631.69,
 damages and costs, and the judgment roll in said
 action was duly docketed in the office of the Clerk
 of the said County of Westchester, and thereafter
 the said defendant Henry Ungrich, Jr., duly paid
 to the plaintiff the whole amount of the said judgment
 and the said judgment was subsequently satisfied
 and discharged of record; and by reason thereof
 the said plaintiff has no right to have or maintain
 this action. 357

- 358 Wherefore this defendant demands judgment dismissing the complaint of the plaintiff, with the costs and disbursements of this action.

JOHNSTON & JOHNSTON,
Attorneys for Defendant Martin
Ungrich, individually and as
executor, etc.,

8 and 10 Centre Street,
Manhattan Borough,
New York City.

City and County of New York, ss.:

- 359 Martin Ungrich, being duly sworn, says:
That he is the defendant above named; that he has read the foregoing supplemental answer and knows the contents thereof and that the same is true to his knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters, he believes it to be true.

MARTIN UNGRICH.

Sworn to before me this 9th)
day of May, 1907. }

EDWARD P. ORRELL, JR.,
Notary Public, Kings Co.
Ctf. Filed in N. Y. Co.

360

NEW YORK SUPREME COURT.

361

COUNTY OF NEW YORK,

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MAR-
TIN UNGRICH, as Executors
of and Trustees under the
Last Will and Testament of
Henry Ungrich, deceased,

Defendants.

362

The above named defendant, Henry Ungrich, Jr., individually and as executor of and as trustee under the last will and testament of Henry Ungrich, separately answering the complaint of the above named plaintiff, by this second supplemental answer thereto, alleges and avers as follows:

As a further separate and distinct and also as a partial defense, that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his sons Mar-
tin Louis Ungrich, the plaintiff, and this defend-
ant, and leaving a last will and testament and codicil thereto, which is set forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said will and codicil thereto were duly admitted to probate by the Surrogates' Court of the County of New York, and the defendants herein duly qualified as executors of and trustees thereunder, and ever since

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364 have acted as such executors and trustees, and now
are acting as such executors and trustees. That
among other assets the estate of the said Henry
Ungrich consisted of the real estate mentioned and
described in subdivision "c" of the paragraph of
the complaint herein numbered "Third." That
thereafter the said plaintiff made numerous com-
plaints to this defendant and the defendant, Mar-
tin Ungrich, that sufficient income was not realized
from such real estate, and repeatedly requested
this defendant and the said defendant, Martin
Ungrich, as such executors and trustees of the said
last Will and Testament of the said Henry
Ungrich, to act under the power of sale con-
ferred upon them by the said last will and testa-
ment of the said Henry Ungrich, deceased, and
sell the said premises for the best price that they
could get therefor. That at that time this de-
fendant, Henry Ungrich, Jr., expressed his desire
to purchase said premises at a price that would be
satisfactory to the plaintiff, and it was then and
there mutually agreed between the plaintiff and
the defendants that an appraisal of the property
of the said estate so mentioned and described in
subdivision "c" of the paragraph of the complaint
herein numbered "Third" should be made by
365 Philip A. Smyth, a well known auctioneer and ap-
praiser and real estate agent and broker, doing
business for many years past in the Borough of
Manhattan, City of New York, and well conversant
with the values of properties therein and well con-
versant with the values of the properties so men-
tioned and described in the said subdivision "c"
of the said paragraph of the said complaint so
numbered "Third." And thereupon the said
Philip A. Smyth duly appraised the first and sec-
ond of the parcels mentioned and described in the
366

said subdivision "c" of the said paragraph of the 367
said complaint so numbered "Third" at the sum
of \$110,000, and the third parcel mentioned and
described in the said subdivision "c" of the para-
graph of the said complaint so numbered "Third"
at the sum of \$22,000, and the fourth parcel of the
property so mentioned and described in the said
subdivision "c" of the said paragraph of the said
complaint so numbered "Third" at the sum of
\$20,000, and the whole four parcels at the aggre-
gate sum of \$152,000. And thereupon this de-
fendant offered to the plaintiff and the defendant
Martin Ungrich, to purchase said four parcels
mentioned and described in subdivision "c" of the 368
said paragraph of the said complaint numbered
"Third," at the sum of \$157,000, and thereupon
an agreement in writing was entered into, bear-
ing date of May 16, 1902, between this defendant
and the said defendant, Martin Ungrich, as such
executors and trustees as aforesaid, the plaintiff
and one Harry K. Davenport, acting on behalf
of this defendant, wherein and whereby this de-
fendant and the said defendant, Martin Ungrich,
agreed to sell and convey the said premises so
mentioned and described in the said subdivision
"c" of the paragraph of the said complaint num-
bered "Third" to the said Harry K. Davenport,
acting on behalf of this defendant, for the said 369
sum of \$157,000. And thereafter the said plain-
tiff, in writing, duly executed and acknowledged
by him, declared and affirmed to this defendant
and the defendant, Martin Ungrich, as executors
and trustees of the said last will and testament
of the said Henry Ungrich, deceased, that the sale
of the said real estate, for the aggregate considera-
tion of \$157,000 was made at his request, with his
consent and approval, and with full knowledge

370 on his part that the said real estate was purchased for and was to be conveyed to this defendant, who was one of the executors of and trustees under the last will of the said Henry Ungrich, deceased, and he therein and thereby ratified and confirmed the same and all of the acts of this defendant and the said defendants, Martin Ungrich, as such executors of and trustees under the last will and testament of Henry Ungrich, deceased, done in connection therewith. That this defendant acted and relied upon the written declaration, affirmation, ratification and confirmation so made by the said plaintiff and joined with the

371 defendant Martin Ungrich in a conveyance of the said premises mentioned and described in the said subdivision "c" of the said paragraph of the said complaint numbered "Third" to the said Harry K. Davenport, which deed bears date May 22, 1902, and was duly recorded in the office of the Register of the County of New York on May 24, 1902, in Section 6, Liber 66 of Conveyances, at page 419, and indexed under blocks Nos. 1790, 1810 and 1909, on the land map of the City of New York, as by reference thereto being had will more fully and at large appear. And the said Harry K. Davenport on that day, and as part of the purchase price and as consideration for the said conveyance, executed; duly acknowledged and delivered to the defendants his purchase money bond in the sum of \$10,000, secured by a mortgage in that amount covering the fourth of the parcels described in the subdivision "c" of the paragraph of the said complaint numbered "Third," which said mortgage was on that day duly recorded in the office of the Register of the County of New York in Blocks series, Section 6, Liber 111 of Mortgages, at page 7, as by reference thereto being had will

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more fully and at large appear. That on that day 373
the said Harry K. Davenport, as part of the con-
sideration for such conveyance to him as afore-
said, also executed his purchase money bond in the
sum of \$11,000, secured by purchase money mort-
gage in that amount covering the third of the par-
cels described in subdivision "c" of paragraph
"Third" of the said complaint, which said mort-
gage was duly recorded in the office of the said
Register in Block Series of Mortgages, Section 6,
Liber 109, at page 223. And on the same day as
further part consideration for the said conveyance
to him, the said Harry K. Danveport executed his
bond in the sum of \$57,500, secured by purchase 374
money mortgage covering the first two of the said
premises described in the said subdivision "c" of
the said paragraph "Third" of the said com-
plaint, which said bond and mortgage was duly
recorded in the said Register's office in Section 7
block series of mortgages, Liber 134, at page 460,
as by reference thereto being had will more fully
and at large appear. And the said Harry K.
Davenport on the same day, duly conveyed the
said premises so mentioned and described in the
said subdivision "c" of the said paragraph of the
said complaint numbered "Third," to this defend-
ant by deed bearing date that day, and duly re-
corded in the said office of the said Register of 375
the said County of New York, on the said 24th day
of May, 1902, in Section 6, Liber 68 of Convey-
ances, at page 299, and indexed under blocks Nos.
1790, 1810 and 1909 on the Land Map of the City
of New York, as by reference thereto being had
will more fully and at large appear. That such
conveyance was made subject to the aforesaid
mortgages so made by the said Harry K. Daven-
port to this defendant and the said defendant

- 376 Martin Ungrich, as such executors and trustees as aforesaid covering the aforesaid parcels. That the consideration paid by this defendant for the said conveyance of the said property to him was a proper, fair and reasonable consideration therefor, and the act of the said defendant Henry Ungrich, Jr., and the defendant Martin Ungrich, as executors of and trustees under the last will and testament of the said Henry Ungrich, deceased, in the conveyance of the said parcels of real estate mentioned and described in the subdivision "c" of the paragraph of the said complaint numbered "Third" through the said Harry K. Davenport to this defendant was an act done for the benefit
- 377 of the estate and within the terms of the power and trust given to this defendant and the said defendant Martin Ungrich, as such executors and trustees as aforesaid, and was in no respect in conflict with such power and trust. That thereafter and on or about the second day of May, 1903, this defendant and the said defendant Martin Ungrich, as such executors of and trustees under the last will and testament of the said Henry Ungrich, deceased, duly presented to the Surrogates' Court of the County of New York, having jurisdiction thereof, a true and accurate account of their proceedings as such executors of and trustees under the last will and testament of the said
- 378 Henry Ungrich, deceased, and wherein they set forth the sale of the said premises so mentioned and described in the said complaint herein numbered "Third," for the said sum of \$157,000 and wherein and whereby they duly charged themselves with the receipt of the said sum of \$157,000 as the consideration price of the sale of the said premises. That the said plaintiff was duly made a party to such proceedings in the said Surrogates'

Court of the County of New York, so having juris- 379
 diction thereof, and such proceedings were there-
 after duly had therein on notice to the plaintiff,
 that a decree was duly entered in the said Sur-
 rogates' Court of the County of New York, bear-
 ing date of the 13th day of May, 1903, and filed in
 the office of the Clerk of that Court on or about
 that day, wherein and whereby it was duly ad-
 judged that the said account of this defendant
 and the said defendant Martin Ungrich, as such
 executors and trustees as aforesaid, wherein and
 whereby they had set forth the sale of the said
 real estate so mentioned and described in the said
 subdivision "c" of the said paragraph of the said 380
 complaint numbered "Third" for the said sum of
 \$157,000, and wherein and whereby they had duly
 charged themselves with the receipt of the said
 consideration price of the said premises, should
 be and thereby was judicially settled and allowed
 as filed and adjusted, and wherein and whereby
 it was adjudged that out of the balance so found
 in the hands of this defendant and the said de-
 fendant Martin Ungrich, as such executors of and
 trustees as aforesaid, that this defendant and the
 said defendant Martin Ungrich, as executors of
 and trustees under the last will and testament of
 Henry Ungrich, deceased, should retain the sum of
 \$867.18 for their commissions on the accounting, 381
 and the sum of \$161.95 for their costs and dis-
 bursements on the accounting, and that the bal-
 ance then remaining in their hands, being the sum
 of \$78,984.07 should be held by them subject to the
 provisions of the last will and testament of the
 said Henry Ungrich, deceased. That \$78,500 of
 the said sum was thereafter to the knowledge of
 the plaintiff held by these defendants as such
 executors and trustees in the said bonds so secured

382 by mortgages as aforesaid, in trust for the benefit of the plaintiff during the term of his natural life pursuant to the terms and conditions of the aforesaid last will and testament of the said Henry Ungrich, deceased. That prior to the commencement of this action, there became due for interest on said bonds and mortgages, and this defendant and the said defendant Martin Ungrich, received as interest thereon the sum of \$1,633.59. That out of the said sum, the said defendants duly paid the mortgage tax on one of the mortgages held by them and paid the Receiver of Taxes of New York City as personal tax for the year 1906 on the estate of their testator, the sum of \$376.03, thereby leaving a balance in their hands belonging to the plaintiff under the terms and conditions of the said last will and testament of Henry Ungrich, deceased, the sum of \$1,257.56. That after the commencement of this action, the said defendant Martin Ungrich and this defendant, as such executors and trustees, received as the net income or increment of the said bonds and mortgages, the sum of \$1,661.64, and on the 12th day of June, 1907, there was in the hands of these defendants as such executors and trustees as aforesaid, the sum of \$2,919.20 of income realized from said bonds and mortgages held by them as trustees for the plaintiff under the terms and conditions of the said last will and testament of the said Henry Ungrich, deceased. That on the said 12th day of June, 1907, the plaintiff, well knowing that said sum of \$2,919.20 was in the hands of this defendant and the said defendant Martin Ungrich, as executors as aforesaid, as income increase and interest realized by them from such bonds and mortgages, applied to this court for an order directing these defendants forthwith to pay that sum

to him, and this court thereupon and on the 21st 385
 day of June, 1907, made its order, bearing date
 that day and entered in the office of the Clerk of
 that Court on June 24, 1907, which was subse-
 quently modified on the appeal thereto by the said
 defendant Martin Ungrich and this defendant, by
 order of the Appellate Division of the Supreme
 Court for the First Department, bearing date and
 entered in the office of the Clerk of that Court on
 November 22, 1907, directing the said defendants
 forthwith to pay the said sum of \$2,919.20 on ac-
 count of the income due him of the trust estate of
 the said Henry Ungrich, deceased. And thereafter
 the said defendants, pursuant to the terms of the 386
 said order, duly paid to him and the said plaintiff
 received from them, the said sum of \$2,919.20, on
 account of the income due him under the trust
 estate of the said Henry Ungrich, deceased. That
 by reason thereof the said plaintiff has no right to
 have or maintain this action.

WHEREFORE this defendant prays judgment
 as in his answer.

ISAAC P. HUBBARD,

Attorney for Defendant,

Henry Ungrich, Jr.,

132 Nassau Street,

Manhattan Borough, 387

New York City.

388 City and County of New York, ss.:

Henry Ungrich, Jr., being duly sworn, says:

That he is one of the defendants herein, that he has read the foregoing second supplemental answer and knows the contents thereof and that the same is true of his knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

HENRY UNGRICH, JR.

Sworn to before me this 6th }
day of December, 1907. }

389 Wm. C. WOLF,
Notary Public,
New York County.

390

NEW YORK SUPREME COURT,
COUNTY OF NEW YORK.

391

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MAR-
TIN UNGRICH, as Executors
of and Trustees under the
Last Will and Testament of
Henry Ungrich, deceased,

Defendants.

392

The above named defendant Martin Ungrich, individually and as executor of, and as trustee under, the last will and testament of Henry Ungrich, separately answering the complaint of the above named plaintiff, by this his second supplemental answer thereto, alleges and avers as follows:

As a further separate and distinct and also as a partial defense, that the said Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his 393 sons Martin Louis Ungrich, the plaintiff, and the defendant Henry Ungrich, Jr., and leaving a last will and testament and codicil thereto, which is set forth in the paragraph of the said complaint numbered "First," and that thereafter and on April 11, 1901, the said will and codicil thereto were duly admitted to probate by the Surrogates' Court of the County of New York, and the defendants herein duly qualified as executors thereof and trus-

tees thereunder, and ever since have acted as such
executors and trustees, and now are acting as such
executors and trustees. That among other assets
the estate of the said Henry Ungrich consisted of
the real estate mentioned and described in sub-
division "c" of the paragraph of the complaint
herein numbered "Third." That thereafter the
said plaintiff made numerous complaints to this
defendant and the defendant Henry Ungrich, Jr.,
that sufficient income was not realized from such
real estate, and repeatedly requested this defend-
ant and the said defendant Henry Ungrich, Jr., as
such executors and trustees of the said last will
and testament of the said Henry Ungrich, to act
under the power of sale conferred upon them by
the said last will and testament of the said Henry
Ungrich, deceased, and sell the said premises for
the best price that they could get therefor. That
at that time the defendant Henry Ungrich, Jr.,
expressed his desire to purchase said premises at
a price that would be satisfactory to the plaintiff,
and it was then and there mutually agreed between
the plaintiff and the defendants that an appraisal
of the property of the said estate so mentioned
and described in subdivision "c" of the paragraph
of the complaint herein numbered "Third" should
be made by Philip A. Smyth, a well known auc-
tioneer and appraiser and real estate agent and
broker, doing business for many years past in the
Borough of Manhattan, City of New York, and
well conversant with the values of properties
therein and well conversant with the values of the
properties so mentioned and described in the said
subdivision "c" of the said paragraph of the said
complaint so numbered "Third." And thereupon
the said Philip A. Smyth duly appraised the first
and second of the parcels mentioned and described

in the said subdivision "c" of the said paragraph 397
of the said complaint so numbered "Third" at the
sum of \$110,000, and the third parcel mentioned
and described in the said subdivision "c" of the
paragraph of the said complaint so numbered
"Third" at the sum of \$22,000, and the fourth
parcel of the property so mentioned and de-
scribed in the said subdivision "c" of the
said paragraph of the said complaint so num-
bered "Third" at the sum of \$20,000, and the
whole four parcels at the aggregate sum of
\$152,000. And thereupon the defendant Henry
Ungrich, Jr., offered to the plaintiff and this de-
fendant, to purchase said four parcels mentioned 398
and described in subdivision "c" of the said para-
graph of the said complaint numbered "Third," at
the sum of \$157,000, and thereupon an agreement
in writing was entered into, bearing date May 16,
1902, between this defendant and the said defend-
ant Henry Ungrich, Jr., as such executors and
trustees as aforesaid, the plaintiff and one Harry
K. Davenport, acting on behalf of the defendant
Henry Ungrich, Jr., wherein and whereby this de-
fendant and the said defendant Henry Ungrich,
Jr., agreed to sell and convey the said premises
so mentioned and described in the said subdivis-
ion "c" of the paragraph of the said complaint
numbered "Third" to the said Harry K. Daven- 399
port, acting on behalf of the defendant Henry Un-
grich, Jr., for the said sum of \$157,000. And
thereafter the said plaintiff in writing, duly exe-
cuted and acknowledged by him, declared and af-
firmed to this defendant and the defendant Henry
Ungrich, Jr., as executors and trustees of the said
last will and testament of the said Henry Un-
grich, deceased, that the sale of the said real es-
tate for the aggregate consideration of \$157,000
was made at his request, with his consent and ap-

400 proval, and with full knowledge on his part that
 the said real estate was purchased for and was to
 be conveyed to the defendant Henry Ungrich,
 Jr., who was one of the executors of and trustees
 under the last will of the said Henry Ungrich,
 deceased, and he therein and thereby ratified and
 confirmed the same and all of the acts of this de-
 fendant and the defendant Henry Ungrich, Jr.,
 as such executors of and trustees under the last
 will and testament of Henry Ungrich, deceased,
 done in connection therewith. That this defend-
 ant acted and relied upon the written declaration,
 affirmation, ratification and confirmation so made
 by the said plaintiff and joined with the defendant
 401 Henry Ungrich, Jr., in a conveyance of the said
 premises mentioned and described in the said sub-
 division "c" of the said paragraph of the said
 complaint numbered "Third" to the said Harry
 K. Davenport, which deed bears date May 22,
 1902, and was duly recorded in the office of the
 Register of the County of New York on May 24,
 1902, in Section 6, Liber 66 of Conveyances, at
 page 419, and indexed under blocks Nos. 1790,
 1810 and 1909, on the land map of the City of
 New York, as by reference thereto being had will
 more fully and at large appear. And the said
 Harry K. Davenport on that day, and as part of
 the purchase price and as consideration for the
 402 said conveyance, executed, duly acknowledged and
 delivered to the defendants his purchase money
 bond, in the sum of \$10,000, secured by a mort-
 gage in that amount covering the fourth of the par-
 cels described in the subdivision "c" of paragraph
 of the said complaint numbered "Third," which
 said mortgage was on that day duly recorded in
 the office of the Register of the County of New
 York in Block series, Section 6, Liber 111 of Mort-
 gages, at page 7, as by reference thereto being

had will more fully and at large appear. That on 403
that day the said Harry K. Davenport, as part of
the consideration for such conveyance to him, as
aforesaid, also executed his purchase money bond
in the sum of \$11,000, secured by purchase money
mortgage in that amount covering the third of
the parcels described in subdivision "c" of para-
graph "Third" of the said complaint, which said
mortgage was duly recorded in the office of the
said Register in Block Series of Mortgages, Sec-
tion 6, Liber 109, at page 323. And on the same
day, as further part consideration for the said
conveyance to him, the said Harry K. Davenport
executed his bond in the sum of \$57,500, secured 404
by purchase money mortgage covering the first
two of the said premises described in the said
subdivision "c" of the said paragraph "Third" of
the said complaint, which said bond and mortgage
was duly recorded in the said Register's office in
Section 7, block series of mortgages, Liber 134, at
page 460 as by reference thereto being had will
more fully and at large appear. And the said
Harry K. Davenport on the same day, duly con-
veyed the said premises so mentioned and de-
scribed in the said subdivision "c" of the said
paragraph of the said complaint numbered
"Third," to the defendant Henry Ungrich, Jr.,
by deed bearing date that day, and duly recorded 405
in the said office of the said Register of the said
County of New York, on the said 24th day of May,
1902, in Section 6, Liber 68 of Conveyances, at
page 299, and indexed under blocks Nos. 1790.
1810 and 1909, on the Land Map of the City of New
York, as by reference thereto being had will more
fully and at large appear. That such conveyance
was made subject to the aforesaid mortgages so
made by the said Harry K. Davenport to this de-
fendant and the said defendant Henry Ungrich,

406 Jr., as such executors and trustees as aforesaid,
covering the aforesaid parcels. That the consid-
eration paid by the defendant Henry Ungrich, Jr.,
for the said conveyances of the said property to
him was a proper, fair and reasonable considera-
tion therefor, and the act of the said defendant
Henry Ungrich, Jr., and this defendant, as exec-
utors of and trustees under the last Will and
Testament of the said Henry Ungrich, deceased,
in the conveyance of the said parcels of real estate
mentioned and described in the subdivision "c" of
the paragraph of the said complaint numbered
"Third" through the said Harry K. Davenport to
407 the defendant Henry Ungrich, Jr., was an act done
for the benefit of the estate and within the terms of
the power and trust given to this defendant and
the said defendant Henry Ungrich, Jr., as such
executors and trustees as aforesaid, and was in no
respect in conflict with such power and trust. That
thereafter and on or about the second day of May,
1903, this defendant and the said defendant Henry
Ungrich, Jr., as such executors of and trustees
under the last will and testament of the said Henry
Ungrich, deceased, duly presented to the Surro-
gates' Court of the County of New York, having
jurisdiction thereof, a true and accurate account
of their proceedings as such executors of and
408 trustees under the last Will and Testament of the
said Henry Ungrich deceased, and wherein they
set forth the sale of the said premises so men-
tioned and described in the said complaint herein
numbered "Third," for the said sum of \$157,000
and wherein and whereby they duly charged them-
selves with the receipt of the sum of \$157,000 as
the consideration price of the sale of the said
premises. That the said plaintiff was duly made
a party to such proceedings in the said Surro-
gates' Court of the County of New York, so having

jurisdiction thereof, and such proceedings were 409
thereafter duly had therein on notice to the plain-
tiff, that a decree was duly entered in the said
Surrogates' Court of the County of New York,
bearing date of the 13th day of May, 1903, and
filed in the office of the Clerk of that Court on or
about that day, wherein and whereby it was duly
adjudged that the said account of this defendant
and the said defendant Henry Ungrich, Jr., as
such executors and trustees as aforesaid, wherein
and whereby they had set forth the sale of the said
real estate so mentioned and described in the said
subdivision "c" of the said paragraph of the said
complaint numbered "Third" for the said sum of 410
\$157,000, and wherein and whereby they had duly
charged themselves with the receipt of the said
consideration price of the said premises, should be
and thereby was judicially settled and allowed as
filed and adjusted, and wherein and whereby it
was adjudged that out of the balance so found in
the hands of this defendant and the said defend-
ant Henry Ungrich, Jr., as such executors of and
trustees as aforesaid, that this defendant and the
said defendant Henry Ungrich, Jr., as executors
of and trustees under the last Will and Testa-
ment of Henry Ungrich, deceased, should retain
the sum of \$867.18 for their commissions on the
accounting, and the sum of \$161.95 for their costs 411
and disbursements on the accounting, and that
the balance then remaining in their hands, being
the sum of \$78,984.07, should be held by them sub-
ject to the provisions of the last Will and Testa-
ment of the said Henry Ungrich, deceased. That
\$78,500 of the said sum was thereafter to the
knowledge of the plaintiff held by these defend-
ants as such executors and trustees in the said
bonds so secured by mortgages as aforesaid, in
trust for the benefit of the plaintiff during the

412 term of his natural life pursuant to the terms and conditions of the aforesaid last Will and Testament of the said Henry Ungrich, deceased. That prior to the commencement of this action, there became due for interest on said bonds and mortgages, and this defendant and the said defendant Henry Ungrich, Jr., received as interest thereon the sum of \$1,633.59. That out of the said sum, the said defendants duly paid the mortgage tax on one of the mortgages held by them and paid the Receiver of Taxes of New York City as personal tax for the year 1906 on the estate of their testator the sum of \$376.03, thereby leaving a balance in their hands belonging to the plaintiff under the terms and conditions of the said last Will and Testament of Henry Ungrich, deceased, the sum of \$1,257.56. That after the commencement of this action, the said defendant Henry Ungrich, Jr., and this defendant, as such executors and trustees, received as the net income or increment of the said bonds and mortgages, the said sum of \$1,661.64, and on the 12th day of June, 1907, there was in the hands of these defendants as such executors and trustees as aforesaid, the aggregate sum of \$2,919.20 of income realized from said bonds and mortgages held by them as trustees for the plaintiff under the terms and conditions of the said last Will and Testament of the said Henry Ungrich, deceased. That on the said 12th day of June, 1907, the plaintiff, well knowing that said sum of \$2,919.20 was in the hands of this defendant and the said defendant Henry Ungrich, Jr., as executors as aforesaid, as income, increase and interest realized by them from such bonds and mortgages, applied to this court for an order directing these defendants forthwith to pay that sum to him; and this court thereupon and on the 21st day of June, 1907, made its order, bearing

date that day and entered in the office of the Clerk 415
of that Court on June 24, 1907, which was subse-
quently modified on the appeal by the said de-
fendant Henry Ungrich, Jr., and this defendant,
by order of the Appellate Division of the Supreme
Court for the First Department, bearing date and
entered in the office of the Clerk of that Court on
November 22, 1907, directing the said defendants
forthwith to pay the said sum of \$2,919.20 on ac-
count of income of the trust estate of the said
Henry Ungrich, deceased. And thereafter the said
defendants, pursuant to the terms of the said
order, duly paid to him, and the said plaintiff re-
ceived from them the said sum of \$2,919.20 on ac-
count of the income due to him under the trust 416
estate of the said Henry Ungrich, deceased. That
by reason thereof the said plaintiff has no right to
have or maintain this action.

WHEREFORE this defendant demands judg-
ment as prayed for in his answer.

JOHNSTON & JOHNSTON,
Attorneys for Defendant,
Martin Ungrich,
256 Broadway,
Manhattan Borough,
New York City.

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418 City and County of New York, ss.:

Martin Ungrich, being duly sworn, says:

That he is one of the defendants herein; that he has read the foregoing second supplemental answer and knows the contents thereof, and that the same is true of his knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

MARTIN UNGRICH.

Sworn to before me this 6th }
day of December, 1907. }

519 EDWARD P. ORRELL, JR.,
Notary Public,
Kings County.
Ctf. filed in New York County.

NEW YORK SUPREME COURT.

a21

COUNTY OF NEW YORK.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MAR-
 TIN UNGRICH, individually,
 and as Executors of and
 Trustees under the Last Will
 and Testament of Henry Un-
 grich, deceased,
 Defendants.

422

The above entitled action, having been tried in its regular order upon the calendar of this court, at a Special Term, Part V., before Mr. Justice James Fitzgerald, without a jury, on January 15, 16, 17, 20 and 21, 1908, the said Justice is now requested by the defendants to make the following

FINDINGS OF FACT:

Found—J. F., J. 1. That on March 1, 1901, the above named Henry Ungrich, the elder, died in the City, County and State of New York, leaving him surviving his sons Martin L. Ungrich, the plaintiff, and Henry Ungrich, Jr., one of the defendants, and leaving a last will and testament and codicil thereto, of which the following are true copies: "IN THE NAME OF GOD, AMEN: "I. HENRY UNGRICH, of the City, County and "State of New York, being of sound mind and "memory, and mindful of the uncertainty of this "life, do hereby make, publish and declare this

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424 "my last will and testament in manner following,
 "that is to say: After the payment of all my just
 "debts and funeral expenses, I give, devise and
 "bequeath unto my executors, hereinafter named,
 "and the survivors or survivor of them, all my
 "estate, real, personal and mixed of every kind
 "and nature and wheresoever situate, of which I
 "die seized, possessed of, or entitled to, at the time
 "of my decease, IN TRUST, nevertheless, to and
 "for the following uses and purposes, to wit: 1st.
 "To enter upon and take possession thereof, and
 "manage and conduct the same and collect the
 "rents, issues, income, interest and profits thereof,
 "until the division of my estate, as hereinafter
 425 "provided for. 2nd. Out of such income, to pay
 "and disburse all taxes, assessments, water rents,
 "interest, insurances and repairs, and all other
 "lawful charges, that may be levied, assessed, im-
 "posed, charged, or made thereon. 3rd. To sell
 "and convert my entire estate into cash, as soon
 "after my decease as my Executors, hereinafter
 "named, and the survivors and survivor of them
 "deem best in such manner and upon such terms,
 "as my Executors think proper. 4th. To set
 "apart, out of the proceeds of my estate, the sum
 "of five thousand dollars and invest and reinvest
 "the same, until the arrival of my granddaughter,
 426 "Florence E. Ungrich, at the age of twenty-one
 "years, and upon her so arriving at the age of
 "twenty-one years. I give, devise and bequeath
 "to my said granddaughter, Florence E. Ungrich.
 "the said sum of Five thousand dollars and all
 "interest or income, which has accumulated
 "thereon, to her, her heirs and assigns forever.
 "And in the event of my said granddaughter,
 "Florence E. Ungrich, departing this life before
 "reaching the age of twenty-one years, then and
 "in that event, I direct that said legacy to her shall

"lapse and become void, and the sum or sums 427
 "which would have been due her thereunder, shall
 "be disposed of, in the manner hereinafter pro-
 "vided, for the balance of my estate. 5th. To
 "divide the balance of my estate, into two equal
 "one half parts, and to pay over to my son
 "HENRY UNGRICH one of such parts, which
 "equal undivided one half part I hereby give, de-
 "vise and bequeath to my said son HENRY UN-
 "GRICH, to him, his heirs and assigns forever.
 "6th. To hold the remaining equal undivided one
 "half part, of said balance of my estate and keep
 "the same invested and reinvested, and to pay
 "over to my son MARTIN LOUIS UNGRICH, in 428
 "quarter-yearly payments, during his natural life,
 "the net income received from the investment of
 "such one-half part of my estate. 7th. Until the
 "sale and division of my estate as provided in the
 "3rd, 4th, 5th and 6th clauses of this my Will, I
 "direct my executors, and the survivors or sur-
 "vivor of them, to divide and pay the net income,
 "which is received from my estate, to my two sons
 "HENRY UNGRICH and MARTIN LOUIS UN-
 "GRICH in equal parts, one half to each of them,
 "in quarter-yearly payments. 8th. Upon the death
 "of my said son Martin Louis Ungrich, then I
 "give, devise and bequeath said one half part of
 "my estate (the net income of which I have here- 429
 "inbefore directed shall be paid to my said son
 "Martin Louis Ungrich during his natural life),
 "with such accumulations of interest as may not
 "then have been paid to my said son Martin Louis
 "Ungrich, to my son HENRY UNGRICH, to him,
 "his heirs and assigns forever. 9th. In the event
 "of the death of my said son Henry Ungrich, with-
 "out leaving lawful issue, prior to the death of my
 "said son Martin Louis Ungrich, then and in that
 "event, upon the death of my said son Martin

- 430 "Louis Ungrich, I give, devise and bequeath all
 "said one-half of my estate, real, personal and
 "mixed as follows: a. To my daughter-in-law,
 "EMILY A. UNGRICH, wife of my said son
 "Henry Ungrich, the sum of ten thousand dollars,
 "which amount I give and bequeath to her, her
 "heirs and assigns forever. b. To my nephews,
 "MARTIN and HENRY UNGRICH, sons of my
 "deceased brother MARTIN, the sum of five thou-
 "sand dollars each, which amount I give and be-
 "queath to each of them, their heirs and assigns
 "forever. c. All the rest, residue and remainder
 "of said one-half of my estate, I give, devise and
 431 "bequeath to Maria Rodenbach, the only daughter
 "of my deceased brother Jacob Ungrich, of the
 "town of Kreusnach in Rheinisch Prussia, Ger-
 "many. 10th. I hereby nominate, constitute and
 "appoint my said son HENRY UNGRICH and my
 "nephew MARTIN UNGRICH Executors of this
 "my last will and testament, and Trustees of my
 "estate until the final distribution thereof, with
 "full power to them and to their survivors and
 "survivor of them to do and perform all, each and
 "every act and thing whatsoever requisite and
 "necessary, to the due and proper execution, of
 "this my Will and of all the powers, trusts and
 "duties hereby reposed, given and devolved upon
 432 "them and their survivors and the survivor of
 "them; also with full power and authority, to sell
 "or lease, any or all of my real estate, or any por-
 "tion thereof, and to dispose of my personal es-
 "tate, when in their sound discretion, it will be for
 "the best interests and benefit of my estate so to
 "do, and to sign, seal, execute and deliver good
 "and sufficient conveyances, leases, releases, bills
 "of sale and all other instruments of writing and
 "record necessary or proper therefor. 11th. I
 "hereby revoke and annul, all other and former

"wills by me at any time heretofore made. IN 433
 "WITNESS WHEREOF, I have hereunto set
 "my hand and seal this fourteenth day of Febru-
 "ary, in the year of our Lord, one thousand, eight
 "hundred and ninety-six. (Signed) HENRY
 "UNGRICH (Seal). The foregoing instrument
 "consisting of five pages, was at the date thereof
 "signed, sealed, published and declared by the said
 "HENRY UNGRICH as and for his last will and
 "testament in the presence of us, who at his re-
 "quest and in his presence and in the presence of
 "each other have subscribed our names as wit-
 "nesses thereto. R. A. Havener, No. 281 Lenox
 "Avenue, N. Y. City. James Demarest, No. 448 434
 "Macon Street, Brooklyn, N. Y. WHEREAS, I,
 "HENRY UNGRICH, of the City, County and
 "State of New York, have made my last will and
 "Testament in writing bearing date the fourteenth
 "day of February, in the year of our Lord one
 "thousand eight hundred and ninety-six (1896),
 "and am now desirous of making a Codicil to my
 "said last Will and Testament. NOW, THERE-
 "FORE, I, said HENRY UNGRICH, do hereby
 "make, publish and declare This instrument to be
 "a codicil to my said Last Will and Testament
 "aforesaid. I do hereby revoke, annul and can-
 "cel the provisions made for my granddaughter
 "FLORENCE E. UNGRICH, in the 4th clause, on 435
 "page 2, of my said last Will and Testament, and
 "I direct that the said sum of five thousand dol-
 "lars therein mentioned, shall be disposed of by
 "my executors, in the manner provided in my said
 "last Will and Testament, for the balance of my
 "estate, and as if the provision for my said grand-
 "daughter, has not been inserted in my said last
 "will and testament. I make this revocation be-
 "cause I believe that my said granddaughter will
 "be provided for by her mother. In all other re-

- 436 "spect I hereby confirm and ratify my said last
 "will and testament aforesaid, to all intents and
 "purposes. IN WITNESS WHEREOF, I have
 "hereunto set my hand and seal this twenty-eighth
 "day of July, in the year of our Lord, one thou-
 "sand eight hundred and ninety-seven. Henry
 "Ungrich (Seal). The foregoing instrument, con-
 "sisting of two pages, was at the date thereof,
 "signed, sealed, published and declared by the
 "said Henry Ungrich as and for a codicil to his
 "last Will and Testament, dated February 14th,
 "1896, in the presence of us, who, at his request
 "and in his presence and in the presence of each
 437 "other, have subscribed our names as witnesses
 "thereto. Thomas J. McPherson, 90 Bristol
 "Street, Brooklyn; James Demarest, 448 Macon
 "Street, Brooklyn, N. Y."

Found—J. F., J. II. That thereafter and on April 11, 1901, the said will and codicil was duly admitted to probate by the Surrogate of the County of New York, as a will of real and personal property, and letters testamentary thereon were issued to the defendants herein who thereafter duly qualified as executors and trustees thereunder, and ever since have acted and now are acting as such.

- 438 *Found—J. F., J.* III. That the said Henry Ungrich, deceased, left at the time of his death the following personal property: One \$1,000 Texas and Pacific Railroad 1st mortgage, 5% gold bond, \$1,000; one \$1,000 St. Louis and Southwestern 1st mortgage, 4% gold bond, \$1,000; 20 shares Wheeling and Lake Erie Railway 1st preferred stock, \$2,000; balance in Hamilton Bank, \$782.20; net receipts for February, 1901, \$435.51; cash in Harlem Savings Bank, \$1,125.24; cash in Greenwich Savings Bank, \$1,042.66; cash in German

Savings Bank, \$1,028.14; cash in Bowery Savings 439
 Bank, \$1,007.16; cash in Empire City Savings
 Bank, \$993.42; cash in Seamen's Bank for Sav-
 ings, \$952.18; cash in Bank for Savings, \$918.24;
 promissory notes of Martin Louis Ungrich, pay-
 able on demand: No. 1, dated April 7, 1899, \$2,600;
 No. 2, dated July 13, 1899, \$100; No. 3, dated Au-
 gust 2, 1899, \$35; No. 4, dated September 23, 1899,
 \$56; No. 5, dated October 25, 1899, \$47; gold watch,
 chain and cuff buttons, \$5.

Found—J. F., J. IV. That the said personal
 property of which the said Henry Ungrich, the
 elder, died seized and possessed was on January 30,
 1902, duly appraised by Patrick H. Loftus and C. 440
 W. Luyster, Jr., appraisers, duly appointed by one
 of the Surrogates of the County of New York for
 that purpose, in the aggregate sum of \$11,549.75,
 and each item of the said personal estate was ap-
 praised by the said appraisers as follows: One
 \$1,000 Texas and Pacific Railroad 1st mortgage
 5% gold bond, \$1,180; one \$1,000 St. Louis and
 Southwestern 1st mortgage, 4% gold bond, \$980;
 20 shares Wheeling and Lake Erie Railway 1st
 preferred stock, \$1,100; balance in Hamilton Bank,
 \$782.20; net receipts for February, 1901, \$435.51;
 cash in Harlem Savings Bank, \$1,125.24; cash in
 Greenwich Savings Bank, \$1,042.66; cash in Ger- 441
 man Savings Bank, \$1,028.14; cash in Bowery
 Savings Bank, \$1,007.16; cash in Empire City
 Savings Bank, \$993.43; cash in Seamen's Bank for
 Savings \$952.18; promissory notes of Martin
 Louis Ungrich, payable on demand, No. 1, dated
 April 7, 1899, no value; No. 2, dated July 13, 1899,
 no value; No. 3 dated August 2, 1899, no value;
 No. 4, dated September 23, 1899, no value; No. 5,
 dated October 25, 1899, no value; gold watch,
 chain and cuff buttons, \$5.00.

442 *Not Found—J. F., J. V.* That such appraisal was made by said appraisers so duly appointed by the said Surrogate of the County of New York at the office of James Demarest, at 132 Nassau Street, in the Borough of Manhattan, City of New York, on the 30th day of January, 1902,, at four o'clock in the afternoon of that day, pursuant to a written notice thereof theretofore served on the plaintiff and each of the defendants individually, each of whom on January 24, 1902, in writing, admitted due and timely service thereof.

Found—J. F., J. VI. That such inventory of the said personal estate of the said Henry Ungrich, the elder, deceased, was duly filed in the
443 office of the Surrogates' Court of the County of New York on May 12, 1902.

Found—J. F., J. VII. That said Henry Ungrich, Jr., at the time of his decease, was seized and possessed of the following described premises: All those certain lots, pieces or parcels of land, with the buildings and improvements thereon erected, situate, lying and being in the Twelfth ward, Borough of Manhattan, City, County and State of New York, bounded and described as follows, to wit.: *Parcel No. 1.* All that certain lot,
444 situate, lying and being in the Twelfth ward of the City of New York, Borough of Manhattan, County and State of New York, known and distinguished as Lot number 359 (three hundred and fifty-nine, on a map entitled "Map of property belonging to Samson Adolph Benson, living in the Twelfth ward of the City of New York," New York, May, 1848, compiled and surveyed by Francis Nicholson, City Surveyor, and filed in the office of the Register of the City and County of New York, and numbered Map 180 (one hundred and eighty),

bounded and described as follows: BEGINNING 445
 at a point on the northerly side of One Hundred
 and Twenty-fourth Street, distant seventy-five
 feet westerly from the westerly side of Sixth Ave-
 nue (now Lenox Avenue) as widened by an Act of
 the Legislature of the State of New York, entitled
 "An Act for the improvement of part of the City
 of New York between One Hundred and Tenth
 Street and the Harlem River," passed April 24,
 1865, Laws of 1865, Chapter 564,, page 1133, which
 point was distant one hundred feet westerly from
 the westerly side of Sixth Avenue (now Lenox
 Avenue) before said widening; thence running
 northerly parallel with said Lenox Avenue (for- 446
 merly Sixth Avenue) one hundred feet and eleven
 inches; thence westerly parallel with One Hun-
 dred and Twenty-fourth Street twenty-five feet;
 thence southerly again parallel with Lenox Ave-
 nue (formerly Sixth Avenue) one hundred feet
 and eleven inches to the northerly side of One Hun-
 dred and Twenty-fourth Street; thence easterly
 along said northerly side of One Hundred and
 Twenty-fourth Street, twenty-five feet to the point
 or place of beginning, being the same premises
 conveyed by John L. Strang and Sarah Strang,
 his wife, to Henry Ungrich, by deed bearing date
 November 18, 1872, and recorded in the office of
 the Register of the City and County of New York, 447
 in Liber 1227 of Conveyances, page 688, Novem-
 ber 18, 1872. *Parcel No. 2.* All that certain par-
 cel of land situate, lying and being in the Twelfth
 Ward of the City of New York, Borough of Man-
 hattan, County and State of New York, bounded
 and described as follows: Beginning at a point at
 the intersection of the westerly line or side of
 Lenox Avenue (formerly Sixth Avenue), with the
 northerly line or side of One Hundred and Twenty-

- 448 fourth Street; thence running westerly along said northerly line or side of One Hundred and Twenty-fourth Street seventy-five feet; thence northerly parallel with Lenox Avenue (formerly Sixth Avenue) fifty-six feet; thence easterly parallel with One Hundred and Twenty-fourth Street and part of the distance through the centre of a party wall seventy-five feet to the westerly line or side of Lenox Avenue (formerly Sixth Avenue); thence southerly along the said westerly line or side of Lenox Avenue (formerly Sixth Avenue) fifty-six feet, to the point or place of beginning, be the said several dimensions more or less, being the same premises conveyed by Rudolph Wyman and Yette,
- 449 his wife, and Bernhard Hamburger and Rebecca, his wife, to Henry Ungrich, by deed bearing date March first, 1869, and recorded in the office of the Register of the City and County of New York, in Liber 1093 of Conveyances, page 245, March 1, 1869. *Parcel No. 3.* All that certain lot, piece or parcel of land, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York bounded and described as follows: Beginning at a point formed by the intersection of the westerly side of Pleasant Avenue (formerly Avenue A) with the southerly side of One Hundred and
- 450 Twenty-third Street, running thence southerly along said westerly side of Pleasant Avenue (formerly Avenue A) twenty-five feet eleven inches; thence westerly and parallel with One Hundred and Twenty-third Street one hundred feet; thence northerly and parallel with Pleasant Avenue (formerly Avenue A) twenty-five feet eleven inches, to the southerly side of One Hundred and Twenty-third Street, and thence easterly along said southerly side of One Hundred and Twenty-third Street one hundred feet to the place of beginning, being

the same premises conveyed by Henry Ungrich, 451
 Jr., and Emily A., his wife, to Henry Ungrich,
 Sr., by deed bearing date the twenty-eighth day of
 March, 1894, and recorded in the office of the Reg-
 ister of the City and County of New York, on the
 twenty-ninth day of March, 1894, in Block Series
 (Conveyances), Section 6, Liber 19, page 266,
 Block number 1810, on the Land Map of the City
 of New York. *Parcel No. 4.* All that certain lot,
 piece or parcel of land, with the building thereon
 erected, situate, lying and being in the Twelfth
 Ward of the City of New York, Borough of Man-
 hattan, County and State of New York, bounded
 and described as follows, viz.: Beginning at a
 point on the southerly side of One Hundred and 452
 twenty-sixth Street, distant one hundred and
 thirty-five (135) feet easterly from the corner
 formed by the intersection of the southerly side
 of One Hundred and Twenty-sixth Street, with the
 easterly side of Third Avenue, running thence
 southerly and parallel with Third Avenue ninety-
 nine (99) feet and eleven (11) inches to the
 centre line of the block; thence easterly along the
 same thirty (30) feet; thence northerly and again
 parallel with the Third Avenue Ninety-nine feet
 and eleven inches to the southerly side of One
 Hundred and Twenty-sixth Street aforesaid, and
 thence westerly along the same thirty (30) feet, to 453
 the point or place of beginning, being the same
 premises conveyed by Stephen J. Wright and
 Susan A., his wife, to Henry Ungrich, by deed
 bearing date the 30th day of December, 1882., and
 recorded in the office of the Register of the City
 and County of New York, in Liber 1696 of Con-
 veyances, page 278, January 4th, 1883.

Not Found—J. F., J. VIII. On February 27,
 1902, the defendants as executors of and trustees

454 under the said last will and testament of the said Henry Ungrich, the elder, deceased, sold and delivered to the defendant Henry Ungrich, Jr., the Texas and Pacific Railway first mortgage 5% \$1,000 gold bond at 120½, and the St. Louis and Southwestern first mortgage 4% gold bond at 98½, and the 20 shares of Wheeling and Lake Erie Railroad, first preferred stock at 57, and executed, duly acknowledged and delivered to the said defendant Henry Ungrich, Jr., a bill of sale in writing thereof, and received from the said defendant Henry Ungrich, Jr., for said Texas and Pacific first mortgage 5% gold bond, and for said
 455 St. Louis and Southwestern first mortgage 4% gold bond, and for said 20 shares of Wheeling and Lake Erie Railroad first preferred stock, the sum of \$3,374.00, a sum which was \$65.50 in excess of the amount at which the said appraisers had appraised such bonds and shares of stock.

Not Found—J. F., J. IX. The plaintiff, upon the trial of this action, failed to show that the defendant Henry Ungrich, Jr., had ever sold the said bonds and the said shares of stock at any profit to him.

Not Found—J. F., J. X. That at numerous times between the date of the probate of the said will of the said Henry Ungrich, deceased, and the
 456 16th day of May, 1902, the plaintiff made complaints to the defendants about the irregularity of his income, and expressed a desire to have some definite income fixed by the division of the personal property and the sale of the real estate.

Not Found—J. F., J. XI. That thereupon and some time prior to the 16th day of May, 1902, the plaintiff himself made attempts to procure a purchaser of the property, and wrote to the defend-

ants that he had a customer who had made an 457
offer for the whole three parcels of real property
of between \$140,000 and \$150,000 for all; which
was to be half cash and the balance mortgage at
four to four and one-half per cent.

Not Found—J. F., J. XII. That some time
prior to the 16th day of May, 1902, the defendant
Henry Ungrich, Jr., expressed his desire to pur-
chase the Lenox Avenue and 124th Street property
and said that he did not care for the other two par-
cels.

Not Found—J. F., J. XIII. That after such 458
expression of his desire on the part of the de-
fendant Henry Ungrich, Jr., to purchase said
Lenox Avenue and 124th Street property, James
Demarest, with the knowledge of the plaintiff, was
instructed to procure an appraisal of these prop-
erties to be made by Philip A. Smyth, and there-
after the said Smyth appraised the three parcels
aforesaid at the aggregate sum of \$152,000, valu-
ing the 124th Street and Lenox Avenue parcel at
the aggregate sum of \$110,000, and placing the
value of No. 281 Lenox Avenue at \$45,000, and
Nos. 283-285 Lenox Avenue at \$25,000 each, and
No. 107 West 124th Street at \$15,000, and placing
the value of the corner of Pleasant Avenue and 459
123d Street, known as No. 443 Lenox Avenue, at
\$22,000, and placing the value of the property No.
208 East 126th Street at \$20,000.

Not Found—J. F., J. XIV. That such appraisal
was in writing and was shown to and seen by the
plaintiff.

Not Found—J. F., J. XV. That the plaintiff

460 and the defendants met at the office of James Demarest, 132 Nassau Street, in the Borough of Manhattan, City of New York, on May 16, 1902, and the defendant Henry Ungrich, Jr., again expressed his desire to purchase the Lenox Avenue and 124th Street property, and thereupon the defendant Martin Ungrich said that if he bought any, he would have to buy all, and would have to pay \$5.000 more than the aforesaid appraisal. That said Henry Ungrich, Jr., then agreed to buy the three parcels and pay the aggregate sum of \$157,000, half in cash and half in mortgage, therefor. There was then some discussion about the rate of interest and Henry Ungrich, Jr., refused
 461 to pay more than four per cent. per annum.

Not Found J. F., J. XVI. Thereupon the said James Demarest in the presence of the plaintiff and the said defendants, dictated to Harry K. Davenport, and the said Harry K. Davenport typed on the typewriter, an agreement which the said Harry K. Davenport and the said defendants thereupon executed and which the said Demarest witnessed and which reads as follows: "We.
 "HENRY UNGRICH, JR., and MARTIN UNGRICH, as Executors and Trustees under the
 "Will of Henry Ungrich, deceased, hereby agree
 462 "to sell and convey to Harry K. Davenport, of the
 "Borough of Brooklyn, City and State of New
 "York, the premises known as Nos. 281, 283 and
 "285 Lenox Avenue and 107 West 124th Street,
 "Borough of Manhattan, City and State of New
 "York, for the consideration of One hundred and
 "fifteen thousand dollars (\$115,000), to be paid
 "one-half cash and the balance on bond and mortgage, payable in five years from date, interest
 "at 4% per annum; the premises No. 450 East

"123d Street and No. 443 Pleasant Avenue, Bor- 463
 "ough, City and State aforesaid, for the con-
 "sideration of Twenty-two thousand dollars
 "(\$22,000), payable one-half cash and the bal-
 "ance of bond and mortgage payable five years
 "from date, interest at 4% per annum; and the
 "premises No. 208 East 126th Street, Borough,
 "City and State aforesaid, for the consideration of
 "Twenty thousand dollars (\$20,000), payable one-
 "half cash and the balance on bond and mort-
 "gage payable five years from date, interest at 4%
 "per annum. Said Executors and Trustees to exe-
 "cute, acknowledge and deliver Executor's deed
 "for the conveyance of said premises, free and 464
 "clear of all incumbrances and said deed to be
 "delivered at the office of James Demarest, No.
 "140 Nassau Street, Borough of Manhattan, New
 "York City, on May 22nd, 1902, at 2 o'clock M.,
 "title of each of said premises to be closed as of
 "June 1st, 1902. The rents accruing up to June
 "1st, 1902, to belong to the estate of Henry Un-
 "grich and interest on purchase money mortgages
 "to date from June 1, 1902. And the said Harry K.
 "Davenport agrees to take the said premises for
 "the price and upon the terms hereinbefore set
 "forth. Dated May 16th, 1902. Harry K. Daven-
 "port. Henry Ungrich, Jr., Martin Ungrich, Exec-
 "utors and Trustees. In presence of: James De- 465
 "marest."

Not Found—J. F., J. XVII. That thereupon
 the plaintiff wrote at the bottom of the said agree-
 ment mentioned in the last preceding request to
 find, in his own handwriting, the words "Contract
 approved by me. Martin Louis Ungrich."

Not Found—J. F., J. XVIII. That three copies
 of the said instrument were prepared by the said

466 Davenport and one copy was delivered to the plaintiff and one to each of the defendants.

Not Found—J. F., J. XIX. That on May 22, 1902, the plaintiff and the defendants met at the said office of the said James Demarest, and the said defendants then executed, duly acknowledged and delivered their certain deed, wherein in consideration of the sum of \$157,000 they duly conveyed to the said Harry K. Davenport, the three pieces or parcels of land of which the said testator Henry Ungrich, the elder, died seized and possessed, which deed bears date May 22, 1902, and which was recorded in the office of the Register of
467 the County of New York on May 24, 1902, in Section 6, Liber 66 of Conveyances, at page 419, and indexed under blocks Nos. 1790, 1810 and 1909 on the land map of the City of New York.

Found—J. F., J. XX. That thereupon and on the said 22d day of May, 1902, and as part consideration for the said conveyance so made and so mentioned and described in the last preceding request to find, the said Harry K. Davenport executed, duly acknowledged and delivered his bond in the sum of \$10,000, secured by purchase money mortgage in that amount covering the said premises so known as No. 208 East 126th Street, which
468 said mortgage was on the said 24th day of May, 1902, recorded in the office of the Register of the County of New York in Block Series, Section 6. Liber 111 of mortgages, page 7. That on the said 22d day of May, 1902, the said Harry K. Davenport, as further part consideration for such conveyance to him as aforesaid, also executed, duly acknowledged and delivered to the defendants his bond in the sum of \$11,000, and a purchase money

mortgage in that amount covering the property 469
 on the southwest corner of East 123d Street and
 Pleasant Avenue, in the Borough of Manhattan,
 City of New York, and known as No. 443 Pleasant
 Avenue, which said mortgage was, on the said
 24th day of May, 1902, duly recorded in the office
 of the said Register in Block Series of mortgages,
 Section 6, Liber 109 at page 323. And on the said
 22d day of May, 1902, as further part considera-
 tion for said conveyance to him, the said Harry K.
 Davenport executed his bond in the sum of \$57,-
 500, secured by purchase money mortgage cover-
 ing the said premises on the corner of Lenox Ave-
 nue and 124th Street, which said mortgage was 470
 duly recorded in the said Register's office in Sec-
 tion 7, Block Series of mortgages, liber 134 at
 page 160.

Not Found—J. F., J. XXI. That on the said
 22d day of May, 1902, the said Henry Ungrich,
 Jr., executed and delivered to the defendants his
 receipt for the sum of \$78,500, dating the same
 May 31, 1902, for his one-half part of the pro-
 ceeds of the sale of the said premises, which said
 receipt was produced on the trial of this action
 from the bundle of vouchers accompanying the
 account of their proceedings filed by the defend-
 ants, and on which the decree of the Surrogates' 471
 Court of May 13, 1903, hereinafter adverted to,
 was entered.

Found—J. F., J. XXII. That on the said 22d
 day of May, 1902, the said Harry K. Davenport
 duly conveyed to the defendant Henry Ungrich,
 the four pieces or parcels of land above mentioned,
 subject to the payment of the three mortgages
 aforesaid, so made by the said Davenport to the

472 said defendants in their representative capacity, by deed, bearing date that day and duly recorded in the office of the Register of the County of New York, on May 22, 1904, in Section 6, Liber 68 of Conveyances, at page 299, and indexed under said block Nos. 1790, 1810 and 1909 on the land map of the City of New York.

Not Found—J. F., J. XXIII. That on the said 22nd day of May, 1902, the plaintiff executed, duly acknowledged and delivered to the defendants an instrument in writing, bearing date that day and which reads as follows: "WHEREAS Henry Un-
 473 "grich, late of No. 107 West 124th Street in the
 "Borough of Manhattan, in the City, County and
 "State of New York, died on the first day of
 "March, 1901, seized and possessed of the follow-
 "ing described lands and premises in the Twelfth
 "Ward of the Borough of Manhattan, City and
 "State of New York, to wit: No. 107 West 124th
 "Street, Nos. 281, 283 and 285 Lenox Avenue, No.
 "450 East 123rd Street, No. 443 Pleasant Ave-
 "nue and No. 208 East 126th Street. AND
 "WHEREAS Henry Ungrich, Jr., and Martin
 "Ungrich, were duly appointed Executors and
 "Trustees under the Will of said Henry Ungrich,
 "and were given power to sell and dispose of the
 474 "said real estate. AND WHEREAS, I, Martin
 "Louis Ungrich, son of Henry Ungrich, first above
 "named, and the principal beneficiary of the
 "Trust created in the will of said Henry Ungrich,
 "have requested the said Executors and Trustees
 "to sell the said real estate and set aside the trust
 "fund called for in my father's will. NOW
 "THEREFORE, I, said Martin Louis Ungrich do
 "hereby declare and affirm that the sale of the
 "real estate hereinbefore mentioned made this

"day for the aggregate consideration of One hun- 475
 "dred and fifty-seven thousand dollars is made at
 "my request and with my consent and approval
 "and with full knowledge on my part that the
 "said real estate is purchased for and is to be
 "conveyed to my brother, Henry Ungrich, Jr.,
 "who is one of the Executors and Trustees under
 "the Will of my father, Henry Ungrich, deceased,
 "and I hereby ratify and confirm the same and
 "all the acts of the said Executors and Trustees,
 "done in connection therewith. IN WITNESS
 "WHEREOF, I have hereunto set my hand and
 "seal this twenty-second day of May, Nineteen
 "hundred and two. Martin Louis Ungrich L. S. 476
 "In presence of James Demarest. City and Coun-
 "ty of New York, ss.: On this twenty-second day
 "of May, in the year one thousand nine hundred
 "and two before me personally came Martin Louis
 "Ungrich, to me known and known to me to be
 "the individual described in and who executed
 "the foregoing instrument and he thereupon duly
 "acknowledged that he executed the same. James
 "Demarest, Notary Public, Kings Co. Cert. filed
 "in New York Co."

Not Found—J. F., J. XXIV. That \$157,000
 was a fair and reasonable value for the said four
 parcels of real property at the time of the sale 477
 and conveyance thereof to the said Henry Un-
 grich, Jr.

Found—J. F., J. XIXV. At the time of the sale
 and conveyance of the said four parcels of real es-
 tate to the said Henry Ungrich, Jr., the Subway
 was openly being constructed in Lenox Avenue.

Not Found—J. F., J. XXVI. That prior to the
 sale of the said four parcels of land to the said

478 Henry Ungrich, Jr., the plaintiff made himself acquainted with the situation and condition of the said parcels of property and the market value thereof.

Found—J. F., J. XXVII. That the plaintiff is and was at the times hereinafter mentioned, a practising architect and a man of intelligence.

Not Found—J. F., J. XXVIII. That at the time of the sale and conveyance of the said premises to the said Henry Ungrich, Jr., the plaintiff was in no condition of weakness, or of confidence in or dependence upon the defendants, and was
479 not subject to any undue or overmastering influence exerted over him in any manner by either of the defendants.

Not Found—J. F., J. XXIX. The plaintiff had equal knowledge and means of knowledge with the defendant Henry Ungrich, Jr., as to the existing and future value of these four parcels of real estate.

Not Found—J. F., J. XXX. The plaintiff failed to show on the trial that he did not know of the coming of the Subway and that the construction of such Subway was expected to enhance the value of the 124th Street and Lenox Avenue property,
480 and that one George Ehret had purchased property in the immediate vicinity of this 124th Street and Lenox Avenue parcel.

Found—J. F., J. XXXI. That Henry Ungrich, the elder, in his lifetime and on February 17, 1897, assigned to the defendant Henry Ungrich, Jr., by instrument of assignment, bearing date that day and duly recorded in the office of the Register of the City and County of New York on February 18, 1897, in Block Series of Mortgages.

Section 6, Liber 50 at page 461, and indexed under block No. 1774 on the land map of the City of New York, and also recorded in Block Series of Mortgages, Section 7, liber 70, at page 260, and indexed under block No. 1909 on the said land map, a certain indenture of mortgage, bearing date November 2, 1896, made by John D. Thees and wife, to secure the payment of the sum of \$12,000, recorded in said Register's office on November 5, 1896, at 2.08 P. M. in Block Series of Mortgages, Section 6, Liber 56 at page 483, and indexed under block No. 1774 on the said land map, and also a certain other indenture of mortgage, bearing date July 23, 1891, made by Noah Schwab and wife to said Henry Ungrich, to secure the payment of the sum of \$5,000, recorded in the said Register's office on July 30, 1891, at 2.36 P. M. in Block Series of Mortgages, Section 7, Liber 5, at page 267, and indexed under block No. 1909 on said land map, and also a certain other indenture of mortgage, bearing date September 1, 1886, made by Alice Rohkohl to said Henry Ungrich, to secure the payment of the sum of \$10,000, recorded in said Register's office on September 2, 1886, in Liber 2027 of mortgages, page 400.

Not Found—J. F., J. XXXII. That at the time of the said assignment, there was due on said mortgages the sum of \$25,000.

Not Found—J. F., J. XXXIII. That some time after the death of the said Henry Ungrich, the elder, the plaintiff complained to the defendant Henry Ungrich, Jr., of such assignment of mortgages so made by his deceased father to his said brother and stated that he thought that he ought to have some allowance therefor; that he had in

484 view the purchase of a small house in Brooklyn for a home; and that he had thoroughly reformed from his previous manner of living; that thereupon the said Henry Ungrich, Jr., offered to give to the said plaintiff the sum of \$4,500, which amount he subsequently, on the solicitation of the said James Demarest, raised to \$6,000.

Found—J. F., J. XXXIV. On June 23, 1902, the defendant Henry Ungrich, Jr., gave his check to the plaintiff for the sum of \$6,000, which the plaintiff subsequently cashed, and the plaintiff executed, duly acknowledged and delivered to the said defendant Henry Ungrich, Jr., a general release in writing wherein and whereby in consideration of the sum of \$6,000, he released the said defendant Henry Ungrich, Jr., his heirs, executors and administrators of and from all and every manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever in law or in equity he had against him or ever had or which his heirs, executors or administrators, hereafter could, should or may have for or upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of those presents, and “especially from
485 “any and all claims to any part of the proceeds
“of certain bonds and mortgages assigned to the
“said Henry Ungrich, Jr., by his father in his
“lifetime, or to any part of the moneys which the
“said Henry Ungrich, Jr., had received or might
486 “thereafter receive from the proceeds of the said
“bonds and mortgages.”

Not Found—J. F., J. XXXV. On or about 487
 March 1, 1902, the defendants as executors of the
 said last will and testament of the said Henry
 Ungrich, the elder, deceased, rendered an account
 of their proceedings, as such up to that date, and
 duly filed in the office of the Surrogates' Court for
 the County of New York, an account of their pro-
 ceedings as such executors up to that date. In
 that account the said defendants duly accounted
 for all the personal property of their testator as
 shown in the aforesaid inventory, and for the sale
 thereof, and the proceeds realized thereon, and
 the division thereof between the defendant Henry
 Ungrich, Jr., and the defendants as trustees, un- 488
 der the terms of the trust created by the said last
 will and testament of the said testator, for the
 benefit of the plaintiff, and filed therewith their
 petition praying that a citation might issue di-
 rected to all persons interested in the said estate
 of their said testator, requiring them to show
 cause why the said estate of the said executors
 should not be judicially settled and allowed; and
 thereupon a citation was duly issued out of the
 said Surrogates' Court directed to the plaintiff
 and all other persons interested in the said estate
 of the said testator, requiring them to attend be-
 fore that court and show cause why such account
 should not be judicially settled and allowed. 489
 That such citation was duly served upon the said
 plaintiff, and thereafter such proceedings were
 duly had therein, that on September 25, 1902,
 there was entered a decree of the said Surrogates'
 Court for the County of New York in the office of
 the Clerk of that Court, whereby the said ac-
 count so filed by the said defendants as such ex-
 ecutors, was judicially settled and allowed as
 filed and adjusted.

490 *Not Found—J. F., J.* XXXVI. That on the second day of March, 1903, the defendants as executors of and trustees under the last will and testament of Henry Ungrich, the elder, deceased, duly filed in the office of the Clerk of the Surrogates' Court of the County of New York, an account of their proceedings, as such, between the 1st day of March, 1902, and the first day of March, 1903. That in their said account they set forth the aforesaid decree of the Surrogates' Court of September 25, 1902, and that they had been charged therein as trustees, with the sum of. \$5669.93. That Schedule "A," annexed to their account, 491 contained a statement of all the income belonging to the estate, and the amount that had been received from a sale of the real estate, and the amount received from a sale of the personal property, and a statement of all interest or moneys received by them for which they were legally accountable. Schedule "B," annexed thereto, contained a statement of all the personal property then remaining in their hands, and the appraised value thereof. Schedule "C" contained a statement of all the moneys paid for administration. Schedule "D," annexed thereto, contained a statement of all disbursements made in connection with the real estate, and all claims of creditors 492 presented to and allowed by them. And Schedule "E" contained a statement of all moneys paid to legatees. In said account, the said defendants, as such executors and trustees as aforesaid, charged themselves with the sum of \$166,725.96. This amount embraced, as shown in Schedule "A" of that account, the aggregate amount of the personal estate in their hands for the benefit of the plaintiff, the rents they had received from the real property, the interest they had received

up to that date on the bonds and mortgages that 493
 they so held as such executors and trustees, and
 the amount of \$157,000, the proceeds of the sale
 of the real estate. In Schedule "A" annexed to
 that account, they showed that they had paid to
 the plaintiff and to the defendant Henry Ungrich,
 Jr., income due to them on May 31, 1902, Septem-
 ber 3, 1902, and December 1, 1902; that they had
 invested for the account of the plaintiff \$3,000;
 that they had paid to the defendant Henry Un-
 grich, Jr., the sum of \$78,500, as one-half of the
 proceeds of the sale of the real estate. The said
 defendants also at the same time filed in the office
 of the Surrogates' Court of the County of New 494
 York, their petition praying that a citation should
 issue thereon directed to all persons interested in
 the said estate, requiring them to show cause why
 the said account should not be judicially settled
 and allowed. That thereupon a citation was duly
 issued out of the said Surrogates' Court addressed
 to the plaintiff and all persons interested in the
 said estate of the said testator, and such citation
 was duly served upon the said plaintiff, and such
 proceedings were thereafter duly had therein, that
 on May 13, 1903, a decree was duly entered in the
 said Surrogates' Court judicially settling and al-
 lowing the said account of the said defendants as
 so filed and adjusted, and adjudging and decree- 495
 ing that the said defendants, as such executors
 and trustees, held the said sum of \$78,987.07 sub-
 ject to the terms and provisions of the said last
 will and testament of the said testator.

Not Found—J. F., J. XXXVII. That between
 the 1st day of June, 1903, and the 4th day of June,
 1906, the plaintiff received from the defendants
 the income realized from the said bonds so made
 by the said Harry K. Davenport to the said de-

496 defendants and so secured by purchase money mortgages so given by him covering the aforesaid premises, and signed and delivered to the defendants eleven different receipts, in each of which he states that he has received from the defendants as such executors and trustees of the estate of his deceased father, "interest on the bonds of Harry K. Davenport aggregating \$78.500, secured by mortgage on premises 281-285 Lenox Avenue, 107 West 124th Street, 208 East 126th Street, and "443 Pleasant Avenue, New York City."

Not Found—J. F., J. XXXVIII. That \$3,000 of the fund in the hands of the defendant for the
497 benefit of the plaintiff under the terms and conditions of the said will of the said testator was deposited by the defendants and kept by them on deposit with the Knickerbocker Trust Company, under an agreement with the said Trust Company that said Trust Company would pay three per cent. thereon.

Not Found—J. F., J. XXXIX. That the defendants tried afterwards to find a mortgage in which they could invest the said sum of \$3,000 so kept by them on deposit with the Knickerbocker Trust Company, but were unable to find any on account of the smallness of the amount. The said
498 defendants also repeatedly requested the plaintiff to find some mortgage in which they could invest said fund, but the said plaintiff did not notify the said defendants that he had found any such mortgage.

Not Found—J. F., J. XL. That between the 1st day of June, 1903, and the 4th day of June, 1906, the plaintiff signed and delivered to the defendants as such executors and trustees, seven different receipts, in each of which he acknowl-

edged receipt from the defendants as such exec- 499
utors and trustees, of the sum of \$48.68, "interest
on fund in Knickerbocker Trust Company."

Not Found—J. F., J. XLI. The plaintiff at all
times from the date of the investment by the de-
fendants of the fund held by them as trustees un-
der the terms of the will of the testator for the
benefit of the plaintiff, knew of the nature of such
investment, and with knowledge, received the in-
terest, increase or increment therefrom, and with
knowledge of the nature and character of such in-
vestments received the income, increase and in-
crement therefrom and receipted to the defendants
therefor. 500

Not Found—J. F., J. XLII. That the first year
after the death of the testator, the personal estate
of the said testator was assessed by the Commis-
sioners of Taxes and Assessments in the City of
New York at the sum of \$25,000. That the follow-
ing year it was raised by the said Commissioners
of Assessments and Taxes to the sum of \$100,000;
that when it was so raised to \$100,000, James
Demarest went to the Commissioners and com-
plained of the increase, and the commissioner
hearing his complaint, asked whether they were
satisfied to pay the same amount as the year be-
fore. That upon the said Demarest expressing 501
his willingness so to do, the assessment was re-
duced to the sum of \$25,000.

Not Found—J. F., J. XLIII. There is no evi-
dence that the said James Demarest went to the
Commissioners of Taxes and Assessments and
made such complaint through any instructions re-
ceived by him from the defendants. or that he went
with their knowledge or made the statement that
he did with their knowledge, acquiescence or con-
sent.

502 *Not Found—J. F., J.* XLIV. That on or about the 24th day of April, 1903, the plaintiff and his wife duly executed and acknowledged and delivered to the defendant Henry Ungrich, Jr., a quit claim deed, bearing date that day and duly acknowledged by them on that day wherein and whereby they quit claimed and released to the defendant Henry Ungrich, Jr., any and all right, title or interest that they had in or to the first two pieces or parcels of land hereinbefore mentioned, and being the premises 281-285 Lenox Avenue and 107 West 124th Street.

503 *Not Found—J. F., J.* XLV. That on or about the said 24th day of April, 1903, the plaintiff and his wife duly executed and duly acknowledged on that day, and duly delivered to the defendant Henry Ungrich, Jr., their certain deed in writing, bearing date May 22, 1902, wherein and whereby they quit claimed and released to the defendant Henry Ungrich, Jr., any and all right, title or interest they or either of them had in and to the third of the premises hereinbefore described, and being the premises known as No. 443 Pleasant Avenue, which said deed was thereafter duly recorded in the office of the Register of the County of New York on July 31, 1903, in Section 6, Liber 79 of conveyances, at page 29.

504 *Not Found—J. F., J.* XLVI. That on the said 24th day of April, 1903, the said plaintiff and his wife duly executed, duly acknowledged and duly delivered to the above named defendant Henry Ungrich, Jr., their certain deed in writing, bearing date that day, wherein and whereby they duly quit claimed, released and conveyed to the said defendant Henry Ungrich, Jr., all the right, title and interest which they or either of them had in and to the fourthly mentioned premises hereinbefore de-

scribed, and being the premises known as No. 208 East 126th Street, which said deed was duly recorded in the office of the Register of the County of New York on April 24, 1903, in Section 6, Liber 75 of Conveyances, at page 152. 505

Found—J. F., J. XLVII. That on July 22, 1903, the above named defendant Henry Ungrich, Jr., duly sold to one Esther Eisenberg, for the sum of \$19,500, the premises thirdly above described and being the premises known as No. 443 Pleasant Avenue, in the Borough of Manhattan, City of New York, and the said Henry Ungrich, Jr., duly conveyed the said premises to the said Esther Eisenberg, by deed, bearing date July 22, 1903, and recorded in the office of the Register of the County of New York on that day in Section 6, Liber 79 of Conveyances, at page 30. 506

Found—J. F., J. XLVIII. That on April 24, 1903, the defendant Henry Ungrich, Jr., sold the premises fourthly above described and being the premises known as No. 208 East 126th Street, to one Charles Goldstein, for the sum of \$18,500, and duly conveyed the said premises to the said Goldstein, by deed bearing date that day which was duly recorded in the said Register's office in Section 6, Liber 75 of Conveyances, at page 152.

Found—J. F., J. XLIX. That prior to the date of the quit claim deed made by the plaintiff and his wife to the defendant Henry Ungrich, Jr., of the premises firstly and secondly hereinbefore described, and being the premises 281-285 Lenox Avenue, and 107 West 124th Street, this defendant Henry Ungrich, Jr., erected a stable and storage building upon the portion thereof known as No. 107 West 124th Street, and made alterations in the premises Nos. 281-285 Lenox Avenue, at a cost to him of \$24,869.36. 507

508 *Not Found—J. F., J. L.* That the said plaintiff rendered and performed services as architect for the defendant Henry Ungrich, Jr., at the special instance and request of the said defendant Henry Ungrich, Jr., in making and preparing preliminary studies, general drawings and specifications for the erection of such stable or garage then contemplated to be erected by the defendant as the owner thereof, on the said lot of land, so known as No. 107 West 124th Street, and in making and preparing preliminary studies, general drawings and specifications for such five story brick storage warehouse so erected upon the said lot so known as No. 107 West 124th Street, by the
 509 defendant Henry Ungrich, Jr., as the owner thereof, and in making and preparing preliminary studies, general drawings and specifications and making and preparing additional plans for alterations to the above plans and specifications for the alteration of the three brick buildings, with brownstone fronts, on the north west corner of 124th Street and Lenox Avenue, known as Nos. 281-285 Lenox Avenue, to be made by the said defendant Henry Ungrich, Jr., as the owner thereof.

510 *Found—J. F., J. LI.* That thereafter and at the same time as the commencement of this action, the plaintiff commenced another action in the Supreme Court of New York in the County of Westchester, as plaintiff, against the defendant Henry Ungrich, Jr., as defendant, to recover the sum of \$765, with interest thereon from November 15, 1902, as the reasonable value of such work, labor and services so rendered and performed by the said plaintiff for the said defendant Henry Ungrich, Jr., at the said defendant Henry Ungrich, Jr.'s, instance as aforesaid, in preparing such preliminary studies, general drawings, plans and ad-

ditional plans and specifications for the erection 511
 and alteration of the buildings on the said pieces
 or parcels of land firstly and secondly hereinbe-
 fore described, and known as Nos. 281-285 Lenox
 Avenue and 107 West 124th Street. And there-
 after such proceedings were duly had in such ac-
 tion, that subsequent to the commencement, and
 prior to the trial of this action, the defendant
 Henry Ungrich, Jr., pursuant to the statute in such
 case made and provided, duly offered to allow
 judgment to be taken against him in such action,
 for the sum of \$465, with interest from November
 15, 1902, together with the costs of that action, to
 the date of that offer, and duly subscribed such 512
 offer in writing and caused the same to be duly
 subscribed by his attorney, and caused the same
 to be served upon the attorneys for the plaintiff;
 thereafter such proceedings were had in said ac-
 tion, and after the commencement of this action
 and before the trial hereof, that the plaintiff
 herein, as plaintiff therein, in writing and pursu-
 ant to the statute in such case made and provided,
 duly accepted the said offer of the said defendant
 Henry Ungrich, Jr., and served upon the attorney
 for the defendant Henry Ungrich, Jr., therein and
 defendant herein, a written notice subscribed by
 the said plaintiff therein and herein, accepting the
 said offer of the said defendant Henry Ungrich, 513
 Jr., to allow judgment to be taken against him for
 the said sum of \$465, with interest from November
 15, 1902, together with the costs and disbursements
 of that action to the date of such offer; and there-
 after such proceedings were duly had in that ac-
 tion, pursuant to law and pursuant to the statute
 in such case made and provided, that judgment
 was duly entered in that action, in favor of the said
 plaintiff therein and herein, and against the said

514 defendant Henry Ungrich, Jr., therein and herein, for the sum of \$631.69, damages and costs, and the judgment roll in that action was duly docketed in the office of the Clerk of the County of Westchester, and thereafter the said defendant Henry Ungrich, Jr., duly paid to the said plaintiff the whole amount of the said judgment, and the said judgment was thereafter satisfied and discharged of record.

Not Found—J. F., J. LII. That on July 2, 1906, the defendant Henry Ungrich, Jr., sold and conveyed the first two of the premises hereinbefore described and being the premises known as
 515 Nos. 281-285 Lenox Avenue and 107 West 124th Street, to one George Ehret, for the sum of \$250,000 gross, and on that day, duly executed and delivered his deed, bearing date that day, whereby he duly conveyed to the said George Ehret the said premises.

Not Found—J. F., J. LIII. That before the commencement of this action, there had become due to the plaintiff as income derived from the investments made by the defendants as trustees of the fund directed by the said last will and testament of their said testator, to be invested by them for the benefit of the plaintiff, the sum of \$1,633.59.
 516 That out of that amount, the trustees had paid the mortgage tax on one of the mortgages held by them and had paid the Receiver of Taxes personal tax for the year 1906, the aggregate sum of \$376.03, leaving in their hands belonging to the plaintiff under the terms and conditions of the trust created by the said last will and testament of their testator for his benefit, the sum of \$1,257.56. That after the commencement of this action the defendants received as the net income or increment of

the said bonds and mortgages, the further sum of 517
 \$1,661.64, and on June, 1907, they had in their
 hands the aggregate sum of \$2,919.20 of income
 belonging to the plaintiff and which the plaintiff
 was entitled to under the terms of the said trust
 so created for his benefit by the said last will and
 testament of the said testator. On June 12, 1907,
 the plaintiff, knowing that that sum was in the
 hands of the defendants as income, increase or in-
 terest realized from such bonds and mortgages
 and from such deposit in the Knickerbocker Trust
 Company, applied to this court for an order direct-
 ing the defendants forthwith to pay that sum to
 him, "without prejudice to his rights in the ac- 518
 "tion." That the said defendants did not oppose
 the granting of that motion, except in the particu-
 lar that they claimed to the justice hearing said
 motion, that the court had no right to impose any
 condition upon the payment by them and the re-
 ceipt by the plaintiff of the said income, that it
 should be without prejudice to the plaintiff's
 rights in the action. That nevertheless, this court
 on June 21, 1907, made its order, bearing date that
 day and entered in the office of the Clerk of the
 County of New York on June 24, 1907, directing
 the payment by the defendants to the plaintiff of
 the said sum of \$2,919.20, "without prejudice to
 "the rights of either party to the action." There- 519
 upon the attorneys for the defendants herein
 served upon the attorneys for the plaintiff a no-
 tice, accompanied with a check for the sum of
 \$2,919.20, made by the said defendants to the order
 of the plaintiff, which check was subsequently paid,
 and which notice read as follows. "Pursuant to the
 "terms of the order of this court, bearing date
 "June 21, 1907, and entered in the office of the
 "Clerk of the County of New York on June 24,
 "1907, we hereby send to you check to the order of

- 520 “Martin Louis Ungrich for the sum of \$2,919.20,
 “and we hereby notify you that we shall appeal
 “from so much of the order as provides that the
 “payment of that sum shall be ‘without prejudice
 “to the rights of either party to the action,’ as we
 “claim that the court has no power to impose such
 “condition upon the payment or receipt of the said
 “sum.” Thereafter the said defendants ap-
 pealed to the Appellate Division of the Supreme
 Court for the First Department from so much of
 the said order as provided that the said payment
 by the defendants and receipt by the plaintiff,
 should be “without prejudice to the rights of either
 521 “party to the action.” And such proceedings
 were duly had on such appeal that the said Ap-
 pellate Division of the Supreme Court for the
 First Department, by its order, bearing date No-
 vember 22, 1907, and entered in the office of the
 Clerk of that Court that day, modified the order so
 appealed from by striking out the portion thereof
 so appealed from, to wit: the words, “without
 “prejudice to the rights of either party to the
 “action.”

Not Found—J. F., J. LIV. That the said plain-
 tiff has never returned the said sum of \$2,919.20
 to the defendants, nor any part thereof.

- 522 *Not Found—J. F., J. LV.* That prior to the
 death of his father, the plaintiff had drawn a num-
 ber of checks on banks in which he had no account
 and got people to cash them for him; he had also
 forged a signature to a check by one J. Roberts
 to his order, which he had endorsed and upon
 which he procured the money, and he had been in
 the City Prison. Upon the trial of this action, he
 admitted that Exhibit 103 was all in his hand-
 writing, and was a list of bad checks that he had
 given, but denied that the check to which he had

so forged the name of J. Roberts and which was 523
drawn to his own order on the Mount Morris Bank
was in his handwriting, although it is specified in
the list of such checks set forth in Exhibit 103, and
an examination thereof readily shows that it is in
his handwriting.

AND AS CONCLUSIONS OF LAW:

Not Found—J. F., J. I. The purchase by the
defendant Henry Ungrich, Jr., of the aforesaid
premises of which his testator died seized, was
not void, but merely voidable.

Not Found—J. F., J. II. The purchase by the 524
defendant Henry Ungrich, Jr., of the real estate
of which his testator died seized, was acquiesced
in by the plaintiff.

Not Found—J. F., J. III. The purchase by the
defendant Henry Ungrich, Jr., of the premises of
which his testator died seized, was ratified by the
plaintiff.

Not Found—J. F., J. IV. The purchase by the
defendant Henry Ungrich, Jr., of the property of
which his testator died seized, being not void but
merely voidable, and it having been acquiesced in
and ratified by the plaintiff, cannot now be at-
tacked by the plaintiff. 525

Not Found—J. F., J. V. There was no breach
of duty on the part of the defendants in the invest-
ment of the sum of \$3,000, by depositing the same
in the Knickerbocker Trust Company at three per
cent. interest. The plaintiff knowing of such de-
posit and the rate of interest allowed thereby and
receiving the income therefrom, and receipting for
it, acquiesced in and ratified such investment of

526 that amount by such deposit in the said Trust Company.

Not Found—J. F., J. VI. The plaintiff having known of such deposit of the sum of \$3,000 in the Knickerbocker Trust Company with interest at three per cent. per annum, and having received the income realized therefrom, and receipting for it, has estopped himself from claiming in this action that the defendants were guilty of any breach of trust in relation thereto.

527 *Not Found—J. F., J. VII.* There was no breach of any duty on the part of the defendants in relation to the reduction of the tax upon the trust estate held by them for the benefit of the plaintiff.

Not Found—J. F., J. VIII. There was no misappropriation of \$25,000 of personal property not included in the inventory of the estate that was duly made and filed by the defendants.

Not Found—J. F., J. IX. The plaintiff by the receipt of the sum of \$6,000 from the defendant Henry Ungrich, Jr., estopped himself from claiming that Henry Ungrich, Jr., had misappropriated any part of the personal estate of his testator.

528 *Not Found—J. F., J. X.* The receipt by the plaintiff of the sum of \$6,000 on or because of any claim advanced by him to the defendant Henry Ungrich, Jr., that the latter had misappropriated any part of the personal estate of his testator, estops the plaintiff from maintaining any action to call the defendants to account for any such misappropriation by his brother.

Not Found—J. F., J. XI. The general release executed by the plaintiff to his brother, the defendant Henry Ungrich, Jr., bars the plaintiff from any claim herein of any misappropriation by the

defendant Henry Ungrich, Jr., or any part of the 529
personal estate of the testator.

Not Found—J. F., J. XII. The two decrees of the Surrogates' Court aforesaid estop this plaintiff from maintaining this action.

Not Found—J. F., J. XIII. The first decree of the Surrogates' Court upon the first mentioned accounting of the defendants, estops this plaintiff from claiming herein that the personal estate of his testator was other than is shown in the inventory, duly filed by the defendants thereon, and that the items allowed to the defendants for money paid to him were correct, and that the defendants had 530
been charged with all the interest for money received by them and embraced in the account, for which they were legally accountable, and that the money charged to the defendants as collected, was all that was collectible, and that the allowances made to the defendants for the decrease, and the charges made against them for the increase in the value of the property, were correctly made, and that the defendants had properly divided the whole amount of the personal estate between the defendant Henry Ungrich, Jr., and the defendants as trustees for the plaintiff.

Not Found—J. F., J. XIV. The second decree 531
of the Surrogates' Court upon the second accounting of the defendants above mentioned, estops the plaintiff from claiming that the sale of the real property of which the testator died seized, and the conveyance thereof to the defendant Henry Ungrich, Jr., was in any manner improper or that the amount realized therefor was insufficient, or that the investment of one half of the proceeds of the said sale in the bonds of the said Davenport, secured by the purchase money mortgages given by

532 him to the defendants, covering the property was in any degree improper, or that the amount of interest specified therein as payable thereon was insufficient.

Not Found—J. F., J. XV. The rendition by the plaintiff of the work, labor and services done and performed for the defendant Henry Ungrich, Jr., at his request, and as the owner thereof, upon and in relation to the 124th Street and Lenox Avenue property, bars and estops the plaintiff from in any manner maintaining any action to set aside the conveyance to Henry Ungrich, Jr., of that property or to call the defendants to account for
533 the proceeds realized by him on any subsequent sale thereof.

Not Found—J. F., J. XVI. The rendition by the plaintiff of the work, labor and services done and performed for the defendant Henry Ungrich, Jr., at his request, and as the owner thereof, upon and in relation to the 124th Street and Lenox Avenue property, and the recovery of the judgment recovered by the plaintiff against the defendant Henry Ungrich, Jr., in the Supreme Court of New York for the County of Westchester, for the reasonable value of those services and the payment by the defendant to the plaintiff of the amount of
534 that judgment bars and estops the plaintiff from maintaining any action to set aside the conveyance to the defendant Henry Ungrich, Jr., of that property, or to call the defendants to account for any sum realized by the defendants Henry Ungrich, Jr., on the subsequent sale thereof.

Not Found—J. F., J. XVII. The bringing of the action by the plaintiff, as such, in the Supreme Court for the County of Westchester, to recover therein of the defendant Henry Ungrich, Jr., for

work, labor and services rendered and performed 535
by the plaintiff at the request of the defendant
Henry Ungrich, Jr., in and about the erection for
the defendant, as the owner thereof, of the stable
or garage and storage warehouse on the premises
No. 107 West 124th Street, and the alteration of
the buildings on the premises 281-285 Lenox Ave-
nue aforesaid, for the defendant Henry Ungrich,
Jr., as the owner thereof, was an election of reme-
dies on the part of the plaintiff that bars him from
maintaining this action.

Not Found—J. F., J. XVIII. That the expen-
diture by the defendant of the sum expended by
him, as the owner thereof, in the erection of the 536
stable or garage and storage warehouse on the said
premises No. 107 West 124th Street, and in the
alteration of the premises Nos. 281-285 Lenox
Avenue as aforesaid, with the knowledge, acqui-
escence, consent and aid by the plaintiff as archi-
tect, in the drawing of plans therefor, bars and
estops the plaintiff from maintaining any action to
set aside the conveyance of the said premises to
the said defendant Henry Ungrich, Jr., or from
calling him or the defendants to account for the
proceeds realized upon the subsequent sale of the
premises.

Not Found—J. F., J. XIX. By applying in this 537
action, after its commencement, for an order di-
recting the defendants to pay over to him the in-
come derived from the investment that the defend-
ants had made of his share of the estate of the tes-
tator, the plaintiff estopped himself from main-
taining this action.

Not Found—J. F., J. XX. That the general re-
lease executed and delivered by the plaintiff to the

538 defendant Henry Ungrich, Jr., bars and estops him from maintaining this action.

Not Found—J. F., J. XXI. That there should be judgment for the defendants with costs.

Dated New York, February —, 1908.

JOHNSTON & JOHNSTON,
Attorneys for defendant Martin
Ungrich, individually, and as
executor, etc., of Henry Ungrich,
deceased.

539 ISAAC P. HUBBARD,
Attorney for defendant Henry
Ungrich, Jr., individually, and
as executor, etc., of Henry Ung-
rich, deceased.

540

NEW YORK SUPREME COURT,

541

COUNTY OF NEW YORK.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MARTIN UNGRICH, individually, and as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,
Defendants.

542

The above entitled action having been tried in its regular order upon the calendar of this court, at a Special Term, Part V, before Mr. Justice Fitzgerald, without a jury, on January 15, 16, 17, 20 and 21, 1908, and the defendants having submitted joint requests to find findings of fact and conclusions of law, the defendant Henry Ungrich, Jr., does, in the event that the said Justice refuses to find the requests to find the conclusions of law jointly requested by the said defendants, and in that event only, request the court to find the following 543

FINDINGS OF FACT:

Not Found—J. F. I. That after this defendant had erected the stable and storage building and made the alterations in the premises on the corner of Lenox Avenue and 124th Street, specified in the defendants' joint requests to find as a finding of fact numbered "L," and after the plaintiff and his wife had duly executed their quit claim deed, bear-

544 ing date April 24, 1903, whereby they quit claimed and released to this defendant any and all right, title and interest that they had in and to the said premises on the corner of 124th Street and Lenox Avenue, as set forth in such joint requests to find numbered "XLIV," this defendant paid to the defendants Martin Ungrich and Henry Ungrich, Jr., as executors of and trustees under the last will and testament of Henry Ungrich, deceased, as interest on the mortgages executed by Harry K. Davenport to the said defendants specified in the defendants' joint request to find numbered "XX," the aggregate sum of \$9,840.00.

545 *Not Found—J. F. II.* That this defendant also paid the taxes on the several parcels of land, so conveyed to him as specified in the joint requests to find of the said defendants numbered "XIX," the taxes assessed on the said property amounting to the aggregate sum of \$5,829.88, the water rates imposed on the said property amounting to the sum of \$570.10, the assessments levied on the said property amounting to the sum of \$69.40, fire insurance premiums amounting to the sum of \$874.90, plate glass insurance amounting to the sum of \$89.00 and \$159.75 commissions on the rentals collected on the said premises, and the aggregate sum of \$3,626.12, for repairs on the said building, and paid for janitors' services in said buildings the aggregate sum of \$1,770.44, and for premiums on casualty insurance covering the said premises, the sum of \$72.58.

546

Not Found—J. F. III. That this defendant paid as commissions to brokers on the sale to Esther Eisenberg specified in the defendants' joint requests to find numbered "XLVII," the sum of \$195.00.

Not Found—J. F. IV. That this defendant 547
paid for brokerage on the sale of the premises to
Charles Goldstein, specified in the defendants'
joint requests to find numbered "XLIX," the sum
of \$185.00.

Not Found—J. F. V. That this defendant paid
for brokerage on the sale of the premises to George
Ehret specified in the defendants' joint requests
to find numbered "LII," the sum of \$2,500.00.

AND AS A CONCLUSION OF LAW:

Not Found—J. F. I. That if the conveyances
by the defendants as executors of and trustees
under the last will and testament of Henry Un- 548
grich, deceased, to Harry K. Davenport, and by
the said Harry K. Davenport to this defendant, be
determined to be void or voidable, and it be deter-
mined that the same should be set aside, or that
the defendants are chargeable with the amount
realized by this defendant on the sale of the prem-
ises, that this defendant has an equitable lien on
the amount with which the defendants may be
charged to the amount of the purchase price paid
on the conveyance to the said Davenport and for
the amount expended by this defendant in the erec-
tion of the stable and building and the alterations
of the said buildings on the corner of Lenox Ave-
nue and 124th Street, and for the aforesaid 549
amounts of interest paid on mortgages, taxes, as-
sessments, water rents, premiums for fire, plate
glass and casualty insurance premiums, janitors
services and commissions.

Dated New York, February , 1908.

ISAAC P. HUBBARD,
Attorney for defendant Henry
Ungrich, Jr.

550

At a Special Term of the Supreme Court held in and for the County of New York, in the County Court House in said County in the City of New York, on the day of May, 1908.

Present—Hon. JAMES FITZGERALD, *Justice*.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

551

HENRY UNGRICH, JR., and MARTIN UNGRICH, individually, and as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,
Defendants.

} Decision.

552 The issues of fact raised by the answers of the defendants herein coming on to be tried by the Court at a Special Term, held by the undersigned without a jury, and having been tried, and the allegations and evidence of the parties having been heard, now after hearing L. Laffin Kellogg, Esq., counsel for the plaintiff, and Edward W. S. Johnston, Esq., and Isaac P. Hubbard, Esq., counsel for the defendants, and due deliberation having been had, I decide and find as follows:

FINDINGS OF FACT.

First: That Henry Ungrich died in the City, County and State of New York on the first day of March, 1901.

Second: That the said Henry Ungrich, at the 553
time of his death, left a Last Will and Testament
and Codicil, of which the following is a copy:

"In the Name of God, Amen. I, Henry Ungrich, of the City, County and State of New York, being of sound mind and memory, and mindful of the uncertainty of this life, do hereby make, publish and declare this my last Will and Testament in manner following, that is to say:

After the payment of all my just debts and funeral expenses,

I give, devise and bequeath unto my executors, hereinafter named, and the survivors or survivor of them, all my estate, real, personal and mixed 554
of every kind and nature and wheresoever situate, of which I die seized, possessed of, or entitled to, at the time of my decease. IN TRUST, nevertheless, to and for the following uses and purposes, to wit:

1st. To enter upon and take possession thereof, and manage and conduct the same and collect the rents, issues, income, interest and profits thereof, until the division of my estate, as hereinafter provided for.

2nd. Out of such income, to pay and disburse all taxes, assessments, water rents, interest, insurance and repairs, and all other lawful charges, 555
that may be levied, assessed, imposed, charged or made thereon.

3rd. To sell and convert my entire estate into cash, as soon after my decease as my Executors, hereinafter named, and the survivors and survivor of them deem best, in such manner and upon such terms, as my Executors think proper.

556 4th. To set apart, out of the proceeds of such sale of my estate, the sum of five thousand dollars and invest and re-invest the same, until the arrival of my granddaughter, Florence E. Ungrich, at the age of twenty-one years, and upon her so arriving at the age of twenty-one years, I give, devise and bequeath to my said granddaughter, Florence E. Ungrich, the said sum of of five thousand dollars and all interest or income which has accumulated thereon, to her, her heirs, and assigns forever. And in the event of my said granddaughter, Florence E. Ungrich, departing this life, before reaching the age of twenty-one
 557 years, then and in that event, I direct that said legacy to her shall lapse and become void, and the sum or sums which would have been due her hereunder, shall be disposed of, in the manner hereinafter provided for the balance of my estate.

5th. To divide the balance of my estate into two equal one-half parts, and to pay over to my son Henry Ungrich one of such parts, which equal undivided one-half part I hereby give, devise and bequeath to my said son Henry Ungrich, to him, his heirs and assigns forever.

6th. To hold the remaining equal undivided one-half part, of said balance of my estate and
 558 keep the same invested and re-invested, and to to my son Martin Louis Ungrich, in quarter-yearly payments, during his natural life, the net income received from the investment of such one-half part of my estate.

7th. Until the sale and division of my estate as provided in the 3d, 4th, 5th and 6th clauses of this my Will, I direct my executors, and the survivors or survivor of them to divide and pay the net income, which is received from my estate,

to my two sons Henry Ungrich and Martin Louis 559
Ungrich in equal parts, one-half to each of them,
in quarter-yearly payments.

8th. Upon the death of my son Martin Louis
Ungrich, then I give, devise and bequeath said
one-half part of my estate (the net income of
which I have hereinbefore directed shall be paid
to my said son Martin Louis Ungrich during his
natural life, with such accumulations of interest
as may not then have been paid my said son Mar-
tin Louis Ungrich, to my son Henry Ungrich, to
him, his heirs and assigns forever.

9th. In the event of the death of my said son 560
Henry Ungrich, without leaving lawful issue, prior
to the death my said son Martin Louis Ungrich,
then and in that event, upon the death of my said
son Martin Louis Ungrich, I give, devise and be-
queath all said one-half of my estate, real, per-
sonal and mixed as follows:

a. To my daughter-in-law Emily A. Ungrich,
wife of my said Henry Ungrich, the sum of ten
thousand dollars, which amount I give and be-
queath to her, her heirs and assigns forever.

b. To my nephews Martin and Henry Ungrich,
sons of my deceased brother Martin, the sum of 561
five thousand dollars each, which amount I give
and bequeath to each of them, their heirs, and as-
signs forever.

c. All the rest, residue and remainder of said
one-half of my estate, I give, devise and bequeath
to Maria Rodenbach, the only daughter of my de-
ceased brother Jacob Ungrich, of the town of
Kreusnach in Rheinisch Prussia, Germany.

562 10th. I hereby nominate, constitute and appoint
 my son Henry Ungrich and my nephew Martin
 Ungrich Executors of this my last Will and Tes-
 tament, and Trustees of my estate until the final
 distribution thereof, with full power to them and
 to their survivor and survivors of them to do and
 perform all, each and every act and thing what-
 soever requisite and necessary, to the due and
 proper execution, of this my Will, and of all the
 powers, trusts, and duties hereby reposed, given
 and devolved upon them and their survivors and
 the survivor of them; also with full power and
 authority, to sell or lease, any or all of my real
 estate, or any portion thereof, and to dispose of
 563 my personal estate, when in their sound discre-
 tion, it will be for the best interests and benefit of
 my estate so to do, and to sign, seal, execute and
 deliver good and sufficient conveyances, leases,
 releases, bills of sale and all other instruments of
 writing and record necessary or proper therefor.

11th. I hereby revoke and annul, all other and
 former wills by me at any time heretofore made.

IN WITNESS WHEREOF, I have hereunto set
 my hand and seal this fourteenth day of February,
 in the year of our Lord, one thousand, eight hun-
 dred and ninety-six.

564

(Signed HENRY UNGRICH. (Seal)

The foregoing instrument, consisting of five
 pages, was at the date thereof, signed, sealed, pub-
 lished and declared by the said Henry Ungrich
 as and for his last Will and Testament, in the pres-
 ence of us, who at his request and in his presence
 and in the presence of each other have subscribed
 our names as witnesses thereto.

R. A. Havenor, No. 281 Lenox Avenue, N. Y. 565
City.

James Demarest, No. 448 Macon Street, Brooklyn, N. Y.

WHEREAS, I, Henry Ungrich, of the City, County and State of New York, have made my last Will and Testament in writing bearing date the fourteenth day of February, in the year of our Lord one thousand eight hundred and ninety-six (1896) and am now desirous of making a Codicil to my said last Will and Testament:

Now, therefore, I, said Henry Ungrich, do hereby make, publish and declare this instrument to be a codicil to my said last Will and Testament 566
aforesaid.

I do hereby revoke, annul and cancel the provisions made for my grand-daughter Florence E. Ungrich, in the 4th clause, on page 2, of my said last Will and Testament, and I direct that the said sum of five thousand dollars therein mentioned, shall be disposed of by my executors, in the manner provided in my last Will and Testament for the balance of my estate, and as if the provisions for my said grand-daughter has not been inserted in my said last Will and Testament.

I make this revocation because I believe that my said grand-daughter will be provided for by her mother. 567

In all other respects I hereby confirm and ratify my said last Will and Testament aforesaid, to all intents and purposes.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-eighth day of July, in the year of our Lord, one thousand eight hundred and ninety-seven.

HENRY UNGRICH. (Seal)

568 The foregoing instrument consisting of two pages, was at the date thereof, signed, sealed, published and declared by the said Henry Ungrich as and for a codicil to his last Will and Testament, dated February 14th, 1896, in the presence of us, who, at his request and in his presence, and in the presence of each other, have subscribed our names as witnesses thereto.

Thomas J. McPherson, 90 Bristol Street, Brooklyn.

James Demarrest, 448 Macon Street, Brooklyn, N. Y.

Third. That thereafter and on the 11th day of
569 April, 1901, said Will and the Codicil thereto were admitted to probate by the Surrogate of the County of New York.

Fourth. That the defendants, Henry Ungrich, Jr., and Martin Ungrich, having been nominated and appointed under said will and codicil, duly qualified as executors and trustees thereunder, and have ever since acted and now are acting as such executors and trustees.

Fifth. That Henry Ungrich died seized and possessed of certain real and personal property, which passed under said Will. That the said real
570 estate consisted of four (4) parcels of land, with the buildings and improvements thereon erected, situated, lying and being in the Twelfth Ward of the Borough of Manhattan, City, County and State of New York, and described as follows:

Parcel No. 1. All that certain lot, piece or parcel of land, with the buildings thereon, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, known and distinguished at

lot number 359 (three hundred and fifty-nine) on 571
 a map entitled "Map of property belonging to
 Samson Adolph Benson, living in the Twelfth
 Ward of the City of New York," New York, May,
 1848, compiled and surveyed by Francis Nichol-
 son, City Surveyor, and filed in the office of the
 Register of the City and County of New York, and
 numbered Map 180 (one hundred and eighty),
 bounded and described as follows:

Beginning at a point on the northerly side of
 One Hundred and Twenty-fourth street, distant
 seventy-five feet westerly from the westerly side
 of Sixth Avenue (now Lenox Avenue), as widened
 by an Act of the Legislature of the State of New
 York, entitled "An Act for the improvement of 572
 part of the City of New York between One Hun-
 dred and Tenth Street and the Harlem River,"
 passed April 24, 1865, Laws of 1865, Chapter 564,
 page 1133 (which point was distant one hundred
 feet westerly from the westerly side of Sixth Ave-
 nue (now Lenox Avenue) before said widening);
 thence running northerly parallel with said Lenox
 Avenue (formerly Sixth Avenue) one hundred feet
 and eleven inches; thence westerly parallel with
 One Hundred and Twenty-fourth Street twenty-
 five feet; thence southerly again parallel with
 Lenox Avenue (formerly Sixth Avenue) one hun-
 dred feet and eleven inches to the northerly side of 573
 One Hundred and Twenty-fourth street; thence
 easterly along said northerly side of One Hundred
 and Twenty-fourth Street, twenty-five feet to the
 point or place of beginning, being the same prem-
 ises conveyed by John L. Strang and Sarah
 Strang, his wife, to Henry Ungrich, by deed bear-
 ing date November 18, 1872, and recorded in the
 office of the Register of the City and County of
 New York, in Liber 1227 of Conveyances, page
 688, November 18, 1872.

574 Parcel No. 2. All that certain parcel of land, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, bounded and described as follows:

Beginning at a point at the intersection of the westerly line or side of Lenox Avenue (formerly Sixth Avenue), with the northerly line or side of One Hundred and Twenty-fourth Street; thence running westerly along said northerly line or side of One Hundred and Twenty-fourth Street seventy-five feet; thence northerly parallel with Lenox Avenue (formerly Sixth Avenue) fifty-six feet; thence easterly parallel with One Hundred and Twenty-fourth Street and a part of the distance through a party wall seventy-five feet to the westerly line or side of Lenox Avenue (formerly Sixth Avenue) fifty-six feet, to the point or place of beginning, be the said several dimensions more or less, being the same premises conveyed by Rudolph Wyman and Yette, his wife, and Bernhard Hamburger and Rebecka, his wife, to Henry Ungrich, by deed bearing date March first, 1869, and recorded in the office of the Register of the City and County of New York, in Liber 1093 of Conveyances, page 245, March 1, 1869.

576 Parcel No. 3. All that certain lot, piece or parcel of land, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, bounded and described as follows:

Beginning at a point formed by the intersection of the westerly side of Pleasant Avenue (formerly Avenue A), with the southerly side of One Hundred and Twenty-third Street, running thence southerly along said westerly side of Pleasant Avenue (formerly Avenue A) twenty-five feet

eleven inches; thence westerly and parallel with 577
 One Hundred and Twenty-third Street one hundred feet; thence northerly and parallel with Pleasant Avenue (formerly Avenue A) twenty-five feet eleven inches, to the southerly side of One Hundred and Twenty-third Street, and thence easterly along said southerly side of One Hundred and Twenty-third Street one hundred feet to the place of beginning, being the same premises conveyed by Henry Ungrich, Jr., and Emily A., his wife, to Henry Ungrich, Sr., by deed bearing date the twenty-eighth day of March, 1894, and recorded in the office of the Register of the City and County of New York, on the twenty-ninth day of 578
 March, 1894, in Block Series (Conveyances), Section 6, Liber 19, page 266, Block Number 1810, on the Land Map of the City of New York.

Parcel No. 4. All that certain lot, pieces or parcel of land, with the building thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, bounded and described as follows, viz.:

Beginning at a point on the southerly side of One Hundred and Twenty-sixth Street, distant one hundred and thirty-five (135) feet easterly from the corner formed by the intersection of the southerly side of One Hundred and Twenty-sixth Street 579
 with the easterly side of Third Avenue, running thence southerly and parallel with the Third Avenue, ninety-nine (99) feet and eleven (11) inches to the centre line of the block; thence easterly along the same thirty (30) feet; thence northerly and again parallel with the Third Avenue ninety-nine (99) feet and eleven inches to the southerly side of One Hundred and Twenty-sixth Street aforesaid, and thence westerly along the same

580 thirty (30) feet to the point or place of beginning, being the same premises conveyed by Stephen J. Wright and Susan A., his wife, to Henry Ungrich, by deed bearing date the 30th day of December, 1882, and recorded in the office of the Register of the City and County of New York, in Liber 1696 of Conveyances, page 278, January 4th, 1883.

Sixth. That according to the account rendered by the executors, the said Henry Ungrich also died possessed of personal property, in the sum of \$11,549.75, of which the sum of \$3,000 was by them set aside and held by them as trustees under the said will, for the use and benefit of the plaintiff.

581 Seventh. That on the 16th day of May, 1902, the defendants as executors and trustees entered into a contract in writing with one Harry K. Davenport, under the terms of which they agreed to convey to the said Harry K. Davenport, for the sum of \$157,000, payable one-half in cash, and the balance on bond and mortgage, payable five years from date, with interest at the rate of 4% per annum, all the real estate set out and described in the Fifth Finding, the contents of which contract are fully set out in plaintiff's Exhibit No. 5 in this case.

582 Eighth. That on the 22nd day of May, 1902, the defendants as executors and trustees, executed and delivered to Harry K. Davenport, a law clerk in the office of the attorney for the executors, a deed purporting to convey to the said Harry K. Davenport, for the aggregate consideration of \$157,000, all the real estate of which the said Henry Ungrich died seized and possessed, and more particularly described above in the Fifth Finding.

Ninth. That on the 22nd day of May, 1902, the

said Harry K. Davenport, as a part of the same 583 transaction, and at the same time, executed and delivered a deed to the defendant, Henry Ungrich, Jr., purporting to transfer and convey all the real property as conveyed by the said executors and trustees as aforesaid to the said Harry K. Davenport, and covering all the real estate of which the said Henry Ungrich died seized and possessed, as stated and contained in the Fifth Finding.

Tenth. That on the same day, to wit, on the 22nd day of May, 1902, said Harry K. Davenport executed and delivered to Henry Ungrich, Jr., and Martin Ungrich, as executors and trustees un- 584 der the last Will and Testament of Henry Ungrich, deceased, three mortgages aggregating the sum of \$78,500, covering portions of said real estate, as follows:

A mortgage on parcels number 1 and 2, being the premises known as No. 107 West 124th Street and Nos. 281, 283 and 285 Lenox Avenue, New York City, in the sum of \$57,500.

A mortgage on parcel No. 3, being the premises known as No. 443 Pleasant Avenue, New York City, in the sum of \$11,000.

A mortgage on parcel No. 4, being the premises known as No. 208 East 126th Street, New York City, in the sum of \$10,000; 585 all of which said mortgages provided for the payment of interest at the rate of four per cent. (4%).

Eleventh. That in accepting the said conveyances so made to him by the said trustees as aforesaid, and in executing and delivering a deed conveying the said premises to one of the defendants, Henry Ungrich, Jr., and in executing and deliv-

586 ering the said mortgages above set out and referred to herein, the said Harry K. Davenport acted wholly as a dummy or intermediary therein and at no time had any beneficial interest in said premises.

Twelfth. That on the said 22nd day of May, 1902, and at the time of the said transaction above referred to in relation to the said real estate, the defendants procured from the plaintiff a paper purporting to show that the said sale and transaction in regard to the real estate above mentioned was made at the request of the plaintiff, with his consent and approval, and with full
587 knowledge on the part of the plaintiff that the said real estate was purchased for and was to be conveyed to the defendant Henry Ungrich, Jr., one of the executors and trustees under the will of Henry Ungrich, deceased, and purporting to ratify and confirm the sale and all of the acts of the said executors and trustees done in connection therewith, which said paper is Defendant's Exhibit 6 in this case.

Thirteenth. That thereafter and on the 24th day of April 1903, the defendants procured to be executed by the plaintiff and his wife, three (3) quit-claim deeds conveying to the said Henry Un-
588 grich, Jr., one of the executors and trustees under the said will, all their right, title and interest in and to the real estate of which the said Henry Ungrich died seized as stated in the Fifth Finding, which said deeds constitute Defendants' Exhibits 67, 68 and 69; that only two of said deeds have been recorded.

Fourteenth. That the defendant, Henry Ungrich, Jr., up to and for many years prior to his father's death had the care and management of

his father's estate, and for his compensation was 589
maintained with his family at his father's residence, and in addition thereto received the sum of One hundred dollars (\$100.00) per month.

Fifteenth. That the plaintiff, an architect by profession, was at the times herein mentioned a man of irregular habits, involved in financial difficulties, and wholly unfamiliar with real estate values and had no knowledge of the true and fair value of the real estate so conveyed by him as aforesaid.

Sixteenth. That the plaintiff was induced to agree to the transactions transferring the title to said real estate upon the urgent and repeated solicitations of the defendant Henry Ungrich, Jr., and upon his representation that the sum of \$157,000 was more than the true value of said premises and in agreeing to said transfer the plaintiff realied absolutely upon the representations made to him by the defendant, Henry Ungrich, Jr., and by the attorney for the executors. 590

Seventeenth. That during all the times while said solicitations were being made to the plaintiff to agree to the transactions as aforesaid, transit facilities and other great improvements were being inaugurated along Lenox Avenue, and property belonging to said estate was rapidly increasing in value, and under the circumstances the said premises should have been held, and a sale thereof was most inopportune, and which said facts were well known to the defendants. 591

Eighteenth. That the consideration pretended to be paid for the conveyance of said premises through an intermediary to the defendant, Henry Ungrich, Jr., was inadequate, insufficient and far

592 below the real value of the property, and which said fact was well known to the defendants and their attorney, but unknown to the plaintiff and concealed from him by them.

Nineteenth. That in such transactions the plaintiff was not represented by an independent attorney acting fully in his interests, but relied wholly upon the representations made to him by the defendants and their attorney as to the value of the premises conveyed and the defendants and their said attorney concealed from the plaintiff the true and fair value of the property at said time, and did not disclose fully and fairly all the facts and circumstances in regard to the condition of the said property or the true value thereof, and did not speak fully to the plaintiff of every material fact concerning the property known to them, nor was he apprised of the law nor told how these facts would be dealt with by a Court of law or of equity.

Twentieth. That the defendant, Henry Ungrich, Jr., after the transfer to him of the title to the said real estate in the manner above set out, took possession thereof and converted the income thereof to his own use and benefit and thereafter resold said premises within four years for the sum of Two hundred and eighty-eight thousand dollars (\$288,000.00), an increase of over One hundred and thirty thousand dollars (\$130,000) above the consideration pretended to be paid by him therefor.

Twenty-first. That this result was realized by the defendant, Henry Ungrich, Jr., without the advance or expenditure of any moneys other than those received from the rents, issues and profits of said premises and the entire expense of holding and caring for said real estate until sold was paid,

or could have been paid, out of the income of said 595 property.

Twenty-second. That after the transactions above referred to the net income received by the plaintiff from the trustees was reduced from Three thousand two hundred dollars (\$3,200) received by him before said transactions, to the sum of Two thousand six hundred dollars (\$2,600) per annum, received by him thereafter, and was entirely paid out of the income of said estate.

Twenty-third. That the said transactions resulting in the transfer of the title of said premises to the defendant, Henry Ungrich, Jr., were unjust and unfair and against the true interests of 596 the plaintiff.

Twenty-fourth. That upon the discovery of the unfairness of the transaction and the true value of the property conveyed, and his legal rights in the premises, the plaintiff elected to treat the said transactions above referred to as fraudulent and void as to him and to claim that the proceeds of the sale of said premises by the defendant, Henry Ungrich, Jr., were impressed with a trust in favor of the plaintiff, and duly brought this action therefor.

Twenty-fifth. That since the discovery by the 597 plaintiff of the unfairness of said transaction and his rights in the premises, the plaintiff has in no way ratified, acquiesced in or confirmed the said transactions, and has in no way waived his right to recover his legal rights in the premises.

Twenty-sixth. That the defendants were guilty of misconduct in the performance of their duties as trustees in that they failed to act properly, honestly and justly in their dealings with the es-

598 tate, in their failure properly to invest and reinvest the moneys thereof and pay over to the plaintiff the share to which he was entitled, and properly care for the estate to the best interests of the plaintiff, their cestui que trust.

Twenty-seventh. That the net proceeds received by the defendant, Henry Ungrich, Jr., from the sale of the premises belonging to the estate transferred to him as aforesaid was the sum of \$260,250.89, made up as follows:

	Sale of 208 East 126th Street, sold	
	April 22, 1903.....	\$18,500.00
	Sale of 443 Pleasant Avenue, sold July	
599	22, 1903	19,500.00
	Sale of Lenox Avenue property, sold	
	July 2, 1906.....	250,000.00

		\$288,000.00

Less moneys expended by the defendant, Henry Ungrich, Jr., for commissions on sales of and improvements to premises, viz.:

	Commission on sale of 208	
	East 126th St.	\$185.00
	Commission on sale of 443	
	Pleasant Ave.	195.00
600	Commission on sale of Lenox	
	Ave. property	2,500.00
	Cost of building on Lenox	
	Ave. property	24,869.11

		27,749.11

	Net proceeds	\$260,250.89

Twenty-eighth. That there is on deposit in the Knickerbocker Trust Company the sum of Three

thousand two hundred and twenty-four and 11-100 601
dollars (\$3,224.11), set aside as the share of the
plaintiff in the personal property of the estate of
Henry Ungrich, deceased, and directed to be held
in trust for his benefit.

Twenty-ninth. That the amount of the trust
fund created for the plaintiff's benefit by the terms
of said will should be made up and constituted of
the sum of One hundred and thirty thousand one
hundred and twenty-five and 45-100 dollars
(\$130,125.45), one-half of the net proceeds re-
ceived from the sale of said real estate as above
stated, and in addition thereto the said sum of
Three thousand two hundred and twenty-four and 602
11-100 dollars (\$3,224.11), on deposit in the Knick-
erbocker Trust Company, making the total trust
fund to be set apart and held for the benefit of the
plaintiff under the terms of said will the sum of
One Hundred and thirty-three thousand three hun-
dred and forty-nine and 56-100 dollars (\$133,-
349.56).

Thirtieth. That the income which should have
been paid to the plaintiff under the trust fund di-
rected to be created for his benefit by the terms of
said will, over and above all payments, credits
and offsets up to and including June 1, 1906, is the 603
sum of Six thousand three hundred and sixty-five
and 9-100 dollars (\$6,363.09), as shown by the fol-
lowing statement:

**604 STATEMENT OF INCOME FROM PROPERTY,
LESS EXPENSES, FROM JUNE 1,
1902, to JUNE 1, 1906.**

Payments.

	Received rents, 1902 to 1903.	\$9,193.35	
	Received rents, 1903 to 1904.	8,300.00	
	Received rents, 1904 to 1905.	8,761.00	
	Received rents, 1905 to 1906.	10,025.60	
		-----	\$37,279.95
	Interest on \$19,500 from July 22, 1903, to June 1, 1906, at 6%	\$3,344.25	
605	Interest on \$18,500 from April 22, '03, to June 1, 1906	2,456.42	
		-----	\$6,800.67

	Grand total		\$41,080.62
	Less disbursements on property, as shown below		12,904.41

	Total net income received by defend- ants	\$ 31,076.21	
	Plaintiff's share of same, to wit: one- half	\$ 15,538.10	
	Less income paid to plaintiff from 1902 606 to 1906	\$ 9,840.00	

	Balance	\$ 5,598.10	
	In addition, Plaintiff is entitled to in- terest on \$3,000 from February 27, 1902, to June 1, 1906, at 6%	766.99	

	Total amount due to plaintiff on June 1, 1906		\$ 6,365.09

Thirty-first. That in addition thereto the plaintiff is entitled to and should receive as income from the trust fund, as properly constituted, from June 1st, 1906, to May 12th, 1908, the date of this decision, over and above all payments, credits and offsets, the sum of Seventeen thousand, nine hundred and forty-four and 33-100 dollars (\$17,944.33), as shown by the following statement:

STATEMENT OF INCOME FROM THE
PROPERTY FROM JUNE 1ST, 1906, TO MAY
12TH, 1908, THE DATE OF THESE FINDINGS:

Interest on \$19,500, June 1, 1906, to May 12th, 1908, at 6%	\$ 2,278.25	608
Interest on \$18,500, June 1, 1906, to May 12th, 1908, at 6%	2,161.42	
Interest on \$250,000, July 2, 1906, to May 12th, 1908, at 6%	27,916.67	
	<hr/>	
	\$32,356.34	

Of which plaintiff is entitled to one-half as his share, or.....\$ 16,178.17

Plaintiff is also entitled to interest on the sum of \$3,224.11, in the Knicker- bocker Trust Co., from June 1, 1906, to May 12th, 1908, at 6%	376.68	609
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Plaintiff is also entitled to interest on amount due plaintiff on June 1st, 1906, as per previous statement, amounting to \$6,365.09, from June 1, 1906, to May 12th, 1908, at 6%	743.65	
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\$17,298.50

- 110 Thirty-second. That the total amount of income which should be paid to the plaintiff, over and above all credits, payments and offsets, is the sum of Twenty-three thousand, six hundred and sixty-three and 59-100 dollars (\$23,663.59), less, however, the amount of income paid to the plaintiff June 15th, 1907, after the commencement of this action, under the order of the Court, amounting to the sum of Two thousand nine hundred and nineteen and 20-100 dollars (\$2,919.20), leaving a balance of Twenty thousand seven hundred and forty-four and 39-100 dollars (\$20,744.39).

CONCLUSION OF LAW.

611

First. That the transactions resulting in the sale to the defendadnt, Henry Ungrich, Jr., of the premises belonging to the estate referred to in the complaint, including the contract of sale, the deeds of conveyance, mortgages confirmatory deeds and quit-claim deeds, were and are fraudulent as to the plaintiff and the plaintiff is entitled to the proceeds and benefits thereof received by the defendant, Henry Ungrich, Jr., to the extent of the interest therein created for his benefit under the terms of the will of Henry Ungrich, deceased.

- 612 Second. That there has been no ratification or acquiescence on the part of the plaintiff after the discovery of the fraud practised upon him in respect to the transactions resulting in the transfer of the title to said premises to the said defendant, Henry Ungrich, Jr.

Third. That the sum of One hundred and thirty thousand one hundred and twenty-five and 45-100 dollars (\$130,125.45), one-half of the net proceeds of the sale of said real estate, together with the sum of Three thousand two hundred and twenty-

four and 11-100 dollars (\$3,224.11), the amount on 613
 deposit in the Knickerbocker Trust Company,
 amounting altogether to the sum of One hundred
 and thirty-three and forty-nine and 56-100 dollars
 (\$133,349.56), are impressed with a trust in favor
 of the plaintiff under the terms of said will, and
 constitute and should be held as the trust fund
 therein created for his benefit.

Fourth. That the plaintiff is entitled to judg-
 ment in this action against the defendants direct-
 ing them to pay over to him the amount of income
 remaining due and unpaid, amounting to the sum
 of Twenty thousand, seven hundred and forty-four
 and 39-100 dollars (\$20,744.39), together with in- 614
 terest thereon from date

Fifth. That the plaintiff is entitled to judgment
 directing the removal of the defendants as trus-
 tees under said will and the appointment of new
 trustees in their place and stead.

Sixth. That the plaintiff is also entitled to judg-
 ment directing the defendants to pay over to their
 successor or successors as trustee or trustees to be
 appointed in the decree to be entered herein the
 said sum of One hundred and thirty-three thou-
 sand, three hundred and forty-nine and 56-100
 (\$133,349.56) dollars, as the principal of the trust
 fund created for the benefit of the plaintiff under 615
 the Last Will and Testament of Henry Ungrich,
 deceased, and judgment is directed accordingly,
 together with costs and an extra allowance of Two
 thousand dollars to the plaintiff against the de-
 fendants personally.

JAMES FITZGERALD,
 J. S. C.

616

NEW YORK SUPREME COURT,

NEW YORK COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MARTIN UNGRICH, individually, and as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,

Defendants.

Judgment.

617

The issues in this action having been regularly brought on for trial before Mr. Justice James Fitzgerald at a Special Term, Part V of this Court, held in and for the County of New York at the County Court House in said County in the City of New York, and all the parties having appeared before the Court, and the Court having heard the allegations and proofs of the parties, and after due deliberation having duly made and filed on the 23d day of May, 1908, a decision in favor of the plaintiff and against the defendants, containing a statement of facts found and the conclusions of law thereon and directing judgment as hereinafter stated, and the plaintiff's costs, together with the special allowance granted by the Court, having been duly adjusted at the sum of Twenty-one hundred and sixty-seven and 89-100 (\$2,167.89) dollars,

Now on motion of Kellogg & Rose, attorneys for the plaintiff, it is hereby

ADJUDGED

619

(1) That the transactions resulting in the sale to the defendant, Henry Ungrich, Jr., of the premises belonging to the estate of Henry Ungrich, deceased, referred to in the complaint, including each and all of the contracts of sale, the deeds of conveyance, mortgages, confirmatory deeds, and quit-claim deeds, were and are, and each of them was and is fraudulent as to the plaintiff, and the plaintiff is entitled to the proceeds and benefits thereof received by the defendant, Henry Ungrich, Jr., to the extent of the interest therein created for his benefit under the terms of the will of Henry Ungrich, deceased.

620

(2) That the net proceeds received by the defendant, Henry Ungrich, Jr., from the sale of the said premises belonging to the estate so transferred to him as aforesaid was the sum of Two hundred and sixty thousand two hundred and fifty and 89-100 dollars (\$260,250.89).

(3) That the sum of One hundred and thirty thousand one hundred and twenty-five and 45-100 dollars (\$130,125.45), one-half of the said net proceeds of the sale of said premises, together with sum of Three thousand two hundred and twenty-four and 11-100 dollars (\$3,224.11), the amount on deposit in the Knickerbocker Trust Company, amounting together to the sum of One hundred and thirty-three thousand, three hundred and forty-nine and 56-100 dollars (\$133,349.56), are impressed with a trust in favor of the plaintiff under the terms of said will, and constitute and are hereby adjudged to be the trust fund created under the terms of said will for the benefit of the plaintiff.

(4) That the plaintiff recover from the defendants as the amount of income on the trust fund

621

522 created for his benefit under the terms of said will remaining due and unpaid, the sum of Twenty thousand seven hundred and forty-four and 39-100 dollars (\$20,744.39), together with interest thereon from the date of this decree.

(5) That the defendants be and they hereby are removed as Trustees for the plaintiff under the terms of said will and The New York Trust Company is hereby appointed in the place and stead of the said defendants, as trustee of the trust created under the will of the said Henry Ungrich, deceased, for the benefit of the plaintiff.

523 (6) That the defendants pay over to The New York Trust Company as their successor the said sum of One hundred and thirty-three thousand three hundred and forty-nine and 56-100 dollars (\$133,349.56), the principal of the trust fund created for the benefit of the plaintiff under the Last Will and Testament of Henry Ungrich, deceased.

(7) That the plaintiff recover from the defendants, Henry Ungrich, Jr., and Martin Ungrich, personally the sum of Twenty-one hundred and sixty-seven and 89-100 (\$2,167.89) dollars, his costs and allowance as taxed by the Clerk of this Court, and said plaintiff is entitled to judgment and execution therefor.

624

Enter.

J. F.,

J.

PETER J. DOOLING,
Clerk.

NEW YORK SUPREME COURT.

625

COUNTY OF NEW YORK.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MARTIN UNGRICH, individually, and as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,
Defendants.

626

You will please take notice that the defendant, Henry Ungrich, Jr., individually and as executor of and trustee under the last will and testament of Henry Ungrich, deceased, hereby excepts to the decision made by Mr. Justice Fitzgerald herein, filed in the office of the Clerk of the County of New York, with the judgment roll herein on May 23, 1908, and specifically to so much of the eighth finding of fact therein as finds and decides that the deed made by the defendants as executors and trustees to Harry K. Davenport, on May 22, 1902, merely purported to convey to the said Harry K. Davenport, all the real estate of which the said Henry Ungrich died seized and possessed.

627

The said defendant also excepts to the ninth finding of fact, and specifically to so much thereof as finds and decides that the deed made by the said Harry K. Davenport to this defendant on March 22, 1902, merely purported to transfer and convey all the real property of the estate of which Henry

670 transfer and convey all the real property of the estate of which Henry Ungrich, the elder, died seized and possessed.

The said defendant specifically excepts to the eleventh finding of fact and to the whole thereof, and to each and every part thereof.

The said defendant excepts to so much of the finding of fact numbered "Twelfth" as finds and decides that the paper mentioned therein was procured by the defendants from the plaintiff, and specifically to so much of the said finding as finds and decides that the paper mentioned therein merely purported to show that the sale and transaction in regard to the real estate mentioned and described therein was made at the request of the plaintiff, with his consent and approval, and with full knowledge on the part of the plaintiff that the real estate was purchased for, and was to be conveyed to, the defendant Henry Ungrich, Jr., and merely purported to ratify and confirm the same and all the acts of the executors and trustees done in connection therewith.

671

The said defendant excepts to so much of the finding of fact numbered "Thirteenth" as finds and decides that the defendants procured three quit claim deeds, therein mentioned, to be executed by the plaintiff and his wife.

672 The said defendant excepts to the whole of the finding of fact numbered "Fourteenth," and to each and every part thereof.

The said defendant excepts to so much of the finding of fact numbered "Fifteenth" as finds and decides that the plaintiff was at the times mentioned in said decision in financial difficulties; and to so much of the said finding of fact as finds and decides that the plaintiff was at said times wholly unfamiliar with real estate values. The said de-

fendant also excepts to so much of the said finding 673
of fact as finds and decides that the plaintiff had
no knowledge of the true and fair value of the real
estate conveyed by him as mentioned in said de-
cision.

The said defendant also excepts to the whole of
the finding of fact numbered "Sixteenth," and to
each and every part thereof, and specifically to so
much thereof as finds and decides that the plaintiff
was induced to agree to the transactions transfer-
ring the title to said real estate upon the urgent
and repeated solicitations of the defendant Henry
Ungrich, Jr., and specifically to so much thereof 674
as finds and decides that the plaintiff was induced
to agree to said transactions upon the representa-
tions of the defendant Henry Ungrich, Jr., that
the sum of \$157,000 was more than the true value
of the said premises; and specifically to so much
of the said finding as finds and decides that in
agreeing to the said transaction the plaintiff re-
lied absolutely upon the representations made to
him by the said Henry Ungrich, Jr., and specifi-
cally to so much of the said finding of fact as finds
and decides that the plaintiff in agreeing to said
transfer relied absolutely upon the representations
made by the attorney for the executors.

The said defendant excepts to the whole of the
finding of fact numbered "Seventeenth" and to 675
each and every part thereof, and specifically to so
much thereof as finds and decides that while the
said solicitations were being made to the plaintiff
to agree to the said transactions, the property be-
longing to the said estate was rapidly increasing
in value, and specifically to so much of the said
finding of fact as finds and decides that under the
circumstances the said premises should have been
held, and that a sale thereof was most inopportune.

676 and specifically to so much of the said finding of fact as finds and decides that this defendant well knew that the property belonging to the estate was rapidly increasing in value, and under the circumstances the said premises should have been held and that a sale thereof was most inopportune.

The said defendant also excepts to the whole of the finding of fact numbered "Eighteenth," and to each and every part thereof, and specifically to so much thereof as finds and decides that a consideration was pretended to be paid for the conveyance of the premises to the defendant Henry Ungrich, Jr., and specifically to so much of the said finding of fact as finds and decides that the consideration
 677 paid for the said conveyance of the said premises was inadequate, insufficient and far below the real value of the property, and specifically to so much of the said finding of fact as finds and decides that this defendant well knew that the consideration paid for the conveyance of the said premises to the defendant Henry Ungrich, Jr., was inadequate, insufficient and far below the real value thereof, and specifically to so much of the said finding of fact as finds and decides that the attorney for this defendant well knew that the consideration paid for the conveyance of the said premises to the defendant Henry Ungrich, Jr., was inadequate insuffi-
 678 cient and far below the real value of the said property, and specifically to so much thereof as finds and decides that the plaintiff did not know that the consideration paid for the said conveyance was inadequate, insufficient and far below the real value of the property, and specifically to so much thereof as finds and decides that this defendant concealed from the plaintiff the fact that the consideration paid for the said conveyance of the said premises to the said Henry Ungrich, Jr., was inadequate.

insufficient and far below the real value of the said 679
property.

The said defendant also excepts to the whole of
the finding of fact numbered "Nineteenth" and to
each and every part thereof, and specifically to
so much thereof as finds and decides that in such
transactions the plaintiff was not represented by
an independent attorney, and specifically to so
much thereof as finds and decides that the plaintiff
relied wholly on the representations made to him
by the defendants and their attorney as to the
value of the premises conveyed, and specifically to
so much thereof as finds and decides that this de-
fendant made any representations to the plaintiff 680
as to the value of the premises conveyed, and spe-
cifically to so much thereof as finds and decides
that the attorney for this defendant made any rep-
resentations to the plaintiff as to the value of the
premises conveyed, and specifically to so much of
the said finding of fact as finds and decides that
the defendants and their said attorney concealed
from the plaintiff the true and fair value of the
said property at the said time, and specifically to
so much thereof as finds and decides that this de-
fendant concealed from the said plaintiff the true
and fair value of the property at the said time,
and specifically to so much of the said finding of
fact as finds and decides that the attorney for this 681
defendant concealed from the plaintiff the true and
fair value of the said property at the said time,
and specifically to so much thereof as finds and de-
cides that the defendants did not disclose fully and
fairly all the facts and circumstances in regard
to the condition of the said property or the true
value thereof, and did not speak fully to the plain-
tiff of every material fact concerning the property
known to them, and specifically to so much thereof

682 as finds and decides that this defendant did not disclose fully and fairly all the facts and circumstances in regard to the said property or the true value thereof, and did not speak fully to the plaintiff of every material fact concerning the property known to him, and specifically to so much thereof as finds and decides that the plaintiff was not apprised of the law nor told how these facts would be dealt with by a court of law or of equity.

This defendant excepts to the whole of the finding of fact numbered "Twentieth" and to each and every part thereof.

683 This defendant excepts to the whole of the finding of fact numbered "Twenty-first" and to each and every part thereof.

This defendant excepts to the whole of the finding of fact numbered "Twenty-second" and to each and every part thereof.

This defendant excepts to the whole of the finding of fact numbered "Twenty-third" and to each and every part thereof.

684 This defendant excepts to the whole of the finding of fact numbered "Twenty-fourth" and to each and every part thereof, and specifically to so much thereof as finds and decides that the plaintiff discovered any unfairness in the transaction and discovered the true value of the property conveyed, and his legal rights in the premises, and specifically to so much thereof as finds and decides that there was any unfairness in the transaction, and specifically to so much thereof as finds and decides that the true value of the property was other than what was paid for it, and specifically to so much thereof as finds and decides that the plaintiff elected to treat the said transactions referred to as fraudulent and void as to him and to claim that the proceeds of the sale of said prem-

ises by the defendant Henry Ungrich, Jr., were im- 685
pressed with a trust in favor of the plaintiff, and
duly brought this action therefor.

This defendant excepts to the whole of the find-
ing of fact numbered "Twenty-fifth" and to each
and every part thereof, and specifically to so much
thereof as finds and decides that there was a dis-
covery by the plaintiff of any unfairness in the
said transaction, and specifically to so much
thereof as finds and decides that the plaintiff dis-
covered that he had any rights in the premises, and
specifically to so much thereof as finds and decides
that there was any unfairness in the said trans-
action, and specifically to so much thereof as finds 686
and decides that the plaintiff has in no way rati-
fied, acquiesced in or confirmed the said transac-
tion, and specifically to so much thereof as finds
and decides that the plaintiff has in no way waived
his rights to recover his legal rights in the prem-
ises.

The said defendant further excepts to the whole
of the finding of fact numbered "Twenty-sixth"
and to each and every part thereof, and specifically
to so much thereof as finds and decides that the
defendants were guilty of misconduct in the per-
formance of their duties as trustees in that they
failed to act properly, honestly and justly in their
dealings with the estate, and specifically to so 687
much thereof as finds and decides that the defend-
ants failed properly to invest and reinvest the
moneys of the said property and pay over to the
plaintiff the share to which he was entitled, and to
care for the estate to the best interests of the
plaintiff, their cestui que trust.

The said defendant further excepts to the whole
of the finding of fact numbered "Twenty-sev-
enth," and to each and every part thereof, and

688 specifically to so much thereof as finds and decides that the cost of the building on the Lenox Avenue property was \$24,869.11.

The said defendant further excepts to so much of the finding of fact numbered "Twenty-eighth" as finds and decides that there is on deposit in the Knickerbocker Trust Company the sum of \$3,224.11, set aside as the share of the plaintiff in the personal property of the estate of Henry Ungrich, deceased.

The said defendant further excepts to the finding of fact numbered "Twenty-ninth," and to each and every part thereof.

689 The said defendant further excepts to the whole of the finding of fact numbered "Thirtieth" and to each and every part thereof.

The said defendant further excepts to the finding of fact numbered "Thirty-first" and to each and every part thereof.

The said defendant further excepts to the whole of the finding of fact numbered "Thirty-second" and to each and every part thereof.

The said defendant excepts to the conclusion of law numbered "First," and to each and every part thereof.

690 The said defendant also excepts to the conclusion of law numbered "Second," and to each and every part thereof.

The said defendant also excepts to the conclusion of law numbered "Third," and to each and every part thereof.

The said defendant also excepts to the conclusion of law numbered "Fourth," and to each and every part thereof.

The said defendant also excepts to the conclusion of law numbered "Fifth," and to each and every part thereof.

The said defendant also excepts to the conclusion of law numbered "Sixth," and to each and every part thereof. 691

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "V."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "VIII."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "IX."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "X." 692

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XI."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XII."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XIII."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XIV."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XV." 693

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XVI."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XVII."

The said defendant also excepts to the refusal

694 of the Court to find his requested finding of fact numbered "XVIII."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XIX."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXI."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXIII."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXIV."

695 The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXVI."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXVIII."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXIX."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXX."

696 The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXXII."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXXIII."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXXV."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "XXXVI."

The said defendant also excepts to the refusal 697
of the Court to find his requested finding of fact
numbered "XXXVII."

The said defendant also excepts to the refusal
of the Court to find his requested finding of fact
numbered "XXXVIII."

The said defendant also excepts to the refusal
of the Court to find his requested finding of fact
numbered "XXXIX."

The said defendant also excepts to the refusal
of the Court to find his requested finding of fact
numbered "XL."

The said defendant also excepts to the refusal
of the Court to find his requested finding of fact 698
numbered "XLI."

The said defendant also excepts to the refusal
of the Court to find his requested finding of fact
numbered "XLII."

The said defendant also excepts to the refusal
of the Court to find his requested finding of fact
numbered "XLIII."

The said defendant also excepts to the refusal
of the Court to find his requested finding of fact
numbered "XLIV."

The said defendant also excepts to the refusal
of the Court to find his requested finding of fact
numbered "XLV."

The said defendant also excepts to the refusal 699
of the Court to find his requested finding of fact
numbered "XLVI."

The said defendant also excepts to the refusal
of the Court to find his requested finding of fact
numbered "L."

The said defendant also excepts to the refusal
of the Court to find his requested finding of fact
numbered "LII."

The said defendant also excepts to the refusal

700 of the Court to find his requested finding of fact numbered "LIII."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "LIV."

The said defendant also excepts to the refusal of the Court to find his requested finding of fact numbered "LV."

The said defendant also excepts to the refusal of the Court to find his requested conclusion of law numbered "I."

The said defendant also excepts to the refusal of the Court to find his requested conclusion of law numbered "II."

701 The said defendant also excepts to the refusal of the Court to find his requested conclusion of law numbered "III."

The said defendant also excepts to the refusal of the Court to find his requested conclusion of law numbered "IV."

The said defendant also excepts to the refusal of the Court to find his requested conclusion of law numbered "V."

The said defendant also excepts to the refusal of the Court to find his requested conclusion of law numbered "VI."

702 The said defendant also excepts to the refusal of the Court to find his requested conclusion of law numbered "VII."

The said defendant also excepts to the refusal of the Court to find his requested conclusion of law numbered "VIII."

The said defendant also excepts to the refusal of the Court to find his requested conclusion of law numbered "IX."

The said defendant also excepts to the refusal

of the Court to find his requested conclusion of law 703
numbered "X."

The said defendant also excepts to the refusal
of the Court to find his requested conclusion of law
numbered "XI."

The said defendant also excepts to the refusal
of the Court to find his requested conclusion of law
numbered "XII."

The said defendant also excepts to the refusal
of the Court to find his requested conclusion of law
numbered "XIII."

The said defendant also excepts to the refusal
of the Court to find his requested conclusion of law 704
numbered "XIV."

The said defendant also excepts to the refusal
of the Court to find his requested conclusion of law
numbered "XV."

The said defendant also excepts to the refusal
of the Court to find his requested conclusion of law
numbered "XVI."

The said defendant also excepts to the refusal
of the Court to find his requested conclusion of law
numbered "XVII."

The said defendant also excepts to the refusal
of the Court to find his requested conclusion of law 705
numbered "XVIII."

The said defendant also excepts to the refusal
of the Court to find his requested conclusion of law
numbered "XIX."

The said defendant also excepts to the refusal
of the Court to find his requested conclusion of law
numbered "XX."

The said defendant also excepts to the refusal

706 of the Court to find his requested conclusion of law
numbered "XXI."

Dated, New York, May 29, 1908.

Yours, etc.,
JOHNSTON & JOHNSTON,
Attorneys for Deft. Martin Ung-
rich, individually, etc.,
256 Broadway,
Manhattan Borough,
New York City.

To

707 KELLOGG & ROSE, Esqs.,
Attorneys for Plaintiff,
115 Broadway,
Manhattan Borough,
New York City,

and

PETER J. DOOLING, Esq.,
Clerk of the County of New York.

708

CASE.**NEW YORK SUPREME COURT,**

COUNTY OF NEW YORK.

MARTIN L. UNGRICH,

Plaintiff,

vs.

HENRY UNGRICH, JR., and MARTIN UNGRICH, individually, and as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,
 Defendants.

710

The above entitled action came on for trial in its regular order upon the calendar of this Court, at a Special Term, Part V, thereof, held in and for the County of New York, at the County Court House, in the County of New York, on the 15th day of January, 1908, before the Hon. James Fitzgerald, Justice, without a jury, and the parties appeared herein by their respective counsel as follows:

711

For the Plaintiff:

Messrs. KELLOGG & ROSE;

L. Laffin Kellogg, Esq., and MacIntosh
 Kellogg, Esq., of Counsel.

For the Defendant Henry Ungrich, Jr.:

ISAAC P. HUBBARD.

For the Defendant Martin Ungrich:

Messrs. JOHNSTON & JOHNSTON;

Edward W. S. Johnston, Esq., of Counsel.

712 Mr. Kellogg: This action is brought by Martin L. Ungrich against Henry Ungrich, Jr., and Martin Ungrich to recover the benefits which one brother has derived in dealing as an executor, with the estate.

The complaint sets out the will of Henry Ungrich, who was the father of Martin Louis, the plaintiff, and Henry Ungrich, Jr. The plaintiff under this will received, or was supposed to receive, one-half of the property, but in trust for him. His habits were bad and that is the reason why it was done. Henry Ungrich, Jr., the executor and one of the defendants, received his share of his father's estate in fee simple. He was to get one-half absolutely. And that is practically all that is necessary for us to know as to the relations between these two brothers. The other defendant is an executor and trustee, who is also named Martin, and who has no interest in this case beyond being an executor and trustee of this estate.

713

Now, it seems, and this is all admitted, that Mr. Henry Ungrich, the father, died leaving this will which was admitted to probate, and a codicil also, on the 11th day of April, 1901. Among the assets of the estate were some personal property, which the account says to be \$13,000, but should have been \$27,000 larger, and three pieces of property.

714 About a year after this will was admitted to probate, I think it was in 1902, in May, 1902, these three pieces of property were deeded by the executors and trustees through a dummy, as it is admitted in the answer to one Harry Davenport, in the office of one James Demarest, an attorney, to the defendant Henry Ungrich, Jr. These two executors in this roundabout way, or through this dummy, which they admit, deeded these pieces of property to Henry Ungrich, Jr., and this dummy made back mortgages, upon this property, as I un-

derstand it, amounting to something like \$78,000. 715
 That is, this Davenport made back the mortgages on this property when he had it in his possession from the estate, and then deeded it back to Henry Ungrich, Jr. So that the situation is that Henry Ungrich, Jr., became possessed of the entire amount of property at this price and subject to those mortgages, in this way. They both had the same attorney. Both the estate and the plaintiff. And the transaction was had and all these deeds signed in the office of James Demarest.

The property was afterwards sold, in less than two years—one of the pieces of property—there were three altogether—two of them were valued, as I shall show you, at \$22,000 each, or nearly that amount, and the other one was valued at \$100,000, making about \$150,000 for those three pieces of property. Then they gave this man a check for \$6,000 and he took this check and one of the executors then became possessed of the entire amount of property, which, as we shall show you, was undervalued at that time, by the testimony of experts. And out of which he admits in his answer he made inside of two years, \$150,000. 716

Now this action is brought in order, not to set aside those deeds, nor to affirm the transaction, but to have restored to this estate the share of the property which has come to this executor by his dealing with the estate, and to have the proper sum put in trust, so as not to allow the executor or trustee to make a profit out of his dealings with the estate. 717

The Court: Profit by the transaction?

Mr. Kellogg: Yes. The law is very plain in that respect. It does not allow an executor or trustee to deal with estate property to their own profit, and requires them to show by affirmative proof,

718 that the transaction is absolutely fair, and that they have not obtained any advantage from it. So that after some formal proof of value, and the deeds, I shall rest my case, and the burden will be upon them to show that it was fair and show the circumstances under which it was obtained from us.

Now, they admit at the end of the answer, in the last paragraph of the answer, page 68 of the printed case, folio 203, "That this defendant, relying upon the said written declaration, affirmation, ratification and confirmation so made by the said plaintiff, and the said deeds made by the said plaintiff and his wife to this defendant, on or about
719 the 2nd day of July, 1906, by deed bearing date that day, sold and conveyed the first and second of the parcels mentioned and described in subdivision 'C' of the paragraph of the said complaint herein numbered 'Third' to one George Ehret for the consideration of \$250,000 and paid for commissions on said sale the sum of \$2,500." Showing this property they took for \$100,000.

Now, will you produce the original deed dated May 22nd, 1902, from Henry Ungrich, Jr., and Martin Ungrich, to Harry K. Davenport?

(Paper produced.)

720 Mr. Kellogg: I offer this deed in evidence.

Received and marked Exhibit A.

Mr. Kellogg: I would like to call your Honor's attention to the fact that this deed is dated May 22nd, 1902, and recorded May 24th, 1902, and is witnessed by and acknowledged before James Demarest. This James Demarest was the witness and was also the notary public.

Will you kindly produce the deed of Harry

Davenport to Henry Ungrich, Jr., made the same 721
date?

(Paper produced.)

Mr. Kellogg: I offer in evidence the deed from Harry K. Davenport, unmarried, to Henry Ungrich, Jr., dated May 22nd, 1902, conveying the said property, subject to three certain mortgages to secure an aggregate principal sum of \$78,500; each of the mortgages bears interest at four per cent. per annum. This deed is witnessed by James Demarest, and acknowledged before James Demarest as notary public, and recorded on May 24th, 1902.

Received and marked Exhibit B.

722

Mr. Kellogg: Will you produce those three mortgages that were referred to in that deed?

Mr. Johnston: I can give you certified copies. I haven't the originals. The mortgages have been paid and they are on file in the Register's office.

Mr. Kellogg: I have certified copies here, too. As long as I have some, I can offer these. I offer in evidence a mortgage dated May 22nd, 1902, between Harry K. Davenport, unmarried, and Henry Ungrich, Jr., and Martin Ungrich, as executors of the last will and testament of Henry Ungrich, deceased, upon one of those pieces of property, for 723
\$57,500. That covers property on Ninth Avenue and 124th Street.

Mr. Johnston: The numbers of the property are 281, 283 and 285 Lenox Avenue and 109 West 124th Street.

Mr. Kellogg: This mortgage also was witnessed by James Demarest and acknowledged before him as notary public, and recorded on May 24th, 1902.

Received and marked Exhibit C.

724 Also I offer in evidence a mortgage dated May 22nd, 1902, from Harry K. Davenport, to the defendants, the executors and trustees under the last will and testament of Henry Ungrich, deceased, for \$11,000, at four per cent., and covering the piece of property on Pleasant Avenue, on the southwest corner of 123rd Street and Pleasant Avenue. That also was witnessed by and acknowledged before James Demarest, and recorded May 24th, 1902.

Received and marked Exhibit D.

725 Also I offer in evidence a mortgage made May 22nd, 1902, from Davenport to these executors and trustees, covering a point on the southerly side of 126th Street, distant 135 feet easterly from the corner formed by the intersection of the southerly side of 126th Street with the easterly side of Third Avenue. This mortgage being for \$10,000, with interest at four per cent. per annum. This mortgage is also witnessed, and acknowledged before James Demarest as notary public; recorded on May 24th, 1902.

Received and marked Exhibit E.

Mr. Kellogg: Now, give me the deed which you practically admit in your answer to George Ehret.

726 Mr. Johnston: I have no such thing as that.

Mr. Kellogg: Have you a certified copy?

Mr. Johnston: No.

Mr. Kellogg: I call your attention to the admission in the answer, that one of those parcels marked "C" was sold to George Ehret, for \$250,000.

Mr. Johnston: Where is an admission of that kind in the answer?

Mr. Kellogg: Page 68.

The Court: Folio 203. That is the folio in the 727
appeal book. That is the last paragraph, just before the demand for judgment.

Mr. Kellogg: I have a certified copy of that deed. I didn't know that I had it. I will offer in evidence a certified copy of the deed dated July 2nd, 1906, between Henry Ungrich, Jr., and Annie P. Ungrich, his wife, to George Ehret, brewer, covering the northerly side of 124th Street, distant 75 feet westerly from the westerly side of Sixth Avenue, now known as 281, 283 and 285 Lenox Avenue, and 107 West 124th Street.

Mr. Johnston: The defendant, Martin Ungrich, objects to the offer of these deeds, being between 728
third parties, as incompetent and improper and not binding on him.

Mr. Kellogg: He is responsible, as trustee.

Objection overruled. Exception.
Received and marked Exhibit F.

Mr. Johnston: If I make an objection, it is understood that Mr. Hubbard's objection applies, unless a specific objection is made.

The Court: Yes.

Mr. Kellogg: This deed is signed also in the presence of James Demarest, and is acknowledged before him, as Commissioner of Deeds, in this city, on June 2nd, 1906. The answer admits the 729
sale of the other two pieces of property, and I am not troubling about them, because I am not interested in them. Sold for a little less than the consideration named on this other deed.

730 RANSON E. WILCOX, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination by Mr. Kellogg:

I reside in Mount Vernon. My place of business is in 125th Street, between 7th and 8th Avenues. My business is real estate. I have been in that business continuously since 1882. The firm of Wilcox & Shelton, of which I am a member, does a general real estate business. We buy and sell, make loans, manage and appraise property. Personally, for two or three years I have given most
731 of my time to the appraising of property. I have appraised property for the City in condemnation proceedings; school sites, library sites, park sites. I have also testified as to the value of property in a considerable number of cases, along Park Avenue in damage suits that arose over the construction of the elevated road through that avenue. The New York Central work, when it was elevated out of the cut upon an elevated structure; also for various firms of attorneys in proceedings involving the value of real property.

Q. Have you, at my request, made an appraisalment of the values of the property on Lenox Avenue and 124th Street, known by the numbers 281,
732 283 and 285 Lenox Avenue and 107 West 124th Street?

Mr. Johnston: I object as immaterial and not binding on the defendant, and incompetent and improper and no foundation therefor, and the witness not shown qualified to testify.

Objection overruled. Exception.

A. I have.

Q. Have you also made an appraisement of the value of the property on the corner of Pleasant Avenue and 123rd Street, a lot 100 by 25 feet 11? 733

A. I have.

Same objection.

Same ruling and exception.

Q. And of a lot on 126th Street, between Second and Third Avenue, Number 208 East 126th Street?

Same objection.

Same ruling and exception.

A. I have.

Q. Have you appraised them as of May 22nd, 1902? 734

Same objection.

Same ruling and exception.

A. I have.

I knew those properties. I was familiar with them at those dates. How they were situated and what was on them.

Q. Now, tell me what was the fair value on May 22nd, 1902, of the property on East 126th Street, to which I have just referred?

Mr. Johnston: I object as incompetent, improper in form, and also on the grounds stated previously. 735

Objection overruled. Exception.

The Court: What property is that, the street number?

Mr. Kellogg: 208 East 126th Street.

A. This property was worth in May, 1902, \$22,000.

736 Mr. Johnston: I ask your Honor to strike out the answer as a conclusion, incompetent, and on the grounds previously stated.
Motion denied. Exception.

Q. What was the fair valuation on May 22nd, 1902, of the property corner of Pleasant Avenue and 123rd Street, 25 feet 11, by 100?

Mr. Johnston: I renew the same objection.

737 Q. What is the street number? A. 450 East 123rd Street. The property is not exclusively designated by that number, since there are two entrances. There is an entrance on Pleasant Avenue and an entrance on the street. The property is situated on the southeast corner of Pleasant Avenue and 123rd Street.

Mr. Johnston: Yes, it has two numbers.

The Court: What was the fair value of this property on May 22nd, 1902, as it then stood?

Mr. Johnston: Same objection.

Same ruling and exception.

The Witness: This property was worth in May, 1902, \$22,500.

Mr. Johnston: I ask your Honor to strike out the answer on the grounds previously stated.

738 Motion denied. Exception.

Q. Take the property on Lenox Avenue and 124th Street, the three lots on Lenox Avenue and the one lot on 124th Street, whose numbers have just been mentioned, Numbers 281, 283 and 285 Lenox Avenue, and 107 West 124th Street, what was the fair value of this property on May 22nd, 1902?

Same objection.

Same ruling and exception.

A. This property was worth \$150,000.

739

Cross-examination by Mr. Johnston:

I have known the property on Lenox Avenue and 124th Street since 1882, or 1883. The buildings or properties on the Avenue, the Numbers 281, 283 and 285, have been during all that time substantially in the same condition they are now, being four story flats and stores; brick buildings with brownstone fronts; the first floor being used for stores, and there being one flat on each floor upstairs. The property at 107 West 124th Street was until within recent years, a lot bearing a two story frame house; an old house, as I first knew it 740 early in 1880, and in 1882 or 1883; but that house has now been removed and a five story stable has been erected on that property. That was erected I think in 1903, or 1904. In my answer as to the value of this property on Lenox Avenue and 124th Street, I was considering the character of the buildings that were on it at that time. I have considered them as I have described. I did not take the stable into account. I have acted as broker in the purchase of property in the immediate vicinity of this. We have sold property in all streets and avenues in that vicinity. There was no piece of property in the vicinity of this property on the corner of Lenox Avenue and 124th Street, that I 741 acted as broker in, in the month of May, 1902. (Referring to a paper.) I don't recall any sales made in that immediate vicinity about that time, nor immediately subsequent. There were some private houses in that general vicinity, but nothing in 124th Street. I acted as broker in the sale of Number 149 West 126th Street, is only two minutes' walk from that point. That is a private dwelling, sold in May, 1902. I acted as broker in

- 742 the sale of Number 236 West 121st Street, between 7th and 8th Avenues. That was flat property. That was sold in May—in March, 1902. I know what the price paid for those respective properties at that time was. Number 236 West 121st Street sold for \$15,500. The size of the lot was 18 feet wide, front, by 100 feet 11 inches deep, full to about 70 feet. The other piece I mentioned was a private dwelling, 149 West 126th Street; that is 16 feet 8 inches wide, three story brownstone private dwelling, on a lot 99 feet 11 inches deep. I acted as broker for 244 West 132nd Street, between 7th and 8th Avenues. That was a private dwelling. I have no memorandum as to the size of that lot. It
- 743 sold for \$13,000. That was in February, 1902. I have a memorandum here of a sale of property that we made in 129th Street, between 7th and 8th Avenues, Number 225 West 129th Street. I don't remember just how large that house is; about 20 feet wide on a lot full depth; sold in June, 1902; for \$15,000. The building was a three story brownstone private dwelling. I don't know if I have now given all. I don't think I have given all that we made. I have given all that I have on the memorandum here. I made that memorandum a day or two ago. From our books. In order to testify therefrom in this case, yes, sir. I cannot
- 744 recall just now any other transaction in which I assisted as broker, or acted as broker, during this period of time, in the immediate vicinity of this property. This other piece of property, 149 West 126th Street, realized \$14,500. I do not know of transactions on Lenox Avenue during that period of time, of my own knowledge. I don't think so, about that time. We had property for sale but I don't remember any sales consummated, I do not recall acting as broker in the placing of any

loans on any property in the immediate vicinity of 745
 this property, during this period of time. I don't
 recall any now. I could not state without refresh-
 ing my memory on that point. We did a more or
 less continuous business with loans, and did dur-
 ing those years, as well as now, but I could not
 state to recall any of them. I acted as broker con-
 tinuously in making leases in the vicinity of the
 property in question. The property in 125th
 Street, known as Number 42 West 125th Street.
 About this time, I am unable to name the date—
 about this time we made a lease for a term of years
 of that property. It is a four story and basement
 store and dwelling property, on the south side of 746
 125th Street, between Lenox and Fifth Avenues;
 stores in basement and on the parlor floor, living
 apartments upstairs. The lease did not cover the
 entire building. Leases were made separately on
 each floor. I acted as broker in the making of the
 leases in all the building. I am unable to state
 what were the aggregate rentals, the annual ren-
 tals, so received for that property during that
 year. I am unable to recall that. I have not re-
 freshed my memory in regard to those matters. I
 acted as broker in the making of leases in prop-
 erty, 125th Street, between 7th and 8th Avenues.
 In my opinion, the character of the property on
 125th Street is quite different from 124th Street, 747
 as to the character of the rental. 124th is quite
 different from 125th Street. I had also had charge
 of 100 on 124th Street, between 7th and 8th Ave-
 nues. They were rented by the month. That
 property rented for about \$10,000 per year. The
 character of the property was five story tene-
 ments. The character of that property is not the
 same as the property on Lenox Avenue. No. 124th
 Street is quite different from Lenox Avenue. I

- 748 acted as broker in the making of leases on Lenox Avenue, on the corner of 128th Street, 100 feet on Lenox Avenue, south from the corner of 128th Street, the southeast corner of 128th Street and Lenox Avenue. The character of the property at Lenox Avenue and 128th Street is in some respects similar to that of Lenox Avenue and 124th Street, in my opinion. In some respects. It was not devoted to business at that time. 128th Street and Lenox Avenue was not devoted to business at that time, as 124th Street and Lenox Avenue is. The subway was in the course of construction. It was opened in the fall of 1904. The Lenox Avenue branch, not until December, if I recall rightly. As
- 749 to the aggregate amount, of the rental received from this property that I stated, at 128th Street and Lenox Avenue, by the year, there were six private houses there, each of which rented for \$900. I have rented in my business six houses on the south side of 123rd Street, between 7th and 8th Avenues; three story and brick private dwellings. The character of that street and that place, is somewhat similar to 124th Street; used mainly for residences, with here and there a store. It is not similar to Lenox Avenue and the corner of 124th Street. It is not similar to Lenox Avenue. I can state other property; on 8th Avenue, at 123rd
- 750 Street; the southwest corner of 8th Avenue and 123rd Street. Northwest corner of 8th Avenue and 122nd Street. One between 122nd and 123rd Streets, on the easterly side of 8th Avenue; all of it being business property. The character of that property is similar to that at Lenox Avenue and 124th Street. In the respect that there are stores upon the first floor. Not all of it, however, is similar. Some of it—the southwest corner of 123rd Street and 8th Avenue, has stores upon the first floor, and a hotel upstairs. The 123rd Street

part of it, however, continuing through the whole 751
 block to St. Nicholas Avenue, have private dwell-
 ings. And the Elevated Railroad goes through 8th
 Avenue at this part. The property on 122nd Street
 and 8th Avenue is one story and basement, and
 stores. In my opinion, the fee and rental values
 of property at 8th Avenue and Lenox Avenue have
 moved in the same ratio. There has been the same
 general appreciation during the last five years,
 let us say, or seven years. Perhaps the apprecia-
 tion on Lenox Avenue has been greater on Lenox
 Avenue than on 8th, during that time. I have not
 given all the properties that I acted as broker in,
 in the transaction of, or leasing, in the immediate 752
 vicinity of the property in question. I would be
 unable to recall them all. I cannot recall more
 without a little time. Numbers 232 and 234 West
 121st Street, adjoining on the west the property
 that I testified I had sold—adjoining on the east.
 That is the nearest I can come to any property
 that I acted as broker in leasing, in, during this
 period of time, to the property in question. Dur-
 ing the month of May, 1902, and the months of that
 year prior thereto I leased a block of private
 houses in 128th Street, between 7th and 8th Ave-
 nues, on the south side, 100 feet frontage. I don't
 find that any nearer than 121st Street. No I
 leased 130th Street, between Lenox and 7th. I 753
 don't find that any nearer to it. Twelve private
 houses on the north side of 130th and east of 7th.
 That is nearer than the 8th Avenue property. The
 nearest piece during this period of time, that I
 acted as broker in the leasing of, to the premises
 in question is Number 42 West 125th Street. I
 recall now a house on Lenox Avenue, between
 125th and 126th Street, on the westerly side. That
 house was a four story and basement private
 dwelling, at that time. That rented for \$1,500.

754 Re-direct Examination by Mr. Kellogg:

The subway in May, 1902, the construction was beginning of the subway in Lenox Avenue. The subway runs past this property. If I recall correctly, the construction had not been begun at this point. That is, in May, 1902. It is my recollection that the construction was under way between the Park and 116th and 117th Streets, and that the avenue had not been opened up as far as this. The subway was finished at this point so far as the appearance of the street was concerned, practically completed in the summer of 1904. Entirely completed most of the way, so far as the street
 755 was concerned externally, above, early in 1904; but I think trains did not begin to run at this point until December, 1904. As to the distance from this property on Lenox Avenue that I have been testifying as to its value, the subway depot was constructed, one entrance was about 100 feet from the northerly line of the Lenox Avenue property; a little less than 100 feet, I guess. It is located just south of the corner of 125th Street and Lenox Avenue, on the westerly side of Lenox Avenue. I stated less than 100 feet from this very property I have been valuing, as I recall it. The coming of the subway led to a very marked appreciation of property in all the upper section of New
 756 York. So that for that section it greatly emphasized and accelerated the increase in the value of the property that was going on all over the city.

Q. What do you say as to the sales of property upon Lenox Avenue during the building of the subway?

Mr. Johnston: I object as incompetent and improper.

Objection overruled. Exception.

A. The property on Lenox Avenue began to be actively sought after; the more as we approached —as the completion of the subway approached. 757

Mr. Johnston: I move to strike out the answer as incompetent and improper and not matter of his own knowledge.

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

Mr. Johnston: I ask a ruling.

The Court: I will allow the answer to stand.

Mr. Johnston: Exception.

There was an apparent appreciation of property in Lenox Avenue as soon as it was known that the subway was projected through that Avenue, which appreciation increased and was accentuated as the time of completion drew near. There were a few sales, but only a few, in this vicinity of Lenox Avenue and this property, during the building of the subway, that is to my knowledge. My office was at this time three or four minutes' walk from this property; about a thousand feet. George Elhret owned the larger portion of the block upon which this Lenox Avenue property was situated at that time. 758

By Mr. Johnston—Re-cross Examination: 759

I know of the transaction of the sale of the property on the northwest corner of Lenox Avenue and 118th Street, on December 1st, 1902, by the Hamilton Bank to Henrietta C. S. Dodd at the time. I do not recall what the consideration was. I knew at that time. I do not recall the transfer of the property Number 229 Lenox Avenue, west side, 75 feet 11 inches north of 121st Street, by Ed-

- 760 ward C. Whittaker to the City Realty Company, on April 17th, 1902. I recall the transfer of the property 268 Lenox Avenue, east side, 75 feet 5 inches north of 123d Street, by Henry B. Auchincloss to Henry and Elizabeth Steinau. I was personally knowing to that transaction. Steinau paid \$22,000 in that transaction. It is in the next block from this property in question, south, near some private houses. I do not recall now the sale and transaction of the property Number 146 West 124th Street, south side, 250 feet east of 7th Avenue, by Louise P. Hegencamp as Executrix, to Adolph Schiebel, in June, 1902. I do not know exactly what the aggregate amount of the rental was that was received in May, 1902, for this property on Lenox Avenue and 124th Street, in question. I call the building worth \$20,000 and the balance was the value of the ground. I put on 281 Lenox Avenue alone a value of \$52,250. That lot was 18 feet 8 2-3 inches wide on Lenox Avenue, at the northeast corner of Lenox Avenue and 124th Street, and about 75 feet deep on 124th Street. I valued that building at \$8,000, and the lot at the difference between \$52,250 and \$8,000—\$44,250, if I subtract right. Number 283 Lenox Avenue, that was the same size, those three are all of the same size. I valued that building at \$6,000, and the lot at \$28,500. And number 285 Lenox Avenue I valued the same as 283; that is, on the building, and \$28,500 on the ground. Number 107 West 124th Street. That lot is 25 feet wide on 124th Street, beginning 75 feet west from the Avenue, and is 100 feet 11 inches deep. The building had no value at that time. It added nothing to the value of the ground, at least, I valued the ground at \$28,750.

By Mr. Kellogg:

763

There was an advantage or increase in value owing to the fact of the location of all this property together, joined each other. Each parcel valued separately, would have been worth considerably less. But the figures I gave in answer to the inquiries, while directed to the units, was the increased value that appertained to each one as united with the others. I valued them separately and afterwards added the plottage, and I added the plottage in the answers to this gentleman.

The Court: So they would represent exactly \$150,000?

764

The Witness: \$150,000; yes, sir.

Q. What is the property on 126th Street worth now, in the same condition as it was in 1902?

Mr. Johnston: I object as immaterial.

Objection overruled. Exception.

A. I think 218, or 208, East 126th Street is worth \$29,000 now. It is no longer in the original condition. In its original condition, if it had been continued in the original condition except—being kept in good order, it would be then exactly like 210, which stands next door to it on the east, and it would be worth \$29,000.

765

Q. What would the property on Pleasant Avenue, in the same condition as it was in May, 1902, be worth now?

Same objection.

Objection overruled. Exception.

A. I think it is worth \$29,000. \$28,500 or \$29,000. Those two pieces of property I have last

766 mentioned, they were affected favorably by the coming of the subway, or at least they partook of the same general upward movement. The subway was not near these properties; you could not say they derived a benefit from the nearness of the subway, but they partook of the upward movement of all property in that region by reason of the increased value that came when the subway was done.

By Mr. Johnston:

I know of the sale of the property on the southeast corner of 126th Street and Lenox Avenue, in 1907, a lot 100 by 85, a recent sale. I haven't the
767 amount before me. I was not knowing to the sale. I heard the City expected to buy it, but I do not know what it brought. I should think that was about a half larger than the size of the land in this property at 124th Street and Lenox Avenue, that I have been speaking of; no, perhaps it is double the size of the property; that is 100 by 100. I don't know that that property was sold for \$195,000.

HERMAN A. SCHMIDT, called as a witness on behalf of the plaintiff, being duly sworn, testified
768 as follows:

Direct Examination by Mr. Kellogg:

My business is real estate and insurance. I have a firm since about six years. The name of my firm is Schmidt & Donohue. Before that, the name of my firm was Herman A. Schmidt. My office is 291 Lenox Avenue. I have been in the real estate business since 1889. I have been in this office since last September. My office before

that was Eighth Avenue between 124th and 125th 769
 Streets. It had been at that place from 1895 un-
 til last September. In 1902, my office was on
 Eighth Avenue. Two avenue blocks away from
 this Lenox Avenue property that has been spoken
 of. My business was real estate in all its branches.
 Making of loans, managing, sales, appraisals for
 foreign countries. I have appraised real estate for
 my principal and other people. I have bought
 and sold property in the vicinity of 126th and
 125th Streets, between Second and Third Ave-
 nues, and between Lenox Avenue and Seventh
 Avenue, and between First and Pleasant Avenues
 and 122d and 123d Streets, during that time. I 770
 am familiar with the value of property in that
 vicinity from my business operations, in May,
 1902. I have at your request, made an appraise-
 ment of the values of these properties, which have
 been referred to in the testimony of the previous
 witness, in May, 1902. I am familiar with the
 properties as they were at that time. I had seen
 the properties at that time.

Q. Now, be kind enough to tell what the fair
 valuation of the property between Second and
 Third Avenues on 126th Street, 208 East 126th
 Street, was in the condition that it was on May
 22d, 1902?

Mr. Johnston: We make the same objec- 771
 tion as we made to the question put to Mr.
 Wilcox.

(Objection overruled. Exception.

A. On the south side of 126th Street, \$28,000.
 The fair valuation of the property at the corner
 of 123d Street and Pleasant Avenue, 25 feet 11
 inches by 100, one of the numbers, 443 Pleasant
 Avenue, the southwest corner was \$21,000. The

772 fair value of the property at the corner of Lenox Avenue and 124th Street, on May 22d, 1902, known as Numbers 281, 283 and 285 Lenox Avenue and Number 107 West 124th Street was \$152,000. In May, 1902, the subway was coming. I think it was completed a year and a half after that. The coming of the subway increased the value of property considerably. It was a great deal of increase.

Cross-examination by Mr. Johnston:

I acted as the broker in the transaction of the sale of this property at 107 West 124th Street and 281, 283 and 285 Lenox Avenue to Mr. George
773 Elhret. He is the father-in-law of my partner. That transaction took place about three years ago. The price paid was a quarter of a million, \$250,000.

Mr. Kellogg: We agreed on that.

I received a brokerage from Henry Ungrich, Jr., on that figure. On that consideration or price, yes, sir. The year that was sold in—I think about two or three years ago. (Witness shown paper.) The present papers refresh my recollection as to the date when it occurred. It was less than two years. The date shows there.

The Court: What was the date?

774 The Witness: May, 1906. I have bought so many properties I cannot tell.

I acted before the month of May, 1902, as broker on the 2d day of January, 1902, for the adjoining piece of property, Number 287 Lenox Avenue. The price for that was \$28,000. The size of that property is about the same as 285; there is a little—I cannot tell the size—19 1-3 inches, I think—and the other was 18 feet ten inches—eight and two-

thirds, there is really a party wall there. The 775
 depth is 75 feet; there is a fraction over there.
 There is a party wall on one side, and one is an
 independent wall. Then I acted as broker for
 the property adjoining to that. The purchaser of
 this last mentioned piece was Mr. Pannes. I am
 speaking of 287 now. I sold that. The seller,
 the owner of the property, that sold it to Pannes, I
 don't remember any more. I sold property ad-
 joining that, 289, in 1902, on the 24th day of Feb-
 ruary. The price realized on that was \$49,000.
 The size of the house was 25 feet 3 inches. I sold
 the property adjoining 107, that is 109, I sold that
 in 1901; that is on 124th Street. On the 12th day 776
 of November. I did not give the dimensions of the
 other property, as to the depth of 289. All the
 properties on Lenox Avenue here were 75, except
 107 on 124th Street, which runs 100 feet, backs
 up. I sold Number 109 West 124th Street ad-
 joining this property and adjoining that again.
 I have sold 125th Street properties; I sold the
 southeast corner of Park Avenue and 125th Street.
 I cannot recall now having sold any property on
 126th Street in the neighborhood of 208, between
 Second and Third Avenues during the month of
 May, or any months prior thereto, in that year,
 or even in the last months of 1901. I did not act
 as broker in the placing of loans on any property 777
 in the immediate vicinity of this property, 208
 East 126th Street. I did not act as broker in the
 making of any leases of property in the immediate
 vicinity of this property, 208 East 126th Street.
 during this period of time. The character of 125th
 and 126th Streets is quite materially different; is
 quite materially different. I acted as broker in
 the sale of a piece of property in the immediate
 vicinity of the property at 123d Street and Pleas-

778 ant Avenue, as to which I have testified, during
 this period of time I have mentioned. (Witness
 pauses.) I sold the northeast corner of 118th
 Street and Second Avenue—nothing nearer than
 that; oh, no, I cannot recollect any. I did not act
 as broker in the placing of any loans on any prop-
 erty in the immediate vicinity of those premises
 during that period. I acted as broker in the mak-
 ing of leases during that period of time on prop-
 erty in the immediate vicinity of these premises.
 I placed, or made a lease for 119th Street and
 Pleasant Avenue. I made a lease on 125th Street
 and Park Avenue; leases for 125th Street and
 779 Madison Avenue; leases for 125th Street and Sec-
 ond Avenue. That is right near by, 125th Street
 and Second avenue. Not exactly a different char-
 acter of property—no, not much. There is dif-
 ference in the locality of 125th Street and Sec-
 ond Avenue, and 123d Street and Pleasant Ave-
 nue. Oh, yes, there is quite a difference. The
 nearest property where I acted as broker in a
 transaction of making leases of property in the
 immediate vicinity of 123d Street and Pleasant
 Avenue during that time is 119th Street. I heard
 of the sale of the property on the southeast corner
 of 126th Street and Lenox Avenue, 100 by 85, in
 1907. I heard what the consideration was, real-
 780 ized therefrom. I think it was \$300,000; that is
 street gossip. Because that is heard in the street.
 In the value I have placed on the property. Num-
 bers 281, 283 and 285 Lenox Avenue and 107 West
 124th Street, the buildings I placed—well, about
 \$8,000 apiece on the Lenox Avenue side. The
 building, 281 Lenox Avenue, was worth more than
 285. You could add a few hundred dollars on ac-
 count of being a corner. The value I put on the
 building on the side street, 107 West 124th Street,

as that stood then—then that was a frame cottage 781
on the property.

The Court: Give the value.

I did not come prepared—I was subpoenaed here and I had no memoranda—I value that about \$600. The value I placed upon the fee of the property, Number 107 West 124th Street, without the building, the lot was worth about at that time—the lot was worth \$25,000. 25 feet front by 100 feet 11 inches, was worth \$25,000 at that time. I did not know of the sale of 146 West 124th Street by Louise P. Hogencamp to Adolph Schiebel in June of that year. I don't recollect it. I don't 782
recollect any sales that transpired in that time, of property in that locality, except what I made myself, and on the south side of the street. This was on the north; I bought the property adjoining to that. I sold them, too. The value I put on the fee of the premises Number 281 Lenox Avenue at that time, being the corner, at that time it was worth about \$60,000. Number 283 Lenox Avenue without the building.

The Court: 281 without the building?

The Witness: Without the building,
\$50,000.

And 283 Lenox Avenue without the building 783
\$25,000. 285 without the building, the same; that is giving them singly. I have had only one lot value.

By Mr. Kellogg:

It is as a separate plot. Not as a plot, no.

By Mr. Johnston:

I had a great many conversations with Mr. Henry Ugrich prior to the time that Mr. George

784 Ehret bought the property, about the values. We have talked so much about it, I don't remember what I said now. I never stated to him at that time, that the property was only worth \$165,000. I never said that, at that time. I swear. I am under oath now. I will state at the present time, and swear, that I did not state to Henry Ungrich prior to the purchase of this property by George Ehret, that the property was not worth \$160,000. Prior to the date George Ehret bought it, that is May, 1906—No, I didn't say that.

By Mr. Kellogg:

Henry Ungrich, Jr., put this property in my
 785 hands for sale. He did, and he didn't. I tried to buy it from him and he was trying to sell it to me, but we could never agree as to the price. I started as soon as I had acquired the house next to him, adjoining his property at Lenox Avenue. I had my first interview with Mr. Henry Ungrich, Jr., about it in 1902. Well, we bought, the last piece of property we bought was the house adjoining, 287, and right after that, all that was left to acquire was the piece owned by Mr. Henry Ungrich—by the Ungrich brothers then. I bought this property. My client at that time was Mr. Pannes. Then it was transferred to Mr. Ehret. He was acting in Mr. Ehret's interests. We held it in his
 786 name until we got Mr. Ungrich's piece. Mr. Ehret was the real purchaser. Mr. George Ehret. The transaction in regard to Mr. Pannes was in January, 1902. After that I had a talk with Mr. Henry Ungrich as soon as I could get hold of him. He placed a price on that property at that time. Well, yes, he put a much higher price. Well, he said he would not sell it at all; it was not for sale, as is usually done. Well, I left it to himself and waited. He fixed the price after that—he wanted

\$200,000. Well, that was about three and a half 787
 or four years ago. That was not in 1902. No,
 no; that was after that. That was about a year
 and a half after that. He fixed \$200,000 after a
 while for the pieces, the Lenox Avenue pieces. Yes,
 that includes the house on 124th Street. Yes,
 sir. He did not put any price on this property be-
 fore the time for he put \$200,000 on it. No, it was
 not for sale then. I asked him in 1902 to sell this
 property right after the Pannes sale. I didn't ex-
 actly ask him to sell it. I asked him whether it
 was for sale and whether he would sell if I found
 a purchaser for it. He said it was not for sale.
 The prices that I gave as to the separate lots were 788
 if those lots sold separately without the buildings.
 They were worth more as a whole, and the price I
 gave of \$152,000 was as a whole. The pieces are
 worth more together, than separately, as I gave it.
 I think the rents of this property prior to 1902
 were eleven to twelve thousand dollars, as Mr. Un-
 grich gave them to me. I knew about the rents.
 I got them from Mr. Henry Ungrich, I think.
 Cross that out, because I don't know the exact
 amount at all. He gave me a statement, which was
 correct. My recollection is, it was ten or twelve
 thousand dollars. Something like that, as he
 stated to me.

Q. What is the value of that property now? 789

Mr. Johnston: I object as immaterial and
 not within the issues.

Objection overruled. Exception.

A. About \$375,000.

Q. Now, I want to ask you what the present
 value of the property, of these other pieces of
 property is, in the same condition as they were

790 in 1902? A. The property on the corner of 123rd Street and Pleasant Avenue?

Same objection.

Same ruling and exception.

The Witness: I cannot recollect now.

I valued the house and lot at \$21,000.

Q. What would that same house in that location in the same condition it was in 1902, be worth now?

Same objection.

Same ruling and exception.

791 A. It would be worth fifteen per cent. more. And the same of the other property on 126th Street, about the same.

Mr. Kellogg: I rest. I have other evidence to put in in rebuttal.

Plaintiff here rested.

JAMES DEMAREST, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

792 Direct Examination by Mr. Johnston:

I am a lawyer by profession. I have been such for over twenty years. I represented the defendants in this case, the executors of Henry Ungrich, the elder, deceased, from the time of the probate of his will. I know Martin Louis Ungrich, the plaintiff. I am well acquainted with both of the defendants. In 1896 I think I represented Martin Louis Ungrich, as his attorney or counsel in the divorce case. With the exception of that time,

and between that time and May, 1902, I had not 793
 acted as his counsel. That is the only business
 I recall that I ever did for him. In May, 1902,
 Martin Louis Ungrich called upon me in refer-
 ence to a sale of the property belonging to the es-
 tate of his deceased father. He called in May,
 1902, and has called—used to come in there quite
 frequently at different intervals in regard to es-
 tate matters and talked with me. Martin Louis
 Ungrich, the plaintiff, and Henry Ungrich, Jr.,
 the defendant, were present at some of those inter-
 views. I recollect an interview at which the de-
 fendants and the plaintiff were present, which oc-
 curred in my presence, at which a discussion came 794
 up as to the sale of the real estate left by the tes-
 tator, Henry Ungrich, the elder. In the spring,
 early in the spring before the date of the marriage
 of Henry Ungrich, Jr., there was a meeting in my
 office, that was the year 1902, at which the ques-
 tion of the sale of the real estate was discussed.
 I cannot fix the date any more accurately than I
 have. Unless my register will give me some fur-
 ther light upon it—

Mr. Kellogg: Yes, look it up.

I am asked to look at my letter book of May
 5th, 1902, and see if that refreshes my recollec-
 tion on that date. 795

(The witness leaves the stand, and returns
 with a book.)

(Papers shown to witness.) Also to look at the
 papers you show me, and look at the book and
 look at the second page, and the first two pages
 that are attached on there, and I am asked whether
 those will refresh my recollection as to this date
 I am testifying about. The date I am testifying

796 about is an earlier date, because Mr. Henry Ungrich, Jr., was married in March, or thereabouts. That paper which you handed me refreshes my memory as to later meetings. I find that the meeting of the executors was called for February 27th; and at that meeting—I think that was just before Mr. Henry Ungrich went away, the question of the sale of the real estate was discussed. February 27th, there was a meeting of the executors, and M. L. Ungrich at my office.

The Court: The plaintiff was there?

The Witness: The plaintiff was there, and the two defendants.

797 It was about—I cannot swear they were consultations; this has reference to the sale of the real estate, and took place on February 27th, 1902, because my—

The Court: About that time?

The Witness: I was about that time, because Mr. Henry Ungrich was married soon after that and went away, and it was before, I recollect distinctly.

798 I recollect distinctly, around about February 27th, and there was a meeting at my office in which there was the question of the sale of the real estate. Mr. Martin Louis Ungrich said that he wanted the real estate sold. He said that he thought that there was unnecessary expense being made on the property; that the repairs were too great; that he wanted a fixed income, and wanted the executors to sell the property so that the fund of which he was to receive the interest could be set aside and he would know what his income was each year. There was something said at this meeting about having an appraisement of the property

made. The executors asked me to get an ap- 799
 praisal. I was asked to get an appraisal by either
 Mr. Martin Louis Ungrich or Mr. Henry Ungrich,
 Jr. I said to them, "You, each of you get an ap-
 praisal." Martin, the executor, I said to him,
 "You get an appraisal." I said the same to Henry
 Ungrich, Jr., "You all live in Harlem." I said
 to Martin Louis Ungrich, "You get an appraisal,
 so that you will be sure and get the proper value
 of the property." I said to him, "You must ob-
 tain the market value of the property when you
 sell it." And I suggested the name of Philip H.
 Smyth, and asked them if that would be satis-
 factory. I asked them if they knew him person- 800
 ally, or were interested in any way with him, and
 they said that they did not, and directed me to get
 an appraisal from Mr. Smyth. Such an appraisal
 was procured from Mr. Smyth, to my knowledge.
 (Papers shown to witness.) The papers you now
 show me, are the papers which I received as the
 appraisal from Mr. Smyth.

Marked Exhibits 1, 2 and 3 for identifica-
 tion.

The papers, Exhibits 1, 2 and 3 for identifica-
 tion, were shown to Mr. Martin Louis Ungrich,
 the plaintiff, by me. They were. He was pres- 801
 ent at the meeting. I cannot swear that I saw him
 read those papers. They were handed to him in
 my office.

Mr. Johnston: I offer those papers in evi-
 dence.

Received and marked Exhibits 1, 2 and 3
 in evidence.

I heard a conversation between the plaintiff and

802 the defendants, in my presence, concerning the papers, Exhibits 1, 2 and 3. That was at a subsequent interview to this in February, that I have stated about. I can place the date of it. On May 16th, the plaintiff, Martin Louis Ungrich, and the two executors were present at my office. Now, prior to that time, I wrote him a letter requesting him to attend on that date. I am under the impression that I did.

Mr. Johnston: Will you produce the letter of May 8th, 1902, of James Demarest to Martin Louis Ungrich, which you received notice to produce?

803 Mr. Kellogg: The plaintiff produces a letter written by James Demarest, signed by H. K. D., on May 8th, 1902, addressed to Mr. Louis Ungrich.

Mr. Johnston: I offer that letter in evidence.

Received and marked Exhibit 4.

I find there was a meeting on May 9th, of the executors, and Martin Louis Ungrich, was at my office on May 9th. At that meeting there were present the executors, Henry Ungrich, Jr., and Martin Ungrich, and Martin Louis Ungrich. Martin Louis is the plaintiff and Martin is the executor.

804 I said there was a meeting of May 16th and one on May 9th, also. On the 9th of May, the appraisals were presented and the executors spoke in regard to the figures—talked over the amounts, and as to the property and the buildings, etc., and they were generally discussed. Then they wanted to know—they asked about a sale of the property. And I advised them that they could sell it at auction or at private sale. They had, as I recol-

lect, full power under the will. And I think it was 805
 at that interview that question of Mr. Henry Un-
 grich buying the property was raised. Mr. Henry
 Ungrich said he would be willing to take the prop-
 erty at a proper figure, but he thought that the
 figures named by Mr. Smyth were high. "Well,"
 I said, "it would not be proper for the executors
 to transfer the property to themselves." And
 Mr. Martin Louis Ungrich, the plaintiff, said:
 "Well, I am the principal party in interest, and if
 I wanted to have it, I do not see why he could not
 have it." They finally talked the matter over, back
 and forth, and finally they decided that they would
 make a figure. The appraisal, of Mr. Smyth, as I 806
 recollect it, amounted to one hundred and fifty-
 two thousand dollars. Mr. Martin Ungrich, the
 executor, said that he would be willing to sell it
 for \$157,000, which was \$5,000 in excess of the ap-
 praisal, and that he wanted to do whatever the
 two brothers wanted to do; if Henry wanted to
 have it, and Martin Louis was willing for him to
 have it, why, he was willing. They stated—as to
 the terms of the sale, they were discussed and they
 decided, they said they would sell the property at
 the figures agreed upon, and that mortgages for
 half the amount would be given back—that pur-
 chase money mortgages should be given back. The
 mortgages were to bear interest at four per cent. 807
 per annum, and become payable in five years from
 date. There was a discussion between those peo-
 ple about this interest. Mr. Martin Ungrich
 thought that the interest ought to be more, and
 Mr. Henry Ungrich stated he would not pay more
 than four per cent. He spoke of the income—of
 the small income the property was bringing, and
 he would not pay any more than that, if that was
 the situation. There was another talk in relation

808 to, or question which was discussed. The question as to buying part, or all of the property, was discussed; and Mr. Henry Ungrich, Jr., said he would buy the Lenox Avenue or said he would be willing to take the Lenox Avenue property. And Martin Louis, the plaintiff, said, "Well, if you want any of it, you must take it all." I recall that. I was directed to prepare a memorandum setting forth the terms on which the property was to be disposed of. And they also said they would figure the rentals up to the end of the quarter and that the settlement was made, would be as of June 1st. I have narrated everything that I recollect, that
 809 transpired on this occasion, except that I was to prepare a memorandum of the sale, of the terms, and they were to have a meeting a few days later at which that was to be signed. This conversation occurred on the 9th of May; this was a previous meeting. I think I have narrated everything that I recollect transpired on that occasion. Oh, pardon me; the different prices which each executor and the plaintiff had obtained on the property for their own satisfaction, was mentioned. Mr. Henry Ungrich, Jr., said that he had gone over the property with some friend of his, an appraiser, and that his appraisal was from \$128,000 to \$130,000. And Mr. Martin Ungrich said he thought it was
 810 worth about \$145,000 to \$150,000. Martin Ungrich said one hundred and fifty. And Martin Louis, I recollect his saying one hundred and forty to one hundred and forty-five.

The Court: What was Martin, the executor's?

The Witness: Martin, the executor's, was \$150,000, as I recollect it.

I think I have stated all the conversation that I

heard at that time, all that I recall. I do not 811
recollect any conversation about the Appraisal of
Mr. Smyth, further than what I have stated, except
that Mr. Martin Ungrich increased the figure
\$5,000— —

The Court: You have told us that.

That is all I recall, sir. The parties did meet
again on the 16th, yes. I prepared a little memo-
randum of the terms on which the property was to
be sold. (Papers shown witness.) I am shown
these papers and asked if either one of these three
papers is the memorandum prepared by me, and if
so, which one. This is the memorandum I refer 812
to at present. (Indicating.)

Marked Exhibit 5 for identification.

I am shown Exhibit 5 for identification, the
paper just marked, and asked if I am acquainted
with the signatures of the following persons:
Harry K. Davenport, Henry Ungrich, Jr., Martin
Ungrich and Martin Louis Ungrich. (Paper
shown to witness.) I am. I have seen them
write. The paper Exhibit 5 was signed by those
persons in my presence.

Mr. Johnston: I offer it in evidence.

Exhibit 5 for identification, received and 813
marked in evidence.

Now, as to the conversation at this time, of the
presentation of this paper Exhibit 5. The paper
was produced and read to the parties who were all
present, the two executors, Martin Louis Ungrich,
and Mr. Davenport were there, and I asked them
if they were satisfied it expressed the terms on
which they wished to dispose of the property and
they stated it did. Then to Mr. Martin Louis, I

814 said, "Is that satisfactory to you?" He said, "It is." There were two of them. I said, "If it is, I will just indorse it, 'Contract approved by me,' and you sign it." He said, "Yes, I will write it in on this one while you are writing it on the other one." And one of them—in that one it is in his own handwriting, "Contract approved by me, Martin Louis Ungrich, or Martin L.," whatever way he signed it. I do not recall anything else transpiring on that day at present. This was on the 16th day of May, 1902. The parties met again on the 22nd day of May. At this meeting on the 16th, the executors instructed me to prepare the bonds and mortgages and deeds as called for by
 815 that memorandum. That was in the presence of Martin Louis Ungrich. On the 22nd day of May—I stated to Mr. Martin Louis, I stated, in addition to that, "You say this is satisfactory to you. On the day the title is closed, the title is passed, you will have to sign a paper saying that you understand that this property is to be conveyed to your brother." He said, "That is all right. You prepare the paper." I did so, and on the day the title was passed they met there again, and the deeds, and the bonds and mortgages were executed, and another paper was signed by Mr. Martin Louis Ungrich at that time. I am asked if the paper now
 816 shown me is the paper that was then signed by Martin Louis Ungrich. (Paper shown to witness.) This is the paper, yes sir. That was signed in duplicate at that time. I am asked if the paper now shown me is the duplicate. (Paper shown to witness.) I think it is, without comparing it. (After comparing it.) Yes sir, I think it is.

Mr. Johnston: I offer these papers in evidence.

By Mr. Kellogg:

811

I have had those papers in my possession. Mr. Johnston has them now.

Mr. Kellogg: They were in your possession?

Mr. Johnston: They were.

Mr. Kellogg: They come from the defendants' possession.

Received and marked Exhibits 6 and 7.

The Court: They were left with whom at the time?

Mr. Kellogg: With the defendants.

The Court: Produced in Court now, by the defendants?

Mr. Johnston: Yes.

812

By Mr. Johnston:

On this 22nd day of May, 1902, at the time the deeds were delivered, my recollection is that Mr. Ungrich—Mr. Davenport, who took the deeds, had a receipt from Mr. Ungrich for his one-half or distributive share of this amount of \$78,500. I presume it was filed as a voucher. I presume it was filed as a voucher in the Surrogate's office. At that time bonds and mortgages were executed by Mr. Davenport for the executors. I am shown a paper bearing date May 22nd, 1902, and asked whether that is one of the papers I refer to. (Paper shown to witness.) It is.

813

Mr. Johnston: I offer that in evidence.

Received and marked Exhibit 8.

This is the identical paper that was then signed by Mr. Davenport. This is the original of that mortgage.

Mr. Johnston: I now offer in evidence the satisfaction piece of that mortgage, filed in

820 the office of the Register of the County of New York, along with the mortgage which has just been offered and marked Exhibit 8, on June 1st, 1906.

Received and marked Exhibit 9.

The paper which I am now shown bearing date May 22nd, 1902, is another of the papers that was then executed by Mr. Davenport. (Paper shown to witness.)

Mr. Johnston: I offer that in evidence.

Received and marked Exhibit 10.

821 Mr. Johnston: I also offer in evidence the satisfaction piece of that mortgage, produced with the mortgages from the Register's office, filed therein on August 22nd, 1907.

Received and marked Exhibit 11.

I am asked whether the paper now produced, is the third of those mortgages that were executed at that time. (Paper shown to witness.)

Mr. Johnston: I offer that in evidence.

Received and marked Exhibit 12.

822 Mr. Johnston: Also I offer in evidence the satisfaction piece of that mortgage, filed in the office of the Register of New York, on May 22nd, 1907, along with the mortgage, Exhibit 12.

Received and marked Exhibit 13.

I do not recall anything else at present, that transpired on the 22nd day of May, 1902.

Mr. Johnston: Now, I ask you to produce the letters written by James Demarest to the plaintiff, as follows: January 29th, 1903; May 28th, 1903; June 12th, July 13th, September 24th, November 17th, 1903; February 19th,

1904; July 7th, 1904; November 26th, 1904; 823
 April 4th, 1905; June 1st, 1905; June 5th,
 1905; June 14th, July 6th, November 10th,
 1905; November 28th, 1905; December 2nd,
 1905; December 6th, 1905; January 3rd, 1905;
 April 5th, 1905; May 12th, 1906; May 17th,
 1906; May 23rd, 1906; June 2nd, 1906; July
 3rd, 1906; November 26th, 1906; December
 7th, 1906.

Mr. Kellogg: Those are all letters written
 by Mr. Demarest to Mr. Louis Ungrich?

Mr. Johnston: Yes.

Mr. Kellogg: I have not got, and I cannot
 produce the letters of January 29th, 1903; 824
 May 28th, 1903; June 12th, 1903; July 13th,
 1903; September 24th, 1903; November 17th,
 1903; February 19th, 1904; July 7th, 1904;
 November 26th, 1904; April 4th, 1905; June
 5th, 1905; May 12th, 1906; May 23rd, 1906;
 December 7th, 1906. The rest, I will produce.

I find the letter of September 24th, 1903,
 which I produce, and I produce the letters of
 January 3rd, 1905; June 1st, 1905; June 14th,
 1905; July 6th, 1905, is produced; November
 10th, 1905, I produce; November 28th, 1905,
 I produce; December 2nd, 1905, is produced;
 December 6th, 1905, produced; April 5th,
 1906; May 17th, 1906; June 2nd, 1906, pro- 825
 duced; November 26th, 1906, is produced; I
 have produced all that I stated I produced,
 except the letter of July 3rd, 1906, and I will
 look for that. That is the only one I have not
 got at present. I have not produced it yet.

On behalf of the executors, I made payments
 of interest to Mr. Martin Louis. I had corre-
 spondence with him, notifying him of checks being
 ready for him. I had correspondence with him.

826 I had correspondence with him about his receiving interest from the estate, or the executors. I presume copies were kept of all the letters sent by me to him. I am asked if I have got a press copy of the letter of January 29th, 1903, sent by me to him. (Referring to a book.) Yes, I have a letter, a press copy of the letter dated January 29th, 1903. I did not mail the letter. From my recollection, I cannot swear that I mailed the letter. I cannot swear that such a letter was mailed myself, because I did not mail the letter.

Mr. Kellogg: I also produce in answer to the call, the letter of December 7th, 1906.

827

I am shown letters dated September 24th, 1903; January 3rd, 1905; June 1st, 1905; June 14th, 1905; July 6th, 1905; November 10th, 1905; November 18th, 1905; December 2nd and 6th, 1905; April 5th, 1906; May 17th, 1906; June 2nd, November 26th, and December 7th, 1906, and asked whether those are the letters sent by me to the plaintiff. (Papers shown to witness.)

They are letters which were dictated and signed by me and sent from my office.

828

Mr. Johnston: I offer all those letters in evidence with the exception of those of November 10th, 1905, and May 17th, 1906.

Mr. Kellogg: Will you state the dates of those you offer.

Mr. Johnston: September 24th, 1903; January 3rd, 1905; June 1st, June 14th, July 6th, November 28th, December 2nd and 6th, 1905; April 5th, 1906; June 2nd, November 26th and December 7th, 1906.

They are produced from the possession of the plaintiff, to be followed by evidence that he took an interest, with knowledge of how

that interest emanated and what it emanated 830
from.

Received and marked Exhibits 14 to 25, inclusive.

I am shown twenty-six different papers, and asked if those papers, in my opinion, bear the signature of the plaintiff, Martin Louis Ungrich. (Papers shown to witness.) Yes sir, I think each of those are signed by the plaintiff.

Received and marked Exhibits 26 to 51, inclusive.

Between the 13th day of June, 1903, and the 3rd 831
day of July, 1906, I received letters from Martin Louis Ungrich, the plaintiff. I have got the letters there. (Indicating.) (The witness produces the letters.)

Mr. Johnston: I offer in evidence a letter of October 24th, 1904, written by the plaintiff.

Mr. Kellogg: No objection.

Received and marked Exhibit 52.

Mr. Johnston: I offer in evidence a postal card of July 13th, 1903, the only purpose being to show the receipt by the plaintiff from Mr. Demarest of the letter, so as to lay the 831
foundation for offering that letter in evidence.

Mr. Kellogg: No objection.

Received and marked Exhibit 53.

I wrote to the plaintiff a letter of July 13th, 1903.

Mr. Johnston: The letter is as follows:

832

"July 13th, 1903.

M. Louis Ungrich, Esq.,

Dear Sir:—

Please call and get interest check on
Wednesday 15, at 11 o'clock.

Yours truly,

JAMES DEMAREST."

Received and marked Exhibit 54.

Mr. Johnston: I also offer in evidence a
letter dated November 27th, 1905.

The Court: From the plaintiff to the wit-
ness?

833

Mr. Kellogg: Yes, your Honor.

Received and marked Exhibit 55.

At the time that I received this letter, dated
November 27th, 1905, defendants' exhibit 55, I
think that none of the mortgages made by Daven-
port to the executors, had been paid. Q. Did the
Executors have any funds in their hands at that
time for investment, to your knowledge?

Mr. Kellogg: I object as incompetent. That
has no bearing on the case.

Objection sustained. Exception.

834

Mr. Johnston: I offer in evidence the letter
of February 21st, 1904, by the plaintiff to the
witness, only for the purpose of fixing the re-
ceipt of the letter by the witness from the
plaintiff. I offer it all in evidence, but only
for that purpose.

Mr. Kellogg: There is no objection to this
letter.

Received and marked Exhibit 56.

Mr. Johnston: Also I offer in evidence the
letter of March 24th, 1903, from the plain'iff
to the witness.

Mr. Kellogg: No objection.

835

Received and marked Exhibit 57.

I am shown a paper and asked whether that and the paper that was pinned on, was a letter sent by me to the plaintiff, and whether I received that back in the mail from the plaintiff, with the indorsement that is thereon. (Papers shown to witness.)

The Court: Two writings on the one sheet of paper?

Mr. Johnston: Yes.

The Witness: Yes, it is.

Mr. Johnston: I offer that in evidence.

836

Received and marked Exhibits 58 and 59.

On the day when I sent this letter to the plaintiff, one of the Davenport mortgages had been paid.

Mr. Kellogg: The satisfaction piece shows they had not.

The Witness: Yes, that is 1906, I think.

Mr. Kellogg: That is in May, and one mortgage was June 1st, 1906, the satisfaction piece, and the others were August and May, 1907.

The Witness: That was principally to secure an application for—

837

Mr. Kellogg: You were asked whether they had been paid, and I call your attention to the fact that they have not; that is all.

The owners of one of these pieces of property came to me and said, some time before that,—wanted to know if the Executors would receive the money, and arrangements were made, or I communicated with the Executors, and they said they would receive the money on June 1st. I communicated it to the plaintiff. I did, sir.

838 Cross-examination by Mr. Kellogg:

I did communicate to the plaintiff, that one of the mortgages was to be paid off and that the Executors wanted to get a suitable application—another loan—a re-investment of the money. I told him the money would have to be re-invested and I told him I would send him application such as I sent the Executors and he could look at them, also. I am a counsellor at law. I think I was admitted in 1882 or 1883, and have practiced ever since in the city of New York. I knew the father of these two young men. He died in 1901. I had known him—I suppose I had known him since
 839 1882 or 1883, or somewheres along there. I think he was a client in the office where I was originally a clerk; that was where I met him. Before I was admitted. I first did business with him personally, along in 1894 or 1895, or 1893, somewheres along there. I have been in his house. After his wife died his household was composed of himself, his son and his son's wife, I think. His son, Henry Ungrich, Jr. I do not know of anybody else living there. I think Mr. Henry Ungrich, Jr., had a daughter. I know that. I presume she lived there. Until her marriage, I think she lived there. When that occurred I cannot say. Sometime prior to Mr. Ungrich's death. He died prior to 1901,
 840 I think. He lived at 107 West 124th Street. Part of this same property. Henry Ungrich, Jr., and his wife remained members of that household, with Mr. Ungrich, Sr., until after he died. How long before he died I cannot say. I cannot say about that, because I do not know. I was not there frequently. I don't think I was there oftener than two or three times prior to his death. I saw Henry Ungrich, Jr., elsewhere, prior to the old gentleman's death; not frequently; occasionally. He

came to my office. I was the attorney for the old gentleman, at the time of his death. With the son, Henry Ungrich, Jr., I did not have any legal business prior to that; nothing to speak of; I do not recall. I do not recall that I had any litigation with him, or made any charges against him prior to the father's death, in 1901. I do not recall any. I did have some business with the plaintiff, Martin Louis Ungrich, in reference to his divorce; that was in 1896 or 1897. I acted as his attorney at that time. I drew the old gentleman's will. It was drawn I should think five or six years before he died. 1896—I think I drew two wills for him and a codicil. I think I was a witness to both the will and the codicil. I don't remember whether it was signed at my office, or at the house. I don't recall as to that. I think one paper was signed at the house, and one—no, I think it was signed at the office, but I cannot state positively. I do not recall. I cannot say as to whether Henry Ungrich, Jr., was present when it was signed. No, I do not recall. 841

I do not recollect Mr. Ungrich ever bringing his father to my office. I was at the funeral at St. Luke's Hospital. He died in St. Luke's Hospital. His funeral took place in the chapel there. Then the will was read. I think it was read in my office in the presence of Henry and Martin Louis and the executors Martin Ungrich—a cousin. Q. Henry Ungrich had charge of the property for his father, during his lifetime? 842

Mr. Johnston: I object as incompetent and improper, and not within the issues.

Objection overruled. Exception.

A. I presume he had. I had no personal knowledge of that. 843

844 He had charge, to the best of my knowledge and belief. I know of nobody else having charge. The will was read at my office, in the presence of two executors, and in the presence of Martin Louis Ungrich. That is my recollection. I am under the impression that I read the will. I don't remember. Nothing was asked at that interview by anybody—by Martin Louis Ungrich, as to what personal property there was. Not to my recollection. I haven't any recollection of any question being asked by him. No questions asked by Martin at all, as to whether or not there was much personal property. I don't recollect anything about that. I do not remember that it was stated on this
845 occasion, that there was \$25,000 worth of personal property left, in addition to the real estate. No sir, I do not. Nothing of that kind said. I don't recall it; no sir. I have no knowledge of it; I don't recollect it. After this will had been read I did not see Martin Louis Ungrich, the plaintiff, often. I don't know that I should say frequently. He did not come to me and complain about the will. Q. Did he ever come and ask you if he could not take steps to set that will aside?

Mr. Johnston: I object as immaterial, irrelevant and incompetent, and as not within the issues.

846

A. No.

The Court: The witness says, "No."

The Witness: I have no recollection.

I will not swear positively he did not. I have no recollection that he did. No sir, I haven't any recollection. I do not remember stating to him that there was plenty of time for him to do that; that he had a certain length of time to do it. I

never made any such statement to him, to my 847
 knowledge, that I can recollect. I never made any
 such statement as that to him. I am sure of that.
 I know there is a time limit, for setting a will aside.
 What that is I cannot express my opinion off-hand,
 as to that, state the law off-hand. As to what the
 personal property left was there was some securi-
 ties and money in savings banks, I think. I do not
 remember what amount it was. I offered the will
 for probate and it was admitted. I proved it, and
 we took steps to have the transfer tax fixed and
 appraisal made. I acted as attorney for the ex-
 ecutors and trustees during that entire time. I
 am not acting yet for them. I haven't had any- 848
 thing to do with them recently, except when inter-
 est has been sent to me, I have sent it to them. I
 have collected the interest for them. I have not
 got the record in my book of the date of the first
 charge in that divorce proceeding. And I have
 not got my record here. You asked me for records
 for 1900, and I looked in 1897. I had no record
 whatever of any charge being made to him at that
 time. In his divorce suit my impression is that his
 father paid my bill, whatever it was; that is, he
 paid the money, or got it from his father. What-
 ever my charge was, was paid. Paid by his father.
 When he came in these different dates during 849
 1902, before this transaction which you complain
 of in this suit, I do not recall his mentioning the
 personal property, except that he spoke at times
 of the mortgages; he claimed that some mortgages
 which his father had owned and given to his
 brother some years before—. He claimed they
 should belong to the estate; and he thought they
 belonged to the estate. These mortgages amounted
 to about \$25,000 at that time; my recollection. I
 don't remember what the amount was.

850 Mr. Kellogg: Have you got those, Mr. Johnston?

Mr. Johnston: I have the assignment. I thought I had all the papers, but I have not.

Mr. Kellogg: The assignment will do.

Mr. Johnston: All in one instrument, and I have the satisfaction piece and the assignment. (Producing the papers.)

Mr. Kellogg: Am I right about the amount altogether?

Mr. Johnston: \$27,000. They aggregated \$27,000. \$25,000 was due.

I am shown an assignment and asked if those
851 are the mortgages which I have reference to.
(Papers shown to witness.) Yes, sir.

Marked Exhibit G for identification.

I cannot recall the date when he first spoke of the mortgages. He spoke of mortgages which his father had owned and given to his brother; and said that he thought, something about their having been transferred to avoid personal taxes, but he would not make such a claim as that, because that would make his father out a fraud, and I remember his stating that. What he referred to, was, he was speaking of the mortgages that had been
852 given to his brother by his father. I cannot recollect what date it was when he first spoke of that. That is impossible. I think he spoke about it before May 22nd, 1902. How long before I cannot tell. These conversations that led up to the making of these deeds by the executors to Davenport had been going on since early in the year 1902, February. Before that, he had complained that the repairs were excessive and every time that quarterly settlements would be made, then he

would complain that he never knew where he was 853
 coming out; that the repairs were excessive and
 he never could tell what his income would be, and
 he wanted the property sold on that account so
 that he could have a fixed income. That was what
 he said. I think he said that along in 1901. The
 executors used to make their quarterly settlements
 in my office. The plaintiff would be there. I did
 not see the plaintiff very frequently alone. Not
 very frequently; I saw him alone occasionally.
 Occasionally he came to get his money, or ask some
 question. I don't remember that he came to see
 me as often as once a month. I don't remember.
 I don't know. He may have been there on an
 average of once a month. Or he may have been 854
 ten or twelve times a year, probably more. I can-
 not tell you anything definite. I don't recollect
 that he came a little oftener in the early part of
 1902. I can recollect his being in there occasion-
 ally. I can say nothing any clearer or more
 clouded than that. He was very anxious to have
 the property sold. That was the principal thing.
 He did not want a share in the personal property.
 I cannot say that he did. He asked me what be-
 came of the \$25,000, he said, "Which my father
 gave to Henry—the mortgages which my father
 gave to Henry." I said that was a matter for him
 to take up with the executors. I had nothing to do 855
 with that. He knew the mortgages had been given
 by his father to his brother, and that was all there
 was to it. I did not say to him that I would try to
 get his share for him. No sir, not his share. I
 talked to his brother. I did at one time tell him I
 would be glad to do anything to have his brother
 do something for him. No question of any rights.
 I do not recollect when they commenced to pay,
 or to make the quarterly settlements in my office;

856 whether that was early in 1901, whether they commenced with the first quarter or not, I don't know. That first year, from the estate, I think he got about \$780 to \$800 a quarter. That would be at the most, \$3,200 a year; yes sir; I think that is about what he got. That was paid by the checks of the estate, I think. I think it was not paid through me, sir. I don't think I paid him anything until after the property was sold. It was paid at my office, by the executors, the two executors. On those different occasions when the money was paid sometimes both of the executors were present, and sometimes they were not. Martin Ungrich, the executor, came to my office quite frequently. When the others met, he would be there, or if he was not there, he would send word, or send the check indorsed, or something like that. Henry Ungrich had charge of the property; collected the rents, I think. I think he was there more frequently than Martin. You ask if I kept any books which would show which executors were present at my office at any time. Only in my day book I would write down each day, the doings of the day, and who called, etc. I have the book here, for 1902.

858 I have got my book here. This is a book, a sort of charge blotter that I have kept upon my desk, in which I intended to put down each day such items of business as were transacted. It don't always contain everything, but I try to have it do so. I never had any cash book. I haven't any book in which I show the receipts of money paid for fees, etc. The only record I have and ever kept in fact, were the little slips for the month. I have those slips for two or three years. I never keep them for more than a year or two. I have not got them for 1902. I don't keep any book

showing the money I receive and charge. I pay 859
 out the disbursements when I make them—if you
 look in this book—I had a running account; I had
 a book in which I collected the disbursement
 money. I kept a bank account. Yes sir; put in
 my book. In 1902 I had an account in the Colonial
 Trust Company and one in the Nassau Bank. The
 Nassau Bank account was comparatively nothing
 at that time. I did not use it to speak of. My
 main account was in the Colonial Trust Company.
 I did not keep any ledger, no sir; I kept a day
 book; that is a day book in which I kept all moneys
 which I collected for my clients and charged
 against clients. That refers particularly to the
 fact where I collected interest on mortgages, and 860
 moneys for estates, and rents, etc. I have no
 record anywhere of moneys I received, outside of
 my check book. I have my check book for 1902.
 Yes sir; I have the stub of 1902—check stubs. I
 have an entry there of February 27th, 1902. You
 may see it. (Hands book to counsel.) The sec-
 ond item. I have no recollection of that date
 apart from that entry. The only recollection I
 have is—I was about to say that it might very
 well be—

Mr. Kellogg: I read, “Ungrich Estate,
 Thursday, February 27th. Meeting of Ex-
 ecutors and M. L. Ungrich. Division of per- 861
 sonal estate; general consultation; account-
 ing ordered.”

I have no doubt it is right. I think it related to
 the accounting settlement that was made at that
 time.

Mr. Kellogg: Have you a letter of about the
 27th of February?

862 This is February 27th.

Mr. Johnston: You are sure this is 1902?

The Witness: Yes.

I do not remember what time of day it was. The executors came.

Mr. Johnston: In answer to your request, I have no letter from Mr. Demarest. My recollection is I have such a letter from the plaintiff himself. You were asking about letters of Mr. Demarest's.

Whether there was any division of the personal
863 estate, I really cannot say. I cannot remember any of the details of the coming there on that day. It is six years ago. There was not a discussion about \$25,000. I can remember that, because there never was any such discussion between the executors in my hearing. That is what I am talking about. You are asking me if there was a discussion about this matter when the executors were there. There was no discussion when the executors were there present and Louis was present in regard to the \$25,000, no sir; I never heard any. At this particular date, I cannot give the conversation piece by piece. This is six years ago. I
864 do not recall the conversations that were held then. I do not remember that upon that date, the executors sold to Henry Ungrich, Jr., the personal securities. I do not remember it was that date. I know a bill of sale was made and Mr. Ungrich took them. They were sold. Certain securities. They were sold, as I recollect.

Mr. Kellogg: I offer this in evidence. It is a bill of sale of a part of the estate securities.

Mr. Johnston: Which we produce.

Received and marked Exhibit H.

Mr. Kellogg: Did you offer a letter of February 24th, 1902? 865

Mr. Johnston: No, I did not. I did not have such a letter.

(Paper shown to witness.) This is my signature, sir.

Mr. Kellogg: I offer that in evidence.

Received and marked Exhibit I.

February 27th was on Thursday, I think. I do not recall any other papers signed that day. I cannot recall the conversation. I now turn to my book again and find what is the next interview 866 that I have reported there. Tuesday, March 4th. (Book handed to counsel.) The first item.

Mr. Kellogg reads: "Tuesday, March 4th, Ungrich Estate. Meeting of Executors. Adjourned to March 6th, 11 A. M."

I don't know that there was a meeting. It was adjourned. I have no note of anybody being present. No recollection. I now turn to March 6th. (Book returned to plaintiff's counsel.)

Mr. Kellogg reads: "Thursday, March 6th, Ungrich Estate. Meeting Executors, and M. L. Ungrich, quarter division made; went to office of Tax Commissioners." That means the quarter division of the income, the quarter ending March 1st, 1902. I paid Mr. Ungrich a portion of the rents from the property. The estate's check, I think, was given. That refers to a visit to the office of the Tax Commissioners relative to the personal estate — assessments. To have it adjusted at a proper figure. I don't remember what the assessment was that year, 1902. That was the estate assessment. The next entry is March 7th. I did not 867

- 868 read the item. If you read it, whatever it says. Only Henry Ungrich, Jr., was present. The next one is March 10th. Nobody present. This is the memorandum. "Went to the office of the Tax Commissioners in the matter of the personal estate and assessment." The next one is March 26th. (Book handed to counsel.) I think Martin was present. M. L., the plaintiff, was not present. The next one is March 27th, "Saw P. A. Symth about appraisal of the property." Neither of the Ungrichs was present on March 27th, according to my record. And the interview of April 12th, Louis was not present, and no one was present but
- 869 Martin Ungrich, the executor. And April 15th, Martin Ungrich; April 19th, Louis was not present. May 3rd, H. Ungrich called on consultation. Louis was not present then. (Witness reads.) "May 5th, called meeting of Executors for 7th, at 2 P. M. May 6th, Martin Ungrich called. May 6th; received card from Henry Ungrich. No meeting on the 7th. On May 9th, Louis, the plaintiff, was present. A consultation of Executors and M. Louis Ungrich; petition for accounting and schedules signed. Received balance of bill, \$1,213.19. The next is May 12th, Ungrich Estate, Monday, May 12th, filed inventory in Surrogate's office. M. Louis Ungrich called; consultation. May 14th,
- 870 Ungrich Estate, H. Ungrich, Jr., and M. Louis Ungrich called; consultation. May 16th, Ungrich Estate, meeting of Executors and M. Louis Ungrich; contract for sale of real estate signed. May 19th, worked on papers. Wrote H. Ungrich. May 21st, drew deeds and bonds and mortgages. May 22nd, title to real estate closed; deed and mortgages; received \$105 on account of Revenue stamps, etc." I now turn to the entry of May 9th, 1902, and read that entry under that date. (Wit-

ness reads). "Consultation, Executors and M. Louis Ungrich. Petition for accounting and schedules signed. Received balance bill \$1,213.19." Those papers were signed by the executors. I have no papers signed by M. Louis Ungrich on that date. He did not sign the petition or the schedules. I cannot relate the details of the conversation on that date. I can tell you what was done. The schedules were gone over. Who came there first I could not say. I cannot tell whether Louis or the Executors came first. I think there was some talk about the real estate that day, May 9th. I can only state in a general way, Mr. Kellogg. I cannot relate the conversation. I know it was discussed. Every meeting, that was. I can only say that I think there was. That is as definite as I can be. I cannot remember any more definitely than that, because I have no positive recollection. I haven't any recollection of any conversation on May 9th. The entry of May 16th is "Meeting of Executors and M. Louis Ungrich; contract for sale of real estate signed." That meeting lasted—they were there probably an hour. I cannot recall who came first. I should say they did not come together. I do not recall as to whether the two executors came together.

Mr. Kellogg: Let us have those two contracts that were signed on that date.

Mr. Johnston: You are getting mixed. There was a contract of May 22nd.

Mr. Kellogg: Let me see that.
(Paper handed to plaintiff's counsel.)

On May 16th after the executors and M. Louis Ungrich were all there, I told them that the appraisals were ready to be presented. I cannot recollect whether the appraisals—that was the first

- 874 day the appraisals were produced or not; whether they had been there at the previous meetings. I cannot recall as to that. My best recollection is I think the appraisals had been presented before that. When they were presented I cannot remember; I do not remember when they were presented; I have no memorandum of it. I have no memorandum to show when they were presented to the executors first, and Mr. Ungrich; they met there together. I myself got Mr. Symth to make this appraisal. The estate paid him. The appraisals were present on May 16th. I know that Mr. Henry Ungrich spoke of the appraisals and said that he thought the prices were higher than the
- 875 property should sell at. That was after the people came together. I think that the sale of the real estate to Henry Ungrich, Jr., was discussed at the meeting of May 9th. He wanted to take the property. He wanted to buy the property. Henry Ungrich, Jr. He said he was willing to buy it at a proper figure, and the appraisal I think had then been made, and he said the price was higher than his appraisal. He had gone over it with some friend—. That was what he said, yes sir. Martin Louis was present then, yes sir. Mr. Martin Ungrich, the executor, made his price on it, \$157,000, which was \$5,000 more than the appraised value of Mr. Smyth. Mr. Henry Ungrich,
- 876 Jr., said he would be willing to take the Lenox Avenue property, and the plaintiff, Mr. Martin Louis, said he must take it all, or none, if he wanted to take it. That was on May 9th. I did not intend to say that. I could not recollect any of the conversation of May 9th, but there were so many of these conversations, it is difficult to place them; six years ago, really. I have a memorandum here of seeing Mr. Smyth in regard to the appraisal; that is in regard to the making of the ap-

praisal. That was March 27th. That I saw Mr. Smyth. And asked him to make the appraisal. He sent it to me and I had it ever since April 4th. I don't know what date I received it. I think they were shown before May 9th to Mr. Louis Ungrich. 877

The Court: The witness finds it hard to fix the date. Do you not?

I cannot exactly recall when those appraisals were first presented to those three gentlemen. I cannot swear what the date was. I can swear they were presented positively prior to May 16th. I am sure they were. I mean to the three gentlemen. We never had a meeting if it was possible— 878
They were shown to them soon after they were received by me. How soon after I do not know. That I cannot tell you; either April 4th, or May 16th—not April 4th; that was the day they were mailed to me. I may have received them subsequently. I know they were there May 16th—May 9th, I mean to say. I don't see any entry in here as to when they were first presented to the executors and to Mr. Ungrich, the plaintiff. The individual appraisals of the executors were not in writing, all verbal; mentioned the amounts. They furnished no written appraisal. Who handed these appraisals to the plaintiff, these Smyth appraisals, that I cannot say, who handed them to him. 879
They were handed from hand to hand and went around to everybody between them. Whether I handed them that I cannot swear to. I cannot tell who did hand them. I saw him have the appraisals. Pardon me. I did not intend to say I did not see him read them. You asked me if he read them. Yesterday I said I could not swear that he read them. That was what I thought I said. I cannot swear who handed them to him, no sir. I

- 880 saw each one of the parties take those appraisals and look them over; each one of them; they were handed around. If Henry Ungrich, Jr., had been in there, he had probably seen them. I did not show them first to Henry Ungrich, Jr., before I showed them to Martin Louis. I don't know that I did, I won't swear that I didn't. It is not my best recollection, that having obtained the appraisal, that I showed it to the executors. Not at all, because everything was shown—. On May 16th I think the contract was drawn after they came there. I cannot recollect whether that was drawn that day; I think it was drawn after they came there and then signed. It was drawn up—I
- 881 dictated it and it was typewritten by the stenographer or clerk. There had been conversation prior to this in which the acquisition of the real estate by Mr. Henry Ungrich, Jr., had been agreed upon. I don't recall whether the contract was drawn that day, or was prepared when they came there. The entry in my book is May 16th, the item is, "Contract signed." I have no memorandum of when that was drawn. You say there seems to be a change from 12 o'clock to 2, in the closing of the title. (Paper shown to witness.) I do not remember how that happened. That does not refresh my mind that I had the paper already drawn
- 882 and the hour of 12 was not convenient. That don't refresh my memory. It may have been dictated then and the hour changed after it was dictated. I am asked whose writing that is on the back. (Paper shown to witness.) I don't know; that has been— I guess that is Mr. Johnston's handwriting, or some memorandum that he put on it. It was not made at the time.

Mr. Johnston: My father did that. That is 883
his handwriting.

The appraisals may have been present May 9th. I did not mean to say they were first presented there, because I think they were presented before that. I cannot swear positively to the date they were presented first. I looked up every source of information I had and I could find nothing positive on that point. I advised them on some date prior to May 16th they could sell at auction. I presume it was May 9th. I think it was. I am shown Defendant's Exhibits 6 and 7, which appear to be signed May 22nd, 1902. (Paper shown to witness.) These were drawn up, I cannot tell the 884
day. No memorandum on my book as to those. I rendered the executors bill for counsel fees. Itemized, not for counsel fees; disbursement items. I dictated that paper. They were dictated, and they were executed in duplicate. One for each of the executors. They had them that day. Then they were put back in the Estate papers. That paper was shown to Mr. Henry and Martin Louis Ungrich when the meeting was held on the 22nd of May. I had it drawn. There was no lawyer present other than myself. Louis was not represented by counsel. He was not represented at any of those interviews by counsel. I took his acknowl- 885
edgment to both of these papers and then they were handed to the executors. The drawing of that paper was arranged for—discussed at the meeting of the 16th of May, by the executors and all of us. He did not have any counsel then. Martin Ungrich, the executor, insisted that the amount should be fixed at \$157,000. That is my recollection. That is the way it came to be fixed at \$157,000. Yes sir, he added the \$5,000. That was the

886 way it was done to meet the demand of Martin Ungrich. I don't think Martin wanted to have the property sold at auction. I don't think so. I never heard him say he wanted it sold at auction. I don't recall his saying that. I won't swear that he did not say it, or never said it.

Mr. Kellogg: I want the check of Henry Ungrich, Jr.

(Check produced by Mr. Johnston.)

\$6,000 was not paid by Henry Ungrich, Jr., nor agreed to be paid, before these papers were signed, no sir.

887 Mr. Kellogg: Let me have that paper.
(Paper produced.)

(Paper shown to witness.) That is the handwriting of Mr. Henry Ungrich, Jr., on this slip, yes sir. Q. What does it say?

Mr. Johnston: I object; the paper is the best evidence. Put it in evidence.

Marked Exhibit J for identification.

888 The talk about the \$25,000 settlement which we called \$25,000 for those assigned mortgages and stock, the \$25,000 of personal property commenced in the spring, as far as Mr. Martin Louis was concerned. He spoke of the mortgages which his father had given to his brother some years ago. He thought it was not fair, or something like that. I told him, "You know your father gave those to your brother years ago." I presume I did mention it to Henry Ungrich, Jr. I think I did. I told him his brother spoke of the mortgages which his father had given him some years before. I said "He seemed to think it was not fair that his father had given you those mortgages." That

was all. I did not tell him that he wanted some 889
 portion of it returned. How many talks I had
 with Henry Ungrich, Jr., about that I cannot say.
 I may have had more than one; I cannot recall how
 many. I did not say that Martin Louis Ungrich
 wanted half of the \$25 000. I have no recollec-
 tion of saying any such thing as that. Martin
 Louis did not say he was entitled to that. Martin
 Louis asked me if I could not get his brother to do
 something for him. He wanted to buy a house
 and I told him if there was anything I could do, I
 would be glad to do it. And he made mention
 about his brother and his brother said those mort-
 gages had been assigned to him, they had nothing 890
 to do with the estate, or the affairs of the estate,
 and I said "I know that." When I said I would
 do what I could for him, it was some time in the
 spring. I don't know when it was. I told Louis
 Ungrich that I would be glad to help him. He
 used to talk before that time, about the property.
 He may have mentioned the real estate. He men-
 tioned it at different times. He did not say he was
 largely indebted and he had to have money. No
 sir; I don't recall that; he never told me that. He
 spoke of buying a house. He spoke of buying a
 house, that is the only thing I recollect about it.
 I think it was along in the spring of that year; I
 cannot fix the date positively or any more nearly. 891
 I don't recall any letter I wrote about it. After-
 wards I induced Henry Ungrich, Jr., to do some-
 thing of this kind, yes sir; it was after the real
 estate was sold. He finally agreed to the amount
 of \$6 000, which I paid him. I presume this is the
 check; I don't know. (Paper shown to witness.)
 I presume this is the check. I don't know of any
 check of that amount to his order.

Mr. Kellogg: I offer the check in evidence.
 Received and marked Exhibit K.

892 I saw Martin Louis Ungrich the day the release was executed in my office, on June 23rd, if that is the date.

Mr. Kellogg: Is there any other release?

Mr. Johnston: (Producing a paper.) I didn't know we had another one. I never saw this one.

893 I have an entry in my diary of June 23rd. On Monday, June 23rd, Henry Ungrich called; M. Louis Ungrich called. Henry delivered check. M. Louis Ungrich signed release. I prepared that release at the time they were there. Right then and there. He acknowledged it in my presence. The two brothers went away together. The check speaks for itself. Yes, pardon me, it is on the Harlem Branch. I didn't know. The check shows. I didn't know where the check was drawn on. (Book shown witness.) I think that is the check which was paid on June 23rd. I saw it on that date. I am basing my recollection on the memorandum in my book. I do not have any recollection of the time of day it was. I cannot say as to whether those two men came there together. I have no knowledge of how the check was paid. I didn't receive from Martin Louis Ungrich \$500 on June 23d. Not that day. He called a day or 894 two later. A day or two later I received \$500 in bills. I did not claim that I was entitled to \$600 at first. I will give you the conversation if you will let me, as I recall it. I don't recall as to that, whether he had a receipt or not. In my book there is a deposit on the 24th of \$500, if that is the amount. (Produces a book.) That is the only item I have. I don't know whether it refers to that or not. (Indicating.) That is the succeeding day. Entry on check book, deposited June

24th, 1902, \$500. I don't know if that refers to 895
 that \$500. That is the only entry I have. I know
 that he paid it. I don't recall as to whether he
 had a receipt or not. I remember the circum-
 stances of his coming down. You ask: "Did he
 say that he came down to settle with you, for mak-
 ing this settlement?" He said—practically that
 is what he said. He did not ask me how much my
 bill was. He asked me how much did I think it
 ought to be. No, referring to the settlement I
 had made with his brother; you call it in regard
 to the \$25,000, and I call it another. The settle-
 ment that he had made with his brother. On the
 settlement about which I talked to his brother. I 896
 don't recall as to whether I wrote him a letter in
 regard to it or made any written memorandum. I
 may have done so. I took some part in having an
 accounting of the estate, there were two account-
 ings. Q. Yes, I understand that; they have been
 set up here in bar. Now, was Martin Louis Un-
 grich represented by any other counsel than your-
 self on those proceedings?

Mr. Johnston: I object as immaterial and
 not the best evidence, and as incompetent and
 improper.

Objection overruled. Exception.

A. He was not represented by me on those ac- 897
 countings; I was the attorney for the executors.

He was not represented by any counsel that I
 know of! he was cited; citation was served on him.
 I think there was no appearance on his behalf.
 The only other thing I recollect doing for him in
 1902 is I think I drew his will. I think the wife's
 will was in the succeeding year, 1903. I think his
 will was drawn in 1902. Exclusive of that \$500
 and exclusive of the two wills, I did not act during

898 the year 1902, for Mr. Louis Ungrich. I don't recall any business that I did for him personally. \$50 that I received in 1902 was for services rendered the estate in collecting the interest and my bill to the estate. Mr. Ungrich, the first time, after the property was sold, the income was paid to him. When I paid it over to him he said, "Now who pays your bill? Who pays you for what you did for the estate?" He says, "Does that have to come out of this income?" I said, "I supposed it would; there is nothing else for it to come out of, unless it comes out of the principal and that wouldn't be right." He said, "What are you going to charge for that?" I said, "My charge for the collection and disbursement of interest is two and one-half per cent. Anything else there is for me to do, I would have to charge the estate for. I collect a good deal of money on bonds and mortgages and that is the charge, I said. He said, "If I will have to pay that, it will have to come out of me, and I cannot help it, and I will have to pay every time I get the interest." I said, "It is as long as it is broad; it comes out of you," I said, "as long as it has to be paid." We figured out what it would be and it amounted to \$25 or \$30. I said that in any case it would have to be paid for. There was taxes to be paid. And he said, "Well, 899 why not make it every six months?" I said, "If that is satisfactory to you, that is to me." That is the way \$50 came to be paid to me every time he received his six months' interest. I rendered no bill to the executors for it. During this time I was also attorney for the executors and trustees. I collected the interest and paid the personal taxes. I was the attorney for the executors and trustees during this time. That was what the money was paid to me for. The interest which the executors 900

received from Henry Ungrich, Jr., was handed to me, and I paid it over to Martin Louis, while he owned the property, yes, sir; after he sold it, then I received it from the owners of the property. During all this time I remained the attorney for the estate. Personal taxes were paid, yes sir, the estate was. I went over for the estate to get it reduced; of course, it was for his benefit. He did not pay me \$50 for getting it reduced. Never, that I recall. That was not for personal taxes. That is at the time the interest was paid; June and December, that was not the personal taxes. I did not in the year 1902, receive from him \$50 in addition to the \$500, no sir. I have no memorandum of the amounts that I received. That would be \$50.00 for every six months. If you choose to put it so. I have no record of the receipt of any money from him in 1902. He did not pay me for that. I received in 1903, aside from the will, or for this work which I have described, \$100. I received in 1904 from the plaintiff for professional services, \$100. It was for services rendered to the estate. I meant collecting and disbursements of interest and such things. Just as I have described it. 1903, \$100; 1904, \$100; 1905, \$100; 1906, \$50. That is the last. I cashed the estate check for him. I gave him \$785. He cashed it himself; he cashed it himself and I deposited his check which was drawn on the Harlem Trust Company, I think. He did not pay me anything at that time. It was not a \$50 check, no sir, \$785. I think I drew his will in 1902, in the summer. Her will I think was in 1903. The date of her will, when I drew that was June 16th, 1903. Annie V. Ungrich. That is June 16th, 1903. His will was August 25th, 1902. August 25th, M. Louis Ungrich called in re will. There was nothing on the 26th. I don't recall that he paid anything more than the amount of \$50 that

904 he paid me. These receipts, all these Exhibits from 26 to 51 inclusive, were all written in my office. September 3rd, Exhibit 27, is in my handwriting. 26, 28, 29, 30, 31, is typewritten partly, and partly in my handwriting; 32 is in my handwriting; 33 is in my handwriting; 34, 35 and 36 are in the handwriting of my clerk; 37, 38 and 39 are my handwriting; 40 and 41 are in the handwriting of my clerk; 42, 43 44, 45, 46, 47, 48, 49, 50 and 51 are in my handwriting. The man that I refer to as my clerk, Mr. Davenport, he is the H. K. Davenport, the grantee in the deed. I think he gave him \$25 for acting in this transaction. \$50 is not the charge made in the account. Oh, no; no charge
 905 of that kind made for that. That is not charged to the estate. There were no mortgages on this property when the \$78,500 mortgages were put on, free and clear. That is, I had no knowledge of any mortgages. I think it was free and clear. I didn't examine the title, I recollect that Mr. Ungrich, the plaintiff, spoke of four and one-half per cent. interest and Mr. Ungrich his brother, Henry Ungrich, Jr., he said he wouldn't pay over four per cent. if he took the property. That was before that contract or memorandum of the terms was prepared. Four per cent. on \$78,500 is \$3,140.

906 The Court: That was the amount of the interest on the mortgage?

The Witness: Yes, sir, a year's interest.

The personal tax that was levied was \$25,000 It was put on but it was reduced. The first assessment put on was \$100,000. He paid a tax of \$25,000. The tax on it runs different amounts different years; I think $1\frac{1}{2}$ per cent. on \$25,000. The

annual tax was about three hundred and seventy 907
odd dollars.

The Court: Who paid the \$370?

The Witness: Paid out of the income.

The Court: Paid by the plaintiff?

Mr. Kellogg: Yes, sir; so that his net income was \$3,140, deducting \$370 from that.

No money passed at this transaction, upon the transfer to Davenport or the making of the mortgages for \$78,500. I am not attorney for the estate now, or the trustee. I have had nothing particular to do with the estate. There was some interest sent to me last month and I sent it to the executor, Mr. Ungrich; sent him the check. I 908
haven't had anything to do with the estate; they have invested their money on bond and mortgage and loans without my assistance; the moneys that have been paid in. I had to pay a mortgage recording tax; it was last week, on a mortgage of \$10,000, which was taxable, in order that it might be exempt from personal tax; I suggested to Mr. Ungrich it ought to be paid. I haven't had any dispute with them. My relations are amicable and friendly with them. I paid a mortgage tax for them last week on one of the mortgages.

Q. Did you know anything about the habits of the plaintiff? 909

Mr. Johnston: I object as not within the issues and incompetent and improper.

Objection overruled. Exception.

A. Why, I know that some years ago he was somewhat wild, when he was a young man. I know that.

Q. Wasn't he in the habit of drinking to excess?

910 Mr. Johnston: I object on the same ground.
Objection overruled. Exception.

A. He told me that he was a changed man. In the spring when he wanted me to get his brother to do something for him. He told me he was a changed man in 1902. Before that time I had not known he was very intemperate. Not intemperate; I didn't know it of my own knowledge. He never showed it in my presence. Some of those meetings that were called here in regard to these executors and trustees matters, in the spring of 1902, were adjourned because he didn't come. I think they were.

911 Q. And weren't you told that it was because he was drinking and unfit to come?

Mr. Johnston: I object as hearsay and incompetent and improper.

Objection sustained.

Q. Did you talk on the subject, with Henry Ungrich, about it?

Same objection.

The Court: Answer yes or no; did you talk with him about it?

A. No.

912 Q. Did you talk with anybody about it, the other executor? A. No, sir.

Mr. Johnston: Same objection.

The Court: He says "No."

I don't recollect filing a lien for him in 1897, for architect's services. I think he consulted me once about a claim. He had a claim against his father-

in-law's estate. I remember that. Oh, yes, it 913
was before 1902.

By Mr. Johnston:

Referring to Plaintiff's Exhibit H, bearing date February 27th, 1902, you ask me whether I recollect any conversation that occurred between the plaintiff and the defendants in regard to a sale of the shares of stock mentioned in that paper. I recollect the conversation. The conversation took place, and Mr. Henry Ungrich, Jr., said he would be willing to take those stocks at a proper figure. I said they were personal property. I didn't know of any objection there would be to his buying them any more than anybody else, and 914
he said he would be willing to take them and did take them and paid for them. That was in the presence of Martin Louis. Yes, sir, they were all there together. I don't recall anything that Martin Louis said at that time. That occurred on the day that paper bears date, on the 27th day of February, 1902. I do not know what the market value of those shares of stock were, on that date. I know there was discussion on that date as to fixing a price for those stocks. After such discussion, the price was so fixed. I am shown an accounting proceeding, filed September 25th, 1902, and the decree thereon, in the Surrogates' Court, 915
and the petition for an accounting, produced from the files of the Surrogates' Court, and asked whether that is the account that I referred to in stating that there was a meeting of the executors and of the plaintiff on or about May 9th, 1902, at my office, concerning a petition for an accounting and schedules and they were gone over at that time. That is the account that was prepared in the spring of 1902. That was shown to the plaintiff by me. He was present when the schedules

916 were signed; they were all present there. I saw the schedules in his hands. He looked them over, and the executors looked them over.

Mr. Johnston: Now, I offer that account, petition, citation, vouchers and decree in evidence.

Mr. Kellogg: I would like to have this offer made separately, because I am sure we don't want all the Surrogate's office papers here.

The Court: You only want sufficient to support your averment.

917 Mr. Johnston: I want the petition, the citation showing service, and the account itself, and such of the vouchers as are material to the questions which have been put here; and one of those is the receipt that was given by Henry Ungrich, Jr., for his share of the estate, and for the personal property that he took over. Those I want in evidence and I want the decree. Of course, the balance of the vouchers are not material, but I cannot pick them out. The Clerk left these papers with me, from the Clerk of that Court.

I offer in evidence the decree, petition, citation and proof of service and the account. I offer in evidence the—

918

Mr. Kellogg: That is the end of that offer.

Mr. Johnston: I am not through. I offer in evidence the vouchers of which this witness has testified, which were signed by Henry Ungrich, Jr., for his share of the estate and which your Honor did not permit him to testify to, on the ground it was secondary evidence. No other vouchers that are included in these papers.

Mr. Kellogg: I object on the ground that 919
I cannot identify them.

Mr. Johnston: Not whether they come from
the files of the Surrogate's Court?

The Court: I understand that is not
pressed?

Mr. Kellogg: No.

Mr. Johnston: I offer in evidence the peti-
tion and the account.

The Witness: This accounting, I think,
comes from 1902, before the sale. There is
no voucher for \$78,500; that would be in sub-
sequently. For the personal estate; for his
share of the personal estate.

Received and Petition marked Exhibit 60,
the account, Exhibit 61. 920

Mr. Johnston: I offer in evidence the cita-
tion and proof of service.

Received and marked Exhibit 62.

Mr. Johnston: Also I offer the decree, filed
in the office of the Surrogate's Court on Feb-
ruary 25th, 1902.

Mr. Kellogg: I would like it to appear on
the record there was no appearance for the
plaintiff in that decree or anything else other
than the petition.

Received and marked Exhibit 63. 921

I am shown a paper bearing date February 27th,
1902, and asked where I found that paper. (Paper
shown to witness.) Amongst the vouchers filed
with the account. The accounting proceeding
which has just been offered in evidence. That is
the paper which I referred to in my cross-exam-
ination as a paper signed by Henry Ungrich, Jr.,
of February 27th, 1902.

921 Mr. Johnston: I offer that in evidence.
Received and marked Exhibit 64.

I am shown Exhibits 6 and 7 and asked whether there was any other copy of these papers, prepared, executed and delivered or not. I only recall two copies. I do not recall one that was executed and delivered to Martin Louis Ungrich, the plaintiff. I will state in full the conversation that occurred between me and the plaintiff at the time that I received from him the \$500. He came to my office a day or two after the day he was there with his brother and signed a release, and he said, "I want to pay you for what you did for me in fixing
923 matters up with Henry." He said, "I am very much pleased. I am sure I would not have done as well if it had not been for you and what do you think I ought to pay you?" I said, "Louis, I suppose anybody would charge you probably ten per cent. at least, in a matter of that kind, but I will not make that amount." He said, "How would \$500 be?" I said, "That is what I thought of." He said, "That is perfectly satisfactory to me if it is to you," and he paid me. That was what was said at the time, but he also said this; he said he had drawn some money uptown, and,
924 "I have more, if you are not satisfied with that; I want you to be satisfied." I said, "That is perfectly satisfactory to me." And the general release that I referred to, is the paper that you now show me. (Paper shown to witness.) I said he called a day or two after a general release. That is what I thought I said. Yes, sir, June 23d, 1902.

Mr. Johnston: I offer it in evidence.
Received and marked Exhibit 65.

I never made any charge to the executors for 925
some work—for the work of collecting the income, collecting the interest and paying it over. The last charge I made to the executors was up to February, 1903, I think.

By Mr. Kellogg:

Henry Ungrich paid the interest on this \$78,500. He did when he owned the property. When he owned the property over there. While he owned all of the property, Henry Ungrich, Jr., paid the interest personally; he sold part of it. He drew checks to the order of the estate and sent those checks to me and then I had estate checks payable to his brother. Those were sent to me and 926
Mr. Martin Ungrich called and indorsed the checks, so that his check would be deposited to the estate and I sent that back to be deposited to the estate, and then delivered to the plaintiff the check which was drawn to his order by the executors. That was in 1902. Not in 1903 and 1904. In 1903 Mr. Ungrich sold part of the property; then the interest cards were made and placed in my card index, notices sent to the new owners. I did not get in all the years all the interest from Henry Ungrich, Jr. In some cases the interest was paid to me directly by the people on whose property the mortgages were held. For the benefit of the estate. I turned that—I collected that money—I deposited it in the bank and collected the checks. I did not then make a check or a payment to the trustees. I drew checks to Martin Louis Ungrich and took duplicate receipts. I drew checks to Martin Louis Ungrich. I didn't send it back to the trustees and they send it back to me. For checks of these other accounts paid to me by the owners of the property on which the 927

928 mortgage rested, I gave my own check directly to Louis, and took duplicate receipts from him for each of the executors. The trustees asked me to do that.

Q. When I asked you on your cross-examination if the first suggestion in regard to your fees was not \$600, didn't you answer No? A. It was not \$600 in money; it was ten per cent.

Q. What was ten per cent. on \$6,000? A. \$600. I thought you meant was the amount, \$600, mentioned. Yes, sir, it is a distinction. I do not mean to say that ten per cent. was not mentioned, because it was. When this money was paid to me, 929 neither one of the executors or trustees was present. At the time that this paper was signed, that is marked Exhibit 65, nobody was present but Mr. Henry, Jr., Mr. Martin L. Ungrich and myself. That was prepared there, while they were there that day, after they arrived. That was on June 23rd, 1902. I think Louis Ungrich had been to see me after the 22nd of May, 1902, in reference to this. I think he had, yes, sir. He may have been in two or three times. Possibly. I don't think it was any more than that. (Referring to the book.) He was there June 9th; the executors were there then. Then on June 12th the entry is as follows: Ungrich, M. L., telephoned to meet appointment to 930 2 P. M. instead of 11 A. M. Consultation with H. U., Jr. After May 22nd, 1902, I think there was only one interview with Louis in the book here. There were several interviews. Yes, sir, I think so. It was on the subject to have his brother do something for him. The same subject that had been spoken of prior to May 22nd, 1902. He did not say, "Why doesn't Henry give me \$7,500 and pay the amount he agreed to at the time of the 22nd of May agreement?" Never

\$7,500 mentioned. He did not say, "Why doesn't 931
 Henry agree to pay me the amount he agreed to,
 at the time I signed those deeds?" I have no
 recollection of this. He did not say he was prom-
 ised this money and he wanted to know why he
 didn't get it. I don't recollect that. My recol-
 lection as to conversation, is such that I cannot
 swear positively what was not said, or what was
 said. I cannot recall this conversation. It is
 nearly six years ago. It is pretty hard for a law-
 yer to remember all the conversation he has with
 all his clients. One of these conversations after
 May 22nd, 1902, I merely recollect that they oc-
 curred about the sum of \$6,000; that is all I can 932
 recollect and that was the amount that was paid
 that day. I was present the day the money was
 paid, or the release was given. On the 23rd day
 of June I was present, yes, sir. When they came
 to me, both of them told me they had accepted the
 \$6,000. I think they were practically agreed when
 they came to me. My recollection is that when the
 release was drawn, the amount was increased.
 From \$4,500 or \$5,000 to \$6,000. It was either
 one or the other, but I cannot tell. When it had
 been fixed at \$4,500 or \$5,000 I don't know. Not
 in my presence. What they said at this meeting
 when this paper was signed, that is pretty hard 933
 for me to recall. I cannot recall what the conver-
 sation was. I cannot recall the conversation.
 That release is in my handwriting. Acknowledged
 by him. Acknowledged by him and the acknowl-
 edgment taken before me as commissioner of
 deeds. I read the paper over to him. The whole
 of the paper. He was in normal condition that
 day; he always was when he was in my office; I
 never knew him to be anything else.

934 The Court: You mean as to sobriety?
 Mr. Kellogg: Yes, sir.

I don't remember anything being said, at or before the signing of the papers on May 22nd, 1902, in regard to this personal matter and what would be done. There was no promise made then. I never heard any promise made that I can recall. No promise was made in my presence. No. I did not give Mr. Ungrich a copy of this paper. There was only one paper drawn. It was not left with me. Mr. Henry Ungrich took it; they went away together with the paper.

935

FRANK G. SWARTWOUT, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct Examination by Mr. Johnston:

936 I am a real estate broker and appraiser. I have been such about thirty years. I am a member of the Real Estate Board of Brokers of the City of New York; yes, sir; member of the Appraisal Committee on that Board; on the Real Estate Board of Brokers also. My office is in Mt. Morris Bank Building, 125th Street and Park Avenue, New York City. I have testified in Court as a real estate expert. I have, many times. I am conversant with the value of the property on the corner of Lenox Avenue and 124th Street. I am, having bought and sold property in about every street and avenue in Harlem. I have bought and sold property in the immediate vicinity of that corner. I have. I was acquainted with this property, 281, 283 and 285 Lenox Avenue and 107 West 124th

Street on May 16th, 1902. Yes, sir, I was. In my 937
 opinion, the value of these properties on that date
 was \$114,400. \$28,000 upon the buildings and the
 balance is for the land. I was acquainted with
 the premises 443 Pleasant Avenue and 450 East
 123d Street at that time. I was, yes, sir. In my
 opinion, the value of those premises on that date
 was \$20,000. I was acquainted on that date with
 the premises 208 East 126th Street; yes, sir, I
 was. In my opinion, the value of that property
 on that date was \$21,000. I have purchased and
 sold property in the immediate vicinity of this
 Pleasant Avenue and 123rd Street property. I
 have, and all round; all those streets and ave- 938
 nues. Also in the immediate vicinity of 208 East
 126th Street. I have sold nearly every piece of
 property between Second and Third Avenues on
 126th Street during my business career. In my
 opinion, the value of that property, 208 East 126th
 Street, on the 22nd day of July, 1903, was about
 \$20,500. In my opinion, the value of the property
 on Pleasant Avenue and 123rd Street on April
 24th, 1903, was about \$20,000. In my opinion, the
 value of the property on Lenox Avenue and 124th
 Street on the 2nd day of July, 1906, was \$228,800.
 There was a change in the buildings on those
 premises on Lenox, on 124th Street, between May 939
 16th, 1902, and July 2nd, 1906. There was a large
 five story building erected on the 124th Street lot.
 In my estimate of \$228,800, that building was not
 included. It is not included. The value of those
 premises with that building included, would be, I
 think, \$250,800.

Cross-examination by Mr. Kellogg:

I have been in business about 30 years. I am
 49 years old. All the time in the real estate busi-

940 ness in New York, in business in New York. All the time in business in this city. Since I was 19 years old. In the real estate business. My office now is in Mt. Morris Bank Building, 125th Street and Park Avenue. I have not got a partner. I have had one. My business has been in this building about eight years, I think. During that time I have been alone. I have been alone before that time. Before then it was at 157 West 125th Street, between Third and Lexington Avenue. I had a partner there a part of the time. Eugene S. Peters. I don't remember if I had any of this property on my books for sale, this property that I appraised to-day. I don't remember. 941 I might have had it years ago, but not recently. Perhaps ten or fifteen years ago. I haven't had it since that time, not to my recollection. I never tried to buy any of it. I did not make any written record of its condition in 1902. I appraised the property recently, as of that date. Two or three weeks ago. If I ever appraised it before that I don't remember. Not to my recollection. An official appraisal, to the best of my recollection, I never did. I have had arguments as to the value, with different people, on the property, at different times. Some disagreed with me and some didn't. Mr. Henry Ungrich, Jr., saw me and 942 asked me to make this appraisal. No one else. I have known him a number of years. I cannot give you the exact time. I suppose I have known him for ten years anyway. I have never been in his house. I have never done any business for him. I have seen him by meeting him. He has called at my office, sometimes and talked there; talked to me about real estate. He lived about five miles from me; at the present time he lives about twenty miles from me. I know where he lives at White

Plains. In the summer time I live at Scarsdale, 943
 about four miles from there; I drive around and I
 saw him erecting a house there, which he lives in
 there; therefore I know where he lives. He had
 built a small cottage up there that he lives in. He
 was doing that year before last, I think it was.
 On the property on Lenox Avenue, on the Lenox
 Avenue property, in 1902, there were three, four
 story brick buildings, with stores. Four story
 and cellar, I believe I have been inside of them.
 I have been inside of the houses. I was in there
 two or three weeks ago, and then I was there in
 former years. I cannot tell you the time now. On
 the 124th Street property in 1902, was a small 944
 frame cottage; not so small, but an old frame cot-
 tage. Two story frame. I knew who owned the
 rest of the property on that block. George Ehret.
 I knew that about this time in 1902, he was buy-
 ing property there. I knew that he finally bought
 this property. I know that he did. I have built
 houses and constructed houses. I have, a great
 many, for myself, I have built property. I have
 built buildings, yes, sir. Not as a carpenter or
 contractor, no, as an owner. For myself, and for
 others. Not as contractor. As agent for others.
 I do not understand that these houses on Lenox
 Avenue were constructed in 1902. To construct
 them new in 1902 would have cost about \$35,000. 945
 That is, approximately. \$35,000 to \$40,000. It
 wouldn't cost more. No; I think not; they are
 small buildings. They are four story. Yes, sir,
 but narrow. Only 55 feet deep. 18 feet 8 inches
 wide and 55 feet deep, the buildings. The lot 75
 feet deep. I do not know when they were built.
 A great many years ago. I remember them at
 least twenty years. Prior to that they were con-
 structed. What it would have cost to build them

- 946 in 1882 I cannot answer that question now. I would have to go back and find out what building material was worth at that time, and labor was worth and other things, in order to give you an estimate of the value at that time, but they would not cost as much as they would in 1902. I would not have to do the same in order to tell you what they would cost in 1902. No, sir, because I remember better what the cost of construction was in 1902 than I do in 1882. My memory ceases as to the cost of construction. I will say five years. About 1902 was the limit, from memory, the cost of material and labor. What it would cost to
- 947 build the little shanty on 124th Street in 1902, I could not answer that question. It was such an old house I didn't take it into consideration as worth anything at that time. To build a house of that character would cost five or six thousand dollars, I suppose, to-day. In 1902 it would probably have cost \$5,000 to build a new house that size. In making my estimate, I allow nothing for this house. I do not. I have been told what rent that property brought in, in 1902, but I have forgotten. I don't know, not from my own personal knowledge, no. I know what rent was received for any of the property on Lenox Avenue in 1902, only from Mr. Ungrich and his books, which
- 948 he showed me, the rents collected. I did know what the tax valuation was (referring to a paper); I did know; I don't know whether I have it. I have 1904, 1905, 1907; I had the values on it in 1902, but I have forgotten that now. I haven't that. I have not got 1903, the tax valuation. I have not; not here. I have not got 1904. No, not with me. 1905, 1907; so I had 1902 and 1904 also, but I haven't it at present with me. The assessed valuation in 1905 of the land and buildings were

\$33,000, 107 West 124th Street; the corner of 449
Lenox is \$32,000, land and building; 283, adjoining
the corner was \$23,000; 285, the north house,
was \$23,000.

The Court: That was in 1905?

The Witness: That was in 1905.

The Court: What was the total?

The Witness: Total, \$111,000. That is considerably higher than it was in 1902. I remember.

I appraised—I separated the corner lot, 31 by 75, and the two inside lots, 25 by 75. Then I valued the whole plot, 56 by 75. I did not value them 950
separately. There are not four lots on Lenox Avenue. With one on 124th Street, there is four lots. Four pieces of property. I did not put any separate values on them. Except on the lots and on the buildings; separated the lots from the buildings.

Q. That is, the total of lots from the total of buildings? A. Yes, sir. I considered it—

Q. And have you in there a separate value of each lot there, and the buildings on it, of each of those four pieces? A. No, sir; I considered it one piece of property. In one ownership they are worth more in that condition than is separated. I sold the corner of 125th Street; not in that block, but 951
on the block opposite. I have not sold property on that block. That is the block bounded by Seventh, Lenox, 124th and 125th Streets. I believe I did, years ago I sold some of the lots on the north side of 124th Street between Lenox and Seventh Avenue, with brick buildings on. Ten or fifteen years ago, I suppose. I haven't sold any in that block since. Not on that block. Whether I was present and took any part in any sales of

- 952 any property in that block at any time since my original sale, that I could not answer. I have sold property on the block to the east of this block that I have described. I don't remember the date; north side of 124th, between Fifth and Lenox Avenues. Five or six years ago. Some time like that. That is as near as I can give you. I made thousands of sales and I cannot remember the particulars. I remember what property I sold; I don't have to look it up. I remember when I sold property nearer to this property in question than the one you asked me about. I remember the more recent dates. I have sold and purchased
- 953 property on the block between Second and Third Avenue and 125th and 126th Streets, in 1902. I think 1902. I was buying and selling there most every year. I think the number was 225 East 126th Street. And 247, I think, also. The first one a five story single flat. The price I sold it for was \$13,000 and something, I think it was. Between thirteen and fourteen thousand dollars. In 1902. 17 feet, I think that lot was. The property that I valued and appraised on 126th Street was a five story double flat at that time, two apartments on a floor. 30 feet wide. I do not remember what time in 1902 I made this sale. No, I don't. One was a single apartment. And this was a double apartment.
- 954 (One was practically a new house and the other was an old one. I cannot swear as to the date. I can swear that I bought and sold property in 1901, or 1903, in that locality. Between 1901 and 1903. Two brownstone houses on the north side of 123rd, between First and Pleasant Avenues, 16 feet 8, three story and basement. Sold at one sale—one owner to one purchaser. 1901, or after, I cannot swear as to that. I don't remember what the price was. I think it was \$12,000 for the two,

to the best of my recollection. I am quite positive, 955
to the best of my recollection. I said they were
three story and basement, brownstone dwellings.
On this property at the corner of 123rd Street was
a four story brick tenement. I do not definitely
know about the rents of that property—only from
what I have stated, by an examination of Mr. Ung-
rich's books. I could not tell now from memory. I
have not got a record of it. I got information
about all this property from Mr. Henry Ungrich.
All that I got, I got information from nobody else.
It was not a well known fact in my business that
Mr. George Ehret was in the market to purchase
this property in that block in 1902. Not in 1902, 956
no. The last two or three years. I think he owned
the corner of Lenox Avenue and 125th Street in
1901. About that time he bought it. I don't know
whether he took title to that as Pannes; he did to
some others on Lenox Avenue after that. I know
there was a sale to Pannes, but at that time I did
not know that he represented Mr. Ehret. I never
did know the price until I heard your witness, Mr.
Schmidt, testify to it here yesterday. I do not
say that this is not so. At the time I heard Mr.
Schmidt testify I had already made up my valua-
tions and appraisalment. I know that Mr. Ehret
bought in 1900 a piece of ground on the corner of
125th Street and Lenox Avenue, 150 by 100. I do 957
know that. I knew he bought that corner but I did
not know he desired to buy anything else. He did
not own other property on that block at that time.
I think not. I think the corner was his first pur-
chase. I am quite positive. I stand on that. The
condition of Lenox Avenue in regard to the Sub-
way in 1902, they had started to build the Subway
at that time. How far they had got along with it
I could not say. They had the avenue dug out and

958 the dirt piled along the avenue. The construction and operation of the Subway greatly increased the value of real estate in that section. The subway station was about 75 feet, I should judge from this property on Lenox Avenue. The plan showed that there was to be a station there. I believe that showed in 1902. The effect of the Subway construction, was to appreciate the value of property very largely and quickly. After the completion, yes. Before, no. It was completed in 1904. They started to work in 1902. There were not many sales between 1902 and 1904 on Lenox Avenue, in this neighborhood. Not a great many, no.

959 Q. People were rather holding their property for the prospective advance, were they not?

Mr. Johnston: I object as incompetent and improper and not within the purview of this inquiry.

Objection overruled. Exception.

A. I know that it was hard to sell real estate on Lenox, from my own personal experience on pieces I was interested in and trying to sell, while the subway was being constructed. The street was blockaded, and it was almost impassable, and there was no business there at that time; you could not rent property well.

960 Q. What would you say was the value of that property to-day, in the same condition as to buildings on it, that it was in 1902?

Mr. Johnston: The same objection on the same ground.

Q. The value to-day, with the same buildings on it and with the same condition it was in, in 1902?

The Court: In regard to the subway?

Mr. Kellogg: In regard to the property it- 961
self. The subway does affect it. It is there.
That would affect the question.

The Court: You mean with the conditions of
the street, as to the street being piled up with
dirt?

Mr. Kellogg: No, not the condition of the
street but the condition of the buildings.

Objection overruled. Exception.

Q. What is the value of the property to-day, in
your opinion? A. With the same buildings that
were on it in 1902?

Q. Yes. A. With the conditions as they exist 962
to-day?

Q. Yes. A. \$228,800. At that time there was
no appreciation caused by the coming of the sub-
way. I do not allow anything by virtue of that. I
do not take off anything by virtue of the fact the
street was torn up.

— — —

JOHN H. WHITTLE, called as a witness on be-
half of the defendants, being duly sworn, testified
as follows:

Direct Examination by Mr. Johnston:

My business is real estate. I have been in that 963
business over twenty-two years. My office is at
present, Park Avenue and 116th Street. I have
been there nine years. I am acquainted with the
buildings on the corner—on the northwest corner
of Lenox Avenue and 124th Street. I have known
them 25 years. I know the three buildings, Num-
ber 281, 283 and 285 Lenox Avenue and Number
107 West 124th Street. I have not known that
building in 107th Street for that number of years

- 964 that is there now. I knew the building that was there in 1902. The building that was there in 1902 on that property, 107 West 124th Street, was a two story and basement frame cottage, occupying a portion of the lot, used as a private dwelling. The building that is there now, covering that lot, is a five story brick, storage warehouse and stable. The buildings, 281, 283 and 285 Lenox Avenue in 1902 were four story brick buildings, with brownstone fronts, stores on the grade floor and apartments on the upper floors. I had during the year 1902 and prior to May 16th of that year, purchased and sold property in the immediate vicinity of this house on the northwest corner of 124th Street and Lenox
- 965 Avenue. 119 and 121 West 121st Street, near Lenox Avenue. And prior to 1902, on 125th Street, between Lenox and Seventh, north side. 68 West 127th Street in the year 1906. No property on Lenox Avenue in that period of time. Not that I remember. I acted as broker or agent in the letting of property in that immediate vicinity during that period of time. The 121st Street houses I had charge of for a number of years, having been letting them until I sold them again. That seems to be the only one in the immediate vicinity that I had charge of during that period. I was conversant with the value of that property on the north-
- 966 west corner of Lenox Avenue and 124th Street in the month of May, 1902. In my opinion, the value of that property at that time was \$113,600. The land was worth \$90,600; the buildings, \$23,000. In my opinion, the value of that property during the month of July, 1906, was \$250,000. The value of the land, \$200,000; buildings, \$50,000. I was conversant with the buildings, 443 Pleasant Avenue and 450 East 123rd Street in the month of May, 1902. I acted as broker or principal, in the pur-

chase and sale of property in the immediate vicinity of these premises during the year 1902. I sold a three story and basement—I am not sure whether two or three story, brownstone house, almost immediately opposite the property in question on the north side of 123rd Street between Pleasant and First Avenues. In my opinion, the value of that property in the month of May, 1902, was \$20,000. In my opinion, the value of that property in the month of April, 1903, there was a slight depreciation in the value from \$20,000—about \$19,500. I was in the month of May, 1902, interested in the premises, 208 East 126th Street. I had acted as broker or principal in the purchase or sale of property in the immediate vicinity of that property. 214 East 126th Street. I don't recollect any others at the present time. I have that one very much in mind. It is almost adjacent to this property in question. In my opinion, the value of this property, 208 East 126th Street in the month of May, 1902, was \$20,000. In my opinion, the value of this property, 208 East 126th Street on the 23rd day of April, 1903, or during the month of July was the same. On this Pleasant Avenue and 123rd Street property there were two buildings, occupying the entire lot, with the exception of four feet on the front end of it, facing on Pleasant Avenue. The building facing on Pleasant Avenue was a four story brick and brownstone building, occupied as an apartment house, two apartments on each floor; the building on the rear or lot facing on 123rd Street, was a four story brick building, occupied as an apartment house, with one apartment on each floor. The premises, 208 East 126th Street was a five story brick building, brownstone front, occupied as an apartment house, with two apartments on each floor.

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970 Cross-examination by Mr. Kellogg:

My office is now at the corner of 116th Street and Park Avenue. I am alone. I have not always been alone. Since the 1st day of January, 1904, I have been alone. John W. Wood was with me before; the firm was Wood & Whittle. I had been with him probably nine years. I have been in business over 22 years. As a broker during all that time. I have not done any business for Henry Ungrich. Not that I remember. I made these valuations at the request of Mr. Ungrich, Jr. I have known him for fifteen years. I knew him in Harlem. That was, I was on speaking
 971 terms; semi social. I don't know; we possibly may belong to some lodge or club together; I don't know what clubs he belongs to now, or lodges. I made that valuation about a month ago. I got my information from the various sales that were made in the neighborhood during the time, and my general knowledge. Mr. Henry Ungrich, Jr., allowed me to examine his rental roll. A book. It was his cash book, practically; rental roll. It did somewhat form an element in my reaching a valuation. I have not a copy of the rentals here. I never sold any property in this block on which this Lenox Avenue and 124th
 972 Street property is situated. Not that I remember. I knew of sales of property on that block in 1902. In 1902, yes, 124th Street, between Lenox and Seventh Avenue. And Seventh Avenue. 146 West 124th Street. It was sold June 16th, 1902. I sold no property on the block itself that I have described. I knew of the sale of the corner of 125th Street and Lenox Avenue to Mr. Ehret. In 1901, or 1900. I knew of the sale of the two buildings adjacent to this property, but I did not know the details. I didn't know the price, not until I

heard it testified to here yesterday. I know 973
something about it now, that I heard the testimony of the man that made the sale. I am quite familiar with it now. At that time I had made up my valuation or appraisement without any knowledge of that. The lot next to these Lenox Avenue lots, that was 19 feet and 8 inches front on Lenox Avenue by 75 feet in depth, I understood brought \$28,500 with the building. Three story and brick building. I should judge 45 to 50 feet deep. I never had any measurement of it, I only know it from looking through it. It was built of brick. Three stories. It was not a private dwelling. It was a store and dwelling. I understand that in 1902, in February 24th, 1902, the next lot 974
to that, 25 feet 3 by 75, was sold for \$49,000. That is a frame building. I do not know the size of the building. I should judge it occupies the entire frontage; as to both—I can tell you, I was in it the other day. It is about 35 feet deep. Possibly there may have been an alley; I may have thought that belonged to the building on the corner. I had the diagram. I have not now. I did not know that in 1902, Mr. George Elhret was a seeker after the property on this block and was buying property there. I knew about the subway. I did not make any depreciation in value from the condition of the street by reason of the subway. Not any perma- 975
nent depreciation in value. The temporary depreciation did not affect the fee; it affected the rental. I did not take anything off of this \$113,600 by reason of the subway construction that was going on. Nothing from the fee. There is the rental value and the fee value. I took a reduction of the rental value. I do not remember being asked a single question about the rental value of this property unless you asked it. I said

976 there was a depreciation of the value of this property temporarily, on account of the condition of the street which made a number of stores and apartments vacant. I allowed no depreciation in my estimate for those facts. Nothing, for the reason—-. The effect of the construction of the subway upon the values of property in the vicinity of this Lenox Avenue property was wonderful. It had a great deal to do with the increase of the value of that land. There were other elements that entered into the increase of value; but it had a great deal to do with it. More than anything else in the world.

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HARRY K. DAVENPORT, called as a witness on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination by Mr. Johnston:

I am a clerk in a law office. In the office of Stewart & Shearer, 45 Wall Street. I have been there two years. Prior to that time I was with James Demarest. I was with Mr. Demarest in the month of May, 1902. I know Martin Louis Ungrich, the plaintiff. I know Martin and Henry Ungrich, Jr.,
 978 the defendants. I knew them in May, 1902. I remember these three persons being present in Mr. Demarest's office with me and Mr. Demarest, on the 16th day of May, 1902. On May 16th, Mr. Martin Ungrich and Mr. Henry Ungrich, the executors, and Mr. Louis Ungrich were in Mr. Demarest's office to complete the— My memory is not exactly clear, whether May 16th is the date when the contract was signed in this matter, or when the contract was closed. I am shown De-

defendants' Exhibit 5 and asked if I remember seeing that paper before. (Paper shown to witness.) 979
 I do. I heard conversation between Henry, Jr., Martin Ungrich and Martin Louis Ungrich on that day, at the time this paper was signed. I did. The price— If you will allow me to look at that paper, to refresh my recollection, I cannot confine my recollection to that particular day.

The Court: He practically says he cannot recollect the conversation so that he can repeat it. That is what you say?

The Witness: So that I can repeat it, yes, sir.

The Court: You don't recollect it so that 980
 you can repeat it?

The Witness: Not off hand; I want something to refresh my recollection.

I look at Exhibit 5 and read it over and state that I can refresh my recollection from that, so that I can repeat the conversation had on that day. Mr. Demarest stated that the property belonging to this estate was to be sold to Mr. Henry Ungrich for \$157,000. There was various conversations back and forth, and Mr. Demarest then said—dictated to me this agreement which was signed by all the parties, which recited the terms. This paper, Defendants' Exhibit 5, was dictated 981
 to me in the presence of the plaintiff and the two defendants. It was. As to whether I heard conversation or discussion about the paper, between those parties at that time, I would say that, in a general way, the price was mentioned. \$157,000 was the price stated. I heard Mr. Demarest say that. Mr. Martin Louis Ungrich, the plaintiff, in substance said that the price was satisfactory, and upon—at the close of that conversation this

982 agreement was dictated to me, which incorporated —I am shown Defendants' Exhibits 6 and 7. (Papers shown to witness.) I did see these papers before. I recollect on the 22nd of May, 1902, a transaction occurring in my presence, between the plaintiff and the two defendants. That was the date of the sale of this property. I heard conversation at that time, between those parties. The general conversation.

The Court: Did you hear any conversation?

The Witness: I did, yes, sir.

983 The price, \$157,000, was mentioned to Mr. Louis Ungrich and he said that the price was satisfactory to him. My recollection is that Mr. Demarest then dictated to me an agreement or an instrument which recited the— And that paper was signed by Mr. Ungrich. I saw Martin Louis, the plaintiff, after the 22nd of May, 1902, in the office of Mr. Demarest. Yes, sir. Mr. Ungrich mentioned that—

The Court: Did you ever have any conversation with him?

The Witness: Yes, sir.

984 I had conversations with him about bonds and mortgages that I had executed on the 22nd day of May, 1902. Yes, sir. I cannot fix the date of these conversations. No, sir, not definitely. They were at the time when Mr. Ungrich called to the office for his semi-annual interest on the mortgages. He asked me if my interest had been paid and whether everything was all right.

Cross-examination by Mr. Kellogg:

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I am a lawyer. I was admitted in 1902. I was not admitted at the time that I acted in this transaction. I have known Louis Ungrich since I have been with Mr. Demarest. I was with Mr. Demarest I think it was five years. Beginning about May, 1900, to January, 1907,—1906. 1900 to 1906. I just about remember when his father died and the will came into the office. I just remember that. That was the early part of my clerkship. I remember it. About that. I had a general clerkship. I am twenty-seven or twenty-eight years of age. I did not see Mr. Louis Ungrich in the office, often. No, not often. Four or five times 986 a year. At times he was there two or three times a month; he did not call regularly. He did not come in quite often. No, I wouldn't say quite often. He began to come in quite often in the fore part of 1902. How many times I saw him there in January, 1902, I haven't any idea. I may have kept a record, but I don't seem to have the record. I haven't got it. I left it with Mr. Demarest. I mean some record on his books. I presume he was there in February. I think he was there a good many times. The executors were there. He was there with the executors at times. I heard their conversations. I did participate somewhat 987 actively in them. Prior to May 9th. Prior to May 16th. In April. I am quite sure. March. In general through the year. I kept no record of those conversations at all. I was not present at any time when Mr. Demarest and Louis Ungrich talked together. Not unless Mr. Henry Ungrich and Mr. Martin Ungrich were present. Mr. Louis Ungrich was in alone. I did not hear any of the conversation between Mr. Demarest and him. Not that I recall. I did all the stenography and type-

988 writing, and Mr. Demarest and I were practically alone. That is all the force of the office, I and Mr. Demarest, at that time. At that time, Mr. Schlesinger, Mr. Demarest's associate, was there, and I also did work for him. He was a different institution from Mr. Demarest. There were no other clerks in the office. No other clerks. I was there as stenographer. I am not doing that work now. I am a clerk associated with Stewart & Shearer, as a clerk. Being admitted to the bar, but not practicing by myself. I heard discussion in regard to the personal property that Mr. Louis Ungrich claimed, just in a general way. That is all. I did not hear Mr. Louis Ungrich make any
 989 claim in the presence of the executors or in the presence of Mr. Demarest, to his being entitled to his share of \$25,000 of personal property. Not directly in my presence. I knew that he had requested his share of that. That was after this—after May, 1902, as I recall it. I fix it by the real estate transaction, the sale of the real estate. I have no recollection of what Mr. Demarest said in his testimony as to some claim being made prior to this real estate transaction. I bought this property of the executors. I paid a receipt of \$78,500, of one-half of that purchase price, which receipt was signed by Mr. Henry Ungrich.

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Mr. Kellogg: Where is that? Let me see that. I ask you to produce the receipt.

Mr. Johnston: We haven't had any notice to produce that receipt. You are entitled to anything we have.

(Hands plaintiff's counsel certain papers.)

No money passed. I believe the contract reads half cash and half by mortgages. I gave no cash except this receipt. I was first asked to make

this contract several days before the contract was 991
 made Mr. Demarest asked me. Mr. Henry Ung-
 rich was present when he asked me. I think Mr.
 Martin Ungrich. I will not testify that he was.
 Not positively, no. I should not think more than
 four days before May 16th; it may be a week.
 Possibly it was on the 9th of May. Mr. Demarest
 made some mention of my remuneration after-
 wards. I was paid \$25. At the time of the clos-
 ing of the title, I made those mortgages. I had
 not searched the title. When this agreement was
 made, May 16th, 1902, the parties had been present
 in the office, before it was dictated to me, probably
 half an hour. The rooms were adjoining; the 992
 offices were adjoining. I think it was open between
 one door. I think it was. They may have been
 in there half an hour before I was called in there.
 I had been in that room before they commenced
 to dictate this paper ten or fifteen minutes, prob-
 ably. Mr. Demarest stated that the property was
 to be sold for \$157,000. That is not all I remem-
 ber of that conversation. That property was to
 be sold to Mr. Henry Ungrich, and Mr. Martin
 Ungrich, the plaintiff, stated that it was all right,
 it was perfectly satisfactory to him. That was on
 May 16th. . On the 16th. The instrument was
 then dictated. Then I went out and put it in
 typewriting. It took me to dictate and typewrite 993
 this ten or fifteen minutes. Then I took it back
 into the office. I did the typewriting outside. The
 receipt for that \$78,500 was not given me, then.
 It was given me on the day of closing, that was
 May 22nd. What the change of the date of clos-
 ing was I have no recollection. I noticed that
 when I had it before. (Paper shown to witness.)
 I don't recall that change. At the time of making
 this paper I don't recall any particular conversa-
 tion regarding why a contract for a sale which

994 was to be followed by no searching of the title and by an exchange of deeds between the parties and mortgages, was required. Nothing was said about the necessity of having these parties committed at once to the price of this property, \$157,000. Not that I remember. I have stated now, all that I can remember of those different conversations. Up to the signing of the contract. I am sure that the receipt of the \$78,500 of Mr. Ungrich was signed and delivered on May 22nd. My memory is distinct about that. I am quite positive that it was delivered. As I recall it, Mr. Ungrich handed me the receipt and then I paid it back to the executors as part of the purchase price of the property and also handed to them the bonds and mortgages executed by me for the other half. But no money passed. This was on the 22nd of May. On the 22nd of May. (Paper shown to witness.) That is the paper.

Mr. Kellogg: I offer that in evidence.
Received and marked Exhibit L.

Those deeds and mortgages were delivered on May 22nd. May 22nd. I am quite positive about that; I don't know whether they were dated that, or not. The conversation on May 22nd was confined to the closing of the title and the usual transfer, and purchase by me of this large property. I do not mean to say that on May 22nd, while these gentlemen were at this office, that the deed to me and deed from me to the executors mentioned on that date, for \$78 500, was already dictated. The instruments I refer to were the two that were handed to me to refresh my recollection; the bonds and mortgages had been prepared between May 16th and May 22nd. The bonds and mortgages had been prepared. I mean these papers, Exhibits 6

and 7, those are the papers that I mean were dictated that day. I am not positive, because I took a lot of dictation concerning this title and I am not quite positive that they were actually dictated on that date. I am not positive about their being dictated on that day. Mr. Demarest dictated these papers, Exhibits 6 and 7. I returned them to Mr. Demarest after they were written out by me. I presume I did. Defendants' Exhibits 6 and 7, I have no positive recollection of exactly when they were drawn, whether before this meeting of May 22nd, or not. After I had done the typewriting, I presume I handed them to Mr. Demarest. I have no recollection of the circumstances under which I handed them to him. I did not compare them with him. Not that I recall. I presume this is the result of his dictation without any correction. I don't recall doing it over. After I had given them to Mr. Demarest, when I next saw them, I cannot say positively. I may have seen them on his desk several times before they were used but I know I saw them on the 22nd. I didn't say I had them on the 22nd. I saw them on the 22nd. In Mr. Demarest's room. I don't recall whether they were being delivered to me. I think they were signed while I was in the room. That was the date of closing the title, and there was a number of papers signed there at the time. I cannot swear to that positively. I had nothing to do personally with getting these two papers executed. I didn't have anything to do with getting them executed. I think I did see them being executed, yes; as I say, there were several papers executed at that time, and that was one of the papers that was being signed at that time. To my best recollection I saw Martin Louis Ungrich, so that I will swear to it, sign his name to that paper, inspect and sign

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- 1000 it. I did not ask him to sign it. I did not talk to him about signing it. He did not talk to me about signing it. The fact in my mind that makes me say here that my recollection is that I saw him sign that paper is the fact that it was signed on that day, and it was signed while the other papers were being signed in the office, and that I saw him sign it. He didn't sign the other papers. I was signing the other papers upon Mr. Demarest's desk. I was signing the other papers upon Mr. Demarest's desk, and Martin Louis was signing at Mr. Demarest's desk. Both on the same desk. I believe so. To my best recollection. I will swear so.
- 1001 I did not read this paper over to Martin Louis Ungrich. These papers may have afterwards gone back into my custody. They may have; I won't say positively. I have a very decided recollection, on some of these things that I was directly connected with, I have. I went into the room after these other people came here and when the deeds were signed or mortgages, about five or ten minutes probably. All the papers were prepared. I sat down and signed all my papers on Demarest's desk. And Ungrich signed those papers. It took me fifteen or twenty minutes. I don't know exactly what I did with the papers. You must understand that some of this thing was
- 1002 mine and some I was merely executing my duties as a clerk. When I had delivered the mortgages to Mr. Henry Ungrich and Mr. Martin Ungrich. I don't know as I did any delivering as to those two papers.

Mr. Johnston: The defendants offer in evidence a certified copy of the petition and appraisal of the estate of Henry Ungrich.

Mr. Kellogg: I won't make any objection to that; it is prior to January 24th, 1902; I don't

make an objection to it.

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Received and marked Exhibit 66.

Mr. Johnston: File marked May 12th, 1902.

Also I offer in evidence a deed, bargain and sale, bearing date April 24th, 1902, made by Martin Louis Ungrich and Fanny B. Ungrich, his wife, to Henry Ungrich, Jr., quit claiming the properties on the northwest corner of 124th Street and Lenox Avenue mentioned and described in the complaint herein, duly acknowledged on the 24th of April, 1903, before James Demarest, notary public.

Mr. Kellogg: No objection.

Received and marked Exhibit 67.

Mr. Johnston: I offer in evidence a certified copy of a deed bearing date April 24th, 1903, made by Martin Louis, son of Henry Ungrich, deceased, late of the City of New York, and Fanny B. Ungrich, his wife, to Henry Ungrich, Jr., conveying the Pleasant Avenue property, corner of 123rd Street; duly acknowledged on the 24th day of April, 1903, before James Demarest, notary public, and recorded on July 31st, 1903, in Liber 79, Section 6 of Conveyances, page 29.

Received and marked Exhibit 68.

Mr. Johnston: Also I offer in evidence a certified copy of a deed made on May 22nd, 1902, by Martin Louis Ungrich and Fanny B., his wife, to Henry Ungrich, Jr., granting, bargaining and selling to them the property in 126th Street, mentioned and described in the complaint; duly acknowledged before James Demarest, notary public, on the 24th day of April, 1903, and duly recorded in the office of the Register of the County of New York, on April 24th, 1903, in Liber 75, Section 6, page 132.

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1006 Received and marked Exhibit 69.

Mr. Johnston: Also I offer in evidence a petition for a judicial settlement, from the records of the Surrogate's Court, entitled, "In the Matter of the Judicial Settlement of the Account of Henry Ungrich, Jr., and Martin Ungrich, as Executors of Henry Ungrich, deceased," filed in that office on March 13th, 1903.

Received and marked Exhibit 70.

Mr. Johnston: Also I offer the citations issued on that petition, filed with proof of service, April 30th, 1903.

Received and marked Exhibit 70.

1007 Mr. Johnston: Also I offer in evidence the account filed with the petition, on March 12th, 1903.

Received and marked Exhibit 72.

Mr. Kellogg: I would like to call attention to the fact that I object to all these three upon the ground that I have stated in the objection to the other account and I call attention to the citation and ask that it be put on the record, that in the decree there is no appearance for Mr. Martin Ungrich, my client, and it appears that he was served with the citation according to the affidavit on the 22nd day of April, 1903, at the office of James Demarest, 140 Nassau Street, Borough of Manhattan, New York City.

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Mr. Johnston: I now offer the decree entered upon this last mentioned accounting, which has been received in evidence, settling the account.

Received and marked Exhibit 73.

Mr. Johnston: It is dated and filed May 13th, 1903.

Mr. Kellogg further that it contains or pur- 1009
ports to contain on its face the account of the
executors and covers the administration of the
real estate which belonged to the Trustees. I
call your Honor's attention to this decree.
There is no appearance on this accounting for
my own client or anybody else.

Mr. Johnston: I now offer in evidence an
exemplified copy of a judgment roll in an ac-
tion in the Supreme Court of Westchester
County, brought by Martin Ungrich against
Henry Ungrich, Jr., to recover for services
rendered in regard to the premises Numbers
281, 283 and 285 Lenox Avenue and 107 West 1010
124th Street; the matter set up by our sup-
plemental answer.

Received and marked Exhibit 74.

Mr. Johnston: I offer in evidence a tran-
script of the satisfaction of the judgment just
offered in evidence, showing the payment
thereof.

Received and marked Exhibit 75.

Mr. Johnston: Also I offer in evidence an
order and papers on the motion in the Su-
preme Court, County of New York, entitled,
"In the Matter of the Application of Martin
Louis Ungrich for the payment of certain
moneys under the trust created by the Will of 1011
Henry Ungrich, deceased. Martin L. Ung-
rich, plaintiff, against Henry Ungrich, Jr.,
and Martin Ungrich as executors, etc., of
Henry Ungrich, deceased." I offer the order
and the motion papers, and the opposing affi-
davits.

Received and marked Exhibit 76.

Mr. Johnston: I call upon you to produce
pursuant to my notice to produce, notice

1012 signed by the attorneys for the defendant of trial of that proceeding just offered, bearing date June 25th, 1907. I have a certified copy.

Mr. Kellogg: Put that in.

Mr. Johnston: I offer the notice served by the attorneys for the defendant in this matter in which the papers have just been received in evidence and produced by the defendants, under the notice.

Received and marked Exhibit 77.

Mr. Johnston: Also I offer in evidence a certified copy of the order of the Appellate Division in the appeal in that action.

Received and marked Exhibit 78.

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HENRY UNGRICH, JR., one of the defendants, called as a witness in his own behalf, being duly sworn, testified as follows:

Mr. Johnston: I offer in evidence a check made by Martin Ungrich and Henry Ungrich, Jr., executors of and trustees under the will of Henry Ungrich, to M. L. Ungrich, bearing date June 15th, 1907.

Received and marked Exhibit 79.

1014 Direct Examination by Mr. Johnston:

I am the son of Henry Ungrich, the elder. The plaintiff is my brother. After my father's death I had conversations with my brother, the plaintiff, about the sale of the real estate that my father left. Not immediately after. I did have such conversations, yes, sir. They took place about—well, between the 1st of January and the 9th of May, 1902. He said he would like to have matters fixed up so that he would know just exactly what

he had to live on. Well, he would like to have 1015
 the estate settled up. He said something about
 the real estate. There was a great deal said, Mr.
 Johnston. Well, I saw him before that at my
 house and at Mr. Demarest's office, and we were
 talking the matter over for several months. He
 said he would like to have the property sold. I
 suggested that we see Mr. Demarest and see just
 exactly where we were at. We did see Mr. Dem-
 arest. Yes, sir. I saw Mr. Demarest and my
 brother at Mr. Demarest's office, and I saw Mr.
 Demarest alone and I saw my brother alone, at
 different times. There were a great many meet-
 ings. 1016

By the Court:

I do not remember the first time that I and my
 brother and Mr. Demarest met, in Mr. Demarest's
 office. I cannot fix that date. I think it was in
 the month of February, that year.

By Mr. Johnston:

Mr. Demarest said that there were three ways
 we could close that estate. By a friendly partition
 suit, or by selling it to an outside party. Or two
 ways; not three ways. Well, we talked the mat-
 ter over and the first thing we came upon was the
 price, or what the various properties were worth. 1017
 Well, there was a great deal said, I could not tell
 what each person said. I can tell what the sub-
 stance of the conversation was. The substance of
 the conversation was that closing of the estate.
 My brother wanted his income fixed. He said
 that. I said that I would buy the property at a
 fair price; all that it was worth. I also stated
 that I would rather not buy the 126th and 123rd
 Street properties; they were very troublesome

- 1018 properties and they did not bring in rent enough for the money that was invested in them. My cousin Martin, my co-executor, broke in there and he said, "Henry, if you take this property, you must take all or none." I don't remember just what Louis said then. I can say what he said in substance. I cannot tell you just what he said at that instant. I can state in substance what he said. He stated that he was perfectly willing that I should have the property. He wanted the property to bring all that it was worth. There was nothing stated at that time about having an appraisal made, that was at a later meeting. I can not tell when this meeting was that I have
- 1019 just narrated the conversation occurring at, what date it was. I could not tell you just what date that was. I think it was in the month of March. I don't think there was another—I am quite positive there was no another meeting until after I came back from my wedding trip, which was on the 28th of April. I think I could get the date of that meeting from my memorandum. (Referring to a book.) It was about a week prior to our meeting of May 16th, which would make it about May 9th. I remember what the conversation was at that meeting. Mr. Demarest had the appraisals there. I am asked if the papers, Exhibits 1, 2 and
- 1020 3 are the papers that I saw upon that date. (Papers shown to witness.) Those are the papers. I remember a conversation between my brother, Mr. Demarest and myself, and my cousin Martin. About getting such appraisals, at a previous meeting. Mr. Demarest stated that we must get the highest market value for the property. And in order to get that, it was necessary that we should have the property appraised, by a disinterested party. That was said, I think, on the meeting of

May 9th. It was on May 16th that those papers 1021
were presented to us, the appraisals, on May
16th.

Mr. Kellogg: May 16th those papers were
presented.

The Court: May 16th.

I have told the entire conversation that I rec-
ollect occurring on May 9th, as far as I can recol-
lect. On the 16th of May we talked the matter
over, of selling the property. I objected to the
appraisal on the ground that the figures were too
high. I stated that. I had an appraisal of my
own. I did not show that to them. I stated some-
thing about having an appraisal. I stated that I 1022
had an appraisal. I said my appraisal was in
the neighborhood of \$148,000 to \$150,000 for the
whole thing. I thought that the appraisal of
\$22,000 for the Pleasant Avenue property was
\$2,000 too high; and on the 126th Street, it was
about \$1,000 too high. And I stated that the
Lenox Avenue property, in my judgment, was not
worth over \$105,000. But I was willing to take
the property at Mr. Smyth's appraisal. My
brother said something then. I don't think Mar-
tin said anything just then. My brother said that
I ought to be willing to pay more than the ap-
praised value; that the property had a future. 1023
And my cousin Martin then said that I ought to
pay at least \$157,000. To which I agreed. I said
I would take the property at that price. Then
Mr. Demarest asked if everything was satisfac-
tory; asked Martin, and he asked Louis, and
asked me; and he said then, that it would be nec-
essary for him to draw up the papers, the deeds,
mortgages, etc. I am acquainted with my brother.
Louis' handwriting. I have seen him write. I

1024 am asked if the paper you now show me is a letter received by me from him. (Paper shown to witness.) Yes, sir, that is a letter I received from him. On or about the day it bears date.

Mr. Johnston: I will offer it in evidence after he has read it.

(Witness reads the letter to himself.)

Mr. Johnston: I offer it in evidence.

Letter received and marked Exhibit 80.

I am shown another letter bearing date January 23rd, 1902, and asked if that is a letter I received from my brother on or about the day it
1025 bears date. (Paper shown to witness.) Yes, sir, that is a letter I received.

Mr. Johnston: I offer it in evidence.

Received and marked Exhibit 81.

I am also shown another letter bearing date February 25th, 1902, and asked if that is a letter received by me from my brother, on or about the day it bears date. (Paper shown to witness.) Yes, sir.

Mr. Johnston: I offer it in evidence.

Received and marked Exhibit 82.

1026 I am shown another letter bearing date December 29th, 1901, and asked if that is a letter received by me from my brother. Yes, sir.

Mr. Johnston: I offer that in evidence.

Received and marked Exhibit 83.

I am shown a paper marked Exhibit 5. That paper was signed on May 16th. (Paper shown to witness.) Three copies of that paper were signed on that date. Three, that I know of. I saw them delivered. One was delivered to myself and one to

Martin Ungrich and one to my brother. The next 1027
 meeting that I recollect occurring between my
 brother, myself and my cousin Martin, and Mr.
 Demarest, well, we arranged for a meeting on the
 22nd of May, at that meeting upon that date. We
 did meet on the 22nd. Well, there was quite a
 little said at the other meeting. That I have not
 narrated. Mr. Demarest said that if we were all
 agreed, there wasn't anything further to do except
 to get the papers ready; and he said that would
 take several days. He said he would have to draw
 up the bonds and mortgages, the deeds, and he
 turned to my brother and he said, "Louis, I will
 also have to draw up a paper showing that this 1028
 transaction is being made with your knowledge
 and consent and at your request;" and Louis
 said, "All right." I said I would take the prop-
 erty at the price suggested by Martin Ungrich.
 Then there was a little argument over the rate of
 interest. I stated I would not pay over four per
 cent. interest. That was the prevailing rate at
 that time. I stated that it was the prevailing rate
 in about so many words. I am stating what was
 said at that time. My brother stated he thought
 the interest ought to be four and one-half per cent.
 I objected to that, and we finally—— After con-
 siderable talk, he agreed at four per cent. He said
 he agreed. Yes, sir, he did. He said that four 1029
 per cent. would be satisfactory to him. I think I
 have now told all that I recollect that transpired
 on the 16th of May. I think so. I proceed to the
 22nd of May and state what I heard said at that
 time. We got to Mr. Demarest's office and we had
 the papers all ready and we proceeded to execute
 them. The executors proceeded to execute them.
 Martin Louis Ungrich was there. I saw him sign
 papers. He signed this paper which Mr. Demarest

1030 had prepared. The papers, Exhibits 6 and 7, are the papers that were then signed by Martin Louis Ungrich. (Papers shown to witness.) I recollect that my brother and Martin both expressed themselves as satisfied that the thing was settled, and so did I. I remember that my brother said he would like to see me in regard to those mortgages; and I told him he could see me at any time. I did not subsequently have a conversation with him about any mortgages that I remember. He never broached the subject to me. Mr. Demarest had spoken to me about it and said that Louis was complaining about those mortgages and I told Mr. Demarest that Louis knew where to find me, and if he had anything to say on those mortgages, to come to me and say it. I did have a conversation with my brother Louis about those mortgages previous to that time. I don't know just when it was, but I think it was in the early part of the year 1902. He stated that I ought to divide up with him on those mortgages. He said what mortgages. Yes, sir, the \$25,000. I told him I did not think so, and that my father had assigned those mortgages to me for the reason that he thought he had done considerable for Louis and that I had given up a position and I had taken entire charge of my father's affairs and he was not paying me the amount of money that I had been earning. And 1032 I said, "Louis, father has spent a great deal of money on you, to help you out of various scrapes and one thing and another, and he assigned those mortgages to me partly to square matters between us. I don't think you are entitled to anything of them." He said he thought he was. There may have been one or two more conversations about those mortgages, but I don't remember. The substance of those conversations was about the same. He was always after a division of the mortgages.

I was present when he executed the paper, Defendant's Exhibit 65. (Paper shown to witness.) 1033
 There was a meeting between my brother and myself several days prior to that. And he told me he had been looking at a little house over in Brooklyn, that he would like to buy it; he could buy it for about \$5,500, and he thought I ought to let him have that money. I finally agreed to let him have \$4,500, and after some more talk, I agreed to \$5,000. That was the way we left it; to meet at Mr. Demarest's office to settle things. When he came to Mr. Demarest's office, he had evidently changed his mind because he wanted more. So Mr. Demarest asked him to step in the outer 1034
 office while he was talking with me. And Mr. Demarest reasoned and agreed with me and finally I agreed to make it \$6,000. My brother said it was satisfactory. I recollect the signing of that paper Exhibit 65. That general release. I recollect what was said at the time of the signing of it, and what was done. I gave him a check for \$6,000, which I presume he had cashed, because it came back. After the 22nd day of May, 1902, my brother did work for me, in some of those pieces of property. The first work he did was to prepare plans for the building that I was thinking of erecting on the lot, 107 West 124th Street. The second work was, I think, was an amended plan of the first 1035
 plans. I am shown a paper bearing date October 15th, 1902, and asked if that bears my brother's signature. (Paper shown to witness.) Yes, sir, this is his signature.

Mr. Johnston: I offer this in evidence. I offer both of them.

Received and marked Exhibits 84 and 85.

I sold some of those properties. Yes, sir, the

1036 first property I sold was, I think, 443 Pleasant Avenue. I realized on that sale \$19,500. I sold 208 East 126th Street. I got \$18,500. I sold the Lenox Avenue and 124th Street property. I realized \$250,000.

Mr. Johnston: I am through on behalf of the defendants, whose interests are joint, and Mr. Hubbard has some questions that he desires to ask on behalf of his defendant. There is a counterclaim in this witness's answer, whom I do not represent, and Mr. Hubbard does. I was deputized to conduct the examination as far as their interests were identical.

1037 By Mr. Hubbard:

After the conveyances of these premises, Number 107 West 124th Street, and Uumbers 281, 283, 285 Lenox Avenue, by Mr. Davenport to me, I erected a stable and storage warehouse on the property, 107 West 124th Street. This conveyance was made to me by Mr. Davenport in May, 1902. We started on the work about October 16th, 1902. I think that is the date. I can give you the exact date. It was a five story stable and storage building. It was erected in accordance with the lease I had made. I had to put it up, for a certain building; I had already leased the building. The building upon those identical premises at the time of the purchase from Mr. Davenport was a two story and basement frame building. They were torn down.

1038

I can tell the cost of the building, without using the paper: about \$28,869, Mr. Kellogg. I think it was 36 cents. I did not execute any mortgages. The premises were taken subject to mortgages given by Mr. Davenport. I paid interest on the

mortgages referred to here. I paid the interest 1039
 on the property that I owned to the executors.
 Those premises on Lenox Avenue and also the
 premises on 123rd Street and Pleasant Avenue.
 I paid the interest on the Pleasant Avenue and
 the 126th Street property as long as I owned
 them. After that, the other owners paid it. I
 paid the interest on those other premises as long
 as I owned them. I conveyed the premises on
 Pleasant Avenue, I think it was in April, 1903.
 I conveyed the premises on 126th Street either
 June or July of the same year. And I conveyed
 the premises to Mr. Ehret—107 West 124th Street
 and 281, 283 and 285 Lenox Avenue, that was con- 1040
 veyed in June, I think, 1906. I cannot state the
 aggregate amount of interest that I have paid
 upon those several premises, up to the time of the
 conveyances as stated by me, not without looking
 at my memorandum. I am handed these papers.
 (Papers shown to witness.) \$9,840 I think is the
 exact amount of the interest that I paid. No
 cents. I look at those papers handed me and
 state what they are. They are receipts for inter-
 est that I paid. I paid it to the executors. I did
 not pay this to the party who has signed this as a
 receipt. My checks were always drawn to the or-
 der of Henry Ungrich, Jr., and Martin Ungrich, 1041
 executors and trustees. They were all paid by
 checks to the order of the executors. After the
 conveyance to me, I paid taxes upon those several
 premises. I paid the taxes right along that were
 due on the property. The amount of taxes I paid
 while I was the owner of the premises, the sum
 total was \$5,811.66. I have the tax bills there. I
 paid \$648.46 water rent. I paid over a thousand
 dollars in fire insurance, but the net amount—I
 was allowed insurance on the different properties

- 1042 as I sold them—the net amount I paid is \$600.11. I paid plate glass insurance. The net amount of that that I paid was \$91.95. These premises were rented. During the time they were rented and during the time I owned them, I paid for insurance of the rents. The amount was \$19.15. I paid that one year. There were repairs on those premises during the time I owned them, lots of them. Paid by me. During the entire time I owned the property, \$3,626.12. There was a janitor or caretaker in those buildings. Yes, sir; in the Lenox Avenue property I had one janitor. The Pleasant Avenue property, there were two houses on one lot and that had one janitor; and the 126th Street property had one janitor. During that time I owned that property, I paid for janitors' services, \$1,770.44. These premises were at times in the hands of a real estate agent for rental, and collecting of rents, etc., at that time. I paid commission for that. Altogether, during my ownership of that property, I paid out \$336.50 in commissions. I sold the premises on Pleasant Avenue and 123rd Street. In April, I think it was, 1903. The price at which I sold it was \$19,500. I paid on the sale of those premises a commission of \$195: 1 per cent. The premises Number 208 East 126th Street, I sold those premises. About June or July, the same year. At the price of \$18,500. I paid a commission on that sale. \$185: one per cent. And the 107 West 124th Street and 281, 283 and 285 Lenox Avenue, they were sold in one parcel. To George Elret. About the month of June, in 1906. I paid a commission on that sale. \$2500, one per cent.
- 1043
- 1044

Cross-examination by Mr. Kellogg:

The only business I have is managing my own affairs; looking after property. I have done a

little building; built two houses, or three houses. 1045

I am in no business. I have not been in any business since May 1st, 1894. I have done something since May, 1894. Yes, sir, I have done lots. Looking after property isn't any joke. I have not been in any business since 1894. Before that I had been in the wholesale flour trade. My father's name was Henry. I went to live with him—it was shortly after my mother's death; I don't know the exact month; it was in 1885, I think. I and my wife went there. Not my present wife. I have been married twice. I lived at 107 West 124th Street. This very property that is the subject under discussion. There came a time that I took up the management of my father's property for him; that was on May 1st, 1894. May 1st, 1894. 1046
And I left the firm that I was with. I am sure about that date. He commenced to pay me for that when I went to live with him. He paid me \$100 a month and the expenses of the household. I think it was 1885; I went to live at my father's house; it may have been 1886, but I think it was 1885. I lived in the house until his death. My father when he died was in his 82nd year. He died in the hospital. The trouble was apoplexy. The first stroke he had on the 6th of July, 1899. Sometime between midnight and two o'clock in the morning. I had charge of my father's books. 1047
I had charge of my father's books—entire charge, from May 1st, 1884, up to the time of his death. Several years before his death he was—one eye was operated on for cataract. He had difficulty in reading. No other infirmity. Nothing except what goes with old age; he was not feeble—yes, he got quite feeble during the last. He was in pretty good shape up to four or five years before his death—not four or five, about four years be-

- 1048 fore his death he was in pretty good shape. There were other occupants of this house, aside from my family, I and my wife and my father, my daughter and the help we had—servant help, no other of the family. I did not pay to my father any cash for the assignment of the mortgages which aggregate in this paper \$25,000. I think the paper states one dollar. Nothing beyond that. I was paid the monthly payments, or the amount of \$1200 a year, and the expenses of the household. I paid myself. At the end of every month I made out a statement of the receipts and disbursements and then drew my check for the balance due my father, and deposited that check in
- 1049 the bank. My father did not have an operation on his eyes by Dr. Friedenberg, in 1894. I swear positively to that. Dr. Volk operated on his eyes. I don't know what year it was, but it was some time previous to his death. I could not fix the exact date. I collected all the rents of these properties. I had not done that since 1885. I took entire charge of my father's affairs on the 1st of May, 1894. Prior to that, my father did not pay me \$100 a month; not until I took entire charge. I misunderstood your question before. The \$100 a month commenced in 1894. I collected the rents, looked after the repairs, took general supervision
- 1050 of the property. Took care of this property on 126th Street, Pleasant Avenue and Lenox Avenue, all the property. Took charge of it all, and collected the rents. I kept a bank account. There was a bank account in my father's name and a bank account in my own name. I put in my bank account all the rents that I collected. I put to my father's bank account the net amount left at the end of the month, after the rents were all in, and the bills were paid. I tried to get the bills in at

the end of the month. From 1894 to the time of 1051
 my father's death, seven years, I did what I have
 described now, and for the price that I have
 stated. I had a power of attorney from my father
 in 1886. Not to build a building on Pleasant Ave-
 nue, not to build a building. I owned the prop-
 erty at that time, when I put up that building. I
 owned the Pleasant Avenue property. The power
 of attorney was to collect rents and make leases;
 leases not to exceed one year. I had another
 power of attorney at the bank to transact his bus-
 iness. My father died March 1st, 1901. He had
 been in the hospital before he died about nine-
 teen months. My wife died three days after my 1052
 father, and I guess it was some time after that
 that the will was read, because I was all broken
 down; my wife had been sick for several years,
 and I took a trip south. I do not remember the
 exact date the will was read. My impression is
 it was after I came back from the south. I guess
 Mr. Demarest had the will. That is my impres-
 sion. I cannot swear positively. I may have
 brought it down; I don't remember. If I had the
 will, it was in the safe deposit vault, but I don't
 know positively that I had it. I cannot say posi-
 tively. My impression is that the will was not
 read the day after my wife's funeral. My im-
 pression is it was not. I cannot say positively. 1053
 It was read at Mr. Demarest's office. I guess my
 brother was there. I don't know whether I had
 any company going down to the office, or not, sir.
 I cannot remember that. I don't know whether
 I went alone or whether somebody went with me.
 I don't remember whom I found there when I got
 there. I know that my brother was there when
 the will was there, and I think my cousin Martin
 was there. I would not say so positively. My

1054 brother was there. Mr. Demarest read the will.

Q. What was said at this time?

Mr. Johnston: I object as immaterial, incompetent and improper, and not within the issues.

Objection overruled. Exception.

A. I don't think there was much conversation over it. I cannot remember anything about it. No, sir, I cannot. I do not think there was much said.

Q. Do you remember any question being asked of you by your brother Henry— A. I have no brother Henry.

1055 Q. Your brother Louis, as to the amount of personal property that was left?

Mr. Johnston: The same objection.

Same ruling and exception.

A. I do not. I would not say that there was not. I wouldn't say so. Very likely he asked about the estate, but I don't remember. I don't remember what he said. There was some talk about different things, but I don't remember what was said at that time. Probably the personal estate was one of the things that was talked about, but I do not know. Nothing more than Mr. Demarest said he would offer the will for probate. My brother did not say
1056 that he was dissatisfied with the will. I don't know that he said he was satisfied with it. But he did not say he was dissatisfied with it. Positively not. I remember that. All I remember about the talk is that Mr. Demarest said he would offer the will for probate. That is all. I wrote this letter to my brother of date of April 6th, 1901. (Paper shown to witness.) That is my handwriting.

Mr. Kellogg: I offer it in evidence.

Received and marked Exhibit M.

April 19th, 1901. (Paper shown to witness.) 1057
It looks like my handwriting, that is my handwriting.

Mr. Kellogg: I offer it in evidence.
Received and marked Exhibit N.

The Ungrich "cousin" referred to in this letter, I presume, is Martin, one of the executors. I presume so. I have several cousins. He was not an executor then, in—— What date was it? We had a misunderstanding just shortly after my father's death. I did not speak to him for a few days. That misunderstanding did not remain. Not very long. It may have been a week. I don't think longer. 1058
That was the only misunderstanding that I had with Mr. Martin. As far as I remember, I don't remember any misunderstanding I had with him. You mean, that is the only thing—— I don't remember any other misunderstanding between us between the time of April, 1901 and 1902. About that time in 1901 and 1902 we used to see each other every time we had any business in connection with the estate. I used to go to his house. Which accounts do you mean? We always conferred on any business we had in connection with the estate. I never had any trouble to get him to come and see me about it. Not that I remember. 1059

(Mr. Kellogg then reads the letter.)

As to whether that refreshes my mind as to Martin's coming up to look at the books I would say, well, I remember that was about the time we had a misunderstanding. Martin complained at the time he had the misunderstanding. At the time we had the misunderstanding. I think he said he would not come to my house. That is about all he said that I remember. All he said that I remember, yes, sir.

1060 Mr. Kellogg: I offer in evidence a letter dated April 22nd, 1901, from Henry Ungrich to Louis Ungrich.

Received and marked Exhibit O.

(Read to the Court.)

If on April 22nd, 1901, I was still under disagreement with Martin, the executor, I don't remember. I think that we did not get on a friendly footing until we deposited the personal estate in the trust company. I think that was about the first time we were—— I think that was some time in April. I cannot tell without looking at my book. When we opened the account in the New York Security & Trust Company. I think it was in April. I have the check book here. (Book handed to witness.) About May 16th, 1901. It may have been a little before or a little later. I wanted him to come to Thees's house, where I lived. Martin would not come there.

Mr. Kellogg: I offer in evidence a letter dated April 22nd, from Henry to Louis.

Received and marked Exhibit P.

Mr. Kellogg: Will you give me Louis' letter to which the letter of April 22nd is an answer? Addressed, "Postal card just received;" 1901, April.

1062 Mr. Johnston: April 19th, there is a postal card, and April 21st there is a postal card, and April 22nd; you may have them all.

Mr. Kellogg: Now I offer the postal card of April 19th, from Louis to Henry, and the one of April 21st, from Louis to Henry.

Received and marked Exhibits Q and R.

Thees was my son-in-law.

Mr. Kellogg: I offer in evidence a letter

dated May 1st, 1901, from Henry to Louis. 1063

Received and marked Exhibit S.

Mr. Kellogg: Now, the letter of May 11th, I offer in evidence.

Received and marked Exhibit T.

(Letters read.)

I don't recall just what there was that inspired those expressions in my letters, referring to the fact that he was not on good terms with me, asking to be on good terms. Probably he felt like Martin did at that time, that things were not right. That is the only thing I can attribute it to. Well, he always seemed—— I could not say what he said to me at that time. He never said anything that I remember to intimate that I had not been honest about the affairs of the estate. Nothing of any kind. Not that I remember. He seemed to think that I had an unfair advantage of him. That seemed to be the burden of his complaint all the time. Yes, he told me so. I thought it had an affect upon his disposition towards me. I had seen much of him prior to my father's death—seen him often. I used to see him frequently. I don't know just how frequently. Perhaps once a week and perhaps not as often. Once in a while I would meet him at the hospital, and sometimes would go over to him from my house. That is, seeing my father. He went to see my father at the hospital. Several times we went together. 1064 1065

Mr. Kellogg: I offer in evidence the letter of May 17th, from Henry to Louis.

Received and marked Exhibit U.

I don't think either one of us, Martin, the executors and I, exchanged any words in regard to making up. We just simply met and he tried to

- 1066 be friendly and I tried to be friendly. I did not want to have any ill-feeling against him. We were friendly after these accounts were made up, and this deposit made. So far as I remember, we were. That I fix as the date when we become friendly. About that time, I don't remember whether Louis was present when I and Martin went over our accounts, these accounts in which I deposited the money in the bank. I don't remember that. Well, there was money in eight— I don't know that I went over it at all. We had to file certificates that we were the executors, with some of the savings banks. There was money in 1067 seven or eight different savings banks. Some of them wanted certificates and some of them did not care for them. To do that, I and Martin came together at those different banks. He went with me to open the account. I presume he went over the accounts with me by which I made the deposit in the New York Security & Trust Company. I think he did. I am not positive whether—I could not swear so positively. My best impression is that he did.

Mr. Kellogg: I offer in evidence a letter of May 31st, 1901, with the exception of the figures on it.

- 1068 Received and marked Exhibit V.

I was friendly with Martin then. Why I asked Louis to get those checks of the estate signed and endorsed. Well, Louis had to get his own checks signed, so— He was entitled to the checks from the executors of his father's estate. They had to be signed by both executors. At that time, on May 31st, 1901, I don't know whether he had indorsed the check for the deposit to the credit of the estate account. I don't know. It says here,

in my letter, "Get him to indorse the check for 1069 deposit in the Estate account." It was probably a check for the amount due the estate. I presume I asked Louis to get Martin to sign it. I presume so, if the letter says so. I have no recollection other than that about it. I cannot remember all these things.

Mr. Kellogg: I read in evidence the postal card of May 31st.

Received and marked Exhibit W.

Mr. Kellogg: I also offer in evidence the letter of July 6th, 1901, from Henry to Louis.

Received and marked Exhibit X.

Also I offer in evidence the letter of October 31st, 1901. 1070

Received and marked Exhibit Y.

I made my first effort to close the estate the time it was closed, I guess. I did not make any effort to close it. Mr. Demarest may have told us that it was necessary to divide the personal estate before January 1st, 1902, in order to avoid the payment of the tax on the personal estate. Mr. Demarest may have told us it was necessary to do that. I may have written to him. I was not anxious to have the personal estate divided. I don't know that I was particularly anxious. 1071

Mr. Johnston: I submit he cannot answer that categorically.

I did not say so, to Louis, that I wanted to get the estate closed up as soon as possible. I did not. I don't remember ever saying it. I could not swear positively I did not say it. No, I could not do that. (Mr. Kellogg reads the letter Exhibit Y.) At this time, on October 15th, 1901, I don't think I had any conversation with Louis, in re-

- 1072 gard to an agreement on prices of these different houses. I don't think so. I don't remember. I don't think I did. Probably Mr. Demarest told me, and that is where I got the information that if we did not agree on the prices of these houses there would have to be a partition sale. By this language: "If we agree, meanwhile, on prices for the different houses; if not, then nothing is left except to have a partition sale." I have the impression, I meant, if we agreed upon the sale of the property, we might agree upon some sort of a price. I did not know how we would sell it. I had not talked to him at that time, about my willingness to buy the property. I talked to
- 1073 him about my willingness to buy the property probably around the first of the year. By the words, "If we all agree, meanwhile on prices for the different houses;" as to who were to agree I presume everyone that was interested; the executors and all. Probably Louis and I.

Mr. Kellogg: I offer in evidence the letter of October 18th, 1901.

Received and marked Exhibit Z.
(Read to the Court.)

- Whether that meeting of October 22 was held I don't know. October 18th the letter was written,
- 1074 1901. May I look at my books? I have no note of any meeting at that time. There is no memorandum at all. This is a book that I have been keeping—I don't know whether I kept memoranda of meetings in that book. I think I have another one of this date, but I don't seem to have it with me. I can't find it. I don't know whether we had a meeting there or not, on the 22nd.

Mr. Kellogg: I offer in evidence a letter of

October 21st, 1901, between the same parties. 1075

(Letter shown to witness.) Yes, sir that is my handwriting.

Received and marked Exhibit AA.

(Read to the Court.)

At that time I think nothing had been said in regard to the arrangement of the real estate. I don't think there had. I cannot say so positively. Louis probably stated he wanted to see me privately. I don't know what the subject was.

Mr. Kellogg: I offer in evidence a letter of October 19th, produced by the defendants, 1076 from Henry to Louis.

Received and marked Exhibit BB.

(Read to the Court.)

I do not recognize that as the answer to the letter, "Anything you have to talk about private may just as well be said so, if you only will let me know you want to see me alone. It is not necessary for us to go to Demarest's office." I don't know if that is the answer. I don't know. No. I don't remember that a meeting had already been called for October 22nd, 1901, at Mr. Demarest's office. I don't remember that. I don't remember what the discussion was at that meeting. I don't 1077 think there was anything said about a forced sale by partition, or otherwise, of this property. I am pretty sure that nothing of that kind was said. What happened at this time I don't think was in relation to the closing of the estate. I don't think so. It may have been in relation to a division of the personal property. It may have been that. I won't swear to it. There had been one or two divisions up to that time; quarterly divisions. I

1078 cannot tell what the subject of that interview was.
I cannot. I don't know that it ever took place.

Mr. Kellogg: I offer in evidence a card produced by the defendant, dated November 4th, 1901, from Louis to Henry.

Received and marked Exhibit CC.

(Read to the Court.)

I was not desirous of having the personal estate closed up in November, 1901. Not necessarily so, no, sir. Whether I expressed, said in writing or orally, a wish to Louis to have this personal estate divided in November, 1901, I don't
1079 know. I may have done so. But I could not say positively. My best recollection is that Louis was the anxious one; not I. And that I was not anxious to do it. Not at all, sir. I was not anxious to escape the taxes on January 1st, and I did not ask him to divide up the personal estate so as to escape the taxes. I was not anxious to escape the payment of personal taxes. I have no recollection of expressing to him, or making a request to him, orally or in writing, to the effect that I desired the personal estate divided so as to escape the payment of the taxes on January 1st, and of doing that in November, 1901. I did not say so.
1080 I have no recollection of it. I have no recollection of making of making the request at the same time, and saying that the money or personal property, could be invested for more than it was getting in the trust company, and bring in at least four to five per cent. I have no recollection of it. No, sir.

Mr. Kellogg : I offer in evidence a letter from Henry to Louis, of November 5th.

Received and marked Exhibit DD.

(Read to the Court.)

I did not see the letter. (Paper shown to witness.) Yes, sir, that is my handwriting. Upon the occasion of the accounting \$3,000 that was held in trust for Louis by me was put in the trust company by the executors; yes, sir; on certificates. I don't know just exactly the date without looking at my memorandum. I think it was in the spring of 1902. I think it was. Some of it is there yet. Of that original \$3,000. There is of that original amount, about \$2700, I think. It has never been invested otherwise than by leaving it in the trust company. No, sir; we could not find— Interest is paid on it; three per cent., I think. In 1902 there was paid three per cent. It has always been three per cent. Pretty sure.

1081

1082

Mr. Kellogg: I offer in evidence a postal card received November 8th, 1901, from Louis to Henry.

Received and marked Exhibit EE.

(Read to the Court.)

Mr. Johnston: June 9th, 1902, the account shows there was an amount of \$3,000 deposited.

I think it was after the—

Mr. Johnston: No, I said that was what the account stated.

1083

The Witness: I can fix the exact time by taking my book out and looking.

June 9th, 1902. We deposited \$3,000—what we deposited there. Deposited \$3,000 to the credit of this trust fund in which my brother shared. There has been paid out of it since, the interest which has been paid by the Trust Company. As to what decreased it to \$2,700.00, we have received money that was paid off and paid out money on bond and

- 1084 mortgage to this amount. It was decreased in the ordinary running affairs of the account. We did not have this loss on other securities. Some of this \$3,000 was put in other investments, other than the certificate of deposit. Some of it was. I would have to go through my check book. I have an account of it to show how I, as trustee, invested this estate. I have an account of it. Part of this \$3,000 was used in the mortgage that we made. It amounted probably to two hundred odd dollars. The last mortgage we made. That was not very long ago. Within six months. None of it had been used before. This sum of \$3 000 did not remain
- 1085 until six months ago from June, 1902, on certificate of deposit, in the trust company, afterwards, at the division of the personal estate, this amount was paid out and re-deposited with some other money. To Louis. We deposited it in the Knickerbocker Trust Company, on certificate. It is there. I have got the Receivers' certificate. We got a certificate of deposit from the Knickerbocker Trust Company. That was turned in, with my quarterly, and I, as executor, transferred the balance due on the certificate to the active account. We had one account on which we drew checks. On a certificate of deposit you cannot draw checks. We put it in the active account, in the estate account in the Knickerbocker Trust Co. In the same
- 1086 Company. That \$3,000 put apart for the trust was there in the account. In the account. We transferred it from one account to the other. When it was put in the trust account I could not tell you. On July 19th, 1907, the balance in the certificate of deposit was transferred to the other account in the Knickerbocker Trust Co. \$3,219.11. There was also \$52.74 interest due on that certificate. It was transferred July 19th. July 19th, 1907. It was then put in the active account of the trust, yes, sir.

It had been before on certificate. On certificate of 1087
 deposit. Yes, sir. The number of the certificate
 is Number H557. From June 9th, 1902, to July
 19th, 1907, it remained in the certificate of deposit
 in the Knickerbocker Trust Company. We trans-
 ferred it to the active account of the trust; we were
 expecting some mortgages to be paid off; it is in
 the active account now, in the Knickerbocker
 Trust Company. That sum has been in the Knick-
 erbocker Trust Company all that time, in those
 two different accounts.

The Court: I suppose the certificate of de-
 posit has been surrendered.

The Witness: Yes, sir.

1088

I said I would take the bonds and stocks of the
 estate at the prices fixed by the market rate that
 day; I said I would take them. They wanted to
 turn them into cash; I said I would take them. I
 don't think before anybody asked me to take them;
 I don't think so; I said I would take them and sell
 them. Those bonds were by virtue of this paper
 which was signed on February 27th, 1902—that is,
 the Texas & Pacific Railroad bonds, the St. Louis
 & Southwestern bonds, and twenty shares of the
 New York, Wheeling and Lake Erie Railroad
 stock—were taken over by me at a price, at my
 suggestion, in order to pay the market price for 1089
 them. I think it was my suggestion; I did not have
 any particular object in making that suggestion;
 no object at all, except to convert them into cash
 for the benefit of the estate. I don't remember
 just how long I kept those bonds and stock before
 I sold them. I don't remember just how long. I
 know I sold them. I may have kept them. I don't
 know exactly how long; not very long; I could not
 say whether it was a month, or two, or three

1090 months; it may have been longer; I am not positive. I am positive of something in this world. I have got a memorandum of them somewhere, I guess.

Mr. Kellogg: I offer two postal cards in evidence, dated November 26th and 28th, 1901, from Louis to Henry.

Received and marked Exhibits FF and GG.
(Read to the Court.)

Mr. Kellogg: I ask the other side to produce a letter of November 29th, and they say they haven't it. I offer a letter of November 30th, 1901, written by Henry to Louis.

1091 Received and marked Exhibit HH.
(Read to the Court.)

I cannot tell you how much money we had in the bank on November 30th, 1901; I cannot tell you. I could not tell you whether it was several thousand dollars. Mr. Johnston has the check book. (Book handed to witness.) What date was that? There appears to be something like \$7,300 there on November 30th, 1901. I cannot give you the receipts from the rents of the property monthly without looking at some memoranda. I can't tell offhand what the rental of this property was. I took care of it and collected the rent about ten years altogether. (Referring to a paper.) The gross rentals from 281, 283, 285 Lenox Avenue for the year 1901, part of which time it belonged to my father and part to the estate, was \$5,354. That is the gross rental. 208 East 126th Street, for the year 1901, the gross rental, \$1,874.50. 443 Pleasant Avenue and 450 East 123rd Street, for the year 1901, from January 1st to January 1st, \$1,940.50. Then there was for 107 West 124th Street, in that year there was \$320 received in rent. That was part of the Lenox Avenue property; the gross

1092

rents of the property were not between ten and twelve thousand dollars a year; not as much as that; the gross rental of that property was about \$9,000; between nine and ten thousand dollars. I was not afraid in November, 1901, there would not be enough to pay the taxes; I was not afraid. My relations with Martin Ungrich were friendly on November 30th, 1901, as far as I know. 1093

Mr. Kellogg: I offer in evidence a letter of November 30th, 1901.

Received and marked Exhibit II.

(Read to the Court.)

I don't know why I sent my check for my interest, and the check for Louis' interest in the estate, to Martin to be signed, by Louis at that time; I don't know of any reason why. I cannot tell. 1094

Mr. Kellogg: I offer a postal card from Henry to Louis, in evidence, dated February 25th, 1902.

Received and marked Exhibit JJ.

(Read to the Court.)

I suppose I went there then; I suppose I did; I don't know; I have no recollection of going there; very likely I did. I cannot state whether I did or not; no, sir; I do not remember what I wrote this postal card for, what the meeting was, that I called upon him to meet me there unless it was to fix up estate matters. That date was February 25th, 1902; it was probably—our business was to make up our statement; to the best of my recollection it was to make up this statement; a quarterly statement. I don't remember going there on the 27th, but no doubt I was there, I do not remember anything that happened there; I do not remember anything that occurred there. 1095

- 1096 Mr. Kellogg: I offer in evidence a letter of January 9th, 1902, from Henry to Louis.
Received and marked Exhibit KK.
(Read to the Court.)

I don't know whether there was any meeting on Tuesday, January 14th; I don't remember. Is that the date fixed for the meeting? No doubt I was there, but I don't remember it; I don't remember anything about it. We had meetings every little while; I do not remember having a meeting on this day at all, and nothing that occurred there.

- 1097 Mr. Kellogg: I offer in evidence a letter written to Louis Ungrich by James Demarest, dated January 27, 1902.
Received and marked Exhibit LL.
(Read to the Court.)

I was married in 1902, a second time, March 19th, and went off on a trip and was gone about six weeks; not quite.

- Mr. Kellogg: I offer in evidence a letter of March 25th, 1902.
Received and marked Exhibit MM.
(Read to the Court.)

- 1098 That fixes the time of my absence. In May, 1902, the beginning of May, 1902, I may have had a talk with my brother about settling up this real estate matter as early as the first part of May, 1902; very likely I did. Well, I don't remember the language; but the substance is in regard to the prices and the agreement to take the property, etc. I don't remember what was said, or any language. I don't think I said to him that I was anxious to get things fixed so that I would

know where I stood and what was my income and 1099
 be able to manage my own business to suit myself.
 I don't think I stated anything of that kind. No,
 I will not swear; I will not swear to anything that
 I am not absolutely certain of. I am certain of
 some things; I did not urge my brother from time
 to time, so that I could arrange this real estate,
 so that I would get things fixed up and arrange
 my income. Never; he was the one that was do-
 ing the urging; he was.

Mr. Kellogg: I offer in evidence a letter
 dated May 2nd, 1902, from Henry to Louis.

Received and marked Exhibit NN.

(Read to the Court.)

1100

I remember to have written that letter. It was
 true when I wrote it; yes, sir, it was true.

Mr. Kellogg: I offer in evidence a postal
 card dated May 2nd, 1902, from Henry to
 Louis, on the same date.

Received and marked Exhibit OO.

(Read to the Court.)

The Witness: There was no store in 107.
 "A store" probably.

Mr. Kellogg (reading): "No. 107 West
 124th Street and store vacant." That is right,
 isn't it?

1101

The Witness: I understood you to say the
 store at 107 was vacant. The house was va-
 cant.

Mr. Kellogg: I offer in evidence the letter
 of May 5th, 1902, from James Demarest to
 Louis Ungrich.

Received and marked Exhibit PP.

(Read to the Court.)

Mr. Kellogg: I offer the letter from James

1102 Demarest, of May 8th, 1902, to Louis Ungrich.

Received and marked Exhibit QQ.

(Read to the Court.)

Mr. Kellogg: Also I offer in evidence another letter of May 8th, from Henry to Louis.

Received and marked Exhibit RR.

(Read to the Court.)

I have a memorandum book which will show what time I sold these stocks; I have not got it where I can put my hand on it. It is at home. I could not fix the date of the first talk about my purchase of this real estate, or the transfer of the
 1103 real estate to me; I could not fix that date; it was somewhere around that time, January, 1902. Sometimes I would have conversations with my brother alone; sometimes Mr. Demarest and I talked it over. We talked it over at Mr. Demarest's office; that is, I— The first time that I have a recollection of telling my brother that I would buy this property was before the appraisal was made; some time before then; I could not fix the date, it would be impossible for me to fix upon any particular date. There were a great many talks about that property. The first positive offer I made I think that was on the 16th of May
 1104 when we agreed on the price. I think that is the first time that I ever offered the price. I said that I would take the property more than once. I don't know just at what dates. Perhaps it was the 1st of January, 1902. Perhaps earlier than that. I don't think it was as far back as November or December, 1901, somewhere around the 1st of January. I told my brother—I told my brother I would buy the property at a fair valuation. On May 2nd I wrote, "I want to have this uncertainty

cleared up and if there isn't any other way to do it, 1105
 put the whole property up at auction and sell it
 out to the highest bidder." I don't deny writing
 that letter. I said, "I want to get things fixed up
 and get things so that I can manage my business
 to suit myself." That was so. I meant by stat-
 ing so as to be able to manage my own business
 to suit myself I would rather manage my own
 business alone. Nobody was managing mine. I
 would rather manage my own affairs. I did not
 mean in this letter when I wrote, "so as to be
 able to manage my own business in order to suit
 myself," by getting the property so as not to be
 troubled by the other executor, not necessarily. I 1106
 probably meant that I preferred to have affairs in
 such a shape that I could handle things myself
 and be responsible to no one else. That is what I
 meant, as you say. You can construe it that way.
 Where on May 8th I said, "If possible I would like
 the entire matter settled soon and am willing to
 give a fair price for all or have a sale and know
 just where I stand." I don't believe any price
 had been mentioned by me up to that time, May
 8th. I don't think the appraisal was in at that
 time. I had not seen it. On May 8th, I don't
 think I had seen the appraisal; I don't think so. I
 think the first time I say it was May 9th or 16th, I
 don't remember which. I do not remember going 1107
 down after this notice had been sent to Louis to
 come down to Mr. Demarest's office, and Louis
 not being there. No, sir, I don't remember that;
 I do not remember going down there after making
 an appointment with Louis and his not being
 there; I don't remember that. I do not remember
 it being adjourned, the appointment being ad-
 journed at Mr. Demarest's office, because of
 Louis's absence, in May. I won't say it is not so;

- 1108 I don't remember it, that is all. You call my attention to my letter of May 8th, 1902, in which I say: "Although it was not absolutely necessary for you to be present yesterday at the meeting, at Mr. Demarest's office, as a matter of courtesy to you, we deferred taking any action on the business in hand until to-morrow afternoon at 2 o'clock, for the same time and place, and hope you will be there." I don't deny writing that. That letter refreshes my mind. I remember it from that letter. I know that on May 8th, the appraisal had been made by Mr. Smyth. I don't know whether Mr. Demarest had the appraisal or not. I may have seen it on May 7th or May 1st. I haven't
- 1109 any recollection about it, at all; I have not. I remember the meeting of May 16th, 1902. It was in Mr. Demarest's office; I could not say who got there first; I don't know whether I came alone, or whether anybody was with me. I don't remember who I found there. I could not even say what time of the day it was, whether—the usual hour we were to meet, was in the morning. I could not say what time of day it was. I do not remember whether Martin was there when I got there or not; whether Louis was there when I got there I could not say. I think Mr. Demarest was there; I cannot swear to that; we were there some time. I did not make
- 1110 a memorandum how long it was. We were there some time. It may have been an hour, or two hours; I don't remember; I don't know if it was half an hour; it probably was; I don't know that it was. I could not say—yes, sir, it was more than fifteen minutes. I could not say who spoke first; I don't know whether I did or not. I don't know whether Mr. Demarest spoke first or not. I could not say who spoke first. I could not say who spoke first at all; what did Mr. Demarest say at

the meeting? We talked—the substance of his language I cannot give the language; we got into conversation over the price. The talk about this real estate came up; probably Mr. Demarest started it. I objected to the appraisal; I thought it was too high; but I was willing to give—I thought some of the figures werer too high; that was on the Lenox Avenue property, and on the East side property, too. I thought that was too high. I stated that I was willing to give a certain price. I was willing to take the property at the appraised value. I stated I was willing to take the property at the appraised value. That is after—I said that after I had objected to the two East side properties; I did not want them. I said I did not want those; I said why I did not want them. I did not consider them worth the money they were appraised for; and after we had agreed on the price—before we came to that, I stated I did not want the two East side properties; I did not want them. I said I did not want those; I did not want them. I said why I did not want them. I did not consider them worth the money they were appraised for; and after we had agreed on the price—before we came to that I stated that I did not want the two East Side properties; Martin said that I must take all, or none. He said I ought to give \$157,000 for it. I agreed to that price. I said I would give it. Then Mr. Demarest drew up the agreement—he dictated an agreement to his stenographer in his office; I stayed there. There is one thing that was said there, that—

My appraisal was about \$158,000, the two Lenox Avenue properties. I think— I did not have any written appraisal. I don't know whether my brother's figures were written or not. He

- 1114 stated he had an appraisal for himself, but I did not see any paper in his possession. He stated he had an appraisal. It might be that I didn't state anything about that at the first examination. I don't remember any papers being read. I think after the papers that Mr. Demarest dictated were typewritten, they were brought in and handed around. There were three copies and each one read them; there were two papers on the day that the title passed. But there were three—I am positive of that—on the 16th, because he handed one to each of us; I am absolutely sure of that, pretty sure. I stated a valuation that day of what I thought the two East side properties were worth.
- 1115 My valuation on the East side property for myself, was about \$20,000 for the pleasant Avenue, and about \$19,500 for the 126th Street. I mean for myself to buy. As to whether I value it less when I myself am to buy, I say I had been handling that property for a good many years, and I knew what it was. I meant that was the price at which I would be willing to take it. That is what I meant by my other valuation, certainly. I thought the Lenox Avenue property was worth somewhere around \$105,000, that is for myself to buy. I of course, had an idea of my own, what the property was worth, the price that I would be
- 1116 willing to take it at; that was the price I was willing to take it at; I finally took the property for more. That is the conclusion—I fixed this price at what I was willing to give for the property as dealing for myself; I did not own this East side property in 1901. I never put a price on it in 1901, this East side property, offering it for sale, not that I remember. I never fixed a price for it, not that I remember.

Mr. Kellogg: I offer in evidence a letter 1117
of October 25th, 1901, from Henry to Louis.

Mr. Johnston: I have no objection to the
body of the letter.

Mr. Kellogg: I do not offer the comments.
I include the enclosure.

Received and marked Exhibit SS.
(Read to the Court.)

(Exhibit SS shown to witness.) I wrote this
letter; I did not write this at the bottom.

Mr. Kellogg: No, we admit that.

Mr. Johnston: The question is, whether
those are your figures on the diagram. Did 1118
you understand that?

The Witness: Yes sir, I think those are my
figures there.

Well, my brother wrote to me—I think I remem-
ber the occasion of writing this letter. My brother
wrote to me that he had somebody who wished to
buy the property, and he asked me for a diagram,
with the rentals, etc., I think.

Q. And for the price that you would be willing
to pay for it?

Mr. Johnston: I don't find that on there.

Mr. Kellogg: I will show it to you. Let 1119
me have the letter, Mr. Johnston.

Mr. Johnston: What date is that?

Mr. Kellogg: This letter is October 25th;
I suppose a few days before that.

You call my attention to this paper here which
says, "208 East 126th Street; 135 feet East of
Third Avenue." That is in my handwriting.

Mr. Kellogg (reads): "\$25,000; no mort-

1120 gage on property now; will take cash; \$9,000; mortgage \$16,000 at four and one-half per cent."

That is my handwriting; there is no date on that; I know that is attached to the letter of November 25th and I made a diagram at different times. I don't know whether that is the diagram I made at that time or not. I could not swear that that is what I fixed as the price of that property on October 25th, 1901, or whenever I made that paper. I could not swear to that; that is my writing, it says "\$25,000 and will take." I could not swear that that is my handwriting. I could not
1121 swear to that; I have no— That is my handwriting, "Will take cash, \$9,000, mortgage, \$16,000." That is my handwriting. I sent that in a letter, but I don't know whether it was in that letter.

Mr. Kellogg: In that letter was also this:
"Southwest corner 123rd Street and Pleasant Avenue, 25 feet 11 x 100, tax valuation, \$13,500, no mortgage on property now; \$25,000; cash, \$9,000; mortgage, \$16,000 at 4½ per cent."

That is my handwriting; I think those diagrams
1122 were sent after I owned the property; I think that this \$25,000 was placed on it as the valuation of the property after I bought it. That is my impression; I don't say so positively. I sold it within eleven months after I bought it. I don't know whether within eleven months I offered the property that I purchased from my brother, for \$25,000; I don't know whether that is so or not. I may have done that. I haven't any recollection about it at all. I remember that very distinctly. In this letter there is not contained a diagram of

the Lenox Avenue property. (Paper shown to 1023 witness.) No sir, that is the Pleasant Avenue property. What is that? (Mr. Kellogg indicating.) That is 126th Street; there is no Lenox Avenue there; unless on the back of one of these other sheets; this is Lenox Avenue; there is no price for that; there doesn't seem to be. I knew that the subway was coming on Lenox Avenue in 1902. I knew that it was coming; I knew it was to be constructed; it was in the course of construction; I saw it right at Lenox Avenue; you did not say what time of the year; they did not start digging up until about May. I don't know whether it was before or after; it was about May. I could not say so, positively, that it was before May. 1124

The lower part of Lenox Avenue had been dug up. They were working on the lower end of the avenue the year before. I thought that you had reference to this particular location. At the time of the transaction of May 22nd, I could not say it had reached there; I could not say positively; I am under the impression if it had not reached there, it was very close by. It was the report that the station was to be at 125th Street. From this Lenox Avenue property the entrance of the station was about 150 feet, less than that; 125 feet; I am speaking of the entrance to the station. If you mean the station itself, it is probably not over 1125 25 feet; but if you mean the entrance, it is about 125 feet; I think the station comes up about 75 feet north of 124th Street; the station itself. I knew that this station was to be there in 1902, prior to this sale. That was the report; I knew that the avenue was very much cut up by the construction of the subway at the time of this sale. Property was rather dull at that time. I did not know that the people there were holding the property for an advance; I don't know what anybody

- 1126 else was doing. I was. Yes. At that time I did not own it. Everybody expected that the construction of the subway would improve the property. I did not know that George Ehret owned most of the rest of the block; I knew positively that he owned the southwest corner of 125th Street and Lenox Avenue; I had not been approached by brokers to sell this property in 1901 and 1902, to sell it to Ehret. I had not been approached by Mr. Schmidt. I heard Mr. Schmidt's testimony on the stand. Mr. Schmidt never approached me to put a price on that property until I had possession of it for three or four months; I don't think I told him then that I would not sell it.
- 1127 I did not name any price on it, three or four months after I purchased it. He made me an offer for a lot on 107 West 124th Street, and I told him I would not sell that lot; he made me no offer for the Lenox Avenue property; he said they did not want it; it was no use to them. I lived in 1902 at 60 West 129th Street before this sale, at 60 West 129th Street; I lived there from— I rented the apartment in March, 1902. From March, 1902, I did not live in this 107; I lived at 74 West 125th Street at that time, up to the time I got married; I lived at my daughter's from about— I lived when my father died, in 1901, at 107 West 124th
- 1128 Street; I left, to go to my daughter's house— I ceased to live there about March 10, 1901. There is property on Lenox Avenue next door, and property on 124th Street; you mean Lenox Avenue? I do not know of the Pannes sale of the property next door; next to my Lenox Avenue lot sold in 1902; I do not know of that sale. I did not know that Ehret had bought that. I didn't know that Pannes had bought the other lot, next door either, towards 125th Street. There were reports around

that both pieces of property were sold, but I don't 1129
 know anything about that; I did hear those re-
 ports that this property had been sold, and that
 Ehret was the probable purchaser. I did not hear
 that—yes, I did hear that. I don't remember
 when I heard it. I knew the property 109 West
 124th Street had been sold. I don't know who
 bought it. I knew who sold it. Mrs. Willing sold
 it, the lady that lived there. I think that property
 was transferred in the name of a party by the
 name of Everhard. I knew what the price was.
 As to the rumor whether that was bought for
 Ehret I would say there were lots of rumors going
 around. There was a rumor there and I 1130
 heard of it, but I don't know whether it was. The
 property next to that, 111, I don't know when that
 was sold. I don't remember that sale of April
 21st, 1902. I remember one sale of that property.
 I did not know anything positively in regard to
 those facts—in regard to those sales about the
 time the sale was made. Hearsay, that was all I
 know. At the meeting of May 16th, after we had
 agreed—Mr. Demarest said he would draw up a
 contract. The date of May 22nd was fixed as the
 time of the closing of title because Mr. Demarest
 stated it would take several days to prepare the
 papers, bonds, mortgages, deeds and this other
 agreement in regard to—that he told my brother 1131
 he would draw up, or draft a paper saying this
 property was being sold at his request. That is
 —the paper that Louis was to sign; the property
 was not searched, the title. On May 22nd he had
 the papers all ready when we were there. I don't
 know how long we were there; I did not note the
 time. We signed the deed as executors, and also
 I signed the receipt for my one-half of the estate
 which was coming to me at that time. I signed
 my receipt for my share of the estate. I received

- 1132 one-half of the estate; that was what I gave the receipt for; I did not receive any cash. I did not part with any cash to my brother, not at that time. (Paper shown to witness.) Yes sir, I signed that receipt. (Returning paper to counsel.) I did not look at the date at that time. (Returning the paper to witness.) May 31st. The settlement—I think I signed it that day, May 22; I think it must have been—it must have been dated ahead. The settlement was made as of the 1st of the month. All the rents and everything was apportioned that way. I think it was signed May 22nd; I won't be positive about that. I neither received nor parted with any money. I did not pay Davenport \$25.00 or anything. I don't know who paid that; I did not know whether he was getting anything. I did not know that he was getting anything. I don't say that Mr. Davenport might not have received \$25. Mr. Demarest might have paid him. We did not—I did not, rather. It was not paid out of the estate that I know of. I don't know by whom it was paid. The executors gave the deed of all this property to Davenport; then Davenport gave it to me. Those papers were all signed that day; Davenport did not give back a mortgage on all this property for \$78,500; he gave three mortgages, amounting altogether to \$78,500. That is right,
- 1133
- 1134 and no money passed. You show me the exhibits in the Surrogate's account. I find "May 31st paid Martin L. Ungrich, Income to date, \$750;" August 31st., Martin L. Ungrich, income to date, \$897.77; November 30th, Martin L. Ungrich, income to date, \$820.18; February 28th, 1902, \$739.01." Up to February 28th, 1902, from the 11th of February, 1901. Whether the total income amounted to \$3,201.96 or not I cannot say. I did not figure up the income. Those were the four quarterly

payments of the income to Martin Louis under the will, for the first year, \$3,201.96. After the property came into my possession, my individual possession, I collected the rents; I collected my own rents; I have a book showing the rents that I collected. What the income from the property was for the year 1902 I can give you in a very few minutes; I can give you the gross amount for the year up to the 1st of January, 1902. Is that what you mean—from the time—that is, from the time I came into possession in January, 1901? You want a statement of the gross rents—of those, while I had them, three properties. 1185

The Court: From May 22nd, 1902, until you sold them. 1186

The Witness: You want each piece of property separate?

I sold the first property I think it was in April, 1903. You mean the gross rents for 1902.

I was asked to make up a statement of the gross rents for the year 1902; that is the statement that I have made up. (Book shown to witness.) You asked me to make up a statement; I have made up a statement of those rents. There is nothing in it, in this book, except— I can tear the page out. (The witness does as requested and presents the paper to plaintiff's counsel.) Those years all begin with June 1st, when I got in possession. The gross rents of 208 East 126th Street, in 1902 to 1903, were \$1,792.10. That is one year, 443 Pleasant Avenue; this was considered as one house; that has two numbers; they are both on the same lot, 443 and 450 Pleasant Avenue. That amount was \$2,379.50 for that year. 107 West 124th Street for the same year, \$415. 281 Lenox Avenue, \$1,311. That is right, 283 Lenox Avenue, 1137

- 1138 \$1,615. 285, \$1,680.75. I want to say something right here; this last year is really thirteen months; there are two months of June. 208 East 126th Street, the rent for that year was \$1,792.10. This was the first— That is 1902 to 1903, that is right; 443 and 450 Pleasant Avenue, \$2,379.50; 107 West 124th Street, \$415; 281 Lenox Avenue, \$1,311; 283 Lenox Avenue, \$1,615; 285 Lenox Avenue, \$1,680.75; that does not make between nine and ten thousand dollars, not as much as that; 208 East 126th Street; I didn't own the house the next year. I had sold it in the April following June 1st. Whether the first years rental was only up to April—I don't remember—I can tell you in a moment, if you will allow me to look. I think it was included in the month of April up to the 24th of April, that is the 126th Street house. The Pleasant Avenue property was sold in June, 1903, so that all the property that I had left of the main property was the 124th Street and the Lenox Avenue property; the rent for 107 West 124th Street from 1903 to 1904, \$2,700. The 281 Lenox Avenue property was \$2,109; 283 Lenox Avenue, \$1,732; 285 Lenox Avenue, \$1,759; the next year, 1904 to 1905, the income of rent from 107 West 124th Street, \$2,700; 281 Lenox Avenue, \$2,350; 283 Lenox Avenue, \$1,848; 285 Lenox Avenue, \$1,863; 1140 1905 to 1906, that is thirteen months, the next one, \$2,925. For 107 West 124th Street, \$2,925; 281 Lenox Avenue, that is thirteen months, \$2,664.50; 283 Lenox Avenue, \$2,129; 285 Lenox Avenue, \$2,207. When I sold 208 East 126th Street, the price of the property was \$18,500, that I sold at; the price at which I sold. I got \$500 cash on the contract and there was a mortgage of \$10,000 on the property; the interest—I got a purchase money mortgage of \$4,500; five per cent., I think; I got

\$3,313.53 cash; I got two checks—\$3,313.53; 1141
\$4,500 second mortgage, which I took back again,
because these people didn't have enough cash.

The Court: A second mortgage?

The Witness: A second mortgage, \$4,500,
five per cent.

The \$10,000 mortgage from Davenport to the
executors was left on until it was satisfied, until
it matured.

The Pleasant Avenue property was sold for
\$19,500, subject to a first mortgage of \$11,000;
that is the Davenport mortgage; I took back a sec-
ond mortgage of \$6,000; five per cent. and got cash 1142
on delivery of deed, \$1,954.81.

Mr. Kellogg: Now, have you got a division
of the separate taxes on this property?

Mr. Hubbard: It is all on one bill, and the
several pieces are there, all the taxes. (Pro-
duces a paper.)

Mr. Kellogg: Can we have a statement
separating those? It would be much better
than going into it.

Mr. Johnston: I think the witness can give
you what the property is worth better than
anybody else, on those bills. You might just
ask him. 1143

I give the tax that was put on the different prop-
erties in 1902 and 1903; 208 East 126th Street,
\$341.01; 443 and 450 Pleasant Avenue, that is one
house, the tax on that was \$306.91; 107 West 124th
Street, the tax on that was \$204.60; 281 Lenox
Avenue, \$318.28; 283, \$238.71; 285, \$238.71. Now,
there was a discount of \$15.12 on those bills. Of
course, that is—In 1903, 107 West 124th Street,
\$197.91; the other two properties had passed out

- 1144 of my possession; the corner house 281 Lenox Avenue, \$339.28; 283 and 285 were both \$268.59; they were taxed the same; the next year, 1904, 107 West 124th Street, \$499.42; 281 Lenox Avenue, \$378.35; 283 and 285 were both \$287.54; the next year, 1905, 107 West 124th Street, \$491.86; 281 Lenox Avenue, \$476.96; 283 and 285 were both \$342.81; that is all; Mr. Ehret paid the 1906 taxes. The trust estate is now invested in one mortgage of \$34,000 at five per cent. at 171st Street, east of Audubon Avenue. Another mortgage—D. C. Kee is the owner of the property. It was invested some time last summer, the summer of 1907; it is a very large apartment house; very modern, up to date
- 1145 apartment house; a property valued at about, I should judge, pretty close to \$70,000. Then we have another mortgage at five per cent., \$24,000, on an Audubon Park apartment house, near 163d Street; that was put on some time last summer; I can give you the exact date by referring to my book. (Produces a book.) The \$34,000 mortgage was placed on the 17th day of June, 1907; the \$24,000 mortgage was placed on August 12th, 1907; there is still another, of \$10,000, at five and one-half per cent.; that is the northeast corner of 48th Street and Fifth Avenue, Brooklyn; it is a three story house with a bank on the ground floor
- 1146 and apartments upstairs; that makes altogether \$68,000; altogether we have on hand about \$15,174, not in cash; there is some money in the Knickerbocker Trust Company. That is not the same money that has been there always. The rest—what the \$15,000.00 is in I will have to divide it up for you. \$1,140.83 of the money is in the Corn Exchange Bank at two and one-half per cent. The balance is in the Knickerbocker Trust Company. The balance of the \$15,000; it was deposited there—the Corn Exchange money—I haven't got the

book here; it is only recently, that has been de- 1047
posited; it is income. That account in the Knicker-
bocker Trust Company was opened at the time,
I think, that Mr. Ehret paid off his mortgage in
1907; about July.

Mr. Johnston: 1906?

The Witness: 1906.

I have not got my account in the Knicker-
bocker; which money do you mean? Whether
there has been any investment of that money, the
\$15,000,000, the proceeds of the mortgage of
Ehret's, I say there has only been a little over
\$13,000, which is actually—

1148

Mr. Johnston: That is not the Ehret mort-
gage, having been paid off in 1906. It was
1907.

The Witness: I think it was 1907.

That was not a mortgage made by me person-
ally; no sir, Davenport; that amount altogether
was \$57,500; a mortgage made by Davenport to
the executors for \$57,500; that remained on and
was paid off in 1907. The terms of the Ehret sale
by me, I got the cash for my equity in the prop-
erty; I got about \$183,000 cash—\$182,641.20.
How soon after May 22nd, 1902, did I commence
to make preparations to build on the 124th Street 1149
property? Well, I talked with my brother; when
I commenced to actually build on this property?
In May of that year I first determined to build
on that property, that is, I had been talking of it
in May, the latter part of May. I had not been
talking of building on this property prior to May
22nd, 1902; some time in June that I was thinking
of building. We had been talking of it in May,
right after I bought the property. I put up a five
story storage warehouse and stable building.

1150 Mr. Kellogg: I offer in evidence nine receipts from Henry Ungrich, Jr., and Martin Ungrich to Henry Ungrich, Jr., all in the handwriting of Mr. Demarest.

Received and marked Exhibit TT.

Also I offer in evidence the division of the assessments and arrears of which they gave the total yesterday.

Received and marked Exhibit UU.

Also I offer in evidence the nine tax bills.

Received and marked Exhibit VV.

1151 I owned the Pleasant Avenue property once; I paid \$15,400 for it; I think it was. I put up the building on it; I think it was in 1887; it didn't cost quite \$9,500; somewhere between \$9,000 and \$9,500, as near as I can recollect. As to how many times Mr. Demarest had spoken to me in regard to the payment to my brother of this portion of the personal property of \$25,000, which I call it, before May 22, I say the \$25,000 was not a part of the personal estate. I don't know positively that the \$25,000 of mortgages was talked of prior to May 22nd by Mr. Demarest and me at all; it may have been; I could not positively testify it was not. I don't remember that I had been given a memorandum by Mr. Demarest of bills amounting to about \$900 or a thousand dollars, that my brother owed and was in distress for, prior to May 22nd; I don't remember that; I could not say sure about it; I don't remember it; it is very likely that I had, but I don't know. I did not tell Mr. Demarest that I would pay those bills; I don't remember any such thing as that. I don't remember whether I paid any bills at any time for my brother, shortly after May 22nd; I don't remember, Mr. Kellogg; I remember paying some-

1152

thing to Hausman; I don't remember what the 1153
 month was or what the amount was. I have got
 a record of it. I don't know. What month did
 you say it was? That \$6,000 was paid in 1902. I
 don't remember what month it was that I paid
 Hausman. I know I paid something. Some debt
 my brother owed him. That was a debt—George
 B. Brown was paid in 1901, I think. May I get
 my memorandum? I paid George Brown \$150 on
 May 23rd, 1901. I did not tell Mr. Demarest, nor
 see any statement of bills of his, prior to May
 22nd, 1903, for something like \$300. I don't re-
 member that at all. I did not say to Mr. Demar-
 est that I would pay \$7,500, if this trade went 1154
 through. No sir, never, never. That is not so.
 I did not say either that I would pay those bills.
 I didn't think I did. I am not positive enough to
 swear to it, but I do not think I made any such
 statement. My brother came to me for those
 moneys which were afterwards fixed at \$6,000,
 very soon after the property had been transferred
 to me. Well it may have been a week or two
 weeks, but it was very soon after the prop-
 erty had been transferred. He told me
 that he wanted to buy a little house in
 Brooklyn. He did not say that he wanted the
 money that was promised him when he signed
 those papers. In what year? This transfer was in 1155
 1902. I never made a promise— I don't re-
 member that he said he would have those bills
 paid. I don't remember that. I cannot say that
 he didn't. I don't remember. He may have
 given me a list of the bills at that time, but I don't
 remember. He did not say to me that he had been
 promised \$7,500 as his share of the \$25,000 and
 wanted me to give it to him.

1156 The Court: The question is, did he say that to you?

A. He did not, no sir. I don't remember just what passed. I could not remember. It ended in my paying him a check for \$6,000, and beside that \$300, or two or three hundred dollars to this German, Philip Hausman, but that was the following year. That was a year afterward, wasn't it? I don't know what year I paid Hausman that. I know I paid that. I kept an account of it. I think so. Probably I did, yes sir. I knew something about my brother's habits. He was intemperate at times. He had been so all his
1157 life; that is from the time he was out of school, probably sixteen or seventeen years of age, off and on. Sometimes he would be all right, for a long while. Well, for months at a time or longer. My father knew that habit; he could not help knowing it.

Q. Did you write this letter? (Letter shown to witness.) A. Where is the rest of it?

Q. You don't need to ask me that. Did you write that? A. That is my handwriting, yes sir, but there is more of this letter than this.

Q. We haven't got any more. Was that letter written by you to Louis? A. Yes sir, that is my
1158 handwriting.

Q. Written by you to Louis? A. Yes sir.

Q. It is signed by you, "Yours, Henry"? A. Yes sir, but that is not the whole letter.

Q. No, I understand that, but that is all I could get.

Mr. Kellogg: We offer that in evidence.

Mr. Johnston: I object as incomplete and incompetent and improper.

Mr. Kellogg: There is nothing to show that is not all.

The Witness: I never started a letter that 1159
way in my life.

Mr. Johnston: I object as not proper; it is
not the whole letter and it is incompetent and
improper for that reason.

Objection overruled. Exception.

Mr. Johnston: Is that date that is on there,
in your handwriting?

Mr. Kellogg: No, I don't claim that; that
is in my handwriting. I leave that off. The
date has nothing to do with it.

The Court: Only such portion as is in the
handwriting of the witness.

Mr. Kellogg: Yes sir.

1160

Received and marked Exhibit WW.

(Read to the Court.)

By Mr. Johnston:

The operation that I refer to in this letter, Ex-
hibit WW, is the construction of the building at
107 West 124th Street. I state what was the oc-
casion of my writing that letter, or portion of the
letter. My brother had prepared plans for that
building. He had been to my house with a draft
of the plans and I noticed his hand shaking very
much. I said, "Louis, are you drinking again?"
He said, "No, Henry, I am not." I said, "If you
"are drinking, I don't want anything to do with 1161
"you, because I know you are absolutely unre-
"liable. I would rather stop right where I am
"and not go ahead with this work, because you
"put me in a hole once before on the Pleasant
"Avenue house." He said, "Henry, I am not
"drinking, that is the trembling of my hands, not
"the excessive severity of my drinking." On the
strength of his promise, I told him to go ahead and

1162 finish those plans. He went off, got drunk and lost them. I had started that building with the intention of putting up an automobile garage, when Ludwig Bauman & Company approached me as to whether I would put up a building for their occupation, if we could agree on the rental, and I said that I might. I communicated that to Louis. Yes sir, he knew; he was present. Well, after I had got started on the other work, he prepared the plans for the new building and then lost them. And then the Building Department got after me. I had four inspectors after me.

1163 The building which I first proposed to erect was only to be about 70 feet in depth and two stories high, and the new building was to cover 97 feet of the lot, the full depth about, and five stories high. The Building Department got after me, because the inspector said, "You are covering the whole lot and your plan only shows for a seventy foot building." And I told him that the new plans were under way. Neville & Bagge went down, the architects— Those were my architects. Yes sir, went down—when my brother lost the plans, there was nothing for me to do but to get somebody else. So they went down and fixed the matter up at the Building Department, so that we could continue the work. The plans were then
 1164 finished up and the building was constructed. That letter was written after the loss of those plans. That letter was written under great provocation. My own condition of health at that time was not very good. I got down sick as a result of that thing. I have testified to having had some misunderstanding with Martin. The making of the investments of the trust account did not have anything to do with that misunderstanding. No sir. We made many efforts to get a mortgage

upon which to loan this \$3,000 of Louis. We were 1165
 not able to get such a mortgage, and we asked
 Louis to look around and see if he could get one
 and he said he would. There was one mortgage of
 \$10,000 paid off and we notified Louis about it
 and we were looking around to place it, and we
 asked him to look around, and went and looked
 at several properties that were called to our at-
 tention. He told us he had looked at them. You
 call my attention to the letter, Exhibit SS and the
 diagrams annexed thereto and ask me whether
 those diagrams were annexed to that letter at the
 time I sent it, and enclosed in the same envelope
 and sent the letter. (Papers shown to wit-
 ness.) No sir, they weren't. The fact that demon- 1166
 strates that to me is that these two diagrams were
 made up and left with my father. He was very
 anxious to get rid of that property, the 123rd and
 126th Street property. I came to pay these debts
 of my brother after my brother came to me and
 assured me that he had reformed. He was a dif-
 ferent man.

Mr. Kellogg: When was this? What time
 did this take place?

Mr. Johnston: At the time of the payment
 of those debts.

The Witness: I believed him.

1167

I talked with him about it. This was the sub-
 ject of conversation between us.

The Court: You talked about it?

The Witness: Yes sir.

The particular conversation I had with my
 brother was in regard to Mr. Brown's check. I
 told that—that conversation was with my brother.
 I told my brother that, or words to that effect.

1168 The Court: Keep down to the words you said to your brother, as much as possible.

The Witness: I told him, in deference to my father's wishes, that my father was very anxious to have the Brown matter cleared up, I would try and see what I could do with that check. I went to see Mr. Brown and he told me that it had been charged out to profit and loss years ago. I said—I asked Mr. Brown if a settlement of fifty cents on the dollar would be satisfactory to him and he said it would; so I paid him \$150.

1169 I paid other checks of my brother's. I paid a woman that lived next door to us, that had a check of ten or eleven dollars.

The Court: You mean checks for which there were no funds?

I had a conversation with my brother about the check of the neighbor's, or the claim of the neighbor's, which I have just spoken of, that I paid. I told him that Mrs. Willing had spoken to me after my father's death and thought that that matter ought to be made right, and I told her I thought so too, and I told her I would see that she got her money. I paid other debts of my brother's. I
1170 paid Hausman \$24 about that time, but I don't remember whether that was a check or not. I had a conversation with my brother about the payment to Hausman. Oh, yes, certainly, but I don't remember the conversation; it is too long ago. I paid other debts of my brother's. I paid other debts, but I cannot remember what they were. I cannot state what the conversation was in relation to paying them, that I had with my brother, the other debts. I cannot. I did have conversa-

tions with my brother about paying them. I must 1071
 have had conversations with him, but I don't re-
 member what they were. I did not make any
 promise to pay those debts of my brother at the
 time of the transfer of those properties. I never
 promised him anything, in respect to paying any
 bills of his, for this transfer. I never made any
 promise of any kind in regard to that property.

By Mr. Kellogg:

I had seen my brother so as to observe his con-
 dition prior to May 16th. My brother was all
 right about that time. It was one of his good
 spells. I was not waiting for that, before I made
 the agreement about the property. I wasn't wait- 1172
 ing for anything. There might have been a meet-
 ing that was adjourned in January from January
 to May, 1902, because he hadn't come, but—— I
 stated just now that some meetings had been ad-
 journed. I stated on May 8th, 1902, "Dear Louis:
 Although it was not absolutely necessary for you
 to be present at the meeting at Mr. Demarest's
 office, as a matter of courtesy to you, we deferred
 taking any action on the business in hand until to-
 morrow afternoon at two o'clock, at the same
 place and hope you will be there." I guess I
 wrote that letter, yes sir. I did not know that he
 was off then on a spree. I didn't. I didn't 1173
 know anything about his drinking habits from
 January to May, 1902. I never saw him under
 the influence of liquor about that time, no. He
 didn't tremble and shake. I am sure. I made an
 effort to lease the Lenox Avenue or 124th Street
 property prior to May 22nd, 1902. I did not make
 any effort to sell this property prior to May 22nd,
 1902. No sir, not at that time; I don't think we
 offered it in the market. I don't think so. As
 to how soon I offered this property for

- 1174 sale after May 22nd, 1902, I say I didn't offer it in the market at all. I didn't offer to sell it. I thought it was a good piece of property to hold. It had a future. Certainly. I had seen that property. I thought so in 1902, prior to May 22, 1902. I always thought so. Yes sir, certainly, I knew that property had a future, but I didn't know how far away it was. I didn't own the property then in 1901 or 1902, prior to May 22nd. I couldn't sell it. As to whether I was the executor and I had the power of sale under the will, but I did not think it was property that ought to be sold at that time. I say just
- 1175 about that time values were pretty—things were pretty dull. I don't know that we made any efforts to sell it in 1902, no sir. I thought that property had a future. If a man thinks property is good, he will hold it. I thought it ought to be held and not sold, in order to reap the benefit in the future. I did not pay my brother for those plans, until he sued me. I was advised. I paid him. No suit about it. I confessed judgment; the case was not tried in court. Action was commenced against me and went to judgment. Neville & Bagge were the architects that made the plan. I engaged them, in October, 1902. I think it was in October, yes sir; I can state exactly from
- 1176 my memorandum. Of income we have got now that belongs to the beneficiary under this estate that has not been paid to him, there is \$1,140.83 in the Corn Exchange Bank. That is income. And then in the Knickerbocker Trust Company there is \$314.91 of income invested in the Knickerbocker Trust Company—that is in the Knickerbocker. That is all the income. Totalling \$1,510.74. \$52.74 has been due since August 13th, of last year, the check which you returned. Then there is \$163.17 interest on the balance in the bank

which is income on investment. There is \$99 of 1177 interest which was paid by Mr. Ehret on the—not by Mr. Ehret, by the parties that paid off the mortgage on the 123rd Street property. The dates it was all due are as follows: August 13th, \$52.74; August 13th, interest credited by the Knickerbocker Trust Company, \$163.17. August 21st, interest from May 31st, 1907, to August 31st, 1907, \$99. January 2nd, interest upon bond and mortgage of \$10,000 on Brooklyn property, \$275. January 7th, interest received from Mr. Davis C. Kee, \$920.83.

The Court: Making a total of \$1,510.74?

The Witness: Making a total of \$1,510.74. 1178

MARTIN UNGRICH, one of the defendants, called in his own behalf, being duly sworn, testified as follows:

Direct Examination by Mr. Johnston:

I am one of the defendants here. I recollect having conversations with the plaintiff, Martin Louis Ungrich, prior to the meeting of May 9th and 16th, at Mr. Demarest's office, about the sale of the real estate of his father's estate. I remember having conversations at the house, previous to that. At my house. There was nobody present but him and I. I do not recollect the exact date of this occurrence. Well, he complained about that he was not getting enough income, and he would rather have a fixed amount; the expenses of the property was increasing. He said he was dissatisfied with the arrangement, dealing out his income; that the expense of running the property was too much and he didn't know—he would 1179

1180 rather have a fixed income. I said, "What is your remedy then?" "Oh," he said, "sell the property. I want a settlement. I want a quick settlement. I don't want this—I want the property sold." I said, "It is not advisable to sell the property, Louis, and not at this time, I don't think." "Well," he said, "Henry wants to buy the property." I said, "Henry? Henry cannot buy the property—should not buy the property. If it is to be sold, it is to be sold at public auction." He said, "I don't care how it is done and I have talked to Mr. Demarest about it and he says it can be done, if I and Henry are willing it should be sold." I said, "I will see Mr. Demarest about it and see what he says about it." That is all the conversation that I recollect. I remember the meeting of the 9th of May, 1902, at Mr. Demarest's office, affter this conversation. Yes sir, there was a meeting there. Well, there was a meeting—

1181

Mr. Kellogg: What is that date?

Mr. Johnston: The 9th.

The matter was discussed and Louis said, "I want this thing settled. I want it settled quick." I said, "Well, what do you want to do? What is your proposition?" "Well, sell the property." 1182 Sell the property." So I said, "How can we sell the property? Private sale or auction?" He said, "Well, sell it either way." I said, "How to arrive at the price?"

Mr. Kellogg: Who are you talking to now, to Louis?

The Witness: To Louis and Henry.

Mr. Kellogg: To everybody.

The Witness: Yes, sir, to everybody.

There were present on this occasion on the 9th 1183
of May, at Mr. Demarest's office, Mr. Demarest,
Louis and myself. Henry was there, yes, sir.
Mr. Demarest said, "Well, I don't see any other
way but to get an appraisement." I said, "Well
then, we will get an appraisement, and then we
can know what to do, and see what we can do
further." So Mr. Demarest says, "Well, who
do you want to get to be appraiser?" Well, Henry
suggested several parties and I said, "Well, I
don't know." I said, "I think we had better get
Mr. Philip A. Smyth. He is a man well up in
real estate matters." So we agreed that Mr.
Demarest should get an appraisement, which he 1184
afterwards did. I saw the papers, Exhibits 1, 2
and 3. (Papers shown to witness.) I did not see
those in the hands of Mr. Louis Ungrich. I did
hear a conversation about these Exhibits 1, 2 and
3, these papers which I have just seen, carried on
in the presence of Mr. Louis Ungrich. Why, yes.
Well, he said—he came to my house, Louis did,
and he said, "Mart, I have got the appraise-
ments." I said, "You have? Where did you get
them?" "I was at Demarest's office." I said,
"What are they?" He gave me the figures, the
separate figures. He said, "What do you think of
them?" "Well," I said, "What do you think of
them?" He said, "I think they are good prices." 1185
I said, "I think these are a good appraisement,
the only objection is, the east side property I think
is undervalued; the other is more than I expected
it to be. That is the Lenox Avenue.

Mr. Kellogg: That is the Lenox Avenue?

The Witness: No sir, the 126th and Pleas-
ant Avenue property is undervalued.

- 1186 I remember the meeting on the 16th of May at Mr. Demarest's office, when the paper was signed. I remember that meeting. Henry was present, and Louis and I, and Mr. Demarest, and a question came up—this appraisal was submitted. Henry looked them over and he said, "Well, I don't care about buying all the property." I said, "Henry, you don't care?" I said, "Why?" He said, "Well, I don't care about the east side property." I said, "Well, this ends the business. You will either buy it all or nothing." There was a good deal of talk back and forth and then he said, "Well, I will buy the property at a fair price, but this Lenox Avenue property is all I want." I said, "Well, we won't sell anything without you buy this whole thing; every bit. And at these appraised values." I said, "Another thing, we will add \$5,000 more," which would make \$157,000. "Well," Henry said, "I will think over the matter." I said, "You can do as you please about it." Well, after a while he said, "Well," after a good deal of thought, he said, "Well, I will take the property." And I said to Louis, I said, "Now Louis, are you satisfied?" and he said, "I am perfectly satisfied, Mart; I am perfectly satisfied." Demarest said, "Well, now, Louis has to make an agreement, stating his wishes in this matter, and before there is anything done." I saw the paper, Exhibit 5, then signed at that time. (Paper shown to witness.) I remember the meeting on the 22nd of May, at Demarest's office, the time when the deeds and bonds and mortgages were signed. Yes, that followed after. Well, the papers were prepared then, and we signed the necessary papers, what we signed; the transfer was to be made and was made. I don't remember any particular conversation oc-
- 1187
- 1188

curing on that date. I recollect the signing of the 1189
papers 6 and 7, on that date, that you now show
me. (Papers shown to witness.) After these two
papers were signed, one was handed to me and one
was handed to Henry, I believe. I did have a con-
versation with Mr. Louis, about the mortgages
that his father had assigned in his lifetime to
Henry. He mentioned something about what
his—— Well, he told me that Henry had got a
mortgage of \$25,000 from his father and that he
thought he ought to settle up with him in some
way, to square that thing up. This was not in the
presence of Henry. I never had any conversa-
tion with Henry about that. I never knew of any 1190
settlement being made by Henry with Louis, af-
terwards. I recollect the sale of the shares of the
Texas & Pacific Railroad, and the gold bonds of
the St. Louis & Southwestern Railroad, first mort-
gage bond, and 20 shares of the Wheeling, Lake
Erie & Western Railroad Company to Henry. I
never had any conversation with Louis, or at
which Louis was present, about the sale of these
shares and bonds.

Cross-examination by Mr. Kellogg:

I was present at the reading of the will at Mr.
Demarest's office. I was there, Louis and Henry, 1191
and Mr. Demarest. At that time Louis did not ask
any question in regard to the amount of the per-
sonal estate that his father had left. I don't think
Henry made any statements at that time. I will
not swear positively that he did not. I don't re-
member any question asked as to what property
the old gentleman left. I didn't ask any ques-
tions about it. I don't remember positively at
that time. Afterwards, when these men were
present, it was talked over. At Mr. Demarest's

- 1192 office. Everything was done at Mr. Demarest's office. Everything you are asking about was done there. The next time there was something mentioned about personal property. I don't remember the amount being stated at that time. I cannot recollect that. Louis may have asked how much personal property there was there. He may have asked that. Henry stated what it was. I cannot fix the amount. It was about that amount, \$25,000. I had a misunderstanding with Henry, in the early part of our executorship. That may have continued for some time. It may have. It did, yes sir. The checks for a long time that I signed, were brought to me by Louis. Henry used to come to my house. Those checks were brought to me by Louis at the time I was unfriendly to Henry. And the checks that were signed for Louis, as well as those that were signed for Henry, were brought to me now and then by Louis. For me to sign and then I handed them back and he took them to Henry. Well, I cannot say that I was not on speaking terms with Henry. I met Henry occasionally and we— During this time you are speaking of I was not on speaking terms. I didn't speak to him or have anything to do with him; not particularly, no. I did not go to his house. No more than estate matters was concerned. I didn't go to his house to see him. He did not come to my house. He positively refused to come to my house. I saw Louis quite often. He called on me. He called upon me and talked over this difference between me and Henry. He always had some complaint about Henry, and I said, "Well,"— He told me that Henry wanted to buy the property. Yes, he told me that shortly after the will had been admitted to probate and I had been made an executor within six or eight

months. It was not earlier than that. Louis got 1095
 uneasy—— Louis did not tell me that Henry
 had spoken to him and Henry was all the time
 urging him to sell the property to him. He did
 not tell me that. He told me his brother wanted
 to buy this Lenox Avenue property. He told me
 he wanted to buy the property. I told him it was
 not right. He told me that his brother had been
 talking to him most every time he saw him, ask-
 ing him to sell this property to him. Yes sir, he
 told me that. I could not say how many conver-
 sations, but that was his whole theme. That was
 his whole theme, that his brother wanted to buy
 the property. I told him not to sell it to him, I 1196
 did. I thought, I said, the property had a future.
 I did. I thought it ought to be held for the bene-
 fit of both brothers. And then sold when the mar-
 ket was better, or rose.

Well, I cannot say I am on unfriendly terms
 with Henry now. There came a time in the ad-
 ministration of the estate by me and Henry, in
 which we came closer together. I went over the
 matters with him towards the closing of the estate
 in 1902. I had not, as an executor, made any ef-
 forts to sell any of this property prior to May
 22nd, 1902. Henry and I had not talked over any-
 thing about selling any of this property. No ef-
 fort was made to sell it to anybody. No sir; the 1197
 only way I thought it was to be sold, or could be
 sold, was at public auction. This property was
 not put by us in the hands of any real estate man
 for sale, prior to May 22nd, 1902. I had no talk
 with Henry about putting it in the hands of any
 real estate man for sale. It was not put up at
 auction for sale by me or Henry. It was not. I
 went up about in April, 1901, to Henry's house,
 or some house, to look at the books of the estate.
 Referring to the time, the instance at which Thees,

- 1198 the son-in-law, was going to punch my head and use vulgar expressions and wouldn't let me in, that happened. I went there with Louis, very reluctantly. I said I didn't want to go to Henry. "If you have any difference with him—" I said, "You had better see Henry and be on friendly terms with him and settle this thing in a brotherly way, whatever there is." After repeatedly urging me, he said, "Well, I want you to go to the house and see Henry on certain matters." I did go. I went to Thiess'. That is the son-in-law of Henry. That was where Henry was living. Well, Henry and Louis got into some sort of discussion about it. They got in some discussion about some deeds or mortgages and one thing and another, and I said nothing. But I said, "Now, Henry, I am here by Louis asking me to come. I cannot do anything between you two, but if there is any difference at all, why, settle the matter in a brotherly way and a peaceable way." So the thing got quite heated and finally the son-in-law came out and he said, "Now, I have heard enough about this." He said, "You get out of here, both of you; you only came here to kick up strife." I said, "No, I did not; I didn't come here to do anything of the kind. I came here because Louis asked me to come here and I don't
- 1199 want to make any disturbance at all. I will get out." He said, "If you don't get out, I will punch your head," etc. I got out. I never saw the books. I never saw the books of the estate. Not to this date. I have had no share, other than in the signing of those papers, in its administration, and I have done nothing else beyond signing these different papers, the accounts and these mortgages, toward the conduct of the estate. Q. Now, the first conversation that you gave us, you said
- 1200

was on May 9th. How do you fix the date—the 1201
first conversation given on your direct examination,
how do you fix the date?

Mr. Johnston: He did not say that, Mr. Kellogg. You did not get it correct. He said he had a conversation prior to May 9th at the house.

I had a conversation at the house with Louis. Yes sir, with Louis, at the house. Louis told me in that conversation that Henry was still after the property, wanted to buy it. He did not say that he had fixed any terms or any price on it. I told him not to sell it. That was prior to May 9th. 1202
Nothing particular happened at that time. That is all that happened. On May 9th, we were all at the office together. That was the date that Mr. Demarest said that he would get an appraisal of the property by Mr. Smyth. Yes, it must have been. That is my best recollection of it. He said he would get it, get this appraisal. He didn't say that he had already gotten the appraisal from Mr. Smyth. He did not show any appraisal on that day to me. No sir. The first time that I saw the appraisal, it must have been the next—the next meeting. On the 16th, I saw the appraisal at that time. That is the first time I had ever seen the appraisal of Smyth. Previously Louis brought me the amounts. That must have been a few days before May 16th. He had them written down. He had written down the amounts of the different properties; \$110,000 for the Lenox Avenue property, \$22,000 for the 126th Street and \$20,000 for the Pleasant Avenue. When he showed them to me I said, "What do you think of it, Louis?" He said, "It is all right." I said, "If you think it is all right, I think we ought to put 1203

- 1204 at least \$5,000 more to it." He said, "Yes, yes, certainly, I think so." That was between the 9th and the 16th, yes sir. On the 16th Henry agreed to buy the property at that price. At \$157,000, the aggregate. Before that was reached Henry wouldn't agree to those prices. He wouldn't agree to the prices that were on the Smyth appraisal. He said, "I think they are too high." We were there that day, at the office, probably an hour or over an hour. To the office I came alone. I don't remember whether the men were there when I got there, the other men. I don't remember that, sir, whether I got there first, or whether the others were; that I don't remember. I don't remember Mr. Henry Ungrich, Jr., at this conversation saying that he had had this property appraised by a friend of his and that it was only worth from \$128,000 to \$130,000 at this time. I don't remember him saying that, no sir; I don't remember him saying that. I will not testify he did not say that, to the best of my recollection. He may have said that, for the sake of argument. He might have said that. I did not say that it was worth about one hundred and forty-five to one hundred and fifty thousand dollars. I didn't say that. No, I didn't say that. I didn't hear Henry say it was worth one hundred and twenty-eight to one hundred and thirty thousand dollars. It is my best recollection that nothing of that kind occurred. I do remember that I insisted upon an increase of the figure of \$5,000. Making it \$157,000. I did not have any appraisal made for myself. Well, Mr. Smyth's— Mr. Demarest proposed Mr. Smyth. I never saw Mr. Smyth about it. Personally, no sir. I know he made an appraisal. I know from the— That was submitted, yes sir. I said at this time, when this appraisal was brought up,

that I thought it was a good appraisal. And that 1207
 the east side was undervalued. Something like
 that. At this conversation of May 16th, I knew
 that the subway was going through there and in-
 creasing the value of property. I had that in
 mind. I am a property owner myself. I own real
 estate up in that vicinity. I thought that the
 coming of the subway there was largely increasing
 or appreciating the value of property. I thought
 so. I knew it was no time to sell property, at that
 time, on Lenox Avenue, and the avenue was all
 torn up. Yes sir; that was the reason I expressly
 objected to the sale. I thought it was not a fair
 time to sell it at all. At this time, on the 16th, 1208
 there were some papers signed. By me and by
 Henry. That was on the agreement of the sale
 of this property. There was nothing said about
 the necessity of having this contract made at once,
 so that everybody would stand to it. Nothing was
 said about that. We had our talks there, as I
 have stated, and Henry said he was suited, and
 then this contract was made and signed. There
 were two copies, we signed two or three, I think.
 One was given to each executor. On May 22nd,
 we met there and the papers were all prepared.
 We were there then. Some time I think; an hour
 or longer. I read over the papers, I read the deeds
 I signed. I looked the mortgages over to see that 1209
 they were mortgages, then I signed them as Mr.
 Demarest handed them to me. Yes sir. I do not
 remember seeing any other papers signed there
 that day. I don't remember hearing any paper
 read out aloud in my presence, while Mr. Louis
 Ungrich was there. I don't remember that.

At this conversation on May 16th Henry didn't
 want to buy the East side property. I said he must
 take it all, or none.

There was something said about the rate of in-

1210 terest upon those mortgages. There was. Louis said he wanted four and a half, and I said I thought four and one-half per cent. ought to be paid. Henry said, 'No, four per cent. is all that I can pay and will pay.' There was nothing said about the personal property there, at that time—about his claim to the personal property. I didn't hear anything about that. I have not been indemnified by an agreement as to the result of this trial by Henry. He has not made an agreement with me.

Q. Are you paying the expenses of the lawyer who represents you here, yourself? Didn't he agree to pay it?

1211

Mr. Johnston: I object, as not within the issues and incompetent and improper.

Mr. Kellogg: I think it is a proper question, to show his interest in the matter.

Mr. Johnston: We stand on our objection. Allowed. Exception.

A. No, sir, he did not agree to pay it. He made no agreement. As to whether I stated to Louis that I was not to be responsible for anything here, that Henry had agreed to stand back of the whole transaction, I said as far as I was concerned, I told Louis I was to be represented by my own lawyer; 1212 that my interest and Henry's interest might conflict. I did not say that I had made an agreement with Henry about the expenses to be paid by him. No sir. Sure about that. It was a fact that I and Henry seldom saw each other either before or after he moved to White Plains, in April, 1903.

Mr. Kellogg: I offer in evidence a letter of April 25th, 1903, from Henry to Louis.

Received and marked Exhibit XX.
(Read to the Court.)

1213

I did not, in 1903, or at any other time, take up the subject of the investment of this \$3,000 with Henry—\$3,000 from the trust company. No, sir. He never asked me to take it up with him.

Mr. Kellogg: That is all.

Mr. Johnston: That is all. We rest.

By Mr. Kellogg:

I know about the habits of Louis as to his intemperance. I do. I know that he drinks occasionally; I never saw him under the influence of liquor. I have seen him shake pretty well. Nervous, naturally nervous. I knew by my acquaintance with him, that he had been more or less intemperate all his life. Yes, sir. 1214

Mr. Hubbard: I offer in evidence the check.
Received and marked Exhibit 86.

— — —
MARTIN LOUIS UNGRICH, the plaintiff,
called as a witness in his own behalf, being duly
sworn, testified as follows:

Direct Examination by Mr. Kellogg:

1215

I live at 426 St. Mark's Avenue, Brooklyn. I have lived there since 1903. I lived before at 437 West 44th Street, New York. I lived there about sixteen months. Before that I lived at 326 West 43rd Street. I lived there about a year and a half. Before that at my father's house. Henry Ungrich was my father. There were two children at the time of his death. Two; my brother and myself. That is my brother, who has been on the

- 1216 stand, Henry. My father died in St. Luke's Hospital, on Morningside Heights. I think he was in the hospital about nineteen or twenty months, and he had been sick for years before that. Oh, he was infirm, and he had cataracts of the eyes, and had rheumatism badly at various times. He had two strokes of apoplexy, I believe. He had one about 1893 or 1894; in there sometime. He had the next one while he was at the hospital. I went to the hospital very frequently. During the latter years of his life from 1897 down, I saw my father quite often. I was living downtown. He lived in Harlem then. He was in his own house. That was before he went to the hospital. In 1895 I went away, ceased living with my father, and was away about three years, and came back and lived at his house about six months, and then I went away again. Henry was living there at that time. My business has been an architect. I have been employed by James E. Ware, Clinton & Russell and Horgan & Slattery. I have been working in their employment. I remember my father's death. He died on the 1st of March, 1901. His death was succeeded by the death of my brother Henry's wife. Yes, sir, we came home from my father's funeral, and about an hour after we came home from his funeral, his first wife died the same day of my
- 1217 father's funeral. His wife was buried on the 7th, and we were at Mr. Demarest's office on the morning of the 8th of March. The 8th of March. Mr. Demarest's office was at 140 Nassau Street. There were present at the reading of the will Mr. Demarest, Martin, my cousin, my brother and myself. Mr. Demarest read the will. He read it out loud. Mr. Demarest said: "Now, gentlemen, we will start in and we will read this will." And he took the will out of his safe. Then Henry said: "Well,
- 1218

my brother knows, Louis knows, what the real 1219
property is, but there is about \$25,000 worth of
personal property here, consisting of three or four
railroad bonds and money in seven or eight banks
or savings banks." Well, they read the will, and
they got talking among each other. Martin said,
"Well, if that is all the money your father has
got—I always had an opinion he had a whole lot
of money." He said, "I consider myself a poor
man and I have a good deal more money than
that." He said that at that meeting. There was
nothing more of consequence happened at that
hearing. Not much more was said.

Q. Did you say you were surprised? A. I said 1220
I was surprised—

Mr. Johnston: I object as immaterial and
I move to strike it out.

Motion denied. Exception.

I said, "I cannot understand why my father has
such a small amount of money, when I know that
he had sold a house," and I asked them, "Where
in the deuce has all this money gone to? Father
has been taking in pretty close to \$11,000 a year,
every year, ever since 1894, and he sells a house
in the meantime, and only \$7,500 or \$7,800 left out
of all that money. Where did it go to?" My 1221
brother said, "Well, that is all there is." That
was that very day. That was on the 8th of March.
After the will was admitted to probate and they
qualified as executors, I saw Henry right along at
least once or twice a week there. That is in
1901, yes, sir. I first knew, or first learned,
the exact amount, that was \$7,500 or there-
abouts, of the personal property, that was in
the estate from my brother Henry, he told me that
my cousin Martin and he had gone to all the vari-
ous banks, seven or eight, and had withdrawn the

1222 money and opened an estate account in the New York Security Company. I did not know that at the time the will was read. If I said that, this morning when I was asked the question and I related as part of the conversation about the \$25,000.00, I said that was not so, because I did not know it until he told me this. After that, I saw my brother right along. I saw him, I met him in the street—I met him in Demarest's office and also at his house sometimes. I had conversations at different times in regard to this estate.

He said, "Louis, I would like to get that Lenox Avenue property, and we will get rid of Martin; he will be a stumbling block. We can get together
1223 and settle our own affairs." I said, "I want to know where I am coming in for my half of this \$25,000?" He said, "What the hell—how much do you want out of that \$25,000?" I told him I wanted half. This conversation with my brother in which he asked me to sell the Lenox Avenue property to him occurred at least ten or fifteen times.

He said he wanted the Lenox Avenue property; he did not care about the East side property. I saw Mr. Demarest at times between the death of my father and May 22, 1902. About the 1st of June, 1901, when I got my first \$785 of quarterly
1224 income, and also another little check, as near as I can recollect for \$18, and another little check for another small amount, I said, "Mr. Demarest, have you spoken to Henry about this personal business matter yet? Because, if you haven't, I am going to engage counsel; I am going to try and break my father's will." And I told him, Mr. Demarest, at the time, that I had gone down to see Mr. Slattery, of the firm of Horgan & Slattery—Mr. Slattery gave me a letter of introduction to

Davies, Stone & Auerbach, the firm, and I went 1225
 down there and saw Mr. Stone, or some other—I
 don't know it was Stone, or other—but one of the
 counsel in their office it was. I certainly went there
 and told Mr. Demarest—I told him that I would
 contest the will. And he said, "Louis, take it
 easy. Leave this thing to me. I will fix it. I will
 see that you will get this money." I said, "All
 right." I had talks with him afterward, about it.
 Certainly. I saw Mr. Demarest three or four
 times, different times after that. I asked in re-
 gard to my share of that \$25,000 at those times,
 the second and third talks. Yes, sir, certainly. He
 said Henry wouldn't give me \$12,500; he said he 1226
 wouldn't give me that much. He said, "He will
 give you \$7,500." I said, "Mr. Demarest, if I have
 got to take up nearly a thousand dollars of bills of
 mine; I don't think it is right; I thought Henry
 would pay the debts and various sums to me, and
 I am at a loss"—my brother was there within a
 day or two after that and I wrote out bills, \$980,
 just about \$980, in front of Mr. Demarest and Mr.
 Demarest saw me hand that slip to my brother and
 my brother told me he would pay that money for
 me. In addition to that \$980, \$7,500. That was
 away back in October, the year before, 1901. I did
 not get that money prior to the signing of the pa-
 pers on May 22nd, 1902. Every time we met it 1227
 was the same old thing, that I would get that
 amount. I never did get it. There were conversa-
 tions about this, just prior to May 22nd, 1902, in
 regard to this money. Mr. Demarest was there
 and my brother, and I saw my brother alone about
 it. I saw Mr. Demarest alone about it. He said
 he had it fixed for me. He said he had it fixed for
 me. That I was to get \$7,500. And Henry would
 pay those bills for me. Martin, the executor, was
 not there at all at those conversations.

1228 Henry and Mr. Demarest didn't explain it very fully why they didn't want Martin to know about it, but they impressed upon me—— They told me not to tell Martin. There had not been any change.

I first knew about the assignment of these mortgages of twenty-seven, or twenty-five thousand dollars, to my brother, when your son took me up in the Hall of Records and showed me that. I had never heard of that fact. That was at the time when I was suing for the architect's fees; last summer. I never knew it before. I think I got a letter from Mr. Demarest on the 7th of May, telling me about a meeting; for me to be there at the office. I was not there. I did not go. I got another letter then to come. Yes, sir, they made an appointment for the 9th. I did not go then. I first went about a week later. That was about May 16th. I wasn't there on May 9th at all. I was at home; I had sprained my ankle and I could not get my shoes on and I wrote to Mr. Demarest, and I have the letter from Demarest somewhere — I guess—Mr. Kellogg has got it, I think. I told Mr. Demarest that I had met with an accident and he said he was glad it was in my foot, he was very glad it was not my head that was broken. The first time I was there was May 16th. I heard that

1229 testimony, I was in Court when my brother Henry, and Martin, and Demarest testified to this May 16th meeting. When the contract was signed. For the sale of this property to my brother. At the time I signed this paper which appears to be approved by me, I had not seen any appraisal by Mr. Smyth or anybody else of this property. I never saw an appraisal. I never had an appraisal made myself. I said I would get one made. When I found out what they were going to charge me, I dropped it; I didn't have the money to spare.

1230

(Paper shown to witness.) I never saw that paper in my life. (Referring to Exhibits 1, 2 and 3.) I didn't see any of these. They said they were getting an appraisal. I understood they were going to have about three or four made. At that meeting there was nothing said about the amount of the appraisal that they had made. The amount of the appraisal was first spoken about I think on the meeting on the 16th. Oh, my cousin was there and Mr. Demarest and myself and we talked over the different things. 1231

My cousin, Martin, and my brother and Mr. Demarest were there. They said that Henry was there to get the property and they had a paper there for me to sign. And there was something said as to the amount that they were to pay for it. That was \$157,000. I cannot recollect just what I said. 1232

Mr. Demarest told me to leave it to him and he would see that my brother would use me right. You show me Exhibit 5. (Paper shown to witness.) That is my name there. Yes, sir, that is my name there. That is my signature at the bottom. I started to read that paper and Mr. Demarest said, "Never mind, Louis; it is all right; it is simply a matter of form." They did not give me any copy of it, not to my recollection. I don't remember it. 1233

I saw them again on May 22nd. I saw Mr. Demarest between May 16th and May 22nd. He said, "I have got it fixed. Henry is going to pay you that money." That \$7,500 and my debts. That was between May 16th and May 22nd. We met there on May 22nd. There was a couple of papers signed and I saw Mr. Davenport turn over some papers to Mr. Demarest which I presume was the mortgages or whatever they had to get. I don't know what they were. They were not

- 1234 shown to me. No, sir, no papers. You call my attention to these two papers which are marked Exhibits 6 and 7 and ask me if those are my signatures. (Papers shown to witness.) Those are my signatures. Those papers were not read to me, nor did I read them. I started to read the paper. Mr. Demarest said, "Louis, it is all right, it is simply a matter of form, so that Henry can get this property, purchase this property, and it is simply a matter of form." I knew that the property was purchased by Henry at that time. I knew that—I knew Henry was the one that wanted to buy it, but I didn't know about Mr. Davenport.
- 1235 No copies of any of these papers were given to me.

By the Court:

Between the 9th and the 16th of May, I was not at the house of my cousin. There was a meeting down in Mr. Demarest's office on the 9th, and then there was one on the 16th and then one on the 22nd. Between the 9th and 10th, or the 9th and 22nd, I was not at his house. I could not get my shoes on.

Mr. Johnston: Prior to that, is the testimony.

- 1236 The Court: Prior to the 9th, if I remember rightly, Mr. Martin Ungrich said that the plaintiff told him some figures.

Mr. Johnston: That was prior to the 9th.

The Court: The 9th was the date of the appraisal, wasn't it?

Mr. Johnston: The date when the appraisal was submitted.

Mr. Kellogg: Martin said that the appraisal was ordered on the 9th; it is dated April 24th; then, he stating that, of course he could

not have seen it until after the 9th because it 1237
was not ordered until the 9th.

Mr. Johnston: Dated April 4th.

Mr. Kellogg: April 4th; worse yet.

Mr. Johnston: Yes, we think so, too.

By Mr. Kellogg:

I did not between May 9th and May 16th, see Martin, the executor, the co-executor, at any time. I remember what my condition was at that time, between the 9th and the 16th. Yes, I remember it. I had been drinking and that was why I met with the accident. I fell off my wheel in Prospect Park. A bicycle. I had the accident about the 5th, I should think, of May. It was before I ever 1238
got the first letter from Demarest to come over, that there was to be a meeting held. The first time after that, that I was able to go out, was on the 16th, able to go to a meeting, was on the 16th. I had not before the 16th, ever heard any of the prices that had been appraised on this property. Martin was present there when those figures were read. Yes, sir, he was in the office. No appraisement was shown to me to read. I never gave Martin any figures of the appraisement and never had any talk with him about it. I did not get this \$7,500 and the \$980 of debts paid. I went to Mr. Demarest's office a couple of days afterwards after 1239
May 22nd, to see whether Henry had sent the check down for me. I said to Mr. Demarest, "Try to get it for me." I went out. I introduced the subject. I did. I said, "Has Henry sent you down that check yet?" He said, "No, Henry is going away on a trip." He said, "That is probably why he has not sent it." I saw Mr. Demarest more than once about that. Yes, sir, a half dozen times. He said he hadn't heard from Henry. I

1240 didn't see Henry until after he got back—he was gone about four weeks. Then we met in Mr. Demarest's office one afternoon. That was on the 21st day of May. That was the day before I got the check. 22nd day of June, 1902. Henry told me to come up to his house the next morning, to meet him there and he would give me the check. My best impression is that Henry was there when I got there. I went up the next morning to get the check. I did. Demarest wasn't there. He said, "Let us have a little breakfast, and then after we feed, I will give you that check and then if you want any money, I will go down to the Knickerbocker Bank with you and get it." There was
 1241 something said about the amount at this time. \$6,000. I said. I understood it was to be \$7,500 and the debts beside. "Well," he said, "That is all you are going to get." I never got the \$7,500. He never paid \$980 of debts except those he testified to on the stand here. He paid some of the debts. Yes, sir, he paid what he said.

I said, "Where does the difference come in? There is \$1,500 owing there now, on this check." "Well," he said, "That is all that you are to get." I took the check. (Paper shown to witness.) Yes, sir, that is the check. That is my signature, to Exhibit 65, marked June 23, 1902. (Paper shown
 1242 to witness.) Yes, sir, that is my writing. That is Demarest's writing in the body of it. Yes, sir, I think the whole thing is Mr. Demarest's writing.

Q. Did you keep any copy, or did you ever see this paper until you came into Court?

Mr. Johnston: I object as incompetent and improper and not within the issues here.

Objection overruled. Exception.

Q. Just look at this paper and say if you ever

knew of it, before you came into Court here? 1243

Same objection.

Same ruling and exception.

The Court: You were asked if you saw this paper, before you saw it in Court.

Q. Just look at this paper and say if you ever knew of it before you came into Court here?

Same objection.

Same ruling and exception.

A. No, sir.

Q. Was it read to you, or any such paper?

Same objection.

1244

Same ruling and exception.

A. No, sir.

Q. Was there any copy of it given to you?

Same objection.

Same ruling and exception.

A. No, sir.

This check of \$6,000— — My brother and I went down to the Knickerbocker Trust Company, 125th Street and Lenox Avenue; he introduced me to a man who is now third vice-president of the bank; I don't recollect what his name was, but he introduced me in there and I got \$1,500 in cash and a certificate of deposit for \$4,500, which I left at the Knickerbocker Trust Company and I took the \$1,500 in cash away with me. From there I went down to Mr. Demarest's office, right after drawing this cash. He asked me the day before to come in again. He knew I was going to pay him for doing this work for me and I went down to pay him

1245

1246 —for him to tell me what would be the amount he would charge for his fees. He did not get \$7,500.

After I had the \$1,500 I went to James Demarest's office, 140 Nassau Street. Immediately. I got right on the elevated train, 125th Street and Eighth Avenue and I went right down. I was alone. My brother wasn't with me. I found Mr. Demarest in.

Q. Now, give us, as nearly as you can, the details of the conversation between you and Mr. Demarest?

Mr. Johnston: I object as not—

1247 Q. State what he said.

Mr. Johnston: I object as not binding on the defendant and incompetent and hearsay.

Objection overruled. Exception.

A. He said, "Were you up to Henry's house this morning?" I said, "I was." He said, "Did he give you a check?" I said, "Yes." He said, "How much?" I said, "\$6,000."

I said I didn't see why I should get less than what was agreed upon that I was to get. He said that is all Henry would give. Well, I was trying to find out what he was going to charge me. I did not ask him what he was going to charge me. No, 1248 he said, "I am going to charge you ten per cent. of that amount of this collection, \$600." I said, "This looks pretty steep to me." Well, we will have business right along here together," he said, "and, will \$500 suit you?" I said, "All right." "Well," he said, "it is worth a thousand dollars of anybody's money." I gave him five \$100 bills. In payment of his services in getting this money. Yes, sir.

Mr. Demarest first said that he would undertake

for me to get this money after June 1st, when I 1249
 got my first quarter payment. 1901. Mr. Demar-
 est had been my attorney before, done work for me
 before, as attorney. When my first wife sued me
 for divorce, he acted as attorney in the case and
 my father paid him for me. Besides this he drew
 up the lien papers on the building at 80th Street
 and Broadway for me, in 1898 or 1899. He has
 acted since as my attorney. I paid Mr. Demarest,
 in the year 1902, for legal services aside from this
 \$500, \$50. I have been trying to find out what that
 was for myself. He said he wasn't getting any
 more money from the estate, and somebody had to
 pay him, and he said, "I will look after your busi-
 ness and see that you are being dealt with right, 1250
 and are you satisfied that I charge you \$50 for
 each time when you draw your income?" I said,
 "Yes, that is satisfactory to me." In 1903 he got
 \$100. 1904, he got \$150. 1905, he got money from
 me every time I drew my income, except in the
 December income of 1906. He knew then that the
 suit was already in the way.

Q. Do you know anything of the values of real
 estate? Have you any experience or knowledge of
 them?

Mr. Johnston: I object as immaterial, irrele-
 vant, incompetent and not binding on the de-
 fendants and not within the issues. 1251

Objection overruled. Exception.

A. No.

Q. Did you ever own any property or real es-
 tate?

Same objection.

Same ruling and exception.

A. No, sir.

Q. Did you ever sell any? A. No, sir.

1252 Q. Did you ever state to Henry or Martin, or anybody else, that you wanted this property sold so as to make your income certain?

Mr. Johnston: I object as leading, incompetent, improper and calling for a conclusion.

Objection overruled. Exception.

A. No, sir.

My income from this estate prior to the taking of this property by Henry was a little over \$3,200 with the small checks that I got beside; \$3,140 to \$3,200. It has been since about \$2,600, a little more; a few dollars more. You show me some papers here which bear my signature—

1253

Mr. Johnston: One of them does, the other does not.

I signed that. The paper appears to be marked Exhibit 67; that is my signature. That is the signature of my wife. I remember being in the office of Mr. Demarest in the spring of 1903, when I was asked to sign certain papers.

My wife was with me. On that occasion Mr. Demarest said, "Louis, I have got a couple of papers here." He had written me a letter to come over and when we got there, he said, "I have got a couple of papers here, for you and your wife to sign, to complete up the other papers that was some time ago,"—that has been signed. I did not read them, no, sir. I signed them, and my wife. No, sir, my wife didn't read them at all. I did not have any copies given to me. I did not know what I signed, until the papers themselves were shown me, any further than what Mr. Demarest said. No, no, sir, not any more than what he told me. My brother had not said anything to

1254

me about any confirmatory deed at all. I never 1255
 got any papers in the case from beginning to last.
 I first found out the large value of this property
 —of the Lenox Avenue property, in the latter
 part of June or the early part of July, 1906. I
 saw it among the real estate news, that George
 Ehret had bought that corner. And I wrote to
 my brother a letter inclosing this slip of the sale
 of the property, and sent it to him and he said
 that I was a little bit premature; that the thing
 had not come to a head yet, and a few—and some-
 thing else, I don't recollect what it was. At any
 rate, it was premature; the thing was not consum-
 mated at all.

1256

I sent two letters to Mr. Demarest and tried to
 find out what Henry had got for the property, and
 I never got any answer. Then I engaged your
 firm on the 13th day of July, 1906, to commence
 this action.

Q. Now, there have been produced here from
 the Surrogate's Court, copies of accounts of the
 executors of the estate of your father. Had you
 ever seen any such accounts?

Mr. Johnston: I object as immaterial.

Objection overruled. Exception.

A. No, sir.

Q. Were you, other than as you have stated as 1257
 to your relations with Mr. Demarest, represented
 by any attorney in any of these transactions with
 your brother?

Mr. Johnston: I object.

Q. Or the estate of your father?

Mr. Johnston: I object as immaterial and
 not the best evidence.

Objection overruled. Exception.

1258 A. No, sir.

A. I got a citation paper once. About the time they were proposing to get things ready for the Surrogate. Which time it was I cannot recollect. I did get a citation. I have no recollection whether I got another citation. This paper was served on me in Mr. Demarest's office. Yes, sir, I had a copy of that paper. Mr. Demarest said, "It is no use for you to go over there with me." he said, 'to the Surrogate's office.'

Well, I didn't go over there. Mr. Demarest said it was not necessary for me to go over. No, sir, I didn't ask him.

1259 Q. Had you ever, prior to the bringing of this action, seen any copies of these accounts of the executors?

Mr. Johnston: I object as immaterial and not within the issues.

Objection overruled. Exception.

A. I never saw any accounts.

Q. Were you represented by any counsel or attorney, in any of these proceedings in the Surrogate's Court?

Mr. Johnston: Same objection.

1260 A. No, sir.

The Court: He answered that. That is shown on the record.

The relations between Henry and Martin in 1902 were unfriendly, most of the time. I know that because I got letters from my brother saying he could not get along with Martin. Checks were sent to me by Henry, to get Martin to sign, executors' checks. During 1901. The relations

in 1902 weren't very smooth; they wouldn't see 1261
each other only once in about six or seven or eight
weeks. Whenever Mr. Demarest would write to
them, that was about the only time when they did
see themselves. About 1903 they never were
friendly; not from the start; not from the very
first. I say it was unfriendly in 1902 and in
1903.

Mr. Kellogg: I offer in evidence a letter
of June 22nd, 1903.

Received and marked Exhibit YY.

Mr. Kellogg: Also I offer in evidence a
letter of August 6th, 1903, from Louis to
Henry.

1262

Received and marked Exhibit ZZ.

Mr. Kellogg: I offer in evidence a letter of
November 6th, 1903.

Received and marked Exhibit AAA.

(Read to the Court.)

I look at this letter dated October 25th, 1901,
which says: "Dear Louis: Your p. c. received.
"Will be as you request here from 10 to 10.30 A.
"M., October 28th. I return you memorandum
"from which you can make diagram. Any other
"information needed you can have at any time.
"Yours, Henry." That is dated October 25th,
1901. Then there appears four sheets of paper, 1263
containing diagrams, and showing the value of
what they call estate property, and I say that this
diagram came in that letter, and that letter was
received about the time it is dated.

Cross-examination by Mr. Johnston:

You show me a letter dated September 7th, 1901,
and ask me whether that is in my handwriting.
(Paper shown witness.) Yes, sir, that is my hand-

1264 writing. The statements therein contained are true. Yes, sir.

Mr. Johnston: I offer that letter in evidence.

Received and marked Exhibit 87.

(Read to the Court.)

You show me another letter, bearing date June 30th, 1901, and ask me if that is in my handwriting, and is that a letter sent by me to my brother Henry. (Paper shown to witness.) Yes, sir. I know my handwriting. Yes; I wanted to refresh my memory about it.

1265 Mr. Johnston: I offer that in evidence.
Received and marked Exhibit 88.

You show me a letter dated July 17th, 1901, and ask me whether that is in my handwriting and if it is a letter sent by me to my brother Henry. (Paper shown to witness.) Yes, sir, that is my handwriting.

Mr. Johnston: I offer that in evidence.

Received and marked Exhibit 89.

(Read to the Court.)

1266 You ask me if the letter bearing date October 2nd, 1901, is in my handwriting and is a letter sent by me to my brother Henry. (Paper shown to witness.) Yes, sir, it is. You call my attention to an abbreviation there. I will explain what I meant by this "en't." For "endorsement."

Mr. Johnston: I do not offer that, because I do not want to encumber the record. It is merely a friendly letter, but you may offer it if you want it.

You show me a postal card bearing date July 1267 5th, 1901, and ask me whether that is in my handwriting and whether it is a postal card sent by me to my brother. (Paper shown to witness.)
Yes, sir.

Mr. Johnston: I offer it in evidence.
Received and marked Exhibit 90.
(Read to the Court.)

You show me a postal card bearing date May 3rd, 1901, and ask me whether that is in my handwriting and is a postal card sent by me through the mail. (Paper shown to witness.)
Yes, sir.

1268

Mr. Johnston: I offer it in evidence.
Received and marked Exhibit 91.
(Read to the Court.)

You show me a letter bearing date May 18th, 1901, and ask me whether that is a letter in my handwriting, sent by me to my brother Henry. (Paper shown to witness.) Yes, sir, I wrote that.

Mr. Johnston: I offer that in evidence.
Received and marked Exhibit 92.
(Read to the Court.)

You show me a letter bearing date June 17th, 1269 1901, and ask me if that is a letter in my handwriting, and a letter sent by me to my brother. (Paper shown to witness.) Yes, sir.

Mr. Johnston: I offer that in evidence.
Received and marked Exhibit 93.

You show me a letter bearing date October 16th, 1901, and ask me whether that is in my handwriting and is a letter sent by me to my brother.

1270 (Paper shown to witness.) Yes, sir, that is my handwriting.

Mr. Johnston: I offer it in evidence.
Received and marked Exhibit 94.
(Read to the Court.)

You show me a postal card bearing date November 6th, 1901, and ask me whether that is in my handwriting and one sent by me to my brother Henry. (Paper shown to witness.) Yes, sir.

Mr. Johnston: I offer it in evidence.
Received and marked Exhibit 95.
(Read to the Court.)

1271

I mean by "M." Martin.

You show me a postal card bearing date July 14th, 1901, and ask me whether that is in my handwriting and one sent by me to my brother. (Paper shown to witness.) It is my handwriting.

Mr. Johnston: I offer it in evidence.
Received and marked Exhibit 96.
(Read to the Court.)

1272 You show me a letter bearing date November 11th, 1901, and ask me whether that is in my handwriting, and one sent by me to my brother. (Paper shown to witness.) Yes, sir.

Mr. Johnston: I offer it in evidence.
Received and marked Exhibit 97.
(Read to the Court.)

You show me a letter bearing date June 8th, 1907, and ask me whether that is in my handwriting. (Paper shown to witness.) Yes, sir.

Mr. Johnston: I offer it in evidence. I only offer the portion in his handwriting.

Mr. Kellogg: Then I will offer the other 1273 part. It is all part of one letter.

The Court: I can only deal with one offer. I will sustain Mr. Johnston's offer.

Received and marked Exhibit 98.

You show me a letter bearing date February 19th, 1904, and ask me if that is a letter in my handwriting and ask me if it is a letter sent by me to my father and brother. (Paper shown to witness.) Yes, sir, I wrote that.

Mr. Johnston: I offer that in evidence.

Received and marked Exhibit 99.

Mr. Johnston: I only read these extracts: 1274

"I am very glad Henry has decided to give
"up his flour selling business and give his
"whole attention to your property. For you
"are growing old and the annoyances of look-
"ing after your tenants, etc. are trying. But
"I don't want Henry to feel so hard upon me,
"in my last letter, or in fact any time, either."
And then, "If you can, Father, I want you to
"take up that Wood check, as the amount is
"small and none of us knows what I meant.
"Take it up out of the money I send to you
"please and all will yet be well."

That "Wood check" referred to there I don't 1275 know anything about it.

Mr. Kellogg: You don't remember anything at all about that?

The Witness: No, sir.

You show me a letter bearing date December 23rd, 1887, and ask me whether that is in my handwriting and is one sent by me to my brother and father. (Paper shown to witness.) This was

1276 not sent to my father. This was sent to Henry.

The Court: To your brother?

The Witness: Yes, sir.

Mr. Johnston: I offer that in evidence. I offer the portion which is marked.

Received and marked Exhibit 100.

You show me a letter bearing date October 12th, 1887, and ask me if that is a letter written by me and one sent to my brother or my father, and if so, to which. (Paper shown to witness.) Sent to my brother—to my father; not to my brother at all; that is mine.

1277 Mr. Johnston: I offer that in evidence.
Received and marked Exhibit 101.
(Read to the Court.)

You show me a letter dated September 7th, 1887, and ask me whether that is in my handwriting and one sent to my father or my brother, and if so, to which. (Paper shown to witness.) Yes, sir, I wrote that; sent to my father.

Mr. Johnston: I offer that in evidence.
Received and marked Exhibit 102.

1278 You show me a brown paper and ask me in whose handwriting it is. (Paper shown to witness.) That is my writing. I gave that paper to my father. I overdrew my bank account at the West Side Bank. I did have some money in the West Side Bank. I did. I did draw checks on that bank when I knew there was no money in it, and this was a list of those checks. That is what I did, but I didn't—I was drunk; I didn't know what I was doing. They sent me two notices that my account was overdrawn and I paid no attention to it.

Mr. Johnston: I offer that in evidence. 1279

Received and marked Exhibit 103.

The Court: You had an account there?

The Witness: I had an account there from the beginning of 1881 when I opened an office, 46th Street and Broadway, and I had an account there for over seven years.

I had an account in another bank during the year 1887. Yes, sir. I had an account in the Franklin Savings Bank, and I had an account in the—— I think so, in other check banks at different times. I did not have any account in the Hamilton Bank. No, sir. Nor in the Mt. Morris Bank. No. You show me a paper bearing date September 30th, 1887, and ask me whether that is a check drawn by me on the Mt. Morris Bank. Yes, sir, I drew that. 1280

Mr. Johnston: I offer that in evidence; nothing but the check.

Received and marked Exhibit 104.

You show me a check bearing date October 3rd, 1887, and ask me if the face of that is not entirely in my handwriting. The face of that check is not in my handwriting.

Marked Exhibit 105 for identification. 1281

The Court: You mean nothing on the face of the check is in your handwriting?

The Witness: No, sir, I did not write the face of that check.

Mr. Kellogg: What do you mean, the face of the check?

The Witness: Let me see it again.

(Check returned to the witness.)

The Witness: I did not write that check.

1282 The Court: No part of it?

The Witness: No, sir.

I did have a conversation with Martin Ungrich at his home about the sale of this property of my father's. He started it all the time. I said that I did want to sell the property. Yes, sir. There might have been other things said. He said he would not advise the sale of it, and if Henry tried to force me, he would object to it.

Q. Is that all the conversation you ever had about the sale of the property with Martin Ungrich at his home?

1283 The Court: Other than what you have told us? Say yes or no, to that.

A. He told me Henry wanted to buy the property.

The Court: That is all; is that what you mean?

The Witness: Yes, sir.

I told him that Henry wanted to buy the property. I did. I never said anything about wanting to sell the property. No, sir, not to Martin. Never said to Martin that I wanted the property sold. No, sir, because Martin—— I just answered the question. I first had a conversation with Mr. Demarest about a sale of this property, almost after my father died.

1284 I first had any conversation with Mr. Demarest about a sale of this property early in June. I told Mr. Demarest I intended to bring a suit to break my father's will. I told him where I had gone to see about it, and he advised me not to do so. He said, "Leave it to me, Louis, and I will see that you are taken care of here." This all came up because Mr. Demarest knew that I was dissatis-

fied with the sale of the property. In June, 1901? 1285
 Oh, that was before that; this was in October, 1901, when most of this talk took place. You asked me when I first had my first conversation with Mr. Demarest about the sale of my father's property, and I have said in June, 1901. That was what I said. He said that Henry wanted to buy that property and when I knew that Henry wanted to buy that property, I wanted to get half of this \$25,000 personal estate. That was what I was looking after, to get what I considered my half share.

I have not stated all that was said on the first interview that I had with Mr. James Demarest 1286
 about the sale of my father's property. We had quite a talk about it. No, sir, I have not stated it all. I can state more.

The Court: About the sale of this property, at that time?

Mr. Kellogg: Property, or real estate?

Mr. Johnston: Real estate.

Mr. Demarest told me that he would take care of me in this here sale. When I said I was going to employ counsel to look after me, he said, "What is the use of getting another lawyer? I have been in this case and I know all about it and I will look after your interests there and I will see that 1287
 Henry does what is right by you." That is all that was said at that meeting that I recollect.

As to whether I recollect any other subsequent meeting after, commencing immediately after, a subsequent meeting between me and Demarest at which a conversation in regard to the sale of my father's property took place. He never spoke to me about that sale. Demarest didn't. Between the time I have mentioned and the time of the

- 1288 sale, he did, yes. I said when he asked me what I was thinking—what I thought about it, he asked me if I was getting appraisals made and I told him No. I said I was going to get somebody to make an appraisal, but I never had one made and he knew it. I did not have any diagram made of the property and submit that to real estate people. I did procure diagrams from my brother and my cousin Martin. I did; they were mailed to me. I took, or showed them to one man. Not to anybody else. That man was a friend of mine that was in the real estate business, by the name of Emil Eckhardt, in Broadway, near 42nd Street.
- 1289 I asked him about what he considered to be the value of this property. We never got any further than— I asked him what was his idea of the value, or opinion of the value of this property. I asked him, yes, sir. He said he had not sold a piece of property in Harlem in fifteen years. I did not have anybody in view as a purchaser of that property at any time before the sale to my brother. I never took anybody there to look at it. I did not. I never did show this diagram to anybody with a view to their becoming purchasers of it but Kellogg & Rose; those are the only persons that I showed this diagram to. I know I did to them. Nobody ever spoke to me
- 1290 about buying the property prior to the time my brother bought it. I did not have anybody in view as a purchaser of the property, prior to the time my brother purchased it. Never.

You show me Exhibit 67. (Paper shown to witness.) I recollect signing that paper. I had got a notice from Mr. Demarest to come to his office and bring my wife, which I did. In the office I started to read it and he said, "Oh, that is all right, Louis. "That is to finish up in the other case that you

“signed. It is simply a matter of form,” and 1291
everything seemed to be a matter of form.

The Court: You identified the paper, Mr. Johnston.

Mr. Johnston: I did, sir, as Exhibit 67.

Am I sure this was in Mr. Demarest's office, that I signed this paper? I will see the date. (Referring to the paper.) That paper was not signed on that date. Am I sure that I signed this paper in Mr. Demarest's office? (Referring to the paper again.) Well, that is the only paper that was signed in his office. I am sure that I signed this paper in Mr. Demarest's office. I can give the 1292
date when that paper was signed, if you want to know. It was signed the day when Mr. Demarest drew up my wife's will. That was on—she was only in Demarest's but twice. On the 16th day of June, 1903, that paper was signed in Demarest's office, because when she signed that paper, I asked Mr. Demarest if he wouldn't draw up a little will for her at the time, and she was sick and she was afraid something would happen to her, and he drew up that will when the paper was signed. Mr. Demarest never came to my house in Brooklyn for me to sign any papers. I never signed any papers in Brooklyn for Mr. Demarest. 1293
Not from my recollection. I won't swear positively that I didn't, but I don't believe I did.

Mr. Kellogg: Perhaps I can state to your Honor, if your Honor thinks Mrs. Ungrich is a necessary and material witness to the signing of this confirmatory deed, that she was brought to the office this morning for the purpose of coming up here as a witness and was taken with a violent attack of heart disease. She is subject to heart disease and I had to

- 1294 send her back by one of the boys in the office, so that this man could come here. I only want a few lines of testimony and I would ask that my friends go over to her house and take the testimony.

Mr. Johnston: Yes. We stipulate now on the record, that the testimony of Fannie B. Ungrich, wife of the plaintiff, shall be taken at 426 St. Mark's Avenue, Brooklyn, before blank, notary public—

- 1295 Mr. Kellogg: On a date to be agreed upon between the counsel and that her testimony may be read with the same effect as though taken actually upon the trial.

I will put in evidence a letter of October 24th, 1906.

Received and marked Exhibit BBB.

(Read to the Court.)

Mr. Kellogg: I offer in evidence this letter of July 11th, 1902.

Received and marked Exhibit CCC.

(Read to the Court.)

PLAINTIFF HERE RESTED.

- 1296 JAMES DEMAREST, recalled, testified as follows:

Direct Examination by Mr. Johnston:

I recollect having a conversation with Martin Louis Ungrich, the plaintiff, about having counsel. I do, yes, sir. He told me that he had consulted counsel on different occasions in regard to matters of his father's estate, and he told me that

one lawyer had told him he could drive a coach 1297
 and four through his father's will. "But," he
 said, "suppose I do and take any action, the prob-
 abilities are I wouldn't be better off and you
 "lawyers would get a lot more out of it." That
 was what he told me on one occasion. Again, he
 complained relative to the payment of the per-
 sonal tax. He complained about that. He said he
 thought it was unfair that the personal tax should
 be paid out of the income; he thought it ought to
 be paid out of the principal. I told him the best
 thing for him to do would be to consult counsel
 about it. If he could show me any cases or any
 basis on which I could advise the executors to pay 1298
 it out of the principal, I would be glad to do so,
 and he told me subsequently that he had consulted
 counsel but that no definite steps had been taken
 and he didn't see that there was any use to pursue
 it further; that they told him it would probably
 have to be paid out of the income. At the time of
 selling to Henry, there was nothing said about
 counsel at that time. I don't recall anything be-
 ing said about counsel at that time. I remember
 the occasion of the reading of the will at my office.
 I remember that it was read there and that Mar-
 tin, the plaintiff, and Henry Ungrich, Jr., and
 Martin Ungrich were present. As to whether
 Henry Ungrich, Jr., in my presence said in re- 1299
 sponse to any inquiry from Martin Louis, the
 plaintiff, anything about how much the personal
 estate of his father consisted of— I have no
 recollection of any amount being named at that
 time. There was nothing said by Henry Ungrich,
 Jr., in my presence, as to there being \$25,000 of
 personal estate. I never heard that amount men-
 tioned, sir. Martin Louis did not in my presence
 on that occasion, say that he was surprised that

- 1300 his father had so little money. I never heard him say that. He did not say anything about his father having sold a house and getting the money for it, at that time. I never heard that. He did not ask his brother Henry, in my presence, where the money went to from the proceeds of the sale of that house. No, sir, I never heard that. Martin Louis, the plaintiff, never said to me where, or asked me where he was coming in in regard to any of the \$25,000 of personal property. He never did, no, sir. Henry Ungrich, Jr., never in my presence asked him what he wanted out of it, or anything to that effect. Never. He never said
- 1301 to Henry Ungrich, Jr., in my presence or hearing, that he wanted half of the \$25,000, or anything like that. I never heard him say so. I never heard any conversation whatever, about Henry paying \$7500 to Martin Louis Ungrich. I never heard \$7500 mentioned. He came to me and spoke to me about the mortgages which had been transferred to Henry by his father. That was the only conversation he had, or any conversation I had. That was about any personal property he referred to, except at the time the inventory was taken; he was present there when the appraisers were there and the inventory made out. He never said he was going to contest his father's will. No, sir.
- 1302 I never said to him, in speaking of a contest of his father's will, "Louis, I will talk to Henry. I will 'see you get the money.'" No, sir, I never said that. In fact, I told him I think, his father's will expressed his father's wishes and if he didn't, it was for him to act as he thought best. That was about the time the will—before it was probated. As to whether Henry Ungrich said to me he would give him \$7500 and pay his bills and debts, of which he made out a list aggregating \$980. I say

I never heard \$7500 mentioned and I have no rec- 1303
 ollection of ever seeing any list of Martin Louis'
 bills or debts. I never heard Henry say he would
 pay any bills of Martin Louis'. I never did. He
 never said it to me or in my presence. Louis
 Ungrich never came to me and asked me to get
 Henry to give him \$7500 and get Henry to pay
 his bills, aggregating \$980. He never mentioned
 \$7500, and never said anything about Henry pay-
 ing his debts. I never said to him that I would
 get it fixed, he would get the \$7500 and Henry
 would pay the \$980. I never said, except as I
 have testified before, that I would do the best I
 could to get Henry to do the best he would. I 1304
 never said anything to Louis about not saying
 anything to Martin about it. No, sir. Nor about
 getting the \$7500 or paying the bills. Never. I
 never said to Martin Louis Ungrich, "Leave it to
 me and I will see that your brother does what is
 right." No, sir; I told him I would do the best
 I could with Henry. I never stated to Martin
 Louis about any paper that he signed in my pres-
 ence, or in my office, or anywheres, it was a mere
 matter of form. No, sir, never; every paper that
 he signed was read over to him before he signed
 it. When he started to read Exhibit 5, I did not
 state to him that it was a mere matter of form.
 (Paper shown to witness.) I did not, sir. I, be- 1305
 tween May 16th and May 22nd, or at any other
 time, never said to Martin Louis Ungrich that I
 had it all fixed with Henry to pay Martin Louis
 \$7500. I never did. I never stated to Martin
 Louis, the plaintiff, when he started to read Ex-
 hibit 6 and 7, that those were a mere matter of
 form, or words to that effect. (Papers shown to
 witness.) I did not, sir. I never stated to Mar-
 tin Louis, the plaintiff, that any papers that he

- 1306 signed were a mere matter of form, for Henry to get the property. I never did. I remember when Henry went on a trip and was absent for some time shortly after the father's will was made. I think he went away for some time. Just after the probate of the will. Yes, in that spring he was away. During that period of time, Martin Louis never came to me and asked me about his getting \$7500 and his bills, \$980 paid. No, sir, I never heard the amount mentioned until I heard it here in Court. I never said to him that Henry was away and as soon as he got back I would fix it up. No, sir. At the time that this \$6,000 check was paid and the general release was executed, nothing was said about \$7500 at that time. It was not mentioned. The general release was signed and delivered in my office, 140 Nassau Street. I filled it out in the presence of both of them. They were both there at the time. 140 Nassau Street, corner of Beekman. The papers, exhibits, the originals, 68 and 69, and the paper Exhibit 67, were executed by the plaintiff and his wife. (Papers shown to witness.) These three deeds were executed in the apartment of Martin Louis, corner of Prospect Place and Vanderbilt Avenue, Brooklyn, April 24th, 1903. The day before the title—the closing of the title to the 126th Street property
- 1307 was set down for closing at my office the day preceding. Mr. Davis—I went to the office—Mr. Ungrich lived near to my house, and from my office, on my way home, I went to his house in the evening and he was out. That was on my way home. I stopped there in the morning and he let me in and he said, “Good morning. Do you want to see me, Mr. Demarest?” I said, “Yes, I want to see you, something about the property that Henry bought.” He said, “Come upstairs.” I
- 1308

went upstairs in his apartment and he took me in 1309
 his room where his desk was and said, "What is
 it?" I said, "The title to the 126th Street prop-
 erty was down for closing yesterday, and the at-
 torney for the purchaser raised some question
 about the title, but he has agreed to take it if you
 will give a confirmation of sale, quit deed, or what-
 ever they were, of the property. And Henry has
 asked me to step in and see if you will sign these
 deeds for him?" He said, Sure, I will do that for
 "him. I don't know whether he would do as much
 "for me, but I will do it for him." Then he com-
 menced to talk about the plans there, for which
 Henry had not paid him, for plans he had drawn. 1310
 I said, "I don't know anything about that; I will
 "ask him about that, if you wish me to." I then
 produced the deeds. He said, "Would you like
 "to have my wife sign the deeds?" I said, "Yes,
 "as there is only one piece of property and the
 "title is to be passed now, the 126th Street prop-
 "erty. Henry would like you to execute these and
 "the others, if you will." I gave them to him and
 he said he would. His wife came in and I ex-
 plained or read over each deed and explained the
 contents and stated what deed it was, or what
 property it covered, and then each of them signed
 the deeds and I witnessed them and took their
 acknowledgment. 1311

Cross-examination by Mr. Kellogg:

The plaintiff spoke of or mentioned two men
 as counsel he had been to. When I asked him
 who, Stern I think he said was a friend, and
 some lawyer for some friend of his by the name
 of Beall. He also spoke of seeing Mr. Auerbach,
 or Mr. Stone, or some of the firm. He said he had
 seen them. Yes, sir. That was relative to the

- 1312 payment of personal taxes. That was long after the will had been probated, that he spoke of seeing them. He did not say he had been to see them regarding the will. No, sir, that was in regard to the payment of personal taxes, as to whether it should be paid out of principal or income. Long after this transaction. Yes, sir, because he didn't pay it until after this transaction. That was long after May 22nd, 1902. Yes, sir. He said he had been to see Stern. Along about that time. It may have been earlier. It may have been earlier than May 22, 1902; I cannot say. No, I don't recollect the date. I think it was earlier, because I think
- 1313 he said—I think it was some time prior to that because he said he was the lawyer who told him he could break his father's will. He did tell me that. Yes, sir. I did not say that never occurred. No, I said not Davies, Stone & Auerbach told him. He said this lawyer told him he could drive a coach and four through his father's will. I said that was for him to determine. I thought his father's will expressed his father's wishes. That I appeared for the probate of the will. At the time of the transaction of May 22nd, 1902, there was no lawyer present other than myself. No, sir. At that time I had spoken to Henry about the \$25,000. I had told Louis I would be glad
- 1314 to do anything I could for him. I cannot recall the date. It was prior to May 22nd. I had spoken to Henry. I may have spoken more than once. My recollection is that Henry said he would not discuss the matter until after the matter of the real estate was settled. He would not discuss any question of any settlement or any arrangement with Louis until after that, until after the real estate matter was settled. He did not give any reason why. No; he said, "I don't want to dis-

cuss it now. I won't discuss it until the real estate matter is settled," and I so told that to Louis. I had spoken to Henry about that once or twice. I know I did once, and possibly twice. I had promised I would do that. I had, yes, sir. For my conversation with Henry in regard to the \$25,000 is that he paid me \$500 for. Is what he paid me \$500 for. I talked to Henry about it several times after the real estate transaction was closed. Before that we had two or three talks. I told Louis I had talked about it, generally, yes, sir. I did not tell him he would take that up just as soon as the real estate transaction was passed. I didn't say that. I said he said he would not discuss that until after the real estate transaction was disposed of. I did not tell Louis that I thought Henry would be fair about it, if the real estate transaction went through. No, sir, I didn't say that. I said I hoped Henry would be fair with him. I did not lead Louis to believe that Henry would be fair with him if the real estate transaction went through. I did not intend to lead him to believe that. I said just exactly what I say. That I hoped he would be fair, after the real estate transaction went through. Louis did not claim any exact amount. Half of the \$25,000 was not what he mentioned. No, he never claimed half.

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Mr. Johnston: He never said that?

The Witness: I don't remember he ever stated that he claimed \$12,500, no.

He wanted Henry to do something for him. He did not name any specific amount, except about a house that he wanted to buy. He did not say that there was \$25,000 of personal property, of which he claimed his half under the will. No, sir, he didn't. I was trying to get Henry to do

- 1318 something for him, as much as he would do for him, and that was what he asked me to do. The sum of \$25,000 was mentioned when Louis said, "My father gave this \$25,000 worth of mortgages to Henry; what did he do that for?" I don't know there was \$27,000. No, sir, I don't know anything about it, except an assignment had been made four years before the old gentleman's death. I drew the assignment and it was executed in my presence. Louis wasn't there. The Davenport mortgages were read over to Louis on the 22nd—they were not read over entirely. The deed from the executors to Henry was not read over. I did not say those papers were read over. I said he never signed any paper in my presence but what was read over to him. I didn't give him copies of the papers he signed because they were drawn for the executors. He never had any copy that I know of. He was not represented by any counsel. I never saw him when he was intemperate. I knew he drank at times. How was it that this tax on the trust fund of \$78,500 was only made on \$25,000? That was the amount of the assessment laid by the Tax Commissioners; that is the amount at which it was assessed. I never had anything to do with it being fixed, exactly. It is sworn to every year. The second Monday of January.
- 1319 I think the first year it was \$100,000 and the second—— I think I went over there with the executors and the correct amount was stated and it was reduced. Another year, it was—I think the next year it was made \$25,000 and the succeeding year it was raised to \$50,000. I went over there and stated it was no greater than it was the year before. I didn't see why it should be increased, and they made it the same as it was the year before, \$25,000. I knew what the amount
- 1320

of the estate was, but I knew, and I just stated 1321
exactly what the case was. It was not any greater
than it was the year before. I didn't charge
Louis for that.

HENRY UNGRICH, JR., recalled, testified as
follows:

Direct Examination by Mr. Johnston:

You show me Exhibit 105 for identification.
(Paper shown to witness.) That is all in Louis' 1322
handwriting, the whole check.

Mr. Johnston: I offer it in evidence.

Exhibit 105 for identification received and
marked in evidence by that number.

I remember the time when my father's will was
read at Mr. Demarest's office. I said something
about how much the personal estate of my father
was at that time. Yes, sir. I said that there was
money in seven or eight savings banks, that there
were two bonds, and some shares of stock, besides
the balance in the Hamilton Bank. I think I stated
that aggregated about eleven to twelve thousand 1323
dollars. I did not say that my father's personal
estate aggregated \$25,000. No, sir. My cousin
Martin did not say at that time, "Is that all the
property your father had? I consider myself a
poor man, but I have more than that." I never
heard him make any such statement. Louis Un-
grich did not say at that time, "I cannot under-
stand why my father had so little money," or any
words to that effect. I don't remember his mak-
ing any such statement. He did not make any

- 1324 statement about his father having recently sold a house at that time. No, sir, my father had not sold any house. He did not say at that time, "Where did the money go?" and I did not reply, "Well, that is all that there is." No, sir. Did I ever say to Louis, "We will get rid of Martin," or any words to that effect? Or, "He is a stumbling block," or any words to that effect? Well, there is a letter read which says I done so, but I don't remember saying any such thing. Louis did not say to me, "Where am I coming in about that \$25,000 personal estate?" No, sir. He never said to me that he wanted half of the \$25,000 personal estate. No, sir. I never said to Martin
- 1325 Louis, the plaintiff, that I would pay him \$7500 for his share of the personal estate. I did not. I never made any such statement. I never said to him that I would pay him \$7500. I did not. I never said to him that I would pay \$980 of his personal debts, or any amount of his personal debts. I did not. I never saw any list of his personal indebtedness. No, sir. I never told Louis, the plaintiff, not to tell Martin about my agreement to pay him \$7500 and his bills of \$980 or any words to that effect. No, sir. On the day when I delivered the check for \$6,000 to the plaintiff, there was nothing said about \$7500. No, sir, there
- 1326 was not. That check was delivered at Mr. Demarest's office. The general release delivered was drawn up and executed at Mr. Demarest's office on that morning. It was handed to him at Mr. Demarest's office. The papers, Exhibits 5, 6 and 7, I know what they are—those papers that were signed on the 16th and 22nd of May. Mr. Demarest did not in my hearing then say to Louis Ungrich, "It is only a mere matter of form." No, sir, he never made any such statement as that.

When the general release was delivered, Martin 1327
 Louis did not say to me that he was to get \$7500
 and that check which I gave him was not \$7500,
 or any words to that effect. I did not say to him,
 "That is all you are going to get." Nor any
 words to that effect. I never said anything of the
 kind.

Cross-examination by Mr. Kellogg:

My father owned 287 Lenox Avenue. It may
 have been sold in 1896, but I don't remember—
 I don't know. My father didn't sell it. He owned
 it at one time, yes, sir. I never had anything to
 do with this house—with the collection of rents or 1328
 anything there. It did not come down to me as
 executor. It was sold to Mrs. Alice Rohkohl—
 I don't know when, sir. I don't know when it
 was sold. I know he owned it in the early 90's.
 He may have owned it in 1894. I don't think he
 owned it in 1896. He may have owned it in 1895;
 I don't know. I was in charge of his affairs in
 1894. 1894, yes, sir, May 1st. It must have been
 sold previous to that time, for I never had any-
 thing to do with it. What my father sold it for.
 My father sold it, I think, for \$15,250. I think
 that is the price. I cannot tell what year it was
 sold in. No, sir, I cannot. My father did sell a 1329
 house, as Louis stated. He did not sell the house
 at the time we were figuring upon the personal
 estate in 1901. No, sir, it had not been sold at the
 time we were figuring up the estate in 1901. It
 may have been sold by the other people who took
 it. I don't know. The property may have been
 sold three or four times. The ownership of my
 father in that house had ceased prior to 1901. I
 will swear I did not sell that house myself. I had
 nothing to do with that house. Who the lawyer

- 1330 was who had charge of the sale I don't know. I think Mr.— I don't know who father's attorney was at that time. I don't know whether it was Mr. Demarest or Mr. Rebham. Where did I hand Louis this check? (Paper shown to witness.) In Mr. Demarest's office. It is drawn on the Knickerbocker Trust Co. The Harlem branch. I did not go up there with him. I did not go up with him to the bank and identify him when this check was drawn. I cannot tell whether the check was drawn in cash or not. (Paper shown to witness.) It is marked, "Paid." That is all. Where I had been from May 22nd to June 22nd, 1902, that is more than I can tell you, sir. I may have been out of town; I don't know.
- 1331

— — —

MARTIN UNGRICH, recalled, testified as follows:

Direct Examination by Mr. Johnston:

- I remember the occurrence of the reading of my uncle's will in Mr. Demarest's office. I do, yes, sir. My cousin Henry Ungrich did not say at that time there was \$25,000 of personal property, or any words to that effect. I don't remember if the amount of the personal estate was mentioned at that time. I don't remember. I do not recollect at that time saying, "Is that all the property your father had? I consider myself a poor man but I have more than that." I said nothing of the kind. I do not recollect my cousin Louis stating at that time, that he could not understand why his father had so little money as he had recently sold a house, or words to that effect. No, sir. I never heard James Demarest say to Martin Louis,
- 1332

the plaintiff, at the time of the execution of any 1833
paper which has been mentioned here, "That is a
mere matter of form," or any words to that effect.

Cross-examination by Mr. Kellogg:

At the time of the reading of the will, I don't
remember that there was anything said about the
amount of the personal property. I am almost
positive that there was nothing said. There was
nothing said about it at all. No question asked
by Louis about the estate at all. Nothing. Henry
did not tell him anything about this estate. No,
sir. I am quite sure of that. I cannot say who
came there first; I cannot say that or who were 1834
there when we got there. I know we met there.
We were there possibly an hour. Louis was there
all that time. Yes, sir. The will was read. There
was only a couple of pages. It didn't take very
long. Probably five minutes. Well, I cannot say
just what was said during that hour. I cannot say
what was said. Well, possibly it was not an hour.
No, sir, I cannot tell what was said. I cannot say
anything that was talked of. I cannot, no. The
will was read, yes, sir, and that was all. I don't
remember what was said.

DEFENDANTS HERE RESTED.

1335

— — — — —
MARTIN L. UNGRICH, recalled, testified as
follows:

Direct Examination by Mr. Kellogg:

I have no recollection of signing any deeds at
my house as stated by Mr. Demarest. I have no
recollection of it, no, sir. I do recollect signing the
papers on June 16th, at his office. I do, that is the

1336 date my wife's will was made. (Paper shown to witness.)

Mr. Kellogg: I call the attention of the Court to the fact it is not a recorded paper; it has never been recorded.

Q. Did you ever see this deed, this paper here, until this trial? A. Well, my name is there.

I never recollect seeing this paper, but my name is there. And my wife's name is there.

Q. Now, it appears that this paper has been certified to by the Clerk of the County of Kings as having been handed to him with your signature
1337 and the acknowledgment of Mr. Demarest on the 27th of April, 1903. Mr. Demarest says that you signed this paper at your house. Do you have any recollection of signing any paper relating to this estate at your house? A. No, sir; I know that my wife only signed two papers and the only times she was in Demarest's office was twice, to my best recollection—twice. I have talked with my wife about that, about the papers she signed with me. Yes, sir; she remembers she went in very particularly, because that is a thing—that is a good point to her to remember, the day she made the will.

1338

No Cross-examination.

Plaintiff here rested, except the plaintiff's wife's testimony, which is to be taken later.

NEW YORK SUPREME COURT,

1339

NEW YORK COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR., and MARTIN UNGRICH, individually,
and as Executors of and
Trustees under the Last Will
and Testament of Henry Un-
grich, deceased,
Defendants.

1340

Testimony of Fannie B. Ungrich, a witness on behalf of the plaintiff, taken before Thomas A. Healy, Esq., a Notary Public in and for the County of New York, at the office of Messrs. Kellogg & Rose, on the 19th day of February, 1908, pursuant to stipulation between the parties in open court.

APPEARANCES:

For the Plaintiff:

Messrs. KELLOGG & ROSE

1341

(By Mr. L. Laffin Kellogg and Mr. Mac-
Intosh Kellogg).

For the Defendant Henry Ungrich, Jr.:

ISAAC P. HUBBARD, Esq.

For the Defendant Martin Ungrich:

Messrs. JOHNSTON & JOHNSTON

(By Mr. Benjamin E. Messler).

1342 FANNIE B. UNGRICH, called as a witness on behalf of the plaintiff, being duly sworn, testified as follows:

Direct Examination by Mr. L. Laffin Kellogg:

I live at 426 St. Marks Avenue, Brooklyn. I am the wife of the plaintiff, Martin Louis Ungrich. I was married the 18th day of August, 1898, at Jersey City, New Jersey. How long I have lived there I don't remember. I have lived in other places since I was married. Do I remember where I lived in 1903, at the time I had my will made by Mr. Demarest? I think that was—I believe it was——

1343 How long I have lived here where I am now, I don't remember. I never took much notice of how long. I don't remember how long I have lived in this place now, St. Marks Avenue. I have a very poor memory, I don't remember how many months or years. I don't remember the exact date. I think I lived there more than a year. Yes, sir, I think it was—— I think it was more than a year. When first married I lived at 326 43d Street, New York City. I lived after that at 437 West 44th Street, New York City. I did not board in those places. No, sir. Kept house. After that we moved to 244 Prospect Place, Brooklyn. That is not where I am living now. No, sir; 426 St. Marks

1344 Avenue, that is the last place. Yes, sir. I know James Demarest, the lawyer. Yes, sir, just by seeing him. That is my signature to this paper which the Court has marked "Exhibit 67." (Showing witness paper and indicating.) Yes, sir; that looks like my signature; it looks like it. I was at Demarest's office in New York. Twice. He was at our house once. I never signed any papers. At my house? No, sir. He came to my house a month after we lived there, a month after we moved.

That was in 224 Prospect Place. He did not say 1345
 anything about signing any deeds there. He just
 came up and said to my husband, he said, "I would
 like you to go down and see my wife to make an
 alteration on my house." Never said anything
 about deeds at that time, no, sir. I do not remem-
 ber signing any deeds at his office—at Mr. Dem-
 arest's office. I do not remember signing them. I
 did sign papers at his office. I do remember they
 were not read to me. No, sir; they were not. Mr.
 Demarest said, "Mrs. Ungrich, please sign your
 name underneath your husband's as a matter of
 form."

Mr. Hubbard: I move to strike out the lat- 1346
 ter part of the answer as not being responsive.

I don't remember. Mr. Demarest drew my will.
 Yes, sir, he drew my will. That was executed at
 his office. I signed this in Demarest's office. I
 signed Exhibit 67 in Mr. Demarest's office. Yes,
 sir. There weren't any other papers besides these
 two papers. That paper was not read to me. Be-
 fore I signed it. No, sir. Mr. Demarest just said,
 "Mrs. Ungrich, please sign your name under your
 husband's as a matter of form." I did so. My
 husband was with me at that time.

Q. Do you remember whether there were not 1347
 two other papers of the same nature which you
 signed at that time?

Mr. Messler: I object to the question as
 leading. She has already testified she did not
 sign any papers at that time.

A. How many papers there were at this time I
 don't remember.

Q. Did you ever know that you had signed, with
 your husband, any deeds of any property? A. No,
 sir.

1348 Mr. Messler: Objected to as calling for a conclusion of the witness.

Q. Did Mr. Demarest state to you the contents of any paper which you signed or make any statement other than you have said, as to being a matter of form? A. No, sir.

Mr. Messler: I object to the question as calling for a conclusion of the witness, irrelevant, incompetent and immaterial and also as leading. I have no objection as to what Mr. Demarest did say.

1349 It was on the 16th of June, 1903, that my will was made. What happened at this time I do not remember. No, sir.

Q. Now, Mrs. Ungrich, upon the trial of this action, brought by your husband, Mr. Demarest states as follows: That he went to your house on his way home one evening, and that you let him in—

Mr. Hubbard: I object; that is not the testimony.

Mr. Kellogg: I am reading from the testimony.

1350 Q. (Continuing): Mr. Demarest said he stopped at your house in the morning and Mr. Ungrich let him in and he said—

Mr. Hubbard: I object, that is not the testimony.

Mr. Kellogg: I must have the wrong place.

Q. (Reading): "I went to the office—Mr. Ungrich lived near to "my house, and from my office, on my way home, I went to his house in the "evening and he was out. That was on my way

"home. I stopped there in the morning and he 1351
 "let me in and he said, 'Good morning, do you
 "want to see me Mr. Demarest?' I said, 'Yes,
 "'I want to see you, something about the prop-
 "'erty that Henry bought.' He said, 'come up-
 "'stairs.' I went upstairs in his apartment and
 "he took me in his room where his desk was and
 "said, 'What is it?' I said, 'The title to the 126th
 "'Street property was down for closing yester-
 "'day, and the attorney for the purchaser raised
 "'some question about the title, but he has agreed
 "'to take it if you will give a confirmation of sale,
 "'quit deed,' or whatever they were, of the prop-
 "erty, 'and Henry has asked me to step in and see 1352
 "if you will sign these deeds for him?' He said,
 "'sure, I will do that for him. I don't know
 "whether he would do as much for me, but I will
 "do it for him.'

"Then he commenced to talk about the plans
 "there, for which Henry had not paid him, for
 "plans he had drawn. I said, 'I don't know any-
 "thing about that; I will ask him about that, if
 "you wish me to.' I then produced the deeds.
 "He said, 'Would you like to have my wife sign
 "the deeds?' I said, 'Yes, as there is only one
 "piece of property and the title is to be passed
 "now, the 126th Street property, Henry would
 "like you to execute these and the others, if you 1353
 "will.' I gave them to him and he said he
 "would. His wife came in and I explained or
 "read over each deed and explained the contents
 "and stated what deed it was, or what property
 "it covered, and then each of them signed the
 "deeds and I witnessed them and took their ac-
 "knowledgement." That is what he says took
 place. Is that so? A. No, sir.

1354 Cross-examination by Mr. Messler:

- I do not remember at what time I moved to this house, 244 Prospect Place. No, sir. I don't remember. I don't remember. No, sir. I don't remember the year in which I moved there. I have no recollection at all as to the time I moved there. I do not remember the times at which I lived at any of the other addresses which I have given. No, sir, I don't remember. I do not remember when I moved to the house at which I am now. I never paid any attention. At what house was I living at the time when I say I signed certain papers at Mr. Demarest's office. Where was
- 1355 I living? When I signed papers in Demarest's office? 224 Prospect Place, Brooklyn. I am therefore sure I was living there at the time I signed the papers in his office, yes sir. I do not know at what time I signed the papers? No, sir. I don't remember. I can't fix it at all in any way. No, sir. I never signed any papers at my house. No, sir. None of any sort. No, sir. No legal papers of any sort. No, sir. Either at this house or any other. No, sir. I executed my will the 16th of June, 1903. I do remember that. Yes, sir. That was the last time I went to Demarest's office, when I made my will. That is how I remember it, the last time.
- 1356 The last time I went to Demarest's office was the 16th day of June, 1903. Yes, sir. I remember signing the will only from the fact that I remember going to Demarest's office about that time and that was the last time I went to his office. That was the last time. I did not sign any other papers at his office at that time, on the 16th of June. No, sir. What the next time previous to it, the 16th of June, that I had been at Demarest's office was I don't remember. I had been

there before. Yes, sir. Twice. Twice I was there 1357
altogether. Twice before this time. Twice. I
have already testified that I went there on the
16th of June, now you ask me how many times be-
fore that had I been there. Twice. Before that,
twice.

Q. And yet you have been there in his office
twice in all? A. Twice.

Q. I am afraid you do not understand. I asked
you how many times you were at Mr. Demarest's
office altogether and you say twice? A. Twice
and the time he made the will.

Q. Three times? A. Yes, sir.

Q. Three times altogether? A. Yes, sir.

Q. Three times or two times, altogether? A. 1358
Twice.

I don't remember the dates of those other two
times when I was there. I don't remember. Were
they long before this 16th of June? I think, as
much as I recollect, I think it was one year apart.
That is, that the time before the 16th of June when
I was at Demarest's office was a year before then.
As much as I recollect, one year before; one year
before he made my will. I was there at his office.
As far as I recollect. What took me there at
that time? Why did I go there at that time?
What time? The year before I made my will
there? I don't remember. When the time was 1359
that I went there before that I don't remember. I
do not remember why I went there. No, sir.
When the time was that I signed certain papers
at Demarest's office that I have testified to. I
don't remember. I don't remember whether I
ever signed any papers there except my will. I
don't remember. Demarest went to my house at
Brooklyn or at any of the houses in which I lived
only once, in Prospect Place. Once. Yes, sir.

- 1360 That was in the morning—one morning before he went to his office. What date I don't remember. I do not remember the year. I don't remember. It was after I made my will. It was after. Yes, sir. He came there for my husband to make an alteration to his house. I know that because I heard him say so. The kitchen and dining-room was together. My kitchen door was open. I was in the kitchen. I heard him say it. To my husband. He did not say anything else. No, sir. I am quite sure of it. Yes, sir. I remember that he came to my house at this time, because we lived there one month after we moved, and he came one morning and wanted his house altered—an alteration to his house. When Demarest came to see my husband about the alteration to the house we lived there one month, when he came to talk to my husband. What causes me to remember this date particularly. I don't remember. I don't remember this, this time.
- 1361

Mr. Kellogg: The date of this will, is that what you mean?

Mr. Messler: I mean this: She remembers very clearly that it was exactly a month from the time she had moved there, and I want to know why it is that she remembers that time so very clearly.

- 1362 The Witness: I don't.

I don't remember why it is that I remember that particular time. I don't know why I remember that, and I don't know why I remember that. I don't remember. I don't remember.

Q. So that your memory is entirely a blank upon all of these transactions, except that Mr. Demarest came to your house, one month after you had moved there, is that correct? A. I don't remember.

Re-direct Examination by Mr. MacIntosh Kellogg: 1363

I was married at Jersey City in 1898. Yes. I went to live right after I was married to 437 West 34th Street. That was in 1898. Yes, sir. How long I lived there I don't remember. I don't remember whether it was one year, two years or three years. No, sir. The next place was 44th Street. And then 244 Prospect Place. 44th Street. We moved from 44th Street to Brooklyn, 224 Prospect Place; then after that we moved to 426 St. Mark's Avenue, and that is the last place. We have lived at 426 St. Marks Avenue ever since. I don't remember what time of the year it was when I moved to Prospect Place, where I lived. I don't remember. When I fixed the time of one month after I moved there, that Mr. Demarest came there, I suppose I made a mistake in that. I am quite sure about that time, whether a month or not. I am sure. I don't remember. I don't remember the date of the signing of the will, on June 16, 1903, that I testified. I don't remember. The day I made my will? That was on the 16th day of June, 1903. 1364

By Mr. L. Laffin Kellogg:

I am an invalid. I have a weak heart. I came over to attend the trial of this action and became sick. Yes, sir. I have come out of a sick bed. I had the doctor yesterday. 1365

FANNIE B. UNGRICH.

Sworn to before me this 24th }
day of February, 1908. }

THOS. A. HEALY,
Notary Public,
New York County.

The foregoing case contains all the evidence taken and proceedings had upon the trial of this action.

1366

Exhibit A.

THIS INDENTURE made the twenty-second day of May in the year one thousand nine hundred and two Between Henry Ungrich Jr. and Martin Ungrich, as executors of and trustees under the last will and testament of Henry Ungrich, late of the City and State of New York, deceased, parties of the first part, and Harry K. Davenport, of the Borough of Brooklyn, County of Kings, City and State of New York, party of the second part, Witnesseth:

That the said parties of the first part by virtue of the power and authority to them given in and
1367 by the said last will and testament and in consideration of One hundred and fifty-seven thousand dollars lawful money of the United States, paid by the said party of the second part, do hereby grant and release unto the said party of the second part his heirs and assigns forever.

All those certain lots, pieces or parcels of land with the buildings and improvements thereon erected, situate lying and being in the Twelfth Ward, Borough of Manhattan, City, County and State of New York, bounded and described as follows, to wit:

Parcel No. 1. All that certain lot, piece or parcel
1368 of land, with the buildings thereon, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, known and distinguished as Lot number 359 (three hundred and fifty-nine) on a map entitled "Map of property belonging to Samson Adolph Benson, living in the Twelfth Ward of the City of New York" New York, May 1848, compiled and surveyed by Francis Nicholson, City Surveyor, and filed in the office of the

Register of the City and County of New York, 1369
and numbered Map 180 (one hundred and eighty)
bounded and described as follows:

Beginning at a point on the Northerly side of
One hundred and twenty-fourth street distant
seventy-five feet westerly from the westerly side
of Sixth Avenue (now Lenox Avenue), as widened
by an Act of the Legislature of the State of New
York, entitled "An Act for the improvement of
part of the City of New York between One hun-
dred and tenth street and the Harlem River"
passed April 24, 1865, Laws of 1865, Chapter 564,
page 1133 (which point was distant One hundred
feet westerly from the westerly side of Sixth Ave- 1370
nue (now Lenox Avenue) before said widening);
thence running northerly parallel with said Lenox
Avenue (formerly Sixth Avenue) One hundred
feet and Eleven inches; thence Westerly parallel
with one hundred and twenty-fourth street Twen-
ty-five feet; thence Southerly again parallel with
Lenox Avenue (formerly Sixth Avenue) One hun-
dred feet and Eleven inches, to the Northerly side
of One hundred and twenty fourth street; thence
Easterly along said Northerly side of One hun-
dred and twenty-fourth street, Twenty-five feet to
the point or place of beginning. Being the same
premises conveyed by John L. Strang and Sarah
Strang, his wife, to Henry Ungrich, by deed bear- 1371
ing date November 18, 1872, and recorded in the
office of the Register of the City and County of
New York. in Liber 1227 of Conveyances, page
688, November 18, 1872.

Parcel No. 2. All that certain parcel of land,
situate, lying and being in the Twelfth Ward of
the City of New York, Borough of Manhattan,
County and State of New York, bounded and de-
scribed as follows:

- 1372 Beginning at a point at the intersection of the westerly line or side of Lenox Avenue (formerly Sixth Avenue) with the Northerly line or side of One hundred and twenty-fourth street; thence running westerly along said northerly line or side of One hundred and twenty-fourth street seventy-five feet; thence Northerly parallel with Lenox Avenue (formerly Sixth Avenue) fifty-six feet; thence Easterly parallel with One hundred and twenty-fourth Street and part of the distance through the centre of a party wall seventy-five feet to the westerly line or side of Lenox Avenue (formerly Sixth Avenue) thence southerly along the said Westerly line or side of Lenox Avenue (formerly Sixth Avenue) Fifty-six feet, to the point or place of beginning be the said several dimensions more or less.
- 1373

Being the same premises conveyed by Rudolph Wyman and Yette, his wife, and Bernhard Hamburger and Rebecka his wife, to Henry Ungrich, by deed bearing date March first, 1869, and recorded in the office of the Register of the City and County of New York, in Liber 1093 of Conveyances, page 245, March 1, 1869.

- Parcel No. 3. All that certain lot, piece or parcel of land, situate, lying and being in the Twelfth Ward of the City of New York, bounded and described as follows:
- 1374

Beginning at a point formed by the intersection of the Westerly side of Pleasant Avenue (formerly Avenue A) with the Southerly side of One hundred and twenty-third street, running thence Southerly along said Westerly side of Pleasant Avenue (formerly Avenue A) Twenty-five feet and Eleven inches; thence Westerly and parallel with One hundred and twenty-third Street, one hundred feet; thence Northerly and parallel with

Pleasant Avenue (formerly Avenue A) Twenty-five feet Eleven inches; to the Southerly side of One hundred and twenty-third Street, and thence Easterly along said Southerly side of One hundred and twenty-third Street, One hundred feet to the place of beginning. Being the same premises conveyed by Henry Ungrich, Jr. and Emily A., his wife, to Henry Ungrich, Sr. by deed bearing date the twenty-eighth day of March, 1894, and recorded in the office of the register of the City and County of New York, on the twenty-ninth day of March, 1894, in Block Series (Conveyances) Section 6, Liber 19, page 266, Block Number 1810, on the Land Map of the City of New York. 1375

Parcel No. 4. All that certain lot, piece or parcel of land, with the building thereon erected situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, bounded and described as follows:

Beginning at a point on the Southerly side of One hundred and twenty-sixth street; distant One hundred and thirty-five (135) feet Easterly from the corner formed by the intersection of the Southerly side of One hundred and twenty-sixth Street, with the Easterly side of Third Avenue running thence Southerly and parallel with the Third Avenue Ninety-nine (99) feet and Eleven inches to the centre line of the Block; thence Easterly along the same Thirty (30) feet, thence Northerly and again parallel with the Third Avenue Ninety-nine (99) feet and Eleven (11) inches, to the Southerly side of One hundred and twenty-sixth Street aforesaid, and thence Westerly along the same Thirty (30) feet to the point or place of beginning. Being the same premises conveyed by Stephen J. 1377

1378 Wright and Susan A. his wife, to Henry Ungrich, by deed bearing date the 30 day of December, 1882, and recorded in the office of the Register of the City and County of New York, in Liber 1696 of Conveyances, page 278, January 4th, 1883.

Together with the appurtenances, and also all the estate which the said Testator had at the time of his decease in said premises. AND ALSO the estate therein which the said parties of the first part have or have power to convey or dispose of, whether individually or by virtue of said will, or otherwise;

TO HAVE AND TO HOLD the above granted
1379 premises unto the said party of the second part, his heirs and assigns forever. And the said parties of the first part covenant with the said party of the second part that the parties of the first part have not done or suffered anything whereby the said premises have been encumbered in any way whatever.

IN WITNESS WHEREOF, the said parties of the first part to these presents have hereunto set their hands and seals the day and year first above written.

Henry Ungrich Jr. Exer. & Trustee (L.S.)

Martin Ungrich, exer. & Trustee (L.S.)

1380 In the presence of
James Demarest.

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

On this twenty-second day of May in the year One thousand nine hundred and two, before me personally came Henry Ungrich, Jr. and Martin Ungrich, as Executors of and trustees under the last will and testament of Henry Ungrich, de-

ceased, and known to me to be the individuals described in and who executed the foregoing conveyance, and they thereupon severally acknowledged to me that they had executed the same. 1881

James Demarest,
Notary Public, Kings Co.
Cert. filed in New York Co.

Exhibit B.

THIS INDENTURE, made the twenty-second day of May, in the year One thousand nine hundred and two, Between Harry K. Davenport, (unmarried) of the Borough of Brooklyn, County of Kings, City and State of New York, party of the first part, and Henry Ungrich Jr., of the Borough of Manhattan, City, County and State of New York, party of the second part, 1882

Witnesseth:

That said party of the first part, in consideration of the sum of Ten Dollars, lawful money of the United States, and other valuable consideration, paid by the party of the second part, doth hereby grant, bargain, sell and release unto the said party of the second part, his heirs and assigns forever. 1883

All those certain lots, pieces or parcels of land, with the buildings and improvements thereon erected, situate, lying and being in the Twelfth Ward of the Borough of Manhattan, City, County and State of New York, bounded and described as follows, to wit:

Parcel No. 1. All that certain lot, piece or parcel of land, with the buildings thereon, situate, lying and being in the Twelfth Ward of the City

1384 of New York, Borough of Manhattan, City and State of New York, known and distinguished as lot No. 359 (three hundred and fifty-nine) on a Map entitled "Map of property belonging to Samson Adolph Benson living in the Twelfth Ward of the City of New York" May 1848, compiled and surveyed by Francis Nicholson, City Surveyor, and filed in the office of the Register of the City and County of New York, and numbered Map 180 (one hundred and eighty) bounded and described as follows:

Beginning at a point on the Northerly side of One hundred and twenty-fourth street, distant
 1385 seventy-five feet Westerly from the Westerly side of Sixth Avenue (now Lenox Avenue) as widened by an Act of the Legislature of the State of New York, entitled "An Act for the improvement of part of the City of New York, between One hundred and tenth street and the Harlem River" passed April 24, 1865, Laws of 1865, Chapter 564, page 1133 (which point was distant One hundred feet Westerly from the Westerly side of Sixth Avenue (now Lenox Avenue) before said widening) thence running Northerly parallel with said Lenox Avenue (formerly Sixth Avenue) One hundred feet and Eleven inches; thence Westerly parallel with One hundred and twenty-fourth street
 1386 Twenty-five feet; thence Southerly again parallel with Lenox Avenue (formerly Sixth Avenue) One hundred feet and Eleven inches to the Northerly side of One hundred and twenty-fourth street, and thence Easterly along said Northerly side of One hundred and twenty-fourth Street, Twenty-five feet, to the point or place of beginning.

Being the same premises conveyed by John L. Strang and Sarah Strang, his wife, to Henry Un-

Ungrich by deed bearing date November 18, 1872, 1387
and recorded in the office of the Register of the
City and County of New York, in Liber 1227 of
Conveyances, page 688, November 1, 1872.

Parcel No. 2. All that certain parcel of land,
situate, lying and being in the Twelfth Ward of
the City of New York, Borough of Manhattan,
County and State of New York, bounded and de-
scribed as follows:

Beginning at a point at the intersection of the
westerly line or side of Lenox Avenue (formerly
Sixth Avenue) with the Northerly line or side of
One hundred and twenty-fourth Street, thence run-
ning Westerly along said Northerly line or side of 1388
One hundred and twenty-fourth Street, Seventy-
five feet; thence Northerly parallel with Lenox
Avenue (formerly Sixth Avenue) Fifty-six feet;
thence Easterly parallel with One hundred and
twenty-fourth Street and part of the distance
through the centre of a party wall Seventy-five
feet to the Westerly line or side of Lenox Avenue
(formerly Sixth Avenue) thence Southerly along
the said Westerly line or side of Lenox Avenue
(formerly Sixth Avenue) Fifty-six feet, to the
point or place of beginning be the said several
distances more or less.

Being the same premises conveyed by Rudolph 1389
Wyman and Yette, his wife, and Bernhard Ham-
burger and Rebecka, his wife, to Henry Ungrich,
by deed bearing date March first, 1869, and re-
corded in the office of the Register of the City and
County of New York, in Liber 1093 of Convey-
ances, page 245, March 1, 1869.

Parcel No. 3. All that certain lot, piece or par-
cel of land, situate, lying and being in the Twelfth
Ward of the City of New York, Borough of Man-

- 1390 hattan, County and State of New York, bounded and described as follows:

BEGINNING at a point formed by the intersection of the Westerly side of Pleasant Avenue (formerly Avenue A) with the Southerly side of One hundred and twenty-third Street, running thence Southerly along said Westerly side of Pleasant Avenue (formerly Avenue A) twenty-five feet and eleven inches; thence westerly and parallel with One hundred and twenty-third Street, One hundred feet; thence Northerly and parallel with Pleasant Avenue (formerly Avenue A) Twenty-five feet Eleven inches to the Southerly side of One hundred and twenty third Street, and thence Easterly along said Southerly side of One hundred and twenty-third Street, one hundred feet, to the place of beginning, being the same premises conveyed by Henry Ungrich, Jr. and Emily A. Ungrich, his wife, to Henry Ungrich Sr., by deed bearing date the twenty-eighth day of March, 1894, and recorded in the office of the Register of the City and County of New York on the 29th day of March, 1894, in Block Series (Conveyances) Section 6, Liber 19, page 266, Block number 1810, on the Land Map of the City of New York.

- 1392 Parcel No. 4. All that certain lot, piece or parcel of land, with the building thereon erected, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, bounded and described as follows, viz.:

BEGINNING at a Point on the Southerly side of One hundred and twenty-sixth Street, distant One hundred and thirty-five (135) feet Easterly from the corner formed by the intersection of the

Southerly side of One hundred and twenty sixth 1393
 Street with the Easterly side of Third Avenue;
 running thence Southerly and parallel with the
 Third Avenue, Ninety-nine (99) feet and Eleven
 inches to the centre line of the Block, thence East-
 erly along the same Thirty (30) feet; thence
 Northerly and again parallel with Third Avenue
 Ninety-nine (99) feet and eleven (11) inches, to
 the Southerly side of One hundred and twenty-
 sixth Street aforesaid; and thence Westerly along
 the same Thirty (30) feet to the point or place of
 beginning, being the same premises conveyed by
 Stephen J. Wright and Susan A. his wife, to
 Henry Ungrich, by deed bearing date the 1394
 30th day of December, 1882, and recorded in
 the office of the Register of the City and County
 of New York, in Liber 1696 of Conveyances, page
 278, January 4th, 1883, together with the appur-
 tenances and all the estate and rights of the said
 parties of the first part in and to the said prem-
 ises.

To have and to hold the above granted premises
 unto the said party of the second part, his heirs
 and assigns forever. Subject to three certain
 mortgages to secure the payment of the aggre-
 gate principal sum of Seventy-eight thousand
 Five hundred dollars, each of which mortgages
 bears interest at four per cent. per annum. 1395

IN WITNESS WHEREOF, the said party of
 the first part hath hereunto set his hand and seal
 the day and year first above written.

Harry K. Davenport. (L.S.)

In the presence of

James Demarest.

1396 State of New York, }
County of New York, } ss.:

On this twenty-second day of May, in the year One thousand nine hundred and two, before me personally came Harry K. Davenport, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he thereupon duly acknowledged to me that he executed the same.

James Demarest,
Notary Public, Kings Co.,
Cert. filed in New York Co.

1397

Exhibit C.

This indenture made the twenty-second day of May, in the year One thousand nine hundred and two, between Harry K. Davenport, (unmarried) of the Borough of Brooklyn, County of Kings and City and State of New York, party of the first part, and Henry Ungrich, Jr. and Martin Ungrich, as executors of and trustees under the last will and testament of Henry Ungrich, late of the City and State of New York, deceased, parties of the second part;

1398 WHEREAS, the said Harry K. Davenport is justly indebted to the said parties of the second part in the sum of fifty-seven thousand and five hundred dollars, lawful money of the United States, secured to be paid by his certain bond or obligation bearing even date herewith, conditioned for the payment of the said sum of Fifty-seven thousand and five hundred dollars on the twenty-second day of May, one thousand nine hundred and seven, and the interest thereon to be com-

puted from the date hereof at the rate of four per 1399
cent per annum, and to be paid semi-annually on
the twenty-second days of November and May in
each and every year until said principal sum is
fully paid, IT BEING THEREBY EXPRESSLY
AGREED that the whole of said principal sum
shall become due after default in the payment of
interest, taxes or assessments as hereinafter pro-
vided, NOW THIS INDENTURE WITNESETH,
that the said party of the first part, for the better
securing the payment of the said sum of money
mentioned in the condition of the said bond or ob-
ligation with interest thereon, And also for and
in consideration of One dollar paid by the said
parties of the second part, the receipt whereof is 1400
hereby acknowledged, doth hereby grant and re-
lease unto the said parties of the second part and
to their successors and assigns forever All that
certain lot, piece or parcel of land with the build-
ings thereon situate, lying and being in the
Twelfth Ward of the City of New York, Borough
of Manhattan, County and State of New York,
known and distinguished as lot Number 359 (three
hundred and fifty-nine) on a Map entitled "Map
of property belonging to Samson Adolph Benson
living in the Twelfth Ward of the City of New
York "New York" May 1848, compiled and sur-
veyed by Francis Nicholson, city surveyor, and 1401
filed in the office of the Register of the City and
County of New York, and numbered Map 180 (one
hundred and eighty) bounded and described as
follows:

Beginning at a point on the northerly side of
One hundred and twenty-fourth street, distant,
distant Seventy-five feet westerly from the west-
erly side of Sixth Avenue (now Lenox Avenue)
as widened by an Act of the legislature of the State

- 1402 of New York, entitled "An Act for the improvement of part of the City of New York, between "One hundred and tenth Street and the Harlem "River" passed April 24, 1865, Laws of 1865, Chapter 564, page 1133 (which point was distant one hundred feet westerly from the westerly side of Sixth Avenue (now Lenox Avenue) before said widening), thence running northerly parallel with said Lenox Avenue (formerly sixth Avenue) one hundred feet eleven inches; thence westerly parallel with One hundred and twenty-fourth street twenty-five feet, thence southerly again parallel with Lenox Avenue (formerly Sixth Avenue) One hundred feet and eleven inches to the Northerly side of 124th Street; thence Easterly along said Northerly side of One hundred and twenty-fourth Street, twenty-five feet to the point or place of beginning.

- Being the same premises conveyed by John L. Strang and Sarah Strang his wife to Henry Ungrich by deed bearing date November 18, 1872, and recorded in the office of the Register of the City and County of New York, in Liber 1227 of conveyances, page 688, November 18, 1872. And also all that certain parcel of land, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State
- 1404 of New York, bounded and described as follows:

Beginning at a point at the intersection of the westerly line or side of Lenox Avenue (formerly Sixth Avenue) with the Northerly side or line or One hundred and twenty-fourth street, thence running Westerly along said Northerly line or side of One hundred and twenty-fourth street, seventy-five feet, thence northerly parallel with Lenox Avenue (formerly Sixth Avenue) fifty-six feet, thence Easterly parallel with One hundred

and twenty-fourth street and part of the distance 1405
 through the centre of a party wall seventy-five
 feet to the westerly line or side of Lenox Avenue
 (formerly Sixth Avenue), thence southerly along
 the said westerly line or side of Lenox Avenue
 (formerly Sixth Avenue) fifty-six feet to the point
 or place of beginning, be the said several dimen-
 sions more or less, being the same premises con-
 veyed by Rudolph Wyman, and Yette, his wife,
 and Bernard Hamburger and Rebecka his wife to
 Henry Ungrich, by deed bearing date March first
 1869, and recorded in the office of the Register of
 the City and County of New York in Liber 1093
 of conveyances, page 245, March 1, 1869, being a 1406
 part of the premises conveyed to the party of
 the first part hereto by the parties of the second
 part hereto, by deed bearing even date and deliv-
 ered simultaneously herewith, and this mortgage
 being given to secure the payment of part of the
 consideration or purchase money in said deed ex-
 pressed.

It is hereby covenanted and agreed by and be-
 tween the parties hereto that if at any time or
 times, before said bond is paid any law or laws
 be enacted reducing the taxable value of land by
 deducting therefrom any lien thereon or chang-
 ing the laws in relation to taxes on debts secured
 by mortgages, or the manner of collecting such 1407
 taxes, the mortgagor agrees to pay to the mort-
 gagee a sum equal to the tax or burden imposed
 by said law or laws on the holder of the said bond
 and this mortgage in addition to the interest to be
 paid in said bond within ten days after the said
 tax is made payable by said law or laws, unless
 the amount of said tax is added to the amount of
 interest provided for in said bond exceed legal in-
 terest or unless the payment of said tax by the

1408 mortgagor or owner of the land is prohibited by law. If the amount of said tax and the interest aforesaid exceed legal interest or if such payment by the mortgagor or owner of the land is prohibited by law, then said bond and this mortgage shall become due and payable at the expiration of thirty days after the enactment of any such law or laws.

The additional amounts which may under the foregoing provision become due and payable shall be regarded as interests and shall be part of the debt secured by said bond and this mortgage, and all the provisions in reference to default in payment of interest contained in said bond and mortgage shall apply to such additional amounts.

1409 If a law be enacted under which the mortgagor shall be liable to pay an additional sum under the foregoing provisions, the mortgagor may pay off said bond at any time before maturity, if said mortgagor gives to the holder thereof three months prior notice in writing of the intention to do so. If such notice be given said bond and this mortgage shall then become due and payable as if the time fixed in the notice had been named in the bond as the time for the payment of said principal sum, together with the appurtenances and all the estate and rights of the said party of the

1410 first part in and to said premises.

To have and to hold the above granted premises unto the said parties of the second part their successors and assigns forever.

Provided always, that if the said party of the first part, his heirs or assigns shall pay unto the said parties of the second part, their successors or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon at the time and in the manner

mentioned in the said condition, that then these 1411
presents and the estate hereby granted shall cease,
determine and be void.

And the said party of the first part covenants
with the said parties of the second part as fol-
lows:

First: That the party of the first part will pay
the indebtedness as hereinbefore provided and if
default be made in the payment of any part there-
of, the parties of the second part shall have power
to sell the premises herein described according to
law.

Second: That the party of the first part will 1412
keep the buildings on the said premises insured
against loss by fire for the benefit of the mort-
gagee.

Third: And it is hereby expressly agreed that
the whole of said principal sum shall become due
at the option of the said parties of the second part
after default in the payment of interest for thirty
days, or after default in the payment of any as-
sessment for ninety days after notice and demand.

IN WITNESS WHEREOF, the said party of
the first part has hereunto set his hand and seal
the day and year first above written.

HARRY K. DAVENPORT. 1413

In the presence of

James Demarest.

Words "twenty five feet" before word "twenty-
five" page 2, line 14, stricken out before execu-
tion.

1414 State of New York, }
 County of New York, } ss. :

On this 22nd day of May in the year One thousand nine hundred and two before me personally came Harry K. Davenport to me known and known to me to be the individual described in and who executed the foregoing instrument, and he thereupon duly acknowledged to me that he executed the same.

James Demarest,
 Notary Public, Kings Co.,
 Cert. filed in N. Y. Co.

1415

Exhibit D.

THIS INDENTURE, made the twenty-second day of May in the year One thousand nine hundred and two between Harry K. Davenport (unmarried) of the Borough of Brooklyn, County of Kings, and City and State of New York, party of the first part, and Henry Ungrich Jr., and Martin Ungrich, as Executors of and Trustees under the last Will and Testament of Henry Ungrich, late of the City and State of New York, deceased, parties of the second part.

1416 WHEREAS, the said Harry K. Davenport is justly indebted to the said parties of the second part in the sum of Eleven thousand dollars lawful money of the United States, secured to be paid by his certain bond or obligation, bearing even date herewith, conditioned for the payment of the said sum of Eleven thousand dollars on the twenty-second day of May, one thousand nine hundred and seven, and the interest thereon to be computed from the date hereof, at the rate of four

per cent per annum, to be paid semi-annually on 1417
the twenty-second days of November and May, in
each and every year, until said principal sum is
fully paid. It being thereby expressly agreed that
the whole of said principal sum shall become due
after default in the payment of interest, taxes or
assessments as hereinafter provided;

NOW THIS INDENTURE WITNESSETH,
that the said party of the first part for the better
securing the payment of the said sum of money
mentioned in the condition of the said bond or ob-
ligation with interest thereon, and also for and in
consideration of One dollar paid by the said par-
ties of the second part, the receipt whereof is here- 1418
by acknowledged, both hereby grant and release
unto the said parties of the second part and to
their successors and assigns forever;

ALL that certain lot, piece or parcel of land, sit-
uate, lying and being in the Twelfth Ward of the
City of New York, Borough of Manhattan, County
and State of New York, bounded and described as
follows

BEGINNING at a point formed by the intersec-
tion of the westerly side of Pleasant Avenue (for-
merly Avenue A) with the southerly side of One
hundred and twenty third street, running thence
southerly along said westerly side of Pleasant
Avenue (formerly Avenue A) twenty-five feet and 1419
eleven inches, thence westerly and parallel with
One hundred and twenty-third street, one hun-
dred feet, thence northerly and parallel with
Pleasant Avenue (formerly Avenue A) twenty-five
feet and eleven inches to the southerly side of One
hundred and twenty-third Street and thence east-
erly along said Southerly side of One hundred and
twenty-third street, one hundred feet to the place
of beginning.

- 1420 Being the same premises conveyed by Henry Ungrich Jr. and Emily A. his wife, to Henry Ungrich, Sr., by deed bearing date the twenty-eighth day of March, 1894, and recorded in the office of the Register of the City and County of New York, on the 29th day of March, 1894, in Block Series, (Conveyances) Section 6, Liber 19, page 266, Block number 1810, on the Land Map of the City of New York, being part of the premises conveyed to the party of the first part hereto by the parties of the second part hereto by deed bearing even date and delivered simultaneously herewith, and this mortgage being given to secure the payment of part of the consideration or purchase money in said deed expressed.
- 1421

- It is hereby covenanted and agreed by and between the parties hereto that if at any time or times before said bond is paid any law or laws be enacted reducing the taxable value of land by deducting therefrom any lien thereon or changing the laws in relation to taxes or debts secured by mortgages, or in the manner of collecting such taxes, the mortgagor agrees to pay to the mortgagee a sum equal to the tax or burden imposed by said law or laws on the holder of the said bond, and this mortgage, in addition to the interest provided to be paid in said bond, within ten days
- 1422 after said tax is made payable by said law or laws, unless the amount of said tax added to the amount of interest provided for in said bond exceed legal interest or unless the payment of said tax by the mortgagor or owner of the land is prohibited by law. If the amount of said tax and the interest aforesaid exceed legal interest or if such payment by the mortgagor or owner of the land is prohibited by law, then said bond and this mortgage shall become due and payable at the expiration of

thirty days after the enactment of any such law 1423
or laws. The additional amounts which may under the foregoing provision become due and payable shall be regarded as interest and shall be part of the debt secured by said bond and this mortgage and all the provisions in reference to default in payment of interest contained in said bond and mortgage shall apply to such additional amounts.

If a law be enacted under which the mortgagor shall be liable to pay an additional sum under the foregoing provisions, the mortgagor may pay off said bond at any time before maturity, if said mortgagor gives to the holder thereof three 1424
months prior notice in writing of the intention to do so. If such notice be given, said bond and this mortgage shall then become due and payable as if the time fixed in the notice had been named in the bond as the time for the payment of said principal sum.

Together with the appurtenances and all the estate and rights of the said party of the first part in and to said premises.

To have and to hold the above granted premises unto the said parties of the second part, their successors and assigns forever.

Provided always that if the said party of the first part, his heirs, executors or assigns shall pay 1425
unto the said parties of the second part, their successors or assigns the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said condition, that then these presents and the estate hereby granted shall cease, determine and be void.

And the said party of the first part covenants with the parties of the second part as follows:

1426 First: That the party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof the parties of the second part shall have power to sell the premises herein described according to law.

Second: That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

1427 Third: And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said parties of the second part after default in the payment of interest for thirty days or after default in the payment of any tax or assessment for ninety days after notice and demand.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Harry K. Davenport (L. S.)

In presence of

James Demarest:

State of New York,)
County of New York,) ss.:

1428 On this 22nd day of May, in the year One thousand nine hundred and two, before me personally came Harry K. Davenport, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he thereupon duly acknowledged to me that he executed the same.

James Demarest,
Notary Public, Kings Co.
Cert. filed in N. Y. Co.

Exhibit E.

1429

This Indenture made the twenty-second day of May in the year One thousand nine hundred and two, between Harry K. Davenport (unmarried) of the Borough of Brooklyn, County of Kings, and City and State of New York, party of the first part, and Henry Ungrich, Jr. and Martin Ungrich, as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, late of the City and State of New York, deceased, parties of the second part;

Whereas, the said Harry K. Davenport is justly indebted to the said parties of the second part in the sum of ten thousand dollars lawful money of the United States, secured to be paid by his certain bond or obligation bearing even date herewith, conditioned for the payment of the said bond of ten thousand dollars on the twenty-second day of May, one thousand nine hundred and seven, and the interest thereon to be computed from the date hereof, at the rate of four per cent. per annum, and to be paid semi-annually on the twenty-second days of November and May in each and every year until said principal sum is fully paid. IT BEING THEREBY EXPRESSLY AGREED that the whole of the said principal sum shall become due after default in the payment of interest, taxes or assessments as hereinafter provided, NOW THIS INDENTURE WITNESSETH, that the said party of the first part for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon and also for and in consideration of one dollar paid by the said parties of the second part, the receipt whereof is hereby acknowledged, doth hereby grant and release unto the said

1430

1431

1432 parties of the second part and to their successors
and assigns forever

ALL that certain lot, piece or parcel of land with
the building thereon erected situate, lying and
being in the Twelfth Ward of the City of New
York, Borough of Manhattan, County and State of
New York, bounded and described as follows,
viz.:

BEGINNING at a point on the southerly side of
One hundred and twenty-sixth street distant one
hundred and thirty-five (135) feet easterly from
the corner formed by the intersection of the south-
erly side of one hundred and twenty-sixth street
1433 with the Easterly side of Third avenue, running
thence southerly and parallel with Third Avenue
nine-nine feet (99) feet and eleven inches to the
centre line of the block, thence easterly along the
same thirty (30) feet, thence northerly and again
parallel with the Third Avenue nine-nine feet (99)
and eleven inches, to the southerly side of one hun-
dred and twenty-sixth street aforesaid and thence
westerly along the same thirty (30) feet to the
point or place of beginning.

Being the same premises conveyed by Stephen
J. Wright and Susan A. his wife, to Henry Un-
grich, by deed bearing date the 30th day of De-
cember, 1882, and recorded in the office of the
1434 Register of the City and County of New York, in
Liber 1676 of Conveyances, page 278, January 4th,
1883, being part of the premises conveyed to the
party of the first part hereto by the parties of the
second part hereto, by deed bearing even date and
delivered simultaneously herewith, and this mort-
gage being given to secure the payment of part
of the consideration or purchase money in said
deed expressed.

It is hereby covenanted and agreed by and between the parties hereto that if at any time or times before said bond is paid any law or laws be enacted reducing the taxable value of land by deducting therefrom any lien thereon, or changing the laws in relation to taxes on debts secured by mortgages or the manner of collecting such taxes the mortgagor agrees to pay to the mortgagee a sum equal to the tax or burden imposed by said law or laws on the holder of said bond and this mortgage in addition to the interest provided to be paid in said bond within ten days after said tax is made payable by said law or laws unless the amount of said tax added to the amount of interest provided for in said bond exceed legal interest, unless the payment of said tax by the mortgagor or owner of the land is prohibited by law. If the amount of said tax and interest aforesaid exceed legal interest or if such payment by the mortgagor or owner of the land is prohibited by law, then said bond and this mortgage shall become due and payable at the expiration of thirty days after the enactment of any such law or laws.

The additional amounts which may under the foregoing provisions become due and payable shall be regarded as interest and shall be part of the debt secured by said bond. And this mortgage and all the provisions in reference to default in payment of interest contained in said bond and mortgage shall apply to such additional amounts.

If a law be enacted under which the mortgagor shall be liable to pay an additional sum under the foregoing provisions, the mortgagor may pay off said bond at any time before maturity, if said mortgagor gives to the holder thereof three months prior notice in writing of the intention to do so. If such notice be given said bond and this

1438 mortgage shall then become due and payable as if the time in the notice had been named in the bond as the time for the payment of said principal sum.

Together with the appurtenances and all the estate and rights of the said party of the first part in and to said premises, TO HAVE AND TO HOLD the above granted premises unto said parties of the second part, their successors and assigns forever. Provided always that if the said party of the first part, his heirs or assigns shall pay unto the said parties of the second part, their successors or assigns the said sum of money mentioned in the condition of the said bond or obligation and the interest thereon at the time and in the manner mentioned in the said condition, that then these presents and the estate hereby granted shall cease, determine and be void.

And the said party of the first part covenants with the said parties of the second part, as follows:

First: That the party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof, the parties of the second part shall have power to sell the premises herein described according to law.

1440 Second: That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

Third: And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said parties of the second part after default in the payment of interest for thirty days or after default in the payment of any tax or assessment for ninety days after notice and demand.

IN WITNESS WHEREOF, the said party of 1441
the first part has hereunto set his hand and seal
the day and year first above written.

Harry K. Davenport (L. S.)

In the presence of

James Demarest.

State of New York,)
County of New York,) ss.:

On this 22nd day of May, in the year One thousand Nine hundred and two before me personally came Harry K. Davenport, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he 1442
thereupon duly acknowledged to me that he executed the same.

James Demarest,
Notary Public, Kings Co.
Cert. filed in N. Y. Co.

Exhibit F.

This indenture made the second day of July, in the year One thousand nine hundred and six (1906), between Henry Ungrich Jr. and Emma T. Ungrich, his wife, both of the Borough of Manhattan in the City, County and State of New York, parties of the first part, and George Elret, of the same place, party of the second part, Witnesseth: 1443

That the said parties of the first part in consideration of the sum of One Dollar lawful money of the United States and other valuable considerations paid by the party of the second part, do hereby grant and release unto the said party of the second part, his heirs and assigns forever, all

- 1444 that certain lot, piece or parcel of land, with the buildings thereon, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, known and distinguished as lot number 359 (three hundred and fifty-nine) on a Map entitled "Map of property belonging to Samson Adolph Benson, living in the Twelfth Ward of the City of New York" May 1848, compiled and surveyed by Francis Nicholson, City Surveyor, and filed in the office of the Register of the City and County of New York and numbered Map 180 (One hundred and eighty) bounded and described as follows:
- 1445 BEGINNING at a point on the Northerly side of One hundred and twenty-fourth Street, distant seventy five feet westerly from the Westerly side of Sixth Avenue (now Lenox Avenue) as widened by an Act of the Legislature of the State of New York, entitled "An Act for the improvement of part of the City of New York, between One hundred and tenth Street and the Harlem River" passed April 24, 1865, Laws of 1865, Chapter 564, page 1133, (which point was distant One hundred feet westerly from the Westerly side of Sixth Avenue (now Lenox Avenue) before said widening); thence running Northerly parallel with said Lenox Avenue (formerly Sixth Avenue) One hundred
- 1446 feet and eleven inches; thence Westerly parallel with One hundred and twenty-fourth Street, twenty-five feet; thence Southerly again parallel with Lenox Avenue (formerly Sixth Avenue) One hundred feet and Eleven inches, to the Northerly side of One hundred and twenty-fourth Street, and thence Easterly along said Northerly side of One hundred and twenty-fourth Street, Twenty-five feet to the point or place of beginning. Being the same premises conveyed by John L. Strang

and Sarah Strang, his wife, to Henry Ungrich, by deed bearing date November 18th 1872, and recorded in the office of the Register of the City and County of New York in Liber 1227 of Conveyances, page 688, November 18, 1872; and also all that certain parcel of land situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, bounded and described as follows:

BEGINNING at a point at the intersection of the Westerly line or side of Lenox Avenue (formerly Sixth Avenue) with the Northerly side or line of One hundred and twenty-fourth street, thence running Westerly along said Northerly line or side of One hundred and twenty-fourth Street, seventy-five feet; thence Northerly parallel with Lenox Avenue, (formerly Sixth Avenue) fifty-six feet; thence Easterly parallel with One hundred and twenty-fourth Street, and part of the distance through the centre of a party wall seventy-five feet to the Westerly line or side of Lenox Avenue (formerly Sixth Avenue) thence southerly along the said Westerly side of Lenox Avenue (formerly Sixth Avenue) fifty-six feet to the point or place of beginning, be the said several dimensions more or less. 1448

Together with the appurtenances and all the estate and rights of the said parties of the first part in and to said premises, 1449

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, and his heirs and assigns forever.

And the said Henry Ungrich, Jr. one of the parties of the first part doth covenant with the said party of the second part, as follows:

First: That the said Henry Ungrich Jr. one of

1450 the parties of the first part is seized of the said premises in fee simple and hath good right to convey the same.

Second: That the party of the second part shall quietly enjoy the said premises.

Third: That the said premises are free from encumbrances except subject to a mortgage for Fifty-seven thousand Five hundred dollars (\$57,500) bearing interest at four per cent (4%) per annum, the principal of which is payable May twenty-second 1907, and subject to leases of said premises as follows:

1451 Premises 107 West 124th Street, expiring February 1st, 1911.

Premises 281 Lenox Avenue, expiring May 1st, 1909, and premises 285 Lenox Avenue expiring May 1st 1909. None of which leases are for saloons or liquor stores other tenancies being monthly tenancies only.

Fourth: That the parties of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth: That said Henry Ungrich Jr. will forever warrant the title to said premises.

1452 IN WITNESS WHEREOF, said parties of the first part have hereunto set their hands and seals the day and year first above written.

Henry Ungrich Jr. (L. S.)

Emma T. Ungrich, (L. S.)

In the presence of

James Demarest.

State of New York, }
 County of New York, } ss. : 1453

On this second day of June, in the year one thousand nine hundred and six (1906) before me personally came Henry Ungrich, Jr. and Emma T. Ungrich, his wife, to me known and known to me to be the individuals described in and who executed the foregoing instrument, and they thereupon severally acknowledged to me that they executed the same.

James Demarest,
 Commissioner of Deeds,
 New York City.

1454

Exhibit G.

KNOW ALL MEN BY THESE PRESENTS,
 That I, Henry Ungrich of the City, County and State of New York party of the first part, in consideration of the sum of one dollar (and other valuable consideration) lawful money of the United States, to me in hand paid by my son Henry Ungrich, Jr. of the same place party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, assigned, transferred and set over, and by these presents do grant, bargain, sell, assign, transfer and set over unto the said party of the second part, a certain Indenture of Mortgage, bearing date the second day of November in the year one thousand eight hundred and ninety-six made by John D. Thees and wife to Henry Ungrich to secure the payment of the sum of twelve thousand dollars and recorded in the office of the Register of the City and County of New York on the 5th day of

1455

- 1456 November A. D. 1896 at two o'clock and eight minutes P. M. in Block Series (mortgages) Section 6 Liber 56 page 483 and indexed under Block number 1774 on the land map of the City of New York. And also a certain other indenture of mortgage bearing date the twenty-third day of July in the year eighteen hundred and ninety-one made by Noah Schwab and wife to Henry Ungrich to secure the payment of the sum of Five thousand dollars and recorded in the office of the Register of the City and County of New York on the thirtieth day of July A. D. 1891 at two o'clock and thirty-six minutes P. M. in Block Series (mortgages) Section 7 Liber 5 page 267 and indexed under block number 1909 on the landmap of the City of New York.
- 1457

And also a certain other Indenture of mortgage bearing date the first day of September in the year eighteen hundred and eighty six made by Alice Rohkohl to Henry Ungrich to secure the payment of the sum of ten thousand dollars and interest, and duly recorded in the office of the Register of the City and County of New York on the second day of September 1886 in Liber 2072 of Mortgages, page 400, together with the bonds or obligations therein described, and the money due and to grow due thereon, with the interest. TO

- 1458 HAVE AND TO HOLD the same unto the said party of the second part, his heirs, executors, administrators and assigns, for his and their use benefit and behoof forever, subject only to the proviso in the said Indentures of Mortgage mentioned. And I do hereby make, constitute and appoint the said party of the second part my true and lawful attorney, irrevocable in my name or otherwise, but at his own proper cost and charges to have, use and take all lawful ways and means

for the recovery of the said money and interest; 1459
and in case of payment, to discharge the same as
fully as I might or could do if these presents were
not made.

IN WITNESS WHEREOF, I have hereunto set
my hand and seal the seventeenth day of February
in the year one thousand eight hundred and
ninety-seven.

Henry Ungrich (L. S.)

Sealed and delivered in the
presence of

Frank Hines

James Demarest.

1460

State of New York,)
City and County of New York,) ss.:

On this seventeenth day of February one thou-
sand eight hundred and ninety seven before me
personally came Henry Ungrich to me known and
known to me to be the individual described in, and
who executed the within assignment, and he there-
upon duly acknowledged to me that he had exe-
cuted the same.

James Demarest,
Notary Public, Kings Co.
Cert. filed in N. Y. Co.

1461

Recorded in the office of the Register of the City
and County of New York on the 18th day of Feby
A. D. 1897, at 12 o'clock 8 Min. P. M. in block
series (Mortgages) section 6 Lib 60 page 461 and
indexed under Block Number 1774 on the Land
Map of the City of New York. Witness my hand
and official seal.

(Seal)

Wm. Sohmer, Register.

- 1462 Recorded in the office of the Register of the City and County of New York, on the 18 day of Feby A. D 1897, at 12 o'clock 8 Min. P. M. in block series (Mortgages) section 7, Liber 70 page 260 and indexed under Block Number 1909 on the Land Map of the City of New York. Witness my hand and official seal.
- (Seal) Wm. Solmer, Register.

Exhibit H.

- KNOW ALL MEN BY THESE PRESENTS.
- 1463 That we, Henry Ungrich, Jr., and Martin Ungrich, Executors of and Trustees under the Last Will and Testament of Henry Ungrich, late of the City, County and State of New York, deceased, parties of the first part, for and in consideration of the sum of Three thousand three hundred and seventy five dollars lawful money of the United States to us in hand paid, at or before the ensealing and delivery of these presents, by Henry Ungrich, Jr. of the same place of the second part, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do grant and convey unto the said party of the second part, his executors, administrators and assigns, All and
- 1464 singular one Texas and Pacific Railway 1st Mortgage, 5% \$1000. Gold Bond at 120½, one St. Louis and Southwestern 1st Mortgage 4% \$1000, Gold bond at 98½, 20 shares Wheeling & Lake Erie Railway 1st preferred stock at 57.

TO HAVE AND TO HOLD the same unto the said party of the second part, his executors, administrators and assigns forever. And we do, for ourselves and our successors and assigns, covenant and agree to and with the said party of the sec-

ond part, to warrant and defend the sale of the 1465
 said securities and chattels hereby sold unto the
 said party of the second part, his executors, ad-
 ministrators and assigns, against all and every
 person and persons whomsoever.

IN WITNESS WHEREOF, we have hereunto
 set our hands and seals this twenty-seventh day of
 February one thousand nine hundred and two.

Henry Ungrich Jr.
 Extr & Trustee (L. S.)
 Martin Ungrich
 Extr & Trustee (L. S.)

Sealed and delivered in the presence of 1466
 James Demarest.

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

On the twenty-seventh day of February in the
 year one thousand nine hundred and two before
 me personally came Henry Ungrich, Jr. and Mar-
 tin Ungrich, Executors of and Trustees under will
 of Henry Ungrich, deceased, to me known, and
 known to me to be the same person described in
 and who executed the within bill of sale, and sev- 1467
 erally acknowledged to me that they executed the
 same.

James Demarest,
 Notary Public, Kings Co., N. Y.
 Cert. filed in N. Y. Co.

1468

Exhibit I

Office of
James Demarest,
140 Nassau St.,

New York, Feb. 24th, 1902.

Martin L. Ungrich, Esq.,
Dear Sir.—

Please be here on Thursday at 2 P. M. for the
purpose of settling the matter of the inventory
and personal estate of your father.

Truly yours,
James Demarest.

1469

Exhibit J for Identification.

Being slip annexed to \$6000 check in Henry
Ungrich Jr's handwriting. "This ck was paid
M. L. U. for general release."

Exhibit K.

Henry Ungrich, Jr.
1470

No. 43

New York Jun 23 1902

KNICKERBOCK TRUST COMPANY
HARLEM BRANCH
125th St. & Lenox Ave.

PAY TO THE ORDER OF M. Louis Un-
grich Six thousand Dollars \$6000

Henry Ungrich Jr.
Payable
Through
New York
Clearing House.

Endorsed: M. Louis Ungrich

Exhibit L.

1471

May 31st, 1902.

Received from Estate of Henry Ungrich, Seventy-eight thousand and five hundred and 00-100 Dollars in full one-half share proceeds of sale of real estate.
\$78,500.00

Henry Ungrich Jr.

Exhibit M.

H. UNGRICH, JR.
14 W. 125th St.,
N. Y.

1472

Apr 6, 1901.

Dear Louis:

Your P. C. just rec'd. It will be impossible for me to call up Mr. Demarest to-day. I want to see you but have been too busy to come down. Was surprised to hear from Mr. D— that there was some talk about the money you owe to the Ungrich's. I think they have had such benefits in the way of cheap plans that they should be willing to call that acc'd settled. At any rate, I think the acc't is outlawed and I am not going to assist them in collecting it, and if there is going to be any attempt made to collect it out of Father's Est. I will oppose it right from the start. I see no reason why we cannot settle up Father's Est. soon as possible and am not in favor of the Ungrich's sticking their nose in our affairs as we are capable of handling our own business. Come up to-morrow P. M. about 3 o'clock. I will be here.

1473

Yours affectly,
Henry.

1474

Exhibit N.

Apr. 19/01.

Dear Louis:

It was impossible for me to come down to see you this A. M.

1475 I would like yourself and Martin or for that matter an expert accountant to go over my books with me and I am quite sure when we get through you will be perfectly satisfied. It has always been my intention to act towards you as a brother should. You will no doubt agree with me when I tell you it grieves me to have people come to me & say they have heard or seen so and so. I want you to treat me as though you had some confidence in me & anything you do not understand I will endeavor to make plain to you. And what is more you will find if you do right by me that I am disposed to meet you halfway. I sincerely hope and trust that I shall hear no more insinuating remarks until there is some ground for them.

Closing, I am

Affet'ly yours,

Henry.

Exhibit O.

1476

Apr. 22, 1901.

8.15 A. M.

Dear Louis:

Your P. C. just rec'd. I cannot come up to Martin's this A. M. as I have a plumber and carpenter working in 126th St. House & want to see what is wrong over there with plumbing.

I don't understand what you want me to go to

Mr. Demarests for. We can do nothing there at present. 1477

My Book Vouchers, &c. are all here & you & Martin can come here & we can go over them, taking our time until we get through. Anytime will suit me that is convenient to both of you.

In haste,
Yours,
Henry.

Exhibit P.

Dear Louis:

New York, Apr. 22nd 1901. 1478

Your letter of this date just rec'd. In reply will state this is the first time I have heard that Martin has any objection to coming to Thees. I don't know why. We can be alone here just as much as at his house. Besides my books etc. are all here and open to inspection. I don't propose to have any quarrel with you, but must tell you that if this don't suit you are at liberty to take any steps you see fit & I will meet you.

Yours truly,
Henry.

Exhibit Q. 1479

[Postal Card.]

N. Y. Apr. 19th 01.

Dear Henry:

Have just written Martin that I will be at his house Saturday 10 to 10:30 unless it rains. Try & be there. If you dont come I will be at Johns afterwards, say about 12 ock.

Yours, etc.
Louis.

1480

Exhibit R.

[Postal Card.]

New York April 21st 1901,

8:30 P. M.

Dear Henry :

I am to be at Martins house at 10:30 A. M. Monday. Saw your letter to him & want to see you both together also as you proposed in your last letter to him on Saturday last. If you dont want to come make appt at D's office for Tuesday & mail me notice as to time.

Yours etc.

1481

Louis.

Exhibit S.

May 1st, 1901.

Dear Louis :

I enclose you herewith a memo of April collections & disbursements. Should you desire to see my Vouchers &c. I will be only too happy to have you call and do so. In fact I am very anxious to have my Books gone over, since the time I took complete charge of Father's affairs on July 31, 1896. Before that time he kept his own Bank
 1482 Acc't. although I commenced to look after his property on May 1st, 1894. It is too bad you have started out on the assumption that I have not conducted myself properly in the management of our Dear Father's affairs, when you have nothing to base such an opinion on. I have repeatedly requested both Martin and yourself to come here and satisfy yourselves. It is too bad two brothers should live at enmity with each other when we ought to be in harmony and accord with each

other. Can't you make an effort to conquer your foolish thoughts and believe me an honest man until you have reason to know otherwise. Let us try and be friends. 1483

Yours affectly

Henry.

Exhibit T.

May 11, 1901.

Dear Louis:

Your postal rec'd. Am glad to know you are coming up and I will stay in all day tomorrow to see you and will give you all the information in my power. There is no reason why we should not be on good terms with each other. 1484

Yours affectly

Henry.

Exhibit U.

May 17/01.

Dear Louis:

Martin and myself finished up our business at the different Savings Banks yesterday at the same time gave each notice that balance dep. would be withdrawn on or after July 1st. prox. We also opened an Estate Acct in the New York Security and Trust Co. by depositing the funds I had on hand, also the balance in Father's acct. in the Hamilton Bank. 1485

We got two vacancies in the old House on Pl. Ave. this week both of which flats will have to be fixed up before I can rent them & got Uncle started in there yesterday.

1486 Hoping you are well & to see you soon, I am,
Afftly yours,
Henry.

Exhibit V.

May 31, 1901.

Dear Louis:

I enclose herewith May stmnt. also check which please ask Martin to sign, also to endorse the check for Dep. to Cr. Est. Acct. If you can see Martin tomorrow and get your check here before 12 o'clock I can get the cash for you at the Hamilton Bank if you want it so soon.

1487

Yours truly,
Henry.

Please return ck. Cr. H. U. Jr.	\$750.
" Est.	224.02

when signed by Martin.

Exhibit W.

May 31/01.

Dear Louis:

Have forwarded May memor also checks to
1488 Martin

One to Cr. Est. for May net receipts

"	" M. L. U.	} for quarter.
"	" H. U. Jr.	

You had better see him and return checks to me when signed. I have made the division as per Mr. Demarest's instructions.

Yours truly,
Henry.

Exhibit X.

1489

July 6, 01.

Dear Louis:

In reply to your Postal of 5th inst. will say hope the trip will do you & especially your wife much good. I am going to Manhattan Beach on Tuesday afternoon weather permitting.

Will deposit following checks in Est. Acct. N. Y. Security & Trust Co. on Monday (8th)

H. U. Jr. for June bal.	453.15	
Bank for Savings " & int.	936.60	
Seaman Sav. Bank " "	971.22	
Empire City Sav.Bk." "	1010.80	
Bowery Sav. Bk. " "	1027.30	
German " " " "	1046.13	1490
Greenwich Sav. Bk. " "	1060.89	
Harlem " " " "	1147.11	

\$7653.20

Afftly yours,

Henry.

Exhibit Y.

10/15/01

Dear Louis:

When you see Martin ask him if he mailed the bill for Personal tax & check as the bill has not yet been returned to me although I got the others, also Glock bill back last week on Wed. the 9th. Next year, unless we divide the personal est. before Jan. 1st 02 we will have to pay on \$12645.25 amount fixed by the appraiser in his report to the Surrogate. 1491

Mr. Demarest says we can close up the Est. anytime after Nov. 12th if no claims against the

1492 est. come in. In answer to the adds in the N. Y. Law Journal & Comm. Adv. each Wed. and if we agree meanwhile on price for the different houses. If not then nothing is left to do except have a partition sale.

I am feeling pretty well now but long to get away & will take a trip through Europe this winter if possible.

Hoping yourself & wife are well & expecting to see you soon I remain,

Yours afftly
Henry.

1493

Exhibit Z.

Oct. 18/01

Dear Louis:

I called up Mr. Demarest's office again about 3 o'clock & found him in so made appointment for next Tuesday, Oct. 22nd 10:30 A. M. Have notified Martin to be there.

Yours
Henry.

Exhibit AA.

Oct. 21, 1901.

1494 Dear Louis:

Anything you have to talk about privately can just as well be said here if you will only let me know you want to see me alone. It is not necessary for us to go to Demarest's office for that purpose.

I rec'd a postal from Martin asking what meeting was for & replied you had stated that he sug-

gested such a meeting himself to talk matters over 1495
& on that I had arranged for the meeting.

Yours

Henry.

Exhibit BB.

New York, Oct. 19th 1901
10 A. M.

Dear Henry:

Your letter received and I will be at D's office.

If you possibly can get there by 9.30 as I would
like to have a talk with you alone when neither 1496
Martin nor John is present. There are some
things I wish to speak of which concerns neither
of them & of which I would have spoken yester-
day when at your house had we been by ourselves.

So try and be at Demarests office at 9.30 A. M.
next Tuesday.

Affly your Bro.

Louis.

No. 437 W. 44th St.

Exhibit CC.

New York, Nov. 4th 1901

Dear Henry

1497

We got back Saturday P. M. Will be up after
Election probably Thursday early about 8.30 A.
M. Cannot do so any sooner.

Yours etc.

Louis.

1498

Exhibit DD.

Nov. 5, 1901.

Dear Louis:

Your Postal of 4th inst. duly rec'd. In reply will state you will have to get up here early to see me as I am on the Jury and leave here about 9 o'clock.

Unless divided before 1st Monday of next January the est. will be taxed \$12,645.25 for Per. Est. as fixed by Appraiser which at this year's rate 2.3178 amts. to nearly \$300 besides which the money in Trust Co. is bringing only 2½% & could be invested to be advantage & bring in at least 4 & perhaps 5.

Yours afftly.

Henry.

Exhibit EE.

[Postal Card.]

N. Y. Nov. 8th 1901.

Dear Henry:

I will call up Sunday at 11 to 12 M. Cannot come Saturday.

Yours etc.

1500

Louis.

Exhibit FF.

[Postal Card.]

N. Y. Nov. 26th 1901.

Dear Henry

Will call up and see you Wednesday night after I call on Martin. Should you however have any

engagement dont let my coming interfere.

1501

Yours afftly

Louis.

Regards to all.

Exhibit GG.

[Postal Card.]

6 P. M. N. Y. Nov. 28th 1901.

Dear Henry:

Just sent Martin a letter also, stating I would see him Saturday P. M. 7:15 7:30 & will make engt. at D's office for Dec. 10th as per our meeting last night. Learned today that Geo. Ungrichs son from Chicago has been in N. Y. 9 months & works for Brewster C. F. 47th St. & Bdy. 1502

Yours

Louis.

Exhibit HH.

Nov. 30, 1901.

Dear Louis:

Your postal of yesterday received.

By Mr. Demarest's advice I will include amount of undivided net receipts for Mch. Apr. May \$16.94 in the net receipts for the months of Sept. Oct. & Nov. On Dec. 9th I will get the market closing bid prices on the Wheeling & Lake 1st prfd. Stock. Also on St. Louis Southwest & Texas Pacific Bonds & will take them if there is no objection in lieu of cash & suggest we all agree to leave a bal. of \$2,000 in the Trust Co. thus keeping the acct. alive & to create a fund with which to meet next 1503

1504 year's taxes etc. in case the Est. is not closed up before hand. I have no doubt this will be satisfactory to Martin as well as to yourself.

Your afftly,
Henry.

Exhibit II.

Nov. 30, 1901.

Dear Louis:

1505 Please see Martin and have enclosed checks properly signed, then return mine also the Estate check to me I wish to have book balanced at the N. Y. Security & Trust Co. so we can see the amount on Deposit with Int. if they will write up the Int. The custom is to write up Int. only in Jan'y & July except when accounts are closed.

Should you desire to draw the cash bring your ck. here so I can dep. it at the Hamilton Bank and draw against it on my acct.

Yours afftly.
Henry.

Exhibit JJ.

1506

[Postal Card.]

Feb. 25/02

Dear Louis:

Meet Martin & Myself at Mr. Demarest's office 140 Nassau St. on Thursday (27th) 2 P. M. sharp.

Yours truly,
Henry.

Exhibit KK.

1507

H. UNGRICH, JR.
74 W. 125th St.,
New York.

Jany. 9/02

Dear Louis:

I have arranged for a meeting at the office of Mr. Jas. Demarest No. 132 Nassau St. at 11 o'clock A. M. sharp next Tuesday, Jany. 14/02 to make a Division of the Personal Est. Will the time fixed for the meeting be convenient for yourself?

Please answer & oblige

1508

Yours

Henry.

Have also written to Martin to be there.

Exhibit LL.

Office of
James Demarest
132 Nassau Street.

New York Jan. 27th 1902.

Martin L. Ungrich, Esq.,

Dear Sir:—

1509

Will you kindly be here on Thursday next, the day appointed for the appraisement of your father's estate, at 3:30 P. M., as I would like to go over the figures with you before the appraisers come.

Truly yours,
James Demarest,
H. K. D.

1510

Exhibit MM.

Oak Court 3/25/02

Dear Louis:

Your welcome letter of 24th recd, was glad to hear from you.

We are enjoying our Honeymoon to the fullest extent. Have had several very fine drives & long walks through the Piney Woods.

We leave Lakewood on the 7:40 A. M. train Thursday the 27th and are due at Washington D. C. about 1.30 P. M. same day. Our address will be

1511

"The Raleigh",
Penna Ave. & 12th St

Give my regards to your wife & with best wishes for yourself, I am,

Afftly your Bro.

Henry.

Exhibit NN.

H. UNGRICH, JR.,
60 W. 129th St.,
New York.

May 2/02

1512 Dear Louis:

Your postal received. Next Tuesday A. M. will suit me if the appointment is to meet at my house. Mr. Demarest wants all of us to meet at his office on Wednesday or Thursday. He will write to Martin & yourself to see if Wed. or Thurs. will suit.

I would like to see Martin as at present don't know anything about rents or bills due or un-

paid. In fact I want to have this uncertainty-1513
cleared up & if there is no other way to do it put
the whole property up at auction & sell it to the
highest bidder. Then we will know exactly how
we stand & you will know just what your in-
come is.

I am willing to give a fair price for the prop-
erty or in case we cannot agree take my chance at
getting what I want at auction or if any one thinks
it worth more than I do let it go altogether. Any-
thing to get things fixed so I will know where I
stand and what my income is & be able to man-
age my own business to suit myself.

Come in any time you are up this way. 1514
Love to all from us both.

Yours hastily
Henry.

Exhibit 00.

[Postal Card.]

May 2/02

Dear Louis:

Come in any time you can do so. I am anxious
to see you, also Martin would like to get metters
fixed up somehow. Too bad we have Store, also 1515
107 vacant.

Yours in haste,
Henry.

1516

Exhibit PP.

Office of
James Demarest
140 Nassau Street.

New York, May 5th, 1902.

M. Louis Ungrich, Esq.,

Dear Louis :

Will you please attend a meeting of the Executors of the Est. of Henry Ungrich, deceased, at this office, on Wednesday (7th inst) at 2 P. M.?

Truly yours,

1517

James Demarest.

Exhibit QQ.

Office of
James Demarest
140 Nassau Street.

New York May 8th 1902.

M. Louis Ungrich, Esq.,

Dear Sir:—

1518 Will you kindly attend the adjourned meeting of the Executors of the Estate of Henry Ungrich, at this office tomorrow (Friday) at 2 P. M. It is important that you be here as matters of importance concerning your interest will require action. While it is not absolutely necessary that you should be present, the Executors in courtesy to you send you this notice.

Truly yours,

James Demarest
H.K.D.

H. UNGRICH, JR.,
60 W. 129th St.,
New York.

May 8, 1902.

Dear Louis:

Although it was not absolutely necessary for you to be present yesterday at the meeting in Mr. Demarest's office, as a matter of courtesy to you we deferred taking any action on the business in hand until tomorrow afternoon at 2 o'clock *sharp*, at same place and hope you will be there.

I understand you have had an estimate made 1520 by an expert of your own selection. Mr. Demarest also had one made by order of the Exers. and at the expense of the Estate. You might bring your Est. with you for comparison with the other. If possible I would like the entire matter settled soon & am willing to give a fair price for all or have a sale and know just how I stand.

It will be necessary to spend quite some money on the Lenox Ave. fronts which need painting very much & the only way to make a good job of it, is to burn off most of the stuff now on the woodwork as it is coming off in scales in many places on account of having been painted so often.

In some cases the plate glass will have to come 1521 out & the window frames be rebuilt as the woodwork has shrunk away from the glass entirely, and in other places will have to be rebuilt as the wood has rotted away & with the store on corner and the house in 124th St. vacant besides several flats, it will materially reduce our income.

Mr. Demarest has the accounting all ready to be signed & approved by the Surrogate, thus settling up the first year's business of the Est. & dividing

1522 the Comm. due the Extrs. each time there is an accounting made. Mr. Demarest also finds we have divided too much income which will have to come out of the next quarterly division on June 1st prox.

I have been too busy to call on you & am somewhat surprised that you have not called here yet, knowing you have the time to do so. Surely there can be nothing wrong, in fact so far as I know there is not, and we shall both be very happy to give you a hearty welcome & be pleased to see you also your wife.

Hoping to see you tomorrow afternoon at 2 o'cl.
1523 sharp at Mr. Demarest's office.

I remain with kindest regards from us both to your wife & yourself.

Affely your Bro.

Henry.

Exhibit SS.

Oct. 25 1901.

Dear Louis:

Your P. C. rec'd. Will be in as you request from 10 to 10:30 A. M. Monday, Oct. 28th.

1524 I enclose you memor. from which you can make diagrams, etc. Any other information needed you can have at any time.

Yours,

Henry.

Oct. 25/01

208 E. 126.

1525

30 x 79 x 99.11

Rents when fully occupied at present rentals	\$2160.
Tax. Val (1901) \$15000	347.57
Water estimated	100.
Gas (Halls) Est.	40.
Janitor \$8 per m.	96.
Repairs and Vacancies	

443 Pleas. Ave. & 450 E. 123.

25.11 x 100

When fully occupied at present rentals	\$2178.
Tax Val. (1901) \$13500	312.83
Water	77.
Gas (Halls) estimated	45.
Janitor 16 per m.	192.
Repairs and vacancies.	1526.

281, 283, 285 Lenox Ave.

Lots 75 deep
Houses 55 "

Frontage 56 to centre party wall No. 277

Rents when fully occupied at present rentals	\$5556.
Less	
Taxes 1901 Val. \$35000	\$811.04
Water estimated	100.
Janitor	325.
Repairs & Vacancies	
Gas (Halls) estimated	45.

107 W. 124.

1527

25 x 100 40 per m.	\$480.
Tax Val. (\$9000) (1901)	208.55
Water	8.

1528

S. W. Cor. 123rd St. & Pleasant Ave.

25.11 x 100.

25.11

North.		South.	
1st floor	\$15.00	1st floor	\$13.00
2nd "	16.00	2nd "	15.00
3rd "	15.50	3rd "	14.00
5th "	15.00	4th "	13.00
	<u>\$61.50</u>		<u>\$55.00</u>
2nd floor South vacant.		443 Pleasant Avenue.	
All others rented.			

1529

Basement	\$7.00	420 E. 123rd St.	40.
1st floor	15.00		
2nd "	15.00		
3rd "	15.00		
4th "	14.00		
	<u>\$66.00</u>		1.5

24.6

25.11

Rent

61.50

55.

66.

Taxed Valuation

\$13,500

\$25,000

1530

182.50

Cash

9,000

Mortg.

16,000 at 4½

No mort. on property now.

208 E. 126th St.

1531

135 feet East of 3d Ave.

30

W		E	
1st floor	\$17.00	1st floor	\$19.00
2nd "	19.00	2nd "	20.00
3rd "	18.00	3rd "	19.00
4th "	17.00	4th "	18.00
5th "	16.00	5th "	17.00
	<u>\$87.00</u>		<u>\$93.00</u>
All flats rented.			
Taxed valuation.			
\$15,000.			

30

20.11
Yard

1532

\$25000.

No mortgage on property now.

Will take cash

\$9,000

Mortgage

16,000 at 4½%

Exhibit TT.

New York City, Sept. 3rd, 1902.

Received of Henry Ungrich, Jr. Seven hundred and eighty-five Dollars in full three months' interest up to Sept. 1st, 1902 on Bonds of H. K. Davenport for \$78,000, secured by Mortgages on premises No. 208 E. 126 St., 443 Pleasant Ave, 107 W. 124 St., 281-285 Lenox Ave. Manhattan, N. Y. City.

1533

James Demarest,
Counsellor-at-law,
140 Nassau St.

\$785.00/100

Henry Ungrich, Jr.

Martin Ungrich.

Trustees Est. of Henry Ungrich.

1534

James Demarest,
Counsellor-at-law,
140 Nassau St.

New York City, Dec. 1st, 1902

Received of Henry Ungrich, Jr. Seven hundred eighty-five Dollars in full Three months' interest up to Dec. 1st, 1902 on Bonds of H. K. Davenport for \$78,500 secured by Mortgage on premises Lenox Ave. N. W. Cor. 124th St., Pleasant Ave. & 123rd St. and East 126th Street, N. Y. City.

\$785.00/100 Martin Ungrich Ex
Henry Ungrich, Jr. Ex.

1535

James Demarest,
Counsellor-at-law,
140 Nassau St.

New York City, June 1st, 1903

Received of Henry Ungrich Jr. Eleven hundred and fifty Dollars, in full Six months' interest due June 1st 1903 on Bond of H. K. Davenport for \$57,500, secured by Mortgage on premises No. 281, 283 & 285 Lenox Ave. and 107 W. 124 St. New York City.

\$1150.00/100 Martin Ungrich Exrs.
Est. of
Henry Ungrich Jr. Henry
Ungrich.

1536

James Demarest,
Counsellor-at-law,
140 Nassau St.

New York City, June 1st 1903.

Received of Henry Ungrich, Jr. Two hundred and twenty Dollars in full Six months' interest due June 1st 1903 on Bond of H. K. Davenport for \$11000 secured by Mortgage on premises No. 450 E. 123rd St. & 443 Pleasant Ave.

\$220.00/100 Martin Ungrich Exrs.
Est. of
Henry Ungrich Jr. Henry
Ungrich.

New York City, Nov. 23rd 1903. 1537

James Demarest,
Counsellor-at-law,
140 Nassau St.

Received of Henry Ungrich, Jr. Eleven hundred and fifty Dollars, in full Six months' interest due Dec. 1st 1903 on bond of H. K. Davenport for \$57,500 secured by Mortgage on premises No. 281-283-285 Lenox Ave. & 107 W. 124 St. \$1150.00/100 Henry Ungrich, Jr.
Martin Ungrich.

New York City, June 1st 1904.

James Demarest,
Counsellor-at-law,
140 Nassau St.

Received of Henry Ungrich, Jr. Eleven hundred and fifty Dollars, in full Six months' interest due June 1st, 1904 on Bonds of H. K. Davenport for \$57,500 1538 secured by Mortgages on premises No. 281, 283 & 285 Lenox Ave. and 107 West 124th St., New York City.

Est. Henry Ungrich
by James Demarest
Atty. for Mortgagees

New York City, November 30th, 1904

James Demarest,
Counsellor-at-law,
140 Nassau St.

Received of Henry Ungrich, Jr. Eleven hundred and fifty dollars in full six months' interest due Dec. 1st 1904 on Bond of H. K. Davenport for \$57,500 secured by Mortgage on premises No. 281, 283 and 285 Lenox Ave. 107 W. 124th St. N. Y. 1539 \$1150.

Henry Ungrich, Jr.
Martin Ungrich.

1540

New York City, June 1st 1905.

James Demarest,
Counsellor-at-law,
140 Nassau St.

Received of Henry Ungrich Jr. Eleven hundred and fifty dollars, in full six months' interest due June 1 1905 on Bond of H. K. Davenport for \$57,500 secured by Mortgage on premises No. 281, 3, 5 Lenox Ave. 107 W. 124th St.

\$1150.00

James Demarest
Att'y for mortgages.

1541

New York City, Nov. 28th, 1905.

James Demarest,
Counsellor-at-law,
140 Nassau St.

Received of Henry Ungrich, Jr., Eleven hundred and fifty and 00/100 Dollars, in full six months' interest due Dec. 1, 1905, on Bond of Harry K. Davenport for \$57,500. secured by Mortgage on premises No. 281-283-285 Lenox Ave. 207 W. 124th St.

\$1150.00

James Demarest
Atty. for mortgages.

1542

Exhibit UU.

1543

CITY OF NEW YORK, Department of Finance,
Bureau for the Collection of
Assessments and Arrears.

Record No. 187 Room 85 Stewart Building.

Folio 113

Ward 12 Henry Ungrich, Jr. Owner.

Section 7

Assess't No.	Block No.	Lot No.	\$ Cents	
26	1909	28	20.88	
27		29	15.66	
28		29½	15.66	
29		30	15.66	1544
<hr/>				
				67.86
				1.54
<hr/>				
				69.40

An assessment has been made upon property for receiving basins on the N. E. and N. W. corner of 124 St. and Lenox Ave. which was confirmed on the 5 day of June 1902.

and entered on the 6 day of June 1902.

If not paid within sixty days after the date of entry interest will be charged at the rate of seven per cent. per annum, to be calculated from said date of entry. 1545

William E. McFadden

Collector of Assessments and arrears

Payment will be received (in money current at the several banks in this city) at the above office.

1546

NOTICE.

Keep this bill and bring it with you for payment of the assessment, and also see that the block and lot numbers correspond with your tax bill for the same property.

Collector of
Assessments and Arrears
Registered
Oct. 1 1902

E. C.

Received New York, Oct. 1 1902
from M. Henry Ungrich, Jr. the above
stated amount of sixty nine 40/100
dollars.

1547

Wm. E. McFadden

Collector of Assessments & Arrears.

G. V.

No payment received after 2 o'clock P. M. Saturdays 12 M.

1548 Henry Ungrich, Jr. No. 55 New York Oct. 1 1902
THE CORN EXCHANGE BANK
HARLEM BRANCH.
Pay to the order of William E. McFadden
Collector of Arrears
Sixty nine & 40/100 dollars
\$69 40/100 Henry Ungrich Jr.

(Endorsed)

Pay to the National City Bank of N. Y. or order
To Credit of Chamberlain, City of New York
Oct. 1, 1902

William E. McFadden

Collector of Assessments and Arrears.

Received Payment through the
New York Clearing House

Oct. 1, 1902

National City Bank.

Exhibit VV.

1549

M Ungrich: CITY OF NEW YORK.
BOROUGH OF MANHATTAN.

To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.

To Water Rates on under-described premises, as
per meter, from May 20, 1902 to July 25, 1902.
• No. 285 Lenox Ave.

.

Sec.	Vol.	Fol.		Cubic Feet	Amount
7	2	28	Meter No. 29298 Present		
			Index,	343500	
			" " At last Statement,	340900	2600
			Total Cubic Feet at 10 Cents per		1550
			100 feet,	2600	2 60
			Rent of Meter, Months,		
			Credit for Regular Annual Rate		
			on Building months at \$		
			" Extras,		
			Net amount,		2 60

Department of Water Supply

PAID

FEB 13 1903

New York

Gas and Electricity

James Kennedy

For Water Register

1551

1552 M Ungrich

CITY OF NEW YORK.

BOROUGH OF MANHATTAN.

To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.

To WATER RATES on under-described prem-
ises, as per meter, from May 20 1902 to Nov.
24 1902

No. 281 Lenox Ave.

	Sec.	Vol.	Fol.		Cubic Feet	Amount
	7	2	27	Meter No. 29297 Present		
				Index	162900	
				" " At last Statement,	154000	8900
1553				Total Cubic Feet at 10 Cents per		
				100 feet,	8900	8 90
				Rent of Meter,	Months,	
				Credit for Regular Annual Rate		
				on Building months at \$		
				" Extras,		
				Net amount,		8 90

Department of Water Supply

PAID

FEB 13 1903

New York.

Gas and Electricity

James Kennedy

For Water Register

1554

No. 144 New York Feb-13 1903 1555

Henry Ungrich, Jr.

THE CORN EXCHANGE BANK

HARLEM BRANCH.

Pay to the order of Dept. Water Supply
Gas & Electricity Eleven & 50/100 Dollars.
11.50/100 Henry Ungrich Jr.

Endorsed: Meter bills 281-285 Lenox Ave.

Pay to the National City Bank of New York
or Order

Department of Water Supply, Gas & Electricity.

Robert A. Kelly

Water Register 1556

Received Payment
through the
New York Clearing House
Feb. 14 1903
National City Bank.

1557

1558 M Ungrich

Shaw 12/27/05
CITY OF NEW YORK.
BOROUGH OF MANHATTAN.

To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.

To WATER RATES on under-described prem-
ises, as per meter, from May 17, 1905 to Nov.
24 1905.

No. 281 Lenox Ave.

.			
Sec.	Vol.	Fol.	
7	2	27	Meter No. 29297 Present
			Index, 288100
1559			" " At last Statement 266800 21300

Total Cubic Feet at 10 Cents per		
100 feet	21300	21 30
Net amount,		21 30

Department of Water Supply
PAID

JAN 11 1906
New York.
Gas and Electricity.
Received Payment
J. J. Dalton For Water Register

1560

Shaw 12/28/05

1561

Ungrich

CITY OF NEW YORK,
BOROUGH OF MANHATTAN.To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.To WATER RATES on under-described prem-
ises, as per meter, from May 17, 1905 to Nov.
23 1905.

No. 285 Lenox Ave.

Sec.	Vol.	Fol.		Cubic Feet	Amount
7	2	28	Meter No. 29298 Present		
			Index,	88400	
			" " At last Statement	58400 30000	1562
			Net amount,		30 00

Department of Water Supply

PAID

JAN 11 1906

New York. J. J. Dalton

Gas and Electricity For Water Register

1563

1564

Henry Ungrich, Jr.

No. 543

New York, Jany. 10, 1906.

THE CORN EXCHANGE BANK

HARLEM BRANCH.

PAY TO THE ORDER OF Dept of Water
Supply, Gas & Electricity Fifty one & 30/100
Dollors

\$51 30/100

Henry Ungrich, Jr.

Pay to the National City Bank
of New York, or Order
Department of Water Supply, Gas & Electricity
Joseph W. Savage
Water Register

1565

RECEIVED PAYMENT,
through the
New York Clearing House,
JAN 11 1906
NATIONAL CITY BANK.

1566

Shaw 8/3/05 1567
 Ungrich, CITY OF NEW YORK,
 BOROUGH OF MANHATTAN.

To DEPARTMENT OF WATER SUPPLY,
 GAS AND ELECTRICITY, Dr.

To WATER RATES on under-described prem-
 ises, as per meter, from Dec. 1 1904 to May
 17, 1905

No. 285 Lenox Ave.

Sec.	Vol.	Fol.		Cubic Feet	Amount
7	2	28	Meter No. 29298 Present		
			Index	58400	
			" " At last Statement	43600	14800
					1568
			Total Cubic Feet at 10 Cents per		
			100 feet,	14800	14 80
			Net amount,		14 80

Department of Water Supply
 Paid

Oct. 19 1905

New York

Gas and Electricity

Received Payment

J. J. Dalton, For Water Register

1569

1570

Ungrich

Shaw 8/3/05

CITY OF NEW YORK.

BOROUGH OF MANHATTAN.

To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.

To WATER RATES on under-described prem-
ises, as per meter, from Dec. 1 1904 to May
17, 1905

No. 281 Lenox Ave.

Sec.	Vol.	Fol.		Cubic Feet	Amount
7	2	27	Meter No. 29297 Present		
			Index	266800	
			" " At last Statement	236700	30100

1571

30100 30 10
30 10

Net amount,

Department of Water Supply

Paid

Oct 19 1905

New York

Gas and Electricity

Received Payment

J. J. Dalton for Water Register

1572

Henry Ungrich, Jr. No. 503 New York, Oct 18 1905 1573
 THE CORN EXCHANGE BANK
 HARLEM BRANCH.
 PAY TO THE ORDER OF Dept of Water
 Supply, Gas & Electricity, Forty four &
 90/100 Dollars
 \$44 90/100 Henry Ungrich Jr.

Endorsed:

Pay to the National City Bank
 of New York, or Order
 Department of Water Supply, Gas and Electricity
 Joseph W. Savage
 Water Register 1574
 RECEIVED PAYMENT
 Through the
 New York Clearing House,
 Oct 19 1905
 NATIONAL CITY BANK.

1575

1576 1903 Hen. Ungrich, Jr. CITY OF NEW YORK.
BOROUGH OF MANHATTAN.

To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.

BUREAU OF WATER REGISTER,
13-21 Park Row, 15th Floor.

To WATER RATES on under-described prem-
ises from May 1st, 1903 to April 30th, 1904
Section 6

Vol.	Fol.	Block No.	Lot No.	Location of Premises.	Front Building. Dolls.	Water Closets and Urinals. Dolls.	Baths. Dolls.
1577							
	4	103	1810	28 S.W. Cor. Pleasant & 123 St.	13	22	33

Extra Fams. Dolls.	Amount
9	77

\$77

Department of Water Supply

PAID

JUL 10 1903

Gas and Electricity

New York.

1578 James Kennedy for Water Register.

1903 Henry Ungrich, Jr. CITY OF NEW YORK. 1579

BOROUGH OF MANHATTAN.

TO DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.BUREAU OF WATER REGISTER,
13-21 Park Row, 15th Floor.Section 7 To WATER RATES on under-de-
scribed premises from May 1st, 1903, to April
30th, 1904.

Vol.	Fol.	Block No.	Lot No.	Location of Premises.	Front Building. Dolls.	Water Closets and Urinals. Dolls.	Extra Fams. Dolls.	
2	25	1909	29½	283 Lenox Ave.	9	6	3	1580

Baths.
Dolls.

6

\$24

Department of Water Supply
Paid

July 10 1903

Gas and Electricity

New York

James Kennedy for Water Register 1581

1582

Henry Ungrich, Jr.

No. 171

New York, Jul 10 1903

KNICKERBOCKER TRUST COMPANY

HARLEM BRANCH.

125th St. & Lenox Ave.

PAY TO THE ORDER OF Dept. of Water
Supply Gas & Electricity One hundred & one
Dollars

\$101

Henry Ungrich, Jr.

Endorsed: National City Bank of New York,
Or Order,

Department of Water Supply, Gas & Electricity

Robert A. Kelly, Water Register

1583

Received Payment

through the

New York Clearing House,

July 11 1903

NATIONAL CITY BANK.

1584

Ungrich ----- CITY OF NEW YORK. 1585
BOROUGH OF MANHATTAN.

To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.

To WATER RATES on under-described prem-
ises, ~~as~~ per meter, from May 18, 1904 to Dec.
1, 1904

No. 285 Lenox Ave.

Sec.	Vol.	Fol.		Cubic Feet	Amount
7	2	28	Meter No. 29298 Present		
			Index,	43600	
			" " At last Statement	22300	21300
					1586
			Total Cubic Feet at 10 Cents per		
			100 feet,	21300	21.30
			Net amount,		21.30

Department of Water Supply
Paid

Apr 4 1905

Gas and Electricity

New York

J. J. Dalton for Water Register

1587

No. 281 Lenox Ave

Apr 4 1905
Gas and Electricity J. J. Dalton
New York For Water Register

Digitized by Google

Henry Ungrich, Jr. No. 443 New York Apr 3, 1905 1591
 THE CORN EXCHANGE BANK
 HARLEM BRANCH.
 PAY TO THE ORDER OF Dept of Water
 Supply Gas etc.
 Sixty & 90/100 Dollars
 \$60.90/100 Henry Ungrich Jr.

Endorsed: Pay to the National City Bank of
 New York, or Order Department of Water Sup-
 ply, Gas & Electricity, Joseph W. Savage, Water
 Register. Received Payment through the New
 York Clearing House Apr 4 1905 National City
 Bank.

1592

Ungrich CITY OF NEW YORK.
 BOROUGH OF MANHATTAN.

To DEPARTMENT OF WATER SUPPLY,
 GAS AND ELECTRICITY, Dr.

To WATER RATES ON UNDER-DESCRIBED
 PREMISES, as per meter, from Nov. 25,
 1903 to May 18 1904
 No. 281 Lenox Ave.

Sec.	Vol.	Fol.		Cubic Feet	Amount
7	2	27	Meter No. 29297 Present		
			Index	197100	1593
			" " At last Statement	180000	17100
			Total Cubic Feet at 10 Cents per		
			100 feet,	17100	17.10
			Net amount,		17.10
			Department of Water Supply,		
			Paid		
			Sept 6 1904		
			New York		
			Gas and Electricity		
			Received Payment J. J. Moore		
			For Water Register		

1594 Ungrich

CITY OF NEW YORK.
BOROUGH OF MANHATTAN.To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.To WATER RATES on under-described prem-
ises, as per meter, from July 25, 1902 to May
18, 1904

No. 285 Lenox Ave.

Sec.	Vol.	Fol.		Cubic Feet	Amount
7	2	28	Meter No. 29298 Present Index Average		
			504 days		
			" " At last Statement, Not regis-		
			tering	70600	
1595			Present Index,		
			5/18/05	22300	
			" " At last Statement,		
			12/18/03	Reset 22300	
			Total Cubic Feet at 10 Cents per		
			100 feet,	92900	92.90
			Net amount,		92.90

Department of Water Supply,

Paid

Sep 6 1904

New York

Gas and Electricity

Received Payment J. J. Moore

1596

For Water Register

Henry Ungrich, Jr.

No. 372 New York, Sept 3rd 1904 1597

THE CORN EXCHANGE BANK

HARLEM BRANCH.

PAY TO THE ORDER OF Dept of Water
 Supply Gas and Electricity
 One hundred & ten Dollars

\$110

Henry Ungrich, Jr.

Endorsed: Pay to the National City Bank
 of New York, or Order
 Department of Water Supply, Gas & Electricity
 Joseph W. Savage, Water Register
 Received Payment 1598
 through the
 New York Clearing House,
 Sep 6 1904
 National City Bank

1599

1600 Ungrich

CITY OF NEW YORK.
BOROUGH OF MANHATTAN.To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.To WATER RATES on under-described prem-
ises, as per meter, from Nov. 24, 1902 to May
4, 1903

No. 281 Lenox Ave

	Sec.	Vol.	Fol.		Cubic Feet	Amount
	7	2	27	Meter No. 29297 Present		
				Index	170100	
				" " At last Statement	162900	7200
1601				Total Cubic Feet at 10 Cents per		
				100 feet,	7200	7.20
				Net amount		7.20

Department of Water Supply,
Paid

Sep 21 1903

New York.

Gas and Electricity

James Kennedy for Water Register.

1602

Henry Ungrich, Jr. No. 257 New York Sept. 21 1903 1603
 THE CORN EXCHANGE BANK
 HARLEM BRANCH.
 PAY TO THE ORDER OF Dept. of Water
 Supply, Gas etc. Seven & 20/100 Dollars
 \$7.20/100 Henry Ungrich Jr.

Endorsed: Pay to the National City Bank
 of New York, or Order,
 Department of Water Supply, Gas & Electricity
 Robert A. Kelly
 Water Register
 Received Payment, through the
 New York Clearing House Sept 22 1903
 National City Bank
 Endorsement Guaranteed.

1604

1605

1606 Ungrich

CITY OF NEW YORK.
BOROUGH OF MANHATTAN.To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.To WATER RATES on under-described prem-
ises, as per meter, from May 4, 1903 to Nov.
25 1903

No. 281 Lenox Ave.

Sec.	Vol.	Fol.		Cubic Feet	Amount
7	2	27	Meter No. 29297 Present		
			Index,	180000	
			" " At last Statement,	170100	9900
1607			Total Cubic Feet at 10 Cents per		
			100 feet,	9900	9.90
			Net amount,		9.90

Department of Water Supply

Paid

Feb. 5 1904

New York.

Gas and Electricity

J. J. Dalton

For Water Register

1608

Henry Ungrich, Jr.

No. 317 New York, Feb 4 1904 1609

THE CORN EXCHANGE BANK

HARLEM BRANCH.

PAY TO THE ORDER OF Dept of Water
Supply etc. Nine & 90/100 Dollars

\$9.90/100 Henry Ungrich Jr.

Endorsed: Pay to the National City Bank
of New York, or Order
Department of Water Supply, Gas & Electricity
Joseph W. Savage, Water RegisterReceived Payment
through the
New York Clearing House, 1610
Feb 5, 1904
National City Bank
Endorsement Guaranteed.

1611

H. Ungrich, Jr.

Henry Ungrich 60 W. 129th St.,
New York.

TO DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.

To WATER RATES on under-described premises, as per meter, from May 21 1902 to Nov. 20, 1902.

No. 208 E. 126th St.

• • • • •

Sec. Vol. Fol.

Cubic Feet

Amount

1618 6 5 122 Meter No. 20609 Present

Index, 460-400

“ “At last Statement 421400 39000

39.00

Net amount,

39.00

Department of Water Supply

PAID

Dec. 30 1902

New York.

Gas and Electricity.

A. S. Hawley

For Water Register

1613

Henry Ungrich, Jr. No. 115 New York Dec. 31 1902 1614
 THE CORN EXCHANGE BANK
 HARLEM BRANCH.
 Pay to the order of Dept. of Water Supply,
 Gas & Electricity Thirty nine Dollars
 \$39 Henry Ungrich, Jr.

Endorsed: Pay to the National City Bank of
 New York, or Order, Department of Water Sup-
 ply, Gas & Electricity, Robert A. Kelly, Water
 Register.

Received Payment, through the New York
 Clearing House Dec. 31, 1902 National City Bank. 1615
 Endorsement Guaranteed.

1617

1618 M Ungrich

CITY OF NEW YORK.
BOROUGH OF MANHATTAN.To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.

BUREAU OF WATER REGISTER,

13-21 Park Row, 15th Floor

To Water rates on under-described premises from
May 1st, 1905, to April 30th, 1906.

Vol.	Fol.	Block No.	Lot No.	Location of Premises	Front Building. Dolls.	Water Closets and Urinals. Dolls.	Baths. Dolls.
1619	2	22	1909	29½	283 Lenox Ave.	9	6

Extra Fams. Dolls.	Amount
--------------------------	--------

3	24
---	----

Penalty	per cent. on \$	\$24
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Department of Water Supply

PAID

Jul 11 1905

Gas and Electricity,
New York.

J. J. Moore

For Water Register

1620

Henry Ungrich, Jr. No. 484 New York, July 10th, 1905. 1621
 THE CORN EXCHANGE BANK
 HARLEM BRANCH.
 PAY TO THE ORDER OF Dept. of Water
 Supply Gas etc. Twenty four Dollars
 \$24 Henry Ungrich Jr.

Endorsed: Pay to the National City Bank of
 New York, or Order Department of Water Sup-
 ply, Gas & Electricity Joseph W. Savage Water
 Register.

Received Payment through the New York Clear-
 ing House, Jul 11 1905 National City Bank. 1622

1623

1624

CITY OF NEW YORK,
BOROUGH OF MANHATTAN.

Henry Ungrich, Jr.

To DEPARTMENT OF WATER SUPPLY,
GAS AND ELECTRICITY, Dr.

BUREAU OF WATER REGISTER,

13-21 Park Row, 15th Floor.

Section 7 To Water Rates on under-described
premises from May 1st, 1904, to April 30th,
1905.

1625

Vol.	Fol.	Block No.	Location of Premises.	Front Building. Dolls.	Water Closets and Urinals. Dolls.	Baths. Dolls.
2	22	1909	283 Lenox Ave.	9	5	6

Lot No.	Extra Fams. Dolls.	Amount
29½	3	\$24

Department of Water Supply

PAID

July 11, 1904

New York.

1626

Gas and Electricity,
Received Payment
J. J. Dalton for Water Register

Henry Ungrich, Jr. No. 360 New York, July 11th, 1904 1627

THE CORN EXCHANGE BANK

HARLEM BRANCH.

PAY TO THE ORDER OF Dept Water
Supply, Gas Electricity Twenty four Dollars

\$24 Henry Ungrich Jr.

Endorsed:

Play to the National City Bank
of New York, or Order
Department of Water Supply, Gas & Electricity
Joseph W. Savage, Water Register
Received Payment 1628
Through the
New York Clearing House,
Jul 11 1904
National City Bank
Endorsement Guaranteed

1629

1630 DEPARTMENT OF FINANCE, CITY OF NEW
YORK

Borough of Manhattan.
Bureau for the Collection of Taxes,
Nos. 57 & 59 Chambers Street

H. Ungrich Jr.

60 W. 129th St.

New York.

TO THE CITY OF NEW YORK
FOR TAXES, 1902.

1631	Sec.	Vol.	Line No.	Block No.	Lot No.	Between what Aves.	Between what Streets.	Valu- ation.	Tax.
	6	4	23354	1790	44	126-125	3-1	15,000	341.01
	"	"	25534	1810	28	1st & P	122-123	13,500	306.91
	7	2	10091	1909	28	L & 7	124-125	9,000	204.60
	"	"	10123	1909	29	"	2	14,000	318.28
	"	"	10124	1909	29½	"	"	10,500	238.71
	"	"	10125	1909	30	"	"	10,500	238.71
								72,500	1648.22
								Oct. 6	15.12
									1633.10

Paid by check
Subject to collection,
Oct. 21 1902

1632

A. E. P. Cashier

Received Payment

Wm. H. Moughiary

Deputy Receiver of Taxes

No. 62 New York October 1st 1902 1633

Hery Ungrich, Jr.

KNICKERBOCKER TRUST COMPANY

HARLEM BRANCH

125th St. & Lenox Ave.

PAY TO THE ORDER OF Receiver of
Taxes New York City Sixteen hundred &
thirty three & 10/100 Dollars

\$1633 10/100

Henry Ungrich Jr.

Endorsed: Pay to the National City Bank of
New York or order Oct 21 1902 John J. McDon-
ough, Deputy Receiver of Taxes, Borough of
Manhattan. Received Payment through the New 1634
York Clearing House, Oct 21 1902 National City
Bank.

1635

1636 DEPARTMENT OF FINANCE, CITY OF NEW
YORK.

Borough of Manhattan,
Bureau for the Collection of Taxes,
Nos. 57 & 59 Chambers Street
Name Henry Ungrich Jr.
Box 74
White Plains N. Y.

TO THE CITY OF NEW YORK,
FOR TAXES 1903

1637

Sec.	Vol.	Line No.	Block No.	Lot No.	Between what Aves.	Between what Streets.	Valu- ation.	Tax.
7	2	10749	1909	28	7 & L	124-125	14,000	197.91
"	"	10784	"	29	"	"	24,000	339.28
"	"	10785	"	29½	"	"	19,000	268.59
"	"	10786	"	30	"	"	19,000	268.59
								<hr/>
								\$1074.37
								9.67
								<hr/>
								\$1064.70

1638

Registered
Oct. 13 1903
Book 8 Folio 113
Paid by Check
Oct. 13 1903
B. B. B. Cashier
Received Payment Wm. H. Moughiary,
Deputy Receiver of Taxes

Henry Ungrich, Jr.

No. 189 New York, October 7th 1903. 1639

KNICKERBOCKER TRUST COMPANY

HARLEM BRANCH

125th St. & Lenox Ave.

PAY TO THE ORDER OF RECEIVER
OF TAXES New York City. Ten hundred &
Sixty four & 70/100 Dollars

\$1064 70/100

Henry Ungrich, Jr

Endorsed: Pay to the National City Bank of
New York or order Oct 13 1903 John J. McDon-
ough, Deputy Receiver of Taxes Borough of Man-
hattan.

1640

Received Payment, through the New York
Clearing House, Oct 13 1903 National City Bank
Endorsement Guaranteed.

1641

1642 DEPARTMENT OF FINANCE, CITY OF NEW
YORK.

Borough of Manhattan,
Bureau for the Collection of Taxes,
Nos. 57 & 59 Chambers Street

Name Henry Ungrich, Jr.

Address P. O. Box 74

White Plains N. Y.

TO THE CITY OF NEW YORK
FOR TAXES, 1904.

1643	Sec.	Vol.	Line No.	Block No.	Lot No.	Between what Aves.	Between what Streets.	Valu- ation.	Tax.
	7	2	10751	1909	28	107 W.	124 St.	33,000	499.42
			10783		29	281 Lenox Ave.		25,000	378.35
			10784		29½	283 Lenox Ave.		19,000	287.54
			10785		30	385 Lenox Ave.		19,000	287.54
									<hr/>
									1452.85
									13.95
									<hr/>
									1438.90

Registered

Oct 3 1904

Book 12 Folio 1

Paid by Check

Oct 3 1904

1644

E. G. S. Cashier

Received Payment

Wm. H. Moughiary,

Deputy Receiver of Taxes

No. 238 New York, Oct. 3 1904 1645

KNICKERBOCKER TRUST COMPANY

HARLEM BRANCH.

125th St. & Lenox Ave.

PAY TO THE ORDER OF Recr of
Taxes, Boro Manhattan N. Y. City
Fourteen hundred and thirty eight &
90/100 Dollars

\$1438 90/100

Henry Ungrich Jr.

Endorsed: Pay to the National City Bank of
New York, or Order Oct 8 1904 John J. McDon-
ough, Deputy Receiver of Taxes, Borough of 1646
Manhattan.

Received Payment, through the New York
Clearing House Oct. 3 1904 National City Bank.

1647

1648 DEPARTMENT OF FINANCE, CITY OF NEW
YORK.

Borough of Manhattan,
Bureau for the Collection of Taxes,
Nos. 57 & 59 Chambers Street

Name Henry Ungrich Jr.
Address Box 74 White Plains N. Y.

TO THE CITY OF NEW YORK
FOR TAXES, 1905.

	Sec.	Vol.	Line No.	Block No.	Lot No.	Between what Aves.	Between what Streets.	Valu- ation. Dolls.	Tax.
1649	7	2	10750	1909	28	7-1	124-125	3,300	491.86
			783		29			3,200	476.96
			784		29½			2,300	342.81
			785		30			2,300	362.81
									<hr/>
									1654.44

Registered
Dec. 2 1905
Book 5 Folio 101
Paid by Check
Dec. 2 1905
J. B. B. Cashier

1650

Received Payment
Wm. H. Moughiary,
Deputy Receiver of Taxes

Henry Ungrich, Jr. No. 528 New York, November 28th, 1905. 1651
 THE CORN EXCHANGE BANK
 HARLEM BRANCH.
 PAY TO THE ORDER OF Recr of Taxes,
 Manhattan Boro N. Y. City Sixteen hundred
 fifty four & 44/100 Dollars
 \$1654 44/100 • Henry Ungrich, Jr.

Endorsed:

Pay to the National City Bank, of New York,
 or order Dec. 2 1905 John J. McDonough, Dep-
 uty Receiver of Taxes.

Received Payment through the New York
 Clearing House Dec. 2 1905 National City Bank. 1652

Exhibit WW.

New York

1902.

The Commissioners of Taxes and Assessments
 have taxed the Personal Est. held in trust for your
 acct. by Martin & myself at 25000 which will re-
 duce your income about 400 dollars. They could
 properly tax the entire amt. of 78,500 thus re-
 ducing your income over 1250 dollars and it might
 be a good thing & serve you right to do so as you
 would have that amount less to spend in riotous 1653
 living & I almost feel like having them do so, for
 the contemptible trick you served me; as had you
 admitted you were drinking when I accused you
 of it, you would not have tricked me as you did &
 the fact that you forbid your wife to tell me you
 were and had been drinking hard for some time
 shows & satisfies me you did so deliberately. You
 knew how much I depended on you and to do such
 a thing after the way I had treated you has in-

1654 stalled such a feeling of hatred and contempt in me for you that I never want to see you again or have you call me brother. Your action will make my building cost me over 3000 dollars more.

Your cks. for Int' sent to Mr. Demarest today & after Martin has signed them you can get at Demarest's office.

I would like to know what the mistake is you say Neville & Baggs have made in plans.

You have put me in an awful hole & I don't see how I shall ever get out of it.

1655 I haven't had a good night's sleep in 6 weeks. & several times was afraid I would go insane over my trouble. You have wrecked my life. This is the thanks I get for using you like a white man. Some times I think you have led me into this trap deliberately & three times I have laid around thinking I might see you & kill you & then kill myself. But I have got over that & won't trouble or injure you in any way so you need not worry over that.

I went into the operation with the fullest confidence in and dependence on you & will never forget your deception or forgive the injury you have done me.

Yours,

Henry.

1656

Exhibit XX.

Apr. 25/03

7:30 P. M.

Louis

Your letter and check for 6.50 just handed me as I stepped out of our rooms into the hall on my way to the lodge. Why send me ck. for 6.50 when

your share is only 4 dollars and bill for care of 1857
 father's and mother's graves will not come in before next Oct. or Nov. and at present cannot say what it will be as mother's grave will have to be remounded and probably replanted with myrtle.

Now in regard to the 5 dollars for the jewelry, I did not so understand it. We valued it at 5 dollars and you said you would take it. I had no right to give it away still rather than have any words over it, will pay the amount myself in order to make the books balance.

The 32 dollars you speak of I don't understand, and if you can show me where the amt. comes in I will gladly give you ck. for the amt. you say is due 1658
 you. Meet me at Mr. Demarest's office tomorrow morning 11 o'clock and we can talk the whole matter over calmly and without anger on either side, as letter writing seems to be a most unsatisfactory way of settling matters anyhow. We can also talk over the question of plans you drew and had approved. You ought to know that I don't want anything except what is fair and right. The \$3,000 in the K. Tr. Co. certainly should bring more interest, but Martin and I seldom see each other and I cannot invest it alone and several times when I have spoken to him about it he said very little, so you see it is not my fault and if you will come to Mr. Demarest's office tomorrow we can go over 1659
 everything and I will promise you not to get out of temper and will discuss everything with you in a calm and businesslike manner.

Yours,

Henry.

P. S. Will not deposit ck. before I have seen you.

1660

Exhibit YY.

June 22d 1903.

Louis

Your letter rec'd this A. M.

In relation to the mtge. we could have got on the Bklyn. property that Mr. Demarest spoke about, I think it is too late to get that as they could not wait any longer.

1661 Martin is acting very funny. He almost treated Mr. Demarest with contempt the other day when he called him on the telephone. I wrote him two letters so did Mr. Demarest to my letter as to location of property so I could go & look at it, he has not even condescended to reply. I am unconscious of having done anything for which he should act in that way. You can see Mr. Demarest at your convenience & ask him if I can do anything independently of Martin. I am of the opinion I cannot. If so, however, will do my best to invest the money so it will bring a greater return.

I presume if Martin cannot give any good reason to explain his conduct he could be removed as Trustee, but he might put up a fight and there is no telling what that would cost.

1662 If you were in his power he could make things decidedly unpleasant for you & might expect a rakeoff every time there was something coming to you. He is hard to understand & get along with & I am mighty glad I am rid of him so far as my affairs are concerned.

Yours in haste,

Henry.

Exhibit ZZ.

1663

New York, Aug. 6th, 1903.

Louis

In reply to yours of the 5th inst. will state that the int. due on the Dep. in the N. Y. Security & Trust Co. has not yet been entered in the Pass Book as it only amounts to about 11 dollars. I think not. Think it worth while to make the trip down town for that purpose. Also on account of Martin's absence from N. Y. not having his address would not know where to send the ck. for his signature & the chances are if I did he would hold the check & make you come to him for it. So thought best to wait until he gets back & have him come down to Mr. Demarest's office as there will be some signing to do in relation to the bal. on dep. which can be divided soon as the tax rate is definitely settled upon. 1664

Am looking for a satisfactory loan for the money in the K. Tr. Co. as Mr. Demarest thinks I can draw that money without Martin's signature. Of course, would give him a chance to approve or disapprove the investment or state his reasons for acting as he does. He should act or get out. He has no right to be a stumbling block.

Yours in haste,

Henry. 1665

1666

Exhibit AAA.

Nov. 6/03.

Louis

In reply to your insolent letter rec'd this A. M. will say, that I remember your sending me a check, but do not recollect its amount or the amount of Stuber's bill and as my old ck. book, bills and other memoranda are all packed away with my furniture &c. in the storage warehouse it is impossible for me to say whether you are right or wrong.

However, as you say you have my letter, also your ck. I take it for granted that what you say is true.

1667 You should know me well enough to know that I would not knowingly accept two dollars and fifty cents from you that did not rightfully belong to me.

Now, Louis, I have no desire to be anything but friendly toward you and can if I so desired reduce your income very materially by having the mtges. taxed at their face value. I can also take thirty days time in paying the interest.

1668 By the way, if you are so very flush with money, you can send over your ck. for the tax on the personal est. the am't is about \$353 less the am't held by the Trustees Jany. 1st about \$1500 the tax on which will be betw. 20 and 25 dollars. I cannot give you the exact figures now.

Am glad to hear you are doing well and trust you will continue so.

Yours,

Henry.

Henry Ungrich, Jr.
P. O. Box 74
Prospect Hill
White Plains, N. Y.

Oct. 24th, 1906.

Dear Louis

Your letter of the 23d inst. duly rec'd. In reply will say the only job that you might be able to construe as your not having been paid for is the one for the automobile garage. When I paid you the \$6000 you gave me a general release from all claims of every kind and nature, still I would not even take refuge behind that as a refusal to pay that particular amount. 1670

Now if Mr. Demarest got \$500 out of you for that he did wrong in asking it of you and you were foolish in giving it to him and concealing the fact from me as I certainly would have opposed it and I can see no reason why you should give him \$50 every time you got your money from income investments for your account. As to the claim of our cousins against you you told me you had given the money to Martin to pay them and that he had never turned it over to them and would go and see Kossuth yourself about it; that was the last I ever heard of that; since then you have met me dozens of times. I supposed all our past differences were settled and we were once more what brothers should be, friends. Now Louis, you know I am legally responsible, why do you wait until this late day to stir things up, and why did you not speak of this matter before if you thought I owed you anything? It looks to me as if you were not sincere in your professions of brotherly love and friendship. 1671

Now as to letters &c I still have all letters, bad

1672 checks, notes and receipts for accounts I settled for you and will use them if necessary. However, the spectacle of two brothers going into Court over a few paltry dollars digging up and bringing into public view the family skeleton is not very edifying and it seems to me some one has given you very bad advice, and some way out of such a dilemma ought to be found without getting into Court. That of course depends on how reasonable people are.

In regard to Mr. Demarest, some things have transpired recently that I do not approve of and I have not done much legal business with him on that account.

1673 Only about ten days ago, as Emma and myself contemplate a trip abroad on account of my health which is bad, I had my attorney here draw up a new Will, and in that Will I made a very handsome bequest to you to let you see that the brotherly feeling still exists so far as I am concerned, but if the old feeling of distrust and hatred &c. is going to break out again, I shall lose no time in adding a codicil to my Will and cutting that bequest out, and before you do anything foolish you had better think it over, come up and see me or meet me anywhere most convenient and talk matters over as brothers should and if we then see
1674 that we cannot agree it will be time enough to go to law which should always be the last resort especially between two brothers. Don't you think honestly that would be the wisest course to pursue? Your lawyer will tell you so if he is an honest man, although it may mean a loss of business to him.

I could keep on writing indefinitely but think for the present this is sufficient and close as ever

Affly your brother

Henry.

Exhibit CCC.

1675

New York, July 11th, 1902.

Dear Louis:

Not hearing from Martin I yesterday sent him a postal as follows:

Did you receive my letter of July 7th, 02?

If so, kindly sign and return check, as requested or state reason for your refusal to do so. Yours truly, Henry. In reply he sent my ck. & the paper herewith enclosed. I don't know what he wants to see you for. Presume he knows nothing about—

Don't get into any argument with him as it is not worth while. Be careful.

Yours afftly,

1676

Henry.

1677

1678

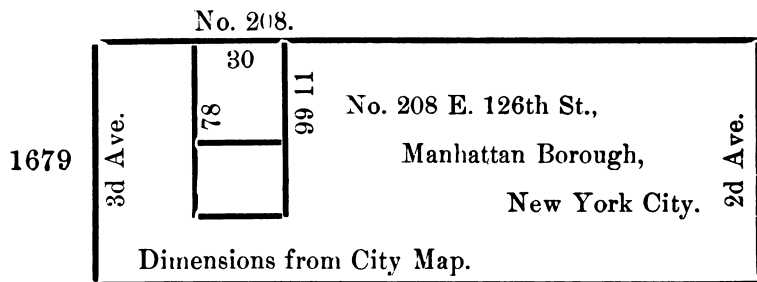
Exhibit 1.

PHILIP A. SMYTH,

Real Estate Auctioneer, Broker and Appraiser,
No. 30 Pine St., New York.

This is to Certify, that I have made a personal
examination of the property shown on diagram:

East 126th Street.



Size of Lot, as per diagram.

<i>Building:</i>	Size,	}	Five story brownstone two family Flat with portico entrance, in fair condition and order.
	Height,		
	Condition,		
	Materials,		
	Use,		

Present Market Value,

\$20,000. (Twenty thousand dollars)

1680 Rental Estimated at

\$2160. (Twenty-one hundred and sixty)

Remarks,

New York, April 4th, 1902.

Philip A. Smyth,
Appraiser.

To

Mr. James Demarest, Atty.,
140 Nassau St.,
City.

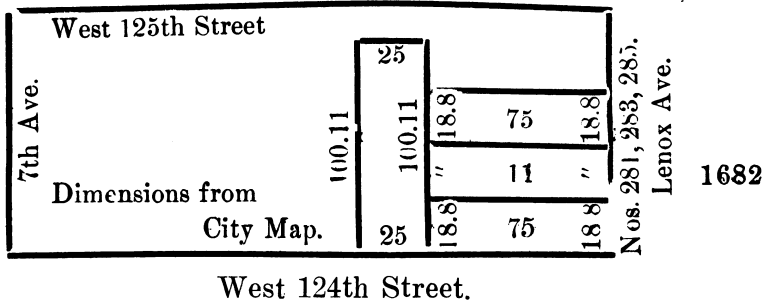
Exhibit 2.

1681

PHILIP A. SMYTH,

Real Estate Auctioneer, Broker and Appraiser,
No. 30 Pine St., New York.

This is to Certify, that I have made a personal
examination of the property shown on diagram:



Size of Lot, as per diagram.

Size, } Three four story brown-
Height, } stone flats with stores on
Building: Condition, } Lenox Avenue, and 2 story
Materials, } and basement frame dwell-
Use, } ing on 124th St.

Present Market Value,

\$110,000. (One hundred and ten thousand)

Rental Estimated at

\$6020. (Six thousand and twenty) 1683

Remarks, I divide my appraisal as follows, but in
my judgment the plot should be owned by one per-
son,—

No. 281 Lenox Ave., corner 124th St.	\$45,000.
No. 283 " " adjoining	25,000.
No. 285 " " "	25,000.
No. 107 W. 124th St.	15,000.

1684 New York, April 4th, 1902.

Philip A. Smyth,
Appraiser.

To
Mr. James Demarest, Atty.,
140 Nassau St.,
City.

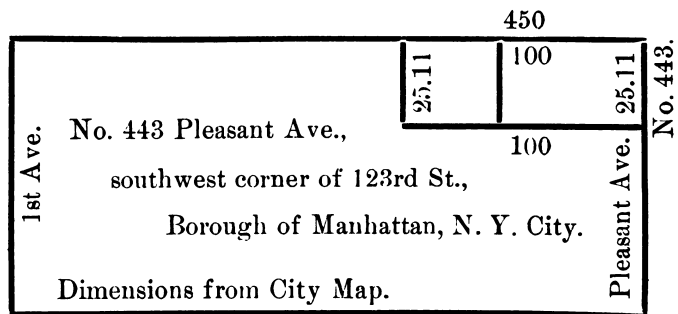
Exhibit 3.

PHILIP A. SMYTH,
Real Estate Auctioneer, Broker and Appraiser,
No. 30 Pine St., New York.

1685

This is to Certify, that I have made a personal
examination of the property shown on diagram:

East 123rd Street.



1686

Size of Lot, as per diagram.

Building:

Size,	}	No. 443 Pleasant Ave., 4 story brownstone flat, 2 families on a floor. No. 450 E. 123rd St., 4 story brick flat, 1 family on a floor.
Height,		
Condition,		
Materials,		
Use,		

Present Market Value,

\$22,000. (Twenty-two thousand dollars)

Rental Estimated at

\$2190. (Twenty-one hundred and ninety)

Remarks,

1687

New York, April 4th, 1902.

Philip A. Smyth,
Appraiser.

To

Mr. James Demarest, Atty.,
140 Nassau St.,
City.**Exhibit 4.**

May 8th, 1902.

M. Louis Ungrich, Esq.,

Dear Sir:—

Will you kindly attend the adjourned meet- 1688
ing of the Executors of the Estate of Henry Ung-
rich, at this office to-morrow (Friday) at 2 P. M.
It is important that you be here as matters of im-
portance concerning your interest will require
action. While it is not absolutely necessary that
you should be present, the Executors in courtesy
to you send you this notice.

Truly yours,

James Demarest,

H. K. D.

Exhibit 5.

1689

We, HENRY UNGRICH, JR. and MARTIN
UNGRICH, as Executors and Trustees under the
Will of Henry Ungrich, deceased hereby agree to
sell and convey to HARRY K. DAVENPORT, of
the Borough of Brooklyn, City and State of New
York, the premises known as Nos. 281, 283, and
285 Lenox Avenue and No. 107 West 124th Street,
Borough of Manhattan, City and State of New
York for the consideration of One hundred and

- 1690 fifteen thousand dollars (\$115 000), to be paid one-half cash and the balance on bond and mortgage, payable in five years from date interest at 4% per annum; the premises No. 450 East 123rd Street and No. 443 Pleasant Avenue, Borough, City and State aforesaid, for the consideration of Twenty-two thousand dollars (\$22,000), payable one-half cash and the balance on bond and mortgage payable five years from date interest at 4% per annum; and the premises No. 208 East 126th Street, Borough, City and State aforesaid for the consideration of Twenty thousand dollars (\$20,000) payable one-half cash and the balance on bond and mortgage payable five years from date, interest at
- 1691 4% per annum.

Said Executors and Trustees to execute, acknowledge, and deliver Executor's deed for the conveyance of said premises, free and clear of all incumbrances and said deed to be delivered at the office of James Demarest No. 140 Nassau Street, Borough of Manhattan, New York City, on May 22nd, 1902, at 2 o'clock M., title of each of said premises to be closed as of June 1st, 1902. The rents accruing up to June 1st, 1902, to belong to the Estate of Henry Ungrich and interest on purchase money mortgages to date from June 1, 1902. And the said Harry K. Davenport agrees to take the said premises for the price and upon the terms

1692 hereinbefore set forth.

Dated May 16th, 1902.

Harry K. Davenport.
Henry Ungrich, Jr.,
Martin Ungrich,
Executors and Trustees.

Contract approved by me

Martin Louis Ungrich.

In the presence of:

James Demarest.

Exhibit 6.

1693

WHEREAS Henry Ungrich, late of No. 107 West 124th Street in the Borough of Manhattan, in the City, County and State of New York, died on the first day of March, 1901, seized and possessed of the following described lands and premises in the Twelfth Ward of the Borough of Manhattan, City and State of New York, to wit: No. 107 West 124th Street. Nos. 281, 283 and 285 Lenox Avenue, No. 450 East 123rd Street, No. 443 Pleasant Avenue and Nos. 208 East 126th Street.

AND WHEREAS Henry Ungrich, Jr., and Martin Ungrich, were duly appointed Executors and Trustees under the Will of said Henry Ungrich, and were given power to sell and dispose of the said real estate, 1694

AND WHEREAS, I Martin Louis Ungrich, son of Henry Ungrich, first above named, and the principal beneficiary of the Trust created in the will of said Henry Ungrich, have requested the said Executors and Trustees to sell the said real estate and set aside the trust fund called for in my father's will,

NOW, THEREFORE, I, said Martin Louis Ungrich do hereby declare and affirm that the sale of the real estate herein before mentioned made 1695 this day for the aggregate consideration of One hundred and fifty-seven thousand dollars is made at my request and with my consent and approval and with full knowledge on my part that the said real estate is purchased for and is to be conveyed to my brother, Henry Ungrich, Jr., who is one of the Executors and Trustees under the Will of my father, Henry Ungrich, deceased, and I hereby ratify and confirm the same and all the acts of the said Executors and Trustees, done in connection therewith.

1696 IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-second day of May, Nineteen hundred and two.

Martin Louis Ungrich (L. S.)

In presence of:

James Demarest.

City and County of New York, ss.:

On this twenty-second day of May, in the year one thousand nine hundred and two before me personally came Martin Louis Ungrich, to me known and known to me to be the individual described in and who executed the foregoing instrument and he thereupon duly acknowledged that he executed the same.

1697

James Demarest,
Notary Public, Kings Co.
Cert. filed in New York Co.

Exhibit 7.

1698 WHEREAS Henry Ungrich, late of No. 107 West 124th Street in the Borough of Manhattan, in the City, County and State of New York, died on the first day of March, 1901, seized and possessed of the following described lands and premises in the Twelfth Ward of the Borough of Manhattan, City and State of New York, to wit: No. 107 West 124th Street, Nos. 281, 283 and 285 Lenox Avenue, No. 450 East 123rd Street, No. 443 Pleasant Avenue and No. 208 East 126th Street.

AND WHEREAS Henry Ungrich, Jr., and Martin Ungrich, were duly appointed Executors and Trustees under the Will of said Henry Ungrich, and were given power to sell and dispose of the said real estate.

AND WHEREAS, I, Martin Louis Ungrich, son 1699
of Henry Ungrich, first above named, and the principal beneficiary of the Trust created in the Will of said Henry Ungrich, have requested the said Executors and trustees to sell the said real estate and set aside the trust fund called for in my father's will.

NOW THEREFORE, I, said Martin Louis Ungrich do hereby declare and affirm that the sale of the real estate hereinbefore mentioned made this day for the aggregate consideration of One hundred and fifty-seven thousand dollars is made at my request and with my consent and approval and with full knowledge on my part that the said real estate is purchased for and is to be conveyed to my brother, Henry Ungrich, Jr., who is one of the Executors and Trustees under the Will of my father, Henry Ungrich, deceased, and I hereby ratify and confirm the same and all the acts of the said Executors and Trustees, done in connection therewith. 1700

IN WITNESS WHEREOF, I have hereunto set my hand and seal this twenty-second day of May, Nineteen hundred and two.

Martin Louis Ungrich (L. S.)

In presence of

James Demarest.

1701

City and County of New York, ss.:

On this twenty-second day of May, in the year one thousand nine hundred and two before me personally came Martin Louis Ungrich, to me

1702 known and known to me to be the individual described in and who executed the foregoing instrument and he thereupon duly acknowledged that he executed the same.

James Demarest,
Notary Public, Kings Co.
Cert. filed in New York Co.

Exhibit 8.

THIS INDENTURE, made the twenty second day of May, in the year One thousand nine hundred and two, BETWEEN HARRY K. DAVENPORT, (unmarried) of the Borough of Brooklyn, County of Kings and City of New York, party of the first part, and HENRY UNGRICH, Jr., and MARTIN UNGRICH, as executors of and Trustees under the last will and testament of Henry Ungrich, late of the City, and State of New York, deceased, parties of the second part:—

1703 WHEREAS, the said Harry K. Davenport, is justly indebted to the said parties of the second part in the sum of TEN THOUSAND DOLLARS, lawful money of the United States, secured to be paid by his certain bond or obligation bearing even date herewith conditioned for the payment of the said sum of TEN THOUSAND DOLLARS, on the Twenty second day of May, One thousand nine hundred and seven, and the interest thereon to be computed from the date hereof at the rate of four per cent. per annum and to be paid semi-annually on the twenty second days of November and May in each and every year until said principal sum is fully paid.

1704 IT BEING THEREBY EXPRESSLY AGREED, that the whole of the said principal

sum shall become due after default in the pay- 1705
ment of interest taxes or assessments as herein-
after provided.

NOW THIS INDENTURE WITNESSETH,
that the said party of the first part, for the better
securing the payment of the said sum of money
mentioned in the condition of the said bond obli-
gation, with interest thereon and also for and in
consideration of one Dollar paid by the said par-
ties of the second part, the receipt whereof is
hereby acknowledged doth hereby grant and re-
lease unto the said parties of the second part, and
to their successors and assigns forever, ALL that
certain lot, piece or parcel of land, with the build- 1706
ing thereon erected, situate, lying and being in the
Twelfth Ward of the City of New York, Borough
of Manhattan, County and State of New York,
bounded and described as follows: viz: BEGIN-
NING at a point on the Southerly side of One hun-
dred and twenty sixth Street, distant one hundred
and thirty-five (135) feet Easterly from the Cor-
ner formed by the intersection of the Southerly
side of One hundred and twenty sixth Street, with
the Easterly side of Third Avenue, running thence
Southerly and parallel with Third Avenue ninety
nine (99) feet and eleven inches, to the centre line
of the Block, thence Easterly along the same,
thirty (30) feet, thence Northerly and again par- 1707
allel with the Third Avenue, ninety nine (99) feet
and eleven inches, to the Southerly side of One
hundred and twenty sixth Street aforesaid, and
thence Westerly, along the same thirty (30) feet;
to the point or place of beginning. Being the same
premises conveyed by Stephen J. Wright, and Su-
san A. his wife by Henry Ungrich by deed bearing
date the 30th day of December 1882, and recorded
in the office of the Register of the City and County

- 1708 of New York in Liber 1696 of Conveyances, page 278, January 4th, 1883. Being part of the premises conveyed to the party of the first part hereto by the parties of the second part hereto, by deed bearing even date and delivered simultaneously herewith and this mortgage being given to secure the payment of part of the consideration or purchase money in said deed expressed. It is hereby covenanted and agreed by and between the parties hereto that if, at any time or times before said bond is paid, any law or laws be enacted reducing the taxable value of land by deducting therefrom any lien thereon or changing the laws in relation to taxes on debts secured by mortgages or the manner of collecting such taxes, the mortgagor agrees to pay to the mortgagee a sum equal to the tax or burden imposed by said law or laws on the holder of said bond and this mortgage, in addition to the interest provided to be paid in said bond, within ten days after said tax is made payable by said law or laws unless the amount of said tax added to the amount of interest provided for in said bond exceed legal interest, unless the payment of said tax by the Mortgagor or owner of the land is prohibited by law. If the amount of said tax and the interest aforesaid exceed legal interest, or if such payment by the mortgagor or owner
- 1709 of the land is prohibited by law, then said bond and this mortgage shall become due and payable at the expiration of thirty days after the enactment of any such law or laws, the additional amounts which may under the foregoing provision become due and payable, shall be regarded as interest and shall be part of the debt, secured by said bond and this mortgage and all the provisions in reference to default in payment of interest contained in said bond and mortgage shall apply to
- 1710

such additional amounts. If a law be enacted under which the mortgagor shall be liable to pay an additional sum under the foregoing provisions, the mortgagor may pay off said bond at any time before maturity, if said mortgagor gives to the holder thereof three months prior notice in writing of the intention to do so. If such notice be given, said bond and this mortgage shall then become due and payable as if the time in the notice had been named in the bond as the time for the payment of said principal sum. 1111

TOGETHER WITH THE appurtenances and all the estate and rights of the said party of the first part in and to said premises.

TO HAVE AND TO HOLD the above granted premises unto the said parties of the second part their successors and assigns forever. 1712

PROVIDED ALWAYS, that if the said party of the first part, his heirs or assigns shall pay unto the said parties of the second part, their successors or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and in the manner mentioned in the said bond or obligation, that then and these presents shall cease, determine and be void.

AND the said party of the first part will pay the indebtedness as hereinbefore provided, and if default be made in the payment of any part thereof the parties of the second part shall have power to sell the premises herein described according to law. 1713

SECOND—That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

- 1714 THIRD—And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said parties of the second part after default in the payment of interest for thirty days or after default in the payment of any tax or assessment for ninety days after notice and demand.

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seal the day and year first above written. HARRY K. DAVENPORT—(LS) In presence of James Demarest.

- 1715 STATE OF NEW YORK, COUNTY OF NEW YORK. On this 22nd day of May, in the year one thousand nine hundred and two, before me personally came Harry K. Davenport, to me known and known to me to be the individual described in and who executed the foregoing instrument, and he thereupon duly acknowledged to me that he executed the same—James Demarest Notary Public, Kings Co. Cert. filed in N. Y. Co. INDORSED to be indexed against Block Number 1790 on the land map of the City of New York. RECORDED preceding at request of JAMES DEMAREST May 24, 1902 at 11 o'clock & 17 mins. A. M.

- 1716 JOHN H. J. RONNER.
Register.

Discharged (Mortgage Filed) June 1, 1906
by a certificate recorded in Liber 495
Discharges of Mortgages, page 440.

Frank Gass
Register.

REGISTER'S OFFICE

1717

County of New York, State of New York

I, FRANK GASS, Register of the said County, have compared the annexed copy with an instrument recorded in this office, on the 24th day of May, A. D. 1902 at 11 o'clock 17 mins. A. M. in Liber 111 Section 6 of Mortgages, Page 7, and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal, this 5th day of December, 1907.

(L. S.)

Frank Gass, Register.

1718

T. J. L.

J. J. K.

Exhibit 9.

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

We Henry Ungrich, Jr. and Martin Ungrich, as Executors of and Trustees under the last Will and Testament of Henry Ungrich, late of the City and State of New York, deceased, DO HEREBY CERTIFY: That a certain Indenture of Mortgage bearing date the twenty-second day of May, 1719 in the year one thousand nine hundred and two (1902) made and executed by Harry K. Davenport, to Henry Ungrich and Martin Ungrich as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, late of the City and State of New York, deceased, to secure the payment of the sum of Ten Thousand dollars and interest, and duly recorded in the office of the Register of the County of New York in Block Se-

1720 ries (Mortgages), Section 6 Liber 111 Page 7 and indexed under Block Number 1790 on the Land Map of the City of New York on the Twenty-fourth day of May in the year one thousand nine hundred and two (1902) at eleven o'clock, 17 minutes in the forenoon is paid, and we do hereby consent that the same be discharged of record.

Dated the 29th day of May, 1906.

Henry Ungrich, Jr.,
Exr. & Trustee.
Martin Ungrich,
Excr. & Trust.

1721 Signed in the presence of
James Demarest.

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

On this twenty ninth day of May one thousand nine hundred and six (1906) before me personally came Henry Ungrich, Jr. and Martin Ungrich, Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased, to me known and known to me to be the individuals described in, and who executed the above Certificate and they thereupon severally acknowledged to me that they had executed the same.

1722

James Demarest
Commissioner of Deeds
New York City.

Exhibit 10.

This Indenture made the Twenty second day of May in the year one thousand nine hundred and two between Harry K. Davenport (unmarried) of

the Borough of Brooklyn County of Kings and 1723
 City and State of New York party of the first part
 and Henry Ungrich, Jr. and Martin Ungrich as
 executors of and Trustees under the last Will and
 Testament of Henry Ungrich late of the City and
 State of New York deceased parties of the second
 part; Whereas the said Harry K. Davenport is
 justly indebted to the said parties of the second
 part in the sum of Eleven thousand Dollars law-
 ful money of the United States secured to be paid
 by his certain bond or obligation bearing even
 date herewith conditioned for the payment of the
 said sum of Eleven thousand dollars on the
 Twenty second day of May one thousand nine hun-
 dred and seven and the interest thereon to be com- 1724
 puted from the date hereof at the rate of Four
 per cent. per annum and to be paid semi-annually
 on the twenty second day of November and May,
 in each and every year until said principal sum is
 fully paid.

It Being Thereby Expressly Agreed That the
 whole of said principal sum shall become due after
 default in the payment of interest taxes or assess-
 ments as hereinafter provided.

Now This Indenture Witnesseth That the said
 party of the first part for the better securing the
 payment of the said sum of money mentioned in
 the condition of the said bond or obligation with 1725
 interest thereon and also for and in consideration
 of one dollar paid by the said parties of the second
 part the receipt whereof is hereby acknowledged
 doth hereby grant and release unto the said par-
 ties of the second part and to their successors and
 assigns forever.

ALL that certain lot piece or parcel of land sit-
 uate lying and being in the Twelfth Ward of the
 City of New York Borough of Manhattan County

- 1726 and State of New York bounded and described as follows. Beginning at a point formed by the intersection of the westerly side of Pleasant Avenue (formerly Avenue A) with the southerly side of One hundred and twenty-third Street running thence southerly along said westerly side of Pleasant Avenue (formerly Avenue A) twenty five feet and eleven inches thence westerly and parallel with One hundred and twenty third Street one hundred feet thence northerly and parallel with Pleasant Avenue (formerly Avenue A) twenty five feet eleven inches to the southerly side of One hundred and twenty third Street and thence easterly along said southerly side of One hundred and twenty third Street one hundred feet to the place of beginning.
- 1727

- Being the same premises conveyed by Henry Ungrich, Jr. and Emily A his wife to Henry Ungrich, Sr. by Deed bearing date the Twenty eighth day of March 1894 and recorded in the office of the Register of the City and County of New York on the 29th day of March 1894 in block series (Conveyances) section 6 Liber 19 page 266 Block Number 1810 on the land map of the City of New York. Being part of the premises conveyed to the party of the first part hereto by the parties of the second part hereto by deed bearing even date and delivered simultaneously herewith and this mortgage being given to secure the payment of part of the consideration or purchase money in said deed expressed it is hereby covenanted and agreed by and between the parties hereto that if at any time or times before said bond is paid any law or laws be enacted reducing the taxable value of land by deducting therefrom any lien thereon or changing the laws in relation to taxes on debts secured by mortgages or the manner of collecting such taxes
- 1728

the mortgagor agrees to pay to the mortgagee a sum equal to the tax or burden imposed by said law or laws on the holders of the said bond and this mortgage in addition to the interest provided to be paid in said bond within ten days after said tax is made payable by said law or laws unless the amount of said tax added to the amount of interest provided for in said bond exceed legal interest or unless the payment of said tax by the mortgagor or owner of the land is prohibited by law if the amount of said tax and the interest aforesaid exceed legal interest or if such payment by the mortgagor or owner of the land is prohibited by law then said bond and this mortgage shall become due and payable at the expiration of thirty days after the enactment of any such law or laws the additional amounts which may under the foregoing provision become due and payable shall be regarded as interest and shall be part of the debt secured by said bond and this mortgage and all the provisions in reference to default in payment of interest contained in said bond and mortgage shall apply to such additional amounts if a law be enacted under which the mortgagor shall be liable to pay an additional sum under the foregoing provisions the mortgagor may pay off said bond at any time before maturity if said mortgagor gives to the holder thereof three months prior notice in writing of the intention to do so if such notice be given said bond and this mortgage shall then become due and payable as if the time fixed in the notice has been named in the bond as the time for the payment of said principal sum.

Together with the appurtenances and all the estate and rights of the said party of the first part in and to said premises.

To Have and To Hold the above granted prem-

1732 ises unto the said parties of the second part their successors and assigns forever.

Provided Always that if the said party of the first part his heirs executors or assigns shall pay unto the said parties of the second part their successors or assigns the said sum of money mentioned in the condition of the said bond or obligation and the interest thereon at the time and in the manner mentioned in the said condition that then these presents and the estate hereby granted shall cease determine and be void.

AND the said party of the first part covenants with the parties of the second part as follows.

1733 First. That the party of the first part will pay the indebtedness as hereinbefore provided and if default be made in the payment of any thereof the parties of the second part shall have power to sell the premises herein described according to law.

Second. That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the mortgagee.

1734 Third. And it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said parties of the second part after default in the payment of interest for Thirty days after default in the payment of any tax or assessment for ninety days after notice and demand.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

Harry K. Davenport (LS)

In Presence of
James Demarest.

State of New York County of New York, ss.: 1735

On this 22nd day of May in the year one thousand nine hundred and two before me personally came Harry K. Davenport to me known and known to me to be the individuals described in and who executed the foregoing instrument and he thereupon duly acknowledged to me that he executed the same.

James Demarest
Notary Public Kings Co.,
Cert. filed in N. Y. Co.

Indorsed to be indexed against block No. 1810
on the land map of the City of New York. 1736

RECORDED preceding at request of James
Demarest May 24th 1902 at eleven o'clock and 17
minutes A. M.

John H. J. Ronner,
Register.

Discharged (Mortgage Filed) Aug. 22 1907
by a certificate recorded in Liber 548
Discharges of Mortgages, page 141.

Frank Gass,
Register.

REGISTER'S OFFICE, 1737

County of New York, State of New York.

I, FRANK GASS, Register of the said County have compared the annexed copy with an instrument recorded in this office, on the 24th day of May, A. D. 1902 at 11 o'clock 17 min. A. M. in Liber 109 Section 6 of Mortgages, Page 323 and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

Frank Gass Register.

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

Dated the twenty-first day of June, 1907.

Henry Ungrich, Jr. L. S.
Martin Ungrich L. S.

In the presence of
James Demarest.

State of New York, } 1741
City and County of New York, } ss.:

On this twenty-first day of August one thousand nine hundred and seven (1907) before me personally came Henry Ungrich, Jr., and Martin Ungrich as executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased, to me known and known to me to be the individuals described in, and who executed the above Certificate and they thereupon severally acknowledged to me that they had executed the same.

James Demarest,
Commissioner of Deeds,
New York City. 1742

Exhibit 12.

THIS INDENTURE made the Twenty-second day of MAY in the year One Thousand nine hundred and two.

BETWEEN HARRY K. DAVENPORT (unmarried) of the Borough of Brooklyn, County of Kings and City and State of New York party of the first part and HENRY UNGRICH, Jr. and MARTIN UNGRICH, as Executors of and Trustees under the last Will and Testament of Henry 1743 Ungrich late of the City and State of New York, deceased, parties of the second part.

WHEREAS the said HARRY K. DAVENPORT is justly indebted to the said parties of the second part in the sum of Fifty seven thousand and Five hundred dollars lawful money of the United States, secured to be paid by his certain bond or obligation bearing even date herewith conditioned for the payment of the said sum of Fifty

1744 Seven thousand and five hundred dollars on the twenty second day of MAY one thousand nine hundred and seven and the interest thereon to be computed from the date hereof at the rate of four per cent. per annum, and to be paid semi-annually on the Twenty second days of November and MAY in each and every year until said principal sum is fully paid. IT BEING THEREBY EXPRESSLY AGREED that the whole of the said principal sum shall become due after default in the payment of interest taxes or assessments as hereinafter provided.

NOW THIS INDENTURE WITNESSETH,
 1745 That the said party of the first part for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon and also for and in consideration of one dollar paid by the said parties of the second part, the receipt whereof is hereby acknowledged doth hereby grant and release unto the said parties of the second part and to their successors and assigns forever. . . .

ALL that certain lot piece or parcel of land with the buildings thereon situate lying and being in the Twelfth Ward of the City of New York Borough of Manhattan, County and State of New York known and distinguished as lot number 359
 1746 (three hundred and fifty nine) on a map entitled "Map of property belonging to SAMSON ADOLPH BENSON, living in the Twelfth Ward of the City of New York ("New York" May, 1848 compiled and surveyed by Francis Nicolson, City Surveyor and filed in the office of the Register of the City and County of New York and numbered Map 180 (One hundred and eighty) bounded and described as follows. . . .

BEGINNING at a point on the Northerly side

of One Hundred and twenty fourth Street distant 1747
 Seventy-five feet Westerly from the Westerly side
 of Sixth Avenue (now Lenox Avenue) as widened
 by an act of the Legislature of the State of New
 York entitled "An Act for the improvement of
 part of the City of New York, between One Hun-
 dred and Tenth Street and the Harlem River"
 passed April 24, 1865, Laws of 1865, Chapter 564,
 page 1133, (which point was distant One Hun-
 dred feet Westerly from the Westerly side of
 Sixth Avenue (now Lenox Avenue) before said
 widening) thence running Northerly parallel with
 said Lenox Avenue (formerly Sixth Avenue) One
 hundred feet and eleven inches thence Westerly 1748
 parallel with One Hundred and twenty fourth
 Street twenty-five feet thence Southerly again
 parallel with Lenox Avenue (formerly Sixth Ave-
 nue) One hundred feet eleven inches to the North-
 erly side of One hundred and twenty fourth Street
 and thence Easterly along said Northerly side of
 One Hundred and twenty fourth Street twenty five
 feet to the point or place of beginning. . Being
 the same premises conveyed by John L. Strang
 and Sara Strang his wife to Henry Ungrich, by
 deed bearing date November 18, 1872 and recorded
 in the office of the Register of the City and County
 of New York, in Liber 1227 of Conveyances page
 688 November 18, 1872. . . . 1749

AND ALSO, ALL that certain parcel of land
 situate, lying and being in the Twelfth Ward of
 the City of New York Borough of Manhattan,
 County and State of New York, and bounded and
 described as follows:—

BEGINNING at a point at the intersection of
 the Westerly line or side of Lenox Avenue (for-
 merly Sixth Avenue) with the Northerly side or
 line of One hundred and Twenty Fourth Street

1750 thence running Westerly along said Northerly line or side of One hundred and twenty fourth Street seventy five feet thence Northerly parallel with Lenox Avenue (formerly Sixth Avenue) fifty six feet thence Easterly parallel with One Hundred and twenty fourth Street and part of the distance through the centre of a party wall seventy-five feet to the Westerly line or side of LENOX AVENUE (formerly Sixth Avenue) thence Southerly along the said Westerly line or side of Lenox Avenue (formerly Sixth Avenue) fifty six feet to the point or place of beginning be the said several dimensions more or less, being the same premises conveyed by Rudolph Wyman and Yette his wife and Bernhard Hamburger and Rebecka his wife to Henry Ungrich by deed bearing date March first, 1869, and recorded in the Office of the Register of the City and County of New York in Liber 1093 of Conveyances page 245, March 1, 1869.

1751 Being part of the premises conveyed to the party of the First part hereto by the parties of the second part hereto by deed bearing even date and delivered simultaneously herewith and this mortgage being given to secure the payment of part of the consideration or purchase money in said deed expressed. . . .

1752 IT IS hereby covenanted and agreed by and between the parties hereto that if at any time or times before said bond is paid any law or laws be enacted reducing the taxable value of land by deducting therefrom any lien thereon or changing the laws in relation to taxes on debts secured by mortgages or the manner of collecting such taxes the mortgager agrees to pay to the mortgagee the sum equal to the tax or burden imposed by said law or laws on the holder of the said bond and this mortgage in addition to the interest to be paid in

said bond within ten days after said tax is made 1753
 payable by said law or laws unless the amount of
 said tax added to the amount of interest provided
 for in said bond exceed legal interest or unless the
 payment of said tax by the mortgagor or owner of
 the Land is prohibited by law. If the amount of
 said tax and the interest aforesaid exceed legal
 interest or if such payment by the mortgagor or
 owner of the land is prohibited by law then said
 bond and this mortgage shall become due and pay-
 able at the expiration of thirty days after the en-
 actment of any such law or laws. THE additional
 amounts which may under the foregoing provi-
 sions become due and payable, shall be regarded 1754
 as interest and shall be part of the debt secured
 by said bond and this mortgage and all the pro-
 visions in reference to default in payment of in-
 terest contained in said bond and mortgage shall
 apply to such additional amounts.

IF a law be enacted under which the mortgager
 shall be liable to pay an additional sum under the
 foregoing provisions, the mortgagor may pay off
 said bond at any time before maturity if said
 mortgagor gives to the holder thereof three months
 prior notice in writing of the intention to do so, if
 such notice be given said bond and this mortgage
 shall then become due and payable as if the time
 fixed in the notice had been named in the bond as 1755
 the time of the payment of said principal sum. . .

TOGETHER with the appurtenances and all
 the estate and rights of the said party of the first
 part in and to said premises. . . .

TO HAVE AND TO HOLD the above granted
 premises unto the said parties of the second part
 their successors and assigns forever.

PROVIDED ALWAYS that if the said party
 of the first part his heirs or assigns shall pay

1786 unto the said parties of the second part their successors or assigns the said sum of money mentioned in the condition of the said bond or obligation and the interest thereon at the time and in the manner mentioned in the said condition that then these presents and the estate hereby granted shall cease determine and be void. . . .

AND the said party of the first part covenants with the said parties of the second part as follows. . . .

FIRST.—That the said party of the first part will pay the indebtedness as hereinbefore provided and if default be made in the payment of any part
1787 thereof the parties of the second part shall have power to sell the premises herein described according to law. . . .

SECOND.—That the party of the first part will keep the buildings on the said premises insured against loss by fire for the benefit of the Mortgagee. . . .

THIRD.—AND it is hereby expressly agreed that the whole of said principal sum shall become due at the option of the said parties of the second part after default in the payment of interest for thirty days or after default in the payment of any tax or assessment for ninety days after notice and
1788 demand. . . .

IN WITNESS WHEREOF the said party of the first part has hereunto set his hand and seal the day and year first above written.

Harry K. Davenport (L.S.)

IN PRESENCE OF

Words Twenty five feet before word twenty
page 2 line 14 stricken out before execution.

James Demarest.

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

1789

On this 22nd day of MAY in the year One thousand nine hundred and two, before me personally came HARRY K. DAVENPORT to me known and known to me to be the individual described in and who executed the foregoing instrument and he thereupon duly acknowledged to me that he executed the same.

James Demarest,
 Notary Public Kings Co.
 Cert. filed in N. Y. Co.

INDORSED to be indexed against Block Number 1773 on the Land Map of the City of New York. RECORDED preceding at the request of JAMES DEMAREST MAY 24th, 1902 at 11 o'clk & 17 Mins A. M. 1790

John H. J. Ronner,
 Register.

Block Number 1773 Sec-6 Changed
 to Block No. 1909 Sec-7 on this
 24th day of MAY 1902 at 11 o'clk
 40 mins. A. M.

John H. J. Ronner
 Register

Discharged (Mortgage filed) May 22, 1907 by a certificate recorded in Liber 523 Discharges of Mortgages, page 465. 1791

Frank Gass Register.

Register's Office,
 County of New York, State of New York

I, FRANK GASS, Register of the said County, have compared the annexed copy with an instrument recorded in this office, on the 24th day of

1762 May, A. D. 1902, at 11 O'clock 17 Mins. AM. in Liber 134 Section 7 of Mortgages, Page 460 and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

In Testimony Whereof, I have here-
 (Seal) unto subscribed my name and affixed
 T. J. L. my official seal, this 5th day of De-
 J. J. K. cember, 1907.

Frank Gass Register.

Exhibit 13.

1763

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

We, Henry Ungrich, Jr. and Martin Ungrich, as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased, DO HEREBY CERTIFY: That a certain Indenture of Mortgage bearing date the twenty-second day of May in the year one thousand nine hundred and two (1902) made and executed by Harry K. Davenport to Henry Ungrich, Jr. and Martin Ungrich as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,
 1764 to secure the payment of the sum of Ffty seven thousand and Five hundred Dollars (\$57,500) and interest and duly recorded in the office of the Register of the City and County of New York in Block Series (Mortgages, Section 7 Liber 134 Page 460 and indexed under block number 1903 on the Land Map of the City of New York on the twenty-fourth day of May in the year one thousand nine hundred and two (1902) at eleven o'clock, and 17 minutes in the forenoon is paid,

and we do hereby consent that the same be dis- 1765
charged of record.

Dated the 22nd day of May 1907.

Henry Ungrich, Jr.
Extr & Trustee.

Martin Ungrich
Extr & Trustee.

Signed in the presence of
James Demarest.

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

On this twenty-second day of May one thousand 1766
nine hundred and seven (1907) before me person-
ally came Henry Ungrich, Jr. and Martin Ungrich,
Executors of and Trustees under the Last Will
and Testament of Henry Ungrich, deceased, to
me known and known to me to be individuals de-
scribed in, and who executed the above Certificate
and they thereupon severally acknowledged to me
that they executed the same.

James Demarest,
Commissioner of Deeds
New York City

1767

Exhibit 14.

Sept. 24th, 1903.

M. Louis Ungrich, Esq.,

Dear Sir:—

Will you please call here and get check for
interest due you? Most any day, at about 12
o'clock is the best time. I spoke to Henry about
the plans but he says that he has none of the

1768 plans which you drew, consequently cannot return them to you.

Truly yours,
James Demarest.

Exhibit 15.

Jan. 3, 1905.

Martin L. Ungrich, Esq.,
426 St. Marks Ave.,
Brooklyn, N. Y.

Dear Louis :

1769 Please call here for check, interest on balance in Trust Company. Any day between 11 and 12 will suit me best.

Yours truly,
James Demarest.

Exhibit 16

June 1, 1905.

Mr. Louis Ungrich,

Dear Louis :

I have received part of the interest due you (\$1350.) and exepect balance in a day or two.
1770 Call any time that you find convenient, and I will be ready to pay you the amount on hand.

Yours truly,
James Demarest.

Exhibit 17

1771

June 14, 1905.

Martin L. Ungrich, Esq.,

Dear Sir:

Kindly call here on Saturday or Monday next
to get interest.

Yours truly,
James Demarest.

Exhibit 18

July 6th, 1905.

M. Louis Ungrich, Esq.,

425 St. Marks Ave.,

Brooklyn, N. Y.

• 1772

Dear Louis:

Please call and get your check for interest from
the Trust Company. The amount is \$47.88.

Yours truly,
James Demarest.

Exhibit 19

Nov. 28, 1905.

Martin L. Ungrich, Esq.,

426 St. Marks Ave.,

Brooklyn, N. Y.

1773

Dear Louis:

I received your letter to-day. Please call with-
out fail at 11:30 o'clock to-morrow (Wednesday)
as I have a check for you, and must arrange for
the payment of the personal tax, as to-morrow is
the last day. Please be here without fail 11.30
A. M.

Yours truly,
James Demarest.

1774

Exhibit 20

Dec. 2, 1905.

Martin L. Ungrich, Esq.,
426 St. Marks Ave.,
Brooklyn, N. Y.

Dear Louis:

Please call here on Monday between 11 and 12 o'clock and get check for the balance of your December interest.

Yours truly,
James Demarest.

1775

Exhibit 21.

Dec. 6, 1905.

Mr. Martin L. Ungrich,
426 St. Marks Ave.,
Brooklyn, N. Y.

Dear Louis:

I wrote you last week, asking you to call on Monday, for the balance of your interest. I presume you have not received my letter, because you have not called.

Please call to-morrow (Thursday) between 11 and 12 o'clock as I have the balance of the interest here for you.

Yours truly,
James Demarest.

Exhibit 22.

1777

April 5, 1906.

Martin L. Ungrich, Esq.,
426 St. Marks Ave.,
Brooklyn, N. Y.

Dear Louis:

I have received word that the \$10,000 mortgage on 208 East 126th Street, the income of which is paid to you, will be paid off June 1st.

I have notified the Executors and I wish you would look around and see if you can not find a good investment which would bring you more income than the interest which you now receive. 1778

Yours truly,
James Demarest.

Exhibit 23.

June 2nd, 1906.

Martin L. Ungrich, Esq.,
426 St. Marks Ave.,
Brooklyn, N. Y.

Dear Louis:

I have all your interest collected. Please call Monday any time between 11 A. M. and 3 P. M. 1779

Yours truly,
James Demarest.

1780

Exhibit 24.

Nov. 26th, 1906.

Martin L. Ungrich, Esq.,
426 St. Marks Ave.,
Brooklyn, N. Y.

Dear Sir:

Please call and see me to-morrow or Wednesday in regard to payment of personal taxes.

Yours truly,
James Demarest.

1781

Exhibit 25.

Dec. 7th, 1906.

Martin L. Ungrich, Esq.,
426 St. Marks Ave.,
Brooklyn, N. Y.

Dear Mr. Ungrich:

Enclosed please find check \$1257.56 balance interest due you from Estate of Henry Ungrich, deceased, as per enclosed statement. This statement does not include the item of interest on the balance in the Trust Company, which you received in July last. Please sign and return enclosed receipt.

1782

Kindly remit check for amount due at your convenience, and oblige,

Yours truly,
James Demarest.

Exhibit 26.

1783

New York City, June 15th, 1903.

Received of Henry Ungrich, Jr. and Martin Ungrich, Exors and Trustees Est. of Henry Ungrich Fifteen hundred and Seventy Dollars in full Six months' interest due June 1st, 1903 on Bonds of H. K. Davenport aggregating \$78,500 secured by Mortgage on premises No. 281-285 Lenox Ave., 107 W. 124 St., 208 East 126 St., 443 Pleasant Ave. cor. East 123 St. New York City.

\$1570.00

1784

Martin L. Ungrich.

Exhibit 27.

New York City, Sept. 3rd, 1902.

Received of Henry Ungrish, Jr. and Martin Ungrich, Trustees Estate of Henry Ungrich, Seven hundred and Eighty five Dollars, in full three months' interest up to Sept. 1st 1902 on Bonds of H. K. Davenport for \$78,500 secured by Mortgage on premises No. 208 E. 126th St., 443 Pleasant Ave., 107 W. 124 St., 281-285 Lenox Ave., Manhattan, N. Y. City.

\$785.00.

1785

Martin Louis Ungrich.

James Demarest
Counsellor-at-Law
140 Nassau St.

James Demarest
Counsellor-at-Law
140 Nassau St.

1786

Exhibit 28.

July 17th, 1903.

Received from Henry Ungrich Jr. and Martin Ungrich Forty four and 62/100 Dollars in full interest to July 1, 1903, on \$3000. on deposit in Knickerbocker Trust Co., N. Y. City.
\$44.66/100

M. Louis Ungrich.

Exhibit 29.

Oct. 1st, 1903.

Received from Henry Ungrich, Jr. and Martin Ungrich Trustees Est. Henry Ungrich Eight and 48/100 Dollars interest due me from Est. of Henry Ungrich.
\$8.48/100

M. Louis Ungrich.

Exhibit 30.

New York City, Nov. 23rd, 1903.

1788 James Demarest
Counsellor-at-Law
140 Nassau St.

Received of Henry Ungrich, Jr. & Martin Ungrich, Exer & Trustee Est. H. Ungrich, Eleven hundred and fifty Dollars, on account interest due Dec. 1st, 1903 from Est. of Henry Ungrich.

Martin L. Ungrich.

Exhibit 31.

Dec. 22nd, 1903

Received from Henry Ungrich Jr. and Martii Ungrich, Executors, Est, Henry Ungrich, dec'd, Four hundred and Sixty and 36/100 Dollars in full bal. income due Dec. 1, 1903, from said Est

Henry Ungrich, dec'd. making a total of Sixteen 1789
hundred and ten 36/100 dollars to date.
\$460. 36/100

Martin L. Ungrich.

Exhibit 32.

James Demarest
Counselor-at-Law
140 Nassau St.

New York City, June 2nd, 1904.
Received of Henry Ungrich, Jr. and
Martin Ungrich, Trustees Est. of Henry
Ungrich (through James Demarest,
atty.) Four hundred and twenty dollars,
in full six months' interest due June 1st,
1904 on Bonds of H. K. Davenport for 1790
\$11,000 secured by mortgage on premises
No. 208 E. 126 St. and 443 Pleasant Ave.
\$420.00/100

Martin L. Ungrich.

Exhibit 33.

James Demarest
Counselor-at-Law
140 Nassau St.

New York City, June 9th, 1904.
Received of Henry Ungrich, Jr. and
Martin Ungrich, Trustees Est. of Henry
Ungrich, Eleven hundred and fifty Dol-
lars, in full Six months' interest due June 1791
1st 1904 on Bonds of H. K. Davenport for
\$57,500 secured by Mortgage on premises
No. 281, 283 & 285 Lenox Ave. and 107
West 124 St.
\$1150.00/100

Martin L. Ungrich.

1792

Exhibit 34.

New York, July 11th, 1904.

Received from Henry Ungrich, Jr. and Martin Ungrich, Trustees of the Estate of Henry Ungrich, Deceased, Fifty six and 16/100 Dollars interest on the sum of \$3224.11 from Nov. 3, 1903 to June 30th, 1904.

\$56.16/100

M. Louis Ungrich.

Exhibit 35.

Dec. 6th, 1904.

1793

Received from Henry Ungrich, Jr. and Martin Ungrich, Exrs & Trustees Est. Henry Ungrich Fifteen hundred and seventy and 00/100 Dollars income due from Estate Henry Ungrich to Dec. 1st, 1904.

\$1570.00/100

M. Louis Ungrich.

Exhibit 36.

Duplicate

Dec. 6th, 1904.

Received from Henry Ungrich, Jr. and Martin Ungrich, Exrs & Trustees Est. Henry Ungrich Fifteen hundred and seventy and 00/100 Dollars income due from estate Henry Ungrich to Dec. 1, 1904.

\$1570.00

M. Louis Ungrich.

Exhibit 37.

1795

Jan. 10th, 1905.

Received From Henry Ungrich, Jr. and Martin
Ungrich Trustees Est. of Henry Ungrich, Forty-
eight and 74/100 Dollars income from Est. of
Henry Ungrich, decd.

\$48.74/100

Martin L. Ungrich.

Exhibit 38.

New York City, June 2nd, 1905.

Duplicate

1796

Received of Henry Ungrich, Jr. and
Martin Ungrich, Trustees Est. of Henry
Ungrich—Fifteen hundred and Seventy
Dollars, in full six months' interest due
June 1st, 1905 for \$78,500 held by said
trustees.

\$1570.00/100

Martin L. Ungrich.

Exhibit 39.

New York City, June 2nd, 1905.

Received of Henry Ungrich, Jr. and 1797
Martin Ungrich, Trustees Est. of Henry
Ungrich, Fifteen hundred and Seventy
Dollars in full Six months' interest due
June 1st, 1905 for \$78,500.

\$1570.00/100

Martin L. Ungrich.

James Demarest
Counsellor-at-Law
140 Nassau St.

James Demarest
Counsellor-at-Law
140 Nassau St.

1798

Exhibit 40.

July 7th, 1905.

Received from Henry Ungrich, Jr. and Martin Ungrich, Executors &c. under Will of Henry Ungrich, dec'd, Forty seven and 88/100 Dollars int. to July 1st 1905 on funds in Knickerbocker Trust Co.

\$47.88

Martin L. Ungrich.

Exhibit 41.

Duplicate

1799

July 7th, 1905.

Received from Henry Ungrich, Jr. and Martin Ungrich, Executors &c. under will of Henry Ungrich, dec'd Forty seven and 88/100 Dollars int. to July 1st 1905 on funds in Knickerbocker Trust Co.

\$47.88/100

Martin L. Ungrich.

Exhibit 42.

New York City, Nov. 29th, 1905.

1800

James Demarest
Counselor-at-Law
140 Nassau St.

Received of Henry Ungrich, Jr. and Martin Ungrich, Trustees Est. of Henry Ungrich Eleven hundred and fifty Dollars, in full Six months' interest due Dec. 1st, 1905 on Bond of H. K. Davenport for \$57,500 secured by mortgage on premises No. 281, 283 & 285 Lenox Ave. and 107 West 124 St. New York City.

\$1150.00/100

Martin L. Ungrich.

Exhibit 43.

1801

Duplicate

New York City, Nov. 29th, 1905.

Received of Henry Ungrich, Jr. and Martin Ungrich Trustees Est. of Henry Ungrich Eleven hundred and fifty Dollars, in full six months' interest due Dec. 1st 1905 on bond of H. K. Davenport for \$57,500 secured by Mortgage on premises No. 281, 283 & 285 Lenox Ave, and 107 W. 124 St. New York City.
\$1150.00/100

Martin L. Ungrich.

1802

Exhibit 44.

New York City, Dec. 11th, 1905.

Received of Henry Ungrich, Jr. and Martin Ungrich Trustees Est. of Henry Ungrich Four hundred and twenty Dollars, in full Six months' interest due Dec. 1st, 1905 on Bonds of H. K. Davenport for \$21,000 secured by Mortgages on premises E. 126 St. & 443 Pleasant Ave. N. Y. City.
\$420.00/100

Martin L. Ungrich. 1803

James Demarest
Counsellor-at-Law
140 Nassau St.

Counsellor-at-Law
140 Nassau St.
James Demarest

1804

Exhibit 45.

New York City, Dec. 11th, 1905.

Duplicate.

James Demarest
Counselor-at-Law
140 Nassau St.

Received of Henry Ungrich, Jr. and Martin Ungrich, Trustees Est. of Henry Ungrich Four hundred and twenty dollars, in full Six months' interest due Dec. 1st, 1905 on Bonds of H. K. Davenport for \$21,000 secured by Mortgages on premises E. 126 St. & 443 Pleasant Ave. N. Y. City.

\$420.00/100

Martin L. Ungrich.

1805

Exhibit 46.

Jan. 5th, 1906.

Duplicate.

Received from Henry Ungrich, Jr. & Martin Ungrich, Trustees Est. of Henry Ungrich, dec'd, Forty Eight and 68/100 Dollars int. to Jan. 1, 1906 on fund in Knickerbocker Trust Co.

\$48.68/100

Martin L. Ungrich.

1806

Exhibit 47.

Jan. 5th, 1906.

Received from Henry Ungrich, Jr., & Martin Ungrich, Trustees Est. of Henry Ungrich, dec'd, Forty eight and 68/100 Dollars int. to Jan. 1, 1906 on fund in Knickerbocker Trust Co.

\$48.68/100

Martin L. Ungrich.

Exhibit 48.

1807

Duplicate.

New York City, June 4th, 1906.

Received of Henry Ungrich, Jr. & Martin Ungrich, Ex & Trustee Est. of Henry Ungrich, Fifteen hundred and Seventy Dollars, in full Six months' interest due me June 1st, 1906 on Bonds of H. K. Davenport aggregating \$78,500.
\$1570.00/100

Martin L. Ungrich.

James Demarest
Counselor-at-Law
140 Nassau St.

Exhibit 49.

1808

New York City, June 4th, 1906.

Received of Henry Ungrich, Jr. & Martin Ungrich, Ex & Trustees Est. of Henry Ungrich, Fifteen hundred and seventy Dollars, in full six months' interest due me June 1st 1906 on Bonds of H. K. Davenport aggregating \$78,500.
\$1570.00/100

Martin L. Ungrich.

James Demarest
Counselor-at-Law
140 Nassau St.

Exhibit 50.

1809

July 3rd, 1906.

Received from Henry Ungrich, Jr. and Martin Ungrich, Exers Est. Henry Ungrich Forty Seven 88/100 Dollars in full interest to July 1, 1906 on \$3224.11/100.
\$47.88/100

Martin L. Ungrich.

1810

Exhibit 51.

Duplicate

July 3rd, 1906.

Received from Henry Ungrich, Jr. and Martin Ungrich, Exers Est. Henry Ungrich Forty Seven 88/100 Dollars in full interest to July 1, 1906 on \$3224.11/100.
\$47.88/100

Martin L. Ungrich.

Exhibit 52.

Brooklyn, N. Y. C.

Oct. 24th 1904

1811

Mr. Jas Demarest

My dear Sir:

Will call & see you either Tuesday or Wednesday between 11 and 1 Ock P. M.

Have some matters to talk over with you in regard to my Father's est matters in respect to the mtge tax etc. not at all clear to me.

Respectfully yours,

Martin L. Ungrich
No. 426 St. Marks Ave.

1812

Exhibit 53.

[Postal Card.]

No. 224 Prospect Pl.

Brooklyn N. Y. C.

July 13th, 1903.

Mr. Jas. Demarest

Your letter recd Will see you either Tuesday or Thursday. Cannot call Wed. as requested.

Yours respty
Martin L. Ungrich.

Exhibit 54.

1803

July 13th, 1903.

M. Louis Ungrich, Esq.,

Dear Sir:—

Please call and get interest check on Wednesday (15th) at 11 o'clock.

Yours truly,
James Demarest.

Exhibit 55.

Martin L. Ungrich,
Architect & Supt.

1804

No. 426 St. Marks Ave., Bklyn.

Brooklyn N. Y. Co.
Nov. 27th, 1905

Mr. James Demarest,

Dear Sir

I have a man an old friend of our family & Brother in law to L. K. & Martin Ungrich (Mr. Frederick Biehl, No. 284 Hewes St. Brooklyn, N. Y.) who would be glad to get from 10 to 13000 00/100 in December to build with. He & partner have 59 Brooklyn lots almost clear. Write to Henry & Martin my Exs. in regard to this.

1805

I will have Mr. Biehl at your office next Friday 11 to 12.30 to see you.

He will pay 5% & perhaps 5½% Int.

Yours respy.

Martin L. Ungrich.

P. S. Would come over to see you in place of writing this, but my foot has swollen again, so I cannot get my shoe on.

1816

Exhibit 56.

No. 224 Prospect Place
 Brooklyn N. Y. C.
 Feby 21st 1904.

Mr. James Demarest

My Dear Sir:—

Your letter recd O'K. Monday being a Holiday I will call at your office either Tuesday or Wednesday next in reference to tax notice etc. Have been down to Baltimore during past few days & got home Saturday evening

1817

Yours very respy.
 Martin L. Ungrich.

Exhibit 57.

New York Mar 24th 03

Dear Mr. Demarest

1818 Have not heard from you lately as I expected about that \$25000.00 mgt. tax, or the threat of Henry's as per his last letter which I let you read the last time I saw you. Enclosed find clipping from N. Y. World of 23rd. Why cannot I also be held exempt from taxation. I am simply a life beneficiary of my Father's will hold no real right in same etc. etc. which you can better understand than I. Is Henry in or out of town? I have not answered any of his 2 last letters to me because they make me tired & if he sends me any more of the same calibre I will get Genl Green after him in damn short order for when anybody sends

such threatening letters thro the mail there is a 1819
law to handle such damn crazy people as he.

Yours very truly
Martin L. Ungrich
224 Prospect Place.,
Brooklyn, N. Y. C.

Please answer at earliest cov, as Daniels case
parallels mine exactly.

Exhibit 58.

Office of
James Demarest 1820
Attorney and Counselor at Law
140 Nassau Street
Telephone Cable Address
"Jamesrest" New York
New York, May 23rd, 1906.

Martin L. Ungrich, Esq.,
426 St. Marks Ave.,
Brooklyn, N. Y.

Dear Louis:

I have received your report on Underhill
Avenue loan and have concluded to lay the Hop-
kins Street matter before the executors, but I will
not send the application to them until I get a re- 1821
port from you on the application which I now en-
close.

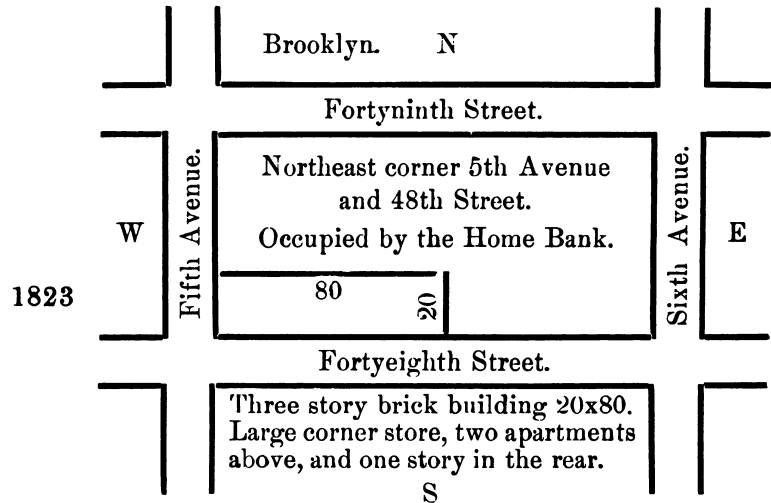
From the description given me, I think this may
be better than the hopkins Street. Please look at
it at once and let me have a report without fail to-
morrow, Thursday, so that I may send the two ap-
plications or which ever you deem the best, to

1822 the executors to-morrow, Thursday night, and oblige,

Yours truly,

(Dic. J. D.)

James Demarest.



Value of Building \$16,500.

Annual Rent \$1,702.

Exhibit 59.

Mr. James Demarest

1824 My Dear Sir:

This appln is the best yet. Tell my Bro Henry & Martin I am satisfied either here or Hopkins Street.

Yours M. L. U.

SURROGATES' COURT.

COUNTY OF NEW YORK.

In the Matter of the Judicial
Settlement of the Account of
Proceedings of Henry Ung-
rich, Jr., and Martin Ung-
rich, as Executors of Henry
Ungrich, deceased.

To the Surrogates' Court of the County of New York. 1826

The petition of Henry Ungrich, Jr., residing at 60 West 129th Street, Borough of Manhattan, New York City, respectfully sheweth:

That letters testamentary under the last will and testament of Henry Ungrich, late of the City of New York, deceased, were granted by this court to your petitioner and Martin Ungrich on the 11th day of April 1901. That the only persons interested in the estate of said decedent as creditors or persons claiming to be creditors, or as his next of kin, legatees or otherwise, together with their places of residence are, to the best of your petitioner's knowledge, information and belief, as follows, to wit: 1827

Henry Ungrich, Jr., a son of deceased, who resides at 60 West 129th Street, Manhattan, New York City.

Martin Louis Ungrich, a son of deceased, who resides at 437 West 44th Street, Manhattan, New York City.

Martin Ungrich, a nephew of deceased, who re-

1828 sides at 213 West 133rd Street, Manhattan, New York City.

Henry Ungrich, a nephew of deceased, who resides at 518 West 183rd Street, Manhattan, New York City.

Maria Rodenbach, a niece of deceased, who resides at Kruesnach, Rheinisch Prussia, Germany.

And no bonds were ever given or required.

That all of the above are of full age and sound mind.

That more than one year has elapsed since the issuance of said letters testamentary.

1829 Your petitioner therefore prays that his account may be judicially settled and that the persons above mentioned may be cited to attend the settlement.

Henry Ungrich, Jr.
Petitioner.

Dated New York May 22, 1902.

County and State of New York, ss:

Henry Ungrich, Jr., the petitioner named in the foregoing petition, being duly sworn, deposes and says that he has read the foregoing petition subscribed by him and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

1830

Henry Ungrich, Jr.
Petitioner.

Sworn to this 22d day of }
May, A. D. 1902 }

Harry K. Davenport,
Commissioner of Deeds,
City of New York.

SURROGATES' COURT,

COUNTY OF NEW YORK.

In the Matter of the Judicial
Settlement of the Account of
Henry Ungrich, Jr., and
Martin Ungrich, as Execu-
tors of Henry Ungrich, de-
ceased.

Account of
Proceedings.

To the Surrogate's Court of the County of New
York: 1832

We, Henry Ungrich, Jr. and Martin Ungrich,
both of the County of New York, do render the
following account of our proceedings as executors
of Henry Ungrich, deceased:

On the 11th day of April, A. D., 1901, letters
testamentary were issued to us. On the 12th day
of May, A. D., 1902, we caused an inventory of
the personal estate of the deceased to be filed in
this office, which personal estate therein set forth
amounts by appraisement by the appraisers duly
appointed to \$11,549,75.

Schedule A, hereto annexed, contains a state-
ment of all the property contained in said in-
ventory sold by us at public or private sale, with
the prices and manner of sale, which sales were
fairly made by us at the best prices that could be
had with due diligence, as we then believed. It
also contains a statement of all the debts due the
said estate and mentioned in said inventory,
which have been collected, and also of all interest
or moneys received by us, for which we are legally
accountable. 1833

1834 Schedule B, hereto annexed, contains a statement of all debts in said inventory mentioned, not collected or collectible by us, together with the reasons why the same have not been collected and are not collectible, and also a statement of the articles of personal property mentioned in said inventory unsold, and the reasons of the same being unsold, and the appraised value, and also a statement of all property mentioned therein lost by accident, without any willful default or negligence, the cause of its loss and appraised value. No other assets than those in said inventory or herein set forth, have come to our possession or knowledge. All the increase or decrease in the value of any assets of said deceased is allowed or changed in said Schedules A and B.

Schedule C, hereto annexed contains a statement of all moneys paid by us for funeral and other necessary expenses for said estate, together with the reasons and object of such expenditure.

1836 On or about the first day of May, in the year 1901, we caused a notice for claimants to present their claims against the said estate to us within the period fixed by law, and at a certain place therein specified, to be published in two newspapers, according to law, for six months, pursuant to an order of the Surrogate's Court of the County of New York, to which order, notice and proof of publication duly filed, we refer as part of this account.

Schedule D, hereto annexed, contains a statement of all the claims of creditors presented to and allowed by us, or disputed by us, and for which a judgment or decree has been rendered against us, together with the names of the claimants, the general nature of the claim, its amount, and the time

of the rendition of the judgment. It also contains 1837
a statement of all moneys paid by us to the cred-
itors of the deceased, and their names and the
time of such payment.

Schedule E, hereto annexed, contains a state-
ment of all moneys paid to the legatees, widow or
next of kin, of the deceased.

Schedule F, hereto annexed, contains the names
of all persons entitled as widow, legatee, or next
of kin, of the deceased, to a share of his estate,
with their places of residence, degree of relation-
ship, and a statement of which of them are minors,
and wheter they have any general guardian, and
if so, their names and places of residence, to the 1838
best of our knowledge, information and belief.

Schedule G, hereto annexed, contains a state-
ment of all other facts affecting our administration
of said estate, our rights and those of others in-
terested therein.

We charge ourselves as follows:

With amount of Inventory	\$11,549.75	
With increase as shown by Exhibit		
A,	10,039.13	
	<hr/>	
	\$21,588.88	\$21,588.88

We credit ourselves as follows:

With amount of unsold property,		
as per Schedule B,	\$5.00	1839
With debts not collected, as per		
bill,		
With Schedule C,	2,072.59	
With " D,	4,437.45	
With " E,	9,403.91	
	<hr/>	
	\$15,918.95	15,918.95

Leaving a balance of \$5,669.93

to be distributed to those entitled thereto, subject
to the deductions of the amount of their commis-

1840 sions, and the expenses of this accounting. Said Schedules which are severally signed by us, are part of this account.

Martin Ungrich, Jr.
Martin Ungrich.

SCHEDULE A.

1901.

	Mch.	Cash received, rents collected, E. 126th St., N. Y. C.,	\$163.50
	"	Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	178.00
	"	Cash received, rents collected, 283 Lenox Ave., N. Y. C.,	162.00
1841	"	Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	139.00
	"	Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	106.50
	"	Cash received, rents collected, 450 E. 123rd St., N. Y. C.,	66.00
	Mch. 11	Cash received St. Luke's Hospital, rebate on bill,	30.84
	Apr.	Cash received, rents collected, 208 E. 126th St. N. Y. C.,	201.00
	"	Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	178.00
	"	Cash received, rents collected, 283 Lenox Ave., N. Y. C.,	140.00
	"	Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	139.00
1842	"	Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	104.00
	"	Cash received, rents collected, 450 E. 123rd St., N. Y. C.,	73.00
	"	Cash received, rents collected, 107 West 124th St., N. Y. C.,	40.00
	"	Cash received, St. Louis, S. W. R. R., May coupon,	20.00
	May	Cash received, rents collected, 208 E. 126th St., N. Y. C.,	164.50
	"	Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	178.00
	"	Cash received, rents collected, 283 Lenox Ave., N. Y. C.,	140.00

		Voucher No. 1843
1901		
"	Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	144.00
"	Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	120.00
"	Cash received, rents collected, 450 E. 123rd St., N. Y. C.,	73.00
"	Cash Texas & Pacific, June coupon,	25.00
June	Cash received, rents collected, 107. W. 124th St., N. Y. C.,	40.00
"	Cash received, rents collected, 208 E. 126th St., N. Y. C.,	162.00
"	Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	178.00
"	Cash received, rents collected, 283 Lenox Ave., N. Y. C.,	140.00
"	Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	144.00
"	Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	110.50
"	Cash received, rents collected, 450 E. 123rd St., N. Y. C.,	51.00
July	Cash received, rents collected, 107 W. 124th St., N. Y. C.,	40.00
"	Cash received, rents collected, 208 E. 126th St., N. Y. C.,	145.50
"	Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	178.00
"	Cash received, rents collected, 283 Lenox Ave., N. Y. C.,	140.00
"	Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	144.00
"	Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	115.50
"	Cash received, rents collected, 450 E. 123rd St., N. Y. C.,	66.00
Aug.	Cash received, rents collected, 107 W. 124th St., N. Y. C.,	40.00
"	Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	178.00
"	Cash received, rents collected, 283 Lenox Ave., N. Y. C.,	140.00
"	Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	120.00
"	Cash received, rents collected, 208 E. 126th St., N. Y. C.,	171.00

1844

1845

	1901	Voucher No.
1846	" Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	94.00
	" Cash received, rents collected, 450 E. 123rd St., N. Y. C.,	51.00
Sept.	Cash received, rents collected, 107 W. 124th St., N. Y. C.,	40.00
	" Cash received, rents collected, 208 E. 126th St., N. Y. C.,	126.00
	" Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	178.00
	" Cash received, rents collected 283 Lenox Ave., N. Y. C.,	140.00
	" Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	120.00
	" Cash received, rents collected, 443 Pleasant Ave.,	88.50
1847	" Cash received, rents collected, 450 E. 123rd St., N. Y. C.,	51.00
Oct.	Cash received, rents collected, 107 W. 124th St., N. Y. C.,	40.00
	" Cash received, rents collected, 208 E. 126th St., N. Y. C.,	134.00
	" Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	153.00
	" Cash received, rents collected 283 Lenox Ave., N. Y. C.,	140.00
	" Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	145.00
	" Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	83.50
	" Cash received, rents collected, 450 E. 123rd St., N. Y. C.,	66.00
Nov.	Cash received, rents collected, 107 W. 124th St., N. Y. C.,	40.00
1848	" Cash received, rents collected, 208 E. 126th St., N. Y. C.,	143.00
	" Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	153.00
	" Cash received, rents collected 283 Lenox Ave., N. Y. C.,	140.00
	" Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	145.00
	" Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	93.50
	" Cash received, rents collected, 450 E. 123rd St., N. Y. C.,	66.00
	" Cash received, Texas & Pacific, Dec. coupon,	25.00

1901.		Voucher No. 1849
Dec.	Cash received, rents collected, 107 W. 124th St., N. Y. C.,	40.00
"	Cash received, rents collected, 208 E. 126th St., N. Y. C.,	151.00
"	Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	153.00
"	Cash received, rents collected 283 Lenox Ave., N. Y. C.,	140.00
"	Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	145.00
"	Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	63.50
"	Cash received, rents collected, 450 E. 123rd St., N. Y. C.,	66.00
1902.		
Jan.	Cash received, rents collected, 107 W. 124th St., N. Y. C.,	40.00
"	Cash received, rents collected, 208 E. 126th St., N. Y. C.,	137.00
"	Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	177.00
"	Cash received, rents collected, 283 Lenox Ave., N. Y. C.,	140.00
"	Cash received, rents collected, 285 Lenox Ave., N. Y. C.,	145.00
"	Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	96.50
"	Cash received, rents collected, 450 W. 123rd St., N. Y. C.,	66.00
Feb.	Cash received, rents collected, 107 W. 124th St., N. Y. C.,	40.00
"	Cash received, rents collected, 208 E. 126th St., N. Y. C.,	153.50
"	Cash received, rents collected, 281 Lenox Ave., N. Y. C.,	177.00
"	Cash received, rents collected, 283 Lenox Ave., N. Y. C.,	140.00
"	Cash received, rents collected, 285 Lenox Ave.,	147.50
"	Cash received, rents collected, 443 Pleasant Ave., N. Y. C.,	91.00
"	Cash received, rents collected, 450 E. 123rd St.,	59.00
1901.		
Aug.	Cash received, interest N. Y. Security & Trust Co.,	4.52

		Voucher No.
1852	1902.	
	Jan. 1 Cash received, interest N. Y. Security & Trust Co.,	94.19
	1901.	
	May Cash received, interest Colonial Trnst Co.,	5.07
	July 1 Cash received, interest Savings Banks,	133.01
	1902.	
	Oct. 31 Cash received, St. Louis & S. W. O. V. coupon,	20.00
	1902.	
	Feb. 27. Cash received, increase on sale of one Texas & Pacific R. R. first mort- gage, 5% gold bond over and above inventory,	25.00
	Feb. 27 Cash received, increase on sale \$1,000 St. Louis & S. W. first mortgage gold bond, over and above inven- tory,	5.00
1853	Feb. 27 Cash received, increase on sale of 20 shares Wheeling & Lake Erie R. R. 1st mortgage, over and above in- ventory,	40.00
		<hr/>
		\$10,039.13
		Henry Ungrich, Jr. Martin Ungrich.

1854

SCHEDULE B.

1855

Jewelry in the hands of Executors and not sold, \$5.00
 Henry Ungrich, Jr.
 Martin Ungrich.

SCHEDULE C.

		Voucher No.	
1901.			
Mch. 9	Cash paid P. L. Bogert, Florist,	\$20.00—	1
May 13	Cash paid F. Hulberk, undertaker,	294.65—	2
May 28	Cash paid R. Caterson, monumental work,	44.75—	3
July 3	Cash paid James Demarest on ac- count of counsel fees and dis- bursements,	500.00—	4
Apr. 25	Cash paid Sundry disbursements, witness fees, certificate, etc.,	14.10—	5
June 10	Cash paid, advertising for claims in Law Journal,	20.00—	6
June 10	Cash paid, advertising for claims in Commercial Advertiser,	30.00—	7
Aug. 30	Cash paid, Transfer tax,	119.09—	8
1902			
Feb. 24	Cash paid C. W. Luyster, Jr. Ap- praiser,	15.00—	9
Feb. 24	Cash paid P. H. Loftus, appraiser,	15.00—	00
Feb. 27	Cash paid James Demarest, bal- ance counsel fees,	1000.00—	11
		<hr/>	
		\$12072.59	

Henry Ungrich, Jr.
 Martin Ungrich.

1857

1858

SCHEDULE D.

	1901	Voucher No.
Mch.	1 Cash Paid P. Mayer, Janitor,	\$8.60— 12
"	13 Cash paid Consolidated Gas Co., gas,	2.90— 13
"	3 Cash paid J. H. Meridt, paniter,	2.40— 14
"	9 Cash paid J. E. Kehoe, locksmith,	1.45— 15
"	15 Cash paid M. Moonan, domestic,	15.00— 16
"	15 Cash paid H. Holberg, Janitor,	.70— 17
"	15 Cash paid Consolidated Gas Co., gas	11.40— 18
"	31 Cash paid F. W. Abeling, Janitor,	27.00— 19
"	31 Cash paid H. Kolberg, Janitor,	16.00— 20
Apr.	1 Cash paid P. Mayer, Janitor,	13.90— 21
"	5 Cash paid G. B. Brown, plumber,	8.96— 22
"	6 Cash paid Consolidated Gas Co., gas,	3.30— 23
1859	" 6 Cash paid G. A. Feld Co., stoves,	2.35— 24
"	5 Cash paid Ilsley & Held Co., paint- ers' supplies,	2.43— 25
"	6 Cash paid J. B. Kehoe, locksmith,	4.00— 26
"	8 Cash paid M. Bachrach, stationery,	1.30— 27
"	11 Cash paid F. H. Hinds, carpentry,	1.21— 28
"	19 Cash paid Consolidated Gas Co., gas,	6.20— 29
"	24 Cash paid Dept. of Water Supply, water rent,	96.50— 30
"	3 Cash paid Consolidated Gas Co., gas,	3.40— 31
"	30 Cash paid F. W. Abeling, janitor,	27.00— 32
Mch.	30 Cash paid H. Kolberg, Janitor,	16.35— 33
"	30 Cash paid G. B. Brown, plumber,	63.35— 34
Apr.	30 Cash paid W. Helms, plumber,	3.00— 35
"	30 Cash paid P. Mayer, Janior,	15.45— 36
"	30 Cash paid J. H. Merridt, painter,	2.25— 37
1860	" 30 Cash paid C. W. H. Elting, carpenter,	9.29— 38
May	3 Cash paid F. H. Hinds, carpenter,	3.50— 39
"	4 Cash paid H. C. F. Koch & Co., sundries,	2.04— 40
"	4 Cash paid W. Stone, mason,	65.00— 41
"	6 Cash paid Dept. of Water Sup- ply, water rent,	109.00— 42
"	7 Cash paid Ilsley & Held Co., paint- ers' supplied,	3.47— 43
"	15 Cash paid J. E. Kehoe, locksmith,	3.80— 44
"	15 Cash paid W. Helms, plumber,	9.00— 45
"	14 Cash paid J. H. Merridt, painter,	32.48— 46

1901.		Voucher No.	1861
"	19 Cash paid E. A. Briggs Co., hardware,	.40—	47
"	28 Cash paid Henry Ungrich, Jr., sundries,	1.39—	48
"	31 Cash paid F. W. Abeling, janitor,	27.00—	49
"	31 Cash paid H. Kolberg, janitor,	16.00—	50
"	31 Cash paid P. Mayer, janitor,	8.00—	51
June	1 Cash paid Croft Bros., carpets,	149.03—	52
"	3 Cash paid H. C. F. Koch & Co., sundries,	1.01—	53
"	4 Cash paid Consolidated Gas Co., gas,	7.40—	54
"	1 Cash paid H. Kolkmann, roofer,	4.15—	55
"	4 Cash paid H. Kolberg, janitor,	2.35—	56
"	5 Cash paid J. E. Kehoe, locksmith,	10.13—	57
"	5 Cash paid F. W. Abeling, janitor,	.40—	58
"	7 Cash paid Ilsley & Held Co., painters' supplies,	11.65—	59
"	6 Cash paid J. H. Merridt, painter,	40.61—	60
"	1 Cash paid G. B. Brown, plumber,	19.02—	61
"	7 Cash paid A. Larsen, elevators,	12.50—	62
"	10 Cash paid P. Mayer, janitor,	5.00—	63
"	10 Cash paid C. Mann & Co., hardware,	.65—	64
"	18 Cash paid G. Raymond, plasterer,	6.75—	65
"	18 Cash paid P. Mayer, janitor,	5.00—	66
"	19 Cash paid P. Mayer, janitor,	22.00—	67
"	29 Cash paid Consolidated Gas Co., gas,	6.80—	68
"	30 Cash paid F. W. Abeling, janitor,	27.00—	69
"	30 Cash paid H. Kolberg, janitor,	16.00—	70
"	30 Cash paid P. Mayer, janitor,	9.78—	71
"	25 Cash paid C. W. Elting, carpenter,	.75—	72
"	29 Cash paid G. B. Brown, plumber,	14.37—	73
July	2 Cash paid Croft Bros., carpets,	81.70—	74
"	3 Cash paid H. C. F. Koch & Co., sundries,	2.71—	75
"	3 Cash paid Henry Ungrich, Jr., sundries,	1.05—	76
"	3 Cash paid E. A. Briggs Co., sundries,	23.00—	77
"	31 Cash paid Consolidated Gas Co., gas,	5.70—	78
"	24 Cash paid J. H. Merridt, painter,	3.50—	78
"	31 Cash paid G. B. Brown, plumber,	11.05—	80
"	31 Cash paid P. Mayer, janitor,	8.30—	81
"	31 Cash paid H. Kolberg, janitor,	17.85—	82
"	31 Cash paid E. W. Abeling, janitor,	29.35—	83

1862

1863

1864	1901.	Voucher No.
Aug.	1 Cash paid W. J. Davis & Co., sun-	
"	1 Cash paid H. Kolkmann, roofer,	5.00— 85
"	1 Cash paid J. E. Kehoe, locksmith,	9.69— 86
"	5 Cash paid H. C. F. Koch & Co., sundries,	3.26— 87
"	5 Cash paid N. Y. World, advertising,	.60— 88
"	5 Cash paid P. Mayer, janitor,	2.00— 89
"	20 Cash paid Consolidated Gas Co.,	6.90— 90
"	23 Cash paid John H. Merridt, painter,	38.41— 91
"	11 Cash paid F. H. Hines, carpenter,	6.03— 92
"	31 Cash paid F. W. Abeling, janitor,	32.00— 93
"	31 Cash paid H. Kolberg, janitor,	16.00— 94
"	31 Cash paid P. Mayer, janitor,	8.53— 95
Sept.	3 Cash paid G. B. Brown, plumber,	27.27— 96
"	2 Cash paid J. E. Kehoe, locksmith,	5.30— 97
"	3 Cash paid H. C. F. Koch & Co., sundries,	1.79— 98
1865	" 4 Cash paid C. W. H. Elting, car- penter,	3.75— 99
"	9 Cash paid Croft Bros., carpets,	3.75—100
"	9 Cash paid J. H. Meridt, painter,	87.63—101
"	24 Cash paid G. Raymond, plasterer,	11.00—102
"	25 Cash paid G. A. Feld Co.,	2.85—103
"	23 Cash paid A. Glassman, glazier,	4.35—104
"	30 Cash paid P. Mayer, janitor,	10.05—105
"	30 Cash paid H. Kolberg, janitor,	27.00—106
"	30 Cash paid J. Westlund,	15.50—107
"	31 Cash paid G. B. Brown, plumber,	25.56—108
Oct.	1 Cash paid H. Kolkmann, roofer,	4.15—109
"	3 Cash paid H. C. F. Koch & Co.,	2.01—111
"	31 Cash paid J. H. Merritt, painter,	76.53—112
"	15 Cash paid Henry Ungrich, Jr., sundries,	.93—113
1866	" 16 Cash paid Consolidated Gas Co., gas,	11.80—114
"	21 Cash paid A. Smith, railings,	2.00—115
"	10 Cash paid A. Glassman, glazier,	2.00—116
"	31 Cash paid H. Kolberg, janitor,	27.00—117
"	31 Cash paid J. Westlund, janitor,	16.00—118
"	31 Cash paid P. Mayer, janitor,	10.00—119
"	30 Cash paid R. Raymond, plasterer,	5.00—120
"	31 Cash paid G. B. Brown, plasterer,	37.51—121
"	7 Cash paid Receiver of Taxes,	1,710.80—122
"	1 Cash paid H. Holkmann, roofer,	24.35—123

1901.		Voucher No. 1867
"	1 Cash paid H. C. F. Koch & Co., sundries,	1.76—124
"	5 Cash paid J. R. Kehoe, locksmith,	2.10—125
Nov.	1 Cash paid C. W. H. Elting, carpenter,	16.98—126
"	1 Cash paid G. A. Feld & Co., stoves,	4.36—127
"	9 Cash paid A. Glassmaun, glazier,	.85—128
"	7 Cash paid A. Smith, iron railings,	1.50—129
"	8 Cash paid C. Wall, mason,	3.00—130
"	1 Cash paid G. H. Merridt, painter,	97.35—131
"	20 Cash paid F. H. Hind, carpenter,	31.40—132
"	25 Cash paid Consolidated Gas Co., gas,	9.00—133
"	30 Cash paid H. Kolberg, janitor,	27.00—134
"	30 Cash paid J. Westlund, janitor,	16.00—135
"	30 Cash paid P. Mayer, janitor,	8.00—136
Dec.	3 Cash paid G. B. Brown, plumber,	25.08—137
"	1 Cash paid J. E. Kehoe, locksmith,	2.98—138
"	30 Cash paid C. W. H. Elting, carpenter,	2.31—139
"	2 Cash paid H. C. F. Koch & Co., sundries,	1.77—140
"	2 Cash paid G. Raymond, plasterer,	7.75—141
"	1 Cash paid Henry Ungrich, Jr., sundries,	1.07—142
"	6 Cash paid J. D. Merridt, painter,	81.42—143
"	9 Cash paid C. L. Hubbell Co.,	11.50—144
"	12 Cash paid A. Glassman, glazier,	10.00—145
"	23 Cash paid Consolidated Gas Co., gas,	10.00—146
"	24 Cash paid P. Mayer, et al.,	20.00—147
"	12 Cash paid G. A. Feld & Co., stoves,	4.89—148
"	27 Cash paid H. Kolberg, janitor,	27.00—149
"	31 Cash paid J. Westlund, Janitor,	16.00—150
"	31 Cash paid P. Mayer, Janitor,	8.60—151
"	31 Cash paid G. B. Brown, plumber,	16.07—152
"	31 Cash paid J. E. Kehoe, locksmith,	2.00—153
1902		
Jan.	2 Cash paid H. C. F. Koch & Co.,	2.48—154
"	17 Cash paid J. Leach, stationery,	.50—155
"	8 Cash paid Croft Bros., carpets,	7.50—156
"	31 Cash paid Consolidated Gas Co., gas,	10.60—157
"	31 Cash paid J. Westlund, Janitor,	16.00—158
"	31 Cash paid H. Kolberg, Janitor,	27.00—159
"	31 Cash paid P. Mayer, Janitor,	10.25—160

1868

1869

	1902	Voucher No.
1870	" 31 Cash paid Henry Ungrich, Jr., sundries,	1.05—161
	" 31 Cash paid G. B. Brown, plumber,	58.62—162
Feb.	1 Cash paid A. Glassman, plumber,	9.00—163
"	1 Cash paid H. C. F. Koch & Co., sundries,	3.12—164
"	1 Cash paid J. E. Kehoe, locksmith,	2.66—165
"	1 Cash paid C. A. Feld & Co., stoves,	2.83—166
"	1 Cash paid H. Kolkmann, roofer,	10.65—167
"	1 Cash paid G. B. Brown, plumber,	5.48—168
"	4 Cash paid J. H. Merritt, painter,	85.59—169
"	15 Cash paid C. O. Hubbell, stoves,	2.88—170
"	27 Cash paid Department of Water Supply, water rent,	121.20—171
"	20 Cash paid Metropolitan Plate Glass Ins. Co.,	26.01—172
1871	" 28 Cash paid H. Kolberg, Janitor,	27.00—173
"	28 Cash paid J. Westlund,	16.35—174
"	28 Cash paid P. Mayer, Janitor,	8.40—175
"	28 Cash paid Consolidated Gas Co., gas,	9.10—176
Feb.	28 Cash paid G. B. Brown, plumber,	14.13—177
	1901	
Mch.	1 Cash paid Knowers Bros., barbers,	3.00—178
Nov.	1 Cash paid G. H. Dyuber, florist,	12.00—179
		<hr/> \$4437.45
		Henry Ungrich, Jr. Margin Ungrich

SCHEDULE E.

	1901	
1872	May 31 Cash paid Martin Louis Ungrich, income to date,	750.00—180
"	31 Cash paid Henry Ungrich, Jr., income to date,	750.00—181
Aug.	31 Cash paid Martin Louis Ungrich, income to date,	892.77—182
"	31 Cash paid Henry Unggrich, Jr., income to date,	892.77—183
Nov.	30 Cash paid Martin Louis Ungrich, income to date,	820.18—184
"	30 Cash paid Henry Ungrich, Jr., income to date,	820.18—185

1902		Voucher No. 1873
Feb. 28	Cash paid Martin Louis Ungrich, income to date,	739.01—186
Feb. 28	Cash paid Henry Ungrich, Jr., income to date,	739.00—187
" 27	Cash paid Henry Ungrich, Jr., one half share personal estate,	3000.00—188
		<hr/> \$9403.91

Henry Ungrich, Jr.
Martin Ungrich.

SCHEDULE F.

HENRY UNGRICH,	son of the deceased, residing at No. 124 West 125th Street, Borough of Manhattan, New York City.	1874
MARTIN LOUIS UNGRICH,	son of deceased, residing at No. 326 West 43d Street, Borough of Manhattan, New York City.	
MARTIN UNGRICH,	a nephew of deceased, residing at No. 213 West 133rd Street, Borough of Manhattan, New York City.	
HENRY UNGRICH,	a nephew of deceased, residing at No. 213 West 133rd Street, Borough of Manhattan, New York City.	1875
MARIA RODENBACH,	a niece of deceased, residing at Kruesnach, Rheinisch Prussia, Germany.	

Henry Ungrich, Jr.
Martin Ungrich.

1876

SURROGATES' COURT,

COUNTY OF NEW YORK.

In the Matter of the Judicial
Settlement of the Account of
Henry Ungrich, Jr., and
Martin Ungrich, as Execu-
tors of Henry Ungrich, de-
ceased.

County of New York, ss.:

- 1877 Henry Ungrich, Jr., and Martin Ungrich, ex-
ecutors of Henry Ungrich, deceased, being duly
sworn, say that the charges made in the foregoing
account of proceedings and schedules annexed, for
moneys paid by us to creditors, legatees and next
of kin, and for necessary expenses are correct;
that we have been charged therein all the interest
for moneys received by us and embraced in said
account, for which we are legally accountable; that
the moneys stated in said account as collected,
were all that were collectible, according to the
best of our knowledge, information and belief, on
the debts stated in such account at the time of the
settlement thereof; that the allowances in said ac-
count for the decrease in value of any assets, and
1878 the charges therein for the increase in such value,
are correctly made; and that we do not know of
any error in said account, or anything omitted
therefrom, which may in anywise prejudice the
rights of any party interested in said estate. And
deponents further say that the sums under \$20
charged in the said account, for which no vouchers
or other evidences of payment are produced, or
for which we may not be able to produce vouchers

or other evidences of payment, have actually been 1879
 paid and disbursed by us as charged, and that said
 account contains, to the best of our knowledge and
 belief, a just and true statement of all our receipts
 and disbursements of account of the estate of said
 deceased, and of all money and other property be-
 longing to said estate, which have come into our
 hands, or which have been received by any other
 person by us or order of authority for our use,
 and that we do not know of any error or omission
 in the account to the prejudice of any creditor of
 or person interested in the estate of the decedent.

Henry Ungrich. Jr.

Martin Ungrich. 1880

Sworn to before me this 22nd }
 day of May, 1902. }

Harry K. Davenport,
 Commissioner of Deeds,
 City of New York, No. 40.

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

Charles D. Losee, being duly sworn, says that
 he is the principal clerk of the publisher of the
 Commercial Advertiser, a daily newspaper printed
 and published in the Borough of Manhattan, City 1881
 of New York. That the advertisement hereunto
 annexed has been regularly published in the said
 Commercial Advertiser once a week for six months
 successively, commencing on the 8th day of May,
 1901.

Charles D. Losee.

1882 Sworn to before me this 25th }
 day of November, 1901. }

W. J. Maddox,
 Notary Public,
 City and County of New York.
 (Seal.)

“In pursuance of an order of Hon. Abner C. Thomas, the Surrogate of the County of New York, notice is hereby given to all persons having claims against Henry Ungrich, late of the County of New York, deceased, to present the same with vouchers thereof, to the subscribers at their place
 1883 of transacting business, at the office of James Demarest, No. 132 Nassau Street, in the City of New York, Borough of Manhattan, on or before the 12th day of November next.

Dated, New York, the 1st day of May, 1901.”

Henry Ungrich, Jr.,
 Martin Ungrich,
 Executors.

James Demarest, attorney for executors, 132 Nassau Street, Borough of Manhattan, New York City.

1884 State of New York,
 City and County of New York, } ss.:

John J. Cosgrove, being duly sworn, says: That he is the principal clerk of the publisher of the New York Law Journal, a daily newspaper printed and published in the County of New York. That the advertisement hereto annexed has been regularly published in the said The New York Law

Journal once a week for six months successively, 1885
commencing on the 8th day of May, 1901.

John J. Cosgrove.

Sworn to before me this }
day of November, 1901. }

Athelston Baughan,
Notary Public, Kings Co.
Ctf. filed in N. Y. Co.

“Henry Ungrich—In pursuance of an order of
Hon. Abner C. Thomas, Surrogate of the County
of New York, notice is hereby given to all persons
having claims against Henry Ungrich, late of the 1886
County of New York, deceased, to present the
same with vouchers thereof to the subscribers at
their place of transacting business, at the office of
James Demarest, No. 132 Nassau Street, in the
City of New York, Borough of Manhattan, on or
before the 12th day of November, next.

Dated, New York, the 1st day of May, 1901.

Henry Ungrich, Jr.,
Martin Ungrich,
Executors.

James Demarest, attorney for executors, 132
Nassau Street, Borough of Manhattan, New York 1887
City.

Exhibit 62.

THE PEOPLE OF THE STATE OF NEW
YORK,

By the Grace of God, Free and Independent.

To Martin Louis Ungrich, Martin Ungrich, Henry
Ungrich, Maria Rodenbach, and to all persons

1888 interested in the estate of Henry Ungrich, late of the County of New York, deceased, as creditors, legatees, next of kin, or otherwise,
SEND GREETING:

You and each of you are hereby cited and required personally to be and appear before our Surrogate of the County of New York, at the Surrogates' Court of said County, held at the County Court House, in the County of New York, on the 16th day of September, 1902, at half past ten o'clock in the forenoon of that day, then and there to attend a judicial settlement of the account of the proceedings of Henry Ungrich, Jr. and Martin Ungrich, as executors of the last will and testament of said deceased, and such of you as are hereby cited as are under the age of 21 years, are required to appear by your guardian, if you have one, and if you have none, to appear and apply for one to be appointed, or in the event of your neglect or failure to do so, a guardian will be appointed by the Surrogate to represent and act for you in the proceeding.

In Testimony Whereof, we have caused the seal of the Surrogates' Court of the said County of New York to be hereunto affixed.

1890 Witness, Hon. Abner C. Thomas, a Surrogate of our said County, in the County of New York, on the 27th day of May, in the year of our Lord, One thousand nine hundred and two.

(Seal)

J. Fairfax McLaughlin,
Clerk of the Surrogates' Court.

SURROGATES' COURT,

1891

COUNTY OF NEW YORK.

In the Matter of the Judicial
Settlement of the Account of
Henry Ungrich, Jr., and
Martin Ungrich, as Execu-
tors of Henry Ungrich, de-
ceased.

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

Harry K. Davenport of the Borough of Brook- 1892
lyn, City and State of New York, being duly
sworn, says: That he is over the age of twenty
one years. That he made due service of the an-
nexed citation in the above entitled special pro-
ceeding, on the persons named below whom de-
ponent knew to be the persons mentioned and de-
scribed in said citation; by delivering to and
leaving with Martin Louis Ungrich, Martin Un-
grich and Henry Ungrich, personally, a true copy
of said citation, as follows: On the 3rd day of
September, 1902, at office of James Demarest, 140
Nassau Street, Borough of Manhattan, City and
State of New York; on Martin Louis Ungrich, 1893
Martin Ungrich and Henry Ungrich personally.

Harry K. Davenport.

Sworn to before me this 3rd }
day of September, 1902. }

Samuel Schusishler,
Notary Public,
N. Y. Co.

1893

SURROGATES' COURT,

COUNTY OF NEW YORK.

In the Matter of the Judicial Settlement of the Account of Henry Ungrich, Jr., and Martin Ungrich, as Execu- tors of Henry Ungrich, de- ceased.	}
--	---

City and State of New York, ss.:

1895 Harry K. Davenport of New York City, being duly sworn, says: That he is over the age of twenty-one years. That before the date of the first publication, to wit, on the 10th day of June, 1902, deponent deposited in the post office at the County of New York, one set of a copy of the annexed citation and of the order of publication, said set contained in a securely closed, postpaid wrapper, directed to Maria Rodenbach, Kreusnach, Rhein-
ish Prussia, Germany.

Harry K. Davenport.

Sworn to before me this 12th }
 day of September, 1902. }

1896

Samuel Schusishler,
 Notary Public,
 N. Y. Co.

State, City and County of New York, ss.:

William G. Hills being duly sworn saith, that he is the principal clerk of the Publishers of the New York Daily Tribune, a newspaper published in the City of New York by the Tribune

Association; that the advertisement hereto annexed was regularly published in the New York Daily Tribune once a week for seven weeks (seven times) successively, commencing on the 19th day of June, 1902. 1897

Wm. G. Hills.

Sworn to before me this 31st)
day of July, 1902. }

Wm. Barker,
Notary Public, New York County.

(Hereunto annexed is a printed copy of the citation as published in the New York Daily Tribune.) 1898

State, City and County of New York, ss.:

John J. Cosgrove being duly sworn, says that he is the principal clerk of the Publisher of the New York Law Journal, a daily newspaper printed and published in the County of New York. That the advertisement hereto annexed has been regularly published in the said The New York Law Journal, once a week for six weeks, successively, commencing on the 19th day of June, 1902.

John J. Cosgrove.

Sworn to before me this 31st) 1899
day of July, 1902. }

James F. McGuire,
Notary Public,
New York County.

(Hereto annexed is a printed copy of the citation as published in the New York Law Journal.)

1900

Exhibit 63.

At a Surrogates Court, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York, on the 25th day of September, in the year 1902.

Present: Hon. FRANK T. FITZGERALD, Surrogate.

1901

In the Matter of the Judicial Settlement of the Account of Henry Ungrich, Jr., and Martin Ungrich, as Executors of Henry Ungrich, deceased.

1902

Henry Ungrich, Jr., as one of the executors of the last will and testament of Henry Ungrich, late of the County of New York, deceased, having heretofore made application to one of the Surrogates of the County of New York for a judicial settlement of the account of said Henry Ungrich, Jr. and Martin Ungrich, as such executors, and a citation having been thereupon issued, pursuant to Statute, directed to all persons interested in the estate of said deceased, citing and requiring them and each of them personally to be and appear before the said Surrogate at his office in the City of New York, on the 16th day of September, 1902, at 10:30 o'clock in the forenoon of that day, then and there to attend such judicial settlement, and the said citation having been returned with proof of the due service thereof upon Martin Louis Ungrich, Martin Ungrich, Henry Ungrich and Maria Rodenbach, and the said executors having

appeared on the return day of said citation, and 1908
the said executors having rendered their account
under oath before the said Surrogate, and the said
account having been filed in this court with the
vouchers in support thereof, and the said matter
having been duly adjourned to this day, the said
Surrogate after having examined the said account
and vouchers, now herein finds the state and con-
dition of the said account to be as stated and set
forth in the following summary statement thereof,
made by the Surrogate, as judicially settled and
adjusted by him, to be recorded with and taken
to be a part of the decree in this matter, to wit:

A summary statement of the account of the said 1904
executors, made by the Surrogate as judicially
settled and allowed:

The said executors are charged as such

With amount of inventory,	\$11,549.75	
With increase as shown by Sched- ule A,	10,039.13	\$21,588.88

The said executors are credited as such		
With amount of unsold property, Schedule B,	5.00	
With amount of funeral expenses and expenses of administra- tion, Schedule C,	2,072.59	
With amount paid for debts of the deceased, Schedule D,	4,437.45	
With amount paid as legacies, Schedule D,	9,403.91	\$15,919.95

leaving a balance in their hands of \$5,669.93.

The sum of \$5,669.93 in hands of said execu-
tors with which they are hereby charged.

And it appearing that the said executors have
thus fully accounted for all the moneys and prop-
erty of the estate of said deceased which have
come into their hands as such executors, and the

1906 account having been adjusted by the said Surrogate and a summary statement of the same having been made as above and herewith recorded, now on motion of James Demarest, attorney for the executors herein, it is hereby

ORDERED, ADJUDGED AND DECREED that the said account be and the same is hereby judicially settled and allowed as filed and adjusted. And it is

1907 FURTHER ORDERED, ADJUDGED AND DECREED that after the balance so found as above, remaining in their hands, the said executors retain the sum of Three hundred and forty nine and 19/100 (\$349.10) for the commissions to which they are entitled on this accounting, and that they retain the sum of One hundred and seventy seven and 31/100 (\$177.31) for their costs and disbursements on this accounting. And it is

FURTHER ORDERED, ADJUDGED AND DECREED that the balance then remaining in the hands of the said executors (after deducting the aforesaid amounts) to wit Five thousand six hundred and sixty nine and 93/100 (\$5669.93) be held by the said executors, subject to the provisions of the last will and testament of Henry Ungrich, deceased.

1908 Frank T. Fitzgerald,
Surrogate.

Endorsed: Filed September 25, 1902.

Exhibit 64.

1909

Feb. 27 1902.

Received from Est. Henry Ungrich Three thousand and 00/100 Dollars, one half share personal estate.

Henry Ungrich, Jr.

\$3000.00 100

Exhibit 65.

To All to Whom These Presents Shall Come or
May Concern, Greeting:

1910

KNOW YE, That I, Martin Louis Ungrich, son of Henry Ungrich, late of the Borough of Manhattan in the City, County and State of New York, for and in consideration of the sum of Six thousand dollars, lawful money of the United States of America to me in hand paid by my brother Henry Ungrich, Jr., of the same place, the receipt whereof is hereby acknowledged, have remised, released, and forever discharged, and by these presents do for myself and my heirs, executors and administrators, remise, release and forever discharge the said Henry Ungrich, Jr. and his heirs, executors and administrators, of and from all, and all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against him I ever had, now have or which I or my heirs, executors or administrators, hereafter

1911

1912 can, shall or may have for, upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of these presents.

And especially from any and all claims to any part of the proceeds of certain bonds and mortgages assigned to said Henry Ungrich, Jr., by my father Henry Ungrich during his lifetime, or to any part of the moneys which said Henry Ungrich, Jr. has received or may hereafter receive from the proceeds of the said Bonds and Mortgages.

1913 IN WITNESS WHEREOF, I have hereunto set my hand and seal the twenty-third day of June in the year one thousand nine hundred and two (1902).

Martin Louis Ungrich.

Sealed and delivered in the
presence of
James Demarest.

State of New York,)
County of New York,) ss. :

1914 On the twenty third day of June before me personally appeared Martin Louis Ungrich to me known, and known to me to be the same person described in and who executed the within instrument and acknowledged to me that he executed the same.

James Demarest,
Notary Public, Kings Co.
Cert. filed in New York Co.

Exhibit 66.

1915

To all persons interested in the Estate of Henry Ungrich, deceased, as Legatees, next of kin, or otherwise, NOTICE IS HEREBY GIVEN, That the Executors of the Estate of said deceased, with the aid of appraisers, for that purpose duly appointed by the Surrogate of the County of New York will on the 30th day of January, 1902 at 4 o'clock in the afternoon of that day, at office of James Demarest, 132 Nassau Street, Borough of Manhattan, City of New York, in said County, proceed to make an Inventory and Appraisement of all the goods, chattels and credits of said deceased.

1916

Dated this 24th day of January, 1902.

Henry Ungrich, Jr.
Martin Ungrich.

To all persons interested in the Estate of Henry Ungrich, deceased, as Legatees, next of kin, or otherwise, NOTICE IS HEREBY GIVEN, That the Executors of the Estate of said deceased, with the aid of appraisers, for that purpose duly appointed by the Surrogate of the County of New York will on the 30th day of January, 1902 at 4 o'clock in the afternoon of that day, at office of James Demarest, 132 Nassau Street, Borough of Manhattan, City of New York, in said county, proceed to make an inventory and Appraisement of all the goods, chattels and credits of said deceased.

1917

Dated this 24th day of January, 1902.

Henry Ungrich, Jr.
Martin Ungrich, Executors.

1918 (Endorsed on back):

Due and timely service of a copy of the within Notice is hereby admitted.

Dated January 24th, 1902.

Henry Ungrich,
Henry Ungrich, Jr.
Martin Ungrich,
Martin Louis Ungrich.

City and County of New York, ss.:

1919 Harry K. Davenport being duly sworn says that he is the managing clerk in the office of James Demarest, Esq., attorney for the Executors herein; that on the 24th day of January, 1902 he deposited three copies of the annexed original notice of Appraisement in three public places in the County of New York, as required by Statute.

Harry K. Davenport.

Sworn to before me this 13th }
day of May, 1902. }

Samuel Schlesinger,
Notary Public,
N. Y. Co.

1920

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

I, C. W. Luyster, Jr., an appraiser duly appointed by the Surrogate of said County, do swear and declare, that I will truly, honestly, and impartially appraise the personal property of Henry Ungrich, late of the County aforesaid, deceased,

which shall be for that purpose exhibited to me, 1921
to the best of my knowledge and ability.

C. W. Luyster, Jr.

Sworn, this 25th day of January, {
1902, before me. }

W. J. Nagel,
Notary Public, Kings Co.
Cert. in N. Y. Co.

State of New York, {
County of New York, } ss.:

I Patrick H. Loftus an appraiser duly appointed
by the Surrogate of said County, do swear and de- 1922
clare, that I will truly, honestly, and impartially
appraise the personal property of Henry Ungrich,
late of the County aforesaid, deceased, which shall
be for that purpose exhibited to me, to the best of
my knowledge and ability.

Patrick H. Loftus.

Sworn, this 24th day of Feb- {
ruary, 1902, before me. }

Samuel Schlesinger,
Notary Public, N. Y. Co.

State of New York, { 1923
County of New York, } ss.:

Surrogates Office.

Henry Ungrich, Jr. one of the Executors of the
estate of Henry Ungrich, deceased, being duly
sworn, says: that the annexed Inventory is in all
respects just and true; that it contains a true
statement of all the personal property of the said
deceased, which has come to the knowledge of the

1924 deponent, and particularly of all money, bank bills and other circulating medium, belonging to the said deceased, and of all just claims of the said deceased against deponent, to the best of the knowledge of the deponent.

Henry Ungrich, Jr.

Sworn, this 24th day of Jan-
uary, 1902, before me. }

Samuel Schlesinger,
Notary Public, N. Y. Co.

A TRUE AND PERFECT INVENTORY OF
ALL THE GOODS,

1925

Chattels and credits, which were of Henry Ungrich, late of the City of New York, Borough of Manhattan, deceased, made by the Executors of the Estate of said deceased, with the aid and in the presence of C. W. Luyster, Jr. and Patrick H. Loftus, they having been duly appointed and sworn as appraisers; containing a full, just and true statement of all the personal property of the said deceased, which has come to the knowledge of the said Executors of said estate, and particularly of all moneys, bank bills, and all other circulating medium belonging to the said deceased, and of all just claims of the said deceased against

1926

said Executors of all bonds, mortgages, notes, and other securities for the payment of money belonging to the said deceased, specifying the names of the debtor in each security, the date, the sum originally payable, the endorsement thereon, and the sum which, in the judgment of the Appraisers, may be collectible as such security.

Upon the completion of this Inventory, duplicates thereof have been made and signed at the end thereof, by the Appraisers.

INVENTORY AND APPRAISEMENT 1927

OF THE

PERSONAL ESTATE

OF

HENRY UNGRICH,

Deceased.

Died, March 1st, 1901.

	Par Value	Appraised Value	
1901.			
March 1 One \$1000 Texas & Pacific Railroad 1st mortgage, 5 per cent. gold bond,	\$1000.00	\$1180.	
One \$1000 St. Louis & Southwestern 1st mortgage 4 per cent. gold bond	1000.	980.	1928
20 shares Wheeling & Lake Erie Railway 1st preferred stock	2,000.	1100.	
Balance in Hamilton Bank	782.20	782.20	
Net receipts for February, 1901	435.51	435.51	
Cash in Harlem Savings Bank,	1125.24	1125.24	
Cash in Greenwich Savings Bank	1042.66	1042.66	
Cash in German Savings Bank	1028.14	1028.14	
Cash in Bowery Savings Bank	1007.16	1007.16	
Cash in Seaman's Bank for Savings	952.18	952.18	
Cash in Empire City Savings Bank	993.42	993.42	
Cash in Bank for Savings	918.24	918.24	
Promissory notes of Martin Louis Ungrich, payable on demand:			
No. 1 dated April 7, 1899	2600.	0	
No. 2 dated July 13, 1899	100.	0	
No. 3 dated August 2, 1899	35.	0	1929
No. 4 dated September 23, 1899	56.	0	
No. 5 dated October 25, 1899	47.	0	
Gold watch, chain and cuff buttons	5.	5	
	<hr/>	<hr/>	
	15,127.75	11,549.75	
Whole amount of inventory		\$11,549.75	

Dated, New York, February 24, 1902.

C. W. Luyster, Jr.

Patrick H. Loftus,

Appraisers.

1930 State of New York, }
 County of New York, } ss.:

I, Daniel J. Dowdney, Clerk of the Surrogates' Court of said County, do hereby certify that I have compared the foregoing copy of Inventory and Appraisement in the matter of the estate of Henry Ungrich, deceased, with the original record thereof now remaining in this office, and have found the same to be a correct transcript therefrom and of the whole of such original record.

1931 In Testimony Whereof, I have hereunto set my hand and affixed the Seal of the Surrogates' Court of the County of New York, this 5th day of Dec. in the year of our Lord one thousand nine hundred and seven.

(Seal) Daniel J. Dowdney
 Clerk of the Surrogates' Court

Exhibit 67.

1932 THIS INDENTURE, made the twenty-fourth day of April in the year One thousand nine hundred and three, BETWEEN MARTIN LOUIS UNGRICH (son of Henry Ungrich, late of the County of New York, deceased) and FANNIE B. UNGRICH, his wife, both of the Borough of Brooklyn, County of Kings and City and State of New York, parties of the first part, AND HENRY UNGRICH, Jr., of the Borough of Manhattan, City, County and State of New York, party of the second part:

WITNESSETH, that the said parties of the first part, in consideration of the sum of One dollar,

lawful money of the United States, and other valuable consideration paid by the party of the second part, do hereby grant, bargain, sell and release unto the said party of the second part, his heirs and assigns forever, ALL those certain lots, pieces or parcels of land with the buildings and improvements thereon erected, situate, lying and being in the Twelfth Ward of the Borough of Manhattan, City, County and State of New York, bounded and described as follows, to wit.: 1933

PARCEL I. All that certain lot, piece or parcel of land with the building thereon, situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, known and distinguished as lot number 359 (three hundred and fifty-nine) on a map entitled "Map of property belonging to Samson Adolph Benson, living in the Twelfth Ward of the City of New York," New York, May 1848, compiled and surveyed by Francis Nicholson, City Surveyor and filed in the office of the Register of the City and County of New York and numbered 180 (One hundred and eighty) bounded and described as follows: BEGINNING at a point on the Northerly side of One hundred and twenty-fourth Street, distant seventy-five (75) feet westerly from the Westerly side of Sixth Avenue (now 1934
Lenox Avenue) as widened by act of the Legislature of the State of New York, entitled Act for the improvement of part of the city of New York between One Hundred and tenth Street and the Harlem River, passed 24, 1865, Laws of 1865 (Chapter 564, page 1133), which point was distant one hundred feet westerly from the westerly side of Sixth Avenue (now Lenox Avenue) before said widening) thence running Northerly parallel 1935

1936 with said Lenox Avenue (formerly Sixth Avenue) one hundred feet and eleven inches; thence Westerly parallel with One hundred and twenty-fourth Street, twenty-five feet; thence Southerly again parallel with Lenox Avenue (formerly Sixth Avenue) one hundred feet eleven inches to the Northerly side of One hundred and twenty-fourth Street and thence Easterly along said Northerly side of One hundred and twenty-fourth Street, twenty-five feet to the point or place of beginning.

PARCEL II. ALL that certain parcel of land situate, lying and being in the Twelfth Ward of the City of New York, Borough of Manhattan, County and State of New York, bounded and described as follows: BEGINNING at a point at the intersection of the Westerly line or side of Lenox Avenue (formerly Sixth Avenue) with the Northerly line or side of One hundred and twenty-fourth Street; thence running Westerly along said Northerly line or side of One hundred and twenty-fourth Street, seventy-five feet; thence Northerly parallel with Lenox Avenue (formerly Sixth Avenue) fifty-six feet; thence Easterly parallel with One hundred and twenty-fourth Street and part of the distance through the centre of a party wall, seventy-five feet to the Westerly line or side of Lenox Avenue (formerly Sixth Avenue); thence Southerly along the said Westerly line or side of Lenox Avenue (formerly Sixth Avenue) fifty-six feet to the point or place of beginning, be the said several dimensions more or less.

1938 TOGETHER with the appurtenances and all the estate and rights of the said parties of the first part, in and to the said premises,

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of 1939
the first part, have hereunto set their hands and
seals the day and year first above written.

Martin Louis Ungrich (L.S.)

Fannie B. Ungrich (L.S.)

In the presence of
James Demarest

State of New York, }
County of Kings, } ss.:

On this twenty-fourth day of April in the year
One thousand nine hundred and three before me 1940
personally came Martin Louis Ungrich and Fan-
nie B. Ungrich, his wife, to me known, and known
to me to be the individuals described in and who
executed the foregoing instrument, and they
thereupon severally acknowledged to me that they
executed the same.

(Seal) James Demarest
Notary Public
Kings County

State of New York, }
County of Kings, } ss.:

I, Charles T. Hartzheim, Clerk of the County
of Kings, and also Clerk of the Supreme Court of 1941
said County (said Court being a Court of Record),
DO HEREBY CERTIFY that Mr. James Demar-
est whose name is subscribed to the certificate of
proof or acknowledgement of the annexed instru-
ment, and thereon written, was, at the time of
taking such proof or acknowledgement, a NO-
TARY PUBLIC of the State of New York in and
for said County of Kings, dwelling in said County,
commissioned and sworn and duly authorized to

1942 take the same. And further, that I am well acquainted with the handwriting of such Notary, and verily believe that the signature to said Certificate is genuine, and that the said instrument is executed and acknowledged according to the laws of the State of New York.

In Testimony whereof, I have hereunto set my hand and affixed the seal of said County and Court this 27 day of Apr 1903.

Chas T. Hartsheim

(Seal)

Clerk

Exhibit 68.

1943

THIS INDENTURE made the twenty fourth day of April in the year one thousand nine hundred and three.

BETWEEN MARTIN LOUIS UNGRICH (son of Henry Ungrich late of the County of New York deceased) and FANNIE B. UNGRICH his wife both of the Borough of Brooklyn County of Kings and City and State of New York parties of the first part and HENRY UNGRICH JR of the Borough of Manhattan, City County and State of New York party of the second part.

1944 WITNESSETH that the said parties of the first part in consideration of the sum of One Dollar lawful money of the United States and other valuable consideration paid by the party of the second part do hereby grant bargain sell and release unto the said party of the second part his heirs and assigns forever.

ALL that certain lot piece or parcel of land situate lying and being in the Twelfth Ward of the City of New York Borough of Manhattan County and State of New York bounded and described as follows:

BEGINNING at a point formed by the intersection of the Westerly side of Pleasant Avenue (formerly Avenue A) with the Southerly side of One hundred and Twenty third Street; running thence Southerly along said westerly side of Pleasant Avenue (formerly Avenue A) twenty-five feet eleven inches; thence Westerly and parallel with One hundred and twenty third Street one hundred feet; thence Northerly and parallel with Pleasant Avenue (formerly Avenue A) twenty five feet eleven inches to the Southerly side of One hundred and twenty-third Street and thence easterly along the said Southerly side of One hundred and twenty third Street one hundred feet to the place of beginning. 1945 1946

TOGETHER with the appurtenances and all the estate and rights of the said parties of the first part in and to said premises.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF the said parties of the first part have hereunto set their hands and seals the day and year first above written. Martin Louis Ungrich (L. S.) Fannie B. Ungrich (L. S.) In the presence of James Demarest.

State of New York, County of Kings, ss.: On this twenty fourth day of April in the year one thousand nine hundred and three before me personally came Martin Louis Ungrich and Fannie B. Ungrich his wife to me known and known to me to be the individuals described in and who executed the foregoing instrument and they thereupon severally acknowledged to me that they executed the same. James Demarest, Notary Public Kings County. 1947

1948 State of New York County of Kings, ss.:

I, CHARLES T. HARTZHEIM Clerk of the County of Kings and also Clerk of the Supreme Court for said County (said Court being a Court of Record) DO HEREBY CERTIFY that Mr. James Demarest whose name is subscribed to the certificate of proof or acknowledgement of the annexed instrument and thereon written was at the time of taking such proof or acknowledgement a Notary Public of the State of New York in and for said County of Kings, dwelling in said County commissioned and sworn and duly authorized to take the same. And further that I am well ac-

1949 quainted with the handwriting of such Notary and verily believe that this signature to the said Certificate is genuine and that the said instrument is executed and acknowledged according to the laws of the State of New York. In Testimony Whereof I have hereunto set my hand and affixed the seal of said County and Court this 27th day of April 1903. Chas. T. Hartzheim Clerk (L. S.)

Indorsed to be indexed against Block Number 1810 on the land map of the City of New York.

Recorded preceding at the request of Davis & Kaufmann July 31 1903 at 1 o'clock and 20 min. P. M.

1950

John H. J. Ronner,
Register.

REGISTER'S OFFICE

County of New York, State of New York.

I, Frank Gass, Register of the said County, have compared the annexed copy with an instrument recorded in this office on the 31st day of July, A. D. 1903, at 1 o'clock 20 Mins. P. M. in Liber 79 Sec. 6 of Conveyances, page 29 and certify the

same to be a correct transcript therefrom, and of 1951
the whole of said instrument.

IN TESTIMONY WHEREOF, I have
(L. S.) hereunto subscribed my name and
J. M. B. affixed my official seal, this 5th day
F. F. G. of December, 1907.

Frank Gass Register.

Exhibit 69.

THIS INDENTURE, made the twenty-second
day of May, in the year One thousand nine hun- 1952
dred and two, between MARTIN LOUIS UN-
GRICH (son of Henry Ungrich, late of the County
of New York, deceased), and FANNIE B. UN-
GRICH, his wife, both of the Borough of Brook-
lyn, County of Kings and City and State of New
York, parties of the first part and HENRY UN-
GRICH, JR., of the Borough of Manhattan, City,
County and State of New York, party of the sec-
ond part:

WITNESSETH, That the said parties of the
first part in consideration of the sum of one dollar
lawful money of the United States and other valu-
able consideration paid by the party of the second
part, do hereby grant bargain sell and release 1953
unto the said party of the second part his heirs
and assigns forever,

ALL that certain lot, piece or parcel of land,
with the building thereon erected, situate, lying
and being in the Twelfth Ward of the City of New
York, Borough of Manhattan, County and State of
New York, bounded and described as follows, viz.:

BEGINNING at a point on the southerly side of
one hundred and twenty-sixth Street distant one

- 1954 hundred and thirty-five (135) feet Easterly from the corner formed by the intersection of the southerly side of One hundred and twenty-sixth street with the Easterly side of the Third Avenue; running thence southerly and parallel with the Third Avenue, ninety-nine (99) feet and eleven (11) inches to the centre line of the block; thence easterly along the same thirty (30) feet thence North-erly and again parallel with the Third Avenue ninety nine (99) feet and eleven (11) inches to the southerly side of One hundred and twenty-sixth Street aforesaid, and thence Westerly, along the same, thirty (30) feet to the point or place of BE-
GINNING, and known as and by the street num-
ber 208 East 126th Street.

TOGETHER with the appurtenances and all the estate and rights of the said parties of the first part, in and to said premises.

TO HAVE AND TO HOLD the above granted premises unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

MARTIN LOUIS UNGRICH (LS)
FANNIE B. UNGRICH (LS)

- 1956 In the presence of:
James Demarest.

State of New York, }
County of Kings, } ss.:

On this twenty-fourth day of April in the year one thousand nine hundred and three before me personally came, MARTIN LOUIS UNGRICH and FANNIE B. UNGRICH, his wife, to me known, and known to me to be the individuals de-

scribed in and who executed the foregoing instru- 1957
ment, and they thereupon severally acknowledged
to me that they executed the same.

JAMES DEMAREST,
Notary Public,
Kings Co., N. Y.

State of New York, }
County of Kings, } ss.:

I, CHARLES T. HARTZHEIM, Clerk of the
County of Kings, and also Clerk of the Supreme
Court for said County (said Court being a Court
of Record) DO HEREBY CERTIFY, that MR.
JAMES DEMAREST, whose name is subscribed 1958
to the certificate of proof or acknowledgement of
the annexed instrument and thereon written, was
at the time of taking such proof or acknowledge-
ment, a Notary Public of the State of New York in
and for said County of Kings, dwelling in said
County commissioned and sworn and duly author-
ized to take the same. And further, that I am well
acquainted with the handwriting of such Notary,
and verily believe the signature to said certificate
is genuine, and that the said instrument is exe-
cuted and acknowledged according to the Laws
of the State of New York. IN TESTIMONY
WHEREOF I have hereunto set my hand and 1959
affixed the seal of said County and Court this 24th
day of Apl. 1903.

CHARLES T. HARTZHEIM, Clerk (LS)

INDORSED to be indexed against Block Num-
ber 1790 on the Land Map of the City of New
York.

RECORDED preceding at request of Davis &
Kaufmann, April 24th, 1903, at 2 o'clock and 38
minutes P. M.

JOHN H. J. RONNER, Register.

1960 REGISTER'S OFFICE,

County of New York, State of New York

I, FRANK GASS, Register of the said County, have compared the annexed copy with an instrument recorded in this office, on the 24th day of April, A. D. 1903 at 2 o'clock 38 mins. P. M. in Liber 75, Sec. 6 of Conveyances, page 152, and certify the same to be a correct transcript therefrom, and of the whole of said instrument.

IN TESTIMONY WHEREOF, I have
 (L. S.) hereunto subscribed my name and
 J. M. B. affixed my official seal, this 5th day
 1961 P. F. G. of December, 1907.
 Frank Gass Register.

Exhibit 70.

SURROGATES' COURT,

COUNTY OF NEW YORK.

1962 In the Matter of the Judicial
 Settlement of the Account of
 Henry Ungrich, Jr., and
 Martin Ungrich, as Execu-
 tors of Henry Ungrich, de-
 ceased.

To the Surrogates' Court of the County of New York:

The petition of Martin Ungrich, one of the executors of the estate of Henry Ungrich, deceased, and residing at No. 213 West 133rd Street, in the

Borough of Manhattan, City of New York, re- 1963
spectfully sheweth that on the 26th day of May, 1902, said executors filed in the office of the Surrogate of New York County an account of their proceedings as executors, &c. of Henry Ungrich, deceased, up to March 1, 1902, which account was judicially settled by a decree of this Court made and entered the 25th day of September 1902; that the only persons interested in the estate of said decedent as creditors, or persons claiming to be creditors, or as his next of kin, legatees or otherwise, together with their places of residence are, to the best of your petitioner's knowledge, information and belief as follows, to wit.:

Henry Ungrich, Jr., a son of deceased, who re- 1964
sides at No. 60 West 126th Street, Manhattan, New York City.

Martin Louis Ungrich, a son of deceased who resides at No. 224 Prospect Place, Brooklyn, New York City.

Martin Ungrich, the petitioner herein, a nephew of deceased, who resides at No. 213 West 133rd Street, Manhattan, New York City.

• Henry Ungrich, a nephew of deceased, who resides at No. 518 West 183rd Street, Manhattan, New York City.

Maria Rodenbach, a niece of deceased, who re- 1965
sides at Kruznach, Rheinisch Prussia, Germany.

That no bonds were ever given or required.

That all of the above are of full age and sound mind.

That said executors are desirous of having their account for the year ending March 1, 1903, judicially settled.

Your petitioner therefore prays that said account may be judicially settled, and that the per-

1966 sons above mentioned may be cited to attend the settlement.

Dated, New York, March 12th, 1903.

MARTIN UNGRICH,
Petitioner.

City and State of New York, ss.:

1967 Martin Ungrich, the petitioner named in the foregoing petition, being duly sworn, deposes and says that he has read the foregoing petition, subscribed by him, and knows the contents thereof; and that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

Martin Ungrich,
Petitioner.

Sworn to before me this 12th }
day of March, 1903. }

Harry K. Davenport,
Comm. of Deeds,
City of New York.

1968 State of New York, }
County of New York, } ss.:

I, DANIEL J. DOWDNEY, Clerk of the Surrogates' Court of said County, do hereby certify that I have compared the foregoing copy of Petition in the matter of the estate of Henry Ungrich, deceased, with the original record thereof now remaining in this office, and have found the same

to be a correct transcript therefrom and of the 1969 whole of such original record.

(L. S.) IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the Surrogates' Court of the County of New York, this 5th day of December, in the year of our Lord one thousand nine hundred and seven.

Daniel J. Dowdney
Clerk of the Surrogates' Court

Exhibit 71.

1970

THE PEOPLE OF THE STATE OF NEW YORK
BY THE GRACE OF GOD, FREE AND IN-
DEPENDENT.

To Henry Ungrich, Jr.

Martin Louis Ungrich

Henry Ungrich and Maria Rodenbach.

and to all pesons interested in the Estate of Henry Ungrich late of the City of New York, deceased, as creditors, legatees, next of kin or otherwise, SEND GREETING:

You and each of you are hereby cited and required personally to appear before our Surrogate 1971 of the City and County of New York, at the Surrogates' Court of said City and County, held at the County Court House in the City of New York, on the 5th day of May, 1903, at half past ten o'clock in the forenoon of that day, then and there to attend a judicial settlement of the account of proceedings of Henry Ungrich Jr. and Martin Ungrich, as Executors of the Last Will and Testament of said deceased, and such of you as are

1972 hereby cited as are under the age of twenty-one years, are required to appear by your guardian, if you have one, or if you have none, to appear and apply for one to be appointed, or in the event of your neglect or failure to do so, a guardian will be appointed by the Surrogate to represent and act for you in the proceeding.

In Testimony Whereof, We have caused the seal of the Surrogates' Court of the said City and County of New York to be hereunto affixed. WITNESS, HON. FRANK T. FITZGERALD, Surrogate of our said City and County, at the City of New York, the 13th day of March, in the year of our Lord one thousand nine hundred and three.

(L. S.) J. Fairfax McLaughlin,
Clerk of the Surrogates' Court.

SURROGATES' COURT,

CITY AND COUNTY OF NEW YORK.

1974 In the Matter of the Judicial
Settlement of the Account of
Henry Ungrich, Jr., and
Martin Ungrich, as Execu-
tors of Henry Ungrich, de-
ceased.

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

Harry K. Davenport, of the Borough of Brook-
lyn, City and State of New York, being duly
sworn, says that he is over the age of 21 years;
that he made due service of the within citation in

the above entitled special proceeding on the persons named below, whom deponent knew to be the persons mentioned and described in said citation, by delivering to and leaving with Henry Ungrich, Jr. and Martin Louis Ungrich, personally a true copy of said citation, as follows: On the 22nd day of April 1903 at office of James Demarest, No. 140 Nassau Street, Borough of Manhattan, New York City; on Martin Louis Ungrich; and on the 24th day of April 1903 at the office of James Demarest, No. 140 Nassau Street, Borough of Manhattan, New York City, on Henry Ungrich, Jr. 1975

Deponent further says that on the day of the first publication, to wit: on the 17th day of March 1903, he deposited in the Post Office at the County of New York, one set of a copy of the annexed citation and of the order of publication, said set contained in a securely closed postpaid wrapper, directed to Marie Rodenbach, Kreuznach, Rheinisch, Prussia, Germany. 1976

Harry K. Davenport.

Sworn to before me this 29th)
day of April, 1903.)

Samuel Schlesinger,

Notary Public, N. Y. Co.

I admit service of the within citation.

April 28, 1903.

1977

Henry Ungrich

City and County of New York. ss.:

On this 28th day of April, 1903, before me personally came Henry Ungrich, to me known and known to me to be one of the individuals named in the within citation and who executed the foregoing admission of service of said citation and duly acknowledged that he executed the same.

Harry K. Davenport,

Com. of Deeds,

City of New York.

1978

Exhibit 72.**SURROGATES' COURT,**

COUNTY OF NEW YORK.

In the Matter of the Judicial
Settlement of the Account of

HENRY UNGRICH, JR., and
MARTIN UNGRICH,

as Executors of Henry Ung-
rich,

Deceased.

Account of
Proceedings.

1979

To the Surrogates' Court of the County of New
York:

We, HENRY UNGRICH, JR., and MARTIN
UNGRICH, both of the County of New York, do
render the following account of our proceedings
as Executors of Henry Ungrich, deceased, from
the first day of March, 1902, to the first day of
March, 1903. On the first day of March, 1902, we
rendered an account of our proceedings as Execu-
tors, as aforesaid, up to said date. On the 25th
day of September, 1902, a decree of this Court was
made wherein it appears that the said account
theretofore filed, as aforesaid, was allowed by the
Surrogates of the County of New York, and it
therein appeared that we were charged with the
balance of Five thousand six hundred and sixty-
nine and 93/100 Dollars (\$5,669.93).

1980

SCHEDULE A, hereto annexed, contains a
statement of all income received from real estate
and amount received for sale of real estate; and
it also contains a statement of all interest or

moneys received by us for which we are legally ac- 1981
countable.

SCHEDULE B, hereto annexed, contains a statement of all the personal property now remaining in our hands and unsold, and the appraised value.

SCHEDULE C, hereto annexed, contains a statement of all moneys paid for administration and other necessary expenses of said estate.

SCHEDULE D, hereto annexed, contains a statement of all disbursements made in connection with the real estate; and also a statement of all claims of creditors presented to and allowed by us, together with the names of claimants, the 1982
general nature of the claim and its amount.

SCHEDULE E, hereto annexed, contains a statement of all moneys paid to legatees.

We charge ourselves as follows:

With amount of Schedule A.	\$166,725.96
With amount of Schedule B,	5.00
	<hr/>
	\$166,730.96

We credit ourselves as follows:

With amount of Schedule C,	\$781.49
With amount of Schedule D,	1,091.94
With amount of Schedule E,	84,844.33
	<hr/>
	\$86,717.76

Leaving a balance of \$80,013.20

to be distributed to those entitled thereto, sub- 1983
ject to the deductions of the amount of our commissions and the expense of this accounting. The said schedules, which are severally signed by us, are part of this account.

Martin Ungrich, Jr.
Martin Ungrich.

1984

SCHEDULE A.

	1902.		
	Mch. 1	Balance on hand March 1st, 1902	\$5,669.93
		Cash received, rents collected, 107 W. 124 St.,	40.00
		Cash received, rents collected, 208 E. 126 St.	110.00
		Cash received, rents collected, 281 Lenox Ave.	150.00
		Cash received, rents collected, 283 Lenox Ave.	118.00
		Cash received, rents collected, 285 Lenox Ave.,	120.00
		Cash received, rents collected, 443 Pleasant Ave.,	56.00
		Cash received, rents collected, 450 E. 123rd St.,	45.00
			135.00
1985	Apr.	Cash received, rents collected, 107 W. 124 St.,	40.00
		Cash received, rents collected, 281 Lenox Ave.,	150.00
		Cash received, rents collected, 283 Lenox Ave.,	140.00
		Cash received, rents collected, 285 Lenox Ave.,	145.00
		Cash received, rents collected, 208 E. 126 St.,	163.00
		Cash received, rents collected, 443 Pleasant Ave.,	63.50
		Cash received, rents collected, 450 E. 123 St.,	51.00
	May	Cash received, rents collected, 107 W. 124 St.,	40.00
1986		Cash received, rents collected, 281 Lenox Ave.,	77.00
		Cash received, rents collected, 283 Lenox Ave.,	140.00
		Cash received, rents collected, 285 Lenox Ave.,	123.00
		Cash received, rents collected, 208 E. 126 St.,	199.00
		Cash received, rents collected, 443 Pleasant Ave.,	154.50
		Cash received, rents collected, 450 E. 123 St.,	67.00
		Cash received, rebate Consolidated Gas Co.,	2.70

July 1	Cash received, interest on bal. N. Y. Security & Trust Co.,	78.73	1987
Sept. 1	Cash received, interest on bond & mortgage,	785.00	
Dec. 1	Cash received, interest on bond & mortgage,	785.00	
1903.			
Jan. 22	Cash received, interest on bal. Knickerbocker Trust Co.,	50.53	
Jan. 26	Cash received, interest on bal. N. Y. Security & Trust Co.,	27.07	
1902.			
May 31	Cash received, sale of real estate,	157,000.00	
		<u>\$166,725.96</u>	

HENRY UNGRICH, JR.
MARTIN UNGRICH.

1988

SCHEDULE B.

Jewelry in the hands of Executors and not sold,	5.00
HENRY UNGRICH, JR. MARTIN UNGRICH.	

SCHEDULE C.

		Voucher	No.	
1902.				
June 9	Cash paid Mt. Morris Safe Deposit, rent of box,	5.00	1	
Sept. 16	Cash paid Martin Ungrich, Executor, commissions,	174.60	2	
Sept. 16	Cash paid Henry Ungrich, Jr., Executor, commissions,	174.59	3	
Sept. 16	James Demarest, disbursements, &c.,	177.30	4	
1903.				1989
Mch. 1	James Demarest, counsel fee from Mar. 1st, 1902, to Feb. 1st, 1903,	250.00	5	
		<u>\$781.49</u>		

HENRY UNGRICH, JR.
MARTIN UNGRICH.

1990

SCHEDULE D.

	1902.		Voucher No.
	March 4	Cash paid J. E. Kehoe, locksmith,	\$9.10—6
	" 7	Cash paid F. H. Hines, carpenter	16.67—7
	Apr. 16	Cash paid H. Dexheimer, tinsmith,	4.00—8
	"	Cash paid N. Y. World, advertising,	3.60—9
	" 1	Cash paid J. Mulvein, plumbing,	11.25—10
	" 1	Consolidated Gas Co., gas,	6.60—11
	" 23	Cash paid Reuter & Mauser, painting,	22.00—12
	" 30	Cash paid P. Mayer, janitor,	9.85—13
	" 30	Cash paid M. Ungrich,	4.13—14
	May 1	Cash paid P. Mayer, janitor,	8.30—15
	" 2	Cash paid Consolidated Gas, Co.,	10.20—16
	" 5	Cash paid Mrs. Westlund, janitor,	2.00—17
	" 6	Cash paid A. Glassman, glazier,	2.10—18
	" 6	Cash paid J. E. Kehoe, locksmith,	6.55—19
	" 6	Cash paid H. Kolkman, roofer,	8.75—20
1991	" 6	Cash paid G. B. Brown, plumber,	20.82—21
	" 6	Cash paid J. H. Merritt, painting,	45.03—22
	" 6	Cash paid H. C. F. Koch & Co.,	4.12—23
	" 6	Cash paid Klausmann & Mayer, roofer,	6.95—24
	" 7	Cash paid F. H. Hines, carpenter,	25.24—25
	" 10	Cash paid J. C. Morgan, painting,	1.00—26
	" 28	Cash paid Consolidated Gas Co.,	8.50—27
	" 31	Cash paid G. Raymond, mason work,	5.00—28
	" 31	Cash paid A. Noll Contracting Co., carpentering,	54.00—29
	" 31	Cash paid P. Mayer, janitor,	9.54—30
	" 31	Cash paid G. B. Brown, plumbing,	20.47—31
	" 31	Cash paid J. Westlund, janitor,	16.00—32
	" 31	Cash paid H. Kolberg, janitor,	27.00—33
	" 31	Cash paid H. Kolkman, roofer,	8.70—34
	" 31	Cash paid H. C. F. Koch & Co., sundries,	4.15—35
1992	" 31	Cash paid J. H. Merritt, painting,	6.04—36
	" 31	Cash paid A. Glassman, glazier,	.85—37
	" 31	Cash paid J. E. Kehoe, locksmith,	1.10—38
	" 31	Cash paid Department Water Supply, meter,	39.30—39
	" 31	Cash paid Department Water Supply, water rent,	109.00—40
	" 31	Cash paid Consolidated Gas Co., gas,	6.30—41
	Oct. 6	Cash paid Receiver of Taxes, per- sonal tax (estate),	225.25—42
	May 22	Cash paid revenue stamps on transfer real estate,	105.00—43

" 16	Cash paid Philip A. Smyth, appraisal real estate,	50.00—44	1993
" 31	Cash paid rebate paid on real estate, in May for June account,	127.50—45	

\$1,091.94

HENRY UNGRICH, JR.
MARTIN UNGRICH.

SCHEDULE E.

		Voucher No.	
1902.			
June 9	Cash paid M. Louis Ungrich, in- come to May 31,	\$809.01—46	
" 9	Cash paid Henry Ungrich, Jr., in- come to May 31,	809.00—47	
Jul. 8	Cash paid M. Louis Ungrich, share interest received,	39.36—48	
Jul. 8	Cash paid Henry Ungrich, Jr., share interest received,	39.36—49	1994
Sept. 3	Cash paid M. Louis Ungrich, income,	785.00—50	
Dec. 1	Cash paid M. Louis Ungrich, income,	785.00—51	
1903.			
Jan. 26	Cash paid M. Louis Ungrich, in- come on bank deposit,	50.53—52	
Jan. 26	Cash paid M. Louis Ungrich, share interest received,	13.54—53	
Jan. 26	Cash paid Henry Ungrich, Jr. share interest received,	13.53—54	
1902.			
June 9	Cash paid invested for acct. M. Louis Ungrich,	3000.00—55	
May 31	Cash paid Henry Ungrich, Jr., one-half share of proceeds of sale of real estate,	78,500.00—56	1995
		<hr/>	
		\$84,844.33	

HENRY UNGRICH, JR.
MARTIN UNGRICH.

1996

SURROGATES' COURT,

COUNTY OF NEW YORK.

In the Matter of the Judicial
Settlement of the Account of

HENRY UNGRICH, JR., and
MARTIN UNGRICH,

as Executors of Henry Ung-
rich,
Deceased.

1997 City and County of New York, ss.:

Henry Ungrich, Jr. and Martin Ungrich, Execu-
tors of Henry Ungrich, deceased, being duly
sworn, say that the charges made in the foregoing
account of proceedings and schedules annexed,
for moneys paid by us to creditors, legatees and
next of kin, and for necessary expenses, are cor-
rect; that we have been charged therein for all
interest for moneys received by us and embraced
in said account, for which we are legally account-
able; that the moneys stated in said account as
collected, were all that were collectible, according
to the best of our knowledge, information and be-
1998 lief, on the debts stated in such account at the time
of this settlement thereof; that the allowances in
said account for the decrease in the value of any
assets, and the charges therein for the increase in
such value, are correctly made, and that we do not
know of any error in said account or anything
omitted therefrom which may in any wise preju-
dice the rights of any party interested in said
estate. And deponents further say that the sums,
under twenty dollars, charged in the said account,

for which no vouchers or other evidences of pay- 1999
 ment are produced, or for which we may not be
 able to produce vouchers or other evidence of pay-
 ment, have actually been paid and disbursed by us
 as charged; and that said account contains, to the
 best of our knowledge and belief, a full and true
 statement of all our receipts and disbursements
 on account of the estate of said decedent, and of
 all moneys and other property belonging to said
 estate which have come into our hands, or which
 have been received by any other person by us or
 order of authority for our use, and that we do not
 know of any error or omission in the account to
 the prejudice of any creditor or person interested 2000
 in the estate of the decedent.

Henry Ungrich, Jr.
 Martin Ungrich.

Sworn to before me this 2nd }
 day of March, 1903. }

Harry K. Davenport,
 Commissioner of Deeds,
 City of New York.

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

2001

I, Daniel J. Dowdney, Clerk of the Surrogates'
 Court of said County, do hereby certify that I
 have compared the foregoing copy of Account of
 Proceedings in the matter of the estate of Henry
 Ungrich, deceased, with the original record thereof
 now remaining in this office, and have found the
 same to be a correct transcript therefrom and of
 the whole of such original record.

2002

In Testimony Whereof, I have here-
unto set my hand and affixed the Seal
of the Surrogates' Court of the
County of New York, this 5th day of
(Seal) Dec. in the year of our Lord one
thousand nine hundred and seven.

Daniel J. Dowdney,
Clerk of the Surrogates' Court.

Exhibit 73.

2003

At a Surrogates' Court held in and
for the County of New York, at
the County Court House, in the
Borough of Manhattan, City of
New York, on the 13th day of May,
in the year One thousand nine hun-
dred and three.

Present: Honorable FRANK T. FITZGERALD,
Surrogate.

2004

In the Matter of the Judicial
Settlement of the Account of

HENRY UNGRICH, JR., and
MARTIN UNGRICH,

as Executors of Henry Ung-
rich,
Deceased.

Martin Ungrich, as one of the Executors of the
last will and Testament of Henry Ungrich, late
of the County of New York, deceased, having here-
tofore made application to one of the Surrogates
of the County of New York, for a judicial settle-

ment of the account of the proceedings of Henry Ungrich, Jr. and Martin Ungrich, as Executors of Henry Ungrich, deceased, for the year ending March 1, 1903, and a citation having been thereupon issued, pursuant to statute, directed to all persons interested in the estate of said deceased, citing and requiring them and each of them personally to be and appear before the said Surrogate's at his office in the City of New York, on the 5th day of March, 1903, at 10:30 o'clock in the forenoon of that day, then and there to attend such judicial settlement, and the said citation having been returned with proof of the due service thereof on Martin Louis Ungrich, Henry Ungrich, Henry Ungrich, Jr. and Maria Rodenbach, and the said Executors having appeared on the return day of said citation, and the said Executors having rendered their said account under oath before the said Surrogate; and the said account having been filed, together with the vouchers in support thereof, and the said matter having been duly adjourned to this day, the said surrogate, after having examined the said account and vouchers, now here finds the state and condition of the said account to be as stated and set forth in the following summary statement hereof, made by the Surrogate as judicially settled and adjudged by him to be recorded with and taken to be a part of the decree in this matter, to wit:

A SUMMARY STATEMENT of the account of said Executors made by the Surrogate as judicially settled and allowed.

The Executors are charged as such

With amount of income received	
and sale of real estate,	\$166,725.96
With amount unsold property,	5.00
	<hr/>
	\$166,730.96

2008 The said Executors are credited
as such:

With expenses of administration Schedule C,	781.49	
With amount paid for disburse- ments and claims of creditors, Schedule D,	1091.94	
With amount paid as legacies, Schedule E,	84,844.33	88,717.76

Leaving a balance in their hands of \$80,013.20

The sum of Eighty thousand and thirteen and 20/100 Dollars, in hands of said Executors, with which they are hereby charged.

2009 And it appearing that the said Executors have thus fully accounted for all moneys and property of the estate of said deceased, which have come into their hands as such Executors during the year ending March 1, 1903, and their said account having been adjusted by the said Surrogate, and a summary statement of the same having been made as above and herewith recorded.

Now on motion of James Demarest, attorney for the Executors herein, it is hereby

ORDERED, ADJUDGED and DECREED that the said account be and the same is hereby judicially settled and allowed as filed and adjusted.

2010 AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that out of the balance so found as above, remaining in their hands, the said Executors retain the sum of Eight hundred and sixty-seven and 18/100 Dollars (\$867.18) for the commissions to which they are entitled on this accounting; and that they retain the sum of One hundred and sixty-one and 95/100 (\$161.95) for their costs and disbursements on this accounting.

AND IT IS FURTHER ORDERED, ADJUDGED AND DECREED, that the balance then remaining in the hands of the said Executors (af-

ter deducting the aforesaid amounts), to wit: Sev- 2011
 enty eight thousand nine hundred and eighty-four
 07/100 dollars (\$78,984.07) be held by the said
 Executors subject to the provisions of the last will
 and Testament of Henry Ungrich, deceased.

Frank T. Fitzgerald,
 Surrogate.

Exhibit 74.

THE PEOPLE OF THE STATE OF NEW
 YORK, BY THE GRACE OF GOD FREE
 AND INDEPENDENT.

To all whom these presents shall come or may 2012
 concern

Greeting:

KNOW YE, That we, having examined the rec-
 ords and files in the office of the Clerk of the
 County of Westchester, and Clerk of the Supreme
 Court of said State for said County, find a certain
 judgment Roll there remaining in the words and
 figures following, to wit:

2013

2014

SUPREME COURT OF THE STATE OF
NEW YORK.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR.,

Defendant.

} Trial desired to
be had in West-
chester County.

2015

To the above named Defendant

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your answer on the Plaintiff's Attorneys within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against your by default, for the relief demanded in the complaint.

Dated New York, December 5th, 1906.

2016

Kellogg & Rose
Plaintiff's Attorneys,
Office and Post Office Address,
No. 120 Broadway,
Borough of Manhattan,
New York City.

NEW YORK SUPREME COURT,

2017

WESTCHESTER COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR.,

Defendant.

2018

The plaintiff appearing herein by Kellogg & Rose, his attorneys, for an amended complaint herein, respectfully shows to this Court:

FOR A FIRST CAUSE OF ACTION.

First: That heretofore and between the 1st day of May and the 1st day of November, 1902, the plaintiff rendered and performed services for the defendant, at his special instance and request, as an Architect, in making and preparing preliminary studies, general drawings and specifications for a two story and cellar brick garage, contemplated to be erected on the lot known as 107 West 124th Street, in the City of New York, at an estimated cost of \$8500, owned by the defendant, or contemplated to be purchased by the defendant. 2019

Second: That said services were reasonably worth the sum of \$85.00.

Third: That although duly demanded, no part of said sum has been paid.

2020 FOR A SECOND CAUSE OF ACTION.

First: That heretofore and between the 1st day of May and the 1st day of November, 1902, the plaintiff rendered and performed services for the defendant, at his special instance and request as an architect, in making and preparing preliminary studies, general drawings and specifications for a two story and cellar brick garage, contemplated to be erected on the lot known as 107 West 124th Street, at an estimated cost of \$9,000, owned by the defendant, or contemplated to be purchased by the defendant.

2021 Second: That said services were reasonably worth the sum of \$180.

Third: That although duly demanded, no part of said sum has been paid.

FOR A THIRD CAUSE OF ACTION.

2022 First: That heretofore and between the 1st day of May and the 15th day of November, 1902, the plaintiff rendered and performed services for the defendant, at his special instance and request, as an architect, in making and preparing preliminary studies, general drawings and specifications for a five story brick storage warehouse, contemplated to be erected on lot known as 107 West 124th Street, in the City of New York, at an estimated cost of \$20,000 owned by the defendant, or contemplated to be purchased by the defendant.

Second: That said services were reasonably worth the sum of \$300.

FOR A FOURTH CAUSE OF ACTION. 2023

First: That heretofore and between the 1st day of May and the 1st day of November 1902, the plaintiff rendered and performed services for the defendant, at his special instance and request, as an architect, in making and preparing preliminary studies, general drawings and specifications and in making and preparing additional plans and alterations to the above plans and specifications for the alteration of three brick buildings with brown stone fronts, on the northwest corner of 124th Street and Lenox Avenue, known as Nos. 281, 283 and 285 Lenox Avenue, in the City of New York, at an estimated cost of \$10,000 owned by the defendant or contemplated to be purchased by the defendant. 2024

Second: That said services were reasonably worth the sum of \$200.

Third: That although duly demanded, no part of said sum has been paid.

WHEREFORE the plaintiff demands judgment against the defendant for the sum of \$765, with interest thereon from the 15th day of November 1902, together with the costs and disbursements of this action.

2025

Kellogg & Rose
Plaintiff's Attorneys,
Office and Post Office Address,
No. 120 Broadway,
Borough of Manhattan,
New York City.

2026 City and County of New York, ss.:

Martin L. Ungrich being duly sworn, says he is the plaintiff in this action. That he has read the foregoing amended complaint and that the same is true to his own knowledge, except as to the matters which are therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.

Martin L. Ungrich.

Sworn to before me this 17th }
day of January 1907 }

2027 Thomas A. Healy,
Notary Public,
New York Co.

NEW YORK SUPREME COURT,

WESTCHESTER COUNTY.

2028	MARTIN L. UNGRICH,	}
	Plaintiff,	
	AGAINST	}
	HENRY UNGRICH, JR.,	
	Defendant.	

The defendant herein appearing by G. Truman Capron his attorney, in answer to the amended complaint of the plaintiff herein, makes answer as follows:

FIRST CAUSE OF ACTION.

2029

For answer to the first cause of action.

I. This defendant admits the allegations contained in paragraph First and Second, but denies each and every allegation contained in paragraph Third of the first cause of action set forth in said amended complaint.

II. And for a further and separate defense to said first cause of action, this defendant avers and alleges that he made full payment to this plaintiff for any and all claims, debts and obligations due or arising out of said services rendered as alleged 2080 in said first cause of action, and for any and all other claims which this plaintiff might, could or did have against this defendant up to the 23rd day of June, 1902, as is shown by a certain general release in writing made and duly executed by this plaintiff and delivered to this defendant, which said general release bears date on said 23rd day of June, 1902, a copy of which release is hereto annexed and made a part to this answer to the amended complaint and marked Exhibit "A."

WHEREFORE, this defendant demands that the first cause of action as alleged in the amended complaint be dismissed with costs.

2081

SECOND CAUSE OF ACTION.

For answer to the second cause of action:

I. For answer to the First paragraph of said cause of action, this defendant denies upon information and belief each and every allegation therein contained.

II. For answer to the Second paragraph of said cause of action this defendant denies upon infor-

2032 mation and belief each and every allegation therein contained.

For answer to the Third paragraph of said cause of action this defendant denies upon information and belief each and every allegation therein contained.

WHEREFORE, this defendant demands that the second cause of action as alleged in the amended complaint, be dismissed with costs.

THIRD CAUSE OF ACTION.

For answer to the third cause of action:

2033 I. For answer to the first paragraph of said cause of action, this defendant denies each and every allegation therein contained and for a separate defense to the allegations contained in said paragraph, avers and alleges that he did enter into an agreement with this plaintiff for certain plans and specifications and superintendence for the erection of a storage warehouse and stable, to be erected on lot known as Number 107 West 124th Street, in the City of New York, which services were to be performed by the plaintiff, so that the building should be completed by First May, 1903, in order that the same might be occupied by Ludwig Baumann & Company as provided by a verbal

2034 contract and lease entered into between this defendant and said Ludwig Baumann & Company on or about First October 1902, of which contract the plaintiff herein had notice and knowledge, and this defendant further avers and alleges that this plaintiff failed to produce said plans and specifications, and never delivered to this defendant any plans or specifications for the building so to be erected, and never rendered any services in the superintendence of the erection of the same, al-

though many demands were made upon the plaintiff for the same, and although this defendant performed in all respects his part of the contract. Defendant further avers and alleges that this plaintiff claimed that the reason for his failure to produce said plans and specifications was that he had lost the same, and was unable to find them. That this defendant made reasonable effort to assist the plaintiff in finding said plans and specifications, and to that end did insert for two days in one of the leading dailies published in the City of New York, to wit: The New York World, an advertisement offering a reward for the return of the same to this defendant, for which advertisement this defendant did pay the sum of Two Dollars and forty cents (\$2.40). 2035 2036

II. For answer to the second paragraph of said third cause of action, this defendant denies each and every allegation therein contained.

III. For a further and separate defense to said third cause of action, this defendant avers and alleges that this plaintiff never secured the approval of the Building Department of the City of New York to any plans or specifications for said building, as is required by the Building Laws applicable to the said City of New York. 2037

IV. And for a further and separate defense and by way of counterclaim to said third cause of action, this defendant avers and alleges that after due notice to this plaintiff to produce said plans and specifications, this defendant was obliged to and did employ the services of other architects in order to be able to complete the building for occupancy in accordance with said contract with Ludwig Baumann & Company. That this defendant

2038 thereupon entered into an agreement with the firm of Neville & Bagge, architects, to make and prepare preliminary studies, general drawings and specifications for a five story brick storage warehouse and stable to be erected on said lot, and said Neville & Bagge did duly prepare said plans and specifications, and procured the approval of the same by the Building Department of the City of New York, and the building was constructed under said plans and specifications so prepared by Neville and Bagge for which said services this defendant did pay to Neville & Bagge the sum of Three hundred and fifty (\$350.00) Dollars.

2039 V. And for a further and separate defense and by way of counterclaim to said third cause of action, this defendant avers and alleges that by reason of the failure of this plaintiff to superintend the erection of said building, this defendant was obliged to and did employ the services of one Frank H. Hines to superintend the erection of said building for which services this defendant did pay said Frank H. Hines, the sum of Three hundred and forty (\$340.00) Dollars, being seventeen weeks superintendence at Twenty (\$20.00) Dollars per week.

2040 VI. This defendant alleges that he was at all times ready and willing to perform each and every part of said contract with the plaintiff on his part to be performed.

WHEREFORE, this defendant demands affirmative judgment against the plaintiff for the sum of Six hundred and ninety two dollars and forty cents (\$692.40) with interest, and that the third cause of action of said amended complaint be dismissed with costs.

FOURTH CAUSE OF ACTION.

2041

For answer to the fourth cause of action:

I. For answer to the first paragraph of said fourth cause of action, this defendant admits that he did enter into a contract with this plaintiff for the performance of services as an architect in making and preparing preliminary studies, general drawings and specifications for the alteration of the building known as number 281 Lenox Avenue, in the City of New York, but that said plans were unsatisfactory to this defendant in that they failed to receive the approval of the Building Department of the City of New York, so that it was impossible to alter the building on said lot in accordance with said plans and for the further reason that said plans were not in accordance with the requirements of this defendant in relation to said alterations. 2042

II. And for a further answer to said paragraph First of said cause of action, this defendant denies upon information and belief each and every allegation therein contained not already herein specifically admitted or denied.

III. For answer to paragraphs second and third of said fourth cause of action, this defendant denies upon information and belief each and every allegation therein contained. 2048

WHEREFORE, this defendant demands that the fourth cause of action be dismissed with costs.

WHEREFORE, the defendant demands that the complaint herein be dismissed with costs and that defendant have affirmative judgment against the plaintiff for the sum of Six hundred and ninety two dollars and forty cents (\$692.40) with interest

2044 thereon from the 20th day of April, 1903, and that
the defendant have the costs and disbursements
of this action.

G. Truman Capron,
Attorney for Defendant,
Office and Post Office Address,
2 Grand Street,
White Plains, N. Y.

EXHIBIT A.

2045 TO ALL TO WHOM THESE PRESENTS
SHALL COME OR MAY CONCERN, GREET-
ING: KNOW YE, That I, Martin Louis Ungrich,
son of Henry Ungrich, late of the Borough of
Manhattan, in the City, County and State of New
York, for and in consideration of the sum of Six
thousand dollars, lawful money of the United
States of America to me in hand paid by my
brother Henry Ungrich, Jr., of the same place, the
receipt whereof is hereby acknowledged, have re-
mised, released, and forever discharged, and by
these presents do for myself and my heirs, execu-
tors and administrators, remise, release and for-
ever discharge the said Henry Ungrich, Jr., and
his heirs, executors and administrators, of and
2046 from all, and all manner of action and actions,
cause and causes of action, suits, debts, dues, sums
of money, accounts, reckoning, bonds, bills, spe-
cialties, covenants, contracts, controversies, agree-
ments, promises, variances, trespasses, damages,
judgments, extents, executions, claims and de-
mands whatsoever, in law or in equity, which
against him I ever had, now have or which I or my
heirs, executors or administrators, hereafter can,
shall or may have for, upon or by reason of any

manner, cause or thing whatsoever from the be- 2047
ginning of the world to the day of the date of these
presents.

And especially from any and all claims to any
part of the proceeds of certain bonds and mort-
gages assigned to said Henry Ungrich, Jr., by my
father Henry Ungrich during his lifetime, or to
any part of the moneys which said Henry Un-
grich, Jr., has received or may hereafter receive
from the proceeds of the said bonds and mort-
gages.

IN WITNESS WHEREOF, I have hereunto
set my hand and seal the twenty-third day of June
in the year one thousand nine hundred and two 2048
(1902).

Martin Louis Ungrich (LS)

Sealed and delivered in the
presence of

James Demarest

State of New York, }
County of Westchester, } ss.:

Henry Ungrich, Junior, being duly sworn, de-
poses and says that he is the defendant in this ac-
tion; that he has read the foregoing answer to the
amended complaint, and knows the contents there-
of; that the same is true to the knowledge of de- 2049
ponent except as to the matters therein stated on
information and belief, and as to those matters he
believes it to be true.

Henry Ungrich, Jr.

Sworn to before me this 7th }
day of February, 1907. }

Alonzo J. Hart,
Notary Public,
Westchester County, N. Y.

2050

NEW YORK SUPREME COURT.

WESTCHESTER COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR.,

Defendant.

2051

The plaintiff replies to the counterclaim stated and alleged in paragraphs III, IV, V and VI of the third cause of action of the answer of the defendant Henry Ungrich, Jr., to the amended complaint and respectfully shows to this Court as follows:

First: He denies each and every allegation stated and contained in paragraph III of defendant's answer to the third cause of action.

2052

Second: He denies the allegations stated and contained in paragraph IV of defendant's answer to the said third cause of action, that after due notice to this plaintiff to produce said plans and specifications, the defendant was obliged to and did employ the services of other architects in order to be able to complete the building for occupancy in accordance with said contract with Ludwig Baumann & Company.

Third: He denies any knowledge or information sufficient to form a belief as to the allegations stated and contained in paragraph IV of defendant's answer to the said third cause of action, that

this defendant thereupon entered into an agree- 2053
 ment with the firm of Neville & Bagge, architects,
 to make and prepare preliminary studies, general
 drawings and specifications for a five story brick
 storage warehouse and stable to be erected on said
 lot, and said Neville & Bagge did duly prepare
 said plans and specifications and procured the
 approval of the same by the Building Depart-
 ment of the City of New York, and the building
 was constructed under said plans and specifica-
 tions so prepared by Neville & Bagee, for which
 said services this defendant did pay to Neville &
 Bagge the sum of three hundred and fifty (\$350)
 dollars.

2054

Fourth: He denies each and every allegation
 stated and contained in paragraph V of the de-
 fendant's answer to the third cause of action.

Fifth: He denies each and every allegation
 stated and contained in paragraph VI of the de-
 fendant's answer to the third cause of action.

Sixth: He specifically denies each and every
 allegation in the counterclaim stated and alleged
 in the answer of the defendant Henry Ungrich,
 Jr., nor hereinbefore specifically admitted, con-
 troverted or denied.

WHEREFORE plaintiff demands judgment 2055
 dismissing the counterclaim set up in the answer
 of the said defendant, Henry Ungrich, Jr. and for
 judgment as demanded in the Complaint, together
 with the costs and disbursements of this action.

Kellogg & Rose
 Attorneys for the Plaintiff,
 Office and Post Office Address,
 No. 120 Broadway,
 Manhattan, New York City.

2056 City and County of New York, ss:

Martin L. Ungrich being duly sworn, says that he is the plaintiff in this action. That he has read the foregoing reply and that the same is true to his own knowledge, except as to the matters which are therein stated to be alleged upon information and belief, and that as to those matters, he believes it to be true.

Martin L. Ungrich.

Sworn to before me this 16th }
day of February, 1907. }

2057 Thos. A. Healy,
Notary Public,
New York Co.

2058

NEW YORK SUPREME COURT,

2059

WESTCHESTER COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR.,

Defendant.

2060

Defendant hereby offers to allow judgment to be taken against him in the above entitled action for the sum of Four hundred and Sixty five (\$465) Dollars, with interest from the 15th day of November, 1902, with costs to date of this offer.

This offer is made pursuant to the provisions of Section 738 of the Code of Civil Procedure of the State of New York.

Dated White Plains, N. Y., March 18, 1907.

Henry Ungrich, Jr.,
Defendant.

G. Truman Capron,
Defendant's Attorney,
Office and Post Office Address,
2 Grand Street,
White Plains, N. Y.

2061

To:

Kellogg & Rose, Esq.,
Attorneys for Plaintiff,
120 Broadway,
New York City.

2062

NEW YORK SUPREME COURT.

WESTCHESTER COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR.,

Defendant.

2063

SIR:

You will please take notice that the above named plaintiff hereby accepts the offer of the above named defendant to allow judgment to be taken against him for the sum of Four hundred and sixty five Dollars (\$465.00) with interest thereon from the 15th day of November, 1902, and with costs to the date of the defendant's offer.

Dated New York, March 29th, 1907.

Martin L. Ungrich,
Plaintiff.

2064

Kellogg & Rose,
Plaintiff's Attorneys,
Office and Post Office Address,
120 Broadway,
New York City,
Boro. of Manhattan.

To G. Truman Capron, Esq.,
Attorney for Defendant,
2 Grand St.,
White Plains, N. Y.

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

2065

On this 29th day of March, 1907, before me personally came Martin L. Ungrich, to me personally known and known to me to be the plaintiff in the above entitled action and to be the same person who executed the foregoing acceptance of offer of Judgment and duly acknowledged to me that he executed the same.

Thos. A. Healy,
 Notary Public, N. Y. Co.

NEW YORK SUPREME COURT,

2066

WESTCHESTER COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

HENRY UNGRICH, JR.,

Defendant.

2067

The above named defendant having offered to allow judgment to be taken against him by the plaintiff for the sum of Four hundred and sixty five (\$465.00) Dollars with interest thereon from the 15th day of November, 1902, and costs, on the 19th day of March, 1907, and the plaintiff having on the 29th day of March, 1907, accepted said offer, and the costs of the plaintiff having been regularly adjusted by the Clerk of this Court at the sum of

2068 Now on motion of Kellogg & Rose, the attorneys for the plaintiff, it is

ADJUDGED that the above named plaintiff Martin L. Ungrich, recover of the above named defendant, Henry Ungrich, Jr., the sum of Four hundred and sixty five Dollars (\$465.00) with interest thereon from the 15th day of November, 1902, amounting to the sum of \$121.98, together with \$44.71 his costs and disbursements as taxed by the Clerk of this Court, amounting altogether to the sum of \$631.69, and that he have execution against the defendant therefor.

2069 Dated White Plains, N. Y., March 29th, 1907.

Leslie Sutherland,
Clerk.

All which we have caused by these presents to be exemplified and the seal of our Supreme Court to be hereunto affixed.

Witness, Hon. Martin J. Keogh, Justice, at White Plains, the 30th day of April, in the year of our Lord one thousand nine hundred and seven.

Leslie Sutherland,
Clerk.

2070 I, Martin J. Keogh, presiding Justice of the Supreme Court of the State of New York, for the County of Westchester, do hereby certify that Leslie Sutherland, whose name is subscribed to the preceding exemplification, is the Clerk of the said County of Westchester, and Clerk of said Supreme Court of said County, duly elected and sworn, and that full faith and credit are due to his official acts. I further certify that the seal affixed to the exem-

plification is the Seal of our said Supreme Court, 2071
and that the attestation thereof is in due form.

Dated White Plains, April 30, 1907.

Martin J. Keogh,
N. C. J. S. C.

State of New York, }
County of Westchester, } ss.:

I, LESLIE SUTHERLAND, Clerk of the Supreme Court of said State, in and for the County of Westchester, do hereby certify that Martin J. Keogh, whose name is subscribed to the preceding certificate, is presiding Justice of the Supreme Court of said State, in and for the County of Westchester, duly elected and sworn, and that the signature of said Justice to said certificate is genuine. 2072

IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed
(Seal) the seal of the said Court this 30 day
of April, 1907.

Leslie Sutherland,
Clerk.

2073

2074

Exhibit 75.

<i>Against Whom.</i>			<i>In Whose Favor.</i>		
Ungrich, Henry Jr.			Martin L. Ungrich.		
When Perfected.	Where Perfected.	Damages and Costs	Filed and Docketed	Attorney's Name	When Satisfied.
	West. Sup.	Dolls., Cts. 631.69	1907 Mar. 29 3:25	Kellog & Rose	1907 Apl. 2

County Clerk's Office, }
 Westchester County, } ss.:
 State of New York. }

2075 I, Leslie Sutherland Clerk of the County of Westchester, certify that the above is a correct transcript from the Docket of judgments kept in my office. And I further satisfy, that the above Judgment is satisfied of record. . . .

In Testimony Whereof, I have here-
 unto subscribed my name and affixed
 (L. S.) my official seal this 1 day of May
 A. D. 1907.

Leslie Sutherland,
 Clerk.

2076

Exhibit 76.**2077**

At a Special Term, Part I, of the
Supreme Court, held at the Court
House, in the County of New York,
on the 21 day of June, 1907.

Present, Hon. JAMES A. BLANCHARD, Justice.

IN THE MATTER

OF

The Application of Martin
Louis Ungrich, for the pay-
ment of certain moneys un-
der the trust created by the
will of Henry Ungrich, de-
ceased.

2078

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

Henry Ungrich, Jr., and Martin
Ungrich, as Executors of
and Trustees under the Last
Will and Testament of
Henry Ungrich, deceased,

2079

Defendants.

A motion having been made herein on the part
of the above named plaintiff Martin Louis Un-
grich for an Order directing Henry Ungrich, Jr.
and Martin Ungrich, as Trustees under the last
will and Testament of Henry Ungrich, deceased,

2080 to pay to the said Martin L. Ungrich, the plaintiff in the above entitled action, the sum of Two thousand eight hundred ninety-four and 53/100 dollars (\$2,894.53) out of said trust estate and such sums as are earned under said estate without prejudice to his rights in this action, and said motion having come on to be heard.

On reading and filing the Notice of Motion dated June 12, 1907, affidavits of Martin Louis Ungrich and L. Laflin Kellogg, verified June 12th 1907, on the part of the plaintiff, and the affidavits of Henry Ungrich Jr. and Isaac T. Hubbard and Martin Ungrich, verified June 17, 1907, and Edward W. S. Johnston, verified June 18th, 1907, on the part of the defendants, and after hearing L. Laflin Kellogg of counsel for the plaintiff in support of this motion, and Isaac P. Hubbard and Edward W. Johnston, in opposition thereto, and it appearing that the defendants above named as such Trustees after the making of this motion and prior to the hearing hereof, to wit, on the 15th day of June, 1907, had sent by registered mail to the said plaintiff, Martin L. Ungrich, a certified check for the sum of \$2,919.20, a sum admitted by the defendants to be due and owing to the said plaintiff under said trust aforesaid, in accordance with a notice served on the 17th day of June, 1907, 2081 by the respective attorneys for the defendants on the attorneys for the plaintiff and made a part of this motion, and the said certified check for \$2,919.20 having been returned to the attorneys for the defendant Henry Ungrich, Jr. in open Court upon the ground that the said sum could not be received in full settlement as required in said notice, or at all unless without prejudice to the rights of the plaintiff in this action. 2082

Now on motion of Kellogg & Rose, attorneys for

the said Martin L. Ungrich, the plaintiff herein, 2083
it is

ORDERED that Henry Ungrich, Jr. and Martin Ungrich, as Trustees under the last Will and Testament of Henry Ungrich, deceased, forthwith pay to Martin L. Ungrich the plaintiff, the sum of \$2,919.20, the sum admitted by the defendants to be due on account of income under the trust estate of Henry Ungrich without prejudice to the rights of any of the parties in this action.

Enter

J. A. B.

J. S. C.

2084

2085

2086

NEW YORK SUPREME COURT.

COUNTY OF NEW YORK.

IN THE MATTER

OF

The Application of Martin
Louis Ungrich, for the pay-
ment of certain moneys un-
der the trust created by the
will of Henry Ungrich, de-
ceased.

2087

NEW YORK SUPREME COURT.

NEW YORK COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

Henry Ungrich, Jr., and Martin
Ungrich, as Executors of
and Trustees under the Last
Will and Testament of
Henry Ungrich, deceased,

2088

Defendants.

SIRS:

YOU WILL PLEASE TAKE NOTICE, That
on the Summons, Complaint, Answers of the de-
fendants Martin Ungrich, and Henry Ungrich,
Jr., the Reply of the plaintiff, the Supplemental

Answers of the defendants Henry Ungrich, Jr. 2089
 and Martin Ungrich herein, and the annexed affidavits of Martin L. Ungrich and L. Laffin Kellogg verified the 12th day of June, 1907, we will move this Court, at a Special Term, Part I thereof, to be held at the Court House thereof, in said County, on the 18th day of June, 1907, at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard, for an Order directing Henry Ungrich, Jr. and Martin Ungrich, as Trustees under the last Will and Testament of Henry Ungrich, deceased, to pay to Martin L. Ungrich, the plaintiff in the above entitled action, the sum of \$2894.53 out of said trust estate, and 2090
 such sums as are earned under said trust without prejudice to his rights in this action, and for such other and further relief as to the Court may seem just and proper.

Dated New York, June 12th, 1907.

Yours, etc.,
 Kellogg & Rose,
 Attorneys for Plaintiff,
 Office and Post Office Address,
 No. 115 Broadway,
 Borough of Mantattan,
 New York City.

To

Isaac P. Hubbard, Esq.,
 Attorney for defendant
 Henry Ungrich, Jr.,
 individually, etc.

2091

to

Messrs. Johnston & Johnston,
 Attorneys for defendant
 Martin Ungrich, individually, etc.

2092

NEW YORK SUPREME COURT.

NEW YORK COUNTY.

IN THE MATTER

OF

The Application of Martin
Louis Ungrich, for the pay-
ment of certain moneys un-
der the trust created by the
will of Henry Ungrich, de-
ceased.

2098

NEW YORK SUPREME COURT,

NEW YORK COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

Henry Ungrich, Jr., and Martin
Ungrich, as Executors of
and Trustees under the Last
Will and Testament of
Henry Ungrich, deceased,

2094

Defendants.

City and County of New York, ss.:

Martin L. Ungrich, being duly sworn, deposes
and says, that he is the Plaintiff in the above en-
titled action.

That heretofore and on or about the first day of 2095
March, 1907, Henry Ungrich died in the City and
County of New York, leaving him surviving his
sons Martin Louis Ungrich, this plaintiff, and
Henry Ungrich, Jr., one of the defendants, and
leaving a last will and testament and codicil
thereto.

That in said Will it is provided among other
things, under paragraph Sixth thereof, as fol-
lows:

“Sixth: To hold the remaining equal undivided
“one half of said balance of my estate and to keep
“the same invested and reinvested, and to pay
“over to my son Martin Louis Ungrich, in quar- 2096
“terly yearly payments during his natural life,
“the net income arising from the investment of
“such one half part of my estate.”

That under said paragraph deponent is clearly
entitled to one-half the income of said estate.

That deponent has brought this action to remove
the defendants herein as executors and trustees on
various grounds, in that they have failed to justly
carry out and perform their duties as such execu-
tors and trustees by wasting said estate, by ren-
dering accounts which are untrue and by selling
all the real property under said estate to one of
the trustees, herein, namely Henry Ungrich, Jr. 2097

That said executors and trustees have done
other acts and things in the management of said
estate as more fully is set forth in the complaint
herein, to the great loss, damage and injury of
this plaintiff.

That before the commencement of this action,
the defendants as such executors and trustees
have made payments of income to the plaintiff
semi-annually, to wit: the first day of December
and the first day of June, in each year, instead of

2098 making such payments quarterly as provided in paragraph Sixth of said will aforesaid.

That it cannot be denied by the defendants as trustees that there is a considerable amount of money due to deponent, to which deponent is clearly entitled. That said sums of money have been offered to deponent from time to time as follows:

2099 That heretofore and on or about the 7th day of December, 1906, and after the commencement of this action, the defendant Henry Ungrich, Jr. sent deponent a check for income amounting to \$1257.56, together with a receipt to be signed by deponent therefor, and that thereafter and on or about the 4th day of January, 1907, the defendant Henry Ungrich Jr. sent deponent a check for \$48.68, together with a receipt to be signed by this deponent therefor.

2100 That although deponent was clearly entitled to this money, as is shown by the offer of the defendants as such trustees to pay the same, and as deponent claims sums greatly in excess of these amounts, nevertheless deponent could not as he was advised, accept said checks and sign said receipts therefor, because the amounts in said checks were not a true account of the moneys to which deponent was entitled under said trust, and because the receipts in the form proposed would tend to prejudice the rights of the deponent in this action.

That thereupon deponent returned said checks and receipts to the defendant Henry Ungrich Jr.

That thereafter and on or about the 3d day of June, 1907, deponent received a check from Henry Ungrich Jr. for \$1368.29, together with a receipt therefor, and that thereafter and on or about the 6th day of June, 1907, deponent received a check from Henry Ungrich, Jr. for \$220, together with a receipt therefor.

That annexed hereto are copies of all of said 2101
checks and said receipts as above referred to.

That deponent for the same reasons could not,
as he was advised, accept said checks or sign said
receipts and has returned said checks and receipts
to the defendant Henry Ungrich, Jr.

That the defendants as Trustees by their offer
of the said checks, which amount to this date to
the sum of \$2894.53, concededly admit that there
is this amount at least due to the plaintiff, this
deponent, as income under said trust estate.

That deponent desires that the Court will order
and direct that the amounts admittedly due for in-
come under said trust shall be paid to him without 2102
prejudice to his rights in this action and on ac-
count of income.

That the said income is necessary to the sup-
port of plaintiff, this deponent, and he relies on
the same for the maintenance and support of him-
self and his family.

Martin L. Ungrich.

Sworn to before me this 12th }
day of June, 1907. }

Thos. A. Healy,
Notary Public,
New York Co.

2103

2104

NEW YORK SUPREME COURT.

NEW YORK COUNTY.

IN THE MATTER

OF

The Application of Martin
Louis Ungrich, for the pay-
ment of certain moneys un-
der the trust created by the
will of Henry Ungrich, de-
ceased.

2105

NEW YORK SUPREME COURT.

NEW YORK COUNTY.

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

Henry Ungrich, Jr., and Martin
Ungrich, as Executors of
and Trustees under the Last
Will and Testament of
Henry Ungrich, deceased,

2106

Defendants.

City and County of New York, ss.:

L. Laffin Kellogg, being duly sworn, deposes
and says that he is a member of the firm of Kel-
logg & Rose, the attorneys for the plaintiff in the
above entitled action.

That heretofore and on the 6th day of December, 1906, the above entitled action was commenced by the service of the Summons and Complaint on the defendants Henry Ungrich, Jr. and Martin Ungrich. 2207

That the above entitled action is one for an accounting and for the removal of the Executors and Trustees herein.

That the complaint alleges, among other things, that the defendants, as Executors and Trustees, have failed to properly account for moneys received by them and have been guilty of fraud and neglect in the management of said estate, and for other relief as therein more particularly set forth. 2108

That on January 14th, 1907, the defendant Martin Ungrich served his answer herein, and on January 15th, 1907, the defendant Henry Ungrich, Jr., served his answer herein.

That said answers contain practically a general denial of all the allegations of the complaint, except that the answer of the defendant Henry Ungrich, Jr. contains a counterclaim counterclaiming and alleging in substance the amount spent by the said defendant Henry Ungrich, Jr., after his purchase of said real property, for building thereon, repairs and commissions for the sale of said property, and including all of the expenses in connection with said property which had been paid by him since the acquisition of said property. 2109

That thereafter and on the 21st day of January, 1907, the plaintiff served his reply to said counterclaim, which said reply was virtually a general denial of the same.

That thereafter and on the 21st day of January, 1907, the plaintiff served a notice of trial for the February Term upon the defendants' attorneys.

That thereafter and on April 19th, 1906, the defendants, through their attorneys, made separate

2110 motions for leave to serve supplemental answers herein.

That said motions came on for argument on the 24th day of April, 1907, before the Hon. James A. O'Gorman.

2111 That deponent personally appeared on the argument of said motion and stated to the Court that the defendants, as such Trustees, would not pay any income to the plaintiff without requiring receipts therefor which would prejudice the rights of the plaintiff in this action and which the plaintiff was unable to accept and asked the Court to impose for a condition for the granting of the motion that the defendants be required to pay said moneys to the plaintiff without prejudice.

That the Court refused to impose this as a condition for the granting of the orders, but suggested that a further application might be made to the Court for this relief.

That the decision of the learned Justice on the granting of said motions appeared in the New York Law Journal of April 25th, 1907, and is as follows:

2112 "Ungrich v. Ungrich, (two motions, Nos. "21 and 39) Motions for leave to serve supplemental answers granted without prejudice to the present position of the causes on "the calendar, and parties to proceed to trial "as soon as the cause is reached in its regular "turn. Settle order on notice."

That thereafter and on the 26th day of April, 1907, and before the settlement and signing of said orders granting leave to the defendants to serve their supplemental answers herein, the above entitled action being 6452, appeared on the Call Calendar of this Court to be set down for trial.

That the plaintiff asked and insisted that the case be set down for an early date in May, 1907,

and called the attention of the Court to the fact 2113
that the learned Justice, James A. O'Gorman, as
a condition to granting leave to the defendants to
serve supplemental answers herein, should not de-
lay the trial of this action.

The defendants protested vigorously against
setting the action down for trial and were success-
ful in having the case put over to the June Call
Calendar of this Court. That up to the present
time the case has not appeared on the Call Calen-
dar of this Court.

That deponent believes that if the case had been
set down for trial for some date in May, 1907, it
could have been reached and tried before the end 2114
of the June Term.

That deponent is informed and believes that
the trial of this action cannot possibly be reached
before October or November of this year.

That deponent, therefore, asks that the defend-
ants be directed by this court to pay the plaintiff
the said sums of money admittedly due to him
under the trust estate, without prejudice to any
rights that the plaintiff may have in this action.

L. Laffin Kellogg.

Sworn to before me this 12th }
day of June, 1907. }

2115

Thos. A. Healy,
Notary Public,
New York Co.

2116 *Copies of Checks and Receipts Received by Martin L. Ungrich, the Plaintiff, from Henry Ungrich, Jr., at the Various Times Mentioned in the Affidavits Herein and Returned to Said Henry Ungrich, Jr.*

Statement

of

Interest Collections

Estate of Henry Ungrich.

June 5th 1906 to December 5th 1906.

2117	1906.		
	June 12	Received from H. Ungrich, Jr., Int. June 1st, 1906 to June 12th, 1906, paid by Colonial Trust Co. on principal \$10,000, mtge. on 208 E. 126th St. (Paid off June 1st, 1906.)	\$6.84
	Nov. 30	Received from Klein & Lipman 6 mos. int. to Dec. 1st, 1906, on \$11,000 mtge. on 443 Pleasant Ave.	220.00
	Dec. 1	Received from Geo. Ehret 6 mos. int. to Dec. 1st, 1906, on premises Lenox Ave. & 124th St.....	1150.00
	" 5	Received from W. C. Damron int. on \$10,000 mtge. 48th St. & 5th Ave., Brooklyn, June 12th, 1906, to Dec. 1st, 1906	256.75
2118			
			<hr/>
			\$1633.59
	June 12th	Paid mortgage tax on \$10,000 mtge. 5th Ave. & 48th St., Brooklyn, June 12th, 1906, to July 1st, 1906...	\$2.61
	Dec. 7th	Paid Receiver of Taxes, N. Y. City, personal tax 1906 Estate of Henry Ungrich..	373.42
	" "	Paid Martin L. Ungrich bal-interest received	1257.56
			<hr/>
			1633.59

Dec. 1906. 2119

Received from Henry Ungrich, Jr., and Martin Ungrich, Executors and Trustees estate of Henry Ungrich, deceased. Twelve hundred and fifty-seven and 56/100 (\$1257.56) in full balance interest due me as per above statement.

No. 5040.

\$1257.

New York, Dec. 7th, 1906.

COLONIAL TRUST COMPANY

222 Broadway.

PAY TO THE ORDER OF Henry Ungrich, Jr. and Martin Ungrich Exrs. and Trustees Es- 2120
tate of Henry Ungrich Twelve hundred and fifty seven 50/100 dollars.

\$1257.50/100

James Demarest.

James Demarest

Counsellor-at-law,

140 Nassau St.

(Endorsed)

Pay to Martin L. Ungrich or order.

Martin Ungrich

Henry Ungrich, Jr.

Exrs. & Trustees,

Estate of Henry Ungrich.

2121

New York, June 1907.

Henry Ungrich, Jr. } Exr. & Trustees

Received from Martin Ungrich } Est. Henry Ungrich

Two hundred and seventy-five Dollars

for interest on Bond J. B. Breivogel, N. Y. cor.
48th St. & 5th Ave. Brooklyn, N. Y. \$10,000 at
5½% Dec. 1/06 to June 1/07.

\$275.

2122

New York, June 6, 1907.

Henry Ungrich, Jr. & } Exrs. &
 Received from Martin Ungrich } Trustees.
 Two hundred & twenty.....Dollars
 for 6 mos. interest to June 1/07 on Bond & mtge.
 \$11000 a 4% premises S. W. Cor. Pleasant Ave. &
 123rd St.
 \$220.

New York, June 1907.

Henry Ungrich, Jr. } Exrs. & Trustees
 Received from Martin Ungrich } Est. Henry Ungrich
 2123
 Ten hundred and ninety three & 29/100 dollars for
 interest on bond Harry K. Davenport Lenox Av.
 & 124 St. \$57500 a 4% from Dec. 1/06 to May
 22/07.
 \$1093.29/100

No.

New York, June 6, 1907.

KNICKERBOCKER TRUST COMPANY,

Harlem Branch

2124

125th Street & Lenox Ave.

Pay to the order of M. Louis Ungrich
 Two hundred & Twenty Dollars
 \$220.

Henry Ungrich, Jr. } Exrs. &
 Martin Ungrich, } Trustees.

No. 1 New York, June 3, 1907. 2125

KNICKERBOCKER TRUST COMPANY,

Harlem Branch,

125th St. & Lenox Ave.

Pay to the order of M. Louis Ungrich

Thirteen hundred and sixty-eight & 29/100 dollars.

\$1368.29/100

Henry Ungrich, Jr. } Exrs. &
Martin Ungrich, } Trustees.

2126

2127

2128

NEW YORK SUPREME COURT,

COUNTY OF NEW YORK.

In the Matter of the application of Martin Louis Ungrich for the payment of certain moneys under the trust created by the will of Henry Ungrich, deceased.

2129

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

Henry Ungrich, Jr., and Martin Ungrich, as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,

Defendants.

City and County of New York, ss.:

2130 Henry Ungrich, Jr., being duly sworn, deposes and says:

That he is one of the defendants in the above entitled action and one of the executors of and trustees under the last will and testament of Henry Ungrich, deceased, mentioned in the affidavit of Martin Louis Ungrich, the plaintiff herein, verified June 12, 1907.

That the investments which have been made by the said executors and trustees on bonds and

mortgages for the benefit of the said plaintiff under said will have always been made with his approval and he knew and knows that the interest upon the same was payable semi annually and was so made payable at his request and approval. 2231

That up to the time of the bringing of this action, the interest upon the said investments was paid to and accepted by said plaintiff semi annually without objection and he always signed the receipt for the same in the manner and form as these shown in the said affidavit of the plaintiff.

That the said plaintiff knew that the defendants could not invest said part of deceased's estate in investments whereby the interest could be paid quarterly. 2132

That the checks sent to plaintiff by the defendants mentioned in his said affidavit covered all moneys that were then due to plaintiff and a true account of the moneys to which plaintiff was then entitled under said trust, excepting the sum of \$5.60 which was the amount of a miscalculation of a payment of interest and upon the same being discovered by deponent, he immediately sent his personal check to plaintiff for that amount to correct same.

That since the return of the said checks and receipts by the plaintiff to defendants, deponent has caused to be delivered to said plaintiff a certified check to his order in the amount of \$2,919.20, which is more than the amount claimed by plaintiff and which is the full amount due to him as income under the said trust estate to this date. This certified check for the sum of \$2919.20 was sent by registered mail addressed to the said Martin Louis Ungrich, the plaintiff in the second or the above entitled actions, at 426 St. Marks Avenue, in the Borough of Brooklyn, City of New York, on Saturday, June 15, 1907, and has not 2133

2134 come back through the mails and has not been tendered back to deponent by the said Martin Louis Ungrich. On June 17, 1907, deponent's attorney and the attorney for the defendant Martin Ungrich individually and as such executors and trustees aforesaid served upon Messrs. Kellogg & Rose, the attorneys for the said Martin Louis Ungrich, a notice, a copy of which is annexed hereto and marked Schedule "A."

Deponent objects to the granting of any order as sought here both on the grounds that the money sought by the said Martin Louis Ungrich, such plaintiff in the second above entitled action, has been already paid.

2185 And deponent also objects to any order being granted herein that such payment of the said sum of \$2919.20 of any sum as income to the said Martin Louis Ungrich shall be as asked for in the notice of motion herein "without prejudice to his rights in this action", on the ground that this court has no power whatever to make such provision in an order. That the said Martin Louis Ungrich if he desired the payment of such sum as income must take such payment with all its attendant consequences and this Court has no power to relieve him from these attendant consequences when he takes that sum, as deponent is advised by
2136 his counsel as aforesaid.

Deponent, therefore, asks that this motion may be in all respects denied.

Henry Ungrich, Jr.

Sworn to before me this 17th }
day of June, 1907. }

Edward P. Orrell, Jr.

Notary Public,

Kings Co.

Ctf. filed in N. Y. Co.

City and County of New York, ss.:

2137

Isaac P. Hubbard, being duly sworn, says:

That he is the attorney of the defendant Henry Ungrich, Jr., one of the defendants in the above entitled action. That on the 26th day of April, this action appeared for the first time on the call calendar of this court, which consisted of about 275 cases and was next to the last case on said calendar and His Honor, Mr. Justice Leventritt, marked the case for the first call in May and it was not put over to the June call calendar as stated in the affidavit of the plaintiff's attorney herein, but has not appeared upon said call calendar since. That the said defendant has at all times been anxious to have said action tried as soon as it could be reached.

2138

Isaac P. Hubbard.

Sworn to before me this 17th }
day of June, 1907. }

Edward P. Orrell, Jr.,
Notary Public,
Kings Co.

Ctf. filed in N. Y. Co.

2189

2140

SCHEDULE "A"

NEW YORK SUPREME COURT,

NEW YORK COUNTY.

In the Matter of the application of Martin Louis Ungrich for the payment of certain moneys under the trust created by the will of Henry Ungrich, deceased.

2141

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

Henry Ungrich, Jr., and Martin Ungrich, as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,

Defendants.

2142 To Kellogg & Rose,
115 Broadway, New York City.

Gentlemen:—

We hereby notify you that on Saturday, June 15th, 1907, there was sent by mail to the above named Martin Louis Ungrich, addressed to 426 St. Mark's Avenue, Borough of Brooklyn, City of New York, a certified check for the sum of \$2919.20, which check was made payable to his order and which check represents the full amount

due Martin Louis Ungrich as income under the 2143
trust estate in the hands of Henry Ungrich, Jr.,
and Martin Ungrich, as executors of and trustees
under the last will and testament of Henry Un-
grich, the elder, deceased, and that said sum is
paid without any reservation or qualification
whatsoever and not pursuant to any demand here-
tofore made upon the said Henry Ungrich, Jr.,
and Martin Ungrich, as such executors and trus-
tees as aforesaid, but solely for the reason that the
same is due Martin Louis Ungrich as aforesaid.

Dated New York, June 17, 1907.

Isaac P. Hubbard, 2144
Atty. for Henry Ungrich, Jr.,
individually and as exr., etc.
132 Nassau St.
Johnston & Johnston,
Attys. for Martin Ungrich,
individ. and as exr., etc.,
256 Broadway,
Manhattan Borough.

2145

2146

NEW YORK SUPREME COURT,

COUNTY OF NEW YORK.

In the Matter of the application of Martin Louis Ungrich for the payment of certain moneys under the trust created by the will of Henry Ungrich, deceased.

MARTIN L. UNGRICH,

2147

Plaintiff,

AGAINST

Henry Ungrich, Jr., and Martin Ungrich, as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,

Defendants.

City and County of New York, ss.:

2148 Martin Ungrich, being duly sworn, says:

That he is one of the defendants in the second above entitled action. That on June 15, 1907, there was sent by the defendants in the second above entitled action to the plaintiff by registered mail addressed to the said Martin Louis Ungrich at 426 St. Marks Avenue, in the Borough of Brooklyn, City of New York, a certified check to his order in the sum of \$2919.20, which is the whole amount of income due to the plaintiff and which the plaintiff was entitled to under the trust

herein. That the said Martin Louis Ungrich has 2149
sent to me a written acknowledgement of the receipt of the said check and has written a statement that he would hand over the money to his attorney and that he thanked the defendants aforesaid for their courtesy.

Deponent objects to the granting of the motion herein under the circumstances and particularly objects to the granting of any order which shall contain a provision as asked for in the notice of motion herein that the payment to the said Martin Louis Ungrich, such plaintiff as aforesaid, of the said sum of \$2919.20 or any other sum as earned under the trust shall be "without prejudice to his 2150
rights in the action."

Deponent objects to the incorporation of any such clause in any order herein on the ground that this court is absolutely without power in deponent's estimation, to incorporate any such clause in any such order and that this court cannot absolve the plaintiff from the effect of receiving the aforesaid sum as money which the plaintiff is entitled to as earned under the trust from the securities in which the executors and trustees aforesaid have invested it.

Deponent therefore asks that the motion either may be denied, or if it be granted, that the order shall contain no such clause as asked for in the 2151
notice of motion herein as aforesaid.

Martin Ungrich.

Sworn to before me this 17th }
day of June, 1907. }

Edward P. Orrell, Jr.,
Notary Public,
Kings Co.

Ctf. filed in N. Y. Co.

2152

NEW YORK SUPREME COURT,

COUNTY OF NEW YORK.

In the Matter of the application of Martin Louis Ungrich for the payment of certain moneys under the trust created by the will of Henry Ungrich, deceased.

2158

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

Henry Ungrich, Jr., and Martin Ungrich, as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,

Defendants.

2154

City and County of New York, ss.:

Edward W. S. Johnston, being duly sworn, says:

That he is one of the attorneys and counsel for Martin Ungrich, defendant in the second above entitled action. That annexed hereto and marked Schedule "A" is a copy of an original notice which was served on Messrs. Kellogg & Rose, at-

torneys for the plaintiff in the second above enti- 2255
tled action, on June 17, 1907, with their stamped
admission of service thereof thereon.

Edward W. S. Johnston.

Sworn to before me this 18th }
day of June, 1907. }

Benjamin E. Messler,
Commissioner of Deeds,
City of New York.

2156

2157

2158

SCHEDULE "A."

NEW YORK SUPREME COURT,

NEW YORK COUNTY.

In the Matter of the application of Martin Louis Ungrich for the payment of certain moneys under the trust created by the will of Henry Ungrich, deceased.

2159

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

Henry Ungrich, Jr., and Martin Ungrich, as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,

Defendants.

2160 To Kellogg & Rose,
115 Broadway, New York City.

Gentlemen:

We hereby notify you that on Saturday, June 15th, 1907, there was sent by mail to the above named Martin Louis Ungrich, addressed to 426 St. Mark's Avenue, Borough of Brooklyn, City of New York, a certified check for the sum of \$2919.20, which check was made payable to his order and which check represents the full amount

due Martin Louis Ungrich as income under the **2161**
 trust estate in the hands of Henry Ungrich, Jr.,
 and Martin Ungrich, as executors of and trustees
 under the last will and testament of Henry Un-
 grich, the elder, deceased, and that said sum is
 paid without any reservation or qualification
 whatsoever and not pursuant to any demand here-
 tofore made upon the said Henry Ungrich, Jr. and
 Martin Ungrich, as such executors and trustees as
 aforesaid, but solely for the reason that the same
 is due Martin Louis Ungrich as aforesaid.

Dated New York, June 17, 1907.

Isaac P. Hubbbard, **2162**
 Atty. for Henry Ungrich, Jr.,
 individually, and as exr. etc.,
 132 Nassau Street.

Johnston & Jornston,
 Attys. for Martin Ungrich,
 individually, and as exr. etc.,
 256 Broadway,
 Manhattan Borough,
 N. Y. City.

2168

2164

Exhibit 77.**NEW YORK SUPREME COURT,**

COUNTY OF NEW YORK.

In the Matter of the application of Martin Louis Ungrich for the payment of certain moneys under the trust created by the will of Henry Ungrich, deceased.

2165

MARTIN L. UNGRICH,

Plaintiff,

AGAINST

Henry Ungrich, Jr., and Martin Ungrich, as Executors of and Trustees under the Last Will and Testament of Henry Ungrich, deceased,

Defendants.

2166 To Messrs. Kellogg & Rose,
Attorneys for Martin L. Ungrich,
115 Broadway, City.

Gentlemen:

Pursuant to the terms of the order of this court, bearing date June 21, 1907 and entered in the office of the Clerk of the County of New York on June 24, 1907, we hereby send to you check to the order of Martin L. Ungrich for the sum of \$2919.20. And we hereby notify you that we shall

appeal from so much of the order as provides that 2167
the payment of that sum shall be "without preju-
dice to the rights of any of the parties to this ac-
tion," as we claim that the court has no power
to impose such a condition on the payment or re-
ceipt of the said sum.

Dated New York, June 25, 1907.

Yours, etc.,

Isaac P. Hubbard,
Atty. for Henry Ungrich, Jr.,
individually, etc.

Johnston & Johnston,
Atty. for Martin Ungrich, 2168
individually, etc.

City and County of New York, ss.:

Edward P. Orrell, Jr., being duly sworn, says
that he is over the age of twenty one years; that
on the 25th day of June, 1907, he served the within
notice on Messrs. Kellogg & Rose., at their offices
No. 115 Broadway, Manhattan Borough, New
York City, by delivering a duplicate original
thereof to Mr. Macintosh Kellogg of said firm or
associated therewith, and leaving the same with
him, and at the same time delivering to said Mac- 2169
intosh Kellogg certified check to the order of Mar-
tin L. Ungrich for the sum of \$2919.20.

Edward P. Orrell, Jr.

Sworn to before me this 26th }
day of June, 1907. }

Benjamin E. Messler,
Commissioner Deeds,
City of New York.

2170

Exhibit 78.

At a term of the Appellate Division
of the Supreme Court held in and
for the First Judicial Department
in the County of New York on the
22d day of November 1907.

Present—Hon. EDWARD PATTERSON,

Presiding Justice.

“ GEORGE L. INGRAHAM,

“ CHESTER B. McLAUGHLIN,

“ JAMES W. HOUGHTON,

“ FRANCIS M. SCOTT,

2171

Justices.

In the Matter of the applica- 1277.
tion
OF

Martin L. Ungrich for the pay-
ment of certain moneys under the trust created by the
will of Henry Ungrich, de-
ceased.

MARTIN L. UNGRICH,
Respt.,

2172

vs.

Henry Ungrich, Jr., and Mar-
tin Ungrich as Exrs. and
Trustees, etc.,

Appls.

On Appeal from
Order.

An appeal having been taken to this Court from
an order of the Supreme Court entered on the 24th
day of June, 1907, by Henry Ungrich, Jr., and

Martin Ungrich, as executors and trustees, etc., 2173
 and said appeal having been argued by Mr. Edward W. S. Johnston of counsel for the appellants and by Mr. L. Laffin Kellogg of counsel for the respondent; and due deliberation having been had thereon, it is hereby

ORDERED that the order so appealed from be and the same is hereby modified by striking out the words "without prejudice to the rights of any parties in this action," and as so modified affirmed with \$10 costs and disbursements of this appeal to the appellants to abide the final judgment in the action.

Enter 2174
 E. P...
 J. S. C.

(Seal) A Copy
 Peter J. Dooling
 Clerk

Exhibit 79.

No. 3 New York, June 15, 1907

KNICKERBOCKER TRUST COMPANY

HARLEM BRANCH.

125th St. & Lenox Ave.

2175

PAY TO THE ORDER OF M. L. UNGRICH
 Twenty nine hundred and nineteen and 20/100
 Dollars.

\$2819 20/100

Martin Ungrich Jr.
 Martin Ungrich.
 Exrs & Trustees
 Est. Henry Ungrich

2176 Endorsed:

M. L. Ungrich.

Pay The American Exchange National Bank
or order. Kellogg & Rose.

Received Payment Through New York Clear-
ing House June 26 1907.

AM. EX. NAT. BK. M. Burns, Cachier.

Exhibit 80.

N. Y. Jan. 7th 1902.

Dear Henry:

2177 Saw Martin this A. M. in regard to his P. C.
which I left with John for you when I called down
to see you at house. We waited at Hamilton Bank
 $\frac{1}{2}$ hour for you as I told John I would.

Martin & I will meet you at the Hamilton Bank
bet. 9.30 & 10 A. M. on Wednesday Jan. 8th as
he wants to see you in reference to an offer a man
made for the Lenox, 126th & 123rd St. parcels in
a lump. I told him I thought price offered too
low bet. \$140 & \$150000 for all, \$75000 cash, bal.
mtge. at 4 to $4\frac{1}{2}\%$. Don't fail to be on hand, as
I have some business to also talk about to you
both, before per est. is settled up.

Give my love to all at home.

2178

Yours afftly
Louis

Exhibit 81.

New York Jan 23rd 1902

Dear Henry

Will be up to see you between 5 & 6 o'clock to-
morrow (Friday) evening at your house so try &
be in. Also have general description of 126th St

& Pleasant Ave parcels ready for me, with rentals, 2179
amt of cash buyer needs etc. etc., as I met a R. E.
broker yesterday who has client that wants Har-
lem property for investment.

Regards to all

Yours afftly

Louis

Exhibit 82.

New York 7 P. M.

Feb. 25th 1902

Dear Henry

Your P. C. recd. Also got letter this P. M. from 2180
Mr. Jas Demarest to same effect.

Will be on hand at apptd. time. Would suggest
you have your "corrected" statement & Feby's
statement also there so we can make one job of it.

Hoping you are all well I am

Afftly yours

Louis

Exhibit 83.

New York Dec 29th 1901

Dear Henry

I think it would be a good idea to make an ap- 2181
pointment with Martin yourself & I to meet at
Demarests office on Tuesday next in forenoon &
arrange that Personal Estate division, and have
it done with. It seems foolish to let matter run
on, and pay that 2% tax if not settled by Jan 2nd
or 3rd next.

Make the appt and notify me as to date and
time. Saw Martin yesterday & he showed me your
P. C. about what you friend had seen in Real Es-

2182 tate Record. Your friend was right, but *you are not* right in saying I am fooling my money away. I have money in two and my wife in 1 savings bank, besides I have cash in my safety deposit box in the vaults of the Amsterdam Bank Bdway & 39th St where I have some papers. Insurance policies of Fire & Life Co's. & my wife & I also have some cash at home. I loaned out some money and its all good except perhaps that \$54.50 I lent Charley Hauseman, and I know I will have to wait long for that. Chas was good to me in the past & I have not forgotten the fact.

Now, Henry, dont worry over me and imagine
2183 a lot of unnecessary wrong doing on my part. I do not interfere with anybody's business but it seems a lot of your friends take a big interest in mine & I wish they would mind their own.

Hoping you will make appt as before stated & that you & yours are all well I am

Aftly your Brother
Louis

Exhibit 84.

AGREEMENT.

2184 This agreement entered into this fifteenth day of October 1902 between Henry Ungrich Jr., of the City, County and State of New York, party of the first part, and Ludwig Baumann, of the same place, party of the second part,

WITNESSETH, That the said party of the first part hereby agrees to erect a five story and basement, stable building on the premises number 107 West 124th Street, said premises being 25 feet by 100 feet, 11 inches, and building to be 25 feet by

97 feet, with the appurtenances and the said party 2185
 of the second part, agrees to hire from the said
 party of the first part, said stable building, which
 is to be built according to plans and specifications,
 to be submitted by the party of the first part, for
 the term beginning November first 1902, to the
 expiration of the present lease by the party of the
 second part, on the property number 144 and 146
 West 125th Street, not to exceed the term of ten
 years, at the annual rental of twenty-seven hun-
 dred dollars (\$2700.00), payable in equal monthly
 payments, in advance, on the first day of each and
 every monthly payments, in advance, on the first
 day of each and every month during said term. 2186
 Payment of rent to commence upon completion
 and turning over of the building by the party of
 the first part, to the party of the second part, the
 party of the first part to keep the roof and outside
 of the building in proper condition and repair.
 The party of the second part, to keep the inside of
 the premises in repair and in addition to pay the
 Croton Water tax, which is or may be assessed
 upon the premises.

It is mutually agreed by and between the par-
 ties hereto, that this memorandum and agreement
 is simply preliminary to the one to be executed
 by the attorney of the Mr. Henry Ungrich Jr.

In WITNESS WHEREOF, the parties hereto 2187
 have hereunto set their hands and seals this 15th
 day of October, 1902.

Henry Ungrich, Jr.

Ludwig Bauman per J. S. Gatham

Witnesses

Martin L. Ungrich & Chas M. Anderson

2188

Exhibit 85.**AGREEMENT.**

THIS AGREEMENT entered into this fifteenth day of October, 1902 between HENRY UNGRICH, Jr., of the City, County and State of New York party of the first part, and LUDWIG BAUMANN, DAVID FROELICH, EMIL FUERTH and SIMON MEYER, composing the firm of Ludwig BAUMANN & COMPANY, of the same place, parties of the second part,

2189 WITNESSETH that in consideration of \$1,000 in hand paid, each to the other, receipt of which is hereby acknowledged, the said party of the first part hereby agrees to erect a five story and basement, stable and storage building on the premises 107 West 124th Street, and premises being 25 feet by 100 feet, 11 inches, and building to be 25 feet by 97 feet with appurtenances and the said parties of the second part, agree to hire from the said party of the first part, said stable building, which is to be built according to plans and specifications, to be submitted to the party of the first part, for the term beginning November first, 1902, to the first day of February, 1911, at the annual rental of Twenty-seven hundred dollars (\$2700.), payable in equal monthly payments, in advance, on 2190 the first day of each and every month during said term. Payments of rent to commence upon the completion and turning over of said building by the party of the first part, to the parties of the second part, and the acceptance thereof by the parties of the second part, the parties of the second part hereby agreeing to accept said building when completed according to the aforesaid plans and specifications. Party of the first part further covenants that he will complete said building on

or before April, 1903. The party of the first part 2191
 agrees to keep the roof and outside of the building
 in proper condition and repair, during the same
 time. The parties of the second part agree to keep
 the inside of the premises in repair and in addi-
 tion to pay the Croton Water tax, which is or may
 be assessed upon the premises during said term.

IN WITNESS WHEREOF, the parties hereto
 have hereunto set their hands and seals this 15th
 day of October, 1902.

Henry Ungrich Jr. (L. S.)

Ludwig Baumann & Company (L. S.)

Per J. S. Gathman.

2192

In presence of

James Demarest

Exhibit 86.

No. 4. New York, May 31, 1906.

KNICKERBOCKER TRUST COMPANY

HARLEM BRANCH

125th St. & Lenox Ave.

PAY TO THE ORDER OF Henry Ungrich, Jr.
 Eleven hundred and fifty Dollars.

2193

\$1150.

Henry Ungrich, Jr.

Endorsed: Pay to the order of James Demarest,
 atty. for Exrs & Trustees Estate of Henry Ung-
 rich. Henry Ungrich, Jr. James Demarest Atty
 for Exrs & Trustees Estate of Henry Ungrich.
 Pay Colonial Trust Company or order James
 Demarest.

- 2194** Pay to the order of the National Park Bank of New York. Colonial Trust Company, New York, Edmund L. Judson, Secy. Received payment through New York Clearing House May 31, 1906. The National Park Bank of New York.

Exhibit 87.

N. Y. Sept. 7th, 1901.

Dear Henry:

- 2195** Your letter was recd O. K. yesterday and what you wrote was partly true, in that, that I did get a little full, but was not in such a helpless condition as you imagine, but it has been a very long time since it occurred before, and Henry rest assured it will not happen again in a long time, take my word for it. Today wife & I leave for Liberty to remain about 2 weeks. When we get back intend to move uptown and take a nice flat, and after we get settled will let you know & hope to have you visit us.

Yours affectionately

Louis.

c/o Revonah Lodge

Liberty Sul. Co. N. Y.

2196

Exhibit 88.

New York June 30th 1901.

Dear Henry:

Did not see L. or L. K. Saturday at job after leaving you as they were not there & did not care to go to their house.

Will come up to see you Monday evening 7 to

7:15 as I want to see you in regard to their a/c 2197
& also get full size description etc. so I can draw
up correct diagrams as to properties for ap-
praisers use and also to talk over matter of same
with you beforehand.

Am going to see Demarest Monday about 12 to
1 on a matter of business for myself. Try & be in
when I come or leave appt there for me in case
you cannot be at home.

Yours afftly

Louis.

Exhibit 89.

2198

“Revonah Lodge” Liberty Sullivan Co. N. Y.

July 17th 1901.

Dear Henry:

Well, Brother, after a weeks hunt & search for
a quiet homelike place to stop & after trying 2
other places the circular of which I enclose you
we have at last got quarters in an ideal house. We
went to Eldred 1st stayed 2 days, then took stage
across country 12 miles to White Lake stayed 2½
days, then took “bus” across the country again to
Liberty & stopped at Revonah Mountain House
1½ days & got carriage & drove to top of Revonah
Mountain 2900 ft above sea level on the top found 2199
the Revonah Lodge of which I also send you a
cut etc. There is a fine lake. “Ravonah Lake,”
⅝ mile North West where we go fishing boating
etc. and the view from our room windows is sim-
ply grand, overlooking the town of Liberty and all
the surrounding country. This place is the very
highest point in Suln. Co. except Walnut Moun-
tain which is said to be 250 ft higher. For my part
this little trip has done me great good and I am

2200 feeling & looking well but my wife does not feel well at all & I have written to our N. Y. Dr. to see if it is advisable to have wife's last 2 prescriptions refilled & expressed up here. The roads for walking from town to our house (1¾ miles) are very steep, but up on top are smooth & nearly level. Our room is cheerful & the food good plain & substantial & there are 6 other people here who live in N. Y. & Brooklyn.

My N. Y. janitress mailed me a notice from Surrogate & presume you also recd copy of same also, in regard to Father's Est appraisal by Frank Mazet I have done nothing as yet to get an app'l on
 2201 Fathers property but there is time enough when I get back. Suppose John & Minnie & Baby etc are all up at Raquette Lake. Am also going to send Martin letter by this mail. I only hope my wife will pick up flesh etc. while here. She does not cough much & her color is somewhat better but she is weak & even short walks tire her.

Hoping you & yours are all in good health and that I will get an answer at earliest convenience telling me any news you may have. I close remaining

Your afft Bro

Louis.

c/o John G. Mayhew
 2202 Revonah Lodge
 Liberty Sul Co. N. Y.

Exhibit 90.

2203

New York July 5th 1901.

Dear Henry:

We will not leave N. Y. until about Tuesday next. Mailed Martin June statement last night. Will see you before I go away.

Yours etc.

Louis.

Exhibit 91.

[Postal Card.]

2204

New York May 3d 1901.

Dear Henry:

Got statement & letter at 7 P. M. last night. Will write you a reply this morning when I get home.

Yours etc.

Louis.

Saw D on Tuesday & Martin yesterday.

Exhibit 92.

New York May 18th 1901.

2205

Dear Henry:

Yours of 16th recd. Am glad you & Martin got around to various banks etc. and that things went along smoothly etc. I think it would be well if we could all get along nice & friendly together. For my part no one can come to you again and say I said this, that or another thing for I have got through since seeing you the last time when we went to Woodlawn and if anyone comes to you then wait until you see me first before getting pro-

2206 voked at what they may have to say. I expect to see Martin on Tuesday A. M. and will later call at your house.

Hoping you & all are enjoying good health I am

Yours afftly.

Louis.

Exhibit 93.

New York June 17th 1901.

Dear Henry :

2207 Saw L. & L. K. today & they showed me "my own" papers to them of about \$342.00/100. Had a talk & found out things of which I was unawares of time I was in trouble as I always supposed Father had repaid Louis & Kos the moneys they had paid out on my a/c when I was in trouble in City Prison that time.

2208 However, they told they would take \$300.00 in full for all claims & give me all my old notes, letters etc. they hold. Also had talk with them about Florence action as to change of name etc. and after I see you will go & see Mr. Dem and have him fix up answer to submit before (too late) on 19th & try & thwart Ball. Will explain all to you before hand. Saw Martin & all the Biehls today also.

Please wait in Tuesday 18th until 9.30 for me as I want to see you & have Lizzie's papers against me ready when I come and a check for \$70.00 I paid to Charles Wein which you said you would send me.

Hoping you are all well & that you will wait in for me I am

Yours afftly

Louis.

N. Y. Oct. 16th 1901.

Dear Henry:

Your letter recd. I will be up Friday next to see you about 11 to 11.30 A. M. By this mail I also send Martin a letter & will tell him about receipt you ask for. When I see you we will talk over matters as to Per Est etc and try to come to some understanding but perhaps Martin ought to be present before anything is done. I must go to Great Neck L. I on Thursday (tomorrow) or else would have come up then. We are now nearly fixed up at our new home, and hope you will come down & see us when we are fully settled. 2210

My wife is not in as good health as we could wish for, and this moving business, extra work and inconvenience has upset her. However when all arranged we will have a nice little home the rooms are large & clean & house is nice and quiet and is owned by Mr. Louis Fessler, a boss carpenter and friend of mine for years.

Hoping you will be at home when I call I am

Yours afftly
Louis.

No. 437 W 44th St.

2211

2212

Exhibit 95.

[Postal Card.]

N. Y. Nov. 6th 1901. 3 P. M.

Dear Henry:

Just got home & recd your letter. As it would be before 1st mail arrives in morning I could get up to house earlier than as I said, so "do not" expect me Thursday. Have not seen Martin since he you & I were at Demarests. In regard to Per Est when I see you we can talk the matter over but I am afraid "M" will be stubborn & must be consulted. He means alright & I wish you could both
 2213 forget the past troubles. Expect another letter.

Yours afftly
 Louis.

Exhibit 96.

[Postal Card.]

Liberty, N. Y. July 14th 1901

Dear Henry:

Wife & I now here & like it very much. Will write you fully Monday A. M. Regards to all. Recd notice from Surrogate etc. as to Estate. Will
 2214 mail it you tomorrow.

Yours affty.
 Louis.

Revonah House

Dont answer this.

Exhibit 97.

2215

New York Nov 11th 1901.

Dear Henry:

Intend to see Demarest some time Tuesday about Per Est matter as you suggested. Will see Martin about 7:30 P. M. Later and may possibly see you at 9 or 9.30 but not positively.

If you call here please drop me P. C. beforehand, but will not be home Wednesday or Friday but will be Thursday or Saturday. Ask Minnie if she has a spare photo of you & Emily for me & oblige

Yours afftly 2216
Louis.

No. 437 W. 44th St.

Exhibit 98.

Martin L. Ungrich,
Architect & Sup't.,
No. 426 St. Marks Ave., Bklyn.

Brooklyn N. Y. C.

June 8th 1907.

Cousin Martin

Your P. C. received.

Got check for \$220.00/100 O. K. Also got a check 2217 for 5 months & 22 days interest on \$57500 and which is \$5.61/100 less than it ought to be. Have not yet got my \$48.68 from K. T. Co. on \$3219.10 a/c 3%.

My lawyers Kellogg & Rose will receive the above 2 cks today and return them to H. U. Jr. and he can put them with June to Dec. 1906 cks until my case pending against Ex & Trustees is tried.

Your cousin
Louis.

2218

Exhibit 99.

Milwaukee Wis. Feby. 19th 1894.

My dear Father & Brother:

Your letter and \$20.00 money order was received by me on Friday last at 10 A. M. Would have answered sooner only that I was awaiting replies to various answers from architects in Chicago and other places to whom I had written & telegraphed for work, for I thought it would make you feel better in regard to me if you could but hear of my getting a situation for I know you must be pretty well tired of me & my past actions by this time.

2219

For myself I can only say I am tired of all this & when I get to work will behave myself save up my money and try & be a man once more.

By the enclosed letter from Messrs. Nash & Plympton of Cincinnati, you can see I have a place & I have both written & Telegraphed them I would be on hand on Thursday Mar 1st & go to work.

They are the representative architects of Cincinnati and if I behave myself I know I will have a good place with them as they do a large business and want a draughtsman who is up on iron and steel construction on heavy work & that is my best forte. Messrs. Cobb & Frost are a firm for whom I have already worked and to whom I wrote lately, and it seems they have sent my letters etc. to N. & P. who may have written them & who are busy & need help. Now Father when you get this letter I want you to mail me \$25 so I can pay my car fare to Cincinnati and buy me a pair of shoes & also live a week or so until I draw my 1st money and then every week I am going to send you money order for \$12.00 100 to keep for me so that when I want money again you can send me some of what

2220

I have earned myself. In regard to Aunt Anna's 2221
will of which I spoke in my last letter would say
that she mentioned that fact to me herself the last
time I saw her some time in Sept. or Oct. when I
called on her.

I am very glad Henry has decided to give up his
flour selling business & give his whole attention to
your property for you are growing old and the an-
noyances of looking after your tenants etc. are try-
ing but I dont want Henry to feel so hard on me,
as in my last letter or in fact any of my others I
failed to mention anything of his having any ad-
vantage of me in any way. Look over them your-
self & satisfy yourself on that point. Now Father 2222
when you get this letter dont delay your answer
and if you will send me \$35.00 instead of the \$25.00
I have asked for, for this money is the very last I
will ever send for, as I am going to keep my place
as long as it will last & behave myself.

Look after Florence at times and tell her her
papa loves her and my only wishes are that some
day we may all be with each other again.

Answer without delay Father to your loving
son,

M. Louis Ungrich,
c/o General Delivery
P. O. Milwaukee, Wis.

2223

P. S. This Mr. H. H. Hand who sends me this
postal card is an architect who wanted me to work
for him while I was working for Messrs. Trapha-
gen & Fitzpatrick in Duluth. He does the work on
all the large flouring mills up here after I get
through in Cincinnati I may go up there for I will
never go back to N. Y. unless I have money & look
like a gentleman & have money. If you can Father I
want you to take up that Wood chk as the amt. is

2224 small and none of us knows what might happen.
Take it up out of the money I send to you please
and all will yet be well. Heaven bless you is my
wish.

Yours
Louis.

Exhibit 100.

N. Y. Dec. 23d/87.

Dear Bro Henry

2225 With this message I also send one to Father and
hope he will aid me, but Henry my brother, I am
the only Bro you have, if Father should refuse me
for Heaven's sake will you help me in my distress.
God knows, bad as I have been, I am not unfit to
be helped & were you in my situation I would as-
sist you with my all, you have been a good son and
some day will reap the reward while I if I am not
now helped will be disowned. I want to begin
anew let me have a happy Christmas and begin a
new Year for the best. My past birthday was the
saddest I ever knew (& I through any fault of
mine will never experience such another). Henry
dnt refuse me if father does, help me out to your
best ability & remember I am only a human being
2226 & have made mistakes often, but my past ex-
perience has been rough & now when help will
really do me good, I cannot get it if you & father
should refuse it, from any one else & I dont want
& will not again cash checks or commit a crime
but want to be honest & get into some business
again, become self supporting & pay all my just
debts & be a good brother to you & dutiful son to
our dear kind old Father, who when I see his sor-
rowful face & hear his just reproaches on my past

life, the pangs in my heart nearly drive me to dis- 2227
traction.

Dont refuse me Henry if father does & save me
from a suicides or worse fate on a/c of necessary
assistance to

Your loving & only Bro
Louis.

P. S. Meet me at 2 o'clock 124th St. & Madison
Ave. today sure.

Exhibit 101.

New York, Oct. 12th, 1887. 2228

My dear Father

Forgive me and assist me this time out of the
difficulty into which I have placed myself since
coming back from Chicago about 10 or 12 days
ago. You of course by this time know all. I went
to Rev Wagners house again & he told me you
would see and try & do what you could. My
Father, aid me this once & last time and you shall
see that it will be well. I am coming to the house
Thursday evening Oct. 13th about 7.30 to ask your
kind forgiveness for the shame I have brought
upon your good name and will promise you before
God and if necessary on Friday over the grave of
my dear dead mother, to do better in the future & 2229
to show you once for all Dear Father that I will &
can be a good man. My resolution is final & I will
cause you no more heartaches with God's assist-
ance from Heaven & yours on earth all will yet
end well.

I have must to say when I call & do not be angry
but listen to your repentant & changed for the
future son Louis. Do be alone when I call & do
not shun me, My dear Father, as I will reform &
at once. God will help me. Good night.

2230

Exhibit 102.

N. Y. Sept. 7th 87.

My dear Father

I asked you through Henry to kindly meet those 3 checks I had cashed (in all \$115) You must & can easily understand that it is impossible for me to face you to talk this matter over. Talking will do me no good in this instance, and if anything is to be done at all it must be done at once as I am liable to be put into jail for this offense. I want to leave this City & would have done so already had I had the means to get out with.

2231

Are you going to (even though I am a scamp) leave me helpless and without cash to go away with. Pay the 3 checks & let me have \$150.00 and then you can cut me off & disown me if you wish.

I have no more to say & will not call over & see you. It remains for me to see whether you are as stubborn as

Your unfortunate son

Louis.

If you reconsider & consent to what I have asked then let Henry meet me tomorrow evening at place I met him tonight & at ½ past 7 o'ck otherwise all is lost to me.

2232

Exhibit 103.**2233**

6 Mount Morris

6 West Side.

A. V. Benvit, 148 Fulton St.	\$30.
E. G. Soltmann, 119 Fulton St.	35.
Louis Ehlers, 81 West 125th St.	10.
Richard Hevenor, Cor. Lex. Ave. & 125th	15.
E. H. Hartley, 3 Ave, 126th & 127th St.	15.
Foley, Doubleday & Co., 3d Ave. & 118th St.	20.
John M. Ruek, 9th Ave. & 59th St.	35.
Alex Stewart, 3rd Ave. & 14th St.	30.
Chas. Buehler, 157 W. 48th St.	20.
C. Lenhard, 8th Ave. & 124th St.	20.

2234

The above 10 checks were drawn to the order of each party and signed with my signature.

Edwin Rulor, Cor. 43d St. & Bdway, 7.00
made to his order & signed

James Keator

F. K. Keller, 668 6th Ave. 28.00
made to my order and signed

John W. Roberts

The total amount equals \$265.00.

Exhibit 104.

No. 47 New York, Sept. 30th 1887. **2235**

Fraud

No a/c

MOUNT MORRIS BANK

125th St. and 4th Ave.

PAY TO THE ORDER OF ALEXANDER
STEWART Thirty 00/100 Dollars

\$30.00/100

M. Louis Ungrich

Endorsed Alexander Stewart.

2286

Exhibit 105.

125th Street & 4th Avenue.

No. 17
F'raud

No a/c

New York, Oct. 3rd 1887

MOUNT MORRIS BANK.

New York City.

PAY TO THE ORDER OF M. LOUIS UNG-
 RICH Twenty eight 00/100 Dollars
 \$28.00/100

J. Roberts

Endorsed by M. Louis Ungrich.

2287

2288

It is hereby stipulated that the foregoing case **2239** contains all the evidence given upon the trial of this action and that the same be settled and ordered to be filed and annexed to the judgment roll herein.

Dated, November 16, 1908.

EDWARD P. ORRELL,
Attorney for Appellant Henry Ungrich.

JOHNSTON & JOHNSTON,
Attorneys for Appellant Martin Ungrich.

KELLOGG & ROSE,
Attorneys for Respondent.

2240

On the above stipulation the foregoing case on appeal, containing all the evidence, is hereby settled and ordered on file.

Dated, November 18, 1908.

JAMES FITZGERALD,
J. S. C.

2241

2242 Pursuant to Section 3301 of the Code of Civil Procedure, it is hereby stipulated that the foregoing consists of true and correct copies of the notices of appeal, the judgment roll, and case and exceptions as settled, and the whole thereof, now on file in the office of the Clerk of the County of New York; and certificates thereof by the Clerk of said County, pursuant to Section 1353, is hereby waived.

Dated, November 16, 1908.

EDWARD P. ORRELL,
Attorney for Appellant Henry Ungrich.

2243 JOHNSTON & JOHNSTON,
Attorneys for Appellant Martin Ungrich.

KELLOGG & ROSE,
Attorneys for Respondent.

Pursuant to Section 1353 of the Code of Civil Procedure, it is

Ordered, that the foregoing printed record as settled be filed in the office of the Clerk of the Appellate Division of the Supreme Court in the First Judicial Department.

2244 Dated, November 18, 1908.

JAMES FITZGERALD,
J. S. C.

Opinion.

2245

SUPREME COURT,

SPECIAL TERM, PART V.

By Mr. Justice Fitzgerald.

Ungrich v. Ungrich et al.—Henry Ungrich died in this city about March 1, 1901, leaving him surviving two sons, Martin L. Ungrich, the plaintiff, and Henry Ungrich, Junior, one of the defendants. By the terms of his will, which was admitted to probate on April 11, 1901, after the payment of certain amounts, the executors were to divide the estate into two equal one-half parts and to pay over to Henry Ungrich, Junior, one of such parts; to hold the remaining half and to pay over to Martin L. Ungrich, in quarter-yearly payments during his life, the net income received from the investment of such one-half. Upon the death of Martin L. Ungrich the trust estate became the property of Henry Ungrich, Junior. By the will Henry Ungrich, Junior, and Martin Ungrich, a nephew of the testator, were made executors and trustees and duly qualified, and have since continued to act as such executors and trustees. The personal property amounted to \$11,549.75. The real estate consisted of four parcels, viz.: Parcels 1 and 2 consisted of four lots, with the buildings thereon erected, situate at the corner of Lenox avenue and One Hundred and Twenty-fourth street, known as Nos. 281, 283 and 285 Lenox avenue and 107 West One Hundred and Twenty-fourth street; parcel 3, situate at the southwesterly corner of One Hundred and Twenty-third street and Pleasant avenue, known as No. 443 Pleasant avenue; parcel 4, situate on the southerly side of One Hundred and Twenty-sixth street, 135

2246

2247

- 2248 feet east of Third avenue, known as No. 208 East One Hundred and Twenty-sixth street. At the time of the sale by the executors—May, 1902—these various properties were, as disclosed by the evidence, of the value of about \$200,000. All of the four parcels were conveyed to one Harry K. Davenport, a law clerk in the office of the attorney for the executors, for a consideration of \$157,000. No money payment was made. Davenport, the grantee, immediately executed mortgages aggregating \$78,500, exactly one-half of the price; these mortgages bore interest at the rate of 4 per cent. The property was at once reconveyed to the defendant Henry Ungrich, Junior, one of the executors. This defendant for many years prior to his father's death had had the care and management of the estate, and for his compensation was maintained with his family at his father's residence and in addition received the sum of \$100 per month. The plaintiff, an architect by profession, was a man of irregular habits, involved in financial difficulties, wholly unfamiliar with real estate values, who, upon the urgent and repeated solicitation of his brother, was induced to agree to the transaction, and it is clear that in doing so he relied absolutely upon the representations made to him by this brother and the attorney for the executors.
- 2249
- 2250 During all of this time transit facilities and other great improvements were being inaugurated along Lenox avenue and the property thereon and adjacent thereto was rapidly increasing in value. Under the circumstances the time of the sale was most inopportune and the price was far below the real value of the property. The purchasing executor resold it within four years for the sum of \$288,000, thus securing a profit of over \$130,000. By the arrangement it is to be noted that while the trustee became so largely enriched the income of

the cestui que trust was reduced from \$3,200 to \$2,600 per annum. That the executor during all this time was fully aware of the change in conditions in the property is clear, and it cannot be held otherwise than that a fraud was perpetrated, and the attempt to prove ratification of the agreement must fail. Acts innocently done without knowledge, intervening between a fraud and its discovery, cannot within well settled authority be held to establish acquiescence (*Adair v. Brimmer*, 74 N. Y., 553; *People v. O. B. of S. B. B. Co.*, 92 N. Y., 103). The defendants herein were called upon to establish entire fairness throughout the transaction (*Smith v. Hewlett*, 29 App. Div., 182); this they wholly failed to do. The conveyance by the executor to the law clerk and the deed by the law clerk to the executor were one transaction, the trustee acting in the double capacity of seller and purchaser of the trust property, and there was clearly a conflict between interest and duty (*Davoue v. Fanning*, 2 Johns Ch., 252; *Gardner v. Ogden*, 22 N. Y., 327; *Forbes v. Halsey*, 26 id., 53; *Van Epps v. Van Epps*, 9 Paige, 237; *Duncomb v. N. H. & N. Y. RR.*, 84 N. Y., 199). Judgment for plaintiff. Proposed findings of fact and conclusions of law may be submitted accordingly upon notice.

2252

2258

42

N. Y. Supreme Court,

APPELLATE DIVISION—FIRST DEPARTMENT.

MARTIN L. UNGRICH,

Plaintiff-Respondent,

AGAINST

HENRY UNGRICH, JR., and MARTIN UNGRICH, individually, and as Executors of and Trustees under the last Will and Testament of Henry Ungrich, deceased,

Appellants' Points.

Defendants-Appellants.

STATEMENT.

There are herewith presented separate appeals by the defendant Henry Ungrich, Jr., individually and as executor of and trustee under the last will and testament of Henry Ungrich, deceased (fols. 7-13), and the defendant Martin Ungrich, individually and as executor of and trustee under the last will and testament of Henry Ungrich, deceased (fols. 16-22), from a judgment, bearing date and entered in the office of the Clerk of the County of New York on May 23, 1908, adjudging (1) that the transactions resulting in the sale to the defendant Henry Ungrich, Jr., of the premises

belonging to the estate of Henry Ungrich, deceased, referred to in the complaint and including each and all the contracts of sale, the deeds of conveyance, mortgages, confirmatory deeds and quit-claim deeds were and each of them was and is fraudulent as to the plaintiff, and the plaintiff is entitled to the proceeds and benefits thereof received by the defendant Henry Ungrich, Jr., to the extent of the interest therein created for his benefit under the terms of the will of Henry Ungrich, deceased (fol. 619); (2) that the net proceeds received by the defendant Henry Ungrich, Jr., from the sale of the said premises belonging to the estate so transferred to him as aforesaid was the sum of \$260,250.89 (fol. 620); (3) that the sum of \$130,125.45, one half of the said net proceeds of the sale of the said premises, together with the sum of \$3,224.11, the amount on deposit in the Knickerbocker Trust Company, amounting together to the sum of \$133,349.56, are impressed with a trust in favor of the plaintiff under the terms of the said will, and constitute and are the trust fund created under the terms of the said will for the benefit of the plaintiff (fols. 620-621); (4) that the plaintiff recover from the defendants as the amount of income on the trust fund created for his benefit under the terms of the will remaining due and unpaid, the sum of \$20,744.39, together with interest thereon from the date of that decree (fols. 621-622); (5) that the defendants be removed as trustees for the plaintiff under the terms of the said will, and the New York Trust Company be appointed in the place and stead of the said defendants as trustees of the trust created under the will of Henry Ungrich, deceased, for the benefit of the plaintiff (fol. 622); (6) that the defendants pay over to the New York Trust Company as their

successor, the sum of \$133,349.56, the principal of the trust fund created for the benefit of the plaintiff under the last will and testament of Henry Ungrich, deceased (fol. 623), and (7) that the plaintiff recover from the defendants Henry Ungrich, Jr., and Martin Ungrich, personally, the sum of \$2,167.89, costs and allowance as taxed by the clerk of this Court, and that the said plaintiff is entitled to judgment and execution therefor (fol. 623).

The plaintiff, a devisee for life under his father's will, of an undivided half interest in his father's estate, the fee of the other half of which, and the remainder in fee to the half of which the plaintiff holds a life estate, being vested in his brother, sues his brother and cousin, executors under that will, claiming that they failed to perform and carry out their duties as such executors and trustees in the following particulars: (a) In not accounting for \$25,000 of personal property "fraudulently, dishonestly and secretly" converted to the use and benefit of the defendant Henry Ungrich, Jr.; (b) they failed to invest \$3,000 of the trust moneys, except by depositing it in the Knickerbocker Trust Company at an insufficient and inadequate rate of interest; (c) they conveyed three parcels of property through a dummy to Henry Ungrich, Jr., one of their own number, for the sum of \$157,000, at a totally insufficient and inadequate consideration, and out of proportion to the fair and reasonable value of such real estate, and invested the half of the proceeds in which the plaintiff has a life interest, in mortgages that said dummy had given back to them as executors and trustees at the time of the transfer; (d) they "falsely and fraudulently" certified for the purpose of reducing the tax thereon, the value of the

trust estate for the benefit of the plaintiff at the sum of \$20,000.

The property so conveyed through a dummy to the defendant Henry Ungrich, Jr., is described in the complaint as being four parcels, although really there are three, parcels 1 and 2 being but one plot and situate on the northwest corner of Lenox Avenue and 124th Street (fols. 50-56). The next plot, which is described as parcel 3, is on the southwest corner of Pleasant Avenue and 123d Street (fols. 57-59). and the remaining plot is on the south side of 126th Street, 135 feet east of Third Avenue (fols. 59-61). The Lenox Avenue and 124th Street property is known as Nos. 281-283 and 285 Lenox Avenue, and the 124th Street property as No. 107 West 124th Street, and in the testimony on the trial they are sometimes described by those street numbers.

The answers, after denying the material allegations of the complaint (fols. 73-76; 178-181), set up as separate and distinct and also as partial defenses that Henry Ungrich, mentioned and described in the complaint, died on March 1, 1901, leaving him surviving his two sons, the plaintiff, and the defendant Henry Ungrich, Jr., and leaving a last will and testament and codicil thereto, which are set forth in the complaint; that the said will and codicil were, on April 11, 1901, duly admitted to probate by the Surrogates' Court of the County of New York (fols. 76; 181), and the defendants herein duly qualified as executors and trustees and now are acting as such executors and trustees; that among the other assets, the estate of the decedent consisted of the real estate aforesaid (fols. 77; 182); that thereupon the plaintiff made numerous complaints to the defendants that sufficient income was not realized from such real

estate and repeatedly requested the defendants to act under the power of sale conferred upon them by the last will and testament of the said decedent and sell said premises for the best price they could get therefor (fols. 78; 183); that at that time the defendant Henry Ungrich, Jr., expressed his desire to purchase the said premises at a price that would be satisfactory to the plaintiff, and it was then and there mutually agreed between the plaintiff and the defendants that an appraisal of the properties of the said estate should be made by one Philip A. Smyth, a well known auctioneer and appraiser and real estate agent and broker, doing business for many years past in the Borough of Manhattan, City of New York, and well conversant with the values of properties therein, and well conversant with the values of properties as mentioned and described in the complaint (fols. 78-79; 183-184); that thereupon the said Philip A. Smyth duly appraised the first two of these parcels at the sum of \$110,000, and the third parcel at the sum of \$22,000, and the fourth parcel at the sum of \$20,000, and the whole four parcels at the aggregate sum of \$152,000 (fols. 80; 185), and thereupon the defendant Henry Ungrich, Jr., offered to the plaintiff and to the defendant Martin Ungrich to purchase the said four parcels at the sum of \$157,000, and an agreement in writing was then entered into bearing date May 16, 1902, between the defendant Henry Ungrich, Jr., and the defendant Martin Ungrich, as executors and trustees as aforesaid, the plaintiff and one Harry K. Davenport, acting on behalf of the defendant Henry Ungrich, Jr., wherein and whereby the defendants agreed to sell and convey the premises described in the complaint to the said Davenport acting on behalf of the defendant Henry Ungrich, Jr., for the sum of \$157,000 (fols. 81-82; 186-187); that thereupon the plaintiff

in writing, duly executed and acknowledged by him, declared and affirmed to the defendants that the sale of the said real estate for the aggregate sum of \$157,000 was made at his request, with his consent and approval, and with full knowledge on his part that the said real estate was to be conveyed to Henry Ungrich, Jr., who was one of the executors of and trustees under the said will and testament of Henry Ungrich, and he therein and thereby ratified and confirmed the same and all of the acts of the said Henry Ungrich, Jr., and the defendant Martin Ungrich, as such executors and trustees as aforesaid, done in connection therewith (fols. 82-84; 187-189); that the defendants acted and relied upon the written declaration, affirmation, ratification and confirmation so made by the plaintiff and joined in a conveyance of the said premises described in the complaint to the said Davenport, which deed bears date May 22, 1902, and was duly recorded in the office of the Register of the County of New York on May 24, 1902, in Section 6, Liber 66 of Conveyances, at page 419 and indexed under block numbers 1790, 1810 and 1909 on the land map of the City of New York (fols. 84-85; 189-190); that the said Davenport on the same day duly conveyed the premises described in the complaint to the defendant Henry Ungrich, Jr., by deed bearing date that day and duly recorded in the office of the said Register on May 24, 1902, in Section 6, Liber 68 of Conveyances at page 299, and indexed under the block numbers aforesaid (fols. 85-86; 190-191).

These answers also set up as a second separate and distinct defense, and also as a partial defense, that after Davenport duly conveyed the said premises aforesaid to the defendant Henry Ungrich, Jr., as hereinbefore described (fols. 98-107;

203-212), the defendants duly presented to the Surrogates' Court of the County of New York, having jurisdiction thereof, a true and accurate account of their proceedings under the said will and testament which set forth the sale of the premises mentioned and described in the complaint for the said sum of \$157,000, and charged the said defendants-executors with the receipt of that sum as the consideration price of the said premises (fols. 107-119; 213-214); that the plaintiff was duly made a party to such proceeding in the Surrogates' Court, and such proceedings were thereafter duly had therein on notice to the plaintiff, that a decree was duly entered in the said Surrogates' Court bearing date May 13, 1903, and filed in the office of the Clerk of that Court on or about that day, wherein and whereby it was duly adjudged that the said account of the executors as such executors and trustees as aforesaid should be, and thereby was, judicially settled and allowed as filed and adjusted, and that out of the balance so found in the hands of the said defendants, as such executors and trustees aforesaid, the said defendants should retain the sum of \$867.18 for their commissions on the said accounting, and the sum of \$161.95 for their costs and disbursements on the accounting, and that the balance then remaining in their hands, being the sum of \$78,984.07, should be held by them subject to the provisions of the said will (fols. 109-112; 215-217).

The answers also set up as a third separate and distinct, and also as a partial defense, that after the conveyance by Davenport to the defendant Henry Ungrich, Jr., of the premises aforesaid, as hereinbefore described (fols. 112-121; 217-227), the plaintiff and his wife, by deed bearing date April 24, 1903, and duly acknowledged by them on

that day, conveyed to the said defendant the first two of the parcels mentioned and described in the complaint (fols. 122; 227-228).

As a fourth separate and distinct defense, and also as a partial defense, the answers set up that after Davenport had so conveyed to the defendant Henry Ungrich, Jr., the premises described in the complaint as hereinbefore described (fols. 123-133; 228-238), the plaintiff and his wife duly conveyed the third of the parcels of land described in the complaint to the defendant Henry Ungrich, Jr., by deed bearing date April 24, 1903, and duly acknowledged by them on that date, which deed was duly recorded in the office of the Register of the County of New York on July 31, 1906, in Section 6, Liber 129 of conveyances, at page 29 (fols. 133; 238-239), and on that last mentioned date, the defendant Henry Ungrich, Jr., duly conveyed the said premises to Esther Eisenberg, by deed dated July 22, 1903, and recorded in the said Register's office in Section 6, Liber 79 of Conveyances, page 30, at a consideration which was less than the amount which the defendant Henry Ungrich, Jr., paid to himself and the defendant Martin Ungrich, as such executors and trustees as aforesaid, for the said premises (fols. 133-134; 239-240).

As a fifth separate and distinct defense, and also as a partial defense, the answers set up that after the said Davenport had so conveyed the said premises to the defendant Henry Ungrich, Jr., as aforesaid (fols. 134-143; 240-250), the plaintiff and his wife duly conveyed the fourth of the parcels mentioned and described in the complaint to the defendant Henry Ungrich, Jr., by deed bearing date April 24, 1903, and acknowledged by them on that date, which deed was duly recorded on April 24, 1903, in Section 6, Liber 75 of Con-

veyances, at page 152, and on this last mentioned date, the defendant Henry Ungrich, Jr., duly conveyed the said premises to one Charles Goldstein by deed bearing date that day and duly recorded in the said Register's office in Section 6, Liber 75 of Conveyances at page 157, at a consideration which was less than the amount which the defendant Henry Ungrich, Jr., paid to the executors and trustees as aforesaid (fols. 144-146; 250-252).

As a sixth separate and distinct, and also as a partial defense, the answers set up that on February 7, 1897, the decedent in his lifetime duly assigned to the defendant Henry Ungrich, Jr., a certain indenture of mortgage, bearing date November 2, 1896, made by one John D. Thees and wife to the said Henry Ungrich, since deceased, to secure the payment of the sum of \$12,000, and which was recorded in the office of the Register of the County of New York on November 5, 1896, in Section 6, Block Series of Mortgages, Liber 56, page 483, and also a certain other indenture of mortgage, bearing date July 23, 1891, made by one Noah Schwab and wife to the said Henry Ungrich, deceased, to secure the payment of the sum of \$5,000, recorded in the office of the Register of the County of New York on July 30, 1891, in Section 7, Liber 5, page 267 of mortgages, and also a certain other indenture of mortgage, bearing date September 1, 1886, made by one Alice Rohkohl to the said decedent to secure the payment of the sum of \$10,000 and interest, and duly recorded in the said Register's office on September 2, 1886, in Liber 2027 of mortgages, page 400, by instrument of assignment, bearing date February 17, 1897, and duly recorded in the said Register's office on February 18, 1897, in Section 6, Liber 50 of mortgages, at page 461, and also in Section 7, Liber 70 at page 260; that the aggregate amount

of the said mortgages so assigned by the said decedent in his lifetime to the defendant Henry Ungrich, Jr., by such instrument of assignment, was the sum of \$25,000, which is the sum mentioned and described in the complaint as being personal property "fraudulently, dishonestly and "secretly converted to the use and benefit of the "defendant Henry Ungrich, Jr.;" that disputes having arisen thereafter between the plaintiff and the defendant Henry Ungrich, Jr., over such assignment of the said bonds and mortgages by the said decedent in his lifetime, and over the conveyances by the said defendants as executors and trustees as aforesaid of the premises described in the complaint to the said Davenport, and the conveyance by the said Davenport to the defendant Henry Ungrich, Jr., the plaintiff, in consideration of the sum of \$6,000, to him in hand paid by the defendant, by general release, bearing date and duly executed and acknowledged by him, on June 23, 1902, duly released, remised and forever discharged the defendant Henry Ungrich, Jr., his heirs, executors and administrators, of and from all manner of action and actions, causes and causes of action, suits, debts, dues, sums of money, accounts, reckoning, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, in law or in equity, which against him he ever had, or which his heirs, executors or administrators thereafter might have, upon or by reason of any matter, cause or thing whatsoever, from the beginning of the world, to the day of the date of such presents (fols. 146-153; 252-259).

As a further separate and distinct, and also as a partial, defense, and also as a counterclaim (fols. 154-171), the defendant Henry Ungrich, Jr.

alone avers that prior to the time the said Davenport had so conveyed the said premises described in the complaint to him as hereinbefore described (fols. 154-164), the said Davenport, as part of the consideration price of the premises, executed to the defendants as such executors and trustees, a mortgage conveying the first two parcels of the premises described in the complaint for the sum of \$57,500, and a mortgage covering the third of the premises described in the complaint in the sum of \$11,000, and a mortgage covering the fourth of the premises described in the complaint, in the sum of \$10,000, and then conveyed the said premises to the said defendant Henry Ungrich, Jr., subject to the payment of the said mortgages; that after such conveyance by Davenport to him, the said defendant Henry Ungrich, Jr. relying upon the written declaration, affirmation, ratification and confirmation so made by the plaintiff, erected, or caused to be erected, a stable and storage building at a cost to him of \$24,869.36 upon the first two of the parcels described in the complaint, and that the plaintiff knew that the defendant had erected such stable and storage building on the said premises before he and his wife conveyed the premises described in the complaint to the said defendant as hereinbefore described, and that the said defendant Henry Ungrich, Jr., in such reliance, paid to the plaintiff interest on the said mortgages executed by Davenport in part payment of the said premises to an amount over \$13,000, and individually paid taxes on the several parcels of land described in the complaint amounting to the sum of \$5,829.88, and assessments on the same amounting to \$69.40, and water rents on the same amounting to \$570.10, and premiums for fire insurance on the said buildings amounting to

\$874.90; premiums for plate glass insurance on the buildings amounting to \$89.00; janitors' services for care of the same amounting to \$1,770.44, commissions on rentals of same amounting to \$159.75, and necessary repairs on the buildings on the same amounting to \$3,626.12, and brokerage amounting to the sum of \$185, on the sale of the aforementioned premises to the said Goldstein, and \$195 commissions on the sale of the third of the aforementioned premises to the said Eisenberg, and \$2500 on the sale of first two of the said premises to George Ehret.

The plaintiff, for reply to the counterclaim contained in the answer of the defendant Henry Ungrich, Jr., admits the death of his testator and the admission of his will to probate, and that the defendants duly qualified as executors and trustees thereunder (fols. 266-267), and that among other assets the estate consisted of the parcels of land described in the complaint (fols. 267-268), *and that thereafter the plaintiff made numerous complaints to the defendants that sufficient income was not realized on such estate* (fol. 268). He denies that he requested the defendants to act under the power of sale contained in the will and sell the premises for the best price they could get (fol. 268). He denies that the defendant Henry Ungrich, Jr., expressed his desire to purchase the said premises at a price that would be satisfactory to the plaintiff, or that it was then and there mutually agreed between the plaintiff and the defendants that an appraisal should be made by the said Smyth (fols. 269-270). He denies any knowledge or information sufficient to form a belief as to whether Smyth so appraised the said premises (fols. 270-271). He denies that the defendant Henry Ungrich, Jr., offered to purchase the said premises for the sum of \$157,000. He denies that

he entered into an agreement in writing with the said defendants and the said Davenport wherein and whereby the defendants agreed to sell and convey the premises described in the complaint to the said Davenport acting on behalf of the defendant Henry Ungrich, Jr., for the sum of \$157,000 (fols. 272-273). He denies that he, in writing, duly executed and acknowledged by him, declared and affirmed to the defendants that the sale of the real estate for \$157,000 was made at his request, with his full consent and approval, with full knowledge on his part that the said real estate was to be purchased for and was to be conveyed to the defendant Henry Ungrich, Jr., who was one of the executors of and trustees under the said will, and that he therein ratified and confirmed the same and all the acts of the defendants done in connection therewith (fols. 273-274), though "he admits that "this plaintiff was induced by fraud to sign some "papers, the contents of which he did not know, "and to this day does not know" (fol. 275). He then proceeds to deny any knowledge or information sufficient to form a belief as to the reliance of the defendant Henry Ungrich, Jr., on such written declaration, affirmation, ratification and confirmation (fols. 275-276). He admits that the said Davenport executed and delivered the said mortgages in the sum of \$78,500 (fol. 277). He denies any knowledge or information sufficient to form a belief as to whether at the time of the conveyance to him of the premises described in the complaint, Davenport executed and delivered to the defendant's executors and trustees the three several mortgages described in the answers (fols. 277-278). He admits that Davenport "*duly* conveyed "the said premises so mentioned and described in "the said subdivision c of the said paragraph of "the said complaint so numbered 'Third' to the

“said Henry Ungrich, Jr., by deed bearing date “on or about that day, and duly recorded in the “office of the said Register on May 24, 1902, in “Section 6, Liber 68 of Conveyances at page 299” (fol. 279). He denies that after the conveyance of the premises to the said defendant Henry Ungrich, Jr., the said defendant relying upon the written declaration, affirmation, ratification and confirmation made by the plaintiff, erected or caused to be erected a stable and storage building at such cost as aforesaid (fol. 280). He denies that he, knowing that the said defendant Henry Ungrich, Jr., had erected such stable and storage warehouse, with his wife, duly conveyed the premises described in the complaint to the defendant Henry Ungrich, Jr., by the several deeds mentioned and described in the answers (fol. 281). He denies that the defendant Henry Ungrich, Jr., acting on his written declaration, affirmation, ratification and confirmation, and upon the deeds that the plaintiff and his wife made to the defendant Henry Ungrich, Jr., paid interest on the mortgages executed by Davenport aforesaid to the amount of \$13,000, and paid the taxes, assessments, water rates, cost of janitors’ services and commissions on rentals set up in said counterclaim (fols. 282-283). He admits that the defendant Henry Ungrich, Jr., sold the fourth of the parcels of property aforesaid to Goldstein, and the third of the parcels to a “certain person” (fol. 284). He denies that the defendant Henry Ungrich, Jr., relying upon his written declaration, affirmation, ratification and confirmation aforesaid, and on the deeds that the plaintiff and his wife made to the said defendant, conveyed the said premises and paid the commissions aforesaid (fols. 284-287). He denies that the said Henry Ungrich, Jr., in reliance on such declaration, affirmation, ratification

and confirmation, conveyed the first two of the parcels of land described in the complaint or paid certain commissions on the said sale as set up in the said counterclaim (fols. 287-289).

The defendants interposed two supplemental answers to the complaint, permission having been granted therefor by orders of the court.

The first of these supplemental answers sets up that after the said Davenport had so conveyed the said premises to the defendant Henry Ungrich, Jr., as aforesaid (fols. 296-307; 329-340), and the accounting of the defendants in the Surrogates' Court as aforesaid, and the entry of final decree made therein on such accounting (fols. 307-311; 340-344), and the conveyances made by the plaintiff and his wife to the defendant Henry Ungrich, Jr., of the said premises (fols. 312-314 and 344-347), that the plaintiff rendered and performed services for the defendant Henry Ungrich, Jr., as the then owner of the first two parcels of land described in the complaint at the special instance and request of the defendant as an architect in making and preparing preliminary studies, general drawings and specifications for a two story and cellar brick garage, contemplated by the defendant Henry Ungrich, Jr., as such owner thereof, to be erected on such plot or parcel of land aforesaid, at an estimated cost to the defendant of the sum of \$8,500, and that thereafter and between May 1st and November 1, 1902, the plaintiff rendered and performed other services for the said defendant, as the owner of such premises, at the special instance and request of the said defendant as an architect in making and preparing preliminary studies, general drawings and specifications for a two story and cellar brick garage contemplated by the said defendant Henry Ungrich, Jr., as such owner thereof, to be erected upon the said

plot or parcel of land at an estimated cost of \$9,000; that thereafter and between May 1 and November 1, 1902, the plaintiff rendered and performed services for the said defendant as the owner of the said premises at the special instance and request of the said defendant as an architect in making and preparing preliminary studies, general drawings and specifications for a five story warehouse contemplated to be erected by the defendant on the said premises, as the owner thereof, at an estimated cost of \$20,000, and that thereafter and between those dates, the plaintiff rendered and performed services for the said defendant Henry Ungrich, Jr., at the special instance and request of the said defendant, as an architect in making and preparing additional plans and alterations to the above plans and specifications, for the alteration of three brick buildings with brownstone front on the said premises, so owned by the said defendant Henry Ungrich, Jr., at an estimated cost of \$10,000, and at the time of the commencement of this action, the plaintiff commenced another action in the Supreme Court of New York for the County of Westchester, as plaintiff, against this defendant Henry Ungrich, Jr., to recover the sum of \$765 with interest thereon from November 15, 1902, as the reasonable value of the work, labor and services rendered by the plaintiff for the said defendant, at such defendant's instance and request as aforesaid, in preparing such preliminary studies, general drawings and specifications and additional plans and specifications as aforesaid, and thereafter such proceedings were had subsequent to the commencement of this action that the said defendant Henry Ungrich, Jr., pursuant to the statute in such case made and provided, duly offered to allow judgment to be taken against him in said action for the sum of

\$465, with interest from November 15, 1902, with costs of the action to the date of the offer, and duly subscribed such an offer in writing and caused the same to be duly subscribed by his attorney, and caused the same to be served upon the attorneys for the plaintiff and thereafter such proceedings were duly had in that action, and after the commencement of this action, that the said plaintiff duly accepted the said offer of the said defendant Henry Ungrich, Jr., and served upon the attorney for the said defendant Henry Ungrich, Jr., a written notice subscribed by the said plaintiff therein and herein, accepting the said offer of the said defendant Henry Ungrich, Jr., to allow judgment to be so taken against him for the said sum of \$465 with interest from November 15, 1902, together with the costs and disbursements of the action, and thereafter such proceedings were duly had pursuant to law and pursuant to the statute in such case made and provided, that judgment was duly entered in favor of the plaintiff therein and herein, and against the defendant Henry Ungrich, Jr., therein and herein, for the sum of \$631.69, damages and costs, and the judgment roll in said action was duly docketed in the office of the Clerk of the County of Westchester, and thereafter the said defendant Henry Ungrich, Jr., duly paid to the plaintiff the whole amount of the said judgment, and the judgment was thereafter duly satisfied and discharged of record, and that by reason thereof the plaintiff has no right to have or maintain this action (fols. 314; 325 and 350-358).

The said defendants by the second of their supplemental answers, allege that after the conveyance by the executors to Davenport and the execution by Davenport of the said mortgages given as part of the payment of the consideration for the conveyance to the said Davenport, and after

the conveyance by Davenport to the said defendant Henry Ungrich, Jr., of the said premises subject to the said mortgages so made by the said Davenport to the executors and trustees aforesaid (fols. 362-376; 392-407), and after the accounting by these defendants as such executors and trustees as aforesaid in the Surrogates' Court and the entry of final decree in that proceeding settling their accounts and adjudging that the sum of \$78,500 was the sum to be held by them under the terms of said will (fols. 377-381; 407-411), that the amount so found to be held by them subject to the provisions of the last will and testament of the decedent was held by the defendants all these times to the knowledge of the plaintiff in trust for the benefit of the plaintiff (fols. 381-382; 411-412); that prior to the commencement of this action there became due for interest on the said bonds and mortgages, and the defendants herein received therefor the sum of \$1633.59; that out of that sum the defendants paid the mortgage tax on one of the mortgages held by them, and paid the Receiver of Taxes as personal tax for the year 1906 on the estate of their testator, the sum of \$376.03, thereby leaving a balance in their hands belonging to the plaintiff under the terms and conditions of the said will, of the sum of \$1,257.56 (fols. 382-383; 412-413); that after the commencement of this action the said defendants, executors and trustees as aforesaid, received the further sum of \$1,661.64, as interest on the said mortgages, and on June 12, 1907, there was in the hands of these defendants as interest on the said bonds and mortgages, and as money belonging to the plaintiff under the terms and conditions of the said will of the said decedent, the aggregate sum of \$2919.20 (fols. 383-384; 413-414); that on the said 12th day of June, 1907, the

plaintiff, well knowing that the said sum of \$2,919.20, so in the hands of the said defendants as such executors and trustees as aforesaid, was income, increase and interest realized by them from such bonds and mortgages, applied to this court for an order directing the defendants herein to pay that sum to him, and thereupon this court made its order, bearing date that day and entered in the office of the Clerk of this court on June 24, 1907, directing that the said defendants forthwith pay the said sum of \$2919.20 on account of income due to the plaintiff of the trust estate of the said decedent, and the said defendants thereupon and pursuant to the terms of said order paid said sum to the said plaintiff, and by reason thereof, the said plaintiff has no right to have or maintain this action (fols. 384-386; 414-416).

On the trial there was no attempt whatever to establish any claim of wrongdoing in respect to the first, second and last of the aforesaid charges.

No relief was awarded to the plaintiff and no finding was made in the decision as to the first and last of such charges.

The defendants affirmatively proved that the plaintiff had been written to by Demarest to come to his office and get his interest, (fols. 1771-1781-1782), and had knowingly receipted for interest paid, on the deposit of \$3,000 in the Knickerbocker Trust Company (fols. 1792; 1795; 1786; 1798; 1799; 1805; 1806; 1809 and 1810), and that they had endeavored to procure a loan in which to place this sum of money, but had been unable to do so on account of the smallness of the amount, and that they had frequently asked the plaintiff to get such a loan (fols. 1081-1087 and 1164-1165). Yet the defendants are charged in the judgment herein with 6% interest on this

amount so left on deposit with the said trust company (fols. 606 and 609).

The plaintiff proved that the three parcels of real estate of which his father died seized had been conveyed by the defendants in their representative capacity to Harry K. Davenport at an aggregate consideration of \$157,000 for the three parcels (fols. 719-720; 1366-1381); that the defendant Henry Ungrich, Jr., had executed and delivered to the defendants in their representative capacity a receipt for his one-half of the purchase price of those properties (fols. 991-995 and 1471), and that Davenport had executed and delivered to the defendants in their representative capacity mortgages covering the premises in question, to secure the payment of the other one-half of the consideration (fols. 722-723; 1397-1412; 724; 1415-1428; 725; 1429-1442), and then conveyed the property in question to the defendant Henry Ungrich, Jr., by deed, bearing date May 22, 1902, subject to the payment of the three several mortgages aforesaid, so aggregating \$78,500 (fols. 721; 1381-1396).

The plaintiff also produced testimony on the part of two real estate experts as to the value of the three parcels so conveyed at the time of conveyance and at the present time. That was all of the plaintiff's case in chief.

The plaintiff's witness Wilcox says the East 126th Street property in May, 1902, was worth \$22,000 (fols. 734-735), and at the present time is worth \$29,000 (fol. 764); the Pleasant Avenue property was worth \$22,500 in May, 1902 (fol. 737), and at the present time \$29,000 (fol. 765); the Lenox Avenue and 124th Street property in May, 1902, was worth \$150,000 (fols. 738-739).

Schmitt, his other witness, puts the value of the East 126th Street property in May, 1902, at \$28,-

000 (fol. 771), and at the present time about fifteen per cent. more (fols. 790-791); the Pleasant Avenue property in May, 1902, at \$21,000 (fol. 771), and at the present time about fifteen per cent. more (fol. 791); the Lenox Avenue property in May, 1902 at \$152,000 (fol. 772), and at the present time \$375,000 (fol. 789).

Wilcox places the value of 281 Lenox Avenue in May, 1902 at \$52,250, the lot being worth \$44,250 and the building \$8,000 (fol. 761); 283 and 285 Lenox Avenue at the same time he places at \$34,500 each, the lots at \$28,500 and the buildings \$6,000 each (fols. 761-762); 107 West 124th Street he places at \$28,750, and the buildings of no value (fol. 762).

Schmitt places the value of 281 Lenox Avenue in May, 1902, at \$50,000, and the building at \$8,000, and 283 and 285 Lenox Avenue at the same time at \$25,000 each, the buildings at \$8,000 each (fols. 780; 782-783), while 107 West 124th Street, he places at that time as worth \$25,000 for the lot and the building \$600 (fol. 781).

There is thus a striking want of agreement as to the values of these properties between the two experts of the plaintiff.

The defendants, on the other hand, called two real estate experts on the question of values of these properties.

Swartwout placed the value of the 126th Street property in May, 1902, at \$21,000 (fol. 937), while Whittle placed it at that time at \$20,000 (fol. 968). Swartwout placed the Pleasant Avenue property at that time at \$20,000 (fol. 937), and Whittle at \$19,500 (fol. 967). Swartwout places the Lenox Avenue and 124th Street property at that time at \$114,400. \$28,000 for buildings and the balance for the lands (fol. 937), while Whittle placed it at that time at \$113,600, the buildings

being worth \$23,000 of such value (fol. 966). Swartwout placed the value of the East 126th Street property at the time the defendant Henry Ungrich sold it at \$20,500 (fol. 938); Whittle at \$20,000 (fol. 968). Swartwout places the value of the Pleasant Avenue property at the time Henry Ungrich sold it at \$20,000 (fol. 938); Whittle at \$20,000 (fol. 968). Swartwout places the value of the Lenox Avenue and 124th Street property at the time it was sold to George Ehret at \$228,500 without the building and \$250,000 with the new building that had been erected there (fols. 937-938), and Whittle at \$250,000 (fol. 966).

Thus, we have substantial agreement on these values between the defendants' experts and the appraisal of Philip A. Smyth, hereinbefore and hereinafter mentioned, which was made at the time and no very great divergence between them and the plaintiff's witness Wilcox except as to the Lenox Avenue property at the time of its transfer to the defendant Henry Ungrich, Jr.

The defendants established by their own testimony and the testimony of James Demarest, who was, as plaintiff's counsel admitted, *the counsel at that time for all the parties hereto* (fols. 715; 792-793); that shortly after the death of the testator, the plaintiff complained of the irregularity of the income, that he never knew where he was coming out; that the repairs on the property were too great and were increasing, and expressed a desire to know definitely what his income would be and to have some definite income fixed by the personal property being divided and the real estate sold (fols. 798; 853; 854; 1014-1015; 1017; 1099; 1179-1180); he alone wished and urged the selling of the property (fol. 1099); that thereupon and prior to March 27th an agreement was made between the parties that Mr. Demarest should

procure an appraisal to be made by Philip A. Smyth; Demarest then told each of the two executors and the plaintiff to get appraisals so they would know the market value of the property when they sold it (fols. 798-800; 1019-1021; 1183-1185; 1202; 1206).

Smyth's appraisals dated April 4, 1902, show a value then placed by him in 1902 of \$20,000 on the East 126th Street property; \$22,000 on the Pleasant Avenue property and \$110,000 on the Lenox Avenue and 124th Street property, divided as follows: the corner at \$45,000 and 283 and 285 at \$25,000 and 107 West 124th Street at \$15,000 each (Exh. 1, 2, 3; fols. 801 and 1678-1687).

The defendants proved that this appraisal was shown to the plaintiff and was read by him; that he read the several amounts thereon, knew of them and showed them to the defendant Martin Ungrich (fols. 800-801; 877; 878; 1202-1203); that the different prices that each of these parties had then obtained on these properties was discussed among them; that the defendant Henry Ungrich, Jr., gave his at \$128,000 to \$130,000; the defendant Martin Ungrich his at \$150,000 and the plaintiff his also at \$150,000 (fols. 809-810; 1021; 1114).

The defendants showed by his own testimony and his letters (e. g., Exh. 81; fols. 2178-2179) that the plaintiff had endeavored to procure purchasers of the property and that the highest offer that he had received for the whole three parcels was between \$140,000 and \$150,000 for all, which was to be half cash and the balance mortgage at four to four and one-half per cent. (Exhibit 80; fols. 2176-2178).

The plaintiff, it is true, said he did not remember ever having seen these appraisals (fol. 1230) but he admitted that the figures had been read to him (fol. 1238). He admitted, moreover, that he

had agreed to, and tried to, get an appraisal made of the property and that the appraisals cost him so much that he had not got them. He did not deny the testimony of the defendants that he stated that he himself had an appraisal (fol. 1114).

In the face of the clear and consistent testimony of three unimpeached witnesses (one of them is totally disinterested), that this appraisal was shown to him before the transfers of these properties were made, and its existence being shown and the maker thereof being dead, the weight of evidence on this question is clearly with the defendants.

However, the evidence both for the plaintiff and the defendants admits of no doubt that the plaintiff fully informed himself as to the market value of these properties before he gave his consent to the transfer thereof to the defendant Henry Ungrich, Jr., which will be hereinafter adverted to.

Testimony was given that was not contradicted that he urged his brother to pay more for the Lenox Avenue property than the appraised value because it had a future (fol. 1022).

The defendants then proved by their own testimony and that of Mr. Demarest and the latter's stenographer and clerk Davenport, that on May 16, 1902, when the appraisals of Smyth were shown to the plaintiff and the defendants, that Demarest advised them that they could sell the property by a friendly partition suit or at auction or private sale under the power conferred by the will (fols. 804-805 and 1016), that the defendant Henry Ungrich, Jr., then said that he was willing to buy the property although he thought such appraisals were high (fols. 805; 874-875; 1111-1112; 1186-1188); that then Demarest said that it would not be proper for the executors to transfer the property to one of themselves, that thereupon the

plaintiff said, "*Well, I am the principal party in interest and if I want to have it, I do not see why he could not have it*" (fols. 805; 1180-1181); that thereupon the defendant Martin Ungrich said that if the defendant Henry Ungrich, Jr., wanted the property he would have to give \$5,000 more for it and take all or none (fols. 806; 808; 876; 1018; 1023; 1112-1113; 1187), and after some conversation the defendant Henry Ungrich, Jr., agreed to pay that amount, half in cash and half in mortgage; that then there was a discussion as to the rate of interest to be paid on the mortgage, and the defendant Henry Ungrich, Jr., refused to pay more than four per cent., which was thereupon agreed to by all the parties present (fols. 807-808; 905; 1028 and 1210); and thereupon the plaintiff expressed himself as satisfied with such a price being realized for the property and that such property should be conveyed to his brother (fols. 813-814; 1018 and 1187), and thereupon Mr. Demarest dictated, in the presence of all the parties thereto, and his stenographer Davenport, typed, an agreement (fols. 880 and 980-1114), whereby the defendants agreed to sell and convey to said Davenport the aforesaid properties for the aggregate sum of \$157,000—made up of \$115,000 for the Lenox Avenue and 124th Street property, \$22,000 for the Pleasant Avenue property and \$20,000 for the East 126th Street property—payable one-half in cash and the other half in purchase money bond and mortgage, payable five years from date with interest at four per cent. per annum, title to be closed on May 22, 1902, at two P. M., as of June 1, 1902, the rents accruing up to June 1, 1902, to belong to the estate of Henry Ungrich, and the interest upon the purchase money mortgages to date from June 1, 1902. This agreement was read to all the parties hereto, each was asked if he was

satisfied that it expressed the terms on which they wished to dispose of the property and each, including the plaintiff, said it did. Demarest then said to the plaintiff: "If it is I will just indorse it " "Contract approved by me' and you sign it." The plaintiff replied: "I will write it on this one " "while you are writing on the other." It was then signed by the two defendants and Davenport and written of the copy produced by the defendants at the bottom thereof, all in the plaintiff's handwriting, is the following: "*Contract approved "by me. Martin Louis Ungrich*" (fols. 813-814; 812; 1689-1692; 981; 983 and 1114).

They also showed that the plaintiff had this document in his hands and looked at it and could have or did read it (fol. 999); that three copies of it were made and one of them delivered to the plaintiff and one to each of the defendants. On this day Demarest said to the plaintiff: "You say " "this is satisfactory to you, on the day title is " "passed you will have to sign a paper saying that " "you understand that this property is to be conveyed to your brother." The plaintiff replied: "That is all right. You prepare the paper" (fols. 815; 1027-1028; 1130-1131).

The defendants then proved that the parties again met on the 22d day of May, 1902; that on that date Mr. Demarest had ready (fols. 996-997; 1029) the deeds from the defendants as executors to said Davenport (Exhibits A and B; fols. 1366-1381), and from Davenport to the defendant Henry Ungrich, Jr. (Exhibit B; fols. 1382-1395), and the bonds secured by purchase money mortgages covering the property from Davenport back to the executors for half the purchase price (Exhibits C, D and E; fols. 1398-1441), all of which were then executed by the respective grantors and mortgagor and all of which were put on record in

the office of the Register of the County of New York on May 24, 1902; that at that time the defendant Henry Ungrich, Jr., executed and delivered to Davenport his receipt for \$78,500 as his half of the purchase price of this property coming to him under the will of the testator and Davenport paid that over to the executors (fols. 818; 989-991 and 1131-1132); that receipt (Exhibit L; fols. 995 and 1471) dated May 31, 1902, so as to comply with the terms of the contract that the closing should be as of June 1, 1902, was produced from the files of the Surrogates' Court and from the bundle of vouchers filed with an accounting by the defendants which will be hereinafter adverted to.

The defendants then showed that on this 22d day of May, the plaintiff executed an agreement (fols. 815-818 and 1030) reciting the ownership by his father of the premises aforesaid; that his brother and cousin (the defendants herein) were duly appointed the executors and trustees under the will of his father and were given power to sell and dispose of the real estate, and that he had requested them to sell the real estate and set aside the trust fund called for in his father's will for him, and that he declared and affirmed that the sale of the real estate that day for the aggregate sum of \$157,000 was made at his request, with his consent and approval, and with full knowledge on his part that the real estate was purchased for and was to be conveyed to his brother Henry Ungrich, Jr., one of the executors and trustees of his father's will, and that he thereby ratified and confirmed the same and all the acts of the executors done in connection therewith (fols. 1693-1700). Two copies of this paper were executed by the plaintiff, and one was delivered to each of the defendants (fols. 816-817). After this was all done the plain-

tiff expressed himself as satisfied that the thing was all settled (fols. 1030 and 1187). He nowhere denies that he did so express himself.

Previously to all this the defendant Martin Ungrich had advised the plaintiff against selling this property to the defendant Henry Ungrich, Jr., also saying that he thought the property had a future (fols. 1095-1096).

The defendants also showed that there had been an appraisal made by C. W. Luyster, Jr., and Patrick H. Loftus, appraisers duly appointed by the Surrogate of the County of New York, of the personal estate of the testator and that that personal estate was appraised by them at \$11,549.75. This was made up of one Texas and Pacific Railroad first mortgage, five per cent. bond, of the par value of \$1,000, appraised at \$1,180; one \$1,000 St. Louis and Southwestern first mortgage four per cent. bond, of the par value of \$1,000, appraised at \$980, twenty shares of Wheeling and Lake Erie Railroad, first preferred stock, of the par value of \$2,000 appraised at \$1,100; and the following deposits in banks, to wit: Hamilton Bank, \$782.20, Harlem Savings Bank, \$1,125.24, German Savings Bank, \$1,028.14, Greenwich Savings Bank, \$1,024.66, Bowery Savings Bank, \$1,007.16, Empire City Savings Bank, \$993.42, Seaman's Bank for Savings, \$952.18, Bank for Savings, \$918.24, and five promissory notes of the plaintiff for \$2,600, \$100, \$35, \$56 and \$47 respectively, appraised at nothing, and a gold watch, chain and cuff buttons appraised at \$5 (Exhibit 66; fols. 1002-1003 and 1915-1931).

The plaintiff showed that the defendants had sold to the defendant Henry Ungrich, Jr. (a matter of which he does not complain in his complaint), by bill of sale, dated February 27, 1902, the Texas and Pacific first mortgage bond of \$1,-

000 for \$1,200; the St. Louis and Southwestern bond for \$985; the twenty shares of Wheeling and Lake Erie at \$1,140, or in all \$65.50 in excess of the appraisal (Exhibit H; fols. 864-865; 1463-1467; 913-914 and 1088-1090).

The defendants showed that these bonds and shares of stock were taken over that day by the defendant Henry Ungrich, Jr., with the consent of the plaintiff at the market rate therefor (fols. 913-914). It was not shown whether he had ever realized a profit or a loss on any transfer by him thereof. Neither the decision nor the judgment herein in any way criticizes this transfer.

The defendants put in evidence the account and schedules annexed thereto, the petition filed therewith and the citation issued thereon, and proof of the service of such citation upon the plaintiff and a decree of the Surrogates' Court of September 25, 1902, which settled their accounts as executors and passed upon the sale of the personal estate of the testator and the division of the proceeds arising therefrom between the defendant Henry Ungrich, Jr., and the defendants as trustees for the benefit of the plaintiff for life, with remainder over to the said defendant Henry Ungrich, Jr., which was filed in the office of the Clerk of the Surrogates' Court on September 25, 1902 (Exhibits 60, 61, 62 and 63; fols. 916-920 and 1825-1908).

The plaintiff looked over that account and Schedules at the time the defendants signed them (fols. 915-916).

The defendants then put in evidence their account of their proceedings wherein they set forth the aforesaid decree of the Surrogates' Court and that they had been charged therein as trustees with the sum of \$5,669.93; that their Schedule "A" annexed to this account contained a state-

ment of all the income received from the real estate and the amount they had received from the sale of the real property, and a statement of all interest and moneys received by them for which they were legally accountable, whereas Schedule "B" contains a statement of all personal property then remaining in their hands at its appraised value; Schedule "C" contains a statement of all moneys paid for administration; Schedule "D" contains a statement of all disbursements made in connection with the real estate and all claims of creditors presented to and allowed by them and Schedule "E" contains a statement of all moneys paid to legatees. They charge themselves therein with \$166,725.96. This embraces, as shown in Schedule "A," the aggregate amount of the personal estate in their hands for the benefit of the plaintiff, the rents that they had received, the interest they had received up to that date on bond and mortgage, and the amount of \$157,000 as proceeds of the sale of the real estate. In Schedule "E," they show that they have paid the plaintiff and the defendant Henry Ungrich, Jr., income to May 31, 1902, then to September 3, 1902, then to December 1, 1902, and that they had invested for account of the plaintiff \$3,000, and that they had paid the defendant Henry Ungrich, Jr., one-half the proceeds of the sale of the real estate, \$78,500.

The defendants also put in evidence their petition on such accounting and the citation issued thereon and proof of the service thereof upon the plaintiff, and the decree of the Surrogates' Court of May 13, 1903, discharging them as executors and adjudging that the balance in their hands of \$78,984.07 is held by them as trustees for the plaintiff subject to the provisions of the last will and testament of their testator.

This petition, citation, proof of service, account and decree were marked Exhibits 70, 71, 72 and 73 (fols. 1006-1007 and 1962-2011).

The defendants also put in evidence three deeds each bearing date April 24, 1903, almost a year after the occurrence of the transfer to the defendant Henry Ungrich, Jr., by which the plaintiff and his wife quit claimed and released unto the defendant Henry Ungrich, Jr., each of the several pieces and parcels of real estate aforesaid. The quit claim deeds to the Pleasant Avenue and East 126th Street properties have been recorded; the one to the Lenox Avenue property has not been recorded (Exhibits 67, 68 and 69; fols. 1003-1006 and 1931-1960).

The plaintiff testified in relation to these confirmatory deeds that he had, at the request of Demarest, executed some papers which Demarest had told him confirmed the title of his brother to the properties his brother had taken; that he had not read the papers; that they were all signed at Demarest's office in *New York City* and they were signed on the occasion of his wife going there to execute her will *on June 16, 1903* (fols. 1253-1254 and 1290-1293). Yet each and every one of these papers is acknowledged in Brooklyn, where Demarest says they were executed and acknowledged (fols. 1307-1310) on April 24, 1903, before Mr. Demarest, as notary public (fol. 1939) and each and every one bears *a certificate, BEARING DATE APRIL 27, 1903, of the County Clerk of Kings County*, certifying to the qualifications of the said Demarest as a notary public to take acknowledgments in Kings County (fols. 1941-1942; 1948-1949 and 1957-1959). He even got his wife to tell the same impossible story (fols. 1346 and 1349-1353).

The defendants put in evidence eleven receipts, each executed by the plaintiff, wherein he states that he has received from the defendants as executors and trustees of the estate of his deceased father, \$1,500 *in full of six months interest on the "bonds of Harry K. Davenport, aggregating \$78,-500 secured by mortgage on premises 281-285 "Lenox Avenue, 107 West 124th Street, 208 East "126th Street, 443 Pleasant Avenue, corner of "123d Street, New York City,"* and which range from June 1, 1903, to June 4, 1906 (Exhibits 26; 27; 32; 33; 39; 42; 43; 44; 45; 48 and 49; fols. 830; 1783; 1784-1785; 1789-1790; 1790-1791; 1796-1797; 1799-1800; 1801; 1802; 1804; 1807; 1808).

The defendants also proved by the testimony of Davenport, which is not in any way contradicted by the plaintiff, that the plaintiff frequently called and joked him about whether he had paid the interest on his bonds (fol. 984).

They also put in evidence seven receipts ranging between the same dates whereby the plaintiff acknowledges receipt from the defendants, as such executors and trustees, of the sum of \$48.68, as interest "*on fund in Knickerbocker Trust Company*" (Exhibits 28; 40; 41; 46; 47 and 51; fols. 830; 1786; 1798; 1799; 1805; 1806 and 1810).

They also put in evidence nine different receipts ranging between the same dates, whereby the plaintiff acknowledges receipt of divers sums of money as "*interest due me from estate of Henry "Ungrich*" (Exhibits 29; 30; 31; 34; 35; 36; 37; 38 and 50; fols. 830; 1786-1787; 1787-1788; 1788-1789; 1792; 1793; 1794; 1795; 1796 and 1809).

The plaintiff proved by the defendant Henry Ungrich, Jr., that he had sold the 126th Street property and the Pleasant Avenue property for amounts that were materially less than the amount at which he had taken the property over, and at

which it had been appraised by Mr. Smyth, but that after erecting a stable or garage and warehouse on the 124th Street and Lenox Avenue property, costing him the sum of \$24,869.36, he had sold the entire plot on the corner of Lenox Avenue and 124th Street to George Ehret, for the sum of \$250,000.00 (fols. 1035-1036); though he only got for his equity therein the sum of \$182,641.20 (fol. 1148).

It was this latter sale, as was frankly said by the plaintiff's counsel on the trial, that was the *causa causans* of this action.

The plaintiff himself put in evidence an assignment of three several mortgages aggregating \$27,000, upon which only \$25,000 was due, made by the testator to the defendant Henry Ungrich, Jr. (Exhibit G), and a check made by the defendant Henry Ungrich, Jr., to the plaintiff for \$6,000.

The defendants by the testimony of Demarest and of Henry Ungrich, Jr., established that the plaintiff had complained of the fact of this assignment of these mortgages by his father in his lifetime to the defendant, and that Demarest interceded with the defendant Henry Ungrich, Jr., to pay to the plaintiff something therefor, the plaintiff representing that he had changed his mode of life, and that he could purchase a little home in Brooklyn and needed money for that purpose; that Henry Ungrich, Jr., had first agreed to pay \$4,500 and at the intercession of Demarest he finally paid the sum of \$6,000 by the check for that amount which was so put in evidence by the plaintiff (fols. 819-851; 854-855; 887-892; 931-933; 1030-1034; 1151-1156 and 1189-1190), and thereupon the plaintiff executed and delivered to Henry Ungrich, Jr., a general release bearing date June 23, 1902, after the printed form which contained the clause "and especially from any and all claim to any part

“of the proceeds of the bonds and mortgages assigned to Henry Ungrich, Jr., by my father Henry Ungrich during his lifetime or to any part of the moneys which said Henry Ungrich, Jr., has received, or may hereafter receive from the proceeds of the said bonds and mortgages” (Exhibit 65).

The defendants then established the matter set up in their first supplemental answer that after the conveyance of the 124th Street and Lenox Avenue property to the defendant Henry Ungrich, Jr., and the record thereof, the plaintiff rendered and performed services for the said defendant Henry Ungrich, as the then owner of those parcels of real estate, at the special instance and request of that defendant, as architect, in making and preparing preliminary studies, general drawings and specifications for a two-story and cellar brick garage, and also rendered and performed services for said defendant as the owner of the said premises in making and preparing preliminary studies, general drawings and specifications for a five-story storage warehouse on the street lot, and also in preparing preliminary studies, general drawings and specifications, and making and preparing preliminary studies, general drawings and specifications for the alteration of three brick buildings with brownstone front on the avenue side of the premises aforesaid, and that at the time he commenced this action, had commenced another action in the Supreme Court for the County of Westchester, to recover the sum of \$765, with interest from November 15, 1902, as the reasonable value of his work, labor and services so rendered and performed by him for the defendant in preparing such studies, general drawings, plans and specifications, and additional plans and specifications; that thereafter the de-

fendant Henry Ungrich, Jr., in that action duly offered to allow judgment to be taken against him for the sum of \$465, with interest from November 15, 1902, and the costs of the action to the date of that offer, and thereafter such proceedings were duly had in that action that the plaintiff in writing and pursuant to the statute in such case made and provided, duly accepted the said offer, and thereafter judgment was duly entered in that action in favor of the plaintiff and against the said defendant for the sum of \$631.69, damages and costs, and the judgment roll in that action was duly docketed in the office of the Clerk of the County of Westchester, and thereafter the defendant Henry Ungrich, Jr., duly paid the whole amount of the said judgment, and the judgment was subsequently satisfied and discharged of record (Exhibits 74 and 75; fols. 1009-1010; 2012-2075; 1034-1035; 1160-1163).

In connection with this defense must be read Exhibit 84 (fols. 2184-2187), which is a contract made between Henry Ungrich, Jr., and Ludwig Baumann, for the erection of a five-story and basement stable building on the premises at 124th Street and Lenox Avenue, which Baumann agreed to hire from Henry Ungrich, Jr., when it was built according to the plans and specifications, payment of rent to commence on the completion or turning over of the building by Henry Ungrich, Jr., to the said Baumann. To that agreement the plaintiff is a witness (fol. 2187). The plaintiff did not deny he signed this paper nor claim that he did not know what he was signing.

The defendants then proved the matter set up in their second supplemental answer that before the commencement of this action, the sum of \$1,633.59 had become due to the plaintiff as income derived from the aforesaid mortgages, made by

Davenport to the executors, and from the deposit of \$3,000 in the Knickerbocker Trust Company aforesaid, and that out of that sum the defendants had paid the mortgage tax on one of the mortgages held by them and paid the Receiver of Taxes as personal tax for the year 1906 the aggregate sum of \$376.03, thereby leaving in their hands belonging to the plaintiff under the terms and conditions of the trust for his benefit, created by the will of his testator, the sum of \$1257.56; that after the commencement of the action the defendants received as the net income or increment of the said bonds and mortgages the further sum of \$1,661.64, and on June 12, 1907, they had in their hands the aggregate sum of \$2,919.20 of income realized by them from said mortgages as income under the trust created for the plaintiff under the terms of the said will, and on June 12, 1907, the plaintiff, well knowing that that sum was in the hands of the defendant as income, increase, or interest realized from such bonds and mortgages and from such deposit in the said Knickerbocker Trust Company, applied to this court for an order directing the defendants forthwith to pay that sum to him, and thereupon this court on June 21, 1907, made its order bearing date that day and entered in the office of the Clerk of this court on June 24, 1907, directing the payment by the defendants to the plaintiff of this amount. The order was coupled with a provision therein that the payment should be "without prejudice to the rights of either party to the 'action'" (Exhibit 76: fols. 1010-1011 and 2077-2162). Thereupon the defendants served a notice upon the attorneys for the plaintiff that pursuant to the constraint of that order, they would pay over that money to the plaintiff, but that they claimed that the court had no power to incorpor-

ate that condition in the order and that they intended forthwith to appeal from that portion of the order containing such clause (Exhibit 77; fols. 1011-1012 and 2164-2169). Thereupon the defendants did appeal to this court from so much of the order as provided that such payment should be without prejudice to the rights of either party to the action, and this court handed down an opinion to the effect that the court below was without power to incorporate that provision in the order and that if the plaintiff required the trustees to pay the income to him pending the litigation, he had to take it subject to the legal consequences that would flow therefrom, and modified the order by striking out the provision thereof on account of which the appeal was taken (Exhibits 77 and 78; fols. 1012 and 2170-2176).

The plaintiff made Mr. Demarest his own witness in regard to his transactions with Demarest, who had either asked for, or to whom the plaintiff had volunteered to pay, \$500 for his services in bringing about the payment by the defendant Henry Ungrich, Jr., to the plaintiff of the \$6,000 aforesaid, and who had asked for, or to whom the plaintiff had volunteered to pay, \$50 for his services in collecting and transmitting the plaintiff's income to him (fols. 893-903; 921-928).

Whatever account of these transactions between the plaintiff and defendants may appeal to us, the same result must be arrived at, that the plaintiff knowingly and willingly paid these amounts to Demarest and that these payments were, as shown by Plaintiff's Exhibit BBB (fol. 1670), unknown to the defendants, and, therefore, the fact of such payments is something for which the defendants cannot in any manner be criticized.

The plaintiff on re-direct, testified that at the time when the parties met over the reading of

the will, the defendant Henry Ungrich, Jr., stated that his father's personal estate amounted to about \$25,000, consisting of railroad bonds and moneys in business and savings banks, and that the defendant Martin Ungrich expressed surprise that it was so little (fol. 1219), and that he said that he knew his father had recently sold a house and yet there was only \$7,500 in cash and he would like to know where it all went to, and Henry said that that was all there was (fol. 1220); that Henry had said he would like to get the Lenox Avenue property and did not care for the East Side property (fol. 1223); that he then said that he wanted to know where was he coming in for his half of that \$25,000 and Henry asked what he wanted out of it and he told him he wanted half (fol. 1223); that he asked Mr. Demarest whether he had spoken to Henry about the personal property; he said that he would contest the will; Demarest said for him to take it easy, that he would see to it that he got the money (fols. 1224-1225); subsequently he said that Henry would not give him the half of \$25,000—\$12,500—that he wanted; that Henry would give him \$7,500; that he then said, "Mr. Demarest, if I have got to take up nearly a thousand dollars of bills of mine, I don't think it is right; I thought Henry was to pay the debts and various sums to me and I am at a loss;" that he subsequently made out a list of \$980 of indebtedness that he owed and handed it in front of Demarest to his brother Henry and Henry said he would pay that \$980 and \$7,500 (fols. 1225-1226); that he never got it; that Demarest said he would get the \$7,500 and that Henry would pay the \$980 of indebtedness that he owed; that both Henry and Demarest told him not to tell the defendant Martin Ungrich (fols. 1227-1228); that he never heard of the assignment of the mortgages

by his father to Henry until he saw them in the Hall of Records, along with Mr. MacIntosh Kellogg, the son of his counsel, at the time the suit was brought (fol. 1228); that Demarest told him Henry was to get the property and was to pay \$157,000 for it, and told him to leave it to him and he would see that his brother Henry used him right (fol. 1232); that when he started to read Exhibit 5, Demarest told him it was all right, that it was merely a matter of form for Henry to get the property, that they did not to his recollection give him a copy of it (fol. 1232); that between the 16th and 22d of May, 1902, Demarest told him that he had it all fixed for Henry to pay him that \$7,500 and his debts (fol. 1233); that he did not read or have read to him Exhibits 6 or 7; that Demarest told him when he started to read them, "Louis, it is all right, simply a matter of form "for Henry to get—to purchase—that property (fol. 1234); that he saw Davenport turn over some papers to Demarest which he thought were the mortgages or whatever they had to get (fol. 1233); *that he knew Henry was purchasing the property, but he did not know about Davenport* (fol. 1234); that a couple of days after May 22, 1902, he went to Demarest and asked after his check; Demarest told him that Henry had gone on a trip (fol. 1239); he went to Demarest half a dozen times more; on June 22d, 1902, Henry told him to come to his house on the following day and he would give him the check (fol. 1240); that when he went to the house, \$6,000 was mentioned and he said he understood it was to be \$7,500 and his debts paid, and Henry said, that is all you are going to get. Henry handed him the check and he took it and cashed it (fols. 1241 and 1244-1245); that he then agreed to pay Demarest \$500 for getting this \$6,000 for him and \$50 for collecting his income

each time it was paid (fols. 1245-1250); that when he signed the quit claim deeds, Demarest told him they were a couple of papers that he wanted him and his wife to sign to clean up the other papers he had signed a while ago (fols. 1253-1254); that when he got the citation papers, Demarest told him that there was no need of his going to the Surrogates' Court (fol. 1258).

This is all the testimony on the plaintiff's part in any attempt to explain the transactions of which the defendants have given testimony.

This testimony of the plaintiff was all emphatically denied by Demarest and the two defendants (fols. 1299-1307; 1322-1327 and 1331-1333).

It is impossible to read the correspondence between Mr. Demarest and the plaintiff and that which passed between the plaintiff and the defendants, and the testimony of Mr. Demarest as to the entries on his diary (fols. 860-872; 881; 892; 929-930), without reaching the conclusion that the plaintiff had full knowledge of, and was fully consulted about, every step in the management of this estate, and that if there was any attempt at concealment, it was to conceal the dealings which the plaintiff and the defendant Henry Ungrich, Jr. had together from the defendant Martin Ungrich. Exhibits Q, R, BB, CC, EE, FF, GG, 82, 83, 52, 53, 87, 88 and 56 (fols. 1479; 1480; 1495-1496; 1497; 1499; 1500; 1501-1502; 2180; 2181-2183; 1811-1812; 1816; 2195-2197) show appointments made by and with the plaintiff to discuss the affairs of this estate. Exhibit BB (fols. 1495-1496) is a request on the plaintiff's own part to have a talk with the defendant Henry Ungrich alone when Martin Ungrich is not present, as there is something that the plaintiff wishes to speak of "which does not concern Martin." Exhibit 82 (fol. 2180) also speaks of a statement having been presented to him, and

a corrected and additional statement being desired so that they could all be gone over by the plaintiff. Exhibit 83 (fols. 2181-2183) suggests a meeting at Mr. Demarest's office for the purpose of making a division of the personal estate. Exhibit 89 (fols. 2198-2202) recites the fact that the plaintiff had received from his New York janitress a notice from the Surrogates' Court in regard to an appraisal.

Exhibits 14, 15, 16, 17, 19, 20, 21, 22, 23, 25 and 54 (fols. 1767-1779; 1781-1782 and 1803) all contain requests to the plaintiff to come into Mr. Demarest's office and get his interest due on his mortgages. Exhibits 15 and 25 (fols. 1768-1769 and 1781-1782) specifically mention interest due the plaintiff on the amount invested in the trust company. Exhibit 22 (fol. 1777) specifically mentions the mortgage on the East 126th Street property being due and that it would be paid off and tells the plaintiff to look around for a good investment which would bring more income than the interest he was then receiving. Exhibit 52 (fol. 1810) is an appointment made by the plaintiff with Mr. Demarest to talk over matters with him in regard to his father's estate as to which he is not at all clear.

Exhibit 58 (fols. 1820-1824) is a letter sent by Mr. Demarest to the plaintiff after one of the Davenport mortgages had been paid (fols. 835-836), enclosing a diagram on a piece of paper of property in Brooklyn (fols. 1822-1823), stating that he would not send the application to the executors until he got a report from the plaintiff on such application. And Exhibit 59 is a letter written by the plaintiff to Demarest in answer to Mr. Demarest's letter aforesaid, saying, "This application is the best yet. Tell my brother Henry "and Martin I am satisfied either here or Hop-

“kins Street. Yours, M. L. U.” (fols. 835-839 and 1824).

Exhibit 90 is a letter from the plaintiff stating that he had mailed to the defendant Martin Ungrich the June, 1901, statement (fol. 2203).

Exhibit 91 is a letter of May 3, 1901, from the plaintiff to his brother stating that he had got a statement and letter the night before and would write him a reply that evening; that he had seen Demarest on Thursday and Martin the day before (fol. 2204).

Exhibit 92 is a letter of May 18, 1901, from the plaintiff to his brother stating that he was glad that the latter and the co-defendant had got around to the banks and that things went along smoothly; that he thought it would be well if they could all get along nice and friendly together and that for his part no one could come to his brother again and say that he had said “this, that “or another thing for I have got through since “seeing you the last time when we went to Wood-lawn, and if any one comes to you, wait and see “me first before getting provoked at what they “have to say. I expect to see Martin on Wednesday at two P. M. and will later call at your “house” (fols. 2205-2206).

Exhibit 93 is a letter from the plaintiff to his brother of July 17, 1901, saying “Saw L. and L. “K. to-day and they showed me ‘my own’ papers “to them of about \$342; had a talk and found out “things of which I was unawares of the time I “was in trouble as I always supposed Father had “repaid Louis and Kos the moneys that they had “paid out on my account when I was in trouble “in the City Prison that time” (fols. 2207-2208).

Exhibit 55 is a letter from the plaintiff to Demarest stating that he had an old friend of his family who wanted to borrow \$10,000 to \$13,000 in

December, 1905, to build with, and asking Mr. Demarest to write to Henry and Martin, the executors, in regard thereto (fols. 1804-1805).

Exhibit 57 is a letter from the plaintiff to Demarest saying "Have not heard from you lately as "I expected about that \$25,000 personal tax or the "threat of Henry's as per his last letter which I "let you read the last time I saw you. Enclosed "find clipping in New York World of the 23d. "Why cannot I also be exempt? I am simply a "life beneficiary of my father's will; hold no real "right in same, etc. etc. which you can under- "stand better than I" (fols. 1817-1819).

Exhibit 94 is a letter of October 16, 1901, from the plaintiff to his brother reading "Your letter "received. I will be up on Friday next to see you "about 11:30 A. M. By this mail I also send Mar- "tin a letter and will tell him about receipt you "ask for. When I see you we will talk over mat- "ters as to personal estate, etc. and will try to "come to some understanding, but perhaps Mar- "tin ought to be present before anything is done" (fols. 2209-2210).

Exhibit 95 is a postal from the plaintiff to his brother dated November 6, 1901, containing the following: "Have not seen Martin since he, you "and I were at Demarest's office in regard to per- "sonal estate. When I see you we can talk the "matter over but I am afraid Martin will be stub- "born and must be consulted. He means all right "and I wish you could both forget the past trou- "bles" (fols. 2212-2213).

Exhibit 96 is a postal of July 14, 1901, from the plaintiff to his brother containing the words, "Received notice from Surrogate as to estate. "Will mail it to you to-morrow" (fols. 2213-2214).

Exhibit 97 is a letter of November 11, 1901, from the plaintiff to his brother in which he says "I intend to see Demarest sometime Tuesday "about personal estate matter as you suggested. "Will see Martin about 7:30 P. M. later and may "possibly see you at 9 or 9.30 but not positively" (fol. 2215).

Exhibit 98 is a letter from the plaintiff to the defendant Martin Ungrich, dated June 8, 1907, in which he says, "Got check for \$220 O. K. Also "got a check from Henry for five months two days "interest on \$57,500, which is \$5.61 less than it "ought to be. Have not yet got my \$48.68 from "the Knickerbocker Trust Co. on \$3219.10 ac- "count, three per cent." (fols. 2216-2217).

This correspondence and the testimony that was given on the trial also clearly establishes that there was no relation of weakness, confidence or dependence on the part of the plaintiff towards the defendants. These parties were dealing at arm's length with equal knowledge and means of knowledge as to the property of the estate. The parties dealt on terms of equality. There was no undue or overmastering influence asserted over the plaintiff in any manner. The plaintiff being on the ground and being manifestly a person of intelligence and capacity knew of and saw, as well as did the defendants, the coming of the Subway and had just as much reason as did his brother to anticipate an increase in value of the property from its proximity to the Subway when such Subway was completed; in fact, as we have seen, *advised his brother to buy such property because it had a future* (fol. 1022). The defendant Henry Ungrich, Jr., thought the same thing (fol. 1174). The defendant Henry Ungrich, Jr., did not know of the purchase on this block by Ehret, the brewer (fol. 1126) and the mere fact that he

had heard rumors that purchases had probably been made by George Ehret on the block (fols. 1128-1129) does not show that he was in possession of any superior knowledge in relation to this property than the plaintiff. Even if he had known that George Ehret had made purchases, it would not follow that he had reason to suppose that George Ehret would purchase the property in question. A man does not have reason to believe that a purchaser of property adjoining his property is likely to be a purchaser of that property.

There is no evidence on the part of the plaintiff of any lack of knowledge on his part as to the presence of the Subway or of lack of expectation on his part that the presence thereof would benefit and materially increase the value of the property in question when it was complete and running. There is no evidence that the plaintiff did not know that Ehret had purchased property in the vicinity. All that the evidence shows of knowledge on the part of the defendant Henry Ungrich, Jr., in relation thereto is that the street was all dug up and property was dull at the time and he did not know the people were holding the property for an advance (fols. 1124-1125).

Exhibits 99, 100, 101, 102, 103, 104 and 105 disclose, if anything can possibly disclose, the character of this plaintiff and show him to be a person to whom credit should not be given where he is contradicted by unimpeached witnesses as he is throughout this case by the defendants and by disinterested and unimpeached witnesses as he is by Mr. Demarest and Mr. Davenport (fols. 2218-2226). These documents show that the plaintiff had drawn and cashed checks on banks in which he had no account and had forged signatures to checks and realized on them, that he was writing to his father in his father's lifetime, asking him

to meet just such checks, as otherwise he would have to go to jail, and promising never again to cash checks or commit more crimes (Exhibits 100, 101 and 102; fols. 2225-2227; 2228-2229 and 2230-2231).

Then again we have his testimony in attempting to explain his own letters admitting the commission of these crimes and his own list of false and forged checks, that he had drawn the checks while drunk on the Hamilton Bank, in which he had an account, and did not know, on account of his condition, that his account had been exhausted (fols. 1278-2206; 2223-2224; 2226 and 2230-2231). He had to admit that these letters and this list of checks were all in his own handwriting, and that the statements therein were all true (fol. 1278); ten of these checks which he, in this list so written by him, writes were drawn to the order of each party and signed with his name; but one was drawn to the order of Edward Rulor and signed with the forged signature "James Keator" and another was signed with the forged signature "John W. Roberts" (fols. 2223-2224). They, therefore, could not have been checks that he drew while drunk on the Hamilton Bank in which he had an account and which account he did not know, on account of his drunken condition, had been exhausted. He also admitted that he had no account in the Mount Morris Bank whatever (fols. 1279-1280). He then had to admit that Exhibit 104 was a check drawn by him and was in his handwriting. It is a check drawn on the Mount Morris Bank; it is a check that he had cashed (fols. 1280 and 2235), and is a check which is specified in Exhibit 103 (fol. 2233). His testimony, therefore, that this Exhibit 103 was a list of checks that he had drawn on the Hamilton

Bank in which he had an account, and which on account of his drunken condition at the time, he did not know had been exhausted, was absolutely and deliberately false. Then again he testified that Exhibit 105 was not in his handwriting (fols. 1280-1282). His brother swore that it was, and Exhibit 103, which he admitted was all in his handwriting, shows that this identical check was one of those that his father had taken up for him (fols. 2236 and 2234).

Thus this plaintiff stands before this court shown not only to be a criminal, but convicted of deliberate false testimony on this trial.

The defendant, Henry Ungrich, Jr., under cross-examination, testified that the gross rental of Nos. 281-285 Lenox Avenue for the year 1901, part of which time the property belonged to his father and part to the estate, were \$5,354. The gross rental of No. 208 East 126th Street for that time was \$1,874.50, and of the Pleasant Avenue property, \$1,940.50, and of No. 107 West 124th Street, \$320 (fol. 1092); that the gross rent of No. 208 East 126th Street for 1902-1903, which embraced thirteen months, was \$1,792.10; of No. 107 West 124th Street for the same period, \$415; of No. 281 Lenox Avenue, \$1,311; of No. 283 Lenox Avenue, \$1,615, and of No. 285 Lenox Avenue, \$1,680.75 (fols. 1137-1138); that the gross rents of No. 107 West 124th Street from 1903-1904 was \$2,700; of No. 281 Lenox Avenue, \$2,109; of No. 283 Lenox Avenue, \$1,732; of No. 285 Lenox Avenue, \$1,759; that in the year 1904-1905, the gross rental of No. 107 West 124th Street was \$2,700; of No. 281 Lenox Avenue, \$2,350; of No. 283 Lenox Avenue, \$1,848; of No. 285 Lenox Avenue, \$1,863; for the year 1905-1906, which embraced thirteen months, the gross rental of No. 107 West 124th Street was \$2,925; of No. 281 Lenox Avenue,

\$2,664.50; of No. 283 Lenox Avenue, \$2,129; of No. 285 Lenox Avenue, \$2,207 (fols. 1137-1140); that when he sold the Pleasant Avenue property he sold it subject to the Davenport mortgage of \$11,000, and took back a second mortgage of \$6,000 at five per cent. and received in cash on the delivery of the deed, the sum of \$1,954.81 (fol. 1141); that the tax on No. 208 East 126th Street for the year 1902-1903 was \$341.01; on the Pleasant Avenue property, \$306.91; on the West 124th Street property, \$204.60; on No. 281 Lenox Avenue, \$318.28; on No. 283 Lenox Avenue, \$238.71; on No. 285 Lenox Avenue, \$238.71; in 1903, the tax on the West 124th was \$197.91; on No. 281 Lenox Avenue, \$339.28; on both Nos. 283 and 285 Lenox Avenue, \$268.59; the next year, 1904, the tax on the 124th Street property was \$499.82; on No. 281 Lenox Avenue, \$378.35; on both Nos. 283 and 285 Lenox Avenue, it was \$287.54; the next year, 1905, the tax on the West 124th Street property was \$491.86, on No. 281 Lenox Avenue, \$476.96; on both Nos. 283 and 285 Lenox Avenue, \$342.81 (fols. 1143-1144).

That was all the testimony that was given as to the rentals of these properties, and the expenses in relation thereto.

Upon this evidence the court has found in its decision, as findings of fact, (1) the death of the testator (fol. 552); (2) that he left a last will and testament, which is set forth at length (fols. 553-568); (3) that the will was admitted to probate on April 11, 1901, by the Surrogate of New York County (fols. 568-569); (4) that the defendants had duly qualified as executors and trustees thereunder (fol. 569); (5) that the testator died seized and possessed of four pieces of land above mentioned (fols. 569-580); (6) that according to the account rendered by the executors, the

testator also died possessed of personal property in the sum of \$11,549.75, of which sum \$3,000 was by them set aside and held as trustees under the will for the use and benefit of the plaintiff (fol. 580); (7) that on May 16, 1902, the defendants, as executors and trustees, entered into a contract with Harry K. Davenport whereby they agreed to sell to the said Davenport for the sum of \$157,000, payable one-half in cash and the balance in bond and mortgage, payable five years from date, with interest at the rate of four per cent. per annum, all of said real estate (fol. 581); (8) that on May 22, 1902, the defendants, as such executors and trustees executed and delivered to the said Davenport, a deed purporting to convey to said Davenport for the aggregate consideration of \$157,000 all the real estate of which the testator died seized (fol. 582); (9) that on May 22, 1902, the said Davenport, as part of the same transaction, at the same time executed and delivered a deed to the defendant, Henry Ungrich, Jr., purporting to transfer and convey all of said property (fols. 582,583); (10) that on the same day, the said Davenport executed and delivered to the defendants as executors and trustees three mortgages aggregating \$78,500 covering portions of the said real estate, to wit: on the Lenox Avenue parcel, \$57,500, on the Pleasant Avenue parcel, \$11,000, and on the East 126th Street parcel, \$10,000 (fols. 483-585); (11) that in accepting said conveyance so made to him by the trustees and in executing and delivering the deed conveying the premises to the defendant, Henry Ungrich, Jr., and in executing and delivering the mortgages aforesaid, the said Davenport acted wholly as a dummy or intermediary and at no time had any beneficial interest in the premises (fols. 585-586); (12) that on May 22, 1902, and at

the time of the said transaction, the defendants procured from the plaintiff a paper purporting to show that the said sale and transaction in regard to the real estate above mentioned was made at the request of the plaintiff, with his consent and approval and with full knowledge on the part of the plaintiff that the said real estate was purchased for, and was to be conveyed to, the defendant Henry Ungrich, Jr., one of the executors and trustees under said will, and purporting to ratify and confirm the sale, and all the acts of the executors and trustees done in connection therewith (fols. 586-587); (13) that thereafter and on April 24, 1903, the defendants procured to be executed by the plaintiff and his wife three quit claim deeds conveying to the said Henry Ungrich, Jr., all the right, title and interest in and to the real estate of which the said testator died seized, only two of which said deeds were recorded (fols. 587-588); (14) that the defendant, Henry Ungrich, Jr., up to and for many years prior to his father's death, had the care and management of his father's estate, and for his compensation was maintained with his family at his father's residence, and in addition thereto, received the sum of one hundred dollars per month (fols. 588-589); (15) that the plaintiff, an architect by profession, was, at the times herein mentioned, a man of irregular habits, involved in financial difficulties, wholly unfamiliar with real estate values, had no knowledge of the true and fair value of the real estate so conveyed by him as aforesaid (fol. 589); (16) that the plaintiff was induced to agree to the transactions transferring the title to the said real estate upon the urgent and repeated solicitations of the defendant, Henry Ungrich, Jr., and upon his representations that the sum of \$157,000 was more than the true value of the said premises, and in agreeing to said

transfer the plaintiff relied absolutely upon the representations made to him by the defendant, Henry Ungrich, Jr., and by the attorney for the executors (fols. 589-590); (17) that during all the times while the solicitations were being made to the plaintiff to agree to the transactions aforesaid, transit facilities and other improvements were being inaugurated along Lenox Avenue, and the property belonging to the said estate was rapidly increasing in value and under the circumstances, the premises should have been held, and a sale thereof was most inopportune, and which said facts were well known to the said defendants (fols. 590-591); (18) that the consideration pretended to be paid for the conveyance of the said premises through an intermediary to the said defendant, Henry Ungrich, Jr., was inadequate, insufficient and far below the real value of the property, and which said fact was well known to the defendants and their attorney, but unknown to the plaintiff and concealed from him by them (fols. 591-592); (19) that in such transactions the plaintiff was not represented by an independent attorney acting fully in his interests, but relied wholly upon the representations made to him by the defendants and their attorney as to the value of the premises conveyed and the defendants and their said attorney concealed from the plaintiff the true and fair value of the property at said time, and did not disclose fully and fairly all the facts and circumstances in regard to the condition of the said property or the true value thereof, and did not speak fully to the plaintiff of every material fact concerning the property known to them, nor was he apprised of the law nor told how these facts would be dealt with by a court of law or of equity (fols. 592-593); (20) that the defendant, Henry Ungrich, Jr., after the transfer to him of the

title to the said real estate in the manner above set out, took possession thereof and converted the income thereof to his own use and benefit, and thereafter resold the said premises within a period of four years, for the sum of \$288,000, an increase of over \$130,000 above the consideration pretended to be paid by him therefor (fols. 593-594); (21) that this result was realized by the defendant, Henry Ungrich, Jr., without the advance or expenditure of any moneys other than those received from the rents, issues and profits of the said premises and the entire expense of holding and caring for said real estate until sold was paid, or could have been paid, out of the income of said property (fols. 594-595); (22) that after the transactions above referred to, the net income received by the plaintiff from the trustees was reduced from \$3,200, received by him before the said transactions, to the sum of \$2,600 per annum received by him thereafter, and was entirely paid out of the income of the said estate (fol. 595) (23) that upon the discovery of the unfairness of the transaction and the true value of the property conveyed, and his legal rights in the premises, the plaintiff elected to treat the said transactions above referred to as fraudulent and void as to him, and to claim that the proceeds of the sale of the said premises by the defendant, Henry Ungrich, Jr., were impressed with a trust in favor of the plaintiff, and duly brought this action therefor (fol. 596); (24) that since the discovery by the plaintiff of the unfairness of the said transaction and his rights in the premises, the plaintiff has in no way ratified, acquiesced in or confirmed the said transaction, and has in no way waived his right to recover his legal rights in the premises (fol. 597); (25) that the defendants were guilty of misconduct in the performance of their duties as trustees in

that they failed to act properly, honestly and justly in their dealings with the estate, in their failure properly to invest and reinvest the moneys thereof and pay over to the plaintiff the share to which he was entitled, and properly care for the estate to the best interests of the plaintiff, their cestui que trust (fols. 597-598); (27) that the net proceeds received by the defendant, Henry Ungrich, Jr., from the sale of the premises belonging to the estate transferred to him, as aforesaid was the sum of \$260,250.89, made up as follows:

Sale of 208 East 126th Street, sold	
April 22, 1903.....	\$18,500.00
Sale of 443 Pleasant Avenue, sold	
July 22, 1903.....	19,500.00
Sale of Lenox Avenue property, sold	
July 2, 1906.....	250,000.00

	\$288,000.00

Less moneys expended by the defendant, Henry Ungrich, Jr., for commissions on sales of and improvements to premises, viz.:

Commission on sale of 208	
East 126th St.....	\$185.00
Commission on sale of 443	
Pleasant Ave.....	195.00
Commission on sale of Len-	
ox Ave. property.....	2,500.00
Cost of building on Lenox	
Ave. property.....	24,869.11

Net proceeds.....	\$260,250.89

(fols. 598-600); (28) that there is on deposit in the Knickerbocker Trust Company the sum of \$3,224.11, set aside as the share of the plaintiff in the personal property of the estate of Henry Ungrich,

Jr., and directed to be held in trust for the plaintiff (fols. 600-601); (29) that the amount of the trust fund created for the plaintiff's benefit by the terms of the said will should be made up and constituted of the sum of \$130,125.45, one-half of the net proceeds received from the sale of the said real estate as above stated, and in addition thereto, the said sum of \$3,244.11 on deposit in the Knickerbocker Trust Company, making the total trust fund to be set apart and held for the benefit of the plaintiff under the terms of the said will the sum of \$133,349.56 (fols. 601-602); (30) that the income which should have been paid to the plaintiff under the trust fund directed to be created for his benefit by the terms of said will, over and above all payments, credits and offsets up to and including June 1, 1906, is the sum of \$6,365.09, as shown by the following statement:

Statement of Income from Property Less Expenses from June 1, 1902, to June 1, 1906.

Payments.

Received rents, 1902 to 1903.	\$9,193.35	
Received rents, 1903 to 1904.	8,300.00	
Received rents, 1904 to 1905.	8,761.00	
Received rents, 1905 to 1906.	10,025.60	\$37,279.95
Interest on \$19,500 from July 22, 1903, to June 1, 1906, at 6%	3,344.25	
Interest on \$18,500 from April 22, 1903, to June 1, 1906..	2,456.42	6,800.67

Grand total.....		\$44,080.62
Less disbursements on property, as shown below		\$12,904.41

Total net income received by defendants		\$31,076.21

Plaintiff's share of same, to wit, one-half	15,538.10
Less income paid to plaintiff from 1902 to 1906	9,840.00

Balance	\$5,598.10
In addition, plaintiff is entitled to interest on \$3,000 from February 27, 1902, to June 1, 1906, at 6%	766.99

Total amount due to plaintiff on June 1, 1906	\$6,365.09
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(fols. 602-606); (31) that in addition thereto the plaintiff is entitled to and should receive as income from the trust fund as properly constituted, from June 1, 1906, to May 12, 1908, the date of this decision, over and above all payments, credits and offsets, the sum of \$17,944.33, as shown by the following statement:

Statement of Income from the Property from June 1st, 1906.

"Interest on \$19,500, June 1, 1906, to May 12th, 1908, at 6%,	\$2,278.25
Interest on \$18,500, June 1, 1906, to May 12th, 1908, at 6%,	\$2,161.42
Interest on \$250,000, July 2, 1906, to May 12th, 1908, at 6%,	27,916.67

\$32,356.34

Of which plaintiff is entitled to one-half as his share, or	\$16,178.17
Plaintiff is also entitled to interest on the sum of \$3,224.11, in the Knickerbocker Trust Co., from June 1, 1906, to May 12th, 1908, at 6%,	376.68

Plaintiff is also entitled to interest on amount due plaintiff on June 1st, 1906, as per previous statement, amounting to \$6,865.09 from June 1, 1906, to May 12th, 1908, at 6%,	743.65

	\$17,298.50

(fols. 607-709); (32) that the total amount of income which should be paid to the plaintiff over and above all payments, credits and offsets, is the sum of \$23,663.59; less, however, the amount of income paid to the plaintiff on June 15, 1907, after the commencement of this action, under the order of the Court, amounting to the sum of \$2,919.20, leaving a balance of \$20,744.39" (fol. 610).

The decision finds as conclusions of law (1) "that the transactions resulting in the sale to the "sale to the defendant Henry Ungrich, Jr., of the "premises belonging to the estate referred to in "the complaint, including the contract of sale, "the deeds of conveyance, mortgages, confirma- "tory deeds, and quit-claim deeds, were and are "fraudulent as to the plaintiff and the plaintiff "is entitled to the proceeds and benefits thereof "received by the defendant Henry Ungrich, Jr., "to the extent of the interest therein created for "his benefit under the terms of the will of Henry "Ungrich, deceased" (fol. 611); (2) "that there "has been no ratification or acquiescence on the "part of the plaintiff after the discovery of the "fraud practised upon him in respect to the trans- "actions resulting in the transfer of the title to "said premises to the said defendant Henry Ung- "rich, Jr." (fols. 611-612; (3) "that the sum of "one hundred and thirty thousand one hundred "and twenty-five and 45/100 dollars, one-half of

"the net proceeds of the sale of said real estate,
 "together with the sum of three thousand two
 "hundred and twenty-four and 11/100 dollars,
 "the amount on deposit in the Knickerbocker
 "Trust Company, amounting altogether to the
 "sum of one hundred and thirty-three and forty-
 "nine and 56/100 dollars, are impressed with a
 "trust in favor of the plaintiff under the terms
 "of said will, and constitute and should be held
 "as the trust fund therein created for his bene-
 "fit" (fols. 612-613); (4) "that the plaintiff is
 "entitled to judgment in this action against the
 "defendants directing them to pay over to him
 "the amount of income due and unpaid, amount-
 "ing to the sum of twenty thousand, seven hun-
 "dred and forty-four and 39/100 dollars, together
 "with interest thereon from date" (fols. 613-
 614); (5) "that the plaintiff is entitled to judg-
 "ment directing the removal of the defendants as
 "trustees under said will and the appointment of
 "new trustees in their place and stead" (fol.
 614); (6) "that the plaintiff is also entitled to
 "judgment directing the defendants to pay over
 "to their successor or successors as trustee or
 "trustees to be appointed in the decree to be en-
 "tered herein the said sum of one hundred and
 "thirty-three thousand, three hundred and forty-
 "nine and 56/100 dollars, as the principal of the
 "trust fund created for the benefit of the plain-
 "tiff under the last will and testament of Henry
 "Ungrich, deceased, and judgment is directed ac-
 "cordingly, together with costs and an extra al-
 "lowance of two thousand dollars to the plaintiff
 "against the defendants personally" (fols. 614-
 615).

The trial Justice refused to find as requested
 by the defendants that the appraisal of the per-
 sonal property made by the appraisers, duly ap-

pointed by the Surrogates' Court to appraise the same, was made at the office of the said Demarest pursuant to a written notice thereof theretofore served upon the plaintiff and each of the defendants individually, each of whom on January 24 1902, in writing admitted due and timely service thereof (fol. 442), though he has found that the said appraisement was *duly* made by such appraisers (fols. 439-441), and was *duly* filed in the office of the Surrogate of the County of New York on May 12, 1902 (fols. 442-443). He has also refused to find that on February 22, 1902, the defendants, as executors of and trustees under the said last will and testament of the said Henry Ungrich, deceased, sold and delivered to the defendant Henry Ungrich, Jr., the Texas and Pacific Railway first mortgage 5 per cent. \$1,000 gold bond at 120½, and the St. Louis and Southwestern first mortgage 4 per cent. gold bond at 98½, and the 20 shares of Wheeling and Lake Erie Railroad first preferred stock at 57, and executed, duly acknowledged and delivered to the said defendant Henry Ungrich, Jr., a bill of sale in writing thereof, and received from the said defendant Henry Ungrich, Jr., for said Texas and Pacific first mortgage 5 per cent. gold bond, and for said St. Louis and Southwestern first mortgage 4 per cent. gold bond, and for said 20 shares of Wheeling & Lake Erie Railroad first preferred stock, the sum of \$3,374.00, a sum which was \$65.50 in excess of the amount at which the said appraisers had appraised such bonds and shares of stock (fols. 453-455); that the plaintiff on the trial of this action, failed to show that the defendant Henry Ungrich, Jr., had sold the said bonds and the said shares of stock at any profit to him (fol. 455); that at numerous times between the date of the probate of the said will of the said Henry

Ungrich, deceased, and the 16th day of May, 1902, the plaintiff made numerous complaints to the defendants about the irregularity of his income, and expressed a desire to have some definite income fixed by the division of the personal property and the sale of the real estate (fols. 455-456); that thereupon and some time prior to the 16th day of May, 1902, the plaintiff himself made an attempt to procure a purchaser of the property and wrote to the defendants that he had a customer who had made an offer for the whole three parcels of property of between \$140,000 and \$150,000 for all, which was to be half cash and the balance mortgage at 4 to 4½ per cent. (fols. 456-457); that some time prior to the 16th day of May, 1902, the defendant Henry Ungrich, Jr., expressed his desire to purchase the 124th Street and Lenox Avenue property and said he did not care for the other two parcels (fol. 457); that after such expression of his desire on the part of the said defendant Henry Ungrich, Jr., to purchase the said 124th Street and Lenox Avenue property, James Demarest, with the knowledge and consent of the plaintiff, was instructed to procure an appraisal of these properties to be made by Philip A. Smyth, and thereafter the said Smyth appraised the three parcels aforesaid at the aggregate sum of \$152,000, valuing the 124th Street and Lenox Avenue parcel at the aggregate sum of \$110,000, and placing the value of No. 281 Lenox Avenue at \$45,000, and Nos. 283-285 Lenox Avenue at \$25,000 each, and No. 107 West 124th Street at \$15,000, and placing the value of the corner of Pleasant Avenue and 123d Street known as No. 443 Lenox Avenue at \$22,000, and placing the value of the property No. 208 East 126th Street, at \$20,000 (fols. 458-459); that such appraisal was in writing, and was shown to and seen by the plaintiff

(fol. 459) ; that the plaintiff and the defendants met at the office of James Demarest, No. 132 Nassau Street, in the Borough of Manhattan, City of New York, on May 16, 1902, and the defendant Henry Ungrich, Jr., again expressed his desire to purchase the Lenox Avenue and 124th Street property, and thereupon the defendant Martin Ungrich said that if he bought any, he would have to buy all, and he would have to pay \$5,000 more than the aforesaid appraisal ; that said Henry Ungrich, Jr., then agreed to buy the three parcels and pay the aggregate sum of \$157,000 therefor, and pay half in cash and half in mortgage ; that there was then a discussion about the rate of interest and the said Henry Ungrich, Jr., refused to pay more than four per cent. per annum (fols. 459-461) ; that thereupon the said James Demarest in the presence of the plaintiff and the said defendants dictated to the said Davenport, and the said Davenport typed, a typewritten agreement which the said Davenport and the said defendants thereupon executed, and which the said Demarest witnessed, and which reads as follows: "We, Henry Ungrich, Jr., and "Martin Ungrich, as executors and trustees under "the will of Henry Ungrich, deceased, hereby "agree to sell and convey to Harry K. Davenport. "of the Borough of Brooklyn, City and State of "New York, the premises known as Nos. 281, 283 "and 285 Lenox Avenue and 107 West 124th "Street, Borough of Manhattan, City and State of "New York, for the consideration of one hundred "and fifteen thousand dollars (\$115,000), to be "paid one-half cash and the balance on bond and "mortgage, payable in five years from date, interest at 4% per annum ; the premises No. 450 East "123d Street and No. 443 Pleasant Avenue, Borough, City and State aforesaid, for the consideration of Twenty-two thousand dollars (\$22,000),

"payable one-half cash and the balance of bond
 "and mortgage payable five years from date, in-
 "terest at 4% per annum, and the premises No.
 "208 East 126th Street, Borough, City and State
 "aforesaid, for the consideration of Twenty
 "thousand dollars (\$20,000), payable one-half cash
 "and the balance on bond and mortgage payable
 "five years from date, interest at 4% per annum.
 "Said Executors and Trustees to execute, ac-
 "knowledge and deliver Executor's deed for the
 "conveyance of said premises, free and clear of all
 "incumbrances and said deed to be delivered at
 "the office of James Demarest, No. 140 Nassau
 "Street, Borough of Manhattan, New York City,
 "on May 22nd, 1902, at 2 o'clock P. M., title of
 "each of said premises to be closed as of June 1st,
 "1902. The rents accruing up to June 1st, 1902, to
 "belong to the estate of Henry Ungrich and inter-
 "est on purchase money mortgages to date from
 "June 1, 1902. And the said Harry K. Davenport
 "agrees to take the said premises for the price
 "said upon the terms hereinbefore set forth. Dated
 "May 16th, 1902. Harry K. Davenport, Henry
 "Ungrich, Jr., Martin Ungrich, executors and
 "Trustees. In presence of: James Demarest"
 (fols. 461-465); that thereupon the plaintiff wrote
 at the bottom of the said agreement in his own
 handwriting the words "Contract approved by
 "me. Martin Louis Ungrich" (fol. 465), that
 three copies of the said instrument were prepared
 by the said Davenport and one copy was delivered
 to the said plaintiff, and one to each of the de-
 fendants (fols. 465-466); that on May 22, 1902, the
 plaintiff and the said defendants met at the said
 office of the said Demarest and the defendants then
 executed, duly acknowledged and delivered their
 certain deed, wherein in consideration of the sum
 of \$157,000, they duly conveyed to the said Daven-

port, the three pieces or parcels of land, of which the said testator died seized and possessed, which deed bears date May 22, 1902, and was recorded in the office of the Register of the County of New York on May 24, 1902, in Section 6, Liber 66 of conveyances, at page 419 (fols. 466-467); that on May 22, 1902, the said Henry Ungrich, Jr., executed and delivered to the defendants his receipt for the sum of \$57,500, dating the same May 31, 1902, for his one-half part of the proceeds of the sale of the said premises, which said receipt was produced on the trial of this action from the bundle of vouchers accompanying the account of their proceedings, filed by the defendants, and on which the decree of the Surrogates' Court of May 13, 1903, hereinafter adverted to, was entered (fols. 470-471); that on the 22d day of May, 1902, the plaintiff executed, duly acknowledged and delivered to the defendants, an instrument in writing, bearing date that day, which reads as follows: "Whereas Henry Ungrich, late of No. 107 West "124th Street, in the Borough of Manhattan, in "the City, County and State of New York, died on "the first day of March, 1901, seized and possessed "of the following described lands and premises in "the Twelfth Ward of the Borough of Manhattan, "City and State of New York, to wit: No. 107 West "124th Street, Nos. 281, 283 and 285 Lenox Ave- "nue, No. 450 East 123rd Street, No. 443 Pleasant "Avenue and No. 208 East 126th Street. And "Whereas Henry Ungrich, Jr., and Martin Un- "grich, were duly appointed Executors and Trus- "tees under the Will of said Henry Ungrich, and "were given power to sell and dispose of the said "real estate. And whereas, I, Martin Louis Un- "grich, son of Henry Ungrich, first above named, "and the principal beneficiary of the trust created "in the will of said Henry Ungrich, have requested

"the said Executors and Trustees to sell the said
 "real estate and set aside the trust fund called for
 "in my father's will. Now, therefore, I, said Mar-
 "tin Louis Ungrich do hereby declare and affirm
 "that the sale of the real estate hereinbefore men-
 "tioned, made this day for the aggregate consider-
 "ation of One hundred and fifty-seven thousand
 "dollars is made at my request and with my con-
 "sent and approval and with full knowledge on my
 "part that the said real estate is purchased for
 "and is to be conveyed to my brother Henry Un-
 "grich, Jr., who is one of the Executors and Trus-
 "tees under the will of my father Henry Ungrich,
 "deceased, and I hereby ratify and confirm the
 "same and all the acts of the said Executors and
 "Trustees, done in connection therewith. IN
 "WITNESS WHEREOF, I have hereunto set my
 "hand and seal this twenty-second day of May,
 "Nineteen hundred and two. Martin Louis Un-
 "grich, L. S. In presence of James Demarest.
 "City and County of New York, ss.: On this
 "twenty-second day of May, in the year one thou-
 "sand nine hundred and two before me personally
 "came Martin Louis Ungrich, to me known
 "and known to me to be the individual de-
 "scribed in and who executed the foregoing
 "instrument and he thereupon duly acknowl-
 "edged that he executed the same. James
 "Demarest, Notary Public, Kings Co. Cert. Filed
 "in New Yory Co." (fols. 472-476); that \$157,000
 was the fair and reasonable value for the said
 parcels of property at the time of the sale and
 conveyance thereof to the said Henry Ungrich,
 Jr. (fols. 476-477); that prior to the sale of the
 said four parcels of the land to the said Henry
 Ungrich, Jr., the said plaintiff made himself ac-
 quainted with the situation and condition of the
 said parcels of property and the market value

thereof (fols. 477-478); that at the time of the sale and conveyance of the said premises to the said Henry Ungrich, Jr., the said plaintiff was in no condition of weakness, or of confidence in or dependence upon the defendants, and was not subject to any undue or overmastering influence exerted over him in any manner by either of the defendants (fols. 478-479); that the plaintiff had equal knowledge and means of knowledge with the defendant Henry Ungrich, Jr., as to the existing and future value of these four parcels of real estate (fol. 479); that the plaintiff failed to show on the trial that he did not know of the coming of the Subway and that the coming of the Subway was expected to enhance the value of the 124th Street property, and that one George Ehret had purchased property in the immediate vicinity of 124th Street property (fols. 479-480); that at the time of the assignment of the mortgages that the testator in his lifetime made to the defendant Henry Ungrich, Jr., there was due on the said mortgages the sum of \$25,000 (fol. 483); that some time after the death of the said Henry Ungrich, the elder, the plaintiff complained to the defendant Henry Ungrich, Jr., of such assignment of the mortgages so made by his deceased father to his said brother and stated that he thought he ought to have some allowance therefor, and that he had in view the purchase of a small house in Brooklyn for a home, and that he had thoroughly reformed from his previous manner of living, and thereupon the defendant Henry Ungrich, Jr., agreed to give the plaintiff the sum of \$4,500, which he thereafter on the solicitation of the said Demarest raised to \$6,000 (fols. 483-484); that on or about March 31, 1902, the defendants as the executors of the last will and testament of the said Henry Ungrich, the

elder, deceased, rendered an account of their proceedings as such up to that date, and duly filed such an account in the office of the Surrogates' Court of the County of New York; that in that account they duly accounted for all the personal property of their testator as shown in the aforesaid inventory, and for the sale thereof, and the proceeds realized thereon, and the division thereof between the defendant Henry Ungrich, Jr., and the defendants as trustees under the terms of the trust created by the said last will and testament of the said testator for the benefit of the plaintiff, and filed therewith their petition praying that a citation might issue directed to all persons interested in the estate of the said testator, requiring them to show cause why the said account of the said executors should not be judicially settled and allowed, and thereupon a citation was duly issued out of the said Surrogates' Court directed to the plaintiff and all other persons interested in the said estate of the said testator, requiring them to attend before that court and show cause why such account should not be judicially settled and allowed, and such citation was duly served upon the plaintiff, and thereafter such proceedings were duly had therein that on September 31, 1902, there was entered a decree in the said Surrogates' Court whereby the said account so filed by the said defendants as executors was judicially settled and allowed as filed and adjusted (fols. 487-489); that on March 2, 1903, the defendants as executors and trustees aforesaid duly filed in the office of the Clerk of the County of New York an account of their proceedings as such between March 1, 1902, and March 1, 1903; that in their said account they set forth the aforesaid decrees of the Surrogates' Court on September 25, 1902, and that they had been charged therein as trus-

tees with the sum of \$5,669.93; that Schedule "A," annexed to their account, contained a statement of all the income belonging to the estate and the amount that had been received from a sale of the real estate, and the amount received from a sale of the personal property, and a statement of all interest or moneys received by them for which they were legally accountable; that Schedule "B," annexed thereto, contained a statement of all the personal property then remaining in their hands, and the appraised value thereof; that Schedule "C," annexed thereto, contained a statement of all the moneys paid for administration; that Schedule "D," annexed thereto, contained a statement of all disbursements made in connection with the real estate and all claims of creditors presented to and allowed by them; Schedule "E" contained a statement of all moneys paid to legatees; that in said account the said defendants charged themselves with the sum of \$166,725.96; that this amount embraced, as shown in Schedule "A" of that account, the aggregate amount of the personal estate in their hands for the benefit of the plaintiff, the rents they had received up to that date on the bonds and mortgages so held by them as executors and trustees, and the amount of \$157,000, the proceeds of sale of the real estate; that in Schedule "A," annexed to the account, they showed that they had paid to the plaintiff and to the defendant Henry Ungrich, Jr., income due them on May 31, 1902, September 3, 1902, and December 1, 1902; that they had invested for the account of the plaintiff \$3,000; that they had paid to the defendant Henry Ungrich, Jr., the sum of \$78,500, as one-half of the proceeds of the sale of the real estate; that at the same time as they filed their account they filed a petition praying

that a citation should issue thereon directed to all the persons interested in the estate, requiring them to show cause why the account should not be judicially settled and allowed; that thereupon a citation was duly issued out of the Surrogates' Court addressed to the plaintiff and all persons interested in the estate of the said testator, and such citation was duly served upon the said plaintiff, and such proceedings were thereafter duly had thereon, that on May 13, 1903, a decree was duly entered in the Surrogates' Court, judicially settling and allowing the said account as so filed and adjusted, and adjudging and decreeing that the said defendants, as executors and trustees, held the said sum of \$78,987.07, subject to the terms and provisions of the said last will and testament of the said testator (fols. 490-495); that between June 1, 1903, and June 4, 1906, the plaintiff received from the defendants the income realized from the said bonds so made by the said Harry K. Davenport to the said defendants, and so secured by purchase money mortgages, so given by him covering the said premises, and signed and delivered to the defendants eleven different receipts, in each of which he states that he has received from the defendants, as such executors and trustees of the estate of his deceased father, "interest on the bonds of Harry K. Davenport aggregating \$78,500, secured by mortgage "on premises 281-285 Lenox Avenue, 107 West "124th Street, 208 East 126th Street, and "443 Pleasant Avenue, New York City" (fols. 495-496); that \$3,000 of the fund in the hands of the defendants for the benefit of the plaintiff under the terms and conditions of the said will of the said testator were deposited by the defendants and kept by them on deposit with the Knickerbocker Trust Company under an

agreement with the said trust company that the said trust company would pay three per cent. thereon (fols. 496-497); that the defendants tried afterwards to find a mortgage in which they could invest the said sum of \$3,000, but were unable to find any on account of the smallness of that amount; that the said defendants also repeatedly requested the plaintiff to find some mortgage in which they could invest such fund, but the plaintiff did not notify the said defendants that he had found such mortgage (fols. 497-498); that between the 1st day of June, 1903, and the 4th day of June, 1906, the plaintiff signed and delivered to the defendants as such executors and trustees, seven different receipts, in each of which he acknowledged receipt from the defendants, as such executors of the sum of \$48.64, "*interest on the fund in Knickerbocker Trust Company*" (fols. 498-499); that the plaintiff at all times from the date of the investment by the defendants of the fund held by them as trustees under the terms of the will of the testator, for the benefit of the plaintiff, knew of the nature of such investment, and with knowledge of the nature and character of such investments received the income, increase and increment therefrom and receipted to the defendants therefor (fols. 499-500); that the first year after the death of the testator the personal estate of the testator was assessed by the Commissioners of Taxes and Assessments of the City of New York at the sum of \$25,000; that the following year, it was raised by the Commissioners of Assessments and Taxes to the sum of \$100,000; that when it was so raised to \$100,000, James Demarest went to the Commissioners and complained of the increase, and the Commissioner hearing his complaint, asked whether they were satisfied to pay the same

amount as the year before; that upon the said Demarest expressing his willingness so to do, the assessment was reduced to the sum of \$25,000 (fols. 500-501); there is no evidence that the said James Demarest went to the Commissioners of Taxes and Assessments and made such complaint through any instructions received by him from the defendants, or that he went with their knowledge or made the statement that he did with their knowledge, acquiescence and consent (fol. 501); that on or about April 24, 1903, the plaintiff and his wife duly executed, acknowledged and delivered to the defendant Henry Ungrich, Jr., a quit claim deed, bearing date that day, duly acknowledged by them on that day, wherein and whereby they quit claimed and released to the defendant Henry Ungrich, Jr., any and all right, title and interest that they had in or to the first two pieces or parcels of land hereinbefore mentioned, being the premises Nos. 281-283 and 285 Lenox Avenue, and No. 107 West 124th Street (fol. 502); that on April 24, 1903, the plaintiff and his wife duly executed, acknowledged and delivered to the defendant Henry Ungrich, Jr., their quit claim deed in writing, bearing date May 22, 1902, wherein and whereby they quit claimed and released to the defendant all the right, title or interest, they or either of them had in the third of the parcels hereinbefore mentioned, known as No. 443 Pleasant Avenue, which deed was thereafter duly recorded in the office of the Register of the County of New York on July 31, 1903, in Section 6, Liber 79 of conveyances, page 29 (fol. 503); that on April 24, 1903, the said plaintiff and his wife duly executed, acknowledged and delivered to the said defendant Henry Ungrich, Jr., their deed in writing, bearing date that day, wherein and whereby they duly quit

claimed, released and conveyed to the defendant Henry Ungrich, Jr., all their right, title and interest in and to the fourth of the parcels above described, and being the premises known as No. 203 East 126th Street, which deed was duly recorded in the office of the Register of the County of New York on April 24, 1903, in Section 6, Liber 75 of Conveyances, page 152 (fols. 504-505); that the plaintiff rendered and performed services as an architect for the defendant Henry Ungrich, Jr., at the special instance and request of the said defendant Henry Ungrich, Jr., in making and preparing preliminary studies, general drawings and specifications for the erection of such stable or garage then contemplated to be erected by the defendant as the owner thereof upon the said lot of land so known as No. 107 West 124th Street, and in making and preparing preliminary studies, general drawings and specifications for such five-story brick storage warehouse, so erected on the said lot known as No. 107 West 124th Street, by the defendant Henry Ungrich, Jr., as the owner thereof, and in making and preparing preliminary studies, general drawings and specifications and making and preparing additional plans for alterations to the above plans and specifications for the alteration of the three brick buildings, with brownstone fronts, on the northwest corner of 124th Street and Lenox Avenue, to be made by the defendant Henry Ungrich, Jr., as the owner thereof (fols. 508-509); that on July 2, 1906, the defendant Henry Ungrich, Jr., sold and conveyed the first two of the premises hereinbefore described and being the premises known as Nos. 281-283 and 285 Lenox Avenue and 107 West 124th Street, to one George Elhret for the sum of \$250,000 gross, and on that day duly executed and delivered his deed, bearing date that

day, whereby he duly conveyed to the said George Ehret the said premises (fols. 514-515); that before the commencement of this action there had become due to the plaintiff as income derived from the investments made by the defendants as trustees of the fund directed by the said last will and testament of their said testator, to be invested by them for the benefit of the plaintiff, the sum of \$1,633.59; that out of that amount the trustees had paid the mortgage tax on one of the mortgages held by them, and had paid to the Receiver of Taxes the personal tax for the year 1906, aggregating \$376.03, leaving in their hands belonging to the plaintiff under the terms and conditions of the said trust, the sum of \$1,257.56; that after the commencement of this action, the defendants received as the net income or increment of said bonds and mortgages, the further sum of \$1,661.64, and in June, 1907, they had in their hands the aggregate sum of \$2,919.20 of income belonging to the plaintiff which the plaintiff was entitled to under the terms of the said will of the testator; on June 12, 1907, the plaintiff knowing that that sum was in the hands of the defendants as income, increase or interest realized from such bonds and mortgages and such deposit in the Knickerbocker Trust Company, applied to this court for an order directing the defendants forthwith to pay that sum to him, without prejudice to his rights in the action; that the defendants did not oppose the granting of that motion, except in the particular that they claimed to the justice hearing said motion, that the court had no right to impose any condition upon the payment by them and the receipt by the plaintiff of the said income, that it should be without prejudice to the plaintiff's rights in the action; that nevertheless, this court on June 21,

1907, made its order, bearing date that day and entered in the office of the Clerk of the County of New York on June 24, 1907, directing the payment by the defendants to the plaintiff of the said sum of \$2,919.20, "without prejudice to the rights of either party to the action;" that thereupon the attorneys for the defendants served upon the attorneys for the plaintiff, a notice, accompanied with a check for the sum of \$2,919.20, made by the said defendants to the order of the plaintiff, which check was subsequently paid, and which notice read as follows: "Pursuant to the terms of the order of this court, bearing date June 21, and entered in the office of the Clerk of the County of New York on June 24, 1907, we hereby send to you check to the order of Martin Louis Ungrich, for the sum of \$2,919.20, and we hereby notify you that we shall appeal from so much of the order as provides that the payment of that sum shall be 'without prejudice to the rights of either party to the action,' as we claim that the court has no power to impose such condition upon the payment or receipt of the said sum" (fols. 519-520); thereafter the defendants appealed to the Appellate Division of the Supreme Court for the First Department from so much of the said order as provided that the payment by the defendants and receipt by the plaintiff should be "without prejudice to the rights of either party to the action;" that such proceedings were had on such appeal that this court by its order, bearing date November 22, 1907, and entered in the office of the Clerk of that court on that day, modified the order so appealed from by striking out the portion of the order so appealed from (fols. 515-521); that the plaintiff has never returned the said sum of \$2,919.20, to the defendants, nor any

part thereof (fol. 521); that prior to the death of his father, the plaintiff had drawn a number of checks on banks in which he had no account, and got people to cash them for him; he had also forged a signature to a check by one J. Roberts to his order, which he had endorsed and upon which he had procured the money, and he had been in the City Prison; on the trial of this action, he admitted that Exhibit 103 was all in his handwriting, and was a list of bad checks that he had given, but denied that the check to which he had so forged the name of J. Roberts, and which was drawn to his own order on the Mount Morris Bank, was in his handwriting, although it is specified in the list of such checks set forth in Exhibit 103, and an examination thereof readily shows that it is in his handwriting (fols. 522-523).

He has found at the request of the defendants that on May 22, 1902, and as part consideration for the said conveyance that the executors made to Davenport, Davenport executed, duly acknowledged and delivered his bonds, secured by mortgage, covering the premises aforesaid (fols. 467-470); and that on May 22, 1902, the said Davenport "*duly* conveyed to the defendant, Henry Ungrich, Jr., four pieces or parcels of land above mentioned, subject to the payment of the three mortgages aforesaid, so made by the said Davenport, to the said defendants in their representative capacity, by deed, bearing date that, and duly recorded in the office of the Register of the County of New York, on May 22, 1904, in Section 6, Liber 68 of Conveyances, at page 299" (fols. 471-472), that at the time of the sale and conveyance of the said four parcels of real estate to the said defendant, Henry Ungrich, Jr., the Subway was openly being constructed in Lenox Ave-

nue (fol. 477); that the plaintiff is, and at the times hereinafter mentioned was, a practising architect *and a man of intelligence* (fol. 478); that Henry Ungrich, the elder, in his lifetime, and on February 17, 1897, assigned to the defendant Henry Ungrich, Jr., by instrument of assignment, bearing date that day and duly recorded in the office of the Register of the County of New York on February 18, 1897, in Section 6, Liber 50 at page 461, the three several mortgages aforesaid (fols. 480-482), and that on June 23, 1902, the defendant, Henry Ungrich, Jr., gave his check to the plaintiff for the sum of \$6,000, which the plaintiff subsequently cashed, and the plaintiff, executed, duly acknowledged and delivered to the defendant, Henry Ungrich, Jr., a general release in writing wherein and whereby in consideration of the sum of \$6,000, he released the said defendant, Henry Ungrich, Jr., his heirs, executors and administrators of and from all and every manner of action or actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damage, judgments, extents, executions, claims and demands whatsoever in law or in equity he had against him or ever had or which his heirs, executors or administrators, could, should or might have for or upon or by reason of any matter, cause or thing whatsoever from the beginning of the world to the date of those presents (fols. 484-486); that the defendant, Henry Ungrich, Jr., on June 22, 1903, duly sold to Esther Eisenberg for the sum of \$19,500, the premises known No. 443 Pleasant Avenue (fols. 505-506); that on April 24, 1903, the said defendant sold to Charles Goldstein, the premises, No. 208 East 126th Street, for the sum of \$18,500 (fol. 506); that prior to the

date of the quit claim deed made by the plaintiff and his wife to the defendant, Henry Ungrich, Jr., of the premises known as Nos. 281-283-285 Lenox Avenue, and 107 West 124th Street, the defendant, Henry Ungrich, Jr., erected a stable and storage building upon the portion thereof known as No. 107 West 124th Street, and made alterations in the premises, Nos. 281-283-285 Lenox Avenue, at a cost to him of \$24,869.36 (fol. 507); that thereafter and at the same time as the commencement of this action, the plaintiff commenced another action in the Supreme Court of New York for the County of Westchester, as plaintiff, against the defendant, Henry Ungrich, Jr., as defendant, to recover the sum of \$765 with interest from November 15, 1902, as the reasonable value of such work, labor and services so rendered and performed by the said plaintiff for the said defendant, Henry Ungrich, Jr., at the said defendant, Henry Ungrich, Jr.'s, instance as aforesaid, in making and preparing general drawing, preliminary studies and specifications for the erection and alteration of the buildings on the said pieces or parcels of land so known as Nos. 281-285 Lenox Avenue, and 107 West 124th Street, and thereafter such proceedings were duly had in that action that subsequent to the commencement, and prior to the trial of this action, the defendant, Henry Ungrich, Jr., pursuant to the statute in such case made and provided, duly offered to allow judgment to be taken against him in such action for the sum of \$465, with interest from November 15, 1902, together with the costs of the action, to the date of that offer, and duly subscribed such offer in writing and caused the same to be duly subscribed by his attorney, and caused the same to be served upon the attorneys for the plaintiff; that thereafter such proceedings were had in such action, and after the commence-

ment of this action and before the trial hereof, that the plaintiff herein and therein, in writing, pursuant to the statute in such case made and provided, duly accepted said offer and served a written notice subscribed by the said plaintiff therein and herein, accepting said offer, and thereafter such proceedings were duly had in that action, pursuant to law and pursuant to the statute in such case made and provided, that judgment was duly entered in that action in favor of the said plaintiff therein and herein, and against the said defendant, Henry Ungrich, Jr., therein and herein, for the sum of \$631.69 damages and costs, and the judgment roll in that action was duly docketed in the office of the Clerk of the County of Westchester, and thereafter the said defendant, Henry Ungrich, Jr., duly paid to the said plaintiff the whole amount of the said judgment, and the said judgment was thereafter satisfied and discharged of record (fols. 509-514).

The trial Justice refused to find at the request of the defendants as conclusions of law, that the purchase by the defendant, Henry Ungrich, Jr., of the aforesaid premises of which his testator died seized, was not void, but merely voidable (fol. 523); that the purchase by the defendant, Henry Ungrich, Jr., of the real estate of which his testator died seized, was acquiesced in by the plaintiff (fol. 523-524); that the purchase by the defendant, Henry Ungrich, Jr., of the premises of which his testator died seized, was ratified by the plaintiff (fol. 524); that the purchase by the defendant, Henry Ungrich, Jr., of the property of which his testator died seized, being not void, but merely voidable, and it having been acquiesced in and ratified by the plaintiff, cannot now be attacked by the plaintiff (fol. 524); that there was no breach of duty upon the part of the defendants in the in-

vestment of the sum of \$3,000, by depositing the same in the Knickerbocker Trust Company, at three per cent. interest; that the plaintiff knowing of such deposit and the rate of interest allowed thereby and receiving the income therefrom, and receipting for it, acquiesced in and ratified such investment of that amount by such deposit in the said trust company (fols. 525-526); that the plaintiff having known of such deposit of the sum of \$3,000, and having received the income realized therefrom, and receipting for it, has estopped himself from claiming in this action that the defendants were guilty of any breach of trust in relation thereto (fol. 526); that there was no breach of duty on the part of the plaintiff in relation to the reduction of the tax on the trust estate held for the benefit of the plaintiff (fol. 526); that there was no misappropriation of \$25,000 of personal property not included in the inventory of the estate that was duly made and filed by the defendants (fol. 527); that the plaintiff by the receipt of the sum of \$6,000 from the defendant, Henry Ungrich, Jr., estopped himself from claiming that Henry Ungrich, Jr., had misappropriated any part of the personal estate of his testator (fol. 527); that the receipt by the plaintiff of the sum of \$6,000 on or because of any claim advanced by him to the defendant, Henry Ungrich, Jr., that the latter had misappropriated any part of the personal estate of his testator, estops the plaintiff from maintaining any action to call the defendants to account for any such misappropriation by his brother (fols. 527-528); that the general release executed by the plaintiff to his brother, the defendant, Henry Ungrich, Jr., bars the plaintiff from any claim herein of any misappropriation by the defendant, Henry Ungrich, Jr., or any part of the personal estate of the testator (fols. 528-529);

that the two decrees of the Surrogates' Court aforesaid estop this plaintiff from maintaining this action (fol. 529); that the first decree of the Surrogates' Court on the first mentioned accounting of the defendants estops this plaintiff from claiming herein that the personal estate of the testator was other than is shown in the inventory duly filed by the defendants thereon, and that the items allowed to the defendants for money paid to him were correct, and that the defendants had been charged with all the interest for money received by them and embraced in the account, for which they were legally accountable, and that the allowances made to the defendants for the decrease, and the charges made against them for the increase in the value of the property, were correctly made, and that the defendants had properly divided the whole amount of the personal estate between the defendant, Henry Ungrich, Jr., and the defendants as trustees for the plaintiff (fols. 529-530); that the second decree of the Surrogates' Court on the second accounting above mentioned estops the plaintiff from claiming that the sale of the real property of which the testator died seized, and the conveyance to the defendant, Henry Ungrich, Jr., was in any manner improper, or that the amount realized therefor was insufficient, or that the investment of one-half of the proceeds of the said sale in the bonds of the said Davenport secured by the purchase money mortgages given by him to the defendants covering the property was in any degree improper, or that the amount of interest specified therein as payable thereon was insufficient (fols. 531-532); that the rendition by the plaintiff of the work, labor and services done and performed at the defendant, Henry Ungrich, Jr.'s, request, as the owner thereof, on the premises at 124th Street and Lenox Avenue, bars

and estops the plaintiff from in any manner maintaining any action to set aside the conveyance to Henry Ungrich, Jr., of that property, or to call the defendants to account for the proceeds realized by him on any subsequent sale thereof (fols. 532); that the rendition by the plaintiff of such work, labor and services done and performed for the defendant, Henry Ungrich, Jr., at his request and as the owner thereof, on such property, and the recovery of the judgment recovered by the plaintiff against the defendant in the Supreme Court of New York for the County of Westchester, for the reasonable value of those services and the payment by the said defendant to the plaintiff of the amount of that judgment, bars and estops the plaintiff for maintaining any action to set aside the conveyance to the defendant, Henry Ungrich, Jr., of that property, or to call the defendants to account for any sum realized by the defendant, Henry Ungrich, Jr., on the subsequent sale thereof (fols. 533-534); that the bringing of that action was an election of remedies on the part of the plaintiff that bars him from maintaining this action (fols. 534-535); that the expenditure by the defendant of the sum expended by him, as the owner thereof, in the erection of the storage warehouse and garage, with the knowledge, acquiescence and consent and aid of the plaintiff in the drawing of plans therefor, bars and estops the plaintiff from maintaining any action to set aside the conveyance of the said premises to the defendant, Henry Ungrich, Jr., or from calling him to account for the proceeds realized upon the subsequent sale of the premises (fols. 535-536); that by applying in this action, after its commencement, for an order directing the defendants to pay over to him the income derived from the investment that the defendants had made of his share of the

estate of the testator the plaintiff has estopped himself from maintaining this action (fol. 537); that the general release executed by the plaintiff to the defendant, Henry Ungrich, Jr., bars and estops him from maintaining this action (fols. 537-538).

The defendants have separately excepted to these findings and to the refusals to find aforesaid (fols. 625-707).

In the opinion filed by the trial Justice, in deciding this case, he says: "The plaintiff, "an architect by profession, was a man of irregular habits, involved in financial difficulties, wholly unfamiliar with real estate values, who, upon "the urgent and repeated solicitations of his "brother was induced to agree to the transaction, "and it is clear that in doing so he relied absolutely upon the representations made by his brother "and the attorney for the executors. During all "this time transit facilities and other great improvements were being inaugurated along Lenox "Avenue and the property thereon and adjacent "thereto was rapidly increasing in value. Under "the circumstances, the time of the sale was most "inopportune and the price was far below the real "value of the property. The purchasing executor "resold it within four years for the sum of \$288,000, thus securing a profit of over \$130,000. By "the arrangement, it is to be noted that while the "trustee became so largely enriched the income "of the *cestui que trust* was reduced from \$3,200 "to \$2,600 per annum. That the executor during "all this time was fully aware of the change in "conditions in the property is clear, and it cannot "be held otherwise than that a fraud was perpetrated, and the attempt to prove ratification of "the agreement must fail. Acts innocently done "without knowledge, intervening between a fraud

“and a discovery, cannot within well settled authority, be held to establish acquiescence. The defendants herein were called upon to establish entire fairness throughout the transaction. This they wholly failed to do. The conveyance by the executor to the law clerk and the deed by the law clerk to the executor were one transaction, the trustee acting in the double capacity of seller and purchaser of the trust property, and there was clearly a conflict between interest and duty” (fols. 2249-2253).

The case here presented by the plaintiff was, as we will see from the following points, not one where the burden of proof was on the defendants to prove the entire fairness of the transaction. But if it were, that burden, as we have seen from the foregoing statement of facts, was fully met by the defendants. We have also seen from the foregoing examination of the evidence that the plaintiff was, contrary to the statements in the opinion to that effect, thoroughly familiar with the value of this real estate; that the price paid was equal to or even over the market value of such property; that the purchasing executor was no more aware of the changing conditions of the property than was the plaintiff, and that no representations of any kind were made to the plaintiff either by the executor or the attorney; and that there was uncontradicted and overwhelming proof as to ratification and acquiescence on the part of the plaintiff in these transactions.

P O I N T S.

FIRST POINT: The purchase by the defendant Henry Ungrich, Jr., of this property, even if it was an act done without the knowledge, acquies-

cence and consent of the cestui que trust, was not void, but merely voidable, and the refusal of the trial Justice so to find when requested by the defendants, coupled as it was with refusals to find the fifth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twenty-first, twenty-third, twenty-sixth, twenty-eighth, twenty-ninth, thirtieth, thirty-fifth, thirty-sixth, thirty-seventh, thirty-eighth, thirty-ninth, fortieth, forty-first, forty-fourth, forty-fifth, forty-sixth, fiftieth, fifty-second, fifty-third, fifty-fourth, fifty-fifth requested findings of fact, all of which are based upon uncontradicted, undisputed, unimpeached evidence given upon the trial, and the second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, and twentieth requested conclusions of law, all of which present the principles of law as they should have been applied by the trial Justice, along with the findings of fact in the decision numbered twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth, eighteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third, twenty-fourth, twenty-fifth, twenty-sixth, twenty-seventh, twenty-ninth, thirtieth, thirty-first and thirty-second, and the conclusions of law therein numbered first, second, third, fourth, fifth and sixth, and the failure of the decision to contain any findings directly in conflict with such requested findings of fact numbered X, XI, XII, XIII, XIV, XV, XVI, .

XVII, XVIII, XIX, XXI, XXIII, XXVIII, XXX, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI, XLIV, XLV, XLVII, L, LIII, LIV, and LV, and the requested conclusions of law numbered II, IV, V, VI, VII, VIII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX presents error of law reviewable not only in this court, but even if the judgment herein were being reviewed by the Court of Appeals, in that Court.

(a) Thus is *Bushe v. Wright*, 118 App. Div., at p. 377, it is said: "It is an elementary principle "that a deed or conveyance by which a trustee or "one occupying a position of confidence and trust "acquires an interest in the property conveyed, is "not absolutely void but voidable at the election of "the beneficiary or cestui que trust; that until such "beneficiary or cestui que trust elects to avoid the "deed, it is valid; and from this it follows that "such a deed may be ratified, and when once ratified, an action cannot be maintained by the grantor or his personal representatives to avoid it "(*Dodge v. Stevens*, 94 N. Y., 209). In that case "it is said, 'But a purchase by a trustee for himself, of trust property in respect to which he "has a duty to perform, inconsistent with the "character of purchaser—is voidable at the election of the cestui que trust and not absolutely "void. The cestui que trust may affirm the transaction and treat the trustee as a purchaser, or "he may disaffirm the purchase and in case of "real estate, if the title has become vested in the "trustee by a conveyance, may compel the trustee to convey to him, or in trust for him, as the "case may require.' In *Harrington v. Erie County Savings Bank* (101 N. Y., 257) the same "principle was applied, the court saying: 'The

“ ‘appellant relies upon the well established doc-
 “ ‘trine that a trustee cannot purchase or deal in
 “ ‘the trust property in his own behalf or for his
 “ ‘own benefit, directly or indirectly. This is a
 “ ‘rule of equity and is not to be impaired or
 “ ‘weakened. Such a purchase, however, is not
 “ ‘void ab origine, but voidable only, and at the
 “ ‘instance of the cestui que trust or of a party
 “ ‘who has acquired the rights which belong to
 “ ‘one in that relation. Even while in the hands
 “ ‘of the trustees the title may be confirmed as
 “ ‘well by acquiescence and lapse of time as by
 “ ‘the express act of the cestui que trust.’ And
 “ ‘*Kahn v. Chapin*, 152 N. Y., 305, was determined
 “ ‘by the application of the same principle and the
 “ ‘the same principle has been applied in the case
 “ ‘of a conveyance by a person of unsound mind.’ ”

(b) Here the trial Justice has refused to find that the purchase was not void, but merely voidable. He has refused to find that the plaintiff was an active factor in procuring the defendant to purchase the property and actively acquiesced in and recommended the defendant to make such purchase. He has refused to give any weight in determining the questions involved herein to the uncontradicted, undisputed fact that the plaintiff was such an active factor in bringing about this purchase by the executor. He has treated the questions of fact and law presented to him as if the purchase was one by an executor without the knowledge, acquiescence and consent of the *cestui que trust*, and where the act had taken place without any knowledge of the transaction on the part of the *cestui que trust* until after the act had been consummated. He has applied the rules of law governing a situation of that kind and not the rules of law which govern a case such as is pre-

sented by the record herein. He has treated the document which the plaintiff executed at the time of this conveyance as if it were a document that had been executed by a *cestui que trust* in favor of the trustee after the trustee had done some illegal act without the knowledge, acquiescence or consent of the *cestui que trust*. He has treated the confirmatory deeds which the plaintiff and his wife executed, which were in no way attacked in this action, which the judgment does not in any way set aside or annul, as being absolutely void. He has failed to give any effect whatever to the decrees of the Surrogates' Court settling and allowing the accounts of the executors in the transactions of the said defendants which are now attacked, although the plaintiff was a party thereto and was duly cited to attend on such accounting of the defendants. He has failed to give any effect to the acts of the plaintiff in performing work, labor and services for the defendant on the Lenox Avenue property, as the owner thereof, and to the act of the plaintiff at a time when he concededly had full knowledge as to the price that the defendant, Henry Ungrich, Jr., had realized for that property, in suing the defendant, Henry Ungrich, Jr., as the owner of that property, for the work, labor and services that the plaintiff had performed thereon at the said defendant's request, and in the recovery and satisfaction of the judgment therein.

Finally, his decision and judgment proceed upon the theory that a *cestui que trust* who urged his executors to sell the real estate of the trust and one of the executors to buy the same in his own name, who knows that one of the executors is buying the property, who is advised by the other executor not to sell the property to the one so purchasing, and particularly not to sell the property at the time

because the time was inopportune, who is told to procure an appraisal of the property, who tries to sell the property to other parties and is unable to get a price any where near as high as the executor is willing to pay for it, who acquiesces in the procuring of an appraisal from a selected appraiser, and who urges the executor to pay more than that appraisal on the ground that the property has a future on account of changing conditions which are being brought about by the construction of a subway near it, who at the time of the conveyance by the executor to a dummy who subsequently conveys to the executor, endorses on the contract for the purchase and sale of the property in his own handwriting that the contract is approved of and ratified by him, who at the time of the deed certifies to the executors that he approves of the conveyance and knows fully that the property is being purchased by the executor, who does not disclaim knowledge on his part that the property was purchased by the executor, may, when the purchasing executor some four years later has sold two of the parcels conveyed to him at a loss, but the third at a large gain, hold that executor as trustee for him of the proceeds realized by the executor on that sale. This is the theory of this transaction. It is certainly a startling one. We are unable to find any justification in any text book or decision of any court therefor.

If, however, such an action can be maintained upon any such theory, yet the rulings made by the trial Justice in refusing to pass on these requested findings of fact and conclusions of law, and the rulings made by him in his decision herein, above adverted to, are even inconsistent with such a theory. The exceptions taken to the refusal to find these requested findings of fact and conclusions of law, and to the findings of fact above adverted

to, therefore, present error of law, requiring a reversal of this judgment.

(c) Thus in *Bookman v. N. Y. Elevated Railroad Co.*, 137 N. Y., 302, the court was requested by the defendant's counsel to find "that the easements if any appurtenant, to the several lots of land taken or interfered with by defendant's railway, aside from any consequential damages to the said premises from the taking of same, have in themselves only a nominal value," and "that the only property rights of the plaintiff in the said Third Avenue taken, appropriated or interfered with by the defendant, are easements of light, air and access in and over the said streets in front of and appurtenant to the said lots of land described herein," and "that the presence of the defendants railway and of their stations at Twenty-third and Fifty-ninth Streets bring a large number of persons daily into Third Avenue, and increased the traffic in and upon said avenue at these points, and in the neighborhood of the said premises respectively," and "that the effect of the proximity of the defendants' stations above mentioned to the said parcels of the premises in suit is advantageous to the business portion of the premises and produces a special benefit to the same for business uses." And the court held that these refusals to find showed that the trial Justice had misapprehended the principles of law laid down by that court applicable to the elevated railroad cases, and required a reversal of the judgment that had been rendered therein.

The same result was arrived at by the Court of Appeals in *Sutro v. Manhattan Railway Company*, 137 N. Y., 592; s. c. more fully 50 St. Rep., 701.

In *Bohm v. Metropolitan Elevated Railroad Company*, 129 N. Y., at page 582, et seq., the court was requested by the defendant to find that "the existence and operation of the defendants' railroad in Second Avenue has greatly increased the population of the locality in which the plaintiff's property is situated and has brought traffic into Second Avenue. The plaintiff's property has thereby incidentally been benefited," and that "since the year 1880, there has been a general rise in the value of the real estate situated on Second Avenue, and this increase in value is largely attributable to the existence and operation of the defendants' railroad." The defendants also moved for a dismissal of the complaint at the end of the case because, among other grounds, "it appeared that the plaintiff's property had been benefited by the railroad and had increased in value since its erection and by reason thereof." Exceptions were taken to the denial of the motions and to the refusals to find aforesaid. PECKHAM, J. said, "We think upon the whole, that the question was sufficiently raised. It is true that exceptions are unavailing when they are taken to the refusal of a judge to find as facts matters which are merely evidence and which are immaterial. In these cases, however, we must remember that the sole question at issue between the parties upon this branch of the case are as to the proper rule to be observed in ascertaining the amount of damages the plaintiffs had sustained, if they had sustained any. The amount of damage would be materially affected by the rule which should be observed in determining their existence. And yet in making the bare finding of the amount of damage sustained, it would not appear that any particular rule had been followed, and hence it would not appear

"that any erroneous rule had been adopted. It
 "might in some cases be urged, perhaps, that there
 "was no evidence upon which to base a finding of
 "damage, if a correct rule had been adopted, and
 "yet a perusal of the testimony might show some
 "slight amount, and hence the exception would
 "fail. The judgment might at the same time be
 "really founded upon the incorrect rule. There
 "would, in almost any event, be a difficulty in de-
 "termining whether a wrong rule had or had not
 "been adopted. If it were a trial by jury, the
 "judge would be requested to instruct the jurors
 "as to the true rule, and an exception would lie
 "to his refusal and to the rule actually adopted
 "and the question brought up in that way. In a
 "trial before the court it is more awkward. The
 "requests in these cases were to find certain facts
 "and upon those facts the defendants seek to draw
 "an inference in the nature of a conclusion of fact
 "or of law, or both, that the plaintiffs have sus-
 "tained no damage. The court has in truth re-
 "fused to find the facts as requested, and such
 "refusal added to the circumstances that he has
 "found the plaintiffs have sustained substantial
 "damages and to an amount stated by him, leads
 "to the inevitable conclusion that he refused to
 "find them, because they were in his judgment im-
 "material. A request to find that the plaintiffs
 "had sustained no damage, or a motion for a non-
 "suit on the ground that no damage had been
 "proved, might not alone bring up the question.
 "Taking all the means together, which the defend-
 "ants adopted in their perfectly legitimate at-
 "tempt to bring up for review the question as to
 "what is the proper rule of damages in these
 "cases, we must say that if their able counsel has
 "not yet succeeded, it is difficult to see how suc-
 "cess in that line can be achieved hereafter. With-

“out overruling the cases upon the subject of exceptions to refusals to find upon mere matters of evidence, we think the cases before us are distinguishable. The question sought to be raised here is so difficult of presentation by way of exception or request upon a trial before a court or referee, and is withal so important, that we are disposed to say the various requests to find and the exceptions taken to the judge’s refusals, together with the motion for a nonsuit, on the ground that no damage had been proved, and the exception taken to the denial of such motion, should in these cases and under the circumstances be regarded as sufficient to enable us to review and pass upon the question on its merits. Justice we think demands this.”

While in *Legendre v. Scottish Union and National Insurance Company*, 183 N. Y., 392, the Court of Appeals said that since the re-enactment of §1023 of the *Code of Civil Procedure* in 1904, a refusal to find a finding of fact or a conclusion of law may be the subject of judicial review of the exceptions filed to such refusals, that such exceptions are always available in this court and they are available in the Court of Appeals when based upon uncontradicted and undisputed evidence, where the decision of this court is not unanimous, and even where it is unanimous, when the fact or the conclusion of law thus requested to be found is not directly in conflict with a fact or conclusion of law actually found by the trial court.

In *Farmers L. & T. Co. v. N. Y. & N. R. Co.*, 150 N. Y., at page 435, the Court says: “On the trial the learned trial judge refused to find various facts, upon the ground that they were immaterial. It is manifest from an examination of the appellants’ requests to find, and the rulings of the court thereon, that it refused to find many

“facts that were material to sustain the appellants’ defense, and which were established by the undisputed evidence in the case. This, we think, constituted error, as it is the duty of a trial judge to find upon every material question submitted to him and involved in the evidence (*Callanan v. Gilman*, 107 N. Y., 360, 372).”

SECOND POINT: The purchase by the defendant Henry Ungrich, Jr., of this property being merely voidable, and it having been brought about by the plaintiff himself, and having occurred with the plaintiff’s knowledge and acquiescence, it cannot now be attacked by the plaintiff.

In *Vohman v. Mitchell*, 185 N. Y., at p. 426, it is said: “Where the cestui que trust has assented to or concurred in the breach of trust, or has subsequently acquiesced in it, he cannot afterwards proceed against those who would otherwise be liable therefor.”

In *Hine v. Hine*, 118 App. Div., 585, it is said: “A cestui que trust is at liberty to elect to approve an unauthorized investment by the executors or to reject it, but he must either affirm or disaffirm and having once made his election, it is binding upon him.”

And in *Butterfield v. Cowing*, 112 N. Y., 486, the head note is: “A cestui que trust may not allege an act on the part of his trustee to be a breach of trust which has been done under his sanction either by previous consent or by subsequent ratification. In an action by the holder of certain bonds issued by a railroad company against a trustee named in a mortgage of the road and franchises securing the bonds, and against an-

“other company holding title to the mortgaged
 “property, among other things, to have the prop-
 “erty charged with the lien of the mortgage, and
 “to recover the amount of the bonds, which action
 “was based upon allegations of breach of trust on
 “the part of the trustee in transferring title to the
 “mortgaged property, which he had acquired by
 “purchase under a foreclosure sale, and it ap-
 “peared that plaintiff had acquiesced in the acts
 “of the trustee complained of at the time that they
 “took place and had subsequently also ratified
 “such acts. HELD, that the plaintiff was not en-
 “titled to have judgment for a proportionate
 “share of the money received by the trustee upon
 “such transfer.”

(b) In the case now before the court the trustee who purchased owned absolutely an undivided half of these properties and the remainder in the other half after the expiration of the plaintiff's life estate therein. The plaintiff at this time was, as the court had found, an adult, of sound mind, memory and understanding, an architect and a man of intelligence, and although of drinking habits, makes no claim that he was in the slightest degree intoxicated at the time of any of the occurrences in question, and the uncontradicted proof was that he was not under the influence of any stimulant at the time. The plaintiff was subject to no overmastering influence on the part of either of these defendants. He did not show that he was in any degree weak or that the defendants had his unbounded confidence or that they exercised any coercion or undue influence over him or practised any deception of any kind whatever upon him, or that either of them had any information or means of inquiring information in respect to these properties superior to that which he had.

He was the moving spirit in bringing about this sale. He shortly after the death of the testator, complained of the irregularity of his income; that he never knew where he was coming out; that the repairs on the property were too great and were increasing, and expressed a desire to know definitely what his income would be, he alone wished for and urged the selling of the property. He admits in his reply to the counterclaims contained in the answer of the defendant, Henry Ungrich, Jr., that he had made numerous complaints to the defendants that sufficient income was not realized from the estate. He nowhere denies that he had complained of the irregularity of the income, and that the repairs on the property were too great, and were increasing and that he had expressed a desire to know definitely what his income would be and to have some definite income fixed by the personal property being divided and the real estate sold. That and all other testimony given by the defendants and their witnesses that the plaintiff did not deny must be taken as absolutely true (*Van Olinda v. Hall*, 88 Hun, 452). The testimony of the defendant, Martin Ungrich, who concededly was no moving spirit in these transactions, but merely a passive actor therein, that he had advised the plaintiff against selling the property to the defendant, Henry Ungrich, Jr., and had told the plaintiff that he thought that the property had a future, stands utterly uncontradicted by the plaintiff. The testimony stands uncontradicted and unimpeached that the three parties hereto instructed the attorney who represented all of them as the plaintiff's counsel conceded on the trial, to procure an appraisement of this property to be made by Philip A. Smyth, a real estate auctioneer and appraiser in this city, and that Demarest told all three of the

parties to get appraisals themselves so that they should know the market value of the property when they sold it. The testimony of the defendants and Demarest that the appraisal that Smyth gave of the property was shown to and read by the plaintiff, finds no denial in the testimony of the plaintiff, except so far as can be made out in a statement by him that he did not remember ever having seen the appraisals. He admits, however, that they were read to him. He admitted that he had agreed, and tried, to get an appraisal made of the property and that the appraisals cost so much that he did not get them. He did not deny the testimony of the defendants that he stated that he himself had had such an appraisal and at the time of the agreement that was entered into between the parties, gave figures on these properties that were less than the amount that the defendant Henry Ungrich, Jr., agreed to pay therefor. His own testimony and his letters we have pointed out in the statement of facts show that he endeavored to procure a purchaser of the property, and the highest offer that he had received for the property was between \$140,000 and \$150,000, which was to be half cash, and the balance mortgage at four to four and one-half per cent. The price realized for the property was better than the offers he had secured. The appraisals that Smyth gave of the property at the time, was by a person who then could not have had a pecuniary interest to conflict with an unbiased opinion. They agree, as we have seen from the statement of facts, with the weight of the testimony of all of the paid expert witnesses produced on the trial herein, which was many years after the transaction and when hindsight is always better than foresight. The testimony given on behalf of the defendants to which we have adverted in the statement of facts, that the plain-

tiff himself urged his brother to give more for the Lenox Avenue property than the appraised value, *because it had a future*, stands uncontradicted by the plaintiff.

Here we have in all this a *cestui que trust* acting as the moving spirit in bringing about the transaction of which he subsequently complains, and he complains of it only because it turned out that later the defendant, Henry Ungrich, Jr., got, because of the fortuitous circumstance, irrespective of the advance in price caused by the coming of the subway, then in process of construction and which everybody expected would when finished cause an increase in values of the property, that George Ehret had purchased certain of the properties on this block, and the corner so purchased by the defendant, Henry Ungrich, Jr., was the key to the property that Ehret had purchased, and because Ehret was willing to pay and did pay for this property, a much larger price than the defendant had paid therefor. There is not a particle of testimony in the case that the defendant, Henry Ungrich, Jr., knew that Ehret was likely to be a purchaser of this corner property. In the court below, the evidence on the trial that George Ehret had made purchases on this block of some property, and that the defendant, Henry Ungrich, Jr., had heard rumors that he had purchased property on this block, was tortured by the plaintiff in his brief into a statement that both the defendant, Henry Ungrich, Jr., and all real estate men knew that the balance of the property surrounding this property was owned by George Ehret, and he was a prospective purchaser of this property at that time. This was said, moreover, in relation to the testimony of the expert witnesses that the plaintiff produced as to the valuation of the property. It was the crucial error as to the value of the prop-

erty at the time of the transaction that entered into the estimate of the witnesses produced by the plaintiff. One of them was George Ehret's own broker. They placed their valuation on the value of the property to Ehret and their hindsight was exceedingly good. Smyth who made the appraisal at the time was not possessed of that beautiful hindsight, and the persons who made the offers to the plaintiff that he got for that property were not possessed of that beautiful hindsight. Smyth, too, was paid for and gave an unbiased opinion.

Without evidence in the record other than to the effect that the plaintiff had drunk to excess at times, we had in the court below in the plaintiff's brief a statement which finds its echo in the fifteenth finding of fact in the decision, and in the opinion of the special term justice, that the plaintiff was a man of irregular habits, involved in financial difficulties, and wholly unfamiliar with real estate values. There is no proof of any financial stress on the part of the plaintiff in this case. There is some proof that he asked to have \$800 or \$900 of his debts paid by the defendant, Henry Ungrich, Jr., but he had income sufficient to pay those debts. There is proof that he was in no financial stress in the proof that he had the amount of income which it was shown he had wherewith to pay those debts. In the brief of the plaintiff in the court below, this small plant of statement grew into a tree of imagination that the plaintiff was admittedly in debt and was embarrassment, and that the embarrassment of the plaintiff brought about "the consummation of this iniquitous transaction."

It would be introducing a new and dangerous element any way into the principles of equity to hold that the pecuniary condition of principals

to an agreement could avoid its binding effect. There is no proof that the defendants took an unconscionable advantage or fraudulent consideration of any such condition of the plaintiff even if such a condition existed. Moreover, there is no finding that they did. His financial condition, therefore, has no bearing whatever upon the questions before this court.

Wetmore v. Stromeyer, 38 App. Div., 627.

In the face of the testimony of all the parties that the attorney was ordered by the parties to procure an appraisal from Mr. Smyth, and did procure this identical appraisal, which was put in evidence from Mr. Smyth, and showed it to all the parties hereto, we have the plaintiff's brief in the court below stating that there was no proof that Smyth made this appraisal.

In the brief of the plaintiff in the court below, the statement was made that the income of the plaintiff was by these transactions reduced from the sum of \$3,200 to the sum of \$2,600, and was actually paid out of the income of the very estate itself, of which he had been deprived. This statement in the brief of the plaintiff in the court below finds its echo in the 22d finding of fact to this effect. What bearing it has on the issues herein is hard to conceive. The income of \$3,200 was the aggregate of the income received by the plaintiff for the year immediately preceding the date of these transactions. It remains uncontradicted and undisputed that the plaintiff had been complaining of the irregularity of the income that he received from the property, that the expenses of the property had been increasing; the repairs were growing greater in amount and that he desired the real estate to be sold and the personal property divided so that he would have a fixed income and he would know definitely what he would get each year. In

other words, he was willing to take even a reduced income if he knew exactly what that income was to be. By the transaction he got four per cent. on half of the agreed upon value of the real estate, whether the real estate earned that amount or more or less. He assured himself by the sale of an assured income. He deprived himself by the sale of any future advance in price of the property. He himself told the purchasing executor that the property had a future. He does not deny that he made that statement to the purchasing executor. With that knowledge when he sold or acquiesced in the sale or ratified it (however it may be put), he was taking for an assured income the prospect of an advance in price that his brother gained, though there is no evidence that we can find whatever that this four per cent. was entirely paid out of income of the estate, but even if there were, it would not affect the question at issue. It would not prove any fraud on the part of the defendants in this sale. It did not prove the possession by either of the defendants of any superior knowledge as to the value of the property sold to that which the plaintiff had.

Then again, in the brief of the plaintiff in the court below, we have the statement made which finds reiteration in the sixteenth finding of fact that the plaintiff relied absolutely upon the representations made to him by the defendant, Henry Ungrich, Jr., and by the attorney for the executor that the sum of \$157,000 was more than the true value of the premises. There is not a particle of testimony that any such representations were made by the defendant, Henry Ungrich, Jr., or by the attorney, and there is not a particle of evidence in the case that the plaintiff relied upon such representations.

Again, in the court below, the plaintiff's brief

contains statements that the defendant, Henry Ungrich, Jr., knew that the subway was coming and was likely to increase values, but that the plaintiff himself did not know it, and that the defendants did not disclose fully and fairly all the facts and circumstances in regard to the condition of the property, or the true value thereof that they knew of, and did not speak fully to the plaintiff regarding every material fact concerning the property known to them. This statement finds echo in the fifteenth, seventeenth and nineteenth, findings of fact. They disregard utterly the testimony we have above adverted to, which stands uncontradicted and undisputed that the plaintiff had been endeavoring to effect a sale of this property to other persons, and had been unable to get offers anywhere near as large as that which the defendant, Henry Ungrich, Jr., offered and purchased the property for; that the plaintiff was told by his attorney, who was the attorney for all the parties, to get an appraisal of the property; that he himself when the parties met, stated that he had an appraisal of \$150,000 for all the property; that he and the rest directed the attorney to procure an appraisal from Mr. Smyth and that that appraisal was shown to all the parties, and that the plaintiff himself gave the figures therefrom to the defendant, Martin Ungrich; that Martin Ungrich advised the plaintiff not to sell the property to his brother and that the time was inopportune for a sale; that the property at this time was dull owing to the construction of the subway and sales were infrequent. Henry Ungrich, Jr., expected that the Lenox Avenue property had a future. The plaintiff had the same belief because he urged Henry Ungrich, Jr., to pay more for the property than the appraised valuation on that very ground. This testimony is utterly inconsistent with these findings.

Again, we had the statement made in the plaintiff's brief in the court below that the defendant, Henry Ungrich, Jr., showed an inordinate desire to become possessed of this property, and was intent upon the possession of the whole of this estate which would eventually be his, and that the plaintiff believed that his brother was obtaining the property at a price which he believed from statements made at the interviews was fair and just, and that no effort was made in the slightest degree to acquaint the plaintiff with the condition of the property or with the full nature of the transaction, and the plaintiff had a lack of knowledge of the values, and there was a concealment by the defendants of conditions from him, and a failure to apprise the plaintiff of his legal rights in the premises, and that there were other inducements offered to the plaintiff to enter into this contract. This utterly unfounded statement in the brief of the plaintiff finds reiteration in the statement in the opinion below which says that the plaintiff was wholly unfamiliar with real estate values, and that upon the urgent and repeated solicitations of his brother was induced to enter into the transaction; that it is clear that in doing so he relied absolutely upon the representations made to him by his brother and the attorney for the executors; that during all this time transit facilities and other great improvements were being inaugurated along Lenox Avenue and property thereon and adjacent thereto was rapidly increasing in value, and that under the circumstances the time of the sale was most inopportune and the price was far below the real value of the property; that the executor during all this time was fully aware of the change in the condition of this property is clear and that it cannot be held otherwise than that a fraud was perpetrated! In the decision in the

court below, we have it reiterated that the plaintiff was wholly unfamiliar with real estate values and had no knowledge of the true value of real estate conveyed by him as aforesaid; that he was induced to agree to the transaction upon the urgent and repeated solicitations of the defendant, Henry Ungrich, Jr., and upon his representations that the sum of \$157,000 was more than the full value of the said premises, and that in agreeing to the said transfer, the said plaintiff relied absolutely upon the representations made by the defendant, Henry Ungrich, Jr., and the attorney for the executors, and that during all these times, while the said solicitations were being made to the plaintiff, transit facilities and other great improvements were being inaugurated along Lenox Avenue, and the property belonging to the said estate was increasing in value, and under the circumstances, the said premises should have been held and a sale thereof was most inopportune; that the consideration was inadequate, insufficient and far below the real value of the property, which said fact was well known to the defendants and their attorney but unknown to the plaintiff, and concealed from him by them, and the defendants and their attorney concealed it from the plaintiff and did not disclose to him fully and fairly all the facts in regard to the condition of the property, or the true value thereof, and did not speak fully to the plaintiff of every material fact known to them; that the transactions resulting in the transfer of the title of the said premises to the defendant, Henry Ungrich, Jr., were unjust and unfair, and against the true interests of the plaintiff.

The uncontradicted, unimpeached testimony was that the plaintiff was the moving spirit in bringing about a sale of this property; that he alone was desirous of having it sold; that he had

complained to the defendants of the irregularity of his income; that he never knew where he was coming out and that the repairs on the property were too great and were constantly increasing; that he expressed a desire to know definitely what his income would be, and have some definite income fixed by the personal property being divided and the real estate sold; that the attorney for all the parties advised them that they could sell the property only by a friendly partition suit or at public auction; then the defendant, Henry Ungrich, Jr., expressed a desire to buy one of the pieces of property owned by the estate; thereupon the attorney for all the parties stated that that would not be lawful and thereupon the plaintiff stated that as he was the only person interested, he did not see why if he were willing, the transfer could not be made. Then the attorney advised all the parties to get separate appraisals made by themselves. The attorney was then instructed by the parties to procure an appraisal of the property from Mr. Smyth; that appraisal was shown to the plaintiff; he took the figures thereof and told the defendant, Martin Ungrich, what such figures were. The defendant, Martin Ungrich, then advised the plaintiff not to sell the property to the defendant, Henry Ungrich, Jr. The plaintiff again reiterated that if he were willing, that was a matter between themselves. The defendant, Martin Ungrich, then advised the plaintiff not to sell the property, as the time was inopportune. Subsequently the parties met and gave the appraisals that they had separately obtained. The plaintiff gave his at \$150,000, \$2,000 less than the appraisal given by Mr. Smyth; then the defendant, Henry Ungrich, Jr., again expressed a desire to buy the Lenox Avenue property and was then told by his co-defendant, Martin Ungrich, that if he bought

any, he would have to buy all, and he would have to buy \$5,000 more than the appraised value; then the plaintiff urged the defendant, Henry Ungrich, Jr., to pay more than the appraised value of the property because the property had a future. The subway at that time was being openly and notoriously constructed; sales of property, however, adjacent to it were dull. Both the plaintiff and defendant, Henry Ungrich, Jr., expected that the property had a future and the plaintiff urged the defendant, Henry Ungrich, Jr., to buy it for that reason. Then the plaintiff expressed himself as being satisfied to have the property sold to his brother for \$157,000; then the attorney in the presence of the plaintiff dictated the agreement of sale which was made by the defendants with the dummy. When that was written out the executors and the dummy signed the contract and the plaintiff in his own handwriting wrote an endorsement on the contract that it was approved of and consented to by him; after this was done, he expressed himself to the defendant, Martin Ungrich, as glad that the matter was settled. When the deeds were made by the executors to Davenport and by Davenport to the defendant, Henry Ungrich, Jr., a separate instrument was executed by the plaintiff acknowledging that he knew that the property was to be conveyed to his brother, stating therein that he consented thereto and acquiesced in and ratified the transaction, and the price that was realized for the property thereby. There was no denial whatever by the life tenant that he knew the property was to go to his brother and that he knew what the price was to be and that he had so acquiesced in and ratified that transaction. Then four years thereafter, after the purchasing executor had sold two of the parcels so purchased by him at

a loss, and expended thousands of dollars on the other parcel in improving it, and the period of dullness in real estate in the vicinity had ceased, and a person who had bought other properties on the block had found this remaining property then held by the executor to be the keynote of the properties he had purchased, and being, therefore, willing to pay the executor a large profit therefor, the life tenant complaining, without evidence whatever to support it, that the executor knew and was bound to know that that property would bring such a profit to him at that time and that he did not know thereof at the time of the sale. That is all that this evidence shows. Upon that state of facts, this judgment has been rendered.

This is not a case where a trustee possessed of superior knowledge in relation to trust property is the moving factor in a purchase of the trust property from his *cestui que trust*. This is not the case of a *cestui que trust* subsequently ratifying a voidable act theretofore done by the trustee. A very different rule of law is applicable. The rule of the cases cited by the respondent on his brief, and which are cited in the opinion of the Special Term Justice below, would apply, but here it was not the executor, who being possessed of superior knowledge in regard to this property, was desirous of purchasing it from the *cestui que trust* or from the estate. Here the life tenant and *cestui que trust* was not ratifying some act that this trustee had theretofore committed, and which was voidable at his election. The plaintiff herein was the moving factor in bringing about this sale. He himself desired the property sold. He himself when his and the defendants' attorneys stated that the only way the property could be sold was by partition suit, or at public auction,

and his brother expressed a desire to buy one of the parcels and the attorney told them that that would not be lawful, said that if he was willing, as he was the only person having any interest therein, he did not see why his brother could not buy it. It was the plaintiff who, after being advised by the other executor not to let his brother buy the property and not to sell the property at the time it was sold, as the time was inopportune and the property had a future, said that that was a matter between him and his brother and that if he was willing to have his brother buy the property, he could not see where anybody else could object. It was the plaintiff who urged his brother to pay the price that the brother agreed to pay for the property, and told the brother at the time that he should pay it because the property had a future, and then when the agreement was made, it was he who in his own handwriting endorsed upon the contract of sale that the executors made with the dummy, that he approved of and ratified and acquiesced therein and it was he who by separate agreement, knowingly executed by him, certified to the executors that he acquiesced in the sale of the property to his brother, and in the price that they were getting for it, and the terms of that sale. No representations were made to him at that time as to the value of the property by the defendants or either of them, other than as we have stated. Under such circumstances in a transaction of this kind, it was not necessary that the plaintiff should be represented by an independent attorney. Nor was it necessary that he should be apprised of the law or of how these facts would be dealt with by a court of law or of equity. That rule only applies where the trustee is the moving factor in a sale to himself or where the trustee claims that

his cestui que trust has ratified some previous unlawful act of his.

THIRD POINT: But even if the burden was on the defendants of showing that the plaintiff was represented by counsel and that the defendants fully and fairly stated all the facts and circumstances known to them in respect to the condition of the property or the true value of the property, and spoke fully to the plaintiff of every material fact to them known to the plaintiff, and that he was apprised of the law and told how these facts would be dealt with by a court of law or of equity, the burden was fully met.

(a) The plaintiff was complaining about the income, that it fluctuated, that the expenses of the property were too great and were increasing and that he was desirous of knowing exactly what income he would have, and to that end, expressed his desire to the executors of the estate to have the personal property divided and the real estate sold. The attorney who represented all the parties, and was as much the plaintiff's attorney as he was the defendants' as the plaintiff's counsel stated in his opening on the trial, himself advised all the parties that the sale must be by partition suit or by executors' sale at public auction. Then the executor who absolutely owned one undivided half part of this property, and the remainder in the other half, after the expiration of the plaintiff's life estate therein, expressed his desire to buy one of the parcels of land. He could have done this had he purchased at public auction, or in a partition suit, and nobody could have complained there-

of, or have got from him the profit that he made on the sale of the property some four years thereafter. When he expressed this desire, all the parties were told that that would be unlawful for him to buy. It was then the plaintiff said that he was the only party interested in it, and if he was willing, he did not see why it could not be done. That was a true statement of the law. The other executor advised the plaintiff against selling the property to his brother, or selling at that time, stating that he did not think the time was opportune, and that he thought the property had a future; yet the plaintiff then said that that was a matter between his brother and himself. Everybody sought to ascertain the value of the property. An appraisal was got by agreement of all parties from a well known real estate appraiser; each of the parties got appraisals of the property. The plaintiff states that he had one at \$150 000. His correspondence shows that he tried to sell the property and had offers for it, and that the highest offer he had therefor was much less than the amount the executor who subsequently purchased gave therefor. The terms offered by the prospective purchaser that the plaintiff got were the same except as to the amount paid for the property, as that which the defendant Henry Ungrich, Jr., agreed upon on the transfer to him. The Subway was being openly constructed at this time. The plaintiff was frequently in the locality. There is no evidence that he did not know of its construction. There is no evidence that he did not know, as well as did anybody else, that the construction was likely to have a subsequent effect upon the value of the property. He himself advised his brother to pay more than the appraised value for the property because the property had a future. He agreed to his brother buying at the price that was paid by

his brother therefor. He acquiesced therein; he ratified and confirmed the transaction when it took place. He acquiesced in and consented to the contract that was made by endorsement thereon in his own handwriting. He executed a separate agreement ratifying and confirming the sale that had taken place, and the terms that were realized thereon. He was thus informed by the defendants of all the facts and circumstances in regard to the condition of the property, or the true value thereof, that they themselves knew. He was represented by an attorney in the transaction. He was apprised of the law and how a court of law or equity would deal with the facts. The price that was paid was larger than any appraised value secured by any of the parties therefor, or any offer that the plaintiff was able to get for the property. It was the fair value of the property at that time, as is shown by the overwhelming testimony given on the trial, even by hired experts whose hindsight is bound to be better than anybody's foresight.

If, therefore, there was any such burden of proof resting on the defendants, it was fully met by the uncontradicted and unimpeached testimony in this case.

Adair v. Brimmer, 74 N. Y., 539;

Smith v. Howlett, 29 App. Div., at p. 190;

People v. Open Board of Stock Brokers' Building Co., 92 N. Y., 98.

(b) The case of *Weintraub v. Siegel*, N. Y. L. J., Dec. 28, 1907, p. 1201; s. c., 57 Misc., 242, a *nisi prius* decision by BISCHOFF, J., relied upon by the plaintiff, is in no way controlling on any of the questions now before the court. The defendants do not quarrel with anything that is said therein. It is undoubtedly true, the rule that a conveyance

by a person charged with the duties of a trustee resulting in his own taking of title through an intermediary, even though the trustee has a beneficial interest in the property to protect, is voidable at the election of any person interested in the trust estate who does not consent thereto and ratify the same. The title to one of these East Side properties which was involved was held unmarketable not because the plaintiff in this action had not full knowledge of the transfer to Henry Ungrich, Jr., of these properties and had not ratified or confirmed the same in every possible way, but was based upon the fact that Maria Rodenbach, one of the persons interested in the remainder under the trusts in this will, had not any knowledge of the transfer and had not in any way ratified or confirmed the same or consented thereto. The interest that Maria Rodenbach has in this property is an exceedingly indefinite one. One-half the property is given absolutely to Henry Ungrich, Jr. The other half, the executors hold in trust for the benefit of the plaintiff to pay him the income thereof during life, and at his death, to hand over to Henry Ungrich, Jr., or to the latter's children in case Henry Ungrich is then dead. Henry Ungrich, Jr., has children and grandchildren. It is only in the event that Henry Ungrich, Jr., dies without issue that Maria Rodenbach takes an interest. The title was rejected because she takes a possible interest that a purchaser is entitled to be protected against and the possibility of her interest renders the title unmarketable. And the title was held to be unmarketable because there wasn't any proof that she knew of, consented to or ratified or confirmed the sale by the executors through Davenport to Henry Ungrich, Jr. That proof as against the plaintiff, however, is abundant.

FOURTH POINT: There are no material disputed questions of fact in the case, but if there were, they must be resolved in favor of defendants because the plaintiff was unsupported in his testimony and he was contradicted in toto by the defendants and their witnesses, one of whom was utterly disinterested, and he himself on the trial was impeached, and showed himself to be utterly unworthy of belief.

(a) The only dispute in the testimony between the plaintiff and the defendants and their witnesses was as to what the plaintiff testified to on re-direct to the effect that when the will of his father was read, and his brother stated that his father's personal estate amounted to only about \$25,000, that Martin Ungrich expressed surprise that it was so little, and that he spoke of his father having recently sold a house, and yet there was only \$7,500 in cash, and that he would like to know where it all went to, and that his brother said that was all there was, and that he said he wanted to know where he was coming in for his half of \$25,000, and his brother asked what he wanted out of it, and he said he wanted half, and that he spoke to the attorney Demarest about his getting half of the personal property, and said he would contest the will if he did not, and the attorney told him to take it easy and that he would see that he got the money, and that subsequently Henry Ungrich, Jr., told him that he would not give him half of the \$25,000, but would only give him \$7,500, and that he then said that if he had to take up nearly one thousand dollars of bills that he had, he did not think it right, that he thought Henry Ungrich, Jr., was to pay his

various debts, and that subsequently he made up a list of his indebtedness amounting to about \$980, and that the attorney said that he would get the defendant Henry Ungrich, Jr., to pay that amount and the \$7,500, and that both his brother and the attorney told him not to tell the defendant Martin Ungrich about this, and that he never heard of the assignment of the mortgages that his father had made to his brother until he saw them in the Hall of Records at the time the suit was brought, and that the attorney had told him to leave it to him, and he would see that his brother used him right, and when he started to read the document whereby he ratified and confirmed the sale of the property to his brother, that the attorney had told him it was all right, that it was merely a matter of form for his brother to get the property, and he did not recollect that they had ever given him a copy of that paper, and that later the attorney told him that he would have it so fixed that his brother would pay him the \$7,500 and his debts, and that he knew that Henry Ungrich, Jr., was purchasing the property, but he did not know about Davenport, the dummy, and that later he went to the attorney and asked for his check, and that later his brother told him to come to his house and he would give him the check and when he went to the house, \$6,000 was mentioned and he said he understood it was to be \$7,500, and his debts paid, and that his brother then told him that was all he was going to get, and he took the check his brother gave him and cashed it, and then went down to Demarest's office to pay him for getting his money; that when he signed the quit claim deeds, the attorney told him that there were some papers he wanted him and his wife to sign; and that when

he got the citation from the Surrogates' Court, the attorney told him that there was no need of his going to the Surrogates' Court.

This testimony of the plaintiff was, as we have seen, flat footedly denied by the defendants and Demarest.

Under such circumstances, a judgment based upon such uncorroborated testimony of the plaintiff, thus flat footedly denied by the testimony of the defendants and their witnesses, should not stand.

Berau v. O'Connell, 71 Hun, 21;
Hopkins v. Clark, 14 Misc., at p. 601;
Losee v. Morey, 57 Barb, 561;
Raines v. Totman, 64 How. Pr., 493;
Syms v. Vyse, 2 N. Y. St. Repr., 106;
Campbell P. P. Co. v. Yorkston, 11 Misc., 340;
Smith v. Gunn, 35 St. Repr., at p. 429.

(b) Moreover, the testimony of the plaintiff in this respect is so inherently improbable as to be utterly incapable of belief.

The plaintiff's testimony that at the time the parties met at the reading of the testator's will, his brother had said there was \$25,000 personal estate and that subsequently his brother agreed to give him \$7,500 for his share of it, and later paid him \$6,000 for his share of it, is so inherently improbable as to be utterly incapable of any belief. His denial of the defendants' testimony that he had complained of his father in his lifetime giving \$25,000 to his brother, and desired to have some part of the money, and that Demarest had persuaded his brother in view of the plaintiff's claim of reformation, and desire to buy a little home, to pay him some \$6,000 to buy it, and that he had therefor executed and delivered to

the defendant Henry Ungrich, Jr., the general release which specifically releases his brother from any and all claims that he might have on account of the father's assignment of such mortgages to his brother, is also so inherently improbable that it is utterly incapable of belief. The testimony of the defendant Henry Ungrich, Jr., and of Demarest, and the evidence of the general release itself is so cogent and the plaintiff's character is shown to be so bad, and as the inventory of the estate shows a personal estate of only eleven thousand odd dollars, and as the accounts filed by the defendants in the Surrogates' Court charge themselves with only the amount of the inventory and as those accounts were followed by decrees in relation thereto, a finding that there was any such amount of personal property at the time of the testator's death and withheld from the plaintiff, would be utterly lacking in evidence to support it. If the plaintiff's story is true, the personal estate would have amounted to nearly \$37,000. And he would not have been entitled to any part of it. He could not ask the defendant to give him a single cent of it. Nearly \$18,500 of it would have belonged in the trust estate to be held by the defendants for his benefit for life, and the remainder after his death would have belonged to the defendant Henry Ungrich, Jr. He would not have been seeking for that money to be paid to him. He could not possibly have asked for any money to be paid to him unless there was some such claim as he advanced to an equitable allowance on account of some gift by his father in his lifetime to his brother, and which his brother, under the circumstances, saw fit to settle with him, for this sum of \$6,000. It could not possibly be based upon any withholding of the personal property belonging to the estate.

(c) Finally, Exhibits 99, 100, 101, 102, 103, 104 and 105 disclose, if anything can, the character of this plaintiff, and show him to be a person to whom credit should not be given even where he is uncontradicted. These documents show that the plaintiff had drawn and cashed checks on banks in which he had no account, and forged signatures to checks, and realized on them; that he was writing to his father asking him to take up these checks as otherwise he would have to go to jail, and promising never again to cash checks and commit more crimes. They show that he had already been in jail for some crime. Then, again, his testimony in attempting to explain these letters admitting commission of these crimes, and to explain his own list of such checks which he had to admit was all in his own handwriting, and that the statements therein were all true, show that he committed on this trial deliberate perjury. Ten of these checks in this list, he therein wrote were drawn to the order of each party and signed with his name, and one was drawn to the order of Edward Rulor and signed with the signature of James Keator, and the other signed with the forged signature of John W. Roberts. He testified that he had drawn all these checks shown on Exhibit 103 while drunk, on the Hamilton Bank, in which he had had an account and he did not know, on account of his condition, that his account had been exhausted. He later had to admit that he had no account in the Mount Morris Bank whatever, and then he had to admit that Exhibit 104 had been drawn by him on the Mount Morris Bank, and that he had cashed that check, and in fact that check is specified by him in the list 103. Therefore, he had to admit that he had drawn a check on a bank in which he had no account and had cashed it, and thereby admitted that he had committed a crime,

and that the testimony he had theretofore given that Exhibit 103 was a list on checks drawn while intoxicated on the Hamilton Bank on an exhausted account therein was untrue. Then he denied that Exhibit 105 was in his handwriting. His brother swore that it was and swore that his father had taken up that identical check, and the identical check is mentioned in the list in the plaintiff's handwriting, Exhibit 103. He therefore showed himself before this court utterly discredited and unworthy of belief, and his testimony wherever it is in conflict with the defendants', or their witnesses', should not be followed.

Clark v. Mechanics National Bank of New York, 11 *Daly*, 239.

FIFTH POINT: The plaintiff failed to establish any lack of performance of their duties on the part of the defendants in the non-investment of the sum of three thousand odd dollars deposited in the Knickerbocker Trust Company at three per cent. interest. On the contrary, it affirmatively appears that he, knowing of such deposit and rate of interest allowed therefor, received the income and receipted for it and thereby acquiesced in and ratified such investment of that amount and estopped himself from claiming in this action that the defendants were guilty of any breach of trust to him in relation thereto.

(a) The plaintiff offered no evidence whatever showing any neglect on the defendants' part in relation to this deposit. On the contrary he made the defendants his own witnesses in relation there-

to and proved from their mouths on cross-examination that they were unable to procure a mortgage loan in this amount on account of the smallness thereof, and that they frequently asked the plaintiff to try to get such a loan. The correspondence between the parties shows the same state of facts (fols. 1658, 1664, 1768, 1771, 1781 and 2217). This testimony uncontradicted by the plaintiff shows that there was no breach of duty on the defendants' part in relation to this matter.

(b) Moreover, the defendants showed by the plaintiff's receipts that he knew that this money was on deposit in the Knickerbocker Trust Company and he receipted for the amount of interest that was realized from this deposit and thereby estopped himself from claiming herein any breach of duty on the defendants' part in relation thereto. By taking the increment, he ratified the investment. He could not take the increment for several years and receipt for it as such and then subsequently claim any breach of duty on the defendants' part in making the investment, but should have, as soon as he knew of the investment, made due objection and refused to accept the income as insufficient.

Blair v. Cargill, 111 App. Div., 853;
Matter of Sudds, 32 Misc., 182.

(c) Yet we have, as we have seen, the defendants charged by the judgment herein with interest on this deposit in the Knickerbocker Trust Company, at and after the rate of six per cent., when they were only receiving and were paying to the plaintiff and he was receipting to them in full for interest at three per cent.

That portion of the judgment, it would seem, would require no argument whatever to demonstrate was irregular and improper.

SIXTH POINT: The two decrees of the Surrogates' Court upon the accountings of the executors estop the plaintiff from maintaining this action.

(a) In the first decree, the defendants accounted for the disposition of the personal property shown by the inventory that was made thereof, and the division thereof between the defendant Henry Ungrich, Jr., and the defendants as trustees for the plaintiff. That decree necessarily, within the provisions of the Code, adjudged that the whole amount of the personal property was as therein stated, and that the defendants had properly divided the whole amount of such personal estate between the defendant Henry Ungrich, Jr., and the defendants as trustees for the plaintiff.

In the second accounting, the defendants charged themselves with the amount of the purchase price paid for these properties described in the complaint by Henry Ungrich, Jr. The plaintiff at that time knew that the property had been conveyed to Davenport and by Davenport to Henry Ungrich, Jr., and that the purchase price paid therefor was \$157,000, the amount which is set forth in this accounting as the purchase price therefor, and that the defendants had taken back mortgages aggregating \$78,500 for part of that purchase price and that those mortgages bore interest at four per cent. per annum. The accounting sets forth such investment of the sum of 78,500, the share of the trust estate held for the benefit of the plaintiff, in such bonds of Davenport, so secured by such mortgages covering these properties. The plaintiff fully knew of this investment and had received and receipted for in-

come derived therefrom, the payments of which income to him are set forth in said account. Having such knowledge of such transfer and the decrees accounting for such proceeds and for such investment, that decree estopped the plaintiff from in any way maintaining this action.

When these accounts were offered in evidence, the counsel for the plaintiff objected to them on the ground that the Surrogates' Court had no jurisdiction to take the account of an executor for the proceeds of real estate sold under a power in a will, and for that reason, such decrees had no binding effect upon the plaintiff. That question is fully disposed of by the opinion in *Baldwin v. Smith*, 3 App. Div., 350, where the court said, that a Surrogates' Court is expressly vested with jurisdiction to compel an executor to account for the proceeds of real estate sold under a will, and an executor may render a voluntary account of such proceeds and their disposition under the provisions of §2128 of the Code of Civil Procedure. Having such jurisdiction to pass upon the accounts of an executor involving the proceeds of property sold under a power of sale contained in a will, as was this property, this last mentioned decree is an estoppel against the plaintiff from maintaining this action.

An examination of the following cases should satisfactorily establish that these decrees are, particularly in view of the unquestioned knowledge of the plaintiff as to the fact of the sale and transfer of these properties to his brother and the amount realized on the transfer and the delivery of the bonds and mortgages in part payment thereof, as and for the portion of the estate in which he had such life interest and his receipt of the interest payable on said mortgages as such, effectual estoppels against the maintenance of this action.

Matter of Mullon, 74 *Hun*, 358;
Rhodes v. Caswell, 41 *App. Div.*, 229;
Griffen v. Keese, 187 *N. Y.*, 454;
Matter of Halsted, 41 *Misc.*, 606;
Matter of Denton, 103 *N. Y.*, 607;
Matter of Union Trust Co., 65 *App. Div.*, 449;
Mutual Life Ins. Co. v. Schwaner, 36 *Hun*, 373;
Thorn v. De Breteuil, 179 *N. Y.*, 64;
Matter of Elting, 93 *App. Div.*, 516;
Chester v. Buffalo Car Mfg. Co., 183 *N. Y.*, 425.

(b) The opinion of BISCHOFF, J., in *Weintraub v. Siegel*, *supra*, holding that the Surrogate's decrees were not binding on Maria Rodenbach mentioned in the will of the testator, although they recited the sale of the property and the purchase price realized thereon, because there was no proof that Maria Rodenbach knew who the purchaser thereof was, is good authority for holding that these Surrogate's decrees in this case bar and estop the plaintiff from maintaining this action. The opinion holds that if there had been proof that Maria Rodenbach knew who purchased the property, the Surrogate's opinion would have been a bar. There is no question in this case that the plaintiff himself knew that his brother had purchased the property. He so testified. The opinion, therefore, is good authority for holding that the Surrogate's decrees bar and estop the plaintiff.

SEVENTH POINT: The rendition by the plaintiff of work, labor and services done and performed for the defendant Henry Ungrich, Jr.,

at his request and as the owner of, and upon and in relation to the 124th Street and Lenox Avenue property and the recovery of that judgment in the Supreme Court of New York for the County of Westchester from him of the reasonable value of those services and the payment by the defendant to the plaintiff of the amount of that judgment bars and estops this plaintiff from maintaining this action, or at the very least bars him from any claim herein in relation to such property upon which such work was done for which such recovery was had.

1. Upon the trial the counsel for the plaintiff frankly admitted that all that he was after was the profit realized by the defendant Henry Ungrich, Jr., on the sale of the Lenox Avenue and 124th Street property. That is all that the judgment herein reaches. There is no dispute that the other properties were sold by the defendant Henry Ungrich, Jr., at a loss. The form of the action is not to set aside these conveyances, but merely to call the defendants to account for the profits realized on account of the transaction. As there were no profits, but on the contrary a loss in regard to the other two pieces of property, the only substantial question involved is as to the right of the plaintiff to call the defendants to account as to this 124th Street and Lenox Avenue property. The claim as to the investment of the money in the Knickerbocker Trust Company is so manifestly frivolous as really not to have warranted the discussion thereof that we have indulged in on this brief.

The plaintiff having rendered and performed work, labor and services for the defendant

Henry Ungrich, Jr., on and in relation to the property at 124th Street and Lenox Avenue, and having sued him individually for the value of such work, labor and services so performed, and having alleged his ownership of the property in his complaint in that action and having treated him as the owner of the property and having performed the work for him as an individual and as such owner thereof, has estopped himself from claiming any actual or even constructive fraud in the transfer of that property to that defendant.

Thus in *Escolle v. Franks*, 67 Calif., 137, the controversy was between a fraudulent vendee and a creditor. The property involved was a lot of sheep. The creditors attached the property in the hands of the fraudulent vendee. Thereupon the vendee instituted an action of replevin for the property. At that stage of the proceedings the parties came together and the creditor became a little doubtful as to whether he could succeed in the action so he agreed to turn the sheep over to the fraudulent vendee, there having been no settlement of the case, however. Thereupon the fraudulent vendee expended \$400 in and about the keep of the sheep. The court said that turning the sheep over to the vendee was an admission of his title and that the expenditure created an estoppel against any claim that the sale was fraudulent, the court saying that wherever a creditor or a vendee of personal property, after the sale recognized the title of, and caused the property to be delivered to, the vendee upon the faith of such acts, the vendee took the property and expended money in its care, which otherwise it would not have done, the creditor is estopped from denying that the sale was valid.

In *Bump on Fraudulent Conveyances*, 3d ed., at pp. 465, 466 and 467, it is said: "Although a cred-

"itor is not a party to a fraudulent transfer, yet
 "he may subsequently elect to confirm it; for any
 "one may dispense with a provision of law that
 "was made for his protection, but before there can
 "be any binding conveyance he must have notice
 "or knowledge of the facts. If he has, however,
 "been guilty of negligence in availing himself of
 "the information within his reach, constructive no-
 "tice may be imputed to him. * * If with notice
 "of the fraud, either actual or constructive, he
 "makes any agreement upon a consideration con-
 "firming a transfer or any statement or agreement
 "to that effect, upon the faith of which the gran-
 "tee acts, as he would not otherwise do, or under
 "such circumstances that his subsequent assertion
 "of his rights as a creditor, if permitted, would
 "operate as a fraud, he will be held to have con-
 "firmed the transfer. * * If a creditor enters
 "into a contract with the debtor and grantee,
 "whereby he confirms the validity of the convey-
 "ance he cannot afterwards impeach it."

In a note, 22 *Abb. N. C.*, 268, 269, Mr. Abbott
 says, "It is an old maxim of the common law, that
 "if a man has an election to do or demand one of
 "two things and he determines his election, it shall
 "be determined forever." He quotes from *SPEAR*,
J., in *Becker v. Walworth*, 45 *Ohio St. Rep.*, 169,
 et seq.: "It may be said as a deduction from the
 "authorities upon the subject that his election is
 "the making of a choice between two or more
 "benefits or rights, which estops the party from
 "afterwards denying that an election had been
 "made and from demanding some benefit or right
 "other than the one chosen."

In *Lane v. Lutz*, 1 *Keyes*, 203, there was a void-
 able chattel mortgage on certain property. The
 plaintiff, a creditor of the man owning the prop-
 erty on which such mortgage was, entered into an

agreement with such owner and with the mortgagor and the mortgagee, whereby the property was to be sold free from the mortgagee's mortgage and the mortgagee paid out of the proceeds. The plaintiff sought to have the mortgage set aside. The Court held: "The plaintiff is precluded from receding from his agreement by every consideration which enters into the idea of equitable estoppel."

In *Jenness v. Berry*, 17 N. H., 549, the question was whether a creditor could set aside a conveyance of land. The court charged the jury, "If Berry knew of the circumstances connected with the transfer and acquiesced in it, his claim upon the land would cease." The plaintiff excepted to the charge and the court held, "It does not appear what agreement was made or what constituted the acquiescence. If he (Berry) made any agreement confirming the deed upon any consideration or statement or any agreement to that effect upon the faith of which the grantees acted as they would not otherwise have done under such circumstances, his subsequent assertion of his right as a creditor, if permitted, would operate as a fraud, he will be held to have affirmed the transfer." It was held that these charges were proper.

II. Numerous cases might also be cited where the courts have held that pursuing one remedy precludes a person from pursuing an inconsistent remedy. A person cannot at the same time sue in affirmance and disaffirmance of a voidable contract. Here the plaintiff brought two suits; this to disaffirm the voidable transfer to his brother and the action in the Supreme Court of Westchester County in affirmance of that transfer because he charged in his complaint that Henry Un-

grich, Jr., was, and he sued the defendant Henry Ungrich, Jr., as, the owner of this property on 124th Street and Lenox Avenue. His right of recovery in that action was based upon an assertion of the ownership of the property and the employment of him by the defendant Henry Ungrich, Jr., as the owner thereof to perform the work, labor and services that he claimed to have performed. He was not entitled to the recovery there except upon the assertion and proof of the defendant's ownership of the property upon which he claims to have rendered services for the defendant as such owners. The plaintiff cannot in one breath in Westchester County claim a right to a recovery against the defendant as the owner of this property, and with the other breath in this County, claim that the transfer to his brother was fraudulent and voidable, and that he elects to avoid it. The plaintiff made a choice and election of his remedy. He has estopped himself by his admission of title and the acting thereon by the defendant in the payment to him of the money he sued for for such services rendered by him in and about the property. There was here every element of a technical estoppel, every element of an election of remedies on the part of the plaintiff and every element calling for the application of the doctrine of estoppel by admission. Technical estoppel was established by the fact that this was merely a voidable transfer, subject to be ratified and confirmed by the acquiescence and ratification of the *cestui que trust*. The transfer was made with full knowledge upon the part of the *cestui que trust*. He had approved the contract that was made for the transfer. He had executed and delivered to the defendants his consent to the transfer. He and his wife had quit claimed all their interest in the property to the defendants. The defendant

Henry Ungrich, Jr., knew of these facts and relied upon them when he employed the plaintiff to perform services for him as an architect in the erection of a new building and alteration of the old buildings on this plot of ground. And when the plaintiff brought suit against the defendant as the owner of this plot he did it with knowledge that the property had been transferred to his brother, and that his brother had sold this property for a price greatly in excess of that he had so paid therefor, and in suing him, he affirmed, acquiesced in and ratified the transfer to his brother, and the sale of the property so made by his brother. His right of action in the Westchester County suit was based upon his brother's ownership of the property and when his brother permitted recovery to be had in that action against him by the plaintiff and paid the amount of the recovery, he changed his position on the faith of the plaintiff's assertion of title in him in that property. There was estoppel by admission for the plaintiff in that suit of the defendant's ownership of the property. There was an election of remedies because the plaintiff could not sue in affirmance of that transfer recognizing the defendant as owner and claiming a recovery from him for the work done for the defendant upon the property as the owner thereof, and at the same time or thereafter, maintain an action against the defendant based upon the assertion that the transfer to the defendant of the property was fraudulent and voidable, and that he elected to avoid it.

Boots v. Ferguson, 10 *St. Rep.*, at pp.

762, 763, 764; s. c., 46 *Hun*, 129;

Dovale v. Ackermann, 39 *St. Rep.*, 517;

Birch v. Hall, 19 *St. Rep.*, at pp. 27-29;

Washburn v. Benedict, 46 *App. Div.*,

484, 489;

- Trustees, &c. v. Smith*, 118 N. Y., 634;
Robb v. Voss, 155 U. S., 13, 14, 51, 53;
Fowler v. The Bowery Savings Bank
 113 N. Y., 450;
Sanger v. Wood, 3 John. Ch., 416;
Rodermund v. Clark, 46 N. Y., 354;
Riley v. Albany Savings Bank, 36 Hun,
 513; *affd.* 103 N. Y., 669;
Cassidy v. The Mayor, 62 Hun, 358;
Terry v. Munger, 121 N. Y., at pp. 166-
 171;
Conrow v. Little, 115 N. Y., 387;
Droege v. The Ahrens & Ott Mfg. Co.,
 163 N. Y., at pp. 470 and 471;
Goss v. Mather, 46 N. Y., 689;
Bank of Beloit v. Beale, 34 N. Y., 473;
Dietz v. Field, 17 Misc., 26;
Andrews v. Aetna Life Ins. Co., 92 N.
 Y., at p. 604;
Thompson v. Fuller, 28 St. Rep., pp.
 4-5;
Second National Bank v. Burt, 93 N.
 Y., at p. 234;
Terry v. Buek, 40 App. Div., at pp. 420;
 423;
Mills v. Parkhurst, 30 St. Rep., 138;
 s. c., 126 N. Y., 89;
Benedict v. National Bank of the Com-
monwealth, 4 Daly, 171;
Baumann v. Jefferson, 4 Misc., 147;
Seeman v. Bandler, 26 Misc., at pp.
 373, 374;
Bowker Fertilizer Co. v. Cox, 106 N.
 Y., 555;
Morris v. Rexford, 18 N. Y., 552;
Smith v. Sarin, 69 Hun, 311, 312, 317;
 s. c., 30 Abb. N. C., 192;
Bach v. Tuch, 126 N. Y., at pp. 55-57;

Crossman v. Universal Rubber Co., 127
N. Y., at pp. 36; 40;
Roberts v. Ely, 9 *St. Rep.*, 796;
Gardner v. Ogden, 22 *N. Y.*, 327;
Cheeseman v. Sturgis, 9 *Bosw.*, 246. 1

EIGHTH POINT: By applying in this action after its commencement for an order directing the defendants to pay over to him the income then in their hands derived from the investments that the defendants have made of his share, as the plaintiff did, the plaintiff estopped himself from maintaining this action.

The plaintiff has set up in his complaint, and cannot deny knowledge of the transfer to his brother of these properties, subject to these purchase money mortgages for one-half of the purchase price thereof, and that his brother had paid for such transfer to him with his one-half of the estate and that the other half of the estate in which the plaintiff had a life interest was invested in these purchase money mortgages on the property so made by the dummy transferee to the executors and trustees and bearing interest at four per cent. per annum. When the plaintiff took the increment from that investment, he ratified both the sale of the property and the investment of the trust fund in these mortgages. No principle is better established than this.

The court at Special Term had no power to provide that his asking for and taking the income should be without prejudice to the rights of any party to the action. This court in its opinion herein has so distinctly said. No party is protected by the provisions of an order which the court is without power to make.

Payment of the income had been offered to the plaintiff prior to his applying for an order of the court. When the money was paid to him the check for the payment was accompanied with a notice that the defendants claimed the court had no power to incorporate that condition in the order and that they proposed to appeal from it and that his taking of it would be at the plaintiff's risk. The plaintiff did take it. This provision of the order was, upon appeal by the defendants, stricken therefrom. The order, therefore, stands as one made upon the plaintiff's application directing the defendants to pay the income to the plaintiff. By applying in the action for the payment of the income and taking it, the plaintiff has fully estopped himself from maintaining this action.

As INGRAHAM, J., says herein on appeal from the order, 122 App. Div., 49, "If the plaintiff wished "to receive this accrued income he had no right to "impose conditions upon which it should be paid "to him. If he was entitled to the income he was "entitled to receive it, but if he required the trustees to pay it to him pending the litigation, he "*must take it subject to such legal consequences "as would flow therefrom.* The plaintiff can refuse to accept any payment from the trustees "pending the trial of the action; but no reason is "disclosed why the trustees should be compelled "to pay him and at the same time not have the "benefit of such payments."

By demanding and receiving the interest realized from the mortgages that were given as part payment on the sale of this property, the plaintiff ratified the sale and the investment of one-half of the proceeds in which he was entitled to a life interest in these bonds and mortgages which produced such income.

Matter of Ungrich, 122 App. Div., 49;
Bushe v. Wright, 118 App. Div., at pp.
 377, 378;
Hine v. Hine, 118 App. Div., 585-586.

NINTH POINT: Moreover, the execution and delivery by the plaintiff to the defendant Henry Ungrich, Jr., of the general release, is a complete bar and estoppel to the maintenance of this action.

(a) The plaintiff cannot hold the defendant Martin Ungrich for any of the acts he complains of, unless he can hold his brother Henry Ungrich, Jr. Having given a general release from any and all manner of action or actions, cause or causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, spscialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims and demands whatsoever in law or in equity he had against him or which he ever had, or which he or his heirs or administrators hereafter could, should or might have for or by reason of any matter, cause or thing whatsoever from the beginning of the world to the datè of those presents, to his brother Henry Ungrich, Jr., he has released the defendant Martin Ungrich therefrom thereby.

De Long v. Curtis, 35 Hun, 94.

(b) The written words in that release after the printed portion thereof are mere words of description, and not a limitation, and the release is a bar from any claims of any nature whatsoever that the plaintiff had against either of the defendants, for any benefits accruing to him thereafter by reason

of any matter, cause or thing whatsoever at any time theretofore existing.

PATTERSON, J., in *Slayton v. Hemken*,
70 *St. Rep.*, 824; s. c., 91 *Hun*, 582;
Murphy v. City of New York, 190 *N. Y.*,
413.

(c) This release was given after the transfer of the property in question to Henry Ungrich, Jr., after the taking of the bonds and mortgages for half of the purchase price thereof, and after the investment of the \$3,000 in the trust company. Whether the plaintiff at the time that he gave it to him knew or not of the existence of any benefits that had accrued to his release arising out of such transfer of the property to his brother, or knew or not that he had a right to a claim to any portion of those benefits, the release is nevertheless a bar to any action seeking a recovery thereof.

INGRAHAM, J., in *Kibbe v. Bowen*, 18
J. & S., 422;
Duane v. Paige, 82 *Hun*, 139.

(d) The plaintiff offered no evidence to overcome the effect of the giving of such a release.

Walbourne v. Hingston, 86 *Hun*, 63;
Wallace v. Skinner, 88 *Pac.*, 221;
Kirschner v. N. H. S. M. Co., 135 *N. Y.*,
182.

(e) Not only did the plaintiff not offer any evidence to overcome the effect of the release, but the existence of the release is found in the findings of fact made by the trial Justice at the request of the defendants, and is, therefore, available to them. There are no facts in any way impeaching the release or its effect, and the judgment does not find it void or voidable, or set it aside. It, therefore,

follows that it must be held to be a bar to the maintenance of this action.

TENTH POINT: The judgment that has been rendered herein cannot be sustained on any legal theory.

(a) A conveyance by trustees through a dummy to one of their own number is merely voidable, and not void. If brought about by the *cestui que trust* or acquiesced in or ratified in any way by him, it cannot be thereafter set aside. If he elects to disaffirm the transaction, he has undoubtedly two remedies open to him, and perhaps a third. In the first place, he can sue both executors at law to recover his damages and both would be responsible to him for the damages he sustains. In the second place, he can sue in equity to set aside the conveyance. In the third place, he perhaps has a cause of action in the nature of the one at bar to hold the executor to whom the conveyance was made as a *trustee de son tort* of the difference between the market value of the property at the time of the conveyance and the price paid for it. That is all he asks for in the prayer of his complaint (fols. 159-160). This is all that the decision finds he is entitled to (fol. 569). The cause of action at bar, and the judgment that was rendered herein, proceeds upon none of these theories but upon the theory that the *cestui que trust* could elect to hold both the executors as *trustees de ses torts* of the profits made by the one executor to whom the transfer was made. It is not an action at law to hold both the executors as individuals liable to the plaintiff for the damages he has sustained. It is not an action in equity to set aside the transfer. It can at most only be partly upheld and then only on the theory of holding the

executor to whom the conveyance was made as trustee for the plaintiff of the proceeds thereafter realized by that executor from the sale of the properties so transferred to him. We do not believe that any such cause of action exists. If, however, it does exist, as the action necessarily proceeds on the theory of an affirmance of every act of the defendant Martin Ungrich whether lawful or unlawful, right or wrong, that defendant is thereby discharged from any liability to the plaintiff. The plaintiff cannot reach the profits made on the sale of this property without ratifying the transfer of the property to his brother. That transfer being the only act of the defendant Martin Ungrich complained of, and that transfer being ratified, there remains nothing on which to hold that defendant. The judgment as against him, is illegal and improper and should be absolutely reversed, and the complaint as to him dismissed on the merits.

(b) The action proceeding and the judgment being rendered on the theory that the defendant Henry Ungrich, Jr., was a trustee for the plaintiff of the proceeds of the sale of the real property so conveyed to that defendant, if the plaintiff was entitled to any judgment whatsoever against that defendant, it should have been one which provided for the cancellation and annulment of his individual receipt to the executors for his portion of the estate of the testator, of the quit claim deeds by the plaintiff and his wife to the said defendant, and of the general release given by the plaintiff to said defendant and should have vested him with the title to the mortgages that were given by Davenport to the executors in part payment for the conveyance to Davenport, and the proceeds of those mortgages or any secur-

ities in which the proceeds of those mortgages have gone, and the title to the fund on deposit in the Knickerbocker Trust Company, and then have required him to account for those proceeds and adjudged that one-half of the amount thus determined to have been realized by that defendant from the proceeds of such sales of such real estate was property in his hands belonging to the trust estate created by the will of the testator and then have directed him to hand over to himself and the defendant Martin Ungrich, as testamentary trustees such one-half of such proceeds so realized by him from the sale of these properties, together with the fund on deposit in the Knickerbocker Trust Company to be held by them in trust under the terms and provisions of the will of the testator. Or if this court had the power to remove, and was justified on the evidence submitted to it in removing these testamentary trustees and appointing another or others in their stead, the judgment should have directed him to hand over this one-half of the proceeds of such sale of these properties and the amount on deposit with the Knickerbocker Trust Company to such substituted trustee or trustees to be held by them under the terms of such trust created by the will of this testator.

(c) However, it would seem to be clear that this court has no power to remove an executor from his office as such. That power exists alone in the Surrogates' Court. It would also seem to follow that where an executor as such is also created by the will appointing him a testamentary trustee, that this court also has no power to remove him. If, however, this court has power to remove such a testamentary trustee so appointed from his office

as such, yet, if the Surrogates' Court has also power to remove him both as executor and trustee, the court below should have remitted the plaintiff to that tribunal to have secured him such relief as the removal of the defendants as executors and trustees.

Shorter v. Mackay, 13 App. Div., 20;
Borrowe v. Corbin, 31 App. Div., 172;
Morse v. Smith, 42 St. Repr., 168;
Sanders v. Soutter, 126 N. Y., at p. 200;
Hard v. Ashley, 117 N. Y., 606;
Douglass v. Yost, 64 Hun, 155;
Chipman v. Montgomery, 63 N. Y., 221;
Blake v. Barnes, 45 St. Repr., 130, s. c.,
 28 Abb. N. C., 401;
Strong v. Harris, 84 Hun, 314;
Fogarty v. O'Reilly, N. Y. Law Journal,
 Nov. 29th, 1905, s. c., *Id.*, Feb.
 17th, 1906.

(d) Moreover, the judgment proceeding on the theory that the defendant Henry Ungrich, Jr., is trustee *de son tort* for the plaintiff of the proceeds realized from the sale of these properties so conveyed to him, at most he can only be held for the actual proceeds so realized by him therefrom. The judgment does not hold him therefor. It proceeds upon inconsistent theories. It holds him for the gross rents of these properties while he held them, and it credits him with, as far as we can find from the record before this court after most diligent search therein, the arbitrary figure of \$12,904.41 (fol. 605), as the disbursements on the property while he held it. It then holds him for the actual proceeds of the gross purchase price of these properties and charges him with six per cent. thereon though he took the property subject to these mortgages from Davenport, which bore

four per cent. interest. He sold them subject to those mortgages and took back purchase-money mortgages, bearing interest at five per cent. on \$25,000, and received only a small sum in cash on two of them for the balance of his equity therein, and received only a part of the purchase price for the Lenox Avenue property. This is holding him not upon the theory of being a trustee of the proceeds realized by him, but on the theory that he is responsible in damages to the plaintiff for what he should have got out of these properties. He did not get these gross rents less these expenses of \$12,904.41, as far as we can find in the record. He certainly did not get six per cent. interest on the proceeds of sale of the properties, and to award the plaintiff six per cent. interest is awarding him a judgment that is consistent with no theory whatever.

(e) Finally, the judgment proceeding upon such theory should not have in this manner struck a balance as due to the plaintiff on June 1, 1906, of \$6,365.09 (fol. 606), and then given interest on that amount from June 1, 1906, to May 12, 1908, at six per cent. (fol. 609) as it does. This again was awarding compound interest in the nature of damages to the plaintiff,—something which the plaintiff could only obtain when suing both defendants at law for the damages obtained by him through the acts of the defendants, which he is not doing in this case.

Collins v. Collins, 8 App. Div., 502.

TENTH POINT: The judgment appealed from should be reversed and the complaint dismissed as to the defendant Martin Ungrich, individually,

with costs in this court and the court below and a new trial ordered as to the other defendant with costs to abide the event.

JOHNSTON & JOHNSTON,
Attorneys for defendant Martin Un-
grich, individually and as executor
of and trustee under the last will
and testament of Henry Ungrich,
deceased.

EDWARD P. ORRELL,
Attorney for defendant Henry Un-
grich, Jr., individually and as ex-
ecutor of and trustee under the
last will and testament of Henry
Ungrich, deceased.

EDWARD W. S. JOHNSTON,
Of Counsel.

New York Supreme Court,

APPELLATE DIVISION—FIRST DEPARTMENT.

MARTIN L. UNGRICH,

Plaintiff-Respondent,

against

HENRY UNGRICH, Jr., and
MARTIN UNGRICH, individually
and as Executors of and Trus-
tees under the Last Will and
Testament of Henry Ungrich,
deceased,

Defendants Appellants.

BRIEF FOR RESPONDENT.

Statement.

This is an appeal by the defendants from a judgment entered upon a decision rendered by MR. JUSTICE JAMES FITZGERALD, at Special Term, Part V of the Supreme Court, in favor of the plaintiff, adjudging:

1. That the transactions resulting in the sale to the defendant, Henry Ungrich, Jr., one of the trustees of the estate of Henry Ungrich, deceased, of the premises belonging to the said estate, re-

ferred to in the complaint, were fraudulent as to the plaintiff, and that he was entitled to the proceeds and benefits thereof received by said defendant, Henry Ungrich, Jr., to the extent of the interest therein created for the plaintiff's benefit under the terms of the will of said Henry Ungrich, deceased.

2. That the net proceeds received by the defendant, Henry Ungrich, Jr., from the sale of said premises was the sum of \$260,250.89, one-half of which sum, viz., \$130,125.45, together with the sum of \$3,224.11, an amount on deposit in the Knickerbocker Trust Company, amounting together to the sum of \$133,349.56, were impressed with a trust in favor of the plaintiff under the terms of said will and constituted the trust fund created thereunder for the benefit of the plaintiff.

3. That the plaintiff recover from the defendants as the amount of income on the trust fund created for his benefit, remaining due and unpaid, the sum of \$20,744.39.

4. That the defendants be removed as trustees for the plaintiff under the said will and the New York Trust Company appointed in their place and stead.

5. That the defendants pay over to the said New York Trust Company, as their successor, the said sum of \$133,349.56, the principal of the trust fund created for the benefit of the plaintiff.

6. That the plaintiff recover from the defendants personally the sum of \$2,167.89, costs and allowance.

See Decision, pages 184 to 205.

See Judgment, pages 206-208.

See Notices of Appeal, pages 3 to 8.

Pleadings.

The complaint alleges that on or about March 1st, 1901, Henry Ungrich died in the City of New York, leaving him surviving his two sons, Martin Louis Ungrich, the plaintiff, and Henry Ungrich, Jr., one of the defendants, and leaving a last will and testament and codicil thereto, by the terms of which the estate was practically divided into two equal parts, one-half of which was left in trust to the plaintiff for life and the other half was given in fee to the defendant, Henry Ungrich, Jr., and upon the plaintiff's death, he was also given the principal of the trust fund created for the plaintiff's benefit.

That by the will, the defendant, Henry Ungrich, Jr., and Martin Ungrich, a nephew of the testator, were made executors and trustees.

That the will and codicil were duly admitted to probate on April 11th, 1901, and that both defendants qualified as executors and trustees thereunder and have continued to act as such.

That the defendants failed properly to perform their duties as executors and trustees in many particulars, in that, among other things,

1. They wholly failed to have appraised and to account for certain personal property belonging to the estate of the value of \$25,000 and fraudulently, converted the same to the use and benefit of the defendant, Henry Ungrich, Jr.

2. They wholly failed and neglected properly to perform their duties in the management of said trust estate created for the benefit of the plaintiff by depositing in the Knickerbocker Trust Company the sum of \$3,000 at a wholly insufficient and inadequate rate of interest.

3. That among other assets the estate consisted of four parcels of real estate situated in

the City of New York, viz.: Parcel No. 1, a lot on 124th Street; parcel No. 2, a plot consisting of 3 lots on Lenox Avenue; parcel No. 3, a lot on 123d Street, and parcel No. 4, a lot on 126th Street, and that by falsely and fraudulently misrepresenting to the plaintiff the value of said real property, and other illegal and unlawful acts, they induced him to consent to a sale of said real estate to the defendant, Henry Ungrich, Jr., for the sum of \$157,000, a totally insufficient and inadequate consideration to the waste, injury and spoliation of said trust estate, in violation of their powers and duties as such trustees, and all to the great loss and damage of the plaintiff.

4. They improperly, illegally, improvidently and wastefully invested a part of the interest or share of the plaintiff in said trust estate, in three separate mortgages aggregating \$78,500, at an entirely insufficient and inadequate rate of interest, to wit, at the rate of 4% per annum, which said interest was paid by the defendant, Henry Ungrich, Jr., to them as executors and trustees for the use by him of said trust fund and all to the loss, detriment and damage of this plaintiff as a beneficiary of said trust estate.

The relief demanded was:

1. That the defendants account for all property, whether real or personal, in any way belonging to the estate of Henry Ungrich, deceased, coming into their hands, or which should have been taken possession of by them as executors and trustees.

2. That the proceeds received by the defendant, Henry Ungrich, Jr., from the sale of the real property belonging to said estate and conveyed to him unlawfully and illegally be accounted for by him as assets of said estate, and be held impressed with a trust in the plaintiff's favor to the extent of the

interest therein created for his benefit under the terms of said will.

3. That the defendants be removed as such executors and trustees under said will, and that other and suitable persons be appointed in their place and stead.

4. That the plaintiff have such other and further relief as may be just and equitable.

See Complaint, pages 10 to 24.

The answer of the defendant, Henry Ungrich, Jr., sets up nine separate defenses.

FOR A FIRST DEFENSE it admits the allegations of the complaint as to the death, will and codicil of the testator, the admission of the same to probate, and the qualification of the defendants as executors and trustees thereunder. It also admits the ownership by the estate of the real property described in the complaint. As to the other allegations of the complaint it is practically a general denial.

FOR A SECOND DEFENSE it alleges that numerous complaints were made by the plaintiff that sufficient income was not being realized from such real estate, and that the plaintiff "repeatedly requested this defendant, and the said defendant, Martin Ungrich, as such executors and trustees of the last will and testament of the said Henry Ungrich, deceased, to act under the power of sale conferred upon them by the last will and testament of the said Henry Ungrich, deceased, and sell the said premises for the best price that they could get therefor."

That the defendant, Henry Ungrich, Jr., expressed a desire to purchase said premises at a price that would be satisfactory to the plaintiff, and that, thereupon, it was mutually agreed that an appraisal should be made of the real estate by an appraiser

named Philip H. Smythe; that an appraisal was made of the property, aggregating for the said several parcels \$152,000, of which \$110,000 covered the Lenox Avenue and 124th Street property.

That the defendant, Henry Ungrich, Jr., purchased through one Harry K. Davenport, acting as a dummy, from the executors all of the real property at the sum of \$157,000, "with the consent and approval and with full knowledge on the part of the plaintiff," and that the plaintiff, by written declaration, ratified and confirmed the said purchase.

FOR A THIRD DEFENSE it is alleged that the consideration paid by said defendant for the conveyance of the said property to him was proper, fair and reasonable.

FOR A FOURTH DEFENSE it is averred that an accounting was had in the Surrogate's Court by the executors and trustees as of May 2, 1903, to which proceedings the plaintiff was a party, and of which he had due notice, and that the decree settling the accounts of said executors and trustees was a bar to the maintenance of this action.

FOR A FIFTH DEFENSE the following averment is made:

"That thereafter and on or about the 24th day of April, 1903, the said plaintiff and his wife duly conveyed the first two of the parcels of the real estate mentioned and described in the said subdivision C of the said paragraph of the said complaint numbered third to this defendant by deed bearing date April 24th, 1903, and duly acknowledged by them on or about that date," and that the parcels referred to in said deed are the premises situated on Lenox Avenue and 124th Street referred to in the complaint.

FOR A SIXTH DEFENSE an allegation is made that a conveyance by the plaintiff and his wife to the defendant, Henry Ungrich, Jr., dated April 24th,

1903, was made of the premises on East 126th Street, and that on July 22, 1903, a sale of said premises was made for a price less than the amount paid by the defendant to the estate.

FOR A SEVENTH DEFENSE it is alleged that a confirmatory deed from the plaintiff and his wife to the defendant dated April 24, 1903, was made of the premises on 123d Street, and that a sale of said premises was subsequently made by the defendant for a price less than the amount paid by the defendant to the estate therefor.

FOR AN EIGHTH DEFENSE it sets up the making and delivery by the testator in his lifetime of an assignment to the defendant, Henry Ungrich, Jr., of three mortgages amounting in the aggregate to the sum of \$27,000, and alleges that a claim was made by the plaintiff that the said transfer was illegal and that there was paid in settlement of the plaintiff's claim the sum of \$6,000, and a general release of all claims was executed by him.

FOR A NINTH DEFENSE, a counterclaim is set up for disbursements claimed to have been expended by the defendant, Henry Ungrich, in connection with the premises situated on Lenox Avenue and 124th Street in reliance upon the alleged written declaration, confirmation, ratification and confirmation of the transaction resulting in the conveyance of said premises to the defendant, Henry Ungrich, Jr., and upon the deeds made by the plaintiff and his wife to said defendant in respect thereto.

See Answer of Defendant, Henry Ungrich, Jr., pages 25 to 59.

The answer of the defendant, Martin Ungrich, practically sets up the same defenses as are contained in the answer of the defendant, Henry Ungrich, Jr., with the exception that the ninth defense or counterclaim is not alleged.

See Answer of Defendant, Martin Ungrich, pages 60 to 88.

To the counterclaim set up in the answer of the defendant, Henry Ungrich, Jr., the plaintiff served a reply practically denying all of the allegations, with one exception, to wit: *that the consideration for the sale of the property on Lenox Avenue and 124th Street by the defendant, Henry Ungrich, Jr., to George Ehret, was the sum of \$250,000.*

See Reply, pages 89 to 97.

By permission of the Court the defendants were allowed to serve a supplemental answer, in which they alleged that between the 1st day of May and the 1st day of November, 1902, the plaintiff rendered services as an architect for the defendant, Henry Ungrich, Jr., as the then owner of the premises situated on Lenox Avenue and 124th Street, and thereafter commenced an action in the Supreme Court for the County of Westchester against the said defendant to recover the sum of \$765 as the reasonable value of the services so performed; that such proceedings were had that the defendant, Henry Ungrich, Jr., offered to allow judgment to go against him for the sum of \$465, with interest and costs, which offer was accepted by the plaintiff and judgment duly entered for the sum of \$631.69, and subsequently paid by the defendant, Henry Ungrich, Jr., and satisfied of record and which said judgment, it was alleged, is a bar to the prosecution of this action.

See Supplementary Answer of Defendant, Henry Ungrich, Jr., pages 99 to 109.

See Supplementary Answer of Defendant, Martin Ungrich, pages 110 to 120.

By further permission of the Court the defendants were allowed to serve a second supplemental answer, in which it was averred that prior to the

commencement of this action there became due on certain bonds and mortgages executed by Henry Ungrich, Jr., as a part of the transaction resulting in the conveyance to him of the real property described in the complaint, the sum of \$2,919.20, and which said sum the plaintiff was entitled to receive as income under the terms and conditions of the will of the said Henry Ungrich, deceased; that the plaintiff, well knowing the facts, applied to the Supreme Court for an order directing the defendants forthwith to pay that sum to him, and said Court did make an order which was subsequently modified on appeal by the Appellate Division, directing the defendants forthwith to pay the said sum of \$2,919.20 on account of the income due him from said trust estate; that thereafter said defendants did pay to the plaintiff the said sum, and by reason of such payment the plaintiff has lost his right to maintain this action.

See Second Supplemental Answer of Defendant, Henry Ungrich, Jr., pages 121 to 130.

See Second Supplemental Answer of Defendant, Martin Ungrich, pages 131 to 139.

Facts.

On March 1st, 1901, Henry Ungrich died in the City of New York at the age of eighty-two years, leaving him surviving two sons, Martin Louis Ungrich, the plaintiff in this action, and Henry Ungrich, Jr., one of the defendants (see page 10, fol. 29).

The decedent left a last will and testament, and a codicil thereto, which, after making certain specific bequests, provided as to the residue, as follows:

" 5th. TO DIVIDE THE BALANCE OF MY
 " ESTATE INTO TWO EQUAL ONE-HALF PARTS,
 " AND TO PAY OVER TO MY SON HENRY UNG-
 " RICH ONE OF SUCH PARTS, WHICH EQUAL
 " UNDIVIDED ONE-HALF PART I HEREBY GIVE,
 " DEVISE AND BEQUEATH TO MY SAID SON
 " HENRY UNGRICH, TO HIM, HIS HEIRS AND
 " ASSIGNS FOREVER.

" 6th. TO HOLD THE REMAINING EQUAL UN-
 " DIVIDED ONE-HALF PART OF SAID BALANCE
 " OF MY ESTATE AND KEEP THE SAME INVESTED
 " AND RE-INVESTED AND TO PAY TO MY SON
 " MARTIN LOUIS UNGRICH IN QUARTER YEARLY
 " PAYMENTS DURING HIS NATURAL LIFE, THE
 " NET INCOME RECEIVED FROM THE INVEST-
 " MENT OF SUCH ONE-HALF PART OF MY ESTATE.

" 7th. UNTIL THE SALE AND DIVISION OF MY
 " ESTATE AS PROVIDED IN THE 3D, 4TH, 5TH
 " AND 6TH CLAUSES OF THIS MY WILL, I
 " DIRECT MY EXECUTORS AND THE SURVIVORS
 " OR SURVIVOR OF THEM TO DIVIDE AND PAY
 " THE NET INCOME WHICH IS RECEIVED FROM
 " MY ESTATE TO MY TWO SONS, HENRY UNG-
 " RICH AND MARTIN LOUIS UNGRICH, IN
 " EQUAL PARTS, ONE-HALF TO EACH OF THEM,
 " IN QUARTER YEARLY PAYMENTS.

" 8th. UPON THE DEATH OF MY SON MARTIN
 " LOUIS UNGRICH, THEN I GIVE, DEVISE AND
 " BEQUEATH SAID ONE-HALF PART OF MY
 " ESTATE (THE NET INCOME OF WHICH I HAVE
 " HEREINBEFORE DIRECTED SHALL BE PAID TO
 " MY SON MARTIN LOUIS UNGRICH DURING HIS
 " NATURAL LIFE), WITH SUCH ACCUMULATIONS
 " OF INTEREST AS MAY NOT THEN HAVE BEEN
 " PAID TO MY SAID SON MARTIN LOUIS UNG-
 " RICH, TO MY SON HENRY UNGRICH, TO HIM,
 " HIS HEIRS AND ASSIGNS FOREVER.

See pages 185 to 189, fols. 553-565.

On April 11th, 1901, the will and codicil were admitted to probate by the Surrogate of New York County and the defendants qualified as executors and trustees thereunder (See page 15, fol. 45).

At the time of his death, the testator was seized of certain real and personal property which passed under the will. The real estate consisted of four parcels of land, with the buildings and improvements thereon, situated in the Borough of Manhattan, City, County and State of New York, viz.:

PARCELS 1 AND 2 consisted of four lots at Lenox Avenue and 124th Street, known as Nos. 281, 283 and 285 Lenox Avenue and 107 West 124th Street.

PARCEL 3 consisted of a lot at the corner of Pleasant Avenue and 123d Street, known as No. 443 Pleasant Avenue.

PARCEL No. 4 consisted of a lot on the southerly side of 126th Street near Third Avenue, known as No. 208 East 126th Street (See Exhibit SS, pages 508-511).

The personal property amounted in the aggregate, as shown by the accounting of the executors, to the sum of \$11,549.75. (See page 194, fol. 580).

For many years prior to the death of the testator the defendant, Henry Ungrich, Jr., and his family, consisting of his wife and daughter, had lived without expense at his father's house. From May 1st, 1894, until his father's death in 1901, he had had the entire charge of his father's property and had received for his services the sum of \$100 a month besides the expenses of running the household.

See testimony of Henry Ungrich, Jr.,
page 349, fols. 1046-1047.

During these seven years he had no business other than the care of his father's real estate—collected the rents, attended to the repairs, and paid the taxes. In fact, he had entire charge (See page 349, fol. 1045).

He knew, therefore, the net income or revenue derived from the real estate, and was, of course, fully conversant with its value.

His brother, Martin Louis Ungrich, the plaintiff, on the other hand, was a man of no means--an architect by profession--but whose irregular habits and predisposition to drink prevented him from earning an adequate livelihood, and involved him in more or less serious financial difficulties (See page 387, fols. 1161-1162).

That the defendant Henry Ungrich, Jr., was not above taking advantage of the position in which he was placed as a member of his father's household, is shown by the fact--to which he himself confessed on the witness stand--that prior to the death of his father he took as a gift, without the payment of any consideration whatsoever, an assignment of mortgages from his father aggregating the sum of \$27,000, on which he claimed \$2,000 had been paid (See testimony of Henry Ungrich, Jr., page 350, fol. 1048).

Another evidence of his acquisitive disposition is the conceded fact that on February 27th, 1902, after his father's death, he obtained a bill of sale to himself of all the personal securities of the estate (See Exhibit H, page 488, fol. 1463).

It is true, it was not shown that this act resulted in any profit to himself, but we submit it evidences a purpose and design on his part to acquire for himself the assets of the estate.

The two acts referred to are, however, but incidental.

His main purpose, and which the practically undisputed evidence shows he successfully accomplished, was to obtain title to the real estate of which his father died seized, and which constituted the great bulk of the estate.

It appears practically without denial that almost from the day of his father's death he was urgent upon the plaintiff to turn over to him all the real

estate. This was proved by his own testimony, and by the testimony of his co-executor, Martin Ungrich, and of the plaintiff as well.

See testimony of Henry Ungrich, Jr., page 368, fols. 1104-1105.

See testimony of Martin Ungrich, page 399, fol. 1095.

See testimony of Martin Louis Ungrich, page 408, fols. 1222-1223.

It was further and conclusively proved by his own letters to the plaintiff.

See Letters, Exhibits M, Y, AA, DD, HH, KK, NN, OO, QQ, RR and SS, pages 491, 497, 498, 500, 501, 503, 505, 506, 507, 508, 509.

The financial stress of the plaintiff and his unfortunate habits were both availed of to accomplish this purpose, and besides the defendants were greatly aided by the co-operation of an attorney who had acted as attorney for the testator, prior to his death, and who was also the attorney for the executors and trustees, and who also acted as attorney for the plaintiff during the time the iniquitous transaction complained of was being put through.

By virtue of the confidence of the plaintiff in this attorney and his reliance upon him, the proof shows the defendant, Henry Ungrich, Jr., was able to obtain conveyances to himself of the entire real estate for the sum of \$157,000, a wholly insufficient consideration, and was further able to obtain deeds and releases *ad infinitum* to bolster up and support acts, the illegality of which both he and the attorney were manifestly only too conscious.

According to the proof, actual negotiations for the transfer of the real estate began in the month of February, 1902, when both of the defendants and

the attorney met the plaintiff at the office of the attorney, and offers were made by Henry Ungrich to buy the property.

At this meeting, evidently to give some color of fairness to the transaction, it was suggested by the attorney that an appraisal be made and the name of a real estate man, Philip H. Smythe, was mentioned.

See testimony of James Demarest,
pages 266-267, fols. 797-798.

See testimony of Henry Ungrich, Jr.,
page 340, fol. 1018.

See testimony of Martin Ungrich, page
395, fol. 1183.

On May 16th, 1902, the same parties again met, and an appraisal purporting to have been made by Philip H. Smythe, the real estate expert named by the attorney, was produced, showing an appraised value of all the real estate of \$152,000 (See page 292, fols. 874-876).

THERE WAS NO PROOF, HOWEVER, THAT THE APPRAISAL WAS MADE BY MR. SMYTHE, NOR WAS HE CALLED AS A WITNESS TO TESTIFY TO THAT FACT.

That the appraisement at \$152,000 was totally inadequate was shown by two real estate experts called as witnesses by the plaintiff, one of whom swore that the value of the property in May, 1902, was in the aggregate \$194,500, and the other of whom swore that the value was \$201,000.

See testimony of Ransom E. Wilcox,
pages 245-249, fols. 735-739.

See testimony of Herman S. Schmidt,
pages 257-258, fols. 771-772.

At the same meeting a contract was drawn and executed by the executors agreeing to convey to one Harry K. Davenport the entire real estate holdings of the estate for \$157,000, a sum \$5,000

in excess of the alleged appraised value (See page 295, fol. 885).

The Harry K. Davenport named as the grantee in the contract was admittedly a clerk and stenographer in the office of the attorney and acted in the transaction wholly as a dummy.

See testimony of Harry K. Davenport, page 332, fols. 994-995.

To this contract, the written approval of the plaintiff was obtained, through representations as to the fairness of the price agreed to be paid.

See Exhibit 5, pages 563-4, fols. 1689-1692.

See testimony of Martin Louis Ungrich, page 332, fol. 1232.

The price agreed to be paid, viz., \$157,000, was, however, nearly \$50,000 under the real value in 1902.

But this fact was not known to the plaintiff. He did not have the means necessary for the hiring of an appraiser and never had any appraisal made; but relied wholly on the statements and representations made to him at the time.

See testimony of Martin Louis Ungrich, page 410, fol. 1230.

Subsequently, and on May 22, 1902, a further meeting was held, at which deeds of the entire real estate holdings were executed and delivered by the executors and trustees to Davenport for the stated consideration of \$157,000 (See Deed, Ex. A, pages 456-464), and mortgages were executed by him to the executors in the sum of \$78,500, one-half the purchase price bearing interest at 4% (See Exhibits C, D and E, pages 466-481).

Immediately a deed was executed by Davenport to the defendant, Henry Ungrich, conveying the

real estate, subject to the mortgage for \$78,500 (See Ex. B, page 461, fol. 1382).

FOR THESE CONVEYANCES NO MONEY AT ALL WAS PAID, THE DEFENDANT, HENRY UNGRICH, JR., SIMPLY SIGNING A RECEIPT FOR THE SUM OF \$78,500 AND DELIVERING THE SAME TO DAVENPORT AS PAYMENT (See testimony of Henry Ungrich, Jr., pages 377-378, fols. 1131-1132).

At the same meeting a document was procured in duplicate from the plaintiff, approving and confirming the transaction (see Exhibits 6 and 7, pages 565-568).

No copies, however, of these papers were furnished to him. In fact they were not even read by him, but he signed them without reading at the request of the attorney, who stated that their execution was a mere matter of form (See testimony of Martin L. Ungrich, page 412, fol. 1234).

It was wholly in reliance upon the statements of his brother and of the attorney that he signed whatever they put before him without reading or appreciating their contents and effect.

The final act in the consummation of the deal was the obtaining by the attorney of three quit-claim deeds from the plaintiff and his wife covering all the real estate, two of which deeds, *i. e.*, the ones covering the premises at 123d Street and 126th Street, were recorded in July, 1903, but the deed to the principal piece, the property at Lenox Avenue and 124th Street, never was recorded.

See Exhibits 67, 68 and 69, pages 644-654.

On the trial much testimony was adduced showing that at the time these transactions were being carried through the market for real estate in the vicinity of the property in question was dull, but that the subway was being built through Lenox Avenue, which it was believed would largely in-

crease the value of property along its route, and it was testified to by both of the defendants themselves that they considered the Lenox Avenue property particularly was good property to hold and not to sell.

See testimony of Henry Ungrich, Jr.,
pages 375-376, fols. 1125 1126.

See testimony of Martin Ungrich, page
403, fols. 1207-1208.

As a matter of fact, the completion of the subway did largely enhance real estate in the vicinity, and it stands conceded that the defendant, Henry Ungrich, Jr., within four years was enabled to and did actually dispose of the real estate obtained by him from the estate at a profit of at least the sum of \$150,000 (See testimony of Henry Ungrich, Jr., page 346, fol. 1036).

Not only did the plaintiff lose the benefit of this increase in value, but, as a consequence of the transactions referred to, his income after the transfer to his brother was reduced from \$3,200, the amount he received before the property was sold (see testimony of Henry Ungrich, Jr., page 379, fol. 1135), to the sum of about \$2,600, a net loss to the plaintiff of over \$600 (see testimony of Martin L. Ungrich, page 418, fol. 1252), and which income was actually paid out of the receipts from the very estate of which he had been deprived.

In fact, the whole transaction was carried through and the immense profit was realized by the defendant, Henry Ungrich, Jr., without the outlay of one penny of cash beyond what was received as income from the property itself.

In other words, the change accomplished was one of form only, and not of substance. Both parties continued to receive their income from the same source, but the plaintiff, by reason of the illegal transaction, received less income and had no benefit from the advance in value, while the de-

fendant, Henry Ungrich, Jr., received a greatly increased income and had the benefit of all advance in the value of the property.

Before passing to the argument, we desire to call the attention of the Court to another incident testified to upon the trial which shows the pressure brought to bear upon the plaintiff and the inducements held out to him to accomplish the purpose the defendant, Henry Ungrich, Jr., had in view. On the reading of his father's will the plaintiff made inquiries respecting the value of the personal estate, and was told that it amounted only to about the sum of \$25,000.

He expressed himself as surprised at the smallness of the personal estate, and claimed that there should be a much greater amount, as his father had an annual income of \$11,000 and had also recently sold a house. It was not, however, until later in 1901, at the time his brother and cousin went to the various savings banks that he learned that the true amount of the personal estate was only something over \$7,800 (See testimony of Martin Louis Ungrich, page 407, fols. 1219-1221).

Having been told of \$25,000, and the estate showing only some \$10,000, he went to his brother Henry and told him he wanted his share or one half of \$25,000, viz., \$12,500 (See testimony of Martin L. Ungrich, page 408, fol. 1223).

Subsequently he spoke to the attorney in regard to the matter, and the latter promised to talk with the defendant, Henry Ungrich, Jr., and see if he could not get him to make a division of the personal estate (See testimony of James Demarest, page 497, fol. 890).

The result was that the attorney finally informed the plaintiff that his brother would pay him the sum of \$7,500 in full settlement of all claims against the personal property (See testimony of Martin Louis Ungrich, page 409, fol. 1226).

This promise on the part of the defendant, Henry Ungrich, Jr., was held over the plaintiff's head during all the time the urgent requests were being made for his consent to the sale of the real estate. Of course, to a man in the plaintiff's circumstances the promise of so much money must have had its effect. But after he had obtained title to the real estate the defendant, Henry Ungrich, Jr., refused to fulfil his promise as to the payment of the sum of \$7,500. Finally, he paid to the plaintiff the sum of \$6,000 on June 23, 1902, as his share of the mortgages which had been assigned to the defendant, Henry Ungrich, Jr., by his father prior to his death, and used the payment of that sum as a means and excuse to exact from the plaintiff a general release, which was pleaded in bar to this action by the defendants.

See testimony of Henry Ungrich, Jr.,
page 345, fol. 1034.

See testimony of Martin Louis Ungrich,
page 414, fols. 1241-1242.

See Exhibit 65, page 637, fols. 1910-1914.

A further circumstance showing the machinations to extort money from the plaintiff under any and every pretext was the fact, admittedly testified to by the attorney, that in January, 1902, he consented to act for the plaintiff in the matter of securing to him his share of the personal property, and on June 23, 1902, the day the money was paid to the plaintiff, he actually charged and received from him the sum of \$500 for his services (See testimony, page 308, fol. 923).

Besides, the attorney deducted from the plaintiff's income, as alleged fees for collecting the same, the sum of \$50 every time payment was made (See testimony, page 300, fol. 900).

Surely the evidence shows, we submit, a most iniquitous transaction, which cannot be justified

either in law or in morals, and so the learned Trial Judge found.

See Decision, FITZGERALD, J., pages 204-205, fols. 611-615.

From the judgment entered on the decision so made the defendants now appeal to this Court.

Point I.

The transactions resulting in the sale to the defendant, Henry Ungrich, Jr., of the premises belonging to the estate referred to in the complaint, including the contract of sale, the deeds of conveyance, mortgages, confirmatory deeds, quit-claim deeds and general release, were fraudulent as to the plaintiff, and were at his election wholly invalid and void; and the proceeds received were impressed with a trust in the plaintiff's favor to the extent of the interest therein created for his benefit under the terms of said will.

First.—IT WAS TESTIFIED WITHOUT CONTRADICTION, AND THE LEARNED TRIAL JUDGE EXPRESSLY FOUND, THAT THE DEFENDANT, HENRY UNGRICH, JR., WHILE ACTING AS EXECUTOR AND TRUSTEE, SECURED TO HIMSELF A CONVEYANCE OF THE ENTIRE REAL ESTATE HOLDINGS OF THE ESTATE.

The findings of the learned Trial Judge on this point are as follows:

“ *Seventh.*—That on the 16th day of May, 1902, the defendants, as executors and trustees, entered into a contract in writing with one Harry K. Davenport, under the terms of which they agreed to convey to the said Harry K. Davenport for the sum of one hundred and fifty-seven thousand dollars (\$157,000), payable one-half in cash and the balance on bond and mortgage payable five years from date, with interest at the rate of 4% per annum, all the real estate set out and described in the Fifth finding, the contents of which contract are fully set out in Plaintiff’s Exhibit No. 5 in this case.

“ *Eighth.*—That on the 22d day of May, 1902, the defendants, as executors and trustees, executed and delivered to Harry K. Davenport, a law clerk in the office of the attorney for the executors, a deed purporting to convey to the said Harry K. Davenport, for the aggregate consideration of one hundred and fifty-seven thousand dollars (\$157,000), all the real estate of which the said Henry Ungrich died seized and possessed, and more particularly described above in the Fifth finding.

“ *Ninth.*—That on the 22d day of May, 1902, the said Harry K. Davenport, as a part of the same transaction, and at the same time, executed and delivered a deed to the defendant, Henry Ungrich, Jr., purporting to transfer and convey all the real property as conveyed by the said executors and trustees as aforesaid to the said Harry K. Davenport, and covering all the real estate of which the said Henry Ungrich died seized and possessed, as stated and contained in the Fifth finding.

* * * * *

“ *Eleventh.*—That in accepting the said conveyances so made to him by the said trustees as aforesaid, and in executing and delivering a deed conveying the said premises to one of the defendants, Henry Ungrich, Jr., and in executing and delivering the said mortgages above set out and referred to herein, the said Harry K. Davenport acted wholly as a dummy or intermediary therein and at no time had any beneficial interest in said premises.”

See Decision, pages 194–196, fols. 581–586.

These findings are in direct accord with the undisputed evidence and the documentary proof offered upon the trial.

See Deeds, Exhibits A and B. pages 456–466.

See Contract, Exhibit 5, page 563, fol. 1689.

See testimony of James Demarest, page 273, fol. 812.

See testimony of Henry Ungrich, Jr., page 378, fol. 1133.

Second.—THAT THE TRANSACTIONS RESULTING IN THE SALE TO THE DEFENDANT, HENRY UNGRICH, JR., OF THE SAID REAL PREMISES, WERE WHOLLY UNFAIR AND FRAUDULENT AS TO THE PLAINTIFF, WAS ALSO EXPRESSLY FOUND BY THE LEARNED TRIAL JUDGE, AND HIS FINDINGS IN THAT REGARD ARE ALSO FULLY SUPPORTED BY PRACTICALLY UNCONTRADICTED EVIDENCE.

The findings as to the unfairness and fraudulent character of the transaction are as follows:

“ *Fifteenth.*—That the plaintiff, an architect by profession, was at the times herein mentioned a man of irregular habits, in-

“volved in financial difficulties and wholly
 “unfamiliar with real estate values, and had
 “no knowledge of the true and fair value of
 “the real estate so conveyed by him as afore-
 “said.

“*Sixteenth.*—That the plaintiff was in-
 “duced to agree to the transactions trans-
 “ferring the title to said real estate upon the
 “urgent and repeated solicitations of the de-
 “fendant, Henry Ungrich, Jr., and upon
 “his representation that the sum of \$157,000
 “was more than the true value of said
 “premises, and in agreeing to said transfer
 “the plaintiff relied absolutely upon the
 “representations made to him by the de-
 “fendant, Henry Ungrich, Jr., and by the
 “attorney for the executors.

“*Seventeenth.*—That during all the times
 “while said solicitations were being made
 “to the plaintiff to agree to the trans-
 “actions as aforesaid, transit facilities and
 “other great improvements were being
 “inaugurated along Lenox Avenue and the
 “property belonging to said estate was
 “rapidly increasing in value, and under
 “the circumstances the said premises
 “should have been held, and a sale there-
 “of was most inopportune, and which said
 “facts were well known to the defendants.

“*Eighteenth.*—That the consideration pre-
 “tended to be paid for the conveyance of
 “said premises through an intermediary, to
 “the defendant, Henry Ungrich, Jr., was
 “inadequate, insufficient and far below the
 “real value of the property, and which said
 “fact was well known to the defendants and
 “their attorney, but unknown to the plain-
 “tiff and concealed from him by them.

“*Nineteenth.*—That in such transactions
 “the plaintiff was not represented by an in-

“ dependent attorney acting fully in his in-
 “ terests, but relied wholly upon the repre-
 “ sentations made to him by the defendants
 “ and their attorney as to the value of the
 “ premises conveyed, and the defendants and
 “ their said attorney concealed from the
 “ plaintiff the true and fair value of the
 “ property at said time and did not disclose
 “ fully and fairly all the facts and circum-
 “ stances in regard to the condition of the
 “ said property or the true value thereof, and
 “ did not speak fully to the plaintiff of every
 “ material fact concerning the property
 “ known to them, nor was he apprised of the
 “ law nor told how these facts would be dealt
 “ with by a court of law or of equity.

“ *Twentieth.*—That the defendant, Henry
 “ Ungrich, Jr., after the transfer to him of
 “ the title to the said real estate in the man-
 “ ner above set out, took possession thereof
 “ and converted the income thereof to his
 “ own use and benefit and thereafter re-sold
 “ said premises within four years for the sum
 “ of two hundred and eighty-eight thousand
 “ dollars (\$288,000), an increase of over one
 “ hundred and thirty thousand dollars (\$130,-
 “ 000) above the consideration pretended to
 “ be paid by him therefor.

“ *Twenty-first.*—That this result was real-
 “ ized by the defendant, Henry Ungrich, Jr.,
 “ without the advance or expenditure of any
 “ moneys other than those received from the
 “ rents, issues and profits of said premises,
 “ and the entire expense of holding and
 “ caring for said real estate until sold was
 “ paid, or could have been paid, out of the
 “ income of said property.

“ *Twenty-second.*—That after the transac-
 “ tions above referred to the net income re-
 “ ceived by the plaintiff from the trustees

“ was reduced from three thousand two hundred dollars (\$3,200) received by him before said transaction, to the sum of two thousand six hundred dollars (\$2,600) per annum received by him thereafter, and was entirely paid out of the income of said estate.

“ *Twenty-third.*—That the said transactions resulting in the transfer of the title of said premises to the defendant, Henry Ungrich, Jr., were unjust and unfair and against the true interests of the plaintiff.”

See Decision, pages 197–199, fols. 589–595.

The facts so found are supported by practically undisputed proof, both oral and documentary, and a reading of which will, we submit, convince the Court that, as found by the learned Trial Judge, the transactions complained of were “unjust and unfair and against the true interests of the plaintiff.”

***Third*—Under all the authorities the transactions complained of were voidable at the election of the plaintiff, and he was entitled to the proceeds and benefits thereof received by the defendant Henry Ungrich, Jr., to the extent of the interest therein created for his benefit under the terms of the said will.**

1st. THE RULE, OF COURSE, IS THOROUGHLY WELL SETTLED THAT A TRUSTEE MAY NOT DEAL WITH THE TRUST ESTATE TO HIS OWN BENEFIT AND ADVANTAGE, AND THAT IF HE DOES, THE TRANSACTION IS VOIDABLE AT THE ELECTION OF THE BENEFICIARY OR OTHER PERSON INTERESTED IN THE TRUST ESTATE.

Fulton v. Whitney, 66 N. Y., 555.

People v. Open Board of Stock Brokers Building Company, 92 N. Y., 98.

Carpenter v. Taylor, 164 N. Y., 171.
 Matter of Schroeder, No. 1, 113 App.
 Div., 204.
 Slater v. Slater, 114 App. Div., 160.
 Weintraub v. Siegel, 109 N. Y. Supp.,
 215.

The case last above cited involved a question of title growing out of the transfer of one of the very pieces of property involved in the case at bar, and in an able opinion written by JUSTICE BISCHOFF the precise question now under discussion was decided in favor of the plaintiff's contention. JUSTICE BISCHOFF said:

“ Within the authorities such a conveyance
 “ by a person charged with the duties of a
 “ trustee resulting in his own taking of title
 “ through an intermediary, even though the
 “ trustee has a beneficial interest in the prop-
 “ erty to protect, is voidable at the election
 “ of any person interested in the trust es-
 “ tate. * * *

Weintraub v. Siegel (*supra*).

2d. IT IS EQUALLY WELL SETTLED THAT TO THE PROCEEDS AND BENEFITS RECEIVED BY THE DEFENDANT, HENRY UNGRICH, JR., THE PLAINTIFF WAS ENTITLED, TO THE EXTENT OF THE INTEREST THEREIN CREATED FOR HIS BENEFIT UNDER THE TERMS OF THE WILL.

Welch v. Polley, 177 N. Y., 117.

Point II.

No ratification or acquiescence on the part of the plaintiff, after the discovery of the fraud practised upon him, was shown.

First.—Under the facts in the case at bar, to constitute a ratification binding upon the plaintiff the burden was upon the defendant to prove:

1. The entire fairness of the transaction.
2. Full and complete knowledge of the facts by the plaintiff.
3. That the plaintiff was not only made acquainted with the facts, but that he was apprised by the defendants of the law and how the facts would be dealt with by a Court of Equity.

The necessity of showing these three propositions in order to constitute a legal ratification by a *cestui que* trust of a transaction involving dealings by the trustee with the trust estate to his own individual profit and advantage, is fully established in a long line of decisions.

Adair v. Brimmer, 74 N. Y., 554.

Kissam v. Squires, 102 App. Div., 543.

Smith v. Howlett, 29 App. Div., 188.

Matter of Long Island Loan and Trust Company, 92 App. Div., 4; affirmed 179 N. Y., page 520.

Cumberland Iron and Coal Co. v. Sherman, 30 Barb., 575.

In *SMITH v. HOWLETT* (*supra*), a full exposition of the law regarding a ratification by a *cestui que* trust of an illegal transaction by a trustee was made, and the rule above mentioned reiterated in

clear and unmistakable language. JUDGE WARD, writing, said:

“ At law fraud must be proved, but in
 “ equity there are certain rules prohibiting
 “ parties bearing certain relations to each
 “ other from contracting between themselves,
 “ and if parties bearing such relations enter
 “ into contracts with each other, courts of
 “ equity presume them to be fraudulent and
 “ convert the fraudulent party into a trustee,
 “ and herein courts of equity go further
 “ than courts of law and presume fraud in
 “ cases where a court of law would require it
 “ to be proved; that is, if parties within the
 “ prohibited relations or conditions contract
 “ between themselves, courts of equity will
 “ avoid the contract altogether without
 “ proof, or they will throw upon the party
 “ standing in this position of trust, confidence
 “ and influence the burden of proving the
 “ entire fairness of the transaction. * * *
 “ Thus, if a parent buys property of his
 “ child, * * * a trustee of his *cestui que*
 “ trust * * * equity will either avoid the
 “ contract altogether without proof or it
 “ will throw the burden of proving the fair-
 “ ness of the transaction upon the purchaser,
 “ and if the proof fails the contract will be
 “ avoided or the purchaser will be construed
 “ to be a trustee at the election of the other
 “ party. The ground of this rule is that the
 “ danger of allowing persons holding such
 “ relations of trust and influence with others
 “ to deal with them is so great that the pre-
 “ sumption ought to be required to vindicate
 “ it from all fraud or to continue to hold the
 “ property in trust for the benefit of the
 “ * * * *cestui que* trust (Perry Trusts,
 “ Section 194, and note 1, and also Section
 “ 195). * * *

“ And in relation to the duty of the trustee
 “ in such a case to make a full disclosure of
 “ facts, the author first quoted (Perry on
 “ Trusts) in Section 178 says: ‘It is not
 “ enough that they do not affirmatively
 “ misrepresent; they must not conceal;
 “ they must speak and speak fully to every
 “ material fact known to them or the con-
 “ tract will not be allowed to stand.’ * * *

“ **Ratification can only occur where the party**
 “ **claimed to have ratified had full knowledge of**
 “ **the facts and of his legal rights, in case it is**
 “ **sought to apply the doctrine as between trus-**
 “ **tees and a cestui que trust. The rule of such**
 “ **cases is stated in Adair v. Brimmer (74 N. Y.,**
 “ **554: ‘The cestui que trust must * * * not**
 “ **only have been acquainted with the facts, but**
 “ **apprised of the law; how these facts would be**
 “ **dealt with by a court of equity’ All that is**
 “ **implied in the act of ratification when set up**
 “ **in equity by a trustee against his cestui que**
 “ **trust must be proved, and will not be assumed.**
 “ **The maxim ignorantia legis excusat neminem**
 “ **cannot be invoked in such a case; the cestui**
 “ **que trust must be shown to have been ap-**
 “ **prised of his legal rights.’ ”**

Smith v. Howlett (*supra*).

Second.—None of the facts essential to show a ratifi-
 cation by the plaintiff were proved.

1st. THE TRANSACTION WAS UNJUST, UNFAIR AND
 AGAINST THE TRUE INTERESTS OF THE PLAINTIFF.

The evidence shows, and the Trial Court found,
 that the consideration of \$157,000 paid by the de-
 fendant, Henry Ungrich, Jr., for the real estate was
 a totally inadequate and insufficient consideration

and far below the real value of the property (see page 197, fol. 591); and that within four years after the transfer he sold said premises for the sum of \$288,000, an increase of over \$130,000 above the consideration paid by him therefor (See page 198, fol. 594).

The evidence also shows, and it was further found, that this result was realized by the defendant, Henry Ungrich, Jr., without the advance or expenditure of any moneys other than those received from the rents, issues and profits of said premises, and that the entire expense of holding and caring for said real estate was paid, or could have been paid, out of the income of the property (See pages 190-199, fols. 594-595).

It was further found, and the finding is also supported by uncontradicted proof, that after the transactions referred to, the net income received by the plaintiff was reduced from \$3,200 per annum to \$2,600 per annum, and was entirely paid out of the income of said estate (See page 199, fol. 595).

Not only, therefore, did the defendants fail to support the burden upon them to show the fairness of the transaction, but on the contrary, the undisputed proof shows that the transaction was an absolutely unfair and unjust one, and wholly against the interests of the plaintiff as a beneficiary of the estate of which the defendants were appointed trustees.

2d. FULL AND COMPLETE KNOWLEDGE OF THE FACTS BY THE PLAINTIFF WAS NOT SHOWN, BUT, ON THE CONTRARY, AFFIRMATIVE MISREPRESENTATION AND CONCEALMENT, BY THE DEFENDANTS, AND FAILURE TO SPEAK FULLY OF EVERY MATERIAL FACT KNOWN TO THEM BY THE DEFENDANTS, WAS CONCLUSIVELY PROVED.

The plaintiff was shown to have had absolutely no knowledge of the real value of the property belonging to the estate, while the defendant, Henry

Ungrich, Jr., was proved to have had complete charge and care of the property for a period of seven years prior to his father's death, looking after the receipts and collecting the income, and must necessarily have been fully cognizant of the value of the property and the income derived therefrom.

It was, therefore, incumbent upon him to inform the plaintiff of all the facts known to him. THIS, HOWEVER, HE DID NOT DO. On the contrary, he represented to the plaintiff that the sum of \$157,000 was more than the true value of said premises, and in reliance upon this representation the plaintiff agreed to the transfer (see page 197, fol. 590). That the consideration paid was wholly inadequate, insufficient and far below the real value of the property, and which fact was well known to the defendants and their attorney but "unknown to the plaintiff and concealed from him by them," the Trial Court expressly found (See pages 197-198, fols. 591-592).

These findings are in direct accordance with and fully supported by the proof.

3d. NOR WAS THE PLAINTIFF MADE ACQUAINTED WITH ALL THE FACTS OR APPRISED BY THE DEFENDANTS OF THE LAW AND HOW THE FACTS WOULD BE DEALT WITH BY A COURT OF EQUITY.

There is absolutely no proof tending to show that when the transactions were being carried through and the various deeds and instruments purporting to ratify the illegal transfer were being obtained from the plaintiff, he was told that the consideration paid was below the real value, and that he could avoid the transaction; nor did he discover until just prior to the commencement of this action that the premises had been sold by his brother within four years after they have been acquired by him, at the immense profit of nearly \$130,000.

There is an absolute lack of proof, therefore, tending to show that the plaintiff ever was appraised

of the facts or ever informed how the facts would be dealt with in a court of law or of equity.

That he was never informed of his rights and never ratified the transaction after a full disclosure of the facts had been made to him was expressly found by the Trial Court. He found:

“ *Nineteenth.*---That in such transactions
 “ the plaintiff was not represented by an
 “ independent attorney acting fully in his
 “ interests, but relied wholly upon the repre-
 “ sentations made to him by the defendants
 “ and their attorney as to the value of the
 “ premises conveyed, and the defendants and
 “ their said attorney concealed from the
 “ plaintiff the true and fair value of the
 “ property at said time and did not disclose
 “ fully and fairly all the facts and circum-
 “ stances in regard to the condition of the
 “ said property or the true value thereof, and
 “ did not speak fully to the plaintiff of every
 “ material fact concerning the property
 “ known to them, nor was he apprised of
 “ the law nor told how these facts would be
 “ dealt with by a court of law or of equity.”

See page 198, fols. 592-593.

Under the proof in this case, we submit, there was no ratification by the plaintiff under the rule stated in the cases above referred to, and the learned Trial Judge so expressly found. (See page 199, fol. 597.)

Point III.

The purchase by the defendant, Henry Ungrich, Jr., was not brought about by the plaintiff himself, as contended by the appellants, but was acquiesced in by the plaintiff only at the urgent request of his brother.

Under the Second Point of the appellants' brief it is claimed that the purchase by the defendant, Henry Ungrich, Jr., of the property being merely voidable and it having been brought about by the plaintiff himself and having occurred with this knowledge and acquiescence, cannot now be attacked by him plaintiff. (Appellants' Brief, page 91.)

First.—The contention that the plaintiff was the moving spirit in bringing about the transfer is wholly without support in the evidence. It is, in fact, against conclusive documentary proof consisting of letters written by the defendant, Henry Ungrich, Jr., to the plaintiff urging him to consent to a sale.

Almost immediately on the testator's death, and as early as April 6th, 1901, the defendant, Henry Ungrich, Jr., wrote to the plaintiff:

“I see no reason why we cannot settle up
“ father's estate as soon as possible, and am
“ not in favor of the Ungrichs sticking their
“ nose in our affairs, as we are capable of
“ handling our own business.” (See Exhibit
M, page 491.)

On October 15th, 1901, he again wrote:

“Mr. Demarest says we can close up the
“ estate any time after November 12th if no
“ claims against the est. come in in answer
“ to the ads. in the N. Y. Law Journal and

“ Comm. Adv. each Wed. and if we agree
 “ meanwhile on price for the different houses.
 “ If not, then nothing is left to do except
 “ have a partition sale.” (See Exhibit Y,
 pages 497-498, fols. 1491-1492.)

On October 21st, 1901, he further wrote:

“ Anything you have to talk about pri-
 “ vately can just as well be said here if you
 “ will only let me know you want to see me
 “ alone. It is not necessary for us to go to
 “ Demarest's office for that purpose.” (See
 Exhibit AA, page 498.)

On November 5th, 1901, he wrote:

“ Unless divided before the first Monday
 “ of next January the estate will be taxed
 “ \$12,645.25 for personal estate, etc.” (See
 Exhibit DD, page .)

On May 2, 1902, he writes:

“ Come in any time you can do so. I am
 “ anxious to see you. Also Martin would
 “ like to get matters fixed up somehow.”
 (See Exhibit OO, page 595.)

On May 2, 1902, the following letter was written:

“ In fact I want to have this uncertainty
 “ cleared up, and if there is no other way to
 “ do it, put the whole property up at auction
 “ and sell it to the highest bidder. Then we
 “ will know exactly how we stand and you
 “ will know just what your income is. I am
 “ willing to give a fair price for the property,
 “ or in case we cannot agree, take my chance
 “ at getting what I want at auction, or if
 “ anyone thinks it worth more than I do, let
 “ it go altogether. Anything to get things
 “ fixed so I will know where I stand and
 “ what my income is and be able to manage

“ my own business and suit myself.” (See Exhibit NN, page 505.)

On May 8th, 1902, he further wrote:

“ If possible I would like the entire matter
“ settled soon, and am willing to give a fair
“ price for all or have a sale and know just
“ how I stand ” (See Exhibit RR, page 507).

The letters above quoted were followed by others making appointments at the office of the attorney, where the unrighteous transaction was finally consummated (See Letters, Exhibits PP, QQ and RR, pages 506, 507).

Nowhere in the testimony adduced by the defendants are the statements contained in these letters explained or contradicted.

Upon the evidence the learned Trial Court found:

“ *Sixteenth.*—That the plaintiff was in-
“ duced to agree to the transactions transfer-
“ ring the title to said real estate upon the
“ urgent and repeated solicitations of the
“ defendant, Henry Ungrich, Jr. * * *

See Decision, page 197, fol. 590.

Both the evidence adduced and the findings made, therefore, show that the defendant, Henry Ungrich, Jr., was the moving spirit in the transaction and not the plaintiff, as contended by the defendants under POINT II of their brief.

Second.—The cases cited by the appellant (Appellants' Brief, page 91) do not sustain their contention, even if the plaintiff had suggested the sale.

In *VOHMAN v. MICHEL* (185 N. Y., 420), it specifically appeared that the alleged wrongdoing by the trustee had been condoned by the *cestuis que trustent* WITH FULL KNOWLEDGE OF ALL THE FACTS, and the Court of Appeals held that they could afterwards

rescind their action under the rule that "where the "*cestui que trust* has assented to or concurred in the "breach of trust or has subsequently acquiesced in "it, he cannot afterwards proceed against those who "would otherwise be liable therefor."

Vohman v. Michel (*supra*).

In HINE v. HINE (118 App. Div., 585), it appeared that the executors traded property of the estate for other property upon which a mortgage existed. Subsequently the mortgage was foreclosed and a person entitled to share in the estate assigned his interest in the surplus moneys, under the foreclosure proceedings, and then subsequently sought to charge the executors with his portion of the value of the lands exchanged.

It was held that the *cestui que trust* having, WITH FULL KNOWLEDGE OF THE FACTS, elected to take his share of the proceeds under foreclosure, was bound by his election.

Hine v. Hine (*supra*).

In BUTTERFIELD v. COWING (112 N. Y., 486), the action was brought by the holder of certain bonds issued by a railroad company, against the trustee named in a mortgage of the road and franchises, securing the bonds, and against another company holding title to the mortgaged property, among other things, to have the property charged with the lien of the mortgage and to recover the amount of the bonds. The action was based upon allegations of breach of trust on the part of the trustee in transferring title to the mortgaged property, which he had acquired by purchase under a foreclosure sale. It appeared that, WITH KNOWLEDGE OF ALL THE FACTS, the plaintiff had acquiesced in and ratified the acts of the trustee complained of.

The Court of Appeals held that the *cestui que trust* could not avoid the act on the part of his trustee, as it had been done under his sanction.

Butterfield *v.* Cowing (*supra*).

It will thus be seen that the authorities cited and relied upon by the appellant are simply cases in which it was held that a *cestui que trust, with full knowledge of all the facts*, would be bound by the previous sanction or by the subsequent ratification of an illegal act on the part of his trustee.

Clearly those cases do not sustain the proposition advanced by the appellants, even conceding for the sake of argument, that the plaintiff, and not the defendants, suggested the sale of the property complained of.

But, the plaintiff was not the moving spirit in the transaction. On the contrary, the defendant, Henry Ungrich, Jr., himself, was the prime actor in bringing about the sale.

Point IV.

There is no merit in the contention that the two decrees of the Surrogate's Court upon the accountings of the executors estop the plaintiff from maintaining this action (Appellants' Brief, page 117).

It appears by the uncontradicted proof that the plaintiff never examined the accounts presented by the executors for settlement to the Surrogate, nor was he in any way represented on that accounting by an attorney. The only notice that he had of those proceedings was the service upon him in the

office of the attorney, James Demarest, of a citation, which paper, after formal service upon him, was handed back to Demarest.

See testimony of Martin Louis Ungrich, page 420, fol. 1258.

The plaintiff thus had no actual knowledge of the accounts presented and took absolutely no part in the proceedings for their judicial settlement and allowance.

But, in any event, none of the questions arising in the case at bar were before the Surrogate on that accounting or passed upon by him.

Under such circumstances the decrees settling the accounts in no way are a bar to the maintenance of this action.

Fulton v. Whitney, 66 N. Y., 548.

In re Monroe, 142 N. Y., 484.

Mutual Life Insurance Co. v. Schwanner, 36 Hun, 373.

Weintraub v. Siegel, 109 N. Y. Supp., 215.

In the case last above cited the precise question as to the effect of the decrees in the Surrogate's Court was decided adversely to the defendants' contention. JUSTICE BISCHOFF, writing, said:

“ The contention that the *cestui que* trust
 “ was estopped by adjudication is based upon
 “ the fact that in an accounting proceeding
 “ upon the part of the executors of Henry
 “ Ungrich in the year 1903, the item of cash
 “ received upon the sale of this particular
 “ real estate was scheduled and the accounts
 “ were passed upon notice to Maria Roden-
 “ bach without objection. *But clearly no*
 “ *issue was tendered in the proceeding before*

“ *the Surrogate as to the voidable character*
 “ *of this sale; the purchaser was not dis-*
 “ *closed, nor was it suggested by the account*
 “ *that the executor and trustee had taken*
 “ *title. Had there been an issue tendered*
 “ *and litigated upon the subject, the Surro-*
 “ *gate’s decree might well have concluded all*
 “ *parties (Mutual Life Insurance Company*
 “ *v. Schwaner, 36 Hun, 373), but so far as*
 “ *appears the cestui que trust had no knowl-*
 “ *edge of the facts and nothing was sug-*
 “ *gested for decision by the Surrogate*
 “ *other than the correctness of the items of*
 “ *the account, including this item of moneys*
 “ *received upon a sale. * * ** Here there
 “ was no knowledge, and an estoppel by the
 “ passing of the accounts is not supported by
 “ anything within the scope of the account-
 “ ing proceedings, in the course of which
 “ the decree was made.”

Weintraub v. Siegel (*supra*).

We respectfully submit that MR. JUSTICE BIS-
 CHOFF was clearly correct in his holding that the
 decree in the Surrogate’s Court was no bar, AS NO
 ISSUE INVOLVING ANY SUCH QUESTION WAS TENDERED
 TO OR DECIDED BY THE SURROGATE IN PASSING THE
 EXECUTORS’ ACCOUNTS.

Point V.

Nor is the judgment rendered in the action brought by the plaintiff against the defendant, Henry Ungrich, Jr., to recover for services rendered by the former as an architect in connection with the premises in question in any way a bar to the plaintiff's recovery.

Under POINT VII of their brief the appellants claim that the rendition by the plaintiff of work, labor and services done and performed for the defendant, Henry Ungrich, Jr., at his request and as the owner of and upon and in relation to the 124th Street and Lenox Avenue property, and the recovery of a judgment in the Supreme Court for the reasonable value of the services so rendered and the payment by the defendant of the amount of that judgment, bars and estops the plaintiff from maintaining this action (See Appellants' Brief, pages 119-120).

An examination of the pleadings in the action referred to will show that that suit in no way involved the question of the title to the real estate upon which the services were performed, nor was any question in regard to the ownership thereof decided therein.

The suit was an ordinary one to recover for work, labor and services rendered by the plaintiff at the request of his brother in drawing plans and specifications for buildings and improvements intended to be made by the latter on a portion of the premises in question. The defendant offered to allow judgment to go against him for a certain sum, which offer was accepted by the plaintiff and judgment entered accordingly.

It is true that in the complaint there was an al-

legation to the effect that the defendant, Henry Ungrich, Jr., was the owner of the premises (see Complaint, page 673, fol. 2019). That allegation, while true so far as the *record title* to the premises was concerned, was a wholly unnecessary averment. The plaintiff's right to recover in no way involved or depended upon the ownership of the premises, but wholly and solely upon the question of his employment by the defendant to render such services.

Such being the issue presented, the judgment in the plaintiff's favor in no way established the question of the ownership, nor, we submit, does it in any way prevent recovery by the plaintiff in this action.

Besides, at the time of the rendition of the services for which the recovery was had, the plaintiff was not aware of the facts upon which his right to recover in the case at bar is based. Even if he had such knowledge, it would not, we submit, prevent him from accepting employment as an architect, or preclude him from recovering for such services, except upon condition that he forfeit his right to redress for the wrongs he had suffered at his brother's hands.

Point VI.

The order of the Supreme Court directing the payment to the plaintiff of the income to which he was at all events entitled in no way estops him from maintaining this action.

The defendants' contention under Point VIII of their Brief, that by applying in this action for an order directing the defendants to pay

over to him the income then in their hands derived from the investments that the defendants had made of his share, the plaintiff estopped himself from maintaining this action, is absolutely without any legal basis (Appellants' Brief, page 127).

Under the will the plaintiff was entitled to the income of one-half of the estate for life. By the manipulations of the defendants the principal of the trust fund created for his benefit was at the time of the commencement of this action, and now is, evidenced by the mortgages, aggregating \$78,500, on the premises in question executed by Davenport, the dummy, at the time of the transfer of the property in question.

There never has been any question but that the plaintiff was entitled to receive the income on at least the sum of \$78,500 under the trust created for his benefit by the terms of the will.

When this action was commenced, however, the defendants refused to pay him even the amount of income concededly and at all events due to him. The plaintiff being without other adequate means of support, applied to the Supreme Court for an order directing the payment of the income concededly due. His application was granted and an order made directing payment of the income without prejudice.

On appeal to this Court the order was modified by striking out that it should be without prejudice, and as modified, was affirmed.

How the order made can in any way foreclose the plaintiff from receiving justice at the hands of the Court, it is impossible to conceive.

Nor can the application for the order in any way be held to be a ratification of the illegal proceedings or to in any way operate as an estoppel. At the time of the application this action was pending, evidencing an intention on the part of the plaintiff not to ratify but to avoid the transaction. The de-

fendants were fully apprised of his position and could not have been in any way misled to their prejudice.

Point VII.

The general release executed and delivered by the plaintiff to the defendant, Henry Ungrich, Jr., is no bar.

Under Point IX of their brief the appellants assert that the execution and delivery by the plaintiff to the defendant, Henry Ungrich, Jr., of the general release (see Ex. 65, page 637, fol. 1910), is a complete bar and estoppel to the maintenance of this action (see Appellants' Brief, page 129).

It is sufficient to say that this release was part and parcel of the general fraudulent scheme and transaction avoided by the judgment in this case. It was obtained from the plaintiff at the time of the payment to him of the sum of \$6,000 in alleged settlement of his interest in the personal property left by his father. It was signed by the plaintiff without reading and upon the statement made to him by the attorney that it was mere matter of form.

See testimony of Martin Louis Ungrich, pages 414-415, fols. 1241-1245.

Being part and parcel of the illegal transaction and having been obtained wholly and solely for the purpose of enabling the defendant, Henry Ungrich, Jr., to escape from the consequences of his iniquitous deal, the contention of the defendants that it precludes the plaintiff from obtaining justice, we

confidently believe, will not receive any consideration in this Court.

Wilcox v. Howell, 44 N. Y., 398.

Bridger v. Goldsmith, 143 N. Y., 424.

Braine v. Rosswog, 13 App. Div., 249.

Eitel v. Bracken, 38 N. Y. Supp., 7.

Point VIII.

No error was committed in the legal theory adopted in making up the judgment. (Appellants' Brief, page 131).

NO QUESTION WAS RAISED IN THE TRIAL COURT, NOR IS ANY QUESTION RAISED BEFORE THIS COURT, AS TO THE NECESSITY FOR AN ACCOUNTING TO DETERMINE THE AMOUNT DUE.

In fact, there was no need for a reference, as the amounts of receipts and expenditures were testified to without contradiction on the trial, and it was a mere matter of mathematical calculation to arrive at the sums to which the plaintiff was entitled.

By reference to the schedules in the appendix to this brief this Court will see that the account has been adjusted on perfectly proper and legal principles and charges the defendant only with such amounts as they should legally and properly be called upon to pay.

The only objections urged are, in fact, to the theory upon which it was made up in the following particulars:

(1). THAT THE COURT ERRED IN RENDERING A JUDGMENT AGAINST THE DEFENDANT, MARTIN UNGRICH, AS THE PLAINTIFF PROCEEDED ON THE THEORY THAT HE WAS ENTITLED TO THE PROCEEDS AND BENEFITS RE-

CEIVED FROM THE SALE, AND THEREBY AFFIRMED THE TRANSACTIONS RESULTING IN THE SAME.

(2). THAT THE JUDGMENT SHOULD HAVE DIRECTED AN ACCOUNTING BY THE DEFENDANT, HENRY UNGRICH, JR., TO THE DEFENDANTS AS TRUSTEES, AND THEN DIRECTED THE PAYMENT BY THEM, AFTER SUCH ACCOUNTING, OF THE MONEYS COMING INTO THEIR HANDS TO THE NEW TRUSTEE SUBSTITUTED BY THE COURT.

(3). THAT THE SUPREME COURT HAD NO POWER TO REMOVE THE DEFENDANTS, AND THAT IF IT HAD SUCH POWER, ITS POWER WAS CO-ORDINATE WITH THE POWER OF THE SURROGATE'S COURT IN THAT REGARD, AND THE COURT SHOULD HAVE REMITTED THE PLAINTIFF TO THAT TRIBUNAL FOR THE REMOVAL OF THE DEFENDANTS AS EXECUTORS AND TRUSTEES.

(4). THAT THE COURT SHOULD NOT HAVE CHARGED THE DEFENDANTS WITH INTEREST AT 6% ON THE AMOUNT FOUND DUE AS THE TRUST FUND CREATED FOR THE PLAINTIFF'S BENEFIT.

***First.*—The objection that judgment was improperly awarded against the defendant, Martin Ungrich, is not well taken.**

The action is in equity against both of the executors and trustees in respect to an illegal transaction in which they were joint actors. It is true, the defendant, Henry Ungrich, Jr., personally received the profits of the illegal barter and sale. Nevertheless, it was not only by the acquiescence and consent of the defendant, Martin Ungrich, but by his active participation, that Henry Ungrich, Jr., was enabled to do so.

The proceeds received from the sale were, in theory of law, assets of the estate and impressed with the trust in the plaintiff's favor created by the terms of

the will. Being assets of the estate, both of the defendants were chargeable with their custody and control, and if the defendant, Martin Ungrich, permitted his co-executor and trustee to retain sole possession thereof, he cannot escape liability when called to account.

The Court below, as a court of equity, had the right to mould the relief to the exigencies presented, for the purpose of doing full and complete justice.

Second.—**Nor is there any merit in the contention that the Court should have directed an accounting by the defendant, Henry Ungrich, Jr., to the defendants jointly as executors and trustees, and only after such an accounting and payment of the sum found due to the defendants, require them to pay over the trust funds to the substituted trustee.**

It would seem that this objection by the defendants is absolutely one of form rather than of substance. All of the parties concerned were before the Court. It would, therefore, have been a hollow ceremony for the Court to direct the defendant, Henry Ungrich, Jr., to account to himself and his co-trustee, and after such accounting direct the defendants to pay over the trust funds to the substituted trustee.

As we have said, this is not a case where the co-executor and co-trustee was an innocent party, but a case in which the evidence conclusively shows that he was an active participant in the consummation of the transaction adjudged to be illegal and void.

In contemplation of law the assets of the estate were, or should have been, in the hands of the defendants as trustees. It is not for the Court to devise ways and means to enable them to obtain pos-

session of trust funds of which they should have the possession, as the legal custodians.

Tillinghast v. Merrill, 151 N. Y., 135.
People *ex rel.* Dannat v. The Comptroller, 77 N. Y., 245.

The objection urged is wholly without merit.

***Third.*—Nor is there any merit in the contention that the power to remove the defendants as executors and trustees is vested in the Surrogate's Court alone, or that that Court, having co-ordinate powers with the Supreme Court, should have been appealed to for the removal.**

We do not question the power of the Surrogate's Court in a proper case to remove executors and trustee. But, we submit, there can be no question of the right of the Supreme Court to exercise a like power.

The proceeding in the case at bar is an action in equity to compel the restitution of profits received through an illegal transaction, and as an incident thereto and as part of the relief demanded, to remove the defendants as executors and trustees.

There may be some question whether over such an action the Surrogate's Court would have jurisdiction.

But whatever may be the jurisdiction of the Surrogate's Court, there can be no question of the jurisdiction of the Supreme Court to entertain the action and award the relief sought, and as an incident thereto, remove the defendants as trustees and appoint new trustees in their place.

If the defendants were now acting simply as executors, then there might possibly be some ground for the defendants' contention. *but, so far as appears, their duties as executors are wholly at an end, and they have accounted and been discharged as such.*

THEY NOW ARE ACTING WHOLLY IN THEIR CAPACITY AS TRUSTEES OF THE TRUST FUND CREATED FOR THE PLAINTIFF'S BENEFIT, AND IT IS THE CUSTODY OF THAT FUND WHICH HAS BEEN TAKEN FROM THEM AND PLACED IN THE HANDS OF A NEW AND SUBSTITUTED TRUSTEE.

That the Supreme Court has power to and will remove trustees and appoint others in their place under such a state of facts as is disclosed by the record before this Court cannot be denied.

Quackenboss *v.* Southwick, 41 N. Y., 117.

Matter of McGillivray, 138 N. Y., 308.

Matter of Havemeyer, 3 App. Div., 519.

Disbrow *v.* Disbrow, 46 App. Div., 111.

Walton *v.* Collins, 56 N. Y. Sup., 145.

Matter of Mallon, 38 Misc., 27.

***Fourth.*—No error was committed in charging the defendants with six per cent. on the amount found due.**

Annexed to this brief are schedules designated A, B and C, which show the theory upon which the amounts contained in the judgment entered in this action were arrived at.

Generally it may be said that the defendants have only been charged with interest on net amounts found due from them (after deducting all just credits and off sets by way of disbursements for betterments, commissions, etc.) *from the time the amounts found due should have been paid into the trust fund created for the plaintiff's benefit.*

For instance, by reference to SCHEDULE B it will be seen that interest on the proceeds of the sale of No. 443 Pleasant Avenue has been calculated from the day of the sale, by the defendant, Henry Ungrich, Jr., viz.: July 22, 1903. It will also be seen that interest on the proceeds of the sale of 208 East 126th Street has been calculated from the day of the sale, April 22, 1903.

By reference to SCHEDULE C it will be found that interest on the proceeds of the sale of the Lenox Avenue property has only been calculated from the day of the sale, July 2d, 1906.

In other words, interest at 6% has only been charged from the date of the receipt by the defendant, Henry Ungrich, Jr., of the moneys realized from the sale of the premises, and one-half of which under the terms of the will should have been invested for the plaintiff's benefit and of the income from which the plaintiff has been deprived by the wrongful act of the defendants.

Under the authorities, interest at the legal rate of 6%, we submit, was properly computed.

Matter of Myers, 131 N. Y., 409.

Cook v. Lowry, 95 N. Y., 103.

The further objection that by striking a balance as due to the plaintiff on June 1st, 1906, of \$6,365.09 and then giving interest on that amount from June 1st, 1906, to May 12, 1908, at 6%, error was committed, is equally unfounded.

By reference to Schedule C it will be found that the sum of \$6,365.09 was fixed as the income from the property, less expenses from June 1st, 1902, to June 1st, 1906. Interest on the amounts so found due was thereafter calculated and allowed at 6% from June 1st, 1906, to March 2, 1908, amounting to \$668.33. (See Schedule C.)


The plaintiff certainly was entitled to the sum of \$6,365.09 on June 1st, 1906, and being absolutely entitled on that date to that amount, there would seem to be no reason why he should not have interest at the rate of 6% thereafter.

In the adjustment of accounts interest on annual rests is frequently, if not customarily, allowed. In any event, the amount is trivial.

Point X.

**The judgment should be affirmed,
with costs.**

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Schedule "A."

STATEMENT SHOWING CORRECT AMOUNT OF TRUST
FUND WHICH SHOULD BE SET APART FOR THE PLAIN-
TIF UNDER THE WILL.

PROCEEDS OF SALE OF REAL ESTATE.

Sale of 208 E. 126th Street,	\$18,500
“ 443 Pleasant Avenue,	19,500
“ Lenox Avenue property,	250,000
	<hr/>
	\$288,000
Less value of building on Lenox Avenue property and commissions on sales as shown below,	27,749.11
	<hr/>
Net proceeds,	\$260,250.89
One-half of which sum plaintiff is en- titled to have placed in trust for his benefit,	130,125.45
Plaintiff is also entitled to have the fund in the Knickerbocker Trust Company placed in trust for his benefit,	3,224.11
	<hr/>
Total,	\$133,349.56

DETAILS OF CREDITS ALLOWED ABOVE.

Commission on sale of 208 E. 126th Street,	\$185.00
“ 443 Pleasant Avenue,	195.00
“ Lenox Avenue property,	2,500.00
Cost of Building 107 West 124th Street, known as Lenox Avenue property,	24,869.11
	<hr/>
	\$27,749.11

Schedule "B."

STATEMENT OF INCOME FROM PROPERTY, LESS EXPENSES, FROM JUNE FIRST, 1902, TO JUNE FIRST, 1906.

Payments.	
Received rents, 1902 to 1903,	\$9,193.35
" 1903 to 1904,	8,300.00
" 1904 to 1905,	8,761.00
" 1905 to 1906,	10,025.60
	<hr/>
	37,279.95
Interest on \$19,500 from July 22, '03, to June 1, 1906, at 6%	3,344.25
Interest on \$18,500 from April 22/03 to June 1/06	3,456.42
	<hr/>
Total,	6,800.67
	<hr/>
Grand Total,	\$44,080.62
Less disbursements on property as shown below,	12,904.41
	<hr/>
Total net income received by defendants,	\$31,076.21
Plaintiff's share of same, to wit: One- half,	\$15,538.10
Less income paid to plaintiff from 1902 to 1906,	9,840.00
	<hr/>
Balance,	\$5,598.10
In addition plaintiff is entitled to interest on \$3,000 from February 27, 1902, to June 1, 1906, at 6%	766.99
	<hr/>
Total amount due to plaintiff on June 1, 1906,	\$6,365.09

Schedule "C."

STATEMENT OF INCOME FROM THE PROPERTY FROM
JUNE FIRST, 1906, TO MARCH 2, 1908 (BEING DATE OF
SUBMISSION OF CASE).

Interest on \$19,500, June 1, 1906 to March 2, 1908, at 6%	\$2,047.50
Interest on \$18,500, June 1, 1906 to March 2, 1908, at 6%	1,942.50
Interest on \$250,000, June 1, 1906, to March 2, 1908, at 6%	25,000.00
Total interest,	<hr/> \$28,990.00
Of which plaintiff is entitled to one-half as his share, or	\$14,495.00
Plaintiff is also entitled to interest on the sum of \$3,224.11 in the Knicker- bocker Trust Co. from June 1, 1906, to March 2, 1908, at 6%	338.55
Plaintiff is also entitled to interest on amount due plaintiff on June 1st, 1906, as per previous statement, amounting to \$6,365.09, from June 1, 1906, to March 2, 1908, at 6%	668.33
Total,	<hr/> \$15,541.86
Amount of income as per previous state- ment due plaintiff on June 1, 1906	6,365.09
Total,	<hr/> \$21,866.95
Less amount of income paid plaintiff June 15, 1907, under order of the Court,	<hr/> 2,919.20
The total amount of income with which defendants are chargeable, to date,	\$18,947.75

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The Evening Post Job Printing Office, 156 Fulton St., N. Y.

New York Supreme Court,

APPELLATE DIVISION, FIRST DEPARTMENT.

MARTIN L. UNGRICH,
Plaintiff-Respondent,

AGAINST

HENRY UNGRICH, JR., and
MARTIN UNGRICH, individu-
ally and as executors of and
trustees under the last will
and testament of Henry
Ungrich, deceased,
Defendants-Appellants.

} Appellants' Brief
in Reply.

I.—There are many statements of alleged facts in the respondent's brief that have absolutely no basis except in the imagination of the party that wrote it.

(a) The statements on page 12 thereof that the appellant Henry Ungrich, Jr., was fully conversant with the value of the real estate of the testator, and that he was not above taking advantage of the position in which he was placed as a member of his father's household; and the statements on page 13 thereof that the financial stress of the plaintiff and his unfortunate habits were both availed of to accomplish the purpose of the defendant Henry Ungrich to obtain title to the real estate of which his father died seized, which constituted the great

bulk of the estate, and that the defendants were greatly aided by the co-operation of an attorney who had acted as attorney for the testator prior to his death, and who was also the attorney for the executors and trustees; and who also acted as attorney for the plaintiff, during the time the iniquitous transaction complained of was being put through, and that by virtue of the confidence of the plaintiff in this attorney and his reliance upon him, the appellant Henry Ungrich, Jr., was able to obtain conveyances to himself of the entire real estate for the sum of \$157,000, a wholly insufficient consideration, and that said appellant was further able to obtain deeds and releases *ad infinitum* to bolster up and support acts, of the illegality of which both he and the attorney were manifestly only too conscious, and that actual negotiations for the transfer of the real estate began in the month of February, 1902, when both of the defendants and the attorney met the plaintiff at the office of the attorney; and the statements at page 14 thereof that at this meeting, in order to give some color of fairness to the transaction, it was suggested that an appraisal be made and the name of a real estate man, Philip H. Smyth, was mentioned, are absolutely without any support whatever in the record, and no attempt is even made to refer to any folios of the record that substantiate such statements.

(b) There is a modicum of truth in the statement on page 14 thereof that there was no proof that the appraisal of \$152,000 made by Philip H. Smyth was made by him, and he was not called as a witness to testify to that fact. It is true that he was not called as a witness. It is a well-known fact that Philip H. Smyth is dead. Proof of his death was not offered on the trial because it was tacitly conceded by all parties.

The statement, however, that there was no proof that the appraisal was made by Mr. Smyth is unqualifiedly untrue. At folio 800 the witness Dem-

arest testified, "I said to him (Henry Ungrich, Jr.), " ' You must obtain the market value of the property when you sell it,' and I suggested the name of Philip H. Smyth, and asked them if that would be satisfactory. I asked them if they knew him personally, or were interested in any way with him, and they said that they did not, and directed me to get an appraisal from Mr. Smyth. *Such an appraisal was procured from Mr. Smyth, to my knowledge.* (Papers shown to witness.) *The papers you now show me are the papers which I received as the appraisal from Mr. Smyth.* The papers were shown to Mr. Martin Louis Ungrich, the plaintiff, by me. He was present at the meeting. I cannot swear that I saw him read those papers. They were handed to him in my office." The papers were then received in evidence as Exhibits 1, 2 and 3, and those are the appraisals. If this is not proof that the appraisal was made by Mr. Smyth then we do not understand the English language. We certainly cannot understand how counsel can make such statements in a printed brief before this Court.

(c) The statement on page 15 that the written approval of the plaintiff was obtained through representations as to the fairness of the price agreed to be paid is absolutely without support in the evidence. Reference to the case on appeal at the folios cited to uphold such a statement will show that there is absolutely nothing therein warranting the incorporation of such a statement in the brief.

The statement on page 15 that the price agreed to be paid was nearly \$50,000 under the real value in 1902 is based simply and solely on the testimony of two hired experts whose hindsight was marvelous. It is opposed to the testimony to which we have adverted at pages 20-22 of our brief in chief. A finding based thereon is against the weight of evidence in this case.

The statement on page 15 that the fact that this

property was worth \$207,000 in 1902 was not known to the plaintiff is without any evidence in the record to substantiate it. There is no attempt made to quote any portion of the record that it is claimed does substantiate it. The statement on that page that the plaintiff did not have the means necessary for the hiring of an appraiser and never had any appraisement made, but relied wholly on the statements and representations made to him at the time, is also without any evidence to sustain it. As we pointed out on page 22 of our brief in chief, it was proved beyond peradventure that this appraisal was shown to the plaintiff and was read by him; that he read the several amounts thereon, knew of them and showed them to the defendant Martin Ungrich (fols. 800-801, 877, 878 and 1202-1203); that the different prices that each of these parties had then obtained on these properties was discussed among them, and that the defendant Henry Ungrich, Jr., gave his at \$128,000 to \$130,000; the defendant Martin Ungrich his at \$150,000, and the plaintiff his also at \$150,000 (fols. 809-810; 1021 and 1114). The defendants showed by the plaintiff's own testimony and his letters (*e. g.*, Exh. 81; fols. 2178-2179) that the plaintiff had endeavored to procure purchasers of the property and that the highest offer that he had received for the whole three parcels was between \$140,000 and \$150,000 for all, which was to be half cash and the balance mortgage at four to four and one-half per cent. (Exh. 80; fols. 2176-2178). Plaintiff's counsel refers to the testimony of the plaintiff at folio 1230 to substantiate these statements. All that the plaintiff there says is that he did not remember ever having seen these appraisals. At folio 1238, however, he admitted that the figures had been read to him. He admitted, moreover, that he had agreed to and tried to get an appraisal made of the property, and that the appraisals cost so much that he had not got them. He did not deny the testimony of the defendants that he stated that he himself had an appraisal (fol.

1114), and that that appraisal was \$150,000). Testimony was also given that was not contradicted that *he urged his brother to pay more for the Lenox avenue property than the appraised value because it had a future* (fol. 1022). Undisputed testimony was also given that when the appellant, Henry Ungrich, Jr., said he was willing to buy the property although he thought such appraisals were high (fols. 805, 874-875, 1111-1112 and 1186-1188), that the attorney Demarest, said that it would not be proper to transfer the property to one of themselves, and that thereupon the plaintiff said, "*Well, I am the principal party in interest and if I want to have it, I do not see why he could not have it*" (fols. 805 and 1180-1181). Thus not only is there no warrant in the record for these statements, but the record shows the facts to be directly contrary thereto.

(d) The statement on page 16, that it was wholly in reliance upon the statements of his brother and of the attorney that the plaintiff signed whatever they put before him without reading or appreciating their contents or effect, is also without basis in the record.

The counsel for the plaintiff in what he says at the last paragraph of page 16, and which is carried over to the top of page 17, omits reference to the fact that the plaintiff himself urged his brother to pay more for the Lenox Avenue property than the appraised value *because it had a future* (fol. 1022). This testimony was not denied by the plaintiff. Plaintiff's counsel also studiously omits any reference to the fact that the defendant Martin Ungrich testified, and he is not contradicted by the plaintiff, that he had previously *advised the plaintiff against selling this property* to the defendant Henry Ungrich, Jr., *telling him that he thought the property had a future* (fols. 1095-1096).

(e) The appellants have fully covered the questions discussed on page 17 and at top of page

18 of the respondent's brief, in what they have said at pages 97 and 98 of their brief in chief.

(f) Except to say that there is no evidence in the record whatever to justify the statement, on page 19 thereof, that a promise on the part of the defendant Henry Ungrich, Jr., to pay the plaintiff \$7,500 in full of all claims against the personal property of the decedent was held over the plaintiff's head during all the time that urgent request was being made for his consent to a sale of the real estate, and that the statement, also on page 19, that there were machinations of the appellants to extort money from the plaintiff under every and any pretext, is utterly without foundation to be found in the record, and to call the attention of the Court that no attempt is made to cite portions of the record to substantiate such charges, the appellants desire to say nothing more in relation to what is said at pages 18 and 19 of the respondent's brief than what they have said at pages 19, 33, 34, 129 and 130 of their brief in chief. The plaintiff made the attorney Demarest his own witness in regard to his transactions with Demarest, and procured from him testimony that he had either asked for, or the plaintiff had volunteered to pay, \$500 for his services in bringing about the payment by the defendant Henry Ungrich, Jr., to the plaintiff of the \$6,000, and that Demarest had either asked for or the plaintiff had volunteered to pay him \$50 for his services in collecting and transmitting the plaintiff's income to him. Whatever account of these transactions between the plaintiff and the defendants may appeal to the Court, the same result must be arrived at, that the plaintiff knowingly and willingly paid these amounts to Demarest, and that these payments were, as shown by Plaintiff's Exhibit BBB (fols. 1669-1674), unknown to the defendants, and therefore the fact of such payments is something for which the defendants cannot in any manner be criticized. The plain-

tiff's testimony that at the time the parties met at the reading of the testator's will his brother had said there was \$25,000 personal estate, and that subsequently his brother had agreed to give him \$7,500 for his share of it, and later paid him \$6,000 for his share of it, is so inherently improbable as to be utterly incapable of any belief. The plaintiff's denial that he had complained of his father in his lifetime giving \$25,000 to his brother, and that he desired to have some part of the money, and that Demarest had persuaded his brother, in view of the plaintiff's claim of reformation and desire to buy a little home, to pay him some \$6,000 to buy it, and that he had therefor executed and delivered to the defendant Henry Ungrich, Jr., the general release which specifically releases his brother from any and all claims that he might have on account of the father's assignment of such a mortgage to his brother, is so inherently improbable that it is utterly incapable of belief. The testimony of the defendant Henry Ungrich, Jr., and of Demarest, and the evidence of the general release itself is so cogent, and the plaintiff's character is shown to be so bad, and inasmuch as the inventory of the estate shows a personal estate of only eleven thousand odd dollars, and as the accounts filed by the defendants in the Surrogate's Court charge themselves with only the amount of the inventory, and as those accounts were followed by decrees confirming the same and discharging the defendants in relation thereto, and as the general release specifically releases his brother from any and all claims arising out of the father's assignment of these mortgages, the plaintiff's story, referred to on these pages of the respondent's brief, is shown to be utterly and inherently improbable and untrue. If the plaintiff's story were true, the personal estate would have amounted to nearly \$37,000. Moreover, he would not have been entitled to any part of it. He could not ask the defendants to give him a single cent of it. Nearly \$18,000 of it would belong to the trust estate to be-

held by the defendants for his benefit for life, and the remainder after his death would belong to the appellant Henry Ungrich, Jr. He would not have been seeking for that money to be paid to him, unless there was some such claim as he advanced to an equitable allowance on account of some gift by his father in his lifetime to his brother, and which his brother, under the circumstances, saw fit to settle with him, for this sum of \$6,000. It could not possibly be based upon any withholding of the personal property belonging to the estate.

II.—Despite the exposition of conflicting testimony, and the demonstration of the weight of evidence in relation thereto being in favor of the appellants, and the exposition of uncontradicted undisputed evidence set forth on pages 20 to 28, 31-34, 37-47, 92-106, 108-110, 115, of the appellant's brief in chief, statement is made on page 25 of the respondent's brief that the findings of fact numbered "Fifteenth," "Sixteenth," "Seventeenth," "Eighteenth," "Nineteenth," "Twentieth," "Twenty-first," "Twenty-second" and "Twenty-third" are supported by practically undisputed proof, both oral and documentary.

III.—There is nothing in the decision in *Welch v. Polley*, 177 N. Y., 117, which in any way upholds the incongruous and inconsistent judgment which has been rendered herein. All that that case holds is that where a trustee has converted trust funds to his own use and invested the same in the purchase of property, and thereafter becomes bankrupt, and a trustee in bankruptcy is appointed, the beneficiary of the trust may in equity follow the proceeds of the property so purchased into the hands of the trustee in bankruptcy who has no greater right against her than the bankrupt, her trustee, possessed, had he remained solvent, and that the other creditors have no claim which can be proved to be derived from

and belong to the trust for the plaintiff's benefit. The basis of the recovery in that action was the proof that the bankrupt trustee had invested the trust funds in property, and that the proceeds of that property had come into the hands of his trustee in bankruptcy. Really, the decision in that case, is authority for our contention that the judgment in this case, as far as it holds the defendants jointly and the defendant Martin Ungrich at all, for the proceeds of the sale by the defendant, Henry Ungrich, Jr., of the Lenox avenue property, is illegal and inconsistent, by the very theory upon which the cause of action is based.

IV.—We contend primarily that the plaintiff, having been a moving spirit and factor in the sale by the trustees, through a dummy to one of their own number, the burden was not upon the defendants of showing ratification or acquiescence on the part of the plaintiff after the discovery by him that the property was worth more than what he or anybody else thought it was at the time of its sale. If, however, such burden of proof was upon the defendant, we contend that it was fully and fairly met by the evidence which we pointed out in the third and fourth points on our brief in chief.

The statement is made at the bottom of page 30 of the respondent's brief that the plaintiff was shown to have had absolutely no knowledge of the real value of the property belonging to the estate, while the defendant Henry Ungrich, Jr., was fully cognizant of the value of the property and the income derived therefrom. There is absolutely no evidence that the plaintiff had no knowledge of the real value of the property. There is absolutely no proof that the defendant Henry Ungrich, Jr., was fully cognizant of the value of the property. On our brief in chief we have demonstrated that the plaintiff had equal knowledge with the defendants of the value of this property, and the income derived therefrom; that the defend-

ants had no superior knowledge in relation thereto; that the parties agreed to have an appraisal made by Smyth, and Smyth made an appraisal. That the plaintiff tried to get a purchaser for the property, and the highest offer he got therefor was between \$140,000 and \$150,000 for all the property, which was to be half cash and the balance mortgage from four to four and one-half per cent. (Exhs. 80 and 81, fols. 2176-2178-2179). When the parties met at the lawyer's office to discuss the purchase of the property by the appellant Henry Ungrich, Jr., the lawyer informed all the parties that the executor could not purchase.

Thereupon the plaintiff said, "Well, I am the principal party in interest, and if I want to have it I do not see why he could not have it" (fols. 805-1180-1181). The plaintiff does not deny in his testimony that he made this statement. Thereupon the lawyer very properly concurred in this correct statement of the law by the plaintiff, and said that they must have appraisals of the property made, and that an appraisal should be had by somebody who was disinterested, and John F. B. Smyth was selected. This appraisal was shown to and read by the plaintiff. He admits that the figures thereon were read to him. He stated at this meeting when the appraisal was either shown to, read by or to him, that he had had the property appraised at \$150,000. The defendant Martin Ungrich stated that he had an appraisal at the same amount. The defendant Henry Ungrich, Jr., gave his appraisal at \$128,000 to \$138,000. The plaintiff did not deny that he had stated that he had the appraisal (fols. 1114, 800-801, 878, 1202-1203, 809-810 and 1021). Thereupon the appellant, Henry Ungrich, Jr., stated that he was willing to buy the property, although he thought that such appraisals were high (fols. 805, 874-875, 1111-1112 and 1186-1188). Thereupon Martin Ungrich said that he would have to pay \$5,000 more than the appraised value therefor, and he would have to take all the

property or none. Thereupon the plaintiff expressed himself satisfied with the price realized for the property, and thereupon the contract was drawn, and then the attorney said to the plaintiff if this was all right he would endorse it "*Contract approved by me,*" and the plaintiff should sign it. The plaintiff then replied he would write those words on the contract itself while the lawyer was writing them on the other copy, and the plaintiff thereupon did so (fols. 813-814, 812, 1689-1692, 1981-1983, and 1114). Herein was shown an equal knowledge by all these parties of the conditions of this property. Nowhere was there shown any superior knowledge of the conditions of the property in the defendants over the knowledge that the plaintiff had in relation thereto. The respondent says at the top of page 31 of his brief that it was incumbent upon the defendant Henry Ungrich, Jr., to inform the plaintiff of all the facts known to him, and that the defendant Henry Ungrich, Jr., did not do so. Well, what facts did he know? The record is barren of any facts that he should have disclosed to the plaintiff. He did not know that he would subsequently sell this property for \$100,000 advance over the appraised value thereof. All that the record shows is that he believed that the property had a future. The record is barren of a statement by him to the respondent that he did not believe the property had a future, but the record contains proof, as we have already pointed out, that the plaintiff himself had urged the appellant, Henry Ungrich, Jr., to pay this increased price that the defendant Martin Ungrich had insisted should be paid by him, because the Lenox avenue property did have a future (fol. 1022). The testimony that the plaintiff had so urged the defendant Henry Ungrich, Jr., stands uncontradicted on the part of the plaintiff. The testimony was also offered that previous to the reading of the Smyth appraisal, that the defendant Martin Ungrich had advised the plaintiff against selling this property to the defendant Henry Ungrich, Jr., inasmuch as he thought

that the property had a future (fols. 1095-1096). The plaintiff nowhere denies that this advice was given to him by the defendant Martin Ungrich. So that the only fact and circumstance disclosed in this record in relation to this property, of which the plaintiff did not know, was that the property would sometime in the future bring the price that it did. That was really what the plaintiff's counsel means by this statement at the top of page 31 of his brief. That is all that he can mean from this record. There is no evidence whatever that the defendant Henry Ungrich, Jr., knew that the property would bring that price in the future. All the evidence discloses is that he thought the property had a future, but so did his co-defendant and so did the plaintiff.

The plaintiff's counsel on this page of his brief states that the defendant Henry Ungrich, Jr., represented to the plaintiff that the sum of \$157,000 was more than the true value of the property, and that, in reliance upon this representation, the plaintiff agreed to the transfer. He cites folio 590 of the case to substantiate this statement. That is the Sixteenth finding of fact. Nowhere in the record is there any evidence to substantiate this Sixteenth finding of fact. Nowhere is there any proof given that Henry Ungrich, Jr., made any such representation. Nowhere is there any evidence that the plaintiff relied upon any such representation. It is a finding of fact without evidence to sustain it, and the counsel for the respondent cannot point to any single folio of the record, containing testimony, documentary or oral, which substantiates that finding.

The Eighteenth finding of fact which is then adverted to, is also without anything contained in the record to substantiate it. The respondent's counsel says that these findings are in direct accordance with and fully supported by the proof, but as is customary with him, he fails to refer to any single folio of the record, containing evidence, documentary or oral, which does substantiate it. We challenge the citation of any such evidence.

The same remarks apply to the Nineteenth finding of fact quoted by him at length at page 32 of his brief.

V.—The facts show that the plaintiff was a moving spirit and factor in this sale. There is nothing in the letters, extracts from which are quoted on pages 33, 34 and 35 of the respondent's brief, which is in any way inconsistent with our claim that the plaintiff was a moving spirit and factor in this sale by the executor through a dummy to one of their own number. The plaintiff had shortly after the death of the testator complained of the irregularity of his income. The letter of May 22, Exhibit NN, page 505, which was written by the defendant Henry Ungrich, Jr., to the plaintiff shows this. The testimony of the defendants and their witnesses that he had so complained of the irregularity of his income; that he never knew where he was coming out; that the repairs in the property were too great and were increasing and had expressed a desire to know definitely what his income would be, and to have some definite income fixed by the property being divided and the real estate sold (fols. 797-853, 854, 1014, 1015, 1017 and 1179-1180), stands uncontradicted by him. The appellant Henry Ungrich, Jr., felt the same desire to have it put upon a definite basis and himself offered to purchase the Lenox Avenue property, and then the attorney told them all that one of the executors could not lawfully purchase the property, and the plaintiff then said that as he was the only person interested in it, if he was willing, he did not see why it could not be done, and then the executor told them all to get appraisals made and asked them whether an appraisal by John F. B. Smyth would be satisfactory to them, as that of a disinterested party, and they acquiesced therein, and the appraisal of Smyth was procured, and the plaintiff had theretofore tried to sell the property and could not get an offer anywhere near approaching

the amount of the appraisal by Smyth, and had had the property appraised at less even than Smyth's appraisal, and the other executor had had the property appraised at the same amount that the plaintiff stated his appraisal was, and then the appellant Henry Ungrich, Jr., had offered to purchase one of the pieces of property and was told by his co-executor that if he wanted any he would have to take all, and he would have to pay \$5,000 more than Smyth's appraisal, and acquiesced therein, and the plaintiff then expressed himself as satisfied with the sale and the price realized, and he himself wrote on the contract made by the executors with the dummy, in his own handwriting, at his own volition, the words "Contract approved by me," and signed his name thereto. These facts show that the plaintiff was unquestionably a moving spirit and factor in the sale, and nowhere in the brief of the respondent is there anything pointed out which shows the contrary. Certainly the letters quoted do not.

VI.—Despite the evidence at folios 915-916, 916-920, 825-1908, 1006-1007 and 1962-2011, the counsel for the respondent says, on page 37 of his brief: "It appears by the uncontradicted proof that the plaintiff never examined the accounts presented by the executors for settlement to the Surrogate," and quotes folio 1258 to substantiate this statement. The testimony there is: "I got a citation paper once, about the time they were proposing to get things ready for the Surrogate. Which time it was I cannot recollect. I did get a citation. I have no recollection whether I got another citation. This paper was served on me in Mr. Demarest's office. Yes, sir; I had a copy of that paper. Mr. Demarest said: 'It is no use for you to go over there with me,' he said, 'to the Surrogate's office.' I didn't go over there. Mr. Demarest said it was not necessary for me to go over. I didn't ask him."

The learned counsel for the respondent also says therein: "The only notice that he had of those proceedings was the service upon him in the office of the attorney, James Demarest, of a citation, which paper, after formal service upon him, was handed back to Demarest." No portion of the record is cited to uphold this statement. None can be found.

VII.—We desire to add nothing else in answer to the Fourth Point of the respondent's brief to what we have said, except to refer again to what we have said in the Sixth Point on our brief in chief.

VIII.—In relation to Point V on the respondent's brief, we desire only to call attention to the fact that the time of the commencement of that action therein referred to was contemporaneous with the time of the commencement of this, so that the plaintiff certainly cannot claim not to have had full knowledge of every alleged fact of which he complains in this suit at the time he instituted that suit.

IX.—Point VI of the respondent's brief is fully covered by Point VIII of our brief in chief.

X.—In regard to the statement, on Point VII of the respondent's brief, that the general release was not read by the plaintiff, and that he signed it upon the statement made to him by the attorney that it was a mere matter of form, we desire the Court to refer to the folios therein cited to see if the testimony therein contained substantiates this statement. We confidently affirm that it does not. Moreover, there is absolutely no basis for the statement in that point that this general release was part and parcel of a general fraudulent scheme and transaction which was avoided by the judgment in this action. Finally, the release is not avoided.

The fact of its execution is found in the thirty-fifth request to find (fols. 484-486).

XI.—The very argument of the respondent in the Eighth Point of his brief lends additional force to the argument of the appellant that the judgment herein is inconsistent with any legal theory. Primarily, that argument is convincing in favor of the position of the appellants that a judgment charging the defendants jointly and in their representative capacity, and the defendant Martin Ungrich individually, with the amount of the profit that the appellant Henry Ungrich, Jr., realized on the sale of the Lenox Avenue property, is, as we have contended in our brief in chief, inconsistent with any possible theory of law.

What the two cases of *Tillinghast v. Merrill*, 151 N. Y., 135, and *People ex rel. Draper v. Pinkerton*, 77 N. Y., 245, have to do with anything of any question involved in this case, passes the understanding of the counsel for the appellants. In the next place, the contention of the respondent, at pages 47 and 48 of his brief, that the judgment removing the defendants as trustees is warranted because, as executors, they have acted and been discharged as such, and that the fund in their hands is held by them as testamentary trustees, necessarily carries with it the result that the accounting in the Surrogate's Court which discharged them as executors, passed upon their accounts as such in selling this property under the power of sale contained in the will, and ratified such accounts in such sale, and ratified their acts in investing the fund in mortgages on the real estate, and bars and estops the plaintiff from maintaining this action.

Finally, what justification for the award of compound interest on the balance struck on June 1st, 1906, and then on interest on that, is to be found in the cases of *Matter of Myers*, 131 N. Y., 409, and

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Cook v. Lowry, 95 N. Y., 103, cited by the respondent, on page 49 of his brief, we cannot see.

Respectfully submitted,

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Jr., individually and as Executor of
and Trustee under the Last Will and
Testament of Henry Ungrich, de-
ceased.

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Testament of Henry Ungrich, de-
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EDWARD W. S. JOHNSTON,
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