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AMENDED BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

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

Complainant, Joseph Gross, residing in the City
of Philadelphia, County of Philadelphia, and State
of Pennsylvania, respectfully shows that: 10

1. The complainant is a creditor of David Cohen
and Pennsylvania Mortgage and Loan Company, a
corporation of the State of Delaware, defendants
hereinafter named, who are his debtors within the
meaning of the provisions of the Statute of April
15th, 1919, Chapter 213 P. L. 500. The debt due
from the above defendants to the complainant is in
excess of \$90,000 and also other sums on contingent
liabilities hereinafter set forth, which debt arises 20
out of a number of transactions between the com-
plainant and his said debtors.

2. On or about March 31st, 1925, complainant
loaned to David Cohen and Pennsylvania Mortgage
and Loan Company the sum of \$16,555 upon the
agreement of the said David Cohen and Pennsylva-
nia Mortgage and Loan Company to secure him
therefor by the assignment to him of three certain
mortgages of Morris Rutberg and Minnie Rutberg 30
on properties therein specifically described and upon
which the said David Cohen and Pennsylvania Mort-
gage and Loan Company represented to complain-
ant that there was due to them the sum of \$18,000
and upon the agreement that the said David Cohen
and Pennsylvania Mortgage and Loan Company

would enter into the agreement with complainant hereinafter referred to and marked Exhibit "A."

3. Said mortgages were assigned to the complainant and contemporaneously with the said assignment David Cohen and Pennsylvania Mortgage and Loan Company executed a certain agreement with the complainant, whereby they agreed to indemnify and save harmless the said complainant from loss
10 on said mortgages, and agreed that in the event of the non-payment of the said mortgages and foreclosure thereon, they, the said David Cohen and Pennsylvania Mortgage and Loan Company, would bid upon the said properties at sheriff's sale to an amount sufficient to pay the said mortgages with interest and costs, and that upon failing so to bid they would pay any deficiency not realized, at said sale.
copy of said agreement is attached hereto, made
20 rt hereof and marked Exhibit "A."

4. On or about June 1, 1925, complainant loaned David Cohen and Pennsylvania Mortgage and Loan Company the sum of \$5,250 upon the agreement of the said David Cohen and Pennsylvania Mortgage and Loan Company to secure him therefor by the assignment to him of two certain mortgages of Morris Rutberg and Minnie Rutberg, on properties therein specifically described and upon which the said Pennsylvania Mortgage and Loan Company
30 and David Cohen represented to complainant that there was due to them the sum of \$5,500, and upon the agreement that the said Pennsylvania Mortgage and Loan Company and David Cohen would enter into the agreement hereinafter referred to and marked Exhibit "B."

5. Said mortgages were assigned to Dora A.

Gross and contemporaneously with the said assignment Pennsylvania Mortgage and Loan Company and David Cohen executed a certain agreement with Dora A. Gross whereby they agreed to indemnify and save harmless the said Dora A. Gross from loss on the said mortgages and further, agreed that in the event of the non-payment on demand of the said mortgages, or either of them, that they, the said Pennsylvania Mortgage and Loan Company and David Cohen, would take an assignment thereof at the face value thereof and that in the event of foreclosure thereon they, the said Pennsylvania Mortgage and Loan Company and David Cohen, would bid upon the said properties at sheriff's sale to an amount sufficient to pay the said mortgages with interest and costs and upon failing so to bid would pay any deficiency not realized on said sale. A copy of said agreement is attached hereto, made part hereof and marked Exhibit "B." Said mortgages and agreement have since said date been assigned to complainant at his request and the complainant is the present beneficial holder thereof.

6. There is still due and unpaid to complainant upon the transactions set forth in paragraphs 2 to 5 hereof the sum of \$12,204.30, exclusive of interest and costs.

7. Said mortgages have all matured and come due under the terms thereof by reason of the non-payment of interest thereon and the non-payment of taxes on the premises covered thereby. The said David Cohen, acting for himself and the Pennsylvania Mortgage and Loan Company, has requested the complainant not to proceed to foreclose the said mortgages, informing complainant that in the event of foreclosure a sale would not bring more than the

costs of execution. The said David Cohen and Pennsylvania Mortgage and Loan Company have stated to complainant that the said mortgages are of little or no value and have stated that they did not wish the said mortgages foreclosed, as in that event the Pennsylvania Mortgage and Loan Company would be obliged to forthwith pay the full amount due thereon as agreed in Exhibits "A" and "B." Complainant charges that said mortgages are not first
10 liens on the premises described therein and are now, in fact, of little or no value, and that complainant will suffer a loss thereon of a large part or all of the moneys due thereon and due him in said transactions unless he is able to recover from said Pennsylvania Mortgage and Loan Company and David Cohen upon the agreements Exhibits "A" and "B" referred to. Complainant further says that certain of the said mortgages have ceased to be liens on the premises covered thereby because of sales in fore-
20 closure on prior mortgages.

8. Complainant has requested the Pennsylvania Mortgage and Loan Company and David Cohen that they comply with the terms of the said agreement and take assignments of said mortgages and pay to the complainant the amount due thereon, namely, the sum of \$12,204.30, with interest, but they have each so refused to do.

30 9. The defendant, David Cohen, is, in fact, the only person who has invested any money in the stock of the defendant, Pennsylvania Mortgage and Loan Company, and entirely controls the same. Said company is his instrument and in all things done by it is controlled and managed by him. Said David Cohen has so managed his business and the business of the Pennsylvania Mortgage and Loan Com-

pany that his affairs are intermingled with its affairs, and he, from time to time, uses the said company in matters wherein he does not wish his own name to appear. The said David Cohen, from time to time, uses the funds of the said Pennsylvania Mortgage and Loan Company as though they were his own, and uses his own funds from time to time as though they were the property of the Pennsylvania Mortgage and Loan Company, and said company is in all respects, the alter ego of the said David Cohen. 10

10. On or about September 22d, 1925, the defendant, David Cohen, entered into an agreement with the complainant and Nathan Gross, a copy of which is attached hereto, marked Exhibit "C," and made part hereof. The said agreement provided, *inter alia*, that the complainant and Nathan Gross should loan to the defendant, David Cohen, the sum of \$25,000 and also that complainant and Nathan Gross should advance towards subscriptions of stock of the said Joseph Gross, Nathan Gross and David Cohen in Seaside Development Company sums aggregating \$25,000 and that complainant and Nathan Gross should advance two-thirds and the defendant, David Cohen, one-third of all moneys called for by said Seaside Development Company in excess of said \$25,000 for stock subscriptions, in addition to said \$25,000 loan. Complainant has advanced under the terms of the said agreement the sum of \$25,000 as a loan and the further sum of \$25,000 for stock subscriptions under the terms of the said agreement and the further sum of \$1,520.92, being a part of the excess referred to in the said agreement. 20 30

11. Said agreement, Exhibit "C," further provides that the said David Cohen should indemnify

and save harmless the complainant and Nathan Gross from and against any loss whatever, either on the said loan or on the said investments in Seaside Development Company, and warranted the return in full of all moneys advanced by complainant and Nathan Gross on said loan, investments in stock or otherwise, as by the said agreement fully appears.

10 12. The Seaside Development Company named in said agreement, has called for the sum of \$699.00 by David Cohen for the purpose of paying his proportional share on the interest due on the stock subscribed for by defendant, David Cohen, pursuant to the said agreement. Complainant and Nathan Gross have paid their respective advances pursuant to said call. But defendant, David Cohen, has refused to make said payment, and has informed complainant of his determination not to make said payment, and
20 not to make contributions and payments necessary under said agreement, which contributions and payments will soon be called for, the purpose of David Cohen being to embarrass complainant and cause him to lose whatever he has advanced for and on behalf of defendant, David Cohen.

30 13. Said agreement, Exhibit "C," further provided that as a security for the loans and advances to be made by complainant and Nathan Gross, the defendant, David Cohen, should deliver to Joseph Gross deeds for certain lots at Wildwood, New Jersey, referred to in said agreement, and a list of which is attached hereto marked Exhibit "C" and should also receive as security for said loans an assignment of stock to be issued by Seaside Development Company to David Cohen.

14. Said lots at the time said agreement was made

were not worth the sum of \$50,000 and are not now worth half that sum, the market therefor being very poor. Said David Cohen has refused and failed to pay the taxes thereon.

15. That the amounts loaned the Seaside Development Company and the amounts advanced by complainant for stock in the Seaside Development Company upon the guarantee of the said David Cohen and the amounts advanced in excess thereof as provided in said agreement are, in all probability, lost to complainant unless complainant can recover from the defendant, David Cohen, upon the said agreement. The assets of the said Seaside Development Company consist of real estate covered by mortgages in very large amounts, being in excess of \$175,000 and in excess of what complainant believes to be the present full value of the said real estate. The said real estate has greatly depreciated in value since acquired by the said Seaside Development Company, and payments due by said Seaside Development Company for interest and taxes on said land are largely in arrears and notice has been given that mortgages in the amount of \$147,000 on the property of Seaside Development Company will be foreclosed.

16. On or about November 9th, 1925, complainant entered into a bond, together with David Cohen and with certain other persons, being stockholders of Seaside Development Company, which bond was made to William J. Ryan, Inc., and was conditioned to indemnify the said William J. Ryan, Inc., or its assigns against loss under a certain mortgage made by Seaside Development Company, to William J. Ryan, Inc., which mortgage covered premises in the City of Wildwood, New Jersey. Said premises, in the

opinion of the complainant, are not now worth the amount of said mortgage. Said mortgage has come due and payment thereof has been demanded because of the non-payment of a certain installment of principal, due thereon under its terms. Defendant, David Cohen, is liable together with this complainant thereon, and complainant will be compelled to look to the said David Cohen for contribution toward any sums of money which he may be called upon to pay thereon, the exact amount of which complainant is not now able to state, but believes his liability on said bond will be in quite a large sum of money. A copy of said bond is attached hereto and marked Exhibit "E."

17. On or about April 14th, 1926, as security for moneys already due him to the extent of \$19,600 and as security for \$5,000 to be then advanced by him, accepted an assignment of a mortgage and bond accompanying same from Pennsylvania Mortgage and Loan Company in the principal sum of \$30,000 payable on or about February 7th, 1927, and secured by certain lands in Block 156, Wildwood, New Jersey. Complainant accepted said mortgage in consideration of the terms of a certain agreement dated April 14th, 1926, entered into between complainant and David Cohen, Pennsylvania Mortgage and Loan Company and Max Spector. A true copy of said agreement is attached hereto and marked Exhibit "D," and made a part hereof. Said mortgage was made by Nathan Teller to Pauline Rosen and Louis Rosen, and assigned to Pennsylvania Mortgage and Loan Company and thereafter assigned to complainant.

18. In and by the said agreement, Exhibit "D," said Pennsylvania Mortgage and Loan Company

and David Cohen agreed to indemnify and save harmless complainant from any loss on said bond and mortgage and agreed that in the event of non-payment thereof at maturity they would, within ten days thereafter, pay the amount of said mortgage, with interest, and further agreed that in the event of non-payment of the said mortgage and foreclosure thereon, they would bid up the property covered by said mortgage to an amount sufficient to pay the same with interest and costs.

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19. There is still due complainant on said mortgage referred to in paragraph 17, the sum of \$30,000 with interest. Said mortgage has matured and come due under the terms thereof by reason of the non-payment of interest thereon due on August 1st, 1926, and the non-payment of taxes on the premises covered thereby. Complainant has requested the defendant, David Cohen and Pennsylvania Mortgage and Loan Company to pay the amount of the said mortgage with interest according to the terms of the agreement, Exhibit "D," but the said defendants have both refused to pay the same or any part thereof. Said defendants, David Cohen and Pennsylvania Mortgage and Loan Company, have permitted the said premises to be sold at tax sale, for the non-payment of taxes for the year 1923, the said sale having been made September 1st, 1925, to Andrew Petner, and a certificate of sale being recorded September 1st, 1925, in the office of the clerk of Cape May County in Book 235, page 111.

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20. Complainant was induced to accept said mortgage for \$30,000 as security and parted with the additional moneys thereon in reliance upon certain representations made to him by David Cohen, acting for himself, and Pennsylvania Mortgage and

Loan Company, which representations were to the effect that an apartment house had been erected on the lands covered by said mortgage, and that the same had been completed and that all taxes for prior years had been paid. Without said representations complainant would not have accepted said assignment nor parted with the additional moneys thereon, and said defendants, David Cohen and Pennsylvania Mortgage and Loan Company, made said representations with the intent that the said complainant should act thereon and knowing that the complainant relied thereon. Complainant charges that said representations were made fraudulently and with intent to deceive and mislead the complainant.

21. Complainant says that the said defendants, David Cohen and Pennsylvania Mortgage and Loan Company, fraudulently withheld from complainant at the time of the assignment of the said mortgage, the information that the said premises had been sold at tax sale and that they also knew that there had been no apartment house erected on the said lands, the fact being that at the time said representations were made and acted upon by the complainant, an apartment house had been started upon said lands but had not been completed. Shortly prior to the filing of complainant's original bill of complaint herein, complainant discovered that the representations made to him as set forth in paragraph 20 hereof were false and that the lands had been sold for taxes as stated and also learned of the incomplete state of the said apartment house. Said apartment house is not yet completed and the said defendants, David Cohen and Pennsylvania Mortgage and Loan Company have refused and still do refuse to complete the same. Said defendant, David Cohen, has urged and is urging, divers laborers and mate-

rialmen to file mechanics' lien claims against the said land covered by the said mortgage of \$30,000, with the intention to cause to the complainant great loss on the said mortgage.

22. Complainant says that the premises covered by said mortgage are of a much smaller value than the amount of the mortgage of \$30,000 thereon, that the said premises are subject to numerous mechanics' lien claims as well as to large claims for unpaid taxes and that complainant in the event of a foreclosure of said mortgage would suffer a large loss thereon unless he shall be able to recover from the said David Cohen and Pennsylvania Mortgage and Loan Company on said agreement. 10

23. On or about August 19th, 1926, complainant paid for and on account of Pennsylvania Mortgage and Loan Company and David Cohen, the sum of \$10,000 upon a certain note of that company, which had been endorsed by the complainant for the accommodation of the said company. Said note was payable at the bank of M. Blitztein & Company, in the City of Philadelphia, and payment was made to them. 20

24. On or about August 19th, 1926, complainant advanced as a loan to the Pennsylvania Mortgage and Loan Company the sum of \$12,450 in cash. Said sum of \$12,450 and the proceeds of the discount of the said note were all to have been used by the said defendants, Pennsylvania Mortgage and Loan Company and David Cohen, as agreed upon between them and the complainant for the immediate completion of certain buildings, the construction of which had been commenced by or for the said defendants, at Juniper and Park Avenues, Lots 31 and 32, Block 30

“O,” City of Wildwood. Complainant has since discovered that said defendants, Pennsylvania Mortgage and Loan Company and David Cohen, have made no effort to complete said building and that no work had been done thereon since the month of July, 1926. Complainant further advanced as a loan to the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, the sum of \$500.00, paid by complainant at the request of the said defendants, to Joseph Beck Tyler, a member of the New Jersey Bar, in payment for legal services rendered by the said Joseph Beck Tyler to the defendants, Pennsylvania Mortgage and Loan Company and David Cohen.

25. Complainant advanced the moneys necessary to pay said note of \$10,000 upon the agreement that he should receive as security therefor mortgage on Lots 31 and 32, Block “O,” referred to above, in the sum of \$25,000. Said mortgage has been assigned to complainant and complainant believes that the said mortgage is of sufficient value to realize the said \$10,000, but charges that it has no value in excess of the amount of complainant’s loan with interest thereon, said mortgage not being a first lien.

26. Complainant advanced the said sum of \$12,450 mentioned in paragraph 24, upon the security of a mortgage on Lots 14 and 15, Block 85, Wildwood, New Jersey, in the sum of \$75,000 and said mortgage was assigned to the complainant. Said mortgage is not a first lien and complainant charges that he will be unable to realize on the said mortgage, notwithstanding the large amount for which it was given, as much as the amount due him on said loan with interest.

27. The assets of the Pennsylvania Mortgage and Loan Company and David Cohen consist principally of real estate in New Jersey and mortgages covering real estate in New Jersey. Instead of investing their funds in real estate and mortgages in their own names, the said David Cohen and Pennsylvania Mortgage and Loan Company entered into a scheme and made an established practice of taking title to real estate or mortgages in the names of straw men or dummies, who were parties to said scheme and practice, and who, as complainant charges, held title therefor in trust for the said Pennsylvania Mortgage and Loan Company and David Cohen, and that the true consideration for said purchases has passed from the said defendants, Pennsylvania Mortgage and Loan Company and David Cohen. The men who joined in said scheme and practice and who acted as straw men for the said Pennsylvania Mortgage and Loan Company and David Cohen as hereinafter more specifically set forth, are: Nathan Teller, Philip Paul, Samuel Lerner, Jacob Cohen, Jacob D. Kane, Harry Kaufman and National Building and Construction Company. Said course of business scheme and practice on the part of David Cohen and Pennsylvania Mortgage and Loan Company and said straw men or dummies, was entered upon and carried on for the purpose of hindering, delaying and defrauding the respective creditors of Pennsylvania Mortgage and Loan Company and David Cohen, and for the purpose of putting the assets beyond the reach of their creditors.

28. On or about July 20th, 1926, defendants, Pennsylvania Mortgage and Loan Company and David Cohen, caused Nathan Teller to convey unto one, Philip Paul, Lots 11 and 12, Block 56, in the City of Wildwood, Cape May County, New Jersey, which

deed was recorded in the office of the clerk of Cape May County, July 20th, 1926, but was dated July 2nd, 1925. The said Nathan Teller and Philip Paul are both straw men, or dummies, for the said Pennsylvania Mortgage and Loan Company and David Cohen. Said conveyance was a voluntary conveyance, was made for the consideration of \$1.00 recited in the deed therefor, was not made upon a fair consideration but for a nominal consideration only, and was made according to the aforesaid scheme and with the connivance of the said Nathan Teller and Philip Paul for the purpose of placing said property beyond the reach of the creditors of Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud such creditors in pursuance of the scheme set forth in paragraph 27 hereof. Neither said Nathan Teller nor Philip Paul have any interest in the said property whatever but hold the same as trustee for Pennsylvania Mortgage and Loan Company and David Cohen.

29. On or about June 19th, 1926, defendants, Pennsylvania Mortgage and Loan Company and David Cohen, caused Nathan Teller to convey unto one, Philip Paul, Lots 114 and 115, Block 245, North Wildwood, Cape May County, New Jersey; also Lots 109 and 111, Block 245, North Wildwood, Cape May County, New Jersey; also Lot 15, Block 276, North Wildwood, Cape May County, New Jersey; also Lots 24 and 26, Block 208, North Wildwood, Cape May County, New Jersey; also Lot 35, Block 208, North Wildwood, Cape May County, New Jersey, which deed was recorded in the office of the clerk of Cape May County, July 10th, 1926. The said Nathan Teller and Philip Paul are both straw men or dummies for the said Pennsylvania Mort-

gage and Loan Company. The said conveyance was a voluntary conveyance, was made for the consideration of \$1.00, recited in the deed therefor, was not made upon a fair consideration but for a nominal consideration only, and was made according to the aforesaid scheme and with the connivance of the said Nathan Teller and Philip Paul for the purpose of placing said property beyond the reach of the creditors of Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud such creditors in pursuance of the scheme set forth in paragraph 27 hereof. Neither said Nathan Teller nor Philip Paul have any interest in the said property whatever but hold the same as trustee for Pennsylvania Mortgage and Loan Company and David Cohen. 10

30. On or about June 19th, 1926, defendants, Pennsylvania Mortgage and Loan Company and David Cohen, caused Nathan Teller to convey unto one, Philip Paul, Lots 31 and part of 32, Block "O," Wildwood, Cape May County, New Jersey, which deed was recorded in the office of the clerk of Cape May County on July 10th, 1926. The said Nathan Teller and Philip Paul are both straw men or dummies for the said Pennsylvania Mortgage and Loan Company. The said conveyance was a voluntary conveyance, was made for the consideration of \$1.00 recited in the deed therefor, was not made upon a fair consideration but for a nominal consideration only, and was made according to the aforesaid scheme and with the connivance of the said Nathan Teller and Philip Paul for the purpose of placing said property beyond the reach of the creditors of Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud such creditors in pursuance of the scheme set forth in 30

paragraph 27 hereof. Neither the said Nathan Teller nor Philip Paul have any interest in the said property whatever but hold the same as trustee for Pennsylvania Mortgage and Loan Company and David Cohen.

31. On or about September 3, 1925, the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, paid a substantial money consideration to one, David Kotok and wife, for premises
10 known as Lot No. 10, Block 96, of the City of Wildwood, Cape May County, New Jersey, and caused the said David Kotok and wife to convey the same to one, Jacob D. Kane, which was done, said deed being recorded in the office of the clerk of Cape May County, in Book 407 of Deeds, page 367, and was dated September 3d, 1925. Said Jacob D. Kane was a straw man or dummy for the defendants, Penn-
sylvania Mortgage and Loan Company and David
20 Cohen, and is the son of the defendant, David Cohen; said conveyance recites a consideration of one dollar, but complainant says that as to the said Jacob D. Kane, the conveyance of the said property and the payment of the price therefor to the said David Kotok, was a voluntary conveyance by the said Pennsylvania Mortgage and Loan Company and David Cohen, and was not made for a fair consideration, but for a nominal consideration only and was made for the purpose of placing said property
30 beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud said creditors in pursuance to the scheme set forth in paragraph 27 hereof. Said Jacob D. Kane has no interest in said property whatever, but holds the said property as trustee for the said Pennsylvania Mortgage and Loan Company and David Cohen.

32. On or about September 2, 1925, the defendants, Pennsylvania Mortgage and Loan Company and David Cohen paid a substantial money consideration to one, Beecher-Kay Realty Co., for premises known as Lots Nos. 33 and 35, Block 263, North Wildwood, Cape May County, New Jersey, and caused the said Beecher-Kay Realty Co. to convey the same to Jacob D. Kane, which was done, said deed being recorded in the office of the clerk of Cape May County, in Book 444 of Deeds, page 112, and was dated September 2, 1925. Said Jacob D. Kane 10
was a straw man or dummy for the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, and is the son of the defendant, David Cohen. Said conveyance recites a consideration of one dollar, but complainant says that as to the said Jacob D. Kane, the conveyance of the said property and the payment of the price therefor to the said Beecher-Kay Realty Co. was a voluntary conveyance by the said Pennsylvania Mortgage and Loan Company and David Cohen, was not made for a 20
fair consideration, but for a nominal consideration only and was made for the purpose of placing the said property beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud said creditors in pursuance to the scheme set forth in paragraph 27 hereof. Said Jacob D. Kane has no interest in said property whatever, but holds the said property as trustee for the said Pennsylvania Mortgage and Loan Company and David Cohen. 30

33. On or about September 22nd, 1925, the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, paid a substantial money consideration to one, Sidney M. Earle and wife, for premises known as Lots 49 and 51, Block 291, North

Wildwood, Cape May County, New Jersey, and caused the said Sidney M. Earle and wife to convey the same to Jacob D. Kane, which was done, said deed being recorded in the office of the clerk of Cape May County, in Book 411 of Deeds, page 255, and was dated September 22, 1925. Said Jacob D. Kane was a straw man or dummy for the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, and is the son of the defendant, David Cohen. Said conveyance recites a consideration of one dollar, but complainant says that as to the said Jacob D. Kane, the conveyance of the said property and the payment of the price therefor to the said Sidney M. Earle was a voluntary conveyance by the said Pennsylvania Mortgage and Loan Company and David Cohen, and was not made for a fair consideration, but for a nominal consideration only and was made for the purpose of placing said property beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud said creditors in pursuance to the scheme set forth in paragraph 27 hereof. Said Jacob D. Kane has no interest in said property whatever, but holds the said property as trustee for the said Pennsylvania Mortgage and Loan Company and David Cohen.

34. On or about September 22d, 1925, the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, paid a substantial money consideration to Sidney M. Earle and wife, for premises known as Lots 50 and 52, Block 291, North Wildwood, Cape May County, New Jersey, and caused the said Sidney M. Earle and wife to convey the same to Jacob D. Kane, which was done, said deed being recorded in the office of the clerk of Cape May County, in Book 411 of Deeds, page 255, and was

dated September 22, 1925. Said Jacob D. Kane was a straw man or dummy for the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, and is the son of the defendant, David Cohen. Said conveyance recites a consideration of one dollar, but complainant says that as to the said Jacob D. Kane, the conveyance of the said property and the payment of the price therefor to the said Sidney M. Earle and wife was a voluntary conveyance by the said Pennsylvania Mortgage and Loan Company and David Cohen, was not made for a fair consideration, but for a nominal consideration only and was made for the purpose of placing said property beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud said creditors in pursuance to the scheme set forth in paragraph 27 hereof. Said Jacob D. Kane has no interest in the said property whatever, but holds the said property as trustee for the said Pennsylvania Mortgage and Loan Company and David Cohen.

35. On or about September 29th, 1925, the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, paid a substantial money consideration for Jacob Cohen and wife, to the then owner of premises known as Lot 6, Block 105, City of Wildwood, Cape May County, New Jersey, and caused the said Jacob Cohen and wife, to convey the same to Jacob D. Kane, which was done, said deed being recorded in the office of the clerk of Cape May County, in Book 417 of Deeds, page 27, and was dated September 29, 1925. Said Jacob D. Kane was a straw man or dummy for the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, and is the son of the defendant, David Cohen.

Said conveyance recites a consideration of one dollar, but complainant says that as to the said Jacob D. Kane, the conveyance of the said property and the payment of the price therefor to the said Jacob Cohen was a voluntary conveyance by the said Pennsylvania Mortgage and Loan Company and David Cohen, was not made for a fair consideration, but for a nominal consideration only and was made for the purpose of placing the said property
10 beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud said creditors in pursuance to the scheme set forth in paragraph 27 hereof. Said Jacob D. Kane has no interest in said property whatever, but holds the said property as trustee for the said Pennsylvania Mortgage and Loan Company and David Cohen.

36. On or about October 19th, 1925, the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, paid a substantial money consideration to Morris Sacks and wife, for premises known as Lot 3, Block 105, City of Wildwood, Cape May County, New Jersey, and caused the said Morris Sacks and wife to convey the same to Jacob D. Kane, which was done, said deed being recorded in the office of the clerk of Cape May County, in Book 420 of Deeds, page 68, &c., and was dated October 19th, 1925. Said Jacob D. Kane was a straw
30 man or dummy for the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, and is the son of the defendant, David Cohen. Said conveyance recites a consideration of one dollar, but complainant says that as to the said Jacob D. Kane, the conveyance of the said property and the payment of the price therefor to the said Morris Sacks was a voluntary conveyance by the said Pennsyl-

vania Mortgage and Loan Company and David Cohen, was not made for a fair consideration, but for a nominal consideration only and was made for the purpose of placing the said property beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud said creditors in pursuance to the scheme set forth in paragraph 27 hereof. Said Jacob D. Kane has no interest in said property whatever, but holds the said property as trustee for the said Pennsylvania Mortgage and Loan Company and David Cohen. 10

37. On or about November 9th, 1925, the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, paid a substantial money consideration to one, William J. Ryan, Inc., for premises known as Lots 10, 11, 12, 44, 45 and 46, Block 417, also Lots 45 and 46, Block 418, and also Lots 22, 23, 33 and 34, Block 419, North Wildwood, Cape May County, New Jersey, and caused the said William J. Ryan, Inc., to convey the same to Jacob D. Kane, which was done, said deed being recorded in the office of the clerk of Cape May County, in Book 413 of Deeds, page 297, and was dated November 9, 1925. Said Jacob D. Kane was a straw man or dummy for the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, and is the son of the defendant, David Cohen. Complainant says that as to the said Jacob D. Kane, the conveyance of the said property and the payment of the price therefor to the said William J. Ryan, Inc., was a voluntary conveyance by the said Pennsylvania Mortgage and Loan Company and David Cohen, was not made for a fair consideration, but for a nominal consideration only and was made for the purpose of placing the said property beyond the 20 30

reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud said creditors in pursuance to the scheme set forth in paragraph 27 hereof. Said Jacob D. Kane has no interest in said property whatever, but holds the said property as trustee for the said Pennsylvania Mortgage and Loan Company and David Cohen.

- 10 38. On or about June 4th, 1926, the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, paid a substantial money consideration to one, Harry Cohen and wife, for premises known as Lots 14 and 15, Block 85, Wildwood, Cape May County, New Jersey and caused the said Harry Cohen and wife to convey the same to one, Samuel Lerner, which was done, said deed being recorded in the office of the clerk of Cape May County on June 4th, 1926, and was dated June 4th, 1926. Said
- 20 Samuel Lerner was a straw man or dummy for the defendants, Pennsylvania Mortgage and Loan Company and David Cohen. Said conveyance recites a consideration of one dollar, but complainant says that as to the said Samuel Lerner, the conveyance of the said property and the payment of the price therefor to the said Harry Cohen, was a voluntary conveyance by the said Pennsylvania Mortgage and Loan Company and David Cohen, was not made for a fair consideration, but for a nominal consideration only and was made for the purpose of placing
- 30 said property beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud said creditors in pursuance to the scheme set forth in paragraph 27 hereof. Said Samuel Lerner has no interest in the said property whatever, but holds the said property as trustee for the said Pennsyl-

vania Mortgage and Loan Company and David Cohen.

39. On or about June 4th, 1926, the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, paid a substantial money consideration for premises known as Lots 14 and 15, Block 85, City of Wildwood, Cape May County, New Jersey, and caused the same to be conveyed to Samuel Lerner, which was done, said deed being recorded in the office of the clerk of Cape May County, and was dated June 4th, 1926. Said Samuel Lerner was a straw man or dummy for the defendants, Pennsylvania Mortgage and Loan Company and David Cohen. Said conveyance recites a consideration of one dollar, but complainant says that as to the said Samuel Lerner, the conveyance of the said property and the payment of the price therefor was a voluntary conveyance by the said Pennsylvania Mortgage and Loan Company and David Cohen, was not made for a fair consideration, but for a nominal consideration only, and was made for the purpose of placing said property beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud said creditors in pursuance to the scheme set forth in paragraph 27 hereof. Said Samuel Lerner has no interest in the said property whatever, but holds the said property as trustee for the said Pennsylvania Mortgage and Loan Company and David Cohen.

40. On or about June 4th, 1926, defendants, Pennsylvania Mortgage and Loan Company and David Cohen, caused Jacob D. Kane to convey unto National Building and Construction Company, a corporation of the State of New Jersey, Lots Nos. 18

and 19, Block C, City of Wildwood, Cape May County, New Jersey. Said Jacob D. Kane and National Building and Construction Company are both straw men or dummies for the said Pennsylvania Mortgage and Loan Company and David Cohen. Said conveyance was a voluntary conveyance, was made for a consideration of one dollar, recited in the deed therefor, was not made upon a fair consideration, but for a nominal consideration only and was made
10 for the purpose of placing said property beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud such creditors in pursuance of the scheme set forth in paragraph 27 hereof. Said Jacob D. Kane and National Building and Construction Company have no interest in the said property but hold the said property as trustee for Pennsylvania Mortgage and Loan Company and David Cohen.

20 41. On or about February 1st, 1926, defendants, Pennsylvania Mortgage and Loan Company and David Cohen, caused Nathan Teller to create a mortgage unto Jacob Cohen on Lots 12 and 13, Block C, Wildwood, Cape May County, New Jersey, in the sum of \$30,000. Said Nathan Teller and Jacob Cohen are both straw men or dummies for the said Pennsylvania Mortgage and Loan Company and David Cohen. Said mortgage was a voluntary conveyance, was made for a consideration of one dollar,
30 was not made upon a fair consideration, but for a nominal consideration only and was made for the purpose of placing said property beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud such creditors in pursuance of the scheme set forth in paragraph 27 hereof. Said

Nathan Teller and Jacob Cohen have no interest in the said mortgage but hold the said property and mortgage as trustee for Pennsylvania Mortgage and Loan Company and David Cohen.

42. On or about May 26th, 1926, defendants, Pennsylvania Mortgage and Loan Company and David Cohen, caused Nathan Teller to create a mortgage unto Harry Kaufman on Lots Nos. 12 and 13, Block C, City of Wildwood, Cape May County, New Jersey, in the sum of \$30,000. Said Nathan Teller and Harry Kaufman are both straw men or dummies for the said Pennsylvania Mortgage and Loan Company and David Cohen. Said mortgage was a voluntary conveyance, was made for a consideration of one dollar, was not made upon a fair consideration, but for a nominal consideration only, and was made for the purpose of placing said property beyond the reach of the creditors of the said Pennsylvania Mortgage and Loan Company and David Cohen, and to hinder, delay and defraud such creditors in pursuance of the scheme set forth in paragraph 26 hereof. Said Nathan Teller and Harry Kaufman have no interest in the said property and mortgage, but hold the said property and mortgage as trustees for Pennsylvania Mortgage and Loan Company and David Cohen. 10 20

43. On or about October 9th, 1925, defendant, Jacob D. Kane, executed a mortgage to Pennsylvania Mortgage and Loan Company to secure the payment of \$120,000, which said mortgage was recorded in Book 236 of Mortgages, page 319, &c., in the office of the clerk of Cape May County, New Jersey. Said mortgage covered Lot 6, Block 105, City of Wildwood, Cape May County, N. J.; also Lot 10, Block 30

96, City of Wildwood, Cape May County, N. J.; also
Lots 18 and 19, Block C, City of Wild-
wood, Cape May County, N. J.; also Lots 49
and 51, Block 263, North Wildwood, Cape
May County, N. J.; also Lots 50 and 52, Block 291,
North Wildwood, Cape May County, N. J.; also Lots
33 and 35, Block 263, North Wildwood, Cape May
County, New Jersey. The defendant, Pennsylvania
Mortgage and Loan Company, has offered to sell
10 said mortgage in open market and is about to dis-
pose of the said mortgage for the purpose of plac-
ing the same and the amount due thereon beyond
the reach of its creditors, and for the distinct pur-
pose of delaying, hindering and defrauding the com-
plainant from collecting his just claim.

44. On or about April 10th, 1926, Hosea M. Steel-
man executed a mortgage to Pennsylvania Mort-
gage and Loan Company to secure the payment of
20 \$10,000.00, which said mortgage was recorded in the
office of the clerk of Cape May County, New Jersey.
Said mortgage covered Lots 10 and 6, Block 78, City
of Wildwood, Cape May County, New Jersey. On
or about May 2d, 1922, Samuel Roberts and wife,
and Harry Cohen and wife, executed a mortgage to
Pennsylvania Mortgage and Loan Company to se-
cure the payment of \$10,000.00, which said mortgage
was recorded in Book 185 of Mortgages, page 103,
in the office of the clerk of Cape May County, New
Jersey. Said mortgage covered Lots 3, 6, and 7,
30 Block 96, City of Wildwood, Cape May County, New
Jersey. The defendant, Pennsylvania Mortgage and
Loan Company, has offered to sell said mortgages
in open market, and is about to dispose of the said
mortgages for the purpose of placing the same and
the amount due thereon beyond the reach of its
creditors, and for the distinct purpose of delaying,

hindering and defrauding the complainant from collecting his just claim.

45. Defendants, Pennsylvania Mortgage and Loan Company and David Cohen, have stated openly as a threat directed to the complainant, to strip themselves of their assets so as to make it impossible for complainant to collect his just claims from the said Pennsylvania Mortgage and Loan Company and David Cohen, and the complainant says that the conveyances above set forth were made for the purpose of carrying out said threat and purpose, and says that the said Pennsylvania Mortgage and Loan Company and David Cohen are now endeavoring to dispose of their assets for that purpose, and complainant believes they will do so unless prevented by this Court, and complainant further says, that should the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, be permitted to cause the said straw men or dummies, namely, Nathan Teller, Philip Paul, Samuel Lerner, Jacob Cohen, Jacob D. Kane, Harry Kaufman and National Building and Construction Company, to convey away the said premises above referred to, and should the said defendants, Pennsylvania Mortgage and Loan Company and David Cohen, be permitted to convey said premises and the said mortgages above referred to, their assets would be grossly insufficient to pay the complainant his just claims, and that he would thereby be hindered and delayed in collecting his said debt and defrauded of his said debt, as there are no other sufficient assets to satisfy complainant's said claims.

46. That by the course of business of said Pennsylvania Mortgage and Loan Company and David Cohen in paying out their funds for the purchase

of the property above set forth, title to which has been placed in the names of the straw men and dummies above set forth, the said Pennsylvania Mortgage and Loan Company and David Cohen have thereby become insolvent and unable to satisfy the claims of the complainant or of such other creditors as there may be of the said Pennsylvania Mortgage and Loan Company and David Cohen. Complainant does not know how much the indebtedness
10 of the said Pennsylvania Mortgage and Loan Company and David Cohen is to persons other than himself, but believes the said defendants, Pennsylvania Mortgage and Loan Company and David Cohen, are obligated to other persons for large sums of money. Complainant further says that unless this Court shall preserve the said assets now in the names of the straw men aforesaid and the mortgages aforesaid for the benefit of the creditors of the said Pennsylvania Mortgage and Loan Com-
20 pany and David Cohen, that said Pennsylvania Mortgage and Loan Company and David Cohen will be insolvent so far as creditors are concerned and complainant and such other creditors will be unable to recover their said claims.

Complainant is without adequate remedy at law, and, therefore, prays:

30 1. That David Cohen, Jacob Cohen, Pennsylvania Mortgage and Loan Company, Samuel Lerner, Jacob D. Kane, Philip Paul, Hosea M. Steelman, National Building and Construction Company and Nathan Teller and Harry Kaufman, the defendants herein, may answer this bill of complaint and each statement made therein.

2. That the Pennsylvania Mortgage and Loan

Company, its officers, directors, agents and servants, and David Cohen, may be enjoined from transferring, selling or disposing of, in any way, of its assets, be they mortgages or real estate.

3. That the conveyances made by the defendants, David Cohen, Pennsylvania Mortgage and Loan Company, Samuel Lerner, Jacob Cohen, Jacob D. Kane, and Nathan Teller, be declared void, and be set aside as being fraudulent as against complainant. 10

4. That a receiver be appointed to take charge of the property standing in the name of David Cohen, Samuel Lerner, Jacob D. Kane, Philip Paul and Nathan Teller, and mortgages held by the Pennsylvania Mortgage and Loan Company, Jacob Cohen and Harry Kaufman, National Building and Construction Company, referred to in this bill of complaint. 20

5. That defendants, Samuel Lerner, Jacob D. Kane, Philip Paul, Nathan Teller, Jacob Cohen and Harry Kaufman and National Building and Construction Company, be declared as holding as resulting trustees in favor of the Pennsylvania Mortgage and Loan Company and David Cohen for the benefit of complainant.

6. That each of the defendants named herein be restrained and enjoined from selling, assigning or cancelling, satisfying or paying or disposing of any of the real estate, or any of the mortgages, described in this bill of complaint. 30

7. That the complainant may have such other and further relief as may in equity be just and fair.

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

PHILIP WENDKOS,
*Solicitor for and of Counsel
with Complainant.*

10

EXHIBIT "A."

AGREEMENT OF INDEMNITY.

Whereas, Joseph Gross has this day, at our special instant and request, and upon our express promise to always save him harmless against loss, taken assignments from the Pennsylvania Mortgage and Loan Co., a Corp. of three certain bonds and mortgages of Morris Rutberg and Minnie Rutberg, on properties therein more specifically described, the same aggregating the principal sums of Eighteen Thousand (\$18,000.) Dollars.

Therefore, know all men by these presents:

1. That, in consideration of the premises, and for other good and valuable consideration unto us moving, we the Pennsylvania Mortgage and Loan Company, a Corporation, and David Cohen, and each of us, hereby covenant and agree to always indemnify and save absolutely harmless the said Joseph Gross, his heirs, administrators, executors and assigns, from and against any default or loss whatsoever or said bonds and mortgages, or any of them.

2. And we further agree that in the event of the

non-payment of the said mortgage at any time, and foreclosure thereon, we shall bid up the properties therein described at any Sheriff's Sale to an amount sufficient to pay the judgments on said bonds and mortgages together with interest and costs thereon.

3. Upon our failure to so bid on said properties, or any of them, we agree to pay to the said Joseph Gross, his executors, administrators, or assigns, any shortage or deficit whatsoever between the amount of his judgment, interest, and costs, and the sum realized by him at said sale, thereby saving him always absolutely harmless against any loss whatsoever in the collection of said bonds and mortgages. 10

IN WITNESS WHEREOF, we, and each of us, have hereunto attached our respective hands and seals this 31st day of March, 1925.

PENNA. MORTGAGE & LOAN CO. (SEAL)
DAVID COHEN, TREAS. (SEAL) 20
DAVID COHEN (SEAL)

EXHIBIT "B."

AGREEMENT OF INDEMNITY.

WHEREAS, DORA A. GROSS has, at our special instant and request, and upon our express promise to always save her harmless against loss, taken assignments from the Pennsylvania Mortgage and Loan Co., a Corp. of two certain bonds and mortgages of Morris Rutberg and Minnie Rutberg, on properties therein more specifically described, 30

the same aggregating the principal sum of Fifty-five Hundred (\$5500.) Dollars.

THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

10 1. That, in consideration of the premises, and other good and valuable consideration unto us moving, we, the Pennsylvania Mortgage and Loan Company, a Corporation, and David Cohen, and each of us, hereby covenant and agree to always indemnify and save absolutely harmless the said DORA A. GROSS, her administrators, executors and assigns, from and against any default or loss whatsoever of said bonds and mortgages, or any of them.

2. In the event of the non-payment on demand of the mortgages, or either of them, we agree to take an assignment thereof for the face value thereof.

20 3. In the event of a foreclosure thereon, we agree to bid up the property or properties therein described at any Sheriff's Sale to an amount sufficient to pay the judgments on said bonds and mortgages together with interest and costs thereon.

30 4. Upon our failure to so bid on said property, properties, or any of them, we agree to pay to the said DORA A. GROSS, her executors, administrators, or assigns, any shortage or deficit whatsoever between the amount of judgment, or judgments, interest, and costs, and the sum or sums realized by her at said sale, thereby saving her always absolutely harmless against any loss whatsoever in the collection of said bonds and mortgages.

IN WITNESS WHEREOF, we, and each of us,

have hereunto attached our respective hands and seals this day of June, 1925.

PENNSYLVANIA MORTGAGE & LOAN CO.

DAVID COHEN (SEAL)

MAX A. RAPAPORT, SECY. (SEAL)

DAVID COHEN (SEAL)

The within agreement is hereby assigned to Joseph Gross.

Signed, Dora A. Gross.

10

EXHIBIT "C."

AGREEMENT made this 22nd day of September, 1925, by and between Joseph Gross and Nathan Gross (hereinafter called parties of the first part), and David Cohen (hereinafter called party of the second part), witnesseth to wit:

1. The said parties of the first part agree to advance as a loan to the said party of the second part, the sum of Twenty-five Thousand (\$25,000) Dollars, in various sums, within ninety days' from the date hereof. Sums aggregating Ten Thousand Five Hundred (\$10,500) Dollars have already been paid him on account thereof.

20

2. Prior to the execution of these presents, the said Joseph Gross, Nathan Gross, and David Cohen each subscribed for such equal number of shares as may be allotted to each of the persons forming the Seaside Development Co., a corporation owning certain ground at Wildwood, New Jersey.

30

3. Toward the purchase-price, assessments, and contribution due, for, and upon, the said three sub-

scriptions, the said parties of the first part shall advance as the same shall be demanded or assessed by the Board, sums aggregating Twenty-five Thousand (\$25,000) Dollars, the excess shall be paid as follows;

The said parties of the first part two-thirds, and the said David Cohen, one-third.

10 4. The said party of the second part, hereby agrees to indemnify and save harmless, the said parties of the first part, and each of them, from and against any loss whatsoever, either on the said loan, or on said investments in the Seaside Development Company, and absolutely warrants the full return of all the moneys advanced by the said parties of the first part on the said loan, investments, or otherwise, at the close of the transaction herein set forth.

20 5. As collateral security to the parties of the first part for said loan and investments, and the above warranty thereon and therefor, the said party of the second part hereby agrees that, upon the execution of these presents, he will deliver to said Joseph Gross, of the parties of the first part, good and sufficient deeds to certain lots at Wildwood, N. J. as per list attached hereto, marked "Exh. #2, and made part thereof. The title of said lots to be good and marketable, and clear of any incumbrance or liens whatsoever. The said party of the second part
30 hereby expressly represents and warrants as an endorsement hereto, that there were no mortgages on said lots other than those held by him personally, and that all of these have been satisfied of record.

6. As additional security for the said sum of Fifty Thousand (\$50,000.) Dollars, to be advanced as

aforesaid, the shares to be issued by the Seaside Development Company to David Cohen as aforesaid, shall also be assigned to Joseph Gross.

7. The said Joseph Gross shall hold absolute title to the said lots and shares, or the proceeds thereof, until the said parties of the first part shall have been repaid the said sum of Fifty Thousand (\$50,000) Dollars as aforesaid, and such further advances as they shall be made, plus the share of the profits due the parties of the first part as herein provided. 10

8. For the purpose of this undertaking, the said Wildwood lots to be conveyed to the said Joseph Gross, as hereinbefore stated, are hereby assessed at Fifty Thousand (\$50,000) Dollars.

9. Any and all proceeds that may be realized from the sale of the said Wildwood lots, and shares of the Seaside Development Company, shall be disbursed as follows: 20

First, the parties of the first part shall be paid the sum of Fifty thousand (\$50,000) Dollars, plus any other advances that they shall have made.

Secondly, the sum of Twenty-five Thousand (\$25,000) Dollars shall be paid to David Cohen, plus any advances that he shall have made.

Thereafter, any sum or sums received shall be divided as follows:

Two-thirds to the parties of the first part, and
One-third to the party of the second part. 30

10. It is the true intent and purport of this agreement, that the said parties of the first part shall, in all events, be repaid the said sums to be advanced as a loan (as per par. 1 hereof), as an investment

(as per Par. 2 hereof), or otherwise, plus, two-thirds of the profits realized as aforesaid.

IN WITNESS WHEREOF, the above-named parties have hereunto set their hands and seals the above day and year mentioned.

NATHAN GROSS, JR. (SEAL)

JOSEPH GROSS (SEAL)

DAVID COHEN (SEAL)

- 10 Paid on account to-date Fourteen Thousand Five Hundred on account Twenty-five thousand dollar loan aforesaid, and Thirty-one hundred and fifty dollars cash in subscriptions.

DAVID COHEN.

20

LOTS FOR SALE IN WILDWOOD, N. J.

	Lot No.	207-A	Block	216	\$2,000.
	" "	207-B	"	216	2,000.
	" "	216-A	"	212	2,000.
	" "	216-B	"	212	2,000.
	" "	209-A	"	216	2,000.
	" "	209-B	"	216	2,000.
	" "	211-A	"	216	2,000.
	" "	211-B	"	216	2,000.
30	" "	210-A	"	216	2,000.
	" "	210-B	"	216	2,000.
	" "	109-A	"	245	2,000.
	" "	109-B	"	245	2,000.
	" "	111-A	"	245	2,000.
	" "	111-B	"	245	2,000.
	" "	114-A	"	245	2,000.

"	"	114-B	"	245	2,000.
"	"	115-A	"	245	2,000.
"	"	115-B	"	245	2,000.
"	"	12-A	"	276	2,000.
"	"	12-B	"	276	2,000.
"	"	14-A	"	276	2,000.
"	"	14-B	"	276	2,000.
"	"	15-A	"	276	2,000.
"	"	15-B	"	276	2,000.
"	"	24	"	208	2,000.
"	"	26	"	208	2,000.
"	"	35	"	208	2,000.

10

BLOCK 52

Lot No.	1	1,100.	
"	2	1,000.	
"	3	1,000.	
"	4	1,000.	
"	5	1,000.	
"	6	1,000.	
"	7	1,000.	
"	8	1,000.	20
"	9	1,000.	
"	10	1,000.	
"	11	1,000.	
"	12	1,000.	
"	13	1,000.	
"	14	1,100.	
"	21	1,000.	
	22	1,000.	
	23	1,000.	
	24	1,000.	30
	25	1,000.	
	26	1,000.	
	27	1,000.	
	28	1,000.	
	29	1,000.	
	30	1,000.	

	31	1,000.
	32	1,000.
	33	1,000.
	34	1,000.
	35	1,000.
	17	1,100.
	37	1,100.
	18	1,100.
	BLOCK 54	
10	Lot No. 3	2,000.
	2	2,000.
	BLOCK 61	
	Lot No. 1	1,100.
	2	1,000.
	3	1,000.
	4	1,000.
	5	1,000.
	6	1,000.
	16	1,000.
20	17	1,000.
	21	1,100.
	22	1,000.
	23	1,000.
	24	1,000.
	25	1,000.
	26	1,000.
	27	1,000.
	28	1,000.
	38	1,000.
30	29	1,000.
	30	1,000.
	31	1,000.
	32	1,000.
	33	1,000.
	34	1,000.
	35	1,000.
	37	1,000.

BLOCK 95

Lot No. 2

3

4

120' x 100' on Montgomery Ave.

EXHIBIT "D."

10

Whereas, Joseph Gross has this day, at our special instance and request, and in consideration of the terms hereinafter set forth, taken an assignment of a certain bond and mortgage held by Pennsylvania Mortgage and Loan Co. in the principal sum of Thirty Thousand (\$30,000.) Dollars, payable on or about the 7th day of February, 1927, on certain lots in Block 156 at Wildwood, N. J.

Therefore, this agreement witnesseth:

20

1. That the price to be paid for said mortgage is the sum of Twenty-four Thousand Six Hundred (\$24,600.) Dollars, as follows: Five Thousand (\$5,000.) in cash upon the execution of these presents, and the sum of Nineteen Thousand Six Hundred (\$19,600.) by credits as per Exh. "A" hereto attached, and made part hereof.

2. In consideration of the premises, and for other good and valuable consideration, we, the Pennsylvania Mortgage and Loan Co., a corp., David Cohen, 30
and Max Spektor, and each of us, hereby covenant and agree to always indemnify and save absolutely harmless the said Joseph Gross, his heirs, executors and assigns, from any default or loss whatsoever, on said Bond and Mortgage.

3. In the event of non-payment thereof at maturity, we agree to pay the amount thereof with interest, within ten days thereafter.

4. And we further agree that in the event of the non-payment of the said Bond and Mortgage at any time, and foreclosure thereon, we shall bid up the lots and buildings covered by said Mortgage, at any sale, to an amount sufficient to pay the judgments
 10 on said bond and mortgage, together with interest and costs thereon.

5. And further, we, and each of us, the said Pennsylvania Mortgage and Loan Co., David Cohen and Max Specktor, hereby agree and warrant that the said mortgage will be paid upon the sale of the said lots or either of them.

In witness whereof we have hereunto set our hand
 20 and seal this 14th day of April, 1926.

(SGD) DAVID COHEN (SEAL)
 PENNA. MORTGAGE & LOAN CO. (SEAL)
 David Cohen, Treas.
 MAX SPECKTOR (SEAL)

EXHIBIT "A."

30	Note of Penna. Mortgage and Loan Co. due Mar. 14, 1926	\$3100.00
	Note of Penna. Mortgage and Loan Co. due Mar. 15, 1926	1200.00
	Cancellation of agreement for lots in Wildwood Block 53a	1250.00
	Cancellation of agreement Wildwood lots Block C	4400.00

Amended Bill of Complaint

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Cancellation of agreement Specktor lots	7650.00
Fees and costs in Shallit case	125.00
Fees and costs in Platt case	200.00
Lindeberg foreclosure and costs	500.00
Schwartz foreclosure	175.00
Assignment of Account vs Marvine B. & L. Ass'n.	1000.00
	\$19,600.00

10

EXHIBIT "E."

KNOW ALL MEN BY THESE PRESENTS,
That We, ROBERT LEVIN, NATHAN GROSS,
DAVID RABINOVITCH, WOLF BODEK, KAIN
ELLIS, HERMAN APOTHAKE, MAURICE J.
TEITELBAUM, HARRY BALIS, DAVID
COHEN, JOSEPH GROSS, JULIUS J. SALTS- 20
BURG, MAX SPECKTOR, JOSEPH J. FISHER
and MAX MOSKOVITZ, all of the City of Phila-
delphia, except David Rabinovitch, who is of the
City of Reading, Pa. (hereinafter called the Obli-
gors) are jointly and severally held and firmly
bound unto WILLIAM J. RYAN, INC., a corpora-
tion of the State of New Jersey, (hereinafter called
the Obligee) in the sum of Seventy-thousand Dol-
lars, lawful money of the United States of America,
to be paid to the said Obligee, its certain attorney, 30
successors or assigns, to which payment well and
truly to be made, we do bind and oblige ourselves
and each of us, our and each of our heirs, executors
and administrators and every of them, firmly by
these presents.

SEALED with our Seals. Dated the Ninth day
of November, A. D. 1925.

WHEREAS, Seaside Development Company, a corporation of the State of New Jersey, by a certain obligation bearing even date herewith, stands bound unto the Obligee, its successors and assigns, in the sum of One hundred Forty thousand dollars, lawful money as aforesaid, conditioned for the payment of the principal sum of Seventy thousand Dollars, of which Ten thousand dollars is payable upon completion of improvements and notice thereof as therein set forth, and the balance of Sixty thousand dollars within three years from the date hereof; with interest at the rate of six percent per annum, payable semi-annually; and it is provided in the said obligation that the said Seaside Development Company shall produce to said Obligee, its successors and assigns, on or before the thirty-first day of December of each and every year, receipts for all taxes or charges in the nature thereof for the current year assessed upon the premises described in the mortgage accompanying the said obligation.

AND WHEREAS, by a certain Indenture of Mortgage, also bearing even date herewith, the said Seaside Development Company did grant and convey unto the said Obligee, its successors and assigns:—

Lots 3, 4, 5, 6, 7, Block 300; Lots 2, 7, 8, Block 301; Lots 2, 8, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, Block 302; Lots 3 and 4, Block 303; Lots 42, 43, 44, Block 304; Lots 21 and 22, Block 305; Lots 26, 27, 28, 29, 30, Block 412; Lots 26 and 30, Block 414; Lots 22, 23, 26, 30, 33, 34, Block 315; Lots 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 30, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, and 46, Block 416; Lots 2 and 8, Block 303; Lots 25 and 31, Block 414; Lots 12, 13, 14, 15, 16, 17, 18, 38, 39, 40, 41, 42, 43, 44, 45, 46, Block 306; all of said lots being situate in

the City of North Wildwood, Cape May County, New Jersey, being more fully described in said Indenture of Mortgage.

AND WHEREAS, under various agreements between the Obligee and others for the purchase of the said lots, said others were obligated to give their bonds, warrants and mortgages, and it was requested by the Obligors that said others should be relieved from their said obligation to give their said bonds, warrants and mortgages, and it was agreed that they should be so relieved upon the understanding that the Obligors should become surety unto the Obligee, its successors and assigns, in the sum hereinabove mentioned, for the prompt compliance with all of the terms and conditions of the said obligation and mortgage accompanying the same, given by the said Seaside Development Company to the Obligee hereinabove recited: 10

NOW THEREFORE THE CONDITION OF THIS OBLIGATION IS SUCH THAT if the above bounden Obligors, their heirs, executors, or administrators, or any of them, shall and do well and sufficiently save, defend and keep harmless, and indemnify the said Obligee of and from all actions, suits, losses, damages, expense and deficiencies, which it or they shall or may be put to or sustain, or be engaged in for, or by reason of the non-performance or non-fulfillment of all or every or any of the agreements, provisions, terms and conditions of the said mortgage and all obligation given by said Seaside Development Company to Obligee as hereinabove mentioned without fraud or further delay, and shall cause to be paid the principal sum mentioned in the said obligation and mortgage accompanying the same, and interest thereon, and all other charged therein provided, and to do and perform all things therein provided for, all at the times therein 20 30

specified, then this obligation to be void or else to remain in full force and virtue.

AND FURTHER, we do, for ourselves and each of us, our and each of our heirs, executors, administrators, and every of them, authorize and empower any attorney of any Court of record in Pennsylvania or elsewhere to appear for us and each of us, our and each of our heirs, executors, and administrators, and confess judgment against us, and each of
10 us, our and each of our heirs, executors and administrators, for the above sum of Seventy Thousand Dollars, with or without declaration, with costs of suit, release of errors, without stay of execution, with a waiver of exemption and inquisition and condemnation, and with three per cent added for collection fees. Judgment hereunder shall not be entered except upon default persisted in for more than thirty days after written notice of such default is
20 given to the obligors by United States Registered mail in care of Robert Levin, No. 1005 Lincoln Building, Philadelphia, Pa.

It is expressly understood and agreed that this bond or obligation and all the provisions hereof, including the confession of judgment, and the liability of the Obligors, shall extend to and shall indemnify the Oblige, its successors or assigns, against any loss or damage as aforesaid by reason of any default under any and all bonds and mortgages given
30 in pursuance of the provision as to release of any lot or lots contained or set forth in the mortgage hereinabove recited given by the said Seaside Development Company to the Oblige, and it is expressly further understood and agreed that in the event of any default under any such bond or mortgage so given pursuant to said release provisions and within the period of the thirty day notice hereinabove provided for, the obligors, their heirs, executors, ad-

ministrators, or any of them, shall have the right, have the right, at their election, (in addition to the right to make good such default within the said thirty days as hereinabove set forth) to have an assignment of such bond and mortgage accompanying the same, given pursuant to said release provision upon payment of all of the then unpaid principal thereof, together with all interest accrued thereon, costs and other charges collectible by law or provided for in such bond or mortgage, and in the event of such payment of principal, etc., and the taking over of such bond and mortgage, there shall be no right unto the Obligee, its successors or assigns, to confess the judgment as above provided, or to otherwise take action upon this bond or obligation by reason of any such default on such bond or mortgage so taken over by the Obligors, their heirs, executors, administrators or any of them. 10

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written. 20

(SGD)	ROBERT LEVIN	(SEAL)	
"	HERMAN APOTHAKE	(SEAL)	
"	DAVID RABINOVITCH	(SEAL)	
"	WOLF BODEK	(SEAL)	
"	KAIN ELLIS	(SEAL)	
"	MAURICE J. TEITLEBAUM	(SEAL)	
"	HARRY BALIS	(SEAL)	
"	DAVID COHEN	(SEAL)	
"	JOSEPH GROSS	(SEAL)	
"	JULIUS J. SALTSBURG	(SEAL)	30
"	MAX SPECKTOR	(SEAL)	
"	JOS. J. FISCHER	(SEAL)	
"	NATHAN GROSS, JR.	(SEAL)	
"	MAX MOSKOVITZ	(SEAL)	

Signed, sealed and delivered
in the presence of:

FOR VALUE RECEIVED, we hereby assign, set over and transfer the above bond or obligation unto NATIONAL BANK OF COMMERCE IN PHILADELPHIA, its successors and assigns.

IN WITNESS WHEREOF, we have hereunto affixed our name and corporate seal this 9th day of November, A. D. 1925.

WILLIAM J. RYAN, INC.

BY (SGD) WILLIAM J. RYAN
President

10

ATTEST:

.....
SECRETARY.

Attest: John F. Kelly
Secretary.

20

30

NOTICE OF MOTION TO STRIKE OUT
AMENDED BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH GROSS,

Complainant,

and

PENNSYLVANIA MORTGAGE

& LOAN COMPANY, *et*

al.,

Defendants.

Notice of Motion to
Strike Out Amended
Bill of Complaint.

10

To Philip Wendkos, *solicitor of the complainant,*
Joseph Gross.

20

Dear Sir:

Take notice that the defendants, Pennsylvania Mortgage & Loan Company, David Cohen, Jacob Cohen and Samuel Lerner, will make application on behalf of said defendants to the Chancellor, at the Chancery Chambers in the City of Camden, on Monday, the seventeenth day of January, 1927, at ten o'clock in the forenoon, to strike out said amended bill if the same be permitted to be filed, for the following reasons:

30

1. The said amended bill does not set forth any cause of action against any of said defendants upon

48 *Notice of Motion to Strike Out Amended
Bill of Complaint*

which the complainant would be entitled to relief thereunder.

2. Said amended bill is without equity and does not show any ground for the relief prayed for.

3. The facts stated in the amended bill do not justify the granting of any relief to the complainant under the provisions of Chapter 213 of the Laws of 1919.

4. Complainant has no such lien upon any of the lands and premises referred to in the amended bill as would justify the granting of any relief as prayed for therein or would confer upon the complainant the right to maintain the said bill against these defendants as framed.

20 5. The effort of the complainant in said amended bill, in part, is to collect upon the mortgage debt or obtain additional security therefore in advance of realizing on the lands and premises secured by the mortgage, contrary to equity.

6. The amended bill does not allege that either the Pennsylvania Mortgage & Loan Company or David Cohen is the obligor on any of the bonds secured by the mortgages held by the complainant
30 or that either of said defendants, at any time, had the legal title to any of the lands and premises mentioned in said bill in order to warrant restraint against them.

7. Said amended bill does not allege that either the Pennsylvania Mortgage & Loan Company or the

Notice of Motion to Strike Out Amended 49
Bill of Complaint

said David Cohen, of any of the other defendants mentioned in said bill, was insolvent at the time of the particular transactions referred to in said bill or at the time of filing this bill.

8. The amended bill does not show that the complainant is entitled to any equitable relief as prayed for or set forth any facts, the truth of which, if admitted, would show that the complainant would be 10
damaged.

Further, take notice that at the same time and place application will be made on behalf of the defendants above named, should the Court decline to strike out the said amended bill, as a whole, to strike out the following portions thereof, to wit:

9. Paragraph twenty-seven because the facts therein stated do not justify the granting of any relief to the complainant as prayed for in said bill, 20
under the provisions of Chapter 213 of the Laws of 1919, or that the complainant was damaged in any way by reason of the allegations contained therein and the facts stated do not warrant the conclusion alleged that the practice carried on would, in any way, hinder, delay or defraud the creditors of the said Pennsylvania Mortgage & Loan Company and David Cohen, or the complainant, and the facts stated do not support the allegation that the practice adopted would result in putting the assets beyond 30
the reach of their creditors.

10. Paragraph twenty-eight because the allegations contained therein do not show that the complainant would be entitled to any relief as prayed for in said bill under the provisions of Chapter 213

50 *Notice of Motion to Strike Out Amended
Bill of Complaint*

of the Laws of 1919, and that the conveyance by Teller to Paul, as therein stated, both being straw men of the defendants, Pennsylvania Mortgage & Loan Company and David Cohen, would not have the effect of a transfer of title to the land to hinder, delay and defraud creditors and for the further reason that the complainant now holds a mortgage of \$30,000.00 on the lands and premises particularly
10 referred to in paragraph twenty-eight, and the conveyance alleged was under and subject to the complainant's lien under said mortgage, which could not be disturbed in any way by such conveyance and the complainant did not and could not suffer damage by reason of such conveyance.

11. Paragraph twenty-nine for the reason that the facts stated therein do not justify the granting of any relief as prayed for in said amended bill
20 under the provisions of Chapter 213 of the Laws of 1919 and the conveyance from Teller to Paul, both being straw men of the Pennsylvania Mortgage & Loan Company and David Cohen, as alleged in said paragraph, is not a transfer of property as contemplated by said Act and would not result in any damage to the complainant.

12. Paragraph thirty because the allegations contained therein do not show that the complainant
30 would be entitled to any relief as prayed for in said bill under the provisions of Chapter 213 of the Laws of 1919 and the conveyance by Teller to Paul, as stated therein, both being straw men of the defendants, Pennsylvania Mortgage & Loan Company and David Cohen, would not have the effect of a transfer of title to the land to hinder, delay and

Notice of Motion to Strike Out Amended 51
Bill of Complaint

defraud creditors and for the further ground that the complainant now holds a mortgage of \$25,000.00 on the lands and premises particularly referred to in paragraph 30 and the conveyance alleged was under and subject to the complainant's lien under said mortgage which could not suffer damage by reason of such conveyance.

13. Paragraph thirty-one for the reason that the facts stated in this paragraph would not justify the granting of any relief prayed for in the amended bill based upon the provisions of Chapter 213 of the Laws of 1919 and that the taking of title by the straw men mentioned therein for the benefit of the Pennsylvania Mortgage & Loan Company and David Cohen was not such a transfer as contemplated by the provisions of said statute and the taking of title in the name of the straw men would, in no way, result in any damage or detriment to the complainant. 10 20

14. Paragraph thirty-two for the same reasons as were alleged with respect to paragraph thirty-one.

15. Paragraph thirty-three for the same reasons as were alleged with respect to paragraph thirty-one.

16. Paragraph thirty-four for the same reasons as were alleged with respect to paragraph thirty-one. 30

17. Paragraph thirty-five for the same reasons as were alleged with respect to paragraph thirty-one.

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Bill of Complaint*

18. Paragraph thirty-six for the same reasons as were alleged with respect to paragraph thirty-one.

19. Paragraph thirty-seven for the same reasons as were alleged with respect to paragraph thirty-one.

20 20. Paragraph thirty-eight for the same reasons as were alleged with respect to paragraph thirty-one.

20 21. Paragraph thirty-nine because the allegations contained therein do not show that the complainant would be entitled to any relief as prayed for in said bill under the provisions of Chapter 213 of the Laws of 1919, and that the conveyance by Teller to Paul, as therein stated, both being straw men of the defendants, Pennsylvania Mortgage & Loan Company and David Cohen, would not have the effect of a transfer of title to the land to hinder, delay and defraud creditors and for the further reason that the complainant now holds a mortgage of \$75,000.00 on the lands and premises particularly referred to in paragraph 39, and the conveyance alleged was under and subject to the complainant's lien under said mortgage, which could not be disturbed in any way by such conveyance and the complainant did not and could not suffer damage by reason of such
30 conveyance.

22. Paragraph forty for the same reasons as stated with reference to paragraph twenty-nine.

23. Paragraph forty-one for the reason that the facts stated in said paragraph do not justify the

granting of any relief to the complainant under the provisions of Chapter 213 of the Laws of 1919 and, for the further reason that it appears by said paragraph that the mortgage made by Teller to Jacob Cohen is now held by the latter as trustee for Pennsylvania Mortgage & Loan Company and David Cohen and that the creation of such mortgage would, in no way, hinder, delay or defraud their creditors and the complainant has suffered no damage by 10 reason of said mortgage.

24. Paragraph forty-two for the same reasons as hereinbefore stated with reference to paragraph forty-one.

25. Paragraph forty-three because the facts stated therein do not show that the complainant is entitled to any relief under the terms of Chapter 213 of the Laws of 1919 and that the creation of the mortgage for \$120,000.00 by Kane to the Pennsylvania Mortgage & Loan Company placed an asset in the hands of said mortgagee and was not a transfer or conveyance as contemplated by the terms of said Act and the complainant was not damaged by the creation of said mortgage and the allegation with reference to the contemplated sale of said mortgage would not justify the granting of any relief under the terms of said Act or any other equitable relief in this cause. 20 30

26. Paragraph forty-four for the same reasons as stated with reference to paragraph forty-three and for the further reason that the mortgage made by Roberts and Cohen to the Pennsylvania Mortgage & Loan Company was created far in advance of the

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Bill of Complaint*

time of any alleged indebtedness accrued to the complainant.

27. Paragraph forty-five upon the ground that the allegations contained therein are irrelevant, immaterial and do not constitute the basis for equitable relief under the terms of Chapter 213 of the Laws of 1919, or otherwise. No facts are given but
10 merely conclusions stated. There is no allegation of the insolvency of the Pennsylvania Mortgage & Loan Company and David Cohen at the time of the happening of the occurrences referred to therein. No dates are given of any of the transactions therein alleged and no statement is made that the financial status of the Pennsylvania Mortgage & Loan Company and David Cohen would be changed by reason of the carrying out of any of the threats referred to in said paragraph.

20

28. Paragraph forty-six for the reason that no facts are stated and no dates given, merely conclusions alleged, and there is no allegation that the said Pennsylvania Mortgage & Loan Company and David Cohen were insolvent at the time of the transactions referred to or that they, or either of them, were insolvent at the time of the filing of the bill, or unable to pay the complainant, or any of their other creditors, and for the further ground that
30 there is no allegation that if the lands and premises are conveyed or the moneys due upon the several mortgages collected there would be any effect upon the assets of the Pennsylvania Mortgage & Loan Company or the said David Cohen, or that they, or either of them, contemplated the making of any proper use of said proceeds or did sell any of said assets below their real value.

Further, take notice that upon the filing of the amended bill application will be made for an order dismissing the original bill and the several amendments thereto.

Dated, Camden, New Jersey,
January 14th, 1927.

LEWIS STARR,
JOSEPH BECK TYLER,
Solicitors for Defendants.

10

CONCLUSIONS.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH GROSS,
Complainant,

and

PENNSYLVANIA MORTGAGE
& LOAN COMPANY, *et*
al.,

Defendants.

On Bill, Etc.
Hearing on Motion to
Strike Out Bill of
Complaint.
Conclusions.

20

JOSEPH BECK TYLER, Esq., and MESSRS. STARR,
SUMMERRILL & LLOYD, solicitors for certain
defendants, for the motion.

PHILIP WENDKOS, Esq., with whom was associated
JOSEPH H. CARR, Esq., solicitor of complain-
ant, opposed.

30

LEAMING, V. C.:

- I am unable to discern in the Act of 1919 (*P. L.*, 1919, p. 500) any substantial change in the law as theretofore recognized and administered in this Court in aid of creditors as against acts of debtors designed to hinder, delay or defraud them, except by the removal of the rule recognized in this jurisdiction prior to the enactment of that Act which limited such remedies to judgment and attaching
- 10 creditors. Section 10 of the Act specifically extends the remedy there defined to creditors whose claims are not matured, and an earlier section of the Act defines the word creditors, as used in the Act, as persons having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed, or contingent. Until a creditor's claim shall become definitely determined and fixed, administrative remedies in the field of conservation are clearly contemplated by the Act.
- 20 Nor am I able to discern any inherent difference between the act of a debtor in conveying his property to another without consideration to hinder, delay or defraud his creditors, either present or prospective, and that of purchasing property and causing the title to be placed in the name of another for the purpose of hindering, delaying or defrauding present or prospective creditors. In either case the debtor is powerless to recover the property, as
- 30 and it is peculiarly a part of the duty of this Court to adjudicate the validity of such transfers, as against creditors, and to protect, preserve and restore such property for their benefit.

The present motion to strike out is directed to the entire amended bill, and also directed separately to paragraphs 27 to 46 inclusive.

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Paragraphs 1 to 26, inclusive, adequately disclose that complainant is a creditor within the contemplation of the Act of 1919.

Paragraphs 28 to 42, inclusive, specify the several transactions in which the title to specific lands and mortgages which are in fact owned by the debtors of complainant have been placed in the name of others pursuant to a scheme or plan specifically defined by paragraph 27, which scheme is alleged to have been with intent to hinder, delay and defraud defendant's creditors. It is immaterial that some of these acts were prior to the time complainant became a creditor, if it be true, as averred, that the acts were performed for the purpose alleged. Paragraphs 44 and 45 relate to the proposed acts of defendant debtors to dispose of other assets to hinder, delay and defraud complainant, and paragraph 46 alleges their insolvency.

The averments of the bill touching the relations of defendant, David Cohen, and defendant, Pennsylvania Mortgage and Loan Company, a corporation, are well within the principle, alike practical and philosophic, that the power to control action embraces the power to act.

The several motions against the bill will be denied.

Submitted: April 19, 1927.

Determined: April 20, 1927.

ORDER.
IN CHANCERY OF NEW JERSEY.

	Between		
	JOSEPH GROSS,	}	
	<i>Complainant,</i>		
10	and		
	PENNSYLVANIA MORTGAGE		
	& LOAN COMPANY, <i>et</i>		
	<i>als.,</i>		
	<i>Defendants.</i>		

On Bill, &c.
Order.

The defendants, Pennsylvania Mortgage and Loan Company, David Cohen, Jacob Cohen, Jacob D. Kane and Samuel Lerner, having moved to strike
 20 out the amended bill of complaint of the complainant filed herein, which motion was also directed separately to paragraphs 27 to 46 of the said bill, and the Court having heard Lewis Starr and Joseph Beck Tyler, solicitors for the said defendants for the said motion, and Philip Wendkos and Joseph H. Carr, solicitors for the complainant opposed, and the Court having considered the argument.

It is on this 16th day of May, 1927, on motion of the solicitors for the complainant, ordered that
 30 the said motion to strike the said bill and the several parts thereof be and the same is hereby denied with costs.

E. R. WALKER,
C.

Respectfully advised,
 E. B. LEAMING,
 V. C.

AMENDED ANSWER AND COUNTER-CLAIM
TO AMENDED BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH GROSS,

Complainant,

and

DAVID COHEN, JACOB
COHEN, PENNSYLVANIA
MORTGAGE AND LOAN
COMPANY, SAMUEL
LERNER and JACOB D.
KANE,

Defendants.

On Bill, &c.

Amended Answer
and Counter-Claim
to Amended Bill of
Complaint.

10

20

The defendants, David Cohen, Jacob Cohen, Samuel Lerner, Jacob D. Kane and Pennsylvania Mortgage and Loan Company, by this answer to the complainant's amended bill of complaint, say:

1. Deny that the complainant is a creditor of David Cohen and Pennsylvania Mortgage and Loan Company (hereinafter called Loan Company) within the meaning of the provisions of Chapter 213 of the Laws of 1919, and also deny that the said David Cohen and the Loan Company, or either of them, owe to the complainant any sum of money whatever.

30

60 *Amended Answer and Counter-Claim
to Amended Bill of Complaint*

2. Admit the execution of the agreement dated March 31, 1925, referred to in paragraph 2 of the amended bill and the assignment of the mortgages also referred to therein and the statement contained therein that there were \$18,000 due on said mortgages but aver that the said Gross collected the full amount of the moneys loaned on said mortgages and at the time the amended bill was filed,
10 there is no sum of money due and owing from the said defendants to said Gross.

3. Admit the execution of the agreement referred to in paragraph 3 of the amended bill but for the scope and effect, refer to the same when produced.

4. Admit the loan by the complainant to the defendants, David Cohen and Loan Company, of
20 \$5,250, referred to in paragraph 4 of the bill of complaint and the assignment of the mortgages set forth in said paragraph and the fact that there was \$5,500 due on said mortgages, and also the execution of the agreement referred to in said paragraph 4, but for the scope and purpose thereof, refer to the same when produced.

5. Admit the assignment of the mortgages, referred to in paragraph 5 to Dora A. Gross, the wife
30 of said Joseph Gross, but aver that the said Dora A. Gross collected on said mortgages a sum in excess of the amount loaned thereon to the defendants, David Cohen and the Loan Company, and that there is no sum of money due and owing from either of the defendants to the said Dora A. Gross or her husband, Joseph Gross.

6. Deny each and every of the allegations set forth in paragraph 6 of the amended bill of complaint.

7. Deny each and every of the allegations set forth in paragraph 7 of the amended bill of complaint.

8. Deny each and every of the allegations set forth in paragraph 8 of the amended bill of complaint. 10

9. Deny each and every of the allegations set forth in paragraph 9 of the amended bill of complaint.

10. Admit the execution of the agreement referred to in paragraph 10 of the amended bill of complaint but for purpose and scope thereof, refer to the same when produced. Admit that the complainant loaned the said David Cohen \$25,000 but avers that the entire amount of said loan has been repaid and that the defendants do not owe the said Joseph Gross any part of the money referred to in paragraph 10 of the amended bill of complaint. 20

11. Deny that the said defendant, David Cohen, is indebted to the said complainant for any loan or investment made pursuant to the agreement, referred to in paragraph 11 of the amended bill of complaint. 30

12. Deny each and every of the allegations set forth in paragraph 12 of the amended bill of complaint.

13. Admit the allegations contained in paragraph 13 of the amended bill of complaint.

14. Deny each and every of the allegations set forth in paragraph 14 of the amended bill of complaint.

15. Deny each and every of the allegations set forth in paragraph 15 of the amended bill of complaint and avers that the said Gross has disposed of the lands conveyed to him as collateral security
10 for a sum in excess of the amount due to him from the said David Cohen, and at the present time the latter is not indebted to the said complainant by reason of any matter or thing set forth in paragraph 15 of the amended bill of complaint.

16. Admit the execution of the bond, referred to in paragraph 16 of the amended bill of complaint, but deny that there is any liability thereon of the said David Cohen to the complainant. Deny that
20 the complainant will ever be obliged to pay any sum of money thereon and also deny that there is any contingent liability of the said defendant, David Cohen, to the said complainant.

17. Admit the execution of the agreement dated April 14, 1926, referred to in paragraph 17 of the amended bill of complaint, but deny each and every of the other allegations set forth in said paragraph.

30 18. Admit the allegations contained in paragraph 18 of the amended bill of complaint.

19. Deny each and every of the allegations set forth in paragraph 19 of the bill of complaint.

20. Deny each and every of the allegations set

forth in paragraph 20 of the amended bill of complaint.

21. Deny each and every of the allegations set forth in paragraph 21 of the amended bill of complaint.

22. Deny each and every of the allegations set forth in paragraph 22 of the amended bill of complaint. 10

23. Admit the allegations contained in paragraph 23 of the amended bill of complaint but aver that the sum of money paid by the complainant was repaid by the transfer of a mortgage for \$25,000 covering an eight-family apartment at Wildwood, New Jersey, and that there is nothing due at the present time to the said complainant for moneys 20 laid out and expended with reference to said note.

24. Deny that the complainant advanced as a loan to the Loan Company the sum of \$12,450 in cash on August 19, 1926, as set forth in paragraph 24 of the amended bill of complaint, but avers that the sum of \$12,450, referred to in paragraph 24 of the amended bill of complaint, was paid to the Loan Company by the said Gross for an assignment of the \$25,000 mortgage covering the property at Wild- 30 wood, referred to in the last preceding paragraph, but denies the remaining allegations in said paragraph of said amended bill of complaint; and avers that of the sum of \$12,450 the said Gross retained \$4,000 for the purpose of obtaining a first mortgage on said apartments, which he never did.

64 *Amended Answer and Counter-Claim
to Amended Bill of Complaint*

25. Deny the allegations set forth in paragraph 25 of the amended bill of complaint.

26. Deny the allegations set forth in paragraph 26 of the amended bill of complaint.

27. Admit that the assets of the Loan Company and Cohen consist of real estate in New Jersey and mortgages covering real estate in New Jersey and elsewhere, but deny that instead of investing the sums of money in their own name, the said Cohen and Loan Company entered into a scheme and established a practice of taking title in the names of straw men and dummies, who were parties to said scheme and practice and deny that Nathan Teller, Philip Paul, Samuel Lerner, Jacob Cohen, Harry Kaufman and the National Building and Construction Company were used as straw men for the purposes set forth in paragraph 27 of the amended bill of complaint, but admits that at times the defendant used the name of Jacob D. Kane for the purpose of creating mortgages on lands owned by the said Jacob Cohen and David Cohen, and not the Loan Company. Deny that the defendant formed any business scheme or practice for the purpose of hindering, delaying or defrauding their creditors, or for the purpose of putting their assets beyond the reach of their creditors, as set forth in paragraph 27 of the amended bill of complaint.

28. Deny each and every of the allegations set forth in paragraph 28 of the amended bill or complaint.

29. Deny each and every of the allegations set

forth in paragraph 29 of the amended bill of complaint.

30. Deny each and every of the allegations set forth in paragraph 30 of the amended bill of complaint.

31. Admits the execution of the conveyance dated September 3, 1925, from David Kotok and wife to Jacob D. Kane, of the property described in paragraph 31 of the amended bill of complaint, but said purchase was made by Jacob Cohen and not by either the Loan Company or the said David Cohen, and the title was taken in the said Jacob D. Kane so that he might execute a mortgage thereon, but denies that said consideration to the said Kotok was paid by either David Cohen or the Loan Company, but avers that the same was paid by Jacob Cohen and denies that a conveyance was made for the purpose of hindering, delaying and defrauding creditors of the Loan Company or David Cohen, and denies that Jacob D. Kane holds title, as trustee, for the Loan Company or David Cohen. 10 20

32. Admits the execution of the conveyance dated September 2, 1925, from Beecher-Kay Realty Company to Jacob K. Kane of the property described in paragraph 32 of the amended bill of complaint, but said purchase was made by Jacob Cohen and not by either the Loan Company or the said David Cohen, and the title was taken in the said Jacob D. Kane so that he might execute a mortgage thereon, but denies that said consideration to the said Beecher-Kay Realty Company was paid by either David Cohen or the Loan Company, but avers that the same was 30

paid by Jacob Cohen and denies that a conveyance was made for the purpose of hindering, delaying and defrauding creditors of the Loan Company or David Cohen, and denies that Jacob D. Kane holds title, as trustee, for the Loan Company or David Cohen.

33. Admits the execution of the conveyance dated
10 September 22, 1925, from Sidney M. Earl to Jacob
D. Kane of the property described in paragraph
33 of the amended bill of complaint, but said purchase was made by Jacob Cohen and not by either the Loan Company or the said David Cohen, and the title was taken in the said Jacob D. Kane so that he might execute a mortgage thereon, but denies that said consideration to the said Sidney M. Earl was paid by either David Cohen or the Loan Company,
20 but avers that the same was paid by Jacob Cohen, and denies that a conveyance was made for the purpose of hindering, delaying and defrauding creditors of the Loan Company or David Cohen, and denies that Jacob D. Kane holds title, as trustee, for the Loan Company or David Cohen.

34. Admits the execution of the conveyance dated
September 22, 1925, from Sidney M. Earl to Jacob
D. Kane of the property described in paragraph 34
of the amended bill of complaint, but said purchase
30 was made by Jacob Cohen and not by either the
Loan Company or the said David Cohen, and the title was taken in the said Jacob D. Kane so that he might execute a mortgage thereon, but denies that said consideration to the said Sidney M. Earl was paid by either David Cohen or the Loan Company, but avers that the same was paid by Jacob

Cohen, and denies that a conveyance was made for the purpose of hindering, delaying and defrauding creditors of the Loan Company or David Cohen, and denies that Jacob D. Kane holds title, as trustee, for the Loan Company or David Cohen.

35. Admit the execution of the deed dated September 29, 1925, of Jacob Cohen and wife to Jacob D. Kane, for the lands and premises described in paragraph 35 of the amended bill of complaint, but denies that any sum of money was paid therefor by the Loan Company or David Cohen, and avers that the said property is owned by the said Jacob Cohen and the title was placed in Jacob D. Kane for the purpose of placing mortgages thereon, and denies that the said conveyance was a voluntary conveyance to the Loan Company or Cohen of placing the properties beyond the reach of the creditors of the said Loan Company and David Cohen, and deny that the conveyance was made to hinder, delay and defraud their creditors and deny that the property is held by Jacob D. Kane, as trustee, for the Loan Company and David Cohen. 10 20

36. Deny each and every of the allegations set forth in paragraph 36 of the bill of complaint except the fact of the conveyance for the lands and premises from Morris Sacks and wife to Jacob D. Kane and Max Backof, and avers that the said lands and premises are owned individually by said Jacob D. Kane and Max Backof, and that the Loan Company and Cohen have no interest therein and deny that the said conveyance was made by them for the purpose of hindering, delaying or defrauding their creditors. 30

37. Deny the allegations set forth in paragraph 37 of the bill of complaint, except the fact of the conveyance from William J. Ryan, Inc., to Jacob D. Kane, and avers that the said conveyance was made to Kane by said Ryan Company as a purchase by Kane from Ryan, and deny that the said conveyance was made for the purpose of placing the property beyond the reach of the creditors of the
10 Loan Company and David Cohen, and also deny that the said Jacob D. Kane holds title for the Loan Company or David Cohen.

38. Deny each and every of the allegations set forth in paragraph 38 of the amended bill of complaint, except that statement referring to a conveyance made by Harry Cohen and wife to Samuel Lerner, and deny that the said conveyance was made to Lerner as the straw man and dummy for the said
20 Loan Company and Cohen, and also deny that the conveyance was made for the purpose of placing the property beyond the reach of the creditors of the Loan Company and David Cohen, and to hinder, delay and defraud their creditors, and also deny that the said Samuel Lerner has any interest in the property whatever, or holds the same as trustee for the Loan Company and Cohen. Defendant avers, upon information and belief, that the conveyance to Samuel Lerner, referred to in paragraph 38, was
30 made for the purpose of transferring title to him as the bona fide owner of the property.

39. Make the same reply to paragraph 39 of the amended bill of complaint as is set forth in paragraph 38 hereof.

40. Admit the allegations contained in paragraph

40 of the bill of complaint with respect to the conveyance by Jacob D. Kane to the National Building and Construction Company, but deny each and every of the other allegations set forth in said paragraph, and avers that the lands and premises described in said paragraph 40 belong to Jacob Cohen and that the said Loan Company and David Cohen have no interest therein and deny that the conveyance was made to hinder, delay and defraud the creditors of 10
the said Loan Company and David Cohen.

41. Deny each and every of the allegations set forth in paragraph 41 of the amended bill of complaint, except that of the execution of the mortgage from Nathan Teller to Jacob Cohen, but aver that said mortgage was a purchase money mortgage and that the said mortgage is now owned by Jacob Cohen and his wife, and the said Loan Company and David Cohen have no right, title and interest therein. 20

42. Deny each and every of the allegations set forth in paragraph 42 of the amended bill of complaint.

43. Admit the execution by Jacob D. Kane of a mortgage to the Pennsylvania Mortgage and Loan Company for the sum of \$120,000, referred to in paragraph 43 of the bill of complaint, but deny that the said Loan Company has offered to sell said 30
mortgage in the open market and also deny that it is about to dispose of the same for the purpose of placing the proceeds and amount due thereon beyond the reach of its creditors, and for the purpose of delaying, hindering and defrauding the complainant in any way.

44. Admit the allegations set forth in paragraph 44 of the amended bill of complaint with respect to the creation of the mortgage by Steelman to the Loan Company and also the mortgage from Roberts to the Loan Company, but deny that the Loan Company has offered to sell said mortgage in the open market or is about to dispose of the same for the purpose of placing the same and the amount due thereon beyond the reach of its creditors and for the distinct purpose of hindering, delaying and defrauding the complainant, but aver that the mortgages, referred to in paragraph 44, are owned by the Loan Company as the result of investments made by it at the times indicated in said paragraph.

45. Deny each and every of the allegations set forth in paragraph 45 of the amended bill of complaint.

46. Deny each and every of the allegations set forth in paragraph 46 of the amended bill of complaint.

The defendants, David Cohen and Pennsylvania Mortgage and Loan Company, by way of counter-claim exhibited against the complainant, Joseph Cross, complain and say:

1. That the Pennsylvania Mortgage and Loan Company is a corporation incorporated under the laws of the State of Delaware, and is duly registered under the laws of the State of Pennsylvania, and is engaged in the real estate and mortgage business in the States of Pennsylvania and New Jersey; and that David Cohen is engaged in the real estate

business and also is employed by the Pennsylvania Mortgage and Loan Company in the capacity of treasurer.

2. That the complainant, Joseph Gross, is an attorney-at-law, practicing law in the City and County of Philadelphia, Pennsylvania.

3. That Dora A. Gross is the wife of Joseph 10
Gross, and Nathan Gross and Jacob Gross are brothers of the said Joseph Gross, and that the said Dora A. Gross, Nathan Gross and Jacob Gross are nominees of the said Joseph Gross, holding securities and title to real estate as hereinafter set forth.

4. That between the years 1921 and 1926, inclusive, the said defendants employed and retained the complainant, Joseph Gross, for the purposes of instituting foreclosure proceedings, making collec- 20
tions, preparing agreements, deeds and other legal papers, and for the purpose of legal representation and advice, as is hereinafter set forth.

5. That during the years 1921 to 1926 inclusive, the Pennsylvania Mortgage and Loan Company held as security for numerous loans, certain bonds accompanied by mortgages secured upon real estate in the City and County of Philadelphia, State of Pennsylvania. 30

6. Sometime in the year 1920, the defendant, Pennsylvania Mortgage and Loan Company, hereafter called "Mortgage Company," began its business operations and sometime in the months of June and July, 1921, the exact time being unknown to

them, as hereinafter indicated, the defendants, Cohen and Mortgage Company, began to have business dealings with the said complainant, including the borrowing of funds from him and from the beginning of said transactions and during the entire period when the same occurred, the books and records, showing transactions between the said Gross and defendants were kept in the office of the said

10 Gross, either by himself or some person in his employ and no books were kept by either of the defendants showing their individual transactions with the said Gross, and the defendants have no records to show which transactions were applicable to either of the defendants, but the knowledge of the transactions are within the knowledge, possession and control of the said complainant, and the defendant, Cohen, paid to the said Gross, a weekly sum in liquidation of the expense incurred by Gross in

20 keeping the books of the said transactions with the said defendants, and the books are now in the possession of the said Gross.

7. During the years 1921 and 1926, inclusive, certain bonds and mortgages were forwarded by either or both of the defendants to the complainant, Joseph Gross, for the purpose of collecting the principal and interest thereon by instituting foreclosure proceedings, or otherwise, and the said Joseph

30 Gross did cause a large number of foreclosure proceedings to be instituted by either issuing *scire facias sur* mortgage proceedings or by filing of record the bond, which said mortgages accompanied.

8. Defendants are unable to specify the exact time when said bonds and mortgages were forwarded to

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the said complainant, as the information with respect thereto is in possession of the complainant, Gross, but that the amount of the mortgage, the property secured thereby and the name of the mortgagor, so far as the defendants have been able to ascertain are as follows:

Mortgage in

the sum of	Secured on	Mortgagor	
\$1000.00	2034 Frankford Ave., Phila., Pa.	Samuel Arrow	10
1500.00	1136 Glenwood Ave., Phila., Pa.	H. Braverman	
500.00	2323 E. Clearfield St., Phila., Pa.	Morris Cohen	
500.00	2554 N. 13th St., Phila., Pa.	Rubin Cohen	
500.00	567 N. 20th St., Phila., Pa.	Morris Elkin	
1500.00	243-45 South St., Phila., Pa.	Samuel Fractor	20
500.00	1754 N. Aberdeen St., Phila., Pa.	N. Grossman	
500.00	431 Mifflin St., Phila., Pa.	Jacob Gordon	
1500.00	1509 Nedro Ave., Phila., Pa.	Jacob Garfield	
5000.00	Nedro Ave., Phila., Pa.	Henry Garfield	
2500.00	2262 N. 20th St., Phila., Pa.	Isaac Goren	30
1500.00	3020 W. Cumberland St., Phila., Pa.	Jacob Feldman	
500.00	702 Dickinson St., Phila., Pa.	L. B. Feingold	
1500.00	4816 Paschall Ave., Phila., Pa.	Paul Stephens	

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	400.00	2427 S. Berkley St., Phila., Pa.	H. Silverman, et ux
	1200.00	4546 Fernhill St., Phila., Pa.	Joseph M. Hood
	1000.00	2210 S. 8th St., Phila., Pa.	Mr. Hoffmand
10	1000.00	2508 S. 11th St., Phila., Pa.	A. Norin
	1800.00	1611 Fitzwater St., Phila., Pa.	Samuel Platt
	1500.00	1926 N. 29th St., Phila., Pa.	Morris Patrovitch
	500.00	1940 N. Hollywood St., Phila., Pa.	Jacob Patrovitch
	1000.00	2635 N. 30th St., Phila., Pa.	Morris J. Parris
20	500.00	2457 N. 33rd St., Phila., Pa.	Harry Slensky, et ux
	500.00	4114 Cambridge St., Phila., Pa.	J. E. Sodel
	1500.00	1927 S. 9th St., Phila., Pa.	Israel Schwartz
	500.00	2536 S. 9th St., Phila., Pa.	Morris M. Simon
	3500.00	3142 N. Diamond St., Phila., Pa.	Harry Trabine
30	1000.00	2329 E. York St., Phila., Pa.	Wm. I. Breslow
	1000.00	2316 W. Norris St., Phila., Pa.	Joseph Cohen
	500.00	2139 N. 30th St., Phila., Pa.	S. Cuttler
	2000.00	1520 S. 7th St.,	

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	Phila., Pa.	Samuel Chovinson	
500.00	2414 N. 10th St., Phila., Pa.	Joseph Brooks	
9000.00	5004-5008-5014-5016- 5022 N. 9th St., Phila., Pa.	Joseph Brooks	
1500.00	2933-35 Ridge Ave., Phila., Pa.	Joseph Brooks	10
1200.00	824 N. 10th St., Phila., Pa.	Joseph Brooks	
4500.00	307 S. 39th St., Phila., Pa.	Joseph Brooks	
2500.00	1004 N. 6th St., Phila., Pa.	Joseph Brooks	
	3769-71 Cresson St., Phila., Pa.	Chas. F. Gerhard	
	3092-94 Janney St., Phila., Pa.	Chas. F. Gerhard	20
3200.00	1608 N. Lawrence St., Phila., Pa.	George A. Strad	
	3632 Haverford Ave., Phila., Pa.	George A. Strad	
2000.00	525 Wood St., Phila., Pa.	Harry, Nathan Samuel Julia Braverman	
600.00	1525 Dickinson St., Phila., Pa.	Arcangel Di Pietrantonio & Raffaele Bor- elli	30
1500.00	527 Mifflin St., Phila., Pa.	David & Esther Firman	

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	2000.00	929 S. 5th St., Phila., Pa.	Henry Iskart
	1000.00	1308 N. 7th St., Phila., Pa.	Abram & Yetta Katz
	1200.00	824 N. 10th St., Phila., Pa.	Vincent Ross
10	2000.00	1957 N. 31st St., Phila., Pa.	Israel Schwartz
	500.00	2414 S. Lawrence St., Phila., Pa.	Bessie Wollinsky

20 9. The list of mortgages contained in the last preceding paragraph is complete so far as defendants are able to ascertain at the present time, but the books and records in the possession of the complainant, Gross, will contain an accurate statement of the same, to which reference is hereby made, for the purpose of supplying any omissions from the list above set forth. The said mortgage company was the mortgagee mentioned in all of said mortgages.

30 10. These defendants aver that the said Joseph Gross did collect large sums of money, including principal, attorney's fee and interest due and payable on account of said bonds and mortgages, but the said Joseph Gross has failed and refused to account to the Pennsylvania Mortgage and Loan Company for all of the sums of money which have been received by him on account of the said foreclosure proceedings, and the said Joseph Gross has failed and refused to pay to the Pennsylvania Mortgage and Loan Company large sums of money due it and collected by him on account of said foreclosure proceedings.

11. The Pennsylvania Mortgage and Loan Company further avers that it at no time has received an account from the said Joseph Gross setting forth the sums of moneys collected by him upon its behalf, and setting forth the attorney's fees charged by the said Joseph Gross for his services, and the amount of costs expended by him in and on account of said foreclosure proceedings.

12. That a full record of the bonds and mortgages forwarded to Joseph Gross for legal action is in the possession of the said Joseph Gross, and full information of the action taken by the said Joseph Gross, the sums collected by him on account of principal, interest and costs, and the costs expended and fees charged are also entirely in the possession of the said Joseph Gross, all of which these defendants have been unable to ascertain and procure, and these defendants therefore pray that the said Joseph Gross be required to set forth the same in full, in his reply to this counter-claim. 10 20

13. These defendants aver that during the years 1921 to 1926 inclusive, the Pennsylvania Mortgage and Loan Company and David Cohen assigned to the said Joseph Gross, or his said nominees, certain bonds and accompanying mortgages secured upon real estate in the City of Philadelphia, Pennsylvania, and in the City of Wildwood, New Jersey, which bonds and mortgages were assigned as collateral security for certain advancements of money made by the said Joseph Gross to the Pennsylvania Mortgage and Loan Company and David Cohen. 30

14. Defendants are unable to furnish the exact dates and times when the mortgages, referred to in

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the last preceding paragraph, were assigned to the said Gross, but so far as the defendants are able to ascertain the following is a list of the mortgages so assigned:

Mortgage in		Mortgagor	
the sum of	Secured on		
\$19,000.00	936-38-40 N. Marshall St., Phila., Pa.	Samuel Bass, et ux.	
10	915 N. Marshall St., Phila., Pa. 2139 S. 7th Street, Phila., Pa. S. E. Cor. 7th & Wolf Sts., Phila., Pa. N. E. Cor. 7th & Ritner Sts., Phila., Pa.		
20	23,500.00 N. W. Cor. 7th & Moore Sts., Phila., Pa. N. E. Cor. 7th & Winton Sts., Phila., Pa. 1625 S. 7th St., Phila., Pa. 2001 S. 7th St., Phila., Pa.	Morris Rutberg	
	4,000.00 2013 N. 33rd St., Phila., Pa.	Samuel Amsterdam	
30	75,000.00 N. W. Corner of Davis Ave. & Atlantic Ave., Wild- wood, N. J., Lots 14-15, block 85	Samuel Lerner	
	30,000.00 Lots 11-12, Block 56, Jun- iper & Boulevard, Wild- wood, N. J.	Pauline Rosen	
	25,000.00 Lots 12-13, Block C, Wildwood Ave. between the Ocean		

and Atlantic Ave., Wild-
wood, N. J.

David Cohen and Harry Koffman assigned the mortgage of \$1500.00 secured on premises 2401-2429 Nassau Street, Philadelphia, Pa., given to Harry Pearlman to them, to Joseph Gross, or his nominee.

David Cohen and Max Spector assigned the mortgage of \$25,000.00 secured on lot 31 and part of 32, Block O, Poplar Ave., Wildwood, N. J., given by 10
Nathan Teller to them, to Joseph Gross, or his nominee.

15. Defendants are unable to specify in particular the dates of the various mortgages and the assignments thereof, but said information is exclusively in the possession of the said Gross and shown by the various records kept by him, or under his control, with respect to his dealings with the defendants. 20

16. That of the mortgages referred to in the last two preceding paragraphs assigned to the said Gross, certain thereof have been paid, either in whole or in part by the said Gross, although defendants have no accurate knowledge as to which have been paid in full or the amounts received on account of any of the same; said information is exclusively in the possession of the said Gross and shown by the books and records in his possession, 30
respecting the dealings between him and the defendants.

17. Defendants aver that the said Gross, or some person for him, has been collecting interest on the mortgages assigned to him, as aforesaid, although the defendants have no accurate information or

knowledge as to the amount of the interest collected or the time when the same were paid to the said Gross, as such information is within the exclusive knowledge of the said Gross and is shown by the books aforesaid, and at no time has the said Gross, or his nominee, furnished to these defendants any accounting of the moneys which he or they have received on account of either principal or interest on
10 said bonds and mortgages, but that such information is exclusively within the knowledge of the said Gross or shown by the books in his possession.

18. These defendants aver that full details of mortgages assigned to Joseph Gross, or his nominees; the amounts received upon assignment and satisfaction thereof, and the amounts received on account of interest due thereon, are entirely in the possession of the said Joseph Gross, or his nominees; that these defendants have been unable to ascertain and procure the same, and therefore pray
20 that the defendants herein be required to set forth the same in full, in their reply to this counter-claim.

19. These defendants further aver that the said Joseph Gross has in his possession promissory notes executed by the Pennsylvania Mortgage and Loan Company and endorsed by David Cohen, and that the said Joseph Gross also has in his possession agreements wherein and whereby the said
30 David Cohen has agreed to hold harmless and indemnify said Joseph Gross on account of moneys which have been advanced by the said Joseph Gross to the Pennsylvania Mortgage and Loan Company.

20. The agreements referred to in the last preceding paragraph are in possession of the said Gross

and defendants have no copies thereof, and the scope and effect of said agreements can be determined by an inspection of the same, when produced.

21. The following is a list of the promissory notes referred to in the last two preceding paragraphs; all of said notes being executed either by one or both of said defendants:

Note Dated	Amount	
December 25, 1925	\$3,150.00	10
April 14th, 1926	10,000.00	
January 9th, 1925	3,000.00	
November 1, 1923	3,000.00	
November 16, 1925	1,200.00	
December 14, 1925	1,200.00	
January 16, 1926	1,200.00	
February 20, 1926	1,200.00	
March 16, 1926	1,200.00	
January 9, 1924	3,000.00	20
November 14, 1924	4,000.00	

22. All of said notes referred to in the last preceding paragraph were made payable to said Gross, although defendants are unable to specify the exact days when the same were turned over to the said Gross; such information is within the exclusive knowledge of the said Gross or shown by the books in his possession.

30

23. These defendants aver that the said Joseph Gross has collected sums of money on behalf of both of them, and that he has applied the funds so collected against the accounts of both, so that therefore the accounts of these defendants with Joseph Gross have become so intermingled that a separate

bill in equity cannot be filed by each of the said defendants.

24. These defendants aver that large sums of money have also been paid to and received by the said Joseph Gross, on account of moneys owing to him by the said Pennsylvania Mortgage and Loan Company and David Cohen, but the said Joseph
10 Gross has failed and refused to return the evidence of such indebtedness to the Pennsylvania Mortgage and Loan Company, or to David Cohen.

25. Defendants are unable to set forth and designate the amounts of money received by Gross on behalf of either or both of them, or the manner in which he has applied the same, or the time when same had been collected, for the reason that such
20 information is within the exclusive knowledge of the said Gross or shown by the books aforesaid, and defendants are unable to specify, with particularity, the times when said moneys have been collected, as the same is within the exclusive knowledge of the said Gross, but the latter has failed and refused to return to either or both of said defendants the evidence of indebtedness, heretofore referred to, which have been paid and liquidated by the collections made to the said Gross.

30 26. These defendants aver that they are not indebted to the said Joseph Gross in any sum whatsoever, as the said Joseph Gross has been repaid in full by his collections and advancements, and upon a true accounting thereof had, a large balance will be found due these defendants, and these defendants have requested from the said Joseph Gross

an accounting of all moneys collected and paid to the said Joseph Gross, or received by his nominees, but the said Joseph Gross has failed to render any account whatsoever to the complainants, and still refuses to return to these defendants the security assigned or transferred to him or his nominees.

27. The defendants are unable to specify with particularity the amount of money due and owing to them from said Gross, for the reason that the information as to the same is within the exclusive knowledge of the said Gross or shown by the books in his possession. 10

28. The defendant, David Cohen, further avers that on or about the 22nd day of September, 1925, he entered into a written agreement with Joseph Gross and Nathan Gross, wherein certain sums were advanced by them for the purchase of certain stock in a corporation known as the Seaside Development Company, and by virtue of which agreement the stock of David Cohen in said company, and approximately eighty parcels of ground in the City of Wildwood, State of New Jersey, were delivered to the complainant, Joseph Gross, as collateral security for said loan. Said agreement, herein referred to, is in possession of the said Gross, to be produced by him at such time and place as this Court may direct. 20 30

29. The defendant, David Cohen, avers that said agreement also provided for the return of said collateral security when all sums due by David Cohen were paid, and also provided for a distribution of the profits realized from said stock, and the sales of any of said parcels of ground.

30. David Cohen further avers that said Joseph Gross has never returned to the defendant the said stock of the Seaside Delevopment Company, nor such parcels of ground which remain unsold. David Cohen further avers that the said Joseph Gross and Nathan Gross have never accounted to him for the sums realized on the sale of any of said eighty parcels of ground, which information is in the possession of the said complainant, and which the defendant, David Cohen, has been unable to procure or obtain. The said David Cohen therefore requests that the said Joseph Gross and Nathan Gross be required to set forth in full, in their reply hereto, all information regarding the aforesaid transaction entered into by virtue of said agreement dated September 22nd, 1925.

31. To the best of defendants' knowledge, information and belief the following is a list of the lots at Wildwood, New Jersey, sold and conveyed by Gross to Nathan Teller and wife, for the consideration of \$2,000, each said lots being the ones referred to in the agreement dated September 22, 1925, above mentioned:

	Lot No.	Block
	109-A	245
	109-B	245
	111-A	245
30	111-B	245
	114-A	245
	114-B	245
	115-A	245
	115-B	245
	12-A	275
	12-B	276

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14-A	276
14-B	276
15-A	276
15-B	276
24	208
26	208
35	208

32. The following is a list of the 80 lots referred to in the agreement mentioned aforesaid, as near as the defendants can specify:

Lot No.	Block	
207-A	216	
207-B	216	
216-A	212	
216-B	212	
209-A	216	
209-B	216	
211-A	216	20
210-A	216	
210-B	216	
109-A	245	
109-B	245	
111-A	245	
111-B	245	
114-A	245	
114-B	245	
115-A	245	
115-B	245	30
12-A	276	
12-B	276	
14-A	276	
14-B	276	
15-A	276	
15-B	276	

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	24	208
	26	208
	35	208
	1	52
	2	52
	3	"
	4	"
	5	"
10	6	"
	7	"
	8	"
	9	"
	10	"
	11	"
	12	"
	13	"
	14	"
	21	"
20	22	"
	23	"
	24	"
	25	"
	26	"
	27	"
	28	"
	29	"
	30	"
	31	"
30	32	"
	33	"
	34	"
	35	"
	17	"
	37	"
	18	"
	3	54

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2	"	
1	61	
3	61	
4	"	
5	"	
6	"	
16	"	
17	"	
21	"	10
22	"	
23	"	
24	"	
25	"	
26	"	
27	"	
28	"	
38	"	
29	"	
30	"	20
31	"	
32	61	
33	"	
34	"	
35	"	
37	"	
2	95	
3	"	
4	"	30

33. The list of lots herein referred to, having been sold by the said Gross, is complete so far as the knowledge of the defendants is concerned, but defendants believe that the said Gross has sold additional lots, the exact number and location thereof can only be furnished by the said Gross, as the same

is within his exclusive knowledge or shown by the books aforesaid.

34. The defendant, David Cohen, avers that from the second day of June, 1924, up to and including the first day of February, 1926, it was verbally agreed between the said Joseph Gross and the said David Cohen that David Cohen should purchase at
10 sheriff's sale certain properties listed by the sheriff of Philadelphia County for sale, and that the said David Cohen should pay the deposit required by the terms of sale, and that thereafter the balance of the funds necessary to complete settlement with the sheriff should be advanced by the said Joseph Gross, and that title to the premises so purchased would be taken in the name of the said Joseph Gross, or his nominee, and that thereafter, upon the
20 sale or refinancing of the premises so purchased by the said David Cohen, all profits should be divided equally between the said Joseph Gross and the said David Cohen.

35. The defendant, David Cohen, avers that as a result of the verbal agreement between Joseph Gross and David Cohen, set forth in paragraph 34 hereof, the said David Cohen purchased from the sheriff of Philadelphia County numerous properties, paying the deposit money required by the sheriff,
30 and in frequent instances paying additional sums to complete settlement.

36. Defendants are unable to specify particularly the properties referred to in the last three preceding paragraphs, or the amounts paid by the defendant, Cohen, as deposits, or the amount of the

balance of the funds, complete settlement furnished by the said Gross, or the properties the title to which was taken in the name of the said Gross, for the reason that the information with respect thereto is exclusively within the knowledge of the said Gross, as shown by the books in his possession.

37. The defendant, David Cohen, avers that the said Joseph Gross, or his said nominees, have sold 10
certain of the premises so purchased, for sums of money and under terms and conditions unknown to said Cohen; and he avers that the said Joseph Gross, or his nominees, have collected rents from certain of the premises purchased at sheriff's sale; have placed mortgages upon certain thereof, and have received mortgages upon the sale of certain of said premises, which mortgages were subsequently paid in full, but the said Joseph Gross, or his nominees have failed to account to the said David Cohen 20
for all sums of money which they have received on account of the income, refinancing or sale of the said premises, although often requested so to do by the said David Cohen.

38. To the best of defendants' knowledge and belief, the following is a list of the premises which were purchased at sheriff's sale, in pursuance with the verbal agreement aforesaid, and the title taken in the name of the said Gross, or his nominee: 30

3769-71 Cressen St., Philadelphia, Pa.
1608 N. Lawrence St., Philadelphia, Pa.
3632 Haverford Ave., Philadelphia, Pa.
3092-94 Janney St., Philadelphia, Pa.
1940 N. Hollywood St., Philadelphia, Pa.
1926 N. 29th St., Philadelphia, Pa.

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- 525 Wood St., Philadelphia, Pa.
- 2321-23 E. Clifford St., Philadelphia, Pa.
- 1136 W. Glenwood Ave., Philadelphia, Pa.
- 1945 N. 32nd St., Philadelphia, Pa.
- 1530-1538-1540 S. 7th St., Philadelphia, Pa.
- 624 Tasker St., Philadelphia, Pa.
- 1525 Dickinson St., Philadelphia, Pa.
- 527 Mifflin St., Philadelphia, Pa.
- 10 939 S. 5th St., Philadelphia, Pa.
- 1308 N. 7th St., Philadelphia, Pa.
- 824 N. 10th St., Philadelphia, Pa.
- 1906 N. 32nd St., Philadelphia, Pa.
- 1957 N. 31st St., Philadelphia, Pa.
- 2536 S. 9th St., Philadelphia, Pa.

39. The defendants are unable to furnish any more specific information as to the dates when said purchases were made or the amounts paid, as de-
- 20 posit, or the balance paid for the purchase price when acquired from the said sheriff, for the reason that the information is exclusively in the possession of the said Gross or shown on the books aforesaid, and it is the belief of the defendants that the information in the possession of the said Gross, so contained in said books, will disclose that additional properties were purchased by the said Gross under the circumstances set forth in said oral agreement.
- 30 40. The defendant, David Cohen, avers that all information and details concerning the purchase, financing, sale, carrying charges and income from said premises purchased at sheriff's sale are in the possession of the said Joseph Gross, or his aforesaid nominees; that the defendants have been unable to ascertain and procure the same, and there-

fore pray that Joseph Gross, the complainant herein, be required to set the same forth in full in his answer to this counter-claim.

41. These defendants further aver that the said Joseph Gross has never given to these defendants an account of all sums collected by him on their behalf, and has never furnished to these defendants a detailed statement showing the amount of indebtedness claimed by the said Joseph Gross from each of the defendants, although the said Joseph Gross has endeavored, as hereinafter set forth, to hold the defendants each jointly and separately liable for certain sums or indebtedness claimed to be due the said Joseph Gross. 10

42. These defendants aver that the employment of the said Joseph Gross terminated on or about the 21st day of May, 1926, but despite the termination of his employment and without authority, the said Joseph Gross did make collections of sums on behalf of these defendants, which sums were not forwarded to these defendants, nor was any accounting ever given thereof. 20

43. That the said Joseph Gross has in his possession agreements signed by these defendants, including agreements of indemnity and guarantee, copies of which are not in possession of these defendants, who therefore pray that the said Joseph Gross be required to attach to his reply hereto copies of all agreements in his possession, signed by any of these defendants. 30

44. Defendants have no copies of the agreements referred to in the last preceding paragraph and are,

therefore, unable to set forth the exact contents thereof herein, but refer to the same, which is now in the possession of the said Gross, when produced.

45. These defendants aver that the said Joseph Gross has been repaid all sums of money due and payable to him, but the said Joseph Gross has refused to return to the defendants the real estate,
10 mortgages, promissory notes, stocks, and other securities held by him to secure the payment of obligation formerly due him, and has failed to account to the defendants for all transactions which have been entered into between the defendants and the said Joseph Gross, notwithstanding that the said Joseph Gross was their legal adviser and counsel.

46. Defendants are unable to specify with particularity the real estate, mortgages, promissory
20 notes, stocks and other securities belonging to them, held by the said Gross to secure the payment of obligation formerly due him, for the reason that such information is within the exclusive knowledge of the said Gross or shown by the books in his possession.

47. These defendants aver that the Pennsylvania Mortgage and Loan Company and David Cohen had undertaken to complete the erection of certain
30 buildings erected upon premises situate in the City of Wildwood, New Jersey, hereafter set forth and intended to obtain the funds necessary for such completion by refinancing certain premises in Montgomery County, Pennsylvania, and in the City of Wildwood, New Jersey.

48. Said Gross holds a mortgage of \$75,000 on

property at the northwest corner of Davis Avenue and Atlantic Avenue, Wildwood, New Jersey, on lots 14 and 15, block 85, plan of Holly Beach Improvement Company. Erected on this lot is a three-story brick building and when complete will contain thirty-six family apartments of four rooms each. This building is not yet complete, but would have been complete had it not been for the refusal of the said Gross to assist in the financing thereof. The 10 premises upon which the said \$75,000 mortgage is a lien stands in the name of Samuel Lerner, and the latter made said \$75,000 mortgage to the defendant, mortgage company, which assigned same to the said Gross on August 19, 1926, and the said Gross has never advanced anything on said mortgage.

50. Another of the properties, situate in Wildwood, upon which the defendants are erecting a building, is located on the northwest corner of Baker 20 Avenue and the Boardwalk, of dimensions of 40 feet by 100 feet, upon which is being erected a hotel. This hotel is partially completed. The title is in the name of Jacob D. Kane and there is a mortgage on the same made by Kane to the Mortgage Company for \$120,000.

51. Another of the properties upon which the defendants intended to put improvements is located at the southwest corner of Baker Avenue and the 30 Boardwalk, 40' x 100', and the title to the same is in the name of Jacob D. Kane and is covered by the \$120,000 mortgage.

52. Another of the properties upon which the defendants intended to make improvements, comprise

lots 18 and 19, block C, at Wildwood Avenue, in Wildwood, between the Boardwalk and Atlantic Avenue, the title to which was in the name of Jacob D. Kane, who transferred same to National Building & Construction Company, and is also covered by the \$120,000 mortgage. There is being erected on said lots a three-story hotel, which is partially completed.

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53. Another of the lots upon which the defendants started improvements is situate in Wildwood and are lots 11 and 12, block 56, upon which were erected four two-story buildings, which are not entirely complete. These lots are covered by a mortgage of \$30,000 held by the said Gross.

20 54. These defendants aver that although the said Joseph Gross represented them in the capacity of counsel and attorney, and although there were no sums of money due and payable to the said Joseph Gross, the said Joseph Gross filed a bill in equity in Montgomery County, Pennsylvania, and the bill in this cause, whereby the defendants were prevented from refinancing said premises, and thereby prevented from obtaining the funds necessary to proceed with the erection of the buildings in Wildwood City, New Jersey.

30 54a. These defendants aver that thereafter, and at the request of the said Joseph Gross, their attorney and legal adviser, and in pursuance of the advice of Joseph Gross that the hereinafter-mentioned agreement was correct and proper for them to execute, they executed an agreement with the said Joseph Gross, wherein and whereby the said Joseph

Gross agreed to discontinue the bills in equity filed in Pennsylvania and New Jersey, and further agreed to do such things as are set forth in said agreement, which is dated the 19th day of August, 1926, a true and correct copy of which agreement is hereto attached and marked 'Exhibit A.'

55. These defendants further aver that the said Joseph Gross knew the full status of the defendants' business affairs, and the necessity for obtaining funds by refinancing as aforesaid, and obtained the execution of said agreement at a time when he knew the defendants' urgent need for funds, and fraudulently procured these defendants to execute and deliver said agreement, well knowing that same was incorrect and improper for them to sign; thereby abusing the trust and confidence reposed in him by these defendants. 10

56. These defendants also aver that Joseph Gross never intended to carry out the terms of said agreement fraudulently procured, as above recited, with the intention on the part of the said Joseph Gross to fraudulently use the same for the purpose of cheating and defrauding the defendants, and to prevent them from obtaining a just accounting of the large sums of moneys in his hands, which large sums of moneys belonged to these defendants. 20

57. That no account was rendered to these defendants as stated in said agreement, which was executed by the defendants with the understanding that the said Joseph Gross would account to them for all sums of money collected by him; on their behalf, from all real estate and other transactions, 30

and that he would immediately release said bills in equity in order to enable these defendants to raise the necessary funds to finance the development of their properties in the City of Wildwood, State of New Jersey.

58. These defendants also aver that the said Joseph Gross has failed to keep the terms and conditions of said agreement, and has endeavored therein to deprive these defendants of their just rights to certain mortgages and premises therein referred to, in that

(a) The said Joseph Gross failed to keep his agreement to withdraw the proceedings instituted in the Chancery Court of New Jersey, as appears in paragraph 3 of said agreement, but on the contrary, after the execution of said agreement, further proceeded with the said bill in equity, and has caused a *lis pendens* to be filed, whereby these defendants have been prevented from proceeding with the development of their real estate in the State of New Jersey, which has caused them irreparable damage; and these defendants have also been prevented from receiving the principal due and payable to them on account of certain mortgages held by them.

30 (b) The said Joseph Gross failed to convey to these defendants lots #143 on South 11th Street, in the 39th Ward of the City of Philadelphia, as appears in paragraph 4 of said agreement, although the said Joseph Gross has been repaid in full for all sums which were due and payable to him.

(c) The said Joseph Gross failed to transfer to

these defendants the interest of Dora A. Gross in the Perlman mortgage on the Nassau Street property, as provided in paragraph 5 of said agreement, although the said Joseph Gross has been repaid all sums of money which were due and payable to him.

(d) The said Joseph Gross has failed to satisfy or assign to these defendants a mortgage of \$75,000, as provided for in paragraph 20 of said agreement, although there was assigned to the said Joseph Gross a mortgage of \$25,000, as provided for in paragraph 20 of said agreement, and although there are no sums of money whatsoever due and payable to the said Joseph Gross upon either the said \$75,000 mortgage or the said \$25,000 mortgage. 10

(e) The said defendants have no knowledge as to whether the said Joseph Gross paid the note of the defendants in the sum of \$10,000 due M. Blitzstein & Company on or about August 16th, 1926, but these defendants aver that Joseph Gross has failed to return said cancelled note to them, which agreement appears in paragraph 8 of said agreement, dated August 19th, 1926. 20

(f) The said Joseph Gross has failed to return and transfer to the defendants the mortgage in the sum of \$30,000 held by him on the lot at Juniper and Park Avenues, Wildwood, N. J., and the \$25,000 mortgage held by him on lots 31 and 32, block "C," at Poplar Avenue, Wildwood, New Jersey, as provided in paragraph 11 of said agreement, although the sums which were due to the said Joseph Gross had been paid to him in full. 30

(g) That the said Joseph Gross has failed to

convey to these defendants the interest of the said Joseph Gross in the garage at Nos. 4257-61 Girard Avenue, Philadelphia, as provided for in paragraph 12 of said agreement, although there has been paid to the said Joseph Gross all sums of money which were due and payable to him.

10 (h) That the said Joseph Gross has failed to give to these defendants a full, accurate, proper and complete accounting and payment by the said Joseph Gross of all moneys received or collected by him as attorney, or otherwise, as provided for in paragraph 13 of the said agreement, although the said Joseph Gross agreed to give said accounting to these defendants after the execution of said agreement.

20 (i) The said Joseph Gross failed to extend credit for said alleged indebtedness until December 1st, 1927, as provided in the terms of said agreement, but has, on the contrary, filed said bill in equity in the Chancery Court of New Jersey, and has caused a *lis pendens* to be filed, as aforesaid.

30 (j) The said Joseph Gross is not entitled to the full face value, and interest thereon, of mortgages which are standing in his name, as set forth in paragraph 26 of said agreement, in that the said Joseph Gross never advanced the full consideration mentioned in said mortgages.

(k) The said Joseph Gross has failed to reconvey or reassign to defendants the securities standing in his name, or in the name of his nominee, to these defendants, as set forth in paragraph 27 of said

agreement, although the said Joseph Gross has been repaid all sums of money due and payable to him.

(l) The said Joseph Gross has misrepresented the terms and conditions of said agreement, in that the said Joseph Gross has attempted, by the terms of said agreement to deprive the said David Cohen of his interest in the sum of \$85,000 in certain real estate situated in Wildwood, New Jersey, as is more particularly set forth in paragraphs 9 and 28 of said agreement. 10

(m) The said Joseph Gross had been re-engaged as attorney for these defendants and took advantage of the trust and confidence imposed in him by these defendants, and obtained their signatures to said agreement dated August 19th, 1926, upon misrepresentation thereof, and upon the advice of the said Joseph Gross that said agreement was proper for them to execute, and that said agreement did not deprive these defendants of their just and legal rights. These defendants therefore pray that said agreement be rescinded and declared null and void, and of no effect. 20

59. The defendant, David Cohen, further avers that on the 18th day of August, 1925, he conveyed to the said Dora A. Gross, nominee of Joseph Gross, a one-half undivided interest of, in and to premises 4257-59-61 West Girard Avenue, and premises 1209 Belmont Avenue, as collateral security for certain loans, which have since then been repaid to the said Joseph Gross in full, but nevertheless the said Joseph Gross has failed to reconvey the said premises to the defendant, Cohen, and has failed to account 30

to him for the payment of all sums which have been received by him on account of the income thereof.

60. Dora A. Gross, referred to in the last preceding paragraph, is a relative of the said Joseph Gross, and is under the domination and control of the latter.

10 61. The defendants, either separately or jointly, from 1921 to 1926, the exact dates not being within the knowledge of the defendants but within the exclusive knowledge of the said Gross, have had more than two hundred separate and distinct transactions with the said Gross and with respect to all said transactions this bill for an accounting is filed and the defendants have herein specified particularly all of the details of said transactions within their knowledge, and complete and thorough knowledge
20 of all said transactions and all details thereof is within the exclusive knowledge, of the said Gross or shown by the books in his possession.

62. Defendants aver that they have set forth all of the facts and details of their relations with the said complainant covering the period from 1921 to 1926, as herein referred to, which are within their knowledge or shown by the books, papers and documents in their possession and that the said complainant has full, complete and accurate information and knowledge with reference to all of said transactions and the details and facts connected therein, by reason of the books, papers and documents in his possession and under his control, and if the allegations of this counter-claim are not specific, certain and definite in every particular, it is
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for the reason that the defendants do not possess the information necessary to make the same any more specific, certain and definite without access to the books, papers and documents in the possession of the complainant, and said complainant has refused to furnish to the defendants such information.

63. Because of the fact that the said Gross was the attorney and confidential adviser of the said 10 defendants, a relation of trust and confidence existed between them and the defendants were to assume that said trust and confidence would not be abused, and that the said Gross would act toward them with fidelity and zeal and not adopt an attitude or do anything which would cause the said defendants to suffer any loss, but notwithstanding the duty of the said Gross to act with loyalty and fairness toward the defendants, he has violated said 20 duties in the particulars herein set forth, as a result of which the defendants have suffered loss and damage in the collection of rents and the payment of taxes and carrying charges on the lands and premises, which the defendants, or one of them, had undertaken to complete in the City of Wildwood; the completion of which was prevented by the conduct of the said Gross in the particulars herein set forth, and especially by filing the bill in equity in this cause and various *lis pendens* in support thereof; the filing 30 of which *lis pendens* have prevented the defendants from borrowing moneys to finance the construction of the lands and premises in Wildwood and preventing the collection of moneys due and owing to them, to wit: the sum of \$10,000 on a mortgage made by one Steelman, which mortgage fell due October 15th last, and from the proceeds of the collection thereof.

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If the same had not been prevented by the action of the said Gross, the buildings hereinbefore mentioned as being constructed in Wildwood, could have been completed. The said defendants were also prevented from collecting the sum of \$10,500 on a mortgage made by Roberts & Cohen to the Mortgage Company, covering property on Montgomery Avenue and Boardwalk, which sum could have been
10 realized on said mortgage had it not been for the *lis pendens* aforesaid. Said Gross also prevented the consummation of the sale of lots at Wildwood to Balaban, said lots being Nos. 49, 50 and 51, block 296, and 33 and 35, block 265, and another tract of land being 50 feet in front on 22nd Avenue and 50 feet in front on 23rd Avenue, in Wildwood aforesaid, and all of the properties in Wildwood, hereinbefore referred to, could have been re-financed and sufficient sum of money realized to complete the
20 same, had it not been for the *lis pendens* aforesaid.

Wherefore, the defendants aver that they are without adequate remedy at law and that they therefore need equitable relief, and pray:

1. That the said Joseph Gross appear and make answer to this counter-claim.
- 30 2. That the said Joseph Gross be required to account to these defendants for all sums received by him on account of foreclosure of mortgages, and that the said Joseph Gross be required to account to these defendants for all business transactions which have been entered into between them and the said Joseph Gross and that he set forth all sums of money which have been collected or retained by

him, or his nominee, the said Dora A. Gross, Nathan Gross, and Jacob Gross, on account of fees, disbursements, bonuses, profit, income, interest on mortgages or rents which concerned these defendants.

3. That the said Joseph Gross be required to account to the said David Cohen for the purchase of premises which were purchased at the sheriff's sales, as set forth herein, and the disposition thereof, and all sums expended or collected on account thereof. 10

4. That the said Joseph Gross be required to set forth the amount of indebtedness claimed from the defendants; and that he be required to set forth all evidence of indebtedness now held by him, and to state the consideration received by these defendants therefor, and to further set forth the alleged individual liability of the defendants to the said Joseph Gross. 20

5. That the said Joseph Gross and his nominees be required to reconvey to these defendants the real estate conveyed to him or his nominees, and that he be required to set forth an accurate statement of all real estate conveyed to the said Joseph Gross or his nominees.

6. That the said Joseph Gross and his nominees be prevented from assigning or transferring in any way any mortgages conveyed to them by or through these defendants, and that he be required to set forth herein any mortgages or other security received by them from these defendants. 30

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7. That Joseph Gross be required to attach to his reply to this counter-claim copies of all executed agreements, promissory notes, or other papers whatsoever which he has received from these defendants, and that he also be required to state the consideration received by these defendants therefor.

10 8. That Joseph Gross be required to set forth in detail all information regarding each transaction or engagement entered into with these defendants, and to attach copies of all written agreements pertaining thereto.

9. That the said Joseph Gross, as the husband of Dora A. Gross, be required to account to these defendants for all sums collected, received and disbursed by her in and about all real estate, mortgages, or other security received by her from or
20 through these defendants, or in which the defendants were in any matter whatsoever interested, and also to account to these defendants for all real estate, mortgages, and other security not mentioned in this counter-claim, and which she received by or through these defendants.

10. That the said Joseph Gross, as the brother of the said Nathan Gross, be required to account to these defendants for all sums collected, received and
30 disbursed by him in and about all real estate, mortgages, and other security received by him from or through these defendants, or in which these defendants were in any manner whatsoever interested, and also to account for all real estate, mortgages, and security not mentioned in this counter-claim, and which was received by him from or through these defendants.

11. That the said Joseph Gross, as the brother of the said Jacob Gross, be required to account to these defendants for all sums collected, received and disbursed by him in and about all real estate, mortgages and other security received by him from or through these defendants, or in which they were in any manner whatsoever interested, and also to account for all real estate and mortgages not mentioned in this counter-claim, which were received by him from or through these defendants. 10

12. That the said Joseph Gross be prevented from purchasing any mortgages or incumbrances in Wildwood City, New Jersey, secured upon premises owned by these defendants or their nominee, viz.: Jacob D. Kane, whereby a foreclosure or sale under said mortgages or incumbrances would result in the loss of said premises by these defendants. 20

13. That the said agreement dated August 19th, 1926, be declared null and void, and of no effect.

14. That the cost of these proceedings and accounting between the complainant and these defendants, together with the cost of causing all the real estate, mortgages and other security to be reconveyed and reassigned to these defendants, be paid by the said Joseph Gross. 30

15. That the said Joseph Gross be required to pay such damages to these defendants as have been caused by him.

16. That the said Joseph Gross may be required to have conveyed or transferred to these defendants

such real estate, mortgages or other security as may have been received by him or Dora A. Gross, Jacob Gross and Nathan Gross, as his nominees, or any of them, or that the value of the said securities be charged against the said Gross in said accounting.

17. That the said Joseph Gross be restrained from conveying or assigning any real estate, mortgages,
10 or other securities now standing in his name, and received by or through defendants, or in which the defendants are in any manner whatsoever interested, by a preliminary injunction, and upon final hearing be directed to comply with the prayers herein.

18. That these defendants may have such other and further relief as they may be entitled to and as the premises may warrant.

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And the said defendants will ever pray, etc.

JOSEPH BECK TYLER,
*Solicitor for the Defendants,
David Cohen and Pennsylvania Mortgage and Loan
Company.*

LEWIS STARR,
Of Counsel.

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EXHIBIT A.

Whereas, certain disputes and disagreements have arisen between the Penna. Mortgage and Loan Co., a Corp. and David Cohen, hereinafter called

parties of the first part, and Joseph Gross, hereinafter called party of the second part, concerning an accounting of divers transactions between them: and

Whereas, the said parties have agreed fully, completely, and finally to adjust, compromise and settle all said disputes upon the terms and conditions hereinafter set forth.

Therefore this Agreement witnesseth:

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1. The said Joseph Gross hereby waives, releases and quit-claims all his rights and interest, in and to the mortgage against the lot of ground owned by Cornelia R. Killinger, situate in Buck's County, more particularly described in "Exh. A" of a certain bill in equity filed in the C. P. of Montgomery County.

2. Upon the execution hereof, the said Joseph Gross shall discontinue of record, the said equity proceedings instituted by him in the C. P. of Montgomery Co.

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3. Upon the execution of these presents, the said Joseph Gross agrees to withdraw the proceedings instituted in the Chancery Court of New Jersey.

4. The said Joseph Gross hereby undertakes to convey to the said parties of the first part, or their nominee, certain lot, No. 143 on S. 11th St., South of Curtain St. 39th Ward, in the City of Phila., as per par. 27 hereof.

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5. The said Joseph Gross agrees to transfer, or cause to be transferred, to the parties of the first

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part, the interest of Dora A. Gross in the Perlman Mortgage on the Nassau St. properties, as per par. 27th hereof.

10 6. The said Joseph Gross hereby waives, releases and forever discharges and quit-claims any and all claims or demands which he has, or may have, against the parties of the first part or either of them, for fees due him for services rendered them, or either of them, and the Penna. State Finance Co., a corp. owned by them.

7. Upon the execution of these presents, the said Joseph Gross shall pay:

(a) To John B. Tyler, Esq., of Camden, the sum of \$366.67.

20 (b) To Harry S. Abrams, \$75.00.

8. Upon the execution of these presents, the said Joseph Gross shall pay the note of David Cohen and Penna. Mortgage and Land Co., in the sum of Ten thousand (\$10,000.) Dollars, due by them at the bank of M. Blitzstein & Co., on or about August 16, 1926, the said cancelled note to be returned to the parties of the first part.

30 9. The said Joseph Gross hereby reduces to the extent of \$4986.00 his contribution to the Eighty-five Thousand (\$85,000) Dollars mortgage on ten certain Wildwood Lots therein described. Credit was given him for approximately for the said sum for the Amsterdam Mortgage and the unpaid note of the Penna. Mortgage and Loan Co., as per agree-

ment executed on or about January 5, 1926. He agrees that his contribution to, and interest in, the said mortgage shall be reduced by the said sum of \$4986.00.

10. Upon the execution of these presents, the said Joseph Gross shall pay to the parties of the first part the sum of Twelve Thousand, Four Hundred and Fifty Dollars, (\$12,450) the full receipt 10 whereof is hereby acknowledged. The same is given by said Joseph Gross, and received by the parties of the first part only, to be used for the immediate completion of the buildings begun by or for, the parties of the first part, at Juniper and Park Aves., and on Poplar Ave., (Lots 31 and 32 Block "O") Wildwood, N. J.

11. The said Joseph Gross hereby agrees to sell and transfer to said parties of the first part the mortgage in the sum of Thirty-Thousand (\$30,000) 20 held by him on the lot at Juniper and Park Aves., Wildwood, N. J. and the Twenty-five Thousand (\$25,000) mortgage held by him on the lots 31 and 32, Block "O" at Poplar Ave., Wildwood, N. J. the transfer, however to take place only upon the contingencies hereinafter set forth in Par. 27 hereof.

12. The said Joseph Gross hereby agrees to sell to the said parties of the first part his interest in 30 the Belmont Garage at 4257-61 Girard Ave., etc., for the sum of \$1.00, the deed to be executed upon the conditions hereinafter mentioned in Par. 27 hereof.

13. The said parties of the first part hereby expressly admit the full, accurate, proper and com-

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plete accounting and payment by said Joseph Gross to them, and each of them, of all moneys whatsoever received or collected by him, as attorney or otherwise, for them, or either of them, and for the Penn State Finance Co., a corp. owned by them, as aforesaid.

14. The said parties of the first part, and each of
10 them, hereby certify that they have no interest in, or claim whatsoever against, any real estate or mortgage owned, or held by Joseph Gross, or Dora A. Gross, except as hereinafter set forth in Par. 25.

15. Upon a full, thorough and complete accounting and adjustment between the parties, and after allowing and giving credit for all possible claims, credits, or demands whatsoever to which the parties
20 of the first part, or either of them, may be entitled, it is found, agreed, and hereby certified, that there is justly due and payable to the said Joseph Gross by the parties of the first part, and each of them in the sum of \$62,000.

16. The said Joseph Gross hereby agrees to extend credit on the said indebtedness until December 1, 1927, interest being paid at 6% from this date, if, and only if, the structures begun on ground at
30 Juniper and Park Aves., and on Poplar Ave. (lots 31 and 32 block "O") be completed fully and thoroughly within 30 days from the date hereof.

17. Even in the event of said completion and extension the said indebtedness shall mature immediately upon the failure of the parties of the first part

to pay the taxes when due or the interest on first mortgages on any of the land referred to in this agreement.

18. Upon the execution hereof the parties of the first part shall deliver to said Joseph Gross a deed to the said lots and structures on Poplar Ave. and on Juniper Ave. covered by the mortgages herein-after referred to, the Grantee in said deeds being Jacob Gross. In default of such deeds being delivered, the said Joseph Gross is hereby authorized to foreclose on said mortgages at the expense of the parties of the first part. 10

19. Upon the execution of these presents, the parties of the first part shall execute, or cause to be executed, to said Joseph Gross, an assignment of a certain Bond and Mortgage, dated on or about June 1, 1926, held by the Pa. Mortgage and Loan Co., in the principal sum of Seventy-five thousand (\$75,000) Dollars on the ground and structures at Atlantic Ave. and Davis Aves., Wildwood, N. J., together with a Declaration of No Set-off, by Samuel Lerner, whom they hereby represent as the record owner thereof for them. 20

20. The parties of the first part shall be entitled to a satisfaction or assignment of the said Seventy-five Thousand (\$75,000) mortgage, upon delivering to the said Joseph Gross a mortgage in the sum of \$25,000., payable December 1, 1927, with the proper Bond and Declaration of No Set-Off, on the lot at S. W. cor. Baker and Boardwalk, subject only to a first mortgage of Seventy-five Hundred (\$7500.) Dollars. 30

21. The parties of the first part agree to indemnify the said Joseph Gross against any loss which he may sustain on a foreclosure of the Five Thousand (\$5,000) Mortgage held by him on the Bass property, and agreement to apply at 1601 N. 33rd St. (N. W. cor. 33rd and Oxford Sts.,) Phila. In the event of a Sheriff's sale on said judgment, within one year from date, if the said sale shall not bring
10 sufficient to pay the judgment and costs on said bond, or mortgage, they shall pay the difference.

22. All moneys hereafter advanced by the said Joseph Gross to the parties of the first part, or either of them, shall be added to the above-named indebtedness and be secured by securities hereinafter mentioned in Par. 24.

20 23. It shall be optional with the said Joseph Gross, in the event of a call or demand being made by the Seaside Land Development Co. on account of the shares subscribed for therein by the said David Cohen, to pay the said call or demand, on any part thereof and the sum so paid shall be added to the indebtedness aforesaid, and secured as hereinafter stated in Par. 24.

30 24. The said Joseph Gross holds a security for all the obligations whatsoever of the parties of the first part and each of them, the following:

(a) Title to lot 143 S. 11th St. referred to in Par. 4 hereof.

(b) Title to the Perlman mortgages on Nassau St. referred to in Par. 5 hereof.

(c) The Amsterdam mortgage on premises 2013 N. 33rd St. referred to in Par. 9 hereof.

(d) A Thirty-Thousand (\$30,000) mortgage lot and structure at Juniper and Park Aves., Wildwood, and Twenty-five Thousand (\$25,000) mortgage on lots 31 and 32 referred to in Par. 11 hereof.

25. Any net sum or sums received or obtained by 10
the said Joseph Gross on said obligations or securities by foreclosure, sale, or otherwise shall be credited to the account of the said indebtedness of the parties of the first part.

26. Any money or moneys received by the said Joseph Gross shall be credited to the above-named indebtedness, or any balance due thereon, and not upon, or to, any particular mortgage listed in par. 24 hereof. No such mortgage shall be satisfied or 20
assigned except with the consent of the parties of the first part, unless upon the receipt of the fact value thereof with interest.

27. Upon the complete payment and discharge of all the obligations whatsoever of the said parties of the first part and each of them, the said Joseph Gross shall transfer the said securities, on such thereof as shall still be held by him, as directed by the parties of the first part. 30

28. The alleged interest of David Cohen in and to the Eighty-five Thousand (\$85,000) Dollars referred to in Par. 9, hereof under an agreement, dated on or about September 22, 1925, is hereby declared erroneous and is cancelled.

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29. This agreement contains all the stipulations, terms, and agreements of the parties with respect to the matters above stated, and there are no additional oral agreements or conditions in connection therewith, or in reference thereto.

In witness whereof the parties have hereunto set their hands and seals this 19th day of August, 1926.

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PENNSYLVANIA MORTGAGE
& LOAN CO.

By Jacob Cohen	Pres.
By Max A. Rapaport	Secy.
David Cohen	(SEAL)
Jos. Gross.	(SEAL)

Samuel Lerner
Dorothy Berman

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NOTICE.

IN CHANCERY OF NEW JERSEY.

Between:

JOSEPH GROSS,

Complainant,

and

PENNSYLVANIA MORTGAGE

AND LOAN COMPANY, *et*

als.,

Defendants.)

On Bill, &c.
Notice.

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To Joseph Beck Tyler and Lewis Starr, Esqs., Solicitors for and of Counsel with Defendants, David Cohen, Pennsylvania Mortgage and Loan Company, Jacob Cohen, Jacob D. Kane and Samuel Lerner:

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Sirs:

Take notice, that the complainant herein will move before the Honorable Edmund B. Leaming, Vice-Chancellor, at the Chancery Chambers, in the City of Camden, New Jersey, on Tuesday, September 6, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order striking out the amended answer of the defendants, David Cohen, Pennsylvania Mortgage and Loan Company, Jacob Cohen, Jacob D. Kane and Samuel Lerner, for the reasons that said amended answer is not specific, is, in effect, a mere general denial, is not full and com-

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plete does not set forth the knowledge, information and belief of the said defendants, does not fairly meet the substance of the allegations denied and lacks the fullness of discovery required.

Respectfully,

PHILIP WENDKOS,

*Solicitor for and of Counsel
with Complainant.*

JOSEPH H. CARR,

Of Counsel with Complainant.

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Dated, Camden, N. J.,
August 24, 1927.

NOTICE.

IN CHANCERY OF NEW JERSEY.

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Between:

JOSEPH GROSS,

Complainant,

and

PENNSYLVANIA MORTGAGE

AND LOAN COMPANY, *et*

als.,

Defendants.

On Bill, &c.
Notice.

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To Joseph Beck Tyler and Lewis Starr, Esqs., Solicitors for and of Counsel with Defendants, David Cohen, Pennsylvania Mortgage and Loan Company, Jacob Cohen, Jacob D. Kane and Samuel Lerner:

Sirs:

Take notice that we shall apply to the Honorable Edmund B. Leaming, Vice-Chancellor, at the Chancery Chambers in the City of Camden, New Jersey, on Tuesday, September 6, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard, for an order striking out certain allegations of the amended counter-claim filed by you or for a bill of particulars thereof. The paragraphs of the said counter-claim as to which said motion will be directed and the reasons therefor are as follows: 10

1. Paragraph 3. Because the same is uncertain, vague, and indefinite, and does not inform the complainant of the facts which he is called upon to answer, in that it does not state with respect to what specific securities and real estate it is charged that the said Dora A. Gross, Nathan G. Gross, and Jacob Gross are nominees of Joseph Gross, either in said paragraph or elsewhere in said counter-claim. 20

2. Paragraph 5. Because the same is uncertain, vague, and indefinite, and does not inform the complainant of the facts which he is called upon to answer, in that it is not stated what real estate was covered by the said mortgages, the dates and amounts of the said mortgages, the parties to the said mortgages and bonds, what loans were intended to be secured by the said mortgages and bonds, and no names of parties connected therewith are shown, and no dates are given. 30

3. Paragraph 6. Because the same is evasive and does not state that said records and books are within the exclusive knowledge, possession and control of the complainant, nor that the complainant has ex-

clusive knowledge of such transactions, nor that the defendants do not have the books, records and knowledge within their own possession and control.

4. Paragraph 8. Because the same is indefinite and evasive, and does not state that the information is exclusively within the possession of the complainant, nor that said information is not in the possession of the defendants, and because it does not set
10 forth the book and page of the record of said bonds and mortgages, nor the record of the foreclosure proceedings in the courts of the State of Pennsylvania, and because said records are available to the defendants equally with the complainant, and the complainant should not be required to furnish the defendants with information which the defendants can obtain from a search of the public records.

5. Paragraph 9. Because the same is evasive,
20 does not state that the said information is not in the possession of the defendants, and does not show the facts which appear of record in the public office in Philadelphia or the courts of Pennsylvania.

6. Paragraph 10. Because the same is uncertain, vague and indefinite, in that it is not stated which mortgages were collected, and it is not stated that the complainant has failed to account for some of the said moneys nor for which moneys he has failed
30 to account.

7. Paragraph 11. Because the same is uncertain, vague and indefinite, in that it does not set forth for what moneys complainant has accounted, nor that the complainant has not accounted for some of the said moneys, nor that the complainant has failed to

account, or set forth the attorneys' fees charged to the defendant.

8. Paragraph 12. Because the same is uncertain, vague and indefinite, in that it does not set forth that the defendants do not have some record and some information of the matters set forth in said paragraph, and because the said paragraph does not set forth what records and information the defendants have.

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9. Paragraph 13. Because the same is uncertain, vague and indefinite, in that it does not state what moneys the bonds and mortgages were assigned to secure, nor by whom the collateral was pledged, nor to whom the said advancements were made.

10. Paragraph 14. Because the same is uncertain, vague and indefinite, in that the dates of said mortgages are not given, the place of record of the same is not given, the name of the mortgagor in the mortgage for \$25,000.00 on lots 12 and 13, block "C," Wildwood, New Jersey, is not stated, the dates of none of the said mortgages are given, and the names of the persons to whom the last two mortgages named in said paragraph were assigned is not given.

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11. Paragraph 15. Because the same is uncertain, vague and indefinite, in that it is not stated that the defendants have searched the public records for the information referred to.

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12. Paragraph 16. Because the same is uncertain, vague and indefinite, in that the same does not set forth the information appearing on the public records and because the defendants do not set forth

such knowledge as they have regarding the said mortgages.

13. Paragraph 17. Because the same is uncertain, vague and indefinite, in that it does not set forth upon which mortgages interest has been collected, nor what information is available to the defendants, and it is not stated that the complainant has failed to make some account nor for what moneys he has
10 accounted.

14. Paragraph 18. Because the same is uncertain, vague and indefinite, in that it does not set forth that the said information is exclusively in the possession of the complainant, and the information in the possession of the defendants respecting the same is not set forth.

15. Paragraph 19. Because the same is uncertain,
20 vague and indefinite, in that it is not stated what agreements are in the possession of the complainant with sufficient detail for complainant to make answer thereto.

16. Paragraph 23. Because the same is uncertain, vague and indefinite, in that it is not stated what sums of money have been expended nor with respect to what transaction the same have been expended.

30 17. Paragraph 26. Because the same is uncertain, vague and indefinite, in that it is not stated who are intended by the reference as to nominees of the complainant.

18. Paragraph 27. Because the same is uncertain, vague and indefinite, in that the same does not set

forth the information, knowledge and belief of the defendants regarding the moneys claimed to be due to them by the complainant.

19. Paragraph 34. Because the same is uncertain, vague and indefinite, in that it is not stated what properties were to be purchased by the defendant.

20. Paragraph 35. Because the same is uncertain, vague and indefinite, in that it is not stated what properties were purchased by the defendants with sufficient detail as to enable complainant to identify the same. 10

21. Paragraph 36. Because the same is uncertain, vague and indefinite, in that the defendants do not state what information, knowledge and belief they have respecting said transactions and said properties, nor what information appears upon the public records in the locality where the said properties are located. 20

22. Paragraph 37. Because the same is uncertain, vague and indefinite, in that it does not set forth what information respecting said transactions appears on the public records in the locality where the said property is situate, nor what knowledge, information and belief the defendants have respecting the same.

23. Paragraph 38. Because the same is uncertain, vague and indefinite, in that such information as may be disclosed in the public records of Philadelphia, Pennsylvania, is not given. 30

24. Paragraph 39. Because the same is uncertain, vague and indefinite, in that such information as

may be disclosed in the public records of Philadelphia, Pennsylvania, is not given.

25. Paragraph 41. Because the same is uncertain, vague and indefinite, in that it is not stated that the defendants have not received some account nor an account of some moneys collected, nor in what respect the account submitted was deficient.

10 26. Paragraph 42. Because the same is uncertain, vague and indefinite, in that it does not set forth what collections were made by the complainant.

27. Paragraph 43. Because the same is uncertain, vague and indefinite, in that it is not stated **what** agreements are referred to with such **particularity** as to enable complainant to identify the same.

28. Paragraph 45. Because the same is uncertain, vague and indefinite, in that it does not specify with sufficient particularity the real estate, mortgages,
20 notes, stocks, securities and transactions referred to.

29. Paragraph 46. Because the same is uncertain, vague and indefinite, in that it is not stated that the defendants do not have some knowledge, information and belief in the transactions referred to.

30. Paragraph 47. Because the same is uncertain, vague and indefinite, in that it is not stated what buildings were to be erected in the City of Wildwood, nor by whom the same were to be erected.

30 31. Paragraph 58-M. Because the same is uncertain, vague and indefinite, in that it is not stated when the complainant had been re-engaged as attorney for the defendants.

32. Paragraph 61. Because the same is uncertain, vague and indefinite, in that the same is too general to permit of an answer.

33. Paragraph 62. Because the same is uncertain, vague and indefinite, in that it does not set forth the information, knowledge and belief of the defendants.

34. Complainant will also move, at the same time and place, for an order striking out of the counter-claim of the defendants' paragraphs 34, 35, 36, 37, 38, 39 and 40 of the said counter-claim for the reason that the same set forth no cause of action; and that no action can be maintained thereon against the complainant by reason of the Statute of Frauds. 10

35. And that, at said time and place, the complainant will move to strike out of the said counter-claim, paragraphs 47, 48, 50, 51, 52, 53 and 54, and the references in paragraph 55, to the extent of the defendants' obtaining funds, and the reference in paragraph 58-A, which claims that the defendants have suffered damage by the fact that a *lis pendens* was filed on this action, and so much of paragraph 63 as referred to the effect of this litigation to the damages suffered by the defendant as a result of this litigation, and so much of the prayer of said bill as calls upon complainant to pay damages to the defendants, for the reasons that the same do not set forth a cause of action, are without equity, and do not set forth any ground of relief in this matter. 20

Respectfully,

PHILIP WENDKOS, 30
*Solicitor for and of Counsel
with Complainant.*

JOSEPH H. CARR,
Of Counsel with Complainant.

Dated, Camden, N. J.

CONCLUSIONS.
IN CHANCERY OF NEW JERSEY.

10	Between JOSEPH GROSS, <i>Complainant,</i> and DAVID COHEN, JACOB COHEN, PENNA. MTGE. & LOAN Co., SAMUEL LERNER & JACOB D. KANE, <i>Defendants.</i>	} On Bill, etc.
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JOSEPH H. CARR, Esq., for complainant.
LEWIS STARR, Esq., JOSEPH BECK TYLER, Esq., for
defendants.

LEAMING, V. C.

30 So far as the motion to strike out the answer is concerned, I apprehend there can be no doubt that it should be denied. There may be specific paragraphs in the answer that might be susceptible of a motion against them, but to strike out the answer as a whole would be unjustified, and it is clearly one of those cases of a class that should be passed over until final hearing, pursuant to the provision of the rule contemplating that course.

The only doubt I have touching the motion against the counter-claim is that the complainant may be entitled to more specific information touching these charges; but, on the other hand, the averments contained in the counter-claim are to the effect that the pleaders have specified everything within their power, everything that is within their knowledge, and specifically aver that the knowledge of the details is in the possession of the defendants to the counter-claim and that they have requested the data 10 which they do not possess and that their adversaries have refused to give it. Now, I don't see how the Court can possibly avoid the necessity of giving force to those averments. Even assuming that more detailed information would be advantageous to the defendant in the counter-claims, if the fact is as stated in the counter-claim that the defendant to that counter-claim has all the data and that the counter-claimants have given in the counter-claim everything that is in their knowledge or possession, 20 I don't see how the Court can go so far as to require them to do more.

I will not undertake to dispose of this matter at this time. I think I should look more closely into the detailed objections which are made and also examine more closely the detailed averments. It may be that notwithstanding the general statement that everything is supplied that can be supplied, it will appear on the very face of the averments that it is possible to supply more. 30

If eventually these charges in the bill, answers, counter-claims, and the answers to the counter-claims are reduced to specific issues, I apprehend the only thing a Court would do, or would be able to do, would be to refer all the issues to a Master for an accounting. This situation is a new and almost shocking conception to me, coming as I do

from the ancient times, when the law required that a creditor's bill should be upon a judgment and could not be filed otherwise; it is, I may say, a blow to my conception of equity practice to have a statute come and say that a creditor's bill can be filed if the complainant has nothing more than a claim for unliquidated damages. Look where it leads to if we are to accept that procedure, and the statute appears to say that we must. It would seem we are
10 compelled to first ascertain whether anything is due the complainant, and if so, how much. Then we would be compelled to go on and try the other case of fraud and ascertain whether the conveyance was a fraudulent one, thus making essentially two trials, and they would, I assume, have to be tried in that order. Now, if the claim is one for damages, which claim ordinarily would be tried exclusively before the law Court, I apprehend we would be compelled, in some way or other, through a Master, or in some
20 way, to find out what the damages have been. In other words, before we go into the question of fraud or undertake to inquire whether there has been any fraud or not, the Court of Chancery must take the place of a law Court and formulate a decree in the nature of a judgment at law in behalf of the complainant for some sum of money. I believe the statute provides that even a contingent liability shall be a basis of the bill. Suppose we then go on and find a fraud and have the conveyances set aside
30 and it subsequently transpires that the contingent liability does not mature, then it would all go for nothing. Well, the Legislature is omnipotent, I suppose, and we must bow to its powers and prerogatives. But I have at times wondered whether this statute may not encroach upon the constitutional prerogatives of our courts.

Heard September 26, 1927.

SUPPLEMENTAL CONCLUSIONS.

LEAMING, V. C.

At the hearing of the motions in this cause, filed against the amended answer and counter-claim, I tentatively expressed the view that the motions could not prevail; but deferred a final conclusion until the details of the motions and specific averments of the amended counter-claim could be examined more carefully. The amended answer and counter-claim were lost by being filed by the Clerk in Chancery with the files in another cause and have only recently been found and forwarded to me. 10

I have since more carefully examined the motions and amended answer and counter-claim and adhere to the views tentatively expressed at the hearing to the effect that the averments that all the specific data on which the charges against complainant are based is in the possession of complainant and is wrongfully withheld from defendants and cannot in consequence be supplied by defendants more fully than given, is adequate to excuse further details in the counter-claim. Touching paragraphs 36 to 40 inclusive, of the counter-claim, I entertain the view that the facts stated touching the purchases and initial payments by Cohen raise a resulting trust in his favor at least to the amount of such payments, irrespective of any agreement touching future payments by Gross. To that extent recovery clearly could be had; but while holding such a trust title it is not clear Gross would be privileged to complete the purchase and exclude Cohen from the profits. Indeed the exclusion of evidence of an agreement may well charge Gross with a broader measure of liability, including loss of profits from injudicious sales. 20 30

Nor do I think the averments of the counter-claim should be stricken out touching injuries said to have been sustained through complainant's alleged infidelity while acting as attorney for defendants. Injuries received from a breach of trust of that nature may be appropriately ascertained in this court and property wrongfully lost in consequence may be restored or compensation ordered.

In all motions of this nature the general rule is in the event of any possible doubt touching the sufficiency of averments to pass them over to final hearing, at which time all rights of the parties can be conserved.

The several motions will be denied.

Submitted and determined November 18, 1927.

ORDER DISMISSING MOTION.
IN CHANCERY OF NEW JERSEY.

Between		
JOSEPH GROSS,	}	
Complainant,		On Motion to Strike 10
and		Out Answer and
DAVID COHEN, J A C O B		Counter-Claim.
COHEN and PENNSYL-		Order Dismissing
VANIA MORTGAGE &		Motion.
LOAN COMPANY, et als.,		
Defendants.		

The complainant having given notice of a motion to strike out the amended answer and counter-claim 20 to amended bill of complaint filed in this cause on the 23rd day of July, 1927, and argument having been heard thereon and briefs submitted:

It is, on this 30th day of November, 1927, ordered that the motion to dismiss the answer to the amended bill of complaint and the motion to dismiss the counter-claim to the amended bill of complaint, which answer and counter-claim were filed on the 23rd day of July, 1927, be and the same hereby are dismissed with costs. 30

It is further ordered that the complainant have twenty days from the date of service of copy hereof to file a reply to said answer and an answer to said counter-claim.

E. R. WALKER,
C.
(Copy)

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 to Counter-Claim*

Respectfully advised:
E. B. LEAMING, V. C.
 (Copy)
Served 12/1/27.

10 REPLY TO AMENDED ANSWER AND
 ANSWER TO COUNTER-CLAIM.

(Reply filed 1/20/28.)

IN CHANCERY OF NEW JERSEY.

	Between	
	JOSEPH GROSS,	
20	<i>Complainant,</i>	} On Bill, &c. Reply to Amended Answer and An- swer to Counter- Claim.
	and	
	PENNSYLVANIA MORTGAGE	
	AND LOAN COMPANY,	
	<i>et als.,</i>	
	<i>Defendants.</i>	

30 Complainant, Joseph Gross, replying to the an-
 swer of the defendants, David Cohen, Jacob Cohen,
Samuel Lerner, Jacob D. Kane and Pennsylvania
Mortgage and Loan Company, says

1. Complainant denies that he collected the full
amount of moneys loaned on the mortgages referred
to in paragraph 2 of the amended answer and de-
nies the allegation that there was no money due and

owing to this complainant at the time the amended bill was filed.

2. This complainant denies the allegation of paragraph 5 of the amended answer that Dora A. Gross collected on the mortgages therein referred to a sum in excess of the amount loaned thereon and denies the allegation that there is no money due and owing from the defendants to this complainant. 10

3. This complainant denies the allegation of paragraph 10 of the amended answer to the effect that said loan was re-paid to this complainant and denies the allegation that no money is due this complainant.

4. This complainant denies the allegations of paragraph 15 of the amended answer.

5. This complainant denies the allegations of paragraph 23 of the amended answer. 20

6. This complainant denies the allegations of paragraph 24 of the amended answer.

7. This complainant denies the allegations of paragraph 31 of the amended answer.

8. This complainant denies the allegations of paragraph 32 of the amended answer. 30

9. This complainant denies the allegations of paragraph 33 of the amended answer.

10. This complainant denies the allegations of paragraph 34 of the amended answer.

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to Counter-Claim*

11. This complainant denies the allegations of paragraph 35 of the amended answer.

12. This complainant denies the allegations of paragraph 36 of the amended answer.

13. This complainant denies the allegations of paragraph 37 of the amended answer.

10

14. This complainant denies the allegations of paragraph 38 of the amended answer.

15. This complainant denies the allegations of paragraph 39 of the amended answer.

16. This complainant denies the allegations of paragraph 40 of the amended answer.

20 17. This complainant denies the allegations of paragraph 41 of the amended answer.

18. As to all other matters set forth in this amended answer this complainant joins issue.

The complainant, Joseph Gross, by way of answer to the counter-claim of the defendants, David Cohen and Pennsylvania Mortgage and Loan Company, says:

30

1. Answering paragraph 1 of the counter-claim he admits that Pennsylvania Mortgage and Loan Company is a corporation as alleged and that David Cohen is the treasurer thereof, but says that no distinction can be drawn between the said David Cohen personally and the said Pennsylvania Mort-

gage and Loan Company for the reasons set forth in paragraph 9 of the amended bill of complaint.

2. Answering paragraph 2 of the counter-claim, he admits the allegations of paragraph 2 of the counter-claim.

3. Answering paragraph 3 of the counter-claim, he admits that Dora A. Gross is his wife, and that Nathan Gross and Jacob Gross are his brothers, but denies that they are nominees of the said Joseph Gross, holding securities and title to real estate for him, with the exception that Dora A. Gross holds certain property for Joseph Gross under the provisions of paragraph 24, subdivisions A and B of the agreement of August 19, 1926, being Exhibit A attached to the counter-claim. The defendants, David Cohen and Pennsylvania Mortgage and Loan Company, at the time complainant acquired the mortgage referred to in subdivision B of said paragraph 24, being the Perlman mortgage, which was prior to the agreement of August 19, 1926, guaranteed to complainant the payment to him of the sum of \$1,800.00 on the said mortgage, that being the amount of the mortgage. Complainant received \$300.00 on the said mortgage prior to the making of the agreement of August 19 referred to and if there is to be an accounting between complainant and the defendants, David Cohen and Pennsylvania Mortgage and Loan Company, then the defendants, David Cohen and Pennsylvania Mortgage and Loan Company, should be charged with the sum of \$1,500.00 and interest thereon, and this complainant should receive corresponding credit. With reference to the premises 143 South 11th Street, referred to in subdivision A of paragraph 24 of the

said agreement, complainant says that the title to the said property is subject only to the terms of the said agreement of August 19, and if not affected by the said agreement of August 19, 1926, in the hands of complainant, or of the said Dora A. Gross, then this complainant and the said Dora A. Gross are entitled to hold the same free and clear of any and all charge whatever in favor of the said defendants,
10 or either of them.

4. Answering paragraph 4 of the counter-claim, he denies that he was engaged, as alleged, in the years 1921 and 1922, but says that at various times between the years 1923 and 1926 he was engaged by the defendants for the purpose of instituting foreclosure suits and making collections in connection therewith. He denies the remainder of said paragraph.

20

5. Answering paragraph 5 of the counter-claim, he denies the allegations of paragraph 5.

6. In answer to paragraph 6 of the counter-claim, he says that his relations with the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, did not commence until 1923 and he denies the remaining allegations of said paragraph.

30

7. In answer to paragraph 7 of the counter-claim, he says that no business or professional relations existed between him and the said defendants prior to 1923. It is true that beginning with the early part of the year 1923, David Cohen delivered to him certain bonds and mortgages for the purpose of collecting the same and complainant did cause some foreclosure proceedings to be instituted.

8. In answer to paragraph 8 of the counter-claim, this complainant denies that said defendants are unable to specify the time when said bonds and mortgages were forwarded to him and denies that said information is exclusively in complainant's possession. Complainant says that of the foreclosures mentioned in paragraph 8 of the counter-claim, he represented the parties in the following instances:

10

Morris Cohen,
Samuel Platt,
Morris Patrowitch,
J. E. Sodel,
Israel Schwartz,
Morris Simon,
S. Cutler,
Samuel Shawinson,
Harry, Julia and Nathan Braverman,
A. De Petriantonio and Borelli,
David and Esther Fireman,
Nathan Escourt (Schoenfeld),
Abraham and Yetta Katz,
Vincent Ross,
Bessie Wolinsky.

20

With reference to the proceedings in said paragraph, wherein Charles F. Gerhart and George A. Strad are named as mortgagors, this complainant says that he did represent the parties in foreclosures involving the properties referred to under those names, but that said foreclosures were not against the persons named but against one, George A. Lindenberg. As to all other mortgages listed in said paragraph 8, this complainant denies all averments in connection therewith. He further says that all proceedings instituted by him in reference to the matters above mentioned or in reference to any

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to Counter-Claim*

other foreclosure matters are matters of public record open to the inspection of any party to this suit. Complainant further says that he has fully accounted to the defendants for any and all moneys received by him in connection with the foreclosure proceedings with which he had to do as above set forth.

10 9. He denies all of the allegations of paragraph 9 of the counter-claim.

10. In answer to paragraph 10 of the counter-claim, he admits that he collected certain sums of money on certain bonds and mortgages delivered to him, but denies that he has failed and refused to account for the same and denies that he has failed and refused to pay the same, but says that he did pay and account for all such sums of money.

20

11. He denies paragraph 11 of the counter-claim, and says that he did account from time to time for all moneys received by him.

12. He denies all the allegations of paragraph 12 of the counter-claim, and says that said defendants have full, entire and complete records of said bonds and mortgages and full information as to moneys received and have received full, complete and correct accounts of all of the proceedings instituted by
30 complainant and all of the proceeds thereof.

13. In answer to paragraph 13, he denies that any business or professional relations existed between him and the defendants prior to 1923. He admits that certain bonds and mortgages were assigned to

him as collateral security for money by him advanced.

14. In answer to paragraph 14, he denies that defendants are unable to furnish the exact dates and times when the said mortgages were assigned. He says that said mortgage of \$19,000 referred to in paragraph 14 of the counter-claim was not delivered to him as collateral security, but was sold by the Pennsylvania Mortgage and Loan Company to him outright for a valuable consideration. Said mortgage has been collected by complainant and the mortgage cancelled. Said mortgages of Morris Rutberg, referred to in said paragraph 14, were assigned to complainant under the circumstances and with the results set forth in paragraphs 2 to 8, inclusive, of the amended bill of complaint, to which reference is hereby made. With reference to the Amsterdam mortgage, referred to in said paragraph, he says that said mortgage was sold by the Pennsylvania Mortgage and Loan Company to him on or about July 3, 1924; that thereafter said defendants agreed with the complainant that the latter should hold the mortgage as security for all moneys due the complainant by the defendants and that said defendants should be charged with \$3,000 therefor. Complainant has received no money on said mortgage since August 19, 1926, and fully accounted for all moneys theretofore received. Said mortgage of \$75,000, referred to in paragraph 14, was assigned to the complainant by the Pennsylvania Mortgage and Loan Company for value on or about August 19, 1926, pursuant to an agreement of that date attached to defendants' counter-claim and marked Exhibit A. No sums have been received by complainant thereon. The mortgage of \$30,000, re-

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to Counter-Claim*

ferred to in said paragraph 14, was assigned to said complainant under the circumstances referred to in complainant's amended bill by paragraphs 17 to 22, both inclusive, thereof, to which reference is hereby made. No money has been received by complainant thereon. Said mortgage of \$25,000, referred to in said paragraph 14, was assigned to the complainant under the circumstances set forth in paragraph 25 of the amended bill of complaint, to which reference is hereby made. No money has been received by complainant thereon. The mortgage of \$1,500.00 referred to in paragraph 14, was sold outright to complainant by Pennsylvania Mortgage and Loan Company on or about June 16, 1925. Thereafter defendant agreed with the complainant that the latter should hold said mortgage as security for all moneys due to the complainant by the defendants and that defendants should be charged with \$1,500 therefor. No money has been received by complainant thereon, except two interest payments, one made December 16, 1926, for \$45, and another made May 23, 1927, for \$45, both of which payments have been credited on the accounts of complainant with said defendants. Complainant never received, nor did anyone else ever receive for him, any mortgage for \$25,000 on lots 12 and 13, block C, referred to in said paragraph 14.

15. In answer to paragraph 15, this complainant denies each and every allegation thereof, and says that the defendants have complete knowledge and records of the matters referred to in said paragraph.

16. In answer to paragraph 16, this complainant denies that said mortgages have been paid in whole or in part, except as set forth in answer to para-

graph 14, and denies that said defendants have no accurate knowledge as to any payments made or received on account thereof, and denies that all information, books or records concerning the same are exclusively in the possession of the complainant, and says that said defendants have full knowledge and records regarding the same.

17. In answer to paragraph 17, this complainant 10
denies that he has collected any interest on any mortgages assigned to him, except as above set forth, and denies all of the remaining allegations of said paragraph. He says that defendants have full and complete records of all matters referred to.

18. In answer to paragraph 18, this complainant
denies all of the allegations of the same, and says that the defendants have full knowledge of the matters therein referred to. 20

19. In answer to paragraph 19, this complainant
denies that he has in his possession any promissory notes executed by either of the said defendants, but admits that he has in his possession certain agreements of indemnity.

20. In answer to paragraph 20, this complainant
denies each and every allegation of the same.

21. In answer to paragraph 21, this complainant 30
denies each and every allegation of the same and, further, says that he has no notes of either of the said defendants in his possession.

22. In answer to paragraph 22, this complainant
denies all of the allegations of the same and says

that defendants have full and complete information and records of all transactions between complainant and them, both as to said notes and as to all other transactions.

23. In answer to paragraph 23, this complainant admits that he received sums of money on behalf of both of the said defendants and has applied the
10 funds so collected against the accounts of both, which was done at the direction of said David Cohen and said Pennsylvania Mortgage and Loan Company.

24. In answer to paragraph 24, this complainant says that he does not know what sums of money are referred to and, therefore, denies the receipt of the same and specifically denies that he has failed to return the evidence of any indebtedness to the said
20 defendants in instances where said indebtedness has been paid. He says that he has fully accounted to the said defendants for all moneys received by him and has returned to them all papers and evidences of indebtedness held by him where the same have been paid.

25. In answer to paragraph 25, this complainant denies each and every allegation of the said paragraph, and specifically says that defendants have
30 full and complete knowledge and information regarding the matters therein referred to.

26. In answer to paragraph 26, this complainant denies each and every allegation of the same, and specifically says that said defendants are indebted to him in a large sum of money as set forth in said amended bill of complaint. This complainant has

fully and completely accounted to the said defendants for all moneys received.

27. In answer to paragraph 27, he denies each and every allegation of the same.

28. In answer to paragraph 28, this complainant admits that he entered into an agreement regarding the Seaside Development Company, but as to the contents thereof, refers to original and says that a copy thereof is attached to complainant's bill of complaint and marked Exhibit "C." Said agreement was amended on August 19, 1926, by agreement, a copy of which, marked Exhibit "A," is attached hereto. The facts concerning the said original agreement are set forth in complainant's amended bill by paragraphs 10 to 16 thereof, both inclusive, to which reference is hereby made. 10

29. In answer to paragraph 29, this complainant says that for the contents of the said agreement he refers to the original thereof and particularly to paragraphs 10 to 16, both inclusive, of his amended bill of complaint. 20

30. In answer to paragraph 30, this complainant says that the terms of the agreement in which the stock of the Seaside Development Company and lots were held by complainant have never been satisfied and that complainant is entitled to hold the same. No money has been realized on the said lots and there have been no proceeds of any sales to account for. It is not true that said David Cohen lacks information regarding the same which is in the possession of this complainant. This complainant had advanced sums aggregating \$26,520.92 at 30

the time of the filing of the amended bill of complaint, as set forth in paragraph 10 thereof, and since that time upon demand of the said Seaside Development Company complainant has been required to pay additional assessments, making a total advanced in connection with the Seaside Development Company of \$28,928.92, and David Cohen has refused to pay on said assessments under said agreement, referred to in paragraph 10 of the
10 amended bill of complaint.

31. In answer to paragraph 31, this complainant denies that the lots mentioned in said paragraph 31 were sold by him to Nathan Teller and wife for the consideration of \$2,000 each or for any other sum. This complainant was requested by David Cohen to convey said lots to Nathan Teller and did convey the said lots to Nathan Teller by deed dated January
20 12, 1926, and recorded January 26, 1926, in the clerk's office of Cape May County, in Book 423 of Deeds, page 285. The consideration of said transfer was the execution and performance of a certain agreement dated January 26, 1926, between this complainant on the one hand and David Cohen and Nathan Teller on the other hand, copy of said agreement is attached hereto marked Exhibit "B" and made part hereof. There was executed to complainant by said Nathan Teller a mortgage in the sum of
30 \$85,000, which was delivered to complainant pursuant to the said agreement of January 26, 1926, and was recorded in the office of the clerk of Cape May County, in Book 237 of Mortgages, page 338. As appears by said agreement, the said David Cohen, to induce the execution of said deed by complainant for said lots, which complainant was entitled to hold as security for the performance of the

agreement of September 22, 1925, and to convey the same to Nathan Teller, and to execute the said agreement, represented to complainant that he, David Cohen, had advanced the sum of \$10,000 on said mortgage of \$85,000, and undertook to advance additional sum of \$42,000 on said mortgage for the completion of certain houses to be erected on said lots. Said representation was false in that said David Cohen had not advanced \$10,000 or any other sum thereon and was made for the purpose of fraudulently persuading complainant to part with the title and to execute said agreement and to advance the sum of \$5,000 as therein provided. Complainant did rely on said representation and at the request of said David Cohen and of the Pennsylvania Mortgage and Loan Company, made the said conveyance and advanced the sum of \$5,000 to Nathan Teller as provided for in the said agreement. This complainant charges, on information and belief, that said Nathan Teller paid over the said sum to David Cohen pursuant to an original scheme between the said David Cohen and Nathan Teller to defraud complainant of the title to said lots, which he held at security under said agreement of September 22, 1925, Exhibit "C," attached to the bill of complaint, and to defraud complainant of the sum of \$5,000 advanced as aforesaid. It was also agreed between complainant and defendants, David Cohen and Pennsylvania Mortgage and Loan Company, that the \$3,000 with which the said defendants were charged for the Amsterdam mortgage, referred to in paragraph 14 of this answer, should be credited to the account of complainant in connection with the transaction herein referred to in addition to the \$5,000 advance made by complainant as set forth in this paragraph, and it was further agreed

that this complainant should also receive credit on the transactions set forth in this paragraph for the sum of \$1,993.32, due to him by David Cohen and Pennsylvania Mortgage and Loan Company for moneys loaned. The total, therefore, advanced by complainant upon the transactions set forth in this paragraph was \$9,993.32, and if there is to be an accounting in this suit between the parties, complainant and defendant, complainant should receive credit for said sum of \$9,993.32, with interest. Said David Cohen thereafter refused to advance \$42,000 or any other sum under said agreement, and no buildings were ever erected on said lots. Pursuant to said scheme of David Cohen, said David Cohen procured Nathan Teller then and there to execute a deed to said lots, leaving the name of the grantee therein blank, and deliver the same to David Cohen. Said deed has since been recorded to a nominee of David Cohen, who holds title thereto for him. The mortgage for \$5,000 on premises 1601 North 33d Street, referred to in said agreement of January 26, 1926, was delivered to complainant by David Cohen and Pennsylvania Mortgage and Loan Company, and was represented by them to be a true and valid mortgage, for the purpose of inducing complainant to part with the sum of \$5,000 above referred to, and to execute said agreement and to convey said lots to Nathan Teller, but in point of fact this complainant, Joseph Gross, had been informed by said David Cohen, after the execution of said deed and agreement and after the payment of the said \$5,000 by this complainant, that said mortgage was never executed by the said persons named therein as mortgagors, but that their signatures thereto were forged, and complainant requires the said David Cohen and Pennsylvania Mortgage and Loan Com-

pany to account to him for the said sum of \$5,000 with interest thereon.

32. This complainant says, in answer to paragraph 32, that the list of lots contained in Section 32 of the counter-claim is not correct. He says that a correct list of the lots involved in the transaction referred to in the agreement of January 26, 1926, is attached to Exhibit "C" of the amended bill of complaint filed herein. 10

33. This complainant denies each and every allegation of paragraph 33 of the counter-claim.

34. In answer to paragraph 34 of the counter-claim, this complainant denies the allegations thereof as charged against him, but says that it was agreed between this complainant and David Cohen that complainant said said David Cohen should advance in equal parts the moneys required to purchase the following mentioned premises and should divide equally all profits and losses thereon. All other matters set forth in said paragraph 34 are denied. The properties covered by said agreement between complainant and David Cohen were: 1921 North Alder Street, 6121 Catherine Street, two lots on Eleventh Street, 2910 Page Street, lot on Tenth Street, 2427 North 27th Street, Oaks Apartments, Pine Street and 3215-17 Ridge Avenue, all in the City of Philadelphia, Pennsylvania. Said David Cohen and Pennsylvania Mortgage and Loan Company, for a valuable consideration, did assign, transfer and set over unto the said Joseph Gross their interest in the premises referred to outright for a valuable consideration. 20 30

35. Complainant denies all of the allegations of paragraph 35 of the counter-claim, and specifically says that there was no agreement between him and the said David Cohen or Pennsylvania Mortgage and Loan Company, except with reference to the properties set forth in answer to paragraph 34.

10 36. Complainant denies each and every allegation of paragraph 36, and says that there was no agreement between this complainant and the said David Cohen and Pennsylvania Mortgage and Loan Company as to any properties except those set forth in answer to paragraph 34.

20 37. This complainant denies each and every allegation of paragraph 37 of the counter-claim, and says that there was no agreement between himself and David Cohen and Pennsylvania Mortgage and Loan Company as to any properties except those set forth in answer to paragraph 34.

38. Complainant denies each and every allegation of paragraph 38 of the counter-claim.

39. Complainant denies each and every allegation of paragraph 39 of the counter-claim.

30 40. This complainant denies each and every allegation of paragraph 40 and, further, says that as to the properties referred to in paragraph 34 preceding said David Cohen and Pennsylvania Mortgage and Loan Company on or about April 14, 1926, assigned to complainant their rights in said properties for the sum of \$250, which sum was paid by complainant, and complainant further, as part of said transaction, agreed to sustain all losses which

may be incurred in connection with said property. There was never any agreement between complainant and said David Cohen and Pennsylvania Mortgage and Loan Company relating to any other properties than those referred to in paragraph 34. This complainant further says that as to all the properties mentioned in the counter-claim and referred to in paragraphs 34 to 40, inclusive, that the agreement therein set forth and claimed against this complainant is set forth as a verbal agreement only and this complainant says that he could not be held liable on any verbal agreement of the nature charged against him because of the provisions of "An Act for the prevention of frauds and perjuries," which statute is hereby given as a defense to paragraphs 34 to 40, inclusive. 10

41. This complainant denies each and every allegation of paragraph 41, except that it is true that he has held defendants, David Cohen and Pennsylvania Mortgage and Loan Company, jointly and separately liable on said sum, as they, in fact, are liable jointly and severally therefor. 20

42. In answer to paragraph 42, this complainant says that due to disagreement which arose between himself and the defendants, David Cohen and Pennsylvania Mortgage and Loan Company, their relations became strained on or about May 21, 1926, and the relationship of attorney and client between this complainant and defendants was terminated in a general way at that time, but with the consent and at the request of the said defendants, David Cohen and Pennsylvania Mortgage and Loan Company, this complainant continued as attorney of record for them in certain pending matters wherein he had 30

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to Counter-Claim*

already been retained and wherein he received certain sums of money, for all of which he duly and faithfully accounted to the defendants.

43. Complainant denies each and every allegation of paragraph 43 of the counter-claim.

10 44. Complainant denies each and every allegation of paragraph 44 of the counter-claim.

20 45. Complainant denies each and every allegation of paragraph 45 of the counter-claim. This complainant says that, in fact, the said defendants are indebted to him in excess of \$90,000 as set forth in the amended bill of complaint herein and if this complainant shall be required to enter into an accounting with David Cohen and Pennsylvania Mortgage and Loan Company, then all sums of money due him as set forth in the amended bill of complaint and as further stated in this answer, should be decreed to be paid to him.

46. Complainant denies each and every allegation of paragraph 46 of the counter-claim.

47. Complainant denies each and every allegation of paragraph 47 of the counter-claim.

30 48. In answer to paragraph 48 of the counter-claim, complainant says that he holds a mortgage of \$75,000.00 on the property mentioned in said paragraph, and also says that said property is in the name of Samuel Lerner, but denies all of the other allegations of the said paragraph.

50. As to paragraph 50 of the counter-claim, com-

plainant says that Jacob D. Kane did hold title to said property, but that since the filing of the amended bill of complaint herein, said premises have been conveyed by Jacob D. Kane to Morris Cohen, the brother of defendant, David Cohen, who holds the same for David Cohen and Pennsylvania Mortgage and Loan Company, and complainant further says that said conveyance was made without consideration and for the purpose of hindering, delaying and defrauding complainant of the moneys due him. Complainant denies all the other allegations of the said paragraph. 10

51. As to paragraph 51 of the counter-claim, complainant says that it is true that title to said premises was in the name of Jacob D. Kane, and says that since the filing of the amended bill of complaint herein said premises have been conveyed by Jacob D. Kane to Morris Cohen, the brother of defendant, David Cohen, who holds the same for David Cohen and Pennsylvania Mortgage and Loan Company, and complainant further says that said conveyance was made without consideration and for the purpose of hindering, delaying and defrauding complainant of the moneys due him. Complainant denies all the other allegations of the said paragraph. 20

52. As to paragraph 52 of the counter-claim, complainant says that Jacob D. Kane did hold title to said property, but that since the filing of the amended bill of complaint herein said premises have been conveyed by Jacob D. Kane to Morris Cohen, the brother of defendant, David Cohen, who holds the same for David Cohen and Pennsylvania Mortgage and Loan Company, and complainant fur- 30

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to Counter-Claim*

ther says that said conveyance was made without consideration and for the purpose of hindering, delaying and defrauding complainant of the moneys due him. Complainant denies all the other allegations of the said paragraph.

10 53. As to paragraph 53 of the counter-claim, complainant says that it is true that Jacob D. Kane holds title to said lots but denies all other allegations of said paragraph.

20 54. In answer to paragraph 54 of the counter-claim, this complainant says that he did institute legal proceedings for the purpose of enforcing his rights as a creditor of the said David Cohen and Pennsylvania Mortgage and Loan Company, had good cause therefor and was entirely justified in so doing. Said proceedings were instituted after consultation by complainant with counsel for the purpose of collecting moneys rightfully due him and after full and complete disclosure to counsel of all of the facts and upon the advice of counsel.

54-A. In answer to paragraph 54-A, this complainant admits the execution of the agreement of August 19, 1926, but denies all other allegations of said paragraph.

30 55. This complainant denies all the allegations of paragraph 55 of the counter-claim.

56. This complainant denies all the allegations of paragraph 56 of the counter-claim.

57. This complainant denies all the allegations of paragraph 57 of the counter-claim. Said agreement

of August 19, 1926, was entered into between complainant and the defendants, David Cohen and Pennsylvania Mortgage and Loan Company, in good faith and after all of the parties thereto had consulted independent counsel and said agreement is binding upon the said defendants.

58. This complainant denies that he has failed to keep the terms and conditions of his agreement of August 19, 1926, in that: 10

A. Complainant has failed to withdraw the proceedings in the Chancery Court of New Jersey referred to in said agreement, but says that after the execution of the said agreement he prepared to procure the withdrawal of the said Chancery proceedings, but that prior to the consummation of the proceedings for the withdrawal of said suit, complainant received notice from the defendants that they repudiated the said agreement, and refused to be bound thereby, whereupon complainant ceased further performance thereof. Complainant denies the remaining allegations of said subdivision A of paragraph 58. 20

B. In answer to paragraph 58-B of the counter-claim, complainant says that he has failed to convey said premises, but denies the remaining allegations of said paragraph. 30

C. In answer to paragraph 58-C of the counter-claim, complainant admits that he has failed to transfer said mortgage, but denies the remaining allegations of said paragraph.

D. In answer to paragraph 58-D of the counter-

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to Counter-Claim*

claim, complainant admits that he has failed to satisfy said mortgage, but denies the remaining allegations of said paragraph.

E. Complainant denies all of the allegations of paragraph 58-E of the counter-claim.

10 F. In answer to paragraph 58-F of the counter-claim, complainant admits that he has failed to transfer said mortgage, but denies all the other allegations of said paragraph.

20 G. In answer to paragraph 58-G of the counter-claim, complainant admits that he has failed to convey said premises and, further, says that after the execution of the said agreement of August 19, 1926, defendants failed to pay the interest due on a mortgage on said premises, as a result of which the holder of said mortgage proceeded with foreclosure of the same and the said property has been sold under foreclosure.

H. Complainant denies all of the allegations of paragraph 58-H.

30 I. In answer to paragraph 58-I, complainant says that under the said agreement the money due complainant was due immediately and said extension was effective only in the event that the premises on Juniper and Poplar Avenue were completed within thirty days thereafter. Said premises were never completed and defendants were not entitled to said extension.

J. Complainant denies all of the allegations of paragraph 58-J.

K. Complainant denies all of the allegations of paragraph 58-K.

L. Complainant denies all of the allegations of paragraph 58-L.

M. Complainant denies all of the allegations of paragraph 58-M.

59. This complainant denies all the allegations of paragraph 59 of the counter-claim. He further says that the premises therein referred to are the same premises as were referred to in paragraph 58-G of the counter-claim and as were referred to in the agreement of August 19, 1926. Complainant never received any money whatever therefrom. 10

60. Complainant, in answer to paragraph 60 of the counter-claim, denies that the said Dora A. Gross is under his domination and control. 20

61. In answer to paragraph 61 of the counter-claim, complainant admits that between 1923 and 1926 he had certain transactions with the defendants, but denies all of the other allegations of the said paragraph.

62. In answer to paragraph 62 of the counter-claim, complainant admits that between 1923 and 1926 he had certain transactions with the defendants, but denies all of the other allegations of the said paragraph. 30

63. Complainant denies all of the allegations of paragraph 63 of the counter-claim.

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 to Counter-Claim*

64. In answer to paragraph 64 of the counter-claim, complainant says that the proceedings instituted by him in New Jersey and Pennsylvania against the defendants were instituted for the ultimate purpose of securing payment to complainant for the moneys due to him by the said defendants and that the proceedings instituted by him were so instituted without malice and for justifiable ends,
10 and that complainant had probable cause for the institution thereof and that said actions were instituted upon the advice of counsel after a full disclosure of the facts connected therewith.

65. In answer to paragraph 65 of the counter-claim, complainant says that on August 19, 1926, the said Pennsylvania Mortgage and Loan Company and David Cohen joined in a release to this complainant releasing complainant from all claims
20 which they might have, and says that said release was executed in conjunction with said agreement of August 19, 1926, and is binding upon the said defendants, a copy of said release is hereto attached and marked Exhibit "C."

*Solicitors for and of Counsel
with Complainant.*

30

EXHIBIT "A."

KNOW ALL men by these presents that the agreement entered into by and between Joseph Gross, Nathan Gross and David Cohen, on or about September 22, 1925, concerning certain lots at Wild-

wood, N. J., therein more specifically described, is modified as follows:

1. Unless all the lots which are the subject of said agreement are sold on or before August 1, 1927, it shall hereafter be proper for said Joseph Gross, holding title to said lots as therein stated, to place the same on sale with Ackley, or other auctioneer, operating in Wildwood, so that the same may be sold to the highest bidder or bidders. 10

2. The money or moneys so produced at said public sale shall be paid by said auctioneers to Joseph Gross for distribution by him, in accordance with the terms of the said agreement.

In witness whereof the parties have hereunto set their hands and seals this 19th day of August, 1926.

(SIGNED) JOSEPH GROSS (SEAL)
(SIGNED) JOSEPH GROSS Atty (SEAL) 20
For Nathan Gross
(SIGNED) DAVID COHEN (SEAL)

EXHIBIT "B."

WHEREAS, Nathan Teller is the owner of record of ten certain lots in North Wildwood, of Wildwood, New Jersey, more fully described in a deed heretofore executed to him for said lots by Joseph Gross, and 30

WHEREAS, Nathan Teller has executed to said Joseph Gross a mortgage on said lots in the sum of Eighty-five Thousand (\$85,000) Dollars, covering the purchase price due said Joseph Gross for said lots, and certain sums to be advanced to Nathan

Teller by David Cohen and said Joseph Gross, for the erection of certain houses, as hereinafter set forth, and

WHEREAS, the parties desire to set forth herein fully their entire understanding and agreement concerning the said mortgage and the houses to be built pursuant thereto.

10 THEREFORE THIS AGREEMENT WIT-
NESSETH

1. With the funds advanced, and to be advanced, to the said Nathan Teller on said mortgage, he shall erect seventeen two-story (two family) houses, in accordance with certain plans and specifications adopted. The same shall be completed not later than May 15, 1926.

20 2. The said David Cohen has advanced to date, the sum of Ten Thousand (\$10,000) Dollars on account of the said mortgage, and undertakes to advance additional sums aggregating Forty-two Thousand Dollars (\$42,000) between now and the completion of said houses, as the said advances shall be justified by the progress of the work.

30 3. On account of the said mortgage of Eighty-five Thousand (\$85,000) Dollars, the said Nathan Teller is to be charged, and the said Joseph Gross credited with Eighteen Thousand (\$18,000) Dollars for the said lots conveyed to Nathan Teller, as aforesaid.

4. In addition thereto, said Joseph Gross shall advance the sum of Five Thousand (\$5,000) Dollars upon the execution of these presents, and the further sum of Ten Thousand (\$10,000) Dollars as

soon as the said David Cohen shall have advanced thereon the sum of Twenty Thousand (\$20,000) Dollars.

5. Upon the payment to Joseph Gross of \$6000 on account of this mortgage, he shall release from its lien any lot and building selected by the said Nathan Teller.

10

6. As security for the completion of said buildings by said Nathan Teller, he has this day delivered to said David Cohen that bond and mortgage of Samuel Bass and Anna, in the principal sum of \$5,000 on premises 1601 N. 33rd Street. Upon the completion of said premises, in accordance with the terms hereof, the said mortgage shall be satisfied.

7. The said Bond and mortgage of Samuel and Anna Bass shall be assigned to the said Joseph Gross, who shall hold the same together with the said mortgage of \$85,000 for the benefit of himself and David Cohen, in accordance with their respective, proportionate shares therein.

20

8. The first payments on account of said mortgage shall be made to, and be retained by, said Joseph Gross, until his entire contribution thereto shall have been paid him.

30

9. Abraham Bass shall not be entitled to any compensation whatsoever for any services whatsoever rendered by him in connection with the execution of said buildings excepting from Nathan Teller, by whom he is employed, for whom he is acting as attorney-in-fact.

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to Counter-Claim*

10. In the event of the sale of said lots and buildings for a total sum in excess of the actual cost, the said excess shall be divided between the said Nathan Teller, David Cohen and Joseph Gross, each receiving one-third.

In witness whereof the parties have hereunto set their hands and seals this 25th day of January, 1926.

JOSEPH GROSS

NATHAN TELLER

By Abraham Bass, Att'y

DAVID COHEN

EXHIBIT "C."

20 KNOW ALL MEN BY THESE PRESENTS
THAT WE, Pennsylvania Mortgage & Loan Co. a corp., Penn State Finance Co. a corp., David Cohen and each of us do hereby remise, release and forever discharge Joseph Gross, heirs, executors, and administrators, of and from all, and all manner of, actions and causes of action, suits, debts, dues, accounts, bonds, covenants, contracts, agreements, judgments, claims and demands whatsoever in law or equity, especially any claims, or demands which
30 we have, or may have, for usury, bonus, or excessive interest in any form which against the said Joseph Gross, in, we, or any of us ever had, now have, or which heirs, executors, administrators or assigns or successors, or any of them, hereafter can, shall or may have, for, or by reason of any cause, matter or thing whatsoever, from the beginning of the world to the date of these presents.

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to Counter-Claim

IN WITNESS WHEREOF WE have hereunto
set our hands and seals the 19th day of August,
in the year of our Lord one thousand nine hundred
and twenty-six.

Penna. Mtge. & Loan Co.

by: Max A. Rapaport, Secy. Seal

Penn State Finance Co.

By David Cohen, Treas. seal

David Cohen

10

Signed, sealed and delivered in the presence of

20

30

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Mortgage & Loan Company to Answer
of Joseph Gross to Counter-Claim*

REPLY OF DAVID COHEN AND PENNSYLVANIA
MORTGAGE & LOAN COMPANY TO
ANSWER OF JOSEPH GROSS TO
COUNTER-CLAIM.

IN CHANCERY OF NEW JERSEY.

10

Between	}	Reply of David Co- hen and Pennsyl- vania Mortgage & Loan Company to Answer of Joseph Gross to Counter- Claim.
JOSEPH GROSS,		
Complainant,		
and		
PENNSYLVANIA MORTGAGE		
& LOAN COMPANY, et		
als.,		
Defendants.)		

20

These defendants join issue on the complainant's answer to these defendants' counter-claim and further say:

- 30 1. The alleged release of these defendants, Exhibit C, referred to in paragraph sixty-five of complainant's answer, was obtained from these defendants by the complainant at the time of the alleged agreement of August 19th, 1926, and as a part of said alleged settlement which the complainant refused to carry out and perform and was obtained from these defendants under the false and fraudulent representation of the complainant that he would immediately withdraw the proceeding in the State

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Mortgage & Loan Company to Answer
of Joseph Gross to Counter-Claim

of New Jersey and annul and cancel the *lis pendens* against these defendants' property which he thereafter refused to do and still continues to refuse to do.

The said release and agreement of August 19th, 1926, were obtained from these defendants by the complainant while he was acting as their attorney and in a confidential relation with these defendants 10 as a part of a negotiation for settlement which he has since repudiated and which settlement he has not made and has declined to make.

JOSEPH BECK TYLER,
Solicitor for Defendants, Penn-
sylvania Mortgage & Loan
Company and David Cohen.

REPLY.

IN CHANCERY OF NEW JERSEY.

10

Between

JOSEPH GROSS,

Complainant,

and

PENNSYLVANIA MORTGAGE

& LOAN COMPANY, *et**als.,**Defendants.*On Bill, &c.
Reply.

20

The complainant, Joseph Gross, replying to the reply of David Cohen and Pennsylvania Mortgage & Loan Company to the answer of Joseph Gross to the counter-claim, says:

He denies each and every allegation of the said reply.

PHILIP WENDKOS,

*Solicitor for and of Counsel
with Complainant.*

30

ORDER OF REFERENCE.

(Filed Feb. 15, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH GROSS,

Complainant,

and

PENNSYLVANIA MORTGAGE

& LOAN COMPANY, *et*

als.,

Defendants.

On Bill, &c.
Order of Reference.

10

20

This matter being opened to the Court by Philip Wendkos, solicitor of the complainant, and it appearing that Joseph Beck Tyler, solicitor of the defendants, has consented thereto.

It is on this 15th day of February, A. D. 1928, on motion of Philip Wendkos, solicitor of the complainant, ordered that the above-entitled cause be referred to Hon. E. B. Leaming, one of the Vice-Chancellors of this court to hear the same for the Chancellor and to report thereon to him, and to advise what order or decree should be made therein.

E. R. WALKER,

C.

I hereby consent to the entry of the foregoing order.

JOSEPH BECK TYLER.

A True Copy,
 THOMAS BARBER,
Clerk.

DESIGNATION.
 IN CHANCERY OF NEW JERSEY.

10	Between	}	
	JOSEPH GROSS,		
	<i>Complainant,</i>		
	and		
	PENNSYLVANIA MORTGAGE		
	& LOAN COMPANY, <i>et</i>		
	<i>als.,</i>		
	<i>Defendants.</i>		
			On Bill, &c. Designation.

20 This matter being opened to the Court by Philip Wendkos, solicitor for complainant, and counsel for the respective parties having consented hereto:

It is, on this 20th day of March, 1928, ordered that the 26th & 27th day of September, 1928, at the hour of ten o'clock in the forenoon, at the Chancery Chambers in the Court House, in the City of Camden, be designated as the time and place for the hearing of the above-entitled cause.

E. B. LEAMING,

V. C.

30

(Copy)

On motion of

PHILIP WENDKOS,

Of Counsel with Complainant.

We consent to the entering of the above designation.

Solicitor for Defendants.

EVIDENCE.

IN CHANCERY OF NEW JERSEY.

Between		
JOSEPH GROSS,	}	10
Complainant,		
and		
PENNSYLVANIA MORTGAGE		
& LOAN Co., <i>et al.</i> ,		
Defendants.		On Bill, etc.

JOSEPH H. CARR, ESQ., PHILIP WENDKOS, ESQ., for 20
complainant.

LEWIS STARR, ESQ., J. BECK TYLER, ESQ., for de-
fendants.

LEAMING, V. C.

September 24, 1928.

30

The Court: Are counsel ready in the case set for
today?

Mr. Carr: Yes, sir.

The Court: Now, gentlemen, I would like to make a survey, as far as possible, of the amount of time this case is to occupy or likely to occupy; I have set apart, at the suggestion of counsel, to day and tomorrow, is that adequate?

10 Mr. Carr: If the Court please, I am inclined to think it is, the suit is practically a suit for an accounting, and it seems to me, in view of our position regarding the accounting, before the close of tomorrow, at any rate, the Court could limit the accounting and fix the terms upon which the accounting should be taken. I would be glad to open up some of the ideas we have regarding the matter because personally I do not believe your Honor will be required to sit tomorrow, that is my own view, and I may be wrong, and it may take longer than I anticipate.

20 The Court: My recollection of the pleadings is not at all accurate or distinct although I examined them very carefully some time ago on motions, first, I think, made against the bill, and second, on motions made against the counter-claim, and possibly the answer, too, and my memory of the case is only so much as I retained from having examined the pleadings at that time, but I have an impression, which counsel may be able to correct if it is erroneous, that very much that I said tentatively at an
30 earlier hearing has been more or less crystalized by a subsequent decision of the Court of Appeals, a decision rendered somewhat recently. Counsel may remember that I pointed out the great difficulties that were to be encountered under the Uniform Fraudulent Conveyance Act, I forget what year it was passed, giving to the Court of Chancery jurisdiction in practically all classes of cases where

fraudulent conveyances were averred without the necessity of a preliminary judgment for an amount due to the complainant. I pointed out, as I recall it, the almost endless difficulties and confusion that would arise if we are to accept that Act in its fullness as valid and controlling on the Court of Chancery. The subsequent decision to which I refer was the United Stores case which practically held that Act unconstitutional in so far as it extended to a creditor without judgment or lien the right to file a creditor's bill, that is, a bill for relief against fraudulent conveyances of a debtor against whom he had not exhausted his legal remedy. My recollection of that case is that the Court of Errors, if they did not absolutely decide, at least, practically decided, that the early jurisdiction of the Court of Chancery, under which I grew up, and which I have already suggested in the tentative remarks that I made, were to me almost sacred, although, perhaps, not to the same extent by younger members of the bar, but the essential element in all creditor's bills, as defined in all the earlier cases, was the procurement of a judgment or an attachment lien, and the pursuit of that remedy to a point where the legal remedy was exhausted, in the case of a judgment, the return of the execution unsatisfied, those steps were all held to be jurisdictional, they were absolutely essential to the right of a creditor to file a creditor's bill to set aside a fraudulent conveyance, in other words, there must be established money due and the want of a legal remedy for its enforcement. Now, if I am correct in my memory of the decision of the Court of Errors and Appeals in the case to which I referred it was to the effect that the provisions of this uniform Act were unconstitutional in so far as they undertook to dispense with those prerequisites. Am I not correct in that decision?

Mr. Carr: I think not as far as that, Vice Chancellor. I quite agree with the old law, in my first start at practicing I know before we could file a creditor's bill we had to issue an execution on the judgment and exhaust our remedy at law, but in the case of the United Stores Realty Company v. Asea, that involved a judgment in the District Court in the sum of \$250—as a matter of fact, it was not docketed—and having been obtained the complainant proceeded in equity and relied upon this statute. The Court in the majority opinion by Chief Justice Gummere said, “It has been suggested that the section of the statute which has been referred to violates our Constitution because it impairs the jurisdiction of the courts of law created by that instrument by conferring upon the Court of Chancery power to hear and determine actions for debt and for damages arising out of a breach of contract, that power being necessary for the as-
certainment of the validity of the creditor's claim and for determining the actual amount due on such claim, if it be found to be valid.” Now, as a matter of fact, stopping right there, the 1919 Act does not say how the validity and amount of the creditor's claim shall be determined, it does not expressly say that question shall be tried in the Court of Chancery. The Chief Justice goes on to say, “If this question was involved in the determination of the present case, we would be inclined to consider the suggestion as a meritorious one to the extent indicated,” and that is the language that puts us to the burden of satisfying your Honor that the Act is a perfectly valid Act.

And he goes on to say, “But the fact that a statutory provision is, to some extent, violative of our Constitution, does not justify its condemnation in toto unless the different parts of the provision are

so intimately connected with and dependent upon each other as to warrant a belief that the Legislature intended them as a whole, and that, if all could not be carried into effect, the Legislature would not have passed the residue independently. Bearing in mind the fundamental principle that courts will not declare a statute unconstitutional in every respect where the matter is at all doubtful, we consider that we should not condemn the provision of the statute so far as it is involved in the present case, for it does not seem to us that the different parts of the Act are so intimately connected with and dependent upon the other as to justify a judicial declaration that the whole provision must stand or fall. Reaching this conclusion, and considering, as we have already indicated, that the statutory provision embraces, by implication, claims of creditors, the validity and amounts of which have been established by the judgments of courts of law, but which have not been impressed as liens upon lands of their respective debtors, we conclude that, to this extent, the power conferred upon the Court of Chancery does not infringe upon the jurisdiction of our law courts."

The Court: Do you apprehend in the opinion of Chief Justice Gummere in that case there is room for the contention he would have entertained that bill if there had been no judgment at all?

Mr. Carr: That I don't know, I sent to counsel for the briefs in the matter to see how the question was presented and how it was argued, and found out it was done in a very sketchy manner, the matter was only \$250.

The Court: Doesn't the opinion of Justice Kal-

isch in that case take up a broader view even than the Chief Justice?

Mr. Carr: He was dissenting.

10 The Court: Yes, he was dissenting, but he was expressing his opinion on the broader view that the Chief Justice did not consider it essential to consider, and it is the opinion of one of the most powerful Judges we have in this State, and is to the effect, if I recall—I haven't seen it since it was first published—that a Court of Chancery will not, notwithstanding the statute, entertain a creditor's bill to set aside a fraudulent conveyance unless and until the fact is established in a court of law that an indebtedness exists.

20 Mr. Carr: I was about to say, and I hope your Honor has not closed your mind on the subject, because it was not decided in this case, and I do believe that if the matter had been argued at length, that is, thoroughly argued in all of its aspects before the Court of Errors they would have come to a different conclusion, because I have spent a great deal of time—I rather anticipated this question would arise—and I spent a great deal of time looking into related jurisdictions, that is, I mean jurisdictions of courts in this State, and I don't see any difficulty at all, and I would be very glad to argue the matter out. Now then, as I see it, the best expression of the situation we have here is an opinion
30 by your Honor where the question arose where there was an answer filed to a suit involving a trespass, where the answering defendant set up in his answer that he claimed the same benefits of his answer that he would have claimed by a demurrer, and in passing on that general question how that

would be decided you called attention to the two classes of cases, one where the lack of jurisdiction of the Court was apparent on the face of the bill, and went on to say in other classes of cases—you used in illustration suits to restrain violation of an easement where it is necessary to have a hearing before it can appear the title is disputed—and you held in that situation it was proper for the defendant to plead in that way, and you went on to say, where the defendant did not plead he could demur, 10 where he didn't answer, and set up the lack of jurisdiction for want of title in the land and that the Court would retain the bill pending the termination at law of the facts that were appropriately the subject of legal cognizance, but where the point was made in the pleadings the Court was without jurisdiction the bill would not be retained and the party would be left to his remedy at law. This seems to me to be an analogous case, these defendants in their answer set up they admit we loaned them these 20 moneys, but they say they have repaid the money to us and treat the bill as just what it is to a large extent, a bill for an accounting, and they come in and ask us to account, so until the Court hears that issue it cannot be determined there is a dispute about the bill, and then the question arises whether this subject matter is of such a nature it is fit to be determined by a jury or whether, under all the circumstances, the jury has been waived by their failure to ask for it under the provisions of the 1915 Act, and secondly, this is a matter of equitable 30 jurisdiction and should not be sent to a jury for trial. It is a complicated matter.

The Court: It is complicated, but that does not deny the law court the jurisdiction to determine whether there is anything due or not, and how much, if anything.

- Mr. Carr: Exactly, but the right of the defendant in this case to a jury trial can be waived, and he has waived it here, he has not asked for it, they have not raised the point. Now, I have a number of instances—I don't know all the points in your Honor's mind, and counsel on the opposite side are not urging anything—but we have a number of instances in this court where matters ordinarily cognizable at law are heard here, for instance, suits
- 10 on municipal bills to determine what may be due to claimants to municipal mechanics' lien funds, and it has been decided where the answering defendants have unliquidated claims if they have not asked for a jury their right of trial by jury at law is waived. In the Act relating to the quieting of titles it has been decided by the Court of Errors that while the jury trial, which a party gets in the intermediate stage between the first hearing and final hearing, the jury trial he gets there as being
- 20 under the control of the Court of Chancery and not an action at law, and that is not in violation of any constitutional prerogative of the Supreme Court, it is an ancillary remedy. I would be glad at any appropriate time to argue this matter at length, because I think the jurisdiction should be sustained. In 1915, the Legislature passed a law that provided where this Court had jurisdiction to hear the case no action shall be dismissed because a question arises that should be determined at law, but the
- 30 party can have an action at law, but he should be held to waive that if he doesn't ask for it, and that statute has been approved in a number of instances. After all, what this suit is on the part of the complainant is a suit—we have collateral which we say has disappeared so far as value is concerned and there are equities in those collaterals which the law court cannot determine, and there are claims pre-

sented against us which the law court cannot determine, and I sincerely think, taking the whole thing together—in the case of a bill of goods sold or merchandise delivered, the party might be sent to a law court, but here there is no legal remedy in any way. Take, as far as the jurisdiction of law courts are concerned, interpleader suits, it has been decided that the rule requiring the parties to come in and interplead and set forth their claims will not prevent a party having a jury trial if he is entitled to it, and the case may be held where he has an action at law to determine his claim. Take partition, there is an equity action such as this, an action for accounting, and where the question of title arises this Court will hold the bill and send the party to the law court to determine the legal question, but the question here is an equitable question, like any accounting bill. As your Honor suggested in the preliminary discussion, the fact that we would have to split the case up, first, how much was due, and then the reference to a Master to have an accounting, and then a hearing upon whether there is fraud, has no reference as to whether the Supreme Court has jurisdiction, because after all that is what your Honor would have to find to send us away, not only it had jurisdiction but that it was exclusive. In interpleader suits you have a preliminary hearing whether the complainant may be discharged, and if that decree is made then the other parties come in. I have a memorandum of many similar matters which your Honor would be more familiar with than I am, and not knowing all the points that might be urged against me on this point I may not have covered everything, but I do think at this stage of the proceeding the Court cannot do other than to retain the bill, and then if it appears there is such a dispute as ought to be de-

cided at law exclusively then I can argue out this matter and I will know just what to meet. If the Court concludes an action at law is necessary we are willing to do that, but we would want the bill retained. These parties have attempted to convey these properties after the bill was filed and to dismiss this would leave us without remedy, and it doesn't appear that it is such a bill a Court of Chancery ought not to retain jurisdiction.

- 10 The Court: My thought has not been so much directed to a question of whether or not the bill should be retained or dismissed, that is a matter of detail that is, in practical operation, utterly unimportant as it impresses me at this time; whether this particular bill is retained or not, or whether it is dismissed, is a matter of utter minor importance, because should it be retained no injury could come to anybody, it is always subject to amendment, and it is always subject to being attacked. The
- 20 broad question, it seems to me, that is presented at this time is this, whether this Court should take upon itself the burden of going into the intricate accounts between these parties for the purpose of determining whether anything is due to the complainant, or if it finds anything due then to ascertain how much preliminary to the determination of whether or not the complainant is in a position to file a creditor's bill. Or let me state it differently, we have here a bill which is distinctly a creditor's
- 30 bill, it is a bill filed by a creditor against his debtor to set aside fraudulent conveyances made by the debtor, that is the broad scope of the bill. The answer denies the existence of any indebtedness, leave out for the present consideration, if you choose, the counter-claim where relief is sought by the defendant against the complainant upon the

ground that the indebtedness is the other way, including claims for damages and other things that I can't recall, but consider alone the answer in which the indebtedness is an issue. Now then, is this Court to take upon itself the function of the law courts to try that single question, "Is there anything due?" in order to ascertain whether a creditor's bill shall be maintained. In other words, can a creditor, who has not established at law the indebtedness of the defendant properly come into this court and ask this Court to establish that indebtedness or ascertain that indebtedness in the face of an answer that denies the existence of that indebtedness in order to give him relief by the creditor's bill. 10

Mr. Carr: Now, keeping in mind this is a question of the constitutionality of this Act, I want to call to the Court's attention again more clearly the fact that the point raised by the Chief Justice in this Asea case—it shows the matter was not carefully considered—was that the statute conferred upon the Court of Chancery power to hear and determine actions for debt and damages arising out of a breach of contract, that power being necessary for the ascertainment of the validity of the claim. Nowhere in this Act is that power attempted to be conferred upon the Court of Chancery. Suppose on that theory, the theory just suggested, if the defendant came into court and admitted the existence of the debt the situation would be no different, not if it relates to the constitutionality of the Act, or if it is a necessary foundation of our case that we must have established our right at law. If it is jurisdictional, in other words, the admission of the defendant would not on that theory help the case at all, we would still have to go to law. This Act 20 30

nowhere provides that the Court of Chancery must determine, or even shall determine, this question, it leaves it with the Court to make any order that the circumstances of the case require. It is a short Act, and where the obligation has not matured it provides there may be restraint from disposing of the property, and there may be a receiver to preserve everybody's interest, or make any other order that the circumstances of the case require. Certainly the circumstances of the case—and your Honor sees it before we go into the matter—would require that the amount due us and the amount due the defendant should not be settled in an action at law; personally, I think when your Honor hears this case you will construe this an equitable action.

20 The Court: Assuming we are to go ahead and undertake the ascertainment of the amount due, if anything, from the defendant to the complainant, what is your suggestion that this Court do in that inquiry on the counter-claim, on the claim raised by the counter-claim on behalf of the defendant that they are entitled to offset unliquidated damages against what otherwise might be found to be due the complainant from them. In other words, they allege, if I recall accurately, that the complainant is an attorney-at-law and occupied a trust relationship with the defendant and that he has abused his trust and sold properties which he has not accounted for and sold properties at a sacrifice, which was in abuse of the trust, without the knowledge of the defendant. In a court of law, I apprehend they would find an offset, now, is any claim of that nature to be denied them here or is the Court of Chancery to take up those claims for damages?

30 Mr. Carr: I raised the point in my motion di-

rected to the counter-claim that there was no cause of action set out, not as to the accounting, we are willing to make that, this is the proper court for it, and I want to say this for Mr. Gross, for every dollar he has ever received, for everything he has handled, he is willing and anxious to make an accounting, and I want to make that clear, he is a man of reputation at the Philadelphia bar and he wants to clear himself of this situation.

The Court: I have no suggestion that militates against that, the only point is are the defendants to be denied the counter-claim in this court which they should be entitled in the law court.

Mr. Carr: No, even where they have suffered unliquidated damages we are willing to meet that here. I thought before it was of such a nature that this Court ought not to hear it, but your Honor decided I was wrong because it involved a trust relationship between Gross and his client.

The Court: I only passed that over to final hearing, I don't recall definitely, but I don't think I made a final determination of that question.

Mr. Carr: As far as this case goes we are not asking for a jury trial on that, we are entirely willing to litigate that before your Honor, or before any Master, or in any method provided by the machinery of this court.

The Court: I would like to know the attitude of the defense.

Mr. Tyler: I would like very much to have Judge Starr answer it, but we are anxious to save the

Judge as much as possible and I will therefore, answer it. This bill was filed in August, 1926, over two years ago, the bill in its terms and by its prayer is one to seize property of this defendant; a lis pendens was filed and for more than two years that property has been tied up, a great many properties, a long list of them, and it has made it impossible to finance them or complete them. Now, the prayer is that these conveyances be set aside, that is practically all there is to it, I have looked through all the papers, and that is the prayer. The defendant at once, as soon as that bill was filed, made a motion to dismiss it alleging the lack of jurisdiction, and the first decision your Honor made was based entirely on the Act of 1919, so we went as far as we could in protecting our rights as to the jurisdiction of this court. That having been denied we then proceeded with the answer and counter-claim, it was only after that time that we proceeded with the answer and counter-claim. Now, my thought is that no decree could be made on that bill, it is a bill to set aside fraudulent conveyances, and the amount due has never been adjudicated, and in the opinion of the Court of Errors in the United Stores case they state that the matter of adjudicating the amount due was peculiarly a matter of law jurisdiction. The dissenting opinion clearly emphasizes the distinction upon which the Court decided, the majority held that the judgment was sufficient to satisfy because jurisdiction had been satisfied by determining the amount due, and that having been done it did not encroach upon the Court of Chancery jurisdiction, then the dissenting opinion went even further, it went to the old practice that not only must you go to judgment but you must establish a lien on the property, that was brought about because the judgment in that case was one that there

was no lien on the property. Now, what would happen, suppose a decree was made in this case and the case goes to the Court of Errors, we have a bill to set aside fraudulent conveyances, we have a motion made against the bill and we have had it denied, and then a decree is made. In the meantime what Mr. Carr has obtained is what he has wanted to obtain, his control of the property, not only during the two years which it has unlawfully been obtained, but for several years more, until perchance the defendant is ruined by having his property tied up for a long time more, and that is apparently what the complainant in this case would obtain by maintaining that bill, and I think the only feasible thing to be done is a decree dismissing the bill in view of the opinion of the Court of Errors and Appeals. Now, the reason we went on and answered was because the Court, in the first instance, had retained this bill, it had retained it under the Fraudulent Conveyance Act; if it had not been retained—if this decision had come out, the bill would not have been retained at all, and I don't see why, under those circumstances, they should retain it for a considerable time further for some other reason. I can't go further than what your Honor has already indicated that in this case, because of the peculiar nature of our counter-claim against this defendant, that we are clearly entitled to a jury trial, and that a jury may hear all the transactions that have taken place between these people and the abuse of those transactions and that we may have our claims settled by a jury.

Mr. Carr: If the Court please, the motion made by the defendant did not raise the question that is now before the Court. Mr. Tyler says they want their claim for damages settled by a jury, and yet

he himself brought that into this court. I looked at some other memorandum and I find it may be of some interest to know that these States, according to Pomeroy, have held that there need not be a judgment in order that a creditor's bill might be filed, Alabama, Arkansas, Connecticut, Indiana, Maryland, Massachusetts, North Carolina, Ohio, Tennessee, Virginia, and West Virginia.

10 The Court: Those are the States that have held what?

20 Mr. Carr: Upheld the validity of the statute doing away with the necessity of a judgment at law, and the only exceptions he refers to are in the Federal Courts. I am also told that is also the law in Pennsylvania, and the only exception he refers to is in the Federal Courts and those courts will not take jurisdiction, so we have, at least, some support from other jurisdictions for our position. Now, prior to this Act there have been from time to time cases in which creditors' bills have been sustained without judgment, I think you will recall, where there were claims against decedents' estates. In a case in 90 Equity, the Court of Chancery entertained creditors' bills filed by creditors of decedents without judgment, and in 41 Atl., and those other cases go far enough, and they are cases involving assignments for the benefit of creditors where at least one, a simple contract creditor, was allowed to file a bill, 30 41 Atl., and 55 Equity, and there are other cases.

 The Court: Those cases did not reach the Court of Appeals?

 Mr. Carr: I think one did, I think one went to the Court of Errors, but there was a lien of some

kind, an attachment, but it is interesting to observe it is said an attachment creditor can file a bill, but the case is whether the Court will entertain it when the amount is disputed. Take the old case of *Haston v. Castner*, that was the case where a debt was made a lien, that was the first of these deceased debtor cases, and it held because the debt was the lien the creditor's bill could be filed, but the amount was not settled, merely in becoming a lien did not settle the validity of it. Take the cases that have held the appointing of a receiver gives to the receiver the right to maintain a bill and yet the validity and amount of those claims is not settled. The case to which I refer in speaking of the matter of jurisdiction is the case of *Redrow v. Sparks*, 75 Equity, and in that case your Honor said, "When a bill is insufficient on its face to support equitable jurisdiction or relief it should be demurred to. Defendant may in such case answer, but if on final hearing the bill is found insufficient, costs may be denied to defendant by reason of his failure to demur and in that manner avoid the necessity of a hearing. Cases may arise, however, in which the jurisdiction of a Court of Equity can only be accurately measured by the ascertainment of matters which may be appropriately contained in an answer." That is this case, "Thus a Court of Equity has jurisdiction to enforce a legal right, the existence of which is clear and not in substantial dispute; but the jurisdiction fails when it is made to appear that the legal right is not clear, either by reason of substantial dispute touching the facts on which it is based or uncertainty touching the legal rules on which the right is claimed. In cases of that class an answer and final hearing may be necessary to accurately determine the question of jurisdiction. The propriety of a prayer in an

answer, in a case of that nature, for the benefit of a demurrer for want of equitable jurisdiction is manifest, and has been recognized by our Court of Errors and Appeals in *Todd v. Staats*, 60 N. J. Equity (15 Dick.) 507, 513, and in *Outcalt v. Helme Company*, 40 N. J. Equity (15 Stew.) 665, 667. In the former case, the bill was retained while legal title could be established at law, because no denial of jurisdiction was asserted by the answer; in the

10 latter case, the bill was not retained because the defendant had asserted, by his answer, the want of jurisdiction." The point about the validity of this claim being in dispute cannot appear until these defendants have put in their case, and then if it is a question for the law court—the statute of 1915 says, "If any question, ordinarily determinable at law and requiring jury trial, arise in a suit of which the Court of Chancery has jurisdiction, a jury trial, if required may be ordered, but shall be deemed to

20 be waived unless demanded in the pleadings. In case of such demand, if the issue be one requiring a jury trial, the Court shall send such issue of fact to a Court of law for trial according to the existing practice. But in all cases referred to in this section the Court of Chancery shall retain the cause until the legal question shall be determined, or until an adequate opportunity to determine the same shall have been given, unless justice or the public interest requires a dismissal of the cause." It says,

30 "Arising in a suit of which the Court of Chancery has jurisdiction." The claims of the complainant are secured by mortgages and, as a matter of fact, since this bill was filed, conceding the complainant should attempt to reduce his claim to a fixed sum, we have filed in this court bills of foreclosure in which we have brought in everybody, and that matter is in this court, and in that foreclosure proceed-

ing, which these defendants have not answered, we have had to advertise for them, in that proceeding this court will determine how much may be due on these collateral mortgages. I would have had those cases consolidated, but I thought this was complicated enough and I thought the foreclosure matter should go along independently, but if it will help the case at all to consolidate that foreclosure with this case then I would like to have the opportunity to do it, but I want to say this to Mr. Tyler, he referred to the motive, and he said our motive was to ruin his client; it has not been our fault this case has been so long getting on, we want to collect the money this man has parted with, and if there is any damage the Act provides for the appointment of a receiver, and we have never objected to any conservation steps, or anything. I would go into this question as to the right of a jury trial except your Honor said you did not think it was important as to detail—was it your Honor's thoughts this question should be determined now before we go into the case? 10 20

The Court: I am very strongly impressed, Mr. Carr, that I should not go into the trial of this case on the question of how much, if anything, is due to the complainant under the issues as they now stand.

Mr. Carr: What I would ask is this, if that is your Honor's tentative opinion I would like the privilege of submitting a brief on the point, because it is a very important matter to my client, it involves a very large sum, and we ought not to be sent away from here if the Court, in the exercise of its equitable jurisdiction, can keep us here, because sixty or seventy thousand dollars is a lot of money to me, and I know it is a great deal to my client, 30

and that is what we claim, or probably a little more, close to \$90,000. I am told, and to send this man away—I do think it is a case where the Court should exercise jurisdiction if it is possible. How I feel about it doesn't help the case, I know, but —

The Court: If an ascertainment of an amount due is to be had in this Court I think that should go to a Master.

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Mr. Carr: I made a memorandum of what we would agree to in the way of an accounting and will be glad to state it. We are willing to account for, first, the moneys paid out and received by us, as set forth or claimed, and I take up each item, and the mortgages we received as attorney; the reason I qualify that is because there are some mortgages set out, over half of the mortgages set out in the counter-claim Mr. Gross said he never had, and any order made on the accounting I should think should be so framed that it would not be an adjudication against him that he had these mortgages, he ought to be allowed to show he did not receive those mortgages. The same thing is true for the collateral, all the notes, and all these lots, which, as a matter of fact we have not sold, and the sheriff sales that we know nothing about. In that connection I want to make the plain statement I did with respect to the mortgages, there are some properties mentioned in the counter-claim that we know nothing of and, in fact, have never been sold at sheriff sale, and we don't want to be charged at the outset with a mortgage or property we know nothing of. And any other collections, any money we received.

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The Court: Including, do you, in this suggestion

any damages that may be claimed or ascertained for improper conduct of any kind?

Mr. Carr: Yes, with this qualification only, and I think it is a proper one, that at the time this charge is made against us that we failed to do various things and as the result of which he suffered damage, we were not representing him, he was represented by adverse counsel, several counsel in Philadelphia.

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The Court: That would be a fact to be ascertained.

Mr. Carr: Providing we are at liberty to show we did not represent this man at the time claimed we will account for anything we did. Mr. Gross wants to account for everything but we don't want to be put in the position that we have received property we know nothing of.

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The Court: During the time that he was acting in a juduciary relationship.

Mr. Carr: Yes. Just one other point, and this was in your mind when you denied my motion respecting the counter-claim, it is charged against us, we kept the books for these people, and we are prepared to show they have a full and complete set of books, and I think on the accounting they ought to produce those books, because if they are allowed to look at our books and we not theirs we would be at a disadvantage.

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The Court: I am just making this inquiry to see how both sides feel.

Mr. Carr: And what about the costs?

The Court: That will follow the result in case an accounting is had.

Mr. Starr: I think your Honor expressed the situation in this case very aptly when you said the question is whether or not the Court would sit and hear the various allegations set forth in this bill of complaint in order to establish the status of the complainant as a creditor as a basis for filing a bill of this character. Now, I agree with your Honor absolutely that it is not within the province of the Court of Chancery, even under the Act of 1919, to sit for the purpose of hearing testimony as to the amount due in order that a complainant may establish his status as a creditor. Now, the bill here alleges that he is a creditor under the Act of 1919, and it says the indebtedness due from the defendant is in excess of \$90,000, and also other sums of contingent liability hereinafter set forth, which debt arises out of a number of transactions between the complainant and his debtor, then the bill alleges specific instances of business transactions between the complainant and the defendant showing, as the complainant contends, that an indebtedness exists from the defendant to him by reason of those various transactions, and I submit, if the Court please, that everyone of these transactions were susceptible to being tried out and determined in a court of law. Now, that being so, it is perfectly apparent, it seems to me, that your Honor is correct in declining to go into the testimony for the purpose of ascertaining whether there is any sum of money due to this complainant as a basis solely of determining whether he has a status under the Act of 1919 to attack these various transactions.

I think, if the Court please, what ought to be done in this case is for us, if Mr. Carr will agree—I haven't submitted this to Mr. Tyler, I don't know whether he will assent to it or not—but if Mr. Carr will agree that his bill of complaint be limited to a bill for an accounting then we can have the matter thrashed out by going to a Master on a bill for an accounting with the answer and counter-claim, but if he insists that the bill is to be used as a basis for any relief against these various transactions I think we are entitled to have the bill dismissed without the taking of any testimony. Your Honor has the right at final hearing to determine whether this court has jurisdiction. This is merely not for the purpose of settling the accounts between the parties but upon an ascertainment of an amount as the basis for relief under the Act of 1919, and if that is the purpose of the Act I think it is clearly beyond the province of the Court of Chancery to determine.

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Mr. Carr: If the Court please, Judge Starr's argument comes to this, that the Court has jurisdiction on this bill and counter-claim as to the matter of accounting and that it is a matter appropriately in this Court so far as the nature of the transactions are concerned.

The Court: I would not care to make that concession myself if it is to be the test, I would rather accept his statement that he is willing to so treat it, because the Court of Chancery's jurisdiction for an accounting is not so broad as that term standing alone expresses it, there have to be equitable elements supporting an accounting.

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Mr. Carr: The claims of the complainant and

the defendant—the agreement is attached to the bill—an examination of this will show it is purely an equitable matter, I have no doubt about that. If we had sued them at law they would have come in Chancery and asked for an injunction to restrain them, that is what would have happened, but what I wanted to say with respect to this claim we make is that—I understand in Philadelphia on a similar bill on motion there was an application for restraint—I have forgotten the point I wish to make now, but if the Court could maintain this bill as an accounting bill by consent then it could maintain this bill because consent is not necessary, they have waived their right. I know your Honor has the right to raise this question of jurisdiction, but where the parties have waived it it comes into question whether the court of law has exclusive jurisdiction only. What I would like to do, if your Honor feels as you do, I would like to be allowed to submit to your Honor a brief on the points in favor of our side.

The Court: You are not favorable to Judge Starr's suggestion that there may be an accounting before a Master, not as an ascertainment of whether or not this bill should be supported, but as an ascertainment of how the parties stand.

30 Mr. Carr: I don't object to that, but I am not willing to agree that we should abandon the other features, I don't think it can be urged that a suit for an accounting is bad because it asks for other relief.

The Court: Setting aside fraudulent conveyances of the debtor?

Mr. Carr: I don't see any reason why they shouldn't be joined in view of the law now, and, of course, to agree that our present prayer for relief as to these conveyances should be set aside would be putting us out of court entirely, it would be equivalent to a denial of relief, we wouldn't gain anything, we would be down to our decree and we wouldn't have anything to get the money out of.

Mr. Tyler: If the Court please, I understand Mr. Carr is not willing to abandon the bill as set up and discharge the *lis pendens*. That is the gist of the whole thing so far as the defendants are concerned, and any idea Judge Starr had was meant to embrace that the bill should be set aside as far as fraudulent conveyances were concerned and the *lis pendens* set aside. 10

Mr. Carr: I won't consent to that.

Mr. Tyler: In the opinion of the Chief Justice it says, "It has been suggested that the section of the statute which has been referred to violates our Constitution because it impairs the jurisdiction of the courts of law created by that instrument by conferring upon the Court of Chancery power to hear and determine actions for debt and for damages arising out of a breach of contract." Now, that was one of the grounds that the Court of Errors particularly said did not exist in the Court of Chancery, simply to maintain an action to determine a debt arising out of a breach of contract, that had to be done in a court of law before the Court of Chancery had jurisdiction, and they went on to say, "If this question was involved in the determination of the present case, we would be inclined to consider the suggestion a meritorious 20 30

one." Now, we come back to the question of whether this court has jurisdiction to try the dispute between these parties except on the ground of fraudulent conveyances. I don't know under what theory Mr. Gross would be permitted to bring this suit into the Court of Chancery to try out his case except under the Act of 1919; which has been disposed of by the Court of Errors, so if they are insistent upon all the damage that the representations of the bill would do to us, of course, we would not consent to an accounting under those circumstances. Our idea of an accounting would be to dismiss this bill and discharge the *lis pendens*.

The Court: When the motion was made in this case against the original bill I recall very well the reaction which I had in considering the bill. I was strongly impelled to take up the question of the constitutionality of that Act, because this bill obviously could only be maintained, and in fact, it was filed under that Act and by virtue of its provisions, which expressly provide that a creditor whose claim has not matured or whose claim is contingent, may sustain a bill of this kind without a lien or without first pursuing his remedy in a court of law. I am probably unfortunate in one view I have long entertained since I have been on the bench, and that is a feeling that a declaration that a statute passed by our legislature is unconstitutional is probably the most solemn act that any court is called upon to perform, and that such a declaration should not be entertained, first, where any possible doubt can exist touching the unconstitutionality of the Act, and, second, and what has always been a strong factor with me, that that declaration, if made, should appropriately come from a court of last resort of the State and in no case from a trial Court

if there was any way in the world to escape such a declaration in the pending matter. It is a function which the trial Court ought not to entertain in the absence of an absolute necessity for that purpose, and you may search the reports during the 21 years that I have been on the bench for the cases in which I have assumed the responsibility of declaring a legislative Act unconstitutional and you will not find them, unless they arose in a matter where the Court of Appeals had already pointed out the solution of the question so clearly that I felt I was privileged to follow it, and I think I may say in this case when the original motion against this bill was made but for those feelings I should have declared against the unconstitutionality of this Act in so far as it took from the law court the right to ascertain whether money was due from the defendant to the complainant and to impose upon the Court of Chancery in a creditor's bill to set aside a fraudulent conveyance the duty of ascertaining that very fact. It has so long been a doctrine of the Court of Chancery, and recognized from the earliest times, until the Act of 1919, I think it was, that a creditor's bill could only be sustained after an ascertainment of the amount due, or the establishing of a lien, such as in an attachment suit where there was no remedy at law against an absent defendant, other than by a writ of attachment, that it has always been to me a sacred doctrine that should not be encroached upon in the slightest degree in the administration of cases arising from creditors' bills to set aside fraudulent conveyances, and this Act of the Legislature of 1919 was a shock, I think, to all of the older Judges of the State. But at that time, while there had been at the bar a good deal of discussion about the constitutionality of that Act no Court had ventured to say it was not con-

stitutional or that the Court of Chancery should not entertain a creditor's bill without the basis of a judgment or lien and without the creditor having pursued at law all the remedies afforded to him. Subsequently, an answer was filed in this case which brought the situation even more clearly before the Court, and that answer denied absolutely that there was anything due from the defendant, the alleged debtor, to the complainant, the alleged creditor, and

10 that answer was accompanied by a cross-bill or counter-claim, we call it now, in which, among other things, damages were sought in the way of breach of fiduciary duties owing from the complainant to the defendant, damages founded in tort, and this court was urged to give to the defendant the benefit of defenses of that nature which, except by reason of that statute of 1919 could only be available in a law court, and then it seemed to me it might have been my duty to lay aside my hesitancy in

20 passing upon the constitutionality of Acts of the Legislature and to have determined that this court would not entertain this bill, but instead of doing that I delivered, as I now recall it, a long and rambling dissertation on the various embarrassments that this Legislation has created if it is to be pursued and the impracticability of the situation, but I bowed to the omnipotence of the Legislature in passing over all the motions that had been made, there were two or three, until final hearing, following the decision of the Court to the effect that that

30 course should be adopted. In the meantime the Court of Errors has taken up this very question and has given it definite consideration and has determined, if I understand their decision, that that Act is, in effect, to deny to a law court and to impose upon the Court of Chancery under a creditor's bill the duty of ascertaining whether anything

and how much may be due to the complainant in order that he may have a basis for his bill, and I think it my duty at this time, in view of the decision of the Court of Errors and Appeals to take the responsibility of dismissing this bill. The only doubt I have as to that is whether I should possibly retain the bill on the suggestion of Mr. Carr, at least, until the Court of Appeals should review my determination and give them the opportunity to exercise the function which I might reserve of dismissing the bill. If counsel in this case can get an appeal from my determination before the Court of Errors at its November term — 10

Mr. Starr: The third Tuesday in October.

The Court: Why can't you get it on then? I would take the responsibility of holding the bill until the Court of Errors should have decided exactly whether this bill should be retained. In that case the appeal would fall on the defendant. 20

Mr. Starr: I don't see, if the Court please, how the Court could determine the bill to be dismissed and then hold it.

The Court: My order would be to retain the bill and put the appeal on the defense to that question.

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Mr. Starr: It seems to me we are entitled, in accordance with your Honor's view, to have the burden shifted.

The Court: My notion was in that respect to retain the bill and send them to a court of law.

Mr. Tyler: Your Honor will bear in mind Judge Starr's suggestion that the bill be retained an accounting bill, but so far as the fraudulent conveyances are concerned dismissed.

The Court: Yes.

Mr. Tyler: If you are going to drag this out for years under those circumstances we wouldn't have
10 anything to litigate about when we got through.

The Court: My judgment is the Court of Errors will dismiss the bill, but I thought if we got an early hearing —

Mr. Starr: All along you haven't followed out your inclinations, but I think this is the time you should start in.

20 Mr. Carr: If that is done and the bill is retained and we are sent to law for our relief I think that is the decision the Court of Errors would sustain.

Mr. Tyler: The only purpose of this bill is the fraud injected into it, they can go to law without the bill. I suggested last March, and prepared an order to refer this for the purpose of an accounting, and had the order prepared and had it in court, and counsel at that time would not consent to it,
30 Mr. Wendkos came in to court and absolutely refused to have the accounting, and when they find the shoe is on the other foot they will do anything to retain this bill for a considerable time more.

Mr. Carr: My understanding was the point about this accounting was it was contended every-

thing charged against us by this counter-claim should be accounted for and we should be held to account for something we did not receive, I wasn't in court at the time, but I suggested to Mr. Tyler lots of times that we could agree on an accounting.

Mr. Starr: I think this question is to be determined independently of the counter-claim, what would be done with the counter-claim is a matter to be ascertained hereafter, the question is whether or not as this bill is framed it can be sustained, and I think that is squarely before your Honor. 10

The Court: I think so, too. I have a high regard for the briefs furnished by Mr. Carr, they are always enlightening, and I have some hesitancy to decline to refuse such a brief, but I do not believe my views can be changed on this subject and I will advise an order dismissing the bill. 20

Mr. Starr: May I have an opportunity to be heard on whether there is to be a hearing on the counter-claim or not?

The Court: That would be simply for an accounting?

Mr. Starr: Your Honor wouldn't hear it, naturally, it would go to a Master. 30

The Court: What is your attitude on that, Mr. Carr?

Mr. Carr: As the pleadings stand now, with the bill dismissed, we are charged with a great many matters and we have nothing to offset them, no

pleadings, or anything, and I don't see how a court can go on with this now.

The Court: The counter-claim has got to stand alone as a bill for an accounting.

Mr. Carr: All of our allegations are in our bill.

Mr. Starr: Didn't you file an answer to the
10 counter-claim?

Mr. Carr: I would like to confer with my client on that.

The Court: That can be determined between yourselves before the reference is made to a Master. I think the Court had better pass upon and review the validity of my conclusion. I doubt whether it is prudent to go into that, because if the
20 Court determines I was in error in dismissing the bill then I would have to take the case up right where we are.

Mr. Tyler: I have an application to make, I don't know whether it wants to be heard just now or not. As your Honor knows, this litigation has extended over two years, I have had several arguments on the merits of it, and it has been troublesome to the defendants, not only for the loss we sustained, which cannot be compensated for, but for
30 the actual expenses, and I think this is a case in which an allowance should be made to counsel for the defendant in accordance with the rules of this Court.

The Court: My first impressions are not favorable to that, Mr. Tyler. I think the delay has been

distributed among counsel on both sides, and the Court, equitably, and I should hate myself to pay any part of that counsel fee for my delay.

Mr. Tyler: I don't think we have had any delay from the Court.

The Court: I think my primary duty was to summon enough courage to dismiss this bill in the first instance. Much of the delay has been due to the congestion of the calendar, and I do not look in favor upon the allowance, I think your success ought to fully compensate you. 10

Mr. Tyler: That is the greatest compensation, but the other has to be looked after, of course.

• ORDER DISMISSING BILL.

(Filed Oct. 1, 1928.)

IN CHANCERY OF NEW JERSEY.

10

Between

JOSEPH GROSS,

Complainant,

and

PENNSYLVANIA MORTGAGE

& LOAN COMPANY, *et**als.,**Defendants.*On Amended Bill of
Complaint.
Order Dismissing
Bill.

20

This matter coming on to be heard on amended bill, answer, counter-claim and answer thereto; in the presence of Philip Wendkos, solicitor, and Joseph H. Carr, of counsel with the complainant, and Joseph Beck Tyler, solicitor, and Lewis Starr, of counsel with the answering defendants, and it appearing to the Court, after an inspection of the pleadings filed in this cause, that the amended bill of complaint does not set up a cause of action properly cognizable in this court.

30

It is, thereupon, on this 1st day of October, 1928, on motion of Joseph Beck Tyler, solicitor of the answering defendants, ordered that the said amended bill of complaint be, and the same is dismissed with costs to be paid by the complainant to

the answering defendants, in accordance with the rules and practice of this Court.

E. R. WALKER,
C.

Respectfully advised:

E. B. LEAMING,
V. C.

NOTICE OF APPEAL.

10

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH GROSS,

Complainant,

and

PENNSYLVANIA MORTGAGE

& LOAN COMPANY, *et*

als.,

Defendants.

On Appeal.
Notice of Appeal. 20

Joseph Gross, the complainant in the above-entitled matter, hereby appeals from the order of October 1st, 1928, entered in this cause, filed October 1st, 1928, made by the Chancellor on the advice of Vice-Chancellor Leaming, whereby the amended bill of complaint in this cause was dismissed with costs to be paid by the complainant, and each and every part thereof, to the Court of Errors and Appeals, the last resort in all causes. 30

PHILIP WENDKOS,
Solicitor for Complainant.

Dated, Camden, N. J.,
December 12, 1928.

I conceive that there is good cause for appeal in
the above-entitled matter.

JOSEPH H. CARR,
Of Counsel for Complainant.

10

[ENDORSED.]

Service of the within notice is hereby
acknowledged this 22nd day of December,
1928.

JOSEPH BECK TYLER,
Solicitor for Defts.

20

30

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between		10
JOSEPH GROSS,	}	
Complainant-Appellant,		
and		
PENNSYLVANIA MORTGAGE		
& LOAN COMPANY, <i>et</i>		
<i>als.,</i>		
Defendant-Respondents.)		On Appeal from the Court of Chancery. Petition of Appeal.

*To the Honorable, the Court of Errors and Appeals
in the Last Resort in All Causes:*

The petition of Joseph Gross, complainant herein,
and the appellant in this cause respectfully shows
that:

Your petitioner finds himself aggrieved by a final
decree made in the Court of Chancery by his Honor,
Edwin Robert Walker, Chancellor of the State of
New Jersey (advised by Honorable E. B. Leaming,
Vice-Chancellor), bearing date the first day of Oc-
tober, 1928, wherein the said Joseph Gross was
complainant and Pennsylvania Mortgage and Loan
Company, David Cohen, Jacob Cohen, Samuel Ler-
ner, Jacob D. Kane, Philip Paul, Hosea M. Steel-
man, National Building & Construction Company,

Nathan Teller and Harry Kaufman were defendants, in this respect, to wit:

That the said decree ordered that the amended bill of complaint herein be dismissed with costs to be paid by the complainant to the answering defendants.

Your petitioner humbly appeals from each and every part of the said decree of the Chancellor as aforesaid upon the ground that the same is erroneous in that:

1. The Court found that "It appeared to the Court after an inspection of the pleadings filed in this cause that the amended bill of complaint does not set up a cause of action properly cognizable in this Court,"

Whereas, the Court should have found that the amended bill of complaint did set up cause of action properly cognizable in said Court.

20 2. The Court ordered "that the said amended bill of complaint be, and the same is dismissed, with costs to be paid by the complainant to the answering defendants, in accordance with the rules and practice of this Court,"

Whereas, the Court should have retained jurisdiction of the case and retained the said amended bill of complaint and proceeded with the hearing thereon

30 3. The Court erred in dismissing the said bill and should have retained the same and proceeded with the hearing on the issues raised by the pleadings, and if the Court had then found that a trial at law was necessary on any of the issues raised by the pleadings, should have retained the bill of complaint until such issues were determined.

Your petitioner, therefore, prays that the said decree of the Chancellor may be wholly reversed, set aside, and for nothing holden, and that your petitioner may have such relief in the premises that to this Honorable Court may seem proper.

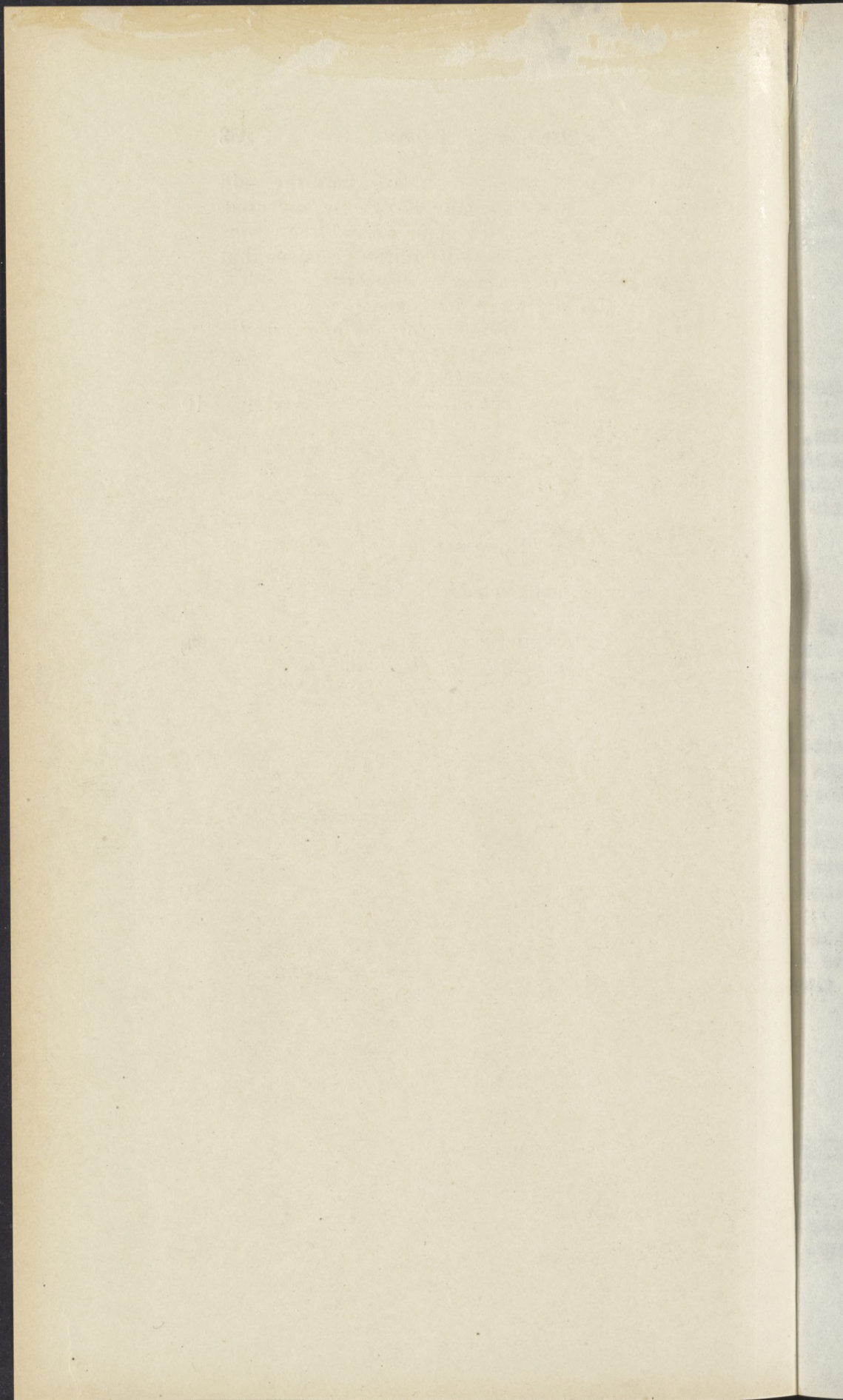
PHILIP WENDKOS,
*Solicitor for and of counsel
with Appellant.*

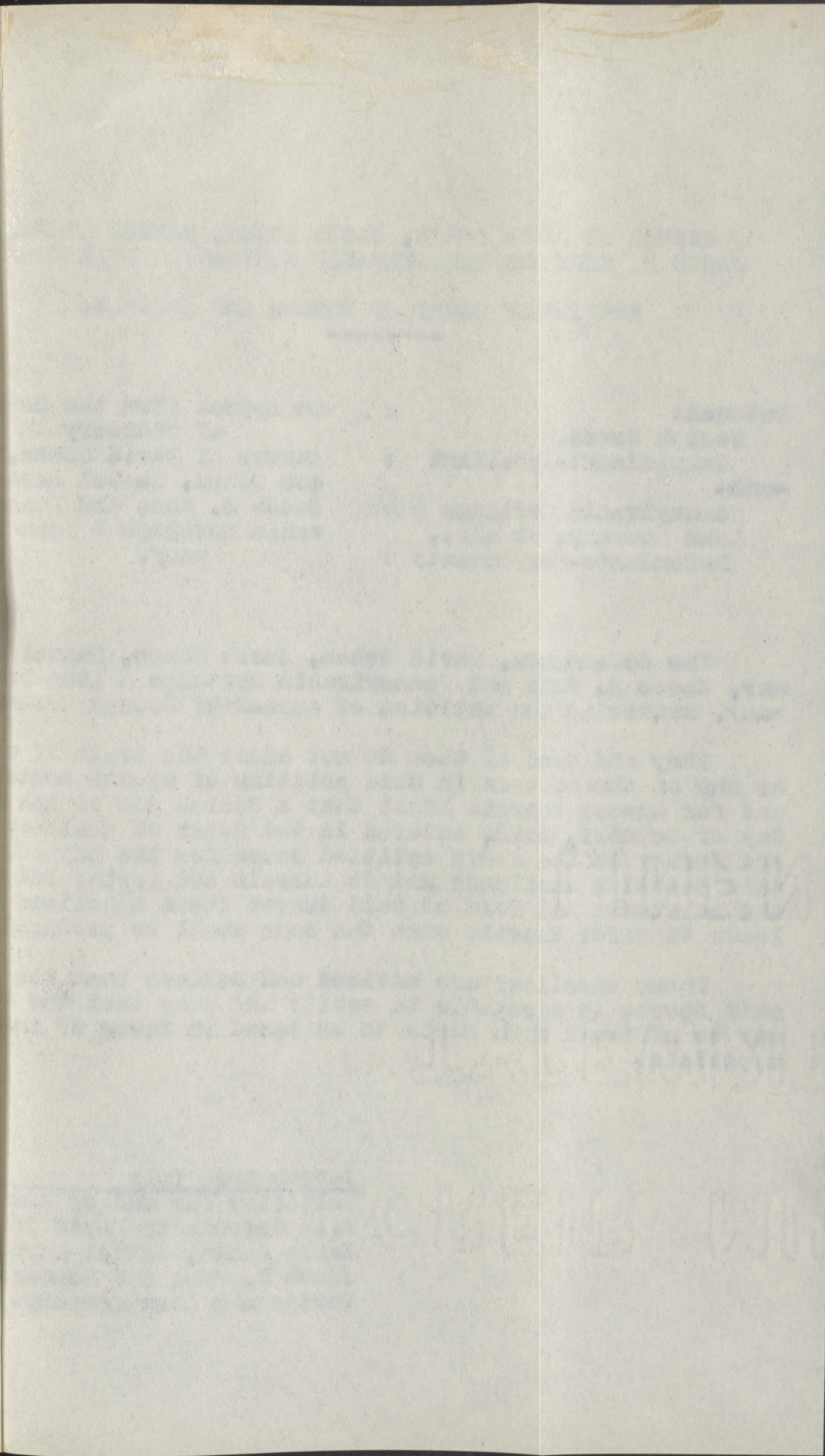
JOSEPH H. CARR,
Of Counsel for Appellant. 10

[ENDORSED.]

Service acknowledged January 14,
1929.

JOSEPH BECK TYLER,
Solicitor for Defendants. 20





ANSWER OF DAVID COHEN, JACOB COHEN, SAMUEL LERNER,
JACOB D. KANE AND PENNSYLVANIA MORTGAGE & LOAN COMPANY,

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between:	:	On Appeal from the Court
Joseph Gross,		of Chancery
Complainant-Appellant :	:	Answer of David Cohen, Ja-
-and-		cob Cohen, Samuel Lerner,
Pennsylvania Mortgage & :	:	Jacob D. Kane and Pennsyl-
Loan Company, et als.,	:	vania Mortgage & Loan Com-
Defendants-Respondents :	:	pany.

The defendants, David Cohen, Jacob Cohen, Samuel Lerner, Jacob D. Kane and Pennsylvania Mortgage & Loan Company, answering the petition of appeal of Joseph Gross, say:

They and each of them do not admit the truth of all or any of the matters in said petition of appeal contained and for answer thereto admit that a decree was on the first day of October, 1928, entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree these appellees take leave to refer thereto when the same shall be produced.

These appellees are advised and believe that the said decree is agreeable to equity and pray that the same may be affirmed with costs to be taxed in favor of these appellees.

Joseph Beck Trler
Solicitor for and of Counsel
with defendants David Cohen,
Jacob Cohen, Samuel Lerner,
Jacob D. Kane and Pennsylvania
Mortgage & Loan Company.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between
JOSEPH GROSS,
Complainant-Appellant,

and

PENNSYLVANIA MORTGAGE AND LOAN COMPANY, *et al.*,
Defendants-Respondents.

APPEAL FROM THE COURT OF CHANCERY.

BRIEF FOR COMPLAINANT-APPELLANT.

STATEMENT OF THE CASE.

This case was disposed of by the Court of Chancery on the pleadings.

Complainant, a lawyer, practicing in Philadelphia, Pennsylvania, filed his bill of complaint for the purpose of securing the decree of the Court of Chancery that certain conveyances were fraudulent as to complainant, seeking to enjoin the defendants from disposing of the property referred to in the bill, and praying for a receiver of the said property and for

a decree that the defendants held the property as trustees for the defendants who were debtors of the complainant, as well as for such other relief as might be just and fair.

The bill set forth obligations of the defendants, Pennsylvania Mortgage and Loan Company and David Cohen, to complainant, in excess of \$100,000.00, and also set forth contingent liability to the complainant. The debts due to complainant consisted of the following:

(a) \$16,555.00 advanced upon the security of mortgages and agreement, Exhibit "A," regarding the same, mentioned in paragraphs two and three of the bill, and also the sum of \$5,250.00, advanced on the mortgages and agreement, Exhibit "B," referred to in paragraphs four and five of the bill, upon all of which mortgages there was due to complainant the sum of \$12,204.30. The bill set forth that the security was of little or no value, and that some of the mortgages had been wiped out by foreclosure.

(b) The next claim set forth in the bill was referred to in paragraphs ten to fifteen, inclusive, which alleged that under agreement, Exhibit "C," complainant advanced the sums of \$25,000.00 as a loan to David Cohen under said agreement, and \$26,520.92 and \$699.00 for stock subscriptions in Seaside Development Company and assessments thereon, the repayment of which two latter sums was guaranteed to complainant by the defendants named in the said agreement. The bill charged that there had been a demand for the repayment of the latter sums and that there had been a failure in such payment, and that the assets of the Seaside Develop-

ment Company were mortgaged for an amount in excess of the value of its property, and that the moneys would be lost unless they could be recovered from the defendants. The agreement, Exhibit "C," upon which these moneys were advanced (State of the Case, page 33) provides that title to certain lots of land should be delivered to complainant as security for his advancements, and that out of the proceeds of the sale of lots, there should be first repaid to complainant the sum of \$50,000.00 advanced by him, that the defendant, David Cohen, should then receive \$25,000.00 and that thereafter the proceeds of the sale should be divided between the parties, the complainant receiving two-thirds and the defendants one-third; the intent of the agreement being expressed to be that the complainant should first receive the moneys advanced by him, and then two-thirds of the profits realized from the sale of the said lots. As a matter of fact, the advancements set forth in the bill under said agreement were, as will be noticed, slightly more than \$50,000.00.

(c) Paragraphs seventeen to twenty-two, inclusive, of the bill set out the next transaction. These paragraphs show that as security for \$19,600.00 then due to complainant (being in addition to any other moneys referred to) and as security for an additional present advance of \$5,000.00, there was to be assigned to complainant a certain mortgage of \$30,000.00. This transaction was governed by agreement attached to the bill, marked Exhibit "D" (State of the Case, page 39). This agreement was likewise an agreement to indemnify complainant and to guarantee to him the return of the moneys due him as a result of this transaction. The bill set

forth that the security of this mortgage was inadequate and that complainant accepted the same solely because of the representations that there were certain improvements upon the building at the time of the transaction. The bill states that the representations were, in fact, false and that the premises had been sold at tax sale and that the security on the said mortgage was inadequate to protect complainant for his collateral loan. The amount due to complainant on this transaction, not including interest, is \$24,600.00.

(d) The next transaction is set forth in paragraphs twenty-three and twenty-five. This was the payment by complainant of a \$10,000.00 note endorsed by him for the benefit of defendants, upon the security of a certain mortgage for \$25,000.00. The bill alleged that complainant believed the mortgage was of the value of the loan thereon, but that there was no value in excess of that amount. The amount due to complainant in this transaction was \$10,000.00.

(e) The next transaction is set forth in paragraphs twenty-four and twenty-six of the bill. This represented the advance of \$12,450.00 in cash, and \$500.00 in cash, in consideration of a mortgage pledge of \$75,000.00. The bill charged that the said mortgage was not a first lien, and notwithstanding the large amount for which it was given, it would not produce the amount of the loan thereon.

The bill further set forth in paragraph sixteen, a contingent liability of the defendant, David Cohen, to complainant upon a certain bond signed jointly by the defendant and complainant, with other par-

ties, being Exhibit "E" attached to the bill, page four hundred forty-one. The claim of the complainant on such bond is for contribution for moneys thereafter required to be paid thereon. This liability was purely contingent. There was, therefore, due to the complainant approximately the sums of \$12,204.00, \$25,000.00, \$26,520.92, \$699.00, \$24,600.00, \$10,000.00, \$12,450.00 and \$500.00, or a total of \$111,973.92, in addition to the contingent liability, on the \$70,000.00 bond.

There is an allegation in the bill, paragraph nine, that the defendant, David Cohen, was the only person who had invested any money in the stock of the defendant, Pennsylvania Mortgage and Loan Company; that he entirely controlled this corporation, and it was in all respects his instrument, and, in fact, his *alter ego*. The bill charged in paragraph twenty-seven, that the assets of the defendants, David Cohen and Pennsylvania Mortgage and Loan Company, consisted principally of real estate in New Jersey, and mortgages in New Jersey, and that instead of investing their funds in their own names, they had entered into a scheme and made an established practice of taking title to real estate or mortgages in the names of straw men or dummies, who were parties to the scheme, and who were charged to hold the title in trust for these two defendants; that the true consideration for the various purchases of real estate had passed from the two defendants, David Cohen and Pennsylvania Mortgage and Loan Company; that the various persons named were the straw men involved with the other defendants in this scheme; and that the scheme and practice were entered upon for the purpose of hindering, delaying and defrauding creditors of David Cohen and Pennsylvania Mortgage and Loan Com-

pany, and for the purpose of putting their assets beyond the reach of their creditors.

The bill then sets out, in paragraphs twenty-eight to forty, inclusive, various conveyances made at the instigation of the defendants, David Cohen and Pennsylvania Mortgage and Loan Company, upon considerations advanced by them, pursuant to said scheme whereby the above-named defendants had parted with their assets and acquired these respective properties standing in the names of their straw parties.

The bill further alleged, in paragraphs forty-one, forty-two and forty-three, that the two principal defendants had caused certain mortgages to be created upon the various lands, two for \$30,000.00 each and the third for \$120,000.00, the purpose of which was to place the properties covered thereby beyond the reach of creditors, the allegation being that there was, in fact, no consideration paid in any of these mortgages.

Paragraph forty-four charged that a certain valid mortgage of \$10,000.00 was to be disposed of for the purpose of placing the proceeds beyond the reach of creditors.

Paragraph forty-five of the bill set forth expressed threats directed to the complainant by the defendants, David Cohen and Pennsylvania Mortgage and Loan Company, to dispose of their assets so as to make it impossible for complainant to collect his moneys, and that if Pennsylvania Mortgage and Loan Company and David Cohen, as well as the straw men in question, were permitted to convey the premises and mortgages, their assets would be grossly insufficient to pay complainant's claims, and he would be hindered, delayed and defrauded of his debt, as there were no other assets to satisfy his claim.

The bill closed with a paragraph setting forth that by the course of business of the defendants, David Cohen and Pennsylvania Mortgage and Loan Company, they had rendered themselves insolvent, and that unless the assets were preserved by the Court, the creditors of these defendants would be unable to recover their claims.

There was a motion by the defendants to strike this bill upon the grounds set forth in the notice found in the State of the Case, page 47. The notice alleged various grounds including lack of equity and that complainant had no lien which would justify granting the relief prayed, and raised other questions directed to the bill and to parts thereof. However, no objection was made to the bill at that time upon the ground that there was or might be an adequate remedy at law, and no question was raised as to the constitutionality of Chapter 213 of the Laws of 1919 under which the bill was to a large extent framed. The motion was principally directed to the merits of complainant's claim to be a creditor and the sufficiency of the allegations of fraud. This motion was disposed of by the Vice-Chancellor, who filed conclusions appearing at pages 55 to 57 of the State of the Case. After these conclusions were filed, an order was entered denying the motion to strike. Thereupon, the defendants filed an answer (State of the Case, page 59), which, in substance, denied that David Cohen and Pennsylvania Mortgage and Loan Company were indebted to complainant in any sums. The answer, however, admitted the making of the various advances set forth in the bill, but claimed there had been repayment. The answer also denied the fraud alleged.

With the answer there was filed a counter-claim by David Cohen and Pennsylvania Mortgage and

Loan Company against complainant. This counter-claim set forth (paragraphs 4 to 12, State of the Case, pages 71 to 77) that complainant had been employed by the defendants as their attorney for the purpose of foreclosing or making collection of certain mortgages in Philadelphia, Pennsylvania; that Gross had kept complete accounts of transactions in such matters not only for himself, but also for these defendants, and that the defendants were without knowledge of the mortgages delivered to complainant. It is set forth that some forty-six mortgages had been delivered to complainant by defendants, for which complainant had not accounted; that complainant had collected sums of money for principal, interest and fees in connection with said foreclosures, but had failed to account therefor.

The counter-claim further set forth (paragraphs 13 to 18, inclusive) that there were certain mortgages transferred to complainant by defendants as collateral for moneys advanced by complainant. These mortgages are itemized in paragraph 14, and consisted of eight items. It was charged that all information respecting these matters was contained in the books of Gross and that the defendants were not in possession of any information respecting the same or the moneys received thereby, although it was charged that large sums of money had been received by complainant thereon.

The counter-claim further charged (paragraphs 19 to 24) that complainant had in his possession certain promissory notes consisting of eleven different items, and asked for an accounting of said proceeds of such notes from Gross, claiming that the defendants' books showing these transactions had been kept by complainant.

Paragraphs 28 to 33, inclusive, set forth the de-

fendants' version of the Seaside Development Company transaction, referred to in the bill of complaint (paragraphs 10 to 15, inclusive). The defendants charged that complainant had sold certain of the lots involved in this transaction and had failed to account therefor, and asked for an accounting of the profits of such sales under agreement, Exhibit "C."

The counter-claim further sets forth (paragraphs 34 to 41, inclusive) that by verbal agreement between complainant and David Cohen, David Cohen was to purchase at sheriff's sales at Philadelphia, certain real estate, and pay a deposit thereon; that the balance of the funds necessary to complete the settlement with the sheriff should be advanced by complainant, and that title should be taken in the name of complainant, and that thereafter upon the sale of the premises, the profits should be divided between complainant and David Cohen. Defendants again pleaded lack of information as to accounts and set forth the purchase of some twenty properties for which an accounting is asked from the complainant.

Paragraph 42 of the counter-claim sets forth that complainant collected sums of money and failed to account therefor.

Paragraphs 47 to 63 of the counter-claim set forth an agreement between the parties for a settlement of disputes between them, and claiming that said agreement was breached by complainant, asked for damages from the complainant claimed to arise as a result of the failure of complainant as alleged, to terminate the litigation.

The counter-claim prayed that the complainant be required to account to the counter-claimants for all moneys received on account of the mortgages delivered to him for foreclosure; that he account for the

properties said to have been purchased at sheriff's sale; that he set forth an account of the indebtedness claimed by him to be due him by the defendants; that he re-convey to the defendants the real estate held by him as collateral and account for the real estate sold by him; and that he be prevented from disposing of his collateral; that he make full discovery of papers in his possession; that he be prevented from purchasing mortgages prior to the mortgages held by him as collateral; that the agreement set forth in the counter-claim, dated August 19, 1926, be declared null and void, and that complainant be required to pay the damages caused to the defendants.

The complainant moved against this answer and counter-claim for reasons not now necessary to elaborate upon. The notice, however, did raise the fact that the allegations respecting real estate purchased at sheriff's sale in Philadelphia were of such a nature that the action could not be maintained by reason of the Statute of Frauds, and further, set forth that the claims of the defendants to unliquidated damages were not proper matters for an account in the Court of Chancery, and could not be disposed of in this suit. The grounds on the motion are set forth in the State of the Case, pages 115 to 123, inclusive. These motions were denied. Vice-Chancellor Leaming filed conclusions, appearing in the State of the Case at page 124, and an order following the conclusions was entered.

Complainant then replied to the answer and answer to the counter-claim, denying most of the matters referred to in the counter-claim, setting forth that, in fact, defendants were indebted to him in the manner as set forth in the bill of complaint. Paragraph 26 of the answer to the counter-claim set

forth that the defendants were indebted to complainant in the manner stated in the amended bill of complaint. There were also some additional claims of complainant against defendants set forth to offset matters raised by the counter-claim for an accounting. These were matters not originally in the bill of complaint. The effect of this counter-claim was to join issue on practically all of the matters raised by the counter-claim, it being stated by the complainant that the agreement for non-performance of which unliquidated damages were claimed against him, had, in fact, been breached by the defendants. The counter-claim further set up a release. The defendants replied, denying the validity of the release.

To sum up, complainant as a creditor without judgment, holding security having some value, filed a bill for the purpose of having certain conveyances declared to be fraudulent and to have certain trusts declared in real estate in favor of creditors, to which there was a counter-claim admitting the amounts advanced, but claiming repayment, further claiming an account, upon which counter-claim issue was finally joined; the matters raised by the counter-claim and bill and answer to the counter-claim all being matters which would enter into the taking of the account.

The counter-claim was to a large extent based upon the fact that complainant was claimed to have been acting in the capacity of attorney for these defendants, and that these matters arose out of the professional relationship between them. Other items of the counter-claim were based upon the claim of joint adventures or trusteeships relating to the purchase and sale of real estate and others had to do with the disposition of collateral securities and an accounting therefor by the creditor to the debtor.

There was no appeal from any of the orders dealing with the motions directed to the pleadings.

The case came on for final hearing, and it seems to the complainant that at the time of the final hearing, the law in this case had been settled to the extent that the bill and counter-claim were properly in court. At the opening of the hearing, without motion by the attorneys for the defendants and counter-claimants, the Court raised the question as to the right to maintain the bill upon the theory that the Act of 1919, relating to fraudulent conveyances, was as applied to this particular case, unconstitutional, and that the subject-matters of the bill were not cognizable by the Court of Chancery. After some argument by counsel the bill was dismissed. The counter-claim was retained so far as all items set forth thereby were concerned. The effect of the dismissal of the bill was that the complainant was left without anything upon which to be granted affirmative relief. This counter-claim is still pending undetermined in the Court of Chancery.

GROUPS OF APPEAL.

The grounds of appeal set forth in the petition of appeal are the following:

1. The Court found that, "It appeared to the Court after an inspection of the pleadings filed in this cause, that the amended bill of complaint does not set up a cause of action properly cognizable in this court."

Whereas, the Court should have found that the amended bill of complaint did set up cause of action properly cognizable in said court.

2. The Court ordered, "That the said amended bill of complaint be, and the same is dismissed, with costs to be paid by the complainant to the answering defendants, in accordance with the rules and practice of this court."

Whereas, the Court should have retained jurisdiction of the case and retained the said amended bill of complaint and proceeded with the hearing thereon.

3. The Court erred in dismissing the said bill and should have retained the same and proceeded with the hearing on the issues raised by the pleadings, and if the Court had then found that a trial at law was necessary on any of the issues raised by the pleadings, should have retained the bill of complaint until such issues were determined.

ARGUMENT.

The argument will be presented under the following heads:

1. The Act of 1919, Chapter 213, is constitutional, as applied to the present case.

(a) It is well settled that a statute will be construed, if possible, so as to uphold rather than to destroy its validity.

(b) The constitutionality of the 1919 Act was mooted in the case of *United Stores v. Asea*, 6 Advance Reports 957, decided May, 1928.

(c) The 1919 Act does not require the Court of

Chancery to exercise the jurisdiction belonging to the law courts, nor confer any powers upon the Court of Chancery to the exclusion of the law courts.

(d) The 1919 Act does no more than enlarge an existing power of the Court of Chancery, and that within constitutional limits.

(e) Creditors' bills to set aside fraudulent conveyances have been sustained in the past where the validity and amount of the creditors' claims are not necessarily determined.

2. If an action at law, or trial by jury, was necessary in this case, the bill should have been retained, pending such action.

3. The right to a trial by jury, or to require an action at law, was waived.

4. Complainant has no adequate remedy at law.

5. The bill should have been retained and relief granted in equity because the subject-matter of the suit in equity was of equitable cognizance.

Subsidiary Points.

A. The allegations of the bill show a proper case of fraud and of equitable cognizance (aside from any question of maturity, or of ascertainment of debt).

B. Complainant was not required to realize on his security before proceeding to collect his debt.

ARGUMENT.

1. THE ACT OF 1919, CHAPTER 213, IS CONSTITUTIONAL AS APPLIED TO THE PRESENT CASE.

The pertinent provisions of this statute as affecting this case are Sections 1, 9, 10, 11 and 12. They are as follows:

1. In this Act "Assets" of a debtor means property not exempt from liability for his debts. To the extent that any property is liable for any debts of the debtor such as property shall be included in his assets.

"Conveyance" includes every payment of money, assignment, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or encumbrance.

"Creditor" is a person having any claim, whether matured or unmatured, liquidated, or unliquidated, absolute, fixed or contingent.

"Debt" includes any legal liability, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

9. (1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase, or one who has derived title immediately or mediately from such a purchaser.

(a) Have the conveyance set aside or obligation annulled to the extent necessary to satisfy his claim, or

(b) Disregard the conveyance and attach or levy execution upon the property conveyed.

(2) A purchaser who, without actual fraudulent intent, has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment.

10. Where a conveyance made or obligation incurred is fraudulent as to a creditor whose claim has not matured, he may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured, and the Court may,

(a) Restrain the defendant from disposing of his property.

(b) Appoint a receiver to take charge of the property.

(c) Set aside the conveyance or annul the obligation, or

(d) Make any order which the circumstances of the case may require.

11. In any case not provided for in this Act, the rules of law and equity, including the law merchant and, in particular, the rules relating to the law of principal and agent, and the effect of fraud, misrepresentation, duress or coercion, mistake, bankruptcy or other invalidating cause shall govern.

12. This Act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those States which enact it.

1. (a) IT IS WELL SETTLED THAT A STATUTE WILL BE CONSTRUED, IF POSSIBLE, SO AS TO UPHOLD RATHER THAN TO DESTROY ITS VALIDITY.

This principle of construction when the validity of a statute is called in question upon the ground that the Act violates the constitutional provision has been stated in many cases. This Court, in the case of *Wilson, Attorney General, v. McGinness*, 78 N. J. L. 346, considered this principle (per Garrison, J.), on pages 369 to 377, in which the historical and philosophic basis of the rule was discussed. In applying this principle, the Court in that case sustained the so-called civil service law in respect to certain aspects, which were under attack. Justice Garrison, in that case, approved Chief Justice Marshall's rule that, "In no doubtful case will a Court pronounce a legislative Act to be contrary to the Constitution."

In *State v. Sutton*, 87 N. J. L. 192, the Court of Errors applied the principle mentioned, and also followed this same principle in the case of *Hudspeth v. Swayze*, 85 N. J. L. 592, in which latter case the constitutionality of the Chancellor-Sheriff Jury Act was upheld.

Justice Van Syckel, in the case of *Road Commission v. Harrington Township*, 55 N. J. L. 327, speaking for the Court of Errors, said, "We must presume that the Legislature intended to pass a valid law and adopt an admissible construction which supports it."

In the early case of *Harris v. Vanderveer's Executor*, 21 N. J. E. 424, Chief Justice Beasley, speak-

ing for the Court of Errors and Appeals, in a case involving the constitutionality of the statute, allowing an appeal from the Prerogative Court to the Court of Errors and Appeals, said that the attack upon the constitutionality of the Act should not prevail "unless it can be made plain to the mind of the Court that some provision of the Constitution exists which prevents the assumption by the Legislature of the authority to pass the Act in question. In the opinion of the Legislature and executive branches of the government this power exists. That opinion is entitled to the utmost respect, and it can with propriety be sustained only when this Court is convinced beyond a doubt that it is founded in error or misconception."

Other cases exemplifying this principle are *Commercial Trust Company v. Hudson County Board of Taxation*, 87 N. J. L. 179, in which the constitutionality of the bank stock tax was considered; and *Lohan v. Thompson*, 88 N. J. L. 40, and *McKenzie v. Elliott*, 77 N. J. L. 43.

1. (b) THE CONSTITUTIONALITY OF THE 1919 ACT WAS MOOTED IN THE CASE OF UNITED STORES v. ASEA, 6 Advance Reports, 957, DECIDED MAY, 1928.

In that case, the majority opinion was delivered by Chief Justice Gummere and the dissenting opinion by Justice Kalisch. The complainant in that case had obtained a judgment in the District Court and without docketing the judgment had filed a bill in Chancery under the 1919 statute, seeking to have a conveyance made by the defendant set aside as fraudulent. The decree in favor of the complain-

ant was affirmed. Chief Justice Gummere referred to the rule that statutes would not be declared unconstitutional where the matter was at all doubtful, and then said, "Considering, as we have already indicated, that the statutory provision embraces by implication claims of creditors, the validity and amounts of which have been established by the judgments of courts of law, but which have not been impressed as liens upon lands of their respective debtors, we conclude that to this extent, the power conferred upon the Court of Chancery does not infringe upon the jurisdiction of the law courts."

The minority opinion expressed the view that: "If the provision of Section 9 of the Statute of 1919, *supra*, is to be read in the sense that it shall be no longer necessary that a judgment be a lien upon the land of the debtor in case the legal title to the property were in him, and no longer necessary that an execution should be issued upon such judgment, and that the same be returned unsatisfied, in order to give the Court of Chancery jurisdiction of a creditor's bill, then it is clear to me that the provision is unconstitutional, for the obvious reason that the Legislature was without power, under the Constitution, to change or alter the fundamentals of the jurisdiction of the Court of Chancery, which fundamentals were established and existed before the adoption of the Constitution of 1844." In reaching this conclusion, emphasis was placed upon the fact that a lien was necessary according to the former practice in Courts of Equity and that the bill in the instant case did not show that the complainant had a judgment which was a lien upon real estate, and, further, it did not have an adequate remedy at law.

The prevailing opinion, therefore, certainly can be said to establish that even without a lien and with-

out exhausting his legal remedy a creditor could maintain a bill to set aside a fraudulent conveyance, so that the case is authority for the proposition that it is no longer necessary to exhaust a legal remedy even though it be construed as still leaving open the question of jurisdiction where the amount due to a complainant is in dispute.

This case has been followed in *Conway v. Raphael*, 6 Advance Reports 812. In that case, the complainant was trustee of a bankrupt against whom a creditor had entered a judgment in the State of New York. The Court of Chancery had dismissed the bill on the ground that no fraud was shown. This decree was affirmed. No reference was made to the fact that the judgment in question was entered in a foreign jurisdiction, this feature being passed over in silence. The opinion did, however, cite the various sections of the Act, which defined insolvency and the test of fraud.

The difficulty which the complainant-appellant in this case faced in the Court of Chancery and will, no doubt, face in this court in securing a reversal, is due to the statement in the majority opinion in the United Stores case, wherein Chief Justice Gummere said, "It has been suggested that the section of the statute which has been referred to violates our Constitution because it impairs the jurisdiction of the courts of law created by that instrument by conferring upon the Court of Chancery power to hear and determine actions for debt and for damages arising out of a breach of contract, that power being necessary for the ascertainment of the validity of the creditor's claim and for determining the actual amount due on such claim, if it be found to be valid. If this question was involved in the determination of the present case we would be inclined

to consider the suggestion a meritorious one to the extent indicated." An examination of the briefs in the United Stores case shows that the amount of the complainant's claim was less than \$300.00 and that counsel had not argued the question of whether or not under the statute the Court of Chancery was required to determine the validity of amount of claims not reduced to judgment. In fact, that question was not involved and this was recognized by the Chief Justice as shown by the excerpts from the opinion above quoted. It is, therefore, submitted that as this statement was *obiter*, it should be re-examined.

1. (c) THE 1919 ACT DOES NOT REQUIRE THE COURT OF CHANCERY TO EXERCISE THE JURISDICTION BELONGING TO THE LAW COURTS, NOR CONFER ANY POWERS UPON THE COURT OF CHANCERY TO THE EXCLUSION OF THE LAW COURTS.

It is to be noted that Sections 9 and 10 of the Act do not say that the Courts from which equitable relief is sought shall necessarily determine the amount due to the complainant in a case where the amount due is in dispute. In fact, these sections make no reference at all to the manner in which, or to the court in which the creditor shall have the validity and amount of his debt adjudicated where defendant in the equity suit disputes either the validity or amount of the claim. Section 9 provides for a proceeding by a creditor whose claim has matured, either to have the conveyance set aside to the extent necessary to satisfy his claim or to disregard the conveyance and attach or levy execution upon

the property conveyed. The first remedy is one which can appropriately be granted only by the Court of Chancery, under our system of jurisprudence, whereas the second alternative remedy is one which can appropriately be exercised only through the mediums of the courts of law and, as a matter of fact, has long since fallen into disuse due to the fact that the creditor pursuing that remedy was unable to secure a title which would be of any real benefit to him. It is to be noticed that there is nothing in this section which requires the construction that these alternative remedies are to be exercised in the same court. It would, therefore, seem to be a fair construction of the intention of Legislature, as expressed in this section, that the creditors should pursue the alternative remedies in the courts appropriate to the object in view.

Section 10 should be read with Section 9. It provides that where a claim has not matured, the creditor may proceed in a court of competent jurisdiction against any person against whom he could have proceeded had his claim matured. This section does not attempt to say that he could then exercise the legal remedy of attachment or execution which would be appropriate only where the debt had matured. But this section does provide that the defendant may be restrained from disposing of his property, that a receiver might be appointed, the conveyance set aside, or obligation annulled, or any other order made which the circumstances of the case may require. These remedies are in their nature equitable remedies and it is not to be presumed that the Court of Chancery, in exercising the equitable remedies authorized by such section, would exceed proper bounds in preserving the property, or otherwise dealing with the subject-matter of the liti-

gation. It is not anywhere provided that the creditor may have satisfaction of his debt prior to its maturity; neither is it provided that the Court of Chancery, in exercising the remedies authorized by Section 10, should proceed without regard to any rights the parties may have to a trial at law, if issues be raised in the case requiring a determination through the channels of the law courts. Neither Section 9 nor Section 10 require the Court of Chancery to take any action which in any way would derogate from the prerogatives of the law courts, nor to impair the litigant's right to a jury trial in a proper case.

Unless the statute absolutely requires the construction that the jurisdiction of the law courts is denied or restricted, or absolutely requires the construction that the litigant's right to jury trial is abridged, the doctrine applicable in cases of doubt, as exemplified in the cases cited in this brief, would require the constitutionality of the Act to be sustained.

The appellant's point may be made more clear by taking the situation of this case as though the bill had been dismissed before answer on a motion for that purpose raising this question of constitutionality. If such a motion had been made, it would necessarily have assumed the proof of the allegations of the bill and, therefore, it would have appeared that there were certain sums of money due to the complainant for which he had no lien. This the motion would necessarily have admitted and it seems to the appellant that, unless the bill in that posture of the case would have to be dismissed, that it cannot be said conclusively that the Act is unconstitutional. And it is also submitted that in that posture of the case, the Court of Chancery, being

governed by the majority opinion of the Court of Errors in the United Stores case, would have been compelled to say that the validity and amount of the complainant's claim must be taken as admitted and that as a lien or judgment was no longer necessary, the bill must stand. If, then, the answer questioned the amount or validity of the complainant's claim, there would be a question which would have to be disposed of in accordance with the recognized practice in our courts, and the fact that this question was raised would not make the Act, in its application to the case, unconstitutional, there being no requirement that a function foreign to the Court of Chancery should be performed by it. This matter is dealt with in more detail at another place in the brief, but is stated here in order to illustrate the contention that the point in question is really not one of constitutionality, but of appropriate procedure in a case properly brought within the jurisdiction of the Court of Chancery by way of an enlargement of its existing powers.

1. (d) THE 1919 ACT DOES NO MORE THAN ENLARGE AN EXISTING POWER OF THE COURT OF CHANCERY AND THAT WITHIN CONSTITUTIONAL LIMITS.

We contend that this statute should be regarded as a proper enlargement of the jurisdiction of the Court of Chancery in an appropriate case and that the principle stated and applied by Chief Justice Beasley in the case of *Harris v. Vanderveer's Executor*, 21 N. J. E. 424, should be applied here.

The Chief Justice in this case had for consideration the law allowing an appeal from the Preroga-

tive Court in a matter of probate to the Court of Errors and Appeals. The Chief Justice examined the nature of the Prerogative Court and the Court of Errors and Appeals with particular reference to whether or not the Act of the Legislature conferring an additional power upon the Court of Errors was in violation of the constitutional provision that the Court of Errors should have jurisdiction "as heretofore." (See pp. 425 to 434.) On page 433, the Chief Justice said, "An aptitude for enlargement, from the inherent nature of judicial institutions, appertains to every constitutional court."

In the case of *In re Cleveland*, 51 N. J. L. 319, Chief Justice Beasley, speaking for the Supreme Court, considered the validity of a statute providing for the speedy determination of controversies relating to the title to municipal offices. It was urged that the statute was a limitation upon the right of the Supreme Court to deal with the title to office by virtue of the writ of *quo warranto*. The validity of the Act was sustained and there is a statement by the Chief Justice in that case which seems to be peculiarly applicable to the present case. He said (pp. 327-328), "If these litigants had been at issue on any matter of fact and either of them had demanded a trial by jury, such trial would have been directed by the Court, for, as the legislative direction is for the Court to try the case, the necessary implication arises that the procedure is to be conducted in the ordinary mode."

The presumption expressed by the Chief Justice in this case, it seems to the appellant, should be indulged here. In other words, it is to be presumed that if a trial by jury was necessary or required, the Court of Chancery would have handled that question according to the usual method in other matters within its jurisdiction.

Another instance of the enlargement of jurisdiction which was held to be within the constitution was in the case of the Act providing that courts of appeal in criminal cases might review the question of whether or not a verdict of guilty was against the weight of evidence. This question was considered and the constitutionality of the Act upheld in the case of *State v. Knight*, 96 N. J. L. 461. The decision was based upon the fact that the Act did not curtail, but rather enlarged the power of the Court of Errors and that such an enlargement was not prohibited by the provisions of our Constitution.

We are not unmindful of the cases exemplified by the recent opinion in the case of *Minochian v. Paterson*, 6 Advance Reports 1905. But it is submitted that this case and *Flanagan v. Plainfield*, 44 N. J. L. 118, are to be distinguished because of the fact that the cases there under consideration had to do with what were construed to be attempts by the Legislature to encroach upon the exclusive right of the Supreme Court to exercise jurisdiction by means of the three prerogative writs of *certiorari*, *mandamus* and *quo warranto*. In fact, the case of *Minochian v. Paterson* recognizes the distinction between the exercise of these prerogative writs and writs not of a prerogative nature, such as the writ of *habeas corpus*.

The present case is likewise to be distinguished from cases of the class of *Hedden v. Hand*, 90 N. J. E. 583, in which the Court of Errors held unconstitutional the statute attempting to give the Court of Chancery authority to abate public nuisances. The Court, in that case, examined into the jurisdiction of the Court of Chancery to take cognizance of cases of public nuisances founded purely on moral turpi-

tude, and finding that there was no such jurisdiction, held that the attempt to confer it was violative, not only of the jurisdiction of the Court of Chancery, but also of the Supreme Court. It is to be noted that this statute attempted to confer upon the Court of Chancery an entirely new jurisdiction, whereas the Act now under consideration, relating to fraudulent conveyances, had for its purpose merely the removal of certain impediments (in general, formal only), to the exercise of the long-established jurisdiction of equity to set aside conveyances in fraud of creditors.

Cases such as *Jersey City v. Lembeck*, 31 N. J. E. 255, are also to be distinguished from the present case. In the cases mentioned, there was an attempt to use the vehicle provided by the Act relating to the quieting of titles for the purpose of reviewing an assessment for municipal improvements. Chief Justice Beasley referred to the fact that to give to the statute the effects claimed for it by the complainant would be to extend it so far as to make the Act unconstitutional, but decided that it was not necessary to adopt such a construction and that the Act would be applied only to those cases in which the complainant could not bring an action at law for the purpose of settling the right claimed in the equity suit. The bill in that case was, therefore, dismissed. The case is authority for the complainant herein, inasmuch as it will not be seriously contended by the respondent that a court at law could give us the relief sought by us, directed to the fraudulent conveyances.

The present case is also to be distinguished from cases where purely legal questions are involved without any equitable question being present, illustrative of which is *Kean v. Union Water Company*,

52 N. J. E. 813, which was a proceeding in Chancery for the purpose of attempting to regulate a corporate election.

There are other cases not referred to, which may be cited by the respondents in their brief, but I think it will be found that in every instance they are to be distinguished from the present case, either because they embrace attempts to abridge the jurisdiction of the constitutional courts, or to attempt to confer upon the court a jurisdiction entirely beyond its function.

Reference is made to *Sweeney v. Williams*, 36 N. J. E. 627, as an example of a case where jurisdiction was extended to a law court without necessarily detracting from the jurisdiction of the Court of Equity. Other cases of this character are:

Miller v. U. S. Casualty, 61 N. J. E. 110 (at p. 117);

Wilson v. State Water Commission, 84 N. J. L. 150;

Haley v. Goodheart, 58 N. J. E. 368;

Brady v. Carteret, 70 N. J. E. 748 and 72 N. J. E. 904;

Palmyra v. Penna. Railroad Co., 62 N. J. E. 601 (at p. 615), affirmed 63 N. J. E. 799;

State Board v. Diamond, 63 N. J. E. 111 (at p. 115), affirmed 64 N. J. E. 793.

The case of *State Board of Health v. Diamond Paper Mills*, above referred to, is express authority for the fact that the Legislature may direct the exercise by the Court of Chancery of the injunction power in a new class of cases to which the remedy is appropriate (at p. 115). Illustrations are there given of instances wherein new cases have been

brought within the jurisdiction of the Court by statutory regulation. This case was affirmed by the Court of Errors upon the opinion in the Court of Chancery, 64 N. J. E. 793. This particular matter is dealt with in connection with the practice in the Court of Chancery whereby in an appropriate case a bill is retained, pending an action at law.

The case of *Brady v. Carteret Realty Company*, 70 N. J. E. 748 and 72 N. J. E. 904, is interesting as showing that the jury trial provided for by the Acts relating to the quieting of titles is within the exclusive control of the Court of Chancery, and that a defendant in a suit brought under that Act was not entitled as a matter of constitutional right to a trial by jury in an action at law. This case, it seems to us, went further than the Court is asked to go in the present instance. The 1919 Act, which is here under review, did not attempt to limit the parties to a jury trial under the control of the Court of Chancery, and the question, therefore, of whether or not such a trial by jury as distinguished from an action at law would be constitutional is not required to be answered in the present case.

1. (e) CREDITORS' BILLS TO SET ASIDE FRAUDULENT CONVEYANCES HAVE BEEN SUSTAINED IN THE PAST WHERE THE VALIDITY AND AMOUNT OF THE CREDITORS' CLAIMS ARE NOT NECESSARILY DETERMINED.

There are a number of cases in which bills have been sustained upon the theory that there was a lien, although the amount and validity of the claim was not settled. This was done upon the theory that

because of certain special circumstances in each class of cases, the debt due a simple contract creditor had the effect of a lien. It would, therefore, seem that to give such a creditor the right to proceed directly on his debt upon the theory that it should have the attributes of a lien would not be an unconstitutional grant of jurisdiction. Especially would this seem to be so as in most, if not all, cases where fraudulent conveyances are sought to be set aside, there is, in fact, no lien because of the rule that a judgment at law does not create a lien upon estates recognized in equity, or given effect only in equity.

The cases to which reference will be made would seem to justify the contention of the appellant that there is no lack of power on the part of the Legislature to extend the boundaries of the cases in which the equitable relief can be granted, although it was this presumed lack of power which actuated the lower Court in dismissing the complainant's bill.

In the early cases which settled the law in this State, the reason for denying jurisdiction to relieve a general creditor was that the legal remedy was not exhausted. The reason was not that the validity and amount of the claim was uncertain. See, on this point, *Haston v. Castner*, 31 N. J. E. 697; *Swayze v. Swayze*, 9 N. J. E. 273, at page 280; *Robert v. Hodges*, 16 N. J. E. 299, at 304 and 305; *Oakley v. Pound*, 14 N. J. E. 178, at 180; *Dunham v. Cox*, 10 N. J. E. 437, at 466 and 467; and *Francis v. Lawrence*, 48 N. J. E. 508.

Oakley v. Pound, 14 N. J. E. 178, makes express reference to the fact that bills by general creditors may be maintained on attachments even though it may develop that no debt is due to the complainant. That the existence of a lien was the real basis of

jurisdiction is made manifest by the various classes of cases above referred to and hereafter referred to in detail. These cases, it seems to us, demonstrate that the courts have sought to sustain these bills wherever possible, so far as might be permissible, under the theory upon which jurisdiction was based. This tendency was noted by Vice-Chancellor Lane in the case of *Jaburg v. Kirshenbaum*, 98 N. J. E. 510.

It was early held that a bill would be sustained to aid an attachment lien. In *Hunt v. Field*, 9 N. J. E. 36, Chancellor Williamson decided that, although nothing might really be due, yet as there was a lien and the legal remedy would not produce results, the bill would lie. Other cases in which attachment liens were considered sufficient to maintain bills, in many of which there was no judgment or at the most, a judgment in a foreign State, are: *Williams v. Michenor*, 11 N. J. E. 520; *Robert v. Hodges*, 16 N. J. E. 299 (foreign judgment); *Currie v. Glass*, 25 N. J. E. 108 (applying creditor's claim based on foreign judgment); *Smith v. Muirheid*, 34 N. J. E. 4 (there was here a judgment in attachment); *Cocks v. Varney*, 45 N. J. E. 72; *Francis v. Lawrence*, 48 N. J. E. 508; *Bainbridge v. Allen*, 70 N. J. E. 355.

In *Francis v. Lawrence* above cited, Vice-Chancellor Green explains the reasons why it is proper that an exception should be made in the case of an attachment, notwithstanding there is no judgment, or notwithstanding the fact that the complainant has not exhausted his legal remedies. These reasons go to the ultimate collection by complainant of his money, and are equally applicable to a case such as the present.

In the case of *Cocks v. Varney* above cited, Vice-

Chancellor Van Fleet recognized the rule in the case of attachments, examined the attachment proceedings, and held that as it conclusively appeared on the face of the papers that there was no valid claim, dismissed the bill.

Another class of cases in which bills have been sustained by general creditors, related to claims against decedents' estates. Thus in *Shirts v. Howell*, 30 N. J. E. 418, Chancellor Runyon sustained a bill by a general creditor and in doing so recognized the fact that a suit at law would not give the complainant a lien but would only establish his debt.

In *Haston v. Castner*, 31 N. J. E. 697, Chief Justice Beasley for the Court of Errors and Appeals, sustained a bill by a general creditor saying that the lien in favor of the general creditor upon lands of the decedent was sufficient to sustain the bill, notwithstanding the fact that while the claim had been filed with the executor its validity had not been passed upon by the court. Reference was also made to the fact that a judgment would not in fact have been a lien on the land.

This reasoning with respect to the actual lien as distinguished from a theoretical right to a lien, is important because the same condition exists in a case such as this where title is in a third person and not in the debtor and with respect to many conveyances was never in the debtor.

In *Jones v. Davenport*, 44 N. J. E. 33, at page 51, the principle was likewise applied. In this case the remedy at law was probably not exhausted, but the bill was sustained.

See also in this point *Merchants &c. Co. v. Borland*, 53 N. J. E. 282, at 297; and *Currie v. Knight*, 34 N. J. E. 485.

The only case we have found where a bill by a

creditor of a decedent's estate was dismissed, is *Rutherford v. Alyca*, 54 N. J. E. 411, where it appeared that there was sufficient personal estate to answer to the debt.

In the case of corporation receiverships in insolvency matters, the courts have gone a great way in order to permit a receiver of an insolvent corporation to maintain a bill to set aside a fraudulent conveyance.

In the case of *Graham Button Company v. Spielman*, 50 N. J. E. 120, affirmed 50 N. J. E. 796, sustained the right of a receiver in this connection. As the statute in question did not expressly say that general creditors have a lien upon the corporate property, the Court, no doubt recognizing the desirability of the result to be obtained, held that the general creditor's claims were "fastened on the debtor's property" and that because of that "fastening," there was a sufficient lien to justify the bill. An examination of this case will show that the Court adopted a construction which was apparently not required, but did so in order to extend the remedy to meet the obvious necessity. This case was followed and approved in *Bradley v. United Wireless Company*, 79 N. J. E. 458, affirmed 83 N. J. E. 688; *Wimpfheimer v. Perrine*, 67 N. J. E. 597; *Fidelity Trust Company v. Staten Island &c. Company*, 70 N. J. E. 550; and *Squire v. Princeton Lighting Company*, 72 N. J. E. 883.

In the case of receivers of partnerships, Vice-Chancellor Garrison in *Brockhurst v. Cox*, 71 N. J. E. 703, affirmed 72 N. J. E. 950, held that a decree of dissolution "fastened upon the assets a lien in favor of existing creditors." It seems to us that this likewise is a case where the Court adopted a construction not required, but desirable to accomplish the necessary result.

There are a number of early cases dealing with the right of creditors or assignees in the case of assignment for the benefit of creditors, to maintain bills to set aside fraudulent conveyances. These cases are *Pillsbury v. Kingon*, 33 N. J. E. 287, *Kalmus v. Ballin*, 52 N. J. E. 290; *Terhune v. Sibbald*, 55 N. J. E. 236; *Loucheim v. Casperson*, 61 N. J. E. 529; and *Wimpfheimer v. Perrine*, 67 N. J. E. 597. As there was no statute which could be construed to create a lien thus bringing cases of this class within those where a bill could be maintained upon that theory, the doctrine of trusts was invoked, it being held that the assignment created a trust and that thus jurisdiction could be exercised. The necessary result was that in *Kalmus v. Ballin*, above cited, it was held that a creditor who had not brought himself within the terms of the assignment was not within the terms of the trust and, therefore, could not sustain a bill. To meet this situation, the statute has been changed and now provides (Section 15, 1 C. S., pages 119-120) that the assignee may maintain such a bill. We do not know of any cases in which the constitutionality of this statute has been approved, but it would no doubt be held that the effect of this Act was to extend the trust in such cases for the benefit of any creditor of the assignor.

It seems to the appellant that by analogy to the foregoing cases, there can be no doubt of the power of the legislature to give to the claim of complainant in this case, or any other party similarly situated, the same rights as though he had a lien acquired by way of judgment.

The English authorities support an action by a creditor, even though judgment has not been obtained. In the case of *Reese Silver Mining Com-*

pay v. Atwell, 7 Law Reports, Equity, page 346, a bill had been filed to set aside a settlement claimed to have been made for the purpose of delaying, hindering and defrauding the plaintiffs of their claims. It was objected that an action would not be sustained unless the creditor first obtained a judgment. Lord Romilly, Master of the Rolls, said:

"I am also of opinion, that no lien or charging order on the property is necessary to entitle the plaintiffs to sue. The point was put with much confidence by Mr. Jessel, but neither he nor Mr. Caldecott, who has shown much diligence in examining the cases, has cited any authority; and it appears that the same point was taken and overruled in *Goldsmith v. Russell*, 5 D. M & G. 547. I have little doubt that what was passing in Mr. Jessel's mind was the rule that the Court will not give equitable execution until the creditor has put himself in a position to obtain execution at law, in which case there is no question of the statute at all. But as soon as the Court finds that a deed has been executed for the purpose of delaying, hindering, or defrauding creditors, and that it comes within the statute, it sets the deed aside, but it goes no further; and the plaintiffs must take some independent proceedings if they wish to have execution against the property in this deed."

See also *George v. Milbanke*, 9 Ves. Jr. 190, at 196 (32 Eng. Rep).

Professor Pomeroy in his work on equitable jurisprudence, second edition, in Section 2305, refers to the fact that in some jurisdictions the rule first requiring a judgment has been changed by statute

and that in such cases suits may be maintained by simple contract creditors. He refers to the States of Alabama, Arkansas, Connecticut, Indiana, Maryland, Massachusetts, Nebraska, North Carolina, Ohio, Tennessee, Ohio, Virginia, and West Virginia. He also states that the Federal Courts failed to follow these statutes upon the ground that where the money demand is a mere legal claim, the defendant is entitled to the benefits of a jury trial. This feature of the present case is disposed of under an appropriate heading. The cases in other States dealing with the question are also covered in 27 C. J., pages 735 to 737.

Even in the Federal Courts it has been decided by the United States Supreme Court that the right to jury trial may be waived, and as is shown elsewhere in this brief, that was the result of the defendants' action in this case. See in re *Reisen-*

2. IF AN ACTION AT LAW, OR TRIAL BY JURY, WAS NECESSARY IN THIS CASE, THE BILL SHOULD HAVE BEEN RETAINED, PENDING SUCH ACTION.

There are a large number of cases in which it has been held that where a legal question arises which requires determination at law the bill will be retained to protect the equities and the parties have been directed to proceed and settle their claims at law. Thus in *D. L. & W. Railroad Company v. Breckenridge*, 56 N. J. E. 595, it appearing that complainant's right to relief by injunction, requiring the removal of certain pipes from lands depended on complainant establishing his legal title, *berg*, 208 U. S. 90, 52 L. Ed. 403.

the case was held over until that right was settled at law.

In *Freicknecht v. Meyer*, 93 N. J. E. 551, the question of title to land was raised and the bill was retained, pending the determination of the question. Justice Dixon, speaking for the Court of Errors in that case, says that at times when the complainant's right to relief depends upon his having a legal title, and there is no obstacle to the assertion of that title in an action at law the bill has been dismissed. He goes on to say, however:

"The modern practice, however, leans towards the retention of the bill, except in some sorts of bills of peace, until an opportunity is afforded to the complainant to bring a legal action upon his title, or until an issue out of Chancery can be tried at law."

See:

Brady v. Carteret Realty Co., 70 N. J. E. 748 and 72 N. J. E. 904;

McAndrews & Forbes Co. v. Camden, 78 N. J. E. 244 (at p. 246);

McGrath v. Norcross, 83 N. J. E. 355;

American Dock Co. v. Trustees, 36 N. J. E. 16, 37 N. J. E. 266;

Carpenter v. Eastern & Amboy Railroad Co., 26 N. J. E. 168.

Assuming that the questions presented for determination in this case required a determination at law, the question as to whether or not the issue should be tried as feigned issue, or whether the issue should be tried in an action at law brought by the parties is at the present time immaterial as neither course was adopted.

It has likewise been decided by the Court of Errors that where in a case in equity appropriate equitable relief requires an assessment of damages the Court of Chancery will in some mode have such damages assessed by a jury. *Schmidt v. Lisiewski*, 53 N. J. E. 670.

In *McCracken v. Harned*, 59 N. J. E. 190, a bill for accounting was held until the party established at law his right to compensation for unliquidated damages.

The common practice in partition matters whereby the bills are retained, while disputes as to title are determined at law is also illustrative of the principle for which the appellant contends.

And in interpleader suits it has been held that the requirement that the defendants shall come in and state their claims is not intended to deprive the parties of any rights they may have and that the Court of Chancery may direct an issue at law. *D'Auria v. Barbarie*, 70 A. R. 154. And it has been held that in interpleader suits any method of trial may be directed that the Court deems proper, either by directing an issue or that an action at law should be brought. *Kirtland v. Moore*, 40 N. J. E. 106; *Condict v. King*, 13 N. J. E. 383. In the case of *Water Works Equipment Company v. McGovern*, 96 N. J. E. 520, which was brought to enforce a lien under the municipal lien law, it was held that a party setting up a claim for unliquidated damages would be required to go to the law court to establish the claim and as no steps had been taken to obtain such a trial, the Court of Chancery would determine the matter. In *Alpaugh v. Wood*, 45 N. J. E. 153, which was a bill for discovery and account, the Court of Errors and Appeals said that while the counter-claim involved

in that case was for a purely legal demand for unliquidated damages, yet the proper course to follow was to suspend the enforcement of a decree in the accounting suit until a reasonable opportunity had been afforded for the appellants to prove by action at law the validity of their counter-claim.

Another case of similar import is *Norton v. Sinkhorn*, 63 N. J. E. 313, in which the Court of Errors, reversed Vice-Chancellor Gray, 61 N. J. E. 508. It was held that the action of the Court of Chancery in striking out the answer setting up unliquidated damages was erroneous, that the fund in question should have been retained in the Court of Chancery and the case allowed to stand over until the defendants should have had their damages assessed in a court at law.

3. THE RIGHT TO A TRIAL BY JURY, OR TO REQUIRE AN ACTION AT LAW, WAS WAIVED.

At no time did the defendants, respondents here, make any claim for a trial by jury. They brought into the litigation various claims against the complainant, setting up a case which the Court of Chancery decided was sufficient to stand as a bill for an accounting, so that so far as the defendants are concerned, they neither asked for nor were denied an issue at law, or an action at law. It is to be borne in mind that until the answer was filed no dispute could have possibly appeared and that any defect in jurisdiction could only have arisen as a result of matters set forth in the answer. The case, therefore, would seem to come within the principle expressed by Vice-Chan-

cellor Leaming in the case of *Redrow v. Sparks*, 75 N. J. E. 396. Vice-Chancellor Leaming in that case said:

“When a bill is insufficient on its face to support equitable jurisdiction or relief it should be demurred to. Defendant may in such case answer, but if on final hearing the bill is found insufficient, costs may be denied to defendant by reason of his failure to demur, and in that manner avoid the necessity of a hearing. Dan. Ch. Pl. & Pr. 542. Cases may arise, however, in which the jurisdiction of a court of equity can only be accurately measured by the ascertainment of matters which may be appropriately contained in an answer. Thus, a court of equity has jurisdiction to enforce a legal right, the existence of which is clear and not in substantial dispute; but the jurisdiction fails when it is made to appear that the legal right is not clear, either by reason of substantial dispute touching the facts on which it is based or uncertainty touching the legal rules on which the right is claimed. In cases of that class an answer and final hearing may be necessary to accurately determine the question of jurisdiction. The propriety of a prayer in an answer, in a case of that nature, for the benefit of a demurrer for want of equitable jurisdiction is manifest, and has been recognized by our Court of Errors and Appeals in *Todd v. Staats*, 60 N. J. Eq. (15 Dick.) 507, 513, and in *Outcalt v. Helme Company*, 42 N. J. Eq. (15 Stew.) 665, 677. In the former case, the bill was retained while legal title could be established at law, because no denial of jurisdiction was asserted by the answer; in the latter case, the bill

was not detained because defendant had asserted, by his answer, the want of jurisdiction."

Reference is made to the two cases cited by the Vice-Chancellor in the foregoing extract; also to *Thiefes v. Mason*, 55 Eq. 456, *Wilkinson v. Camden*, 38 N. J. E. 414 and *Eggers v. Anderson*, 63 N. J. E. 272. In this last case, it was held that as objection to the determination of the amount of the damages had not been timely made, the damages could be determined in equity. To the same effect is *Water Works Equipment Company v. McGovern*, 96 N. J. E. 520. This present case comes exactly within the rule laid down by the authorities, and it is to be noted that no objection was made in the motion originally directed to the bill to the jurisdiction, because of the fact that the parties were entitled to a jury trial, or that there should be an action at law and that the objection taken at the final hearing was not raised by the parties, but by the Court and that even in the counter-claim and answer to the bill which the defendants filed they did not reserve the benefit of a demurrer, the force of which was recognized by the Court of Errors in the case of *Todd v. Staats*, 60 N. J. E. 507. At the argument before the Vice-Chancellor, he suggested (page 174) that whether the bill was retained or not was a purely unimportant detail, but we submit that this is not so. To entirely dismiss the bill is to deprive the complainant of all rights arising from the fact that a bill was filed and that a *lis pendens*, respecting that suit, was on file in the proper office. The result would be that these defendants who, on the face of the pleadings of a matter coming up as this does, cannot deny the

fraud charge, are able to make deeds and to pass title to persons who could claim the rights of innocent purchasers.

Reference should be made to the statute relating to jury trial contained in the Chancery Act of 1915 (P. L., p. 185). That section reads:

“If any question, ordinarily determinable at law and requiring jury trial, arise in a suit of which the Court of Chancery has jurisdiction, a jury trial, if required, may be ordered, but shall be deemed to be waived unless demanded in the pleadings. In case of such demand, if the issue be one requiring a jury trial, the Court shall send such issue of fact to a court of law for trial according to the existing practices.

But in all cases referred to in this section the Court of Chancery shall retain the cause until the legal question shall be determined, or until an adequate opportunity to determine the same shall have been given, unless justice or the public interest requires a dismissal of the cause.”

It is true that this statute is limited to those cases over which the Court of Chancery has jurisdiction, but I think it has been shown that in any event the Court must have jurisdiction to retain the bill until the answer denies the right to relief and that at that period this Act becomes effective. It seems to us that this statute was enacted to meet just such cases as the present and under it the case should have been retained by the Court of Chancery until the determination of any question of law, and unless a jury trial was demanded, such a trial would be regarded as waived, so far as the party's rights were concerned.

4. COMPLAINANT HAS NO ADEQUATE REMEDY AT LAW.

The inadequacy of complainant's remedy is as great in this case as though he had actually reduced his claim to judgment, because on the facts shown, an execution on such a judgment would produce nothing. This point was not raised by the defendants in the Court below or by the Court.

Even if the complainant had a remedy at law which had not been exhausted, there are many cases holding that where the equitable remedy is superior to the legal remedy, it may be exercised. It is true that the rule in cases of fraudulent conveyances prior to the 1919 Act, was that the legal remedy must first be exhausted. But it is contended by the appellant that this was a rule applying to that particular form of remedy, subject to the control of the legislature, and that the legislature did exercise its power by the 1919 Act; that the fact that the Court of Chancery has heretofore exercised jurisdiction because of the superiority of its remedies demonstrates the power of the Court to exercise jurisdiction, if there are no special limitations applying to the particular class of cases before the Court.

Cases illustrative of the right of the Court of Chancery to exercise equitable jurisdiction because of its more advantageous remedies, are: *Smith-Austermuhl Company v. Jersey Railways Company*, 89 N. J. E. 12; *Commonwealth v. Riccio*, 81 N. J. E. 315; *Vaiden v. Edson*, 85 N. J. E. 184; *McCartie v. Murphy*, 83 N. J. E. 195; *Commonwealth Casualty Company v. Southern Surety Company*, 100 N. J. E. 92, affirmed 5 Adv. Reports 1497; *Schoenfeld v.*

Winter, 76 N. J. E. 511; affirmed 79 N. J. E. 219; *Standard Roller Bearing Company v. Crucible Steel Company*, 71 N. J. E. 61; *Feigenspan v. Nyzolek*, 71 N. J. E. 382, 72 N. J. E. 949; *Eggers v. Anderson*, 63 N. J. E. 264.

That the jurisdiction of the Court of Chancery in cases of fraudulent conveyances is a part of the original equitable jurisdiction of the Court as stated in *Tantum v. Green*, 21 N. J. E. 364, and *Horton v. Bamford*, 79 N. J. E. 356, at 379.

5. THE BILL SHOULD HAVE BEEN RETAINED AND RELIEF GRANTED IN EQUITY BECAUSE THE SUBJECT-MATTER OF THE SUIT IN EQUITY WAS OF EQUITABLE COGNIZANCE.

In passing upon this point, the case should be considered as its status was at the time the action was taken by the Court below. At that point there was pending a bill claiming that certain moneys were due, for which there was some collateral given or pledges held; set out at least one transaction, the Seaside Development Company matter, in which there was an agreement for the division of profits. To this bill there was a counter-claim setting out in rather thorough language, the situation as to the records of the parties, which might have been sufficient standing alone to sustain the bill for an accounting; set out a multitude of transactions between the complainant and defendants, in which they stood in the relation of attorney and clients; set out in addition to the Seaside Development Company matter, numerous purchases of real estate upon which there was an agreement for the

division of profits, and made it clear that the accounts between the parties were mutual and complicated.

It was practically conceded at the argument in the Court below, that the case made out by the counter-claim was so complicated, and was of such a nature as to require that equity take jurisdiction. (State of the Case, pages 186 to 189.) And as a matter of fact, equity has taken jurisdiction on all of the matters raised by the counter-claim, and under the statement in the answer of complainant to the counter-claim, bringing in the bill by reference, all of the matters of charge or discharge set forth in the bill will necessarily be adjudicated in the Court of Chancery.

We, therefore, have the situation that in this particular case, the Court of Chancery will have to go on to try the issues between the parties, and in this particular proceeding, determine the validity and amount of the respective claims of the defendants and complainant. The fact that the defendants did not raise any objection to the jurisdiction of Chancery, and did not claim that there was an adequate remedy at law, was no doubt due to the fact that they recognized the equitable nature of the controversy. We, therefore, have the anomalous situation that because the Court was of the opinion that this statute unconstitutionally required it to determine the validity and amount of the complainant's claims, it refused to sustain complainant's bill in so far as it alleged fraud, and in so far as it asked for relief based on fraud, and yet has retained the case for the purpose of determining the very matter criticized, to wit, the validity and amount of the claim. It results that the effect of the action of the Court of Chancery is to

deny relief in a case of fraud, one of its oldest and most powerful jurisdictions, and has in no other way affected the issues between the parties.

It is not suggested that the Court should have dismissed the counter-claim, as it is settled that the dismissal of a bill does not necessarily involve the dismissal of the counter-claim. *Pennsylvania Railroad Company v. National Docks Company*, 52 N. J. E. 555; *Trust Company of New Jersey v. McGinness*, 7 Adv. Rep. 1.

It would seem that under the power of the Court of Chancery to allow amendments for the purpose of working out the ultimate rights of the parties, the complainant should be allowed, when the counter-claim is heard, to counter-claim against the defendants' counter-claim, which is now in the nature of an original bill, and that the complainant could set up in this suit, the same charges of fraud which were contained in the original bill, and ask for the same relief thereby. (Of course, this would not relieve complainant as to transactions intervening.) It is difficult to see what objection could be made to that course, unless it would be the objection of multifariousness. This objection, however, as a result of Chancery Rules 26, 27, 9 and 15e, as noted in *Gierth v. Fidelity Trust Company*, 93 N. J. E. 163, has practically been done away with. The case should be considered as one where the right to remain in equity exists independently of the question of fraud, as obviously the case made by the bill, cross-bill and answer thereto, should be taken as a whole. We have only found one case in this State directly in point upon this question, and obviously such a situation would not often arise. In the case of *Deveney v. Mahoney*, 23 N. J. E. 247, Chancellor Zabriskie held that the complainant

could maintain a bill against his one time partner for the purpose of having the accounts of the partnership settled and to have certain real estate conveyed by the defendant, his former partner, decreed to have been fraudulently made, and to have the same applied to the payment of the complainant and of partnership creditors. This, as will be seen, was a case of a bill for an accounting where there were simply general claims, but where, the bill being properly in Chancery, it was sustained without hesitancy. This case was later approved in *Harney v. First National Bank*, 52 N. J. E. 697.

We refer for the general principles dealing with the right of equity to take jurisdiction in this case, upon principles of accounting, to Pomeroy's work on *Equitable Jurisprudence*, Second Edition, Sections 2356 to 2361, inclusive, and also to the New Jersey cases of *Seymour v. Long Dock Company*, 20 N. J. E. 396, at 407; *Cranford v. Watters*, 61 N. J. E. 284, at 289; and *Alpaugh v. Wood*, 45 N. J. E. 153. Reference is also made to the following cases affirming the principle that even where jurisdiction is concurrent the Court first acquiring jurisdiction will retain it. *Casperson v. Casperson*, 65 N. J. L. 402, at 406; *Sweeney v. Williams*, 36 N. J. E. 627; and *Price v. Grossman*, 140 Atl. Rep. 251. (Not officially reported.)

SUBSIDIARY POINTS.

A. THE ALLEGATIONS OF THE BILL SHOW A PROPER CASE OF FRAUD AND OF EQUITABLE COGNIZANCE (ASIDE FROM ANY QUESTION OF MATURITY, OR OF ASCERTAINMENT OF DEBT).

The bill charges a deliberate fraudulent scheme whereby the defendants, David Cohen and Pennsylvania Mortgage and Loan Company, parted with their assets for the purpose of hindering, delaying and defrauding their various creditors, particularly the complainant. It is charged in the bill that the conveyances to the straw parties and the payment by the defendants of the consideration for the properties to which title was placed in the names of the straw parties, were, as to the grantees in the various deeds, purely voluntary without consideration moving from the grantee and were made as a part of the scheme to defraud complainant.

In *Washington National Bank v. Beatty*, 77 N. J. E. 252, this Court held that in the case of a voluntary conveyance attacked by a subsequent creditor the question to be determined was whether the conveyance was fraudulent and that the only difference between an attack by an existing creditor and a subsequent creditor was in the method of proof, and that a subsequent creditor must prove fraud as a fact.

In *Horton v. Bamford*, 79 N. J. E. 356, Vice-Chancellor Garrison discussed at length the doctrine involved in the case of voluntary conveyances, discussing the rule stated in *Haston v. Castner*, 31 N. J. E. 697, that as to a voluntary conveyance made by one who is indebted there is an irrebuttable pre-

sumption of fraud. This case considers extensively the general principles of this branch of equitable jurisdiction and has been approved by the Court of Errors. See *Semenowich v. Melnyk*, 93 N. J. E. 615. We also refer to:

Babirecki v. Virgil, 97 N. J. E. 315; 99 N. J. E. 867;

Coleman v. Graff, 94 N. J. E. 223;

McNulty v. McCarthy, 78 N. J. E. 365.

It was well settled that the purchase of property and putting title thereto in the name of a third person to avoid creditors is a fraudulent conveyance.

Sayre v. Lemberger, 92 N. J. E. 656;

Kronson v. Lipschitz, 68 N. J. E. 367;

Coleman v. Graff, 94 N. J. E. 223;

Rice v. Mitsch, 92 N. J. E. 693.

B. COMPLAINANT WAS NOT REQUIRED TO REALIZE ON HIS SECURITY BEFORE PROCEEDING TO COLLECT HIS DEBT.

Brick v. Freehold National Banking Co. 37 N. J. L. 307;

Polhemus v. Prudential Life Ins. Co., 74 N. J. L. 570;

Merchants Bank v. Roosma, 2 M. R. 690;

31 Cyc., pages 868 and 869;

Law v. Smith, 68 N. J. E. 81.

Respectfully submitted,

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New Jersey Court of Errors and Appeals

Between

JOSEPH GROSS,
Complainant-Appellant,

and

PENNSYLVANIA MORTGAGE AND LOAN
COMPANY, *et al.*,
Defendants-Respondents.

BRIEF FOR RESPONDENTS.

The complainant filed a bill alleging that the defendants were indebted to him in a large sum of money and sought to set aside the transfer or sale of certain properties on the ground that they were fraudulent under the Act of 1919 known as the "Fraudulent Conveyance Act."

No judgment or lien had been obtained by complainant.

When the bill was filed motion was made to dismiss (S. of C., page 47), and this motion was denied. Subsequently and before this case came on for final hearing the Court of Errors and Appeals decided the case of *United Stores Realty Company v. Asea*, 142 Atl., page 38 (not yet reported in State

reports). Based upon that case on final hearing the bill was dismissed by the Court of Chancery.

The conclusions of Vice-Chancellor Leaming, are found in S. of C., page 165.

The complainant in this case asks to have this Court reverse its decision in the above case and unless that decision is reversed it is dispositive of this case and needs no argument.

LEWIS STARR,
JOSEPH BECK TYLER,
*Solicitors for and of Coun-
sel with Appellees.*

