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**Bill of Complaint.**

Filed June 26, 1925.

## In Chancery of New Jersey.

Between
SAMUEL B. FELD,
Complainant,
and
RUEBEN B. KANTROWITZ, HARRY H. WEINBERGER, ROSE ZUCKER, NATHAN LENZ, JOSEPH SOLOMON, and ABRAM ENDLER,
Defendants.

On Bill, etc. Complaint.

TO HIS HONOR, EDWIN ROBERT WALKER,
Chancellor of the State of New Jersey:

Complainant, residing in the City of Passaic, in the County of Passaic and State of New Jersey, respectfully shows and alleges unto your Honor, the following:

1. That he is a practicing attorney and counsellor-at-law of the State of New Jersey.

2. That on the twenty-fifth day of March, A. D. 1925, your complainant, together with the defendants Rueben B. Kantrowitz and Harry H. Weinberger, and also Emil Hart, Harry Kuller, and Tony Cacoliris, entered into an agreement, to and with one another whereby and wherein it was agreed that the defendant, Rueben B. Kantrowitz purchase the premises known and designated as 12-14 and 16 Lexington Avenue, Passaic, New Jersey, at an agreed price of Two Hundred Six Thou-

sand, Five Hundred Dollars ($206,500.00) in behalf of the following persons, to wit: Rueben B. Kantrowitz, Harry H. Weinberger, Emil Hart, Harry Kuller, Tony Cacoliris and Samuel B. Feld, all of whom were to obtain a one-sixth interest in and to the said property.

3. That in pursuance with said agreement, the said defendant, Rueben B. Kantrowitz did purchase the said lands and premises aforementioned for the price aforesaid, a copy of which said contract is hereto annexed and made a part hereof and referred to herein as Exhibit "A"; and as part of the consideration, it was agreed with one Daniel J. Feldman, who held an option on the said property that he would receive his commission of Five Hundred Dollars ($500.00) from the purchasers in order that a contract might be made between the owners, Nathan Lenz, Joseph Solomon and Abram Endler, and Rueben B. Kantrowitz, as Trustee and agent for Samuel B. Feld, the complainant herein, Harry H. Weinberger, Emil Hart, Tony Cacoliris, Harry Kuller and Rueben B. Kantrowitz.

4. That the said Rueben B. Kantrowitz entered into the said agreement with the owners of the said property in accordance with the contract heretofore referred to, and advanced the sum of Ten Thousand Dollars ($10,000.00) as and for a deposit on account of the said purchase price, each of the parties agreeing to pay a one-sixth part thereof.

5. That thereafter, in pursuance with an agreement made between all of the said parties, towit: Emil Hart, Tony Cacoliris, Harry H. Weinberger,



Harry Kuller and Rueben B. Kantrowitz, they agreed to assign their respective one-sixth interests in and to the said contract unto the said Harry H. Weinberger, who, in pursuance with such an agreement, received an assignment from the said Rueben B. Kantrowitz in and to the said contract. Harry H. Weinberger did then and there pay, to the knowledge and belief of your complainant, the sum of Five Hundred Dollars ($500.00) to Tony Cacoliris, Harry Kuller, Rueben B. Kantrowitz and Emil Hart in payment of their respective interests in and to the said property, and after receiving the assignment of the said contract, he did pay to the said Daniel J. Feldman as and for his commission for the sale of the said real estate the sum of Five Hundred Dollars ($500.00).

6. Thereafter, the said Rueben B. Kantrowitz acquired, by an assignment from the said Harry H. Weinberger, a five-sixths interest in and to the property in question and for which said Rueben B. Kantrowitz, to the knowledge and information of your complainant, agreed to pay to the said Harry H. Weinberger the moneys advanced by him to Tony Cacoliris, Harry Kuller and Daniel J. Feldman, amounting to Fifteen Hundred Dollars ($1500.00), together with an additional sum of Five Hundred Dollars ($500.00), covering the one-sixth interest which the said Harry H. Weinberger had in and to the said premises; and the remaining one-sixth the said Harry H. Weinberger assigned to the complainant herein in consideration of the sum of One Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($1,666.67), so that the said defendant, Rueben B. Kantrowitz, became indebted, after receiving his assignment from Harry

H. Weinberger, in the sum of Three Hundred Thirty-three Dollars and Thirty-three Cents ($333.33).

7. That as a result of the said transfer by the said Harry H. Weinberger, the said Rueben B. Kantrowitz became the owner of five-sixths interest in and to the said contract, pertaining to the sale of the said property, and Samuel B. Feld, the complainant herein, a one-sixth owner.

8. Complainant further alleges that he is a tenant in possession of part of the said premises at the present time, and was continuously in possession at the time of the execution and delivery of the said contract, and for some years prior thereto.

9. That thereafter, the said Rueben B. Kantrowitz fraudulently attempted to dispose of the said premises known as 12-14-16 Lexington Avenue, Passaic, New Jersey and did assign the said contract to Rose Zucker, for a price which the complainant has not been able to ascertain, but at a price which is much higher than the consideration for which it was purchased. Said Rueben B. Kantrowitz did assign the entire contract to the said Rose Zucker, despite the fact that the complainant herein was an undivided one-sixth owner thereof, all of which the said Rueben B. Kantrowitz had knowledge of.

10. That the defendants, Nathan Lenz, Joseph Solomon and Abram Endler had knowledge of the interest which the respective parties had in the said property, and also if the interest which the complainant herein had in and to the same by virtue of the agreement.



11. That the said defendant, Rose Zucker had knowledge of the interest which the complainant had in and to the said premises under and by virtue of his contract from the said Harry H. Weinberger, and that complainant was and is a tenant in possession of the said premises; and that if she, the said Rose Zucker, had no knowledge at that time, such knowledge or information could have been obtained were reasonable inquiry made, so that the interest of the complainant could have been ascertained.

12. That the said defendant, Ruben B. Kantrowitz had no authority of any kind or character which would warrant his right to sell or dispose of the whole of the said premises, said complainant never having agreed to sell his interest in the same.

Complainant charges that he has no adequate remedy in the Courts of Law and to this end, therefore, prays as follows:

1. That the defendants herein, Rose Zucker, Rueben B. Kantrowitz, Harry H. Weinberger, Nathan Lenz, Joseph Solomon and Abram Endler may, to the best and utmost of their respective knowledge, remembrance, information and belief, full true and proper answer make to all and singular, the matters aforesaid.

2. That a writ of subpoena be issued under the seal of this Court, directing and compelling and commanding the said defendants, Rueben B. Kantrowitz, Rose Zucker, Nathan Lenz, Joseph Solomon and Abram Endler, and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Hon-

or, in this Honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by, and perform such order or decree there as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

3. That the defendant, Rueben B. Kantrowitz may be restrained from further consummating said transaction and delivering any deed therefor until the further order of this Court.

4. That the said Nathan Lenz, Joseph Solomon and Abram Endler be restrained from executing and delivering a deed to the said Rose Zucker or Rueben B. Kantrowitz, in accordance with the terms of the contract referred to herein as Exhibit "A" annexed hereto, until the further order of this Court.

5. That the said defendant, Rose Zucker be and she is hereby restrained from accepting or receiving a deed for the said premises until the further order of this Court, and that she be likewise restrained from disposing of, transferring or assigning, in any way, the said contract made between her and the said defenadnt, Rueben B. Kantrowitz, or any part thereof.

6. That the said defendant, Rueben B. Kantrowitz be restrained from transferring, assigning or conveying an interest greater than a five-sixths interest in and to the said premises, to which he is entitled, and the owner of, to the said Rose Zucker.

7. That the said defendant, Rueben B. Kantrowitz, if a deed should be taken in his name, from the owners of the said property, be directed to convey to the said Samuel B. Feld, the complainant herein, an undivided one-sixth interest in and to



the said premises upon the payment of the sum of money equivalent to one-sixth of the purchase price, according to the terms of the contract.

8. That the said alleged contract or assignment made between the said Rueben B. Kantrowitz and Rose Zucker may be set aside on the ground that same was fraud and made with intention to extinguish and vitiate the rights of the said complainant herein and to the said property.

9. That this Honorable Court create a Trust in the said Rueben B. Kantrowitz in and to the said property for and in behalf of the said complainant herein, and likewise shall a trust be created by the said Rose Zucker in behalf of the said complainant herein.

10. That the said defendants, Nathan Lenz, Joseph Solomon and Abram Endler be directed and decreed to convey a five-sixths interest to the said defendant, Rose Zucker and an undivided one-sixth interest to the complainant herein.

11. That a writ of injunction be issued out of this Court and under its seal restraining the defendants herein from carrying out any act or acts until the further order of this Court, which would in any wise, prejudice or jeopardize the right which the said complainant may have in and to the said property.

And that your complainant may have such further and other relief in the premises as the nature

of the case may require, and as shall be agreeable to equity and good conscience.

And your complainant will ever pray, etc.

SAMUEL B. FELD,
Complainant.

EDWARD D. WEISS,
Solicitor of Complainant
and of Counsel.

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*Note.*

A copy of the contract between Endler, et als., and Kantrowitz, Exhibit C-1, printed on page 327 of this State of Case, was attached to the above Complaint.

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**Petition**

containing same allegations and prayers as Complaint and verified by complainant June 26, 1925, was presented to Court and resulted in issuance of following Order to Show Cause:



**Order to Show Cause.**

Filed

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>SAMUEL B. FELD,<br>Complainant,<br>and<br>REUBEN B. KANTROWITZ, HARRY H. WEINBERGER, ROSE ZUCKER, NATHAN LENZ, JOSEPH SOLOMON, and ABRAM ENDLER,<br>Defendants. | On Bill Etc.<br><br>Order to Show Cause. |

The within matter being presented upon the duly verified petition of Samuel B. Feld, the complainant herein, and it appearing that there is due merit to the allegations therein contained, it is therefore on this 26th day of June, 1925, on motion of counsel for the said complainant,

ORDERED that the defendant Rueben B. Kantrowitz be and he is hereby restrained from further consummating the contract which is referred to as exhibit "A", in the bill of complaint with the said Nathan Lentz, Joseph Solomon and Abram Endler, the owners of the said property; and that he is also restrained from further consummating his said contract with the defendant Rose Zucker, until the further orders of this Court; and it is further

ORDERED, that the defendants Nathan Lentz, Joseph Solomon and Abram Endler, the present owners of the said property in question, be and they are hereby restrained until the further orders

of this court from executing and delivering a deed for the said lands and premises in question and described in the Bill of Complaint to either Rose Zucker or Rueben B. Kantrowitz, the defendants herein, and they are also restrained from further consummating the said contract for the sale of the said property in question with the said Rueben B. Kantrowitz and also Rose Zucker; and it is further

ORDERED, that the said Rose Zucker is hereby restrained until the further orders of this Court, from accepting or receiving a deed for the said property from either the said Rueben B. Kantrowitz or the defendants Nathan Lents, Joseph Solomon or Abram Endler; and that she is also restrained until the further orders of this Court from disposing of, or transferring, or assigning the said contract which she has received from the defendant Rueben B. Kantrowitz, or any contract which she has pertaining to the said property in question, and she is also restrained until the further orders of this Court, from assigning, transferring or disposing of any rights or interest in any contract or agreement which she has pertaining to the lands and premises in question, and described in the Bill of Complaint, and it is further

ORDERED, that the defendants herein show cause before this Court at the Chancery Chambers, at Jersey City, New Jersey, on the 27th day of July, 1925, at 10 A. M., or soon thereafter as counsel can be heard, why the said restraint herein shall not be made permanent until the final determination of the within cause; and it is further

ORDERED, that a copy of the petition and or-



der to show cause be served upon the defendants within 4 days from the date hereof, and that the copies may be certified by the solicitor and counsel for the complainant.

Motion to modify or dissolve on two days notice.

EDWIN ROBERT WALKER,
C.

Respectfully advised,
JOHN BENTLEY,
V. C.

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## Answer of Reuben B. Kantrowitz.

Filed July 27, 1925.

IN CHANCERY OF NEW JERSEY.

| | |
|---|---|
| Between<br>SAMUEL B. FELD,<br>Complainant,<br>and<br>REUBEN B. KANTROWITZ, *et als*,<br>Defendants. | On Bill, &c.<br>Answer. |

Defendant, Reuben B. Kantrowitz, residing in the City of Passaic, in the County of Passaic, and State of New Jersey, answering the bill of complaint filed in the above stated cause, says that:

1. He admits the allegations therein contained.

2. He denies each and every allegation therein contained.

3. He denies each and every allegation therein contained.

4. He denies each and every allegation therein contained, but avers that in his own behalf exclusively, he made a contract for the purchase of said property and on the execution thereof, paid to the vendor the sum of Ten Thousand Dollars, ($10,000.00), on account of purchase price, in accordance with the terms aforesaid contract, purchased by complainant that he nor any other person other than this defendant, has had any interest in the said property in this, and by virtue of this contract or any other alleged agreement.

5. He denies each and every allegation therein contained.

6. He denies each and every allegation therein contained.

7. He denies each and every allegation therein contained.

8. He admits the allegations therein contained, but alleges that when he in his own behalf exclusively, made a contract for the purchase of said property that the complainant was then, and for some time prior thereto, a tenant in possession of part of said premises.

9. Defendant denies each and every allegation therein contained.

10. Defendant has no knowledge or information sufficient to form a belief, with respect to the allegations contained in paragraph 10, and leaves complainant to make proof thereof in accordance with law, and defendant further alleges, that neither the complainant nor any other person than this defendant, had any interest in the said property, or the contract which he made for purchase of said property.



11. Defendant has no knowledge or information sufficient to form a belief with respect to the allegations of paragraph 11, and leaves complainant to make proof thereof in accordance with law, and defendant further alleges, that when he made a contract for the purchase of said premises he did so on his own behalf, and that neither the complainant nor any other person other than this defendant, had any interest in the said property described in the said contract.

Defendant admits that when he made said contract on his own behalf that the plaintiff was in possession of said premises.

12. Defendant denies each and every allegation therein contained, and asserts that neither the complainant nor any other person other than this defendant, had any interest in the said property, of the said contract, and that the complainant was the sole partner interested, and that he had full power, and legal right to assign his interest with respect to the whole of said contract.

FEDER & RINZLER,
Solicitors of Defendant
Reuben B. Kantrowitz.

## Answer of Harry H. Weinberger.

Defendant, Harry H. Weinberger, answering the bill of complaint filed in the above entitled cause, says:

1. Each and every allegation alleged in paragraphs 1, 2, 3, 4, 5, 6, and 7 is admitted.

2. Defendant has no knowledge or information sufficient to form a belief, as to the allegations contained in paragraph 8 and leaves complainant to make proof in accordance with law.

3. As to paragraph 9, defendant has no knowledge or information sufficient to form a belief except that he alleges that the said Reuben B. Kantrowitz was only entitled to five-sixths of the property and Samuel B. Feld one-sixth, as is alleged in said paragraph and that whatever disposition was made of said property by the said Reuben B. Kantrowitz this defendant has no positive knowledge of but leaves complainant to make proof in accordance with law.

4. Defendant has no knowledge or information sufficient to form a belief as to the allegations contained in paragraphs 10, 11, and 12 and leaves complainant to make proof in accordance with law.

FIRST SEPARATE DEFENSE.

This defendant claims no interest in and to said property and claims further that the one-sixth to which he was entitled in said property he did assign, set-over and transfer, as alleged in the bill of complaint, and claims to have no interest in said property except that said Reuben B. Kantrowitz is indebted in the sum of Three Hundred thirty-three dollars and thirty-three cents ($333.33) to him, representing the balance due on account of moneys advanced by this defendant and crediting thereon the amount received from Samuel B. Feld, his one-sixth interest.



Wherefore this defendant respectfully prays that the bill of complaint may be dismissed insofar as it affects the said defendant, the said defendant claiming no interest in and to said property, with his costs in this behalf.

Dated: August 1st, 1925.

WEINBERGER & WEINBERGER,
Solicitors of Harry H. Weinberger.

I hereby consent to the filing of the within answer as of within time.

WARD & McGINNIS,
Solicitors of Complainant.

---

## Reply to Answer of Harry H. Weinberger.

Complainant, Samuel B. Feld, replying to the answer filed by Harry H. Weinberger, states:

1. Complainant hereby joins issue with the allegations contained in paragraph "2" of the Answer.

2. Complainant joins issue with the allegations contained in paragraph "3" of the Answer with the exception of any statements therein contained which are not denied.

3. Complainant joins issue with the allegations contained in paragraph "4" of the Answer.

REPLY TO FIRST SEPARATE DEFENSE.

Complainant has no knowledge or information with reference to the account of Three Hundred thirty-three dollars and thirty-three cents ($333.33), but states that he received an assignment of a one-sixth interest in and to the contract covering the property in question, for which interest the complainant paid the said defendant, Harry H. Weinberger, the sum of One Thousand Six Hundred Sixty-six Dollars and Sixty-seven Cents ($1,666.67).

WARD & McGINNIS,
Solicitors and Counsel with Complainant.

## Testimony.

IN CHANCERY OF NEW JERSEY.

Between
SAMUEL B. FELD,
Complainant,
and
REUBEN B. KANTROWITZ, *et als*,
Defendants.
} On Bill &c.

Transcript of the testimony taken in the above-stated cause, on final hearing, at the Chancery Chambers in Jersey City, on Thursday, May 20, 1926, at 10 o'clock in the forenoon, before his Honor JOHN BENTLEY, Vice-Chancellor.

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APPEARANCES:

SAMUEL B. FELD, ESQ., *pro se*,
PETER J. MCGINNIS, ESQ., of Counsel.
For the Complainant;

JACOB L. NEWMAN, ESQ.,
For defendant Rose Zucker.
JOSEPH A. FEDER, ESQ., Solicitor,
ARTHUR T. VANDERBILT, ESQ., of Counsel,
For Defendant Kantrowitz.

---

The Court: Now, gentlemen, are you ready?
Mr. Newman: Yes, sir.



*Testimony.*

The Court: How many witnesses do you intend to swear?

Mr. Newman: I represent the defendant Mrs. Rose Zucker.

Mr. McGinnis: We will see your Honor how much is necessary. Maybe some things will be admitted.

Mr. Newman: I was wondering, before the Senator opened his case, whether it wouldn't be the proper time to move to dismiss the bill, and that would bring up the entire case. I don't think there are many disputed facts in the case.

The Court: What I think I shall do is to hold the motion to strike until after the hearing. I will not deal with it until at least I have heard the opening arguments.

Mr. Newman: Very well.

Mr. McGinnis: If the Court please, the complainant in this case is Samuel Feld, and the subject of the controversy is a piece of land at 12, 14 and 16 Lexington Avenue, in the City of Passaic, consisting of a two-story building, with stores on the first floor and offices on the second, five tenants in all, of whom the firm of Feld, Weiss & Fels are one of the tenants and the complainant, Samuel B. Feld is a member of that firm.

In the spring of 1925, in March, Mr. Feld the complainant, and a man named Reubin B. Kantrowitz, Harry H. Weinberger and three others, six in all, formed a little syndicate to buy this property. They got together and appointed Kantrowitz their agent to obtain a contract, and a contract was made by Kantrowitz by which the land was to be purchased for $206,000, and $10,000 was paid down by Kantrowitz as a deposit, the $10,000, however, coming from one of the members of the syndicate paid on behalf of the others.

Later on, Mr. Weinberger bought out all of the interests excepting Mr. Feld's, intending to take title himself. But there was a change of plans in that respect, and Mr. Weinberger then assigned—I am getting ahead of my story. This contract was made by Kantrowitz, and then Mr. Weinberger assigned a one-sixth of the contract to Mr. Feld; in other words, he recognized Mr. Feld's one-sixth interest in the contract, and then he assigned the remaining five-sixths interest, so that when these assignments were made Mr. Feld held a one-sixth undivided interest in this contract and Mr. Kantrowitz held a five-sixth interest, and Mr. Feld was a tenant in possession.

Kantrowitz after that made an assignment of this contract, or entered into an agreement of some kind with Mrs. Rose Zucker, represented here by Mr. Newman, but instead of assigning to her the five-sixths interest he attempted, or did, make a transfer of the entire interest; in other words, ostensibly six-sixths of the contract.

We then filed a bill in this court in an attempt to enjoin Kantrowitz from carrying out this agreement and transferring our one-sixth interest, and asking for relief so that we would be protected in our one-sixth interest.

The defendant Rose Zucker has replied that she holds a six-sixth interest in the contract and that she is innocent of any knowledge of our equity and challenges our contention in this case that she was charged with constructive notice that we are tenants in possession. That is what we are to establish here today, namely, that Mr. Feld is a tenant in this property; that six persons did get together to buy this property of whom Mr. Feld was one; that they appointed Kantrowitz their agent and



Kantrowitz got the contract in his name, assigned this contract to Weinberger, and Mr. Weinberger, in recognition of our interest, assigned his interest, and that we at all times remained in possession and have never parted with our interest and are still in possession. Also, if your Honor please, the then owners of the land, Messrs. Solomon, Endler and Lenz, also had full knowledge of the fact that Mr. Feld had a one-sixth interest in this contract, and I am just now informed that they made that known to them, too. That is our case.

The Court: Well, how much of that statement of facts do you agree with, Mr. Newman?

Mr. Newman: Well, the defendant here has no knowledge of any of the facts that he has stated that transpired prior to her acquiring the contract. I don't assume that it would make any difference, so far as I am concerned, whether I admit, for the purposes of this argument, that those facts are substantially as stated. I mean, we don't know anything about the making of the contract between themselves and this so-called syndicate, or what happened. We don't know anything about it at all.

The Court: Of course, I understand your entire defense is that you knew nothing about it at the time you acquired it; but I mean now, as a representative of this defendant and as an officer of this court, will you dispute the treating of this property and the signing of the contract?

Mr. Newman: No, I will not dispute it.

The Court: What about the last statement of fact that Senator McGinnis touched upon?

Mr. Newman: That, of course, we don't admit.

The Court: You deny that?

Mr. Newman: Absolutely. This is the first time that that has been brought forth. The Senator has

stated in his brief that there was never any question of notice to Mrs. Zucker, and he has stated that on his feet, and, of course, we deny that.

The Court: Now doesn't that, gentlemen, narrow the issue to the conveyance of one of the former owners to Mrs. Zucker, that is, Mr. Field's interest in the land, before she took title? Isn't that the only fact really in dispute?

Mr. McGinnis: I have always insisted that that is the big issue in this case. I wish to say, also, that we shall contend constructive notice that I have spoken of. Also the fact that she has taken her interest by assignment from Mr. Kantrowitz puts her in a little different position than if it was an absolute conveyance. In other words, there being the relation of assignee and assignor, they are put upon notice; the assignee stands in the shoes of the assignor. It is like a commercial paper where the endorser, a third person, says he knew nothing about it.

Mr. Newman: I think that is correct, as your Honor outlined; that is the only effectual question at issue here.

Mr. McGinnis: And one other question, and that is this: If by any chance your Honor finds against me, Kantrowitz is defendant here and I think your Honor having jurisdiction of one part that you will demand jurisdiction over everything and that we have money relief.

The Court: Who represents Mr. Kantrowitz?

Mr. Newman: Mr. Feder represents him.

Mr. McGinnis: We subpoenaed him to produce his contract.

The Court: Do you pray for such relief in your bill?

Mr. McGinnis: I think not; I think for general relief only.



The Court: Well, that is enough. Whether you pray for it or not, you do set forth the facts with which you charge Kantrowitz, and that being so, under the rules you would be entitled to any relief that is fair without praying for it. I think you had better, of course, cover, briefly but sufficiently, the negotiations &c. as against Mr. Kantrowitz, not as against Mrs. Zucker, that led up to the assignment. Of course, there will have to be some sworn proof on that, because Mr. Kantrowitz is not here to admit it.

Mr. Newman: I understand from Mr. Jaffe that Mr. Kantrowitz will be here in a minute.

---

SAMUEL B. FELD, sworn in his own behalf testified as follows:

Direct-examination by Mr. McGinnis:

Q. You are the complainant in this case? A. I am, sir.

Q. You are a lawyer by profession? A. Yes, sir.

Q. And your offices are where? A. Benson Building, 12 to 16 Lexington Avenue, Passaic.

Q. And 12 to 16 Lexington Avenue is the property which is the subject of this suit? A. Yes.

Q. What does it consist of? A. It is a two-story brick building, having three stores on the ground floor and offices on the second floor.

Q. How many tenants in all, counting the stores and offices, are there in that building? A. I think there are six tenants.

Q. And of the six tenants your firm is one of the tenants; is that right? A. Yes, sir.

Q. Your firm being known as Feld, Weiss & Feld? A. Yes, sir.

Q. This situation that you describe—was that the situation in March, 1925? A. Yes, sir.

Q. Were you a tenant in the building at that time? A. I was.

Q. Do you know the then owners of the building, Messrs. Solomon, Lenz and Endler? A. I do.

Q. And they were your landlords? A. Yes, sir.

Q. And were you personally acquainted at that time with Mr. Reuben Kantrowitz? A. I was.

Q. Was there any person who arranged a syndicate for the purchase of this building around that time? A. Yes, sir.

Q. Who constituted this group? A. Mr. Emil Hart and Mr. Cacoliris—

Mr. Newman: Allow me to enter a formal objection so far as the defendant Rose Zucker is concerned. I understand this is not binding upon her in any way; she wasn't present and knew nothing of it.

Mr. McGinnis: This is simply preliminary.

A. Mr. Emil Hart, Mr. Tony Cacoliris, Mr. Kantrowitz, Mr. Harry Weinberger, and Mr. Kuller, and myself.

Q. Did this group or syndicate make any arrangement to buy this property? A. They did.

Q. And who was appointed the agent to carry out the plan? A. Mr. Kantrowitz.

Q. Reuben Kantrowitz? A. Yes, sir.

Q. Was there a contract made between Reuben Kantrowitz and the then owners of the premises? A. There was.

Q. Do you know when that contract was made? A. That was on the 19th of March, 1925.



Q. And how much was the land to be bought for? A. The land?

Q. The land and premises. A. For $210,000. A. Mr. Feltman in my office had an option on this property for $210,000 with the commission which would amount to $5,000, and Mr. Feltman was satisfied, because I was personally interested in the property, to take $500 in lieu of his commission and let the balance go in reduction of the purchase price.

Q. So the property was agreed to be bought for $206,000? A. It was.

Q. Do you know of Mr. Kantrowitz getting a contract from the owners for that property? A. Yes, sir.

Mr. McGinns: Is Kantrowitz here?

Mr. Newman: Here he is (pointing to Mr. Kantrowitz).

Q. Will you produce that contract. Have you got it? A. No, that was—

Mr. Newman: You mean the original contract? Here it is. It has been recorded and the assignment of Rose Zucker is on the back.

Mr. McGinnis: May I offer in evidence so much of this excepting the assignment, at this stage of the case?

Mr. Newman: All right.

(The same is marked "Exhibit C-1")

Q. How much was paid down? A. $10,000. Let's see (witness refers to C-1) $10,000.

Q. Of this $10,000 did you contribute any part of it? A. Not at that time.

Q. When did you? A. On April 3d, 1925, when

I paid Harry Weinberger one-sixth of $10,000 for a one-sixth interest in the contract for the property, and for which I received an assignment indicating my undivided one-sixth interest.

Q. Was Mr. Weinberger a sort of treasurer of this syndicate? A. Well, he had charge of it; he obtained and assigned the contract.

Q. I will come to that later. He was the treasurer, was he, of the group? A. I believe he was.

Q. After this contract was then taken by Mr. Kantrowitz, as shown there, was there any arrangement made by which the parties in interest had made any assignment to Mr. Weinberger? A. Yes, sir.

Q. Just tell us, briefly, about that. A. After the contract was entered into we met a number of times in Mr. Weinberger's office for the purpose of creating a corporation for this particular property, and the persons interested were the six that I have mentioned and they were to take an equal interest in the shares of stock of the corporation. I think at that time, the last visit or meeting, the corporation was named The Lexington Realty Company, and the certificate of incorporation was at that time dictated by Mr. Jaffe, who was also interested in the corporation with Mr. Kantrowitz, and the certificate was dictated by Mr. here who is sitting next to Mr. Jaffe. That did not materialize, however, and later on, on the 7th of March, we all assembled again at the office of Mr. Weinberger, and it appeared there was some controversy as to who should be really members of this corporation. Some were not satisfied—

Q. Get right down to it. The corporation didn't go through, did it? A. No. The fact is that Mr.



Kantrowitz assigned the entire contract to Mr. Weinberger.

Q. By "Mr. Weinberger" you mean Mr. Harry H. Weinberger, one of the members of the syndicate? A. Yes, sir.

Q. Did you see the assignment to Mr. Weinberger? A. Yes, sir; that was executed in my presence.

Mr. Newman: Have you the assignment to Harry Weinberger?

Mr. McGinnis: We haven't been able to find it.

Mr. Newman: That was supposed to be in writing?

Mr. McGinnis: Yes.

Q. That assignment was in writing? A. Yes, that assignment was in writing.

Q. Have you got that assignment? A. I have not, sir.

Q. Do you personally know where it is? A. I do not.

Q. Who prepared that assignment? A. Mr. Hartstein, a lawyer in New York, who was in the office at the time. He prepared copies on a sheet of yellow paper, and Mr. Kantrowitz signed it and turned it over to Mr. Weinberger.

Q. And did you, in turn, receive anything from Mr. Weinberger? A. Not at that particular time.

Q. And what did you receive from Mr. Weinberger? A. On April 3d, 1925, I appeared at the Service Trust Co. and gave Mr. Weinberger my check for $1666., I think it was, covering one-sixth of $10,000, and obtained an assignment from him indicating one-sixth interest.

Q. Is that the assignment (showing witness paper)? A. Yes, sir.

*Samuel B. Feld—Direct—for Complainant.*

Q. Is that Harry H. Weinberger's signature there? A. Yes, sir.

Q. By the way, can you tell who is the subscribing witness? A. Ruth H. Lentz, Secretary to Mr. Weinberger.

Mr. McGinnis: I offer the assignment in evidence.

Mr. Newman: No objection on our part.

(Admitted and marked "Exhibit C-2")

Q. What was done with relation to the other five-sixths interest at that time? A. I was later on informed—

Q. I mean, what you know of your own knowledge. A. I don't know except what I was informed.

Q. Now, at the time that this assignment was drawn by Mr. Hartstein, from Kantrowitz to Mr. Weinberger, was there any money passed? A. There was.

Q. Just tell us about that. A. As soon as Mr. Weinberger obtained the assignment of the entire contract to himself he immediately paid out to Mr. Daniel H. Feldman a check of $500. as his commission, and also paid out a check of $500. to Mr. Tony Cacoliris, and I believe he made out a check to Harry Kuller.

Q. Do you know what that check was for? A. It represented the value of the interest that they, respectively had in the property. In other words, they figured $500 was the price to buy one another out and he bought each one out.

Q. Who do you mean by "he"? A. Mr. Weinberger.

Q. Now, you say Kantrowitz was present when this took place? A. Oh, yes, he was there.



*Samuel B. Feld—Direct—for Complainant.*

Q. And do you know whether Kantrowitz saw you get this assignment of one-sixth interest from Mr. Weinberger, which has been marked in evidence "Exhibit C-2"? A. He was not there when I obtained this, but he knew about it.

Q. How did he know about it? A. I told it to him and Mr. Weinberger told it to him, and the other members interested also told him that.

Q. Now, all this time you were in possession of the offices, I believe? A. We were and still are.

Q. After that did you ever come in contact with Rose Zucker? A. Never saw her.

Q. You mentioned, I believe, that Mr. Kantrowitz assigned six-sixths interest to Mrs. Zucker; is that right? A. Yes, sir.

Q. Now, up to that time had Reuben Kantrowitz ever made any claim to you that he had a five-sixths interest? A. No, sir. In fact, I had a number of conversations with him and told him that it was my desire to take title about June 1st, because I had the money in hand and, in view of the fact that the building required no heating during the summer months we would be saving that much expense by taking the property immediately and obtain the benefit of the rents. I also told him at that time that it was time for the taxation of property, and I asked him whether or not he had examined the record in the tax office to see whether or not the tax rate had been increased on this property, so that if it was we would be in position to protect ourselves by appealing to the County Tax Board for a reduction of the taxes, and he told me in reply that he had looked over the matter and that the taxes were lower than they were the year previous. He then told me that he would get busy and get together with his money and let me know as soon as

possible, so that we could make a deposit.

Q. He never did that? A. No, sir.

Q. And did you at any time assert to anybody that Reuben Kantrowitz owned the entire interest in that property? A. No, sir; absolutely not.

Q. After Mr. Kantrowitz had sold his interest to Mrs. Zucker do you recall of any instance of Kantrowitz offering you a share of his profits? A. Yes, sir, on a number of occasions he offered me $500 which he said he figured as being one-sixth of the profits that he made on the deal. He told me that at that time at my request. I said to him, "Well, how much did you get for this property? Don't you think it was known that I was interested in this property and that you ought to ask me whether I would consent to sell it?" He says, "Well, I thought you would be satisfied, and I sold the property for $212,000 and after paying out a commission of $500 I figured your interest would be worth $500 and I will give you that at any time you want". He offered me that a number of times, and I told him I didn't have an interest to sell in that way, and I insisted upon getting one-sixth of the property and I wanted it at that time.

Q. Had you ever authorized Kantrowitz to sell your interest? A. Never.

Q. The landlords, Messrs. Endler, Solomon and Lenz—did they have knowledge of your interest in this property? A. Yes, sir; they did.

Q. How do you know that? A. The fact is this: Mr. Cacoliris and I were dickering about the purchase of the property and we were not in financial condition at that time to take the entire building and so we were dickering around with Harry Larkey, of the firm of The Larkey Company, and we agreed that Mr. Cacoliris and I were to take one-



fourth interest in the property if Messrs. Larkey were to take the other half, and we agreed upon the nature of the contract and they all appeared at my office at three o'clock that afternoon of March 19th, and when it came to draw the contract Mr. Harry Larkey's older brother—I don't know his first name —well, he said that his brothers are all married men and "our proposition is we will take the entire property. I told Mr. Endler and Mr. Solomon at that time that I was personally interested in this property and my intention was to get one-quarter interest, and if I couldn't get it I would get some other persons interested, and I would get somebody on the job; and we finally got six persons I have mentioned into the bidding of this property, and a contract was made, with the full knowledge of the fact at that time that I was to get a one-sixth interest. And after I obtained a written assignment from Mr. Weinberger and paid him I also notified the owners of that fact and I exhibited to them the assignment obtained from Mr. Weinberger.

Q. Have you the check that you gave to Mr. Weinberger? A. I have, sir; it is right in my bag. (Witness leaves the stand and produces paper.) Yes, sir; here it is, a check bearing date April 3d, 1925,—check No. 1043, payable to Harry H. Weinberger, for $1606.07.

The Court: Is it going in evidence?

Mr. McGinnis: Yes, sir; I am going to tear that check out and put it in evidence. I now offer it.

Mr. Newman: Ask him when it cleared the bank.

Q. Do you know when that went through the bank? A. I do not, other than from the stamp that is on the check.

Q. Paid April—

The Court: The check speaks for itself.

Mr. Newman: No, it says June 25th—"6-25". The Court will be able to inspect it.

The Court: Any objection?

Mr. Newman: No.

(The same is marked "Exhibit C-3")

Mr. McGinnis: I think that is all.

Cross-examination by Mr. Weinberger:

Q. Mr. Feld, the contract for the sale of this property to Mr. Kantrowitz I understand was executed in your office, was it? A. It was.

Q. At whose request was it that you obtained the property for Mr. Kantrowitz? Who came to you and spoke to you with regard to obtaining that property for Mr. Kantrowitz and the syndicate? A. After the deal with Larkey couldn't go through I immediately had my brother Edward, who was connected with me in my firm, get busy with Mr. Cacoliris and get the other boys together, and I believe they were responsible for the persons gathering there.

Q. What time was the deal closed? A. You mean the contract?

Q. Yes. A. Oh, around 12 or half past 12 at night.

Q. What attorney was representing Mr. Kantrowitz's interest? A. Jacob I. Jaffe.

Q. During the time you were at the office of



Weinberger & Weinberger was Mr. Jaffe there? A. He was.

Q. Was that the time the certificate of incorporation was prepared? A. Yes.

Q. Were all the six persons present at the time? A. I don't remember. I don't think all of them were present.

Q. Who do you recall as being present? A. I think Mr. Hart was there, Mr. Harry Kuller, Kantrowitz was there, Mr. Jaffe was there, and, later on, you came into the room.

Q. With whom was this contract, which was executed and marked in evidence, left after the execution of it at your office? A. With me.

Q. And to whom did you deliver that contract? A. I delivered it to you.

Q. And when was it delivered to me? A. The date I obtained an assignment from you, April 3, 1925.

Q. And to whom did I deliver that contract with the assignment of five-sixths and the one-sixth to yourself? A. I do not know, except you told me you gave it to Mr. Kantrowitz.

Q. Did you, as a matter of fact, afterwards ascertain that from Kantrowitz? A. I did.

Mr. Kantrowitz: If the Court please, in the absence of my attorney I find myself in a position where I desire to object to certain questions Mr. Weinberger has propounded to the witness, especially the last question, "Does he know what happened to the contract".

The Court: What is the ground of the objection?

Mr. Weinberger: I don't want to take ad-

vantage of the defendant, if your Honor please. I didn't know his counsel wasn't here. I don't want to ask anything improper.

The Court: What is your objection to it, Mr. Kantrowitz?

Mr. Kantrowitz: He asked him, "Do you know what happened to the contract"; what did I do with it. How can Mr. Feld know that?

The Court: The first question is objectionable. What Mr. Weinberger told Mr. Feld may be stricken out.

Mr. Weinberger: Mr. Weinberger happens to be one of the defendants in this case; that is why I didn't ask to have it stricken out. Your Honor will appreciate the fact that the question and answer were perfectly proper because there are several defendants here, and what might not be proper to bring out on the part of Mr. Weinberger might be proper on the part of the other defendants.

The Court: Yes, it would be, but you have no right to bring your own declaration. The complainant has the right to show any declaration against interests that you have made, but you have no right to bring it out.

Mr. Weinberger: But your Honor will appreciate the fact that this contract is to be a bisected affair, and each half would be evidential, or each statement made would be evidential, for the purpose of establishing a chain. It might not be binding against these defendants, but it might be binding upon the specific defendant that made the offer, and I think the questions and answers given are perfectly proper.



The Court: Yes, but here is a man who finds himself unexpectedly put to defending himself because his counsel hasn't appeared, and I am not going to strictly enforce the rule. Are you a member of the bar, Mr. Kantrowitz?

Mr. Kantrowitz: No, I am not.

The Court: Go on. The last thing he said about it was he learned about it from Kantrowitz.

Mr. Weinberger: I don't want to be put in the position of asking a question again that would seem to take advantage of the defendant. If he wants any protection, so far as his legal rights are concerned he ought to ask for it while waiting for his counsel.

The Court: It is now 11 o'clock and the absence of his counsel is a misfortune; but I am not going to make his misfortune any heavier than it is. Mr. Newman, this is clearly stamped "April 6, 1925", this check is. I will tell you what the trouble is: The stamping machine was defective or defectively applied. That first character that partly appears is unquestionably the commercial form of the date. Every check perforator that I have ever seen gives the month first then the day of the month, and lastly the year.

Mr. Newman: I guess your Honor is right about that.

The Court: If you strike a line of dots at an angle of 45 degrees with a horizontal and then drop in a perpendicular direction to these two first dots of perforation that appear on the date line you will have a perfect

figure 4. The fact is, that some of the punching needles havn't gone through the paper.

Q. Mr. Feld, when you met at the office who dictated and prepared the certificate of incorporation? A. Mr. Jaffe.

Q. Have you got his papers here? A. No, sir; they were retained by Mr. Jaffe and Kantrowitz.

Q. Now, as a matter of fact, Mr. Feld, what was the reason why a corporation wasn't formed? A. Some objected to being associated with others in the corporation.

Q. With what result? A. That either one sell to the other their respective interests.

Q. And who were present when these negotiations in regard to selling out their respective interests were had? A. Mr. Tony Cacoliris was there, Mr. Hart, Mr. Harry Kuller, Mr. Kantrowitz, Mr. Benjamin Hartstein of New York, Mr. Edward A. Weiss, you were there, and I, of course.

Q. How long did those negotiations last, from what time until about what time? A. Well, I believe, to the best of my recollection, from the latter part of the afternoon until about 8 o'clock, I think.

Q. In the evening? A. Yes, sir.

Q. At that time there was an assignment drafted by Mr. Hartstein in his own handwriting which was signed by Mr. Kantrowitz? A. Yes, sir.

Q. Were there any checks delivered at that time to any individual? A. There were.

Q. Was there a check delivered to Mr. Cacoliris for $500? A. There was.

Q. Was he one of the men in the syndicate who agreed to sell out his interest in the property? A. Yes, sir.



Q. I show you a check and ask you if you saw that check delivered to Mr. Cacoliris at that time? A. I did.

Q. Was Mr. Kantrowitz present when that was done? A. Yes, sir.

Mr. Weinberger: I ask that that be marked for identification.

The Court: Are you going to eventually offer it?

Mr. Weinberger: I am.

The Court: Do you want to offer it now?

Mr. McGinnis: I have no objection.

The Court: There is no jury here and I don't adhere strictly to the rule that you cannot put it in except in your own case.

(Admitted and marked "Exhibit D-1".

Q. Did Mr. Daniel Feldman receive a check for $500? A. Yes, sir; he did.

Q. Will you state what connection Mr. Feltman had in this transaction and whether Mr. Kantrowitz and the syndicate agreed to pay him his commission. A. Mr. Feltman is a real estate broker and he obtained an option from the owners, Messrs. Endler, Solomon and Lenz to sell the property for $210,000 and he was to have a commission of $5,000; but because he is connected with my office and I was personally interested in the deal, and in view of the fact that it was the last day of his option to see the deal through he said he would allow me his entire commission, but we were to pay him $500, and that was agreed upon.

Q. Who made that agreement with Mr. Feltman and who was present when it was made? A. Kantrowitz, Jaffe, Mr. Weiss in my office, Endler, Solo-

mon and Lenz, and my brother and myself. I can't think of any more at present.

Q. What have you to say in regard to the fact as to whether Endler, Solomon and Lenz would have a desire to sell that property unless this commission was paid and their option returned to them? A. They wouldn't sell it.

Q. Was that check delivered to Mr. Feldman at the time this syndicate was selling out its interest? A. Yes, sir; it was.

Q. And at the time of the execution of this assignment to Mr. Weinberger? A. Yes, sir.

Mr. Weinberger: I offer the check in evidence.

(Admitted and marked "Exhibit D-2).

Q. Was there a check made out to Mr. Hart at that time? A. There was.

Q. Whom was it delivered to? A. Mr. Kantrowitz.

Q. Was there a check made out to Mr. Kantrowitz at that time, do you know? A. I don't remember; I don't think there was.

Q. Who else was to receive $500 besides Mr. Feltman, Mr. Cacoliris? A. Mr. Hart, Mr. Kuller, Cacoliris, and Kantrowitz, except myself. I retained one-sixth interest.

Q. Now, Mr. Feld, after this arrangement had been concluded and these checks in fact issued and delivered as you have already stated, did you agree to deliver the contract to anyone for the property, which you retained at the time it was made at your office? A. I agreed to make an assignment to you and deliver the contract to you to be held for the purposes agreed upon.



Q. And was that, in fact, done? A. Yes, sir, on April 3, 1925.

Q. You then gave to Mr. Weinberger a check for how much? A. $1666.67, I think it is. The check is there.

Q. So that that is the check representing your one-sixth interest and representing the advance made by Mr. Weinberger to Cocoliris, Feltman, Mr. Kuller, and one-third of what was due to Mr. Weinberger, or thereabouts? A. I believe it is.

Q. Now, was there ever any question that you and Mr. Kantrowitz were the owners of that property up to the time that you learned that he had sold that property to Mrs. Zucker? A. There was not.

Mr. Weinberger: That is all.

Mr. Newman: I have no cross-examination on behalf of Mrs. Zucker; but of course my objection goes to all of this testimony, on the ground that it isn't binding on Mrs. Zucker, and I so intend without repeating my objection.

Mr. McGinnis: Except such questions of law growing out of the relationship.

The Court: Of course, there is no jury here and I can deal with it when I come to decide the case.

Cross-examination by Mr. Feder:

Q. Did you name, Mr. Feld, the persons that were present in Mr. Weinberger's office when this conversation was had concerning a division of the money and how much each individual was to get? If you didn't, please do it.

Mr. McGinnis: He did, if your Honor please.

A. I have already testified to that fact.

Q. Did you testify that Mr. Hartstein was there? A. He was.

Q. Was Kuller there? A. Yes, sir.

Q. Mr. Hart? A. Yes, sir.

Q. And Mr. Cacoliris? A. Yes, sir.

Q. And Mr. Jacob Jaffe? A. At the time of the division of the moneys when the contract was assigned?

Q. No, at the time you were all together in Mr. Weinberger's office, in reference to Exhibits C-1 and C-2? A. Jaffe was not there.

Q. Was there any other talk about this property, aside from the talk on the date on which these checks were issued? A. There was a disagreement as to the members of the corporation, and because of that disagreement Mr. Weinberger offered to buy out everyone's interest at $500 apiece, and that was accepted and the checks were made out, and that is all that transpired, and after that I left.

Q. Did Mr. Emil Hart get his check? A. No, sir, the check was left—

Q. So that— A. Wait a minute, I haven't finished.

Mr. McGinnis: I want him to have a chance to answer the question.

Mr. Feder: I asked him—

The Court: Wait a minute, Mr. Feder; don't get excited about it. Cross-examining counsel has the right to have a categorical answer and having been answered of course he will have a chance to explain on redirect.



A. He ordered his check to be left with Mr. Kantrowitz.

Mr. Feder: I ask that that be stricken out as not responsive.

Q. Did Mr. Emil Hart get his check?

The Court: He says no.

A. At that time; no, sir.

Q. Did you leave that afternoon the same time that Mr. Kantrowitz did or did you leave before? A. At that particular night?

Q. When these checks D-1 and D-2 were issued? A. I left before, because we had an appointment to be at the game between Passaic and Hackensack, which was the final game at the Paterson armory.

Q. Then you left before? A. Yes.

Q. Then you weren't actually present when these checks were drawn up? A. I was.

Q. Who drew them up? A. Mr. Harry Weinberger.

Q. In your presence? A. Yes, sir.

Q. And delivered them in your presence? A. Yes, sir.

Q. Was Mr. Cacoliris there to accept his check? A. Yes, sir.

Q. Don't you know that Mr. Weiss took over Cacoliris's check? A. He was there with Mr. Cacoliris.

Q. My question is, don't you know that he took this check D-1? A. Mr. Cacoliris got the check from Mr. Weinberger.

Q. Weren't you at that time representing Mr. Cacoliris? A. No.

Q. Weren't Feld, Weiss & Feld representing Mr. Cacoliris in legal matters at that time? A. Not in this particular transaction.

Q. I am not asking you that—

Mr. McGinnis: I object, on the ground that this is not cross-examination. Whether the checks were physically handed to one person or to another person other than Kantrowitz it seems to me is entirely irrelevant.

The Court: Unfortunately, I can't agree with you, because you brought out the incident. I will allow it. (Addressing the witness) The question is whether or not your concern was representing Cacoliris at that time in his legal matters.

A. Mr. Weiss was there to see that he was taken care of.

Q. My question was whether or not you individually or any member of your firm of Feld, Weiss & Feld represented Mr. Cacoliris in his legal affairs about March 27, 1925. A. Yes, sir.

Q. As a matter of fact, Mr. Weiss was there on that particular date representing Tony Cacoliris, wasn't he? A. He was.

Q. In reference to this particular case? A. Yes, sir.

Q. What did you mean when you said before that your firm wasn't in any way representing him? Isn't Edward A. Weiss a member of your firm?

Mr. McGinnis: I object to that.

The Court: Well, that is argumentative.

Q. Were you there, Mr. Feld, when Mr. Hartstein was drafting something on yellow paper in his own handwriting and insisting upon some signatures, one of which signature he was insisting upon was that of Mr. Reuben Kantrowitz?



Mr. McGinnis: There are two questions there.

The Court: It might better be reframed.

Q. Weren't you present when Mr. Hartstein presented some yellow sheets to Mr. Kantrowitz and asked him to sign it? A. I was present when Mr. Hartstein prepared an assignment on a yellow sheet of paper, and Mr. Kantrowitz signed it.

Q. Have you seen that contract and assignment since? A. I have not.

Q. Haven't you been in consultation with Messrs. Weinberger & Weinberger who represented Benjamin Hartstein, examining this assignment?

Mr. Weinberger: I object to the form of the question, on the ground that there is no proof before this court that we represented him.

Mr. Feder: I withdraw that part in regard to their representing him.

Q. Weren't you in consultation with Mr. Harry H. Weinberger or Joseph Weinberger concerning this assignment since it was drafted and since it was assigned as you allege? Yes or no. A. I inquired about it.

Q. Then you were in consultation with him? A. I wouldn't say that that was a consultation.

The Court: You now have your answer, Mr. Feder.

Mr. Feder: That assignment has never been produced in this case although reference has been made to it repeatedly in affidavits and certain allegations, and now I

want to indicate to the Court, sir, that there may be a purpose in concealing it.

The Court: All right, but why argue your case on cross-examination with your witness?

Mr. Feder: I want to show, first if he saw it and if it was in someone's possession and has not been produced.

Mr. McGinnis: He has stated that he didn't have it.

Q. Do you know who has that assignment? A. As far as I know, Mr. Weinberger had it.

Q. When was the last time you saw it? A. At the time that I gave Mr. Weinberger a check for a one-sixth interest in the property.

Q. And when was that, what date? A. April 3d, 1925.

Q. Have you seen it since then? A. No, sir.

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EDWARD FELD, sworn on behalf of the Complainant, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Feld, you are a lawyer by profession? A. I am.

Q. And a member of the firm of Feld, Weiss & Feld? A. Yes.

Q. What relation are you to the complainant? A. I am a brother to the complainant.

Q. Do you know Reuben Kantrowitz? A. I do.

Q. Were you ever present at the making of any agreement between the landlords of the premises then owned by Endler, Solmon & Lenz, on the one



side, and Reuben Kantrowitz on the other? A. I was, at the outset, although I didn't remain until the signing of the contract. I was there at the beginning when the contract was being prepared.

Q. Where was it being prepared? A. At our office.

Q. On what date? A. March 19, 1925.

Q. What time of day? A. Why, negotiations commenced, I should judge, about six o'clock in the evening, and I stayed there until about 10, and then left.

Q. When you use the word "prepared" you mean the word "negotiations"? A. Yes.

Q. Who was present during the evening while you were there? A. Well, I was there; there was Mr. Lenz, Mr. Endler and Mr. Solomon, the owners of the building; Mr. Weiss, my partner, and my brother Samuel; Mr. Kantrowitz and Mr. Jaffe. Those were there, as I recall them. Mr. Feldman was there also. There might have been one or two others there besides those I have mentioned.

Q. Was there anything said with relation to the interest of the different parties in this proposed contract? A. Why, negotiations started in this way: The Larkey Co. were at our office and negotiated the purchase of the building, and Mr. Feldman refused to assign.

Mr. Feder: I object to that, if your Honor please, as being irrelevant and immaterial, what Mr. Larkey had done.

Q. Well, Mr. Feld, confine your testimony to what was said and done in the presence of Mr. Kantrowitz. A. I had gone out with Mr. Cacoliris to Mr. Hart's store, where Mr. Hart had communicat-

ed with Mr. Kantrowitz who was negotiating the purchasing of the building. Mr. Kantrowitz was in the back office of Mr. Hart's store with Mr. Cacoliris and myself. Mr. Kantrowitz said that he could not purchase the building unless he could be released from a certain promise that he made to Mr. Harry Kuller with respect to the purchase of the building.

Q. Who said this? A. Mr. Kantrowitz. And Mr. Kantrowitz said, "I must consult Mr. Kuller first before I can act". He says, "then I will be with you, or I will act myself". He then left the store and in about 10 minutes he returned. I was still waiting in the office of Mr. Hart's store. He came back and said, "Everything is O. K., but I would like to have nothing to do with Mr. Cacoliris"; he should have no interest in the property." I told him if he did not want him to have an interest in the property we would not take him, and the deal would go through as proposed. Subsequently, Mr. Kantrowitz said, "All right; I have arranged with Mr. Kuller, Mr. Weinberger, Mr. Hart and yourself or your brother to acquire an interest in the property, each a one-sixth interest"; and with that understanding Mr. Kantrowitz called upon Mr. Jaffe to come to the office for the purpose of representing him, so far as the drawing of that contract was concerned.

Q. Well, go ahead; did they come to the office then with reference to the drawing of the contract? A. They went upstairs to our office and completed the negotiations for the purchase of the premises.

Q. And when you left—I think you said around 11 o'clock at night, whatever the time was—had the parties come to any agreement as to what their respective interests were to be in this proposed purchase? A. A one-sixth interest, and Mr. Kantrowitz was to act as agent for them in the purchase of it and have the contract in his name.



Q. Now, after that do you remember an incident when your brother and you and Kantrowitz had any discussion with reference to the closing of title? A. Yes.

Q. Tell us about that. A. My brother and I were driving home to supper. It was sometime in the early part of May, if I recall correctly, and Mr. Kantrowitz was driving in the opposite direction on Lexington Avenue. He was just about in front of the Herald when we met him. We stopped at that place, right in front of the Herald, and he got out of his car and came over to us, and my brother Sam said, "We would like to take title to the property on June 1st", and he says, "I am going out to see what I can do to get the money together and close title on June the 1st. Also the question was raised at that time with reference to the possible appeal for taxes, in the event that the tax assessment was greater than the assessment made the year previous; and Mr. Kantrowitz said that he would communicate with us and notify us when he would be ready.

Q. Were you present, or not, at any time when Mr. Kantrowitz brought money to your brother? A. I was present. Mr. Kantrowitz was up in our office and he offered to pay the $500 for his share in the contract—

Mr. Feder: I object to that and ask that it be stricken out, if your Honor please. The offers, if they were made—assuming that they were—we are not conceding them, however—are not binding on us.

The Court: I will overrule that objection.

Whether they are binding or not, they are evidence of the other party's state of mind and realization as to the rights of this complainant.

Q. That is all.

Cross-examination by Mr. Feder:

Q. Mr. Feld, I believe you testified you are a brother to the complainant in this case? A. Yes, sir.

Q. And these conversations that you have referred to about Harry Kuller and Mr. Cacoliris and others, were some time in weeks to the actual signing and execution of the contract in regard to the sale of this building between Endler, Solomon and Lenz and Mr. Kantrowitz? A. I think it was on the very same day.

Q. But prior to the actual signing? A. It may have been an hour or two, or three hours; but it was on the same day.

Q. My question is, was it prior, Mr. Feld? A. It was prior, probably, to the signing of the contract—a few hours.

Q. The contract was executed subsequent to these talks; is that right, Mr. Feld? Yes or no. A. By a few hours, yes.

Q. And you were present? A. I was.

Q. Mr. Weiss was present? A. Yes, sir.

Q. And your brother Samuel B. Feld was present when this contract was signed? A. I wasn't present when the contract was signed; it was being drawn. I was there, but I left before it was completed and signed.

Q. Were you there when any of the signatures were affixed to the contract? A. I was not.



Q. Then you were there when it was drafted—dictated to the girl? A. It wasn't dictated to the girl. It was late at night, and I believe Sam Feld, or somebody in the office, prepared the contract.

Q. Were you there? A. I was there while it was being prepared.

Q. By your brother? A. I say I believe it was he that prepared it. There were no girls in the office at that hour.

Q. You mean that he dictated it or actually typewrote it? A. I think he did.

Q. Don't you know that he did? A. I'm not certain at this time; he may have.

Q. Weren't you there while he was drafting it, and standing right next to him? A. There was a whole lot of discussions going on over there with reference to the Larkey matter and so forth—

Mr. Feder: I ask that that be stricken out.

The Court: Yes, you ought to answer directly, Mr. Feld; the question is whether or not you know who actually typed the contract.

A. I think he did, although my recollection is not perfect on that.

Q. You knew that he was putting this contract in the name of Reuben B. Kantrowitz? A. Yes, sir.

Q. And you were there until about 11 o'clock? A. About 11 o'clock.

Q. So was Mr. Weiss? A. Correct.

Q. Was there any suggestion on the part of Mr. Weiss, or your brother, about Mr. Kantrowitz assigning a one-sixth interest in the property to your brother? A. Well—

Q. Yes or no. A. There might have been; I don't recall it.

Q. There might have been a suggestion, I know, yet there was none actually drafted or signed by Mr. Kantrowitz, was there? Yes or no. A. I can't answer that in that way, for this reason: I wasn't present at the time the contract itself was actually signed.

Q. But you have since learned that there wasn't any contract by Kantrowitz to your brother for a one-sixth interest? A. Since then I have learned there was no assignment, yes.

Q. And that there was none drawn or signed by Kantrowitz that night; referring to March 19, 1925? A. Since that date I have ascertained that.

Q. Now you have spoken of a conversation with Mr. Kantrowitz in the automobile; wasn't that in regard to your obtaining a customer and your wanting to know if Mr. Kantrowitz would sell it to Mr. Eigen of Eigen & Wechsler? A. I do not know.

Q. Do you know Philip Wechler? A. I do.

Q. Do you know Harry Eigen? A. I do.

Q. They're just a block from that property? A. They are within a block.

Q. And you say their names didn't come up in any conversation at all? A. None whatsoever.

Q. And didn't you further say that Mr. Eigen insisted upon having a store in this building, his lease having expired, and so had Mr. Tony Cacoloris's lease, and Eigen could go into Cacoliris's store? A. No, sir.

Q. Never said anything of the kind? A. No, sir.

Q. Was there any talk about the sale of the building? A. There was only talk at that time about—

Q. The question is, was there talk at that time about the sale of the building? A. No.



JACOB I. JAFFE, sworn on behalf of the complainant, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Jaffe, you are a lawyer by profession? A. Yes, sir.

Q. You know Mr. Feld the complainant? A. Yes, sir.

Q. And you know Mr. Weinberger? A. I do.

Q. You know Mr. Kantrowitz? A. Yes, sir.

Q. I believe you are his lawyer, generally? A. Why, he has desk-room in my office.

Q. And you represent him in various legal matters, do you not? A. Yes, sir.

Q. And you are also engaged in certain business deals with him? A. Yes.

Q. Do you remember March 19, 1925? A. Is that the date of the drawing of the contract?

Q. Yes. A. Yes, sir.

Q. Was there on that night a contract drawn between Endler and others, the landlords of the premises under discussion here, and Reuben Kantrowitz? A. Yes, sir.

Q. That was drawn late at night, I believe? A. Why, about 12 o'clock. I think it was 12:30 when we got through.

Q. Mr. Kantrowitz, of course, was there? A. Yes, sir.

Q. And Mr. Samuel Feld, the complainant? A. Yes, sir.

Q. And who else? A. I think the three grantors, Messrs. Endler, Solomon and Lenz, Eddie Feld was there a part of the time, and Ed. Weis was there.

Q. And was there afterwards drawn by you—and when I say "afterwards" I mean on any other date—articles of incorporation, or proposed cor-

poration, respecting this property? A. I dictated articles of incorporation to Miss Band at Weinberger's office.

Q. And that corporation provided for whom as the incorporators? A. I don't recall, Senator.

Q. You say you don't recall? A. I don't recall the reason for that.

Q. I didn't ask you for your reasons; pardon me. Was Mr. Samuel Feld one of the proposed incorporators? A. He was there.

Q. Was he one of the proposed incorporators? A. Yes, sir.

Q. Was Mr. Kantrowitz one of the incorporators? A. Yes, sir.

Q. Was Mr. Harry Weinberger one of the incorporators? A. Yes, sir.

Q. Was Mr. Harry Kuller one of the incorporators? A. His name was brought up; his name was supposedly included, too.

Q. Was Mr. Hart one of the incorporators? A. He was supposed to be, and an objection was made to his name being included in the certificate of incorporation, and there was a wrangle.

Q. That is all about that. Now, was Tony Cacoliris one of the proposed incorporators? A. His name was mentioned, but his name was disposed of in the same manner as Mr. Hart's name was disposed of.

Q. And the incorporation was in respect to the land and premises which is the subject of this suit here, 12 to 16 Lexington Avenue, Passaic? A. Yes, sir.

Q. And the proposed corporation was called The Lexington Realty Company? A. I don't know, but I guess so. I don't remember the exact name.



Cross-examination by Mr. Weinberger:

Q. Mr. Jaffe, the night before this contract was, in fact, executed you called me up on the 'phone, did you not, and asked me to come to your office with Mr. Kantrowitz? A. I don't remember whether I called you or you called me, but you were in town that night and came down to see me with reference to this property.

Q. And didn't you at that time state that Mr. Kantrowitz had made an appointment at your office to try and purchase this property 12 to 16 Lexington Avenue? A. Appointment for when?

Q. The night before the 19th of March the date when the contract was signed? A. Well, let's see; I think I told you that I was told of an appointment, but that evening I hadn't heard anything more about it.

Q. At that time, you at the request of Mr. Kantrowitz, looked over the contract to determine whose name it was in and for whom? A. You didn't name who the parties in interest were, with the exception of yourself and Mr. Feld.

Q. Didn't Mr. Kantrowitz name Mr. Kuller and myself? A. He did not. I knew you were to have an interest.

Q. On the next evening when the contract was signed you were present, weren't you? A. Yes, sir.

Q. At that time you knew six were in the syndicate? A. Yes, sir.

Q. You knew who they were? A. Yes.

Q. And Mr. Kantrowitz told you what names were proposed to go in that syndicate? A. Mr. Kantrowitz didn't tell me; it was Mr. Feld.

Q. Was Mr. Kantrowitz present? A. He was during the preparation of the contract. I can't say

whether he was in the office at that particular part of the office.

Q. The fact is, it was communicated to you? A. Yes.

Q. And after it was communicated to you is it not a fact that, in pursuance of that, you met, with Mr. Kantrowitz, at my office for the purpose of arranging the certificate of incorporation? A. Yes, sir.

Q. And that syndicate was made up of whom? A. Samuel Feld, yourself, Kantrowitz, Mr. Kuller; Mr. Hart's name was mentioned and somebody—

Q. Mr. Who? A. Mr. Emil Hart—and somebody, I don't remember who it was, entered an objection to his becoming a part of the syndicate.

Q. There were two names rejected as a part of that syndicate, weren't there? A. Yes, sir; Mr. Hart's and Mr. Cacoliris's.

Q. And that created a disturbance in regard to the formation of the corporation? A. Yes, sir.

Q. And that led up to the fact that somebody had to get out and take a certain amount for their interest? A. Yes, sir. Just a minute, Mr. Weinberger—

Q. Yes or no? A. I don't know that, Mr. Weinberger.

The Court: That answers it.

Q. Who was the broker in this transaction? A. Daniel Feltman.

Q. How much was he to get for his commission? A. $500.

Q. Who paid it? A. I don't know.

Q. Didn't Kantrowitz pay it? A. I don't know.

Q. Did you ever learn, Mr. Jaffe, through Mr. Kantrowitz? A. Yes, I learned it.



Q. Who, did he tell you, paid it? A. That you paid him $500.

Q. Did you ever learn, through Mr. Kantrowitz, of the fact that there was a settlement made in the office of Weinberger & Weinberger?

Mr. Feder: I object to that, if your Honor please.

Mr. Weinberger: Let me finish my question. I will try to make it evidential.

Q. Did you ever learn of the fact in Weinberger & Weinberger's office, that Mr. Cacoliris had received $500 for his one-sixth interest, Mr. Kuller $500 for his one-sixth interest, Mr. Feltman $500 for his commission, and Mr. Weinberger for his interest, through Mr. Kantrowitz? A. No, sir; not through him; you informed me.

Q. Did you ever learn of it through him?

Mr. Feder: I object to that on this ground, if your Honor please, that if the information that Mr. Jaffe had was solely through his client Mr. Kantrowitz, I submit, as a rule of law, that it was privileged and he has no legal justification to now tell this court, or to tell anyone, concerning what was said between him and Mr. Kantrowitz.

Mr. Weinberger: If Mr. Jaffe urges that, if your Honor please, I will withdraw the question.

The Court: That is not a subject of objection; it is a matter that should be brought to the Court's attention, so that if the witness is entitled to a privilege he may be informed of it.

Mr. Weinberger: As I said to your Honor, if Mr. Jaffe pleads that I have no objection and I won't press it.

A. I am friendly to both sides in this case and I would rather not answer.

Q. Mr. Jaffe, with whom was the contract left after its execution on the 19th of March? A. It was left with Mr. Feld for the purposes of obtaining the signatures of Mrs. Lenz, Solomon and Endler.

Q. Did you not go out to have their signatures signed? A. No, sir.

Q. If I may be permitted, let me ask you this specific question: Will you say that you did not meet me for the purpose of going to have the signatures affixed the next day? A. No, sir.

The Court: You mean affixing to the contract?

Mr. Weinberger: Yes, your Honor.

A. No, sir, not in any way.

Q. Now, did you ever request a contract of Mr. Feld? A. No, I never did, because—

Q. I am not asking you for the reason. A. I never did.

Cross-examination by Mr. Feder:

Q. So that, after the execution of this contract, Mr. Samuel B. Feld still had possession? A. Yes, sir.

Q. And then you know as a fact, Mr. Jaffe, that Mr. Feld turned over this contract to Mr. Kantrowitz? A. I saw it the same day, the following day.

Q. Delivered by whom? A. I didn't know who delivered it; Mr. Kantrowitz had it.

Q. Weren't you with Kantrowitz when the check



for $10,000 was certified in the Passaic National Bank and then Mr. Kantrowitz delivered this check of $10,000? A. No.

Q. You were not there? A. That check for $10,000 was given the night the contract was made.

Q. And then it was to be certified the next day? A. I don't recall that.

Q. You have since learned that, that the check was certified the next day? A. I learned that Mr. Endler and the others were in the bank the very next morning, either to cash or certify the check, I don't know which.

Q. So that it was the next day that the contract was delivered by Mr. Feld to Mr. Kantrowitz and you saw it in his possession? A. I saw the contract in Mr. Kantrowitz's possession, I don't know how it got there.

Q. You say you are friendly to both sides; the fact is, Mr. Jaffe, you are employed by Mr. Weinberger—not by Mr. Weinberger but by the company of which he is the President? A. Yes, sir.

Q. What time was it you got to Mr. Feld's office that night,—the night of the drafting of the contract? A. Between 9 and 10 o'clock, I think.

Q. How long did you remain? A. When we got there Mr. Feld was in the office—that is, Mr. Samuel Feld was in his private room with certain other people, and then they came out about 10 o'clock, and we started to negotiate this contract.

Q. Who did the negotiating, Mr. Kantrowitz and the sellers? A. Mr. Kantrowitz and the sellers. It seems that that very time a certain firm by the name of Larkey were trying to buy the property for $205,000, and when Mr. Kantrowitz and I got there we were told that, in order to get this property, the price would have to be beyond $205,000.

Q. Told by whom? A. Told by either Mr. Feld or Mr. Lenz who came out with Mr. Feld. And Mr. Kantrowitz said to me, then, "What should I pay?" and I said to him that the purchase price was so large that he should try to offer an increase of $1500 beyond that, that is, the $205,000, and that was done; and Mr. Endler then said he would accept it—that he would accept $206,500. for the property, and the contract was prepared, and I think that Mr. Feld did some of the typing and I did some of the typing.

Q. Which Mr. Feld? A. Mr. Samuel Feld. There was no stenographer there at the time and it may be that I prepared the majority of it or he did a part of it. I know I had something to do with it that evening.

Q. Now, as to the discussion of the terms, isn't it true that that was all between Mr. Kantrowitz, Solomon, Lenz and Endler?

Mr. McGinnis: Is he a hostile witness?

The Court: Whether he is or not; it may be between all the parties.

A. The conversation was between all the parties.

Q. I mean the negotiating as to the terms of the mortgage, the language of the mortgage, and the clause in regard to actual purchase was between Mr. Kantrowitz and the sellers direct; isn't that so? A. That I can't say. Everybody was talking; Mr. Feld was there as attorney for Mr. Solomon, Lenz and Endler, and we all talked with reference to the terms of the mortgages.

Q. What I mean is this: It all ultimately narrowed down to an agreement between Kantrowitz and the sellers? A. Yes, sir.

Q. Firstly, as to the amount of cash, $10,000? A.



Yes, that was chiefly an item in which Kantrowitz and the sellers were concerned. That was suggested to them and it was acceptable to both Kantrowitz and the sellers.

Q. And the difference between the mortgage and the selling price was also discussed between them? A. Yes.

Q. And they agreed? A. Yes.

Q. I mean as far as they could agree on these terms, it narrowed down between Kantrowitz and the sellers? A. Kantrowitz was acting in full capacity without consulting anybody else, only consulting me as to the legal effect of it.

Q. Now, then, the day that you referred to in which there was some talk about entering into a corporation,—how long was that after this contract was drawn? A. What day of the week was the 19th on; can you tell me?

Q. A Thursday. A. Well, then, this talk of the certificate of incorporation was the following afternoon.

Q. And the purpose of getting together at that office was to attempt to form a corporation; now, isn't that so? A. Yes, sir; they got together.

Q. And the new parties were being talked about going into this corporation? A. Well, the six names mentioned were talked about.

Q. Isn't it true, Mr. Jaffe, that the conversations were all in regard to a possible formation of a syndicate who wanted to purchase this property from Kantrowitz; that is true, isn't it? A. Yes, sir.

Q. And wasn't their name suggested at the time by Benjamin A. Hartstein? A. I don't recall.

Q. Was he there? A. I don't recall.

Q. Did he come afterwards? A. I don't recollect it.

Q. And wasn't his name mentioned by Mr. Weinberger or somebody else? A. I don't recall.

Q. You wouldn't say he wasn't there? A. I left about 5:30; I had an appointment about 6.

Q. So that in the conversation these different names came up and there were objections to them made by Mr. Kantrowitz and others; is that right? A. Yes, sir.

Q. Mr. Kantrowitz objected to Mr. Kuller; he said, "I don't want Mr. Kuller in any partnership business with me". He made an objection; I don't know what reason he had.

Q. And he said "I won't sell any property to Mr. Kuller"? A. He made an objection to Mr. Kuller, but I don't recollect the substance of it.

Mr. McGinnis: I don't know how far your Honor wants him to go, but I make objection to this.

The Court: I overrule the objection.

Q. Didn't he say that he would not sell any of this property to Mr. Kuller? A. He objected to Mr. Kuller being a part of the syndicate.

Q. And then there was objection made to Mr. Emil Hart? A. Yes.

Q. And then objections made to Tony Cacoliris? A. Yes.

Q. And then after the objection Mr. Kantrowitz took his contract away and went home? A. He didn't leave with me.

Q. Haven't you since learned that from Mr. Weinberger and Mr. Feld? A. I know I saw the contract again in his possession after that.

Q. In other words, Mr. Jaffe, all this talk this afternoon at Weinberger's office was the planning



of a syndicate to arrange to take over this property? A. Yes.

Q. And Mr. Kantrowitz was to sell the property if this syndicate was formed and they agreed upon the terms; is that right?

Mr. McGinnis: All of these questions are highly leading.

The Court: Am I supposed to have no common sense at all? I know that he is being pressed on cross-examination by counsel for a man with whom he says he is very friendly. Can I be depended upon to weigh what he says, in view of those circumstances?

Mr. McGinnis: Yes, sir.

The Court: All right. If there was a jury here I might act differently.

Mr. Feder: Now that your Honor has expressed that about the witness I am going to ask your Honor for an opportunity to show that this witness is as friendly as human beings can be to Mr. Weinberger and Mr. Feld.

The Court: He says so, Mr. Feder, and he has been a most refreshing witness to listen to. He has been absolutely honest, and his own statement was that he was friendly to both sides.

Q. (Question read by the stenographer). A. Yes, the syndicate was to take over the contract. I don't know what the terms were.

Q. Mr. Jaffe, in the last few days isn't it a fact that the complainant, or others representing the complainant, has spoken to you regarding this case? A. Not the complainant.

Q. Who has spoken to you? A. Why, Mr. Weinberger spoke to me in reference to this case.

Q. As late as when? A. Why, we were trying to get together so as to avoid the unpleasantness of this morning's hearing; that's all.

Redirect-examination by Mr. McGinnis:

Q. This discussion around March 19, when something was said about raising the price to $206,500, —wasn't that for the purpose of preventing the sale to Larkey? A. Yes, sir.

Mr. Feder: I object to that as being very leading.

The Court: Under the circumstances I am not going to sustain the objection. It is purely discretionary and I am satisfied that Mr. Jaffe is going to tell the truth.

Q. Mr. Jaffe, when you spoke of Kantrowitz and the others discussing this $10,000 payment, whom do you mean by the term "the others"? A. Mr. Endler, Mr. Solomon, and Mr. Lenz, myself and Mr. Feld. We were all there. Everybody who was there that evening took part in the discussion, either in an advisory capacity or otherwise.

Examination by Mr. Newman:

Q. When you said these people were talking about settling it you don't mean me or Mrs. Zucker, or anyone representing her? A. I never discussed this case with you, Mr. Newman.

Examination by Mr. Weinberger:

Q. In the certificate of incorporation on the night that the contract was closed, was there ever any other name but the six men as to the ownership of that property? A. The names mentioned



at the time of the incorporation were those that I have given.

The Court: But were there any other names?

A. No other names.

Q. The same six names? A. The same six names.

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DANIEL J. FELDMAN, sworn on behalf of the complainant, testified as follows:

Direct-examination by Mr. McGinnis:

Q. What is your business, Mr. Feldman? A. Real estate and insurance.

Q. Doing business in Passaic City? A. Yes, sir.

Q. Are you the Mr. Feldman who has been mentioned here by the witnesses as attempting to sell this property on Lexington Avenue, Passaic? A. Yes, sir.

Q. And had you negotiated the sale of that property? A. I had an option.

Q. Were you present on the evening of March 19, 1925, when this contract between Mr. Endler and others, on the one hand, and Mr. Kantrowitz on the other, was discussed and drawn? A. Yes, sir.

Q. Where did this discussion take place? A. Do you mean with Mr. Kantrowitz?

Q. Yes. A. In a place in Mr. Emil Hart's place —his store—and upstairs in our office. I am in the same office with Feld, Weiss & Feld.

Q. Who was present that evening in the office of Mr. Feld? A. Why, Mr. Kantrowitz, Edward Weiss, Edward Feld, Samuel Feld, Mr. Endler,

Mr. Lenz and Mr. Solomon, Mr. Larkey and attorney Larkey of Newark.

Q. And this contract, which has been offered in evidence, was eventually executed, was it? A. It was.

Q. Was there any discussion in your presence by any of the persons there, when Mr. Kantrowitz was present, as to the interest of the different people in this proposed purchase? A. Yes.

Q. What was it? A. Well, do you want me to tell the whole story?

Q. I think so,—directing your mind to just the interest that Feld had in this. A. Well, do you want me to go and tell how the sale originated or not?

The Court: No, no; what was said about the way this was to be bought by the different people.

A. Mr. Edward Weiss told me to go down to Mr. Emil Hart's store—

Mr. Feder: I ask that that be stricken out.

The Court: Yes, strike it out.

Q. Well, you went to Mr. Hart's store? A. Yes.

Q. Whom did you see? A. Mr. Hart and Mr. Kantrowitz, and I think Mr. Edward Feld was there.

Q. Did you have any talk there? A. Yes.

Q. About this property? A. Yes, sir.

Q. What was said? A. I was not to assign over the option to Mr. Larkey because a new syndicate had been formed to buy it, composed of Harry Kuller, Harry Weinberger, Reuben Kantrowitz, Emil Hart, Tony Cacoliris, and Samuel B. Feld. I said



"I will not assign over anything until you people have the property." I stayed down in Mr. Hart's store until about 8 o'clock, and then I went upstairs with Mr. Kantrowitz.

Q. And up there, was there talk in the course of the evening? A. Yes, sir.

Q. Was there any talk with reference to this syndicate; yes or no? A. Yes.

Q. Now, will you tell us what was said, if anything, by Mr. Kantrowitz with reference to that. A. Mr. Kantrowitz said, "We are going to get this piece of property".

Q. Can you relate to us the whole conversation that was said by Kantrowitz or yourself? A. Feld and the others there explained what was to be done; that the property was to be bought, and he was to hold it. It was supposed that each was to have a one-sixth share. That is the only thing I can remember now; it is over a year ago.

Q. Was there anything said, when the contract was drawn, as to in whose name the contract was to be taken?

Mr. Feder: I object to that as very leading.

The Court: It is leading, but it is absolutely harmless. He is only asked to say "yes" or "no".

A. Yes.

Q. Now, what was said on that subject? A. The contract was to be taken in Mr. Kantrowitz's name.

Q. Were you there when the contract was drawn? A. Yes, sir.

Q. Did you do anything that night to facilitate this sale to this syndicate? A. Yes, sir.

Q. What did you do? A. I was to sign a paper that I would accept $500. instead of $5,000.

Q. When you did that what understanding did you have as to who was to get the benefit? A. The only reason I did that was for Samuel B. Feld.

Q. I understood you to say you had an office in Mr. Feld's office? A. I have.

Q. Were you later on in Mr. Weinberger's office when this settlement was made and checks given? A. Yes, sir; I was there.

Q. Did you see these checks given on that occasion? I show you Exhibits D-1 and D-2. A. Yes, sir.

Q. And did you get a check? A. Yes, sir.

Q. How much was your check? A. $500.

Q. Who was there at that time? A. Mr. Harry Weinberger, Samuel B. Feld, Reuben B. Kantrowitz—do you mean when the checks were handed?

Q. When the checks were made out and handed out. A. Mr. Hartstein, Harry Weinberger, Reuben Kantrowitz, Samuel B. Feld, Tony Cacoliris, and Edward Weiss.

Q. Was there any claim made at that time by Mr. Kantrowitz that he was the sole person in interest? A. No.

Q. Was Kantrowitz present when this D-2 was given? A. Yes, sir.

Q. Is that your signature, "Daniel J. Feldman", on D-2? A. Yes, sir.

Q. Was he present when D-1 was handed out? A. Yes, sir.

Q. And were you present when an assignment or paper of any kind was made by Mr. Kantrowitz? A. Yes, sir.

Q. Who made it? A. Reuben Kantrowitz.

Q. And what were the papers Reuben Kantrowitz made— A. Just a moment: I wasn't sure who



wrote that up. I saw it there. I don't remember who wrote it. It was on a large yellow sheet.

Q. And who signed it? A. Reuben Kantrowitz.

The Court: He hasn't yet answered your question what the instrument was.

Mr. McGinnis: I was just coming to that.

Q. What was this writing on yellow paper which you saw Mr. Kantrowitz sign?

Mr. Feder: That is objected to, on the ground that the writing is the best evidence, and it has not been explained yet why it is necessary to offer secondary evidence.

The Court: He is asked what sort of instrument it was, not the contents.

Mr. Feder: Wouldn't that be a conclusion?

The Court: It may be a conclusion, but I overrule the objection. (Addressing the witness) Now, what was the paper. Don't tell us the contents of it, but what sort of a document was it?

A. The assignment.

Q. From whom to whom?

Mr. Feder: I object to that.

The Court: I think that is objectionable. That is calling for his conclusion. The document itself is the best evidence of that.

Cross-examination by Mr. Weinberger:

Q. Mr. Feldman, you were at the office of Weinberger & Weinberger on the 27th of March, 1925, when the check marked D-1 was given to Mr. Cacoliris? A. Yes, sir.

Q. You were there when all of the negotiations took place? A. Yes, sir.

Q. How long did that last? A. Oh, about four hours.

Q. Will you state to the court whether Mr. Kantrowitz was there? A. Yes.

Q. And Mr. Kuller? A. Yes.

Q. Mr. Cacoliris? A. Yes.

Q. Mr. Samuel Feld? A. Yes.

Q. And Mr. Harry Weinberger? A. Yes.

Q. And was Mr. Hartstein there, too? A. Yes, sir.

Q. Was Mr. Edward Weiss there? A. Yes, sir.

Q. And, by the way, in which of the rooms were these negotiations conducted? A. Why, they were around, first in one room and then in another room, and they were extending out in the hall and they ended in Joe Weinberger's room.

Q. Was it then that the checks were written out? A. Yes.

Q. Who wrote out the checks? A. Mr. Weinberger.

Q. Did you receive a check? A. Yes.

Q. And that is D-2?

Q. I call your attention to the statement on the back of the check, "In full for all commission on property, Daniel Feldman" and ask you if that was on it at the time it was signed A. Yes, sir.

Q. Now, Mr. Feldman, at the time these negotiations were being conducted will you, in your own way, just tell the court what the subject matter of the discussion was. A. Well, the subject matter really was who was to be in it and how many shares each one was to have. The discussion came up that somebody had to be out of it, and on the way home Harry Weinberger says, "I will be out



of it" and they would divide it into five shares, and the only one that disagreed was Samuel B. Feld. Mr. Hart wasn't there any more, and he says "I will leave it up to Reuben Kantrowitz, and he went away.

Q. Now, as a matter of fact, after considerable wrangle the deal was closed, was it? A. It was.

Q. And was it thereupon that this assignment was signed? A. Yes, sir, and Mr. Reuben Kantrowitz picked up the telephone and said to Mr. Emil Hart, "I have got a check for you for $500, and I have checks here for $10,500"; and he said "I am not going to stand for it", and Mr. Reuben Kantrowitz says, "It is too late".

Q. Were you there when they all went to Mr. Hart's office? A. I went away when Mr. Kantrowitz went with the check for $500. He called him all kinds of names and refused to accept the check and said, "I don't want to be a party to it".

Q. Had the deal been concluded when you went to Mr. Hart's office when all these checks were delivered to the different people? A. Yes, sir. That was all I was interested in.

Q. Now, Mr. Feldman, during all the time when those negotiations were being had did the question ever arise as to who was the owner of that property? A. None at all.

Q. Who were the owners? A. The original owners?

Q. Yes. I mean of the men that bought this property? A. The six men I have referred to.

Q. By the way, do you know who had the contract which was signed on March 19th; who kept that contract? A. Samuel Feld put it in his safe.

Q. How long did he keep that contract; do you know? A. I do not know.

Cross-examination by Mr. Feder:

Q. You were vitally interested in this transaction, weren't you? A. Yes, to the extent of $500.

Q. Well, you accepted that $500? A. I did.

Q. And from the 18th of March— A. 19th of March.

Q. —up to the present time you still have desk room and are affiliated with Feld, Weiss & Feld? A. I pay rent there; I am not affiliated.

Q. Don't you do all the insurance work for the mortgage company that they represent? A. They have no mortgage company.

Q. Don't they represent the building and loan company? A. I don't know.

Q. And isn't it true that Feld, Weiss & Feld are stockholders and so forth?

Mr. McGinnis: What does "and so forth" mean?

Q. This building and loan association is in their office? A. Yes.

Q. Of which Mr. Edward Feld is an officer? A. Yes, sir.

Q. And of which Mr. Samuel B. Feld was attorney? A. No, Edward Weiss, I believe is attorney.

Q. And you do all the insurance work for them? A. Most of it.

Q. And your office is in the same suite of offices with them? A. Yes.

Q. And isn't it a fact that you are vitally interested in this case, to see Mr. Samuel B. Feld win it? A. No, sir; I am here only to tell the truth.

Q. Aren't you interested in seeing him win the case? A. No; I have nothing involved in it.



Q. You are indifferent? A. Absolutely.

Q. And entirely disinterested? A. I only want to tell the truth.

Q. And you are entirely disinterested; is that right? A. Yes, sir.

Q. Haven't you been active in investigating this case for them and getting affidavits and getting people to testify? A. No, sir; I never did.

Q. Didn't you get witnesses to come to their office? A. No, sir.

Q. Didn't you go out and take affidavits? A. I don't remember.

Q. Oh, that you don't remember. Haven't you been in consultation with them about this case at least a dozen or more times? A. No, sir.

Q. Never spoken with them about this case? A. I have spoken to them, but never been in consultation.

Q. Well, you took up the subject matter of this case with them? A. It is very natural—

Q. I didn't ask you about that; I asked you if you didn't take up the subject matter of this case with them?

The Court: Mr. Feldman, you should answer the question "yes", or "no", or you don't know. The question was, have you talked this case over with them.

A. Yes, I have.

Q. Now, the first night that the contract was drawn, were you present? A. Yes.

Q. Jaffe was there? A. Yes.

Q. And also Messrs. Feld, Weiss and Feld? A. I think Mr. Weiss was also there, and Mr. Emil Hart was there also.

Q. Was he there throughout the entire drawing of the contract? A. No, he came in later.

Q. And the fact is, that all the discussion about moneys and the terms of the contract were all agreed upon between Kantrowitz and the sellers while you were there? A. Yes.

Q. The only man that put up any money was Kantrowitz? A. That night, yes.

Q. $10,000? A. Yes.

Q. And this was in Mr. Samuel B. Feld's room? A. Yes.

Q. And the man who was to put up the rest of the money, $76,500. was Mr. Kantrowitz? A. I never knew about that.

Q. Weren't you there when the transaction took place? A. I think I was sitting outside at my own desk.

Q. You knew that $76,500 was to be gotten by Mr. Kantrowitz? A. I don't know anything about that.

Q. You knew that Mr. Feld put the contract in his safe? A. I know that he put it in his safe because I saw him go to the safe, but I did not see the contract.

Q. Then you told Kantrowitz that you were going to form a syndicate to buy this property? A. I had nothing to do with it; I have no money to buy property with.

Q. Didn't you start out to get a syndicate together? A. No, I had no interest in that.

Q. Didn't you go out to get any of these other six you have mentioned? A. No, sir.

Q. Never spoke to them before the contract was signed? A. I spoke to Mr. Feld every day.

Q. Didn't you talk to Tony Cacoliris to have him try to buy this property for the syndicate, because you had done Larkey out of this property, and didn't you say to Kantrowitz, "If you are going to



sell it I am going to try to get Cacoliris in it?" A. No.

Q. Wasn't that a fact that Larkey was done out of it? A. Not by me.

Q. Weren't you supposed to sell it to him? A. For my commission.

Q. Isn't it a fact that you had arranged to sell it to Larkey, and didn't you promise that you would assign your option to him? A. Not to Mr. Kantrowitz.

Q. I didn't mention Mr. Kantrowitz's name; my question is, if you didn't promise to assign your option to Larkey and then turn around and make a contract to sell it to Tony Cacoliris? A. I can't answer that yes or no. I wasn't going to sell to Cacoliris. Larkey failed.

Q. Didn't you after Larkey failed try to sell to Cacoliris? A. No.

Q. You mentioned their names in the transaction; why didn't you mention Feld's name?

Q. You want to change it now, do you? A. Yes, sir.

Mr. McGinnis: I object to that statement, that he wants to change it.

The Court: I don't recollect that he mentioned it; but he now says that the man associated with Larkey was Feld.

Q. Now, weren't you there when the certified check was turned over the next morning? A. No, sir.

Q. Then you went there at Weinberger's office in regard to the possible formation of this syndicate; that is true isn't it? A. Not the formation of the syndicate.

Q. Well, getting these people together? A. That's right.

Q. And you got there at what time? A. I can't tell you the exact time; late in the afternoon, about 4 o'clock.

Q. And there was a considerable discussion back and forth? A. A whole lot of it.

Q. As to the agreement or arrangements they were going to make? A. No, the only argument was how much each one was to have, whether one-sixth, one-third, or one-fourth.

Q. In other words, the question of the interest of each one came up, whether it was going to be a one-third, one-sixth, one-eighth, and so on? A. Yes.

Q. So that the interest of what each one was to get was the primary question of discussion? Yes or no? A. You mean the principal question?

The Court: Yes, the most important question they talked about.

A. No.

Q. You just said that the question that came up in the discussion was whether they were to get a one-third, or one-fourth, or one-sixth interest? A. That was one question.

Q. Wasn't that the serious question under discussion, Mr. Feldman? A. Let me think—

Q. Well, don't you know? A. It is over a year ago, and that is the only thing I have got in my mind.

Q. You just said so a minute ago. A. I can't remember.

Q. Why, you remember about the deal and about the contract being placed in the safe by Mr. Feld, and you now say you don't remember an important



thing as to what interest each one was to get; is that right? A. That point stands out in my mind that I told you about.

Q. In other words, the fact stands out in your mind about the deal and the contract being placed in Mr. Feld's safe, but the amount of each one's interest, or the amount that each one was to get, doesn't stand out in your mind? A. On account of there being so much arguing and running about and confusion I can't remember everything.

Q. Didn't you mean what you said to his Honor about the discussion regarding one-third, one-fourth and one-sixth interest? A. I remember that, yes.

Q. You remember a good part of it? A. A good part of it I do. How many was to be in, I don't.

Q. You just said you heard discussion as to whether they were to have a one-third or one-quarter interest and when you said that you meant you didn't know how many were to be in it? A. That's right.

Q. And when you said you didn't know how many you meant you can't remember? A. (Witness pauses).

Q. Can't you answer that simple question? A. I don't understand you.

Q. You said the discussion was as to how many were to go in; by that you mean the number of people? A. No, who was to get forced out; that's the whole thing.

Q. I see. Well, was Mr. Feld doing a lot of talking about that, forcing out? A. No, he just wanted his share.

Q. Did he just listen? A. He argued that his share was a one-sixth interest.

Q. Who talked about the forcing someone out,

Mr. Weinberger? A. I think Mr. Weinberger said something about it.

Q. Mr. Weinberger didn't like Mr. Hart? A. No.

Q. He didn't like Mr. Hart? A. Nobody didn't like Mr. Hart.

Q. Did you hear the testimony of the other witnesses in this case? A. Yes.

Q. Who wanted Mr. Cacoliris out? A. Mr. Weinberger.

Q. Who wanted Mr. Hart out? A. Nobody wanted him.

Q. Who wanted Mr. Kuller out? A. (Witness pauses).

Q. Do you remember? A. No, I don't; not any discussion about it.

Q. You wouldn't say there wasn't any discussion about it? A. I wouldn't say positively.

Q. Now, how much of an interest did Mr. Hartstein want? A. Mr. Hartstein wasn't interested at all.

Q. He was the one that drew the yellow paper? A. He was the one that acted in trying to get them to come to a settlement. He offered his services.

Q. In other words, to see if they couldn't come to some sort of arrangement between them? A. Each one had an interest, and the idea was to get it finished.

Q. In other words, Mr. Hartstein was trying to get this combination together on some terms? A. Yes, because—

Q. You have answered. The fact is that Mr. Hartstein tried to get them together? A. He did.

Q. While Mr. Hart walked away? A. No, no.

Q. Didn't Mr. Hart go out? A. Not then.

Q. Didn't he go out before there was a finish;



yes or no? A. Mr. Hart walked out when Mr. Weinberger says, "I will offer each one $500."

Q. And that is when Mr. Hart left? A. That was one reason why they couldn't get together, because Mr. Weinberger's $500. wasn't satisfactory.

Q. When these people got together it was the understanding that they were to get checks from Mr. Weinberger? A. I don't know; I was only interested in my commission.

Q. Were you present when this property was bought? A. Not by Kantrowitz.

Q. When you all got together at Mr. Weinberger's office wasn't it for the purpose of coming in to get checks of $500 from Mr. Weinberger? A. I can't speak for the others; I went there for my commission.

Q. Well, you were there when the discussion took place about the interest each one was to get? A. There was a lot of discussion, as I told you before.

Q. Now, answer my question, Mr. Feldman; do you understand my question? A. What is it?

Q. When this conversation first took place about this real estate it was a question as to what interest each one was to receive; yes or no. A. Yes.

Q. At that time there was no talk about getting $500 from Mr. Weinberger or of his paying it out to some of the people? A. Not then.

Q. But that was the understanding when they got together? A. No, they were supposed to buy it.

Q. So that this $500 payment proposition of Mr. Weinberger's was something that came up anew? A. While this discussion was taking place, yes.

Q. So that they did not agree on the interest each one was to have when Mr. Weinberger offered to give them $500 apiece? A. They all agreed except

Mr. Hart who had gone home and left his interests in Mr. Kantrowitz's hands.

Q. Then they didn't all agree? A. No, they did not. Mr. Feld didn't agree.

Q. So that when Mr. Hart left there was no agreement; he left while it was being discussed? A. He left a proxy with Mr. Kantrowitz.

Q. At that time there was no agreement? A. No, they were still discussing it.

Q. Now, then, it was after that, after Mr. Hart left that you remained with Mr. Weinberger and Mr. Hartstein and Mr. Samuel B. Feld? A. Yes.

Q. And then Mr. Weinberger suggested that you get your $500? A. I asked him for it.

Q. And he gave it to you? A. Yes, sir.

Q. Did you see all the checks that were passed out that afternoon? A. Yes, sir.

Q. You saw three checks? A. I saw more checks.

Q. How many? A. I saw a check to Emil Hart.

Q. You saw that check made out? A. Yes, sir.

Q. Whom was it given to? A. Mr. Kantrowitz.

Q. Did Mr. Hart take it? A. No, he refused to accept it.

Q. What other checks? A. There was checks handed over to Mr. Kantrowitz; I didn't see the amounts.

Q. Now, you say you saw this yellow paper in Mr. Hartstein's hands? A. (Witness pauses)

Q. Did you or didn't you?

The Court: Answer it "yes" or "no".

A. I can't remember.

Q. Well, you remember the color of the paper? A. I know it was yellow paper.

Q. But you didn't read it? A. No, sir.



Q. You didn't see it? A. I saw it, yes. I was standing right there.

Q. Did you see Mr. Hartstein write it? A. I don't remember who wrote it.

Q. You were standing right there and you don't remember who wrote it? A. There were several yellow papers drawn.

Mr. Feder: I ask that that be stricken out. A. They were scribbling figures and everything.

The Court: Strike it out.

Q. No one signed that paper? A. I didn't see any signature on it.

Q. And then the final step to this whole meeting was broken up after they couldn't reach an agreement as to the people that were to be in it; is that right? A. It wasn't the final step.

Q. Well, it was broken up, this session? A. No, it wasn't broken up; it was finished.

Q. Did Kantrowitz leave? A. Left with me.

Q. Mr. Kantrowitz didn't sign any paper that you saw? A. I don't remember.

Q. Don't you remember whether he signed any papers? A. I heard him state over the telephone that he assigned his interest.

Q. I am asking you whether you saw Mr. Kantrowitz sign any paper; yes or no. A. I can't remember; I think he did.

Q. Was it the paper that Mr. Hartstein held in his hand? A. You see you are asking me the same question again.

Q. Was it placed down on the desk at any time and did you see anybody sign it? A. There was a yellow paper on the desk and I saw it a few times.

Q. But you didn't see Mr. Kantrowitz or Mr. Hartstein sign it? A. I can't remember.

HARRY KULLER, sworn on behalf of the complainant, testified as follows:

Direct-examination by Mr. McGinnis:

Q. You live in the City of Passaic? A. Yes, sir.

Q. And you are one of the persons mentioned here as being a member of this syndicate that were to buy this property on Lexington Avenue? A. Yes, sir.

Q. You knew Mr. Kantrowitz before that? A. Yes, sir.

Q. Did you ever have any discussion with Mr. Kantrowitz about this property previous to March 19, 1925, when this contract was signed? A. Yes, sir.

Q. And when and where was it you first discussed it with Mr. Kantrowitz? A. It was on the boat coming from Cuba.

Q. And what was the conversation that took place on that occasion between you and Mrs. Kantrowitz respecting this property? A. Mr. Hart was on the boat, Mr. Kantrowitz and Mr. Weinberger and myself, and Mr. Hart suggested that we buy the property for him, and I told him that Mr. Edward Feld had spoken to me a few weeks previous to that, before I left for Cuba. All four of us were coming from Cuba, and it was then understood that Mr. Kantrowitz was to be the broker. He was to buy for us and he was to have in it a few thousand dollars. After we came back from Cuba I met Mr. Kantrowitz on the street, and he said he had an option, and we found out after a day or two that he had no option, as I understood. Then Mr. Weinberger said, "What do you know about the building?" and I told him Mr. Kantrowitz is attending to it. I never heard from Mr. Kantrowitz until



one night coming up to my office, and he says, "It looks as though we would have to take in Mr. Feld and Mr. Cacoliris. Now, Walter and Harry will have to be satisfied (meaning Harry Weinberger)".

I says, "I don't know; suppose I ring Harry up" and I rang him up in New York, and he was not in; and he says, "I will tell you, we must have Mr. Feld and Mr. Cacoliris in the deal and if he doesn't want that I will take the two shares"; and he says, "I am going to close it" and I says "All right;" and he says "Give me a check", and I says "I don't want to give you a check because I don't want Endler to know that I was buying the property". He says, "Give me a check"; he says, "I haven't got enough money in the bank to make this good", and he says, "don't worry about it".

The following morning I waited for Mr. Kantrowitz to find out how much he was short, and he says "It is all over". He says, "I was a little short of money, but I got it and made the check good"; and I says, "All right, we will go into Mr. Weinberger's office and we will straighten this matter out." It took a day or two or maybe a week or so, and he kept holding the contract, and he says "Mr. Weinberger, I want to know what is being done with this", and he says, "We have an appointment for this afternoon", and we went up that afternoon to draw the papers.

Q. Where? A. At Mr. Weinberger's office. We went in his office in the Peoples' Bank Building and Mr. Weinberger was busy and we waited outside for awhile and then we went in the private office. It was then around three or four o'clock and the bank was closed when we got to Mr. Weinberger's office. Then we were supposed—

Q. Wait a moment. When you got there who

was there? A. Mr. Hart, Mr. Kantrowitz, Mr. Feld, Mr. Weinberger, myself, and Mr. Jaffe.

Q. That is, five of the six that have been mentioned here? A. Yes.

Mr. Feder: I object as leading.

The Court: Yes, that is a little leading.

A. (Continuing) Well, we were supposed to draw up what you call corporation papers, and Mr. Weinberger then got busy with Harry's brother, and he said, I believe, Mr. Jaffe would draw the papers what is necessary for the corporation.

Then a dispute started about certain names not being wanted in the corporation. Well, after the dispute started I walked into Mr. Weinberger's office and I said, "Rather than to get into a lot of disputes I would rather be out of it, the way I feel about it"; and he says, "Don't lose your patience; everything will be all right".

And so that day nothing happened; and then the following day—I can't recollect whether it was the following day or two days later—we all met in Mr. Weinberger's office, and Mr. Weinberger says: "Here, this has got to come to an end"; and at that time Mr. Hartstein happened to be there, and he says, "You buy my share out or I will buy your share out" and he started off, and Mr. Cacoliris said, "Well, I will sell my share for $500." I said, "I will sell my share for $500". Mr. Hart was there—yes, and Harry Weinberger says "I will do anything to be rid of this man Kantrowitz", and with that Mr. Hart took the elevator and went down, and Mr. Kantrowitz says, "Well, all right, I will sell, too"; and the only one that refused to sell was Feld. And that's all.



Q. And then what was done? Did the sale take place? A. It did.

Q. Just tell us what was done in the line of drawing papers or anything. A. Well, in the line of drawing papers, there was an assignment of contract drawn to Harry H. Weinberger, signed by Reuben B. Kantrowitz, and Harry gave him a check. He also gave a check to Mr. Cacoliris, and he also gave a check to Mr. Hart.

Q. Did you ever have any conversation afterwards with Mr. Kantrowitz with respect to what he was willing to do with Feld in regard to a division of profits? A. Yes, sir.

Q. Tell us when and where that conversation took place, and what was said. A. Mr. Kantrowitz and Mr. Jaffe was in the restaurant for lunch one day, and I said "Ruby, you are not treating Feld right".

Q. When was this? A. After the trouble had started and he sold the property.

Q. What was said? A. Well, he said, "I am not entitled to any more than one-sixth and I suppose he will get only one-sixth".

Q. Is that all? A. That's all.

Cross-examination by Mr. Weinberger:

Q. You didn't cash the check for $500 that was given you originally?

Mr. Feder: I desire to enter an objection to the cross-examination being made by the defendant in this case by Harry Weinberger. His evident purpose seems to be to build up the complainant's case. The question is asked in the most leading way with the purpose of assisting the complainant. I have always

thought that the purpose of cross-examination was to try to elicit the truth from the witness and not for one of the defendants to assist the complainant, which is apparent now by the nature of the cross-examination so far in the case, and this question seems to indicate it.

The Court: What objection can there be to one of a number of parties undertaking to assist one of the other parties? Mr. Weinberger is purely one of the defendants. If you feel you have any grievance you can comment on it in your argument.

Q. Mr. Kuller, I was asking you when I was interrupted by objection, whether or not you were present when the check was made to Feldman, marked Exhibit D-2? A. Yes.

Q. And were you present when the check was made out to Mr. Cacoliris, Exhibit D-1? A. Yes, sir.

Q. Was, in fact, a check made out to yourself? A. There was.

Q. And was there one made out to Mr. Kantrowitz? A. Yes, sir.

Q. And was there one made out to Mr. Hart? A. Yes, sir.

Q. Now, were you there when this assignment was drawn and signed by Mr. Kantrowitz? A. Yes, sir.

Q. When all of you parties except Mr. Hart left that office finally were you present? A. Yes, sir.

Q. At that time was there any question but that Mr. Kantrowitz had sold Mr. Weinberger his five-sixth interest and one-sixth to Mr. Feld? A. No question of that.



Q. And is it true that thereafter Mr. Weinberger reassigned the contract to Mr. Kantrowitz to the extent of five-sixths and one-sixth to Mr. Feld? A. Yes, sir.

Q. And that they got to be the owners, Kantrowitz five-sixths and Feld one-sixth? A. Yes, sir.

Q. Did Kantrowitz ever say anything about the fact that he didn't hold or take the contract for the benefit of Cacoliris, Kuller, Hart, Weinberger and himself? Did he ever say that he didn't take it for that purpose? A. Never.

Q. Do you recall how long, after the alleged contract, or assignment of contract, was made by Kantrowitz to Mrs. Zucker it was that you met him at Green's restaurant? A. Yes, sir.

Q. How long after? A. Oh, I don't know; couple of weeks after.

Q. And at that time what did he say to you? A. That he was willing to give him his one-sixth profit, but he is too small, and that is why.

Q. What did he say Feld wanted? A. He is too small. He didn't say what he wanted.

Q. Did you know that Mr. Feldman had a contract for commission? A. Yes, sir.

Q. Did you know how much the agreement was that the syndicate was to pay Feldman for commission?

Mr. Feder: I ask that the witness only answer "yes" or "no" to that question, without stating the amount.

The Court: Yes, answer "yes" or "no".

Q. That is all I am asking. Do you know? A. Yes.

Mr. Feder: I object, on the ground that the writing speaks for itself. I submit that that is the best evidence.

Q. How much was that? A. $500.

Q. And was the $500 paid to him, as evidenced by the check in your possession? A. Well, you paid him.

Cross-examination by Mr. Feder:

Q. Mr. Kuller, when did you return from Cuba? A. I don't remember the date.

Q. Do you remember the month? A. I do not.

Q. You often discussed proposals with Mr. Kantrowitz, did you not, Mr. Kuller? A. Never before.

Q. Never discussed any real estate business with him? A. No.

Q. And on the boat going over did you discuss more than one proposition or just one? A. I didn't go over on the boat; on the train.

Q. On the train, then. A. I didn't go over on the train; I met him at Miami.

Q. You were just there on a pleasure trip? A. Yes, on pleasure.

Q. While you were there you went out together and discussed different things, didn't you, Mr. Kuller? A. Not that I remember.

Q. Now, how long have you known Mr. Kantrowitz? A. Oh, I guess I have known him over 20 years.

Q. And it was after you came back that you say he came up to your office and talked to you about the Endler property; is that right? A. No, it was on the boat coming back.

Q. Well; then, after you got off the boat did he come up to your office? A. Yes.

Q. And you knew him as a friend, besides business? A. Yes.

Q. You have been with him and in his company so many times you don't remember? A. Oh, I can



remember that. I have been in his company not very much.

Q. Haven't you spoken to Mr. Kantrowitz at least a few hundred times since you have known him, in the last few years? A. Not a few hundred times; no, sir.

Q. Would you say over a dozen? A. If I said a dozen I would exaggerate it.

Q. How many times did you meet him in Green's? A. Why, I saw him every day.

Q. He came up to you and he said to you he didn't have enough money to pay his deposit on this property; is that right? A. No, that night he came up—

Q. Now, answer that "yes" or "no," A. He didn't say that exactly alone; it was more than that.

Q. Was that one of the things he said to you? A. Yes.

Q. And that was the night that he purchased the property? A. Yes, before.

Mr. McGinnis: May I object? What does counsel mean by "purchase of the property"? There was nothing more than a contract.

Q. The same night that he bought the property? A. Yes, before that.

Q. The fact is you never gave him any money? A. No.

Q. Never gave him any money after that either? A. No. Could I answer that? I would like to answer that.

The Court: You mean you want to change it?

A. No, no; I don't want to change it; I want to ask counsel why.

The Court: No, that is a matter to be taken care of later. You see, on cross-examination, Mr. Kuller, no lawyer would ever dare to ask a question if a witness, hostile to him, would be permitted to wander over the subject and tell everything that he wants to tell on a case; so you must confine your cross-examination to anything that is asked you. Then if there is anything to be corrected, modified or explained Senator McGinnis will have an opportunity to do so after the cross-examination is over.

Q. By the way, you are friendly to the complainant, are you not?

The Court: He means Mr. Feld.

Q. Did you get my question? A. Mr. Feld?

Q. Yes. A. I have spoken to Mr. Feld three times in my life.

Q. You are his friend? A. I am not an intimate friend to him.

Q. You are not a friend of Mr. Kantrowitz? A. Why, certainly.

Q. You and he had quite an argument about a month and a half ago? A. No.

Q. And isn't it a fact that you are not on speaking terms with him? A. That is not so.

Q. When was the last time you spoke to Mr. Kantrowitz? A. Well, about a month ago or so.

Q. Where? A. At Green's restaurant.

Q. Why, didn't you answer on cross-examination that the only time you spoke to him was on this



date that you discussed the Feld adjustment? A. That's the time.

Q. About a month ago? A. Yes.

Q. Well, didn't you testify on direct examination it was two or three weeks after the purchase of the property? A. Well, I don't know just exactly. When I say "a month" it is around about that time.

Q. Didn't you, in answer to Mr. Weinberger on cross-examination by complainant's counsel, say the time you spoke to Mr. Kantrowitz concerning the adjustment, or words to that effect, with Mr. Feld, that that was two or three weeks after the purchase of the property?

Mr. McGinnis: I object to the question. It assumes that I asked him that on direct. I don't think I conducted the direct when he said that.

The Court: Oh, it is cross-examination.

Q. Did you say that? A. Yes.

Q. So that, if it is true, as you testified, that the last time you spoke to him was when you discussed the settlement with Mr. Feld, then that was somewhere in 1925, wasn't it? A. I don't know; I spoke to him later than that.

Q. Didn't you just testify that the time that you last spoke to him was when you discussed the settlement with Mr. Feld? A. That's right.

Q. And that was two or three weeks after the purchase of the property? A. I spoke to him more than that.

Q. Didn't you testify that you spoke to him only once on that subject? A. Once?

Q. Yes. A. I don't think I did.

Q. You won't say you didn't? A. I spoke to him more than once on that subject.

Q. Didn't you testify and say the only time that you spoke to him concerning this particular transaction, or words to that effect, was when you met him at Green's two or three weeks after the property was purchased by him? A. That's right.

Q. That's right, isn't it? A. Sure.

Q. And that was the last time you spoke to him? A. No, I spoke to him after that again.

Q. Now, where is your check for $500 that you testified you gave? A. I gave my check to Mr. Lane.

Q. Who is Mr. Lane? A. Mr. Lane is accountant for Weinberger & Weinberger.

Q. You gave the check right back to Mr. Lane, Harry Weinberger's bookkeeper? A. Yes, that's right.

Q. Now, about the time that you met at the office, Mr. Hartstein was there? A. Yes, sir.

Q. Were you in the room with the parties throughout the entire time that they talked about this contract? A. Yes, sir.

Q. You recall also that it was about four hours' discussion when they were going from room to room, and finally winding up in Mr. Weinberger's home? A. Yes.

Q. And there was considerable discussion about interests of the people and also the number? Do you recall that? A. Yes.

Q. That is your distinct recollection; and were you there when a yellow piece of paper was drawn up by Mr. Hartstein? A. What paper have you reference to?

Q. Well, were you there when Mr. Hartstein was writing on a yellow sheet of paper? A. Mr. Hartstein drew up the agreement, yes.



Q. It was a yellow sheet, was it not, Mr. Kuller, from a pad? A. I wouldn't say whether it was yellow or not.

Q. You don't remember that; well, was it typewritten or was it in his own handwriting? A. Well, he was writing. I knew he was doing the writing.

Q. And that was in the room while the people were there? A. Yes.

Q. And no one was dictating to him what he wrote? A. Well, I don't know; I couldn't say that.

Q. Did anybody sign that paper; yes or no? A. Anybody sign it? I guess we all signed it. Mr. Kantrowitz signed it.

Q. No, I mean a yellow sheet of paper that Hartstein drew up, that you saw; did you see any individual sign that paper; yes or no? A. I don't remember.

Q. Well, was that at the wind up of the conference? A. No, it wasn't all wound up.

Q. Was it several hours after discussing the different items between the parties? A. Yes.

Q. And you don't remember whether that was signed? A. No.

Q. Wasn't it the purpose of the people who gathered together this afternoon at this lawyer's office—Weinberger & Weinberger—to sign papers; wasn't that the purpose of going there? A. The purpose of going there—

Q. Yes or no. A. To sign papers.

Q. (The question is read by the stenographer). A. I don't know whether it was the purpose or not.

Q. I believe you also testified that Mr. Weinberger was the one who told Mr. Jaffe to draw up some papers? A. That was about the corporation; that was before. That was to draw the corporation

papers; that was before that. That was way before that. That I know.

Q. And no part of those papers was signed, either? A. The corporation papers? No.

Q. Now, was that at the third hour or fourth hour of the conference? A. Oh, this was a difference conference entirely.

Q. It certainly wasn't the purpose of this group getting at this office, at the original arrangement, that there should be $500 checks paid out by Mr. Weinberger, was it? A. We came up there to buy each other out.

Q. When you first came up there the purpose was the formation of a syndicate, wasn't it? A. When we first came up there, yes.

Q. And this $500 check matter that was talked about, the paying out to several of these people, was something that was created while the conference was going on? A. While the first conference was going on there was the drawing of the papers for the corporation. This man wanted to have that name and so on and we decided to disagree, and so we met again.

Q. You decided at that time to disagree? A. Yes.

Q. You never gave any moneys on the $10,000 payment toward this proposition at any time? A. No, sir.

Redirect-examination by Mr. McGinnis:

Q. Mr. Kuller, you were asked why you didn't give Mr. Kantrowitz money and you wanted to explain—

Mr. Feder: May I object, if your Honor please. I don't know of any question in reference to his not giving Mr. Kantrowitz any money. I think that was one of the things that your Honor called the witness's attention to.



The Court: What you mean is, that it wasn't within the scope of the cross-examination.

Mr. Feder: That is it, and the question was asked as if I asked him.

Mr. McGinnis: The witness started to say "the reason why".

The Court: Well, I often relax the rule as to it not being within the scope of the cross-examination. I will permit the question to stand and permit you to cross-examine him further on it if there is anything brought out. (Addressing the witness) Now go ahead; what was it you wanted to explain.

A. Well, that morning when I was to give him the money Mr. Nadler, who is the landlord where my office is in, offered him a profit on the building and wanted to take the contract right off his hands, and that was the reason he was jostling around and didn't accept my money.

Mr. Feder: I ask that that be stricken out.

Mr. McGinnis: I agree that that be stricken out.

Q. What was said by Kantrowitz to you that morning, if anything, about this man making him an offer; or was there anything said by Kantrowitz? A. Mr. Kantrowitz didn't say nothing to me that I know of.

Recross-examination by Mr. Weinberger:

Q. You said that you gave Mr. Lane your check for $500? A. Yes.

Q. Will you tell the court why.

Mr. Feder: I object, if your Honor please, to his bringing out his motive for doing it.

The Court: You brought it out. Go ahead.

A. Well, I owed some $560 on the Philip Simon mortgage and I turned that over to Mr. Lane and it just about evened up what I owed.

Q. As a matter of fact, the $500 check was actually paid on account of your indebtedness? A. Yes.

Q. To whom was it paid? A. To you.

Q. Meaning Mr. Harry Weinberger? A. Yes.

Recross-examination by Mr. Feder:

Q. What do you mean by this mortgage of Philip Simon? A. Mr. Weinberger and I had a mortgage as partners, and it seemed that Mr. Lane gave me $560 some odd dollars more money than was due me, and so when I got the check I turned it over to Mr. Weinberger.

Q. Do you remember the day you turned it over to him? A. I gave Mr. Lane the check the following day. I got it at night and I gave it to him the following day.

Q. Do you know the month? A. You know the date.

Q. Do you know the month? A. No, I don't.



EDWARD A. WEISS, sworn on behalf of the complainant, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Weiss, you are a lawyer by profession? A. I am.

Q. And member of the firm of Feld, Weiss & Feld? A. I am.

Q. You remember something of this transaction on March 19, 1925? A. I do.

Q. Were you present during these negotiations or the making of this contract? A. I was present at the office.

Q. Was Mr. Kantrowitz there? A. Mr. Kantrowitz was there, and Mr. Samuel B. Feld was there, and Mr. Edward Feld was there a part of the time. Mr. Hart came up later; and Mr. Cacoliris came up, I think, just after the contract had been closed.

Q. Did you hear anything said by Mr. Kantrowitz or any of the people to Mr. Kantrowitz, with respect to what interest Mr. Feld was to have in this? A. There was quite a discussion between the different parties, including the owners of the building as to the terms, and discussion between Mr. Feld and Mr. Kantrowitz as to how many people were to take the property over, and there was to be six I think and he was to have a one-sixth interest.

Q. Was there any claim made at any time during that whole transaction by Mr. Kantrowitz, to the effect that he was to be the sole purchaser? A. Absolutely none.

Q. Were you there until the contracts were actually signed? A. I was there until the contracts were actually signed.

Q. How many contracts were actually drawn up? A. That day, there were two, to the best of my recollection. There might have been three, but I am pretty positive there were two signed.

Q. After that were you present at any other transaction or gathering of these parties? A. I was over in the office sometime later.

Q. What took place on that occasion? A. That was the day on which the check was given to Mr. Cacoliris and Mr. Feldman.

Q. Who was present at that time? A. Mr. Kuller, Mr. Hartstein, Samuel B. Feld, Mr. Cacoliris, Mr. Hart was there a part of the time, Harry Weinberger was there, and Mr. Kantrowitz was there.

Q. Tell me, if you can, any conversation that took place in which Mr. Kantrowitz participated, or was present, with respect to the giving of these checks—how it all came about. A. I think I got over to the office at the request of Mr. Cacoliris who accompanied me, around five in the evening or possibly a little later, and after sitting in the room for awhile I went in another room, and there was quite a discussion. The discussion seemed to be, not so much on the interest, but certain parties wanted other parties in with them; in fact, they couldn't be satisfied. Harry Weinberger offered to buy out anyone's interest for $500, and he said, "If you don't want to buy me out I will give you my share for nothing;" and I advised Mr. Cacoliris to take the $500 and get out.

Q. Who else accepted? A. So far as I know, Mr. Hart says at the time, "I am doing anything Mr. Kantrowitz says" and then he left; he was busy. Kantrowitz says he was satisfied, and Kuller was satisfied. I think that was about all the three of them said, that they were satisfied.



Q. Were there any papers drawn up and executed on that occasion? A. Mr. Hartstein drew a paper up that was supposed to be an assignment. I didn't read the paper. It was drawn on yellow paper, signed by Mr. Kantrowitz. A short time after that there was a telephone call from Mr. Hart, and Mr. Kantrowitz got on the wire and spoke. From what I could get out of the conversation, Mr. Hart wanted to object; he wasn't satisfied; and Mr. Kantrowitz says, "It is too late; I signed the assignment already."

Q. And you had seen him sign the paper? A. Yes.

Q. Did you see the checks drawn? A. I saw Mr. Cacoliris's check, because it was handed over to him and then I walked out with him.

Cross-examination by Mr. Feder:

Q. Mr. Weiss, on the night that the sellers were there at your office and this contract was drawn was there talk right in the presence of these sellers and the different interests—the people that wanted to take the property? A. I wouldn't say it was in their presence.

Q. And Mr. Samuel B. Feld was the sellers' lawyer, wasn't he? A. I will say he was.

Q. And he was taking care of their interests, wasn't he, meaning now Mr. Solomon, Mr. Endler, and Mr. Lenz? A. I think he was taking care of their interests and his own interest at the same time.

Q. Well, he was acting as a lawyer for them, wasn't he? A. I can't say that. I think he can answer that question better than I can.

Q. Wasn't he their lawyer and wasn't you their lawyer? A. I can't say. I was in and around the office.

Q. Feld, Weiss & Feld were? A. Yes.

Q. And Mr. Feld was left in charge of drafting the contract for the sellers? A. Yes.

Q. And you say at that time, when he was drafting the contract, that there was an understanding that he was to get a one-sixth interest in this property? A. Not only he but the others also.

Q. I am talking about him first. A. Well, he had a one-sixth interest, yes.

Q. And, so far as you recollect, no discussion was opened in the presence of the clients, although the contract was drawn to Reuben B. Kantrowitz alone, by Mr. Feld saying nothing in his presence or your presence that he was to have a one-sixth interest? A. I would say that that is so.

Q. Didn't you say, to a question that I asked you about three seconds ago, that you don't recall? A. I say I don't recall, but I don't say that that would happen.

Q. You appreciate that is of vital interest in this case, whether your partner had a one-sixth interest in the property? A. Yes.

Q. And that is the sole issue in this case, and yet you don't remember one way or the other? A. I remember it was discussed in the outer room when Endler, Solomon and Lenz were sitting in the room. I can't say that it was discussed in their presence, because I didn't hear it.

Q. But you do remember in detail the item that Mr. Lenz, Mr. Solomon and Mr. Endler were in the library while there was a discussion in the outer room? A. There was a discussion in the large room—the waiting room.



Q. The waiting room is disconnected from the library? A. There is only one door between the two.

Q. It is a separate room? A. It is a separate room, yes.

Q. Did you have your check-book around that night to the office—Feld, Weiss & Feld's check-book? A. Yes, we had that.

Q. Was there any money given by your partner to Mr. Kantrowitz on that night? A. I did not see any given.

Q. You were there? A. I was there.

Q. There was no discussion about a check that night, was there? A. There was a discussion about a check to be given the next morning or the next day, or something like that.

Q. Now, Mr. Weiss, the contract that Mr. Kantrowitz executed was left with Mr. Feld, with the understanding that Mr. Feld was to get some other signatures? A. It was left with Mr. Feld with the understanding that Mr. Jaffe was to come down the next day and get the signatures.

Q. Their names were incorporated in this contract? A. Yes, sir.

Q. And the contract was left by Mr. Kantrowitz in the possession of Feld, Weiss & Feld? A. It was left in Mr. Samuel B. Feld's possession.

Q. Were you there the next morning when Mr. Kantrowitz's check was brought in, certified? A. No check was ever brought in certified while I was there.

Q. You do know that the check was certified, do you not? A. I don't know. I know he just gave a check to be certified.

Q. Now, at this time when you were at Weinberger's office there was a discussion about the dif-

ferent interests each one was to get? A. No, there was no discussion about that.

Q. That answers it. You say there was no discussion about how much each one was to get? A. That's right.

Q. And there was no discussion as to how many people were to buy and take over this property? A. There was no discussion about that.

Q. You were there when objections were made to certain people who wanted to form this syndicate to buy this property. A. That was at the time those checks were given. That seemed to be the whole trouble, that one man didn't want another man in it or the other didn't want another.

Q. With the consequence that while you were there there was no solid understanding as to who was going to be in it and who was not going to be in it? A. When I left, Mr. Cacoliris had gotten his check for $500, and they all agreed that Harry Weinberger was to get the assignment, and I left. We felt solid, in a way.

Q. I am talking about all the people. Wasn't Mr. Feld a part of this syndicate? A. I qualified that. There was a solid agreement when they turned over certain money to some people and when they got the assignment and the others got a one-sixth interest.

Q. You were standing near Mr. Hartstein while he was drawing this paper? A. I would say I was about five or six feet away from him.

Q. And while he was drawing it you were watching him? A. No, I didn't watch him. I saw him write what was supposed to be an assignment.

Q. You knew he was writing a paper concerning this transaction? A. Yes.

Q. Was that paper read out loud by Mr. Hartstein? A. He didn't read it; Mr. Kantrowitz read it.



Q. And you actually saw Mr. Kantrowitz put his name to that paper? A. Yes, sir.

Q. Saw him sign it, and it was witnessed by whom? A. I don't know whether it was witnessed or not.

Q. It was not in typewriting? A. No, it was written in longhand on a yellow sheet of paper.

Q. Did you read it? A. I did not.

Q. And you did not know anything about its contents? A. I don't, except I was told it was an assignment.

Q. To whom was that paper turned over; do you know? A. That I don't know, because after Mr. Cacoliris got his check I walked out.

Q. You didn't see to whom it was turned over; A. I didn't wait for that.

Q. Did Mr. Hart leave before that paper was signed, or after? A. Mr. Hart left a little before that paper was signed.

Q. Mr. Weiss, you signed an affidavit in this case, did you not? A. I did.

Q. And if I show you the copy will you recognize it?

The Court: Here is the original attached to the bill (handing paper to counsel).

Q. You swore in this affidavit, did you not, "Immediately thereafter, an assignment was drawn of a contract on a yellow sheet of paper, which was turned over to Harry H. Weinberger". Now which is correct, that you didn't see or did see whom it was turned over to? A. I would say that the affidavit is correct.

Q. Then your recollection isn't so good now as

it was in July, 1925? A. No, because that was immediately after the thing happened; it was fresh in my memory then.

Q. And you further swear in the affidavit that Mr. Emil Hart then left the office, stating it was necessary for him to go back to business. Now which is correct? A. It was about that time.

Q. Which time did he leave, after or before? A. I think he left just about the time the assignment was signed. I don't say one way or the other when it was signed, but it was about that time, a couple of minutes before or after; I am not positive.

Q. Now that your memory is refreshed, that it was turned over to Harry Weinberger, do you recall who retained that paper after the group left the office? A. I don't know what happened.

Q. Have you seen that paper since? A. I have not seen the paper since that time.

Q. Did you see an assignment between Harry Weinberger and Samuel B. Feld? A. I have seen an assignment.

Q. You have seen that? A. Yes, sir.

Q. Well, have you ever asked to see the yellow sheet of paper?

Mr. McGinnis: I object to that as not cross-examination.

The Court: Well, I think that anything affecting that transaction to which he testified on the 3d of April is relevant.

A. I can't testify about the 3rd of April; I am testifying about March 27th.

The Court: I thought that was the time of giving the check?

Mr. Feder: Let me state to your Honor,



that, to my mind at least, this paper that is being talked about so much is of some importance in this case. First, I am attacking this witness's credibility, or laying the foundation for attacking his credibility. Secondly, he swore to it in this affidavit, all about the yellow sheet of paper. It seems to me I have the right to inquire into it, to ascertain, first, what he knows, and then your Honor can compare what he says now with what he says there. It seems to me it would throw light on it here.

The Court: It is a little far-fetched to ask whether he asked to see it.

Mr. Feder: I will reframe it.

Q. You have been in steady touch concerning this case with your partner, Mr. Feld, and also Mr. Weinberger, have you not, Mr. Weiss? A. Not with Mr. Weinberger. I never spoke to Mr. Weinberger at all about the case.

Q. With Mr. Feld, your partner? A. I was in steady touch with the case for awhile, but when Senator McGinnis took an active hand in it I forgot all about it.

Q. Have you any knowledge as to where that paper was? A. I don't know anything about that paper from the night I left Weinberger's office up to the present time.

Q. The last time you saw it was when it was turned over to Mr. Weinberger? A. Yes, to the best of my recollection.

Redirect-examination by Mr. McGinnis:

Q. Mr. Weiss, you were asked concerning a por-

tion of your affidavit you made in this case, which reads as follows: "Immediately thereafter an assignment was drawn of the contract on a yellow sheet of paper which was turned over to Harry Weinberger"; did you not also say, immediately after that: "who immediately commenced writing out checks to the parties for their respective interest in the said property"? A. That was all done about the same time.

Q. Also, you were asked about Mr. Hart having left the office; did you not in that affidavit depose as follows: "Emil Hart then left the office, stating that it was necessary for him to get back to business, and a short time thereafter the telephone rang and it was answered by Reuben B. Kantrowitz who addressed the person calling as "'Mr. Hart'. After talking on the telephone, he stated that Mr. Hart had changed his mind and decided not to accept the $500 and wanted his one-sixth in and to the said property. Reuben B. Kantrowitz informed Mr. Hart that it was too late, he having already made an assignment to the said Harry H. Weinberger, and that all the parties interested were accepting $500 each as their profit in the same"? A. That is exactly what he said and that is what happened.

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ANTHONY CACOLIRIS, sworn on behalf of the complainant, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Cacoliris, you are one of the persons in connection with this case today as being a member of this syndicate group? A. That's right.

Q. When were you first asked to join in the buy-



ing of this property? A. Well, I went to Mr. Hart —let me say a few words just previous to that.

Q. You can't testify to anything except what you said. A. I went to Mr. Hart. He knew Larkey Brothers had made a proposition to buy the building and he had a one-third interest—

Mr. Feder: I object to all this, if your Honor please.

The Court: Yes, that may be stricken out.

Q. Mr. Cacoliris, on the 19th of March different people in interest claimed they were all in Mr. Feld's office? A. That's right.

Q. When this contract between Mr. Kantrowitz and the landlords was signed were you there that night? Yes or no. A. No, I wasn't there at the time of drawing the contract.

Q. Around that time had there been any talk of any kind between you and Mr. Kantrowitz and other persons? A. There was.

Q. Who was present at that time when you had the talk? A. Mr. Hart, Mr. Edward Feld, Mr. Kantrowitz, and myself.

Q. Where did that talk take place? A. In Mr. Hart's store.

Q. When? A. That same day in the afternoon.

Q. Tell us what was said on that occasion, that is, the afternoon of March 29th. A. I went to Mr. Hart and told him I would like to have him buy the building together as he knew the other party. They wanted $90,000 for it and Mr. Hart sent for Kantrowitz and Kantrowitz came over to his store and we spoke about it. Sam Feld was supposed to be one of the persons, and Kantrowitz says he can't do any more because he has an interest in it.

So then we agreed to give him our interest and he was satisfied to buy the six of us out. So they went out to make the contract and I went in my store. I was busy.

Q. So you didn't go up there? A. After 12 o'clock when I closed my store, when the contract was signed.

Q. Did you have any agreement as to what share you were to have? A. Exactly one-sixth.

Q. What interest was Mr. Samuel Feld to have? A. One-sixth.

Q. Now, after that were you down in Mr. Weinberger's office? A. I was.

Q. Who was there on that occasion? A. Samuel B. Feld, Ed. Feld, I believe Ed. Weiss, Mr. Kuller, Mr. Kantrowitz, Mr. Hart, Danny Feldman, and Hartstein, some man I didn't know. I was introduced to him.

Q. And what was the talk on that occasion about? A. On that occasion they were trying to form a corporation but they couldn't get together. Some wanted their names to appear on the certificate and some did not.

Q. And then what happened? A. We went down to see if we could put the corporation through or what to do with it. As a matter of fact, when they signed the contract they asked me to take my share of the $10,000 the next morning, which I did the next morning. It was $1667.66. I thought that was better than a whole week trying to form a corporation. Some of them didn't want my name to appear in it, and so we went again the next night to see what we could do.

Q. And what happened? A. We went down to see if we could put the corporation on its feet, and after Mr. Weinberger discussed it for quite some



time and found that he couldn't get anywheres Mr. Weinberger says "We are too many; we can't get together; let us do this:" And I says, "for my part I will give my share, and maybe some of the others will sell out, too". And so he asked me what I wanted for my share and I says: "If I get $500 right now I will sell mine"; and he asked Mr. Kuller and he says he will sell his. Mr. Kantrowitz sold his and so with Mr. Hart.

Q. Did you get your $500? A. I did.

Q. When you got your $500 what did you do; did you stay there? A. No, I went right away.

Q. Now, before you went away do you know whether or not any papers were drawn up and signed? A. It was drawn up by Mr. Hartstein.

Q. And who signed it? A. Mr. Kantrowitz signed it.

Q. Do you know what that paper was supposed to be? A. Supposed to an assignment of the contract to turn it over to Mr. Weinberger.

Q. And I show you a check marked Exhibit D-1 being a check made by Harry H. Weinberger for $500; is that the check that was given to you? A. Made for me, sure.

Q. And cashed by you? A. Cashed by me.

Q. That was your profit in the deal? A. That was my profit on the deal for my sixth interest.

Cross-examination by Mr. Feder:

Q. You have a candy store, or confectionary store, in this building, have you? A. I do.

Q. So, originally, you were trying to buy the property of Mr. Hart, were you? A. Yes.

Q. On that day that you spoke to Mr. Kantrowitz

did you know that there was going to be a contract drawn that night? A. I did.

Q. You knew Mr. Kantrowitz was buying it from the owners? A. I was buying it.

Q. You were buying it and you went up there? A. No.

Q. Did he come down and tell you that he had drawn a contract? A. In his name.

Q. He told you that a contract was being drawn in Mr. Kantrowitz's name? A. No.

Q. You had your check-book there? A. Yes.

Q. Now, wasn't it during that week, Mr. Cacoliris, or after Mr. Kantrowitz had the contract of purchase in his name, that you came to him and asked him about a lease? A. No.

Q. Did he come to you about a lease? A. Absolutely not.

Q. And you say the amount of cash involved at that time was $90,000? A. That's the idea.

Q. Now, did you have property in Ridgewood at that time? A. I still have it yet.

Q. Didn't you come to Mr. Kantrowitz and ask him to sell that property and take, as a part consideration, your property in Ridgewood, and state that you had your own friends who would buy this Lexington Avenue property? Was there any talk like that? A. No, sir.

Q. Nothing like that? A. No.

Q. Did you come to Mr. Kantrowitz's office? A. Never saw him.

Q. Didn't you have a talk with him in Mr. Hart's office? A. I saw him there.

Q. But had no conversations with him? Although you thought he was your partner you never spoke to him? A. Yes, he was my partner.

Q. Did you, after you say he was your partner,



meet him and talk with him? A. I don't know as I seen him except those few times.

Q. You knew his office was in the Lawyers' Building? A. I don't know where it is today.

Q. Weren't you up there in Kantrowitz's office before March, 1925? A. I don't recall.

Q. I mean, you knew where his office was? A. I don't know today.

Q. Was Mr. Jaffe a lawyer? A. Yes.

Q. In the same office with Mr. Kantrowitz? A. Yes.

Q. Now, when you got to Mr. Weinberger's office you understood that the reason you were going was to see if you couldn't buy this contract over from Mr. Kantrowitz— A. Not exactly, no.

Q. Didn't you have any interest in the property? A. Yes.

Q. And didn't you talk there for four hours? A. Yes we did.

Q. Were you there when Mr. Hartstein drew np this piece of paper? A. Yes.

Q. Did you see to whom he gave it? A. No, it was lying on the table there. I know it was supposed to be an agreement.

Q. How do you know that? A. I saw him have it.

Q. And you read it? A. I didn't read it.

Q. If you didn't read it how do you know it was an agreement? A. I heard talking going on.

Q. Is that why you assume it had something to do with the property? A. They asked me to witness the contract. He had to have a witness then.

Q. Do you mean to state that he had the contract with him? A. No, I didn't state that. I said he didn't have it with him. I didn't know whether he had it or not.

Q. Did they ask Mr. Kantrowitz for that contract while you were there? A. He did.

Q. What did he say? A. He says he didn't have the contract with him.

Q. Did they ask where it was? A. I don't know.

Q. Did you hear Mr. Weinberger ask him? A. No, nobody. He asked him for the contract and he says he didn't have it with him.

Q. Did anybody else other than Hartstein who wrote this paper take it up and read it? A. I can't say.

Q. You were there all the time? A. I was.

Q. Didn't you see anybody do that? A. No, sir.

Q. Didn't even see Mr. Feld pick it up? A. I didn't see anybody pick it up and read it.

Q. How long did you stay after this paper was signed? A. Maybe five minutes.

Q. And did Mr. Weiss go away with you? A. Yes, sir.

Q. Did Mr. Feld go away, too, or did he stay there? A. I can't recall whether he went or left.

Q. While you were there didn't Mr. Kuller and Mr. Weinberger try to have some control over the others? A. Yes.

Q. And couldn't get to any understanding? A. No.

Q. And not coming to an understanding you got your $500 and went home. That is correct, is it? A. That's right.

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EMIL HART, sworn on behalf of the complainant, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Hart, you are the person who has been mentioned here a number of times today as being



a member of this group to buy this property on Lexington Avenue? A. Yes, sir.

Q. Do you remember the day on which this agreement was made, on March 19, 1925? A. Yes, sir.

Q. On that day was there a conversation with you and Mr. Kantrowitz and Mr. Cacoliris and others? A. Yes, sir.

Q. What was that conversation? A. They said that the six names that were mentioned would buy the property all together, each one to own a one-sixth interest.

Q. And who would be the ones that would each have a one-sixth. A. Harry Weinberger, Kuller, Samuel Feld, myself, Cacoliris and Kantrowitz.

Q. Were you present up in the office of Mr. Feld that night when this agreement was made? A. Not while it was made. All the agreements were made in my office.

Q. You weren't there when the agreement was signed? A. No, sir; not when it was signed. I was busy in my office.

Q. Now, after that, were you down in Mr. Weinberger's office on this occasion when certain checks were given? A. Yes, sir.

Q. Now tell us who was present at that meeting? A. All the names that I have mentioned was present there, six of us, and Mr. Ed. Weiss, and Mr. Hartstein was there.

Q. And on that occasion there was some discussion, was there, about buying or selling out? A. It was this. After the six got this property Mr. Kantrowitz was supposed to act as agent and he got the agreement in his name. They were going to mention certain names in the corporation and give each one a sixth, but not to mention it in the certificate; but why, I don't know.

Q. All right; did that cause trouble. A. It did.

Q. As a result of that was there something else done? A. The result of that was this: It was proposed that either one of us should buy out the three or all; and finally Mr. Weinberger came out and said there was too many arguments going on, and he next suggested paying a profit to each one, and he said that he would take $500 for his share or he would buy out Mr. Kantrowitz and the rest of us, giving us $500 each. Well, most of them agreed to take it and I asked him to buy the interest of Mr. Kantrowitz. And in the meantime—it looked fishy to me—

Mr. Feder: I object.

Q. After you got in that state of mind what did you do? A. Then I went home to the store and I called up immediately. I says, "Look here, I'm not going to accept $500 for my share; it looks rather funny. You are trying to put me out and I don't know why." He said, "It is too late now; I assigned my interest to Harry Weinberger."

Q. Then did you get your $500? A. No, sir; I didn't accept it at that time, and afterwards I couldn't get it any more. Mr. Kantrowitz says "I know I beat you but it is not the first time". I saw him in the Progress Club, and I says, "What made you do this"—

Mr. Feder: I object to that.

The Court: I don't think it is of any great importance.

Q. Was there a check for $500 brought to you? A. Yes, sir.

Q. And whose check was that? A. Harry Weinberger's.



Q. Excepting for the name, of course, did the check look like that (exhibiting to witness D-1); that style of check, was it? A. I couldn't say about that.

Q. Who brought the check to you? A. Mr. Kantrowitz.

Q. Was anybody else with him or with you at the time? A. I think Danny Feldman.

Q. Did Mr. Kantrowitz show you any check for $10,500? A. That I don't remember.

Cross-examination by Mr. Feder:

Q. You speak of a Mr. Hartstein; was that the first time you had met him? A. Yes, sir, that was the first time.

Q. How was he introduced to you? A. As Mr. Hartstein.

Q. As a lawyer? A. As Mr. Hartstein.

Q. Yes, but do you know him to be a lawyer in New York? A. I know about him.

Q. In what way? A. I do business with his brother.

Q. This Mr. Harstein is a lawyer from New York, isn't he? A. Yes.

Q. And you know him also to be a partner with Mr. Weinberger in the State Finance Co.? A. No, I do not.

Q. You knew he was interested in the State Finance Company, of which Mr. Weinberger is President? A. No.

Q. You didn't know that? A No.

Q. Mr. Hart, this $500 you never kept? A. I never got it.

Q. It was delivered to you, but you didn't keep it? A. That's right.

Q. You said Mr. Weinberger said he would take $500 as his share? A. Yes, sir.

Q. Sure of that? A. Positive.

Q. Did you hear the other witness testify that Mr. Weinberger wanted anything he could get for his share? A. I didn't hear that; I am only telling my story.

Q. You heard him say he wanted $500? A. Positively.

Q. That afternoon there was so much talk that you didn't know where you were and you left the office? A. Well, I did know where I was.

Q. What I mean is, that none of you agreed on what you were going to do? A. Yes, it was agreed.

Q. But nothing was done? A. It was done.

Q. Did you ever, as a matter of fact, sign corporation papers? A. We were going to sign.

Q. Did you? A. No.

Q. Did you sign an agreement with Mr. Kantrowitz that afternoon? A. No.

Q. So the very things which you came to do, to sign papers, was not done that afternoon? A. It was not.

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ABRAM ENDLER, sworn on behalf of the complainant, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Endler, you were one of the three owners of this property in question on Lexington Avenue? A. Yes.

Q. For which a contract was made with Mr. Kantrowitz? A. Yes, sir.

Q. Were you present that evening in Mr. Feld's office when all this was going on? A. Yes, sir.



Q. Was Mr. Kantrowitz there? A. Yes, sir.

Q. Mr. Feld there? A. Yes.

Q. And at that time did you have any understanding with Mr. Kantrowitz as to what interest he and Mr. Feld and the others had?

Mr. Feder: One moment; I object to that, on the ground that the writing speaks for itself as to what interest he had with Mr. Kantrowitz.

The Court: The whole case has proceeded upon the theory that while the contract was taken solely in the name of Mr. Kantrowitz, he took as the agent of these six members of the syndicate, himself and five others. Now, of course, "any understanding" is rather vague. The question perhaps ought to be reframed and ask him if Mr. Kantrowitz said anything.

Mr. McGinnis: I had intended to follow after he said "yes" or "no".

The Court: I overrule the objection, Mr. Feder. (Addressing the witness) Well, was there anything said about what interest was to be taken by Mr. Kantrowitz and what was to be taken by Mr. Feld?

A. No, I didn't understand what interest he claimed. I know Samuel Feld was interested as one of the buyers.

Q. Is that all you know about it? A. That's all.

Q. Do you know how much of an interest Sam Feld had? A. I do not.

Q. Did you, afterwards, learn how much of an interest Sam Feld had, from Mr. Kantrowitz? A. From Mr. Kantrowitz I didn't learn nothing.

Q. Did Mr. Feld at any time tell you that he had a one-sixth interest in that contract?

Mr. Feder: I object to that as leading.

The Court: It is leading and a self serving declaration. I sustain the objection.

Q. At the time this contract was made between you and the other owners on the one part and Mr. Kantrowitz on the other, Mr. Feld was a tenant in this building, was he not? A. Yes, sir.

Q. Holding a lease? A. Yes, sir.

Q. And is still there? A. Yes.

Q. And you had given a Mr. Feldman before that an option to buy this property, had you not? A. Yes, sir.

Q. At what price?

Mr. Feder: I object to that as being immaterial, if your Honor please, what he gave Mr. Feldman.

Q. At what commission?

Mr. Feder: I object to that.

The Court: What is your purpose?

Mr. McGinnis: It shows the relationship to the past, that is all. I won't press it.

Cross-examination by Mr. Weinberger:

Q. Mr. Endler, at the time that this transaction in Mr. Feld's office was being closed,—the contract for the sale of the property—was Mr. Jaffe present? A. Yes, sir.

Q. Mr. Kantrowitz was there? A. Yes, sir.

Q. Mr. Samuel Feld? A. Yes.

Q. And who else? A. Emil Hart and Tony Cacoliris.



Q. At that time there was a discussion as to how many people were in that? A. I don't know just exactly how many was buying it, but I know Sam Feld was interested, and also Emil Hart and Tony Cacoliris was interested.

Q. You knew that four of them were interested? A. Yes.

Q. And how many more you didn't know? A. I didn't know.

Q. And you knew that Mr. Kantrowitz had taken the contract in his own name before that? A. Yes.

Q. Did you get a certified check? A. No. I cashed it myself.

Q. But was it certified? A. No, I cashed it myself.

Cross-examination by Mr. Feder:

Q. That night, however, you got a check from Mr. Kantrowitz of $10,000? A. Yes, sir.

Q. And Mr. Feld didn't offer anything on his part, nor did anyone else there, in money? A. No, sir.

Q. And your discussion about the cash deposit was made with Mr. Kantrowitz? A. Yes.

Q. And you received a check? A. Yes, sir.

Q. And the contract was signed by you and your co-partners? A. Yes, sir.

Q. Are they in court today? A. No, they can't come.

Q. Mr. Feld was your lawyer? A. In some cases.

Q. In that case that night? A. Yes.

Q. You were all in the library that night closing this deal? A. Yes, sir.

Q. And you cashed this check, you say? A. It was cashed the next morning.

Q. You remember that very distinctly, don't you? A. Yes.

Q. And are the other things that you have testified to just as distinct in your mind as the cashing of the check? A. Just exactly.

Q. Is this your signature on the check which I show you, dated March 18, 1925, to the order of Nathan Lenz, Joseph Solomon and Abram Endler for $10,000, signed by Reuben B. Kantrowitz? A. That is my name.

Q. On the back of this check is the signature of A. Endler; is that your signature? A. It was written by one of my partners.

Q. You authorized him to sign your name? A. Yes.

Q. And this is your partner's signature, J. Solomon? A. Yes.

Q. And the signature of Nathan Lenz? A. Yes.

Q. Look at that check and tell us whether it is certified. A. (After examining the check) It is certified.

Q. Well, then you were mistaken, weren't you? That is all.

Mr. Feder: Any objection to this check going in evidence now, Senator?

Mr. McGinnis: I think it is better to go in on your side.

The Court: It can go in now as Defendant's Exhibit.

(The same is admitted and marked Exhibit D-3).



SAMUEL B. FELD, recalled in his own behalf, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Feld, at the time these contracts were drawn up how many copies were made? A. Three.

Q. What was done with those copies? A. One copy I think was given to Mr.—either Mr. Lenz or Mr. Solomon or Mr. Endler, one or the other received the original, and I retained the other two copies.

Q. And did you give any of these copies to Mr. Kantrowitz? A. No.

Q. Did you ever part with any of these copies of the contract? A. I parted with one copy of the contract of April 3d, which is the time I gave Mr. Weinberger my check as shown and he, in return, gave me a written assignment of one-sixth, and the others I always had.

No Cross-examination.

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Mr. McGinnis: We have two other witnesses and they are orthodox Jews and today is a Jewish holiday, and I believe they have declined to come here, but I have enough to occupy the rest of the day. Then we will have Mr. Hartstein, who is a New York Lawyer, and he is in the trial of a case.

The Court: What do you mean, you want to close now with the right to put that proof in at some other time?

Mr. McGinnis: If I close before 4 o'clock I want to reserve the right to put the other witnesses on.

The Court: You may do so.

*Harry Kuller—Recalled, Direct—for Complainant*

HARRY KULLER, recalled on behalf of the complainant, testified as follows:

Direct-examination by Mr. McGinnis:

Q. I believe you live in the city of Passaic? A. Yes, sir.

Q. About how many years have you lived there? A. 30 years.

Q. And have you bought and sold real estate in the City of Passaic? A. A little.

Q. What do you mean by "a little"? A. Well, a few parcels.

Q. And have you bought and sold any in the vicinity of this property on Lexington Avenue? A. Well, I have bought several there.

Q. And have you kept in touch with the market value of real estate in the City of Passaic? A. Very well.

Q. Do you know this property, situated at 12 to 16 Lexington Avenue, Passaic, which is the subject of this suit? A. Yes, sir.

Q. Have you been in that property? A. Yes, sir.

Q. Do you know what the value of that was in the spring of 1925?

Mr. Feder: I object to that, if your Honor please. First, let me ask if counsel intends that Mr. Kuller shall act as expert on the values of real estate; if so I would like to cross-examine him before he answers the question as to the value.

The Court: You may do so.

Cross-examination by Mr. Feder as to Qualifications:

Q. Mr. Kuller, during the first ten years of your



*Harry Kuller—Recalled, Cross—for Complainant.*

life in Passaic what business were you in? A. Carpenter and builder.

Q. You were also in the saloon business at that time, weren't you? A. For awhile.

Q. And you were engaged in all sorts of business, weren't you, off and on, during the first 15 years? A. Not all sorts.

Q. Well, you were in the saloon business? A. For a short time.

Q. And you ran a restaurant? A. No.

Q. Well, a hotel? A. Saloon.

Q. What did you do after the first 15 years? A. I don't quite get you—"the first 15 years".

Q. Well, you said you were in Passaic 30 years? A. I am only 38 years old.

Q. Oh, pardon me; then you have been actively engaged in business how many years? A. Seventeen years.

Q. So that the first 10 years of the 17 years, you were in the saloon business? A. No, sir; I was a carpenter.

Q. You never built any structures between Madison Street and Jefferson Street, Passaic, did you, on Lexington Avenue? A. No, sir.

Q. You never built any properties between Monroe Street and Madison Street on Lexington Avenue? A. No, sir.

Q. This building is a two-story brick building, isn't it, office building? A. That's right.

Q. Across from the Passaic depot? A. That's right.

Q. And around on the side of Lexington Avenue, between Passaic Street and Munroe Street you didn't build any properties, did you? A. Well, I own some.

Q. Which did you own? A. On Washington Place.

*Harry Kuller—Recalled, Cross—for Complainant.*

Q. That is off on a side street? A. Right around the corner from Main Avenue.

Q. That is an old little shanty there you own, isn't it? A. On the avenue we figure mostly the ground as constituting the value, unless it is newly built.

Q. Washington Place is about six blocks from Lexington Avenue where this property is located? A. A block and half.

Q. Block and a half? A. Yes.

Q. From this property to Jefferson Street, is it not? A. It is a half a block.

Q. Then from Jefferson Street to Washington Place is another block? A. Block and half.

Q. And then the property you are talking about is— A. Right around the corner.

Q. Who owns this property? A. Who owns it?

Q. Yes. A. I own it, with others.

Q. Who? A. Harry Weinberger, Irving Werksman.

Q. So you only have an interest in it? A. I bought it myself and I took them in.

Q. And your present ownership is one-third interest? A. Well, you might call it that.

Q. Well, isn't it that? A. Yes, that's right.

Q. After you were in the saloon business what were you actually engaged in? A. Building.

Q. What properties did you build? A. Well, I put up about 58 houses in Clifton about that time.

Q. That was a corporation, wasn't it? A. Yes.

Q. You didn't build them; the Floral Park Land Co. built it? A. That's right.

Q. Well, you didn't build it; you were only a stockholder? A. But I had over 50% interest.

Q. Didn't Berger & Kuchinsky act as foremen?



*Harry Kuller—Recalled, Cross—for Complainant.*

A. They were managers because they were building.

Q. They are builders by trade, aren't they? A. They are.

Q. And they are the ones that actually constructed this property and you financed them; isn't that so? A. I was there every day.

Q. Didn't you finance them? A. What do you mean by "them"?

Q. Kuchinsky. A. I gave them a certain share for taking care of it.

Q. And isn't it a fact that you had some side lines and were actually engaged in them at that time? A. No.

Q. Well, the fact is you weren't spending days at these buildings? A. Most of it.

Q. Weren't you in Newark most of the time? A. Me? No.

Q. What property did you buy between Munroe Street and Jefferson Street, on Lexington Avenue? A. None.

Q. What property did you sell between Munroe and Jefferson Streets on Lexington Avenue? A. None.

Q. So that for the distance of two long blocks on either side of this property we are now discussing you never bought or sold any other in Passaic? A. A block and a half.

Q. That is the only property you ever bought and you didn't sell it? A. That's right.

Q. Have you ever inspected this property, to ascertain the rentals of it? A. What property is that?

Q. This property 12 to 16 Lexington Avenue. A. Well, I did know it at that time.

Q. Do you know it now? A. No.

*Harry Kuller—Recalled, Direct—for Complainant*

Q. Do you know the exact width or frontage of this property? A. It is a little fraction over 60 feet.

Q. Do you know the depth of this property itself, not the land, the property? A. No.

Direct-examination by Mr. McGinnis (resumed):

Q. You have loaned money on real estate? A. Yes.

Q. And you look into the value of those properties? A. Yes, sir.

Q. And do you know, around the time that this contract was made, of Mr. Feder buying a piece of real estate in the vicinity of this property?

Mr. Feder: I object to that.

Mr. McGinnis: It is a part of his knowledge of real estate, to show that he knows what he paid. However, I will withdraw the question and reframe it.

Q. As a part of your knowledge of the value of real estate in the City of Passaic, have you in mind a transaction in which Mr. Feder purchased land on Main Avenue in the City of Passaic about the time this contract was made? A. I do.

Q. And do you know what Mr. Feder paid for it?

Mr. Feder: I object, on the ground—

Mr. McGinnis: I am not asking for the price.

Q. Do you? A. From what I heard, yes.

Mr. McGinnis: Now, then, I respectfully submit that he is qualified.

Mr. Feder: I don't think he is.



*Harry Kuller—Recalled, Direct—for Complainant*

Q. How many houses have you built in the last few years around Passaic? A. Oh, about 65.

Q. And you are familiar, then, with the marketability of structures and their value? A. I am.

Examination by the Court:

Q. How many pieces of property have you bought and sold in the general neighborhood of this property? A. Not any.

Q. How many transactions have you had in buying and selling real estate in Passaic, all together? A. Quite a few.

Q. Well, I know, but you don't give me any idea at all; on your direct-examination you very distinctly said that you had made a few purchases, and now you say "quite a few"; what you mean by "quite a few" I don't know.
A. I think about five or six.

The Court: I think it is clear that this witness is not qualified.

Mr. McGinnis: Let me ask one question.

Direct-examination resumed:

Q. Have you made any appraisals in Passaic in the vicinity of this property?

The Court: Answer "yes" or "no".

A. Yes.

Q. How many?

Mr. Feder: I object, if your Honor please, on this ground: When we talk about "the cinity" this man might be talking about property a mile or two miles away. We are concerned with this immediate locality, because this locality has a distinct value by

itself in Passaic, and the question is entirely too broad.

The Court: Of course, the question of the qualification of this witness is within the discretion of the court. I understand the rule is, that where one has, either by practice or study, or the combination of both, gained an unusual insight into some art or science or other human activity that the ordinary man doesn't know anything about to speak of, he may, in the discretion of the trial court, testify. Now, I am stating generally my ideas on the subject, so that if I am asked to rule on it later I shall not have to repeat it. If he has made appraisals of real estate in the neighborhood, or appraisals of real estate anywhere, he necessarily acquires some degree of familiarity with the way of determining real estate values. You, of course, may cross-examine him as to what he understands the term "vicinity" means, and you may cross-examine him further than that, to check up on what appraisals in that vicinity he has made. (Addressing the witness) The question is, how many appraisals have you made of property in that vicinity.

A. Well, we make them every day.

The Court: Not "we", you individually. I suppose your office makes a very large number.

A. Oh, perhaps 8 or 10.

Q. And also, in the course of your investigations of the value of real estate have you heard of prices, or have knowledge, rather, of prices that have been



paid to other people for property in that vicinity? A. I do.

Q. And have you taken that into consideration in forming your opinion as to the value of real estate in the vicinity of this property under discussion? A. Yes, sir.

Q. How many sales do you know of which have been made in the vicinity of this property, of which you have knowledge as to the price as well as the character of the property sold? A. Well, I know what has been offered for property around in that vicinity.

Q. And of sales you don't know? A. Yes, I know of one or two sales.

The Court: I don't think that you change my opinion any. The result is that this witness has said that he has made five or six purchases and sales of real estate and appraised eight or nine, and that he has heard gossip as to what owners are being offered for their property. If I admit his qualifications, I would pay very scant attention to his opinion, I will tell you that right now. I don't think that the complainant ought to rely upon the opinion of a man like Mr. Kuller.

Mr. Feder: That is all. No questions.

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PHILIP SIMON, sworn on behalf of the complainant, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Simon, you reside in the City of Passaic? A. I do.

Q. How many years have you lived in Passaic? A. I guess about 30 years.

Q. What is your business or occupation? A. Real estate.

Q. How many years have you been in the real estate business? A. About 20 years.

Q. And where have you done most of your business? A. Passaic.

Q. Have you bought and sold property in the City of Passaic—I mean real property? A. Yes, sir.

Q. And for how many years have you been buying and selling real property? A. About the same length of time.

Q. Have you acted as agent in the buying and selling of real property for others? A. Well, I have bought for myself mostly.

Q. How many parcels of real estate have you bought in the City of Passaic? A. I don't know; a couple of hundred.

Q. And sold how many? A. About that amount.

Q. And have you appraised property for others? A. Yes, sir.

Q. How many times have you appraised real estate in the City of Passaic, about. I only want your best judgment. A. Every bit of 25, if not more.

Q. And have you loaned money out on bond and mortgage on real estate in the City of Passaic? A. Yes, sir.

Q. About how many times? A. Oh, a hundred times or more.

Q. And have you acted for others?

The Court: He means invested other people's funds on real estate.





A. No.

Mr. Feder: May I say, so far as Mr. Simon is concerned, that he is a competent realtor in Passaic, and I am just wondering what relation this testimony has to this cause. Under the bill and the prayer of their bill, suppose that Mr. Simon said this property was worth $300,000; as a legal proposition what effect has that upon the nature of their suit?

The Court: I assume this: Suppose I dismiss the bill, so far as Mrs. Zucker is concerned; the bill still alleges that the defendant Kantrowitz, knowing that there was an undivided one-sixth interest in that property in the complainant, and he assigns away his contract which embraces six-sixths, that takes the entire property. This bill contains a prayer for general relief. Under our rules now, whether there is a prayer for general relief or not, any relief can be given that can be supported by proper allegations of the bill. Now, the bill does make those allegations that I have referred to, and the complainant is going to assume that equity, having assumed jurisdiction, will do complete justice, and will not send this case to a jury for the purpose of assessing his monetary damages against the defendant Kantrowitz.

Mr. Feder: I didn't finish what I wanted to convey to your Honor's mind. I say, so far as the amount is concerned, conceding all that the court has said as correct, still the court wouldn't exceed or go above the amount at which he sold the property.

The Court: Now, just consider for a moment how ridiculous that would be. Let us suppose, for the purpose of illustration, that it could be demonstrated that that property is worth $600,000, and that it sold for 112 or 114, or whatever it was. Mr. Feld would be entitled to one-sixth of the difference between what he paid for his share of the property and one-sixth of $600,000, or $100,000. Clearly, I can't take your property and sell it to somebody at an inadequate price and then only expect to be liable to you for what I got for it. I am liable to you for your property is justly worth.

Mr. Feder: Of course, I raised this question in order to ascertain your Honor's view on it.

The Court: You understand I am not deciding the case. You can proceed now, Mr. McGinnis, on the assumption that his qualifications are admitted.

Q. Mr. Simon, do you know of this property 12 to 16 Lexington Avenue, in the City of Passaic, the subject of this controversy here? A. Well, I know the land.

Q. And do you know the value of the land in the immediate vicinity? A. Well, I know a little about it.

Q. Well, do you know enough to testify to the value of the land around there? A. If I had to buy it—

Q. No, the question is, how much is real estate in the vicinity of this property worth?

Mr. Feder: May I object. The witness



asked the question, "If I had to buy it". He is put on now as an expert as to what he and the others would buy that property for.

Examination by the Court:

Q. Mr. Simon, do you know what the local rule is for the market value of real estate? A. Well, if a lot of people run after a piece of property you can get more for it.

Q. The rule is this in the trial of cases: The market value is what, in your opinion, a particular parcel of real estate would sell for, where it is being sold by a seller ready but not forced to sell it so that he would have to sacrifice, and what he would receive from a person who didn't have to have it. A. He would have to buy it for the purpose of making money on it.

Q. But it is a normal sale. If I have a piece of property and I can't meet my taxes and so forth, of course I might sell it at a sacrifice; but if, on the other hand, I bought it as an investment and am perfectly able to carry it but I have decided if I get a good offer for it I will take it, in that instance I would want what I thought was the full value for it. A. If he is a really wealthy man and he doesn't want to sell it he can hold it.

Q. Now, if a man isn't forced to sell, but he agrees to sell, the presence of those two elements constitute the market value. Now, can you give us the market price of 12, 14 and 16 Lexington Avenue, keeping in mind the rule I have just explained? A. Between three and four thousand.

Q. What? A. Per front foot.

Direct-examination resumed by Mr. McGinnis:

Q. You are including the building and I am talk-

ing about the land. Have you bought any property on Lexington Avenue in the vicinity of this property within the last five years? A. No, I haven't bought any in the last five years.

Q. Irrespective of whether you have bought any, are you familiar with the value of it? A. Yes, sir.

Q. Then will you please tell us what thefair market value would be on Lexington Avenue in the vicinity of this property? A. Well, I still say between three and four thousand.

Cross-examination by Mr. Feder:

Q. Mr. Simon, in other words the market value of that property, including the structure and all, would be, in your opinion, not more than $190,000? A. For the building?

Q. Everything. A. No, I wouldn't be in the market to buy myself.

Q. But isn't that so, that you wouldn't say, in your opinion, that the market value of that property would be any more than $190,000? That is so, isn't it? A. I wouldn't say that. I would have to look it over first.

The Court: He says that property is worth between $3,000 and $4,000 a front foot, which would make the property worth between $190,000 and $250,000. You can't get away from that. All this time might as well have been saved. If you want the opinion of a real expert why don't you get a real estate expert.

A. I didn't know I was going to be called; I just happened to be in court.



The Court: That is a waste of time. No man can tell you what real estate is worth with out studying over the situation and at least examining the property with that in view.

(Further hearing adjourned to May 27, 1926.)

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Hearing of Thursday, May 27, 1926.

At the last session the Court announced, after considerable argument, that the hearing today would be as to the bill so far as it askes for relief against Mrs. Rose Zucker, who purchased this property from the defendant Kantrowitz. But this branch of the case has been decided, both by this court and the Court of Errors and Appeals, and is not to be considered here. The following witnesses were called on this branch of the case:

Joseph Solomon,
Nathan Lenz,
Mrs. Rose Zucker,
Reuben B. Kantrowitz.

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Hearing of Thursday, Oct. 21, 1926, 10 A. M.
Main case of Feld v. Kantrowitz resumed.
Counsel present as before.

*James A. Crowley—Direct—for Complainant.*

JAMES A. CROWLEY, sworn on behalf of the complainant, as a real estate expert, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Crowley, where do you live? A. Passaic, New Jersey.

Q. What is your occupation? A. Real estate and banking.

Q. Connected with what institution? A. I am connected with the City Trust Co. of Passaic, as Vice-President.

Q. Are you connected with any title company? A. With the Security Mortgage & Title Insurance Company.

Q. And do you hold any office in that company? A. Secretary.

Q. How long have you held that position? A. 18 years.

Q. How long have you been engaged in buying and selling real estate or appraising real estate in the City of Passaic? A. About 18 years.

Q. Will you state to the court some of your experience regarding the appraising of real estate, or study of values of real estate in Passaic and vicinity? A. Generally, you mean?

Q. Yes, tell us some of the principal pieces of property. A. I have been appraiser in various capacities: I have acted as appraiser before the State Board of Equalization of Taxes; have been employed on municipal work, have acted in connection with the appraisal of the East Jersey Water Works property—

Q. Interrupting you at this moment, this municipal work that you speak of I believe is the effort by the City of Paterson, and Clifton, and Passaic



*James A. Crowley—Direct—for Complainant.*

to condemn the East Jersey Water Co.? A. Not to condemn, but to arrive at a value.

Q. You and two other gentlemen, I believe, constituted the committee which represented the municipalities? A. Yes.

Q. And that system being worth about how much, roughly? A. Well, the water company about fourteen and one-half millions.

Mr. Feder: I object as not responsive.

The Court: That objection cannot be made by you.

Mr. Feder: Then I object because it is immaterial.

The Court: What Senator McGinnis wants is an opinion as to the value of the property.

A. Well, the properties, your Honor, were largely a matter of engineering. We were concerned only with the real estate valuation.

Q. I won't press it, then. What else besides that have you appraised; what other property, recently? A. I am appraising all the time all over the City of Passaic. I have appraised along Lexington Avenue; I have owned property on Lexington Avenue and vicinity.

Q. Are you acquainted with the values of property on Lexington Avenue in the City of Passaic? A. I am, yes.

Q. Do you know of this property which is the subject of this controversy, known as 12, 14 and 16 Lexington Avenue, in the City of Passaic? A. I am, yes.

Q. Known as the Benson Building? A. Yes.

*James A. Crowley—Direct—for Complainant.*

Q. Did you know of this property in the spring of 1925? A. Yes.

Q. Have you formed an opinion as to the value of that property, on or about the first day of June, 1925; yes or no?

Mr. Feder: I object to the first of June, if your Honor please. This contract is March, 1925, and unless it can be established by evidence that the values were stationary between that time and the time counsel asks, I don't see how that is binding or material.

Mr. McGinnis: If your Honor please, on the 19th of March the contract was made. So far as we can learn, on the 2d of June Mr. Kantrowitz assigned this contract to the Zuckers, so that up to that point we had a one-sixth interest. Our damage, it seems to me, arose on or about the first of June.

Mr. Feder: I withdraw the objection.

Q. (Question read by the stenographer). A. Yes.

Q. In your opinion, what was the value of that property on the first of June, 1925—the market value.

Mr. Feder: At this point, sir, may I examine this witness as to his qualifications?

The Court: Certainly.

Examination by Mr. Feder as to qualifications:

Q. Mr. Crowley, did you ever have any interest or own any property between Madison Street and Jeffereson Street, in the City of Passaic? A. Never did.



*James A. Crowley—Direct—for Complainant.*

Q. Did you ever make a purchase or ever sell any property between Madison Street and Jefferson Street on Lexington Avenue, in the City of Passaic? A. As a broker, yes.

Q. Just as a broker? A. Yes.

Q. You never, personally, owned any property there? A. No.

Q. Which property was it that you were a broker of, Mr. Crowley? A. The Ware & Dalley property on the corner of Lexington and Madison.

Q. How long ago? A. I should say that was seven or eight years ago, easily.

Q. Since that time, seven years ago, you have never made any sale there as a broker or anything else of property between those two streets that I speak of? A. Never.

Mr. Feder: If your Honor please, it seems to me that this witness isn't yet legally qualified to give a legal opinion under the rules of law, on Lexington Avenue in the very immediate vicinity of this particular property with which your Honor is concerned. There is testimony that he appraised for different people, for municipalities and so on, Board of Commissioners and what not, but surely that wouldn't have any bearing on this property. The question with which we are concerned is, whether he is qualified as a witness to testify to the value of this particular property or near this property, and I don't think the evidence as yet sustains the rule of law, and I therefore object to it.

The Court: Well, I think perhaps Senator McGinnis has not gone as extensively as he

has usually done into showing the equipment of the witness to express an expert opinion. That perhaps may have been subconsciously brought about by the fact that there is no jury here and I know something of the way these gentlemen do to familiarize themselves with values. I think you ought to go a little more deeply into his qualifications.

Direct-examination by Mr. McGinnis resumed:

Q. Mr. Crowley, as part of your work in appraising properties, did you ever appraise any on Lexington Avenue? A. On Lexington Avenue?

Q. Yes. A. Yes.

Q. Will you tell the court some of the property on Lexington Avenue that you have appraised? A. Only one piece on that block, and that is the adjoining piece for mortgage purposes.

Q. Adjoining this property we are discussing? A. Yes.

Q. (By the Court) How do you arrive at your appraisal?

A. How did I arrive at that particular appraisal, your Honor? By previous sales, by income from the property and sales throughout that particular section, as near as I could get.

Q. About how long ago was that, Mr. Crowley? A. I should say four or five years that that mortgage has been standing.

Q. Now, as a broker, did you ever handle and sell, or were you at an appraisal of any property along Lexington Avenue, in the general vicinity of



this property? A. Why, I have been an owner up to last month, and property in the next block, or part owner.

Q. Did you act as a broker in the sale of any property in that vicinity, other than the property you have mentioned? A. I was a broker in the sale of the other corner some time ago,—the Ware and Dalley corner.

Q. Do you know of transactions where you were appraiser, or where you had first-hand knowledge of a sale or mortgage of real estate in that vicinity on Lexington Avenue, in the vicinity of this property, other than the instances that you have told us about? A. Well, I know of an instance of a sale with which I was connected last month.

Q. And where was that property located? A. In the middle of the block, above this particular property.

Q. And did you at that time know what the property was being sold for? A. Naturally, being a part owner.

Q. That is the case you have told us about? A. Yes.

Q. And have you followed up other real estate transactions there in the vicinity, so as to be familiar with them yourself?

Mr. Feder: I object to that, your Honor. That is purely hearsay.

The Court: I know, but it is one of the methods by which the most careful and accurate real estate men gain their knowledge. They follow these deeds, ferret out the prices, &c. just as you follow the pronouncements of the Court of Errors and Appeals.

Mr. Feder: If they followed them that

closely I would say they followed them very well.

The Court: I will overrule the objection. (Addressing the witness) The question is whether or not you have kept yourself informed of current transactions in that neighborhood?

A. I have, yes.

Mr. McGinnis: I think, your Honor, he is qualified.

Mr. Feder: Now, I object to this witness testifying to values, on the ground that I mentioned, if your Honor please; and on the further ground that to your Honor's question as to how he ascertained the value of that mortgage loan he gave us how he did it; in other words, that is how he figures the market value in the granting of loans. Now, there is no evidnce before this court involving this particular property. I have done the very same things that he has done in ascertaining the market values, so far as mortgages are concerned, so that I could form as accurate conclusions on the value.

The Court: Well, those considerations are something that might affect the weight to be given to the opinion of the witness; but my understanding of expertness is, that it may be acquired in either of two ways, namely, by practical application or by study, or a combination of both. Now, here is a man who, over a long period of time, has apparently been able to sustain himself and make a living as a real estate expert, who has had at least three transactions in the immediate neighborhood of this property; who says that he has kept himself informed of the current transactions in that neighborhood, and I think that clearly qualifies him, beyond question.



Mr. Feder: Will you permit me, then, to further examine this witness?

The Court: Certainly.

Examination as to qualifications by Mr. Feder:

Q. Mr. Crowley, do you know, of your own knowledge, what the income of this property was in March, April, May or June, 1925? A. I do not.

Q. Did you make a personal inspection of this building in June, 1925—did you go through that building in June, 1925? A. I did not.

Q. Do you know, of your own personal knowledge, what the leases are on this building? A. I do not.

Q. You do not? A. I have known, but not now.

Q. Did you, in June, 1925? That is what I am asking? A. I had no reason to know at that particular time.

Q. You don't know the length of the leases? A. No.

Q. You don't know the terms or the amounts that tenants in that building paid in June, 1925? A. I don't know anything about it.

Q. I believe that you testified, Mr. Crowley, that a very important item in the calculation of the value of a piece of property in Lexington Avenue is the income of the property, did you not? A. Yes.

Q. Do you know the size of this particular plot of your own personal knowledge? A. The Title Company which I represent was owners and ten-

ant in that building, so that I do know the size of the plot.

Q. What would you say was the size? A. I should say about 60 ft. front, and it runs back to an alley in the rear. I should say it is a little deeper on the southerly side than on the northerly side. It is probably 115 or 118 feet, or something like that.

Q. In respect to the property adjoining that you mention, do you know the income of that property in June, 1927? A. I do not.

Q. Do you know the income of any of the properties, within the distance or two or three hundred feet to the right of this property going towards Jefferson Street, facing this property? A. Not any more specifically for that month than any other month.

Mr. Feder; Now, if your Honor please, I again object, on the ground that I mentioned before, and on the further ground that it clearly appears that the very things that this gentleman uses to ascertain the market value in this particular property can be used by anyone.

The Court: Mr. Feder, I am afraid that your idea of what qualifies an expert and my ideas are different. I think what you have been doing is to test the reliability of his estimate. I am going to overrule your objection. I think he is fully qualified.

Direct-examination by Mr. McGinnis resumed:

Q. Mr. Crowley, what, in your opinion was the value of this property on or about the first of June, 1925? A. I should say $5,000 a front foot.



Q. Has there been any substantial change since then in values?

Mr. Feder: I object, sir.

Mr. McGinnis: I withdraw it.

Q. In answer to one of the questions of counsel on the other side you mentioned as one of the methods of ascertaining values the matter of the income from the property? That is sometimes a factor, isn't it? A. Sometimes, yes.

Q. And sometimes income may not be any factor in determining the value of property? A. It may not be.

Q. Take cases of vacant land or filled with small shacks; the income there means nothing? A. No.

Cross-examination by Mr. Feder:

Q. This is business property, is it not, Mr. Crowley? A. Yes.

Q. And in business property of course it is very important item to know the income, is it not? A. Yes.

Q. Then, when it is purchased by a person as a business proposition, income is a very essential item to be considered, is it not? A. Not always.

Q. Well, this is business property, and as business property to a person in the market to purchase it is quite important to know the income in arriving at the market value? A. I think not.

Q. Is it important to know the duration of the tenancies? A. Yes.

Q. Doesn't that affect the value? A. To some extent, yes.

Q. As well as the income from the property? A. Income is not always a true guide in determining the value of property.

Q. I don't say the only guide, but isn't it a considerable guide? A. Depends upon whether they are buying it on a speculative basis or an income basis.

Q. I mean on an income basis. A. Yes, income is important, but it doesn't always figure.

Q. On an income basis, the rent received from property is an important item? A. It is.

Q. And in determining of the true value of business property in the market is the duration in tenancies and the income an important guide in coming to the conclusion as to the market value? Yes or no? A. True market value of property is what it will sell for.

Q. I didn't ask you that. A. Well, that is the only way I can answer you.

Q. I will have the question repeated and I insist on an answer. (Question repeated by the stenographer). A. Not always.

Q. (By the Court:) My understanding is, what Mr. Feder wants to know is, whether or not any property of the character of this property on Lexington Avenue—whether the income from it isn't always an important factor in arriving at the value?

A. It is not.

Q. Well, now, you say that you place money on mortgages; you consider the income from the property, do you not? A. Not particularly.

Q. You don't consider that as an item at all? A. Not particularly.

Q. I mean, it is an item to be considered? A. Well, I must confine myself to answering your question, must I not?



The Court: Yes, on cross-examination you must.

Q. That is an item to be considered, is it not? A. A small item, yes.

Q. You say you are familiar with the property next door; is that true? A. Not any more than I am with this.

Q. When you say "not any more", you mean you are not thoroughly familiar? A. Why, I haven't been in the building for four or five years.

Q. Well, you are equally familiar with the building next door as you are with this one? A. I should say so.

Q. Who owns that property next door? A. I think that is owned by Emil Hart.

Q. How much did that property bring when sold in June, 1925? A. I don't know.

Q. Don't you know that it brought $135,000, Mr. Crowley? A. I do not.

Q. And don't you know that that is a plot 20 feet front? A. I would have to look it up in my records. I can't carry those things in my head.

Q. This property next door that you are talking of that was owned by Mr. Hart—who sold that property, do you know? A. To whom?

Q. To Mr. Hart. A. Rowland Johnson.

Q. You weren't the broker? A. I was not.

Q. You were connected with it? A. I was not.

Q. Well, do you know that Rowland Johnson sold it? A. I do.

Q. You know that that property was sold for $45,000, do you not? A. Yes.

Q. And that is a plot of how much frontage? A. You mean the Hart property?

Q. The one next door that you say was sold for

$45,000 by Rowland & Johnson. A. I couldn't say exactly. I know it is either slightly less than 25 feet or more than 25 feet.

Q. At any rate, it is between 22 and 25 feet? A. Exactly.

Q. And that was sold for $45,000? A. Some years ago, yes.

Q. Do you know Cheren's property on Lexington Avenue? A. I know where he is, but I don't know whether it is Cheren's property or not.

Q. How many feet front is there in that Cheren's property, do you know? A. I couldn't tell you; I should say 50 feet.

Q. Well, that's about 150 feet from the property in question, is it not? A. I couldn't say. It is nearer Jefferson Street.

Q. Well, now, Cheren's jewelry store is the beginning of that property, is it not, on Lexington Avenue? A. I couldn't say that.

Q. Try and refresh your memory, Mr. Crowley, and see if you can't recall that the first jewelry store is the first store of the Cheren property we are discussing toward Jefferson Street? A. I know it is this side of the Y. M. C. A., but I can't tell about it now.

Q. You say that is 50 feet? A. In my judgment now; it may be more or less.

Q. Can't you recall that the Cheren property, 50 feet front, was sold around the same time that this property was sold, that is, in the month of May or June, 1925; you remember it was around that time, do you not? A. I do not.

Q. Do you know that that property, 50 ft. front, was sold for $135,000 last year, in either the month of May or June, or around that time? A. I do not.

Q. What property in June, within 100 feet either



side of the building we are discussing, brought $5,000 a foot in 1925? A. None that I know of.

Q. Mr. Crowley, do you remember Mr. Kantrowitz, at the time he bought this property, coming to see you? Do you remember that? A. In reference to this property?

Q. Yes. A. I don't recall it. At the bank, do you mean?

Q. Yes. A. I don't recall it.

Q. Do you remember his speaking to you and asking you for a loan at that time on this property, to the City Trust Co.? A. No application was made to the City Trust Co.

Q. To you, Mr. Crowley. A. No. No written application for a loan was made on the Benson building.

Q. It isn't necessary to make a written application for a loan, is it, Mr. Crowley, at your bank? A. If you ask me whether Mr. Kantrowitz ever approached me for a loan in connection with the Benson building I would say emphatically no.

Q. Do you remember saying to him that he was buying a white elephant? A. No. I remember discussing things with Mr. Kantrowitz but not in connection with this transaction.

Q. You wouldn't say that you didn't discuss it, but that you don't remember it? A. I don't remember ever discussing it.

Q. Now, then, did you ascertain, when you knew you were going to be called as a witness to testify as to the market value, what the income of this property was in June, 1925? A. I did not, Mr. Feder, because I am giving my impression here generally and I did not make a study of the building with the idea of answering questions such as

you are asking. I am not concerned with the leases or anything else.

Q. Again I ask you if the ascertainment of the leases and the length of time they have to run, the income of the property, the age of the property, the quality of the property are all items to be considered in coming to a true market value of property in a business neighborhood such as Lexington Avenue? A. Business neighborhood makes an exception to the rule.

Q. Would you say, then, that all of these items that I have mentioned are or are not to be considered at all? A. They are to be considered, yes.

Q. Aren't they to be substantially considered? A. No, not in a section like we are talking of.

Q. Isn't it always calculated, Mr. Crowley, in ascertaining the market value of property that one would take the income, to figure on seven or eight percent in business neighborhoods to ascertain the market value?

Mr. McGinnis: I object.

The Court: Go ahead.

A. No.

Q. That block, Lexington Avenue, extends from the corner of Madison Street how many feet up towards Jefferson Street; do you know? A. I couldn't tell you.

Q. Can you give us an approximate idea? A. Oh, I don't know; probably six or seven hundred feet.

Q. Now, within that six or seven hundred feet can you name any property, in 1925, that brought $5,000 a square foot? A. Square foot?

Q. $5,000 a front foot; pardon me. A. None that I know of.



Q. You never heard of any, either, did you, in 1925? A. I never did.

Redirect-examination by Mr. McGinnis:

Q. Do you know of property up in the vicinity of Jefferson Street in 1925 bringing over $4,000?

Mr. Feder: On Jefferson Street? I object.

Mr. McGinnis: No, toward Jefferson Street, on Main Avenue.

Mr. Feder: I object to Main Avenue. We are talking about Lexington Avenue.

Q. Mr. Crowley: you were asked about property fronting on the street there six or seven hundred feet; do you know where Main Avenue and Jefferson Street is? Do you know where they call the Christy building is? A. Yes, I know the locality of the building.

Q. How far is that from this property? A. On the corner of Jefferson Street probably three or four hundred feet.

Q. Do you know what property was worth there in the spring of 1925?

Mr. Feder: I object to that. It is a different street, different corner.

A. It is on the same block.

Mr. Feder: It is a different street, though.

The Court: It isn't on the same block or same corner, is it?

Mr. McGinnis: No.

The Court: I am going to allow him to answer the question and then you can show the difference on cross-examination. (Ad-

dressing the witness) Are you familiar with that?

A. On the corner?

Q. Lexington Avenue is a street that makes a slight turn and then continues on Main Avenue? A. It is the easterly side of Main Avenue.

Q. This property is on Main Avenue but on the block made up of Main Avenue and Lexington Avenue front?

Q. (By the Court) Which is Main Avenue, the business street that you see as you go along the railroad?

A. Yes.

Q. Now, do you know what this property known as the Liggett Building sold for in the spring of 1925?

Mr. Feder: I object to that, if your Honor please.

Q. Yes or no.

Mr. Feder: In the first place, there is no evidence here when it was sold nor that this witness has knowledge when it was sold, or whether it was sold in the spring of 1925, as the question implies.

Q. (By the Court) Do you know when this sale was made of the Liggett property?

A. I couldn't say. I know it was sold.

Q. Do you know approximately when it was sold?

Mr. Feder: I object.

A. No, I don't.

Q. Do you know what it was sold for? A. I do not, only from what I have heard.



Q. Do you know who bought it? A. At this recent sale, yes.

Q. The counsel at the table here? A. Both are guilty. (Witness referring to Messrs. Feder & Rinzler).

Examination by the Court:

Q. Mr. Crowley, has there been much change in real estate values since June 1, 1925 in the neighborhood of the Benson Building? A. Well, I should say not very much, Judge; but, you see, property of that sort doesn't enhance so rapidly in value. The income isn't sufficient to bear up the value, and the natural enhancement of this property would be only that which would accrue at the maturity of the leases.

Q. Now, when you say it is worth about $5,000 a front foot do you fix that as of the present time or sometime before? A. I fix that as of any time within the past year.

Q. And upon what do you base your opinion? A. I base my opinion upon what I think I could get for the property and what I feel the rental value would be at the expiration of the present leases, which were made before the present values.

By Mr. McGinnis:

Q. Property in the business section of Passaic in the last two or three years took quite a bound, did it not? A. It did.

By Mr. Feder:

Q. Mr. Crowley, the Liggett Building is a corner property? A. It is.

Q. Facing two streets? A. Yes.

Mr. McGinnis: Now, if your Honor please, there is Mr. Hartstein, the gentleman who drew the assignment from Kantrowitz to Mr. Weinberger, and who is not here. He is a New York man and promised to be here. If he comes in may I ask to be allowed to put him on the stand?

The Court: Oh, certainly.

Mr. McGinnis: With that we rest. If Mr. Weinberger were here I would call him, but he is not here.

Mr. Rinzler: I think it puts us in a false position if we are to give our case away before they close their case.

The Court: Mr. Hartstein is to be used for the purpose of proving the assignment.

Mr. Rinzler: That is a very important matter to us, and it puts us in a very unfair and embarrassing position. As the case now stands we are prepared to go ahead, but if this man should take us by surprise and put in evidence that we are not prepared to meet, your Honor can well see the position we would be in.

The Court: You may be assured if he testifies to anything that is a surprise to you, you will have an opportunity to meet it. And I will deal with any objection to Mr. Heartstein's testimony if and when he takes the stand.





DEFENSE.

Mr. Feder: I want to recall Mr. Samuel Feld.

SAMUEL B. FELD, recalled on behalf of the defendant, testified as follows:

Direct-examination by Mr. Feder:

Mr. Feder: I find that the papers are not here. I want to ask Mr. Feld some questions and would like to refer to his affidavit. I have a copy of the petition here, as well as the affidavit and the contract annexed to it (handing papers to the witness).

Q. Mr. Feld, you signed this petition in the case of Samuel B. Feld against Reuben Kantrowitz? A. I did.

Q. You also signed the affidavit that is annexed to this petition, in the presence of a notary public? A. I did.

Q. At the time you affixed your signature to this affidavit you knew at that time there was annexed to this petition an affidavit and this contract which appears to be annexed to it and concerning and involving this particular property in this court, in which you claimed a one-sixth interest? A. Yes, sir.

Q. Is it true, Mr. Feld that the contract was executed on March 19, 1925? A. Yes, sir.

Q. Is it true, as you say in the first clause of your petition—what you allege in that petition concerning your arrangement with Mr. Kantrowitz?

Mr. McGinnis: If your Honor please, of

course if we have got any affidavits on file we have got to stand by those affidavits; of course if this man swore to anything there it is presumed he told the truth. It seems to me we are losing time on it. In the meantime, I don't think counsel should go on cross-examining this witness.

The Court: I incline to feel that way, too. Why don't you offer the entire file?

Mr. Feder: I am just asking one sweeping question.

Q. You stand by what you say in your petition, particularly the first clause of this petition? A. With the exception I think there is a technical error; it should have been March 19, instead of March 25th.

Q. Do you mean to say now that you swore to this petition, and at the time you swore to it there was an error in the date? A. The contract was drawn up—

Q. Yes or no. A. I believe I did.

Q. So that when you say you affixed your signature to the affidavit and petition you affixed it to dates that were incorrect? Yes or no.

Mr. McGinnis: Wait a minute, Mr. Feld; I want to call your attention to the fact that you mustn't practice any deception. I think we ought to have the original papers here. I notice that the petition speaks of the 19th of March, 1925, so that there is a mistake some place. I call your Honor's attention to that.

Mr. Feder: That is why I wanted to see the original file and I asked for it. I don't



think that book ought to be used (referring to printed record.) In the first place, it is a different case—not this case at all. There is no testimony there that we are now concerned with that is involved in this case.

The Court: Yes, this is Feld v. Kantrowitz.

Mr. Feder: This is the case of Zucker and concerns the assignment of the contract to buy the property.

The Court: Why couldn't that be cleared up by having the original file sent for?

Mr. Feder: All right.

A. We have another office copy, your Honor, which shows it to be the 19th of March.

Q. Then may I hand you this, too, a paper served on us.

Mr. Feder: Your Honor, may I show you this petition also (handing paper to the court).

The Court: They are different petitions. Have you completed your cross-examination?

Mr. Feder: No, I have not.

The Court: Suppose you do, and then take this up in the regular way afterwards. But these two are not the same petition.

Q. This is your signature, I believe (showing paper to witness)? A. Yes, sir.

Q. And the signature attached to the affidavit, "Samuel B. Feld" is also your original signature? A. Yes.

Mr. Feder: I desire to offer this.

A. There was another petition which was filed after that one.

Mr. Feder: There is no objection to my offering this?

Mr. McGinnis: No.

(The same is marked Exhibit D-8, the document being copy of order to show cause in Feld v. Kantrowitz).

Q. Mr. Feld, I show you a bill of complaint in the case of Samuel B. Feld against Reuben B. Kantrowitz, which bill was filed by Edward A. Weiss, solicitor, your partner in law, and ask you whether the signature of Samuel B. Feld at the end of the bill is your original signature? A. It appears to be mine.

Mr. Feder: I desire to offer this.

(Admitted and marked Exhibit D-9).

Q. Now, Mr. Feld, don't you remember testifying in respect to this clause, that at the time this contract was made with Mr. Kantrowitz, that you made known to the sellers that you were to get a one-sixth interest?

Mr. McGinnis: I object to that. That is going all over the main issue that was threshed out before, and it is not within the limits of the one or two questions that counsel wanted to ask, which we didn't object to because we all slip up on matters, but I object to this.

Mr. Feder: If your Honor please, I called at your office yesterday and asked Mr. Bailey to please read back to me two or three pages of Mr. Feld's testimony, and the reason was, because the first day of the hearing Mr. Newman being affiliated in the case I distinctly understood that I need not be here until late in the morning, and when I did come I found that the case had started, so that what Mr. Feld was saying I didn't get. Now I ask the courtesy of the Court to permit me to ask a few more questions of Mr. Feld, who is the complainant, in respect to Mr. Kantrowitz's interests solely.



Mr. McGinnis: First of all, they were joint defendants. Mr. Feder had a right to be here on time the same as everybody else. And, in the second place, Mr. Feder did, when he came in, talk to you and cross-examine Mr. Feld. I happen to know that this is no more than an attempt to enter upon a long cross-examination, and I want to finish if possible today.

The Court: How long will you take, Mr. Feder?

Mr. Feder: Five minutes.

The Court: Under those circumstances, while there is a great deal of force in what you say, Senator, still the fact is that Mr. Feld being one of the first witnesses and a great deal of his testimony must be unknown to Mr. Feder except as it came through his client who sat here, I think he ought to be permitted to have a reasonable opportunity to examine him.

Q. (Question read by the stenographer) Mr. Feld, will you please answer that question? A. I did.

Q. And that was all said at the time the contract was being signed by Kantrowitz and the other

people? A. Not exactly. There was some talk had in the reception room—some talk in the library—talk going on back and forth and both were talking.

Q. Well, was it said before the contract was signed; do you recall that? A. I think it was.

Q. And you have no doubt about your recollection that you told him before the contracts were being prepared in your office; is that right? A. I have no doubt at all.

Q. Then the fact is, however, Mr. Feld, although you did make it known and you had nothing to secrete or hide you did not incorporate anything in that contract which showed that you had a one-sixth interest; is that true, yes or no. A. There was no necessity for that, because—

Mr. Feder: I ask that that be answered by "yes" or "no".

The Court: Yes, you ought to answer it by "yes" or "no", Mr. Feld. You will be given an opportunity to explain, but not on your cross-examination.

A. Nothing was put in the contract.

Q. And you had every opportunity, however, to put it in the contract, had you not, Mr. Feld; yes or no. A. That is correct.

Q. You did dictate the contract? A. I don't remember whether I dictated it or Mr. Weiss.

Q. You were there? A. Yes.

Q. You were there throughout the whole transaction, were you not? A. That is correct.

Q. You were there when the money was turned over? A. I was.

Q. You typed that contract personally, did you



not, Mr. Feld, at the machine? A. I believe I did type a part of it.

Q. And then it was read—the entire contract—in your presence, was it not? A. I think it was, yes.

Q. You did not at that time, although having full opportunity to do so, draw up any collateral instrument signed by Kantrowitz to you, concerning your one-sixth interest. That is also true, is it not? A. That wasn't done.

Q. I didn't ask you why; you had every opportunity to draw up a collateral agreement evidencing your one-sixth interest, did you not? A. Yes, sir.

The Court: Wasn't that all covered by the cross-examination by Mr. Newman? Well, go ahead.

Q. What is your answer to the last question, Mr. Feld? A. I don't think my opportunity was completed at that time.

Q. Why, you stayed in your office about an hour after the contract was signed that night? A. I did personally.

Q. And Kantrowitz was with you? A. No, sir.

Q. Why, you even had a little party; you had tea and cake that night in your office there? A. That is not so.

Q. Didn't Mr. Emil Hart bring the tea and cake up, or sandwiches, while Mr. Kantrowitz was there? A. He brought up, some tea for Mr. Endler also. That was only on a wager.

Q. At any rate, Mr. Feld, you were there during the execution of that contract? A. Yes.

Q. And Mr. Kantrowitz also? A. He was there only a few minutes.

Q. Did you ever write Kantrowitz a letter, personally, on the stationery of your firm, within two weeks after your contract was signed, that you had a one-sixth interest in that property; yes or no? A. No.

Q. Did Mr. Kantrowitz come to your office the following day to get his contract; yes or no? A. The contract was in my possession from the date of its making until April 3d.

Q. All right. So that he came to your office how many times? A. Between when?

Q. Between March 19 and April 3d. A. To my belief, I don't think he was.

Q. Well, did you go and see him, with the contract? A. Not with the contract. I saw him at his office or saw him on the street a number of times.

Q. And finally he got the contract from you? A. Not from me.

Q. From Edward Weiss? A. No, sir.

Q. From whom? A. He got it from Harry Weinberger, from my information.

Q. Are you testifying from hearsay, Mr. Feld? A. Just what I tell you. I was informed that he got the contract from Mr. Weinberger.

Q. How did it get into your safe from Kantrowitz? A. It didn't get into my safe from Kantrowitz.

Q. It was in your safe until April 3d? A. Yes.

Q. Then, as a matter of fact, Mr. Kantrowitz had possession of that contract? A. When.

Q. After April 3d? A. I don't know whether he did or not.

Q. You know it finally left your safe? A. Yes, I turned it over to Mr. Weinberger.

Q. And you know the contract was held until



you certified the $10,000 check which was paid by Mr. Kantrowitz? A. Which contract do you mean?

Q. The contract that was given from Endler and others to Kantrowitz. A. Do you mean the contract that Kantrowitz originally had that was assigned over to Zucker or any one of the contracts?

Q. I mean the contract that was executed between Lenz, Solomon and Endler to Kantrowitz was held by you until the check for $10,000 given by Mr. Kantrowitz was certified, bearing date March 18? A. I don't remember whether the copy of the contract which Mr. Endler was supposed to take was taken by me or not.

Q. Did you at that time issue a check, or attempt to issue a check for $1166.66, which is one-sixth of $10,000, to Kantrowitz? A. Yes.

Q. Would you say that you actually wrote out the check and gave it to Mr. Kantrowitz; yes or no? A. No.

Q. That is all.

The Court: Now, you had some explanation to make.

A. Yes. Your Honor will recall that when I first made application to your Honor for an order to show cause with restraint, that I prepared papers, together with an affidavit, simply verifying the petition in a few words. That, of course, was done in a hurry in order to avoid the owners from transferring the property over to the Zuckers. I did that in a hurry to get the restraining order. Then your Honor will recall Mr. Newman appearing here before your Honor—I believe it was a Monday—and asked that the proceedings be dismissed because the affidavit wasn't properly verified.

The Court: Yes.

And then, in examining the papers over again I discovered that the contract was dated March 19th. Apparently, I didn't have the contract before me when I dictated the papers, and when the other papers came before your Honor I noticed that error and corrected it. I believe it was the stenographer's error; I gave her the papers and told her to get it out, but the date is the 19th. To show you that it was a clerical error, it says, "On the 20th of March", when it should have been the 19th of March. It was a clerical error; that's all.

Another matter I would like to explain: That night the contract was signed and made in the name of Kantrowitz. I retained all the contracts. Kantrowitz never had a contract in his possession from the date of its making until after April 3d, at which time I turned the contract over to Harry Weinberger in consideration of my paying him $1666.66, and he, in return, gave me a written assignment. He gave him the contract and after that I don't know what happened.

Then another point I want to clear up, and that is this: The night the contract was signed Kantrowitz gave his check for $10,000. I offered to give him one-sixth of that and he says, "There is no necessity; we will take care of that tomorrow or next day, because we will have to meet in Harry Weinberger's office and we will arrange it at that time for the payments and the proper making of the corporation so that the property would be turned over to the corporation. To that I agreed, and subsequently we went over to the corporations' office for that, and Jacob I. Jaffe made out the certificate of incorporation.

Mr. Feeder: Now that this has all gone in it seems to me that I ought to be allowed



to cross-examine on two or three things that he said here.

Q. I understand you clearly to say that the contracts were left with you that night? A. Yes, sir.

Q. And that night, as you left you offered Kantrowitz a check which he didn't want to take? A. Yes, that is correct.

Q. Now, you still say, do you, although you knew on the 19th of March, 1925, that Kantrowitz would not take your check for the one-sixth interest which you felt you had a right to in the property, the contract got out of your office; yes or no? A. I wouldn't say no.

Q. Well, when they left your office you had all the original contracts? A. This one that is here.

Q. You knowing on the 19th of March that Mr. Kantrowitz did not want to give you the one-sixth interest? A. That is not correct.

Q. Didn't you say that he did not want to take your check? A. He says "There is no necessity of taking it now".

Q. You told his Honor there was some error in the date? A. Yes.

Q. I call your attention to the fact that the bill indicates that, too; isn't that right, Mr. Feld? A. I believe that is correct, but you will find another bill on file, though.

By Mr. McGinnis:

Q. Your complaint shows it the 19th? A. Yes; that is, the second one.

CAPT. WILLIAM H. KRUITBOSCH, sworn on behalf of the defendant testified as follows:

Direct-examination by Mr. Rinzler:

Q. What is your business? A. Real estate and insurance.

Q. Resident of Passaic? A. I am.

Q. And have resided there for how many years, approximately? A. Thirty years.

Q. For how many years past have you been engaged in the real estate and insurance business in the City of Passaic? A. Five years.

Q. Prior to that what was your business? A. Banking.

Q. With what bank? A. People's Bank & Trust Co.

Q. And in what capacity? A. As teller and assistant treasurer.

Q. And during the five years that you have been engaged in the real estate business have you been considerably active as a realtor? A. I have.

Q. And during your activity in the real estate business in the City of Passaic have you become familiar, and kept yourself familiar, with the fair market valuation of property in the vicinity of the Benson Building involved in this suit? A. I have made a sale in the vicinity recently.

Q. And are you generally familiar with the valuation of property in Passaic? A. I am.

Q. And do you know, from time to time, what properties have brought when sold, in the vicinity of this property in Lexington Avenue? A. Yes.

Q. And have you made appraisals of real estate? A. I have.

Q. During the five years you have been in business? A. Yes.



Q. Have you done that considerably, so far as—

Mr. McGinnis: I think these questions are leading. Otherwise I have no objection.

Q. To what extent, Mr. Kruitbosch, have you made appraisals of property in Passaic, for the purpose of arriving at the fair market valuation? A. I have made them for the Department of Banking and Insurance, and have made them for private owners.

Q. Have your appraisals been done extensively, or otherwise?

Mr. McGinnis: These questions are all leading.

Mr. Rinzler: I don't think so.

The Court: Ask him to what extent—

Q. To what extent, how extensively, have you made appraisals? A. I have appeared as an expert to give testimony in several cases, and I have made appraisals of a number of buildings during the past year—a half dozen.

Q. And for banks as well? A. And for banks and building and loan associations.

Mr. McGinnis: Leading again.

Q. Did you or not make appraisals of real estate, to determine, or to arrive at, the market value for private sale—the fair market value?

Mr. McGinnis: I object to that.

The Court: I will allow that, provided it is answered "yes" or "no".

Q. Did you? A. Not for a bank; for building and loan association.

Q. To what extent have you done that? A. Two cases.

Q. Are you familiar with the property known as the Benson Building involved in this action? A. I am.

Q. Have you formed any opinion of the fair market value of that property, as of June, 1925?

The Court: June 1st, 1925?

Mr. Rinzler: Yes.

Q. I ask you whether or not you have formed an opinion? A. I have formed an opinion.

Q. From your knowledge of that property and your familiarity with it, and your experience as a realtor, and your familiarity with property values in that vicinity, what, in your opinion, was the fair market value of that property as of June 1st, 1925.

Mr. McGinnis: I object to the question, on the ground that counsel has not proved this witness to be an expert. He asks, "Have you appraised property extensively; have you something else extensively. He has had this witness tell conclusions as to his own qualifications, no specific statement.

The Court: I am going to overrule the objection, because men engaged as he is have some knowledge of real estate values. If he has any knowledge at all his opinion is receivable. I think what you say goes to the weight to be given his testimony.

Mr. McGinnis: Then let me ask a few questions.

The Court: I will allow you to cross-examine him on his qualifications.





Examination by Mr. McGinnis as to qualifications:

Q. Mr. Kruitbosch, when did you start in the real estate business? A. About five years ago.

Q. Well, can you give us a little better idea than "about five years ago?" A. Well, I have held a real estate license for the last five years.

Q. And in June, 1925, you had been in business about three or three and one-half years; that's right? A. Yes.

Q. You say that you have appraised properties; did you appraise any real estate in the vicinity of this building around 1925? A. No, sir.

Q. Did you buy any porperty in the immediate vicinity of this property we are discussing around 1925? A. I am not a speculator.

Q. You didn't buy any around in 1925 at any time? A. I didn't buy any, no.

Q. Did you, on behalf of anybody else, buy or sell any property on Lexington Avenue in the immediate vicinity of this property? A. I did.

Q. When? A. This year.

Q. What part of this year? A. In June of this year.

Q. Where? A. Around Lexington Avenue and Munroe Street.

Q. How far is that from this property? A. One and one-half blocks.

Q. North? A. North.

Q. That, then, is the only property, is it not, that you at any time, either as buyer or seller or on your own behalf, or as agent for anybody else, have handled any real estate in the vicinity of this property? A. I have had a number of pieces of property for sale on that street.

Q. I am asking you for transactions that went through. A. I have not.

Q. Now, you say that you have acted as appraiser for a building and loan association? A. Yes, sir; I furnished them reports as to property.

Q. And the loans in those cases have been on residential property? A. Not necessarily.

Q. There wasn't any over on Lexington Avenue in the vicinity of this property, was there? A. Not in the vicinity of this property.

Q. Have you ever gone through this building 12 to 16 Lexington Avenue? A. I have, sir.

Q. When. A. Within the last month or two months.

Mr. McGinnis: I submit, your Honor, that this examination now discloses that he is not an expert, his entire experience being limited to acting as agent in general those five years in one or two instances in reference to property a block and a half of this property involved here. I submit that he is not qualified to testify as an expert.

The Court: That is not all that he testified to; he has testified that he has kept himself informed. I overrule the objection and will permit him to testify. (Addressing the witness) What, in your opinion, is the value of the Benson Building, the property described in the bill of complaint, as of the date June 1, 1925, together with the land upon which it stands.

A. I give the value as $200,000.

Direct-examination by Rinzler (resumed):

Q. I think you indicated that you had a memoranda that you made respecting the dimensions of the building; is that so? A. It is.





Q. Is that memorandum necessary to refresh your recollection on the subject? A. I don't think so.

Q. What are the dimensions of that building? A. 50 x 100 feet. I didn't measure it; I took that from my records in the office.

Cross-examination by Mr. McGinnis:

Q. This $200,000 value that you fix as of June 1, 1925, is that in a general manner? A. I don't understand what you mean.

Q. That is, to make a quick sale do you think that is what it is worth? A. Yes, sir.

Q. The market value would be considerably more, in the ordinary, usual sense, wouldn't it, Mr. Kruitbosch? A. I don't think so.

Q. What is your definition of "market value"? A. As to what property would sell for.

Q. Is that your idea of what constitutes market value? A. Yes.

Q. Then in case of property that wouldn't sell readily it would have no market value; is that it? A. It would have its market value. Anything has its value, but whether it will sell at that price is another matter.

Q. That is your definition of market value, what it will sell for, irrespective of conditions? A. Conditions would affect the value of any property.

Q. Certainly, but I say irrespective of what the conditions would be, what it would sell for is what its market value would be? A. I have made a statement that it is worth so much.

Q. But I want your definition of market value, and you told me it was what the property would sell for. I say, is that irrespective of conditions?

A. I would have to know what the conditions are. What are the conditions?

Q. I am asking you; I'm not an expert. A. Well, I have qualified before this as a real estate expert.

Q. Then you can't tell us what conditions would make any difference in the value of property, then? A. I don't see why I have to state that.

Q. Well, I won't press you if that's your answer. Now, then, what have you before you that assists you in fixing the values as of June 1, 1925? A. The ground value.

Q. I mean, what have you in your mind now relating to June 1, 1925, that enables you to fix the value of that property. A. The construction and the ground value.

Q. Did you know the ground value in 1925? A. I knew as well as I do now.

Q. Was there any difference in values between 1925 and 1926? A. Not a great deal.

Q. It has sagged a little along there, hasn't it? A. The value has sagged and the purchasing has also.

Q. There is a dull market now? A. Yes.

Q. Did you know that in March, 1925, this property was contracted to be sold for $94,000? A. I did not.

Q. $206,000, I mean; did you know that? A. I did not.

Q. Did you know that afterwards, as the result of a lawsuit in which a person named Zucker was insisting upon the right to buy that property and that they paid $206,000 for it? A. I did not, sir.

Q. Did you know that they paid $206,000 without getting the dower rights of the three wives of the owners?





Mr. Rinzler: There is no evidence of that.

Mr. McGinnis: I will withdraw it.

Q. Did you know that Mrs. Zucker, or other people with her, paid $214,000 for that property in July, 1925, or agreed to pay that much? A. I did not.

Q. Did you know that they afterwards paid $214,000 for that property? A. No, sir.

Q. Did you know that $214,000 was paid for that property to three owners of the property, and whose wives did not join in the deeds? Did you know that?

Mr. Rinzler: There is no evidence of that, and I object to it.

Mr. McGinnis: As an expert I am asking him if he knows these things.

Mr. Rinzler: He is assuming a fact that there is no basis for.

Mr. McGinnis: I am asking this expert if he knows. It would make a difference.

The Court: You might ask him if the danger of another world war wouldn't affect it. Your question contains an unwarranted assumption of fact.

Mr. McGinnis: Your Honor would respect the decree of this court in this state?

The Court: I would if it was in evidence before me.

Mr. McGinnis: I offer that decree, and state to your Honor that it contains that statement.

The Court: I will tell you what I will do: I will permit you to ask the question, but I will strike it out unless you subsequently

prove the fact of the recalcitrancy of the wives of those men.

Mr. Rinzler: I don't think that will have any effect, for this reason: In order to make good their legal title they might be willing to pay any price. That, surely, wouldn't be relevant in this case.

The Court: What the Senator is drawing out is this, that Mrs. Zucker and her associates, I understand, who are not slow in taking care of themselves, were willing to pay $214,000 for this property with a feature that renders its marketability somewhat doubtful.

Mr. Rinzler: They didn't know that at the time they agreed to pay that price.

The Court: But they knew it at the time they filed their bill and at the time they took their decree. In other words, they appeared to be willing to take it after they had learned about it. I will overrule the objection and permit the question to be either reframed or answered, I don't know which.

Q. (Question read by the stenographer). A. I had read of that transaction in the newspaper and made no record except for future reference.

Q. Wouldn't the fact, if it be a fact, that at or about the time you say this property was worth $200,000 other persons had contracted to pay $214,000 and thereafter paid money to acquire the outstanding dower rights of the wives of the people who owned the property—would that have made a difference in your fixing its value? A. It would not make any difference in the value, but in the



title, yes, if they bought it free and clear of encumbrance.

Q. The fact, then, that at the time you fixed this $200,000 as the value of the property, if at that time the owners of the property would have been unable to induce their wives to join in signing off their dower rights, would that have made any difference in the value of this property, in your opinion? A. As affecting the title.

Q. I am speaking of the value, Mr. Kruitbosch. A. It would not affect the value.

Q. It would not? A. No, sir.

Q. So that in your judgment this property at that time was worth $200,000 irrespective of the wives of the owners joining in the deeds? A. I testified—

Q. No, I am asking you if that is correct?

The Court: I think you are talking at cross-purposes. He says the value of the property was $200,000. He is talking of values and you are talking of title.

Mr. McGinnis: But he has made the statement that the failure to obtain the dower rights of the wives of the owners makes no difference in the value.

The Court: And he is literally and emphatically correct. The value of the property remains the same, no matter whether it has a cloud upon the title or not. You settle the contesting interests and you clear up the cloud. Let me ask him this:

Q. (By the Court) Now, assuming that the people under contract to convey could not secure the signatures of their respective wives, would you

say that that would have no effect upon the price that one ought to pay for it to purchase it?

Mr. McGinnis: Yes, I will stand by that question.

A. It doesn't affect the market value, but it would affect the selling price to the extent of clearing up the title. I don't know anything about law, as to what the clearing of the title would cost, and I don't think it is a fair question to ask me.

Q. (Cross-examination resumed) Do you know where the Liggett Building is in Passaic, on the corner of Main Avenue and Jefferson Street? A. Yes, sir.

Q. How far is that from this property which is the subject of discussion? A. One block.

Q. Is the locality there as good, from the standpoint of value, as this property here? A. Why, very much the same.

Q. Do you know what the value of the Liggett Building was in June, 1925? A. I do not, sir.

Q. Do you know of any transaction in which that property was sold in 1925? A. I do not remember; I know it was sold.

Q. I thought you were acquainted with all the buying and selling of property around there? A. I am not.

Q. Do you know the width of the Liggett Building? A. No, sir.

Q. Or the depth of it? A. I do not.

Q. Suppose that Liggett property has a depth of 114 feet and a frontage of 40 feet, what would that be worth in June, 1925?

Mr. Rinzler: I object as immaterial and irrelevant.





The Court: To test his credibility, I overrule the objection.

A. The building is an old building, in very bad repair.

Q. What would you say the value was in June, 1925? A. I would have to go into the dimensions of the building before I could give an intelligent opinion as to its value.

Q. But we have the factor of an old building. A. You can't guess at these things.

Q. Well, keeping in mind that it is an old building. A. I wouldn't want to go on record without first going through the building and getting the exact size of the building and its construction and condition.

Q. What was the land worth there in June, 1925, per foot front? A. I can't answer that without going into records and without measuring the property.

Q. I am saying a foot front, Mr. Kruitbosch, of this property.

Mr. Rinzler: The witness apparently hasn't in mind the dimensions or the conditions of the building on it.

The Court: He is being asked only with reference to the land.

Mr. Rinzler: I don't think that is a fair test, because if it has a building on it that is worthless it might affect the value.

A. I don't know the depth.

Q. I have given you the dimensions, 40 feet front and 114 feet deep. I am asking you only for the land value. You have seen the building, but I am not asking you about that; I am only asking you

about the value of the land. A. I can only give a guess.

Q. Why is it that you can only give a guess as to the value? A. Because in appraising property I have to get all the facts I can before making any appraisal.

Q. But I am not asking you with regard to the building; you can ignore that entirely; I am asking you about the land value of this property one block from the property here in question. Can you not tell this court what that land was worth in June, 1925, a foot front, the plot being 40 x 114 feet in depth, one block from this property we are discussing? A. I have sold property on either side and one I got $4,000 a foot for and another I got $3,000 a foot.

Mr. McGinnis: I now ask that that be stricken out as not responsive.

The Court: It is not responsive. It may be stricken out.

A. I won't give a guess.

Q. Can you answer that quesion "yes" or "no"? A. No.

Q. To help you, perhaps, in fixing a figure would you say that $194,000 for that property 40 foot in front in 1925 was a fair value?

The Court: With or without the building?

Mr. McGinnis: With the building.

Mr. Rinzler: The witness has already indicated what his state of mind was.

The Court: He was then under direct-examination; this is cross-examination.



A. $194,000. $3,000 a foot would allow the difference in the value of the old building. At $194,000, with that old building on it, I think that quite a fair price for it.

Redirect-examination by Mr. Rinzler:

Q. Mr. Kruitbosch, Main Avenue and Jefferson Street is a corner? A. Yes.

Q. Does the bus stop there for passengers along that street? A. Yes.

Q. It is the starting place for busses to nearby suburbs? A. Yes.

Q. Is there a better location in the City of Passaic than the corner of Main Avenue and Jefferson Street?

Mr. McGinnis: I object.

Mr. Rinzler: I withdraw the question.

Q. What have you to say, in general, about the value of the Liggett Building, located at the corner of Main Avenue and Jefferson Street, as compared with other properties on Main Avenue and Lexington Avenue, Passaic?

Mr. McGinnis: If your Honor please, the witness has already answered that the value of those two properties is the same.

Mr. Rinzler: I have a right to go into that, if your Honor please.

The Court: The Liggett Building has probably points that make it better, there being a jitney bus station. I will allow the question.

A. It is a very valuable corner on that account, but the other property is nearer the Erie station. It faces the station.

By Mr. McGinnis:

Q. And that makes it valuable? A. Yes.

By the Court:

Q. What did you say the dimensions of that building are? A. 50 x 100.

By Mr. Rinzler:

Q. Have you your records here of the dimensions? A. No, I haven't.

Q. When you made your appraisment of the value of this land and building of the Benson property did you or not see the building and the land?

Mr. McGinnis: If your Honor please, he said he had been in the building.

A. I did not measure it.

Q. When you speak of the dimensions of 50 x 100 are you speaking of the land or building, either or both? A. The building does not cover the entire tract.

Q. At the time you inspected the Benson property for the purpose of making yourself familiar therewith, to enable yourself to arrive at the value —the full market value, did you then make a memorandum of the dimensions of it? A. I did.

Q. And have you that memoranda here? A. Yes, right on top there.

Q. Is it the one you just presented?

Mr. McGinnis: I object to the witness using the memoranda.

The Court: He said he could testify without recourse to it.

Mr. Rinzler: There is something on this paper that shows that I was misinformed or





mistaken about the dimensions, and I don't want that mistake to go by unnoticed.

The Court: He is giving his testimony. He himself could have had the benefit of his memoranda if he needed it.

Mr. Rinzler: I suppose if he erred on that he shouldn't be foreclosed—

The Court: Yes, because any other rule would permit counsel to entirely reverse the testimony of any witness.

Mr. Rinzler: Very well, I will ask one other question.

Mr. McGinnis: I object to any further questions. The man was dismissed and brought back.

The Court: That isn't a subject of objection; that is within my discretion.

Q. Mr. Kruitbosch, you say that the building itself does not cover the entire tract of land upon which it stands; is that correct? A. That is as I understand it.

Q. How much greater are the dimensions of the tract of land than the building it stands on? A. I will have to go over that paper to tell that. I think it is 35—33 feet or something like that.

Q. Well, this paper enables you to refresh your recollection on that subject? A. I guess it would.

Q. And will this paper tell what the dimensions of the land are, front and rear?

Mr. McGinnis: I object to the leading form of these questions.

The Court: I think the objection is well taken. I don't think you ought to urge him to look at something to see if he will say

what you want him to say which is different from something else he has said. It would be perfectly apparent that the witness is changing his testimony.

Q. To the best of your recollection, what is the frontage of the land upon which the building stands? A. 60 feet.

Mr. Rinzler: If there is no objection I will offer this memoranda.

Mr. McGinnis: Oh, certainly there is objection.

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SAMUEL SLAFF, sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Rinzler:

Q. Mr. Slaff, where do you live? A. Passaic, N. J.

Q. For how many years have you lived there? A. 27.

Q. What is your business? A. My business? I was a builder before I was a lumber dealer, and after that I became a lumber dealer for 15 years.

Q. How many years were you in the building business? A. 12.

Q. In Passaic? A. Passaic.

Q. And you are also in the lumber business in Passaic? A. In Passaic.

Q. For how many years? A. 15.

Q. And since you gave up the building and lumber business what has been your business activity? A. Placing money on mortgages and inspecting building for loan.

Q. And for whom have you done that? A. For



the Equitable Title & Mortgage Company of Passaic, Endurance Building & Loan Association, and Material Men's Building & Loan Association.

Q. The Equitable Title & Mortgage Company is located on Main Avenue, Passaic? A. Yes.

Q. Does it or not place loans on mortgages—real estate mortgages? A. Yes, sir.

Q. And this building and loan for whom you make appraisements, where is it located? A. Passaic, N. J.

Q. And then the third company which you mentioned, where is it located? A. Paterson, N. J.

Q. And have you done little or much of this appraisement? A. I have done quite some.

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

Q. Do you know generally the real estate values, or the fair market values, of real estate in the City of Passaic, including Main Avenue as well as Lexington Avenue? A. I have.

Q. And have you, for the past six years, kept yourself informed—

Mr. McGinnis: I object to the leading form of the question.

Mr. Rinzler: That is the same question that counsel has asked.

The Court: Go on.

Q. Have you kept yourself informed and advised of the market value of real property in Passaic? A. I have.

Q. Particularly including Main Avenue and Lexington Avenue? A. I have.

Q. And have you kept yourself informed as to the activity of real estate there? A. I have.

*Samuel Slaff—Direct—for Defendant.*

Mr. McGinnis: May I suggest to your Honor that this whole series of questions is leading.

Q. Have you or not made yourself familiar with what is known as the Benson property, the property involved in this suit? A. I have.

Q. Did you go through the building? A. I did go through the building when Benson had it.

Q. Is the building the same now as it was then? A. It is.

Q. What kind of a building is it; what type of building? A. It is a building three stories high—

Q. Brick building? A. Made out of stone. We call it brick building.

Q. Made out of stone, you say? A. Yes.

Q. Have you formed an opinion of the value of that property as of June 1, 1925?

Mr. McGinnis: Yes or no.

A. I did.

The Court: What do you mean, the building?

Mr. Rinzler: The building and land.

Q. I am referring, Mr. Slaff, to the building and land; I ask you whether or not you have formed an opinion concerning the building and land as of June 1, 1925. A. Yes.

Q. Will you state to his Honor what, in your opinion, was the market value of that land and building, the Benson Building, as of June 1, 1925.

Mr. McGinnis: I object to the question, first, because the witness is not qualified as an expert, and if your Honor overrules me I would like to cross-examine him.



*Samuel Slaff—Direct—for Defendant.*

The Court: You may cross-examine him.

Examination by Mr. McGinnis as to qualifications:

Q. Mr. Slaff, while you were in business you were in a lumber company? A. Yes.

Q. When did you go out of that business? A. In 1909.

Q. Well, what business were you in up to a year and a half ago? A. Lumber business.

Q. I mean when did you stop? A. In 1924.

Q. And after 1924 what business did you go into? A. Into the real estate and mortgage loans and the appraisal of property.

Q. Whereabouts? A. In Passaic and Paterson.

Q. In 1925, then, you had been in that business about one year? A. One year.

Q. Had you bought or sold any property yourself in the immediate vicinity of this property 12 to 16 Lexington Avenue? A. No.

Q. Did you place any mortgage on any property on that street, in the vicinity of this property in question, in 1925, or thereabouts? A. We did on Main Avenue, one mortgage.

Q. How many blocks is that from this property on Lexington Avenue? A. That is three and one-half blocks.

Q. South as you go toward New York? A. Yes.

Q. The properties down there is entirely different from the property around Lexington Avenue? A. They are.

Q. Had you appraised any real estate, around June 1, 1925 or thereabouts, on Lexington Avenue, in the immediate vicinity of this property 12 to 16 Lexington Avenue? A. I did not.

Q. Had you acted as an agent or broker in the

sale, around June 1, 1925, of real estate on Lexington Avenue, in the immediate vicinity of this property? A. I did not.

Mr. McGinnis: I respectfully submit this gentleman is not qualified.

The Court: I am inclined to agree with you now.

Mr. Rinzler: A man doesn't necessarily have to make a sale to know what the values are. He is in that particular business, and he is obliged to keep himself informed as to real estate values. His services are sought out by title companies, by building and loan companies, to make appraisals, and he knows property. He has been a builder and in the building business, supplying lumber to builders and dealing with them.

Q. That is correct, isn't it, Mr. Slaff? A. In the building business for 12 years.

The Court: I don't feel that I would give the slightest weight to his testimony, Mr. Rinzler.

Mr. Rinzler: May I examine him further.

Q. Do you know of any sales that were made, not necessarily by yourself but by others, in the vicinity of this property? A. I do.

Mr. McGinnis: I object. It has been held as mere hearsay and is not sufficient evidence to qualify an expert.

The Court: Let us see how he acquired it.

Q. What property have you of sales? A. All in that vicinity.

Q. Any particular property that you can tell us



about? A. The Ware & Dalley Co. That was sold, I guess, about a year previous to this.

Q. At what price? A. It was over $100,000—about $110 or 115 thousand dollars.

Mr. McGinnis: May I ask, is that something somebody told you?

A. No.

Mr. McGinnis: You didn't do it yourself?

A. No, I didn't make it myself.

The Court: How did you learn it?

A. We always get the sales.

By the Court:

Q. What do you mean by that? A. On account of a lien claim that was taken away, so we calculated at that time what it was worth, and we kept the company posted right along.

Q. What do you mean by "posted"? A. Knowing if a person sold the property how much the value was, whether he paid less for it or overpaid.

Q. How would you learn that? A. From sales that were made through the city.

Q. How would you find out how much had been paid for a piece of property? A. By the sale.

Q. Where would you go to learn how much somebody paid for a piece of property? A. We don't exactly go for that purpose, but we know how much was paid and what the sale was.

Q. Who would tell you? A. It is not necessary to tell us how much was paid. For instance, years ago Main Avenue property was worth—

Q. No, I am speaking of this sale you have told us about for something over $100,000—$110,000 or $115,000; where did you learn that it was $100,000

or whatever it was? A. From those it was sold for. Through the owner.

Mr. McGinnis: This seems to be all hearsay.

Mr. Rinzler: It is true he has to depend upon getting information from others, as your Honor indicated,—to keep himself posted by experience and study.

The Court: That is one thing, where a man has been making his living at it.

Mr. Rinzler: He has been actively engaged in the last two years in real estate and for 12 years as a builder.

Q. When were you a builder, before 1909? A. Yes.

The Court: The conditions are so different.

Direct-examination resumed:

Q. In connection with your lumber company did you make appraisements? A. Yes, sir.

Q. What was your object in making appraisemens while you were in the lumber company? A. Appraise for mortgages. I have appraised it in putting out my own money all these years.

Q. How extensively? A. $250,000 in Passaic.

Q. And in this vicinity? A. Yes.

Q. Where? A. On Jefferson Street and Munroe Street.

Q. Is that near by? A. Yes.

Q. How far from this property is Munroe Street? A. Half a block from the corner there.

Q. How far from this property is Jefferson Street? A. Block and half. Madison Street is a short street.



Q. How much mortgage did you place on that Jefferson Street property? A. $150,000.

The Court: All right; if he has loaned any such sum as that out on mortgages I will let him testify. (Addressing the witness) Now, how much do you think this Benson property was worth as of June 1, 1925?

A. We used to figure—

The Court: Never mind what you used to figure; what do you think it was worth in June, 1925?

A. $3,000 a foot.

The Court: As of June 1st, 1925?

A. Yes.

Cross-examination by Mr. McGinnis:

Q. June 1, 1925, you had been in the real estate business less than a year? A. I have been in the real estate business for 37 years.

Q. I thought you were in the lumber business? A. In the real estate business. I was beginning to loan then.

Q. Where is this property you loaned $150,000 on? A. 78 Jefferson Street.

Q. Goldstein Building? A. The same building.

Q. Isn't that 7 blocks away from this property? A. Jefferson Street? No, it is not 7 blocks.

Q. It is not business property where you are talking of now? A. It is an apartment house and six stores.

Q. Weren't you forced to put that mortgage on the property to insure the money you invested in the property? A. I did not.

Q. When I say "you" I mean whoever was interested in it? A. No.

Q. You say in June, 1925, this property was worth $3,000 a front foot? A. Yes, per front foot.

Q. What was it worth in June, 1926? A. Since that time I don't hear that it should be any greater value.

Q. What was it worth in June, 1924? A. Probably about $500 less.

Q. What was the property around there worth? A. The same value.

Q. Did you notice the Liggett Building? A. That is worth more.

Q. Why? A. Because it is in a better section.

Q. Don't you know that that property down there isn't worth quite so much as up on Lexington Avenue? A. Oh, no, it is worth $1,000 a foot more.

Q. What value do you place on the Liggett Building as of June 1, 1925? A. On the Liggett Building it would be worth more, about $3500 to $4000 a foot.

Q. Now, would it make any difference to you, Mr. Slaff, in fixing the value of this property if in June, 1925, it was sold for $214,000? Would that make any difference to you in forming your estimate? A. I think he paid enough.

Q. No, I ask you, would that make any difference to you in forming your judgment? A. No. It never makes any difference if a person pays more. He paid it because he wants it.

Q. It makes no difference whether he is seeking the property or not? A. No.

Q. So that it wouldn't make any difference to you if in June or July, 1925 people were willing to give $214,000 for that property with an outstanding dower right of three wives of the three owners; you



say that would not make any difference in your estimate? A. No. It would make a difference; I suppose it would make a difference. If it sold for $214,000 and they had to pay $50,000 more it is all his business.

Q. Of course it was his own business, but you say it would make no difference in your estimate of the value of the property? A. I don't know about what people are doing; I am only giving it to you according to my way of figuring it.

Q. Do you know of any other property in that immediate vicinity of 12 to 16 Lexington Avenue that brought $3,000 a foot front, in June, 1925? A. I do.

Q. Where? A. At the corner of Madison and Lexington Avenue.

Q. Is that north or south of this property, toward Paterson or toward New York? A. New York.

Q. How far away from this property? A. On the same block.

Q. Whose property was that? A. Mr. Stein bought that property.

Q. What number? A. Right on the corner.

Q. Corner of Madison Avenue and Lexington Avenue? A. Yes.

Q. When was that bought for $3,000 a foot? A. I don't know that it brought $3,000 a foot, but it was worth it.

Q. I asked you if you knew of any other property around there that was sold for $3,000 a foot? A. Well, let me think. I don't exactly know the property around there that was sold.

Q. That's all.

Redirect-examination by Mr. Rinzler:

Q. You say you started in the real estate business— A. Yes, sir.

Q. —how many years ago? A. 27.

Q. The Stein property, is that known as the Ware & Dalley property? A. Yes, right on the opposite corner.

Q. But it is towards Paterson, to the north? A. Yes.

Q. Now, you know the property where the Cheren jewelry shop is located? A. Yes, sir.

Q. Do you know when the title last passed to that property—the last time it was sold? A. I guess it was about the same time as this property.

Q. Do you know what price it brought? A. That brought about $3,000 a foot.

Mr. McGinnis: How do you know that?

Mr. Rinzler: Don't interrupt.

Mr. McGinnis: What he is eliciting ought to be from legal source, and I think I ought to break in.

Q. Do you know whether Mr. Cheren occupied the store in that building? A. Yes.

Q. Have you spoken to him about it? A. Yes.

Q. How near is that to the Benson Building? A. A few buildings.

Q. And that is also located on Lexington Avenue? A. Yes.

Q. Do you know the Harry Hecht Building? A. Yes.

Q. How near to the Benson building is the Hecht property?



Mr. McGinnis: I object to all this. Having qualified him as an expert and taken his testimony on direct and I don't think he has the right to ask him again.

The Court: I think you are asking a good deal. There has been so much time spent on this case I am inclined not to spend much more.

Q. What did the Hecht building bring? A. Less than $3,000.

Q. According to the best of your recollection, when was it sold? A. I cannot recollect exactly.

Q. How near to the Benson porperty is the Hecht property? A. One is near the other.

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PHILIP RICHMOND, sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Rinzler:

Q. Mr. Richmond, where do you live? A. Passaic.

Q. And you have lived there for how many years past? A. 38.

Q. What is your business? A. Real estate.

Q. Where are you engaged in business? A. In Passaic.

Q. How many years last past have you been engaged in that business in the City of Passaic? A. Thirty.

Q. During that period, Mr. Richmond, have you been active in the real estate business in the surburban section? A. Yes.

Q. Are you familiar with property generally and

with the market values of property generally in the City of Passaic? A. I think I am.

Q. And are you familiar with the Benson property? A. I am.

Q. Are you familiar with the market values, generally, along Main Avenue and Lexington Avenue, in the vicinity of the Benson property? A. I think I am.

Q. Have you personally owned real estate? A. I have.

Q. Well, to what extent in Passaic? A. Oh, I don't know; in different sections of the City of Passaic.

Q. How many different parcels of property have you personally bought and sold? A. Too numerous to tell.

Q. How? A. Too many.

Q. Well, "too many" would be how many? A. 100 or 150.

Q. And they cover— A. Different parts of the City of Passaic.

Q. And as broker have you negotiated the sales of property in Passaic? A. That is my business.

Q. And as broker have you negotiated or been connected with property on Main Avenue as well as Lexington Avenue? A. Not lately.

(Recess until 2 P. M.)

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Q. Do you know of any sales made of property in the vicinity of the Benson property? A. I do.

Q. Sales of what property? A. I know sales have been made for Mr. Morris, of Paterson.

Q. What property? A. In the neighborhood of the Young Mens' Christian Association.

Q. It was formerly the Y. M. C. A. property? A. Yes.





Q. When was that sold? A. At the end of 1924 or the beginning of 25.

Q. At what price? A. 50 x 100 sold for $147,000.

Q. And there is a three-story building there? A. Yes, sir.

Q. Do you know of any other sales made in that neighborhood? A. I know of a sale of a piece of property on Lexington Avenue, not far away from this piece of property. I was trying to sell it for a friend of mine, 40 x 100, originally bought of Grinspan & Levine, right on Lexington Avenue.

Q. What did that sell for? A. I was negotiating the sale and they wanted $3,000 a front foot, and my client was only willing to pay $25 to 20 a front foot.

Q. And how near to the Benson property was it? A. That was the property later bought by Berger & Minsky.

Q. That is the property that has the jewelry shop? A. Yes.

Q. That is almost adjoining? A. Yes.

Q. And the Y. M. C. A. property, how near is that to the Benson property? A. I believe it is about 50 feet away.

Q. Do you know of any other sales in that locality? A. I do. I keep my office at 2 and 4 Lexington Avenue.

Q. How long have you had your office there? A. I have been there for about 7 months, and when that property was bought I moved in, and I asked Mr. Hecht, I says, "That property is"—

Mr. McGinnis: I object to that.

Q. Aside from those remarks, what price did they pay? A. $150,000 for 59 feet.

Q. Do you know of any other properties that were on sale in that immediate vicinity in Lexington Avenue? A. No, so far as my knowledge is concerned, I cannot recall it.

Q. Have you formed in your own mind any opinion as to the fair market value of the Benson Building on the 1st of June, 1925? A. So far as my information is concerned, so far as I am acquainted with the real estate business, I consider the property, June 1, 1925, to be worth 26 to 27 hundred a front foot.

Cross-examination by Mr. McGinnis:

Q. Would you be surprised to know that it was sold for $214,000? A. I don't know what it sold for.

Q. Do you know that, in March, 1925, that property was bought for $206,000? A. I heard it was bought for that.

Q. Do you know that on or about June 18, 1925, a contract was made to sell it for $214,000? A. I do not know that.

Q. And do you know that eventually the property was bought under a contract made in the summer of 1925, for $214,000, and that sum paid, although the people buying it did not get the dower rights of the wives of the owners? A. I don't know that, Senator.

Q. Well, in fixing the value of property it makes a difference, does it not, if you consider the prices the property brings? A. Well, the value must be ascertained by the amount of rental it brings in.

Q. Did you know that the time you say the property was worth somewhere between $155,000 and $160,000 a contract had been made for $206,000? A. I learned that later on.





Q. And did you learn that, later, a contract was made to sell it for $214,000? A. I didn't know that, sir.

Q. And knowing that, do you now want to change your opinion as to what that property was worth? A. So far as my opinion is concerned, I still consider that the property, even today, isn't worth any more than $3,000 a front foot.

Q. Have prices of property changed? A. The prices went down, but not to speak of.

Q. There has been a slump in the real estate market, you think? A. Correct.

Q. And you still think, that being so, that the prices of this property in June, 1925, was somewhere around $2,600 to $3,000 a foot? A. So far as my estimate is concerned, yes.

Q. And it makes no difference to you whether a great deal higher sum was paid for it? A. Senator, a man can pay what he feels like, but the actual value isn't there, in my estimation.

Q. Well, would it make any difference to you in figuring these values if you knew that a contract was made for $214,000 for that property without the dower rights, and that the purchasers went into the Court of Chancery to compel the owners to sell that property? Would that make any difference to you? A. That may be for a man who desires to purchase it. If a man wants that particular property he will pay any price for it.

Q. Would the fact that people are striving to keep it and two or three other people striving to get it from those owners—would that make any difference to you? A. It makes no difference, in my opinion, as to the value of the property. If they want to pay that, all right.

Q. Do you know who bought this Y. M. C. A.

property? A. A fellow by the name of Cogan of Paterson.

Q. Do you know what price he was asking for it? A. I don't, no.

Q. Do you know that he asked $250,000 for that property? A. I don't know that.

Q. If he asked $250,000 for that property in the summer of 1925, would that, with the other facts I have given you, make a difference in your opinion? A. Not in my estimation.

Q. So that it would make no difference to you if everybody around there had increased the value of their property, the purchase price, in your estimation, would remain the same? A. Well, the actual value you have got to base it on, on the actual value for sale.

Q. Did you find out what they wanted for the Cogan property in June, 1925?A. I did not.

Q. Do you know what the frontage of that property was? A. 40 feet or 41 feet; something like that; I don't know.

Q. That would be $104,000 that that property is worth? A. At that time? I did not figure it out.

Q. Now, do you know that that property was held for over $200,000 in 1925? A. I didn't know the price.

Q. You didn't ask the owners of the property? A. No.

Q. So that you didn't ask Mr. Cogan as to what he valued the property at? A. No, I didn't; I asked the people who bought the property in 1925—

Q. Yes or no. A. Let me explain it.

Q. No, I want an answer to my question.



The Court: No, on cross-examination you must answer "yes" or "no".

A. Well, I haven't made an effort to find out.

Q. So that in arriving at the values you haven't made any inquiry of the three owners what they held the property at? A. I did not, no.

Q. When did you first form an opinion as to the value of this property which is the subject of this case? A. Well, I formed an opinion as to the value of the property right along ever since this property has been purchased, and when this property was purchased by Mr. Kantrowitz for $206,000 I then told him—

Q. I didn't ask you what you told him; I asked you when you formed an opinion as to its value? A. I formed that opinion today.

Q. Did you form an opinion as to the value of the property in 1924? A. I did.

Q. What was this property worth in 1924? A. It had the same value.

Q. Do you know that the people who owned this property in the spring and summer of 1925, Mr. Lenz and others, at the close of 1924 and the beginning of 1925, paid $180,000 for that property? Did you know that? A. I heard that.

Q. Would that make any difference in fixing your valuation? A. No.

The Court: What property is that?

Mr. McGinnis: The property under discussion. The former owners, Lenz and others who owned this property—I want to correct that, though; I said January, 1925, it was January, 1924.

Q. In January, 1924, paid $180,000; did you know that? A. Yes.

Q. And property, Mr. Richmond, in Passaic, was worth less in the beginning of 1924 than it was in the spring and summer of 1925? A. No.

Q. Why, isn't it a fact that property has been moving up in Passaic for several years prior to 1925? I mean property in the immediate vicinity? A. I know I figure it less.

Q. Will you tell me what that property was worth in 1924. A. At the end of 1924 and the beginning of 1925 I consider it worth 26 to 27 hundred dollars a front foot.

Q. How much was it in 1923 and the beginning of 1924? A. I consider it was lower.

Q. Then would it surprise you if at the beginning of 1924 the property was sold for $180,000? A. Well, I have heard it sold for that price.

Q. Now, knowing that, would that cause you to alter your opinion as to the value of the property? A. Not with its present income, in my estimation. I figure on that basis, the amount of income.

Q. Well, then, suppose you are dealing with property with no building on it. A. That is a different proposition.

Q. Now, we will consider another type of property, with what we refer to as a shack on it, which you sometimes find in the neighborhood where there are splendid buildings, and which isn't occupied or doesn't bring in any income; would you consider that of any value? A. We always figure on the basis of rent.

Q. So that you don't want the court to have the impression that the only basis of figuring the value is the income, of course? A. But I can put up



a building on it that will bring a satisfactory income if it is in the right neighborhood.

Q. Do you assume that this building has a small income, and that is the reason why it has a low value? A. There is a building on it and, therefore, must be an income. But the income isn't enough to warrant paying that amount of money for it.

Q. Is that the reason that you place a low value upon it? A. Not my only reason.

Q. But it is your principal reason? A. Yes.

Redirect-examination by Mr. Feder:

Q. You were about to say somehting about negotiating a sale when the Senator interrupted you.

Mr. McGinnis: I object, because he wasn't about to say something.

Q. What were you going to say about negotiating the sale of property? A. Burger & Lusky, of New York, requested me to pay $3,000 a front foot and my client refused to pay any more than $2500 per front foot and I didn't negotiate the sale.

Q. When the Cogan property was purchased, the property known as the Y. M. C. A. property, what, if any, changes or improvements were made on it? A. About $25,000 was spent in remodeling it.

Q. In what way? A. The inside walls were taken out and the rooms turned into offices and the building improved generally.

Q. Were the improvements extensive, or not? A. Quite extensive.

Q. About how much money do you consider was spent in improving the property occupied by Cheren and others? A. Fifteen or twenty thousand dollars; maybe a little less; I don't know exactly.

Q. In cases where properties were purchased on Lexington Avenue during the past year, were those properties bought by persons who were tenants or occupants of the building or by persons who were not occupants of the building? A. Mostly by people who were occuping the building.

Q. Conducting business there? A. Stores, and some of them with offices.

Q. Has there been much activity in property in the vicinity of this property? A. To a certain extent a person who wants that property pays the price because he wants it for his business.

Q. Otherwise, have there been many sales? A. Not outside sales.

Q. Would that apply to the last two years? A. Well, it was only purchased by people who owned property next door.

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HARRY STEIN, sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Rinzler:

Q. Do you live in Passaic? A. Yes, sir.

Q. And have lived there for how many years? A. Oh, about 27 years.

Q. And have you been engaged in the real estate business in Passaic? A. I have.

Q. For how many years have you been dabbling in real estate? A. About 20 years.

Q. And have you been engaged in that business for yourself and as a broker for others? A. Yes, for myself.

Q. Now, in the past 20 years how many parcels of property did you buy and sell in Passaic? A.



Oh, I have bought quite some, but I can't remember how many pieces.

Q. And have you bought any in the vicinity of this property in question? A. I have.

Q. You know the property in question, known as the Benson Building? A. I do.

Q. Have you bought business property? A. I have.

Q. And the business property that you bought, did it run into thousands of dollars? A. Yes.

Q. About how many hundreds of thousands dollars' worth of real estate have you bought in your experience as a real estate dealer? A. Oh, I have bought about a million dollars' worth.

Q. And have you placed mortgages of substantial amounts? A. I have not.

Q. Have you kept yourself posted, in your real estate activity, in Passaic? A. I have.

Q. On the market values of properties? A. I have.

Q. And the prices they brought on sale from time to time? A. I have.

Q. Was that necessary in your real estate operations? A. It was.

Q. Have you formed in your mind an opinion of the fair market value of the Benson property, of the land and building as of June, 1925? A. I have.

Q. What, in your opinion, is the market value of the property as of that date?

Mr. McGinnis: I object, on the ground that that he is now shown to be an expert on the values of this property.

The Court: He has been buying and selling property around there for 20 years.

Q. Does that include property bought and sold by you in the vicinity of this property? A. Yes.

Mr. Rinzler: I now press the question.

Mr. McGinnis: Let me ask a few questions.

Q. What real estate did you buy in recent years on Lexington Avenue? A. In recent years? I bought the Prescott Block further up toward Paterson on Lexington Ave.

Q. What other property? A. I also have a quarter interest in the Benson Building.

Q. That is the building that is the subject of this suit? A. That is what I have bought recently.

Mr. McGinnis: I think that qualifies him.

The Court: I think it does, too.

Direct-examination by Mr. Rinzler resumed:

Q. Well, state the value of that property, 12, 14 and 16 Lexington Avenue; how much do you think it was worth as of June 1st, 1925? A. We have paid top-notch price of $214,000 at that time.

Q. That you consider top-notch price? A. At that time.

Q. By "top-notch" do you mean high or low? A. High.

Cross-examination by Mr. McGinnis:

Q. In June, 1925, when you paid this $214,000—right after that—you found that there was a lawsuit on this property; you and the others who had an interest in the property appeared in this case indirectly in the case in which Mrs. Zucker was defendant? A. Yes.





Q. And it was in an effort to prevent Mr. Feld from getting his one-sixth interest of that property? A. I never knew anything about who was the cause of this lawsuit.

Q. I am not asking you whether you knew; you know how that was the cause? A. To some extent.

Q. And then you know there was another case in the Court of Chancery in which you and others that were interested in this property sought to compel the owners of that property to sell it to you at $214,000? A. Yes.

Q. You wanted the property? A. Yes.

Q. And then after that you knew that the case was one where the Court of Chancery had ordered these people to sell the property to you and those interested, for $214,000? A. Right.

Q. And you knew also that at that time the decree of the court said that the wives did not have to join; that is true, isn't it? A. Yes.

Q. So that the property that you thought you were buying at the top-notch price of $214,000, the fact is that the court compelled the people to sell it to you at that top-notch price? A. Yes.

Q. And compelled them to sell it to you at the top-notch price, although you knew that the wives of the owners did not have to sign? A. That's right.

Q. And then after that those interested in it with you secured three deeds from the three wives? A. Yes.

Q. And paid, in all, $14,000, or, to be exact, $13,600. A. $13,333.

Q. And you did that, knowing all the time that $214,000 was, in your opinion the top-notch price? A. At the time when we purchased the contract of Mr. Kantrowitz that was the top-notch price.

Q. Conditions did not get better after that, so far as the value of this property was concerned? A. Now, counsel, I don't understand you.

Q. I will put in plainer English, then: After you purchased that contract the property didn't change in value there, did it? A. Not at that time.

Q. Now I think you were just about to say that you didn't know when you were buying it at $214,000 you weren't going to get the wives' signatures? A. We expected it.

Q. But when you took the deed of the Court of Chancery from those owners you knew, then, that you weren't going to get the signatures of the wives? A. At that time we did not.

Q. And did you then pay $214,000 anyhow for the property? A. We couldn't help ourselves; they had our deposit of $17,500, and this being a family affair and they refused to give us title.

Q. So that, because of the fact that you had already paid $17,500 deposit you decided you would go through all these proceedings in the Court of Chancery to get this property and get them to carry out their bargain? A. We couldn't help ourselves; otherwise they would have our deposit of $17,500.

Q. It didn't occur to you that you might sue them and compel them to go through with the contract or get them to take it off your hands and return the deposit? A. We didn't try to do that, however.

Q. Now, when you paid this bargain price—this top-notch price—of $214,000, you consulted someone as to the value of the property, didn't you?





Mr. Rinzler: I object to the words "Bargain price" and "top-notch price".

Mr. McGinnis: I will withdraw the question.

Q. At the time you made this deal, the contract by which this property was to be bought for $214,000 stated therein—that is, before the transaction went through—you consulted with your other friends as to the price you were to pay? A. I did.

Q. And they knew you were a real estate expert; you gave them the benefit of your best judgment, didn't you? A. I did.

Q. And at that time what was your best judgment as to what that property was worth? A. The price paid for it.

Q. $214,000? A. Yes.

Q. Which would be about $3500 a foot? A. $3600 a foot.

Q. So that if these agents are to be believed, you were sticking your friends $1,000 a front foot? A. I don't understand.

Q. Question withdrawn. You have told us that the reason you went into this deal was because you had paid a deposit of $17,500? A. Yes.

Q. Mr. Lenz was one of the owners of the property? A. Yes.

Q. Did Lenz offer to return that deposit to you? A. He did not, not to me.

Q. Did he at any time offer to give back the deposit to you? A. Not to my knowledge.

Q. Was that ever told to you by anybody that Mr. Lenz offered to give you $17,000 back? A. Not that I know of.

Q. Did any of the other two men, whose names I don't now recall, offer to do that? A. No.

Q. Do you know of any such offer being made to Mrs. Zucker? A. I do not.

Q. Do you want to sell the property now for $214,000? A. I have to consult my associates.

Q. What do you value the property at now, as a real estate expert?

Mr. Rinzler: I think that is no way to fix the present valuation of the property.

Mr. McGinnis: It is to test his real estate knowledge as an expert and to test his credibility.

The Court: I will allow it.

Q. What do you value that at now? A. $4,000 a front foot.

Q. What do you say as to the movement of values in that vicinity since June, 1925? A. Well, they have increased about $500 a front foot.

Q. And you still make that statement, in the face of the other experts testifying on both sides here, that there has been no substantial change in the past year? A. They have not.

Q. I say, notwithstanding what they have testified, you still maintain that that property has advanced $500 a front foot? A. Yes.

Redirect-examination by Mr. Rinzler:

Q. When you and the others took an assignment of the contract to purchase this property for $214,000 did you then know that the dower rights were going to affect the marketability of the title? A. I did not at that time that we signed the contract.

Q. Did you then believe that you were going to get a free and clear marketable title? A. The day





that I was to Mr. Newman's office with Mr. Kantrowitz in Newark I hadn't seen the contract except when the deal was taking place, and Mr. Newman after the check was made out he says, "the women's name is not in the contract" to Saul, and Saul says—

Mr. McGinnis: I object to what Saul says.

Q. Was that the first intimation that you had received that the women did not sign their dower rights? A. That is the first.

Q. Had you kown that the women had not signed the contract would you have purchased the property under the contract?

Mr. McGinnis: I object to his telling what he would have done if something else hadn't happened.

The Court: I suppose it is for the purpose of offsetting what you have drawn out on cross-examination. I overrule the objection.

A. If we had known that the women wouldn't sign the deed we would never have bought the property.

Q. If you had known that the women had not signed the contract would you have bought the property; in other words, if, when you received the assignment of the contract for this property, you knew that the wives would not sign the contract would you have bought the property? A. We would not.

Recross-examination by Mr. McGinnis:

Q. When you paid this deposit of $17,500 to get the property at a top-notch price you spent $13,300

more besides going through a lot of expensive litigation? A. Yes.

Examination by the Court:

Q. What was your purpose in buying the building? A. Just for an investment.

Q. To hold it and not to occupy it? A. Yes.

Q. Of course, you wanted to invest your money to the best advantage? A. Yes.

Q. You paid over $240,000 for a piece of property that you considered to be, at the very most, worth only $214,000? A. We paid $240,000?

Q. I mean, you paid about $228,000? A. In clearing the dower rights, yes.

Q. In other words, you paid $13,000 more than at the very most you considered the property worth? A. At that time the top notch was $214,000, and then when we got into this litigation we settled it for $13,000.

Q. Did you ever read the contract that was assigned to you? A. I did not; Mr. Newman read it.

Q. Did he read it to you? A. Of course, he called our attention to it, and Saul Zucker, Mr. Lenz, Mr. Endler and Mr. Solomon went down to their house and asked their wives, and Mrs. Rose Zucker called my attention to it and she said the property is well worth the money; she says "You will make money on it provided you are satisfied with the income and can hold it; you will have a very good investment", and Mr. Newman says, "Oh, we will go through with the deal", and then we made out a check to Kantrowitz for $17,500 and took the contract.

Q. Were the same men that were the former owners of the building before you? A. Yes.

Q. In your experience as an operator in real



estate don't you understand that when the ordinary contract is made for the conveyance of real estate it is to be made free and clear of anything except those matters that are mentioned in the contract? A. Well, I'm not familiar with that.

Q. You say you have been dealing for 20 years in real estate, purchasing and selling real estate on your own account, with your own money? A. Yes.

Q. Then do you mean to say you don't know what contracts ordinarily contain? A. I have a counsel that looks after that.

Q. Do you mean to say that you don't know what a contract contains? A. I do know.

Q. Of course, you know; you know that they were under contract to convey that to you free and clear of anything except what was contained in the contract? A. Yes.

Q. You knew that if they couldn't give you the dower rights of their wives you didn't have to go through with it? A. Yes.

Q. You mean to say now, knowing that, because Mr. was an uncle of Saul Zucker and he had played that trick on you you didn't want to quarrel with him because it was a family affair? A. Yes.

By Mr. Rinzler:

Q. Mr. Stein, did you have any money up in the Court of Chancery on deposit, by yourself and your co-purchasers, as a guarantee to go through with the purchase of this property? A. I had.

Q. How much money did you have on deposit? A. In the Court of Chancery we had $7600.

Q. So that, all told, you had tied up in cash approximately $25,000 that you had actually paid out?

The Court: That makes it all the worse.

Mr. Rinzler: I don't know that it does.

The Court: I will hear you on it at the close of the case.

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Mr. Rinzler: I understand this morning your Honor reserved the right to Mr. McGinnis to call Mr. Weinberger and Mr. Hartstein. They are here. We are not through, but we don't want to put in our case if they are to call them.

Mr. McGinnis: Mr. Hartstein is not here; he is in New York out of our jurisdiction. Mr. Weinberger is here, and I am willing to go ahead with him.

The Court: Very well.

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HARRY H. WEINBERGER, sworn on behalf of the complainant, out of order, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Weinberger, you are a resident of Passaic and a lawyer by profession? A. I am.

Q. And are you in any other line of business? I believe you are President of the Service Trust Co. of Passaic? A. I am.

Q. You know the parties in this suit, Mr. Feld, Mr. Kantrowitz and others? A. I do.

Q. You are also a defendant in this case? A. I am.

Q. Did you learn of a transaction in which Mr. Kantrowitz, Mr. Feld and others were said to have



entered into a contract to buy premises 12, 14, and 16 Lexington Avenue, Passaic? A. I did.

Q. After learning all that did you know of any meeting being called in your office by those who are said to have been in it? A. Yes.

Q. Were you present at that meeting? A. I was.

Q. Do you recall about when it was? A. Oh, I couldn't give you the date now.

Q. At that meeting do you recall who were present? A. Well, there were several meetings; depends upon which particular meeting.

Q. I call your attention to a meeting in which this group all met together with a view of organizing a corporation. A. I recall that.

Q. Who was present at that meeting? A. There were present originally Mr. Jaffe, Mr. Kantrowitz, Mr. Emil Hart, Mr. Samuel Feld; and there may have been others but I don't just recall who.

Q. There was nothing important carried on at that meeting, was there? A. Nothing except a contract was being prepared—dictated—as I recall it, by Mr. Jaffe to one of the stenographers in my office, and there was considerable discussion about the names that were to go in the certificate, which resulted in the fact that it wasn't consummated.

Q. Following that, either at that meeting or any other meeting, do you know of any transaction in which an assignment of the contract was made to you? A. I do.

Q. Was it at that same meeting or at another meeting? A. Another meeting.

Q. About what was the date of that; do you recall? A. My checks would show the date of that.

Q. (Counsel produces checks and hands them to witness). A. March 27.

The Court: Are those going in evidence?

Mr. McGinnis: They are already in evidence. I am showing the witness Exhibits D-1 and D-2, and the date of those is March 27, 1925.

A. That is correct.

Q. Now, at that meeting, Mr. Weinberger, just tell us, as briefly as you can, what took place leading up to the making of any assignment. A. After the property had been purchased by Mr. Kantrowitz on behalf of the so-called syndicate by Mr. Cacoliris—

Mr. Vanderbilt: I object to that. There has been no testimony of any purchase on behalf of any syndicate.

The Court: It is in the record. This is the third or fourth day, before you came into the case.

A. (Continuing) After the property had been purchased by Mr. Kantrowitz on behalf of this so-called syndicate composed of Mr. Cacoliris, Mr. Emil Hart, Mr. Kuller, Mr. Samuel Feld, Mr. Kantrowitz and myself, meetings were held, and it was my view that it was a rather difficult thing to have so many partners in an enterprise of that sort, and it was thought best to get the people together and divide it into sixths, and to that end a corporation was suggested, with three names who were to hold the units of the different parties that were brought in by those people. I, for example, held the interest of Mr. Kuller and myself. But there was some objection to having those names in the certificate because of some unfriendly feeling, with the result that I suggested that we meet at the office for a



final disposition of the matter, and on this particular day we all met at the office. It happened, I think, in my brother's room. All the parties in interest were there. Mr. Edward Weiss was there, I think, representing Mr. Cacoliris. Mr. Hartstein, who is associated in business with me, was there. He happens to be in New York City and he came over there.

A discussion took place, and I at that time suggested that they could either count me in or count me out; they could have my interest, just for the purpose of expediting the matter. If they wanted to give me something for it, all right; if not, all right. And they agreed, the price being fixed. I told them I would take $500 for my share of the proposition, and I said "Let us get down to some definite action."

Mr. Cacoliris then suggested that he would accept $500 for his share. Mr. Kantrowitz said he would take his share. And it went along and resulted in five-sixths being taken by Kantrowitz and one-sixth by Feld, those two being the parties in interest.

In order to get everything out of the way I constituted myself the money man since they wanted me to help them out, and my check-book was brought in and I wrote out the checks and paid out $500 to Cacoliris and Feldman. Mr. Daniel Feldman was there. He was commission broker and had an option to purchase the property, and in order that the owners might not be held responsible for the amount of the commission, which I think was somewhere in the neighborhood of $5,000, it was agreed that he would sell his option to the syndicate for $500, so that the owners, Solomon, Lenz & Endler would not be liable to him for that

amount of money. I gave Feldman a check for $500 at that time and made out a check to Emil Hart for $500, and a check to Mr. Kantrowitz, which I think was for $10,500. And thereupon an assignment was drafted by Hartstein in his handwriting in the presence of all in this same room.

Q. Assignment of what? A. An assignment of the contract of Mr. Kantrowitz to myself, representing the outlay for the checks.

The Court: Assignment of his contract for the purchase of the property on Lexington Avenue?

A. That is correct.

Q. And you paid out these checks? A. And I delivered those checks to those men. And then Mr. Hart suddenly said he had to leave. He says, "You give my check to Mr. Kantrowitz; I will take my money"; and he left. And I think Mr. Cacoliris had taken his and gone. Then one of the telephones rang and it was a call from Mr. Hart, and he asked for Mr. Kantrowitz, and he got him on the wire, and he says: "Now, I am not going to take the $500". Kantrowitz says, "I have signed the assignment and I have got the checks, and I am not going to go back on my word now; the deal is closed". So Mr. Kantrowitz left with Mr. Feldman to go over to Hart's place of business.

The Court: With Mr. Feldman, the broker?

A. Mr. Feldman, yes, the broker. Well, that was all there was to that transaction.

Q. I show you Exhibits D-1 and D-2 and ask you if those are the two checks you mentioned as having been given out that day. A. Those are two of



the checks that were given to Feldman and Cacoliris. The one to Cacoliris is D-1.

Q. Was there an assignment actually drawn by Mr. Hartstein and signed by Kantrowitz on that day? A. Yes.

Q. And you paid this money out? A. Yes.

Q. The effect of that assignment was to put the title to this contract, if I may call it such, in your name? A. That is correct.

Q. Now, when did you meet again after that? A. Well, we met later on at the bank of the Service Trust Company; I don't recall the date.

Q. I show you Exhibits C-2 and C-3, both of which exhibits bear date the 3d of April, 1925, and ask you if those papers refresh your recollection as to the date? A. They refresh my recollection, yes.

Q. Now, then, what took place on that date? A. Mr. Kantrowitz and Mr. Hart came in to see me after that. They were having some dispute about this check for $500, which Hart refused to accept, claiming that he could get a big profit on that and he didn't see why he should sell for $500, and he wouldn't take the $500.

Between the 27th of March and this date some discussions arose, and again on the 3d of April. I dictated a contract giving Mr. Kantrowitz five-sixths interest and Mr. Feld one-sixth who gave me his check, repaying me for the money which I had advanced to Kuller $500, and to Feldman $500, and to Mr. Cacoliris $500. His check was $1666.67, and the balance between that and the $2,000 I was supposed to get from Mr. Kantrowitz, and I never got it to this day.

Q. And this check dated April 3d, from Mr. Feld, for $1666.67 to you is the check which paid you

the $1666.67 you speak of? A. Correct, for his one-sixth interest.

Q. And Exhibit C-2 which I show you is the assignment which you executed to him of that one-sixth interest in that contract? A. That is correct. There was also a similar contract of five-sixths interest to Mr. Kantrowitz, together with the original contract which was made to me.

Q. Now, did you produce the original contract made in the office to put the deal through for the first time? A. No, it wasn't there at that time. Mr. Feld, after the transaction was closed, in accordance with the arrangement that evening later on delivered it to me. It may have been a day or two after, but it was a few days after, anyway. He had that contract in his safe.

Q. It was delivered, I am informed, when he gave you that check? A. That may be, but that contract, plus the original contract to Kantrowitz, the assignment from Kantrowitz to me on the yellow paper and my five-sixths to Kantrowitz were delivered to Mr. Kantrowitz when I got back my check for $10,500, and the one-sixth contract to Feld was closed on the same day, and the deal was closed with the exception of a few hundred dollars which Mr. Kantrowitz was to give me.

Cross-examination by Mr. Vanderbilt:

Q. Mr. Weinberger, the first meeting that you had in which Mr. Jaffe and others were present was when? A. I can't give you the date, Mr. Vanderbilt.

Q. Well, in what month? A. I am very frank to tell you that I don't know what month this deal took place in. If I could see some data I would give it to you.

Q. Well, here are the checks which were just offered as having been passed on at the second meeting. A. This is the last meeting of the syndicate. That is when they were paid out.



Q. Were these checks, D-1 and D-2 passed out at the last syndicate meeting? A. I don't know.

Q. Do those checks refresh your recollection as to when the first syndicate meeting was held? A. It was possibly on the first or second day after the purchase of the property by Kantrowitz for the syndicate.

Q. So that if we had the original contract of sale that would refresh your recollection as to when the first meeting of the syndicate was held? A. Yes.

Mr. Vanderbilt: Who has the original contract?

Mr. McGinnis: None of us have it. We all used copies.

Mr. Vanderbilt: Is this your own copy of the contract?

Mr. Feder: It is for the order to show cause.

Q. The contract of sale is dated March 19, 1925; does that refresh your recollection as to when the first meeting of the syndicate was held at your office? A. Within a day or two after, provided it was a week day.

Q. It would be the 20th or 21st? A. About that.

Q. Was Hartstein there? A. He was not.

Q. I understand Mr. Jaffe dictated the certificate of incorporation to one of your stenographers? A. That is correct, but it was not signed up and there was no agreement reached there at all. There was an agreement reached there that there was not going to be any corporation inasmuch as they couldn't agree.

Q. In other words, there was an agreement to disagree? A. An agreement to buy out or sell out our respective interests.

Q. This was the first meeting of the syndicate? A. No.

Q. I am talking about the first time the syndicate met. A. The first time was at the bank the day after the purchase, when I learned that there was a syndicate, and it seems Mr. Feld and Mr. Kantrowitz came in to report to me how this deal was closed at Mr. Feld's office.

Q. When did you first become a member of the syndicate? A. Well, the original syndicate, composed of four, was formed on board the boat coming home from Havana.

Q. When did the original syndicate come into existence? A. I should say sometime in February on our way back from Havana.

Q. Well, who owned the property then? A. Messrs. Solomon, Lenz and Endler.

Q. What did Kantrowitz have to do with it then? A. He happened to be one of the folks on board and one of the persons who advised the buying of this property on Lexington Avenue, and they asked me for my opinion, and I told them I thought that it was a good buy if they could buy it right. That was before Mr. Feld was in the picture.

Q. Did Kantrowitz know how far he could go in making the contract? A. The price and the terms were left to Mr. Kantrowitz. He said then that the property could be gotten, I think, in the neighborhood—I think it was $195,000 or $205,000; I don't just recall the figures.

Q. But there was no limits upon him? A. None whatever.

Q. In other words, a sky limit? A. No sky limit



with me, sir, in the transaction. There was no discussion about sky limit; because there was an examination to be given.

Mr. McGinnis: I am going to object to this. I can't see what bearing this has. It seems to me it has very slight evidential value.

The Court: I am inclined to be of the same opinion. What is the purpose?

Mr. Vanderbilt: Mr. Weinberger testified on direct, as I understood him, that the first meeting of this syndicate was held at his office; that Mr. Jaffe dictated to one of his stenographers a certificate of incorporation. Nothing came of it, and he says the matter was not consummated. There was no agreement reached, and that was either one or two days after the signing of this original agreement. I think it is evidential. Now I am trying to find out whether he was laboring under the disability of not having heard, excepting by hearsay, when this syndicate came into existence. However, I will leave that.

Q. Did Mr. Jaffe dictate to one of your stenographers a certificate of incorporation? A. He did.

Q. When did the syndicate meet for the first time? A. On the day that the property was actually purchased by Mr. Kantrowitz, which was the 19th of March, Mr. Kantrowitz came to see me and said he was going down to meet the lawyers and close the transaction, and said he wanted me to be in it because he didn't know how much money they were going to require, and he was prepared to close the contract, and he left at 7:15 P. M.

Q. Was there any disagreement among the parties at either this meeting or the meeting preceding as to the respective quantities or fractions that each party was to have in that property, or was it to be equal one-sixth ones? A. One-sixth ones.

Q. Then Mr. Daniel Feltman is mistaken when he says there was a disagreement? A. I can't tell you what he said.

Q. You heard him testify, didn't you?

Mr. McGinnis: Mr. Daniel Feldman did not testify to that effect.

Q. So far as you know, there was no disagreement at any of these meetings? A. There was one where the point was raised that nobody wanted more than a one-sixth to one party.

Q. Then there was a second session in your office where the agreement was drawn? A. Yes.

Q. And that paper was drawn by Mr. Hartstein? A. Yes.

Q. And delivered to you? A. Correct.

Q. Have you got it? A. I have not. It was delivered to him with the five-sixth original contract when I got the $10,500, or whatever it was.

Q. You delivered the yellow handwritten assignment to Mr. Kantrowitz? A. I did.

Q. What evidence did you have of your right to assign one-sixth interest to Mr. Feld? A. Well, I got the money at that time, the $1666.67 and I gave him one-sixth and it was incorporated in the assignment, because of the fact that there was outstanding a one-sixth interest to Feld.

Q. Have you the check for the $1666. A. No. I saw it in evidence here; I just had it shown me.

Q. Why wasn't that delivered over to Mr. Kantrowitz who paid out the $10,500? A. Because it





was paid to me for money that I had advanced.

Q. Why was this check for $10,500 given back to Mr. Kantrowitz? A. It was given to him because I got the assignment for the full contract, and then when he was given the five-sixths back he gave me my check back and I gave him his five-sixths.

Q. Did Kantrowitz endorse this $10,500 check? A. I can't say that for the moment; I don't know. It may bear his endorsement; I don't know. I didn't look up this transaction since it opened.

Q. Did you obtain any receipt from Mr. Kantrowitz for the check? A. I gave him the assignment for the check.

Redirect-examination by Mr. McGinnis:

Q. Mr. Weinberger, what are your relations now and what have they been to Mr. Kantrowitz, friendly or otherwise? A. We are both very friendly; in fact, I am very friendly with both parties.

Recross-examination by Mr. Vanderbilt:

Q. Are you related to Mr. Feld by marriage? A. Mr. Feld married a cousin of mine.

Q. And you are friendly with him now? A. Very friendly with both litigants.

Mr. McGinnis: I would like at this time to offer the final decree in the Zucker case. I offer the record.

The Court: Is that certified?

Mr. McGinnis: No. May I use this copy?

Mr. Feder: I object to the final decree, whether it be a copy or original, because it

is a different issue between different parties, and also as irrelevant and immaterial.

The Court: I think you have connected up what you wanted by the testimony of Mr. Stein. Now, Mr. Hartstein is not here and you now close your case?

Mr. McGinnis: I do, excepting Mr. Hartstein.

The Court: My understanding is that you were merely going to call him to prove the execution of one of these instruments. I didn't understand that you were going to examine him at all on what transpired. But I will deal with that when he comes here.

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Hearing of November 10, 1926, 2 P. M.
Defendant's case, continued.
All counsel present as before.

J. I. JAFFE, recalled on behalf of the defendant, testified as follows:

Direct-examination by Mr. Vanderbilt:

Q. Did Mr. Harry Weinberger ever give you a $10,500 check made out to the order of Mr. Kantrowitz? A. No, sir.

Q. Did you ever see a $10,500 check made out to the order of Mr. Kantrowitz? A. I did, sir, with the signature of Mr. Harry H. Weinberger torn off.

Q. When was it that you saw this check? A. Why, I can't exactly place the date, but it was, I should say, in the early summer or late spring of last year, about April or May, I should judge.



Cross-examination by Mr. McGinnis:

Q. Where did you see it? A. I saw it in the office of Mr. Weinberger at the Service Trust Company.

Q. Who showed it to you? A. Mr. Weinberger.

Q. Can you tell us more definitely the date? A. I cannot.

Q. Had this lawsuit started or in contemplation? A. No, sir.

Q. Who besides you and Mr. Weinberger were present when this check was shown you? A. Mr. Kantrowitz.

Q. The defendant? A. Yes, sir.

Q. And he showed you the check for $10,500 with the signature torn off? A. Yes, sir.

Q. Did you go there with Kantrowitz? A. No, sir; Mr. Weinberger met me as I was walking in front of the bank.

Q. Where was Kantrowitz then? A. Walking with me.

Q. And you all went upstairs then? A. No, sir; Mr. Weinberger said to me—

Q. I object to what he said to you. A. We didn't go upstairs because the office of Mr. Weinberger was downstairs.

Q. I misspoke; did you go into the bank? A. Yes, at Mr. Weinberger's invitation.

Q. For the purpose of seeing that check? A. No. He says, "Come in, I want to show you the check".

Q. And he invited you in for the purpose of showing you the check? A. No, he asked us in, and when we got inside he pulled out the check and he says "Here is the check".

Mr. McGinnis: I ask that that be stricken out as not responsive.

The Court: Strike it out what he says Mr. Weinberger said.

Redirect-examination by Mr. Vanderbilt:

Q. What did Mr. Weinberger say?

Mr. McGinnis: I object to that, on the ground that it was not in the presence of Mr. Feld.

The Court: Well, here is a suit by Mr. Feld against a number of defendants, and it appears that they or one of them, or some of them agreed to pay the amount of money he lost by reason of the Zucker contract. Now, I think, as between themselves, they may show admissions against interests.

Mr. McGinnis: It is not binding on Mr. Feld.

The Court: I overrule the objection and let it in.

A. Mr. Weinberger said to me, "Why don't you get Ruby, meaning Mr. Kantrowitz, to straighten this thing out?" and I said to him, "Harry I don't control him; I don't know anything about this matter at all, and I'm not interested in it one way or the other". I said, "You have been dealing with him; why don't you straighten it out yourself"? So he said, "Come in the bank and I will show you what I did to try to straighten this thing out," and we went in the bank and he took out the check for $10,500. I don't remember the date of it, but the signature had been torn off, and he showed me little strips of paper on which his signature had been



written, and he said "I offered him that in settlement of this matter". And I turned to Kantrowitz and I said, "Aren't you satisfied with that?" and he says, "No, sir; I am not; I negotiated with Weinberger on that basis and I want it". And I said, "That is all I can do, and that is the extent of my interest in it, and with that I walked out of the bank.

Q. At any conference at which you were present in this matter did you see the assignment of this contract between Kantrowitz and Mr. Weinberger?

Mr. McGinnis: I object to that, if your Honor please. That was all gone into when he was on the stand before. I don't think it is fair for Mr. Vanderbilt to come in at this late day and proceed to retry the case.

The Court: Mr. Jaffe, are you able to recall whether you were examined on that?

A. I don't recall it.

The Court: I will allow it. (Addressing the witness) Did you ever see that assignment?

A. No, sir.

Q. Have you any knowledge of such an assignment from Kantrowitz to Weinberger? A. No, sir; none was prepared by myself nor by any person in my presence, nor signed by Kantrowitz.

Q. Do you know of any other person preparing such an assignment? A. I do not, sir.

Recross-examination by Mr. McGinnis:

Q. You were not there the night Mr. Hartstein was said to have prepared an assignment, were you?
A. No, I wasn't.

DOUGLAS H. LANE, sworn on behalf of the defendant, testified as follows:

Direct-examination by Mr. Vanderbilt:

Q. Mr. Lane, what is your business? A. Bookkeeper.

Q. For Mr. Harry H. Weinberger? A. Yes.

Q. Have you his check-book with you? A. Yes, sir.

Q. Showing the stubs of the cancelled checks? A. Yes, sir.

Q. Will you produce it, please. A. (Witness produces book).

Q. Referring to the stub of check A573, 574, 575, 576, 577 and 578 I ask you whose handwriting they are in? A. Mr. Harry Weinberger's.

Q. Do you know whether or not they all relate to the same controversy? A. Yes.

Q. Will you please read to the Vice-Chancellor those stubs. I think that is the easiest way of getting them on the record. A. No. A573, March 27, 1925, Cacoliris, one-sixth Lexington Avenue property $500. No. A574, same date, to Emil Hart, one-sixth Lexington Ave.

Q. Read all it says. A. As above, is all it says. That means the same thing.

Q. Oh, let's get it in exactly as it is. A. A575, March 27, 1925, Daniel Feldman com. in full $500.

A576, March 27, Harry Kuller $500.

A577, March 27, 1925, Reuben Kantrowitz $10,500.

A578, March 27, 1925, Sam Feld, $500.

Q. Now, I notice some of these are marked "void"; will you please read into the record those. A574, March 27, 1925, Emil Hart, Void.

A576, March 27, 1925, Harry Kuller, $500.



A577, Reuben Kantrowitz, $10,500.

A578, March 27, Samuel Feld, $500.

Q. Now, where is the original of the check A573? A. I think Mr. Feld has it.

Q. That is the check which is marked D-1? A. Yes.

Q. Where is the cancelled check A574? A. I couldn't tell you. That was never returned to me. It has been marked "void" in my handwriting.

Q. How do you know that it was void? A. I don't recollect. I would have been so instructed; otherwise I wouldn't have marked it "void".

Q. Well, that check never went through Mr. Weinberger's bank account? A. No, sir.

Q. And you don't know where the original is now? A. No, sir.

Q. Mr. Weinberger would know about that if anyone does? A. That's right.

Q. Well, check A575 is the check that has been marked D-2, is it not? A. That's correct.

Q. Check A576 is here pasted in the book? A. Well, the reason of that being in the book is because Mr. Kuller had credit for that $500 on some other transaction.

Q. That is not signed by Mr. Weinberger, is it? A. No, sir.

Q. And never went through the bank? A. No, sir; but that was paid Mr. Kuller; he was given credit for it.

Mr. Vanderbilt: I offer that in evidence.

(Admitted and marked Exhibit D-10)

Q. Now, have you the cancelled check A577? A. No.

Q. Have you ever seen it? A. No, sir.

Q. Mr. Weinberger himself would be the only

person who could account for the whereabouts of that check? A. I think that's right.

Q. Now, I call your attention to check A578, made out to Sam Feld. That is endorsed "Samuel Feld, Paid", and I ask you whose endorsement that is in? A. Samuel Feld—it looks like Mr. Weinberger's handwriting.

Q. You are not sure? A. I am pretty sure.

Q. And the second one is in Mr. Harry Weinberger's handwriting? A. I am not sure.

Mr. Vanderbilt: I offer that in evidence. (Admitted and marked Exhibit D-11)

Q. Can you explain, Mr. Lane, why this last check to the order of Mr. Sam. Feld was endorsed by Mr. Weinberger in Mr. Feld's name, and then endorsed over to Rita Weinberger? A. Well, it was never explained to me.

Q. How did you treat it in the bank account? Do you keep the bank account of Mr. Weinberger? A. If I can recall correctly— My recollection is that when that check was returned from the bank I took it up with Mr. Weinberger and asked him if it was O. K., because of the fact that it was made out to Mr. Feld and gone to Mrs. Weinberger's account.

Q. Now, have you any other check in this connection made out to the order of Mr. Feld? A. No, sir.

Q. Can you explain why this check was made to Mr. Feld and then endorsed over to Mr. Weinberger, and then endorsed over to Mrs. Weinberger?

Mr. McGinnis: I object to that. Your Honor will recall that Mr. Weinberger, who would naturally have first-hand knowledge, testified to all of these transactions.



Mr. Vanderbilt: He didn't testify at all about this check.

The Court: Mr. Vanderbilt is not obliged to take what Mr. Weinberger said at its face value. He has a right to prove it. I overrule the objection. (Addressing the witness) The question is, Can you explain that check made out to Sam Feld and then endorsed over to Mrs. Weinberger?

A. No, I cannot.

Q. Now, I ask you to look through the book and see if there are any other checks other than the one to Hart A574, and Kantrowitz A577, where the cancelled checks were not put back in the check-book? A. No, there are no other checks, to my knowledge.

Q. No, I mean in all of Mr. Weinberger's transactions other than these two checks not put back in the book? A. Well, there have been cases where they have not, the checks being destroyed.

Q. Are there any other cases in this book where the checks were destroyed? A. There may be one occasionally. There is one here, but that is marked "void". The check is in my office.

Q. How did you dispose of this check to Samuel Feld, marked Exhibit D-11; through the bank account? A. I opened an account with the Lexington Realty Corporation for this transaction.

Q. Now, was that on the theory that Mrs. Weinberger was to have an interest in the Lexington Realty Corporation? A. No, sir.

Q. On the theory that Sam Feld was? A. I could not say.

Q. Well, under whose instructions did you open that account? A. Mr. Weinberger.

Q. Have you that account with you? A. No, sir.

Q. Can you produce it? A. I can.

Q. May I have the name of that account again. A. Well, it is headed "Lexington Realty Corporation".

Q. There never was such a corporation? A. No, sir; that was for my own record.

Q. How did you get the name of that heading? A. I think I was talking with Mr. Weinberger and the name of the company was spoken of, and I opened a ledger account in that name, so that I could enter these checks in that account.

Q. In that account this Exhibit D-11 appears as relating to Mr. Sam. Feld rather than Mr. Weinberger? A. No, sir; this check is not entered.

Mr. McGinnis: Entered where?

Mr. Vanderbilt: In the Lexington Realty account.

Q. It had nothing to do with him? A. No, sir.

Q. Now, with respect to Exhibit D-10, made out to Harry Kuller; can you explain why it was that that didn't go through the bank? A. Mr. Kuller owed Mr. Harry Weinberger certain moneys in another transaction and the amount of this check was credited and therefore the check was cancelled.

Q. Did Mr. Kuller consent that it just be applied, offhand? A. It has been approved by Mr. Kuller.

Q. Endorsed by him? A. Yes. Mr. Kuller and Mr. Weinberger are partners in a great many transactions.

No cross-examination.

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SAMUEL B. FELD, recalled on behalf of the defendant, testified as follows:

Direct-examination by Mr. Vanderbilt:

Q. Mr. Feld, did you receive any letters, or written memoranda, from Mr. Weinberger at any time with reference to this transaction?



Mr. McGinnis: I object to that, if your Honor please, on the ground that it is a matter that should have been gone into on cross-examination. The witness was on the stand and cross examined.

The Court: Well, it is a discretionary matter and I will allow the question.

A. No, sir.

No cross-examination.

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REUBEN B. KANTROWITZ, recalled in his own behalf, testified as follows:

Direct-examination by Mr. Vanderbilt:

Q. Mr. Kantrowitz, where do you live? A. 120 Van Houten Avenue, Passaic.

Q. How long have you lived in Passaic? A. 26 years.

Q. How old are you now? A. Thirty-four.

Q. What is your business? A. Real estate.

Q. How long have you been in that business? A. Practically all my life.

Q. Do you hold any official position in Passaic? A. I do.

Q. What position? A. Chairman of the Adjustment Board, Zoning Board.

Q. How long have you held that position? A. Since 1924 or 1925; I have a three-year appointment which expires in 1928.

Q. Now, will you please tell us what you know

about this property, the subject of this suit, starting from the first time you had anything to do with it. A. You mean up to the actual purchase, or discussions prior to the purchase?

Q. I mean discussions prior to the purchase of it.

The Court: Mr. Vanderbilt is now giving you a chance to tell your story of what happened from beginning to end.

A. The first discussion in reference to this property arose on my way back from Cuba, with Mr. Weinberger, on the third or fourth day out. We were discussing real estate conditions in Passaic, and he says, what is the—

Mr. McGinnis: I object to so much of this conversation as embraces the conversation they had.

A. That is what he wanted to know.

Mr. McGinnis: He had a long conversation on board the steamer in the absence of Mr. Feld.

The Court: That has been brought out before by other witnesses. I will allow it.

A. He says, "I see you are doing quite a bit in Passaic in the business section".

I says, "Yes, things are booming a little bit in the City of Passaic; there's a chance of making some money there. Mr. Hart and I are discussing buying the building he is in, or trying to, and he and I couldn't get together on the terms. However, when I get back I will make an offer". And on and off before we got back we were discussing this property and how much he thought I ought to pay



for it, what the income was, what the possibilities of the property was.

Weinberger says, "Well, let me know if you do anything that way".

I says, "Well, Mr. Hart and I are thinking of buying it; I don't know", and with that I looked at Mr. Hart, and in the evening when Mr. Hart and I retired Mr. Hart and I had one apartment on the boat and we discussed the thing but came to no decision. Finally, when we got back to Passaic—I believe it was on the night of the 4th or 5th of March, 1925—and after getting back to business I had occasion to meet Mr. Endler who was always after me to see what I could do with the property.

Mr. McGinnis: I object to this.

Q. Not what conversation you had but what did he offer to sell it and you offer to buy it for? A. He offered to sell me the property for $195,000. I told him then that it was out of the question, too much money, but I said, "If you take $190,000 I may be able to put the deal over with you in a few days".

He says, "I will let you know in a few days."

I talked with my partners, and a few days later I met Mr. Endler again, and I says, "What are you going to do about the property?"

He says, "I don't know; we have got a better price".

I says, "I am not interested in it then".

About four or five days after that I met Mr. Endler, and he says, "I have an offer of $200,000—"

The Court: You finally got a contract?

A. I finally went to Mr. Feld's office, but prior to going there I went in Mr. Hart's store, whose store is underneath that office, and we got discussing the

property again. Mr. Hart had called me on the telephone and he says, "I thought you were going to buy this property?" I says, "It is over our heads." I says, "Mr. Endler was supposed to come back and let me know what he is going to do with it". And after that I came over to Mr. Hart's place and I explained the situation there of the possible sale of this property to Mr. Larkey, who is above Mr. Hart's store. I says, "I can't pay that. Mr. Endler promised to come back and I suppose he has been offered a better price for it."

Q. Who is Larkey? A. They own the adjoining piece of property. I says, "Do you know what he is paying for it?" and he says "No," and I says "I can soon find out", and with that I met Mr. Feldman. He came down all excited, and he says, "I am getting a little trimming in a deal up there".

I says, "What deal is that?"

He says, "I have got an option—

Mr. McGinnis: I object to this.

The Court: Yes. Mr. Kantrowitz, leave out some of these details and come right down to the important facts.

A. I went there to see him. I says, "Mr. Endler I thought you were going to let me know about this property. Anyway, I made him an offer of $206,000 for the property.

Mr. McGinnis: I object.

The Court: Well, you got a contract to buy the property for $206,000?

A. Yes.

Q. Where was the contract drawn up? A. Feld, Weiss & Feld's office. It was drawn up by Mr. Sam Feld; he did the typewriting. When I got to Mr.





Feld's office he says to me "Where do I get off in this; I would like the opportunity of getting a lease here, or an option of getting a lease", and I says, "Why not put it in the contract".

Q. Was the contract signed? A. It was and I made out a check for $10,000.

Q. Was that a certified check? A. No, just a plain check.

Q. Was there any conversation between you and Mr. Feld with respect to the property? A. No, sir.

Q. Well, go ahead. A. The next day when I got to Mr. Feld's office Mr. Cacoliris was waiting for me. He is a man who has an ice-cream parlor in the same building, and the first thing he asked me was "Will you give me a new lease?" and I told him that would depend on whether we got the property and I would consider it then. The day after that, I received a call from Harry Weinberger, saying, "Will you come over to see me?" I went over, and he says "I see you got the property." I says, "Yes". He says, "Am I in on it; I do this to show you how we can make some money." I says, "What is it?" He says, "To form a syndicate for the property." I says, "All right". He says, "Who will we get into it?" I says, "You leave that to me; I will take care of that. The only man that was interested in it was Mr. Hart; I will get the rest; you leave it to me", and then we left. Off and on I would get calls from Mr. Weinberger. When we got to forming the coropration the first time there was a dispute as to who was to be in the corporation. One man says, "Well, I won't go in with so and so".

Q. Who was there at this time? A. Mr. Hart, Mr. Weinberger, Mr. Jaffe in Mr. Weinberger's office, and they started arguing among themselves

who shall go into the corporation and who wasn't. Mr. Weinberger says, "Well, I won't go in with Hart; that settles that." It ended in a row and we couldn't get together. We had been wrangling all the afternoon, and later in the evening Weinberger says: "Let me take control of this situation; I will fix this thing up so that no one will be hurt." Harry and I were pretty chummy and I left it to him. He took out his pen and he says "I will buy this property myself." He started making out checks and Mr. Cacoliris grabbed his check and walked out of the door and says, "You can all go to blazes".

Q. You are now speaking of Exhibit D-1? A. Yes.

Q. That is this check (showing witness paper)? A. It is the check that Mr. Cacoliris had in his hand at the time. I didn't see the check at the time?

Q. What other checks were handed out? A. He started writing a lot of checks.

Q. All right; tell us what happened. A. With that I says, "Harry, we can't get together yet tonight". The contract was on the table there and so many people wanted to get in.

Q. Did he have any assignment of the contract? A. My contract was on the desk there.

Q. Did you get any check for $10,500? A. I never did.

Q. Did you make any arrangements to obtain funds at the bank for the purchase of this property? A. I certainly did.

Q. Where? A. Passaic National Bank. I had in the bank before purchasing the property a good balance at all times. I had arranged to finance the property and I was ready to go ahead that day. I



got ready to take title and one day I met Feld and he says, "Say, I have got a customer for the building and if you can make terms I can get the cash". I told him I didn't know what I would do. The next day I received a call from Mr. Stein in regard to that building, and he says, "Do you want to sell that building?" I says, "Everything I got is for sale".

Mr. McGinnis: That is all objected to, of course.

The Court: Yes, never mind what the conversation was with Stein. He is not a party to this litigation.

Q. Did you meet Feld? A. I met him several days later, but I didn't talk with him about this property until after I had sold it.

Q. Did he ever make any arrangements for financing this property, or his part in it? A. No.

Q. When did you first learn that Mr. Feld was claiming any interest in this property? A. When the suit was started.

Q. Did you sell the property to Mrs. Zucker for the best price you could get?

Mr. McGinnis: I object to that.

A. Yes, sir.

Q. Did you try to sell it to other people? A. I offered the property to about a half dozen others. I was in the building several times with buyers. We always went through the building.

Mr. McGinnis: I hate to be objecting all the time.

The Court: I suppose it is on the value of the building.

Q. How many people did you take in to see the building? A. Six or seven, I took.

Q. And whom did you take to see the building? A. Mr. Nadler, and Mr. Julius Mayer. They were people who owned property in the vicinity and I thought there was a good chance to sell it to them. I asked Mr. Hughes to get me a buyer. I asked every big agent in town to try to get a buyer. I went even to Mr. Nadler. I had Mr. Silver of Newark; I had Applebaum on the proposition.

Q. Mr. Eigens? A. Yes, I had Mr. Eigens down there. He told me he had been there with Mr. Feld.

Q. At the time any of these prospective purchasers were there did you take anybody through the offices? A. Feld wasn't there when we went through; he was just going out of the building.

Q. Did you try to get the best price you could? A. Yes, sir. I would have sold the property back to Mr. Endler. I went to Mr. Endler, in fact, and asked him to take it off my hands and he laughed at me.

Q. Now, did you at any time execute an assignment of this contract to Mr. Harry Weinberger? A. I did not.

Q. Did you at any time receive from him an assignment of a five-sixthsinterest in this contract? A. Never.

Q. Have you ever seen such an assignment of contract, assigning five-sixths interest in the contract? A. No, sir.

Q. I show you a letter and ask you if you ever received that in that envelope? A. Yes, sir. It was a registered letter that I received.

Mr. Vanderbilt: I offer that in evidence.





The Court: Any objection. It is a letter dated August 21, 1925.

Mr. McGinnis: I don't know what relevancy it has in this case.

The Court: Mr. Weinberger says here, "I have in my possession a check for the sum of $10,000 received from Messrs. Endler, Lenz and Solomon, which you may have upon delivery of quit claim deed to my 'clients.' Who were Mr. Weinberger's clients he speaks of here?

Mr. McGinnis: Endler, Lenz and Solomon.

Mr. Vanderbilt: They were Mr. Feld's clients.

The Court: What is the purpose of it?

Mr. Vanderbilt: The purpose of this, your Honor, is to show Mr. Weinberger's views as to where the rights of the parties in this property were on the 21st day of August, 1925. I am perfectly willing to couple it up when he comes here, and ask him what he meant by it, if it isn't clear as it stands.

The Court: I will admit it provisionally, on the understanding that you are to connect it up.

Mr. Vanderbilt: May I say this before your Honor rules on it: Mr. Feld, as I understand it, claims through Mr. Weinberger, and any admissions that may be made by Mr. Weinberger. He can claim no better right than Mr. Weinberger, and if Mr. Weinberger writes this letter I think it is binding upon Mr. Feld in this transaction.

The Court: I don't think so. I don't think Mr. Weinberger's conception of what

the rights of the rest of them were is binding upon Mr. Feld. Suppose we have it marked in evidence now and we will go into that question on the argument.

Mr. Vanderbilt: If your Honor thinks I should couple it up I would like to ask Mr. Weinberger later.

(The same is admitted and marked Exhibit D-12.)

Mr. Vanderbilt: I also offer the envelope.

(Admitted and marked Exhibit D-13)

Q. Mr. Kantrowitz, what time of the day or night was it that the original contract between the sellers and yourself as purchaser was finally signed? A. Oh, about 12 o'clock, or a few minutes before between 11 and 12 o'clock.

Q. At night? A. Yes, sir; it took that long to draw the contract.

Q. Did anybody at any time except the Passaic National Bank give you any of the money to finance you in the purchase of this property? A. No, sir.

Q. Did anybody at any time bind themselves to give you money in financing the purchase of this property?

Mr. McGinnis: I object to that. It seems to me it is immaterial here. It should be limited as to whether or not it was Feld, not anybody.

The Court: What is the purpose of it?

Mr. Vanderbilt: The purpose of it is to show that nobody either did finance or agree to finance Mr. Kantrowitz in the purchase of this property.

The Court: I will allow it.



Q. (By the Court) Who was the vendee to whom Endlers and the others were going to convey the night that you went to Hart's store? A. Larkey.

Q. Did anybody bind themselves to help or assist you in the financing of the purchase of this property? A. Nobody except my discounting a note at the bank.

Q. Did you at any time execute any paper in writing with respect to this property except the joint contract of purchase and the contract to Mrs. Zucker? A. Did I ever assign it?

Q. Yes. A. To anybody else?

Q. Yes. A. Not, with the exception of Mrs. Zucker; no, sir.

Q. Referring to D-2, being a check for $500 to Daniel Feldman, I asked Mr. Weinberger what that represented and he was unable to explain; can you explain it? A. I can't, unless he promised him a sixth interest; but he was promising everybody.

Mr. McGinnis: You were not asked that.

A. No, I don't know.

Q. Who delivered the contract to him? A. Mr. Samuel Feld.

Cross-examination by Mr. McGinnis:

Q. On this trip from Cuba, who was present in this group or who composed this group? A. Myself and Mr. Hart traveling as one party; Mr. Kuller and Mrs. Kuller, Mr. and Mrs. Weinberger.

Q. So that of the people that have been mentioned in this case as constituting six persons there was Kuller, Weinberger, yourself and Hart, and Cacoliris; is that right? Everybody but Mr. Feld? A. No, sir; that is not right.

Q. Give us the names again. There was Mr. Kul-

ler, that was one; yourself, 2; Mr. Harry Weinberger, 3; and Mr. Hart, 4? A. That's right.

Q. And no one else? Cacoliris? A. No.

Q. And the discussion that you had was with respect to this property, the subject of this suit? A. No, not necessarily; it was a general discussion.

Q. Was this property discussed? A. Yes. I said to Harry—

The Court: You have answered.

Q. Was there anything said as to what it could be bought for? A. Yes.

Q. Did you know at that time what it could be bought for? A. Oh, yes, I negotiated before leaving.

Q. And did you suggest to these men, or some of them, the advisability of buying this property? A. Not to them, no; to Mr. Hart who was discussing it with me.

Q. You only discussed with Mr. Hart the advisability of buying it? A. Yes.

Q. And in this discussion you contemplated Mr. Hart as having an interest in this property with you? A. Yes, he said he thought he would take an interest with me, but he left it vague.

Q. Then when you got back to Passaic, we will pass on until we get to a time when you were told that the property was likely to be sold over your head. A. That's right.

Q. And you found that the negotiations by which this property was to be sold to somebody else would take place up to Mr. Feld's office; is that right? A. Yes.

Q. And as a result of that did you go upstairs to Feld's office? A. Not until I got Mr. Felman to get Mr. Endler to come down; after I had



made my offer to Mr. Endler, offering him $206,500. He says, "Well, make that an extra $500 and I will see that you get the property. Come on upstairs with me".

Q. So you went to Feld's office? A. Yes.

Q. Did Hart go up? A. He came up later.

Q. Did Mr. Cacoliris go up, too? A. No, not then.

Q. At any time during the evening? A. He might have been later in the party.

Q. In the course of this evening leading up to the negotiations and the drawing of this contract and everything that took place up to midnight, did Mr. Cacoliris come up at all? A. There was a lot of people in the office.

Q. Did Cacoliris come up? A. Yes.

Q. And Hart was there? A. Yes.

Q. And Feld was there? A. Yes.

Q. And you were there? And Weinberger was not? A. No, sir.

Q. Mr. Jaffe was there? A. Yes.

Q. And he was representing who? A. Representing me.

Q. Had he not been sent there by Mr. Weinberger? A. No, sir; I called Mr. Jaffe.

Q. You called Jaffe and Weinberger didn't send him; that's right, is it? A. Yes.

Q. Then the contract was signed by the three owners? A. Yes.

Q. The wives of the owners didn't sign? A. No, sir; it was late.

Q. And the contract was left all night with Mr. Feld; is that right? A. Until the check was made good in the morning.

Q. Left all night with Mr. Feld; yes or no? A. Yes, it was left with Mr. Feld.

Q. And you now say it was left with Mr. Feld in

order to have the check first certified, or to see that it was made good in the morning? A. Yes, sir; Mr. Endler raised the point.

Q. That answers the question: This contract was held by Mr. Feld until the check would be found good in the morning? A. Exactly.

Q. It is not true, then, as stated by Mr. Jaffe, that it was held over night in order that the signatures of the wives of these owners could be secured? A. Both. You don't give me a chance to complete the answer.

Q. Did you not answer counsel's question state that the reason that the contract was held up was to see if the check would be all right in the morning? A. No, he asked me if it was held for the check. I would have told that about getting the signatures of the women if I had been asked.

Q. So that it was an omission on the part of your counsel to ask you all of the reasons why this contract was held? A. I thought of that, but I thought I couldn't volunteer it, so I kept quiet.

Q. So then the next morning the check was made good? A. It was good before that.

Q. Then I understand the reason why this contract was held all night by Mr. Feld was two things; one with reference to the check and the other with reference to securing the signatures of the wives of these three men; is that right? Yes or no. A. I can't answer that "yes" or "no."

Q. I ask you, did you say a moment ago both of these reasons, one the check and the other to get the signatures of the women? A. Will you permit me to explain. Everybody was having a conversation prior to this thing. Why it was left there—

Q. Mr. Kantrowitz, did you not a moment ago say there were two reasons why that contract was



left all night with Mr. Feld? A. Well, I am trying to give you a reason for stating that.

Q. Did you not say that a moment ago? A. That the contract was left for two reasons?

Q. Yes. A. The most important reason was the making the check good and the signatures of the women.

Q. Now, the next morning it was found that the check was all right? A. Exactly.

Q. And then did you get the contract? A. Exactly.

Q. What time of the day? A. As long as it takes me to go from the bank to Mr. Feld's office.

Q. And then you got the contract; and did you ascertain then that the signatures of these three women were not on it; yes or no? A. The signatures were not on it.

Q. But you took the contract, did you? A. Yes, sir; on the representation of Mr. Feld, that it was not necessary to have the women; under the new law no women had to join in the contract.

Q. So that although you had left the contract there all night for two reasons, in the morning you took that contract when one of those reasons was unfulfilled? A. My check was good; I had to take the contract.

Q. Although the women had not signed it? A. Yes.

Q. Now, the next morning you say Mr. Feld told you that the women didn't have to sign real estate contracts any more in order to pass title? A. That is what I understood.

Q. You understood that from Mr. Feld? Mr. Jaffe was your counsel, wasn't he? A. Yes.

Q. Mr. Jaffe is a lawyer? A. Yes.

Q. You have been dealing in real estate, you say

practically all your life; you mean all of your business life? A. Yes.

Q. Bought and sold a good many pieces of property? A. Yes, sir.

Q. And know that you always have to have the wife's signature to every transaction? A. No, sir, I have not.

Q. I am talking now— A. In the majority of the cases I have not had the women on the contracts. I just purchased a piece of property involving more money than this, and the only reason I insisted on the women joining was because of this here matter.

Q. Where was Mr. Jaffe this next morning when you went over to get the contract? A. I don't know; I didn't look up Mr. Jaffe.

Q. He was your lawyer the night before, to see that everything was done right; is that right? A. That's right.

Q. Mr. Jaffe didn't tell you the night before that it was necessary to have the wives on the contract? A. No, sir; that wasn't told me until the next morning.

Q. And told by Mr. Feld who was not your lawyer, and you took his word for it? A. Naturally I would. I would take any lawyer's word for a thing like that.

Q. Didn't you go back again to Mr. Feld about that? A. About a thing no longer on my mind?

Q. Did you go to see Mr. Jaffe after you had seen Mr. Feld? A. No, sir; never discussed it with anybody; didn't think it was necessary.

Q. Now, there was a meeting after that at Mr. Weinberger's office? A. There were several meetings.



Q. Was there a meeting when a group of you got together? A. Yes, sir.

Q. And that was to form a corporation to handle this property? A. Yes, sir.

Q. What proportion did you propose to take in this corporation? A. What proportion?

Q. Yes. A. I had it. I would have taken whatever profits I would have gotten. It all depends on what profits I made. In other words, if I would have sold half to a syndicate I would have taken half; if I had sold three-quarters to the syndicate, I would have taken the balance. Weinberger says to me, "Leave it to me and I will get a profit."

Q. So you showed confidence first in Mr. Feld and later in Mr. Weinberger? A. They were all my friends, Senator.

Q. Suppose we go to the other meeting: The night that you were all over to Mr. Feld's office, the night that this contract was signed, Mr. Feld seemed to be greatly perturbed over the fact that his lease was running out? A. No, he wasn't perturbed over that.

Q. Who was it in the crowd that said his lease was running out? A. No one said that. Mr. Feld said, "Where do I come out in this thing."

Q. Did I understand you to say in the course of your direct-examination that Mr. Feld mentioned something about his lease? A. Yes, the lease was mentioned.

Q. Did I understand you to say that Mr. Feld, in words or substance, said that his lease had only a short time to run? A. No.

Q. Nothing was said about that? A. No, he said, "Where do I come in on this deal".

Q. With reference to the lease? A. "Where do I come in on this deal". I says, "What do you

mean, Sam?" He says, "I could have made $5,000 in there if I had gotten the property."

Q. I am talking about the lease. A. I am leading up to it. I says, "What do you want, Sam; how much of a lease have you got here?" and we came to the point where we wanted all the leases set up in the contract, and he says "I don't know; it is in the safe." I says, "What amount do you pay, Sam?" "I pay $100 a month." I says, "That's reasonable; it isn't high rent". "It isn't high, but I want to get a new lease." I says, "What does your lease read?" He says, "My lease has got five years to go." I says, "Can you show it to me?"

He says, "Let it go; I am not going to own the property anyway; I will sell it to somebody and get the benefit of that lease", and he never showed me the lease.

Q. Let me get this right: You did not testify to that on direct-examination that Mr. Feld said that to you; didn't you say that Mr. Feld said to you that they had only a short time to go with their lease? A. No, no; if I did I was in error.

Q. Well, a little later on after you had been making efforts to sell this property didn't you tell us you went back to Endler, one of the owners that sold it, and ask him to take it off your hands? A. I met him and he says "How are you making out". I says "Not so good".

Q. Did you ask him to take it back? A. Yes, and he laughed at me.

Q. In other words, you were willing to surrender back that contract to him if you got your money; is that what you mean? A. Yes.

Q. And he laughed at you and said what? A. "Nothing doing; that's the time I put something over onto you".



Q. He said that, did he? A. Yes, "glad to get rid of it".

Q. Meaning, you got the worst of the bargain? A. Exactly.

Q. When was that? A. Oh, that was several days after that. He had been telling me I got stuck. He used to meet me at the Club at night.

Q. When was the last time he said that to you? A. I can't give you the date exactly.

Q. Give us your best judgment. A. Anywhere between March 19 and June 1st when I bought it.

Q. Now, you were running around trying to sell that for some time before you realized that you had got a bad bargain? A. I can do several things today; I can speak to Mr. Endler at the same time.

Q. Keeping in mind the first time after that, when was it that you went to Endler and told him that you had a bad bargain? A. It may have been sometime in April.

Q. Now, then, how long after this first time was it that you spoke to Endler the last time? A. It may have been May 29th when I sold it.

Q. You think it was probably around that time? A. It might have been.

Q. What do you mean by the term "might have been?" A. It may have been. I am trying to fix the date.

Q. Do you mean that as an approximate date? A. Yes, on or about that date.

Q. When did the Zucker people buy it? A. On June 1st or 2d, I believe.

Q. You were buying this property for $206,000? A. $206,500.

Q. On the 29th of May, or thereabouts, when Endler was laughing at you over your bad bargain you were able to turn it over for $214,000?

Mr. Vanderbilt: I object. There is no evidence of that.

The Court: I don't think it is material, anyway.

Q. Well, on this occasion, then, when you went to Mr. Endler and said, in words or effect, "Please take this property back", he refused to do, and then you were around— A. I didn't say "Please take this back". At the time I was speaking with Mr. Endler was the time before, Senator, about so much money in a piece of property of that kind.

Q. Mr. Kantrowitz, didn't you, just a moment ago say, that the last time that you went to Endler and asked him to take this property back was approximately the 29th of May? A. It may have been.

Q. Didn't you say "approximately"? A. It might have been.

Q. And didn't you on the first of June sell the property for $214,000? A. Because—

Q. Is that true or not? A. The first of June.

Q. This very property that you had contracted to pay $206,000 for; that is true? A. That's right.

Q. And this deal by which Endler stuck you for $206,000? A. As a matter of fact, the—

Q. And the people who took this contract from you not only paid two prices of $214,000, but also paid 13 and some odd thousand dollars to ge the signatures of the wives for their dower interests? A. I only got that from hearsay.

Q. So that they paid $227,000 to Endler and the other two owners, that Endler refused to take it back from you at $206,000? A. Only what I heard here in court.



Q. Now, I want to take up these meetings again; this second meeting that you made mention of, where did that take place? I refer to this group of men that you have mentioned in answering your counsel's question. A. Which meeting do you refer to, the one at the bank?

Q. Do you remember a meeting in which there were five or six persons present at the bank following the time that you made this contract? You remember that meeting? A. Following the making of the contract?

Q. Yes, at which there was something said by Mr. Weinberger when he left the room. A. You mean the day following that or any time?

Q. Any time. A. At the bank.

Q. Yes. A. No, sir.

Q. Mr. Kantrowitz, on the night of the 19th you made a contract, and on the morning of the 20th it was delivered; after that was there any time when you, Mr. Weinberger, and either Mr. Hart or Cacoliris all got together with a view of forming a company to take this property over? A. Yes.

Q. Where was that? A. In Weinberger's office.

Q. When? A. Oh, that was eight or nine days after the 16th.

Q. Who was there? A. Mr. Weinberger, Mr. Cacoliris, Mr. Hart, Mr. Feld, myself, Mr. Jaffe— have you reference to the time that the corporation was to be formed?

Q. You know the meeting I am talking about; the meeting you are telling us about. A. —and several others.

Q. But in this group was included the six people that were to form the syndicate to buy this prop-

erty; that is correct, isn't it? A. No, it is not. Mr. Hartstein was a part of the syndicate.

Q. I am talking about the six people that you have mentioned. A. That seems to be the six people that we tried to get together.

Q. You were there? A. Yes.

Q. You know the six people I am referring to, do you not? A. Yes.

Q. Were they there? A. Yes, sir.

Q. All right. Now, how long after that meeting was the next in which those six people were there? A. I can't remember.

Q. Give us your best judgment. A. Maybe a few days after.

Q. A few days later? Would it be about the 27th of March that would be the date of the first meeting? A. I said about that time.

Q. Did Mr. Jaffe, your lawyer, at that time draw a certificate of a corporation—close corporation? A. No, it was one that Mr. Weinberger mentioned; he was dictating it. It was in his office, in the doctor's library.

Q. Didn't Mr. Jaffe dictate it? A. I don't remember; there was so much excitement in that office.

Q. Is your recollection getting dim now? A. No, my recollection is good.

Q. Now, at the second meeting who was present of this group? A. When you say "the second meeting" you mean the meeting that continued over for the corporation to be formed?

Q. Yes. A. Practically the same people, with the exception of Mr. Jaffe.

Q. Do you recall, on that occasion, Mr. Kantrowitz, Mr. Hart leaving that group and then calling you up from the outside? A. I don't remember whether he did or not; I know I had telephone



calls from different people representing themselves to be what they weren't.

Mr. McGinnis: I ask that that be stricken out.

The Court: Strike it out as not responsive.

Q. Do you remember, following a discussion there that night, in which Mr. Weinberger offered to buy out or sell out for $500 a head? A. Do I remember?

Q. Yes; was that said? A. He might have said it to a lot of people; he made promises, too, but he never made it to me.

Q. I mean to the group of people of whom you were one? A. Directly to me?

Q. You included? A. No.

Q. To the others in your presence? A. He might have said it to the others, but not to me.

Q. In your presence? A. Yes.

Q. Did he make any objection to selling his interest out to you for $500? A. To me? No.

Q. Or to the others? A. I don't know what he did to the others.

Q. Was it not after that that Mr. Hart went outside and in response to a telephone call you said "It is too late now"? A. No, no, no, no; that was a part of Mr. Weinberger's story. He answered that telephone call. It was the telephone call when Weinberger says "Let me frame this thing. If you want to drag that out, Senator, I will put it in; I will have to do it.

Mr. McGinnis: I ask that that be stricken out.

The Court: It may be stricken out.

Q. Wasn't it at that meeting I have just asked

you about that a number of checks were given out, of which D-1 and D-2 were among them? A. Not in my presence, with the exception of one to Mr. Cacoliris.

Q. Did you see checks made out? A. I saw him writing, but whether they were those checks or not I don't know.

Q. Although this writing was going on, there was nothing being said by Mr. Weinberger or anyone else as checks were being made out? A. To me?

Q. To anybody in your presence. A. Not that I know of.

Q. You heard nothing said about checks? A. I heard Mr. Weinberger say to Mr. Cacoliris something and Mr. Cacoliris leaned over and picked up his check, and he says, "I have got mine" and went right out.

Q. And Mr. Feldman was the broker, as you say, and the agent on that 27th of March? A. He got a check for his one-sixth interest.

Q. Of $500? A. For the one-sixth interest.

Q. For $500? A. Yes.

Q .Was there any commission coming to him at that time? A. Not to him from me or Mr. Weinberger.

Q. No commission at all coming out of the sale of this property? A. Not from me. I was the buyer and the buyer doesn't pay commission.

Q. Mr. Weinberger, at the time he was giving these checks out, you say had no interest in this contract? A. Absolutely not, with the exception of him saying "Let me handle this thing and I will make some money".

Q. So that this $500, D-2 and another $500, D-1, $1,000 in all that Mr. Weinberger gave out he did it apparently without any reason?



Mr. Vanderbilt: I object to the question as calling for the witness's conclusion as to the operation of another man's mind.

The Court: I will allow it.

A. Well, when he made those checks out he was making a grand-stand play.

Q. I don't understand the meaning of that and I ask that it be stricken out.

Mr. Vanderbilt: I object to its being stricken out. It was in response to the Senator's question.

The Court: That is a different situation. What he means by "grand-stand play" I don't know. What do you mean?

A. I mean this, that Mr. Weinberger, during the whole course of this conversation had talked millions; that he had millions; that he knew this property and he would handle this one and that one, and he said "Now, Reuben, you get out and I will take care of this"—this idea of being God almighty and nobody else knowing anything about real estate, and he seemed to be the captain of everything.

Q. And you let Mr. Weinberger dominate the situation that night? A. Yes.

Q. Although you had the contract? A. Yes.

Q. And your money paid for it? A. My money paid for it.

Q. And yet you had the final say in the whole thing? A. I had the final say up to the time for me to put my signature down there, and then I had something to say; but as long as they were there asking me not to sign anything they could buy the city hall.

Q. When you saw these checks being given out you didn't say anything, did you? A. To Mr. Weinberger?

Q. Yes. A. I couldn't, because the man went out with his check; Mr. Cacoliris had the check in his hand and he went out in the hall, and he says, "I have got mine, go to blazes", and he was gone.

Q. You saw Feldman get his check for $500? A. No.

Q. You didn't get Hart's check, did you? A. No, I didn't have anybody's check.

Q. You didn't get Hart's check for $500? A. No, sir.

Q. You say, and have testified before, that Mr. Hartstein did not draw any assignment of that contract that night? A. No, sir.

Q. On a yellow piece of paper or any other kind of paper? A. No, sir.

Q. And you didn't sign any kind of assignment? A. Absolutely nothing.

Q. And you never received back from Mr. Weinberger a five-sixth assignment to you? A. No, sir.

Q. And at that time or at any other time until the suit was commenced in this court, you had no idea that Mr. Feld was claiming one-sixth? A. That is true; I didn't know that Mr. Feld wanted a one-sixth interest. The only thing I knew was what Mr. Weinberger said.

Q. And when did you cease to be a good friend of Mr. Feld's, as you say? A. When did I cease to be a good friend to him?

Q. Yes. A. I am still a good friend of his.

Q. Did you meet him after this meeting of March 27th or thereabouts, from time to time? A. Yes, and I see him now, too, daily.





Q. You met him in the street and offices after that time? A. Yes.

Q. And Mr. Feld never told you that he had a one-sixth interest in that contract? A. Never said a word to me.

Q. Never told you, for instance, that on the 3d of April, 1925, he had given as his share of the one-sixth interest a check to Mr. Weinberger for $1666.67, as shown by Exhibit C-3? A. No, sir.

Q. Never mentioned that to you? A. I never saw the check, nor did I know anything about it until in court here.

Q. And he never mentioned that at any of these numerous meetings? A. There wasn't any numerous meetings. The only meeting that we had was when we were trying to sell the building.

Q. I mean, did you not meet him? A. I met him a number of times, but we never discussed the building.

Q. And he never mentioned anything about his one-sixth interest? A. No, sir.

Q. Never ask you what you were doing with this property all the time? A. The time he came to me—

Q. No, I mean at these various social business meetings. A. No, he wasn't that much interested in the property.

Q. And that continued until this case was commenced in July, 1925? A. It continued until Mr. Newman informed him that his client had purchased the contract from me.

Q. Which was in July? A. No, sir; it was June.

Q. I thought you said a moment agothat the first you knew that he made any claim of having a one-sixth interest was when the suit was commenced?

A. It was simultaneously with the notification by Mr. Newman.

Q. Didn't you testify that at the time this case was commenced was the first time you knew about it? A. If I testified to that I didn't properly understand the question.

Q. Now, when do you say it was? A. I say the suit, as I recall it, was started when Mr. Feld received notification from Mr. Newman that he had purchased the contract from me.

Q. You know the case was commenced July the 10th? A. No, I don't know when it was commenced; I assume it was in June.

Q. This occasion you speak of was in June? A. Yes.

Q. So that whether it be in June or July whenever it was, that was when he first knew about this? A. Yes.

Q. Mr. Feld, on the 3d of April when he gave Weinberger this check, and from then up to June, never said to you "I have got a one-sixth interest in that property" although he had parted with $1666.67? A. I never saw the check, Senator; he never showed me the check.

Q. Now, then, on June 30th or thereabouts, the early part of June, when you say the contract was purchased by Mr. Newman, did you then learn that Mr. Feld claimed a one-sixth interest in the property? A. It was sometime in June that Mr. Newman called me up and he says, "I notified Feld to be ready, that I would take title", and he says "he has got an interest in the property", and I says "No one has an interest in that property, Mr. Newman; I wouldn't sell you anything that anybody had an interest in it." The contract speaks for itself. He drew my assignment right



on the back of my original contract to Mr. Newman's client. I says, "No one has any interest in that."

Q. Did you ever see Mr. Feld after that conversation? A. Yes; Mr. Newman came to my office, and he said "I will tell you"—

Q. Never mind what he said when he came to your office; did you see Mr. Feld after that? A. Yes, he took me to Mr. Feld.

Q. When was that? A. That was sometime after the receipt of the letter by Feld, I presume, by Mr. Newman.

Q. How long after? A. Oh, I couldn't say.

Q. Give us your best judgment. A. Possibly a week.

Q. Now, between the time that Mr. Newman called you up and told you, in substance, that Feld was claiming a one-sixth interest, it was about one week before Newman came there to see you? A. I say a week had elapsed between the time of my assigning the contract to Newman's client and Newman's calling me up.

Q. All right; after Newman called you up when did you see Feld after that, wherever it was? A. I couldn't say.

Q. Did you see him? A. Yes, I did.

Q. About how long after? A. I couldn't say, sir.

Q. Where did you see him? A. Mr. Newman took me to Mr. Feld.

Q. How long, do you think, that was? A. I couldn't say.

Q. And where did you see Mr. Feld? A. In Mr. Feld's office.

Q. Was anybody present besides Mr. Feld? A. I believe there was.

Q. Did Mr. Feld then, in your presence, assert to Mr. Newman that he had a one-sixth interest? A. This was the first time that he said so. I said, "Sam, if you can prove to any of these gentlemen in the crowd that I had knowledge of anybody being in this deal with me there is my check". He says, "You know yourself I have an interest in it" and he started to get excited. He said, "You know I had a one-sixth interest", and even then he didn't show me a check that he had given anybody.

Q. Did he tell you that he had given a check? A. I don't think he did. I don't recall that he said so.

Q. Although you know that that check went through the bank within three days after it was given? A. I don't know whether it went through the bank or not.

Q. He didn't tell you that he had assigned to Mr. Harry Weinberger a one-sixth interest? A. No, sir.

Q. And that that was dated the 3d of April, 1925? I show you the check. A. Yes.

Q. And the check is dated the same day? A. Yes.

Q. And is for $1666.67? A. Yes.

Q. And he didn't show you any of those papers? A. No, sir; those papers were shown to me in court for the first time. He wouldn't face me with Mr. Weinberger.

Mr. McGinnis: I ask that that be stricken out.

The Court: Strike it out.

Mr. McGinnis: I think that is all, sir. There may be possibly one or two matters I might like to touch upon after talking to





Mr. Weinberger, with your Honor's indulgence.

Redirect-examination by Mr. Vanderbilt:

Q. You were questioned on cross-examination, as to the failure of the three wives to sign; was that ever made a point in any of these controversies in Weinberger's office? A. No, prior to that time.

Q. Now, at the first meeting of the six men who were to form the syndicate, were there others there in addition to those who were to form the syndicate? A. Oh, yes.

Q. And was there any agreement ever reached on that occasion as to what the proportion was to be? A. No, they were always fighting among themselves who was to have this and that, and when we were about to agree on the amounts there was a fight as to who was to be in the syndicate.

Q. And there was no agreement as to who would be the incorporators? A. No; that is where the fight started.

Q. At this time with Feld was Mr. Newman present on that occasion? A. Yes.

Q. You met him there? A. Yes.

Recross-examination by Mr. McGinnis:

Q. You said the first time when you met with the owners of the property you said to Mr. Endler "I will have to talk to my partners". A. I said that to Mr. Endler.

Q. Yes. Now who were your partners? A. I never remember saying that to Mr. Endler.

The Court: You said it to someone.

Mr. Vanderbilt: He said Endler said he wanted to talk to his partners.

Q. Didn't you testify that Endler offered to sell for $195,000 and that you would have to talk with your partners? A. No, Endler said he would talk to his partners and see if I could have it for $195,000. That was prior to my going to Cuba.

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Hearing of December 9, 1926.
Defendants' case continued.
All counsel present as before.

JACOB L. NEWMAN, sworn on behalf of the defendants, testified as follows:

Direct-examination by Mr. Vanderbilt:

Q. Mr. Newman, you are a member of the bar of how many years' standing? A. Thirty years.

Q. With offices in Newark? A. Yes, sir.

Q. And you represented Mrs. Rose Zucker who was the purchaser of the premises which are in litigation here? A. I did.

Q. In connection with that purchase by her, did you at any time go to Mr. Feld's office with Mr. Kantrowitz? A. I did, on one occasion, as I recall it.

Q. And can you tell us about when that was? A. Well, it was sometime shortly after this litigation had been commenced.

Q. Who was there at the time? A. On that occasion, my associate Mr. Zucker was there, Mr. Kantrowitz was there, and Mr. Feld.

Q. Will you tell the court what conversation took place. A. Well, it was very brief, but it was to



this effect, that Mr. Kantrowitz said to Mr. Feld: "Why do you lug or bring these people into this litigation".

Q. Who were "these people"? A. Meaning Mrs. Zucker. "She has nothing to do with it and they are entirely innocent."

"Well", he said, "I have a one-sixth interest in the property".

And Mr. Kantrowitz said, "You have no interest at all in the property".

And he still insisted he had a sixth interest.

And Mr. Kantrowitz said, "If you will show me that you have any interest in the property whatever I will give you $500".

That is the conversation as I recall it, although, I might add, what was said on that occasion was understood to be without prejudice to any of the parties.

Q. Did Mr. Feld produce any papers at that time? A. Not that I saw.

Cross-examination by Mr. McGinnis:

Q. Mr. Newman, that was after your clients had purchased this property? A. Oh, yes.

Q. And do recall about the date, keeping in mind when you got the contract? A. I think it was June 3d. It was after Mr. Feld had filed his first bill in Chancery, probably considerably after June 3d.

Mr. Vanderbilt: We have one witness whose testimony is very short and I want to get rid of him so that he can go away. I would like to call him out of order.

The Court: Certainly.

ARTHUR S. HUGHES, sworn on behalf of the defendants, testified as follows:

Direct-examination by Mr. Vanderbilt:

Q. Mr. Hughes, what is your occupation? A. I am in the real estate business.

Q. How long have you been in the real estate business? A. Oh, over 25 years.

Q. You live in Passaic? A. I do, yes.

Q. Are you a banker there, too? A. I am connected with the bank.

Q. And where is your office in Passaic? A. Corner of Main and Howe Avenue.

Q. Are you familiar with the property that is in litigation here? A. Yes, sir.

Q. You were appointed receiver of that property by this court, were you not? A. I was receiver of the rents.

Q. Appointed by the Court of Chancery? A. Yes, sir.

Q. How long have you known that property? A. From the day it was built.

Q. Before this property was purchased by Mr. Kantrowitz was it offered for sale to you? A. It was offered to me; the property was offered me to buy.

Q. By whom, Mr. Hughes? A. I can't recall now. I would say at least three or four brokers offered it to me.

Q. And at what price was it offered to you?

Mr. McGinnis: I don't think that is relevant, sir.

The Court: He didn't accept it. I don't suppose an unaccepted offer is any proof of value.



Mr. Vanderbilt: I think it is, in connection with the price at which it was offered him, which was more than he thought it was worth, and he rejected the proposition. That is what I want to show. I think it is very relevant as showing what Mr. Hughes' value of that property is.

The Court: You produce him as an expert?

Mr. Vanderbilt: Yes.

The Court: You want his opinion on what the property is worth?

Mr. Vanderbilt: I am leading up to that.

The Court: But finding out a certain figure beyond what he thought it was worth is no evidence.

Mr. Vanderbilt: I want to lead up to that. I called him here to testify; he is under subpoena.

The Court: He is not here as an expert?

Mr. Vanderbilt: He is not an expert in the sense that you lug him in and pay him $100 to testify to what you want him to say. I think I am entitled to a little latitude under the situation.

The Court: Well, there is no jury here and I can deal with it when I come to decide the case. I will allow it to be answered. What was the price that you offered?

A. I think $200,000, less a $5,000 commission.

Q. That would be $195,000 net to you? A. Yes, sir.

Q. Did you reject that offer? A. I did.

Q. Why, Mr. Hughes?

Mr. McGinnis: I object to that.

A. Well, it didn't look attractive to me.

Q. Well, what, in your opinion, was the property worth at that time,—the fair market value between a willing buyer and a willing seller? A. Well, when I rejected that proposition at that time I assumed that it was the top-notch price for the property; otherwise, I wouldn't have rejected the proposition.

Q. In other words, the property was not worth $195,000, but less than that?

Mr. McGinnis: He said he considered that the top-notch price.

A. I wouldn't say less that that; I wouldn't say it was worth more. It looked to me like a big price. The proposition didn't appeal to me and I turned it down.

Q. About what time was that, Mr. Hughes? A. It was in the spring, I think, of 1895.

The Court: You mean 1925?

A. 1925, yes.

Q. Was there any difference in the value of that property in the spring of 1925 and June, 1925? A. I don't think so, no.

Q. You have bought and sold property in this locality, haven't you, Mr. Hughes? A. Yes, sir.

Cross-examination by Mr. McGinnis:

Q. You fix the value in the spring of 1925, Mr. Hughes? A. That is my recollection. I think that is correct.

Q. Did you know, around that time, that Mr. Harry Stein was interested in this property? A. I did; yes, sir.



Q. And isn't it a fact that you consult with Mr. Stein on various real estate deals? A. I do, on a great many.

Q. Did he consult with you on this deal? A. I think he did.

Q. Mr. Stein and you are partners in a number of real estate transactions? A. Yes, quite a few.

Q. And Mr. Stein is a director in the bank of which you are Vice-President? A. Yes, he is.

Q. Did Mr. Stein make it known, then, to you, in the course of this consultation with you about this property, that they were paying $214,000 for it without dower rights; yes or no, please. A. Yes, I think he did tell me.

Q. Did you advise Mr. Stein that he was paying too much? A. Well, I don't know whether I advised him or not.

Q. I use that word "advise" in a broad sense; did you suggest, advise, or state to him that he was paying too much? A. Well, my recollection is that he was paying—

The Court: The question is, whether you said anything to him about what you thought of his bargain.

A. Well, it is pretty hard for me to say. Mr. Stein and I are talking these things over twice a day and whether I told him I don't know.

Q. Did you know that a group of people bought a contract to buy this property at this price I told you, $214,000, without the dower rights of three women, and went to the Court of Chancery in a suit for specific performance to enforce this sale? A. The day they were buying property at $124,000, at that time—

Mr. McGinnis: I ask that the answer be stricken out.

Mr. Vanderbilt: I object. I think the witness ought to be entitled to answer the question in his own way.

Q. (The question is read by the stenographer) A. If the price was $214,000? Yes, I knew that.

Q. I repeat the question (the question is again read by the stenographer).

The Court: Did you also know that that was without dower rights?

A. No, I didn't know it was without dower rights until afterwards.

Q. Did you know that Mr. Stein, of this group, went into the Court of Chancery to compel performance of this contract, so that they could buy the property? A. Yes, sir; I did.

Q. And did you know that Mr. Stein, of this group, afterwards paid some $13,000 for these dower rights? A. Yes, sir.

Q. In fact, that part of the transaction was closed out in your office, wasn't it? A. No, not in my office, no.

Q. Well, in the bank's office? A. I couldn't say which office it was closed in; I know it was closed out in Passaic.

Q. Mr. Stein buys considerable real estate in Passaic, does he not? A. Yes, sir.

Q. And has done it for some years? A. Yes, sir.

Q. And you regard him as a shrewd buyer? A. Yes, sir.



Cross-examination by Mr. Weinberger:

Q. There was very high tension in Passaic along Main Avenue and Lexington Avenue, in the year 1925, on or about March of that year?

Mr. Vanderbilt: I don't think they ought to have double cross-examination.

The Court: Mr. Weinberger is a party defendant. Senator McGinnis doesn't represent him.

A. Yes, sir; there has been a high tension along Main Avenue and Lexington.

Q. Property in that neighborhood is bringing $5,000 a foot, is it not? A. I never heard of that price at that time.

Q. You know nothing about such a price? A. Not prior to 1925.

Q. I am speaking of 1925. A. I think the only piece around $5,000 that I am familiar with is the Raensslaer purchase.

Q. That is about how far from the premises in question, in feet? A. That is, I should say, 300 feet—three or four hundred feet.

Q. That was the highest price that you heard of at or about that time? A. That was the highest, yes, sir. I think that was the latter part of 1925.

Q. Haven't you yourself paid more than $4,000 a front foot for property along Main and Lexington Avenue? A. No, sir.

Q. You do know of frequent sales made at that time at that price in 1925? A. I have sold some for that, but never paid it.

Q. Whereabouts was that property? A. On Lexington Avenue, known as the Kehoe Building.

Q. What have you to say in regard to the relative position of the property; is the property more valuable where the Benson Building is or less valuable than the Kehoe Building? A. It is more valuable.

Q. The Benson Building is in the best part of the City and is recognized as the best block in the City? A. One of the best.

Q. Isn't it the the best? A. I wouldn't say so.

Q. What block would you regard as being better than that block? A. I would consider Main Avenue block up to Lexington Avenue is worth more than the Benson Block. I considered that two blocks apart on Main Avenue. The Benson Building lies in a block between Madison Street and Jefferson Street. A part of that block is Main Avenue, where there is a brick block. I look upon it as two blocks.

Q. But, physically, it is one block? A. Physically, it is one block.

Q. And that block is the best block in the city between Madison and Jefferson? A. Yes, no question about that.

Q. And the Benson Building lies in that block? A. Yes.

Q. Isn't it true that the highest rentals paid in the city are in that block, and in that zone? A. I think they are about the limit.

Q. And isn't it likewise true that the most difficult block in the city to purchase and acquire title to property is right on that block? A. It is difficult to acquire any Main Avenue property; it is not easy.

Q. You mean, the prices that are being asked for property in that block are prohibitive? A. Yes.





Q. Some people are asking as high as seven and eight thousand dollars per front foot?

Mr. Vanderbilt: May I have a time fixed. We are dealing with June, 1925.

Mr. McGinnis: I will reframe the question.

Q. Isn't it a fact that in 1925, at or about the spring of that year, property in that particular block of certain owners have been demanding as high as $7,000 a front foot, and varying between that price and $10,000 a front foot?

Mr. Vanderbilt: I object to that as immaterial and has no bearing on the question of price.

The Court: It is cross-examination and I am inclined to allow it, anyhow, for the purpose of inquiring into this witnesses's qualifications. The question is, were there properties in that neighborhood held during the spring of 1925, at seven to ten thousand dollars a front foot by the owners?

A. I would say no.

Q. Well now, let us get specific places: Are you interested in the property at the corner of Lexington and Madison Street? A. No, sir; I am not.

Q. Who owns that, do you know? A. One corner is owned by Harry Stein and the other is owned by Casper Cohen.

Q. Do you know what they were asking for that in the early part of 1925? A. Which one?

Q. Either one. A. The Stein property was not for sale and never has been for sale.

Q. Do you know whether Mr. Stein asks as much as $10,000 a front foot? A. I don't think I ever had a price on that property.

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

Q. When did he buy that property, if you know? A. I would say, approximately 10 years ago.

Q. That's also in the block? A. That's also in the same block as the Benson Building.

Q. Now, what property adjoins that? A. Adjoining that comes the Hart building.

Q. Do you know what they ask for that property per front foot? A. Not in the last year and half or two years.

Q. Do you know whether Mr. Harry Stein offered $6,000 a front foot for that property, and you were one of the associates that sent it to the office? A. I don't believe Mr. Stein ever made such an offer.

Q. Do you know what he did offer? A. I think we offered him—I don't want to be positive of this, Mr. Weinberger; my recollection is, that we offerer Hart $90,000. I may be wrong; it was somewhere around there.

Q. That is a 22 foot plot? A. It is under 25 feet; I know it is not a full 25 foot lot.

Q. And that offer was made when, Mr. Hughes? A. I think that was in the early part of 1925.

Q. With regard to location, the Benson Building is better located than the Hart Building, is it not, being nearer to that hack stand, as you phrase it? A. I wouldn't say so; I wouldn't make any difference.

Q. It is nearer the heart of the city? A. It is nearer the heart of the city, yes, sir.

Q. The Benson Building? A. Yes, sir.

Q. Do you know what they are asking for the



Zimmermann building per foot? A. Not at the present time, no.

Q. Do you know whether they are asking $10,000 a front foot for that property, in 1925. A. No, no, such prices weren't being offered in 1925.

Q. Also, as a matter of fact, there was an offer made of $8,000 a front foot in 1925? A. Well, we hear about such offers.

Q. Well, you heard about that offer, didn't you? A. No, I never heard of the offer.

Q. What was the most you ever heard? A. I wouldn't want to say on the Zimmerman Building. We tried to buy it; I wouldn't want to say today.

Q. Do you know who owns that building? A. Why, it belongs to a Greek.

Q. Cacoliris owns that, doesn't he? A. Some such name.

Q. The main building is in the Benson Building? A. Yes.

Q. Do you know that he was offered $7,500 a front foot in 1925, in the spring of that year? A. For the Zimmerman building?

Q. Yes. A. I don't think Harry Stein ever made any such offer.

Q. You don't know, do you? A. No, I wouldn't pay it.

Q. I am not asking you that; you buy bargains. A. Not always.

Q. But most of the time you are looking for them? A. Try to.

Q. You always try to buy as cheap as you can? A. Correct.

Q. And sometimes we are forced to pay what the market is in general? A. Yes.

Q. Do you know the Schulting Building, where the Berdan Furniture Company is? A. Yes, sir.

Q. Do you know how much they were offered per front foot? A. I do not.

Q. In the purchase of this property by Mr. Stein on Lexington Avenue, known as the Benson Building, would you also place any value upon it owing to the fact that it is a larger plot—one of the largest plots on the block? A. I would not, no.

Q. By the way, how big is this building; do you know? A. 65x100.

Q. Don't you think that it is a factor in getting a building with dimensions 65x100, as compared with 25x100? A. No, I do not. I think there is better sale for smaller buildings.

Q. How about bigger buildings for bigger purposes? A. Well, there is not so much demand for larger buildings.

Q. But when there is, you get a larger price? A. We sometimes buy a larger plot with the intention of cutting it up into smaller plots; that is what all our larger plots are coming to.

Q. Do you mean that is true of Main Avenue? A. I think you will find that all larger plots are being cut up.

Q. Why? A. Because merchants only want to buy 25 feet.

Q. Isn't that a reason why this property is higher in value, because it is a bigger plot, and isn't that better than a smaller plot because you can cut it up and get a bigger resale value as compared with a smaller lot which does not permit that? A. I don't think it makes any difference.

Q. You don't think so? A. No.

Redirect-examination by Mr. Vanderbilt:

Q. With respect to this purchase by Stein, the



property for $214,000—you were asked to go in on that by Mr. Stein? A. I think I was, yes.

Q. And you declined? A. I did.

Q. Why?

Mr. McGinnis: I object to that.

The Court: I overrule the objection.

A. At that time I considered the price too high.

Q. When these various prices were mentioned—I think one you mentioned at $5,000 a front foot; that includes the building on the land? A. Oh, yes, they all include the buildings.

Q. And there would be a considerable variation, depending upon the value of the building, wouldn't there? A. Some, but there is very little difference in those buildings.

Q. The Raensslaer property is a corner property? A. Corner property, yes, sir.

Q. And that increases its value? A. Yes, certainly.

Q. And the value is still further increased by the fact that it is a bus stop for suburban busses? A. It is worth more because it is on the corner, and I think the Raensslaer Building is a little better location.

Recross-examination by Mr. McGinnis:

Q. This Hart property, there is a building on that property, isn't there? A. Yes.

Q. And do you know that there is a party wall right in connection with that; that it is encumbered to the extent of having a party wall? A. I think there are party-wall rights in all those apartments.

Q. I am talking about the Hart Building and nothing else. A. Yes, I think that is so.

Q. You did learn that fact on that date? A. Yes.

Q. Did you learn of the fact that there was an outstanding option, a commission agreement, that Feldman and the owners had? A. Not until that date.

Q. Did you know of it on that date? A. That date, yes.

Q. And you knew that the owners were obligated to pay a commission of how much money? A. I didn't see the option.

Q. From what you heard? A. $5,000.

Q. You deny having seen that agreement? A. I certainly do.

Q. Who told you it was $5,000? A. Either Mr. Endler or Mr. Feldman.

Q. Well, now, you learned of this option and commission agreement of $5,000, did you? A. Yes, that day.

Q. As a matter of fact, where was it you learned it? A. From Mr. Endler.

Q. Where? A. Either in Hart's store, I believe it was, and we sent for Mr. Endler.

Q. Where was it that you learned that the Larkeys were buying the same property? A. In the same place; the store is downstairs and the office upstairs.

Q. What time was it that you learned that the Larkeys were trying to buy the property? A. It must have been somewhere late in the afternoon, six or seven o'clock.

Q. Now, then, you wanted the property, didn't you? A. I wanted the property?

Q. Yes. A. Yes, if I could get it.

Q. And you knew who were the attorneys in that deal? A. Representing whom?

Q. The attorneys representing the buyers and



sellers? A. I didn't know who the attorneys were representing the buyers; I knew the attorneys who were representing the sellers.

Q. Who were they? A. I thought they were Mr. Feld.

Q. Now, you tried to get this property; by what method and whom did you employ to try to see that the deal with the Larkey's didn't go through and you would get the property? A. Mr. Endler.

Q. There was an option outstanding for $5,000? A. I didn't know that. That is where he never told me, because he offered to sell me that property for $195,000.

Q. You learned in the afternoon of this alleged transaction between Larkey and Endler, did you not? A. That's right.

Q. You learned that in Hart's place? A. That's right.

Q. And then you and Hart were associated in this transaction? A. We were supposed to be the original parties in the deal.

Q. Then you did have a deal in regard to this property with some man, in the purchase of it? A. I had no deal. I told you I would take Mr. Hart in it providing he would go in, and Mr. Hart had his opportunity.

Q. I am not asking you about when you started; I am asking you now, when you met in Hart's store was Endler in the store? A. Endler came down.

Q. Was Mr. Feld in the store? A. No, sir.

Q. Was Feldman in the store? A. No, sir.

Q. Who else was in the store? A. Mr. Endler and I was standing in the corner, and I says, "Mr. Endler, why did you kid me about this property?"

He says, "Rubie, I will tell you the truth: I had

an option outstanding and I waited until today. I wanted more money out of you and that is why".

I said, "That is no way, to kid me along; you could have told me when I offered you $195,000".

He says, "If you want the property, pay me a little more and I will get it for you."

Well, that started us dickering, and I figured if I bought that property the mere fact of getting a piece of property on the avenue would be favorable and people would take it off my hands quickly, and I says, "Mr. Endler, if you will get me that property I will give you $500 apiece for the three owners", and he says, "If you will do that I will get you the property". That was because I gave more money for each.

Q. Were the Larkeys upstairs? A. When I got up there they were in the library.

Q. Do you know the Larkeys? A. No, I don't think I do; I know them by name.

Q. You say they were in the library? A. I was told they were in there buying it.

Q. Don't you know Harry Larkey of Passaic, New Jersey? A. I don't know him to speak to him.

Q. Haven't you spoken to them? A. Since?

Q. Ever? A. No.

Q. You say you haven't spoken to Mr. Harry Larkey? A. Not before my acquiring the building.

Q. I asked you a moment ago whether you ever spoke to them and you said "no"; did you mean that? A. Since.

Q. Do you understand what "ever" means? A. Yes; I meant prior to my contract.

Q. Well, now, concerning the Larkeys, and one of whom you say you knew, Harry Larkey, were in the library? A. I was told that the Larkeys were



in there with their lawyer. I wasn't in the room. I was off in another room.

Q. Did you see them that day? A. Not until they came out and I was told "That's the Larkeys," and Larkey started pointing his finger at someone there upstairs in Feld, Weiss & Feld's office.

Q. What time was that? A. I don't know; I didn't have my watch in my hand.

Q. Was it about six o'clock in the evening? A. I wouldn't say whether it was six o'clock or later; it was late in the afternoon.

Q. It is a fact, Mr. Kantrowitz, that you knew then that Feldman had an option and was to get $5,000? A. I didn't know that until I got upstairs about the option.

Q. Didn't you say a few minutes ago that you were informed about that? A. I said so, but I didn't know it until we got upstairs. Mr. Feldman was dickering to have me take that option.

Q. With whom was he dickering? A. Mr. Endler.

Q. The first time you learned of it was in the store? A. He hadn't had an option on it that day.

Q. But the time you learned of it you were down in the store? A. Yes, sir.

Q. And the proof of it you got upstairs when you got up there? A. In fact, I didn't believe Mr. Endler downstairs.

Q. When you got upstairs you heard them talking about buying up the option and the commission agreement? A. Yes, sir.

Q. Now, I want to know what was the discussion in regard to that between Endler and you? A. He tried to buy the option off of him and he offered him something, I don't know how much.

Q. You don't know anything about that talk at all? A. No, they were in the little room.

Q. Wherever they were, you don't know anything about this talk at all? A. No, they were simply talking.

Q. Endler was trying to get back his option and commission agreement? A. They had some talk about it.

Q. Weren't you a party to it? A. Positively not.

Q. You didn't hear any discussion at all? A. No.

Q. Weren't you interested in getting the property? A. Yes, sir.

Q. Weren't you trying to do Feldman out of that $5,000? A. Positively not. After Endler offered $500 for that option I got busy myself.

Q. I thought you didn't know about that? A. I told you right from the start he was offering $500 for it. He was in the room and came out.

Q. When did you say that was? A. You are trying to pin me down to a moment and I can't do that. If you want me to give you answers give me time if you want true answers.

Q. After this discussion took place between Mr. Endler and Mr. Feldman did they reach any agreement? A. They? No. Mr. Feldman says, "I won't deal with you". I says, "I will give you $1,000 for it if you will give me the option.

Q. What option? A. That he had, to let me get hold of that option, because by giving him the $1,000 I would have saved $1500 that I would have to give to Endler.

Q. Well, now, Mr. Kantrowitz, what was the next step when you got up in the office; the Larkeys were trying to get the property and you were after the same property; what did you do in order to get that property? A. I bought the property; but the



buyers were in the same office, in the same building on the same floor, and in the office of Feld, Weiss & Feld, and the only reason that I bought that property is that the Larkeys wouldn't stand for the $5,000. They wanted the $5,000 commission to be put up in escrow. Mr. Feldman was to sue for his commission, and if he lost the case he would lose that $5,000. Mr. Endler would not stand for it. That is why they took $1500 and sold me the property, because they had no guarantee regarding the option of Feldman.

Q. When you speak of $1500, what do you mean? A. I was to give them $1500.

Q. Who? A. Mr. Endler, Lenz and Solomon.

The Court: He has said, as an inducement for them to break their contract he had agreed to give them $500 apiece, which, of course, would be $1500.

Q. So you first made that agreement with Endler, Lenz and Solomon? A. No, I made it with Endler. Mr. Lenz wouldn't consent to it. That was downstairs, and then we had to go upstairs and thresh it out with the other two partners.

Q. Who threshed it out? A. We did, in the hall, and Mr. Lenz says, "We won't do it; if you want to do it, go ahead". Mr. Lenz and I remained in the hall, while Mr. Endler and Mr. Feld went back in the room with the Larkeys and got in some sort of an argument over this $5,000, and came out where I was. He says, "You can have the property; it is yours", and with that I called my attorney and Mr. Feld and they wrote the contract.

Q. Mr. Jaffe was your attorney? A. Yes.

Q. You are in the same office with him? A. Yes.

Q. And he came over and the contract was prepared? A. That's right.

Q. What was the price you say the Larkeys offered for that property? A. $205,000.

Q. They offered $205,000 and they undertook to pay the $5,000 commission; is that right? A. That is what was told to me by Mr. Endler.

Q. And yet you want us to believe now, do you, that although that offer was made these owners agreed to sell you the property for $206,500, and they assumed to pay the commission? A. Oh, no, I didn't say that.

Q. What disposition was to be made of the commission? A. He says, "Who is to take care of Feldman?" I says "I will take care of Feldman", and Feldman says, "I will have nothing to do with you." And I was anxious to get this property, and I says, "Danny, I will fix it up with you".

Q. Danny Feldman? A. Yes.

Q. You would fix it up how? A. By payment.

Q. What payment? A. That I had agreed to give him.

Q. A couple of hundred dollars, or $400? A. I agreed, originally, to buy it off of him for a thousand dollars.

Q. Will you tell the court now how much you agreed to give Feldman. A. Where, downstairs or upstairs?

Q. Upstairs A. Nothing.

Q. Anywhere. A. Downstairs, a thousand dollars.

Q. Did you give it to him? A. No, sir.

Q. Why not? A. Because he tried to get more; he tried to peddle it to somebody else. It was a case of going upstairs and downstairs and a few hours only in which to do it before its expiration.



Q. You got the property, didn't you? A. Yes, sir.

Q. You agreed to give him a thousand dollars if you got the property, didn't you? A. Downstairs, if he would give me the option.

Q. Anywhere? A. No, sir; for the option I agreed to give him a thousand dollars downstairs.

Q. Didn't you agree to fix him up? A. Upstairs I agreed to fix him up.

Q. You say you agreed to fix him up; do you know what that means? A. Yes.

Q. What did you expect to do when you promised you would fix him up? A. Give him something.

Q. How much? A. The amount was never fixed in my mind.

Q. Did you ever fix it? A. No, sir; the deal became nothing.

Q. What became nothing? A. His work.

Q. Did he surrender his option? A. Not to me.

Q. To anybody? A. I don't know. I think he must have surrendered it to Mr. Endler: I don't know.

Q. Mr. Kantrowitz, after you agreed to fix Mr. Feldman up this contract was drawn; is that right? A. Oh, the contract was being drawn; Mr. Jaffe had been doing that.

Q. During all of this time that the contract was being drawn there was a talk between you and Feldman as to fixing him up, was there not? A. No, there was a talk of who was going to buy it. We were talking all the time the contract was being drawn. There was peace in the family.

Q. There was a time when there was peace, was there? A. Yes.

Q. What did it cost you, or what did you agree to pay Feldman for the peace? A. Nothing.

Mr. Vanderbilt: I object to that as immaterial.

(No ruling)

Q. Now, let's get to the next step. That night you gave a check for $10,000? A. That's right.

Q. Did you ever see Cacoliris, up to that point? A. Oh, there was a lot of people in the office. Yes, Cacoliris came in the Hart store when they were trying to form the syndicate to buy the building.

Q. Who was trying to form a syndicate? A. Mr. Hart and Ed. Weiss.

Q. Name all the parties in the Hart store again, if you will, please. You omitted Mr. Cacoliris before. A. You didn't ask me.

Q. Didn't you testify that the only parties in the store were Mr. Endler and Mr. Hart? A. What time? Why don't you ask me times if you want to know who was there.

Q. Mr. Kantrowitz, will you state, in your own way, what parties were trying to form a syndicate? A. Mr. Weinberger, I told you who was in the store on my direct examination and it is now a part of the record. Whatever testimony I gave on my direct examination still holds.

Q. I am asking you the question, sir, and I demand an answer? A. The record will speak for itself.

Q. I am asking you to answer the question. A. Unless you will fix the time I can't answer it.

Q. By the way, you are studying law? A. No, sir.

Q. You are posing as a lawyer now in the directory, aren't you? A. No, sir.

Mr. Vanderbilt: I object to this as immaterial.



The Court: I am going to allow the greatest latitude on cross-examination. Mr. Kantrowitz, will you tell the court in your own way who attempted to form this syndicate and when it was; and also fix the place.

A. (The witness does not answer).

Q. Is your memory so bad this morning, Mr. Kantrowitz? A. Are you waiting for me to answer?

Q. Yes, we would like to have it. A. Just what time do you want to know, from the time I got there until I left?

Q. If you will, please, so that there will be nothing misunderstood. A. When I got there there was Mr. Hart there, and we got discussing the property. Mr. Hart says, "You know the property is about to be sold?"

"Who to?"

And he says, "To the Larkeys."

I says, "That's funny; I'm waiting for a call from Mr. Endler."

He says, "You are not waiting for a call from Mr. Endler. Why didn't you notify me". By the way, it was Mr. Hart that called at my office to tell me that the property was being sold. I came to Mr. Hart's store and we got into conversation. I says, "Where can I get hold of Mr. Endler?"

He says, "I think he is upstairs."

"Can you get hold of him for me?"

He says, "Yes." We tried to get him on the wire and I think there was Ed. Weiss, and when he came down we asked him if we could get hold f Mr. Endler and would he send him down, and he told us about some argument going on that kept him in the store. But, "Gee, I waited for Endler and he kept

me waiting, and he is going to sell the building", and finally Hart says, "Maybe we can get somebody to take over the building". I says, "I will do it if you will take me".

Finally, Cacoliris came, and then Ed. Weiss came in. He had Cacoliris with him, and we talked to him, and asked him if he wanted to be a part buyer of this building, and he says, "Wait a minute and I will let you know." He went out, and then he came back in a few moments, and he says, "I will go into the proposition providing I can get my lease extended".

I says, "Oh, no". I says, "You are only coming in then for what you can get". I says, "Your store is worth more money; you are paying too little rent".

He says, "I won't go into it, then", and it left us back again where Hart and I were in one agreement, and Hart, and Weiss, in another agreement; and we discussed ways and means of getting the property, and we would go upstairs to find out what was doing up there, and Mr. Endler came down and talked a few moments, and he went out until they got to the point where they accepted my $1500, and then we went upstairs.

Q. Now, the check for $10,000 you gave that night,—was that made on the day it was dated? A. Yes, sir; it was made on March 18, and when it was made Endler redrew the contract.

Q. You say it was made on that day? A. Yes.

Q. No question about that? A. No question about it whatever.

Q. You had prepared yourself to pay the $206,000 at the time you entered into this contract?

Mr. Vanderbilt: I object as immaterial. I don't see that it has the slightest bearing.



The Court: Well, it is cross-examination.

Q. You had made plans and had all the money available at the time you executed this contract for $206,000?

Mr. Vanderbilt: I still object to that as immaterial.

The Court: I overrule the objection.

Q. You mean in exactly cash?

Q. Yes. A. You mean in cash?

Q. In any form. A. In stocks, and bonds, and mortgages, yes.

Q. So that when you signed this contract you say that, at that time, you had in stocks and bonds, and in mortgages which were liquid, $206,000? A. No, I didn't have $206,000; I needed $86,500.

Q. Did you have cash at that time available for the purchase of that property? A. The balance needed—

Mr. Vanderbilt: I object, because it is ambiguous. It isn't a question of what he needed at the time of signing the contract, but what he needed at the time he took title, and I object to it as immaterial.

The Court: I overrule it on the ground of immateriality, but I think you ought to be more explicit as to what it means to take title.

Q. Yes or no.

The Court: (Addressing the witness) Now, what Mr. Weinberger is asking is, on the 19th of March, 1925, at the time you entered into this contract did you have available resources to pay whatever was required

above the mortgages that you assumed or gave to complete the purchase price.

A. When it came to my time to take title, yes, sir.

Q. You had the cash on that day? A. Resources, not cash; I held the amount in certificates, mortgages, bonds, stocks, and so forth, that I could convert into cash.

Q. Well, now, Mr. Kantrowitz, you didn't talk to Mr. Feld about the property or any interest in it, did you? A. Upstairs?

Q. Anywhere. A. No, sir; too much excitement.

Q. I thought you were all at peace at one time? A. Later on after the Larkeys left.

Q. Did you then discuss it with him? A. No, sir.

Q. Had you taken Mr. Hart in with you? A. Mr. Hart wasn't the only man who had the opportunity to come in.

Q. Will you answer my question: Had you taken him in with you when you agreed to buy the property? A. Mr. Hart had gone upstairs with me and said he would let me know if he could raise the money. I was under the impression that Mr. Hart was in with me until he told me he was out.

Q. When did he tell you he was out? A. After I was ready to take title.

Q. When did he tell you he was out, is the question? A. When he had to sign his name to the note at the bank.

Q. When? A. Several weeks later when I arranged for a loan of $50,000.

Q. Had you seen him in the interim? A. I used to see him daily.

Q. Where? A. At the club and store.



Q. Had you seen him in any other place? A. At your office.

Q. What were you discussing with him at that time? A. He and I were going into a syndicate that you were trying to arrange.

Q. You did not participate in any discussion of any syndicate? A. Oh yes.

Q. I am speaking now of one with Mr. Cacoliris, Mr. Feld, Mr. Hart, yourself, Mr. Kuller, and Mr. Weinberger— A. And several others.

Q. Those six? A. No.

Q. Including yourself? A. No, there was never any fixed amount.

Q. Mr. Kantrowitz, I am asking you whether you ever discussed the property, or its disposition, or sale, with these five men that I have just named? A. I took no part in the discussion; I had nothing to say in regard to the transaction.

Q. Now, there can't be any mistake about that? A. You did everything; I gave you carte blanche to do everything, and you did it.

Q. What do you mean by giving me carte blanche? A. The day that you called me to your office—after the announcements came out in the newspapers you called me to your office and you says you can form a syndicate. While we were discussing and reading the newspaper you telephoned one of your friends and presumably some of the others, and you says, "I am going to take you in on the deal. That was right in your room in your office.

Q. Mr. Kantrowitz, I am asking you the question, sir, whether or not the five names that I have just mentioned were ever together with you in one room at any one time? A. Mr. Weinberger, I had implicit faith and confidence in you at the time—

Mr. Weinberger: May I ask that that be stricken out.

The Court: Strike it out.

Q. Were you at any time with the five names that I have just mentioned? A. In your office?

Q. Anywhere. A. Yes. There was more than the five.

Q. Do you know Cacoliris? A. I do.

Q. You say, do you, that I suggested to you or anyone else suggested to you that I was one of this syndicate? A. That you suggested when I came to your office?

Q. Will you answer my question, please. A. With whom? I don't know who suggested Mr. Cacoliris. He was in the office when I got there.

Q. Mr. Kantrowitz, you spoke to Mr. Cacoliris, you say in Hart's store? A. Yes, but he told me he wouldn't go into the transaction.

Q. You now say that Mr. Weinberger told you that Mr. Cacoliris was a member of this syndicate? A. He was in the room when I got there. You didn't want him finally.

Q. Mr. Kantrowitz, do you say that you made no arrangement with this man at all that he was to go in this syndicate? A. Positively no.

Q. How many meetings were held with regard to this matter? A. When you say "this matter", you mean how many times did I try to buy this property to form the syndicate?

Q. Anything you want to call it. A. Well, we had a meeting at your bank.

Q. How many, I asked you. A. Several; three or possibly four.

Q. Did you speak at any of them? A. Very little talking, with the exception of you and Mr. Hart.



Q. What did you say about protecting Mr. Hart? A. I says Mr. Hart was in the deal with me; if you fellows take part Mr. Hart will take so and so.

Q. How much of it? A. One-third.

Q. Were you present on the day Mr. Hartstein was in the office? A. I was.

Q. You know him? A. I do.

Q. Do you say he had an interest in this building? A. Yes, you wanted to give him an interest.

Q. Do you say he had an interest? A. You suggested his name as—

Q. Will you answer my question. A. No one had an interest in the building.

Q. Do you say that Mr. Hartstein was not present? A. He was present.

Q. At one of these meetings? A. He was present; yes, sir.

Q. Do you say, or do you not, that you were present at that time and agreed on the names and assignment of that contract referred to as the contract bearing date March 19, 1925? A. I was present.

Q. Will you answer my question more fully. A. I absolutely deny signing any contract or any paper whatsoever pertaining to this property.

Q. Now, Mr. Kantrowitz, were you present when Mr. Hartstein was present, and was there a discussion in your presence in regard to anybody buying an interest or selling an interest in that property? A. Yes; you were doing a lot of buying and selling.

Q. At that time do you say that the statement was not made—I am speaking for Mr. Weinberger now—that I would be perfectly willing to sell my share and take $500 for it or buy any share at that

price; yes or no. A. You can make so many statements I can't keep track of them.

Q. Do you deny that statement? Do you deny that Mr. Cacoliris said at that time, "I will take $500 for my one-sixth interest? A. I do not.

Q. Do you deny that the interest he was selling was his one-sixth interest? A. I don't know whether he was selling a one-sixth interest or not.

Q. Do you deny hearing him say that? A. I don't know whether it was a one-sixth or a one-tenth; I don't know.

Q. You weren't interested in finding out? A. No. You promised me a profit—

Q. Mr. Kantrowitz, do you say that you weren't present when Mr. Feldman received the check for $500? A. I was present, and I asked you what you gave that to him for.

Q. You thought he wasn't entitled to it? A. I protested right then and there.

Q. Are you sure of that? A. Yes.

Q. What did you protest against? A. I protested against his receiving that check.

Q. Did you protest against Cacoliris receiving his check of $500? A. I didn't get a chance. He grabbed his check and went right out. I was in the other room when he took his check.

Q. I show you a check dated March 27, 1925, and ask you whether or not you were in the room when that check was made out—I refer to Exhibit D-2—in full for his one-sixth interest? Do you deny that that check was made out in your presence? A. I certainly do. I don't know who you was giving it to.

Q. A moment ago you said you weren't present when it was made out? A. I was in the room—in the ante-room.



Q. You just said you weren't present in the room when that check was made out; is that true or is it false? A. I was in the room when these checks were drawn.

Q. Then what did you mean by saying a moment ago that you weren't in the room, and didn't see it made out? A. I was in the room. I was referring to the time I was taken out of the room into one of your ante-rooms to discuss something with Mr. Hartstein.

Q. Mr. Kantrowitz, did you see that check made out, (counsel referring to Exhibit D-2)? A. I don't recall.

Q. You just said you saw it made out; now which is true? A. What I said first is true, I suppose.

Q. Let me see if I can refresh your recollection: I thought a moment ago that you said you were present when the check was made out and given—A. I don't know whether I was there when you made it out. If you are pinning me down to one particular check I can't answer "yes" or "no". I was in the room when you were writing checks, but I don't know whose checks they were; but I do know when you handed that check to Mr. Feldman I protested.

Q. You've got that straight now? A. Yes, sir.

Q. You will stand by that answer? A. Yes, sir.

Q. Now, will you tell the court whether there was any discussion about my giving the check, as to what it was being given for, when you protested for some reason? A. Commission.

Q. What did you say as to that? A. "Is he going to pay him commission" and he said, "No, he has got an interest in the building; I will buy his interest."

Q. Now, let's see: You protested to Mr. Feldman getting that check, did you? A. Yes.

Q. And you said "Mr. Weinberger, you have got no right to pay that; he is entitled to no commission"; is that right? A. That's right.

Q. You knew he had the option to purchase the property and was entitled to a commission of $5,000 if that sale went through? A. You didn't have the option then.

Q. On the day you were getting the contract. A. This is March 27th.

Q. But on that day you needed his option and the commission agreement when this contract was being closed, in order to get him out of the way? You needed it for that? A. On the 19th Mr. Endler took care of him.

Q. How did he take care of him? A. I don't know. They gave me the contract.

Q. Do you want now to say that he got any money from Mr. Endler? A. I wouldn't say "yes" and I wouldn't say "no". I don't know.

Q. Well, you know, anyway, that this check was being given to Mr. Feldman. Will you please tell the Court where the money was coming from to give to him? A. You were getting it from me for the property.

Q. There was no talk about the property? A. I left it to you. You were going to get me a profit on that property by forming a syndicate.

Q. Then there was a talk about a syndicate and leaving it to me? A. Yes, you were forming the syndicate.

Q. And I was the one who suggested who was to be in the syndicate? A. Oh yes, you were the one. Some you wanted in and others you wanted to keep out.





Q. Now, Mr. Kantrowitz, you know well, don't you, that I had never seen Mr. Cacoliris in my life? A. I don't know.

Q. But you do know that he was there? A. He was in your office.

Q. Now, will you tell the court why Cacoliris got $500? A. I don't know.

Q. Did you protest against the check? A. He got out so quick I couldn't.

Q. Did you protest against it? A. No, I didn't have a chance.

Q. Now, as a matter of fact, Mr. Kantrowitz, Mr. Hartstein was there, wasn't he? A. Yes, sure.

Q. And do you recall the fact that you took a check from Mr. Hart of $500? A. No.

Q. You deny it, do you? A. Yes.

Q. Do you also deny the fact that you went over to Mr. Hart's place of business with a check? A. I don't remember whether I did or not.

Q. Well, Mr. Kantrowitz, such a little thing as taking a check over to a man of $500 doesn't happen every five minutes of the day, does it? A. Yes.

Q. You have no recollection at all and don't remember anything about going over to Mr. Hart's place on the day in question that these checks were made out, and going to Mr. Hart and giving him that check of $500 or offering it to him? A. I may have gone to Mr. Hart's place.

Q. Do you admit or deny what I am asking you? A. Mr. Hart called me on the telephone and told me he wouldn't sell his interest.

Q. Did you go to his place with the check? A. I might have been there that night.

Q. Do you deny taking the check there? A. I deny taking the check there, yes.

Q. Mr. Hart was there and agreed to take the

$500? A. He hadn't agreed to take anything; he left it to me. He says, "Tell Ruby I object."

Q. He had an interest in the property at that time, didn't he? A. A moral interest with me, yes. He was to go with me all the way.

Q. You heard Mr. Hart testify in this case, did you not? A. Yes, sir.

Q. And you heard Mr. Hart also say, did you not, that you came to him with a check of $500 that same evening? A. I don't recall; I didn't hear that.

Q. You don't recall that? A. No, sir.

Q. Did you go over there with Dan. Feldman—"Danny", you call him? A. I might have.

Q. What for? A. To induce Mr. Hart to be a part of the syndicate.

Q. Induce him to be a part of the syndicate? A. Yes.

Q. What did Danny Feldman have to do with that? A. I don't know. I suppose he was going back to the office and he might have went back that way.

Q. Didn't he go in the place with you? A. I don't recall.

Q. What did he go in there for? A. I don't remember. I don't know what he went in there for, if he did go in there.

Q. Mr. Kantrowitz, before the date for closing you sold the property, didn't you? A. Yes, about a month before, I believe.

Q. And when you sold the property did you discharge your moral obligation to Mr. Hart? A. Oh, sure; long before that time. When he put up with you the sum of $13,000, which was held in escrow for the Passaic National Bank and it came to the bank and they closed the deal behind my back.



Q. Who was this? A. Mr. Hart and Mr. Lobsenz.

Q. You know that of your own knowledge, do you? A. Only what I was told. We went to the bank and found a check for $13,000, for which they were to take the property.

Q. You say that they closed the contract with me? A. Yes.

Q. And this was done behind your back? A. Yes, sir.

Q. Who had the contract? A. I had the contract.

Q. How was I going to sell this property behind your back with your having the contract? A. You were supposed to sell it for me. We had still been talking syndicate right along up until you and I agreed to disagree.

Q. Mr. Kantrowitz, the first time you met Feld did you discuss the question of the purchase of the property or his having any interest in the property at the time you came there? A. When we went up to his office from downstairs?

Q. Up to that time Feld had never been suggested by anybody as having an interest in the property? A. No, sir.

Q. And thereafter, after that night, he appeared on the scene? A. Yes.

Q. With Sam Cacoliris? A. Not all the meetings.

Q. At the meetings held at the office of Weinberger & Weinberger and the bank? A. Well, there were several syndicates, Mr. Weinberger, they wanted to form.

Q. I am speaking now of the syndicate composed of the six people. A. Well, which ones?

Q. Don't you know the names of the six I refer

to? A. But there was another syndicate; there was a syndicate of four at one time.

Q. Composed of whom? A. You, and Mr. Kuller, myself, and Mr. Hart.

Q. Now I am speaking of the syndicate of six, composed of these names mentioned in this case. A. Yes.

Q. At your office? A. Yes, they were present at the meetings, I presume.

Q. You were there? A. Yes.

Q. And Mr. Jaffe was there? A. At one meeting, I believe.

Q. And the certificate of incorporation was drawn? A. I believe it was.

Q. Dictated by your attorney? A. I believe it was dictated by Mr. Betts of your office.

Q. Mr. Jaffe says he dictated it. A. I don't remember that.

Q. Who invited Mr. Feld over? A. I don't know.

Q. Who invited Mr. Cacoliris over? A. I don't know; it wasn't me.

Q. Well, you didn't report to me that they were in the syndicate, did you? A. No; you were to get up the syndicate.

Q. And I got up the syndicate with Mr. Feld and Mr. Cacoliris? A. No, you got Mr. Feld.

Q. And not Mr. Cacoliris? A. I don't know. You didn't want to have anything to do with Mr. Cacoliris, and it was because Eddie Weiss insisted on Mr. Cacoliris having something to do with the transaction—

Q. Now, on this particular evening when the telephone conversation took place with Mr. Hart, and when all these men were in the office, do you remember Mr. Weiss being there? A. He was there



with Mr. Cacoliris and took that check and went away.

Q. How long were they there? A. Oh, I think they were there a part of the afternoon.

Q. Well, would you say a couple of hours? A. I imagine so, yes. I think we were there until—well, it was dark; it was about 7 o'clock, I believe, on a Friday night, I believe.

Q. What was that discussion about that you heard? A. Well, it was a discussion as to who was to take an interest in the building. We started figuring there at one time. The building was going to be divided up into twenty-fourths. It was figured out by Mr. Hartstein, taking the $90,000 as a basis of splitting it up. Mr. Hartstein sat at the corner of the room in Joe Weinberger's room.

Q. Wasn't there any other name except the six in the syndicate discussed that afternoon? A. With the exception that somebody you wanted to take into the syndicate, out side of Mr. Hartstein —somebody in New York.

Q. Was there any other person present? A. Outside of Mr. Hartstein and these six, there was your father sitting in the room and no one else.

Q. Now, as a matter of fact, was there a conclusion reached there that afternoon? A. No.

Q. None whatever? A. None whatever.

Q. And without any conclusion being reached these checks were distributed? A. You handed those checks out as a grand-stand play.

Q. As a grand-stand play, did you say? A. Yes, you were playing these people. It was a case of your buying or their buying.

Q. And after the "grand-stand" play you went over to Hart? A. I might have went to Hart's.

Q. For what purpose? A. The purpose was, as you have said, you had gotten rid of what you wanted to and wanted to form a new syndicate.

Q. What was the necessity of getting rid of them? A. You didn't want to play with Mr. Cacoliris in the game after Mr. Weiss brought him there.

Q. How many meetings before that had there been with Mr. Cacoliris? A. To my knowledge, I don't recall only that one in your office. We had a meeting in the bank with Mr. Feld.

Q. I asked you how many meetings there had been before this one at which Mr. Cacoliris was present? A. I don't think there was any outside of this one; not that I can remember.

Q. Do you mean that? A. Yes, I do.

Q. I thought you said a moment ago that he was there when the corporation certificate was drawn? A. What corporation certificate?

Q. You don't know anything about that, either? A. The corporation meeting you had in your library?

Q. The one Mr. Jaffe dictated. A. No, Mr. Cacoliris wasn't there because his name wasn't in the corporation.

Q. Whose name was mentioned? A. It wasn't Cacoliris's name.

Q. Whose name was it? A. I think you will find you left instructions that papers were to be dictated, but you didn't want to have anything to do with Hart and Cacoliris, and you didn't want their names as a part of it.

Q. Whose names were to go in there? A. If I remember right, it was you and I and Kuller.

Q. Who were you representing? A. Mr. Hart.

Q. Who was Kuller representing? A. I don't know.





Q. How much of an interest were you representing of Mr. Hart's? A. One-third.

Q. How much of an interest did Kuller have? A. One-third.

Q. And how much did Mr. Weinberger have in that certificate? A. One-third.

Q. Why was it divided into thirds? A. Wait, now; I just happen to recall, if you will pardon me; it wasn't thirds. You and Kuller grabbed the lion's share—you and Kuller grabbed the control. That's what started the argument. There was five hundred and some odd shares given to you to control the building. If I remember rightly, it was split up into 270 and 270, which made 540 shares which you and Kuller took.

Q. You are sure, however, about that, and that you and Mr. Hart had a one-third interest? A. At the time of signing we didn't have a one-third interest. I believe the difference was going to be left between 540 and whatever the amount was.

Q. But you said you and Mr. Hart had a third. A. Yes, in the corporation.

Q. Now, is there any other error you have discovered? A. No, we had a third before the corporation was formed at the syndicate meeting.

Q. You say that that certificate called for 540% of the stock and you had the balance? A. No, I didn't say I had the balance.

Q. Who had it? A. I don't recall who had the balance. I think I was one of the original incorporators and the balance was to go into the syndicate.

Q. Well, getting back into that afternoon when the closing took place: What did you spend two and a half hours and more in the office for? What were you doing all that time? You weren't inter-

ested in that proposition with anybody else; what did it concern you? A. You were trying to get a syndicate together, and when you got them together I was to assign them my contract and take my money.

Q. Then weren't you interested in finding out what you were going to get? A. I knew I was going to get $90,000.

Q. You say that was discussed by you that afternoon? A. We were all there and you were doing the talking.

Q. With whom? A. Some of the persons there, and some of it was when I went out of the room. There were conferences held in practically every room in your office, from the library to the stenographer's room.

Q. I am asking you whether there was any discussion excepting as to who was interested in that syndicate? A. There was all sorts of discussion.

Q. Who took part in the discussion? A. You discussed it; you said "I will buy or sell; I will give money or take money".

Q. Mr. Kantrowitz, was there a discussion there at that time as to who stayed in the syndicate and who was to go out? A. There was, yes, by you.

Q. As a matter of fact, was there any discussion as to what a man would take to go out of the syndicate? A. You started off by saying, "I will give you $500".

Q. And was there an acceptance by Cacoliris? A. There was. He took his check.

Q. And that was after the negotiations as to who stays in the syndicate and who goes out; is that right? Yes or no. A. I can't answer that by "yes" or "no" answer.

Q. And was there a like statement made by Mr.





Kuller? A. Well, I think there was, yes; he was a part of that team.

Q. Did he finally also say that he would accept $500? A. Yes, but he didn't accept anything.

Q. Did he say so? A. I don't recall, Mr. Weinberger.

Q. And was there a statement made by Feldman that he would settle his commission for $500? A. That I don't know. When I met Mr. Feldman that was after Mr. Kuller and I had been in conference—

Q. Will you please answer my question without a lengthy explanation: Did he agree to accept $500 for his interest in the syndicate? A. I don't know what he agreed to accept. You gave him a check for $500.

Q. You have no idea what it was for? A. No.

Q. And never knew? A. No, I never inquired to find out what it was for.

Q. And how about Kuller? A. Kuller never took a check.

Q. And about Cacoliris; did you find out what he did? A. You put him out.

Q. You heard that statement? A. You told me personally.

Q. You knew that he was put out because it was I that didn't want to deal with him? A. Yes, you put him out.

Q. You knew, however, that he received his check for $500 and that therefore he could not be one of the syndicate? A. They gave him a check.

Q. But you knew that? A. Yes.

Q. Can you tell us what money was distributed on that afternoon to Cacoliris? A. I have no idea; checks were being distributed.

Q. You don't know whose money it was? A.

Simply I saw a check given to Feldman and it was your check, and I presume the check Cacoliris took was your check.

Q. Whose money was it? A. Your checks.

Q. Did I have any interest in it at that time? A. You didn't and you did. If you got control of it you got an interest. Your interest has been to get control.

Q. Here is another agreement; was this made after the checks were distributed or before? A. This was all done prior to the grand-stand play, when you said, "Leave it to me". That was before you took me in your private room, in the presence of Harry Kuller, and you then said, "We will get these boys out and the three of us will own the building." I says to you, then: "Harry don't do that; get the syndicate together in the right way or don't get it together at all".

Q. Now I ask you whose money was being distributed. A. Your checks.

Q. Was that per arrangement with you? A. Anything you done was "per arrangement with me".

Q. Now, you say there was an understanding in regard to the moneys that were being advanced; who was to pay that money back? A. Well, I didn't know there was going to be any money paid out until you jumped out—

Q. You saw it being paid out; now whose money was it? A. I didn't think you were sincere; I thought you were making that move in order to have the other fellow say to you, "I will buy him out", because you said to me there wasn't anybody in the room with enough money, or who could produce enough money, to buy that contract.

Q. Do you say now that you thought I was paying out the checks without any reason at all? A. I don't know what you had in your mind; you were the leader.





Q. You can't ascribe any reason for it? A. Only that you simply wanted to go ahead with your little act.

Q. You thought it was an act? A. That was our understanding.

Q. You thought it was an act of charity? A. No, no; an act of grand-stand play.

Q. You call the distribution of money a grand-stand play? A. Yes, with no thought upon your part of being part owner.

Q. And you protested against Cacoliris? A. Not Cacoliris; Mr. Feldman. I thought you were sincere.

Q. When did you change your mind about being sincere from the grand-stand play? What act of mine induced you to think it wasn't an act of sincerity? A. All of your acts. I thought I would be double-crossed if I didn't watch my step.

Q. When did you come to that conclusion? A. When I says to you, "Harry, don't do what you are doing it; it is wrong"; and you know I said those words to you, Mr. Weinberger.

Q. Have you testified to that before today in this case? A. I am testifying to a lot of things that you are asking me about that I very reluctantly bring out.

Q. Is there anything else that you are very reluctantly wanting to bring out? A. No, but if you desire to have anything and everything known, and if you think it is material to this issue, I will tell it, or about your bank.

Q. Will you please state to the court what the transaction is? A. That transaction, Mr. Wein-

berger, was relative to Mr. Hart and Mr. Lobsenz, in your purchase of that building.

Q. You were present, were you? A. I didn't see them; they came to you.

Q. Were you present? A. Not at that time; I was present later.

Q. You saw Mr. Lobsenz speak to me? A. Mr. Hart, pardon me.

Q. You have used the name Lobsenz. A. Lobsenz was in a part of that deal; it was Lobsenz's check that was put up in escrow.

Q. With the Service Trust Co.? A. No, the Passaic National Bank.

Q. Mr. Kantrowitz, if you don't know anything of your own knowledge I don't want you to testify about matters that you don't know anything about. Were you present at any time in any place when I was present and talked to you in regard to that? A. I was present in your bank when Mr. Hart was there and you were about to sign a paper, and I grabbed that paper and said, "Harry, don't sign any paper". You remember that.

Q. Referring to what paper? A. Some paper wherein you were going to transfer that property to Mr. Hart and Lobsenz. They came to you, and Mr. Hart says in my presence that he and Lobsenz was going to take over the building with my consent, and when I came to your bank I says, "There will be nothing doing, Harry, I have no papers; this building will not be sold".

Q. Mr. Kantrowitz, without wasting any more time, you never saw Mr. Lobsenz in the bank or in any place with me? A. I don't think I have.

Q. You said that I had no contract for that property? A. No, sir.



Q. And yet you want to give the court the impression that I wanted to assign that contract without your assigning the contract to me? A. Yes, sir.

Q. Is that the idea you want to convey A. Yes; you and I were friendly then. It was nothing for me to trust you with all sorts of moneys and bonds and papers.

Q. Did you ever have any transaction with me in your life about bonds and mortgages? A. I had transaction with reference to a matter that was a bond and mortgage that I took over for myself.

Q. Did you have any transaction wherein Harry H. Weinberger ever assigned any mortgage to you or assigned anything, or in any real estate transaction with you? A. No, but I did put up a $56,000 bond for you.

Q. For whom? A. For one of your clients, at your solicitation.

Q. Are you speaking now of Oleary bond? A. Yes. At the request of Weinberger.

The Court: Now, you are getting pretty far afield.

Mr. Weinberger: The witness insists in bringing these matters out and they require explaining.

Q. Now, Mr. Kantrowitz, getting back to the issue here, I ask you whose money you thought was being distributed that afternoon? A. I didn't think there was any money being distributed.

Q. Did you inquire? A. Inquire? No; I left it all to you. Anything you had done with it would be acceptable to me.

Q. Then if it should appear that on that after-

noon the interest of Mr. Cacoliris was bought out by Mr. Harry H. Weinberger for $500 do I understand that that met with your approval; that you were satisfied with anything that was done by Mr. Weinberger? A. Yes.

Q. Do I understand that the payment made by Mr. Harry H. Weinberger to Mr. Feldman that afternoon met with your approval? A. No, sir; because I stopped you then and there and asked you what you were doing. I said, "What are you giving him that money for?" and you said, "Leave it to me" and you brushed me aside, and I went aside.

Q. May I also ask you this question, sir: Did you ever return that money to Mr. Weinberger? A. No, you never asked me for it. I never knew you laid any moneys out.

Q. You mean that now? A. You never asked me for that money. It was all going to be fixed up—going to be fixed up.

Q. Mr. Kantrowitz, when did you decide that Mr. Feld was not in that party? A. When did I decide? I decided right then and there when we couldn't get together.

Q. When? A. After each meeting.

Q. When did you reach the conclusion that Feldman was no longer in that party? A. I had conversation with him when he brought me a customer to buy it.

Q. When was that? A. Oh, that was several weeks after.

Q. Several weeks after this meeting in the office of Winberger & Weinberger when these checks were distributed you then concluded that? A. I concluded from the start that there was no one in it.

Q. A moment ago you said that was several weeks after this transaction; which is correct? A.



I concluded from the start that there was no partners in it. When I got home the man was in and he brought me a customer to buy it.

Q. Will you tell the court, in your own way, what was the hitch about these people getting together? A. I wouldn't say it was this one time. It was a fourth, and then it down to thirds, and we couldn't come to any understanding or agreement, and one time it was a sixth, and then a corporation, and the next time something else.

Q. Mr. Kantrowitz, when the four were interested, as you have already testified, that was at the time when Feldman and Cacoliris appeared in the store? A. They appeared in the store on the day that I purchased.

Q. And from that time on you would have been content with a one-sixth interest instead of a one-fourth after that meeting on March 20th in my office, at which time the corporation was supposed to take effect? A. Up to that time there was no understanding. It was myself and Mr. Hart.

Q. No talk about Mr. Kuller and Mr. Weinberger? A. No.

Q. Then you joined forces with Feld and Cacoliris that day? A. No, I joined with no one, only Hart. He was the man that was then interested.

Q. Getting back to this check scene, of course you had no intention of paying anybody any money that afternoon? A. I didn't owe anybody any money. I came there for the purpose of consulting, at your solicitation.

Q. And when you came there to consult do you remember who was there? A. I don't know as I remember everybody.

Q. You know Mr. Hartstein? A. Yes, sure.

Q. He gave you an assignment that afternoon? A. He did not.

Q. You say he didn't execute an assignment? A. I did not.

Q. And do you deny that that is your signature (showing witness paper)? A. I certainly do.

Q. And you deny further, do you, that you had a telephone call from Mr. Hart while Mr. Hartstein was there? A. I did not.

Q. You deny the fact that Mr. Hart said "I won't sell that property; I won't take $500 for my one-sixth, and I can get more, and, you know, we are offered $20,000. A. I don't know what his conversation was, but he said that was brought by the Hartstein people.

Q. Do you know that? A. Yes.

Q. Did he 'phone you and say he would take $500 for his one-sixth? A. Yes, sir; he left that office and said "Tell Ruby that".

Q. Did he say he would accept $500 for my one-sixth interest? A. Yes.

Q. What did you say to him? A. I said to him, as you told me you wanted me to say, "It is too late Mr. Hart; I have already given you a check."

Q. Did you tell him that? A. No, no; that is what you told me to say.

Q. Did you tell him that? A. No, sir.

Q. What did you tell him? A. "I will come over and see you".

Q. Now, will you tell the court, in your own way, what Mr. Hart meant when he said to you, "I will take $500 for my one-sixth interest". A. Because he was entitled to a bigger interest than one-sixth.

Q. What did he mean when he said to you over the telephone "I will not take $500 for my one-sixth interest? A. I don't know.





Q. Have you any reason that you can tell me now why it was that Mr. Hart should have 'phoned you and said to you, "Don't take my check for $500 for my one-sixth interest and then 10 minutes after you left the office—

Mr. Vanderbilt: I object to that.

The Court: It is argumentative.

Mr. Weinberger: I withdraw the question.

Q. Mr. Kantrowitz, it is true, is it not that Hart did tell you "Don't take $500 for my one-sixth interest"; yes or no? A. "Don't take", he says.

Q. Yes or no. A. No; "don't take" he says.

Q. I just said that. Is it true that Hart 'phoned you after I left the office that evening? A. He 'phoned your office.

Q. And said "Don't take $500 for my one-sixth interest?" A. That might have been a part of what he said, but he said other things.

Q. Did he say that, do you remember? A. As a part of the sentence, I think he did. I think he said "I won't sell".

Q. Did you say anything to him when he said that? A. I says, "I will be over and see you".

Q. That is all you said? A. Yes.

Q. Did you say to him, "You haven't got a one-sixth interest in that property". A. I did not. Mr. Hart had a moral interest in that property until he declined to go on the note.

Q. Is it true that he agreed to accept $500 for his interest before he left? A. He did not.

Q. Did he say anything to you about taking his check for $500? A. He did not. He says, "Whatever Ruby does I do".

Q. Is it true that he 'phoned you after he left the office? A. Yes, he 'phoned your office.

*Reuben B. Kantrowitz—Recalled, Cross—for Deft.*

Q. Did he speak to you? A. I got him on the wire.

Q. Now, will you say that the conversation on that wire was not listened to by Mr. Hartstein? A. It was not.

Q. You were alone on the wire? A. Yes, sir, in your room, with you telling me what to say on one side and Hartstein on the other.

Q. Mr. Hartstein was there, too? A. He was still sitting in the corner of Joe Weinberger's room when the call came, and I was then standing up against the window.

Q. You never paid Mr. Hart the $500? A. No, he asked to be relieved of the whole transaction.

Q. You do not know that he has a claim against you? A. He has no claim against me.

Further cross-examination by Mr. McGinnis:

Q. Only a question, Mr. Kantrowitz: Where was it that you said to Mr. Weinberger, in reference to this Hart-Lobsenz matter, "Don't do that; you are doing wrong", or words to that effect? A. In his bank.

Q. And when was it? A. Oh, I don't know; I should think it was when the check was given and left in the bank. I couldn't ascertain that date.

Q. Did you see the paper that Mr. Weinberger left? A. He had a paper there and he grabbed it.

Q. What did he do with it? A. He wrinkled it up and threw it away.

Q. What kind of paper was it? A. No, I don't recall.

Q. Whether it was on the Service Trust Co. letterhead or a piece of legal paper? A. It was white paper.

Q. Did you read it? A. I don't remember reading it.



*Reuben B. Kantrowitz—Rec'l'd, Redirect--for Deft.*

Redirect-examination by Mr. Vanderbilt:

Q. Has Mr. Weinberger ever demanded from you the payment of any of these checks that were given out that evening? A. I made him a voluntary offer if he could show me that he paid out any money for my account.

Q. Did he ever demand payment of them from you up to date? A. No, sir.

By Mr. McGinnis:

Q. Mr. Kantrowitz, I show you an affidavit dated the 7th of July, 1925, purporting to be made by you (handing witness paper)— A. Yes.

Q. Sworn to before Joseph A. Feder, Master in Chancery of New Jersey; where was that affidavit sworn to? A. I don't remember.

Q. I call your attention to the fact that it was verified in the County of Essex; was it taken there or in Mr. Feder's office? A. I don't recall. I sign so many affidavits I would have to read the affidavit first.

Q. You signed only one affidavit in this case, did you? A. I don't know; I don't remember; I will have to read the affidavit and then I might be able to tell you where it was signed.

Q. I am simply trying to find out where that was signed, whether in Mr. Newman's office. A. I don't recall now whether I signed it in Mr. Newman's office or Mr. Feder's office.

Q. Was Mr. Feder in Mr. Newman's office? A. He has been in Mr. Newman's office several times, —Mr. Feder and I.

*Harry Weinberger—Recalled, Direct—for Deft.*

HARRY WEINBERGER, recalled on behalf of the defendants, testified as follows:

Direct-examination by Mr. Vanderbilt:

Q. Mr. Weinberger, I show you Exhibits D-13 and D-12, and ask you if that letter and envelope were sent to Mr. Kantrowitz? A. Yes.

Q. Was the letter dictated by you? A. It has my initials; I take it it was. I don't recall the letter myself.

Q. What do you mean in this letter by "I have in my possession a check for the sum of $10,000, received from Messrs. Endler, Lenz and Solomon, which you may have upon delivery of quit-claim deed to my clients?" A. That meant that Messrs. Endler, Lenz and Solomon were over to see Mr. McCarter, and Mr. McCarter recommended that a demand be made for a quit-claim deed from the parties in interest, in order that they could show that they tendered back the money because the wives refused to sign the contract, and, accordingly, the check which was presented was left with me for that purpose.

Q. The sum which Mr. Kantrowitz paid on the execution of the contract was $10,000? A. That is correct.

Q. Now, if Mr. Kantrowitz only had a five-sixth interest in this property why did you offer to give him back $10,000; why not in proportion to the interest he had? A. Because this alleged transfer by assignment from Kantrowitz to Mrs. Zucker was already a matter in litigation and he was denying that there was any interest in Mr. Feld. I thereupon wrote, "Upon delivery of quit-claim deeds to my clients"—or, I didn't specify to whom it should be.



*Harry Weinberger—Recalled, Direct—for Deft.*

Q. You were addressing Kantrowitz as if you were to have a quit-claim deed from him, were you not? A. He was the man who had transferred the contract.

Q. And at that time you were holding $1600 of Mr. Feld's money? A. Oh no; I was holding the money that had been paid by Mr. Feld. Mr. Feld was the man that requested me to get the deed from Mr. Kantrowitz.

Q. Did you send a similar letter to Mr. Feld? A. No.

Q. How did you come to offer $10,000 to Mr. Kantrowitz, when, according to your contention Mr. Kantrowitz had only a five-sixth interest, which would be five-sixths of $10,000, instead of $10,000? A. Read that letter and you will find that it is a quit-claim deed giving the property back to all the original grantors.

Q. Where does it say that, Mr. Weinberger? A. "Upon delivery of quit-claim deed to my clients".

Q. And whom were you going to give the $10,000 to? A. To the parties who received the deeds.

Q. It says, "Which you may have upon delivery"; did you mean Kantrowitz? A. If Kantrowitz offered me the deed he was to get the $10,000.

Q. I show you Exhibit D-11, Mr. Weinberger; this was one of the checks that was made out on what Mr. Kantrowitz was pleased to call the "grand-stand fight". Whose signature is on the back of that check? A. All except "D. Ritta Weinberger" is in my handwriting.

Q. Why did you endorse it "Samuel B. Feld, pay to D. Ritta Weinberger, Harry H. Weinberger?" A. When the checks were all made out in regard to the purchase and sale of the various interests, in order to show that I didn't get the check I endorsed

the check to Mrs. Weinberger as her allowance, I suppose, or as some money coming to her at the time. Mr. Feld never got this check and the check was never delivered to him. It was for the purpose of having a record of the transaction that the check went through that way.

Q. How is that a record of the transaction that Mr. Feld never got it? A. If you will notice the signatures on it you will see that it was signed by me in my handwriting.

Q. That isn't a record of anything excepting that you gave your wife the sum; it has nothing to do with this transaction; it is merely a part of the moneys you gave to Mrs. Weinberger. A. You will find that all these checks were made out that way. At the time we were trying to buy and sell interests, and when Mr. Feld's check was made out he refused to accept it and I endorsed the check immediately over and signed it in my own way as I do instead of destroying the check and making out another check.

Q. Have you the check that was made out to Harry Kuller at the same time? A. Yes.

Q. Is that here? A. I think it is, yes.

Q. I refer to Exhibit D-10 now; you didn't even sign that check? A. No, sir. His check was made out that evening and, as a matter of fact when I came to deliver the check I remembered that Mr. Kuller had pending with me at that time certain transactions in which he owed me money, and I think I instructed my accountant to give him credit, and as a matter of record the check was put back in the check-book as a part of that transaction.

Q. Have you got the check that was made out to Mr. Kantrowitz for $500? A. The check was made out to Mr. Kantrowitz was for $10,500. I think we



can find that check, too. I am not certain, but the check was made out at that time for $10,500, and as I have stated before, when the transaction was concluded the check was returned and the signature to that check later was torn off.

Q. You say the check was returned; returned to whom? A. Returned to me.

Q. But it doesn't appear among your cancelled checks in your book; do you know what became of it? A. It is my recollection we have that check.

Q. If you have it will you produce it? A. I want to tell you very frankly that these things have been shuffled around here; people have been asking for checks on one side or the other side, and I don't know whether I can find it or not; but I think it is among my records somewhere.

Q. Now, why was that check made out for $10,500 to Mr. Kantrowitz? A. Mr. Kantrowitz made an assignment of the contract and this was so that he could get back the $10,000.

Q. What was the $500 for? A. $500?

Q. Yes. This check is $10,500, as I understand it. A. I don't recall what that item was on that check at the moment.

Q. The amount is $10,500; what I want to know is, what was the $500 for, above the $10,000? A. Well, that represented the $500 profit that he was to get. Each man was getting $500.

Q. Was it your understanding that it was a selling out of his interest? A. Oh no, but until Mr. Kantrowitz got back his contract he received the entire amount that everybody was settling at the time I was paying out the money.

Q. Let's see: Then you were putting up the money for everybody, including Kantrowitz, that night? A. Correct.

*Harry Weinberger—Recalled, Direct—for Deft.*

Q. You were the paymaster, then, that evening for everybody? A. I wasn't the paymaster; I was merely carrying out the contract or agreement which was reached between those two men, that they were eventually to get that contract for the five-sixths and the one-sixth interest. That was all that I was doing, so far as I am concerned, and, as I have already testified, my negotiations in that transaction were all closed, the amount had been paid out as agreed upon, including myself, and I had no more interest in it.

The Court: When you say "those two men", you mean—

A. Kantrowitz and the complainant.

Mr. McGinnis: I think counsel is bound by all this testimony, inasmuch as he has made him his witness.

Mr. Vanderbilt: We reserved the right to cross-examine on all these items, but Mr. Weinberger wasn't offered when this letter was put in evidence.

The Court: Well, I am going to do this: I am going to enforce the rule that allows me a discretion to extend the cross-examination of a party as distinguished from an ordinary witness. I want to know all I can about this transaction, and just as I would not curtail or circumscribe the cross-examination of Kantrowitz by Mr. Weinberger, I am not going to circumscribe his cross-examination by Mr. Vanderbilt.

Q. Now, Mr. Weinberger, I can understand your theory of this thing except one point, and that isn't clear, and that is, who was to pay the $500 profit



*Harry Weinberger—Recalled, Direct—for Deft.*

of each of these men that night? A. The parties that remained in the final possession of the property were to bear the expense as part of the costs and profit.

Q. Now, let's see: Hart went out with $500? A. Yes.

Q. Cacoliris went out with $500? A. Yes. Of course, Hart never went out after this arrangement of Mr. Kantrowitz and Hart.

Q. Cacoliris went out? A. Correct.

Q. Feld went out? A. No, he stayed in.

Q. Kantrowitz went out? A. He went out.

The Court: What do you mean, out of the contract or out of the office?

Mr. Vanderbilt: Out of the contract. When they got paid their profit; the others that stayed in were to pay these men that went out.

The Court: I merely want the record to show.

Q. They couldn't get a profit and still be in the deal, too? A. I realize that that is the rule generally, but I find in practice it doesn't always work out that way.

Q. What was the understanding here, if they got paid their profit were they out or in? A. I just told you, Mr. Vanderbilt, that Mr. Kantrowitz and Mr. Feld agreed to take five-sixths and one-sixth interest in that property, and they remained the owners in that property until everybody was out, and it was after I paid out the profit to everybody that the assignment was made to me.

Q. If Mr. Kantrowitz got a profit why didn't Mr. Feld get one? A. Mr. Feld refused. That is what brought about this whole thing. Mr. Feld refused

to sell his one-sixth interest. He says, "I won't take $500; I have bought an interest in this property for my own purposes and I won't sell."

Q. When was this assignment made from Kantrowitz to you of the contract? A. We have been all over that; but the contract of assignment was made that afternoon.

Q. On the day that these checks bear date? A. Yes, the assignment was made that day from Kantrowitz to Harry H. Weinberger.

Q. And on the same day the assignment of a one-sixth interest from you to Sam Feld? A. No.

Q. When was that made? A. That was made after, when he brought the check over of $1666. and some cents.

Q. Made on the date of that check? A. Yes, that date or thereabouts; I don't remember the exact date. First, he paid the money, and then on that day Mr. Kantrowitz got his five-sixths contract from me, and Mr. Feld got his one-sixth assignment, and those two men were the owners of the property at that time, and at that time Mr. Kantrowitz owed me the difference getween the $1666. that I had received from Mr. Feld and $2,000, which I have never received to this day.

Examination by the Court:

Q. Do you remember why no certificate of acknowledgment was annexed to the assignment of Mr. Feld's? A. It was drawn in the bank and I said, "Now I have got the money I want to clean the thing up."

Q. It wouldn't have taken more than a minute to attach a certificate of acknowledgment; do you know why that wasn't done? A. It has never been my practice in these divisable assignments to do



that. I want to say to your Honor now, when I took this assignment to me, there was no acknowledgment on it at all. It was just a payment on contract in my possession. There was no assignment; there was no acknowledgment on that assignment of contract at all.

Q. No, but you there had the physical possession of the instrument that gave you the title. A. This is the first time in my 17 years experience that I have ever had an interest in property which was on an unrecorded assignment. I want to say right now that I had confidence in the people that I was dealing with and I couldn't conceive of any fraudulent practice such as has been done in other cases and as has been done in this case.

No cross-examination.

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BENJAMIN A. HARTSTEIN, sworn on behalf of the complainant, out of order, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Hartstein, I believe you are a member of the bar of New York? A. Yes, sir.

Q. You are acquainted with Mr. Weinberger who has just left the stand? A. Yes.

Q. And also Mr. Feld? A. Yes.

Q. Mr. Kantrowitz? A. Yes.

Q. Do you remember an occasion of being in the office of Mr. Harry Weinberger when there was an assignment of some kind drawn? A. I do.

Q. Who drew that assignment? A. I drew it. There was a yellow pad on the desk and I drew the assignment on that.

Q. From whom to whom? A. Well, I wouldn't say from whom to whom. I drew an assignment, and if you will let me tell my story of just what happened there I will give you the whole story.

The Court: Go ahead.

I happened to be in Weinberger's office that day on some personal business, and I was waiting in the outside office and I was told that Mr. Weinberger would be through in 10 minutes or 15 minutes, and I personally became impatient after waiting outside for about an hour. I heard some talk there; I didn't know who they were, and he says, "Harry, are you going to buy everything?" and he says, "By the way, come in here"; and about that time I saw Mr. Weinberger, Mr. Feld, Mr. Kantrowitz, Mr. Hart, a Greek—I think they referred to him as "a Greek", I don't know his name.

The Court: That is Cacoliris.

And then there was some dispute there about some piece of property to various interests to be defined. I think then they asked me to stay, and I told them I would see what I could do to iron out these various differences. I offered my services at that time, to see if I could be of any value to any of them. And what I gathered at that meeting—

Q. I prefer you would get right down to what you did. A. At that time there was some talk about a piece of property, a contract for which had been taken in the name of Kantrowitz, and Mr. Weinberger, and Mr. Kantrowitz and the other people had had some talk about buying out other peoples' interest, and, as a result of such conversation, Weinberger made out certain checks, and Mr. Hart was to get $500, Kantrowitz, $500, and the



rest of them their share. Then this young fellow, Feld, whom I then met for the first time in my life, insisted upon—the sum and substance of his words were, "I am going to see it through". He said he was not going to sell his interest at all; he wanted his interest. This Greek fellow took his $500 and walked out. Mr. Hart was in a hurry and he says "Kantrowitz, you bring my check" and he left. At that time I was drawing a paper on a yellow pad which I found lying on the desk, the sum and substance of which was to divest certain people of their interest. I couldn't say who the parties were to that agreement, because it is more than a year ago and I don't recollect, but my recollection is refreshed by this conversation. About 10 or 15 minutes after Mr. Hart had left the office he called up Kantrowitz, and he told me to listen on the wire. I listened on the wire in one of the other rooms and I heard Mr. Hart tell Mr. Kantrowitz —he says, "Now, I don't want that $500; I want to stay in there"; and Kantrowitz says, "Weinberger has etaken over our interests". He says, "If you won't do anything for me I won't accept the check of $500", and that concluded the conversation. I haven't any recollection as to who applied for this assignment, but this conversation which I have just disclosed refreshes my recollection to the extent that Kantrowitz executed some paper there, divesting his interest to somebody else, presumably to Weinberger. That is the sum and substance of what I recall happened that day in the office.

Cross-examination by Mr. Vanderbilt:

Q. You can't remember who the parties were to this memorandum that you drew up? A. I don't, Mr. Vanderbilt.

Q. And if you hadn't heard Mr. Weinberger's testimony here now you wouldn't have recalled this conversation that Kantrowitz and Hart had over the telephone? A. No. Mr. Weinberger didn't refresh my recollection until I had a conversation this morning and I had an independent talk with him, and then I told him the sum and substance.

Q. You can't recall from whom and to whom you delivered this paper? A. I can't recall, Mr. Vanderbilt, except that this conversation that I have just detailed that took place between Hart and Kantrowitz on the wire, where Kantrowitz says to Hart "I have already signed," led me to infer that Kantrowitz had already divested himself of any interest in that contract; in whose favor, I don't know and don't presume to tell.

Q. Did you see any people sign? A. I don't remember. I am under oath and I wouldn't say definitely. I didn't see Kantrowitz sign, but I remember Kantrowitz telling Hart "I have already signed". I didn't see that paper signed by Kantrowitz, and I have no recollection outside of the statement of Kantrowitz himself that he signed that paper.

Q. Did you hand him the paper after you had prepared it? A. I didn't hand it to anybody, because I was just there trying to adjust the various differences between the parties.

Q. They were all claiming a different interest? A. They all agreed that each had a one-sixth interest in that property.

Q. What was there for you to adjust then? A. Why, the question was, to find out how much that one-sixth interest was worth.

Q. Was that left to your determination? A. No, it wasn't; it was a conversation and I just, so to



speak, participated. I don't know that I was in anywise instrumental in effecting a settlement or fixing the price of $500.

Q. Did you read the assignment that you prepared to anybody? A. I don't remember that; I wouldn't testify to that. I don't remember. It is over a year ago.

Q. Then you can't say whether or not this was an assignment from some of these people who were paid $500 or not? A. I wouldn't say that.

Q. But it might? A. It may have been.

Q. Have you ever been in any previous transactions with Mr. Kantrowitz? A. I never was in any transactions with Mr. Kantrowitz.

Q. But you have, for a great many years, had business transactions with Mr. Weinberger? A. Yes, but I haven't any relations with Mr. Weinberger.

Q. I mean, you have been in a lot of transactions in the past and up to this time with Mr. Weinberger? A. Yes, that is true, but since that time I have severed all relations with New Jersey except what buildings we own in common.

Q. Why didn't you endorse the assignment on the original contract? A. I couldn't give any reason for that at all.

Q. That is a question of practice, isn't it?

A. I don't attach any significance at all to it. I don't remember why I didn't; I couldn't give any reason for that at all.

COMPLAINANT'S REBUTTAL.

ABRAM ENDLER, recalled on behalf of the complainant, in rebuttal, testified as follows:

Direct-examination by Mr. McGinnis:

Q. Mr. Endler, you testified here at the last hearing that Mr. Kantrowitz, on a certain occasion, came to you after the making of this contract and, in words and effect, asked you to take back your contract, and that you said, "I am glad I stuck you" or words to that effect; was there anything like that said to you? A. No, sir.

Q. Did he ever come to you and ask you to take back that contract? A. No, sir.

Q. The exact expression was that he came to you and asked you to take this contract back, and you said "I know you have a white elephant on your hands"; did he ever say anything like that? A. I don't remember his speaking to me in that way at all.

Case closed.



## Exhibit C-1.

THIS AGREEMENT, made the Nineteenth day of March, in the year of our Lord One Thousand Nine Hundred and twenty-five

BETWEEN Abram Endler and Sarah Endler, his wife; Nathan Lenz and Rose Lenz, his wife; and Joseph Salomon and Florence Salomon, his wife, of the City of Passaic, in the County of Passaic and State of New Jersey, party of the first part;

AND Rueben E. Kantrowitz, of the City of Passaic, in the County of Passaic and State of New Jersey, party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Two Hundred Six Thousand Five Hundred ($206,500.-00) Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they the said party of the first part, will well and sufficiently convey to the said party of the second part, their heirs and assigns, by Deed of Warranty, free of all encumbrances on or before the first day of July next ensuing the date hereof, ALL that certain lot, tract, or parcel, of land and premises, hereinafter particularly described situate, lying and being in the City of Passaic, in the County of Passaic and State of New Jersey

Being premises known and designated as Nos. 12-14-16 Lexington Avenue, and being the same premises conveyed to the parties of the first part by deed of warranty from William Greengrass and wife, and Samuel Steuer and wife; the deed conveying said premises to contain a description of

*Exhibit C-1.*

same by metes and bounds. Being the same premises as described as in Book N-29 page 426 etc., of deeds recorded in Register's office of Passaic City.

The said premises are also conveyed subject to the rights of the Ann Sipp Land Company or its successors to the wall in rear of said building; also subject to the restrictions regarding the sale of intoxicating liquors and against the erection of the front of any building on said premises, which shall at any point project further forward than the present established building line, measured by the existing fronts or display windows of the adjoining buildings along Lexington Avenue.

The above premises are conveyed together with a right of ingress and egress over a tract of land ten and two hundredths (10.02) feet in width and ten and two hundredths (10.02) feet in length, situate on the Northeast corner of said premises herein before described the title to which land is now held jointly by Harry Meyers and the Meyers Realty Corporation by deed dated September 25th, 1929 and recorded in the Passaic County Register's office in Book V-27 of deeds on page 239, et seq. and re-recorded in Book A-28 of Deeds on page 228, et seq.

AND the said Rueben E. Kantrowitz for himself his heirs, executors and administrators, doth covenant, promise and agree to and with the said parties of the first part, heirs, executors, administrators and assigns, that the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Two Hundred Six Thousand Five Hundred ($206,500.00) Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:



*Exhibit C-1.*

| | |
|---|---|
| On execution of this agreement for which this is also a receipt ..... | $10,000.00 |
| On delivery of deed, cash ..... | 76,500.00 |
| And subject to the first mortgage at present a lien on the premises, held by the Paterson Savings Institution, which expires February 27th, 1932, with interest at the rate of six per cent payable semi-annually, and which does not provide for installment payments ..... | 90,000.00 |
| and subject to the second mortgage at present a lien on the premises, held by William Greengrass and Samuel Steuer, which expires January 2, 1927, with interest at the rate of six percent payable semi-annually and which does not provide for installment payments ..... | 30,000.00 |
| | $206,500.00 |

It being understood that the time mentioned herein shall not be of the essence.

It being further understood and agreed that the parties of the first part shall have the use of the room which is presently occupied by the barber at the rental of $25 per month. The tenancy to commence when the barber vacates the said premises; but the right to such tenancy shall not extend beyond a period of one year from the date of the delivery of deed.

The parties of the first part herein represent that the tenants on the second floor and occuping the offices thereon, are the only tenants to whom heat is supplied.

*Exhibit C-1.*

The risk of loss or damage to the said premises by fire or otherwise until the delivery of the said deed is assumed by the party of the first part.

This Contract is entered into upon the knowledge of the parties as to the value of the land and whatever buildings are upon the same, and not on any representations made as to character or quality.

The premises are conveyed subject also to the following leases, and the terms and conditions therein mentioned:

Lease held by Tony Cacoliris, et al, dated Feb. 26, 1923, for store in premises known as #12 Lexington Aven. Passaic N. J. for the term of five years from March 1, 1923, at the yearly rental of $4200.00 for the first three years and $4800.00 for the remaining two years.

Lease held by Emil Hart dated May 9th, 1921, for store in premises known as #14 Lexington Avenue, for the term of ten years from March 1st, 1922, at the yearly rental of $3600.00 for the first five years and $4200.00 for the remaining five years.

Lease held by Isador L. Frankenstein dated October 9th, 1923, for store in premises known as #16 Lexington Avenue for the term of ten years from November 1st, 1923 at the yearly rental of $7200.00.

Lease held by the Passaic Textile Club bearing date January 5, 1924, covering rooms (two large hallrooms) in the premises known as #12-14-16 Lexington Ave., for the term of two years from April 1st, 1924, at the yearly rental of $1440.00.

Lease held by Samuel Heller and Julius Katz dated May 3, 1924 covering Rooms #2 and #9 in premises known as #12-14-16 Lexington Ave. for the term of one year from May 1st, 1924, at the



*Exhibit C-1.*

yearly rental of $480.00; said lease provides for renewal of one year from the date of its termination at the same rental together with another renewal of one year.

Monthly tenant holding Room #1 at the rate of $25.00 per month.

Lease held by Feld, Weiss & Feld, for the term of five years, covering Rooms #3, 4 and 5 at the yearly rental of $1200.00 which has been running for about one year with privilege of renewals for five years.

The parties of the first part agree to turn over to the party of the second part at the time of closing title any and all security on leases that they hold.

The said lands and premises are conveyed subject to all restrictions and reservations contained in former deeds.

It is expressly understood and agreed that the said lands and premises are conveyed subject to an agreement made between the parties of the first part and Dunkerley whereby the party of the first part agreed not to rent the store in the premises formerly occupied by the said Dunkerly for the sale of pianos and other musical instruments for a period of five years from October 8th, 1923.

The rents of said premises, insurance premiums, water rents, taxes, and interest on mortgages, if any shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

ABRAM ENDLER
NATHAN LENZ
JOSEPH SALOMON
RUEBEN B. KANTROWITZ

Witness:

EDWARD A. WEISS

*Exhibit C-1.*

AND IT IS FURTHER AGREED, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the first day of July next ensuing the date hereof, and from thence take the rents, issues and profits to him and their use.

AND IT IS FURTHER AGREED, by the parties hereto, that the said deed shall be delivered and received at office of Feld, Weise & Feld, 12 Lexington Avenue, Passaic, New Jersey, between the hours of Nine o'clock in the forenoon and six o'clock in the afternoon on the said first day of July next ensuing the date hereof.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

ABRAM ENDLER L.S.
NATHAN LENZ L.S.
JOSEPH SALOMON L.S.
RUEBEN B. KANTROWITZ L.S.

Signed, Sealed and Delivered in the presence of
EDWARD A. WEISS



*Exhibit C-1.*

State of New Jersey, } ss.:
County of Passaic, }

BE IT REMEMBERED, that on this nineteenth day of March, in the year of our Lord One Thousand Nine Hundred and twenty-five, before me, the subscriber, A Master in Chancery of New Jersey, personally appeared ABRAM ENDLER and ~~SARAH ENDLER~~, his wife; NATHAN LENZ ~~and ROSE LENZ~~, his wife; and JOSEPH SALOMON and ~~FLORENCE SALOMON~~, his wife, who, I am satisfied are the grantors mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said ~~SARAH ENDLER, ROSE LENZ and FLORENCE SALOMON,~~ wives as aforesaid, being by me privately examined, separate and apart from their said husbands, further acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, FREELY, without any fear, threats or compulsion of their said husbands.

SAMUEL B. FELD,
A Master in Chancery of New Jersey.

## Exhibit C-2.

Received of Samuel Feld the sum of $1666.67, representing 1/6 of the deposit paid on account of property of Abram Endler and Sarah Endler, his wife, Nathan Lenz and Rose Lenz, his wife, Joe Solomon and Florence Solomon, his wife, to Reuben E. Kantrowitz, it being understood and agreed that the said Sam. Feld is to have an undivided 1/6 interest in and to the said premises.

And I do hereby assign, set over and transfer unto the said Sam Feld a 1/6 interest in and to the said premises, subject, however, to the payment of 1/6 of the amount due under the terms and conditions of the said contract.

HARRY H. WEINBERGER.

In Witness Whereof, I have hereunto set my hand and seal this 3rd day of April, 1925.
Signed, sealed and delivered
in the presence of
Ruth H. Lentz



## Exhibit C-3.

SERVICE TRUST COMPANY
OF NEW JERSEY

No. 1043 Passaic, N. J. April 3rd 1925

Pay to the order of Harry H. Weinberger $1666.67
One Thousand Six Hundred Sixty-Six and 67/100
Dollars

SAMUEL B. FELD.

*Reverse Side.*
For Deposit
Harry H. Weinberger.

*Stamped on back*
PAID
4-6-25

## Exhibit D-1.

HARRY H. WEINBERGER

No. A573

Passaic, N. J. March 27, 1925

Pay to the order of T. Cacoliris $500.00

Five Hundred no/100 Dollars

Re 1/6 interest Premises #12-16 Lexington Ave.

To Service Trust Company of New Jersey,
55-136 Passaic, New Jersey.

HARRY H. WEINBERGER.

*Endorsed on back*:
T. Cacoliris
Antony Cacoliris

---

## Exhibit D-2.

HARRY H. WEINBERGER

No. A575

Passaic, N. J. March 27, 1925

Pay to the order of Daniel Feldman $500.00

Five Hundred no/100 Dollars

Re 1/6 Interest and Com. in full

HARRY H. WEINBERGER.

To Service Trust Company of New Jersey,
55-136 Passaic, New Jersey.

*Endorsed on back*:
In full for commission %
Lexington Avenue Property.
Daniel J. Feldman



## Exhibit D-3.

in re deposit 12-14-16 Lexington Av.

No. ..... Passaic, N. J. March 18th, 1925

Passaic National Bank and Trust Company

Pay to the order of
Nathan Lentz, Joseph Solomon, Abraham Endler

Ten thousand 00/100 Dollars

$10,000.00 REUBEN B. KANTROWITZ

CERTIFIED
Good When Properly Endorsed
PASSAIC NATIONAL BANK AND
TRUST COMPANY
M. H. Scheel.

*Endorsed on back*:
Nathan Lenz
Joe Solomon
A. Endler
Endler, Lenz & Salomon

---

## Exhibit D-8.

Copy of Bill of Complaint, printed with Pleadings.

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## Exhibit D-9.

Copy of Petition in language of Complaint, and Order to Show Cause, printed with Pleadings.

## Exhibit D-10.

HARRY H. WEINBERGER

No. A576

Passaic, N. J., March 27, 1925.

Pay to the order of Harry Kuller $500
Five Hundred Dollars

To Service Trust Company of New Jersey,
55-136 Passaic, New Jersey.

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## Exhibit D-11.

HARRY H. WEINBERGER

No. A578

Passaic, N. J. March 27, 1925

Pay to the order of Sam Feld $500.00
Five Hundred no/100 Dollars

HARRY H. WEINBERGER.

To Service Trust Company of New Jersey,
55-136 Passaic, New Jersey.

*Endorsed on back*:
Samuel Feld
Pay to Rita Weinberger
Harry H. Weinberger
Rita Weinberger



## Exhibit D-12.

WEINBERGER AND WEINBERGER

Counsellors at Law

Peoples Bank Building

Passaic, N. J.

---

Telephone 3370-3371-3372

August 21, 1925.

Reuben B. Kantrowitz, Esq.,
Lawyers Building,
Passaic, N. J.

*In re Zucker* vs. *Endler et als*

Dear Sir:

I have in my possession a check for the sum of $10,000.00 received from Messrs. Endler, Lenz and Salomon, which may have upon delivery of quit claim deed to my clients.

Very truly yours,

HARRY H. WEINBERGER.

HHW:LB

A

## Exhibit D-13.

(Face of envelope)

Law Offices of
Weinberger and Weinberger
Peoples Bank Building
Passaic, N. J.

REGISTERED

REUBEN B. KANTROWITZ, ESQ.
Aug 22 1925 Lawyers Building
*Registry return receipt required* Passaic, N. J.

6828 5648



## Memorandum of Opinion.

Filed July 28, 1927.

IN CHANCERY OF NEW JERSEY.

Between

SAMUEL B. FELD,
Complainant,

and

REUBEN B. KANTROWITZ, et al.,
Defendants.

Memorandum of Opinion On Bill &c. (Not for Print)

April 8, 1927.

WARD & MCGINNIS, by
PETER MCGINNIS, ESQ,
For the Complainant;

FEDER & RINZLER, Solicitors, by
JOSEPH A. FEDER, ESQ., of Counsel,
ARTHUR T. VANDERBILT, ESQ.,
Associate Counsel,
For Defendant Kantrowitz.

(This memorandum is not to be published in the Official or Non-official reports).

MEMORANDUM OF OPINION.

BENTLEY, *V-C.*:

On bill for an accounting.

The facts of this case, so far as the complainant's version is concerned, are sufficiently disclosed in the opinion deciding the preliminary motion in the same case, reported in 98 N. J. Eq., 167.

The defense by Kantrowitz (who will be referred

to as the defendant, although Mr. Harry H. Weinberger is also a defendant) is that there never was any joint adventure, but that he alone, and for himself only, purchased the office building. He says, that on the night of so much confusion in Mr. Weinberger's office he amusedly sat back and allowed him to deal with the contract of purchase in the manner to which the complainant and his witnesses described, but that Mr. Weinberger was a mere volunteer, in no manner representing the defendant, and without authority to bind him. It is not my intention to spend a great deal of time in the presentation of my views. Frankly, I do not believe what Kantrowitz says, even after a perusal of the very persuasively-written brief of his urbane and adroit counsel. In the first place, I do not recall that he was able to produce a single witness to corroborate his story as to the events of that night, and I cannot take his word against the complainant and some of the complainant's witnesses, for reasons that will presently be made apparent. It is true he called Mr. Newman for the purpose of proving that when challenged so to do, the complainant did not produce any evidence of his interest in the contract. But this was after the bill was filed and I can well understand the fear the complainant must have had of acquiescing in any request or command in the presence of Kantrowitz, when compliance therewith would apparently be according to the wishes of the latter. The resourcefulness of a man of the type of Kantrowitz is utterly beyond comprehension by the ordinary individual, and his rapidly-formed plans are immediately carried out with a boldness that challenges our astonished, even if grudging, admiration.

In the next place, all the internal evidence is



against the defense. That there was such a meeting as the complainant describes is admitted. It is not denied that it was attended by everyone who the complainant says had any interest in the contract. That an attempt was made to formulate the provisions of a certificate of incorporation is not only admitted but Mr. Jaffe so testified, and that he was the one that made the attempt, although it must be apparent to anyone that he is very friendly to the defendant. On his cross-examination, when called as a witness for the complainant, he finally admitted, under insistent cross-examination by friendly counsel, that eventually all arrangements were completed by the defendant and the vendors of the property, thus making it appear that the complainant was not considered at that time as having any interest in the land or the contract, although it is just as presumable that the defendant alone would treat with the owners since he was the only vendee mentioned therein.

Finally, there is the lack of liklihood of any truth in the defendant's story. There may be characters who would weakly allow another to deal with their property as if it was held in common. The defendant was *not* of this class. He should not attempt to pose as an innocent lamb at the mercy of complainant and his wolfish friends. He belongs to a class of men who have benefited greatly in the recent rising real estate market. Where money is concerned, he is as sharp as steel, shrewd as a fox, implacable and ruthless as an Indian. An instance of his character was revealed in an answer he made to a question of mine. He had described his negotiations with Feldman, a real estate broker or speculator, who had an exclusive option (or contract to sell the property) which was about to expire in a

short time. Previously, he negotiated with one of the co-owners, I think Lenz, and working upon the latter's friendly feeling, had persuaded him to use his influence with the other two tenants in common to sell him the building at an advance of $1500 over the price in Feldman's instrument. Lenz said, that with such a talking-point he thought he could arrange with the others to accept this additional $500 each, and execute a contract. Then, while his friend Lenz was trying to help him, Kantrowitz, behind his back, took Feldman in hand and tried to persuade him to assign his rights for the sum of $1,000., artfully playing up the fact that within a short time his rights would have expired. As an experiment, I ask the defendant why he bothered with Feldman when he had good reason to believe that he would secure the property through the intervention of his friend Lenz by direct dealing with the owners. Without the slightest hesitation he said what I had expected, namely, that if he closed with Feldman he could turn his back on his friend Lenz and his associates and save the $500 that otherwise would go to Lenz. I do not flatter myself that I would be capable of explaining why such conduct is not along the channels usually to be expected of men under these circumstances. But, to my mind, it is one of those straws that show the direction of the wind.

It would be intolerable to attempt to take up and discuss all the points set out in the respective briefs, but I might say, in answer to all that is attempted to be made of the din and confusion of the meeting of March 25th, that while the testimony of the complainant and his witnesses is not as lucid as it might be desired it clearly convinces me that what I have said above is true. I have already explained why I do not hold it very much against the complainant that he refused to disclose to Mr. Newman his muniment of title while the defendant was present.



There is a point, however, in the defendant's brief with which I am in accord, and that is, when he reproves complainant's counsel for their use of a quotation, at the very close of my opinion already mentioned. Mrs. Zucker was not the only co-defendant with Kantrowitz, and there was no prejudging of this phase of the case in my mind. I do not suppose that I had ever previously known that Kantrowitz was alive, and I had no way of coming to any conclusion, in view of his denials. His counsel has hit the nail on the head. I was speaking only of the averments in the bill, without taking into consideration the proof submitted at that time against the bill, and I do not think anyone would deny that the bill disclosed a situation which was outrageous, if true. But, of course, I was not passing upon the truth or falsity thereof with regard to the question now being discussed. As I recall the bill, it required an answer from Mr. Weinberger quite as much as from Kantrowitz. Use of this childish form of argument, if it can be so considered, should not be indulged in, even if it is hoped that it may have the slightest confusing effect upon the court's mind.

With regard to the damages, the usual painful divergence on the part of the so-called experts was present in a marked degree. It runs from $300,000 upon the part of Crowley down to $195,000 or less, as reflected in the testimony of Hughes; that he refused the property at $195,000. because he considered that "the top-notch price". I considered the experts to be about as unreliable as any to whom I have listened.

I momentarily overlooked the testimony of Slaff, who testified to a value of $180,000; and Richman, who got his testimony down to $156,000. In the case of Slaff, he did not know of a single sale in the neighborhood, in his cross-examination; but when he was examined on redirect counsel succeeded in having him testify to a sale or two by methods that were not proper on redirect examination.

I cannot accept at its face value the appraisal by Crowley who testified for the complainant. His evidence will be found to be pervaded throughout by the customary efforts of an expert witness to assist the party by whom he is called, in every possible way.

Disregarding all estimates of the value of the property in question, and considering the type of man Stein is who, with three others, paid over $227,000 for the property, plus the heavy expenses of a lawsuit to compel the vendors to sell, coupled with the very few figures that were given as the basis for the testimony of the various experts, I think that, at the time Kantrowitz assigned the contract, the property was worth $235,000. Inasmuch as the value of the property would have been $28,500. above the price actually paid for it, the complainant's one-sixth thereof would have amounted to $4,750, and that is the sum that will be fixed in the decree as his loss by reason of the unauthorized assignment of the contract by the defendant.

With reference to the sum of $1,666.67 contributed by the complainant, the proofs unfortunately are not clear as to the disposition of it by Mr. Weinberger. It is perfectly clear that this sum came into Mr. Weinberger's hands. I am also convinced that when Mr. Weinberger took over the contract he delivered to the defendant, his check for $10,500.,



representing the $10,000 deposit paid and, in addition, $500 in accordance with the plan that was temporarily adopted. I am so convinced, because of the testimony of Mr. Jaffe, when he was called on November 10th as a witness for the defendant. At that time he said that in April or May, 1925, he had seen one of Mr. Weinberger's checks for $10,500, with the signature torn off, and it is certain that this witness told the truth. The only possible explanation of what became of the proceeds of the complainant's check is, that it was partly exhausted by payments of $500 each to Cacoliris, Hart and Kuller. Hence, the $1500. so distributed inured to the benefit of the defendant, because it freed him of all claims upon the contract by the three members of the adventure who had thus sold out their rights. This, of course, would leave a balance of $166.67 due the complainant from Mr. Weinberger, because it must be apparent to everyone, and especially from Mr. Weinberger's own testimony, that he became disgusted with the bickering of his associates and determined to have nothing further to do with the venture or look for any part of any profit that might be derived from it. The payment of the last-mentioned sum of money by Mr. Weinberger to the complainant should, of course, be deducted from the figure representing the latter's loss, already fixed at $4,750. So that the exact sum which the defendant Kantrowitz will be decreed to pay the complainant is $4,593.33, upon which interest should be computed from the date upon which title was to have been taken according to the terms of the contract of March 19, 1925, because upon the occurrence of that event the profits in the form of rents would have commenced to accrue. In the case of the amount to be paid

*Memorandum of Opinion.*

by Mr. Weinberger, interest should be computed from the 3d day of April, 1925.

My mind is not changed by a reading of the authorities cited on behalf of Kantrowitz. In Partridge v. Cummings, 131 Atl., 683, Vice-Chancellor Leaming (not Vice-Chancellor Buchanan) dealt exclusively with the insufficiency of parol or oral contracts of joint adventure, because of the Statute of Frauds, as Vice-Chancellor Backes pointed out in Grant v. Steenland Constr. Co., 139 Atl., 850. In the latter case, the former was followed, and, in addition thereto, Grant was decreed to have no interest by reason of a resulting trust, because he had neither paid his share of the purchase price of the real estate nor bound himself to pay it. In the case at bar the complainant had paid his entire share so far as due, and the statute was sufficiently satisfied by the partial assignment executed by Mr. Weinberger when he was the assignee of the contract, of which fact the defendant had actual knowledge by information obtained through his own eyes and ears. Consequently, when the defendant received back the contract, he knew that there was in existence a writing signed by his predecessor which bound him with regard to the subject matter of the contract.

A decree will be advised according to the tenor of this opinion.



## Final Decree against Defendant.

Filed May 4, 1927.

IN CHANCERY OF NEW JERSEY.

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|---|---|
| Between<br>SAMUEL B. FELD,<br>Complainant,<br>and<br>REUBEN B. KANTROWITZ, HARRY H. WEINBERGER, ROSE ZUCKER, NATHAN LENZ, JOSEPH SOLOMON, and ABRAM ENDLER,<br>Defendants. | On Bill, &c.<br>Final Decree against Defendant, Reuben B. Kantrowitz |

This cause, coming on to be heard on final hearing, on bill, answer, replication and proofs, and in the presence of Peter J. McGinnis, of Ward & McGinnis, of counsel with complainant, and Arthur T. Vanderbilt, and Joseph Feder of Feder & Rinzler, of counsel with defendant, and upon considering the pleadings and proofs and the arguments of the counsel, from all of which it appears that on or about the 3rd day of April, 1925, the complainant was the owner of a one-sixth interest, and the defendant, Reuben B. Kantrowitz the owner of a five-sixths interest in and to a certain contract for the conveyance of lands, bearing date the 19th day of March, 1925, and particularly described in the bill of complaint, and that the said contract in form had been assigned in its entirety to the defendant, Reuben B. Kantrowitz, by the defendant, Harry H. Weinberger, then owner of said contract, and which contract had been delivered by the said

Harry H. Weinberger to the said Reuben B. Kantrowitz.

And it further appearing that the said Reuben B. Kantrowitz, without the knowledge or consent of the Complainant, Samuel B. Feld, and in disregard of his one-sixth interest therein, fraudulently assigned said contract in its entirety to the defendant, Rose Zucker, and it heretofore appearing to the court that the said Rose Zucker paid value for said contract, had no knowledge of the existence of the interest of the said Samuel B. Feld, complainant, in and to said contract, by reason whereof the court made an order dismissing said bill as to the said Rose Zucker, and in consequence thereto the said Rose Zucker acquired title to the lands, and the said cause as to the defendant, Reuben B. Kantrowitz having thereafter been heard, and it satisfactorily appearing to the court that the said complainant had contributed as his share in the capital or investment in said contract, the sum of one Thousand Six Hundred and Sixty-Six Dollars and Sixty-Seven cents ($1,666.67); and it further appearing that by reason of the conveyance or assignment to the said Rose Zucker, that this court was unable to give relief to the complainant by restraining the assignment of the one-sixth interest of the said Samuel B. Feld, by the said Reuben B. Kantrowitz, defendant, as prayed for in the bill of complaint, but that the said complainant is entitled to money compensation in lieu thereof;

It is thereupon, on this 4th day of May, 1927, on motion of counsel of complainant, ORDERED, ADJUDGED and DECREED, by the Chancellor of the State of New Jersey,

1. That the complainant is entitled as against the defendant, Reuben B. Kantrowitz, to a one-sixth interest in and to the value of said contract at the





time the same was assigned by the defendant, Reuben B. Kantrowitz, to the defendant, Rose Zucker, the value of which contract is the sum of Twenty-Eight Thousand Five Hundred Dollars ($28,500.), and a one-sixth thereof, viz. the sum of Four Thousand Seven Hundred and Fifty Dollars ($4,750.)

2. That the complainant having by previous order of this court been required to pay to the solicitor and counsel of the said Rose Zucker, certain counsel fees and costs in all amounting to Eight Hundred and Eighty Dollars ($880.); that the said Reuben B. Kantrowitz pay said sum with interest thereon, from the date of the payment to the solicitor and counsel of Rose Zucker, viz., the 24th day of June, 1926.

3. That the defendant, Reuben B. Kantrowitz, pay to the complainant, in addition, the sum of One Thousand Five Hundred Dollars ($1500.) being part of one-sixth of the capital investment in the enterprise mentioned in the bill of complaint, with interest thereon from the 3rd day of April, 1925.

4. That the defendant, Harry H. Weinberger, pay to the complainant, the sum of One Hundred Sixty-Six Dollars and Sixty-Six cents ($166.66), being the remainder of complainant's one-sixth contribution to the capital investment with interest thereon from the 3rd day of April, 1925.

5. That there be paid to Ward & McGinnis, Solicitors and Counsel of complainant, a counsel fee of Two Thousand Dollars ($2,000.) and costs to be taxed.

E. R. WALKER,
C.

Respectfully advised,
JOHN BENTLEY,
V. C.

## Notice of Appeal.

Filed May 14, 1927.

IN CHANCERY OF NEW JERSEY.

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| Between<br>SAMUEL B. FELD,<br>Complainant,<br>and<br>REUBEN B. KANTROWITZ, et als,<br>Defendants. | On Bill, etc.<br>Notice of<br>Appeal. |

Defendant Reuben B. Kantrowitz hereby appeals from the final decree made in the above entitled cause on May 4, 1927 and from the whole and every part thereof to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated, May 13, 1927.

FEDER & RINZLER,
Solicitors of Defendant
Reuben B. Kantrowitz.

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

ARTHUR T. VANDERBILT,
Of Counsel with Defendant
Reuben B. Kantrowitz.



## Amended Notice of Appeal.

Filed May 17, 1927.

IN CHANCERY OF NEW JERSEY.

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|---|---|
| Between<br>SAMUEL B. FELD,<br>Complainant,<br>and<br>REUBEN B. KANTROWITZ,<br>Defendant. | On Bill, Etc.<br>Amended<br>Notice of<br>Appeal. |

Defendant Reuben B. Katrowitz hereby appeals from the final decree made by the Chancellor on the advice of Vice Chancellor Bentley in the above entitled cause on May 4, 1927 and from the whole and every part thereof to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated, May 14, 1927.

FEDER & RINZLER,
Solicitors of Defendant
Reuben B. Kantrowitz.

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

ARTHUR T. VANDERBILT,
Of Counsel with Defendant
Reuben B. Kantrowitz.

## Petition of Appeal.

Filed as of time.

NEW JERSEY COURT OF ERRORS AND APPEALS.

| | |
|---|---|
| SAMUEL B. FELD, Complainant-Respondent. vs. REUBEN B. KANTROWITZ, Defendant-Appellant. | 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 Reuben B. Kantrowitz, the appellant in the above entitled cause, respectfully shows that:

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 on the 4th day of May, 1927, in a certain cause in said Court of Chancery wherein the said Samuel B. Feld was complainant and the said Reuben B. Kantrowitz and others were defendants, in this respect, to wit, that the said decree adjudges that the complainant is entitled as against the defendant, Reuben B. Kantrowitz, to a one-sixth interest in and to the value of said contract at the time the same was assigned by the defendant, Reuben B. Kantrowitz, to the defendant, Rose Zucker, the value of which contract is the sum of Twenty-Eight Thousand and Five Hundred Dollars ($28,500), and a one-sixth thereof, viz. the sum of Four



Thousand Seven Hundred and Fifty Dollars ($4,750).

That the said decree further adjudges that the complainant having by previous order of this court been required to pay to the solicitor and counsel of the said Rose Zucker, certain counsel fees and costs in all amounting to Eight Hundred and Eighty Dollars ($880), that the said Reuben B. Kantrowitz pay said sum with interest thereon, from the date of the payment to the solicitor and counsel of Rose Zucker, viz., the 24th day of June, 1926.

That the said decree further adjudges that the defendant, Reuben B. Kantrowitz, pay to the complainant, in addition, the sum of One Thousand Five Hundred Dollars, ($1,500), being part of one-sixth of the capital investment in the enterprise mentioned in the bill of complaint, with interest thereon from the 3rd day of April, 1925.

That the said decree further adjudges that the defendant, Harry H. Weinberger pay to the complainant the sum of One Hundred Sixty-Six Dollars and Sixty-six cents ($166.66), being the remainder of complainants one-sixth contribution to the capital investment with interest thereon from the 3rd day of April, 1925.

That the said decree further adjudges that there be paid to Ward & McGinnis, Solicitors and Counsel of complainant, a counsel fee of Two Thousand Dollars ($2,000) and costs to be taxed.

And petitioner appeals from the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in the following respects:

a. The court below erred in granting a decree against the defendant Reuben B. Kantrowitz.

b. The court below erred in finding that the com-

plainant was entitled to a one-sixth interest in and to the value of the contract at the time the same was assigned by the defendant Reuben B. Kantrowitz to the defendant Rose Zucker.

c. The court below erred in finding that the defendant Reuben B. Kantrowitz pay the complainant the sum of One Thousand Five Hundred Dollars ($1,500), being part of one-sixth of the capital investment in the enterprise with interest.

d. The court below erred in finding the complainant entitled to equitable relief for his acts of commission and omission contributed largely to the creation of the present controversy, and he has estopped himself by his conduct from asking relief from a court of conscience.

e. The court below erred in not finding that the complainant should seek his remedy in a court of law.

f. The court below erred in finding the measure of damages to be the difference between the sum contracted to be paid by the defendant, Reuben B. Kantrowitz, and the alleged value at the time it was assigned by said Reuben B. Kantrowitz to Rose Zucker, of $235,000.

g. The court below erred in finding that the defendant Reuben B. Kantrowitz was to pay the counsel fees and costs of defendant Rose Zucker with interest thereon from date of payment to the solicitor and counsel of said Rose Zucker.

h. The court below erred in finding the solicitors and counsel of complainant were to be paid a counsel fee and costs to be taxed.

i. The court below erred in not finding that the bill of the complainant was to be dismissed with costs.



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

FEDER & RINZLER,
Solicitors of Defendant
Reuben B. Kantrowitz.

ARTHUR T. VANDERBILT,
Of Counsel with Defendant
Reuben B. Kantrowitz.

**Answer.**

Filed

NEW JERSEY COURT OF ERRORS AND APPEALS.

| | |
|---|---|
| SAMUEL B. FELD, Complainant-Respondent. and REUBEN B. KANTROWITZ, Defendant-Appellant. | On Appeal from Court of Chancery. |

The answer of the above-named respondent to the petition of appeal of the above named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true for answer thereto, nevertheless, says and admits that a decree was on the 4th day of May, 1927, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and he prays that the same may be affirmed, with costs to be adjudged to this respondent.

WARD & McGINNIS,
Solicitors of Respondent.

PETER J. McGINNIS,
Of Counsel.

**New Jersey Court of Errors and Appeals**

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|---|---|
| SAMUEL B. FELD, Complainant-Respondent, *vs.* REUBEN B. KANTROWITZ, Defendant-Appellant. | On Bill, etc. |

## BRIEF OF DEFENDANT-APPELLANT REUBEN B. KANTROWITZ.

### Statement of the Case.

The opinion of the learned Vice-Chancellor begins with the statement that this case was brought "on bill for an accounting" (p. 341, l. 33), but a reference to the bill of complaint, which was filed June 26, 1925, and the order to show cause granted thereon (pp. 9 to 11) discloses that this suit was started originally by an application to enjoin certain defendants from transferring or accepting title to, certain premises, and to decree that the complainant had a one-sixth interest in said premises. Since we propose to challenge the jurisdiction of the Court of Chancery to make the decree appealed from, a detailed summary of the pleadings will be helpful.

### Summary of Pleadings.

The allegations of the complaint and the answers of defendant Kantrowitz and defendant Harry H. Weinberger (who, as will appear from

his answer and from the role which he played in this case, was really only a formal defendant introduced into the case to assist complainant) may be summarized as follows:

1. Complainant is a practicing attorney and counsellor-at-law of this state;

This is admitted by both answers.

2. On *March 25, 1925,* complainant, defendant Kantrowitz, and four others entered into an agreement (whether written or oral is not stated) authorizing defendant Kantrowitz to purchase the premises 12-14-16 Lexington Avenue, Passaic, New Jersey for $206,500., all six persons to have an equal one-sixth interest therein;

Kantrowitz's answer denies, Weinberger's answer admits this.

3. In pursuance with said agreement, defendant Kantrowitz purchased the premises, agreeing as part of the consideration to pay $500. to one Daniel J. Feldman as commission;

Kantrowitz's answer denies, Weinberger's answer admits this.

4. That defendant Kantrowitz entered into a contract of purchase with the owners of the property and advanced $10,000 as a deposit, each of the six persons agreeing to pay one-sixth thereof;

Weinberger's answer admits this, Kantrowitz's answer admits deposit was paid by Kantrowitz under the aforementioned contract but alleges that said contract was made in his own behalf exclusively.

5. That thereafter all the six persons agreed to assign their respective one-sixth interests in said contract to Harry H. Weinberger, who in pursuance with such an agreement received an assignment from said Reuben B. Kantrowitz of



said contract, and that Mr. Weinberger then paid $500. to Messrs. Cacoliris, Kuller, Kantrowitz and Hart in payment of their respective interests, and also $500 to one Feldman as commission;

Defendant Kantrowitz denies these allegations, but defendant Weinberger admits them.

6. That thereafter Kantrowitz re-acquired by assignment from Weinberger a five-sixths interest in said property for which said Kantrowitz agreed to pay $1500. advanced by Weinberger to the above named persons and also $500. for Weinberger's one-sixth interest in the premises; and that Weinberger assigned the remaining one-sixth to complainant (the date of said assignment is not stated) in consideration of $1666.67, "so that the said defendant Reuben B. Kantrowitz became indebted after receiving his assignment from Harry H. Weinberger in the sum of three hundred thirty-three dollars and thirty-three cents ($333.33)". (to whom Kantrowitz became indebted is not stated but inferentially complainant must have referred to Weinberger);

Defendant Kantrowitz denies these allegations, but defendant Weinberger admits them.

7. That as a result of said transfer defendant Kantrowitz became owner of a five-sixth interest and complainant Feld of a one-sixth interest in said property;

Answer of defendant Kantrowitz denies this, answer of defendant Weinberger admits.

8. Complainant was for some years, and is, a tenant in possession of part of the premises;

Kantrowitz's answer admits this, Weinberger's answer claims no knowledge or information sufficient to form a belief.

9. That thereafter defendant Kantrowitz fraudulently assigned the entire contract to Rose Zucker;

Kantrowitz's answer denies this, Weinberger's answer sets up no knowledge or information sufficient to form a belief.

10. That the defendant owners of the legal title had knowledge of complainant's interest;

Kantrowitz's answer denies that complainant had any interest; Weinberger's answer sets up no knowledge or information sufficient to form a belief.

11. That defendant Rose Zucker had knowledge of complainant's interest and that he was a tenant; *and that if she had no such knowledge,* she could have obtained it by reasonable inquiry.

Both answers set up no knowledge or information sufficient to form a belief, and Kantrowitz's answer denies complainant had any interest.

12. That defendant Kantrowitz had no authority to sell or dispose of the whole of the said premises (complainant obviously intended to refer to the contract);

Kantrowitz's answer denies this and sets up that he was the only person interested in said contract, whereas Weinberger's answer sets up no knowledge or information sufficient to form a belief.

The complaint contains the usual prayers and also seeks injunctive relief against Kantrowitz and four other defendants in order that complainant's alleged one-sixth interest might be preserved.

The answer of Defendant Rose Zucker denies the allegations of the bill, and sets up seven separate defenses (Supp. S. C., pp. 1-6).



## Disposition of Case Against Mrs. Zucker.

The preliminary phase of this case, involving Mrs. Zucker, the purchaser of the contract from defendant Kantrowitz, was brought before the learned Vice-Chancellor on bill, answer and affidavits. The Court below filed an opinion (reported in 98 N. J. Eq. 167) dissolving the restraint previously granted and refusing a preliminary injunction. The syllabus summarizes the reasons of the Court as follows:

> "1. As between an unrecorded instrument in favor of a tenant in an office building and a subsequent purchaser of the building without either knowledge or notice, for a valuable consideration, the mere fact of possession and occupancy of offices in the building does not put the subsequent purchaser on inquiry.
>
> "2. Where one of two innocent people must suffer as the result of the wrongful act of a third party, and one of such persons has his own carelessness to thank for the situation in which he finds himself while the other is blameless, the position of the latter is the stronger.
>
> "3. Where a contract of sale of real estate is made subject to a tenant's lease, that fact, in the absence of anything to the contrary, warrants the assumption by the purchaser that the lease was the extent of the tenant's interest in the real estate."

Complainant appealed to the Court of Errors and Appeals, and this Court affirmed the order of Vice-Chancellor Bentley, and the opinion of this Court (reported in 99 N. J. Eq. 847) is summarized as follows:—

> "1. It is the general rule in chancery that when the equity of the complainant is fully and explicitly denied by the answer and affidavits, a preliminary injunction is not proper.

> "2. A preliminary injunction should never be granted unless the act threatened to be done will inflict an irreparable injury on the complainant.
>
> "3. When a complainant has filed his bill asserting equitable rights in real estate, and has lodged the statutory notice of the pendency of the suit in the proper office, he is sufficiently protected against alienation of the subject-matter, as the decree will bind alienees as well as parties to the suit, and in such case an injunction against alienation, in the absence of special circumstances, is properly denied."

The final hearing on this phase of the case failed to sustain the allegation that Mrs. Zucker had actual or constructive notice of complainant's interest and resulted in a decree entered June 7, 1926, dismissing the bill (Supp. S. C., p. 13; opinion reported 99 N. J. Eq. 706).

This part of the litigation is important not only on the jurisdictional question but also because the costs and counsel fees incurred by complainant in connection therewith were ordered paid by the defendant Kantrowitz in the decree from which this appeal is taken (p. 351, par. 2, ll. 10-20).

**Final Hearing on Case Against Kantrowitz.**

After the bill had been dismissed as against Mrs. Zucker, the learned Vice-Chancellor continued with hearings on the allegations against Kantrowitz, although, as we contend, the jurisdictional requisites for a proceeding in equity were now entirely absent, and although it became apparent that since Mrs. Zucker was adjudged a bona fide purchaser, no relief except by way of money damages could be awarded complainant against Kantrowitz.

Defendant Weinberger's answer sets up a separate defense in which he disclaims any interest



in the property and states that defendant Kantrowitz is merely indebted to him in the sum of $333.33 (p. 14, l. 30-42).

Complainant's reply to this separate defense alleges that complainant has no knowledge or information with reference to the account of $333.33, despite the fact that it constituted an express allegation in paragraph 6 of the bill of complaint (p. 3, l. 38—p. 4, l. 5). The other paragraphs of the reply to Weinberger's answer, purporting to join issue, also indicate that there was no controversy whatever between complainant and defendant Weinberger.

Nevertheless, Mr. Weinberger participated in the hearings as if he were a real party in interest. After counsel for complainant examined his witnesses on direct, Mr. Weinberger cross-examined them, although it was apparent from the pleadings and from his separate defense disclaiming all interest in the property that he was in the case to corroborate and assist complainant. An objection to these tactics was overruled (S. C., p. 81, l. 33 to p. 82, l. 15). An even more vicious result followed when defendant's case was reached and defendant's witnesses were not only cross-examined by complainant's counsel but were also cross-examined by Mr. Weinberger *pro se,* although it is evident from all his cross-examination that he always attempted to bring out such points as were helpful to complainant, but which complainant's counsel had either neglected or been unable to obtain on his own cross-examination. The objection was properly raised but the learned Vice-Chancellor overruled it (p. 267, ll. 10-15).

> "Mr. Vanderbilt: 'I don't think they ought to have double cross-examination'
>
> "The Court: 'Mr. Weinberger is a party defendant. Senator McGinnis doesn't represent him.' "

The importance of the fact that complainant in reality had the benefit of double cross-examination lies in his failure, despite this double sifting, to establish a clear case. It is quite remarkable that even with Mr. Weinberger's assistance, a sharp conflict is presented by the testimony, with the consequence that complainant must be held to have failed to establish his burden of proof.

The facts which the respective parties sought to establish will be briefly summarized at this point, and the detailed analysis of the testimony will be made in the course of the argument.

The complainant's story in brief is that after he drew and attended to the execution of the contract from Endler and others to Kantrowitz in his office on the evening of March 19, 1925 (and in which, incidentally, he reserved an office leasehold for his law firm), he became a member of a proposed syndicate of six in process of organization by Mr. Harry H. Weinberger (who is related to him by marriage); and that Mr. Weinberger, Harry Kuller, Mr. Cacaloris, Mr. Emil Hart, and defendant Kantrowitz were with himself to become equal owners of the contract obtained by Mr. Kantrowitz. He says that at a meeting of the members of the proposed syndicate held in Mr. Weinberger's law office on March 27, 1925, disagreements arose as to who should be in the syndicate; that Mr. Weinberger offered to buy out the others, some of whom accepted; that Mr. Benjamin Hartstein, of the New York Bar (a business associate of Mr. Weinberger's in many enterprises and ventures) drew up in longhand on a sheet of yellow legal cap an assignment of the Endler contract from Mr. Kantrowitz to Mr. Weinberger; and that later Mr. Weinberger gave complainant an assignment of a one-sixth interest in the Endler contract for which he paid Mr. Weinberger $1,-



666.66; and that Kantrowitz knowingly disposed of the entire contract.

Defendant Kantrowitz denies unequivocally the alleged execution by him of the assignment of the Endler contract to Mr. Weinberger, and says that while there were diverse conversations and negotiations with respect to various individuals acquiring an interest in the Benson property both before he obtained the Endler contract and afterwards, no agreement was ever reached with any individuals as to their sharing the contract with him, and nobody either paid or agreed to pay him any part of the consideration which he obligated himself to pay to the Endler associates. He claims positively that he was the sole party in interest legally and equitably in the Endler contract.

Supplementing the stories of the respective parties are several facts which neither side disputes, and these may be summarized as follows:

1. That Kantrowitz obtained the contract for a purchase of the premises in question on March 19, 1925.

2. That the bill filed alleges in paragraph 2 that on March 25, 1925, complainant and five others agreed that defendant Kantrowitz should purchase the property in question. At the trial, Mr. Feld attempted to explain away this discrepancy by saying it was a stenographic error, but the bill has never been amended.

3. The assignment of the contract which Kantrowitz is alleged to have made on March 27, 1925, in favor of Weinberger, was not produced at the trial.

4. Complainant Feld did not record the assignment for a one-sixth interest which he claims to have obtained from Mr. Weinberger on April 3, 1925.

5. This assignment was not acknowledged.

6. The check for $1,666.67 which Mr. Feld claims to have given in payment for said assignment on April 3, 1925, contains an ambiguity in the perforation showing the date it cleared the bank.

7. Neither the original nor a copy of the paper by which Mr. Weinberger claims to have reassigned a five-sixth interest to Kantrowitz was introduced at the hearing.

8. After Kantrowitz had sold the contract to Mrs. Zucker and complainant Feld had advised her attorney, Mr. Jacob Newman, that he claimed a one-sixth interest therein, Mr. Newman and defendant Kantrowitz appeared at Mr. Feld's office but Feld refused to show them his one-sixth assignment although Kantrowitz offered to pay him $500. if he did produce it.

## Specification of Grounds of Appeal.

The appellant respectfully urges that the final decree of the Court of Chancery, advised by Vice-Chancellor Bentley, was erroneous in the following respects:—

1. The Court below erred in granting a decree against the defendant Reuben B. Kantrowitz.

2. The Court below erred in not finding that the complainant should seek his remedy in a court of law.

3. The Court below erred in finding that the complainant was entitled to a one-sixth interest in and to the value of the contract at the time the same was assigned by he defendant Reuben B. Kantrowitz to the defendant Rose Zucker.



4. The Court below erred in finding the complainant entitled to equitable relief, for his acts of commission and omission contributed largely to the creation of the present controversy, and he has estopped himself by his conduct from asking relief from a court of conscience.

5. The Court below erred in not finding that the bill of complaint was to be dismissed with costs.

6. The Court below erred in finding that the defendant Reuben B. Kantrowitz pay the complainant the sum of One Thousand Five Hundred Dollars ($1,500), being part of one-sixth of the capital investment in the enterprise with interest.

7. The Court below erred in finding the measure of damages to be the difference between the sum contracted to be paid by the defendant, Reuben B. Kantrowitz, and the alleged value at the time it was assigned by said Reuben B. Kantrowitz to Rose Zucker, of $235,000.

8. The Court below erred in finding that the defendant Reuben B. Kantrowitz was to pay the counsel fees and costs of defendant Rose Zucker with interest thereon from date of payment to the solicitor and counsel of said Rose Zucker.

9. The Court below erred in finding the solicitors and counsel of complainant were to be paid a counsel fee and costs to be taxed.

In support of these grounds of appeal, we will maintain the following propositions:

## POINT I.

**Complainant's bill was framed on the theory that Mrs. Zucker, the purchaser of the contract from defendant Kantrowitz, had actual or constructive notice of complainant's alleged interest in said contract, and prayed specific performance against Mrs. Zucker and the vendors. The Court of Chancery, on final hearing of the claim against Mrs. Zucker, found the allegations of the bill were not substantiated by complainant's proof, and dismissed the bill as against her. It then became apparent that as against defendant Kantrowitz only money damages could be awarded, and the Court of Chancery had no jurisdiction to determine complainant's claim against defendant Kantrowitz, who was entitled to his constitutional right of trial by jury.**

A.

There were two classes of defendants in this case: the first was composed of Mrs. Zucker, who took an assignment of the contract of purchase from defendant Kantrowitz, and in this class should also be included Kantrowitz's vendors, defendants Endler, Lenz and Solomon; the second class was composed of defendant Weinberger (complainant's assignor) and defendant Kantrowitz, who was alleged by the bill to have made an assignment of the contract to defendant Weinberger prior to the latter's one-sixth assignment to complainant.

The steps taken in this suit may be summarized as follows:

1. A restraining order was obtained against all defendants to preserve the *status quo* (Supp. S. C., p. 9).



2. The next step in the case was a hearing on bill, answer and affidavits, as to whether an interlocutory injunction should be granted on the allegations of the bill that Mrs. Zucker had either actual or constructive notice of complainant's one-sixth interest in the contract assigned to her by defendant Kantrowitz. The Court of Chancery refused to grant a preliminary injunction and dissolved the restraint (Supp. S. C., p. ; opinion recorded in 98 N. J. Eq. 167).

3. Complainant appealed to the Court of Errors and Appeals from the Order of the Court of Chancery, refusing preliminary injunction. This Court affirmed the Order of Vice-Chancellor Bentley (99 N. J. Eq. 847).

4. The claim against Mrs. Zucker then proceeded to final hearing on May 20, 1926 (S. C., p. 16, ll. 17 to 21). After the opening by Mr. McGinnis, representing complainant, Mr. Newman, in response to a question by the Court, stated that so far as his client was concerned, she had no knowledge of the efforts to form a syndicate, nor of the respective interests of complainant and defendants Weinberger and Kantrowitz in the contract which was assigned to her (S. C., p. 19, ll. 16 to 27). The Court took cognizance of the fact that Mr. Newman's entire defense on behalf of Mrs. Zucker was that she had no notice that complainant had any interest (S. C., p. 19, l. 27 to p. 20, l. 11).

Thereupon, the following colloquy ensued between counsel and the Court:

> "Mr. McGinnis: And one other question, and that is this: If by any chance your Honor finds against me, Kantrowitz is defendant here and I think your Honor having jurisdiction of one part that you will demand jurisdiction over everything and that we have money relief.

The Court: Who represents Mr. Kantrowitz?

Mr. Newman: Mr. Feder represents him.

Mr. McGinnis: We subpoenaed him to produce his contract.

The Court: Do you pray for such relief in your bill?

Mr. McGinnis: I think not; I think for general relief only.

The Court: Well, that is enough. Whether you pray for it or not, you do set forth the facts with which you charge Kantrowitz, and that being so, under the rules you would be entitled to any relief that is fair without praying for it. I think you had better, of course, cover, briefly but sufficiently, the negotiations &c. as against Mr. Kantrowitz, not as against Mrs. Zucker, that led up to the assignment. Of course, there will have to be some sworn proof on that, because Mr. Kantrowitz is not here to admit it.

Mr. Newman: I understand from Mr. Jaffe that Mr. Kantrowitz will be here in a minute'' (S. C., p. 20, l. 28 to p. 21, l. 17).

Pursuant to the Court's instructions, complainant began to introduce his evidence that he did in fact, acquire a one-sixth interest in the contract assigned to Mrs. Zucker. As the Court indicated, proof that complainant had some interest was necessary before any question of notice on the part of Mrs. Zucker of his interest could arise. In the hearing on the first day (May 20, 1926) complainant offered a Mr. Simon to testify concerning the value of the property in question on the date defendant Kantrowitz assigned the contract to Mrs. Zucker. Counsel for defendant Kantrowitz thereupon objected:

> ''Mr. Feder: May I say, so far as Mr. Simon is concerned, that he is a competent realtor in Passaic, and I am just wondering what relation this testimony has to this cause. Under the bill and the prayer of their bill,



> suppose that Mr. Simon said this property was worth $300,000; as a legal proposition what effect has that upon the nature of their suit?
>
> The Court: I assume this: Suppose I dismiss the bill, so far as Mrs. Zucker is concerned; the bill still alleges that the defendant Kantrowitz, knowing that there was an undivided one-sixth interest in that property in the complainant, and he assigns away his contract which embraces six-sixths, that takes the entire property. This bill contains a prayer for general relief. Under our rules now, whether there is a prayer for general relief or not, any relief can be given that can be supported by proper allegations of the bill. Now, the bill does make those allegations that I have referred to, and the complainant is going to assume that equity, having assumed jurisdiction, will do complete justice, and will not send this case to a jury for the purpose of assessing his monetary damages against the defendant Kantrowitz'' (S. C., p. 127, ll. 1-33).

Complainant's proof consumed the entire first day of the hearing, and further hearing was adjourned to May 27, 1926 (S. C., p. 131, ll. 9 to 10). The stenographic minutes of the next hearing open as follows (S. C., p. 131, ll. 12 to 19):

> ''Hearing of Thursday, May 27, 1926.
>
> At the last session the Court announced, after considerable argument, that the hearing today would be as to the bill so far as it asks for relief against Mrs. Rose Zucker, who purchased this property from the defendant Kantrowitz.''

Complainant's counsel opened this hearing as follows:

> ''Mr. McGinnis: I have here, sir, witnesses on the Zucker end of the case.
>
> The Court: Nothing was to be done as to the claim of Kantrowitz?
>
> Mr. McGinnis: No, sir'' (Supp. S. C., p. 15, ll. 15-19).

The testimony offered is found on pages 15 to 27 of the Supplemental State of Case.

After considering the testimony on complainant's claim against Mrs. Zucker, the Court, by order dated June 7, 1926, dismissed complainant's bill on the ground that he was "not entitled to the relief sought and prayed for by him in his bill of complaint as against the defendant, Rose Zucker" (Supp. S. C., p. 13). The Court filed a memorandum opinion on this phase of the case (Rep. in 99 N. J. Eq. 706). The last paragraph of this opinion reads as follows:

> "I will advise a decree, so far as defendant Rose Zucker is concerned, dismissing the bill and leaving the same so far as it prays for relief from other defendants, *in the exact status it occupied at the close of the first day's session of the final hearing.* (Italics ours.)

5. The fifth step in the case was reached on October 21, 1926, when a hearing was held on the claim against Kantrowitz (S. C., p. 131, ll. 30 to 32). At the completion of the case, the Court advised the decree from which this appeal is taken.

B

At this point let us analyze complainant's position. Assuming the allegations of his bill to be true, he showed a case in which defendant had fraudulently breached a contract concerning lands. *Prima facie,* such a case is one for equity's cognizance, and the remedy is specific performance or in the nature of specific performance. But at this point, his *prima facie* case collided with the fact that *before* starting suit complainant knew that defendant had sold the contract to Mrs. Zucker. Then complainant had no case for equity's cognizance *unless he could impeach the sale*—i. e., show that Mrs. Zucker had knowledge of his rights—thereby establishing equity's *power to act.*



Upon this point, Pomeroy says (1 Pomery Eq. Juris, Sec. 237):

> "The following rules have been established by American decisions: If through a failure of the vendor's title, or any other cause, a specific performance is really impossible, and the vendee is aware of the true condition of affairs before and at the time he brings his suit, the court, being of necessity obliged to refuse the remedy of specific performance, will not, in general, retain the suit and award compensatory damages, because, as has been said, THE COURT NEVER ACQUIRED JURISDICTION over the cause for any purpose: *Hatch* v. *Cobb,* 4 Johns. Ch. 559; *Kempshall* v. *Stone,* 5 Johns. Ch. 194; *Morss* v. *Elmendorf,* 11 Paige, 277; *Smith* v. *Kelley,* 56 Me. 64; *McQueen* v. *Chouteau,* 20 Mo. 222, 64 Am. Dec. 178; *Doan* v. *Mauzey,* 33 Ill. 227; *Gupton* v. *Gupton,* 47 Mo. 37; *Milkman* v. *Ordway,* 106 Mass. 232, 253; *Sternberger* v. *McGovern,* 56 N. Y. 12, 20.

This is the rule in New Jersey. In the case of *Logan* v. *Flattau,* 73 N. J. Eq. 222, the Court says:

> "* * * in the original cause the court was without jurisdiction to pass upon the subject-matter of the present action at law, for as soon as the bill of complaint was exhibited it appeared that prior to the filing thereof the complainant therein knew that specific performance was impossible, and the bill could not have been filed with an *honest expectation* that specific performance could be awarded. If, when the bill for specific performance was filed, complainant had no knowledge of the infirmity in the vendor's title, equity could give the complainant relief in the form of compensation *provided he had instituted the proceeding with an honest hope and expectation of obtaining a specific performance. Borden* v. *Curtis,* 48 N. J. Eq. (3 Dick.) 120. But when the bill was filed in the cause for specific performance *complainant knew that specific per-*

*formance was impossible, and that he could not present a case justifying a court of equity in making compensation for the partial breach of the contract to convey, and a condition was disclosed in which equity would not assume jurisdiction* * * *"

"* * * *Nor is there any force in the argument that, under the prayer for general relief, the court could have decreed the repayment of the money* paid when the contract was signed, because the party seeking such recovery has an adequate remedy at law. *Welsh* v. *Bayaud,* 21 N. J. Eq. (6 C. C. E. Gr.) 186."

This rule has been affirmed by the United States Supreme Court. In the case of *Kennedy* v. *Hazelton,* 128 U. S. 667, the Court says, per Chief Justice Gray:

"And if it appears, by the bill or otherwise, that the want of title (even if caused by the defendant's own act, as by his conveyance to a bona fide purchaser) *was known to the plaintiff at the time of beginning the suit,* the bill will not be retained for assessment of damages, but *must be* dismissed, and the plaintiff left to his remedy at law. *Columbine* v. *Chichester,* 2 Phill. 27; S. C. 1 Coop. Tem. Cottenham, 295; *Ferguson* v. *Wilson,* L. R. 2 Ch. 77; *Kempshall* v. *Stone,* 5 Johns. Ch. 193; *Morss* v. *Elmendorf,* 11 Paige, 277; *Milkman* v. *Ordway,* 106 Mass. 232, 256."

Chancellor Kent in the case of *Kempshall* v. *Stone,* 5 Johns. Ch. 193, considered the problem with his usual care and research, and concluded from an examination of the authorities that:

"The jurisdiction of the court on this point was discussed in the case of *Hatch* v. *Cobb* 4 Johns. Ch. 559) and it was considered that the court ought not except in very special cases, to sustain a bill merely for the assessment of damages. The more I have reflected



on the subject the more strongly do I incline to that opinion. When the defendant had disabled himself before the filing the bill, and the plaintiff knew of that fact before he commenced suit (and I consider such knowledge a material circumstance in the case) it is then reduced, to the case of a bill filed for the sole purpose of assessing damage for breach of contract which is a matter strictly of legal and not of equitable jurisdiction."

A case exactly in point is *Saur* v. *Ferris,* 145 Ill. 115. The bill was for specific performance. Defendant had appointed X and Y his agents to sell his land. X had contracted to sell to A, and Y to sell to complainant. Defendant conveyed to A and complainant brought this bill for specific performance alleging A had notice of his rights. At the trial it appeared that A was a *bona fide* purchaser and the bill was dismissed. Complainant appealed contending the bill should have been retained for the assessment of damages. The Court held:

"The rule is well settled that where the defendant's incapacity to perform the contract tho caused by his own act as by his conveyance to a bona fide purchaser is known to the complainant at the time of bringing suit the bill will not be retained for the assessment of damages, but will be dismissed leaving complainant to his legal remedy for their recovery. *Kennedy* v. *Hazelton,* 128 U. S. 667; *Doan* v. *Mauzy,* 33 Ill. 227; *Stickney* v. *Goudy,* 132 Ill. 213."

This was reaffirmed by the Illinois Court in the case of *Threlkeld* v. *Norris,* 300 Ill. 223, when the Court held:

"Where a vendor's incapacity to perform is known to the complainant, at the time of bringing suit for specific performance, the bill will not be retained for the assessment

> of damages, but will be dismissed, leaving complainant to his action at law. Doan King & Co. *v.* Mauzey, 33 Ill. 227; Sam *v.* Ferris, 145 Ill. 115, Kennedy *v.* Hazelton, 128 U. S. 667, 32 L. Ed. 576."

Complainant Feld therefore was faced with the necessity of overcoming this obstacle—the defendant's known inability to specifically perform—at the threshold of equity's jurisdiction.

At this point the question arises whether the elements of fraud alleged here make the case one for equity's cognizance irrespective of its inability in the premises to give specific performance or to decree any other strictly equitable relief. In other words, when fraud is charged should equity take jurisdiction over the cause to award damages?

Our cases leave no doubt upon the point. Unless some relief or redress peculiarly within the largesse of equity is sought, equity will not take jurisdiction of cases of fraud.

In *Krueger* v. *Armitage,* 58 N. J. Eq. 360, the Court said:

> "In support of the jurisdiction the settled rule is relied on that equity has jurisdiction concurrent with law in cases of fraud, and it is insisted that cases of false representations, inducing purchases or investments in stock, are included within the concurrent jurisdiction. But where, as here, the right relied on is a right recognizable at law and the remedy sought is purely pecuniary and legal, the jurisdiction in equity, even if it be concurrent with that of courts of law, will not be exercised where the remedy at law is adequate, certain and complete. The settled principles adopted by the American courts are stated in 2 Pom. Eq. Jur. p. 410, par. 914, &c. and the cases there collected * * *.
>
> "In the present case the bill was not filed for discovery in aid of a suit at law and



> prayed an answer without oath, and the whole case, therefore, so far as relates to the question of false representations and damages, is purely one for a trial by jury. In all of the cases in this state to which I have been referred by counsel, where the equitable jurisdiction in cases of fraud in the sale of personal property has been sustained, *the necessity of some equitable remedy or relief beyond the recovery of the money paid or damages has been disclosed.*"

In *Polhemus* v. *Holland Trust Co.,* 61 N. J. Eq. 655, the Court said:

> "As to the principal claim for relief made by the complainant, we agree with the Vice-Chancellor in holding that the defendant had no trust for the sale of bonds, and that mere recovery of damages, sustained through alleged fraudulent misrepresentation, cannot be effected in the court of chancery. The annulment of a contract induced by such misrepresentation may be decreed, but for the recovery of damages the exclusive remedy in this state lies with the law courts. We approve, on this subject, the doctrine declared by Vice-Chancellor Emery, in *Krueger* v. *Armitage,* 13 Dick. Ch. Rep. 357, followed in this case."

We see then that fraud is cognizable in equity *only when relief peculiarly within the power of equity is sought.* But one cannot make his cause of action for fraud one for equity's intervention by asking equitable relief that he knows defendant to be incapable of yielding. It would be a fraud upon the Court if he did so. Equity would dismiss such a bill for the same reasons that it dismisses a bill (like the present bill) brought for specific performance by one who knows defendant incapable of specifically performing.

Therefore, viewed from any angle, complainant must hurdle the obstacle his knowledge of defendant's inability to specifically perform places in the path of his bill.

The complainant in this case attempted to do it by *alleging* that Mrs. Zucker had notice of complainant's rights. Is the allegation alone, without proof, enough to confer jurisdiction upon the Court of Equity? Then indeed the separation of law and equity in New Jersey is a fiction. If complainant's bare allegations make his case one for equity, then any one having an action maintainable at law, but which he would prefer not to have presented to the consideration of a jury, could so frame his pleadings as to entitle him to go before the Court of Equity. Such a procedure would outrage common sense. Fortunately, the rule in this state, as well as in nearly every other state in the Union is, as stated in 10 R. C. L. Sec. 121:

> "Mere statements in a bill on which the chancery jurisdiction might be maintained, but which are not proved, will not suffice to authorize a decree on such parts of the bill as, if standing alone, would not give the court jurisdiction, but to justify the retention of a cause *not only must some special and substantial ground of equitable jurisdiction be alleged, but it must also be proved on the hearing. For instance, a bill for specific performance of a contract will not be retained for the assessment of damages where a case is not made for specific performance,* and no other special equity is shown which will support jurisdiction of the court. *So, in general when the jurisdiction fails, all the power of the court also fails, except to give judgment for costs.* Otherwise, as the courts have frequently pointed out, a litigant, by a pretended claim for equitable relief, might deprive his opponent of advantages incident to an action at law, as for instance, his constitutional right of trial by jury."



Many cases are cited in the note supporting this statement.

A careful note in 19 L. R. A. (N. S.) 1065, which summarizes the authorities to 1909, states:

> "Although a few cases are found which can be characterized only as variants from the general rule, the preponderance of opinion in relation to the subject under consideration clearly seems to be that *where a case for relief in equity fails, a court of equity is without jurisdiction to award other relief by way of disposing of the entire controversy;* unless, indeed, it appears that the remedy at law will be inadequate."

In 1 Pomeroy's Equity Jurisprudence, p. 372, Sec. 237, that learned author says:

> "The award of mere compensatory damages, which are almost always unliquidated, is a remedy peculiarly belonging to the province of the law courts, requiring the aid of a jury in their assessment, and inappropriate to the judicial position and functions of a chancellor. It may be stated, therefore, as a general proposition, that a court of equity declines the jurisdiction to grant mere compensatory damages, when they are not given in addition to or as an incident of some other *special equitable relief,* unless under special circumstances the exercise of such jurisdiction may be requisite to promote the ends of justice."

To this is appended a note stating that:

> "* * * a case will not be retained when no right to equitable relief is made out. If such a procedure could be tolerated, a party having an action maintainable at law, but which he would prefer not to have presented to the consideration of a jury, could quite frequently so frame his pleadings as to entitle him to go to trial before the court on its equity side, and then claim the right to have the court award

> the damages in violation of the constitutional guaranty of a right of trial by jury.'' *Green* v. *Stewart,* 45 N. Y. Supp. 982, 19 App. Div. 201. Thus, ''when an action at law is sought to be restrained by suit in equity and part of the grounds on which the bill rests are purely of equitable cognizance, and part, when considered separately, are strictly of legal cognizance, and the proofs do not establish the allegations which are of purely equitable cognizance, a court of equity has not jurisdiction to further restrain the action at law, and proceed to determine the legal rights of the parties.''

Several hundred cases applying this rule are cited in 21 Corpus Juris 142, Section 123, which says:

> *''But even where the bill states a case entitling the complainant to equitable relief, if the proof fails to establish the averments of the bill in that respect, the Court is without jurisdiction to proceed further and determine rights that are properly cognizable in a court of law.''*

This rule is followed by the courts of New Jersey, and rightly so.

In the case of *Welsh* v. *Bayaud,* 21 N. J. Eq. 186, Chancellor Zabriskie said

> ''The complainant having failed on his only ground for equitable relief, cannot have his suit retained for granting a relief to which he is only entitled at law.''

In the case of *Peeler* v. *Levy,* 26 Eq. 330, a bill was filed for specific performance by a complainant who knew specific performance to be impossible. The Court held

> ''A court of equity will not take jurisdiction of a naked claim for damages, even when it is made under the guise of a suit for specific performance. *Moiss* v. *Elmendorf,* 11 Paige 287; *Hatch* v. *Cobb,* 4 Johns. Ch. 559; *Kempshall* v. *Stone,* 5 Johns. Ch. 193.''



In the case of *Brown* v. *Edsall,* 9 Eq. 256, the Court says

> ''The Court of Chancery in this state has never adopted the principle that, because its jurisdiction has once rightfully attached, it will retain the cause, as a matter of right, for the purposes of complete relief.''

In the case of *Lodor* v. *McGovern,* 48 Eq. 275, a bill was brought to restrain defendant city from paying for faulty work. The Court of Errors and Appeals declared

> ''If the city in its answer in this case supported by its proofs, had shown that it intended to contest the contractor's right to these moneys, it appears to be indisputable that such SHOWING WOULD HAVE UTTERLY EXPLODED THE ENTIRE GROUND of equitable jurisdiction. In the face of such a demonstration the complainant would have been stripped of every vestige of rightful status in a court of equity. . . .''

In the case of *Red Jacket Tribe* v. *Hoff,* 32 Eq. 441, a bill was filed for two purposes; to supply a defect in a bond for want of seals, and to obtain a decree for the amount due on the bond. The Court held:

> ''Though the subject-matter of this bill, the rectification of the bond and the assessment of the damages thereon, are connected together, yet the latter relief is one which the court, in the ordinary exercise of its authority, *cannot* properly grant. The proper forum for such relief is a court of law. Berry *v.* Van Winkle, 1 Gr. Ch. 269; Iszard *v.* May's Landing Co., 4 Stew. Eq. 511; Palys *v.* Jewett, 5 Stew. Eq. 302.''

The Court of Errors and Appeals in the case of *Shaw* v. *Beaumont Co.,* 88 Eq. 333 (1917), had before it a case in which the fundamental question was one of equitable jurisdiction. The Court carefully reviewed the authorities, saying:

> "The rule to be applied was succinctly stated by Vice-Chancellor Reed, in the case of Stout *v.* Phoenix Assurance Co. of London, 65 N. J. Eq. 573, in these words: 'A court of equity in this state can deal with legal questions only, as far as their decision is incidental or essential to the determination of some equitable question. Merely because a court of equity has acquired jurisdiction for one purpose, it is not empowered to retain the case for complete relief.' Chief Justice Beasley, speaking for this court said: 'It is not true, by any means, that when a court of conscience has acquired cognizance for one purpose, it thereby acquired cognizance over the entire controversy for all purposes.' Lodor *v.* McGovern, 48 N. J. Eq. 379."

In the case of *Palys* v. *Jewett,* 32 Eq. 302, the Court of Errors and Appeals had before it a case in which the parties below consented to equity's proceeding in the case. Nevertheless, the Court in a nineteen-page opinion concluded:

> "The general rule undoubtedly is, that damages, as such, will not be ascertained in equity. Chief Baron Gilbert, in his *Forum Romanum,* thus expresses this inability—his words are: 'And it is a general rule that whenever the matter of the bill is merely damages, there the remedy is at law, *because the damages cannot be ascertained by the conscience of the chancellor.*' This is the language of the decisions, both ancient and modern."

and held that only because the suit was against a receiver appointed by the Court, was there a scintilla of jurisdiction. The Court strongly indicates that had this scintilla of jurisdiction not been present, the case would have been reversed.



The United States Supreme Court recognizes and follows this rule. In the case of *Mitchell* v. *Dowell,* 105 U. S. 430, 26 L. Ed. 1142, a mortgage secured by notes was sought to be foreclosed. At the hearing it transpired that the mortgagor had no title. The Circuit Court rendered a money decree on the notes. An appeal was taken from this decree. The Court held:

> "When this fact (that the mortgagor had no title) was established by the evidence and found by the court below, its jurisdiction, sitting as a court of equity, to proceed any further in the case was lost, and it was without authority to render a decree upon the notes which the invalid mortgage was intended to secure.
>
> When the court found there was no mortgage, there was nothing left for it to act upon but the promissory notes, and on that cause of action there was a plain, adequate and complete remedy at law, and it should have dismissed the bill without prejudice to an action at law.
>
> The rule is, that where a cause of action cognizable at law is entertained in equity on the ground of some equitable relief, sought by the bill, *which it turns out cannot, for defect of proof or other reason, be granted, the court is without jurisdiction to proceed further, and should dismiss the bill and remit the cause to a court of law.* Russell *v.* Clark, 7 Cranch 69; Price's Pat. Candle Co. *v.* Bauwen's pat. Candle Co., 4 Kay & J. 727; Baily *v.* Taylor, 1 Russ & M. 75; French *v.* Howard, 3 Bibb. 303; Robinson *v.* Gilbreth, 4 Bibb. 184; Nourse *v.* Gregory, 3 Litt. (Ky.) 378."

In the case of *Kramer* v. *Isaac Cohn and Mark S. Cohn,* 119 U. S. 355, 30 L. Ed. 439, a bill in equity was filed by the assignee in bankruptcy of Isaac Cohn, against him and Mark S. Cohn, al-

leging that Isaac Cohn, with intent to defraud his creditors, concealed his property and sold it for a large sum of money, and invested that money in a stock of goods, with which he carried on business in the name of the other defendant. The bill prayed for a decree vesting in plaintiff the title to the stock. The defendants denied the allegations and alleged that the business was carried on by Isaac Cohn as clerk of the other defendant, and was wholly owned by the latter.

At the hearing upon the pleadings and proofs, the Court was of opinion that the plaintiff was entitled to recover against Isaac Cohn for money and assets fraudulently withheld by him from his assignee in bankruptcy, the sum of $6,500, but that the plaintiff *had failed to connect the other defendant* with the fraudulent withholding of assets; and therefore entered a decree against Isaac Cohn for that sum and costs, but as to the other defendant, dismissed the bill with costs. Upon petition for rehearing, the Court below held it had no jurisdiction at all in the case and dismissed the bill. Plaintiff appealed. The Supreme Court held:

> "So far as the plaintiff's claim was against Isaac Cohn personally, an action at law to recover the value of the property fraudulently concealed and sold by him would afford a full, adequate and complete remedy. The only pretense for resorting to equity was the allegation that the proceeds in that property had been invested in the stock in goods of a business carried on by him in the name of the other defendant, whereby it was sought to affect the latter and the goods with a trust in favor of the creditors of Isaac, and of the plaintiff as representing them. But the proof wholly failed to support that allegation, and showed that the plaintiff had no right of action, except to recover pecuniary damages against Isaac alone. It thus appeared that the plaintiff never had any claim within the cognizance of a court of equity; and the bill was rightly dismissed generally as to the second defendant, and without prejudice to an action at law against the first defendant. Dowell *v.* Mitchell, 105 U. S. 430 (Bk. 26, L. ed. 1142), Buzard *v.* Houston, U. S. 347 (post, 451), just decided."



To the same effect are the cases of *Buzard* v. *Houston,* 119 U. S. 347, 30 L. ed. 451; *Clark* v. *Wooster,* 119 U. S. 322, 30 L. ed. 392; *Lewis* v. *Cocks,* 23 Wall. 466, 23 L. ed. 70; *Russell* v. *Clark,* 7 Cranch 69, 3 L. ed. 271.

The Federal Courts naturally have followed the rulings of the U. S. Supreme Court. The cases are so numerous and the holdings in them so uniformly support the rule stated, it would be redundancy to cite them.

The Illinois courts, whose equity decisions are respected, have closely adhered to this rule. In *Brauer* v. *Laughlin,* 235 Ill. 265, it was held that "where a bill for a specific performance of an alleged contract on its face made a case authorizing a court of equity to take jurisdiction, but the proof simply disclosed a legal demand, equity could not retain jurisdiction to decree a repayment of the money". The Court said:

> "The recovery here allowed, is upon a purely legal demand, and if an action had been brought at law, either of the parties would have been entitled to a trial by jury. The courts will not permit parties to sue in chancery, and upon failure to establish any basis for equitable relief have the bill retained for the purposes of a recovery upon a purely legal demand. Allowing this to be done would be to deprive defendant of his constitutional right to trial by jury."

In *Toledo, St. Louis & Mo. R. Co.* v. *St. Louis & Ohio River Railroad Co.,* 208 Ill., 623, the Court held:

> "Mere statements in a bill upon which the chancery jurisdiction might be maintained, but which are not proved, will not authorize a decree upon such parts of the bill as if standing alone would not give the court jurisdiction."

The rule is applied also in *Flemming* v. *Reheis,* 275 Ill. 132; *Patterson* v. *Patterson,* 251 Ill. 153; *Linnertz* v. *Doway,* 246 Ill. 485.

It is startling to find that even the code states follow the rule. In *D'Aversa* v. *Guido,* 210 N. Y. S. 621, it was held:

> "The established rule, apparently invoked by the learned Special Term that when equity has obtained jurisdiction of the parties and the subject matter of the action it may adopt the relief of the exigencies of the case, even to the extent of rendering a personal judgment, has no application where it appears as it does in the case at bar, that there never was any ground for equitable relief. Dudley *v.* Congregation, 138 N. Y., 451."

It would be mere supererogation to cite at length cases from all of the American states that follow the rule. It is sufficient merely to indicate one case in each of the states not heretofore mentioned:

(*Little Rock R. Co.* v. *Perry,* 37 Ark. 164);
(*Printup* v. *Mitchell,* 17 Ga. 558);
(*Boonville Natl. Bank* v. *Blakey,* 166 Ind. 427);
(*Fisher* v. *Trumbauer,* 160 Ia. 255);
(*Sharon* v. *Fee,* 203 Mich. 152);
(*Schook* v. *Zimmerman,* 188 Mich. 617);



(*Mansfield* v. *Monett Bank,* 74 Mo. App. 200);
(*Cartwright* v. *Oregon Electric Railway Co.,* 88 Ore. 596);
(*Kerlin* v. *Knipp,* 207 Pa. 649);
(*Ross Tin Mine* v. *Cherokee Tin Mine,* 103 S. C. 243);
(*Union Planters Bank* v. *Memphis Hotel Co.,* 124 Tenn. 649);
(*Deerfield Lumber Co.* v. *Lyman,* 89 Vt. 201);
(*Boston Blower Co.* v. *Carmen Lumber Co.,* 94 Va. 94);
(*Hildebrante* v. *Savage,* 4 Wash. 524).

It is our contention that when the Court, on July 7, 1926, advised a decree dismissing the bill against Mrs. Zucker, this in effect removed the very basis upon which complainant had brought the case within equitable jurisdiction. It is apparent from an examination of the bill of complaint, that only the allegations of paragraphs 10 and 11 (S. C., p. 4, l. 35 to p. 5, l. 15), charging Mrs. Zucker and defendant Kantrowitz's vendors with knowledge of complainant's rights, created a case of which a Court of Equity could take cognizance. By this decree of June 7, 1926, the Court found that these allegations were not true, or at least, that the complainant had failed to sustain them.

The lower Court proceeded to hear the case against defendant Kantrowitz on the theory that, once having acquired jurisdiction, it could retain jurisdiction despite its order of June 7, 1926, which in effect decided that the complainant had not made out a case which permitted the Court to exercise equitable jurisdiction *at all.* In other words, the Court decided that, while the bill was *framed* on the theory of a right to specific relief

as against Mrs. Zucker and the vendors, and was thus brought within equitable cognizance, when the proofs did not warrant the exercise of equitable power, the Court could award money damages. It is respectfully submitted that this conclusion was erroneous.

## POINT II.

**Complainant-appellee has failed to establish that defendant Kantrowitz made an assignment in writing to Weinberger (under whom complainant claims), as required by the Statute of Frauds.**

Considerable testimony was introduced by complainant in an effort to prove that certain conversations had been held between the complainant, defendant Kantrowitz and others concerning the purchase of the property in question. It is undisputed, however, that the contract which Kantrowitz obtained from Endler and his associates mentioned only Kantrowitz as the purchaser, nor is it disputed that Kantrowitz alone paid the $10,000. deposit called for by the terms of the contract. No other person contributed any portion of this deposit, nor did anyone bind himself to pay any portion thereof to Kantrowitz or any part of the balance of the purchase price (p. 238, l. 30 to p. 239, l. 10).

It is apparent, therefore, that no interest in the contract to purchase resulted in favor of any person by operation of law. The nature of the obligation which must be assumed to support a claim of resulting trust was recently considered in *Grant* vs. *Steenland Construction Company* (Vice-Chancellor Backes, 99 N. J. Eq. 82) affirmed by the Court of Errors and Appeals in 5 N. J. A. R. 365, on the opinion of Vice-Chancellor



Backes. In his decision, the Vice-Chancellor said in part (p. 735):

> "The complainant's case cannot be sustained upon the theory of a resulting trust. In order that a trust result in his favor, it must appear that at the time of purchase he paid his share of the purchase price, or bound himself by an absolute obligation to pay it. 2 Pom. Eq. Jur. Par. 1037; Krauth *v.* Thiele, 18 A. 351, 45 N. J. Eq. 47; Down *v.* Down, 82 A. 332, 80 N. J. Eq. 68; Phillips *v.* Phillips, 86 A. 949, 81 N. J. Eq. 459, affirmed 91 A. 1070, 83 N. J. Eq. 345."

Vice-Chancellor Backes, in disposing of the joint venture theory advanced in the Grant case, indicated the effect of the Statute of Frauds in language especially applicable to the case at bar. He said (pp. 736-37):

> "The action cannot be maintained upon the ground of a joint venture in the sale of real estate. The contract was not in writing. The point is decisively settled, so far as this court is concerned, by Vice-Chancellor Leaming in the recent case of Partridge *v.* Cummings, 131 A. 663, in which he held that a parol contract of joint venture for speculation in real estate, in which one party engages to acquire in his own name a contract of purchase of certain land and to hold the contract of purchase and to cause operations under it in equal interest with the other party who advanced no money, was one that concerned an interest in land and to be within the fifth section of our statute of frauds, which provides that no action shall be brought upon a contract concerning an interest in land, unless the contract shall be in writing signed by the party to be changed; and he further held that equitable as well as legal interests in land were embraced within the statute. The Vice-Chancellor referred to the conflict of opinion as disclosed in the note in 18 A. L. R. 484, and

adopted as sound in principle the doctrine of Justice Story in Smith *v.* Burham, Fed. Cas. No. 13019, 3 Sumn 435, which was followed in substance by Vice Chancellor Pitney in Schultz *v.* Waldons, 47 A. 187, 60 N. J. Eq. 71.''

But it may be argued by complainant that the alleged conversations between Kantrowitz and various persons before his purchase of the property, as well as the meetings after Kantrowitz obtained the contract to purchase, called by Mr. Weinberger in an effort to organize a syndicate, are evidential on whether or not Kantrowitz did in fact on March 27, 1925 execute an assignment of his rights in the contract to Mr. Weinberger. It is undisputed that prior to February, 1925 when Mr. Kantrowitz took a trip to Cuba, he had started negotiations in his own name for the purchase of the Benson property (S. C., p. 230, ll. 32-40). On the way back from Havana, Kantrowitz discussed the proposed purchase with Mr. Hart, Mr. Weinberger, and Mr. Kuller, who were also on the boat (S. C., p. 230, ll. 15-32; p. 231, ll. 5-18).

On his return from Havana, Mr. Kantrowitz took up with Mr. Endler the purchase of the property, and had practically come to an agreement with Mr. Endler between March 5 and March 18, Mr. Endler at that time agreeing to discuss the price with his partners, Mr. Salomon and Mr. Lentz (S. C., p. 231, ll. 15-35). On the afternoon of March 19, Kantrowitz learned from Mr. Hart, who occupied one of the stores on the first floor of the Benson building, that Mr. Endler and his associates were upstairs in the office of the complainant Feld, closing a contract with the Larkeys, who conducted a clothing store adjoining the Benson building. Kantrowitz then telephoned Mr. Endler to come down to Mr. Hart's store to find out why he was not going through with his contract with Mr. Kantrowitz. Mr. Endler then explained that whereas Mr. Kantrowitz had agreed to pay $200,000, he was getting $205,000 from the Larkeys. Mr. Kantrowitz then agreed to pay Mr. Endler $206,500 for the property (S. C., p. 231, l. 39, to p. 232, l. 32).



It is not contended by complainant that any agreement was made up to this point whereby Kantrowitz was to purchase the property for any group of men.

But complainant does contend that on the night of March 19, 1925, Kantrowitz arrived at an agreement whereby complainant was to obtain a 1/6 interest in the contract. This is denied by defendant and in such a state of affairs it is preferable to take the word of an impartial witness. Mr. Jaffe, a counsellor-at-law of this state, acted as Mr. Kantrowitz's legal adviser the night the contract was drawn. At the same time he was employed by a company of which Mr. Weinberger was the president. Under cross-examination by Mr. Weinberger he said, with respect to one question:

> ''I am friendly to both sides of this case and I would rather not answer'' (S. C., p. 54, ll. 8-9).

The Court said of Mr. Jaffe:

> ''The Court: He has been a most refreshing witness to listen to. He has been absolutely honest, and his own statement was that he was friendly to both sides'' (S. C., p. 59, ll. 25-30).

Mr. Jaffe's story of the facts which transpired on the night of March 19, in Mr. Feld's office is that when he and Kantrowitz arrived they were told that the Larkeys were up in complainant's office to effect a purchase of the property in question.

"Q. Told by whom? A. Told by either Mr. Feld or Mr. Lenz who came out with Mr. Feld. And Mr. Kantrowitz said to me, then, "What should I pay?" and I said to him that the purchase price was so large that he should try to offer an increase of $1,500 beyond that, that is, the $205,000, and that was done; and Mr. Endler then said he would accept it—that he would accept $206,500. for the property, and the contract was prepared, and I think that Mr. Feld did some of the typing and I did some of the typing" (S. C., p. 56, ll. 1-15).

Asked as to who carried on the negotiations, he testified that he heard no agreement that night whereby Feld was to acquire any interest in the property and that:

"Q. I mean as far as they could agree on these terms, it narrowed down between Kantrowitz and the sellers? A. Kantrowitz was acting in full capacity without consulting anybody else, only consulting me as to the legal effect of it" (p. 57, ll. 11-16).

Mr. Daniel J. Feldman, a witness for complainant, who occupies offices with complainant and who was present at the signing of the contract testified:

"Q. And the fact is, that all the discussion about moneys and the terms of the contract were all agreed upon between Kantrowitz and the sellers while you were there? A. Yes.

Q. The only man that put up any money was Kantrowitz? A. That night, yes.

Q. $10,000? A. Yes.

Q. And this was in Mr. Samuel B. Feld's room? A. Yes.

Q. And the man who was to put up the rest of the money, $76,500. was Mr. Kantrowitz? A. I never knew about that" (S. C., p. 20, ll. 1-17).



While the contract was being prepared, Kantrowitz asked Mr. Feld to enumerate in it all the leases in the building, with their expirations. Feld then asked where he came in, and asserted that he had a five year lease with a five year privilege of renewal at the same rate which had run about a year, but he did not produce this lease. Nevertheless, his alleged lease was enumerated in the contract (S. C., p. 245, l. 30, to p. 246, l. 17). Kantrowitz testified that this was the only interest that Mr. Feld asserted in the property. It is highly significant that Mr. Feld, an experienced lawyer, did not make himself a party purchaser in the contract, although he could have done so by the insertion of a single sentence in connection with the mention of his leasehold interest. Nor did he take from Mr. Kantrowitz any memorandum of his alleged interest in the property, nor did he in any way obligate himself to pay any part of the purchase price.

At 9 o'clock on the morning of March 20th the parties met at the Passaic National Bank, and Mr. Endler had the check (Exhibit D 3) certified (S. C., p. 116, ll. 5-26) and telephoned from the bank to Mr. Feld that this had been done. Mr. Kantrowitz then went to Mr. Feld's office to obtain the contract which had remained with Mr. Feld in escrow until Mr. Kantrowitz's check was certified. Mr. Kantrowitz then asked Mr. Feld if the wives had signed, and Mr. Feld said that it was unnecessary (S. C., p. 243, ll. 10-30). If Mr. Feld had an interest himself in the property, would he not have insisted upon the wives of the grantors joining before the contract was delivered to Mr. Kantrowitz?

Even complainant concedes that he contributed nothing toward the $10,000. deposit which Kantrowitz made March 19th (S. C., p. 23, ll. 34-38). But on cross-examination by Mr. Weinberger (it

is to be noted that Mr. Weinberger exercised the right of cross-examination as if he were a real party defendant) Mr. Feld testified that Kantrowitz did not obtain possession of the contract, at least until after he, Feld, had obtained his one-sixth assignment from Weinberger.

> "Q. With whom was this contract, which was executed and marked in evidence, left after the execution of it at your office? A. With me.
>
> Q. And to whom did you deliver that contract? A. I delivered it to you.
>
> Q. And when was it delivered to me? A. The date I obtained an assignment from you, April 3, 1925." (S. C., p. 31, ll. 14-21).

On this point Mr. Jaffe testified as follows:

> "Q. Mr. Jaffe, with whom was the contract left after its execution on the 19th of March? A. It was left with Mr. Feld for the purposes of obtaining the signatures of Mrs. Lenz, Solomon and Endler (S. C., p. 54, ll. 10-15).
>
> Q. And then you know as a fact, Mr. Jaffe, that Mr. Feld turned over this contract to Mr. Kantrowitz? A. I saw it the same day, the following day.
>
> Q. Delivered by whom? A. I didn't know who delivered it; Mr. Kantrowitz had it" (S. C., p. 54, ll. 35-39).

As soon as Mr. Weinberger learned of the Endler contract he sent for Mr. Kantrowitz and suggested the formation of a syndicate (S. C., p. 289, ll. 25-36), promising to obtain for him a profit of $3,500 and an interest in any syndicate that might be formed (S. C., p. 302, ll. 9-11). A first meeting was held at Mr. Weinberger's office on the afternoon and evening of March 20th. Syndicate papers and certificate of incorporation were prepared, but the parties were unable to agree on the



distribution of the stock and the meeting broke up without anything being accomplished. This much is conceded by all.

A second meeting was held at Mr. Weinberger's office on March 27, 1925. The proposed members of the syndicate were again unable to agree as to their respective interests. As complainant's witness Feldman testified:

> "Q. And there was a considerable discussion back and forth? A. A whole lot of it.
>
> Q. As to the agreement or arrangements they were going to make? A. No, the only argument was how much each one was to have, whether one-sixth, one-third, or one-fourth.
>
> Q. In other words, the question of the interest of each one came up, whether it was going to be a one-third, one-sixth, one-eighth, and so on? A. Yes" (S. C., p. 72, ll. 8-18).

The persons present were also unable to agree as to who should participate in the syndicate. Feldman says on this point:

> "Q. Mr. Weinberger didn't like Mr. Hart? A. No.
>
> Q. He didn't like Mr. Hart? A. Nobody didn't like Mr. Hart.
>
> Q. Did you hear the testimony of the other witnesses in this case? A. Yes.
>
> Q. Who wanted Mr. Cacoliris out? A. Mr. Weinberger.
>
> Q. Who wanted Mr. Hart out? A. Nobody wanted him.
>
> Q. Who wanted Mr. Kuller out? A. (Witness pauses).
>
> Q. Do you remember? A. No, I don't; not any discussion about it" (S. C., p. 74, ll. 4-20).

And then, altho the proposed syndicate was to have purchased the property in question from Kantrowitz, Mr. Weinberger began a process of elimination with the evident purpose of obtaining

control. He offered to pay $500. each to such of the proposed syndicate members who would withdraw. Complainant's witness Feldman says on this point:

> "Q. When this conversation first took place about this real estate it was a question as to what interest each one was to receive; yes or no. A. Yes.
>
> Q. At that time there was no talk about getting $500 from Mr. Weinberger or of his paying it out to some of the people? A. Not then.
>
> Q. But that was the understanding when they got together? A. No, *they were supposed to buy it.*
>
> Q. So that this $500 payment proposition of Mr. Weinberger's was something that came up anew? A. While this discussion was taking place, yes" (S. C., p. 75, ll. 25-38).

Complainant on cross-examination by Mr. Weinberger testified that all of the other proposed members including Kantrowitz, but excepting himself, agreed to take the $500. profit offered by Mr. Weinberger and withdraw.

> "Q. Who else was to receive $500 besides Mr. Feltman, Mr. Cacoliris? A. Mr. Hart, Mr. Kuller, Cacoliris, and KANTROWITZ, except myself. *I retained one-sixth interest.*
>
> Q. Now, Mr. Feld, after this arrangement had been concluded and these checks in fact issued and delivered as you have already stated, did you agree to deliver the contract to anyone for the property, which you retained at the time it was made at your office? A. *I agreed to make an assignment to you* and deliver the contract to you to be held for the purposes agreed upon" (S. C., p. 36, ll. 28-40).

Kantrowitz testified on cross-examination by Mr. Weinberger with respect to the alleged interests of other persons:



> "Q. Whose money was it? A. Your checks.
>
> Q. Did I have any interest in it at that time? A. You didn't and you did. If you got control of it you got an interest. Your interest has been to get control.
>
> Q. Here is another agreement; was this made after the checks were distributed or before? A. This was all done prior to the grand-stand play, when you said, 'Leave it to me'. That was before you took me in your private room, in the presence of Harry Kuller, and you then said, 'We will get these boys out and the three of us will own the building.' I says to you, then: 'Harry don't do that; get the syndicate together in the right way or don't get it together at all" (S. C., p. 304, ll. 17-21).

Kantrowitz answered Mr. Weinberger's questions with respect to the $500 checks as follows:

> "Q. You saw it being paid out; now whose money was it? A. I didn't think you were sincere; I thought you were making that move in order to have the other fellow say to you, 'I will buy him out', because you said to me there wasn't anybody in the room with enough money, or who could produce enough money, to buy that contract.
>
> Q. Do you say now that you thought I was paying out the checks without any reason at all? A. I don't know what you had in your mind; you were the leader.
>
> Q. You can't ascribe any reason for it? A. Only that you simply wanted to go ahead with your little act.
>
> Q. You thought it was an act? A. That was our understanding.
>
> Q. You thought it was an act of charity? A. No, no; an act of grand-stand play" (S. C., p. 304, l. 33 to p. 305, l. 13).

It is apparent from the foregoing that no one acquired any definite legal or equitable interest in the contract held by Kantrowitz, under the

decisions in the Grant and Partridge cases referred to in the beginning of the argument under this point. These confusing oral negotiations, in the absence of a binding commitment on the part of those interested in the formation of the syndicate, did not create in the latter any legal or equitable interests in the property.

Accordingly it became necessary to establish the execution by defendant of some writing by means of which complainant obtained his one-sixth interest. Resort was had, so complainant argues, to the circuitous method of (1) an assignment of the contract to Mr. Weinberger by Kantrowitz; (2) an assignment of one-sixth interest in said contract by Weinberger to Feld; (3) assignment of the remaining five-sixths by Weinberger back to Kantrowitz; (4) delivery back to Kantrowitz of his alleged yellow paper assignment. This was a highly preposterous procedure since, if Feld had been entitled to a one-sixth interest, the same result could have been achieved by the simple expedient of an assignment directly from Kantrowitz to Feld. The entire series of transactions discloses much irrational conduct and it is our contention that complainant has not sustained the burden of clarifying this confusing mess in such manner as to lead the Court to a conclusion with respect to the course of events involved in this case which can be reasonably supported by trustworthy testimony and which does not depend upon conjecture.

The principal witness on the question of whether an assignment transferring Kantrowitz' interest in the contract to Weinberger was executed was Benjamin A. Hartstein, a New York attorney. Mr. Hartstein, who had diverse business relations with Mr. Weinberger, happened to be in Mr. Weinberger's office at the time of the



second meeting in connection with the formation of the proposed syndicate, and was called in to see if he could iron out the differences with respect to the interests of the various people (S. C., p. 322, ll. 10-30). In his testimony concerning the preparation of the assignment Mr. Hart said in part:

> "At that time I was drawing a paper on a yellow pad which I found lying on the desk, the sum and substance of which was to divest *certain people* of their interest."

On cross-examination he testified:

> "Q. You can't remember who the parties were to this memorandum that you drew up? A. I don't, Mr. Vanderbilt.
>
> Q. And if you hadn't heard Mr. Weinberger's testimony here now you wouldn't have recalled this conversation that Kantrowitz and Hart had over the telephone? A. No. Mr. Weinberger didn't refresh my recollection until I had a conversation this morning and I had an independent talk with him, and then I told him the sum and substance.
>
> Q. You can't recall from whom and to whom you delivered this paper? A. I can't recall, Mr. Vanderbilt, except that this conversation that I have just detailed that took place between Hart and Kantrowitz on the wire, where Kantrowitz says to Hart 'I have already signed,' led me *to infer* that Kantrowitz had already divested himself of any interest in that contract; in whose favor, I don't know and don't presume to tell.
>
> Q. Did you see any people sign? A. I don't remember. I am under oath and I wouldn't say definitely. *I didn't see Kantrowitz sign*, but I remember Kantrowitz telling Hart 'I have already signed'. I didn't see that paper signed by Kantrowitz, and I have no recollection outside of the statement of Kantrowitz himself that he signed that paper.

Q. Did you hand him the paper after you had prepared it? A. I didn't hand it to anybody, because I was just there trying to adjust the various differences between the parties'' (S. C., p. 323, l. 39, to p. 324, l. 28).

''Q. Then you can't say whether or not this was an assignment from some of these people who were paid $500 or not? A. I wouldn't say that.

Q. But it might? A. *It may have been.*

Q. Have you ever been in any previous transactions with Mr. Kantrowitz? A. I never was in any transactions with Mr. Kantrowitz.

Q. But you have, for a great many years, had business transactions with Mr. Weinberger? A. Yes, but I haven't any relations with Mr. Weinberger.

Q. I mean, you have been in a lot of transactions in the past and up to this time with Mr. Weinberger? A. Yes, that is true, but since that time I have severed all relations with New Jersey except what buildings we own in common.

Q. Why didn't you endorse the assignment on the original contract? A. I couldn't give any reason for that at all.

Q. That is a question of practice, isn't it? A. I don't attach any significance at all to it. I don't remember why I didn't; I couldn't give any reason for that at all'' (S. C., p. 325, ll. 10-34).

The character of the testimony introduced by complainant to support the execution of this assignment is indicated by the testimony of complainant's witness, Feldman. He testified that: ''there were several yellow papers drawn''; that he didn't ''see any signatures on it''; that he ''didn't remember seeing whether Mr. Kantrowitz or Mr. Harstein signed any paper'' (S. C., p. 77, ll. 8-40).

Similarly, complainant's witness Kuller testified:



''Q. It was a yellow sheet, was it not, Mr. Kuller, from a pad? A. I wouldn't say whether it was yellow or not.

Q. You don't remember that; well, was it typewritten or was it in his own handwriting? A. Well, he was writing. I knew he was doing the writing.

Q. And that was in the room while the people were there? A. Yes.

Q. And no one was dictating to him what he wrote? A. Well, I don't know; I couldn't say that.

Q. Did anybody sign that paper; yes or no? A. Anybody sign it? *I guess we all signed it.* Mr. Kantrowitz signed it'' (S. C., p. 89, ll. 1-17).

Complainant testified that he did not receive any assignment from Weinberger on March 27th, the date of the alleged assignment from Kantrowitz to Weinberger (S. C., p. 24, ll. 35-37). At the hearing, complainant's counsel stated, referring to the assignment, ''We haven't been able to find it'' (S. C., p. 25, ll. 15-16).

The complainant testified further on direct examination:

''Q. Do you know who has that assignment? A. As far as I know, Mr. Weinberger had it.

Q. When was the last time you saw it? A. At the time that I gave Mr. Weinberger a check for a one-sixth interest in the property.

Q. And when was that, what date? A. April 3d, 1925.

Q. Have you seen it since then? A. No, sir'' (S. C., p. 42, ll. 13-21).

''Q. And do you know whether Kantrowitz saw you get this assignment of one-sixth interest from Mr. Weinberger, which has been marked in evidence 'Exhibit C-2'? A. He was not there when I obtained this, *but he knew about it.*

Q. How did he know about it? A. I told it to him and Mr. Weinberger told it to him, *and*

*the other members interested also told him that''* (S. C., p. 27, ll. 1-10).

This is characteristic of complainant's testimony. He assumed to know that Weinberger had informed Kantrowitz, and that the other persons who had been interested in the proposed syndicate, although they were no longer interested on April 3, 1925, also told Kantrowitz about complainant's one-sixth assignment from Mr. Weinberger.

It is significant also that complainant himself never said a word to defendant Kantrowitz about having acquired a one-sixth interest (S. C., p. 255, ll. 5-8). Kantrowitz testified also that he had never seen the check for $1,666.67 (Exhibit C-3, S. C., p. 335), which is dated April 3, 1925, and is alleged to have cleared the bank on the same date although there is an ambiguity in the perforation of the number representing the month when the check went through the bank. If it was 4/3/25, that was prior to Kantrowitz' assignment to Mrs. Zucker. On the other hand, if it was 6/3/25, then it was two days after Kantrowitz had assigned to Mrs. Zucker and one day after Feld, as attorney for Kantrowitz' vendors, had received notice from Mr. Newman, representing Mrs. Zucker, that the latter would be ready to take title at the time specified in the contract.

It is of considerable significance also that complainant between April 3, 1925, and June 1, 1925, never approached defendant Kantrowitz to discuss plans for taking title to the property (S. C., p. 255, ll. 15-37). And although complainant saw defendant Kantrowitz bring various prospective purchasers to look at the building, he did not assert any interest in what was going on (S. C., p. 236, ll. 1-20).

Defendant's case on this point is rendered impregnable by six most important facts:



(1) The fact that the contract itself contained a printed form of assignment which the skilled attorneys present would naturally have used if an assignment were desired, rather than go to the pains of writing out in longhand a separate assignment.

(2) The second point is the evidence of complainant's witness, Mr. Benjamin Hartstein, that he cannot recall whether the paper he drew was an assignment or not, or from whom or to whom it ran. All that he recalls is that it was a paper divesting *certain persons* of their interest in the property, and this is consistent with our contention that the paper was an assignment or release from the various people who received $500 checks from Mr. Weinberger representing their alleged profit in the transaction. Any prudent lawyer would have required such an assignment, because the interests which were being purchased were interests in real property. This is borne out also by Kuller's statement: "I guess we all signed it."

(3) Defendant's point of view is sustained by the check drawing scene which took place at the same time, and which it is submitted has not been adequately explained, either by complainant or Mr. Weinberger. Mr. Weinberger drew a check for $500 to Mr. Cacaloris, who grabbed his check and withdrew from the meeting. Another for $500 went to Harry Kuller which was never used but which it was explained was credited to Mr. Kuller's account in other dealings with Mr. Weinberger. A check for $500 went to complainant Feld, on which Mr. Weinberger endorsed Mr. Feld's name and then endorsed it over to his wife, Mrs. Rita Weinberger. Another went to Mr. Hart for $500, which was not produced and has never been cashed, but which is mentioned in the

stub of Mr. Weinberger's checkbook (S. C., p. 224, ll. 20-40). Another went to Daniel Feldman for $500 for "commission *and one-sixth interest*," which notation in Mr. Weinberger's handwriting he cannot explain (Ex. D. 2, S. C., p. 336, l. 32). Another check to Mr. Kantrowitz for $10,500, was never delivered, not cashed and not produced, but which appears in the stub of the checkbook, and which Weinberger subsequently showed to Mr. Jaffe. This check Mr. Kantrowitz refused, which supports his contention that this session, like the previous one of March 20, ended with the parties still in disagreement and Mr. Kantrowitz the sole owner of the contract (S. C., p. 222, l. 28 to p. 223, l. 10).

The complainant would have the Court believe that Mr. Kantrowitz accepted the $10,500 check in payment of his deposit and his profit on the contract in return for the alleged yellow paper assignment to Mr. Weinberger. Obviously, it could not be so if Mr. Kantrowitz were to get a $3,500 profit, or if he were to continue a member of the syndicate. Mr. Weinberger was unable to explain how Mr. Kantrowitz would still be a member of the syndicate to be formed if he had been paid out his profit along with the others who were retiring from the syndicate for a $500 consideration (S. C., p. 317, ll. 20-24). The only rational explanation of this check drawing orgy is that given by Mr. Kantrowitz that Mr. Weinberger's action was a "grand stand play" in connection with getting rid of prospective participants who were uncongenial to him, and was a part of Mr. Weinberger's effort to dominate the situation.

(4) Defendant's case is also sustained by the significant fact that none of the alleged assignments, though dealing with real estate, were acknowledged. No claim is made that the alleged



original assignment from Kantrowitz to Weinberger was acknowledged or even witnessed. The assignment by Weinberger conferring a one-sixth interest on complainant (Exhibit C-2, p. 334) is not acknowledged. And as for the alleged five-sixths assignment from Weinberger to defendant Kantrowitz, not even a carbon copy was introduced in evidence, and no witness was offered by complainant who witnessed its execution or who could testify that such an instrument had existed.

(5) Complainant's failure between April 3, 1925, and June 1, 1925, to make arrangements with Kantrowitz to take title July 1 as specified in the contract is evidential as to whether he then in fact had an interest by assignment from Weinberger.

(6) It is equally important to note the testimony of Mr. Jacob L. Newman, attorney for Mrs. Rose Zucker. Mr. Newman testified that he went with Kantrowitz to complainant's office after complainant had filed his bill to restrain Mrs. Zucker from taking title, and that Kantrowitz asked complainant why he made Mrs. Zucker a party to the proceedings.

> "Q. Will you tell the court what conversation took place? A. Well, it was very brief, but it was to this effect, that Mr. Kantrowitz said to Mr. Feld: 'Why do you lug or bring these people into this litigation.'
>
> Q. Who were 'these people'? A. Meaning Mrs. Zucker. *'She has nothing to do with it and they are entirely innocent.'*
>
> 'Well', he said, 'I have a one-sixth interest in the property.'
>
> And Mr. Kantrowitz said, 'You have no interest at all in the property.'
>
> And he still insisted he had a sixth interest.
>
> And Mr. Kantrowitz said, 'If you will show me that you have any interest in the property whatever I will give you $500' " (S. C., p. 260, l. 39 to p. 261, l. 18).

Mr. Feld did not show Mr. Kantrowitz or Mr. Newman such a paper. It is to be remarked that Mr. Feld did not take the stand and deny Mr. Newman's testimony, which stands unimpeached.

(7) On August 21, 1925, Mr. Weinberger wrote Mr. Kantrowitz (D-12, S. C., p. 339) by registered mail (D-13, S. C., p. 340) that he had in his possession a check for the sum of *$10,000,* received from Messrs. Endler, Lentz and Solomon, which Mr. Kantrowitz might have upon delivery of a quit-claim deed. Why, if Mr. Feld was the owner of a one-sixth interest in the property, should Mr. Kantrowitz be offered $10,000? Why, if Mr. Kantrowitz had been paid $10,500 for an assignment, should he be offered anything? Moreover, why was not a similar letter written by Mr. Weinberger to Mr. Feld (S. C., p. 228, l. 36 to p. 229, l. 13), if he had a one-sixth interest in the property, especially as Mr. Weinberger, being a party to the litigation, knew that Mr. Feld had brought a suit in Chancery in connection with this alleged contract against Mr. Kantrowitz (S. C., pp. 314 and 315, ll. 10-30).

It has always been held by the Court of Chancery in this state that fraud must be proved by clear and convincing evidence.

> *Kelso* v. *Kelso,* 95 N. J. Eq. 544; aff. 96 N. J. Eq. 354.

We contend that if the assignment to Feld was executed by Mr. Weinberger on April 3, 1925, it was done in anticipation of obtaining sole control. It is very significant that the assignment to Feld which is in evidence and a copy of which is attached to complainant's petition, makes no reference to the alleged assignment from Kantrowitz to Mr. Weinberger. It is submitted that an attorney of Mr. Weinberger's experience would, in the



exercise of ordinary care, have recited the authority under which he was assuming to act. So far as one can judge the motives which prompt persons to act, this assignment to Feld was executed for the following purposes:

1. In order that Mr. Weinberger might receive back $1,666.67 of the moneys paid out by him without Kantrowitz's consent to various persons claiming an interest in the property, which interest was neither legal nor equitable, and for which moneys he had no legal recourse against Kantrowitz.

2. To permit complainant, a relative by marriage to share in any profits which might be made when and if Mr. Weinberger realized his expectation of obtaining sole control from Kantrowitz. Weinberger's efforts to get Kantrowitz to accept the $10,500 check are indicative of his purpose of obtaining control (Mr. Jaffe's testimony, S. C., p. 122, l. 27 to p. 123, l. 10).

Starting thus as a simple arrangement between Mr. Weinberger and Mr. Feld in anticipation of certain developments, the assignment for a one-sixth interest, on the realization of a profit of $7,500 by Kantrowitz, became the occasion and the excuse, under the stress of emotional conflict between impetuous personalities, for extensive litigation.

The argument under this point narrows down to two main questions:—(1) Was there in fact a memorandum signed by the party to be charged, Kantrowitz, to support the authority of Weinberger, under whom complainant claims, to transfer an interest in the realty to complainant? The burden of proving the execution, the loss, and the contents of an instrument required by the Statute of Frauds was clearly on complainant. *Gallagher* vs. *McBride,* 62 N. J. L. 422.

The second question to which the argument under this point narrows down is this:—Assuming that the Court finds that defendant Kantrowitz did execute an assignment to Weinberger, did this authorize Weinberger in turn to assign a one-sixth interest to complainant, in view of Weinberger's admission that he received the assignment to secure his outlay in the check-drawing scene (S. C., p. 212, ll. 10-12), a fact known to complainant? And as a consequence, did not Kantrowitz have a right to act in conformity with his belief that he had executed no instrument conferring on Weinberger authority to make any fractional assignments?

It is respectfully submitted, therefore, that complainant has neither supported the burden of proving that defendant Kantrowitz executed an instrument complying with the provisions of the Statute of Frauds nor has he proved by clear and convincing evidence that defendant Kantrowitz was aware of complainant's alleged interest and fraudulently disregarded it.

## POINT III.

**Complainant is not entitled to equitable relief because his acts of commission and omission contributed largely to the creation of the present controversy, and he has estopped himself by his conduct from asking relief from a court of conscience.**

(1) An attorney in complainant's position would in the exercise of reasonable care in the light of accepted legal doctrines, have included his name as a one-sixth owner in the contract of sale which he himself drew. To include a clause with respect to his firm's leasehold interest (Ex.



C1, p. 331, ll. 10-15), and to fail to protect his alleged interest in the property itself either by incorporation in the contract or by a separate memorandum in writing is such negligent conduct on the part of attorney that it merits serious consideration when the attorney asks to be relieved by a court of equity from the consequences of his own carelessness. If liability can be imposed upon an attorney for negligence in the conduct of a client's business, why should he receive any more favorable consideration when he has by careless acts, created a situation in which proof of his own rights depends on oral testimony by no means convincing, whereas in the exercise of reasonable diligence his right, if any, should have been incorporated in written or documentary form. This controversy would never have arisen had complainant Feld simply stated in the contract that he had an interest therein (since he claims his interest dates back to the execution of the contract on March 19, 1925), or if he had taken from defendant Kantrowitz some other written evidence of his interest.

(2) The failure of complainant to take this ordinary and reasonable legal precaution is silent, but none the less eloquent proof that he did not on March 19, 1925, come to any definite understanding with defendant Kantrowitz that he was to own a specified undivided interest in the property. We urge that an attorney-complainant who applies to a court of equity for relief owes to the Court obligations of candor and of coming in with clean hands which have not been complied with on this aspect of the case.

(3) After the efforts to organize a syndicate proved abortive, why did not complainant, if he had a right to it, require defendant Kantrowitz to assign a one-sixth interest directly to him, so

that Kantrowitz would have understood clearly the source, extent and existence of an interest in complainant. Why was resort had to an assignment from Kantrowitz to Weinberger, followed by a purported assignment to Feld and an assignment back to Kantrowitz? Why such circuity to achieve a simple object? This is another instance in which plaintiff helped to mislead Kantrowitz by participating in a course of conduct far different in character from that which one could expect from an attorney who had clearly defined and legitimate rights which he desired to protect, without entrapping the layman.

(4) Next, was it reasonably proper conduct for complainant as an attorney to fail to record his assignment from Weinberger between April 3, 1925, and June 1st, 1925, when defendant Kantrowitz sold his contract to Mrs. Zucker? Kantrowitz would upon learning of it have had an opportunity to contest it and take steps to cancel it before entering into his agreement with Mrs. Zucker. Moreover, recording would have properly asserted and safeguarded Feld's rights against any purchaser from Kantrowitz. Had complainant as an attorney taken the steps which reasonably could have been expected from him, defendant Kantrowitz might have been compelled by Mrs. Zucker to take back the contract and return the purchase price, but he certainly would not have been, as he is in this suit, confronted with a demand for one-sixth of a mythical profit of $28,500 when his actual profit was only $7,500.

(5) Complainant should also be considered as estopped from equitable relief because of his failure to assert any rights in the property when defendant Kantrowitz brought prospective purchasers to view the premises. Related to this point is the fact that complainant at no time between April 3rd and June 1st, 1925, even discussed with Kantrowitz the ways and means of financing the taking of title.



(6) Finally, we respectfully urge that the Court should consider the secretiveness of complainant about the existence of his assignment from Weinberger. A day or two after he had filed his bill against Mrs. Zucker and others he for the first time asserted his interest in the property to Kantrowitz, and when the latter offered to pay him $500 if he would show him and Mr. Jacob L. Newman this assignment, complainant failed to make any answer. Kantrowitz might have been able, had he been shown this assignment, to make some adjustment with Mrs. Zucker, obtain a reassignment of the contract, and litigate complainant's right to a one-sixth interest in the property before attempting to dispose of it. But complainant apparently preferred to prosecute hopeless litigation against Mrs. Zucker, and in the event of failure therein to compel Kantrowitz to pay him one-sixth, not of his actual profit in a transaction the good faith of which with respect to price is not impeached by the slightest scintilla of evidence, but of an imaginary profit almost four times as large as the actual profit. Was this refusal on the part of complainant to disclose the evidence on which he based his claim (which refusal he must have known as a lawyer would precipitate long and costly litigation), justifiable as a matter of equitable dealing? It certainly cannot recommend him to a court of conscience in which he is now attempting to enforce a right based on the very document he refused to disclose.

It is respectfully submitted that for these reasons, the cumulative effect of which is irresistible, complainant should be denied equitable relief.

## POINT IV.

**The lower Court erred in awarding complainant one-sixth of a speculative profit of $28,500, and in disregarding the actual profit of $7,500 made by defendant Kantrowitz by the sale to Mrs. Zucker, the bona fides of which are sustained by the Court's decision.**

It is inconceivable that Kantrowitz, who regarded himself as the sole owner of the contract, and in whom a five-sixths interest is conceded even by complainant, sold to Mrs. Zucker at a profit lower than he could have obtained from a willing purchaser. Complainant's counsel on cross-examination of defendant's witnesses himself brought out the fact that Endler, Lentz and Solomon, Kantrowitz's vendors, had paid $180,000 for the property in 1924 (S. C., p. 195, l. 25, to p. 196, l. 12), and that the increase in value by June, 1925, was not more than $500 per foot front, or a total appreciation in value of $30,000 (S. C., p. 186, ll. 4-12). This would make the market value on June 1st, 1925, $210,000. Kantrowitz obtained from Mrs. Zucker $214,000. How, then, can he be charged with having undersold the property?

Let us consider another angle. There is not the slightest suggestion anywhere in the record that Endler, Lentz and Solomon, who had paid $180,000 early in 1924, were compelled by any circumstances which developed during the succeeeding year to sell the property in the Spring of 1925 below its true value. It is uncontroverted that they were willing to sell to the Larkeys at a profit of $25,000, and that Kantrowitz obtained the property at the last minute by offering $1500 more. These vendors were out to obtain the highest



price possible. A reference to the contract executed by them in favor of Kantrowitz (Ex. C. 1, p. 329, ll. 1-25) discloses that the profit of $26,500 which they derived from this sale was made on a cash investment by them of $60,000. We may fairly assume that the income from rentals was sufficient to pay all expenses, with the result that after holding the property for about one year the vendors received from Kantrowitz a profit of 44% on their investment.

From March 19, 1925, the date of the contract to Kantrowitz, until June 1st, 1925, the date of the assignment of the contract to Mrs. Zucker, a period of less than two and one-half months elapsed. Nevertheless the lower Court found that the property appreciated in value $28,500 over the price paid by Kantrowitz. This finding was made in the face of testimony that there was no upward trend in values between March and June, 1925 (S. C., p. 264, ll. 26-31), but that in fact, as complainant's counsel established on cross-examination of Captain Kruitbosch, values began to sag in 1925 (S. C., p. 172, ll. 20-27).

There is not even a suggestion by complainant that Kantrowitz made a secret profit out of the transfer to Mrs. Zucker. What motive could possibly have induced him to take a lower price than he could obtain? It must be remembered that he had been searching for purchasers from the end of March to June 1st, and had taken six or seven persons to inspect the building (S. C., p. 236, ll. 1-13). There is no proof that he rejected a better offer.

What facts, then, prompted the Court to assess complainant's damages on the basis of a profit almost four times the actual profit made by Kantrowitz?

Complainant offered two men as experts on the value of the property on the date Kantrowitz sold

to Mrs. Zucker,—i. e., June 1, 1925. The first, Philip Simon, was disqualified by the Court (S. C., p. 130, l. 29, to p. 131, l. 7). The second, Crowley, while permitted to testify although his qualifications were seriously questioned, added nothing to complainant's case, as is evident from the statement of the Court in its opinion:

> "I cannot accept at its face value the appraisal by Crowley who testified for the complainant. His evidence will be found to be pervaded throughout by the customary efforts of an expert witness to assist the party by whom he is called, in every possible way" (S. C., p. 346, ll. 12-17).

Defendant Kantrowitz's experts do not escape the general condemnation of the Court, but no specific criticism is found in the Court's opinion of the testimony of Arthur Hughes, and nothing whatever is said about the evidence given by Captain William H. Kruitbosch. The latter was duly qualified as a real estate expert, and by comparisons with sales in the vicinity about the same time, and as a result also of an examination of the property in question which he made, he stated that its value in June, 1925, was $200,000 (S. C., p. 166, ll. 12-35; p. 176, l. 25, to p. 177, l. 33).

Mr. Arthur Hughes, a Passaic banker, and a realtor for over 25 years in Passaic, knew about the property in question from the day it was built, and he was appointed receiver by the Court of Chancery of the rents of this property in the specific performance suit brought against the owners by Mrs. Zucker to settle the controversy as to whether the wives of the owners had agreed to convey their dower rights (S. C., p. 262, ll. 7-25). This property had been offered to Mr. Hughes by three or four brokers in 1925, shortly before it was purchased by defendant Kantrowitz (S. C., p. 262, ll. 25-35). The price quoted to him and which



he refused to pay was $200,000, less a $5,000 commission (S. C., p. 263, ll. 34-38). He regarded that figure as above the fair market value of the property in the Spring of 1925, as between a willing buyer and a willing seller (S. C., p. 264, ll. 1-30). His cross-examination by Mr. Weinberger (objected to on the ground of double cross-examination, S. C., p. 267, ll. 10-15) disclosed Mr. Hughes' profound knowledge of real estate values in the vicinity. He emphatically rejected Mr. Weinberger's suggestions with respect to the values of specific properties in the neighborhood and gave irrefutable grounds for his answers (S. C., p. 267, *et seq.*).

Without taking the Court's time to consider in detail the evidence on value given by defendant's witnesses Slaff and Richmond, men with an experience in Passaic real estate of 37 and 30 years, respectively, we turn to the testimony of Harry Stein, upon which the lower Court relied in reaching its decision on this point. Mr. Stein testified that he acquired a quarter interest in the building in question through Mrs. Zucker's purchase, and that in his opinion the price of $214,000 which they paid Kantrowitz represented the "top-notch" value of the property on June 1, 1925 (S. C., p. 200, ll. 10-31).

Complainant's counsel attempted to establish that there was an inconsistency between Mr. Stein's statement that he and his associates had paid the top-notch value and their subsequent suit for specific performance either free of, or with an abatement for, the dower rights of the vendors' wives, whose signatures were to have been obtained the morning after the midnight session at which the contract to Kantrowitz had been executed. Stein testified that he and his associates believed that the vendors' wives, related directly or by marriage, would join in the deed; and that

had they known the wives would refuse to join he and his associates would not have taken the assignment of the contract from Kantrowitz for $214,000 (S. C., p. 204, l. 34, to p. 205, l. 35). When the Court of Chancery found that the vendors' wives had not agreed to join in the conveyance, and that the claim to abatement of the purchase price was not established, Stein and his associates paid $13,333 to the wives for a conveyance (S. C., p. 201, ll. 35-36).

The lower Court based its finding that the property was *on June 1, 1925,* worth $235,000 largely on the fact that Stein and his associates ultimately paid $227,000 for it. Complainant's counsel offered the decree in the specific performance suit referred to when his right to cross-examine witnesses on the basis of the decree was questioned:

> "Mr. McGinnis: I am asking this expert if he knows. It would make a difference.
>
> The Court: You might ask him if the danger of another world war wouldn't affect it. Your question contains an unwarranted assumption of fact.
>
> Mr. McGinnis: Your Honor would respect the decree of this court in this state?
>
> The Court: I would if it was in evidence before me.
>
> Mr. McGinnis: *I offer that decree,* and state to your Honor that it contains that statement" (S. C., p. 169, ll. 24-36).

Somehow the decree was not marked as an exhibit. It was entered in February, 1926, and Mr. Stein testified October 21, 1926. He gave several sound reasons for the payment of $13,333 to the vendors' wives above the top-notch value of $214,000 as of June 1, 1925:

1. He and his associates purchased the property, not for a rapid turn-over, but as a long-term investment (S. C., p. 206, ll. 31-35).



2. They fully expected the vendors' wives would join in the conveyance (S. C., p. 206, ll. 25-29; p. 205, ll. 25-36).

3. They would have had no recourse against Kantrowitz for the $17,500 paid him for the assignment had they decided not to take the property (S. C., p. 202, ll. 19-23; p. 203, ll. 23-30).

4. They felt they would succeed in the specific performance suit, and deposited $76,000 with the Clerk of the Chancery Court (S. C., p. 207, ll. 32-37). When, therefore, the decree went against them, they were compelled to go through with the purchase.

5. He and his associates felt that in the year which elapsed since they took the assignment from Kantrowitz the property had appreciated in value $500 a front foot, or an aggregate of $30,000 (S. C., p. 204, ll. 18-30). Their belief that there had been such an increase justified their payment of $13,333 to obtain the full benefit thereof.

The lower Court was not, therefore, justified in disregarding the motives which prompted Stein and his associates to pay an additional sum for dower rights a year after the time they purchased the contract from defendant. It was error for the Court to make retroactive against defendant Kantrowitz the results (which could not be foreseen in June, 1925), of a course of action which Stein and his associates elected to pursue for reasons which appeared to them, and which were, perfectly valid.

The law requires clear and direct proof of damage and will not allow speculative damages. One of the leading cases on this subject is *U. S.* vs. *Behan,* 110 U. S. 338 in which the Court said at page 344:

> "The *prima facie* measure of damages for the breach of a contract is the amount of the

> loss which the injured party has sustained thereby * * * Profits cannot always be recovered. They may be too remote and speculative in their character and therefore incapable of that clear and direct proof which the law requires.''

The Behan case was followed in *U. S.* vs. *Spearin*, (1918), 248 U. S. 132, 139. See also *Wolcott* v. *Lewis*, 36 N. J. L. 262, 271; aff. 38 N. J. L. 496.

In *Hartman* v. *Dobar*, 80 N. J. L. 251, the plaintiff attempted to prove a loss of profits by showing that he had submitted a bid for a contract from which he expected to realize a profit. The Court held that this was too conjectural and that his bid could not be made the basis for an estimate of probable damages. In the present case four experts, (Hughes, Kruitbosch, Slaff and Richmond) testified that the price obtained by Kantrowitz was above the top-notch value at that time. When in addition to this we consider the fact that Kantrowitz had at least a five-sixths interest as against Mr. Feld's one-sixth, it is respectfully submitted that the Court followed pure conjecture in disregarding the $7,500 profit actually obtained by Kantrowitz and substituting therefor a figure of $28,500, which Kantrowitz would undoubtedly have been glad to receive had it been obtainable. On the one hand Kantrowitz is accused of attempting to profit personally at complainant's expense, and on the other he is charged with having ignored his self-interest by selling the property below the market value. It is not the function of a Court of Equity to mete out this character of monetary punishment.



The lower Court's decision on this point is particularly surprising in the light of statements made by the Court when complainant's counsel attempted to have defendant's experts say that the failure to obtain the signatures of the vendors' wives made a difference in the market value of the property as of June 1, 1925. Captain Kruitbosch testified that his valuation of $200,000 presupposed the transfer of a clear title (S. C., p. 171, ll. 5-15). When complainant's counsel persisted in this line of questioning the Court said:

> ''The Court: I think you are talking at cross-purposes. He says the value of the property was $200,000. He is talking of values and you are talking of title.
>
> Mr. McGinnis: But he has made the statement that the failure to obtain the dower rights of the wives of the owners makes no difference in the value.
>
> The Court: And he is literally and emphatically correct. The value of the property remains the same, no matter whether it has a cloud upon the title or not. You settle the contesting interests and you clear up the cloud. * * *'' (S. C., p. 171, ll. 22-36.)

Kantrowitz obtained more than the market price, when it is considered that the contract was minus the signatures of the vendors' wives. Complainant's interest, if any, was in the very contract which did not contain the wives' signatures. Complainant could not have sold any clearer title than did defendant Kantrowitz. His interest was under the same cloud with respect to outstanding dower rights. By adding the cost of obtaining the assignment of the dower rights to the profit for which defendant Kantrowitz sold the contract to Mrs. Zucker, the lower Court decreed that complainant receive one-sixth of the value of a contract containing the vendors' wives'

signatures, when in fact the contract in question, drawn by complainant himself, did not contain their consent to the conveyance of the property.

It is respectfully submitted that the Court erred in awarding complainant one-sixth of the $7500 profit which Kantrowitz actually realized, and in addition thereto awarding complainant one-sixth of an unobtainable and conjectural profit of $21,000, representing a subsequent expense of $13,500 in clearing the dower rights (which were outstanding also so far as complainant's interest was concerned), plus an additional $7500 which the lower Court does not explain. This was not a case for punitive damages.

## POINT V.

**The decree of the lower Court is also erroneous in the following respects:**

1. **In adjudicating the controversy between Weinberger and Kantrowitz concerning $1,500 paid out by Weinberger as "profits";**
2. **In decreeing that defendant Kantrowitz pay the costs and counsel fees incurred by complainant in his litigation against Mrs. Zucker;**
3. **In directing defendant Kantrowitz to pay complainant's counsel a fee of $2,000.**

1. The question of whether Weinberger had authority to pay $500 to three persons and credit himself with $500 for his alleged interest in the property was not properly an issue in this case. Defendant Weinberger in his answer does not pray for any relief against Kantrowitz, assuming that a court of equity would have jurisdiction to



consider such a collateral question, with respect to which the remedy at law is adequate. The answer of defendant Weinberger merely "prays that the bill of complaint may be dismissed insofar as it affects the said defendant, the said defendant claiming no interest in and to said property" (S. C., p. 15, ll. 1-10).

Clearly, therefore, complainant has no right to a decree against Kantrowitz for $1,500 of the $1,667.67, with interest. The latter did not authorize the acceptance of this money, and, as an alternative reason, never authorized nor ratified its application by Mr. Weinberger by way of reimbursement. Kantrowitz denies he authorized Weinberger to pay out $1,500 for him. If the lower Court had power to dispose of this independent controversy which should be passed upon by a jury, then we do not see why it did not adjudicate Weinberger's claim that he was entitled to retain all of the $1,666.66, and receive an additional $333.33 from Kantrowitz because the $500 profit which he was to receive for giving up his "interest" in the contract should be added to the $1,500 he paid out to others.

Mr. Weinberger having admitted that he still held the $1,666.66 representing complainant's share of the capital investment, the lower Court should have directed him to restore all of it to complainant. Instead the decree permits Weinberger to reimburse himself for the $1,500 on the ground that it "inured to the benefit of the defendant" (S. C., p. 347, l. 17), and charges this sum against Kantrowitz (S. C., p. 351, par. 3, ll. 19-25), despite this testimony by Kantrowitz:

> "Q. Has Mr. Weinberger ever demanded from you the payment of any of these checks that were given out that evening? A. I made him a voluntary offer if he could show me that he paid out any money for my account.

Q. Did he ever demand payment of them from you up to date? A. No, sir" (S. C., p. 313, ll. 5-12).

But even if we assume the Court had power to dispose of this issue, it erred in failing to charge one-sixth of the $1,500 to complainant. Referring to the three $500 checks he had paid out the date of the alleged assignment to him by Kantrowitz, Mr. Weinberger testified that "The parties that remained in the final possession of the property were to bear the expense as part of the costs and profits." By the decision of the lower Court, complainant was one of these parties.

2. Complainant was also allowed $880 representing costs and counsel fees allowed Mr. Newman as Mrs. Zucker's counsel in complainant's suits against her in the Chancery Court and the Court of Errors and Appeals. We do not understand upon what theory these expenditures can be allowed. Suppose complainant had brought three or four additional actions, would he have a right to foist the cost on Kantrowitz? Where is the limit?

We contend complainant was not justified under the circumstances in beginning and pursuing litigation against Mrs. Zucker, especially since he was warned by Kantrowitz as Mr. Newman testified, not to drag Mrs. Zucker into the controversy (S. C., p. 261, ll. 1-3). In paragraph 11 of his bill (S. C., p. 5) complainant charges Mrs. Zucker with knowledge of his interest and that he was a tenant in possession, *and that if Mrs. Zucker had no knowledge of his interest inquiry by her would have disclosed it.* It is noteworthy, however, that these allegations, constituting the very basis of the suit, were not substantiated.

The lower Court in its opinion advising that the restraint and injunction should be vacated, said in part:



"Inasmuch as the complainant never recorded his assignment and Mrs. Zucker had no actual notice or knowledge thereof, her rights under the assignment of June 1 cannot be impeached, unless she is chargeable with constructive notice by reason of the fact that the complainant, together with his partners, occupied offices in the premises under consideration."

"In the case at bar, there is not the simple transaction of the purchase of a dwelling house or a farm or a piece of woodland with some one in visible occupation or possession thereof, but presents the case of a building constructed to accommodate a considerable number of tenants and which, in fact, was so occupied. The very purpose of the building is to permit the leasing of suites or stores to a number of independent persons and from the rent so acquired to establish an income for the owner. Under these circumstances to charge a prospective purchaser with notice of any right, title, or interest of one of the tenants beyond the right of tenancy would be *absurd*" (98 N. J. Eq. 167, 169).

The Court then cites the numerous authorities, considers the provision in the contract acknowledged before complainant reserving a leasehold for complainant firm, and concludes that the occupancy of a suite of offices by complainant's firm was not sufficient to put Mrs. Zucker on inquiry, and also that complainant's carelessness in failing to record his assignment and failing to include all his rights when he drew the contract in question, when compared with Mrs. Zucker's blamelessness, required denial of relief (98 N. J. Eq. at 172).

Accordingly, it is urged that complainant started and continued hopeless litigation against Mrs. Zucker. No reasonable attorney, aware of the facts and circumstances of the case as com-

plainant knew them, would in the light of the adjudicated cases, have attempted to charge Mrs. Zucker with constructive knowledge arising out of the tenancy of complainant's firm, and particularly in view of complainant's carelessness in neglecting to include a statement concerning his interest in the contract which he drew, and his failure to record the assignment which he obtained from Weinberger. Had complainant recorded his assignment, Mrs. Zucker would have had constructive notice, and Kantrowitz would have had an opportunity to litigate with complainant his right to a one-sixth interest.

Even greater reason against such recovery exists with respect to the portion of the costs and counsel fees incurred in connection with complainant's appeal to the Court of Errors and Appeals. He was then in the position of having an adverse decision which set forth the reasons and the authorities for the denial of relief as against Mrs. Zucker. Was the appeal to the Court of Errors and Appeals necessary and justified? Complainant might never have taken this appeal but for his belief that he would ultimately recover the costs and expenses from defendant Kantrowitz. But it is respectfully submitted that to permit such recovery in this case would be contrary to principle and would set a precedent which might have dangerous consequences.

3. For the reasons urged under Point III of this brief, that complainant's acts of omission and commission largely contributed to the creation of the present controversy, it is respectfully urged that complainant should have paid his own counsel fees, and that it was improper under the circumstances to charge them against defendant Kantrowitz.



## Conclusion.

The decree of the Court of Chancery should be reversed with a direction that the complainant's bill be dismissed because

I. The lower Court had no jurisdiction to retain the cause for the purpose of awarding money damages for a breach of contract.

II. Complainant has failed to sustain the burden of proving that his one-sixth assignment was derived from one who held a written authorization signed by Kantrowitz, as required by the Statute of Frauds.

III. Complainant was guilty of conduct sufficient to bar him from obtaining relief from a court of conscience.

In the alternative, the decree of the Court of Chancery should be ordered modified in the following respects:

IV. Complainant should be allowed one-sixth of the actual profit of $7,500 made by defendant Kantrowitz, instead of one-sixth of a speculative profit of $28,500 (Par. 1 of Decree, pp. 350-351).

V.

a. Complainant should recover his capital investment of $1,666.66 from defendant Weinberger, instead of receiving $1,500 of it from defendant Kantrowitz (Par. 3 of Decree, p. 351).

b. Defendant Kantrowitz should be relieved from payment of the costs and counsel fees incurred by complainant in his litigation against Mrs. Zucker (Par. 2 of Decree, p. 351).

c. Defendant Kantrowitz should be relieved from payment of a $2,000 counsel fee to complainant's counsel (Par. 5 of Decree, p. 351).

Respectfully submitted,

ARTHUR T. VANDERBILT,
Of Counsel.

FEDER & RINZLER,
Sol'rs and Counsel for
Defendant Kantrowitz.

# New Jersey Court of Errors and Appeals

| | |
|---|---|
| Samuel B. Feld,<br>Complainant-Respondent.<br>and<br>Reuben B. Kantrowitz, et als.,<br>Defendants-Appellants. | On Appeal from Court of Chancery |

## BRIEF ON BEHALF OF COMPLAINANT-RESPONDENT

### STATEMENT OF FACTS

The only defendant on appeal is Reuben B. Kantrowitz. The questions regarding the other defendants, viz., Endler, Solomon, Lentz, Weinberger and Zucker, were settled finally and definitely below.

The complainant, while a tenant in a building at No. 14-16 Lexington Ave., Passaic, New Jersey, with the defendant, Reuben B. Kantrowitz, Harry Weinberger, Anthony Carcoliria, Harry Kuller and Emil Hart, six in all, entered into an agreement amongst themselves, by which they should purchase the premises in question from the then owners, for the sum of $206,500. This agreement provided that the defendant, Kantrowitz, should act as trustee of the syndicate. In pursuance of this, negotiations were carried on with the owners of the premises, with the result that on the 19th day of March, 1925, a contract in writing was entered into for the sale of the premises for the price mentioned, between the owners on one side and defendant, Kantrowitz, as an undisclosed trustee on the other.

The agreement by which this syndicate was formed, was at the outset oral in its nature. Thereafter meetings were held in the office of Mr. Weinberger, with the view of forming a corporation to handle the property. Some controversy arose amongst the members of the syndicate, which resulted in Mr. Weinberger buying out the interest of the various parties. Kantrowitz then assigned the entire contract to Weinberger, and it was understood at the time that what he was assigning was four-sixths of the interest, Mr. Weinberger already holding one-sixth share and Mr. Feld, the complainant, holding the remaining one-sixth part and refusing to sell to Mr. Weinberger. This left Mr. Weinberger holding a five-sixths interest and Feld one-sixth interest in the contract.

Complainant then filed his bill, in which he sought to enjoin Kantrowitz and Mrs. Zucker, and the owners of the premises, Solomon, Lentz and Endler, from taking any steps by which Mrs. Zucker would become possessed of the one-sixth interest of complainant. He also asked that Kantrowitz and Mrs. Zucker and the other defendants be required to specifically perform the contract to the extent of conveying a one-sixth undivided interest in the premises to him. Complainant also charged Kantrowitz with fraud, and he prayed for discovery and general relief.

With regard to Mrs. Zucker, complainant charged that Mrs. Zucker took the contract with constructive notice of complainant's interest, owing to the fact that he, complainant, was a tenant in possession, but the Vice Chancellor advised otherwise, as it will be seen from his opinion reported in 98 N. J. Eq., 167. This ended the controversy so far as Mrs. Zucker was concerned, and the case thereafter proceeded between the complainant on the one hand and defendant, Kantrowitz, on the other. Mr. Weinberger admitted the truth of all the allegations in complainant's bill and supported the complainant's proofs.



The contract provided for an initial payment of $10,000, and to provide his share, the complainant, on April 3, 1925, paid to Mr. Weinberger $1666.67 by check, which appears in evidence (See Exhibit C-3 P. 335). Inasmuch as apparently the whole contract was in the name of Mr. Weinberger by assignment, Mr. Weinberger in order to assure Mr. Feld's interest immediately executed to him upon receipt of the check, an assignment of one-sixth interest in the contract. This assignment from Mr. Weinberger to complainant as set out at page 334 as Exhibit C-2, is as follows:

> Received of Samuel Feld the sum of $1,-666.67, representing 1-6 of the deposit paid on account of property of Abram Endler and Sarah Endler, his wife. Nathan Lenz and Rose Lenz, his wife, Joe Solomon and Florence Solomon, his wife, to Reuben E. Kantrowitz, it being understood and agreed that the said Sam Feld is to have an undivided 1-6 interest in and to the said premises.
>
> And I do hereby assign, set over and transfer unto the said Sam Feld a 1-6 interest in and to the said premises, subject, however, to the payment of 1-6 of the amount due under the terms and conditions of the said contract.
>
> Harry H. Weinberger

In Witness Whereof, I have hereunto set my hand and seal this 3rd day of April, 1925.

Signed, sealed and delivered in the presence of Ruth H. Lentz.

Kantrowitz then regretting his action persuaded Mr. Weinberger to re-assign his interest back to him, Kantrowitz. This Mr. Weinberger did by drawing up an assignment for a five-sixth interest in the contract from himself to Kantrowitz. This took place according to the testimony of Mr. Weinberger, on the 3rd of April, 1925.

Unfortunately, Mr. Weinberger, when the transaction was closed, turned back to Kantrowitz the original contract and the assignment from Kantrowitz to him, thus enabling Kantrowitz to destroy all proof with reference to same.

This left Kantrowitz again owning five-sixths of the contract, and the complainant, Feld, a one-sixth interest, but with the contract still apparently belonging entirely to Kantrowitz. In this situation, Kantrowitz without the knowledge or consent of Feld, assigned the contract to Mrs. Zucker, without disclosing the interest of Mr. Feld. This assignment produced a large profit to Kantrowitz.

The complainant's theory was, and still is, that inasmuch as Kantrowitz had by his fraudulent action prevented specific performance of the contract, complainant was entitled to such relief from him as could be given through money compensation. The Vice Chancellor took this view with the result that he finally decided as follows:

1. That the complainant was entitled to the return of his $1666.67, representing his one-sixth



contribution in the cause; this money had been paid by Mr. Feld to Mr. Weinberger and Mr. Weinberger had in turn paid $1500 of it to Kantrowitz, the defendant.

2. That the complainant should be re-imbursed for counsel fee and costs, which he had been required to pay to the counsel of Rose Zucker, amounting to $880.00.

3. That complainant was entitled to one-sixth of the value of the contract at the time Kantrowitz sold it to Mr. Zucker; this, the court after lengthy examination of experts fixed at the sum of $4700.

4. That he pay to the solicitors of the complainant the sum of $2,000 as counsel fee and costs.

These figures are all embodied in the final decree (Page 349). The figures in the decree differ from those in the opinion due to an error by the Vice Chancellor, which he afterwards corrected. This error consisted in including, in the profits of $4750, the capital sum of $1666.67. This was afterwards properly set forth in the decree.

Defendant appealed, and for the first time attempts to question the jurisdiction of the court.

Vice Chancellor Bentley's opinion on the Zucker phase of the case in reported in 98 N. J. Equity at p. 167. His opinion with reference to the appellant's case is at page 341 of the state of case. The opinions should be read together.

## POINT I.

**THE COURT HAD JURISDICTION TO AWARD COMPLAINANT MONEY COMPENSATION AND WAS JUSTIFIED IN EXERCISING SUCH JURISDICTION UNDER THE CIRCUMSTANCES OF THE CASE.**

Under this point will be considered the first point of appellants' brief.

As against Kantrowitz, the bill prayed that he be restrained from consummating the transaction between himself and Mrs. Zucker (prayer 3, p 6); that he be restrained from transferring, assigning or conveying a greater interest than the five-sixths interest to Rose Zucker (prayer 6, p. 6); that if a deed should be taken by him in his own name from the owners of the premises, that he be directed to convey a one-sixth undivided interest therein to the complainant, Samuel B. Feld (prayer 7, p. 6); that the contract, or assignment, between Kantrowitz and Zucker be held to be a fraud against the complainant (prayer 8, p. 7); that he be held to hold the property acquired in trust for the complainant to the extent of his one-sixth interest (prayer 9, p. 7), and a prayer for discovery and general relief.

When the bill was filed the defendant, Mrs. Zucker, had obtained an assignment of the entire contract from Kantrowitz, but title to the premises had not passed. As against Mrs. Zucker the bill prayed that she be restrained from taking title and for discovery.

The Court finally held that Mrs. Zucker had taken the assignment of the entire contract from Kantrowitz, without knowledge of the complainant's one-sixth interest therein. This fact, however, was only



ascertained by the Vice Chancellor after several trial days at the final hearing.

The proposition in substance of the appellant therefore is that at this stage of the case it was the duty of the Vice Chancellor, irrespective of the question of the wrong-doing of the defendant Kantrowitz, to have dismissed the bill to the end that the complainant be obliged to renew his litigation in a court of law. This proposition is unsound.

The general principle is thus stated by Prof. Pomeroy in his work on Equity Jurisprudence, Sec. 181:

> "The concurrent jurisdiction of equity to grant remedies which are legal in cases which might come within the cognizance of the law courts is materially affected by the operation of two important principles, which are now merely stated, and which will be more fully discussed in a subsequent section. The first of these principles is, that when a court of equity has jurisdiction over a cause for any purpose, it may retain the cause for all purposes, and proceed to a final determination of all the matters at issue. For this reason, if the controversy contains any equitable feature or requires any purely equitable relief which would belong to the exclusive jurisdiction, or involves any matter pertaining to the concurrent jurisdiction, by means of which a court of equity would acquire, as it were, a partial cognizance of it, the Court may go on to a complete adjudication, and may thus establish purely legal rights and grant legal remedies which would otherwise be beyond the scope of its authority."

This principle has been thoroughly well recognized in this State, as shown by an abundance of authorities, of which we cite a few:

> "In the case of Decker v. Caskey, Saxt. 433, Chief Justice Ewing, sitting for the Chancellor, says: It is the desire, as well as the duty of this court, never to do justice by halves—never merely to beget business for another court—and never, when a case is fairly within its jurisdiction, to leave open the door for litigation further, or in any other place, if it can possibly be here closed.' See also, on this point Shannon v Marselis, Saxt. 424, Dalrimple, J., in Williams v. Winans, 22 N. J. Eq., 573 at 577."

> "If a case be once properly before the court, the court will do all in its power to settle the rights of all the parties in the matter in controversy, justly and equitably by one decree." Couse vs. Boyles, et als., 4 N. J. Eq., p. 212.

> "In all cases in which the jurisdiction of the court of chancery, based on fraud, is invoked to obtain purely equitable relief, such as an injunction, the court should proceed to accomplish complete justice and enforce all the complainant's rights arising out of the fraud, including the ascertainment and award of all damages caused by the fraud, unliquidated as well as liquidated." L. Martin Co. vs. Martin & Wilckes Co., 75 N. J. Eq. p. 39.

> "The Court of Chancery of New Jersey has general jurisdiction in all cases of fraud, and the only question as to jurisdiction where there is fraud, is the propriety of exercising the powers which the Court undoubtedly has." Martin v. Martin & Wilckes, 75 Eq. p. 40.



In the opinion of the above case (Martin v. Wickes), appears the following:

> "The gist of the complainant's case lies in a charge of fraud against the defendants. The court of chancery of New Jersey has general jurisdiction of all cases of fraud. The only question as to jurisdiction where there is fraud is confined to the propriety of exercising the power which the court undoubtedly has. The cases decided in this court and the court of errors and appeals sustain the wide theory of equity jurisdiction in New Jersey in all cases of fraud which has prevailed in England. Eggers v. Anderson, 63 N. J. Eq. (18 Dick.) 264; Hubbard v. International Mercantile Agency, 68 N. J. Eq. (2 Robb.) 434; Dawson v. Leschziner, 72 N. J. Eq., (2 Buch.) 1; Mazzola v. Wilkie, 72 N. J. Eq. (2 Buch.) 722. It follows that where the complainant is found to have brought his case properly in the court of chancery of New Jersey for equitable relief based on fraud, and the Court has administered a portion of the relief to which he is entitled, he ought not to be turned out of the court of equity and compelled to try his case all over again in a court of law in order to have his damages awarded to him."

The cases cited by appellant's counsel in his brief do not aid his contention. He cites Sec. 237 of Pom-

eroy Eq., the case of Logan v. Flattau, 73 N. J. Eq., p. 222, and other New Jersey cases, and some cases from foreign jurisdictions, but in all of these, the rule for which he contends is qualified by the proviso, that there must be an absence of good faith.

The true rule is that when equity once takes jurisdiction in a specific performance case that ***where the bill is filed in good faith,*** that even though specific performance be not given, equity will give monetary relief. The point is not whether or not at final hearing specific performance was granted, but whether or not the bill was filed in good faith. Our courts have spoken clearly and emphatically to that effect.

In Borden v. Curtis et al., 48 N. J. Eq. p. 120, the rule is set forth in Syl. 2 as follows:

> "But where a vendee, by contract, of real estate comes into this court in good faith asking specific performance of his contract, and with a reasonable expectation that the vendor is able to perform it, and it afterwards appears that the defendant is unable to perform, either in whole or in part, then this court may, and, when justice requires will, give relief by way of compensation in money in lieu."

Vice Chancellor Pitney in his opinion discussed at length the question of good faith at page 130 last paragraph, where the Vice Chancellor first discussed the case of Wiswall v. McWowam. Ch. 125.

> "If specific performance can be decreed as to a part and the party has put it out of his power to fulfill the contract as to the residue by an act done since the agreement, the court will decree for that part, and assess damages for the residue. ***And lastly, where the remedy is lost, or very precarious at law, and complainant has an equitable case, the court will assess damages in his favor.***" (Italics by the Court.)
>
> (48 N. J. Eq. P. 130.)



From the opinion:

> Chancellor Walworth in the case of Morse vs. Elmendorf, 11, page 277, refused compensation upon a consideration of the circumstances of that case, but (at p. 288) says: "Where the defendant deprives himself of the power to perform the contract specifically, during the pendency of a suit to compel such performance, this court may very properly retain the suit and award to the complainant a compensation in damages, to prevent a multiplicity of suits. And I am not prepared to say that such a decree might not be proper where the defendant had deprived himself of the power to perform the contract prior to the filing of the bill, but without the knowledge of the complainant, ***or even where he never had the power to perform, if the complainant had filed his bill in good faith, supposing at the time he instituted his suit here that a specific performance of the contract could be obtained under a decree of this court.***" (Italics by the Court.)
>
> (P. 131.)

Note in this quotation the language which was italicized was to the effect that if the defendant never had power to perform, yet if the complainant filed his bill in good faith ***supposing*** that at the time he instituted the suit, he could get relief and that equity will proceed to give money damages by way of compensation.

The suggestion of the appellant that the Court having found at a certain stage in the hearing of the case that specific performance could not be obtained, should then refer the case to a court of law for the ascertainment of damages, is met by the answer of Vice Chancellor Pitney, in the case of Dunn v. Hasting, 54 N. J. Eq., P. 503, wherein he said:

> "I am of the opinion that it is not necessary for this court, when it has once entertained jurisdiction in a case to resort to that circuitous mode of relief (p. 510).

There was ample evidence to justify complainant in filing his bill in good faith.

At the hearing it was contended that Mrs. Zucker had actual and constructive notice of complainant's rights; that she only held an assignment and had not paid consideration and that there was evidence from which the inference might be drawn that she had actual notice.

There was evidence of actual notice on the part of Mrs. Zucker. Joseph Solomon—one of the owners of the premises and a cousin of Mrs. Zucker testified (p. 15 Supp. State of Case), that Mrs. Zucker about a month after the making of the contract called to



see him, told him that she contemplated buying the property, and asked for particulars,

> "I told her I presumed Mr. Kantrowitz bought out the partners and the original buyers; and so she said she don't know anything about that, she wasn't interested so far as the partners was concerned."
>
> Q. "Did you tell her who the group of partners were that you presumed Kantrowitz had bought out? A. "I did."
>
> Q. "Who were the group of partners? A. "Harry Weinberger, Harry Kuller, Emil Hart, Reuben Kantrowitz, Tony Cacoliris and Sam Feld."
>
> Q. "Whereabouts did this conversation take place?" A. "In my home."
>
> Q. "Where is your home?" A. "210 Paulison Ave., Passaic."
>
> Q. "Were your relations with Mrs. Zucker friendly at that time?" A. "Yes."
>
> (P. 16 from about 18 to 30, Supp. State of Case.)

On cross-examination he testified that he gave her a memorandum of the rents, etc. This was produced by Mrs. Zucker's counsel and marked in the case. Then followed further examination with reference to the testimony that Solomon gave in another case. (P. 18 and 19.) Mrs. Zucker called to deny this conversation did so only in part. She admitted that she had a conversation with Mr. Solomon in reference to the buying of the property and that he gave her a memorandum of the rents, etc., (p. 21 Supp. State of Case), and on cross-examination ad-

mitted that her relations with Mr. Solomon were absolutely friendly and his attitude was one of helpfulness towards her (p. 23, bottom and at p. 24 top, Supp. State of Case). During the three weeks from the time she first spoke to Mr. Solomon, and the purchase of the contract, she made two visits in all to Mr. Solomon (p. 24 about line 25). There was therefore, on this phase of the case, direct evidence and actual notice on the part of Mrs. Zucker. Counsel argued before the Court, as we argue here, that there was no reason why Mr. Solomon, who was related to Mrs. Zucker and friendly to her, should have deceived her in reference to the actual state of affairs. Mrs. Zucker knew she was getting an extraordinary bargain and took the chance, and as events turned out, took the chance successfully.

Counsel at the hearing and in his argument before the court, however, proceeded mainly on the question of constructive notice on the part of Mrs. Zucker. This testimony in substance showed that the premises was a ***two story*** building containing ***five tenants*** of whom the complainant was one.

It was urged before the Vice Chancellor that Mrs. Zucker should have made inquiries as to the circumstances under which the complainant occupied part of the premises in question. The case was argued before the Vice Chancellor, who deemed the matter of sufficient importance to take the same under advisement for some weeks, and when he filed an opinion adverse to complainant's contention an appeal was taken to the Court of Errors and Appeals, but that Court dismissed the appeal on another point.



The substance of the Vice Chancellor's opinion was that the rule respecting constructive notice by occupation applied only to a single person and not to a group of tenants. As against this, counsel cited the case of Boyer v. Chandler 32 L. R. A. p. 113, 43 N. E. p. 803, where the rule of constructive notice applied to three tenants in a three story apartment house; also the case of Phelan v. Brady (N. Y. Ct. of Errors and Appeals) 23 N. E. p. 1109, where the holder of an unrecorded mortgage on the premises occupied one of the twenty different apartments. In each of these cases the court held that persons purchasing the properties were bound to ascertain the interest of each person in the place. Other cases were also cited in support of counsel's contention. To show counsel's good faith, we are attaching to this brief pages four to nine inclusive, of the brief presented to the Court of Errors and Appeals.

It was also contended, as we contend now, that we were justified in seeking relief against Mrs. Zucker on the ground that what he held was only an assignment of the contract and not a deed for the premises, and the consideration had not passed.

The following appears in 39 Cyc. p. 1763:

> "It is essential to the protection of a bona fide purchaser without notice that the purchase be completed by the execution of the conveyance and the payment of the purchase money. Hence, one having actual or constructive notice before payment, or before he has received a conveyance is not a bona fide purchaser. If the purchaser pays part of the

purchase money before notice he is not a bona fide purchaser to the extent that he can retain the land, but he will be protected to the extent of the amount paid."

Appellant persistently ignores this element of good faith of the complainant in connection with the relief which the court may give. At page 18, 19 and 20 of his brief cases are cited, all of which state that the complainant ***knew at the outset*** that he could not obtain the relief sought for by the bill. This of course was not the situation in the case at bar. He did not and could not know. The cases that counsel cites might be applicable if complainant had filed a bill against Kantrowitz only, after Kantrowitz had not only divested himself of all interest in the contract to Mrs. Zucker, but that Mrs. Zucker had thereafter obtained title to the property as a result of having obtained the contract.

In the case at bar, however, it was urged at the outset and urged with all earnestness and good faith that the complainant was entitled to the relief against Mrs. Zucker as well as Kantrowitz. If the Court had held that Mrs. Zucker was not a bona fide holder of the contract and she had actual notice of the existence of complainant's rights as we still contend the evidence showed, or if the court held that a bona fide holder of a contract to convey did not stand in the same position as bona fide holder of a conveyance, or if lastly, the court had held that Mrs. Zucker had constructive notice of complainant's rights by virtue of the fact that he was an occupant of the premises in question, then we should have



been entitled to a decree for specific performance.

On this last thought we state that there is not a reported case in this State dealing with the question of constructive notice, where there was more than one occupant to the building, in other words, it was a case of novel impression. We had as much right to feel that the court would take the view of the Courts of Appeals of New York and Illinois with nothing contrary in other states as to suppose that the Court would do otherwise.

It follows that if the Court had decreed that Mrs. Zucker, for any of the reasons just suggested, was not in a position of a bona fide holder of a contract to convey the right of the complainant, to then compel specific performance against Kantrowitz would have been questionable. How then may it be urged that at the outset complainant knew that he could not prevail against Zucker or Kantrowitz, with respect to the prayer for specific performance?

As an additional indication of complainant's good faith, the record will disclose, that Messrs. Endler, Solomon and Lentz, owners of the premises, did not file answers, but allowed decrees to be entered by default against them.

Finally, supposing Kantrowitz had taken the deed in his own name from the then owners of the premises with a view of thereafter conveying to Mrs Zucker, we submit, under the circumstances of the case, that the Court would have been perfectly justified in enjoining Kantrowitz from conveying to Mrs. Zucker more than a five-sixth interest in the premises. Surely there was no certainty that Kantro-

witz would not effect the transfer of the interest from the then owners to Mrs. Zucker in any other way.

Counsel lays stress in his brief, on the case of Krueger v. Armitage, 58 N. J. Eq. p. 360, but an examination of that case shows that the question came up on demurrer, hence all facts in the appeal were admitted in the bill, which appeared on its face that the case involved a demand for money compensation only on fraudulent representations for the sale of personal property. There was no question there of jurisdiction appearing on the face of the bill as in the case at bar, nor of good faith of the complainant impressing his cause.

The same is true with reference to the case of Polhemus v. Holland Trust Co., 61 N. J. Eq., 655, mentioned in appellants' brief; that is an appeal from the Court of Chancery, 59 Eq., 93, and there it appears that the suit was solely one for damages for "money paid by the inducement of false representations." Vice Chancellor Reed said that the only reason for this proposition was that the defendants might be trustees and therefore as such owed a duty to the complainant. Surely in the case at bar there was a relationship of trustees and cestui qui trust between Kantrowitz and Feld and as trustee on behalf of the complainant for his one-sixth interest in the property.

## POINT II.

### UNDER THE FACTS ALLEGED IN THE BILL AND PROVEN IN THE CAUSE, EQUITY HAD AT LEAST CONCURRENT JURISDICTION, AND IT



### WAS JUSTIFIED IN RETAINING IT FOR ALL PURPOSES, ESPECIALLY AS THE JURISDICTION WAS NEVER QUESTIONED.

The bill, in addition to praying for specific performance as against Mrs. Zucker and Kantrowitz, prayed also for restraint, and for discovery. To this extent, the jurisdiction of the Court was exclusive. The bill charged fraud on the part of Kantrowitz and in this respect there was at least concurrent jurisdiction with the law.

In Eggers vs. Anderson, 63 Equity, p. 264, the Court of Errors and Appeals said,

> "The Court of Chancery in this State possesses a general jurisdiction in cases of fraud, as well in cases where the remedy at law is plain, adequate, and complete, as in other cases; but when the remedy at law is plain, adequate and complete, the Court of Chancery is reluctant to exercise its jurisdiction."

In the course of his opinion, Justice Dickinson said, in dealing with the jurisdiction of other American Courts, under like circumstances,

> "But New Jersey is distinguished from her sister states by her adherence to the standards of the mother country respecting both rights and remedies in equity, and I know of no constitutional or statutory provision or judicial decision in this state which can be regarded as withholding or withdrawing from our court of chancery any jurisdiction possessed by its English prototype. True the

jurisdiction of equity, in cases of fraud remediable at law, has not been much invoked, but that may be accounted for, in large degree, by the less expensive, equally efficient and in former times more speedy, remedy secured in the courts of law" (p. 271).

Said the Court further:

**"IN THE CASE NOW PENDING THE DEFENDANTS HAVE NOT QUESTIONED THE JURISDICTION OF THE COURT OR OBJECTED TO ITS EXERCISE, AND THE COURT OF CHANCERY HAS EXERCISED ITS JURISDICTION"** (p. 272).

This last quotation is of importance in its application to the case at bar because, until the learned counsel, who now presents the appeal to the Court of Errors, discussed the subject in his brief, the ***question of jurisdiction was never raised.***

As to the various defendants, some answered, others had a default entered against them, but no one, by their pleadings questioned the jurisdiction. The case then went to hearing and several days were taken in developing the testimony in the cause before any disposition was made in the Zucker end of the case. The case then proceeded as to Kantrowitz; was argued by counsel, and an opinion was entered and filed by the Court, and yet no question of jurisdiction was ever raised. The situation is not analogus to parties attempting by stipulation to give jurisdiction to a Court. Here the Court had jurisdiction. It consented to take it, and the defendant, Kantrowitz and others, stood by in silence as the



Court entered upon its consideration of the case, and presented to the Court all their matters of defense, ***of which jurisdiction was not one.***

The State of Case discloses that the bill was filed on June 26th, 1925; Kantrowitz's answer was filed July 27th of the same year; Mr. Harry Weinberger's answer, August 1, 1925. The first hearing was May 30, 1926; the case was heard at various times during the summer and fall of 1926 and so into the winter of 1927. There were eight hearings in all, and an opinion finally was filed on the 8th day of April, 1927. Thus for nearly two years, Kantrowitz, through his counsel contested every factual element, and never once questioned the Court's jurisdiction. He should not now, at this late date, be heard to raise it for the first time. In other words, he should not be allowed to gamble with the decision of the Court of Chancery, and then when the decision is unfavorable to him, be heard to complain.

As a general rule where a chancery court has concurrent jurisdiction with the law courts of a case brought in equity the defendant should take his objections to the jurisdiction on the ground that complainant has an adequate remedy at law early in the action, either by demurrer or answer or it will be waived. Christian Feigenspan v. Nizolek, 71 Eq. 382. Affirmed 72 Eq. 909.

Where equity jurisdiction is invoked in a case where there is a complete remedy at law, when such objection is not taken by demurrer or answer, the court will generally decide the case on the merits. Roe v. Jersey City, 80 Eq. 35.

If the defendant answers a bill without objection to the jurisdiction, and contests the merits of the case, the court will entertain the bill, if the matter be fit for equitable cognizance. Seymour v. Long Dock Co., 20 Eq. 396.

Where the objection that a party has an adequate remedy at law is not taken until after the testimony is all in, the court, in its discretion, may retain the cause if it is competent to grant the relief asked, and has jurisdiction over the subject matter. Coast Co. v. Borough of Spring Lake, 36 Atl. Rep. 21.

In the case at bar, counsel for the defendant-appellant, neither objected in his pleadings or before the court, to the jurisdiction of the Court of Chancery.

In Feigenspan v. Nizolek, supra, Vice-Chancellor Pitney, in the course of his opinion, said (p. 391):

> "If the court actually has jurisdiction, concurrent with the law courts, of such cases, the general rule is that the defendant should take his objection to the jurisdiction on the ground here taken early in the action, either by demurrer or setting it up specifically in his answer. This he has not done, but defendant put himself distinctly and entirely on the ground that he had not executed the covenant in question. In several instances, notably Cutting v. Dana, 25 N. J. Eq. 265, at p. 273, the court has held that having so experimented and been



> beaten on the merits defendant ought not to be permitted to raise the question of jurisdiction as he did."

In Cutting v. Dana, supra, Chancellor Runyon, in the course of his opinion, said (page 273 top):

> "Again, the objection made by the defendant's counsel in this connection, that the complainant has a complete and adequate remedy at law in the premises, comes too late. As before remarked, ***the defendant has answered. In his answer he makes no objection on this ground.*** The complainant has replied to the answer, and testimony has been taken on both sides. ***It is too late for the defendant to make this objection"*** (italics ours). Citations follow.

In Knikel v. Spitz, 74 N. J. Eq., 581, Vice-Chancellor Stevenson, in the course of his opinion, said, (p. 584, paragraph 2):

> "It seems to be settled, however, that the objection to the exercise of the jurisdiction of this Court, in a particular case, based upon fraud, must be made in limine. Eggers v. Anderson, 63 N. J. Eq., 264; Krueger v. Armitage, 58 N. J. Eq., 357, 361. In the absence of seasonable objection on the ground that the remedy at law is adequate, this Court will proceed to exercise its unquestioned jurisdiction, unless of its own motion, it sees fit to exercise the discretionary power of remanding the parties litigant to a Court of Law." Varrick v.

Hitt, 66 N. J. Eq., 442. Lehigh Zinc Company v. Trotter, 43 N. J. Eq., 185, 204.

> ***The defendant, by refraining at the first opportunity from raising the objection to the exercise of jurisdiction by this court, which objection, if sustained, will compel the complainant to commence his litigation over again in another court, may well be deemed to be stipulating or assenting to the proposition that the remedy at law is not adequate, and that therefore, the complainant's case should be disposed of by the exercise of the jurisdiction of this court.***"

In Lehigh Zinc Company v. Trotter, Supra, Justice Depue, delivering the opinion of the Court of Errors & Appeals, said, (p. 204):

> "The bill was not demurred to, nor was any motion made to dismiss it. Answers were filed, and in the answers no objection was taken to the complainant's proceeding by bill, or to the jurisdiction of the court to grant the relief prayed. On the contrary, the company, in its answer, set up a right to retain possession, and set forth in extenso the facts and circumstances on which its claim to retain possession rested, and, in express terms, submitted its rights in the premises to the consideration of the court of chancery. The case was put at issue. Depositions were taken. No objection was made to the mode of procedure, nor to the jurisdiction of the court until final hearing. ***The objection that the complainant had an adequate remedy at law***



> ***came too late to avail the defendants.*** The court, of its own motion, may dismiss a bill at any stage of the cause, on the ground that the complainant has an adequate remedy at law. But where the defendant has not raised the objection until after testimony on the merits has been taken, the court, in its discretion, will retain the cause, if the court is competent to grant the relief prayed, and has jurisdiction of the subject matter." Citations follow. (Italics ours.)

The Court of Equity quite properly retained jurisdiction in this cause, after its finding with respect to Mrs. Zucker's rights.

The evidence in the cause, with respect to Mrs. Zucker, as well as Kantrowitz was so interwoven as to make it almost impossible to separate them. So much so, that Vice-Chancellor Bentley, in the opening word of his opinion, with respect to Kantrowitz, does not take the trouble to go over the facts of the complainant's version of the case, because as he says,

> "The facts of this case, so far as the complainant's version is concerned, are sufficiently disclosed in the opinion deciding the preliminary motion in the same case, reported in 98 N. J. Eq., 167." (Case p. 341.)
>
> (The Zucker case.)

In other words the same group of facts presented by the complainant served the double purpose of being considered in the Zucker end of the case, adversally it is true, and at the same time, applied to Kantrowitz and enured to the complainant's benefit.

Finally, Equity was justified in holding the case to prevent a multiplicity of suits. There was a suit against Mrs. Zucker for specific performance; against Kantrowitz for injunctive relief and specific performance; for discovery against all, and there was, by the general prayer for relief an implied demand for money compensation from Kantrowitz and from Weinberger.

## POINT III.

**THE RELATIONSHIP BETWEEN COMPLAINANT AND DEFENDANT, KANTROWITZ, WAS THAT OF TRUSTEE AND CESTUI QUE TRUST. HENCE, TO COMPEL THE TRUSTEE, KANTROWITZ TO ACCOUNT FOR HIS SECRET PROFITS AS WELL AS IN DAMAGES FOR HIS FRAUD, WAS A SUBJECT OF JURISDICTION EXCLUSIVELY BELONGING TO EQUITY.**

Of course, citation is unnecessary in support of this elementary principle. The trouble, of course,, sometimes is in its application.

The subject of primary jurisdiction of Equity under a relationship of trustee and cestui que trust is discussed in Pomeroy Equity Jurisprudence Section 100-102 inclusive. One of the sequences of this relationship, is that of accounting. See Section 1421 of Pomeroy and Notes thereto. Discovery and accounting growing out of this relationship belongs solely to equity.



## POINT IV.

**ADEQUATE RELIEF COULD NOT HAVE BEEN GIVEN AT LAW.**

Part of the relief in this case was the award by the Chancellor of Eight Hundred and Eighty Dollars ($880.00) to the complainant, representing money which complainant had been obliged to pay as counsel fee and costs to the solicitor and counsel of Mrs. Zucker. The Vice-Chancellor held in effect that Mrs. Zucker and her counsel were entitled to the allowance in the first instance, but that inasmuch as Mr. Feld, the complainant, was obliged to pay this because of the fraudulent act of the defendant, Kantrowitz, that this sum should be charged against Kantrowitz. The complainant, Feld, could not have brought an action in the Court of Law to have ascertained this amount nor to have charged it against Kantrowitz.

## POINT V.

**COMPLAINANT ESTABLISHED BY CLEAR EVIDENCE AND WITHIN THE STATUTE OF FRAUDS THAT KANTROWITZ MADE AN ASSIGNMENT IN WRITING TO WEINBERGER OF THE CONTRACT IN QUESTION SO AS TO ENABLE MR. WEINBERGER TO, IN TURN EXECUTE AN ASSIGNMENT OF A ONE-SIXTH INTEREST TO THE COMPLAINANT.**

The assignment from Mr. Weinberger to the complainant is in writing as Exhibit C-2, and is set froth at p. 334. The check from Mr. Feld to Mr. Wein-

berger for this one-sixth interest is set forth in full in the State of Case as Exhibit C-3. It also appears from the testimony of Mr. Weinberger and a number of other witnesses that the remaining members of the syndicate were bought out by Mr. Weinberger as hereinbefore related and to whom he issued checks for $500.00 each, as their profit in the deal. If the appellant's contention is true, that Mr. Weinberger never received an assignment of this contract from Kantrowitz, then, we are forced to the conclusion that Mr. Weinberger, an astute lawyer of years experience and a banker, deliberately sold to Mr. Feld a one-sixth interest in a contract to real estate which he did not own; took Mr. Feld's money without any color of right, and paid to the remaining members of the syndicate $500.00 each for something they didn't own. Such a course of action could not be explained on the theory that Mr. Weinberger was in his normal senses.

Mr. Weinberger, however, with other witnesses testified completely and positively to the existence of this assignment and the testimony is so complete on the subject that all, apparently, counsel for the appellant can do under his Point 2, is to draw a herring across the trail, by discussing in his brief, learnedly about resulting trust, joint ventures, etc., subjects which are entirely foreign to the issue involved in the case at bar.

Of course the assignment from Kantrowitz to Weinberger was not produced, but after Kantrowitz obtained a re-assignment of this contract from Weinberger, secured same and destroyed it, he cannot be heard to urge its non-existence.

We contend that there was an assignment executed in writing from Kantrowitz to Weinberger;



that Kantrowitz eventually received it back by delivery and then destroyed it.

The appellants' counsel seeks to confuse the issue by allowing discussions of the testimony of the occurrences of March 19th when the syndicate was first formed and the contract taken in Kantrowitz's name, practically, if not utterly, ignoring the assignment afterwards made by Kantrowitz to Weinberger, and from Weinberger back to Kantrowitz and Feld. Thus, he takes all of pages 34, 35, 36, 37 and 38 of his brief in discussing the occurrences on the night of March 19th and the morning of March 20th. It is true that at that time Mr. Feld had not a scrap of writing to show his one-sixth interest, but the reverse is true with respect to April 3rd.

Our proofs on the subject are as follows:

SAMUEL FELD, commenced his discussion of the assignment of the contract from Kantrowitz to Weinberger at bottom of p. 23. In substance he said he paid Weinberger one-sixth of the $10,000, and the reason he had done so was because he, Weinberger, had obtained the contract (P. 24, l. 1-10). Later he said:

> "The fact is that Mr. Kantrowitz assigned the entire contract to Mr. Weinberger. Q. By Mr. Weinberger, you mean Mr. Harry H. Weinberger, one of the members of the syndicate? A. Yes, sir. Q. Did you see the assignment to Mr. Weinberger? A. Yes, sir, that was executed in my presence. Q. The assignment was in writing? A. Yes, that assignment was in writing. Q. Who prepared that assignment? A. Mr. Hartstein,

a lawyer in New York, who was in the office at the time. He prepared copies on a sheet of yellow paper, and Mr. Kantrowitz signed it and turned it over to Mr. Weinberger." (P. 24 last line; p. 25, l. 1-30).

He then went on to describe how Mr. Weinberger made an assignment to him of a one-sixth interest in payment of his check for $1666.67 (P. 25, l. 30-40). Again:

"Q. Now, at the time that this assignment was drawn by Mr. Hartstein, from Kantrowitz to Weinberger, was there any money passed? A. There was. Q. Just tell us about that? A. As soon as Mr. Weinberger obtained the assignment of the entire contract to himself, he immediately paid out to Mr. Daniel H. Feldman a check for $500.00 as his commission, and also paid out a check of $500.00 to Tony Caroliris, and I believe he made out a check to Harry Kuller. Q. Do you know what that check was for? A. It represented the value of the interest that they, respectively had in the property. In other words, they figured $500.00 was the price to buy one another out and he bought each one out. Q. Who do you mean by "he"? A. Mr. Weinberger. Q. Now, you say Kantrowitz was present when this took place? A. Oh, yes, he was there." (P. 26, l. 20 to bottom.)

On page 27 witness said that Kantrowitz knew all about the arrangements by which he, Feld, got a one-sixth back from Mr. Weinberger.

On cross examination he testified that the contract from the owners to Kantrowitz had been in his possession and he delivered it to Mr. Weinberger (P. 31, l. 15-20). He repeated that at the time Mr. Weinberger bought off the other members of the syndicate that Kantrowitz was present (P. 35 entire page).



DANIEL J. FELDMAN, was one of those present at the meeting in Mr. Weinberger's office when this assignment was executed. His testimony on this subject begins at page 64. He was a disinterested witness, and was entitled to a small commission. He testified as follows:

"Q. And were you present when an assignment or paper of any kind was made by Mr. Kantrowitz? A. Yes, sir. Q. Who made it? A. Reuben Kantrowitz. Q. And what were the papers Reuben Kantrowitz made? A. Just a moment; I wasn't sure who wrote that up. I saw it there. I don't remember who wrote it. I don't remember who wrote it. It was on a large yellow sheet. Q. And who signed it? A. Reuben Kantrowitz. Q. What was this writing on yellow paper which you saw Mr. Kantrowitz sign? A. The assignment." (P. 64, l. 35-40; P. 65, l. 1-30.)

On cross examination by Mr. Weinberger, commencing at page 65, he testified that he was among those present as was Mr. Hartstein (P. 65, l. 15). Mr. Hartstein it will be remembered all the witnesses testified drew the assignment. Witness also described the giving out of the checks to the different persons for their interest, and how in the course of the heated discussion Mr. Hart said that he wasn't going to remain any longer, and left the office saying:

"I will leave it up to you Reuben Kantrowitz, and he went away. Q. Now, as a matter of fact after considerable wrangle the deal was closed, wasn't it? A. It was. Q. And was it thereupon that this assignment was signed? A. Yes, sir, and Mr. Reuben Kantrowitz picked up the telephone and said to Mr. Emil Hart, "I have got a check for you for $500, and I have checks here for $10,500", and he said, "I am not going to stand for it," and Mr. Kantrowitz said, "It is too late." (P. 67, l. 3-17.)

HARRY KULLER, whose testimony begins at page 78, on the subject of this assignment, testified to the beginning of the whole relationship amongst these different parties, finally getting down to the meeting in Mr. Weinberger's office when Mr. Kantrowitz made the assignment. On that point, his testimony begins at the bottom of page 80, where he said:

"Mr. Hart took the elevator and went down, and Mr. Kantrowitz says, 'Well, alright, I will sell, too' and the only one that refused to sell was Feld. And that's all. Q. And then what was done? Did the sale take place? A. It did. Q. Just tell us what was done in the line of drawing papers or anything? A. Well, in the line of drawing papers, there was an assignment of contract drawn to Harry H. Weinberger, signed by Reuben B. Kantrowitz, and Harry gave him a check. He also gave a check to Mr. Cacoliris, and he also gave a check to Mr. Hart." (P. 80, l. 1-10.)



Nothing developed on cross examination except witness emphasized his testimony given with respect to assignment. This witness had no interest in controversy and was a friend of defendant, Kantrowitz (P. 86, l. 30). He, however, testified that he saw Hartstein draw up the assignment and that it was done on yellow paper and written by hand (P. 88 at bottom; P. 89 at top); that he actually saw Mr. Kantrowitz sign it (P. 89, l. 17).

EDWARD A. WEISS, whose testimony begins at page 93, with respect to the assignment, testified as follows:

"Q. Were there any papers drawn up and executed on that occasion? A. Mr. Hartstein drew a paper up that was supposed to be an assignment. I didn't read the paper. It was drawn on yellow paper, signed by Mr. Kantrowitz. A short time after that there was a telephone call from Mr. Hart, and Mr. Kantrowitz got on the wire and spoke. From what I could get out of the conversation, Mr. Hart wanted to object; he wasn't satisfied; and Mr. Kantrowitz says, 'It is too late, I signed the assignment already'. Q. And you had seen him sign the paper? A. Yes." (P. 95, l. 1-18.)

On cross examination he testified, that he was within five or six feet from Hartstein while he was drawing the paper, and saw him write what he supposed to be the assignment, and that it was then turned over to Kantrowitz who read it, and he actually saw Kantrowitz put his name to the paper (P. 98 at bottom; P. 99, l. 1-10).

ANTHONY CACOLIRIS was one of the members of the syndicate, and his testimony begins at page 102. On the question of the assignment, he testified to the meeting at the office of Mr. Weinberger, and how they each sold out to Mr. Weinberger; that amongst those who sold out was Mr. Kantrowitz (P. 105, l. 5-10).

> "Q. Now before you went away do you know whether or not any papers were drawn up and signed? A. It was drawn up by Mr. Hartstein. Q. And who signed it? A. Mr. Kantrowitz signed it. Q. Do you know what that paper was supposed to be? A. Supposed to be an assignment of the contract to turn it over to Mr. Weinberger." (P. 10, l. 15-23.)

EMIL HART was also a member of the syndicate. His testimony begins at page 108. This witness had agreed to accept $500.00 for his share and then left. This is the Mr. Hart with whom Kantrowitz talked over the phone. This witness testified on that subject as follows:

> "Then I went home to the store and I called up immediately. I says, 'Look here, I'm not going to accept $500.00 for my share; it looks rather funny. You are trying to put me out and I don't know why.' He said, 'It is too late now; I assigned my interest to Harry Weinberger'." (P. 110, l. 19-26.)

He said there was a check for $500 brought to him, and that it was Mr. Weinberger's check (P. 110); it was his share for selling his interest. He said this check was brought to him by Mr. Kantrowitz, who was accompanied by Mr. Feldman (P. 111, l. 5-10).



The importance of this testimony is that he testified positively to the fact that on this occasion Kantrowitz had sold out to Mr. Weinberger, who drew the check to the different parties. This witness had only friendly feelings for Kantrowitz, and we learned this from the testimony of Kantrowitz himself who testified that he was a friend of Hart's and had always been, and felt under a moral obligation to him and had insisted upon having him in the deal (See Kantrowitz's testimony on this point at page 295, l. 27-35).

HARRY WEINBERGER told of the group meeting at his office and that he made the suggestion that they buy him out or they sell out. The result was that they all agreed to sell with the exception of Mr. Feld, and that as a result Mr. Weinberger would have a five sixth interest and Mr. Feld a one-sixth interest (P. 211, l. 20-28). He then told of the drawing of the checks to the different persons, and that thereupon an assignment was drawn up by Hartstein in his handwriting in the presence of all.

> "Q. Assignment of what? A. An assignment of the contract of Mr. Kantrowitz to myself, representing the outlay for the checks. By the Court: Q. Assignment of his contract for the purchase of the property on Lexington Avenue? A. That is correct." (P. 212, l. 1-30.)

He further testified:

> "Q. Was there an assignment actually drawn by Mr. Hartstein and signed by Kan-

trowitz on that day? A. Yes. Q. And you paid this money out? A. Yes. Q. The effect of that assignment was to put the title to this contract, if I may call it such, in your name? A. That is correct" (P. 213, l. 1-12.)

Incidentally, on the same page he testified to Mr. Feld paying him $1666.67, and receiving an assignment of a one-sixth interest in the contract.

Nothing developed on cross examination or recross examination, other than an attempt to show that Mr. Feld was related to him. It developed that Mr. Feld had married a cousin of Mr. Weinberger's, but that Mr. Weinberger was not only friendly with Feld but was also friendly with Kantrowitz (P. 219, l. 1-30).

JACOB I. JAFFE, defendant's counsel, was not present on the night in question, but on a previous occasion he had prepared a certificate of a proposed corporation to handle this property; that Mr. Feld. the complainant, was one of the incorporators. (P. 50, l. 1-15). He testified:

"Q. On the next evening when the contract was signed, you were present, weren't you? A. Yes, sir. Q. You knew at that time that the six were in the syndicate? A. Yes, sir. Q. Do you know who they were? A. Yes. Q. And Mr. Kantrowitz told you what names were proposed to go in that syndicate? A. Mr. Kantrowitz didn't tell me, it was Mr. Feld. Q. Was Mr. Kantrowitz present? A. He was during the preparation of the contract. I can't say whether he was in the office at that particular part of the office. Q. The fact is it was communicated to you? A. Yes. Q. And after it was communicated to you is it not a fact, that in pursuance of that, you met with Mr. Kantrowitz, at my office for the purpose of arranging the certificate of incorporation. Q. And that syndicate was made of whom? A. Samuel Feld, yourself, Kantrowitz, Mr. Kuller, Mr. Hart's name was mentioned and somebody." (P. 51, l. 30-40; P. 52, l. 1-15.)



In addition to this, we have the testimony of Mr. Hartstein, whose testimony we have discussed elsewhere, but which we think bears reading here. On the subject of the assignment he testified as follows:

"Q. Who drew the assignment? A. I did. There was a yellow pad on the desk and I drew the assignment on that. He couldn't tell from whom to whom the assignment moved, but he heard Kantrowitz say over the phone, ***Weinberger has taken over interests.***" (P. 223, l. 24.)

He explained the matter had taken place over a year and it was difficult for him to remember details, but he did recall "that Kantrowitz executed some paper there divesting his interest to somebody, presumably Mr. Weinberger." (P. 323, l. 31-35.)

Against all this testimony, the defendant offered his bare denial without corroboration of any kind. His story was incoherent and contradictory. He admitted that he was down to Mr. Weinberger's office on the occasion referred to by all the witnesses, and that all the people who were in the syndicate were

there including Mr. Feld, the complainant (P. 280, l. 10-13). When asked about him leaving the group and calling on the phone, he did not flatly deny this, but fell back on the "I don't remember excuse". He said, "I don't remember whether I did or not." He admitted that Mr. Weinberger had offered to buy out the different persons in the group for $500.00 a head (P. 251, l. 12). He said, however, the offer was not made to him, although it was in his presence (P. 251, l. 20-23). Then on cross eramination he apparently recalled the telephone call that Mr. Hart had made to him, that Mr. Weinberger had answered the phone and he heard him say, "Let me frame this thing, if you want to drag that out, Senator, I will put it in; I will have to do it." (P. 251, l. 20-30.) He was asked: if he saw the checks being made out to the different ones, and all he would say was that he saw Mr. Weinberger writing, but whether they were the checks that were offered in evidence he did not know. During all this time that the checks were being made out nothing was said by Mr. Weinberger to him or anyone else (P. 252, l. 5-15). He then confessed, however, that he heard Mr. Weinberger say something to Mr. Cacoliris, and Mr. Cacoliris leaned over and picked up his check and said, "I have got mine" and he went right out." (P. 252, l. 18-20); that he saw Feldman, the broker, get his check for his commission (P. 252, l. 25). Then he was asked: Q. "Mr. Weinberger at the time he was giving these checks out, you say had no interest in the contract? A. Absolutely not with the exception of him saying, 'Let me handle this thing and I will make some money.' Q. So that this $500, D-2 and another $500, D-1, $1000 in all, that Weinberger gave out he did it apparently without any reason?", after objection, he answered, "Well, when he made those checks out he was making a grand-stand play." (P. 252 at bottom; P. 253 at top.) When asked what he meant by grand stand play he said, amongst other things:



> "Now, Reuben, you get out and I will take care of this—this idea of being God Almighty and nobody else knowing anything about real estate, and he seemed to be the captain of everything. Q. And you let Mr. Weinberger dominate the situation that night? A. Yes. Q. Although you had the contract? A. Yes. Q. And your money paid for it? A. My money paid for it. Q. And you had the final say in the whole thing? A. I had the final say up to the time for me to put my signatures down there, and then I had something to say; but as long as they were there asking me not to sign anything they could buy the city hall" (P. 253, l. 20 to bottom).

Aside from general sweeping denials, this about comprised his testimony on this point. It is regrettable that the appellate court could not observe the demeanor of Kantrowitz on the stand.

When Mr. Weinberger cross examined him about the meeting in his office that night when he and Mr. Weinberger distributed these checks, Mr. Weinberger asked him:

> Q. "Now I ask you whose money was being distributed? A. Your checks.
>
> Q. Was that per arrangement with you? A. Anything you done was 'per arrangement' with me.

Q. Now you say there was an understanding in regard to the moneys that were being advanced; who was to pay that money back? A. Well, I didn't know there was going to be any money paid out until you jumped out—

Q. You saw it being paid out; now whose money was it? A. I didn't think you were sincere; I thought you were making that move in order to have the other fellow say to you, 'I will buy him out,' because you said to me there wasn't anybody in the room with enough money, or who could produce enough money, to buy the contract.

Q. Do you say now that you thought I was paying out the checks without any reason at all? A. I don't know what you had in your mind; you were the leader.

Q. You can't ascribe any reason for it? A. Only that you simply wanted to go ahead with your little act.

Q. You thought it was an act? A. That was our understanding.

Q. You thought it was an act of charity? A. No, no; an act of grand stand play."—P. 304, l. 22 to bottom; P. 305, l. 1-15.)

The rest of his testimony was equally ridiculous and incoherent. What the Vice Chancellor thought of this testimony against the mass of testimony produced by the complainant may be observed by a reading of the opinion.

Said the court:

> "In the next place, all the internal evidence is against the defense. That there was such a meeting as the complainant describes is admitted. It is not denied that it was attended by everyone who the complainant says had any interest in the contract. That an attempt was made to formulate the provisions of a certificate of incorporation is not only admitted but Mr. Jaffe so testified, and that he was the one that made the attempt, although it must be apparent to anyone that he is very friendly to the defendant. On his cross examination when he was called as a witness for the complainant, he finally admitted under insistent cross examination by friendly counsel, that eventually all arrangements were completed by the defendant and the vendors of the property, thus making it appear that the complainant was not considered at that time as having any interest in the land or the contract, although it is just as presumable that the defendant alone would treat with the owners since he was the only vendee mentioned therein."—(P. 342 at bottom; p. 343, l. 1-23.)



After discussing the evidence, counsel at page 47 of his brief, advances what he regards as important points in favor of the defendant. These, with our reflection on them, are as follows:

(1) That the contract contained a form of an assignment, and counsel argues that this naturally would have been used. No such inference follows. The printed form might have involved interlineations, cramped writing and the like. With a lawyer in the room, it would have been much easier, and

involved less time, to have sketched out an assignment on a separate piece of paper.

(2) That Mr. Hartstein, who drew the assignment could recall nothing about it, but Hartstein's testimony is quite the reverse. He was asked (P. 321) if he remembered the occasion when some kind of an assignment was drawn in the office of Harry Weinberger, and he replied that he did. He was asked, "Who drew that assignment?" and he replied, "I did. There was a yellow pad on the desk and I drew the assigment on that." (P. 321 at bottom.) He couldn't tell from whom to whom the assignment moved, but he details the conversation of the various persons present, and heard them remark about selling out their interest. Then he heard Kantrowitz say over the phone to a Mr. Hart who had been in the office a few minutes before, "Weinberger has taken over our interests." (P. 323, l. 24.) Note the language, ***"Weinberger has taken over our interests."***

Further, witness explained that the matter had taken place more than a year before, and it was difficult for him to remember details, but he did recall "that Kantrowitz executed some paper there, divesting his interest to somebody, presumably to Weinberger." (P. 323, l. 31-33.)

On cross examination his testimony was even stronger; he said:

> Q. "You can't recall from whom and to whom you delivered this paper? A. I can't recall Mr. Vanderbilt, except that this conversation that I have just detailed that took place between Hart and Kantrowitz on the



> wire, where Kantrowitz says to Hart, 'I have already signed,' led me to infer that Kantrowitz had already divested himself of any interest in that contract." (P. 324, l. 10-18.)

Again:

> "I didn't see Kantrowitz sign, but I remember Kantrowitz telling Hart, 'I have already signed.' " (P. 324, l 23.) Again: "They were all claiming a different interest? A. They all agreed that each had a one-sixth interest in that property." (P. 324, l. 10-25.)

Kantrowitz denied that they (meaning the persons interested in the syndicate) had any interest in the contract.

(3) That Mr. Weinberger did not adequately explain the drawing of the various checks for $500.00 to different persons having an interest. Mr. Weinberger has fully explained this, as well all the other witnesses and members of the syndicate, to which we have referred briefly above. Counsel for appellant has not explained why Mr. Weinberger would be giving this money to the various people if Kantrowitz had not assigned this contract to him. Finally, under this point counsel says that no explanation was offered by Mr. Weinberger as to a check for $10,500.00, a notation of which appears in the stub of Mr. Weinberger's check book. This is fully and clearly explained by Mr. Weinberger commencing at page 316-317.

Mr. Weinberger in substance explained that this check represented $10,000 that Kantrowitz had in the first instance paid as a deposit, plus $500 for his profit, the same was that was being paid to the

other members of the syndicate. As we have pointed out above, Kantrowitz regretted his bargain and got back the contract from Mr. Weinberger and the check for $10,500, was, as Mr. Weinberger says, torn up. (P. 317 at top.)

(4) The failure to have the assignment from Kantrowitz to Weinberger acknowledged, and the failure to produce a carbon copy of the assignment. There was no carbon copy for the simple reason that the instrument was drawn by pen, and in the evening, when the office force, including the stenographers, had gone. It is true that the assignment was not acknowledged, but that did not of course nullify the instrument. Mr. Weinberger explained that it was not his practice to put acknowledgments on these divisible assignments, and that it was the first time in seventeen years he had had any such trouble; he confessed that it was partly due to the fact that he had confidence in the people with whom he was dealing (P. 320 at bottom, p. 321 at top).

(5) That complainant failed between April 3rd, 1925 and June 1st, 1925, to arrange with Kantrowitz to take title July 1st.

We fail to see where this constitutes any solid ground. Concededly in the proposition stated by appellant there remained at least one full month in which Mr. Feld might have made arrangements respecting the title. The arrangement to be made was not of such a tremendous or diverse character as to require any great length of time. It provided for the payment of $76,500 cash, of which complainant would have been obliged to contribute only one-sixth. Aside from this, however, com-



plainant testified: "In fact, I had a number of conversations with him and told him (Kantrowitz) that it was my desire to take title about June 1st, because I had the money in hand and in view of the fact that the building required no heating during summer months we would be saving that much expense by taking the property immediately and obtain the benefit of the rents." (P. 27, l. 20-28.) He again further explained that they discussed the question of making an appeal to the County Board of Taxation for a reduction of the taxes; that he, Kantrowitz, would get busy and get together his money and let him know as soon as possible so they could make a deposit (p. 27 at bottom; p. 28 at top).

The probability is that Kantrowitz who was doing business on a shoe string, finding that Feld was anxious to take title to the property, and that he, Kantrowitz, not having the ready cash to pay his share, concluded to take the bull by the horns and perpetrate the fraud on complainant which brought about this suit.

(6) That after the bill was filed Jacob Newman as attorney for Mrs. Zucker, called with Kantrowitz at complainant's office, and there Mr. Kantrowitz said, "Why did you bring these people into this litigation?" (meaning Mrs. Zucker); that then Feld said, "I have a one-sixth interest in the property," Mr. Kantrowitz said "You have no interest at all in the property," and that Feld still insisted that he had a one-sixth interest, and thereupon Kantrowitz offered to bet him $500.00 that he could not show him a paper etc. (See his testimony in appellant's brief at page 49 at bot-

tom.)

When a gentleman of ability, such as appellant's counsel, advances this as a ground, it shows to what desperate ends he is driven to make a presentable appeal. Note in the conversation Feld asserted that he had a one-sixth interest, and that on Kantrowitz's denial he again asserted it.

The Vice Chancellor in his opinion discussed this point at page 343, l. 19 etc., saying:

> "In the first place, I do not recall that he was able to produce a single witness to corroborate his story as to the events of that night and I cannot take his word against the complainant and some of complainant's witnesses, for the reasons that will presently be made apparent. It is true that he called Mr. Newman for the purpose of proving that when challenged so to do, the complainant did not produce any evidence of his interest in the contract. But this was after the bill was filed and I can well understand the fear the complainant must have had of acquiescing in any request or command in the presence of Kantrowitz, when compliance therewith would apparently be according to the wishes of the latter. The resourcefulness of a man of the type of Kantrowitz is utterly beyond comprehension."
>
> (P. 343, l. 19-34.)

Kantrowitz's action on that occasion was, and is to us convincing proof of his dishonesty. The bill had been filed about June the 3rd. Mrs. Zucker had been served with the restraining order and a copy of the bill, as had Kantrowitz, yet Kantrowitz didn't hasten to see Mrs. Zucker, or her counsel, Mr. Newman, to assure them that there was nothing the matter, nor did he call upon Feld to demand an explanation, but sat and waited until Mr. Newman called upon him and figuratively took him by the scruff of the neck to Mr. Feld's office for an explanation.



(7) That Mr. Weinberger had written to the appellant, Kantrowitz, a letter stating that he had a check of $10,000 from Messrs. Endler, Lentz & Solomon, the owners of the premises, which he was authorized to deliver to him, Kantrowitz, in return for a quit claim deed. Mr. Weinberger at page 314 and 315 of his testimony offers a very full explanation. Messrs. Endler, Solomon and Lentz, the owners of the premises, in addition to being involved in the litigation at the case at bar, were also defendants in another specific performance case brought by Mrs. Zucker and others and heard before another Vice Chancellor. They were not in a position to deliver a deed to anyone which would include the signatures of their respective wives. Mr. Weinberger's full explanation at page 314, l. 30-40 and top of 315 in substance is, that he tendered the whole $10,000 to Kantrowitz, because the whole question of the assignment of the contract from Kantrowitz to Zucker was already in litigation, and he, Kantrowitz, was denying any interest of Feld. Mr. Weinberger wanted a quit claim deed from those having an interest in the matter. In his explanation, he calls attention to the quotation in his letter, "upon delivery of

quit claim deed to my clients. I didn't specify to whom it should be." Again: "Read that letter and you will find that it is a quit claim deed only giving the property back to all the original grantors." (P. 315 entire.)

Counsel asks why wasn't a similar letter written to Mr. Feld in reference to his one-sixth interest, and the answer is that already at that time Mr. Feld was in litigation in the case at bar, demanding specific performance to the extent of the one-sixth interest. Mr. Weinberger undoubtedly knew Mr. Feld's attitude, and that to have made any effort to deal with him at that stage of the case, would have been an idle ceremony.

Then counsel proceeds at page 51 of his brief to assign motives as to why Weinberger executed the assignment of a one-sixth interest to Mr. Feld. The first reason he advances, was that in order to re-imburse him, Weinberger, for money he had already spent out improperly, he concluded to obtain $1666.67 from Mr. Feld by false pretense, the false pretense being to execute a sale of a one-sixth interest in property in which he had absolutely no interest. In other words, Mr. Weinberger to get $1666.67 deliberately committed a crime.

His next reason is that Mr. Weinberger wanted Mr. Feld to share in the profits of the undertaking if he did obtain title from Kantrowitz. These two reasons are contradictory. In one Mr. Weinberger is portrayed as dishonest, and deliberately embezzling $1666.67 from Mr. Feld, and while in the other he is gratuitously endeavoring to put



Mr. Feld in the way of money making. Finally, counsel closes his point with the statement that the point narrows down to two questions, one was, was the memorandum or the assignment actually signed by Kantrowitz and (2) if Weinberger did in fact get the assignment, did he have any right to sell any part to Feld.

As to the first thought we close the discussion with the language of Vice Chancellor Bentley, who says:

> "I do not believe what Kantrowitz says, even after a perusal of the very persuasively written brief of his urbane and adroit counsel. In the first place I do not recall that he was able to produce a single witness to corroborate his story as to the events of that night (the night the assignment was executed), and I cannot take his word against the complainant and some of the complainant's witnesses for reasons that will presently be made apparent."
>
> (P. 322, l. 15-25.)

Then the Court goes on to say that all the internal evidence is against the defendant, for reasons which the court proceeds to give and is set out at page 343. Finally, the Court closes with:

> "There is the lack of likelihood of any truth in the defendant's story."

After all, the question on this point is, as to who was telling the truth? In the final analysis this should be left to the Vice Chancellor, who not only had all the witnesses before him, but was able to observe their demeanor and the manner in which they answered the questions addressed

to them, and as he says the defendant was absolutely uncorroborated and the testimony against him was from a group of witnesses. We submit the Vice Chancellor's finding of fact should not be disturbed. The contention with which appellant closes his point, viz., that if Mr. Weinberger had obtained an assignment of this contract, he had no right to assign it to anyone else is too absurd to call for argument.

## POINT VI.

### NOTHING THAT COMPLAINANT DID EITHER BY OMISSION OR COMMISSION, ESTOPS HIM FROM SEEKING EQUITABLE RELIEF.

This is in answer to the third point of complainant's brief.

Counsel asks a series of questions under this point, (1) why didn't complainant have his name placed in the original contract. We may ask, why didn't all the other persons in the syndicate also have their names placed therein. Of course, if this had been done there would have been no suit. They had agreed to appoint one of their group as an agent or trustee for the others, a thing commonly done, as the records of our courts show. Counsel says in the second place that the failure to take this precaution is proof that he had no one-sixth interest in any contract. This of course is but an argument against the testimony of all the other witnesses and the members of the syndicate, that such an arrangement was in fact made. Thirdly, he asks that after the effort to organize the syndicate had failed, why didn't he require Kantrowitz to assign the one-sixth in-



terest in the contract to him. We have already discussed this in the consideration of the previous point. Mr. Weinberger adopted the method of taking an assignment of the whole contract from Kantrowitz, and then assigning a one-sixth interest to Mr. Feld, so that Mr. Feld, did in fact, upon the failure of the syndicate to organize, receive an assignment in writing of his one-sixth interest.

The next allegation of negligence calling for his estoppel is that he failed to record the assignment. The assignment was of course without an acknowledgment and could not have been recorded, but Mr. Feld has testified as we have quoted elsewhere that day by day he was discussing with Mr. Kantrowitz the taking of title to the property, at which time he would have undoubtedly protected his interest with a proper conveyance.

The next ground is that when Kantrowitz brought prospective purchasers to the property, Feld did not make known to these people that he had a one-sixth interest in the contract. No testimony is quoted to support this contention, but we fail to see how that constitutes a good argument, viz., the fact that he didn't assert ownership to other people.

As to the sixth reason, we have already quoted Vice Chancellor Bentley's opinion, which we again advance as sufficient argument in answer to appellant's point. This reason in fact is that after we filed our bill, that when Mr. Newman, representing Mrs. Zucker, came with Kantrowitz

to Feld's office to demand the meaning of it all, that there Feld asserted that he held a one-sixth interest in the property, but failed to wager $500.00 with Kantrowitz on the subject.

## POINT VII.

**THE COURT COMMITTED NO ERROR IN FIXING THE DAMAGES AS IT DID.**

This is in answer to point four of appellant's brief.

The substance of his contention is that inasmuch as Kantrowitz by his fraudulent action in assigning the contract to Mrs. Zucker made only $7500, that therefore complainant should only be entitled to one-sixth of that profit. This is not the true rule. Feld at the time this contract was made, had a one-sixth interest in the contract. He was entitled to the value of that contract. This value was not to be fixed by the sum Kantrowitz sold it for any more than the value of stolen personal property might be fixed by the fact that a thief sold it to a "fence" or receiver at half its real value. The action of Kantrowitz was analogous in that respect to a thief having possession of personal property and desiring to sell it for what he could. It is recognized that burglars, robbers and others who obtain personal property dishonestly often have to sell their loot far below its real value, yet who would seriously believe that that was the test of the real value of the property thus disposed of? This, however, is the substance of appellant's counsel's argument when he discusses the absence of proof of secret



profits at page 57 of his brief, where he asks: "What facts, then prompted the Court to assess complainant's damages on the basis of a profit almost four times the actual profit made by Kantrowitz?" (P. 57 at bottom.) We feel we have answered the question.

The court took the position that the complainant was entitled to the value of the bargain, that is, the difference between what was paid for the property in March, 1925, and what it was worth at the time Kantrowitz secretly disposed of it to Mrs. Zucker on the 1st of June, 1925. Of course a number of experts on both sides were called and frankly there was a large difference in the value as testified to by them, but we submit that the better evidence was that offered on behalf of the complainant.

Counsel cites several cases in support of the proposition that the court will not allow merely speculative damages. This proposition is true but has no bearing on the case at bar. On March 19, 1925, a certain definite sum was paid for the property in controversy. On the first of June, 1925, the property had a definite market value, the difference between the purchase price and this market value was our damages.

JAMES A. CROWLEY, whose testimony begins at page 132, was in the real estate and banking business in Passaic; he was Vice President of one bank and was Secretary for the Security & Title Insurance Company. His principal business was buying and selling real estate and appraising same in the City of Passaic; that he had been engaged in that business for eighteen years. He had acted

as appraiser before the State Board of Equalization of Taxes, in connection with the appraisal of the East Jersey Water Works property on a proposition to condemn the same by the City of Paterson, Clifton and Passaic, and involved the sum of about fourteen and one-half millions. Mr. Crowley was one of the three experts selected for that purpose by the City of Passaic. Mr. Crowley's qualifications are set out in detail at pages 132 and 133.

He testified to his acquaintance with values of property on Lexington Avenue in Passaic, and owned the property which is the subject of this suit. After having thoroughly satisfied the Court as to his qualifications, he was asked:

> "Q. Mr. Crowley, what, in your opinion, was the value of this property on or about the first of June, 1925? A. I should say about $5,000 a front foot." (P. 140, l. 38.)

This property had a frontage of sixty and a fraction feet, so that on Mr. Crowley's testimony, it was worth over $300,000.

For the defendant, WILLIAM H. KRUITBOSCH, was sworn. His testimony begins at page 162. In an examination as to his qualifications, it developed that Kruitbosch's total experience was five years at the time he was testifying, which would have made only three years in the real estate business at the time the controversy arose between the parties (P. 165, l. 1-10). He testified that he was familiar with the property, and gave the value of the property as $200,000. It developed, however, by further examination by his counsel, that he fixed this value on the speculation that the property was only fifty feet frontage. His testimony was:



> "What are the dimensions of that building? A. 50 x 100 feet. I didn't measure it; I took that from my records in my office." (P. 167, l. 5-10.)

On the basis of the frontage and the value given by this witness, his figure would have made the value $4000, or in other words, would have made the property worth $241,000, based on its true frontage of sixty and a fraction ft.

Without going into Kruitbosch's testimony in detail, it will be noted by a careful examination of his cross examination, that the property under discussion, was in the most valuable portion of the City of Passaic, and that property nearby was by this witness, valued at a much higher sum.

SAMUEL SLAFF, who attempted to qualify as a real estate man, but whose real business was that of a lumber dealer, testified for defendant, and his testimony begins at page 178. He couldn't testify to a single sale in the neighborhood, and fixed the value at $180,000. We shall comment on his testimony in a moment. He was followed by Philip Richmond who fixed the value at $156,000, and evinced surprise to know that it was sold for $214,000 (P. 192, l. 15). It is sufficient in our judgment to comment on the testimony of Slaff and Richmond by quoting the language of Vice Chancellor Bentley.

Said the Vice Chancellor:

> "I momentarily overlooked the testimony of Slaff who testified to a value of $180,000; and Richmond, who got his testimony down

to $156,000. In the case of Slaff, he did not know of a single sale in the neighborhood, in his cross examination; but when he was examined on redirect counsel succeeded in having him testify to a sale or two by methods that were not proper on redirect examination."

(P. 346.)

HARRY STEIN, was the next expert witness, whose testimony begins at page 198. It was developed by his counsel, that Mr. Stein had been in the business for twenty years, dealing mainly in business property, and that his purchases and sales had run into over a million dollars, in addition to that, he said he kept himself well posted in relation to the real estate activity in Passaic. This witness admitted that he had purchased a one-quarter interest in that property (P. 200, l. 15). It subsequently developed, that when Mrs. Zucker bought the property, she was part of a syndicate of whom Stein was one, so that through all the transaction, which we have so frequently referred to with reference to Mrs Zucker, respecting the signing of the contract, she was acting for Stein also.

This witness testified that they had paid $214,000 when they took the assignment from Kantrowitz (P. 200, l. 27). This, the witness described as a top notch price. It subsequently developed in the examination of this witness, that when the owners, Solomon, Endler and Lentz, refused to perform, that witness, and Mrs. Zucker, filed a bill for specific performance. The case came on before Vice Chancellor Fielder and specific performance was decreed. This specific performance, however, required them to pay the contract price without any diminution for the failure of the owners to produce the signature of their respective wives. In order to get these signatures, Mrs. Zucker and the other members of the syndicate paid $13,333 addition. (P. 201, l. 10-35.)



This witness who testified to paying the top notch price, invited litigation to force the owners to sell to him at this top notch price, a property with a defective title, which is only cleared up by his paying an additional $13,333, besides all the various legal expenses which he actually would have been put to. Taking his own figures of $214,000, plus $13,333 and allowing approximately say $3000, as necessary legal expenses, we have this witness Stein and Mrs. Zucker paying $230,000 for the property. Keep in mind that this was done by this astute experienced real estate man. In fact, Stein was described afterwards by another expert, Arthur Hughes, for the defendant, as a very shrewd and astute buyer. (P. 266, l. 24 to bottom.)

Stein, as an excuse for having paid this price, testified that a deposit of $17,500, had been paid (P. 202, l. 25-30; P. 203, l. 25); yet he made no effort to get Lentz to return the deposit (P. 203, l. 30-35); nor did he or Mrs. Zucker at any time in the course of the trial ever make a tender of the contract in consideration of their getting their money back. However, boiled down, his explanation for the price he paid was to protect his $17,500 deposit. Thereupon the Vice Chancellor took him in hand and the following was developed:

"Q. What was your purpose in buying the building? A. Just for an investment. Q. To hold it and not to occupy it? A. Yes. Q. Of course you wanted to invest your money to the best advantage? A. Yes. Q. You paid over $240,000 for a piece of property that you considered to be, at the very most, worth only $214,000? A. We paid $240,000." (P. 206, l. 10-15.)

In the conference that he, Stein, had with Mr. Newman and with Mrs. Zucker and others, Mrs. Zucker had advised with him, "that the property is well worth the money" (P. 206, l. 30).

"Q. In your experience as an operator in real estate don't you understand that when the ordinary contract is made for the conveyance of real estate it is to be made free and clear of everything, except those matters that are mentioned in the contract? A. Well, I'm not familiar with that. Q. You say you have been dealing for twenty years in real estate, purchasing and selling real estate on your own account, with your own money? A. Yes. Q. Then do you mean to say you don't know what contracts ordinarily contain? A. I have a counsel that looks after that. Q. Do you mean to say that you don't know what a contract you know; you know that they were under contract to convey that to you free and contains? A. I do know. Q. Of course clear of anything except what was contained in the contract? A. Yes. Q. You knew that if they couldn't give you the dower rights of their wives you didn't have



to go through with it? A. Yes."
(P. 206 at bottom; P. 207, l. 1-25.)

It also developed that in order to be able to go through with their specific performance bill, they were obliged by Vice Chancellor Fielder, to deposit $76,000 with the Court. Note in the state of case there is an error; this sum therein is mentioned as $7600. This is one of the hundreds of errors that appear throughout the record (P. 28, l. 22 of one of the supplementel states of case). The Court probably in fixing the value of this property took Stein's testimony as the basis, and figured if Stein and Mrs. Zucker and the other members of the syndicate were willing to pay $240,000, that on the first of June, 1925, it was worth at least that.

ARTHUR HUGHES, another expert, whose testimony begins at page 262, fixed the value of the property at $200,000, but admitted in the course of the cross examination beginning at the bottom of page 264, that he had consulted with Stein in many business deals and advised with him; that they were both directors in the same bank; that they bought and sold property together; that he knew that the value at the time was $200,000, and that his friend and business associate was paying $214,000, without dower rights (P. 266).

He also under cross examination by Mr. Weinberger admitted that a certain piece of property known as the "Raensslaer property," was in 1925 sold for $5000 a foot frontage, which property was on the same street, and was only 300 feet from the property we have been discussing. He admitted having made a number of sales in 1925 of property along there at

$4000 a foot frontage. If Mr. Hughes' testimony is to be accepted then, on the basis of these several sales, our property under discussion was worth $240,000, and if it was as good as the "Raensslaer property" 300 feet away, it was worth $300,000. He also admitted that this property which we are discussing and which, by the way, was known as the "Benson Building," was in the best block in the City of Passaic (P. 268); that the demand for property in that vicinity was great; that it was difficult to buy property in that block and that the prices were prohibitive (P. 268).

He also admitted (P. 270, l. 15-28), that a nearby property on the same block, known as the "Hart Building," with a 22 feet frontage, that he had offered $90,000 for same. In other words, witness offered a price of over $4000 a foot frontage for the Hart property.

The Court therefore in considering all the testimony had the expert testimony of Mr. Crowley, who placed the value at $300,000. He had Stein and his associates actually paying $240,000 for it, and the testimony of two other witnesses, whose testimony as we have indicated was not worth serious consideration. We submit that under all the circumstances, the Court was in a position to make a fair ascertainment of the value of this property, and in fixing the sum of $240,000, he was justified in so doing by the testimony before him. The Court frankly admitted as everybody must admit the difficulty of ascertaining the value of lands through experts. However, he practically reached his view of $240,000, as we have



indicated above by taking the testimony of Stein, one of the defendant's own experts. In the course of his opinion the Vice Chancellor said:

> "With regard to the damages, the usual painful divergence on the part of the so-called experts was present in a marked degree. It runs from $300,000 upon the part of Crowley down to $195,000 or less, as reflected in the testimony of Hughes; that he refused the property at $195,000, because he considered that "the top-notch price." I considered the experts to be about as unreliable as any to whom I have listened." (P. 345, l. 30-40.)

## CONCLUSION

No criticism can be offered at the amount of the award. The allowance of $1666.67, represents complainant's capital, the $880, the amount actually expended by him to the solicitor and counsel of Mrs. Zucker; the award of damages on the basis of the value of his bargain was a conservative figure. The Vice Chancellor might readily have placed a much higher valuation. The $2000 counsel fee was reasonable, as included in the seven or eight days of actual hearings in the cause, there were a large number of appearances on motions of various kinds, and attendance before the Court of Errors and Appeals. In addition to this, there were several occasions when the defendants were not ready after complainant had appeared in Court with his witnesses and the case went over. The Vice Chancellor was in a position to judge fairly the allowance.

It is therefore respectfully submitted that for all the reasons advanced, the decree should be affirmed.

WARD & McGINNIS.
Solicitors of Complainant.

Peter J. Mitchell
Of Counsel.

October Term, 1927.

# New Jersey Court of Errors and Appeals

Samuel B. Feld,
Complainant-Appellant,
and
Rueben B. Kantrowitz et als.,
Defendant-Appellee.
} On Bill &c.

## BRIEF ON BEHALF OF COMPLAINANT

* * * * * * * * *
* * * * * * * * *

We contend that the very presence of the complainant in the building, irrespective of how he entered, constituted a standing notice to every prospective purchaser as to what the complainant's interest was. It makes no difference that he might have entered under a lease and thereafter acquired an interest; his physical presence on the premises is notice as to every equity that he possessed.

In support of the foregoing we cite the following authorities:

Holms v. Stout, 10 Equity, page 419 to 426.
Hover v. Bliss, 26 Equity, page 363.
Wood v. Price, 79 Equity, page 620-624.
Kaplan v. Palace Realty Co., 110 Atl. Rep., p. 585.
La Combe v. Headley, 108 Atl. Rep., page 185.

In the case of Wood v. Price, 79 Equity, page 620, syllabus four, five and six read as follows:

> "Possession of real estate which is actual, open and visible occupation, inconsistent with the title of the apparent owner by the record and not equivocal, occasional, or for a temporary or special purpose, is constructive notice

to all the world of the rights of the party in possession."

"His rule also includes those equities of one who occupies as tenant, that are connected with the tenancy, as well as interests under collateral agreements, as a contract to convey the land, or to renew the lease."

"The possession of premises by a tenant is constructive notice, not only of such tenant's rights and equities, but as well notice of those of the landlord."

(Court of Errors and Appeals.)

The points set out in the syllabus are at page 624 and 625 of the opinion, in which the authorities also in support of this proposition are fully discussed.

In Caplan v. Palace Realty Co., 110 Atl. Rep., page 584, syllabus one, two and three are as follows:

"Open, visible, notorious and exclusive possession of land by one not the record owner affords notice to one who purchases the record title, putting him on inquiry and charging him with knowledge of such facts as reasonably prudent inquiry would have ascertained."

"A tenant may during his term lawfully contract for the purchase of the fee from his landlord or may by parol or written agreement lawfully contract with his landlord touching modifications of the lease, and, as to such subsequently acquired rights, he is protected in the absence of inquiry by a purchaser from the landlord who examined the lease."



"Purchaser of realty under lease, in view of the tenant's possession, held not privileged to rely on the lease as an instrument correctly defining the rights of the landlord and tenant at its date, thus relieving him of the duty of further inquiry as to whether the lease was subject to reformation at the tenant's instance in respect of notice of renewal."

The matter in the syllabus is discussed at page 581 of the opinion.

In that case it appeared that complainant entered the premises as a tenant, had a written lease and then entered into a contract of purchase. The defendant seemed to assume the position that they had examined the lease by which the complainant entered into the premises, and felt that that was a sufficient inquiry as to the manner in which complainant held same. The Court, however, took a contrary view as was indicated by the foregoing quotations.

The Vice Chancellor in his opinion while seeming to recognize the general rule above enunciated, took the position that the case at bar differs from the general run of cases, in that it did not present the case of "The purchase of a dwelling house or a farm or a piece of woodland with some one in visible occupation or possession thereof, but presents the case of a building constructed to accommodate a considerable number of tenants and which, in fact, was so occupied."

(Opinion, State of Case, 71, l. 27-33.)

The Court further on in the opinion (p. 72, l. 5-10) differentiated between a single occupant claiming rights under equity notice and one of a group of occupants of a business building or hotel. We re-

spectfully insist that there is no such difference recognized by Courts. The test of our own courts is that the prospective purchaser is charged with knowledge of such interest as his reasonably prudent inquiry would have ascertained had he visited the premises. We respectfully refer the Court to the case of Caplan v. Palace Realty Co., cited above.

Surely had Mrs. Zucker, or her attorney, taken the trouble to visit this two story building, it would not have been anything unreasonable to have asked them to make inquiry of five tenants as to their rights in the building. Illustrative of our contention that a mere number of occupants makes no difference, we respectfully cite the following:

> "And so the occupation of part of a building has been regarded as sufficient to put on inquiry a purchaser of the building."
>
> ***Tiffany on Real property, Sec. 571, 2nd Ed., p. 2224.***

In support of this statement of the rule is cited the case of ***Boyer v. Chandler*** (Ill.), 32 L. R. A., p. 113, 43 Northeastern, p. 803. In that case after citing the general rule as discussed above, the Court proceeded to apply the rule above enunciated in support of the occupant, although she occupied one flat of a three story tenement or apartment house. Said the Court:

> "Possession of a party need not be of every part thereof, in fact, in order to constitute notice of his rights, both legal and equitable. ***Possession*** of a ***part*** of a tract of land or a lot, under a deed for the whole, may be regarded as possession of the whole. Moreover, when the agent saw that the property was occupied, it was his duty to make



> inquiry of ***those*** in possession, in regard to the title under which ***they*** occupied the property. Had he done this, he might have ascertained that Allen had not title. But the agent made no inquiry of ***any*** person ***occupying*** the property, but relied solely on the statement of Allen. The agent of Mrs. Boyer had notice of facts sufficient to put him on inquiry, and, as such facts would have disclosed the existence of Mrs. Elliott's title, he is chargeable with notice of such title. Finding no error in the decree of the court, it must be affirmed. Decree affirmed."

In the statement of facts in the Boyer case, at page 803, 43 Northeastern Rep. 2nd Col., it appears that the person who claimed rights to the possession occupied the ***third flat,*** and the ***two other flats*** were rented to certain other persons.

In the case of Phelan v. Brady, 119 N. Y., 587; 23 Northeastern, 1109, by the opinion of Judge O'Brien it appears that the plaintiff had loaned to the defendant $2000, and had taken from him a bond and mortgage upon certain real estate, which mortgage was not recorded. This real estate consisted of a tenement building containing forty-three rooms, and the apartments were occupied by twenty different occupants or families as tenants. One of these tenants claimed to be the owner of the building. The mortgage was foreclosed and the tenants made party defendants, and the defendant being in possession and being a party set up an answer claiming title. Said the Court:

> "At the time of the execution and delivery of the mortage to the plaintiff, the de-

fendant Mrs. Brady was in the actual possession of the premises under a perfectly valid, but unrecorded deed. Her title must therefore prevail as against the plaintiff. It matters not, so far as Mrs. Brady is concerned, that the plaintiff in good faith advanced his money upon an apparently perfect record title of the defendant John E. Murphy. Nor is it of any consequence, so far as this question is concerned, whether the plaintiff was in fact ignorant of any right or claim to Mrs. Brady to the premises. It is enough that she was in possession under her deed and the contract of purchase, as that fact operated in law as notice to the plaintiff of all her rights. It may be true, as has been argued by plaintiff's counsel, that, when a party takes a conveyance of property situated as this was, occupied by numerous tenants, it would be inconvenient and difficult for him to ascertain the rights or interest that are claimed by all or any of them. But this circumstance cannot change the rule. Actual possession of real estate is sufficient to a person proposing to take a mortgage on the property, and to all the world, of the existence of any right which the person in possession is able to establish. Gouverneur v. Lynch, 2 Paige, 300; Bank v. Flagg, 3 Barb. Ch. 318; Moyer v. Hinman, 13 N. Y. 184; Tuttle v. Jackson, 6 Wend, 213; Trustees v. Wheeler, 61 N. Y. 88, 98; Cavalli v. Allen, 57 N. Y. 517."

23 Northeastern Rep., p. 1110.

* * * * * * * *
* * * * * * * *

41 OCT. 1927

*by leave of Court.*

## New Jersey Court of Errors and Appeals

| | |
|---|---|
| Between<br>Samuel B. Feld,<br>Complainant-Respondent,<br>*and*<br>Reuben B. Kantrowitz,<br>Defendant-Appellant. | On Appeal from Court of Chancery. |

# DEFENDANT'S REPLY BRIEF.

This memorandum (submitted pursuant to leave of Court at the oral argument because complainant's brief reached defendant's counsel only a few hours before the argument) deals only with the glaring inaccuracies in complainant's brief.

## Reply to Complainant's Argument on Jurisdiction.

### 1. Whether Lower Court Had Jurisdiction to Grant Complete Relief.

It is to be noted that the quotation from Pomeroy which is found on page 7 of complainant's brief contains the qualifications—

> *"when a Court of Equity has jurisdiction;"*
> *"if the controversy contains any equitable feature."*

These qualifications are significant, and are enlarged upon by Professor Pomeroy in the section from his work quoted on pages 23 and 24 of my brief.

The first case upon which complainant relies in support of the exercise of jurisdiction by the lower court is *Decker* v. *Caskey*, 1 N. J. Eq. 427.

This suit involved the foreclosure of a mortgage, a matter clearly within equity's jurisdiction. It is highly important that the very next sentence after the language quoted by complainant reads:

> "It sometimes calls for the aid of a jury before by its decree it closes the door of litigation, and such I believe is now the proper procedure" (p. 433).

And the Court there ordered that an action at law in ejectment be brought and prosecuted in the Supreme Court.

Similarly the cases of *Shannon* v. *Marselis*, 1 N. J. Eq. 424, and *Couse* v. *Boyles*, 4 N. J. Eq. 212, cited by complainant on page 8 of his brief involved foreclosures of mortgages, and *Williams* v. *Winans*, 22 N. J. Eq. 373, involved a bill to set aside fraudulent encumbrances on realty.

In each of these cases the *primary equitable relief* prayed for was granted, and these cases are, therefore, clearly distinguishable from the case at bar; for here the lower court by its order of June 7, 1926, denied as against Mrs. Zucker the only strictly equitable relief for which the bill had been filed by complainant.

Complainant, in contending that the lower court had jurisdiction to hear the case against defendant and award money damages, relies chiefly on the authority of *L. Martin Co.* v. *Martin & Wilckes Co.*, 75 N. J. Eq. 39. *This case was reversed by the Court of Errors and Appeals on the very point for which complainant cites it in his brief.* The reversing opinion is found in the same volume, 75 N. J. Eq. 257. This Court commented on Vice-Chancellor Stevenson's views, relied upon by complainant, as follows (pp. 258-260; italics ours):

> **"It is the portion of the decree which directs the master to ascertain these damages that calls for comment. This goes beyond the prayer of the complainant's bill, which,**



> **in this respect, asks only for an account of sales and profits. The vice-chancellor ably argued in favor of the proposition that it would be unfortunate to remit the complainant to a court of law to ascertain its damages. *We are not prepared to accede to his suggestion that we should so extend the jurisdiction of a court of equity,* however desirable it may be that such extension should be brought about, either by *legislation,* or, if that is impossible, in view of our constitutional limitations, *by constitutional amendment. The general rule is that unliquidated damages for a tort cannot be recovered in equity.* So well settled was this rule in England that an act of parliament was required to change it. 21 & 22 Vict. c. 27. This rule is stated in 2 Dan. (5th Am. ed.) 1080. It is equally well settled in this state. Trotter *v.* Heckscher, 40 N. J. Eq. (13 Stew.) 612; Alpaugh *v.* Wood, 45 N. J. Eq. (18 Stew.) 153; Norton *v.* Sinkhorn, 63 N. J. Eq. (18 Dick.) 313.**
>
> **"There is a class of cases in which a court of equity will ascertain the amount of compensation, but these are cases where the ascertainment is necessary *as a condition precedent to the equitable relief which the court of chancery is competent to afford.* Illustrations are to be found in cases where equity requires that a landowner should be enjoined from maintaining ejectment against a corporation having the power to condemn lands, but at the same time requires that the injunction should be awarded upon terms that the corporation make compensation. The cases are collected by Vice-Chancellor Pitney in Sparks Manufacturing Co. *v.* Newton, 57 N. J. Eq. (12 Dick.) 367 (at p. 393); North Hudson Railroad Co. *v.* Booraem, 28 N. J. Eq. (1 Stew.) 450; New York and Greenwood Lake Railroad Co. *v.* Stanley's Heirs, 35 N. J. Eq. (8 Stew.) 283. Other cases are cases of compensation on a bill for specific performance, of which Melick *v.* Cross, 62 N. J. Eq. (17 Dick.) 545, is an in-**

**stance. Another illustration is Simmons *v.* Paterson, 60 N. J. Eq. (15 Dick.) 385, where the right to ascertain compensation was contingent upon the consent of the city. In Eggers *v.* Anderson, 63 N. J. Eq. (18 Dick.) 264, the jurisdiction of equity was sustained in a case of fraud, and it was held that the *value of goods furnished* might be ascertained by a master, *but that case comes short of sustaining the jurisdiction to ascertain unliquidated damages for a tort.*"**

The case at bar falls directly within the principle enunciated by this Court in the *Martin* case.

Let us assume, contrary to the cases which we have cited on pages 20-21 of our brief, that the allegations of fraud in the bill conferred upon the Court of Chancery jurisdiction to proceed against the defendant Kantrowitz even after the entry of the decree denying the specifically equitable relief prayed for.

Even on this assumption, the extent to which the Court could go was to award complainant one-sixth of the *liquidated, actual profit* which defendant Kantrowitz made. That this was the limit of the damages the lower Court could award is clearly indicated by this Court's interpretation of *Eggers* v. *Anderson,* 63 N. J. Eq. 264, in the *Martin* case.

When complainant's counsel offered his first witness to prove the value of the property on the date of the transfer by Kantrowitz to Mrs. Zucker, defendant's counsel questioned the materiality of such evidence and stated that:

> "The Court wouldn't exceed or go above the amount at which he (referring to Kantrowitz) sold the property" (S. C., p. 127, ll. 40-41).



To which the Court replied (S. C., p. 128, ll. 1-17):

> "The Court: Now, just consider for a moment how ridiculous that would be. Let us suppose, for the purpose of illustration, that it could be demonstrated that that property is worth $600,000, and that it sold for 112 or 114, or whatever it was. Mr. Feld would be entitled to one-sixth of the difference between what he paid for his share of the property and one-sixth of $600,000, or $100,000. Clearly, I can't take your property and sell it to somebody at an inadequate price and then only expect to be liable to you for what I got it for. I am liable to you for what your property is justly worth."

It is our contention that when the Court treated the defendant's assignment of the entire contract on the analogy of a conversion of property, and assumed the right to find the value of the property on the date of the transfer to Mrs. Zucker, it was undertaking to award complainant *unliquidated damages for a tort,* contrary to the holding of this Court in the *Martin* case. Chief Justice Beasley thoroughly considered this limitation on the power of the Chancery Court in an extensive opinion in *Palys* v. *Jewett,* 32 N. J. Eq. 302-22, from which we have quoted on page 26 of our principal brief.

### 2. Whether Complainant's Good Faith Conferred Jurisdiction on the Court of Chancery.

In reply to a question asked by the Chief Justice, complainant's counsel at the oral argument admitted that the record does not disclose that the complainant had reason to believe, before he filed his bill, that Mrs. Zucker had been apprised of his alleged interest in the contract. In his brief he relies on the testimony of Joseph

Solomon on direct examination as establishing that Mr. Solomon did inform Mrs. Zucker of complainant's interest. This, of course, does not prove that the complainant was aware when he filed his bill that Mr. Solomon would so testify. In fact, complainant's counsel admitted in his argument before this Court that complainant was unable to obtain from Mr. Solomon at that time any information, because Mr. Solomon was a defendant.

But let us see what Mr. Solomon's actual testimony is. On cross-examination, he was confronted with the testimony he had given in the case of *Zucker* v. *Endler, et als.,* on September 17, 1925, before Vice-Chancellor Fielder. He there testified as follows:

> "Q. You never told Mrs. Zucker about Feld?
> "A. No, until after.
> "Q. Until she told you?
> "A. Yes."

He testified further as follows:

> "Q. You never said anything to Mrs. Zucker that anybody else had any interest in the contract?
> "A. I don't think I did" (Supp. S. C., p. 18, ll. 1-23).

Thus we have a situation where complainant, to establish his good faith with respect to the filing of the bill, produces a witness a year and a half later to state for the first time that he had informed Mrs. Zucker that certain other persons had had interests in the contract in question, which he *presumed* Kantrowitz had bought up. This same witness had six months before, in a case brought by Mrs. Zucker against him and the two other vendors, clearly testified that he did not tell



Mrs. Zucker about any other persons having had an interest in the contract *until after complainant had filed his bill* and Mrs. Zucker came to him to inquire about the merits of the bill.

In *Borden* v. *Curtis,* 48 N. J. Eq. 120, upon which complainant relies on the question of good faith, Vice-Chancellor Pitney stated that the test of good faith was not what complainant actually believed in his own mind, under the influence of his self-interest; but *whether under the circumstances the complainant had reason to doubt that he could establish the equity which he claimed.* In the case at bar, the complainant did have reason under the circumstances to doubt that he could prove actual notice of his alleged interest on the part of Mrs. Zucker. In his brief, at the middle of page 14, complainant admits this when he says:

> "Counsel at the hearing and in his argument before the Court, however, proceeded mainly on the question of constructive notice on the part of Mrs. Zucker."

Complainant included an allegation of actual notice on the part of Mrs. Zucker altho he had no reasonable expectation of being able to prove it but he placed chief reliance on his allegation of constructive notice from the fact of his tenancy of one of the offices in the building in question. The Vice-Chancellor found against him on both allegations. Complainant's contention that there was not a single reported case in this state dealing with the question of constructive notice is surprising, since we find that Vice-Chancellor Bentley in his opinion, 98 N. J. Eq. 169-171, on this phase of the case cites at least four controlling cases—*Wood* v. *Price,* 79 N. J. Eq. 620; *Coleman* v. *Barklew,* 27 N. J. L. 357; *Holmes* v. *Stout,* 4 N. J. Eq. 492; aff. 10 N. J. Eq. 419; *Cox* v. *Devinney,* 65 N. J. L. 389; *Rankin* v. *Coar,* 46 N. J. Eq. 566.

The question arises, therefore, whether complainant's unjustifiable mistake of law conferred a jurisdiction on the Court of Chancery, which it could exercise by way of awarding money damages against defendant Kantrowitz even after the disposition in favor of Mrs. Zucker of the charge of actual or constructive notice.

In *Hildebrandt* v. *Savage,* 4 Wash. 524, 30 Pac. 643, 32 Pac. 109, the Court was faced with a similar situation and said:

> "But the question is, When does the Court obtain jurisdiction in a cause like this? Clearly, the Court had no jurisdiction excepting to foreclose a lien. Now, can a party, by coming into Court, and setting up a mere pretended lien, which has no validity, confer jurisdiction upon the Court to render a personal judgment upon a contract which otherwise would only be triable in an action at law, and thus deprive the defendant of the benefits of such a trial? It is admitted that, if the equitable features of the action were so wanting or ill-founded as to amount to bad faith upon the part of the plaintiff, the action could not be maintained; but it is contended that if it is apparent the plaintiff sought the equity side of the Court in good faith, the Court would thereby get jurisdiction; in other words, making the jurisdiction of the Court depend upon the good faith of the party in asserting his equitable rights. We do not think this position can be maintained in a case like this. As to whether a lien is sufficient upon its face is purely a question of law, and the defects in the lien in this instance were thus apparent by an inspection. *The jurisdiction of the Court ought not to be made to depend on the mere intent or belief of the plaintiff.* If his good faith is to be justified to any extent by the facts, and subject to inquiry accordingly, the law and practice would be rendered very uncertain in this respect, and present great practical difficulties in the



> determination of questions of jurisdiction to which it would give rise."

Similarly, in *Saur* v. *Ferris,* 145 Ill. 115, complainant proceeded on a misconception of the law and the Court decided that his misconception did not confer jurisdiction so as to enable the Court to award money damages.

But a still more important objection exists to complainant's argument on this point. He relies upon *Borden* v. *Curtis,* 48 N. J. Eq. 120, which holds that where a vendee brings specific performance *with a reasonable expectation that the vendor is able to perform,* and it afterward appears that the vendor is unable to perform, the Court may give compensatory relief. Complainant ignores the vital qualification contained in the words, "with a reasonable expectation that the vendor is able to perform". In the case at bar, complainant knew before starting his suit that defendant Kantrowitz was unable to perform. Paragraph 9 of his bill of complaint (S. C., p. 4, ll. 20-32) states that defendant Kantrowitz "did assign the entire contract to the said Rose Zucker, despite the fact that the complainant herein was an undivided one-sixth owner thereof". Defendant standing in the position of a vendor so far as complainant was concerned, and complainant having knowledge at the outset of his inability specifically to perform, the doctrine of *Borden* v. *Curtis, supra,* clearly did not give the Court jurisdiction to give compensatory relief against defendant.

Furthermore, it is to be noted that this is not a case in which C brings a suit in specific performance against D, and in place of specific performance which has become impossible for some reason, the Court decides to award compensatory damages against D. In the present case, specific performance was sought not against D (Kantro-

witz) but against his assignee (Mrs. Zucker). D (Kantrowitz) was not even a necessary party with respect to the specific performance phase of this suit. If complainant had proved actual or constructive notice on the part of Mrs. Zucker, specific performance could have been decreed as against her, but no specific equitable relief could have been given against Kantrowitz, who had, as complainant knew and alleged, divested himself of all interest in the contract. When, therefore, the Court dismissed the bill as against Mrs. Zucker, the only party against whom specific performance could have been decreed was eliminated from the case, and the Court had no power to proceed against Kantrowitz on the theory that, once having acquired jurisdiction of a suit for specific performance, compensatory relief could be granted against any *other party* to the suit.

It is apparent that the quotation from Chancellor Walworth's opinion in *Morse* v. *Elmendorf,* 11 Paige 277, substantiates our contention and not that of complainant; for the Chancellor limits compensation by way of damages in specific performance suits to cases where defendant deprives himself of the power to perform specifically *during the pendency of the suit,* or even prior to the filing of the bill, *but without the knowledge of the complainant.* This case is cited in *Peeler* v. *Levy,* 26 N. J. Eq. 330, for the principle that a Court of Equity will not entertain jurisdiction of a claim for money damages "even when it is made under the guise of a suit for specific performance."

### 3. Whether a Specific Objection to the Jurisdiction Was Necessary.

Complainant argues that defendant should have objected to the jurisdiction in his answer. But an examination of the bill of complaint discloses no



prayer for the assessment in complainant's favor of one-sixth of the value of the property as found by the Court. How was defendant Kantrowitz to know that the Vice-Chancellor would decide that under the prayer for general relief he had authority to award monetary damages on the basis of "the value of complainant's bargain"?

Obviously, then, the first indication defendant had that the Court did not intend to consider his actual profit, but to assess unliquidated damages, was when complainant produced his first expert to prove that the property in question had a higher value than the amount for which defendant sold to Mrs. Zucker. When Mr. Feder, defendant's counsel, questioned the materiality of this testimony and argued that the Court could not go above the price obtained by defendant, the Vice-Chancellor stated that this view was *ridiculous,* and indicated that he intended to ascertain what the property was justly worth (S. C., p. 127, l. 4 to p. 128, l. 25).

It is our contention, first, that when defendant's counsel raised the question of the materiality of the expert's testimony, he properly questioned the Court's authority to assess unliquidated damages, and that the Court's emphatic ruling obviated the necessity of a formal objection. In *Corn* v. *Kaplan,* decided by this Court at the October term, and reported in 5 N. J. Adv. Rep. 1448, Justice Kalisch said with respect to a similar point:

> "It is equally true that counsel for appellant took no formal exception to what the trial judge said, but from what occurred we do not perceive why counsel should have done so, since the trial court virtually anticipated an exception to his ruling when he told counsel that the motion would be denied without prejudice, if it was decided to appeal, thus practically granting an exception if an appeal was decided upon by counsel."

Since this Court in the Corn case construed the language of the Trial Court as anticipating an exception in a case at law, the forceful language of the Vice-Chancellor in the case at bar should under the less technical procedure in chancery be given the effect of anticipating an objection.

Secondly, owing to the emphatic language used by the Court in indicating its views, it was not too late to raise this question of jurisdiction in the briefs filed with the Vice-Chancellor. The Vice-Chancellor's opinion says nothing to indicate that this matter was discussed, but we devoted a separate point to the contention that the complainant should seek his remedy at law.

Thirdly, we contend that it is not too late to raise the question on this appeal, because jurisdiction cannot be conferred by express or implied consent of the parties, where the Court has no jurisdiction of the *subject matter* of the controversy. We have already established that under this Court's decision in the Martin case unliquidated damages for tortious acts cannot be recovered in Chancery. When, therefore, it proceeded with hearings on complainant's claim for unliquidated damages against Kantrowitz after dismissing the bill as against Mrs. Zucker, the Court assumed to deal with a subject matter over which it had no jurisdiction. Accordingly, the following authorities control:

1 C. J. 35:

> "Since appearance has no effect to waive a want of judicial power, and jurisdiction of the subject matter cannot be given by consent or waiver, the objection that the Court has no jurisdiction of the subject matter need not be taken by plea or answer in abatement or to the jurisdiction, but may be raised in other ways and at any stage of the proceedings and is not waived by delay. (Citing *Collins* v. *Keller,* 58 N. J. L. 429; *Warren County* v. *Stackes,* 42 N. J. L. 115; *Duke* v. *Duke,* 70 N. J. Eq. 135 (aff. 72 N. J. Eq. 434)).



> "Thus the objection that there is no jurisdiction of the subject matter may be raised by demurrer *when such want appears on the face of the record,* * * * or the want of jurisdiction may be a ground for reversal on writ of error or appeal; and *the question may be raised even for the first time on appeal or error.*"

*North Hudson County Ry. Co.* v. *Flanagan* (1894), 57 N. J. L. 236, 238:

> "*Jurisdiction cannot be conferred upon a Court by mere consent,* but objection to the mere mode of acquisition of such jurisdiction may be waived."

## Reply to Complainant's Point III.

We do not understand how complainant can argue that a relationship of *cestui que trust* and trustee arose between him and defendant Kantrowitz. There certainly was no express trust agreement. Did any trust arise by operation of law? Complainant bases his case on the claim that he obtained a one-sixth assignment from Mr. Weinberger and that defendant Kantrowitz received back a five-sixth assignment from Mr. Weinberger (S. C., p. 214, ll. 20-30). The mere fact that two people acquire interests in realty from a common grantor does not create between them any trust relationship by operation of law. The two classes of trust which arise by operation of law are constructive and resulting trusts, neither of which were created in this case.

Consequently, the lower court had no jurisdiction to award unliquidated money damages on the theory that complainant was in effect proceeding against a trustee for an accounting.

## Reply to Complainant's Point IV.

Complainant advances the novel argument that because he had disbursed $880 in his litigation against Mrs. Zucker, which he could not recover in a suit at law against Kantrowitz, his remedy at law thereby became inadequate. In the first place, we might ask why, if these expenses were a proximate consequence of defendant's assignment to Mrs. Zucker, they could not be recovered in a suit at law. Secondly, it would be a dangerous doctrine which would give a Court of Equity jurisdiction of a cause otherwise triable only at law, simply because the complainant wishes to be allowed counsel fees and costs incurred in other litigation.

## Reply to Complainant's Point V.

We desire to correct three material impressions which one obtains from reading complainant's argument under this point:

1. Complainant, to prove the execution of an assignment by Kantrowitz to Weinberger, relies chiefly on an admission made by Kantrowitz in a telephone conversation with a Mr. Hart. The latter and Mr. Cacoliris were not wanted by Mr. Weinberger in the proposed syndicate. Both agreed to withdraw on payment of $500 to each, but Hart shortly thereafter called Weinberger's office and told Kantrowitz not to take any check for him. It was on Mr. Weinberger's suggestion that Kantrowitz told Hart he had already assigned to Weinberger. Complainant on page 38 of his brief badly distorts Kantrowitz's testimony on this point (S. C., p. 251, ll. 28-36). All the witnesses admitted it was Mr. Weinberger who did not want Hart in the syndicate.

2. Complainant seeks to account for the non-production of the assignment from Kantrowitz to



Weinberger by stating that Kantrowitz obtained and destroyed it. Nothing in the record justifies this charge. Moreover, would not an attorney of Mr. Weinberger's experience have retained a copy of the document under which he assumed authority to give an assignment to complainant? And why was no copy of the alleged five-sixths assignment back to Kantrowitz produced? It would have been material corroborative evidence.

3. Mr. Newman testified that when he and Kantrowitz called on complainant shortly after the filing of the bill, Kantrowitz asked why complainant brought Mrs. Zucker, an innocent person, into the litigation and said "If you will show me that you have any interest in the property at all I will give you $500" (S. C., p. 261, ll. 1-18). Complainant at several points in his brief speaks of this as an offer by Kantrowitz to "bet" or "wager" $500, and that complainant was therefore excused from showing his assignment.

## Reply to Complainant's Point VII, on the Question of Damages.

Complainant, in arguing that when a thief sells stolen goods to a fence the true owner is not limited to the recovery of the amount received by the thief, inferentially charges that the transaction between Mrs. Zucker and defendant Kantrowitz was not entirely bona fide. But this flies in the face of Vice-Chancellor Bentley's decision of the case against Mrs. Zucker, in which he found that she was a bona fide purchaser. Complainant should not cast *innuendoes* which are expressly ruled out by the findings of the lower court.

To prove that in the two and one-half months which elapsed between Kantrowitz's purchase and sale, the property had a remarkable advance in value, complainant relies in his brief on the

testimony of his expert, Crowley, although his testimony was entirely rejected as untrustworthy by the Vice-Chancellor (Opinion, p. 346, ll. 12-17).

Complainant seeks to make the testimony of Captain Kruitbosch that the property was worth $200,000 on June 1, 1925, serve his purposes by unfairly selecting a bit of testimony in which the witness by a slip of memory gave the dimensions of the premises as 50 x 100. Complainant argues this proves the land was worth $4,000 a front foot. But the witness at the close of his testimony corrected himself and stated that the property has a frontage of 60 feet (S. C., 178, ll. 8-10).

An even more flagrant misquotation is found on page 58 of complainant's brief. The testimony of Mr. Stein there quoted ends with the statement, "We paid $240,000". But a reference to page 206 of the State of Case discloses that Mr. Stein did not make a statement, but, surprised by the amount mentioned by the Court, asked the question, "We paid $240,000?" Whereupon the Vice-Chancellor said, "Q. I mean, you paid about $228,000?" and Mr. Stein answered, "In clearing the dower rights, yes" (S. C., p. 206, ll. 13-17).

Complainant disregards entirely the fact that his interest was also subject to the outstanding dower rights. In tacking the cost of clearing the dower rights eight months after the sale onto the price which Kantrowitz obtained, the lower Court awarded complainant the value of a free and clear interest, which he did not have. And in adding to the figure of $227,500 thus obtained, another $7,500, making the price which Kantrowitz should have obtained $235,000, the Court exceeded its power since it entered the realm of purely speculative and unliquidated damages.

Respectfully submitted,

ARTHUR T. VANDERBILT,
Counsel for Defendant Kantrowitz.

# New Jersey Court of Errors and Appeals

BETWEEN:

SAMUEL B. FELD,
*Complainant-Respondent,*

*and*

REUBEN B. KANTROWITZ,
*Defendant-Appellant.*

On Bill, etc.

## SUPPLEMENTAL STATE OF CASE.

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FEDER & RINZLER,
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ARTHUR T. VANDERBILT,
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**Answer of Rose Zucker.**

# In Chancery of New Jersey

Between

SAMUEL B. FELD,
Complainant,

*and*

REUBEN B. KANTROWITZ, *et al.*,
Defendants.

On Bill, Etc.
ANSWER.

The defendant, Rose Zucker, residing in the City of Newark, County of Essex and State of New Jersey, one of the defendants in this cause, answering the bill of complaint filed herein, says:

1. She admits Paragraph 1.

2. She denies Paragraph 2.

3. She denies Paragraph 3.

4. She denies Paragraph 4, except so much as states that Reuben B. Kantrowitz entered into a contract with Abram Endler, Nathan Lenz, and Joseph Solomon, advancing the sum of Ten Thousand Dollars ($10,000.00) as a deposit on account of the purchase price.

5. She denies Paragraph 5.

6. She denies Paragraph 6.

7. She denies Paragraph 7.

8. She has no knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 8.

9. She denies Paragraph 9.

10. She denies Paragraph 10.

11. She denies Paragraph 11.

12. She denies Paragraph 12.

FIRST SEPARATE DEFENSE.

This defendant says:

1. That she is the owner and bona fide holder, for value, without notice of any outstanding claim, of the entire contract for the purchase of the property known as Nos. 12-14-16 Lexington Avenue, Passaic, New Jersey.

2. That before this defendant, Rose Zucker, purchased from the defendant, Reuben B. Kantrowitz, the aforesaid original contract, signed and entered into by Nathan Lenz, Abram Endler and Joseph Solomon, with Reuben B. Kantrowitz individually, this defendant, Rose Zucker, had a conversation with one of the present title owners, Joseph Solomon, at his home on Paulison Avenue, Passaic, New Jersey, at which time this defendant informed Joseph Solomon that she was interested in purchasing the said property, and the said Joseph Solomon informed this defendant of the rentals that the various tenants in the said property paid, and the carrying costs of the said property, and also informed this defendant that the owner of the contract for the purchase of the said property was Reuben B. Kantrowitz.



3. That relying on the said information received from the said Joseph Solomon that Reuben B. Kantrowitz was the sole owner of the contract for the purchase of said property, this defendant informed her attorney, Jacob L. Newman, to offer for an assignment of the said contract, the sum of Seventeen Thousand Five Hundred Dollars ($17,500.00).

4. Said offer was accepted by the said Reuben B. Kantrowitz, and on the first day of June, 1925, the said Reuben B. Kantrowitz delivered at the office of Jacob L. Newman, her attorney, the original contract for the sale of the said property, with an assignment endorsed thereon, to Rose Zucker, and received therefor a check from the Trustee Account of Jacob L. Newman, in the sum of Seventeen Thousand Five Hundred Dollars ($17,500.00).

5. That at the time that the said Reuben B. Kantrowitz delivered the said contract with the assignment endorsed thereon, to Jacob L. Newman, for this defendant, Rose Zucker, he informed Jacob L. Newman that he was the sole owner and holder of the contract, and produced as evidence thereof, the original contract signed by Nathan Lenz, Abram Endler and Joseph Solomon; upon the strength of his possession of said contract, and the information received from the owners of said premises, the defendant, Rose Zucker, instructed her attorney, Jacob L. Newman, to pay the sum of Seventeen Thousand Five Hundred Dollars ($17,500.00) as a consideration for said assignment.

6. That immediately after receiving the said assignment, Jacob L. Newman, as the attorney of

Rose Zucker, sent a letter to Samuel B. Feld, as the attorney for Messrs. Lenz, Endler & Solomon, and also letters to each of the present title holders, Nathan Lenz, Abram Endler and Joseph Solomon, informing them that his client, Rose Zucker, had obtained an assignment of the said contract, and would be prepared on or before July 1st, 1925, to take title to the aforesaid premises, in accordance with the terms of the contract.

7. That it was not until after the aforesaid letters were sent to the said Samuel B. Feld, and Nathan Lenz, Abram Endler and Joseph Solomon, that this defendant received any notice of any alleged claim in the aforesaid contract, and such notice was received by Jacob L. Newman in a letter from the complainant in this suit.

8. That this defendant, Rose Zucker, is the bona fide purchaser of the said contract for the sale of the property Nos. 12-14-16 Lexington Avenue, Passaic, New Jersey, from the said Reuben B. Kantrowitz, the grantee in the said contract, who was the owner of said contract, and clothed with all indicia of ownership and possession of said contract, and as far as this defendant is able to ascertain, is the real owner of said contract.

SECOND SEPARATE DEFENSE.

1. This defendant, Rose Zucker, purchased the aforesaid contract, for a valuable consideration, without any notice of any alleged outstanding claim against the said contract from Reuben B. Kantrowitz, who is the owner and holder of the apparent title of said contract and had the possession thereof, and had the power of disposition over it, and this defendant is an innocent third



party, and was induced to deal with the apparent owner of the said contract in reference thereto; and, therefore, the complainant is estopped from asserting his alleged title to said contract, if any he have.

THIRD SEPARATE DEFENSE.

1. The complainant by his own affirmative act, conferred the apparent title and absolute ownership of said contract upon the defendant, Reuben B. Kantrowitz, upon the faith of which the said contract was purchased by this defendant, Rose Zucker, for value, without any notice of any alleged outstanding claim against said contract, and, therefore, the complainant is precluded from asserting his alleged title, if any he have.

FOURTH SEPARATE DEFENSE.

1. The complainant held out the defendant, Reuben B. Kantrowitz, and allowed him to appear as the owner of said contract, and as having full power of disposition over the said contract, and this defendant, Rose Zucker, was an innocent third party led into dealing with the apparent owner, Reuben B. Kantrowitz, by the act of the complainant, and, therefore, the complainant is precluded from disputing as against this defendant, the existence of the alleged title, which through the complainant's negligence or mistaken confidence, and by the complainant's affirmative acts and doings, he caused or allowed to appear to be vested in the party making the conveyance, Reuben B. Kantrowitz.

*Answer of Rose Zucker.*

FIFTH SEPARATE DEFENSE.

1. If the complainant has any title in and to the aforesaid contract, he constituted the defendant, Reuben B. Kantrowitz, his agent, clothing him in the full and complete authority to dispose of the entire contract, and he is, therefore, precluded from setting up his alleged title against this defendant, Rose Zucker, who is an innocent purchaser from the agent for a valuable consideration without any notice of the complainant's alleged rights.

SIXTH SEPARATE DEFENSE.

1. The complainant has a complete and adequate remedy at law.

SEVENTH SEPARATE DEFENSE.

1. The complainant is guilty of laches.

NOTICE.

PLEASE TAKE NOTICE, that the defendant, Rose Zucker, reserves leave, at or before the trial of the within cause, to move to dismiss the bill of complaint filed herein, on the ground that it does not set forth a cause of action against this defendant cognizable in a court of equity.

Dated: July 10, 1925.

JACOB L. NEWMAN,
Solicitor for and of Counsel with
the defendant, Rose Zucker.



**Affidavit of Reuben B. Kantrowitz.**

IN CHANCERY OF NEW JERSEY.

Between

SAMUEL B. FELD,
Complainant,

*and*

REUBEN B. KANTROWITZ, *et al.*,
Defendants.

On Bill, Etc.
AFFIDAVIT.

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

REUBEN B. KANTROWITZ, being duly sworn on his oath, according to law, deposes and says:

I am one of the defendants in the above entitled cause, and the purchaser mentioned in the contract, a copy of which is annexed to the bill of complaint filed herein.

I have read the bill of complaint, the petition, and the rule to show cause issued in this cause, and state as a fact that the complainant, Samuel B. Feld, has no title, claim or interest whatsoever in the contract entered into between Nathan Lenz, Joseph Solomon and Abram Endler and myself individually, a copy of which is annexed to the bill of complaint herein. The facts regarding the purchase of the said property and assignment of said contract by me to the defendant, Rose Zucker, are as follows:

The original contract was signed in the office of the complainant, who represented the sellers, and

the complainant knew I put up the Ten Thousand Dollars ($10,000.00) cash deposit, and saw the contract made out to me individually, and delivered it to me at the time of the payment of the aforesaid sum of money.

I never assigned the contract or any interest therein to Harry Weinberger, or any other person, and the original contract always remained in my possession, and I never made any agreement of any kind or character with Harry Weinberger or any other person, purporting to transfer the contract or interest therein, or any of my rights thereunder, except the assignment endorsed on the original contract to Rose Zucker, on the first day of June, Nineteen Hundred and Twenty-five.

During the whole months of March, April and May, Nineteen Hundred and Twenty-five, there was no mention made to me of any alleged claim by the complainant or any other person that they owned or claimed an interest in said contract.

There was no mention made of any outstanding claim that the complainant alleged to have in the said contract, until I had assigned the said contract to Rose Zucker, a defendant in this suit, who, through her attorney, Jacob L. Newman, paid me the sum of $17,500.00. I have never seen Rose Zucker, and do not to this day know her.

At the time that I assigned the original contract to Rose Zucker, at Jacob L. Newman's office in Newark, N. J., I was the sole, complete and entire owner of the said contract, and at that time informed Jacob L. Newman that I was the sole owner and had authority to transfer the same. I feel I am financially responsible and able to answer any judgment obtained in any court of proper record.



REUBEN B. KANTROWITZ.

Subscribed and sworn to before me this 7th day of July, 1925.

JOSEPH A. FEDER,
M. C. C. of N. J.

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**Order to Restrain, etc.**

(Filed July 27, 1925.)

IN CHANCERY OF NEW JERSEY.

Between:

SAMUEL B. FELD,
Complainant,

*and*

REUBEN B. KANTROWITZ,
and others,
Defendants.

On Bill, etc.

ORDER TO RESTRAIN, ETC.

Upon this matter being opened to the Court by Peter J. McGinnis, of Counsel with complainant, no one appearing for the defendants, except as to defendant, Rose Zucker; and this being the return day of an order heretofore made requiring defendants to show cause why they would not be restrained as prayed for in a petition filed in the

cause; and no good cause having been shown by the defendants, Reuben B. Kantrowitz, Joseph Solomon and Abram Endler, each of whom was duly served with notice of this motion;

It is on this 27th day of July, 1925, ordered that the defendants, Joseph Solomon and Abram Endler be restrained and enjoined from conveying the premises mentioned in the Bill of Complaint to Reuben B. Kantrowitz, Rose Zucker, or any other person, or in any wise encumbering the premises until the further order of the court; that Reuben B. Kantrowitz be restrained and enjoined from accepting any conveyance of the premises mentioned in the Bill of Complaint; and from making any further assignment of any contract he may have, or hereafter have for the purchase of the premises mentioned in the Bill of Complaint.

That the matter of the defendant, Rose Zucker be held for further consideration; that as to defendant, Nathan Lenz, the application for his restraint may be brought up upon five days' notice to him of the complainant's application for relief; further

Ordered that a copy of this order, certified to by the Solicitors of the Complainant may be served upon the defendants personally or by leaving same at their abode.

Ordered that Complainant have costs to be taxed.

EDWIN ROBERT WALKER,
C.

Respectfully advised,
JOHN BENTLEY,
V. C.



**Order.**

(Filed Aug. 6, 1925.)

IN CHANCERY OF NEW JERSEY.

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| Between<br>SAMUEL B. FELD,<br>Complainant,<br>*and*<br>REUBEN B. KANTROWITZ, *et al.*,<br>Defendants. | On Bill, Etc.<br>ORDER. |

A bill of complaint having been filed in the above entitled cause, and an order to show cause having been made on the tenth day of July, 1925, why the defendants and each of them should not be restrained from consummating the sale of certain real estate known and designated as the Benson Building, Nos. 12-14-16 Lexington Avenue, Passaic, New Jersey, in accordance with the terms of a certain contract referred to in the bill of complaint, bearing date the nineteenth day of March, 1925, until the final hearing in this cause, and the defendant, Rose Zucker, having made application to vacate the restraint contained in the aforesaid order of July 10th, 1925, and having given due notice of said application to the solicitor of the complainant, as appears from the notice of motion duly acknowledged, and argument having been had on said application to dismiss the restraint contained in the aforesaid order of July

10th, 1925, in the presence of Edward A. Weiss, solicitor for the complainant (Ward & McGinnis, of counsel), and Jacob L. Newman, solicitor for and of counsel with the defendant, Rose Zucker, and an order having been entered, dated the twenty-seventh day of July, 1925, continuing the restraint contained in the aforesaid order of July 10th, 1925, as against all of the defendants, except the defendant, Rose Zucker, and the conclusions of the undersigned having been filed upon the application to vacate the said restraint, it is on this 6th day of August, 1925,

ORDERED, that the order of July 27th, 1925, continuing the restraint contained in the aforesaid order of July 10th, 1925, as against all of the defendants, except the defendant, Rose Zucker, be and the same hereby is vacated, set aside, and for nothing holden; and it is further

ORDERED, that the restraint contained in the order to show cause dated July 10th, 1925, be and the same hereby is dissolved, vacated, set aside and for nothing holden, and the motion of the complainant for a temporary injunction until the final hearing of the above entitled cause be and the same hereby is denied; and it is further

ORDERED, that copies of the foregoing order, certified to by the solicitor for the defendant, Rose Zucker, may be served upon the complainant and the defendants herein, and that such service shall be deemed good and sufficient service of this order.

E. R. WALKER,
C.

Respectfully advised,
JOHN BENTLEY,
V. C.



## Order.

(Filed June 7, 1926.)

IN CHANCERY OF NEW JERSEY.

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| Between<br>SAMUEL B. FELD,<br>Complainant,<br>*and*<br>REUBEN B. KANTROWITZ, *et al.*,<br>Defendants. | On Bill, Etc.<br>ORDER. |

This cause coming on to be heard in the presence of Ward & McGinnis, of counsel with the complainant, and Jacob L. Newman, of counsel with the defendant, Rose Zucker, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard, and considered, and the court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainant is not entitled to the relief sought and prayed for by him in his bill of complaint as against the defendant, Rose Zucker, it is on this 7th day of June, Nineteen Hundred and Twenty-six, by Edwin Robert Walker, Chancellor of the State of New Jersey,

ORDERED, ADJUDGED and DECREED, that the complainant's bill be and the same is hereby dismissed as against the defendant, Rose Zucker, with costs; and it is further

*Order.*

ORDERED, ADJUDGED and DECREED, that the complainant pay to the defendant, Rose Zucker, her costs of this suit to be taxed, and a counsel fee of $750.00, and that execution issue therefor, according to the practice of this court.

E. R. WALKER,
C.

Respectfully advised,

JOHN BENTLEY,
V. C.

It is stipulated that the following statement takes the place of a formal decree *pro confesso* entered in this case:—The defendants Solomon, Endler and Lentz did not answer the bill and thereafter a decree *pro confesso* was entered against each. No further proceedings were taken against them in this cause.



## Additional Testimony.

Hearing of Thursday, May 27, 1926.

This testimony follows the testimony of Kuller recalled and Philip Simon sworn (S. C., p. 125).

It is on the Zucker part of the case which was omitted and is included in the supplemental state of case at complainant's request.

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Mr. McGinnis: I have here, sir, witnesses on the Zucker end of the case.

The Court: Nothing was to be done as to the claim of Kantrowitz?

Mr. McGinnis: No, sir.

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JOSEPH SOLOMON, sworn on behalf of the complainant, testified as follows:

*Direct examination by Mr. McGinnis:*

Q. Where do you live? A. Passaic.

Q. What is your business? A. Real estate.

Q. How long have you been in Passaic? A. 26 years.

Q. Married? A. Yes, sir.

Q. Do you know Mr. Feld? A. I do.

Q. You are one of the men that made this contract for sale to Mr. Kantrowitz? A. Yes, sir.

Q. Did you know at that time that Mr. Feld had an interest in that contract? A. Yes.

Q. Do you know Mrs. Zucker? A. I do.

Q. Is she any relation to you? A. Cousin.

Q. After the making of this contract at any time did Mrs. Zucker ever see you? A. She did.

Q. Where? A. At my home.

Q. Can you tell us about when that was? A. Well, probably about a month after.

Q. Was she accompanied by anybody or alone? A. Alone.

Q. Was there anything said by her to you, or by you to her, about this property which is the subject of this suit? A. Yes; she told me she contemplated buying the property and she came for particulars, that I should give it to her which I did, and I told her I presumed Mr. Kantrowitz bought out the partners and the original buyers; and so she said she don't know anything about that, she wasn't interested so far as the partners was concerned.

Q. Is that the entire conversation on that? A. That is the entire conversation.

Q. Did you tell her who the group of partners were that you presumed Kantrowitz had bought out? A. I did.

Q. Who were the group of partners? A. Harry Weinberger, Harry Kuller, Emil Hart, Reuben Kantrowitz, Tony Cacoliris and Sam Feld.

Q. Whereabouts did this conversation take place? A. In my home.

Q. Where is your home? A. 210 Paulison Ave., Passaic.

Q. Were your relations with Mrs. Zucker friendly at that time? A. Yes.

*Cross-examination by Mr. Newman:*

Q. That is all you told her? A. That is all, as far as we accomplished.

Q. After Mr. Feld started this litigation she came to see you, didn't she? A. Yes.

Q. And didn't you tell her then that Mr. Feld had no interest in the contract? A. I never told her that.



Q. I say, didn't you tell her that he had no interest in the contract?

The Court: He says: "I never told her that".

Q. At the time she came there she came for the purpose of making inquiry about this contract, didn't she? A. The first time, yes.

Q. And you told her you thought it was a good purchase? A. Yes.

Q. And you told her that Mr. Kantrowitz was the owner of the contract, didn't you? A. Well, his name appeared on the contract.

Q. And you told her she might purchase it, didn't you? A. I never advised her to purchase it.

Q. Didn't she tell you at that interview that she intended to pay $7,500 to Kantrowitz and she owned it? A. She didn't say anything about contracts.

Q. What did she say? A. She asked my advice, and I said I wouldn't advise her one way or the other.

Q. Didn't you tell her it was a good thing? A. Yes.

Q. Didn't you then give her a memorandum showing the rents and profits the property brought in? A. Yes.

Q. And isn't that the memorandum? A. Yes.

(The memorandum is marked C-11 in a former case.)

Q. You testified as one of the defendants in a case where Rose Zucker was plaintiff and Abram Kuller was defendant? A. Yes.

Q. On page 134 of the record you were asked this question: "Q. You never said anything to Mrs. Zucker that anybody else had any interest in the contract? A. I don't think that Feld would have served to that effect. Q. You never told Mrs. Zucker about Feld? A. No, until after. Q. Until she told you? A. Yes. Q. Then at that time you did not think Feld had any interest and she need not worry, you would make a deed and your wife would join? A. I didn't say that. Q. What did you say? A. Well, I don't know exactly about this, but those are not the words that were said." Now is that true? A. I don't know.

Q. You swore to those questions and answers as I have read them, didn't you? A. What questions were they? I didn't pay much attention.

Q. You never said anything to Mrs. Zucker that anybody else had any interest in the contract? A. I don't think I did.

Q. As a matter of fact, you never did tell Mrs. Zucker anything about Feld until after he had started his litigation; is that true? A. No, I told Mrs. Zucker the first time she asked me to find out about the contract—and I told her there was a group of partners interested in that contract. I suppose they were bought out.

Q. And didn't you tell her that you thought they were bought out and that Mr. Kantrowitz was the owner of that contract and he had the right to sell it? A. I didn't know whether he had a right to sell or not.

Q. I say, didn't you say that to her? A. I suppose I did.

Q. Didn't you, after this contract was in existence some time, and before Mrs. Zucker had purchased it, try to buy it from Mr. Kantrowitz yourself? A. Me from Mr. Kantrowitz?

Q. Yes. A. No.



*Re-direct examination by Mr. McGinnis:*

Q. I call your attention to testimony on page 133, in which you testified as follows: "Q. Do you recall that when she came over to see you and told you about the Feld matter that you said to her that she need not worry about the matter? A. I didn't say that. Q. What did you say? A. I said that I thought the Feld matter was taken care of. Q. You thought at that time that Feld really had no interest; that he had been bought out; wasn't that your impression? A. That was my impression that he was bought out, but I knew originally that he had an interest in it." Did you so testify? A. Well, it is in the record.

*Re-cross examination by Mr. Newman:*

Q. This that you testified to occurred after Mrs. Zucker had purchased the contract? A. What?

Q. What was just read to you by the Senator was what took place after Feld started his litigation and after Mrs. Zucker had the contract? A. This I don't remember.

Mr. McGinnis: May I get on the record that this record counsel have both quoted from is testimony taken in the case of Zucker *v.* Endler and others, December 17, 1925, before Vice-Chancellor Fielder?

Q. Do you remember meeting Mrs. Zucker after this litigation was started, in a law school in Newark, at the commencement of the law school? A. Yes.

Q. And she told you about Feld, and that she had received a letter from him; do you remember that? A. I don't remember.

Q. Didn't you at that interview tell her that she need not worry about Feld, that he was only out to get a piece of change—to get a piece of money? A. No.

Q. Never said it? A. No.

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NATHAN LENZ, sworn on behalf of complainant, testified as follows:

*Direct examination by Mr. McGinnis:*

Q. You live in Passaic? A. Yes.

Q. And you are one of the men that formerly owned this property and made the contract with Kantrowitz? A. Right.

Q. Did you know at that time that Mr. Feld had an interest in that with these others? A. Yes, sir.

No cross-examination.

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DEFENDANT'S REBUTTAL.

(Mrs.) ROSE ZUCKER, sworn in her own behalf, testified as follows:

*Direct examination by Mr. Newman:*

Q. You are the defendant in this case? A. Yes, sir.

Q. And where do you live? A. 806 South 13th Street, Newark, N. J.

Q. How long have you lived there? A. Going on 5 years.

Q. And you are a widow, are you? A. Yes, sir.



Q. Do you know Mr. Solomon that was on the witness stand? A. I do.

Q. Did Mr. Solomon, prior to the time you purchased this property, ever inform you that any one else had any interest therein excepting Mr. Kantrowitz? A. No, sir.

Q. Did he, at an interview had at his home, tell you that Kantrowitz, Cacoliris, Weinberger, Kuller, and Feld had an interest in this contract, or were partners in connection with it? A. No, sir; if he would have ever said it I would have never bought it under any circumstances.

Q. Did he ever inform you that anyone had any interest in this contract outside of Mr. Kantrowitz? A. He never said a word. I went to see Mr. Solomon as soon as I heard about it, and I asked him what he thinks about the property that he sold to Kantrowitz, and he said, "I consider it a very good buy." I said to him, "Joe, if I should consider it to buy—I was told about that property, but I would not consider it unless I saw you folks about it, and that's the reason I came here"; and he said "it was a very good buy and don't worry about it." I said, "Joe, if I consider it a good buy and I need any more information and I come over here will you give it to me?" He says, "I will give you all the information you want."

Q. Was that the interview when he gave you the information about the rents? A. No, that was the time when he came there, and I says, "Joe, I have spoken to Jacob Newman and Rose Spitzer, and we have decided to buy the property, and will you give me any information", and he says, "I will give you all the information I know." I says, "will you write it out on paper?" and he took a piece of paper.

Q. And then he gave you this memorandum marked C-11? A. Yes, and I promised him, and I says, "If I buy it I will call you up and tell you so", which I did.

Q. Did you, prior to the time that you acquired this contract know that anyone had any interest or concern in the contract outside of Mr. Kantrowitz? A. No, sir.

Q. Had you ever been informed, either verbally or in writing, or in any other manner, that anybody outside of Mr. Kantrowitz had any interest in this contract? A. No, sir; I never heard anything at all after I bought it.

Q. Well, I am referring to prior to the time of the contract; the first notice that you had of Mr. Feld's interest was after you bought it? A. After we sent out notice that we were all ready to take title, I got a letter and I immediately went over to Lenz.

Q. After you had received this notice by letter, or your attorney did, did you see Mr. Solomon at the law school commencement in Newark? A. I did at the commencement, and he congratulated me and I says: "Never mind, Joe, that part is all right, but I received a letter from Feld claiming a one-sixth interest." He says: "Don't worry about it, it is absolutely nothing. He is only looking to make a few dollars." I says: "Joe, how could he look to make money out of me; I don't even know the man."

Q. This letter which you speak of is a letter that was directed to me, dated June 3, 1925; is that correct? A. Yes.

Mr. Newman: I offer, with your permission, a letter which I wrote of June 2d, the day after we acquired the contract.



Mr. McGinnis: No objection.

(Admitted and marked Exhibit D-4.)

Mr. Newman: And my reply.

(Admitted and marked Exhibit D-5.)

Mr. Newman: And then my reply to that?

(Admitted and marked Exhibit D-6.)

Mr. Newman: And I want to offer in evidence my check dated June 1st, to Reuben Kantrowitz, for $17,500.

(Admitted and marked Exhibit D-7.)

*Cross-examination by Mr. McGinnis:*

Q. Mrs. Zucker, Kantrowitz didn't tell you that Mr. Feld had any interest in this? A. No, sir.

Q. Or that he ever had any interest? A. No, sir.

Q. His whole attitude to you was that he was the sole owner of that contract? A. Yes, sir.

Q. Never hinted anything else to you? A. I hadn't seen Kantrowitz.

Q. No, I mean at the time? A. No, I first met Kantrowitz here.

Q. What school did your son graduate from? A. From Columbia Law School.

Q. And it was at this commencement? A. No, it was a nephew of mine that graduated at the Schubert Theatre in Newark, New Jersey, and there I met Mr. Joseph Solomon.

Q. What was it your nephew was graduating from? A. He graduated law.

Q. New Jersey Law School? A. Yes.

Q. And it was on that occasion? A. On that occasion; yes, sir.

Q. Now, these conversations that you had with Mr. Solomon before you bought the property—

you were perfectly friendly with him? A. Absolutely.

Q. And his attitude was that he wanted to tell you all he knew and help you all he could? A. Yes.

Q. Did you know where this property was? A. I did.

Q. And did you go over and look at it? A. I didn't; I just passed by it.

Q. Didn't you go through it? A. No.

Q. After you bought it you went over to Mr. Solomon and then got this? A. No, not after I bought it; before I bought it.

Q. And did not ask him the condition of that building or who the tenants were? A. No, sir.

Q. You lived where at that time? A. At the same residence, 806 South 13th St.

Q. Newark? A. Newark, N. J.

Q. And it is only a matter of half an hour's journey or so from where you lived to Passaic? A. Yes.

Q. And between the time you first spoke to Mr. Solomon that you were contemplating buying this place until you bought it, how long a time was that, all together, in your best judgment? A. It must have been about—over three weeks.

Q. Three weeks? A. Over three weeks.

Q. And in that time you made two visits to Mr. Solomon? A. Either two or more.

Q. Well, did you know that others than Mr. Solomon had an interest in that property? A. No, sir.

Q. You thought Mr. Solomon was the only person that owned that property? A. I knew that there was Mr. Endler and Mr. Lenz and Mr. Solomon.



Q. They were partners? A. Ordinary partners, yes.

Q. Did you have any talk with those men about this property? A. I did.

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REUBEN KANTROWITZ, sworn on behalf of the defendant Zucker, testified as follows:

*Direct examination by Mr. Newman:*

Q. Mr. Kantrowitz, I show you a paper writing and ask you if that is your signature? A. Yes, sir.

Mr. Newman: I think this contract has been offered in evidence; if not, I desire to offer it in evidence; and I believe you didn't offer the assignment on the back. It appears that the contract was assigned to Rose Zucker by Reuben Kantrowitz on the first day of June, 1925, and that I witnessed your signature.

(The same is marked Exhibit C-1.)

I now offer the whole contract.

Q. Mr. Kantrowitz, you are the Reuben Kantrowitz who was the vendee in that contract, are you? A. Yes.

Q. At the time you had your dealings with Mrs. Zucker had you ever seen her? A. No, never saw her.

Q. When did you first see her? A. Last Thursday morning in the court room when I was introduced to her by you.

Q. And you had all your dealings with me in connection with this matter? A. Yes, sir.

*Reuben Kantrowitz, for Defendant—Cross.*

Q. You came to my office with this contract and you signed the assignment there and received this check which has been marked in evidence for $17,500? A. Yes, sir.

Q. And that was a contract to you of how much money? A. $7,500 gross. I had commission to pay out of that.

Q. At the time you sold the contract to Mrs. Zucker did Mr. Feld or anyone else have any interest in the contract? A. No, sir.

Q. Did you ever tell me that anyone outside of yourself was interested in this contract? A. No, sir.

*Cross-examination by Mr. McGinnis:*

Q. You never told either Mrs. Zucker or Mr. Newman or anybody else that Mr. Feld had any interest in this contract; is that right? A. No, sir.

Q. Your attitude at all times was that you were the sole owner of this contract? A. Exactly.

Q. So that you did not disclose any interest that Mr. Feld had in it, if he had any? A. Mr. Feld had no interest in it.

Q. That was your attitude? A. Exactly.

Q. So that if Mr. Feld had a one-sixth interest in this contract that you knew of you absolutely failed to disclose that to the people who were buying your contract? A. Mr. Feld had no interest.

Q. Your attitude was, that if he had any interest you were not disclosing it? A. My attitude was that I was the sole owner and had nothing to disclose.

Q. And Mr. Feld never had a one-sixth interest in it? A. No, sir.



*Reuben Kantrowitz, for Defendant—Cross.*

Q. You always were the sole owner of that contract? A. Yes, sir.

Q. From the night when this contract was signed in Mr. Feld's office? A. Yes, sir.

Q. And at all times until you assigned it to Mrs. Zucker you always had the entire interest in it? A. Yes, sir.

Q. Mr. Harry Weinberger never had any interest in it? A. No, sir.

Q. You never made any assignment of that contract to Mr. Weinberger? A. No, sir.

Q. Mr. Hart had no interest in it? A. No, sir.

Q. Mr. Cacoliris had no interest in it? A. No, sir.

## Corrections.

The parties agree that the following errors in stenographic transcription are contained in the State of Case:

On page 24, line 9, of the State of the Case reads: "Obtained and signed the contract", it should read: "An assignment of the contract."

On page 25, line 28, reads: "He prepared copies", the word "copies", should read "It".

On page 27, line 29, it should read "Six-sixths", instead of "Five-sixths".

On page 29, line 1, the word "Each" was left out.

On page 152, line 30, "Mr. Feld" appears instead of "Mr. Feder".

On page 159, line 18, the figures "$1,166.66", instead of "$1,666.67".

On page 207, line 37, "$7,600.00" should be "$76,000".

On page 207, last line, "$25,000" should be "$105,000".

At page 258, line 21, the question is "He didn't tell you that he had assigned to Mr. Harry Weinberger a one-sixth interest?", and it should read "He didn't tell you that he had been assigned by Mr. Harry Weinberger a one-sixth interest".

At page 295, line 18, the question reads: "And do you recall the fact that you took a check from Mr. Hart of $500.?" and the word "from" should read "for".

On page 301, line 25, the answer is "Yes in the corporation", it should be "Yes in this corporation".

On page 321, line 6, the words "There was no Assignment", should be stricken out entirely.

On page 326, the question "Mr. Endler, you testified here at the last hearing" should read: "Mr. Endler, it was testified here at the last hearing, etc."



## Exhibit D-4.

JACOB L. NEWMAN
Counsellor at Law
810 Broad Street, Newark, N. J.
Market 5721

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Lionel P. Kristeller — Saul J. Zucker

June 2, 1925.

Messrs. Feld, Weiss & Feld,
12 Lexington Ave.,
Passaic, N. J.

Gentlemen:—

This is to advise you that I represent Rose Zucker, who has taken over by assignment the contract for the purchase of the property known as 12-14-16 Lexington Avenue, Passaic, N. J. I understand that you represent the vendors and beg to advise that on or about July 1, 1925, I expect to be in a position to close the title. Before that time I will advise you as to the name of the corporation in which the title will be taken.

Kindly acknowledge receipt of this letter in the enclosed stamped, addressed envelope, and I will appreciate your co-operation and consideration in this matter.

Yours very truly,

JACOB L. NEWMAN

Z/M.
Enc.
2.

## Exhibit D-5.

Samuel B. Feld
Edward A. Weiss
Edward Feld

FELD, WEISS & FELD
Counsellors at Law
12-16 Lexington Ave.
Passaic, N. J.

Suite 3-4-5
Bensen Building

Telephone 3481

Registered Mail.

June 3rd, 1925.

Jacob L. Newman, Esq.,
810 Broad Street,
Newark, New Jersey.

Dear Sir:

This will acknowledge receipt of your letter of the 2nd instant.

Kindly be advised that our Mr. Samuel B. Feld has obtained a written assignment of a one-sixth interest in the contract covering property at 12-14-16 Lexington Avenue, Passaic, New Jersey.

Any interest which you may purchase, will be subject to Mr. Feld's one-sixth interest in this property.

Very truly yours,

FELD, WEISS & FELD.

SBF:BGL



## Exhibit D-6.

JACOB L. NEWMAN
Counsellor at Law
810 Broad Street Newark, N. J.
Market 5721

Lionel P. Kristeller Saul J. Zucker

June 8, 1925.

Messrs. Feld, Weiss & Feld,
12-16 Lexington Ave.,
Passaic, N. J.

Gentlemen:

Your communication directed to me with reference to the contract which my client, Mrs. Rose Zucker, has acquired from Reuben E. Kantrowitz, is herewith acknowledged.

As you well know the assignment of the contract to my client was made on the first day of June, 1925, for a good and valuable consideration, without any notice whatsoever of any kind or character of any alleged interest that Mr. Samuel B. Feld may have had therein by assignment or otherwise. Therefore, as far as my client is concerned her title to the contract being a legal and valid one, the alleged interest of Mr. Feld therein is of no concern to her.

Yours very truly,

JACOB L. NEWMAN.

N/M.

**Exhibit D-7.**

No. 5283 Newark, N. J., June 1, 1925

NATIONAL STATE BANK 55-2

JACOB L. NEWMAN
LIONEL P. KRISTELLER
Trustees

Pay to the order of Reuben E. Kantrowitz, Seventeen thousand and five hundred 00/100 Dollars.

In re Rose Zucker—Purchase Contract Passaic Property.
$17,500.00/100

JACOB L. NEWMAN,
Trustee.

Stamped
Certified for the sum of
$17,500 and 00 cents.
June 2, 1925.
NATIONAL STATE BANK

Endorsed:

REUBEN B. KANTROWITZ
For deposit
REUBEN B. KANTROWITZ
Perforation:
Paid
H. S. B.
6-4-25