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**Bill of Complaint.**

(Filed March 7, 1929.)

**IN CHANCERY OF NEW JERSEY**

To His Honor EDWIN ROBERT WALKER, Chancellor of the State of New Jersey: 10

The complainants Annett-Mahnken Realty Company and Anson Realty Company, both corporations of the State of New Jersey, having their principal offices at Bayonne, in the County of Hudson and State of New Jersey, respectfully show:

1. On and prior to May 16, 1924, Betsey Gollin was the owner in fee of a tract or parcel of land situate in the City of Bayonne aforesaid, which is particularly described as follows: 20

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey, described as follows:

BEGINNING at the intersection of the northerly line of West Thirty-fourth Street with the easterly line of the Hudson County Boulevard; thence running (1) easterly along the northerly side of West Thirty-fourth Street, eighty two and five tenths (82.5) feet; thence (2) northerly, and parallel with the Hudson County Boulevard, eighty seven and five tenths (87.5) feet; thence (3) westerly and parallel with West Thirty-fourth Street, eighty two and five tenths (82.5) feet to the easterly side of the Hudson County Boulevard; thence (4) southerly along the same, eighty seven and five tenths (87.5) feet to the point or place of beginning. 30  
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2. On the date aforesaid there was being erected upon the above described lands a brick apartment house of four stories, containing thirty-two apartments, which was then substantially completed. Said apartment house had been erected under contracts made by Irving Gollin, son of said Betsey Gollin and Max Gollin, her husband, who formerly owned the land, but who had become financially embarrassed and was unable to furnish the funds, or to obtain credit, to discharge the debts incurred in the construction of the apartment house. Thereupon he had conveyed the land and building to his mother, Betsey Gollin, who applied to the complainant Annett-Mahnken Realty Company to aid her in financing the payments for the building. After conferences and negotiations the said Betsey Gollin and Max Gollin, her husband, conveyed said lands and building by deed dated May 16, 1924, recorded May 22, 1924, in book 1530 of deeds for Hudson County, page 235, to complainant Annett-Mahnken Realty Company, which thereupon executed and delivered to said Betsey Gollin a declaration of trust, a copy of which is hereto annexed and marked "Schedule A", bearing date on the same date and delivered simultaneously with said conveyance.

3. The complainant Annett-Mahnken Realty Company thereupon took possession of the lands and building and proceeded to procure loans and make advances of all moneys necessary to discharge the debts which had been incurred by the said Betsey Gollin and Irving Gollin about the erection of the said apartment house. Annexed hereto and marked "Schedule B" is a particular account of all moneys advanced by said trustee pursuant to the terms of the declaration of trust,

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and of the rent collections received by said trustee from the apartments in said building, showing that the amount expended by the trustee in excess of receipts, without interest, amounted on January 1, 1929, to sixty-eight thousand four hundred and thirty-one dollars and seventy-six cents.

4. Said trustee diligently endeavored to effect a sale of the apartment house, but was unable to obtain any offer which was acceptable to said Betsey Gollin and to her son Irving Gollin, who has always acted as her agent and business adviser. In the meantime, the real estate market has become inactive and the trustee is now unable to obtain any bid for the property which, after paying prior encumbrances, will enable it to reimburse itself for the moneys so advanced with interest.

5. On or about April 1, 1928, the Annett-Mahnken Realty Company conveyed the said land and building unto Anson Realty Company, the other complainant, in order that the accounts of the trustee in connection with the management of said apartment house, its receipts and disbursements, might be kept separate and distinct from the other business of the Annett-Mahnken Realty Company. Since that date all collections of rent have been made by the complainant Anson Realty Company, and all disbursements about the maintenance and management of the apartment house have been paid by the Anson Realty Company.

6. At the time of the execution of the declaration of trust the land and building was subject to a mortgage held by the Colonial Life Insurance Company, upon which there was then due the principal sum of \$99,500.00. By the terms of the mortgage the mortgagor was required to pay to the mortgagee instalments on account of principal

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of one thousand dollars quarterly, besides interest. On January 1, 1929, the principal of said mortgage had been reduced by payments of instalments to eighty-three thousand dollars.

10 7. The complainants show that the condition of the real estate market in Bayonne is now such that it cannot find a purchaser for said premises on terms which will enable it to repay the advances and disbursements made in discharging debts incurred in the construction of the building, and about the management of said apartment house; that there seems to be no immediate prospect of any improvement in conditions affecting the price and marketability of real property in said City, and that they should not be required to continue making advances for the carrying  
20 charges of the said apartment house, with the prospect of still further increasing the indebtedness of the defendant, and adding to the loss of the trustee.

The complainants are without adequate remedy in the courts of law and therefore pray:

1. That Betsey Gollin and Max Gollin, her husband, who are the defendants in this suit, may answer this bill of complaint without oath, and each statement therein made;
- 30 2. That an account may be taken of all advances and disbursements made by the complainants in pursuance of the terms of said declaration of trust, and of all interest, commissions and compensation earned by them, and of all receipts by them from rents, or otherwise, to which the defendants are properly entitled;
- 40 3. That the balance due to the complainants may be ascertained, and that the defendants may be decreed to pay such balance to the complainants at a short day to be fixed by this court; and

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that in default thereof the defendants may be foreclosed of all equity in the premises, and that the premises by decree of this court may be sold to raise and satisfy the amount which shall be ascertained to be due to the complainants for their advancements and interest thereon, and for such reasonable sum for services as trustee as shall be ascertained and fixed by this court, in accordance with the provisions of the declaration of trust. 10

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

CARRICK & WORTENDYKE,  
Solicitors and of counsel with Complainants.

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**Schedule A.**

(Note: This paper received in evidence as Exhibit C2.)

TO ALL TO WHOM THESE PRESENTS SHALL COME, the ANNETT MAHNKEN REALTY COMPANY, a corporation of State of New Jersey, sends 30

**GREETINGS:**

WHEREAS—On May 16th, 1924, Betsey Gollin and Max Gollin, her husband, in consideration of One dollar and other valuable consideration to them in hand paid, by deed under their hand and seal, did grant and convey in fee unto said Annett Mahnken Realty Company, all that certain tract, piece or parcel of land and premises, situate lying and being in the City of Bayonne, in the County 40

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of Hudson and State of New Jersey, described as follows:

Beginning at the intersection of the northerly line of West 34th Street, with the easterly line of the Hudson County Boulevard; thence running (1) easterly along the northerly side of West 34th Street (82.5) feet; thence (2) northerly and parallel with the Hudson County Boulevard (87.5) feet; thence (3) westerly and parallel with West 34th Street (82.5) feet to the easterly side of the Hudson County Boulevard; thence (4) southerly along the same (87.5) feet to the point or place of beginning.

NOW KNOW YE, that the said Annett Mahnken Realty Company does in consideration of the sum of One dollar to it paid by the said Betsey Gollin, hereby make known, admit and declare that said premises were so conveyed to it, and that it now holds and will continue to hold the same in trust for the use and benefit of the said Betsey Gollin, her heirs and assigns and for the several creditors of said Betsey Gollin and one Irving Gollin for the furnishing of labor and materials for the construction and erection of the four story brick apartment house building erected upon the above described lands, and said Company does for itself, its successors and assigns covenant and agree to and with the said Betsey Gollin or her heirs and assigns, that said Company will at all times hereafter hold said herein described lands and premises upon the following trusts, and not otherwise, that is to say:

FIRST.—To collect the rents, issues and profits thereof from the several tenants which occupy apartments in said building.

SECOND.—To pay out of said rents and profits, the interest due upon the mortgages that are liens

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upon said premises; to pay taxes, water rents, insurance premiums and for the necessary repairs and other expenses that are proper and incident to the management of said building.

THIRD.—To endeavor to settle with all creditors of said Betsey Gollin and Irving Gollin, and as far as necessary to advance such sum or sums of money as may be necessary for the settlement of all such claims. 10

FOURTH.—That in order to raise moneys sufficient for the settlement of said claims, if a satisfactory price is offered, to sell and convey said premises without the written consent of the said Betsey Gollin, but to render to said Betsey Gollin a just and true account of all moneys received from the sale of said premises and all expenditures. That it has been agreed between the parties hereto that said Annett Mahnken Realty Company is to receive a commission of five per cent (5%) for the collection of said rents; that said Company is to receive a just and reasonable compensation for procuring loans—for all moneys advanced in the settlement of said claims and is to receive lawful interest upon all moneys invested in said property. To pay all other legal and necessary expenses that may become necessary in the management of said property, and also to receive such compensation as may be mutually agreed upon hereafter between the parties hereto and if they fail to agree, to receive such compensation as the Chancellor or any of the Vice Chancellors upon proper issue framed in the Court of Chancery allows to said Company for its services in the capacity as trustee. 20 30

FIFTH.—That after said premises have been freed from all of said debts and claims, and said Company has received its just compensation for 40

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the management thereof, to sell and convey said lands and premises to such person or persons as said Betsey Gollin may require by writing, free and clear and discharged of and from all and every encumbrance thereon by said Company or its successors or assigns, except such as may be necessary to pay said claims.

10 And it does further for itself, its successors and assigns covenant and agree to and with the said Betsey Gollin or her heirs, devisees, executors, administrators and assigns that said Company shall not do, or suffer or permit any act, deed matter or thing, whereby said premises, can, shall or may be in anywise impaired, destroyed or injured in title, interest, estate or otherwise, excepting as may be necessary to carry out and fulfill

20 the conditions of this trust.

IN WITNESS WHEREOF, the said Annett Mahnken Realty Company has caused its corporate seal to be hereto affixed and attested by its Secretary and these presents to be signed by its President, this                    day of May, nineteen hundred and twenty-four.

ANNETT MAHNKEN REALTY COMPANY,  
a corporation of New Jersey,  
30 By (Signed) CHAS. E. ANNETT,  
President.

(Seal)

Attest:

MARY E. ANNETT,  
Secretary.

## Schedule B.

ANNETT-MAHNKEN REALTY COMPANY in  
a/c with GOLLIN APARTMENT HOUSE,  
#880 Boulevard.

DISBURSEMENTS 1924.		10
1924		
May 27	Paid Public Service Electric and Gas Company for ½ dozen electric bulbs.....	\$7.30
" 28	Paid Colonial Life Insurance Company — Payment on mortgage balance due on May 1, 1924.....	500.00
June 1	Paid Public Service Electric and Gas Company for elec- tric bulbs .....	.80
" 23	Paid Horace Roberson for Revenue Stamps .....	4.00
" 3	Paid John Keating, Janitor (May 3rd to June 3rd)...	50.00
" 24	Paid Alexander Seelow, At- torney for James Brady's Sons Company—Judgment for construction bill.....	2,700.00
" 24	Paid Morris Blum—Screens construction bill .....	307.00
" 24	Paid Raskin & Hornstein At- torneys for Angelo Biseste —construction bill .....	251.03
" 24	Paid James E. Pyle, Attor- ney for M. Jacobwitz, Painter—construction bill	1,833.85
" 24	Paid Junction Milling Com- pany—construction bill ..	4,379.70
" 24	Paid Meyer & Ruh Company —construction bill .....	390.80

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1924			
	June 24	Paid Robert Carey, Attorney —Kavanagh construction bill .....	617.62
	" 24	Paid Liberty Lighting Fix- ture Co.—construction bill	1,234.11
10	" 24	Paid Jersey City Stone Works—construction bill..	1,000.00
	" 24	Paid Hudson Electric Com- pany—construction bill...	500.00
	" 26	Paid Columbia Metal Box Company—construction bill	200.00
	" 26	Paid S. Barkas—construc- tion bill .....	385.00
	" 26	Paid Ideal Dumbwaiter Com- pany—construction bill...	300.00
20	" 26	Paid J. Warshawsky—con- struction bill .....	325.00
	" 26	Paid William J. Cain, Attor- ney for Bayonne Supply Company—construction bill	1,599.52
	" 26	Paid M. Leavitt—construc- tion bill .....	1,700.00
	" 26	Paid City of Bayonne—1st half of 1924 taxes .....	810.02
	" 27	Paid Ideal Marble Mosaic Co.—construction bill....	3,000.00
30	" 27	Paid Elkins & Shapiro—con- struction bill .....	500.00
	" 27	Paid Levine & Siegel—con- struction bill .....	650.00
	" 17	Paid Public Service Electric and Gas Company for electric (\$6.28) and gas (\$.24) .....	6.52
40	July 1	Paid Annett-Mahnken Realty Co., May insurance .....	29.28

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1924			
July	1	Paid Baldwin Lumber Company—construction bill ..	3,556.58
"	1	Paid Mechanics' Trust Company—Interest on \$20,000 note .....	20.00
"	1	Paid David Max—construction bill .....	200.00
"	1	Paid Leibman & Sosower—window shades .....	100.00
"	2	Paid Posnock & Turkish—construction bill .....	207.95
"	2	Paid Alex Levy—coal purchased by Gollin .....	1,103.00
"	2	Paid Builders Material Corp.—construction bill .....	643.12
"	3	Paid Max L. Solinsky, attorney for New Jersey Roofing Company—construction bill .....	275.00
"	3	Paid Builders Material Corp.—construction bill .....	46.00
"	8	Paid John Keating, Janitor	50.00
"	8	Paid John J. Hess—construction bill .....	1,500.00
"	14	Paid John M. Hannan, Sheriff—construction bill of Hudson Structural Iron Works .....	1,094.97
"	18	Paid John E. Muller Sons—Insurance premiums on policies covered by Colonial Life Ins. Co. ....	770.59
"	22	Paid O. K. Clothes Dryer Co.—construction bill .....	82.00
"	22	Paid Nathan Welitoff—construction bill .....	125.00

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*Bill of Complaint.*

1924			
	July 22	Paid Bayonne Hardware Company—construction bill	1,250.00
	" 25	Paid Colonial Life Insurance Company — Interest — \$1,489.17; a/c mortgage \$1,000.00 .....	2,489.17
10	Aug. 6	Paid John Keating, Janitor	50.00
	" 7	Paid A. W. Booth & Brothers —coal .....	67.50
	" 7	Paid Charles D. Bauer—repairs carpenter .....	69.02
	" 7	Paid Public Service Electric and Gas Company .....	9.84
	" 8	Paid Wheeland Landscape Company—construction bill	149.00
20	" 8	Paid Bayonne Times—advertisement "Rooms to let" .....	7.20
	" 8	Paid Morris Cohen—Insurance premium .....	98.75
	" 8	Paid Julius Bayroff—construction bill .....	75.00
	" 25	Paid A. W. Booth & Brothers —coal .....	27.00
	Sept. 8	Paid Max Black—window shades .....	35.00
30	" 9	Paid John Keating, Janitor	50.00
	" 11	Paid Ideal Marble Mosaic Company—construction bill	450.00
	" 13	Paid John Gilbertson—plumbing repairs .....	3.36
	Oct. 6	Paid for mop cloths—75¢; screen tags—20¢ .....	.95
	" 10	Paid for cord .....	.40
40	" 20	Paid Gross—Refunded May's rent .....	80.00

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1924			
Oct.	3	Paid John Gilbertson, plumbing repairs .....	4.45
"	4	Paid John Keating, Janitor	50.00
"	4	Paid Mechanics' Trust Com- pany—3 months interest on \$20,000 note .....	306.67 10
"	4	Paid Bayonne Trust Com- pany—3 months interest on \$10,000 @ 6%.....	153.33
"	6	Paid Public Service Electric and Gas Company .....	4.60
"	6	Paid Bayonne Hardware Company—hardware for repairs .....	10.00
"	6	Paid William A. MacGilli- vary—repairs .....	2.25 20
"	6	Paid A. W. Booth & Bros. —coal .....	81.75
"	6	Paid John Gilbertson— plumbing repairs .....	3.36
"	30	Paid Colonial Life Insurance Company—3 months inter- est—\$1,470; on a/c mort- gage—\$1,000 .....	2,470
"	30	Paid A. W. Booth & Bros. —coal .....	206.25 30
"	30	Paid David Max Company— glazier .....	22.00
"	30	Paid I. Moresh—glazier re- pairs .....	12.00
"	30	Paid Lawler Brothers—elec- tric repairs .....	9.50
"	30	Paid C. Haggerty's Sons— Janitors supplies .....	1.93
Nov.	6	Paid John Gilbertson.....	4.20
"	5	Paid John Keating, Janitor	50.00 40

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1924			
	Nov. 21	Paid P. J. Farrell (Weather strips outside) .....	82.25
	" 21	Paid Annett-Mahnken Realty Company—Insurance premium .....	350.40
10	" 21	Paid Bayonne Hardware Company—Hardware for repairs .....	6.55
	" 21	Paid Bayonne Times—Advertising "Rooms to Let" .....	2.52
	" 28	Paid Annett-Mahnken Realty Company—Charge account with insurance premium charged in error to Betsey and Irving Gollin .....	343.20
20	Dec. 1	Paid City of Bayonne, N. J.—2nd half of 1924 taxes	743.87
	" 4	Paid Bayonne Hardware Co.—hardware for repairs...	19.75
	" 4	Paid Water bills to October 24th, 1924 .....	120.40
	" 4	Paid A. W. Booth & Bros.—coal .....	298.13
	" 5	Paid John Keating, Janitor	50.00
30	" 5	Paid John Gilbertson—plumbing bill .....	26.99
	" 8	Paid U. S. Hardware Co.—construction bill .....	29.31
	" 26	Paid Charles E. Annett—6 months interest on \$20,000 @ 6% .....	900.00
	" 30	Paid J. Keating, Janitor...	5.00
	" 31	Paid Bayonne Trust Company—3 months interest on note—Charles E. An-	
40			

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	nett and Horace Rober-		
	son, \$10,000 .....	153.33	
1924			
Dec. 31	Paid Mechanics' Trust Com-		
	pany—3 months interest		
	on \$20,000 note Horace		
	Roberson and Charles E.		10
	Annett .....	306.67	
" 31	Paid A. W. Booth & Bros.—		
	coal .....	318.75	
" 31	Paid William A. MacGilli-		
	vary—repairs .....	17.85	
" 31	Paid Charles D. Bauer, car-		
	penter repairs .....	185.93	
" 31	Paid James Keating, Janitor	50.00	
" 31	Paid Annett-Mahnken Realty		
	Company — Commission—		20
	collection of rents .....	568.92	

## RECEIPTS, 1924

1924			
May 28	Check from Baldwin Lumber		
	Company—Balance Gollin		
	rents (#880 Boulevard) ..	\$ 109.49	
June 30	Rents for June .....	1,941.00	
July 30	Rents for July .....	1,646.00	30
Aug. 28	Rents for August .....	1,641.00	
Sept. 29	Rents for September .....	1,512.00	
Oct. 31	Rents for October .....	1,429.00	
Nov. 28	Rents for November .....	1,234.00	
Dec. 31	Rents for December .....	1,866.00	

## DISBURSEMENTS, 1925.

1925			
Jan. 1	Paid John Gilbertson—		
	plumbing repairs .....	\$ 63.75	40

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1925			
	Feb. 4	Paid Colonial Life Insurance Company—3 months interest on \$97,000—\$1,455.00; a/c mortgage—\$1,000 ....	2,455.00
	" 10	Paid James Keating, Janitor	50.00
10	" 13	Paid Public Service Electric and Gas Company .....	47.52
	" 18	Paid C. Haggerty's Sons—Janitor's supplies .....	3.42
	" 18	Paid John Gilbertson—plumbing repairs .....	100.75
	" 18	Paid Chas. D. Bauer, carpenter repairs .....	44.08
	" 18	Paid Bayonne Hardware Company — hardware repairs .....	16.00
20	" 24	Paid D. Ginsberg—Painting repairs ordered by Gollin	60.00
	Mar. 5	Paid John J. Keating, Janitor .....	50.00
	" 5	Paid D. Ginsberg—Painting repairs ordered by Gollin	25.00
	" 5	Paid A. W. Booth & Bros. coal .....	362.50
30	" 31	Paid Mechanics' Trust Company—90 days interest on \$20,000 note made by Charles E. Annett and Horace Roberson .....	300.00
	Apr. 2	Paid Bayonne Trust Company—3 months interest on \$10,000—Annett and Roberson .....	150.00
	" 2	Paid Bayonne Times—advertising "Rooms to Let" .....	16.80
40			

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1925			
Apr.	8	Paid John J. Keating, Janitor .....	50.00
"	21	Paid Public Service Electric and Gas Company .....	36.36
"	21	Paid W. B. Willensky—wall paper for repairs .....	5.85 10
"	21	Paid Bayonne Hardware Company — hardware for repairs .....	11.50
"	21	Paid Lawler Brothers—electric light repairs .....	10.28
"	21	Paid Louis Picker—painting repairs .....	145.00
"	21	Paid Ketchum for one load of wood .....	6.00
May	1	Paid Colonial Life Insurance Company—3 months interest on \$96,000—\$1,440; on a/c mortgage—\$1,000.....	2,440.00
"	4	Paid J. Keating, Janitor...	50.00
"	4	Paid A. W. Booth & Bros.—coal .....	244.50
June	2	Paid John Fiadino—Mason repairs .....	75.00
"	4	Paid William B. Willensky—Paint and Paper repairs..	151.45 30
"	4	Paid Louis Picker—Painting repairs .....	180.00
"	4	Paid Alex Levy for coal....	28.50
Feb.	13	Paid A. W. Booth & Bros.—coal .....	348.75
June	4	Paid Lawler Brothers—electric light repairs.....	6.65
"	"	Paid Bayonne Evening News—advertising "Rooms to Let" .....	3.60 40

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1925			
	June 4	Paid Public Service Electric and Gas Company .....	9.80
	" 4	Paid Charles D. Bauer—carpenter repairs .....	2.16
10	" 5	Paid John J. Keating, Janitor .....	50.00
	" 12	Paid John Gilbertson—plumbing repairs .....	4.22
	" 18	Paid City of Bayonne— $\frac{1}{2}$ 1925 taxes .....	1,878.10
	" 30	Paid Mechanics' Trust Company—3 months interest on \$20,000 note made by Annett and Roberson.....	303.33
20	" 30	Paid Bayonne Trust Company—3 months interest on \$10,000 note made by Annett and Roberson ....	151.67
	July 3	Paid John Gilbertson—plumbing repairs .....	4.60
	" 3	Paid J. Keating, Janitor.....	50.00
	" 3	Paid A. W. Booth & Bros.—coal .....	79.20
	" 3	Paid Louis Picker—painting repairs .....	120.00
30	" 3	Paid C. Haggerty's Sons—Janitor's supplies .....	3.48
	" 3	Paid Lawler Brothers—electric light repairs .....	6.10
	" 3	Paid Public Service Electric and Gas Company .....	7.72
	" 10	Paid Annett-Mahnken Realty Company—Insurance ....	18.82
40	Aug. 4	Paid Colonial Life Insurance Company—Interest \$1,425; on a/c mortgage \$1,000...	2,425.00

*Bill of Complaint.*

1925			
Aug.	5	Paid J. Keating, Janitor...	50.00
"	5	Paid Public Service Electric and Gas Company .....	14.48
"	11	Paid Louis Picker—painting repairs .....	55.00
"	11	Paid I. Moresch—glazing re- pairs .....	3.00
"	11	Paid Bayonne Hardware Company—Hardware re- pairs .....	1.40
"	11	Paid A. W. Booth & Bros. —coal .....	27.00
"	17	Paid Charles D. Bauer, car- penter repairs .....	28.69
"	25	Paid John Gilbertson— plumbing repairs .....	40.43
"	25	Paid John Keating, Janitor	50.00
Sept.	3	Paid John Gilbertson, Plumbing bill .....	1.60
"	17	Paid for electric fuses.....	.30
"	29	Paid Public Service Electric and Gas Company .....	29.52
"	29	Paid A. W. Booth & Bros. —coal .....	324.00
"	29	Paid Public Service Electric and Gas Company .....	3.24
Oct.	1	Louis Picker—Painting re- pairs .....	395.00
"	1	Paid Bayonne Times— —advertising "Rooms to Let" .....	1.80
"	1	Paid Ketchum for one load of wood .....	6.00
"	1	Paid Bayonne Trust Com- pany—3 months interest on loan of \$10,000 on note of Annett and Roberson..	153.33

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*Bill of Complaint.*

1925			
	Oct. 1	Paid Mechanics' Trust Company—3 months interest on loan of \$20,000—\$306.67; Interest on loan of \$5,000—\$40.83 made by Roberson and Annett .....	347.50
10	" 9	Paid William Frank, Janitor	75.00
	" 9	Paid William Frank, for work on boiler .....	10.00
	" 9	Paid Public Service Electric and Gas Company .....	10.12
	" 9	Paid Bayonne Supply Company—Supplies for repairs	16.00
	" 9	Paid William Frank—Work on boiler .....	5.00
20	" 9	Paid C. Haggerty's Sons—Janitors supplies .....	3.40
	" 9	Paid City of Bayonne—water bills .....	215.88
	" 30	Paid Colonial Life Insurance Company—Interest \$1,410; on a/c mortgage—\$1,000	2,410.00
	" 30	Paid A. W. Booth & Bros.—coal .....	591.10
	Nov. 6	Paid John Gilbertson—plumbing repairs .....	63.98
30	" 10	Paid William Frank, Janitor	75.00
	" 16	Paid Walworth Company—pipe covering repairs.....	10.62
	" 16	Paid Public Service Electric and Gas Company .....	14.92
	" 16	Paid Lawler Brothers—electric light repairs .....	1.05
	" 18	Paid for roach powder .....	.50
40	" 27	Paid Louis Picker—Painting repairs .....	175.00

*Bill of Complaint.*

1925			
Nov. 30	Paid City of Bayonne—2nd half of 1925 taxes .....	1,871.93	
Dec. 7	Paid Walworth Company— Pipe covering repairs.....	61.81	
" 14	Paid William Frank, Janitor	75.00	
" 14	Paid Public Service Electric and Gas Company .....	11.72	10
" 14	Paid Charles D. Bauer—Car- penter repairs .....	3.33	
" 14	Paid Bayonne Hardware Company—Hardware re- pairs .....	33.40	
" 21	Paid John Keating, Janitor (\$5.00) (Bolts \$1.00) ....	6.00	
" 31	Paid Bayonne Trust Com- pany—3 months interest on \$10,000 note of Annett and Roberson .....	153.33	20
" 31	Paid Mechanics' Trust Com- pany—3 months interest on \$20,000 note of Annett and Roberson .....	306.67	
" 31	Paid Mechanics' Trust Com- pany—3 months interest on \$5,000 note of Annett and Roberson .....	76.67	30
" 31	Paid Commission on rents for the year 1925 at 5% —\$13,684.00 .....	684.20	

## RECEIPTS, 1925.

1925			
Jan. 29	Rents for January .....	\$954.00	
Feb. 28	Rents for February .....	1,151.00	
Mar. 30	Rents for March .....	1,289.00	
Apr. 29	Rents for April .....	1,145.00	40

*Bill of Complaint.*

1925			
	May 26	Rents for May .....	1,221.00
	June 27	Rents for June .....	1,296.00
	July 28	Rents for July .....	1,147.00
	Aug. 25	Rents for August .....	1,013.00
	Sept. 28	Rents for September .....	1,128.00
10	Oct. 27	Rents for October .....	1,192.00
	Nov. 30	Rents for November .....	833.00
	Dec. 30	Rents for December .....	1,315.00

## DISBURSEMENTS, 1926.

1926			
	Jan. 12	Paid William Frank, Janitor	\$ 80.00
	" 15	Paid Louis Picker (Fire loss) painting repairs....	170.00
	" 22	Paid Charles D. Bauer—car- penter repairs .....	3.87
20	" 22	Paid Louis Picker—Painting repairs — No. 101—\$75.00 Front door—\$25.00 .....	100.00
	Feb. 1	Paid Public Service Electric and Gas Company .....	14.28
	" 1	Paid C. Haggerty's Sons— Janitors Supplies .....	7.24
	" 1	Paid Lawler Brothers—Elec- tric light repairs .....	3.10
30	" 1	Paid Colonial Life Insurance Company — Interest on mortgage .....	1,390.00
	" 2	Paid Ketchum for one load of wood .....	6.00
	" 9	Paid Colonial Life Insurance Company — Interest on mortgage to correct interest check above .....	5.00
	" 10	Paid A. W. Booth & Bros.— coal .....	122.60
40	" 11	Paid William Frank, Janitor	75.00

*Bill of Complaint.*

1926			
Feb. 11	Paid John Gilbertson— plumbing repairs .....	31.22	
Mar. 6	Paid John Gilbertson— plumbing repairs .....	24.82	
“ 6	Paid Rinker & Company, re- pairing tile work.....	90.00	10
“ 8	William Frank, Janitor ....	75.00	
“ 16	Paid Public Service Electric and Gas Company .....	21.84	
“ 16	Paid A. W. Booth & Bros.— coal .....	231.60	
“ 25	Paid Charles Bauer for sign	3.75	
“ 25	Paid for carfare .....	.50	
“ 31	Paid Louis Picker—painting repairs .....	119.00	
“ 31	Paid A. W. Booth & Bros.— coal .....	261.10	20
“ 31	Paid I. Moresh—glass repairs	8.50	
“ 31	Paid Public Service Electric and Gas Company .....	10.08	
Apr. 1	Paid Bayonne Trust Com- pany—3 months interest on \$10,000 note of Annett and Roberson .....	150.00	
“ 1	Paid Mechanics' Trust Com- pany—3 months interest on \$25,000 two notes of An- nett and Roberson .....	375.00	30
“ 13	Paid John Gilbertson— plumbing repairs .....	28.40	
“ 13	Paid William Frank, Janitor	75.00	
“ 19	Paid Ketchum for one load of wood .....	6.00	
“ 19	Paid Walsh Sign Shop—Sign	8.00	
“ 26	Paid Bayonne Electric Com- pany repairs .....	8.60	40

*Bill of Complaint.*

1926			
	Apr. 26	Paid Bayonne Supply Company—repairs .....	25.60
	“ 30	Paid Colonial Life Insurance Company—Interest \$1,395; on a/c mortgage \$1,000...	2,395.00
10	May 7	Paid Well Rite Company....	2.25
	“ 7	Paid Louis Picker—painting repairs .....	62.00
	“ 7	Paid Public Service Electric and Gas Company .....	7.48
	“ 7	Paid A. W. Booth & Bros.—coal .....	249.20
	“ 7	Paid Charles D. Bauer (Fire Loss) Repairs .....	140.25
	“ 7	Paid John Gilbertson—plumbing repairs .....	7.00
20	“ 10	Paid Ketchum for one load of wood .....	6.00
	“ 10	Paid William Frank, Janitor	75.00
	June 1	Paid William Frank, Janitor	75.00
	“ 9	Paid for grass, seed, etc....	3.05
	“ 15	Paid Bayonne Electric Company—Repairs .....	1.50
	“ 15	Paid John Gilbertson—plumbing repairs .....	80.69
30	“ 15	Paid Public Service Electric and Gas Company.....	8.52
	“ 28	Paid Ketchum for one load of wood .....	6.00
	“ 28	Paid William Frank, Janitor	75.00
	July 1	Paid Bayonne Trust Company—3 months interest on \$10,000 note of Annett and Roberson .....	151.67
	“ 1	Paid Mechanics' Trust Company—3 months interest on \$5,000 note of Annett and Roberson .....	75.83
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*Bill of Complaint.*

1926			
July	1	Paid Mechanics' Trust Company—3 months interest on \$20,000 note of Annett and Roberson .....	303.33
"	2	Paid John Gilbertson—plumbing repairs .....	44.00
			10
"	7	Paid A. W. Booth & Bros.—coal .....	661.62
"	7	Paid Public Service Electric and Gas Company for lamps .....	6.48
"	7	Paid Public Service and Gas Company .....	1.68
"	7	Paid C. Haggerty's Sons—Janitors Supplies .....	9.64
"	13	Paid Annett-Mahnken Realty Company—Insurance premium .....	18.82
"	17	Paid Charles D. Bauer—Carpenter repairs .....	190.87
"	22	Paid Forbes Brothers for seeds, wrench, etc. ....	3.05
"	23	Paid Spray nozzle .....	.55
"	28	Paid Louis Picker—Painting repairs .....	357.00
"	28	Paid Flaz Brothers—Paints repairs .....	2.50
			30
"	28	Paid Public Service Electric and Gas Company.....	7.24
"	28	Paid Public Service Electric and Gas Company lamps..	3.24
Aug:	2	Paid Colonial Life Insurance Company—on account mortgage—\$1,000; interest on mortgage, \$1,380 .....	2,380.00
"	3	Paid City of Bayonne—taxes	2,125.73
			40

*Bill of Complaint.*

1926				
	Aug.	3	Paid City of Bayonne—taxes —Block 170, Lot 54.....	25.61
	"	3	Paid City of Bayonne—taxes	48.14
	"	5	Paid roach powder .....	.50
	"	5	Paid James Keller, Janitor.	75.00
10	"	9	Paid A. W. Booth & Bros.— coal .....	300.00
	"	11	Paid Charles D. Bauer—car- penter repairs .....	26.20
	"	11	Paid John Gilbertson— plumbing repairs .....	12.90
	Sept.	2	Paid James Keller, Janitor..	75.00
	"	4	Paid for faucet washers.....	.20
	"	8	Paid I. Moresh—glass repairs	3.00
	"	8	Paid Public Service Electric and Gas Company .....	16.56
20	"	9	Paid John Gilbertson— plumbing supplies .....	24.25
	Apr.	26	Paid Public Service Electric and Gas Company .....	9.64
	Oct.	2	Paid Bayonne Trust Com- pany—3 months interest on \$10,000 note of Annett and Roberson .....	153.33
	"	4	Paid Mechanics' Trust Com- pany—3 months interest on two notes aggregating \$25,000 made by Annett and Roberson .....	383.34
30	"	4	Paid James Keller, Janitor.	75.00
	"	7	Paid John Gilbertson— plumbing repairs .....	10.00
	"	11	Paid Ketchum for one load of wood .....	6.00
	"	13	Paid Louis Picker—painting repairs .....	200.00
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*Bill of Complaint.*

1926				
Oct.	13	Paid Charles S. Goldberg— Hardware repairs .....	4.50	
"	13	Paid Public Service Electric and Gas Company .....	9.64	
"	21	Paid Charles D. Bauer—Car- penter repairs .....	26.23	10
"	25	Paid Interest on loan \$20,000 Charles E. Annett from July 24th, 1924 to Octo- ber 24, 1925 .....	1,500.00	
"	28	Paid James Keller, Janitor No. 308 .....	2.00	
"	30	Paid James Keller, Janitor..	75.00	
Nov.	1	Paid Colonial Life Insurance Company—Interest on mortgage .....	1,365.00	20
"	4	Paid A. W. Booth & Bros.— coal .....	428.00	
"	18	Paid Ketchum for one load of wood .....	6.00	
"	19	Paid Public Service Electric and Gas Company .....	19.02	
"	19	Paid Louis Picker—Painting repairs .....	420.00	
"	19	Paid Irving B. Lockman— Hardware repairs .....	21.00	30
"	19	Paid Bayonne Electric Com- pany—Electric repairs....	55.90	
"	19	Paid Rinker and Company— Repairing tile work .....	5.00	
"	19	Paid Flax Brothers—Paint- ing repairs .....	735.00	
"	19	Paid John Gilbertson— Plumbing repairs .....	47.88	
"	19	Paid Charles D. Bauer, Car- penter repairs .....	16.55	40

*Bill of Complaint.*

1926			
	Nov. 24	Paid Janitor—No. 408— \$2.00; powder—25¢ .....	2.25
	“ 24	Paid James Keller, Janitor..	37.50
	“ 30	Paid One-half 1926 taxes....	2,125.73
10	Dec. 3	Paid John Gilbertson— Plumbing repairs .....	195.81
	“ 3	Paid Charles D. Bauer, Car- penter repairs .....	15.80
	“ 7	Paid James Keller, Janitor..	37.50
	“ 21	Paid James Keller, Janitor (renting No. 107) .....	2.00
	“ 21	Paid James Keller, Janitor (Xmas \$5.00; one-half month \$37.50) .....	42.50
20	“ 21	Paid Public Service Electric and Gas Company .....	16.36
	“ 21	Paid Irving D. Lockman— Hardware repairs .....	2.25
	“ 24	Paid for wreaths .....	.70
	“ 24	Paid Charles D. Bauer—Car- penter repairs .....	2.11
	“ 31	Paid Bayonne Trust Com- pany—3 months interest on \$10,000 note of Annett and Roberson .....	153.33
30	“ 31	Paid Mechanics' Trust Com- pany—3 months interest on two notes aggregating \$25,000 made by Annett and Roberson .....	383.34
	“ 31	Paid Annett-Mahnken Realty Company—Commission for collecting 1926 rents 5% of \$12,974.98 .....	648.75

*Bill of Complaint.*

## RECEIPTS, 1926.

1926			
Jan. 26	Rents for January .....	\$1,333.00	
" 26	Fire loss collected January 25th, 1926 .....	311.52	
Feb. 26	Rents for February .....	1,066.00	10
Mar. 31	Rents for March .....	1,300.00	
Apr. 27	Rents for April .....	1,095.48	
May 27	Rents for May .....	1,188.00	
June 28	Rents for June .....	960.00	
July 28	Rents for July .....	898.00	
Aug. 24	Rents for August .....	832.00	
Sept. 20	Rents for September .....	\$1,051.00	
Oct. 28	Rents for October .....	1,068.00	
Nov. 30	Rents for November .....	1,175.50	
Dec. 28	Rents for December .....	1,008.00	20

## DISBURSEMENTS, 1927.

1927			
Jan. 5	Paid James Keller, Janitor— ½ month .....	37.50	
" 7	Paid John Gilbertson— Plumbing repairs .....	17.60	
" 20	Paid James Keller, Jani- tor—½ month .....	37.50	
Feb. 2	Paid Public Service Electric and Gas Company .....	15.40	30
" 8	Paid James Keller, Jani- tor—½ month .....	37.50	
" 4	Paid Colonial Life Insurance Company—Interest \$1,365; on a/c mortgage \$1,000...	2,365.00	
" 10	Paid Flax Brothers—Paint- ing Supplies, repairs .....	23.00	
" 10	Paid Bayonne Electric Com- pany—Electric repairs ...	50.04	40

*Bill of Complaint.*

1927			
	Feb. 10	Paid Miller's Sure Destroyer Company .....	10.00
	" 10	Charles D. Bauer—Carpenter repairs .....	25.43
10	" 12	Paid Ketchum for one load of wood .....	6.00
	" 15	Paid Annett-Mahnken Realty Company—Insurance ....	365.00
	" 15	Paid Annett-Mahnken Realty Company—Insurance ....	365.00
	" 18	Paid James Keller, Jani- tor— $\frac{1}{2}$ month .....	37.50
	" 25	Paid A. W. Booth & Bros.— coal .....	300.00
	" 25	Paid John Gilbertson— Plumbing repairs .....	35.45
20	Mar. 2	Paid Ketchum for one load of wood .....	6.00
	" 4	Paid John Gilbertson— plumbing repairs .....	8.25
	" 4	Paid A. W. Booth & Bros.— coal .....	323.75
	" 4	Paid Miller's Sure Destroyer Company .....	10.00
	" 4	Paid Irving B. Lockman— Hardware repairs .....	5.60
30	" 4	Paid Public Service Electric and Gas Company .....	18.04
	" 8	Paid James Keller, Jani- tor $\frac{1}{2}$ month .....	37.50
	" 8	Paid for repairs to lock ....	.50
	" 4	Paid for mop and broom ...	2.34
	" 14	Paid Hannah O'Connor for cleaning .....	20.00
	" 18	Paid Charles D. Bauer—Car- penter repairs .....	26.37
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*Bill of Complaint.*

1927			
Mar.	21	Paid James Keller, Janitor 1/2 month .....	37.50
"	21	Paid James Keller, Janitor, (Renting No. 401) .....	2.00
"	21	Paid Fitzberry for damage to bed in apartment No. 107 .....	10.00
"	28	Paid for District Court case	2.10
Apr.	4	Bayonne Trust Company—3 months interest on \$10,000 note made by Annett and Roberson .....	150.00
"	4	Paid Mechanics' Trust Company—3 months interest on two notes aggregating \$25,000 made by Annett and Roberson .....	417.50
"	5	Paid James Keller, Janitor—1/2 month .....	37.50
"	11	Paid Public Service Electric and Gas Company .....	21.16
"	11	Paid A. W. Booth & Bros.—coal .....	257.20
"	13	Paid Annett-Mahnken Realty Company, Insurance .....	321.20
"	14	Paid for grass, seed, etc. ...	2.00
"	14	Paid John Gilbertson—Plumbing repairs .....	23.50
"	21	Paid James Keller, Janitor, 1/2 month .....	37.50
"	26	Paid Miller's Sure Destroyer Company .....	20.00
"	27	Paid for grass, seed, etc. ...	1.00
May	2	Paid Colonial Life Insurance Company on a/c mortgage \$1,000; interest \$1,350....	2,350.00

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*Bill of Complaint.*

1927				
	May	5	Paid Interest on loan Charles E. Annett—\$20,000 from October 24, 1925 to April 24, 1926 .....	600.00
10	"	5	Paid James Keller, Janitor— $\frac{1}{2}$ month .....	37.50
	"	9	Paid for District Court case	2.10
	"	10	Paid Public Service and Gas Company .....	17.74
	"	12	Paid Ketchum for one load of wood .....	6.00
	"	20	Paid Charles D. Bauer, Carpenter repairs .....	16.45
	"	20	Paid James Keller, Janitor, $\frac{1}{2}$ month .....	37.50
20	"	24	Paid Bayonne Electric Company—Repairs .....	29.13
	"	24	Paid Miller's Sure Destroyer Company .....	10.00
	"	24	Paid A. W. Booth & Bros.—coal .....	395.29
	"	24	Paid C. Haggerty's Sons—Janitors supplies .....	9.56
	June	3	Paid James Keller, Janitor— $\frac{1}{2}$ month .....	37.50
30	"	6	Paid for faucet washers.....	.30
	"	15	Paid Louis Picker—Painting repairs .....	415.00
	"	15	Paid Fred Bauer, Janitor...	50.00
	"	23	Paid Public Service Electric and Gas Company .....	19.26
	"	28	Paid for District Court case	2.10
	"	29	Paid Fred Bauer, repairs ...	8.80
40	July	1	Paid Bayonne Trust Company—3 months interest on \$10,000 note of Annett and Roberson .....	151.66

*Bill of Complaint.*

1927			
July	1	Paid Mechanics' Trust Company—3 months interest on \$5,000 note made by Horace Roberson 8/12/25	75.83
"	1	Paid Mechanics' Trust Company—3 months interest on \$20,000 note made by Annett and Roberson ....	303.33
"	5	Paid Fred Bauer, Janitor...	50.00
"	7	Paid John Gilbertson—Plumbing repairs .....	21.56
"	11	Fred Bauer, Repairs .....	40.90
"	13	Paid Roberson & Roberson—District Court costs .....	2.20
"	13	Paid Miller's Sure Destroyer Company .....	10.00
"	13	Paid Bayonne Electric Company—Repairs .....	29.85
"	13	Paid Forbes Brothers—Hardware repairs .....	4.90
"	14	Paid Annett-Mahnken Realty Company—Insurance ....	18.82
"	26	Paid Fred Bauer, Janitor...	50.00
"	26	Paid Frank Miller's Sure Destroyer Company .....	10.00
"	26	Paid Public Service Electric and Gas Company .....	11.92
Aug.	1	Paid Colonial Life Insurance Company—On a/c mortgage \$1,000; interest \$1,335	2,335.00
"	2	Paid Fred Bauer, Janitor...	85.20
"	2	Paid A. W. Booth & Bros.—coal .....	300.00
"	4	Paid Fred Bauer, Janitor...	50.00
"	13	Paid Court fee .....	2.10
"	13	Paid City of Bayonne—1/2 1927 taxes .....	2,162.76

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*Bill of Complaint.*

1927			
	Aug. 15	Paid Fred Bauer, Janitor...	50.00
	" 15	Paid Peoples Plumbing Supply Company for plumbing materials for repairs .....	5.75
10	" 15	Paid Electric Company for repairs .....	8.28
	" 15	Paid W. B. Willensky for paint—repairs .....	4.45
	" 15	Paid Ruthing Shade Company for shades .....	256.00
	" 22	Paid Fred Bauer for painting	99.60
	Sept. 3	Paid Fred Bauer, Janitor...	50.00
	" 16	Fred Bauer—Painting repairs .....	88.40
20	" 16	Paid John Gilbertson—Plumbing repairs .....	55.75
	" 19	Paid W. B. Willensky—Paint for repairs .....	58.71
	" 19	Paid A. W. Booth & Bros.—coal .....	354.00
	" 19	Paid Miller's Sure Destroyer Company .....	10.00
	" 19	Paid Bayonne Electric Company—repairs .....	33.07
30	" 19	Liberty Lighting Fixture Company—repairs .....	20.00
	" 19	Paid I. B. Lockman—Hardware repairs .....	1.05
	" 19	Paid Fred Bauer, Janitor...	50.00
	Oct. 1	Paid Charles E. Annett—Interest on \$20,000 cash loan to October 24th, 1926....	600.00
	" 6	Paid Electric Company—repairs .....	15.20
40	" 6	Paid Miller's Sure Destroyer Company .....	10.00

*Bill of Complaint.*

1927			
Oct.	6	Paid W. B. Willensky— Painting—repairs .....	140.37
"	6	Paid Walworth Company— repairs .....	39.50
"	6	Paid Fred Bauer, Janitor...	50.00
"	14	Paid John Gilbertson— Plumbing repairs .....	25.25
July	1	Paid Mechanics' Trust Com- pany—3 months interest on \$5,000 note made by Horace Roberson 2/8/27..	75.83
Oct.	14	Paid Boynton Furnace Com- pany for grate bars .....	117.00
"	14	Paid Fred Bauer, Repairs...	253.20
"	14	Paid Public Service Electric and Gas Company .....	11.78
"	14	Paid Public Service Electric and Gas Company for bulbs .....	5.52
"	14	Paid Louis Picker—Painting repairs .....	480.00
"	24	Paid Fred Bauer, Janitor...	50.00
"	31	Paid Colonial Life Insurance Company—on a/c mort- gage \$1,000; 3 months in- terest \$1,320 .....	2,320.00
"	31	Paid Mechanics' Trust Com- pany—Interest on loan on two \$5,000 notes Annett and Roberson .....	153.34
"	31	Paid Mechanics' Trust Com- pany—Interest on note of \$20,000 Annett and Rober- son .....	339.97
Nov.	3	Paid Fred Bauer, Janitor...	50.00
"	3	Paid John Gilbertson plumb- ing repairs .....	17.60

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*Bill of Complaint.*

1927			
	Nov. 16	Paid Fred Bauer, Janitor...	50.00
	" 16	Paid Meyer L. Shapero— Est.—Hall furniture .....	48.00
	" 16	Paid Miller's Sure Destroyer Company .....	10.00
10	" 16	Paid Public Service Electric and Gas Company .....	14.44
	" 16	Paid Peoples Plumbing Com- pany—repairs .....	1.60
	" 23	Paid Liberty Lighting Fix- ture Company—repairs ...	10.00
	" 30	Paid Fred Bauer, Janitor...	50.00
	" 30	Paid Fred Bauer, Painting repairs .....	191.26
	" 30	Paid Louis Picker—Painting repairs .....	24.00
20	" 30	Paid A. W. Booth & Bros.— coal .....	27.00
	" 30	Paid F. Miller's Sure De- stroyer Company .....	10.00
	Dec. 9	Paid Bayonne Electric Com- pany—repairs .....	13.73
	" 9	Paid W. B. Willensky— Paints repairs .....	214.70
	" 15	Paid Fred Bauer, Janitor...	50.00
30	" 16	Paid John Gilbertson— Plumbing repairs .....	4.00
	" 16	Paid Fred Bauer for painting	124.00
	" 31	Paid Charles E. Annett—In- terest to April 24th, 1927 on \$20,000 cash loan .....	600.00
	" 31	Paid Mechanics' Trust Com- pany—interest on \$10,000 note of Annett and Rober- son—6 mos. ....	153.34
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*Bill of Complaint.*

1927			
Dec. 31	Paid Mechanics' Trust Company—6 months interest on \$20,000 note .....	613.34	
" 31	Paid Bayonne Trust Company—3 months interest on \$10,000 note .....	153.33	10
" 31	Paid Bayonne Trust Company—interest on \$10,000 note .....	153.33	
" 31	Paid Fred Bauer, Janitor... Paid Annett-Mahnken Realty Company—Commission of 1927 rents 5% on \$12,084.50 .....	50.00 604.23	

## RECEIPTS, 1927.

20

1927			
Jan. 31	Rents for January .....	\$1,090.00	
Feb. 24	Rents for February .....	1,002.00	
Mar. 22	Rents for March .....	1,346.00	
Apr. 30	Rents for April .....	1,005.00	
May 26	Rents for May .....	1,299.00	
June 25	Rents for June .....	768.00	
July 26	Rents for July .....	742.00	
Aug. 29	Rents for August .....	731.00	
Sept. 28	Rents for September .....	904.00	30
Oct. 31	Rents for October .....	1,233.00	
Nov. 28	Rents for November .....	931.50	
Dec. 31	Rents for December .....	1,033.00	

## DISBURSEMENTS, 1928.

1928			
Jan. 16	Paid Fred Bauer, Janitor	50.00	
" 19	Paid Public Service Electric and Gas Company .....	33.78	40

*Bill of Complaint.*

1928			
	Jan.	19	Paid Miller's Sure Destroyer Company ..... 10.00
	"	19	Paid W. B. Willensky— Paints, repairs ..... 73.10
10	"	19	Fred Bauer for painting— repairs ..... 116.00
	"	19	Paid Peoples Supply Com- pany—repairs ..... 51.69
	"	19	Paid A. W. Booth & Bros.— coal ..... 441.47
	"	24	Paid Combustion Specialties Corporation—repairs .... 399.00
	"	25	Paid Ketchum for two loads of wood ..... 12.00
	"	31	Paid for sand and cement .. 1.25
20	Feb.	1	Paid Colonial Life Insurance Company—Interest \$1,305 on a/c mortgage \$1,000 .. 2,305.00
	"	3	Paid Fred Bauer, Janitor .. 50.00
	"	15	Paid Fred Bauer, Janitor .. 50.00
	"	15	Paid Fred Bauer for carpen- ter work—repairs ..... 46.40
	"	15	Paid W. B. Willensky— Paints—repairs ..... 34.15
30	"	15	Paid Liberty Lighting Fix- ture Company—Repairs .. 9.00
	"	15	Paid Miller's Sure Destroyer Company ..... 10.00
	"	15	Paid Public Service Electric and Gas Company ..... 17.52
	"	20	Paid Insurance for December 6.00
	"	21	Paid A. W. Booth & Bros.— coal ..... 200.00
	"	21	Paid John Gilbertson— Plumbing repairs ..... 36.44
40	Mar.	1	Paid Fred Bauer, Janitor .. 50.00

*Bill of Complaint.*

1928			
Mar.	6	Paid Miller's Sure Destroyer Company .....	10.00
"	6	W. B. Willensky—Paints— repairs .....	19.50
"	6	Paid Bayonne Electric Com- pany—Repairs .....	15.30 10
"	6	Paid for Beaver Board .....	1.08
"	15	Paid A. W. Booth & Bros.— coal .....	306.28
"	15	Paid Fred Bauer, Janitor ..	50.00
Apr.	4	Paid Fred Bauer, Janitor ..	50.00
"	10	Paid C. Haggerty's Sons— Janitors Supplies .....	6.40
"	13	Paid Public Service Electric and Gas Company .....	27.90
"	17	Paid Mechanics' Trust Com- pany—Interest on loan on two notes aggregating \$25,000 .....	454.99
"	17	Paid Bayonne Trust Com- pany—Interest on loan on \$10,000 note of Annett and Roberson .....	151.67
"	17	Paid Fred Bauer, Janitor ..	50.00
"	17	Paid Miller's Sure Destroyer Company .....	220.00 30
"	17	Paid Bayonne Electric Com- pany—Repairs .....	54.94
"	17	Paid Fred Bauer, No. 306— repairs .....	11.50
"	27	Paid J. B. Lockman—Paints and hardware for repairs ..	1.45
"	30	Paid Public Service Electric and Gas Company .....	5.52
May	1	Paid Colonial Life Insur- ance Company—On Ac- count mortgage .....	1,000.00 40

*Bill of Complaint.*

1928				
	May	1	Paid Colonial Life Insurance Company—Interest . . . . .	1,290.00
	"	1	Paid City of Bayonne—Taxes \$2,150.23—Interest \$62.71 . . . . .	2,212.94
	"	1	Paid Fred Bauer, Janitor . . . . .	50.00
10	"	2	Paid A. W. Booth & Bros.—coal . . . . .	324.00
	"	15	Paid Fred Bauer, Janitor . . . . .	50.00
	"	24	Paid Public Service Electric and Gas Company . . . . .	10.66
	"	24	Paid A. W. Booth & Bros.—coal . . . . .	54.00
	"	24	Paid Peoples Plumbing Company—Repairs . . . . .	4.30
20	"	24	Paid W. B. Willensky—Painting materials for repairs . . . . .	96.25
	"	24	Paid Miller's Sure Destroyer Company . . . . .	10.00
	June	1	Paid Fred Bauer, Janitor . . . . .	50.00
	"	15	Paid Fred Bauer, Janitor . . . . .	50.00
	July	2	Paid Bayonne Trust Company—Interest on \$10,000 note of Annett and Robertson . . . . .	151.68
30	"	2	Paid Mechanics' Trust Company—Interest on two notes aggregating \$25,000 . . . . .	454.99
	"	2	Paid Fred Bauer, Janitor . . . . .	50.00
	"	3	Paid Arthur Bauer for painting—Repairs . . . . .	111.20
	July	13	Paid Public Service Electric and Gas Company . . . . .	7.98
	"	13	Paid Public Service Electric and Gas Company . . . . .	1.00
40	"	13	Paid James Brady's Sons—Materials for repairs . . . . .	5.65

*Bill of Complaint.*

1928			
July	13	Paid John Gilbertson— Plumbing repairs .....	7.70
"	13	Paid Liberty Lighting Fix- ture Company—Repairs ..	24.00
"	13	Paid B. T. Roofing Works— Repairs .....	35.00 10
"	13	Paid Miller's Sure Destroyer Company .....	10.00
"	13	Paid A. W. Booth & Bros.— coal .....	108.00
"	15	Paid Fred Bauer, Janitor ..	50.00
"	31	Paid Fred Bauer, Janitor ..	50.00
"	31	Paid Forbes Brothers—seed	11.27
"	31	Paid T. D. Thompson—repair bills .....	9.00
"	31	Paid Public Service Electric and Gas Company .....	7.72 20
Aug.	1	Paid Colonial Life Insur- ance Company—Interest .	1,275.00
"	1	Paid Colonial Life Insur- ance Company—On ac- count mortgage .....	1,000.00
"	10	Paid Public Service Electric and Gas Company .....	7.30
"	10	Paid Albert Ruthing—Awn- ings .....	557.00 30
"	16	Paid Fred Bauer, Janitor ..	50.00
"	31	Paid Fred Bauer, Janitor ..	50.00
Sept.	13	Paid Fred Bauer, Painting— Repairs .....	46.50
"	15	Paid Fred Bauer, Janitor ..	50.00
"	15	Paid Public Service Electric and Gas Company .....	9.82
"	19	Paid W. B. Willensky— Paint—repairs .....	97.50
"	19	Paid Miller's Sure Destroyer Company—2 months .....	20.00 40

*Bill of Complaint.*

1928			
	Sept. 19	Paid Peoples Plumbing and Mill Company—Repairs ..	2.90
	“ 19	Paid A. W. Booth & Bros.— coal .....	39.65
10	“ 21	Paid John Gilbertson— Plumbing repairs .....	7.70
	Oct. 1	Paid Bayonne Trust Com- pany—Interest on \$10,000 note of Annett and Rober- son .....	153.33
	“ 1	Paid Fred Bauer, Janitor ..	50.00
	“ 10	Paid Elco Company—wire— repairs .....	3.70
	“ 11	Paid Mr. Shafer for keys— repairs .....	6.00
20	“ 15	Paid A. W. Booth & Bros.— coal .....	337.00
	“ 15	Paid Public Service Electric and Gas Company .....	10.66
	“ 15	Paid C. Haggerty's Sons— Janitors supplies .....	3.48
	“ 15	Paid Miller's Sure Destroyer Company .....	10.00
	“ 15	Paid Fred Bauer, Janitor ..	50.00
30	“ 16	Paid Fred Bauer, for paint- ing—Repairs .....	61.20
	“ 26	Paid Ketchum for one load of wood .....	6.00
	Nov. 1	Paid Fred Bauer, Janitor ..	50.00
	“ 1	Paid Colonial Life Insur- ance Company—on account mortgage .....	1,000.00
	“ 1	Paid Colonial Life Insur- ance Company—Interest .	1,260.00
40	“ 9	Paid Elco Company—wire— repairs .....	17.00

*Bill of Complaint.*

1928		
Nov. 15	Paid Fred Bauer, Janitor ..	50.00
" 19	Paid Thomas D. Thompson— Electric repairing .....	6.76
" 19	Paid for rug cleaning—No. 205 Plaster .....	5.60
" 30	Paid Fred Bauer, Janitor ..	50.00
" 30	Paid Public Service Electric and Gas Company .....	13.23
" 30	Paid Public Service Electric and Gas Company bulbs	7.20
" 30	Paid Miller's Sure Destroyer Company .....	20.00
" 30	Paid Charles D. Bauer—car- penter repairs .....	56.98
" 30	Paid Annett-Mahnken Realty Company—Insurance ....	20.52
		20
Dec. 15	Paid Fred Bauer, Janitor ..	50.00
" 15	Paid Public Service Electric and Gas Company .....	16.12
" 15	Paid Fred Bauer, Painting— Repairs .....	141.06
" 15	Paid Liberty Lighting Fix- ture Company—Repairs ..	7.00
" 15	Paid Forbes Brothers—Hard- ware for repairs .....	5.19
" 15	Paid Peoples Plumbing & Mill Company—Repairs ..	7.00
		30
" 31	Paid Mechanics' Trust Com- pany—6 months interest ..	975.22
" 31	Paid Bayonne Trust Com- pany—3 months interest on \$10,000 note of Annett and Roberson .....	153.33
1928		
Dec. 31	Paid Fred Bauer, Janitor ..	50.00
		40

*Bill of Complaint.*

1928

“ 31	Paid Annett-Mahnken Realty Co.—Commission for collecting 1928 rents 5% on \$15,673.05 .....	783.65
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## ANNETT-MAHNKEN REALTY CO. RECEIPTS, 1928.

1928

Jan. 31	Rents for January .....	\$1,498.00
Feb. 27	Rents for February .....	1,342.50
Mar. 19	Rents for March .....	1,490.50

## ANSON REALTY CO. RECEIPTS, 1928.

1928

20	Apr. 30	Rents for April .....	1,546.50
	May 30	Rents for May .....	1,112.50
	June 29	Rents for June .....	1,351.00
	July 31	Rents for July .....	1,208.00
	Aug. 31	Rents for August .....	1,138.00
	Sept. 29	Rents for September .....	1,176.00
	Oct. 29	Rents for October .....	1,228.00
	Nov. 30	Rents for November .....	1,376.05
	Dec. 31	Rents for December .....	1,206.00

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## SUMMARY.

## DISBURSEMENTS.

1924 .....	\$45,940.06	
1925 .....	21,136.35	
1926 .....	22,915.61	
1927 .....	24,357.01	
1928 .....	20,189.27	\$134,538.30

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*Answer and Counterclaim.*

## INCOME.

1924 .....	\$11,378.49		
1925 .....	13,684.00		
1926 .....	13,286.50		
1927 .....	12,084.50		
1928 .....	15,673.05	66,106.54	10
		<hr/>	
Over Payments .....		\$ 68,431.76	

**Answer and Counterclaim.**

(Filed April 5, 1929.)

The defendants, Betsey Gollin and Max Gollin, of the City of Bayonne, in the County of Hudson and State of New Jersey, answering the bill of complaint filed in the above entitled cause, say that: 20

1. Paragraph 1 of the bill of complaint is admitted.

2. Paragraph 2 of the bill of complaint is admitted, but these defendants do not admit that the contents and purport of the said agreement are correctly set forth in the said bill, or that the copy of the agreement annexed as Schedule "A" to the said bill of complaint, is a true copy of the said agreement, and for greater certainty therein crave leave to refer to the said agreement, when the same shall be produced. 30

3. Paragraph 3 of the bill of complaint is denied except that these defendants admit that the complainant, Annett-Mahnken Realty Company, took possession of the lands and building described in said bill of complaint. 40

*Answer and Counterclaim.*

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4. Paragraph 4 of the bill of complaint is denied. These defendants further say the said trustee never made any endeavors to effect a sale of the apartment house; that the said trustee never submitted any offer for the sale of the said apartment house to these defendants.

10 5. These defendants have no knowledge of the matters set forth in paragraph 5 of the bill of complaint, sufficient to form a belief, but put the complainants to their proof, but these defendants admit the said Anson Realty Company is now the record owner of the premises described in the bill of complaint.

6. Paragraph 6 of the bill of complaint is denied.

20 7. Paragraph 7 of the bill of complaint is denied. These defendants further say that complainant, Annett-Mahnken Realty Company, has negligently violated the terms of the trust agreement aforesaid, by refusing to make advances of all moneys necessary to discharge the debts incurred by said Betsey Gollin and Irving Gollin, about the erection of the said apartment house; by instituting a foreclosure action against the premises described in the bill of complaint, on its own account; by leaving the building erected upon the premises described in the bill of complaint, to become untenable, causing the property to depreciate in value, and the rental value thereof to greatly diminish, to the great damage of these defendants; by failing to maintain and manage the apartment house in a careful and prudent manner, and also by misappropriating trusts property.

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By way of further answer, the defendants say:

40 8. These defendants further allege that under and in pursuance to the terms of the trust agree-

ment aforesaid, the complainants, or either one of them, are not entitled to an accounting or any other relief in this Honorable Court, unless and until there is a sale of the trust property.

9. These defendants further allege that the complainant, Annett-Mahnken Realty Company, entered into an agreement with the defendant, Betsey Gollin, to finance the completion of the said apartment house, and to be reimbursed for such moneys advanced only out of the proceeds of the apartment house through the collection of the rents, issues and profits, or through a sale of the trust property. 10

#### COUNTERCLAIM.

By way of counterclaim against the complainants, these defendants say that: 20

1. Paragraph 1 of the bill of complaint is reiterated and made part hereof, with the same force and effect as repeated in length.

2. Paragraph 2 of the bill of complaint is reiterated and made part hereof, with the same force and effect as repeated in length.

3. The complainant, Annett-Mahnken Realty Company, thereupon took possession of the lands and buildings described in the bill of complaint and under the trust agreement and deed aforesaid, for the uses and purposes expressed in the trust agreement aforesaid. 30

4. Paragraph 4 of the answer is reiterated and made part hereof, with the same force and effect as repeated in length.

5. Paragraph 5 of the answer is reiterated and made part hereof, with the same force and effect as repeated in length.

6. These defendants further allege that the 40

complainant, Annett-Mahnken Realty Company, never made any endeavors to effect a sale of the apartment house; that the said trustee never submitted any offer for the sale of the said apartment house to these defendants.

10 7. Paragraph 7 of the answer is reiterated and made part hereof, with the same force and effect as repeated in length.

8. Paragraph 9 of the answer is reiterated and made part hereof, with the same force and effect as repeated in length.

These defendants therefore pray:

1. That the said complainants, Annett-Mahnken Realty Company and Anson Realty Company may answer this counterclaim, without oath, and each statement herein made.

20 2. That the bill of complaint filed by the complainants herein be dismissed with costs.

3. That the complainants be compelled to give a true and accurate account of all rents, issues and profits received by them from the trust property, with allowances to these defendants, for the unfaithful and imprudent maintenance of the trust property.

30 4. That these defendants be given such further relief as this Honorable Court deems equitable and just.

SAMUEL L. HIRSCHBERG,  
Solicitor for and of  
Counsel with Defendants.

**Complainants' Answer to Counterclaim.**

(Filed April 24, 1929.)

The complainants for answer unto so much of the defendants' counterclaim as is alleged as the basis of affirmative relief, and as is not repeated solely in answer to the bill of complaint, say: 10

1. In a cause brought and then pending in this court in which the complainant Annett-Mahnken Realty Company was complainant and the present defendants were defendants, to foreclose a certain mortgage held by said complainant upon certain property of the defendants, wherein a final decree had been entered, execution issued and said property advertised for sale by the Sheriff of Hudson County, the said defendants on petition to open the decree and to permit them to answer the foreclosure bill, set up the trust agreement referred to in the counterclaim, a copy of which is annexed to the bill of complaint and marked Schedule A, and obtained an order to show cause dated April 8, 1926, and in said petition claimed and contended that on the true construction of said trust agreement the complainants were obliged to pay all indebtedness incurred by the defendants in the construction of said apartment house, and were entitled to reimbursement only out of the proceeds of said apartment house, from the rents, issues and profits thereof, or from the proceeds of a sale; but the Honorable James F. Fielder, the Vice Chancellor before whom the order to show cause was brought on for hearing, rejected such contention, denied the defendants' application, and by order made April 26, 1926, discharged the rule to show cause, with the restraining order; which ruling of the Vice Chancellor was there- 20  
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*Amended Counterclaim.*

after affirmed on appeal by the Court of Errors and Appeals; by virtue of which ruling of this court the defendants are bound, and are estopped from now urging the construction of the trust agreement for which they contend in their counterclaim.

- 10     2. The complainants deny the allegation of the counterclaim that they have been unfaithful or imprudent in the maintenance of the trust property.

The complainants pray that the counterclaim may be dismissed.

CARRICK & WORTENDYKE,  
Solicitors and of Counsel with Complainants.

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**Amended Counterclaim.**

(Filed August 1, 1930, after Final Hearing.)

The defendants, Betsey Gollin and Max Gollin, of the City of Bayonne, in the County of Hudson and State of New Jersey, amending the counterclaim heretofore filed in the above entitled cause, say that:

- 30     1. Paragraph 1 of the bill of complaint is reiterated and made part hereof, with the same force and effect as if repeated in length.
2. Paragraph 2 of the bill of complaint is reiterated and made part hereof, with the same force and effect as if repeated in length.
3. The complainant, Annett-Mahnken Realty Company, thereupon took possession of the lands and building described in the bill of complaint and under the trust agreement and deed afore-

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said, for the uses and purposes expressed in the trust agreement aforesaid.

4. Paragraph 4 of the answer is reiterated and made part hereof, with the same force and effect as repeated in length.

5. Paragraph 5 of the answer is reiterated and made part hereof with the same force and effect as repeated in length. 10

6. These defendants further allege that the complainant, Annett-Mahnken Realty Company, never made any endeavors to effect a sale of the apartment house; that the said trustee never submitted any offer for the sale of the said apartment house to these defendants.

7. Paragraph 7 of the answer is reiterated and made part hereof, with the same force and effect as repeated in length. 20

8. Paragraph 9 of the answer is reiterated and made part hereof, with the same force and effect as repeated in length.

9. Pursuant to the arrangement made at the time of the conveyance of said apartment house to the complainant, Annett-Mahnken Realty Co., and the said trust agreement, the aforesaid complainant did pay the indebtedness secured by mortgages on properties known as 772 Avenue C, 249 Broadway, 499 Boulevard, 501 Boulevard, 462 Avenue C, all in the City of Bayonne, County of Hudson and State of New Jersey, held by Horace Roberson, Kay-Bee Investment Co., Lillian Markowitz, Newell & Shillowitz, as well as a mechanic's lien judgment against Irving Gollin and specially against said apartment house held by James Brady's Sons Co., but instead of cancelling said mortgages and judgment and keeping the apartment house property as security for said advances, as provided for in said Trust 40

*Amended Counterclaim.*

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Agreement, the said complainants took assignments of the same trustee for the defendant, Betsey Gollin.

10 10. In gross violation of the Trust Agreement aforesaid, and in flagrant abuse of its obligations and duties as trustee, and in direct contravention to the intent and purpose of the Trust Agreement aforementioned, and in wilfull breach of the confidence reposed in it, the said Annett-Mahnken Realty Co., instituted four foreclosure actions against these defendants in this Honorable Court (Dockets Nos. 58-609; 58-610; 58-611; 63-32) predicated upon the mortgages mentioned above, and such proceedings were had thereon that the said Trustee, Annett-Mahnken Realty Co., purchased the said properties at the foreclosure sales.

20 11. On or about the 1st day of April, 1927, the said trustee, Annett-Mahnken Realty Co., conveyed the properties acquired by it at the foreclosure sales, referred to above, to the Anson Realty Co., who is not a bona fide purchaser for value without notice.

30 12. By reason of the premises aforesaid, and in good equity and conscience, the complainants herein hold the properties mentioned in paragraph 9 herein in trust for the use and benefit of the said defendant, Betsey Gollin.

13. The complainants have negligently maintained the properties mentioned in paragraph 9 of this counterclaim, and are not entitled to be reimbursed for moneys expended by them.

These defendants, in addition to the prayers set forth in the original counterclaim to which this is an amendment, further pray:

40 1. That it be decreed that the said complainants, Annett-Mahnken Realty Co. and Anson Realty Co. hold the properties referred to in

*Complainants' Answer to Amended Counterclaim.*

paragraph 11 herein, as trustee for the defendant Betsey Gollin, and that said complainant be ordered and decreed to reconvey the aforesaid properties to the said defendant, Betsey Gollin.

2. That it be decreed that complainants, Annett-Mahnken Realty Co. and the Anson Realty Co. give a true and just account of all rents, issue and profits received from the properties referred to in paragraph 9 herein. 10

SAMUEL L. HIRSCHBERG,  
Solicitor for Defendants.

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**Complainants' Answer to Amended Counterclaim.** 20

(Filed August 18, 1930, after Final Hearing.)

The complainants for answer to so much of the defendants amended counterclaim as is alleged as the basis of affirmative relief, and as is not repeated solely in answer to the bill of complaint, say:

1. They deny the allegations of paragraph 6 of the amended counterclaim; but on the contrary say that the Annett-Mahnken Realty Company made diligent and proper efforts to effect a sale of the apartment house, and consulted frequently with the defendants, and with Irving Gollin, their representative, and from time to time furnished the said representative statements from the books of the Annett-Mahnken Realty Company showing what moneys had been paid out by said Company pursuant to the declaration of trust, in order to enable said representative to negotiate a sale of 30 40

*Complainants' Answer to Amended Counterclaim.*

the apartment house, which he was then endeavoring to bring about.

2. They deny that any such arrangement was made by the Annett-Mahnken Realty Company with the defendants, as is set forth in paragraph 9 of the amended counterclaim; but on the contrary say that said Company took over the mortgages referred to in said paragraph of the amended counterclaim at the request and solicitation of the defendants to protect them from foreclosure and loss of the mortgaged properties, and took from the mortgagees assignments of the respective mortgages, in order to secure repayment for the advances so made by the said Company; that said advances were made on account of the said defendants, and the said assignments of mortgages taken entirely outside of the declaration of trust which relates solely to the apartment house property.

3. They deny that the foreclosure suits instituted by the Annett-Mahnken Realty Company, referred to in paragraph 10 of the amended counterclaim, were in violation of the declaration of trust, or in abuse of the obligation of said Company, as trustee, but assert that said foreclosure actions were properly brought to secure to the said Company repayment of the advances made for the defendants, at their request, and that in each of the said foreclosure actions the defendants appeared, and were represented by counsel, and that they are bound by the final decrees made in each of said causes, and are now precluded from questioning the effect of said decrees and of the sales made thereunder.

4. In a cause brought and then pending in this court, in which the complainant, Annett-Mahnken Realty Company was complainant, and the pres-

*Complainants' Answer to Amended Counterclaim.*

ent defendants were defendants, to foreclose a certain mortgage held by said complainants upon certain property of the defendants, wherein a final decree had been entered, execution issued and said property advertised for sale by the Sheriff of Hudson County, the said defendants on petition to open the decree and to permit them to answer the foreclosure bill, set up the trust agreement referred to in the amended counterclaim, a copy of which is annexed to the bill of complaint and marked Schedule A, and obtained an order to show cause dated April 8, 1926, and in said petition claimed and contended that on the true construction of said trust agreement the complainants were obliged to pay all indebtedness incurred by the defendants in the construction of the said apartment house, and were entitled to reimbursement only out of the proceeds of said apartment house, from the rents, issues and profits thereof, or from the proceeds of the sale; but the Honorable James F. Fielder, the Vice-Chancellor before whom the order to show cause was brought on for hearing, rejected such contention, denied the defendants' application, and by order made April 26, 1926, discharged the rule to show cause, with the restraining order; which ruling of the Vice-Chancellor was thereafter affirmed on appeal by the Court of Errors and Appeals, by virtue of which ruling of this court the defendants are bound, and are estopped from now urging the construction of the trust agreement for which they contend in their amended counterclaim.

5. In each of the foreclosure actions referred to in paragraph 10 of the defendants' amended counterclaim, the defendants were properly brought into this court, and are bound by the

*Complainants' Answer to Amended Counterclaim.*

10 final decree made therein, and by the sales under the executions issued in pursuance of said respective decrees. In the decree in each of said foreclosure actions it was found and adjudged that the defendants were indebted to the Annett-Mahnken Realty Company for the respective sums therein set forth, which adjudications stand unreversed, and are binding upon the defendants in this cause, who were by the express language of said decrees absolutely debarred and foreclosed of all equity of redemption in the mortgaged premises, so that they are now estopped from asserting that said Annett-Mahnken Realty Company is indebted to them because of any of the matters or things litigated in the said foreclosure actions.

20 6. The complainants deny the allegations of the amended counterclaim that they have been unfaithful, negligent or imprudent in the maintenance of the trust property, but on the contrary assert that they have diligently and faithfully performed their services as trustees under the declaration of trust.

The complainants pray that the amended counterclaim may be dismissed.

30 CARRICK & WORTENDYKE,  
Solicitors and of Counsel with  
Complainants.

### Order of Reference to Master.

(Filed September 9, 1929.)

This matter being opened to the court by Messrs. Carrick & Wortendyke, solicitors and of counsel with the complainants, on notice to, and in the presence of, Samuel L. Hirschberg, Esquire, solicitor and of counsel with the defendant, and it appearing that in and by the bill of complaint herein the complainants seek to make an accounting with the defendants of all business dealings and transactions which have been had by and between the parties, growing out of the acts and dealings of the complainants with or in relation to the premises described in the deed made by the defendants to the complainant, Annett-Mahnken Realty Company, referred to in the bill of complaint, and particularly under the declaration of trust made by said complainant, dated May 16, 1924, a copy of which is annexed to the bill of complaint, and marked Schedule A, and that the answer and counterclaim filed by the defendants to the said bill of complaint, admits the giving of said deed, and the making of said declaration of trust; and that an account should be taken of the business dealings and transactions had by and between the said parties with reference to the subject matter of said bill, answer and counterclaim. 10  
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It is thereupon, on this 9th day of September, 1929, ordered and decreed that it be referred to Charles E. Hendrickson, Esquire, one of the special masters of this court, to take an account of all business dealings and transactions between the complainants and the defendants with respect to, or growing out of, or pertaining to, the premises particularly described in the bill of com- 40

*Order of Reference to Master.*

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10      plaint, which is the subject matter of said bill, answer and counterclaim; for the better clearing of which account, all parties are to produce before said master on oath or affirmation, if required, and leave with him, all books and writings in their custody or power relating thereto, and are to be examined upon interrogatories as the said master shall direct; said master is also to have power to examine other witnesses in relation to said account, and in the taking of said account he is to make to both parties all just allowances, and is to report what, upon said account, appears to be due from each party to the other, and also the balance which upon the said account shall appear to be due from either party to the other;

20      And said master is to make his report touching the matters hereby referred to him with all convenient speed; and if in taking said account any special matter shall arise, he is at liberty to state the same to the court and apply for further directions; and all further equity, and all questions of law between the parties save those growing out of and relating to the accounting, which are hereby referred to the master, are reserved until the coming in of the said report.

30

E. R. WALKER,  
C.

Respectfully revised,  
VIVIAN M. LEWIS,  
V. C.

40

**Master's Report.**

(Filed December 3, 1929.)

In pursuance of an order of this Court made in the above entitled cause, bearing date September 9th, 1929, whereby it was referred to me, the subscriber, one of the special masters, to take an account of all business dealings and transactions between the complainants and the defendants with respect to, or growing out of, or pertaining to, the premises particularly described in the Bill of Complaint (which are herein identified as No. 880 Boulevard, Bayonne, N. J.) which is the subject matter of said bill, answer and counterclaim, and to report thereon. 10

I do respectfully report that I have been attended by Irving Gollin, appearing as agent for the defendants Betsey Gollin and Max Gollin, his mother and father, and by the said Betsey Gollin, individually, no solicitor appearing for the defendants, and by Charles L. Carrick, Esq., Solicitor for the complainants, and have taken the depositions of witnesses produced before me, and have examined into the matters referred to me. 20

Annexed to the Bill of Complaint, supplemented by a continuation thereof filed with me, is a complete account of the rents collected from said 880 Boulevard, Bayonne, New Jersey, down to October 15th, 1929, and of the disbursements and moneys paid out by complainants for the account of the defendants down to the same date. 30

These accounts of receipts and disbursements were approved and accepted before me by the complainants and defendants and admitted to be correct. I have therefore returned the vouchers 40

*Master's Report.*

therefor to Charles L. Carrick, Esq., who produced them before me.

The supplementary account is annexed hereto as Exhibit A.

Those accounts produce the following result.

10	Disbursements .....	\$151,628.51
	Rents received .....	76,623.54
		75,004.97
	Balance due complainants .....	\$ 75,004.97

There are several disputed items which are not included in said accounts. These items, defendants insist should be included in said account.

20 Before 880 Boulevard was deeded by defendants to complainants Mr. Irving Gollin gave to Mr. Annett a list of debts the defendants owed. This list is Exhibit No. 1 of 11-19-29 consisting of two pages, a copy of which is hereto annexed as Exhibit B.

30 Mr. Gollin, page 12, suggests that defendants agreed to pay this list as part of the trust agreement. Mr. Annett says, "No, I think it was handed to me before the trust agreement existed." I find that this list was a representation to complainants and that the trust agreement states the agreement of the parties.

40 This trust agreement provides: "That it (complainant) now holds and will continue to hold the same (880 Boulevard) in trust for the use and benefit of the said Betsey Gollin, her heirs \* \* \* and \* \* \* and covenant and agree to and with the said Betsey Gollin or her heirs and assigns, that said company will at all times hereafter hold said herein described lands and premises upon the following trusts, and not otherwise, that is to say":

"THIRD: To endeavor to settle with all creditors of said Betsey Gollin and Irving Gollin, and as far as necessary to advance such sum or sums of money as may be necessary for the settlement of all such claims."

"FOURTH: That in order to raise moneys sufficient for the settlement of said claims, if a satisfactory price is offered, to sell and convey said premises without the written consent of the said Betsey Gollin, but to render to said Betsey Gollin a just and true account of all moneys received from the sale of said premises and all expenditures \* \* \*." 10

I have interpreted said trust agreement in this report to mean that defendants held said property, as trustees; were obligated to settle (as they have done) with all the creditors, and to advance the money for such purpose; that complainants had full right, at a price satisfactory to themselves, to sell said premises and repay to themselves the moneys they had advanced and account to the Gollins, subject only to such fair dealing as one expects of trustees. 20

I find complainants were under no obligation to account to defendants until said property was sold, except such reasonable accountings as defendants might request. 30

Under these conditions, I find that complainants actually provided the money and paid debts that aggregated upwards of \$62,000.00 and that that was all the debts that Mr. Irving Gollin actually certified as payable.

I also find that defendants furnished to Mr. Irving Gollin reasonably, statements of the financial situation of said property at times when Mr. Gollin believed he had opportunities to sell said property (which however never materialized) 40

*Master's Report.*

and were willing to convey on being repaid the moneys due them. A copy of one of these statements is hereto annexed marked Exhibit C and which was Exhibit No. 2 of November 19th, 1929.

10 Judge Carrick took the position that the only matter before the Special Master was the accuracy of the accounting as set forth in the account annexed to the Bill of Complaint, as affected by transactions between the parties under the deed of trust.

The order of reference however provides that the Special Master is "To take an account of *all* business dealings and transactions between the complainants and the defendants with respect to or growing out of, or pertaining to the premises particularly described in the bill of complaint \* \* \* and to make to both parties all just allow-  
20 ances \* \* \*."

The special master feels compelled to report on the following matters which are so interwoven into the matter at bar as to be necessarily a part thereof.

I shall letter them for identification.

	a. Bernard Devin, two mortgages, one for \$11,000.00 and one for \$4,000.00.	
30	Both are handled as one .....	\$15,000.00
	b. Myrtle A. Reed, mortgage .....	3,000.00
	c. Israel Lipshitz .....	3,200.00
	d. Harry Gollin .....	500.00
	e. Winifred Gollin .....	1,500.00
	f. Alex. Levy. Coal .....	1,130.00
	g. James Brady's Sons Co. Judgment	2,700.00
	h. Newell & Shillowitz, mtge. ....	6,500.00
	i. Israel Lipshitz .....	225.00

40 Of these items a, b, c, d, e, f, g, h and i, are all listed on said Exhibit No. 1 of 11-19-29, which

Mr. Annett says was given him by Irving Gollin, and paid by Mr. Annett when O.K'd by Mr. Gollin, and charged against the money he was advancing to get Mr. Gollin out of his difficulties.

Mr. Gollin on page 17 of the testimony states his position of these items as follows:

"The reason I insist that they belong to this account is that Mr. Annett presented a list in evidence and agreed to pay off everything that this list represents and be charged to the Boulevard Apartment account." That is No. 880. And on page 20 of the testimony "My position is that these items in the trust agreement were payable by the Annett Mahnken Co. and that the defendant should be charged with the deficit of \$90,000.00 instead of \$60,000.00 or such sum as these several items add up to."

Mr. Annett's answer to this is on page 13 of the testimony "Charged against the money that I was advancing to you to get you out of your difficulties" and on page 20 of the testimony "When I agreed to go into this transaction, I advanced money on the apartment house and I was given a number of mortgages as collateral to secure Annett Mahnken Realty Co. for any deficit there might be between the rents of the apartment and sale of the same being not sufficient to take care of the money advanced."

I am unable to find any proof to substantiate Mr. Gollin's position and I find to the contrary.

As to item (a) I find that Mr. Gollin requested Mr. Annett to pay the two Devin mortgages which existed before the delivery of the deed and trust agreement; that Mr. Annett did so and took an assignment of those two mortgages and had a right to do so and that the defendants have no right to complain until they repay complainants

the money they paid for them, viz., \$15,455.17. I do not know on what property they are liens.

10 As to item (b) I find that defendants had borrowed on mortgage prior to the deed and trust agreement from Myrtle A. Reed or Horace Robertson, \$3,000.00 out of which Mrs. Betsey Gollin had paid a bill of \$1,800.00 for some bricks furnished to 880 Boulevard and received for herself \$1,200.00 cash. That Mr. Gollin requested Mr. Annett to pay that mortgage; that Mr. Annett did so and took an assignment of it and had a right to do so and that the defendants have no right to complain until they repay complainants the money paid for it. I do not know on what property it is a lien.

20 As to item (c) I find Mr. Gollin requested Mr. Annett to pay that mortgage which existed before the delivery of the deed and trust agreement; that Mr. Annett did so and took an assignment of it and had a right to do so and that the defendants have no right to complain until they repay complainants the money paid for it. I do not know on what property it is a lien.

As to item (f) that was paid and is in the account.

30 As to item (g) that was paid and is in the account. It was a judgment and existed before the delivery of the deed and trust agreement and was a lien on other property of the defendants and complainants had a right to take an assignment of it.

40 As to item (h) that was a mortgage given in payment for work done on 880 Boulevard and was a lien on other property at the time complainants came into the situation. Mr. Gollin asked Mr. Annett to pay it off, Mr. Annett did so and took an assignment of it and had a right

to do so, and defendants have no right to complain until they repay complainants, the money paid for it. I do not know on what property it is a lien.

It is to be remembered that these items a, b, c, g and h are all primary debts of the defendants; that their position was in no way changed by the change in the person of their creditor; that they were all liens when complainants came into the picture and that complainants took the bad case over as they found it by request of the defendants; that complainants were not purchasers of the property, simply trustees to try and help the defendants tide over their difficulties. 10

As to items d, e and i no testimony was given as to them. They were listed in the list of debts, but I believe were not O.K'd by Mr. Gollin or paid by Mr. Annett. 20

I cannot find in the trust agreement any obligation upon the part of the complainants to pay off the above items a, b, c, g and h and to look only to the property 880 Boulevard and the personal responsibility of the defendants for the repayments of the moneys advanced by complainants to take them over at the request of defendants. They were secured liabilities created by the defendants and on payment, I find that complainants were entitled to the security. They evidently were paid by complainants to insure an extension of the due date for the interest of defendants. I have therefore omitted them from the statement of the account, but have set them forth as above to enable defendants to take exact exceptions to this report. 30

The balance due complainants as of October 15th, 1929 is \$75,004.97, the difference between 40

*Master's Report.*

the moneys paid out by complainants and the moneys received from rents of the property 880 Boulevard, Bayonne, New Jersey. To this should be added interest in the amount of \$15,291.77, making a total of \$90,296.74. Calculation of this interest is annexed hereto as Exhibit D, to December 1st, 1929.

Respectfully submitted this 1st day of December, 1929.

CHARLES E. HENDRICKSON,  
Special Master.

**Exhibit A.**

20 SUPPLEMENTAL ACCOUNT BEFORE CHARLES E. HENDRICKSON, SPECIAL MASTER.

ANSON REALTY COMPANY IN ACCOUNT  
WITH GOLLIN APARTMENT HOUSE,  
NO. 880 BOULEVARD.

## DISBURSEMENTS.

	1929		Number
	Feb. 1	Paid Fred Bauer, Janitor .. \$ 50.00	1a
	" 1	Paid Colonial Life Insurance	
30		Co.—Interest .....	1,245.00 2a
	" 15	Public Service Electric & Gas Company .....	32.31 3a
	" 15	Paid Fred Bauer, Janitor...	50.00 4a
	" 25	Paid Miller's Sure Destroyer Company—2 months ....	20.00 5a
	" 25	Paid Irving B. Lockman—Hardware repairs .....	30.00 6a
	" 25	Paid Fred Bauer, Janitor..	54.50 7a
40	" 25	Paid Liberty Lighting Fixture Company—repairs ..	7.00 8a

*Master's Report.*

1929		Number			
Feb.	25	Paid A. W. Booth & Bros.— coal .....	116.00	9a	
"	25	Paid William B. Willensky —repairs .....	221.40	10a	
Mar.	1	Paid Fred Bauer, Janitor ..	50.00	11a	10
"	15	Paid Fred Bauer, Janitor ..	50.00	12a	
"	19	Paid Gustave F. Ruh—Dis- trict Court fees .....	2.20	13a	
Apr.	1	Paid Mechanics' Trust Com- pany—Interest .....	450.00	14a	
"	1	Paid Bayonne Trust Com- pany—Interest .....	150.00	15a	
"	1	Paid Fred Bauer, Janitor...	50.00	16a	
"	4	Paid A. W. Booth & Bros.— coal .....	189.52	17a	20
"	4	Paid Public Service Electric and Gas Company .....	13.18	18a	
"	4	Paid Peoples Plumbing & Mill Supply Co.—repairs.	12.30	19a	
"	4	Paid Forbes Brothers— Hardware repairs .....	4.37	20a	
"	4	Paid Millers Sure Destroyer Company .....	10.00	21a	
"	15	Paid Fred Bauer, Janitor...	50.00	22a	
"	25	Paid Fred Bauer, Janitor...	262.00	23a	30
"	30	Paid Colonial Life Insurance Co.—Int. on mtge.....	1,245.00	24a	
May	1	Paid Fred Bauer, Janitor...	50.00	25a	
"	3	Paid John Gilbertson— Plumbing repairs .....	16.61	26a	
"	7	Paid Gustave F. Ruh—Clerk of District Court.....	4.40	27a	
"	15	Paid Fred Bauer, Janitor...	50.00	28a	
"	21	Paid Public Service Electric and Gas Company.....	12.90	29a	40
"	21	Paid William Ketchum— One load of wood .....	6.00	30a	

*Master's Report.*

1929		Number
	May 21	Paid Millers Sure Destroyer Company ..... 10.00 31a
	" 21	Paid A. W. Booth & Bros. —coal ..... 241.78 32a
10	" 21	Paid Public Service Electric and Gas Company..... 11.85 33a
	" 29	Paid Fred Bauer, Janitor... 104.80 34a
	June 1	Paid Fred Bauer, Janitor... 50.00 35a
	" 12	Paid City of Bayonne—1928 taxes and interest..... 3,512.59 36a
	" 15	Paid Fred Bauer, Janitor... 50.00 37a
	" 21	Paid Public Service Elec- tric and Gas Company... 9.75 38a
	" 21	Paid Peoples Plumbing and Mill Supply Co.—repairs. 7.62 39a
20	" 21	Paid Millers Sure Destroyer Company ..... 10.00 40a
	" 21	Paid Forbes Brothers—re- pairs ..... 1.50 41a
	July 1	Paid Fred Bauer, Janitor... 50.00 42a
	" 1	Paid Bayonne Trust Com- pany—3 months interest . 151.67 43a
	" 10	Paid J. Walrod for bells .. 50.00 44a
	" 11	Paid Public Service Electric & Gas Company ..... 8.22 45a
30	" 11	Paid I. Moresh—repairs.... 1.25 46a
	" 11	Paid A. W. Booth & Bros. —coal ..... 223.85 47a
	" 11	Paid Millers Sure Destroyer Company ..... 10.00 48a
	" 11	Paid Mechanics' Trust Com- pany—3 months interest. 633.96 49a
	" 11	Paid Bergen Point Iron Works—repairs ..... 10.40 50a
	" 11	Paid Fred Bauer, painting.. 144.15 51a
40	" 11	Paid Liberty Lighting Fix- ture Company—repairs .. 15.80 52a

*Master's Report.*

1929			Number
July 11	Paid Mechanics Trust Com- pany—Int. Notes . . . . .	151.66	53a
" 15	Paid Fred Bauer, Janitor . . .	50.00	54a
" 31	Paid Fred Bauer, Janitor . . .	50.00	55a
" 31	Paid Colonial Life Insurance Company—interest . . . . .	2,245.00	56a 10
" 31	Paid Colonial Life Insurance Company—a/c mtge. . . . .	2,000.00	57a
Aug. 6	Paid Charles E. Annett— Loan of June 13th . . . . .	1,000.00	58a
" 15	Paid Fred Bauer, Janitor . . .	50.00	59a
" 16	Paid William B. Willensky —paint . . . . .	340.82	60a
" 16	Paid Public Service Electric and Gas Company . . . . .	9.14	61a
" 30	Paid Fred Bauer, Janitor . . .	174.00	62a 20
" 30	Paid Liberty Lighting Fix- ture Company—repairs . . .	8.80	63a
" 30	Paid Millers Sure Destroyer Company . . . . .	20.00	64a
Sept. 3	Paid Fred Bauer, Janitor . . .	50.00	65a
" 16	Paid Fred Bauer, Janitor . . .	50.00	66a
Oct. 1	Paid Bayonne Trust Com- pany—3 months interest. . .	153.33	67a
" 1	Paid Mechanics Trust Com- pany—3 months interest. . .	153.34	68a 30
" 2	Paid Mechanics Trust Com- pany—3 months interest. . .	640.94	69a
" 2	Paid A. W. Booth & Bros.— coal . . . . .	9.06	70a
" 2	Paid Miller's Sure Destroyer Company . . . . .	10.00	71a
" 2	Paid Public Service Electric and Gas Company . . . . .	10.04	72a
" 2	Paid Fred Bauer, Janitor . . .	50.00	73a
" 15	Paid Fred Bauer, Janitor . . .	50.00	74a 40

*Master's Report.*

ANSON REALTY COMPANY IN ACCOUNT  
WITH GOLLIN APARTMENT HOUSE,  
NO. 880 BOULEVARD.

## RECEIPTS.

1929			
10	Jan. 31	Rents for January .....	\$ 48.00
	Feb. 27	Rents for February .....	1,163.00
	Mar. 30	Rents for March .....	1,420.00
	Apr. 30	Rents for April .....	1,133.00
	May 27	Rents for May .....	1,313.00
	June 25	Rents for June .....	1,215.00
	July 30	Rents for July .....	1,348.00
	Aug. 30	Rents for August .....	1,183.00
	Sept. 24	Rents for September .....	897.00
20	Oct. 9	Rents for October .....	797.00

**Exhibit B.**

	Baldwin Lumber Co. ....	\$ 3,522.90
	Junction Milling Co. ....	4,379.70
	Newell & Shillowitz .....	6,500.00
	Ideal Marble & Mosaic Co. ....	3,000.00
	Jas. Brady's Sons' Co. ....	2,600.00
30	Jersey City Stone Works .....	1,000.00
	M. Jacobowitz .....	1,800.00
	M. Leavitt .....	1,700.00
	Bayonne Supply Co. ....	1,541.00
	John J. Hess .....	2,000.00
	Liberty Lighting Fixture Co. ....	1,223.00
	Bayonne Hardware Co. ....	1,250.00
	Builders Material Co. ....	643.12
	Hudson Structural Iron Works .....	950.00
	David Max Co. ....	242.00
40	Meyer & Ruh Co. ....	375.00

*Master's Report.*

Posnack & Turkish .....	207.95	
Chas. T. Kavanagh Inc. ....	800.00	
Is. Barkas .....	385.00	
Columbia Metal Box. Co. ....	200.00	
Angelo Bisestis .....	225.00	
New Jersey Roofing & Sheet Metal Wks. ....	275.00	10
Louis Certner .....	500.00	
Elkind & Shapiro .....	500.00	
Levine & Siegel .....	650.00	
J. Warshowsky .....	325.00	
Ideal Dumbwaiter Co. ....	300.00	
Wm. Tudor .....	29.31	
McCabe Bros. ....	125.00	
Nathan Welitoff .....	125.00	
Whelan Land Scape Co. ....	159.00	
John Fiadini .....	75.00	20
Leibinan & Sossower, No. 112 Suffolk St., N. Y. ....	100.00	
(\$11,000		
Bernard Dvin ( 4,000 .....	15,000.00	
Myrtle A. Reed, Mtg. 772 Ave. C. ....	3,000.00	
Israel Lipschitz, 499 Boulevard ....	3,200.00	
Harry Gollin (Cash Loaned) .....	500.00	
Winifred Gollin (Cash Loaned) ....	1,500.00	
Alex Levy—Coal .....	1,000.00	
Israel Lipschitz .....	225.00	30
	\$63,052.98	

## Master's Report.

## Exhibit C.

	Name	Construction Account	Interest & Principal	Taxes & Water	Repairs	Rents
	Mortgage .....	\$100,000.00				\$8,198.49
	H. Roberson .....	3,000.00				
10	P. S. Elec. Co. ....				7.30	
	Col. Life Ins. Co. ..		500.00			
	P. S. Elec. Co. ....				.80	
	H. Roberson .....				4.00	
	Janitor .....				50.00	
	B. De Viv. ....	15,000.00	455.17			
	A. Seclow .....	2,700.00				
	M. Blum .....	307.00				
	Rasken & Hornstein	251.03				
	Jas. E. Pyle .....	1,833.85				
20	Junction Mill Co. ..	4,379.70				
	Meyer & Ruh .....	390.80				
	R. Carey .....	617.62				
	Liberty Fix. Co. ...	1,234.11				
	J. C. Stone Wks. ...	1,000.00				
	Hudson Elec. Co. ..	500.00				
	Col. Metal Box Co. .	200.00				
	S. Barkas .....	385.00				
	I d e a l Dumbwaiter Co. ....	300.00				
30	J. Warshawsky ....	325.00				
	Newell & Shilowitz	6,570.22				
	Bayonne Supply Co.	1,599.52				
	M. Leavitt .....	1,700.00				
	T a x e s First Half 1924 .....			810.02		
	Ideal Marble Co. ...	3,000.00				
	Elkins & Shapiro ..	500.00				
	Levine & Siegel ....	650.00				
	Baldwin Lbr. Co. ..	3,556.58				
40	Mech. Trust Co. ....		20.00			

## Master's Report.

Name	Construction Account	Interest & Principal	Taxes & Water	Repairs	Rents
David Max .....	200.00				
Leibmann & Sosower	100.00				
Posnock & Turkish .	207.95				
Alex. Levy .....				1,103.00	
Builders Mat'l Cor.	643.12				10
N. J. Roofing Co. ...	275.00				
Builders' Mat. Cor.	46.00				
John J. Hess .....	1,500.00				
Hudson Struc. Iron Works .....	1,094.97				
J. E. Muller Sons ..				770.59	
O. K. Clothes Dryer Co. ....	82.00				
N. Welitoff .....	125.00				
Bayonne Hardware Co. ....	1,250.00				20
Col. Life Ins. Co. ..		2,489.17			
Janitor .....				50.00	
A. W. Booth & Bro.				67.50	
Chas. D. Bauer ....				69.02	
P. S. Elec. Co. ....				9.84	
Wheeland Landscape Co. ....	149.00				
Bayonne Times ....				7.20	
Morris Cohen .....	98.75				30
J. Bayroff .....	75.00				
A. W. Booth & Bro.				27.00	
Max Black .....	35.00				
Ideal Marble Mosaic Co. ....	450.00				
J. Gilbertson .....				3.36	
J. Gilbertson .....				4.45	
Janitor .....				50.00	
Mech. Trust Co. ....		306.67			
Bayonne Trust Co. ..		153.33			40



## Exhibit D.

Showing accrued interest on excess disbursements.

1924	Disbursements as shown by Schedule B of complainants' bill .....	\$45,940.06	
	Rentals received for year .....	11,378.49	
	Excess disbursements .....	\$34,567.57	10
	Interest on excess, January 1, 1925 to, say, December 1, 1929, 4 years, 11 mo.		\$10,195.66
1925	Disbursements as shown by Schedule B of complainants' bill .....	\$21,136.35	
	Rentals received for year .....	13,684.00	
	Excess disbursements .....	\$ 7,452.35	
	Interest on excess, January 1, 1926, to, say, December 1, 1929, 3 years, 11 mo.		1,751.30 20
1926	Disbursements as shown by Schedule B of complainants' bill .....	\$22,915.61	
	Rentals received for year .....	13,286.50	
	Excess disbursements .....	\$ 9,629.11	
	Interest on excess, January 1, 1927, to, say, December 1, 1929, 2 years, 11 mo.		1,685.09
1927	Disbursements as shown by Schedule B of complainants' bill .....	\$24,357.01	
	Rentals received for year .....	12,084.50	
	Excess disbursements .....	\$12,272.51	
	Interest on excess January 1, 1928, to, say, December 1, 1929, 1 year, 11 mo.		1,411.33
1928	Disbursements as shown by Schedule B of complainants' bill .....	\$20,189.27	
	Rentals received for year .....	15,673.05	
	Excess disbursements .....	\$ 4,516.22	
	Interest on excess January 1, 1929, to, say, December 1, 1929, 11 mo. ....		248.39
	Total interest accrued .....	\$15,291.77	40

**Depositions before Master, returned with Report.**

(Filed December 3, 1929.)

10 This matter having been referred to Charles E. Hendrickson, Esquire, one of the Special Masters of this Court on bill and answer and order of reference dated September 9th, 1929, and the matter coming up on this fourth day of November, 1929, pursuant to master's summons signed by Charles E. Hendrickson, Master, and returnable at the master's office 75 Montgomery Street, Jersey City, New Jersey, on Tuesday, October 22nd, 1929, and said master's summons bearing acknowledgment of service on behalf of the defendants by their solicitor, Samuel L. Hirschberg, and said matter having been on that date ad-  
20 journed to this date November 4th, 1929, at the same place at two o'clock in the afternoon, at which time were present: Carrick & Wortendyke, Solicitors for Annett Mahnken Realty Co. and Anson Realty Co. the complainants, and no one appearing for the defendants Betsy Gollin and Max Gollin, her husband, although acknowledgment of service has been made for them by Samuel L. Hirschberg, Solicitor, and no one appearing in  
30 behalf of said Samuel L. Hirschberg, Solicitor of the defendants, I certify that I have waited from two o'clock until two forty-five o'clock for the appearance of representatives of the defendants, and no one appearing, I have required the complainants to proceed with their proofs under said order of reference.

CHARLES E. HENDRICKSON,  
Special Master in Chancery.

Depositions before Master, returned with Report.

State of New Jersey, } ss.:  
 County of Hudson, }

Edna M. Mason, being duly sworn according to law, upon her oath deposes and says:

I will faithfully and truly, take stenographically and reproduce in typewriting, the testimony to be given in a certain cause now depending in the Court of Chancery of New Jersey, wherein Annett Mahnken Realty Co. and Anson Realty Co. are complainants and Betsy Gollin and Max Gollin are defendants. 10

EDNA M. MASON.

Sworn and subscribed to before me this  
 4th day of November, A. D. 1929.

CHARLES E. HENDRICKSON,  
 Master in Chancery of  
 New Jersey. 20

State of New Jersey, } ss.:  
 County of Hudson, }

CHARLES E. ANNETT, being duly sworn according to law upon his oath deposes and says: 30

Direct Examination by Mr. Carrick:

Q. You are the president of the Annett Mahnken Realty Co., which is a corporation of this state?

A. I am.

Q. You are also president of the Anson Realty Co., the corporation which is the other complainant in this case? A. Yes.

Q. And where do you live? A. I live at Middletown, Monmouth County, New Jersey. 40

*Depositions before Master, returned with Report.*

Q. And you have for many years carried on your business in Bayonne, in the County of Hudson? A. 27 W. 8th Street, Bayonne, N. J.

10 Q. I show you, Mr. Annett, a deed dated May 16th, 1924, made by Betsey Gollin and Max Gollin, her husband, to Annett Mahnken Realty Co., conveying to that company certain premises situate at the intersection of W. 34th Street and the Hudson County Boulevard? A. Bayonne, New Jersey, the northeast corner.

Q. And which deed was recorded May 22nd, 1924, in Book 1530 of deeds for Hudson County at page 235. This is the deed by which the property in question, which is the property described in the bill of complaint was conveyed by Mr. and Mrs. Gollin to the Annett Mahnken Realty Co.?

20 A. It is.

Mr. Carrick offers deed in evidence and deed is marked C-1 on the part of the complainant.

30 Q. Mr. Annett, I show you another paper dated May 16th, 1924, being a declaration of trust which is signed by the Annett Mahnken Realty Co., a corporation of New Jersey by yourself as President and attested by Mary E. Annett, Secretary, under the seal of the company and which declares certain trusts with reference to the property which had been conveyed to the Annett Mahnken Realty Co. by the deed which I have just offered in evidence. This paper is not recorded. Is that the original of the declaration of trust that was made by the Annett Mahnken Realty Co. for the benefit of the grantors in the prior deed? A. That is my signature and Mrs. Annett's signature and I should say yes.

40

*Depositions before Master, returned with Report.*

Q. This declaration of trust was never recorded?

A. Not to my knowledge.

Mr. Carrick offers declaration of trust in evidence and same is accepted and marked C-2 on the part of the complainant.

10

Q. Now, Mr. Annett, after the making of that deed and the execution of that declaration of trust, what did the Annett Mahnken Realty Co. do with reference to the property which is described in the deed and the declaration of trust? A. Took possession of an apartment house known as 880 Boulevard.

Q. Was the apartment house then completed?

A. I cannot say it was completed. There were some things that had to be finished.

20

Q. Was it occupied with any tenants? A. A few tenants, but I should say only 25% rented.

Q. And what about the bills outstanding against the property? A. There were any quantity of them amounting to thousands of dollars.

Q. Now in the declaration of trust, C-2, the second trust declared is to pay out of said rents and profits the interest due upon the mortgages that are liens upon said premises, to pay taxes, water rents, insurance premiums and for the necessary repairs and other expenses that are proper and incident to the management of said building. Did you from time to time pay out money for those charges? A. I certainly did.

30

Q. Did you have any rents at that time or for a long period of time that covered these expenses? A. No, sir, very small amount of rents and the cash deficiency was very large.

Q. The third trust which is declared in the declaration of trust C-2, is to endeavor to settle with all creditors of said Betsy Gollin and Irving

40

*Depositions before Master, returned with Report.*

Gollin and as far as necessary to advance such sums of money as may be necessary for the settlement of such claims. Did the company, you acting as the president and executive of the company, proceed to settle these claims? A. Settled all claims that were approved by Irving Gollin as being correct.

10

Q. Were these claims all submitted to Irving Gollin before they were paid? A. Yes.

Q. You had his approval? A. Yes.

Q. Was it in writing? A. Verbal.

Q. Irving Gollin was the son of the defendants herein, Betsy Gollin and Max Gollin, was he not? A. Yes.

20

Q. And was he in charge of this affair for them? A. He was the person who purchased the land and erected the building. As I remember it, he transferred his interest in it to his mother and she to the Annett Mahnken Realty Co.

Q. As I understand it, Irving Gollin had started this building operation of this apartment house and got into various difficulties and could not carry it on and then transferred the property to his mother and she was endeavoring to go on and complete the building and she got into difficulties and they came to you? A. For financial assistance.

30

Q. Did they both come to you, both Irving Gollin and Betsy Gollin? A. Max Gollin and Betsy Gollin and Irving Gollin were present nearly every meeting.

Q. Before this deed was made to the Annett Mahnken Realty Co. and before the declaration of trust was made, had there been many conversations between you and the Gollin family? A. A number of them.

40

Q. Including Irving Gollin? A. Yes.

*Depositions before Master, returned with Report.*

Q. And Judge Roberson was present? A. He was present at all meetings.

Q. Now, the Annett Mahnken Realty Co. is the business corporation carrying on the business of managing and taking care of real property for your clients? A. Yes, sir.

Q. And did the Annett Mahnken Realty Co. 10  
begin at once keeping accounts for this prop-  
erty? A. We opened a ledger account and charged  
all disbursements as against 880 Boulevard.

Q. What did you do with the collection of rent?  
A. Credited it to the same account.

Q. And have you books of account from that  
time on down to the time when the property  
was transferred to the Anson Realty Co.? A.  
I think all payments were made by check and  
then charged them to the cash book and from 20  
the cash book to the ledger.

Q. And have you present with you the rec-  
ords showing the disbursements and receipts?  
A. I have ledgers and check books.

Q. Now, you have annexed to the bill of com-  
plaint a copy of your account that is the account  
of the Annett Mahnken Realty Co. and also the  
Anson Realty Co. down to the 31st day of De-  
cember, 1928. Do you know that that account  
as annexed to the bill of complaint correctly 30  
states the receipts and disbursements? A. I be-  
lieve it to be absolutely correct.

Q. Let me call your attention to the fact that  
from and after April 1st, 1928, the account of  
this apartment house was carried on by Anson  
Realty Co. Tell me what the Anson Realty Co.  
was and why the transfer of the title was made  
from the Annett Mahnken Realty Co. to the  
Anson Realty Co.? A. In this transaction, we had  
taken over a number of other properties of the 40

*Depositions before Master, returned with Report.*

Gollin family and to place the thing entirely separate from the Annett Mahnken Realty Co. we opened the Anson Realty Co. so that the whole transaction from there on would be separate from the Annett Mahnken books.

10 Q. Does the account of the Anson Realty Co. show anything except the transaction had under the declaration of trust dealing with this particular apartment house? A. The Anson Realty Co. does. That shows the others also.

Q. You have the dealings with this apartment house separate? A. With the Anson Realty Co. There is an account for each different property.

Q. There is a separate ledger account from the time you took over this property for management down to the present time? A. Yes.

20 Q. Did you keep separate books for the Anson Realty Co. or did you carry that on the ledger of the Annett Mahnken Realty Co.? A. Separate book account.

Q. That is completely separate from the Annett Mahnken Realty Co.? A. Yes.

Q. And have you the books of the Anson Realty Co. here to show that account? A. I have the check book only today.

30 Q. What other books are there? A. Cash books and ledger.

Q. You have not the cash book and ledger here today? A. No.

Q. They are accessible though and can be produced? A. Yes.

40 Q. Mr. Annett, I show you a typewritten account contained in a number of pages bound together in a cover which is typewritten on the outside 880 Boulevard (Apt. House), the first item of which is May 27th, 1924 and the item prior to the summary is under date of January

*Depositions before Master, returned with Report.*

28th, 1929, rents for January, \$1,366.20. Does that show the items of receipts and disbursements of the management of this house covering that period of time? A. It does.

Mr. Carrick asks that account be marked for identification, and same is marked C-3 10  
on the part of the complainant.

Q. I show you a second series of typewritten pages with a cover which on the outside is marked as the other exhibit except that it is numbered No. 2, the first item of which apparently is February 1st, 1929, and coming down to October 15th, 1929. That I understand is a continuation of the account running down to the present time? A. It is.

Q. And that is an account with the Anson Realty Co., the ledger part of the account on C-3 for identification being also with the Anson Realty Co.? A. It is. 20

Mr. Carrick offers second series of typewritten pages for identification and same is marked C-4 on the part of the complainant.

Q. I understand, Mr. Annett, that you have present with you today in that suit-case, most of the vouchers vouching the disbursements shown upon these two accounts C-3 and C-4? A. I have the largest majority of them. 30

Q. Are there some that are not vouched by any receipts? A. If any, they are covered by check.

Q. You have checks for them if they are not vouched? A. Yes.

Q. Will you be able between now and the next 40

Depositions before Master, returned with Report.

session to have the checks taken out and marked by proper identification for the various items for which we have no direct receipts? A. I will.

10 Q. As I understand it, the amount of money that has been expended in the clearing of this apartment house from debts and the management and taking care of it, has far exceeded the receipts that have come in? A. They certainly have.

Q. And that is the statement of the bill of complaint that on January 1st, 1929, those expenditures amounted to \$68,431.76, is that correct? A. I imagine that amount is correct. I have no reason to doubt it.

20 Q. There was a prior mortgage to this mortgage held by the Colonial Life Insurance Co.? A. \$99,500, when we took possession.

Q. And that mortgage called for the payment of a certain portion of the principal on account? A. \$1,000.00 on every interest day, four times a year.

Q. Quarterly interest day? A. Yes.

Q. That has always been paid? A. I think there has been one or two exceptions, possibly three.

30 Q. Do you know what the principal of that mortgage amounts to? A. I think \$83,000.00, \$82,000.00 or \$83,000.00 still due.

---

40 Charles E. Hendrickson, Master, offered to spend from 3 P. M. this date, November 6th, 1929, until six thirty going over the vouchers with Mr. Hirschberg or his client or representative and Mr. Hirschberg promised to advise whether he could make that appointment or not.

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By the request of Mr. Irving Gollin, I adjourned the above matter on November 6th, 1929, to November 7th, 1929, at 11:30 A. M.

Continuation of testimony taken this November 7th, 1929, at 11:30 A. M. 10

Present on behalf of the defendants, Irving Gollin.

Mr. Gollin wishes the original account books of Annett Mahnken Realty Co. in which is carried the accounts set forth in the account annexed to the bill of complaint.

Mr. Gollin wishes to cross examine Charles E. Annett and Horace E. Roberson.

Also Mr. Gollin wants check books from which payments have been made on this account. 20

State of New Jersey, }  
County of Hudson, } ss.:

Irving Gollin, of full age, being duly sworn according to law, on his oath deposes and says:

I am the son of Betsy Gollin and Max Gollin, I was formerly the owner of this property and assigned it to my mother. I assigned it to my mother for the reason to obtain more credit while I was completing the apartment house, 880 Boulevard, Bayonne, N. J. At the completion of the apartment house, my father and mother at my request deeded the said property to Annett Mahnken Realty Co. as trustee for Betsy and Max Gollin. I am the agent for my father and mother in this matter. 30 40

*Depositions before Master, returned with Report.*

The account annexed to the bill of complaint is satisfactory so far as that account shows. I have had opportunity to examine the checks and vouchers for the various items on this account. Mr. Hendrickson, the master has told me that he would check over each item with each voucher.

10 I have told him that it is unnecessary for him to do so as I am familiar with the account and as to all matters set forth in the account, I am familiar and am satisfied with the accuracy of the figures and the vouchers for the payments shown on that statement. As to the items of receipts of income from the property as set forth in this account annexed to the bill of complaint, I have no knowledge and it is for the reason of checking up and satisfying myself as to the

20 income that I wish to examine the books and to cross-examine Mr. Roberson and Mr. Annett.

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Continuation of depositions in the above entitled matter this 19th day of November, 1929, at the same place, 75 Montgomery Street, Jersey City, New Jersey. Charles E. Annett being recalled for cross-examination, heretofore duly sworn, deposes as follows:

30

Cross Examination by Mr. Irving Gollin:

Q. Now, Mr. Annett, when you took over the apartment house in May, 1924, what was your duties when you took over that apartment house, what was to be done? A. What were my duties.

Q. Yes, what were your duties? A. Pay the debts. That was the first thing we had to do.

Q. How much were the debts against the apartment house when you took that over? A. The

40 accounting will show that.

*Depositions before Master, returned with Report.*

Q. There is nothing on the accounting to show what the debts were when you took the apartment house over. I would like to know what were the exact amount of the debts when you took the apartment house over on May 16th, 1924? A. The best answer I can give is the list was furnished us by Irving Gollin of the amounts due against the apartment and which he O. K'd before I paid the same. To the best of my knowledge this is the list. 10

Witness offers Mr. Gollin two sheets of paper and it is marked for identification 11/19/29. No. 1.

It is agreed that these are the two pages.

Q. And these are the list of debts that you agreed to pay according to the trust agreement? A. No, I think that was handed to me before the trust agreement existed. 20

Q. That is right, but after the trust agreement existed you agreed to pay the debts on these two pages according to the trust agreement? A. I agreed to pay what is in evidence, I do not remember.

Q. What is on this list? A. Whatever is on that list that you O. K.'d, I paid. 30

Q. And they are charged to the apartment house? A. Charged against the money that I was advancing to you to get you out of your difficulties.

Q. And to be charged to the apartment house? A. Charged to get you out of your difficulties.

Q. To what account has this list been charged to? A. Gollin account.

Q. What kind of an account? A. Those accounts are charged against the apartment house. 40

Depositions before Master, returned with Report.

Q. All these accounts? A. Yes.

Q. If all these accounts were charged to the apartment house, 880 Boulevard, Bayonne, New Jersey, why were they not on Schedule B on the bill of complaint? A. I do not know.

10 Q. If you do not know, I do not know. Why is not the item of Newell & Shilowitz for \$6,500.00 for plumbing work shown on this list on Schedule B? A. I paid it.

Q. Can you find it here on Schedule B of the bill of complaint? A. As I remember it, Newell & Shilowitz had a mortgage which was given to them for their work on this apartment house and that mortgage I took up.

20 Q. Why is not that amount of money on Schedule B of the bill of complaint? A. I do not know, if it is not there, it should be.

Q. Where is the mortgage of Newell & Shilowitz? A. I guess it is in the safe.

Q. Can you bring it here? A. If counsel advises me, I can.

Q. Can I have it here at the next hearing? A. On the advice of my counsel.

30 Judge Carrick says that he will not produce this mortgage because it is not in this account.

Mr. Annett is claiming no credit for it in this account which is now before the master.

Q. Do you claim that this list was for money advanced to pay the bills of the apartment house? A. The list speaks for itself.

40 Q. And you agreed to pay all these claims on the list that were debts accrued on the apartment house? A. I testified that I paid all that is on that list that you approved and O. K.'d.

Depositions before Master, returned with Report.

Q. All right. This mortgage that I have referred to is not on this property but on a piece of property known as 462 Avenue C, Bayonne, New Jersey. This mortgage has been paid and not cancelled off record.

Q. On this list Schedule B, you charge on June 24th, 1924, you gave Alexander Seclow, attorney for James Brady Sons judgment for construction bill \$2,700.00? A. Correct. 10

Q. That money was charged to the apartment house? A. Yes.

Q. Has the judgment on that been cancelled off record? A. I do not know.

Q. If you did know, would it be cancelled off record? A. I told you I did not know.

Q. You do not know if it has been cancelled? A. No. 20

Q. If you did know that it was on record, would you cancel it off record?

Mr. Carrick: I object to the question.

Mr. Hendrickson: I sustain the objection.

Q. Has that mortgage been cancelled off the record? A. I just told you I did not know.

Q. Did you pay Bernard DeVin a check for \$15,455.17? A. If it is on the account, I did. 30

Q. It is not on Schedule B. A. They were paid.

Q. Is that on your list, on Schedule B, of your bill of complaint? A. I do not know, I have not one before me, if you say so it is not there, it is not there.

Q. I am asking you. I will give you the one you gave me. A. It is not there.

Q. Did you pay that \$15,000.00 with your per- 40

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sonal check? A. The firm's check Annett Mahnken Realty Co.

Q. Can I see the check? A. If it is not in this accounting, the check is not here.

Q. Can you bring the check here? A. If my counsel advises me.

10 Q. Did you pay Israel Lipschitz the sum of \$3,200.00 on 499 Boulevard, Bayonne, N. J.? A. Is it in the accounting.

Q. It is not in the accounting. A. I paid it.

Q. Have you got the check? A. I have the check, but if it is not in the accounting, it is not here.

Q. Did you pay Horace Roberson the amount of \$3,000.00 for mortgage on property known as 772 Avenue C, Bayonne, in the amount of  
20 \$3,000.00? A. Is that in the account.

Q. That is not in the account. A. I will give the same answer. It is not in the account, I have the check, but it is not here.

Q. You did not get assignments on all these mortgages? A. I paid them. I certainly got something to show for my money.

Q. Will you produce the checks on all these mortgages? A. They are not in this accounting, no. I will not produce checks for anything that  
30 is not in the accounting.

Q. Will you produce the assignments of these mortgages? A. No, they are not in the accounting.

Q. When did you get the assignments of these mortgages? A. I could not tell you. I do not remember.

Q. Have you got the records? A. They are not in this accounting.

Q. Can I see the accounting on Schedule B of  
40 your bill of complaint on this accounting? A. Yes.

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Q. Can you show the page to me?

By the Master:

Q. Why do you insist they are on the account?

Mr. Gollin: The reason I insist that they belong to this account is that Mr. Annett presented a list in evidence and agreed to pay off everything that this list represents and be charged to the Boulevard Apartment account. 10

By Mr. Gollin:

Q. Can I see your ledger account? A. Yes. What do you want.

Q. I want to check up the list.

Q. When did you take possession of the house? A. Some time in 1924. I think it was in June. 20

Q. Was it occupied with any tenants when you took it over? A. It was.

Q. How many tenants? A. The book will show it.

Q. Will you get me the book? A. Each apartment is there with the number, I think you will find 101 and so on up to 500.

Q. That list for June shows you took rents in for \$1,941 according to your account? A. The account shows what rents were taken in. 30

Q. All right. Why is it, Mr. Annett, that when Judge Carrick asked you whether it was occupied with any tenants, your answer was, "A few tenants, but I should say only 25%", when your own accounts show it was 100% rented. A. I do not think it was ever 100% rented, only the last two years.

Q. Your own accounting shows it was 100% rented? A. It speaks for itself.

Q. You say the house was not completed until 40

Depositions before Master, returned with Report.

three months after you took it over, what do you mean? A. Mechanics were working on the building and different portions of work had to be completed.

Q. What portions of work? A. The marble work was breaking off and had to be reset.

10 Q. The building had been completed. That was more of an alteration? A. I did not consider it alterations, because the contractor did not get his money until the work was completed. It was being dolled up and fixed up where the defective work was.

Q. It is agreed that the amount of rents as accounted for by Annett Mahnken Co. are correct. Mr. Hendrickson is released from checking up and conveying the rents actually collected as  
20 shown by the rent books produced.

By the Master:

Q. Mr. Annett, did you raise any money on this property by mortgage or other form of security for loans to raise money? A. I did not.

Q. Did you raise any money from a rental of signs on the building? A. I did not.

Q. Did you raise any money by any way from this building other than for rents? A. Positively  
30 no.

By Mr. Gollin:

Q. I ask what happened to the \$15,000.00 mortgage on this property and two other pieces of property which was paid off by the Annett Mahnken Co. and assigned to Annett Mahnken Realty Co. by Kay Bee Investment Co. the holder thereof?

40 Judge Carrick: The answer is that this mortgage was paid by the Annett Mahnken

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Co. and taken by assignment to them and in my judgment is not involved in this accounting. Annett Mahnken Co. received no moneys from that mortgage for which they should account and I have therefore declined to enter it in this account or to give any evidence or information about it. 10

Q. I also call for evidence and accounting on a mortgage held by Horace Roberson for \$3,000.00 which was paid by Mr. Annett and which is not on this accounting.

Judge Carrick makes the same statement as to the \$15,000.00 mortgages as above.

Q. The next item I ask for an accounting is on Lillian May Cowitz mortgage for \$3,200.00 which has been paid by the Annett Mahnken Realty Co. and has not been explained in this accounting and is on the apartment house and that mortgage is on this particular apartment house. 20

Judge Carrick: As to this mortgage, I make the same statement as above.

Q. I also call for evidence and accounting as to the disposition of a mortgage for \$6,500.00 held by Newell and Shilowitz, which mortgage was on 462 Avenue C, Bayonne, N. J., and has been paid by Annett Mahnken Realty Co. and assigned to it? 30

Judge Carrick: As to this item, I make the same statement as last above.

Q. I also call for accounting on item of June 24th, 1924, voucher No. 6 paid Alexander Seclow, 40

*Depositions before Master, returned with Report.*

attorney for James Brady & Sons, judgment for construction bill \$2,700.00. A. Mr. Annett says that he paid this judgment or that the Annett Mahnken Realty Co. paid this judgment and took an assignment of this judgment as further security to it for the moneys he advanced in excess of the rents that were then coming in from the building and claims this judgment as security.

10

Q. My position is that these items in the Trust Agreement were payable by the Annett Mahnken Co. and that the defendant should be charged with the deficit of \$90,000 instead of \$60,000.00 or such as these several items add up to.

20

Q. At a hearing before James J. Murphy, Master in Chancery of New Jersey, on the 23rd day of April, 1928, page 20, in the book of depositions, this question was asked by Mr. Samuel L. Hirschberg of Mr. Charles E. Annett, "and your discussion with them dealt with this deed besides the other two mortgages? A. The discussion with them was about the deed and the mortgage that I had as collateral for money invested in this transaction." What do you mean Mr. Annett by collateral for moneys invested in this transaction?

30

A. When I agreed to go into this transaction, I advanced money on the apartment house and I was given a number of mortgages as collateral to secure the Annett Mahnken Realty Co. for any deficit there might be between the rents of the apartment and sale of the same being not sufficient to take care of the money advanced.

Q. But was there a sale of the apartment house? A. Never.

Q. Why did you sell the collateral before you realized what you could get on the principal of the mortgage? A. I did not sell any collateral.

40

Q. The collateral has been sold. These prop-

*Depositions before Master, returned with Report.*

erties have been foreclosed and sold? A. What collateral did I sell?

Q. You sold the DeVin mortgage, property known as 249 Broadway, and 501 Boulevard, did you not, Suit No. 3. Is that property foreclosed?

A. Is that Broadway and 10th Street.

Q. Yes. A. Broadway and 10th Street was sold under foreclosure of mortgage. 10

Q. And was that a collateral mortgage bought in by Annett Mahnken Realty Co.? A. Yes.

Q. Also a mortgage for \$3,000.00 on property at 772 Avenue C, Bayonne, N. J.? A. Yes, that was bought by the Annett Mahnken Realty Co.

Q. And that was also collateral mortgage to protect you for moneys invested in the apartment house? A. Yes.

Q. And also a mortgage for \$3,200.00? A. On what. 20

Q. On property known as 499 Boulevard, known as suit No. 1, the Park House for a mortgage for \$3,200.00? A. I think my daughter held a mortgage for \$5,500.00 that was a first mortgage, the second mortgage was sold because we had to clean it up. Then I think that mortgage was assigned to either myself or a clerk in the office.

Q. And that was also sold? A. There was no interest paid. 30

Q. I am asking you a question, was that mortgage also sold? A. The records show it was sold.

Q. For collateral security? A. Yes.

Q. It was sold to whom? A. Annett Mahnken Realty Co. bought it.

Q. These properties on which these several collateral mortgages were liens, were sold under foreclosure of prior mortgages covering the same properties? 40

*Depositions before Master, returned with Report.*

By Judge Carrick:

Q. Mr. Annett, on the sale under foreclosure of these mortgages by Mr. Gollin, did the property at the foreclosure sale realize the amount of the decree in favor of Annett Mahnken Co.? A. They did not.

10 Q. There was a deficit in every case? A. In every case.

By Mr. Gollin:

Q. The statement was that these properties were sold under prior mortgage foreclosure, is that correct? A. The properties were sold under foreclosure based on these collateral mortgages assigned to Annett Mahnken Realty Co. and that sale did not realize the amount of the decrees in  
20 the foreclosure suit.

Q. When you foreclosed suit No. 3 and at the sale April 29, 1926, the Sheriff's sale, why did you not sell that apartment house? A. I did not sell it on advice of counsel.

Q. For what reason? A. I do not know.

Q. Who originally financed this deal to go into these debts? A. I did.

Q. All yourself? A. Myself and Judge Roberson.

30 Q. Did Judge Roberson have anything to do with it at all? A. He helped me finance it.

Q. Had nothing to do with it? A. He helped me finance it.

Q. Have no control over the property? A. Who?

Q. Judge Roberson? A. I controlled the property and advised with him and he advised with me.

Q. I asked you if he had any control of it? A. The property was in the Annett Mahnken Realty  
40 Co.

*Depositions before Master, returned with Report.*

Q. What did Judge Roberson have to do with the apartment house? Did he have any interest in it? A. He had interest that he helped me raise sufficient money to pay your debts.

Q. Then he had an interest in it when he loaned the money? A. Yes.

in this matter? A. I did not say that.

10

Q. In an affidavit made by Charles E. Annett on April 16th, 1926, you stated in this affidavit that Judge Roberson has been acting as counsel in the matter but he has in no way assumed any control of the property but has been a go-between between deponent and the Gollins in trying to smooth out the difficulties that arose? A. It speaks for itself.

Q. That is the only answer you have? A. Yes.

Q. And in the same affidavit you stated some of the other properties covered by these mortgages which deponent's company acquired in order to save the Gollins were not cared for? What do you mean by stating in that affidavit to save the Gollins? A. As I understood the transaction, your statement to me was that you had the property sold for \$165,000.00 and that if I could save you from having it foreclosed and the mechanics lien put on it for a week or ten days, you could clean the whole matter up and under those circumstances I very foolishly took it up.

20

30

Q. And that is the reason you went in, to save the Gollins? A. Yes.

Q. Why is it in the past six years or since you had control of that apartment house that you never gave an accounting until March, 1929, almost five years after you got control of this property? Why did you wait five years? A. I did not have to wait five years. I was perfectly willing to give an accounting at any time.

40

Depositions before Master, returned with Report.

Q. Why did you have to wait that length of time? A. I was not asked to give any accounting.

Q. We asked for an accounting in November, 1926, and we got the accounting and never got any since.

10                   Offered in evidence and marked for identification as of November 19th, 1929, No. 2.

Q. Why did you foreclose on these mortgages? A. To protect my cash advanced on the apartment house.

Q. Did you agree to pay off any of these mortgages on the apartment house for \$15,000.00 and the other mortgages on 772 Avenue C, and 499 Boulevard, Bayonne, N. J.? A. I agreed to pay the list you presented to me.

20                   Q. On the list I presented to you, Exhibit No. 1? A. Yes.

Q. In the testimony taken on the 23rd day of April, 1928, before James J. Murphy, Master in Chancery of New Jersey, this question was asked of you by Samuel L. Hirschberg. "Q. Did you agree to pay off the mortgage on the apartment house for \$15,000.00? A. I agreed to pay all the claims, assignments and debts against the apartment house to pay from time to time the \$4,000.00 per year on the first mortgage held by Colonial Life Insurance Co.?" A. Correct.

30

Q. Did you pay all these things you agreed to do? A. I did.

Q. You did? A. Yes, I did.

Q. On the same day this question was asked. "Q. When the creditors who had received these mortgages were pressing for more money you advanced the money that was necessary to take up their mortgages and took an assignment to your company? A. Mr. Irving Gollin supplied us with

40

*Depositions before Master, returned with Report.*

a list of the creditors and the amounts due and upon his approval of the amounts due I paid them and got releases." Did you get releases on these mortgages? A. I got either a release or an assignment.

Q. Do you know the third paragraph of the Trust Agreement which reads as follows: To endeavor to settle with all creditors of said Betsy Gollin and Irving Gollin and as far as necessary to advance said sum or sums of money as may be necessary for the settlement of all such claims. A. The trust agreement speaks for itself. If it is in there, it must be correct. 10

By Judge Carrick:

Q. Mr. Annett, this paper which has been produced by Mr. Gollin and which has been marked Exhibit No. 2 of this date by the master is referred to by Mr. Gollin as an accounting. Is that an accounting rendered by you to Mr. Gollin? A. It is not an accounting. It is a memorandum of disbursements made by me. I do not think there is an item of receipts on there. It is one of many I gave him which from time to time he said he had a prospective purchaser for the apartment house. 20

Q. It was prepared by you to show what would be necessary to pay? A. That was taken from the books, of disbursements that would be necessary to pay the Annett Mahnken Co. to clean up the apartment house. 30

Q. And for the purpose only of dealing with prospective purchasers? A. Yes, it was never meant to be an accounting. 40

Depositions before Master, returned with Report.

State of New Jersey, }  
 County of Hudson, } ss.:

HORACE ROBERSON, being duly sworn, according to law, upon his oath deposes and says:

10 Examination by Mr. Gollin:

Q. Judge Roberson on May 5th, 1924, Betsey Gollin and Irving Gollin executed a mortgage to Spencer D. Baldwin in the amount of \$37,000.00. That amount represented a list of creditors that supplied labor and material on the apartment house. He acted for them as trustee for all the creditors. A mortgage in the amount of \$37,000.00 was made to him. That mortgage was recorded May 8th, 1924, Liber 1234, page 91 in the County of Hudson, recorded in the Bureau of Records and Deeds and Mortgages, and the mortgage was cancelled and receipted in full by Spencer D. Baldwin, July 21st, 1925. That mortgage represented that list of the creditors of the labor and material. Can you account for that?

20

A. You are telling me that now. All that you have told me is entirely without my knowledge.

Q. It is of record in the Court House? A. I never examined it.

30

Q. And the mortgage is marked paid in full by Roberson and Roberson? A. I have before me Schedule No. 1 of this date, being a list of bills furnished by Mr. Gollin to Mr. Annett to be paid as debts of the Gollins. The first item Baldwin Lumber Co. \$3,522.90. Upon your advice I paid them \$3,556.58 and a memorandum in my handwriting in lead pencil shows that I took from them two mortgages which they receipted for cancellation and cancelled on the date which you mentioned.

40

Q. Two mortgages? A. Yes. All I know is

*Depositions before Master, returned with Report.*

what you have just now told me and what this record calls to my attention.

Q. That is not answering my question. I am asking you what was that mortgage for, the one for \$37,000.00? A. I notice here an item of \$37,607.98. At your direction I paid the Baldwin Lumber Co. \$3,556.58, took their mortgage and cancelled it. 10

Q. Baldwin Lumber Co. never had a mortgage for \$3,556.58. That was his bill for \$3,556.58. A. All I have to say is upon receipt by them of check from Annett Mahnken Realty Co. they receipted that mortgage for cancellation and it was cancelled.

Q. Have you that mortgage? A. I think it is among some of the papers.

Q. Will you present it if you are asked for it? 20  
A. If it is proper, I will present it.

Q. Do you know anything about this \$37,000.00?  
A. No, I do not, no more than I have testified to now I want to add to my other statement, the next item is Junction Milling Co. \$4,379.70. As I recollect it that check was given to Mr. Baldwin at the time the mortgage was surrendered for cancellation, whether that was included or not, I do not know. I have nothing whatever to do with Mr. Baldwin's trust relationship. 30

Q. In connection with the legal work of this transaction, you represented my Mother and Father, in other words the Gollins? A. To the best of my ability.

Q. What was your ability in this matter? A. Somebody else must pass upon that.

Q. I show you this list Judge Roberson with Horace Roberson's name on it. Did you ever receive the \$3,000.00 shown on this list? A. Never.

Q. This list was presented in evidence in V. C. 40

*Depositions before Master, returned with Report.*

Lewis' Court and Charles E. Annett has testified that everything in this list was chargeable to the apartment house? A. I do not know what Mr. Annett testified to. I know that I never was paid and have never been paid to this day that \$3,000.00.

10 Q. Who does the \$3,000.00 really belong to? A. It belongs to me. I lent the mortgage to Mr. Annett instead of cash.

Q. That money is still due to you? A. It is.

Q. From who. Mr. Annett or the Gollins? A. From the property. It is the same thing that happened with Israel Lipschitz for \$3,200. I advanced my own cash and took from Israel Lipschitz's client an assignment of mortgage.

20 Q. Did you also do it with the DeVin mortgage? A. I did not. I want to add in my answer, that this document was prepared in my office at the request of Irving Gollin. He reported to me that he had a prospective sale. He wanted to know how much money we ought to get for the apartment house in order to pay all of his debts which he had contracted in the building and to pay back the money which his parents had advanced to him by mortgages on other properties. I went with him over the books

30 of Annett Mahnken Realty Co. and made up a statement as best I could as to the amount of money that ought to be received by the apartment house to clear everything off and at the bottom of it in my own handwriting I added some other things that had to be paid in order to clear it off. The property was never sold and this paper was merely a memorandum in order to assist Mr. Irving Gollin to make a sale which was the desire of his parents and himself.

40 Q. Who was John Dalrymple? A. He is a gentle-

Depositions before Master, returned with Report.

man who is my relative, lives in Plainfield, but did live in Bayonne. It was his money that was on that mortgage originally and he wanted his money and I gave it back to him and took the mortgage, but there never was an assignment. I took it in his name.

Q. What was the money used for? A. That \$3,000.00 mortgage. My recollection is that some concern had sold bricks to you for the construction of this apartment house. They had sent through the bricks and claimed money for the bricks. To raise that money for you, I paid that bill out of it and gave the balance of it to somebody, I think your father or mother. I think my books would show that. 10

Q. That is right. What was the amount of that claim? A. I do not remember. 20

Q. Approximately? A. It seems to me \$1,800 or it may have been something else entirely from that.

Q. And the balance of \$1,200 you gave to my father? A. To either your father or mother.

Q. And the brick company's claim was paid out of that \$3,000.00? A. Yes.

Q. In other words, that \$3,000.00 mortgage which you loaned to the Annett Mahnken Realty Co. you loaned that mortgage to Annett Mahnken Realty Co., is that right? A. I did. I have been helping them finance your parent's affairs, your affairs really, and I gave them mortgages instead of giving them cash. 30

Q. And you loaned that mortgage to Annett Mahnken Realty Co. to carry out this transaction? A. Yes.

Q. And they owe it to you? A. Yes.

Q. When was this mortgage given to the Annett Mahnken Realty Co.? A. I cannot tell you exactly. 40

*Exceptions to Master's Report.*

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Q. This mortgage was assigned to the Annett Mahnken Realty Co. by Myrtle Reed? A. It was assigned by Dalrimple to Reed, and Reed to myself. She is my clerk in the office.

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I certify that the foregoing depositions were taken by Edna M. Mason, a stenographer selected by me, and by me duly sworn faithfully and truly to take stenographically and reproduce in type-writing the testimony given, and that such depositions were taken in my immediate presence and hearing by said stenographer, sworn as above stated, and I believe that they accurately state the said evidence.

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CHARLES E. HENDRICKSON,  
Special Master.

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**Exceptions to Master's Report.**

(Filed December 23, 1929.)

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The defendants, Betsey Gollin, and Max Gollin, hereby except to the Report filed in this cause by Charles E. Hendrickson, Esq., one of the Special Masters of this Court, bearing date December 1, 1929, for the following reasons:

1. The Master's Report does not show in what way he arrived at his conclusions.

2. The Master erred in finding that the complainant Annett-Mahnken Realty Co. was entitled to the security of the mortgages held by Devin, Myrtle A. Reed, Horace Roberson and Newell Schilowitz, and the judgment of James Brady's

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Sons Co. upon the payment of the said obligations under the trust agreement.

3. The Master erred in not finding that under the trust agreement the complainant Annett-Mahnken Realty Co. was obligated to pay off the liens held by Devin, Myrtle A. Reed or Horace Roberson, Newell Schlowitz and James Brady's Sons Co., and to look only to the property commonly known as 880 Boulevard, Bayonne, New Jersey, for the re-payment of the money so advanced upon the conveyance of the said property by it under the trust agreement. 10

4. The Master erred in not finding that the complainant Annett-Mahnken Realty Co. by its acts and conduct violated the trust agreement.

5. The Master erred in finding that there is due the complainant Annett-Mahnken Realty Co. the sum of \$75,004.97 besides accrued interest thereon amounting to the sum of \$15,291.77, making the total of \$90,296.74. 20

SAMUEL L. HIRSCHBERG,  
Solicitor for Defendants.

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**Opinion, of Bentley, V. C.**

(Dated February 28, 1930, not filed.)

**MEMORANDUM OF OPINION.**

(This memorandum is not to be published in the official or unofficial reports.)

**10 BENTLEY, V. C.:**

On trustees' bill for a voluntary accounting.

This bill is filed by two corporations and is intended to wind up a lengthy and bitter litigation between the parties. For the sake of convenience only one of the complainants will be referred to because nearly all of the transactions involved have been between Annett-Mahnken Realty Company, the other complainant, the Anson Realty Company, being an affiliated corporation.

20 The bill alleges the conveyance of a tract of land in the city of Bayonne with an apartment house erected thereon. This building had been constructed under the contracts made by one of the sons of the defendants who became pressed for additional money and made a conveyance thereof to his mother so that she might secure additional credit; that she applied to the complainant which after negotiations accepted a deed

30 of the said property in trust for the defendant mother and the creditors who had furnished labor and materials for the construction of the said apartment house. That the land was so held upon the trust that the complainant would collect the rents, issues and profits and to pay out thereof the fixed charges upon the land and building and other proper expenses incidental to the management thereof, to settle the claims of all such creditors and as far as necessary to advance

40 additional sums which might be necessary for

such settlement. The trustee was also empowered to make sale of the premises, to receive five per cent commission for the collection of rents and reasonable compensation for its services. It was finally provided that after freeing the land and building from all debts and claims and after receipt of its compensation that the trustee would convey to Mrs. Gollin's nominee, discharged of and from every incumbrance thereof by the trustee or its successors or assigns except any that might be necessary for the payment of the claims of such creditors as have been hereinabove mentioned. 10

The bill then goes on to state that the complainant took possession and proceeded to procure loans and make advances for the satisfaction of the claims against the property. There is annexed a particular account of such moneys so advanced. It is alleged that this complainant endeavored to effect a sale of the trust property but was unable to obtain an offer acceptable to the beneficiary. That the real estate market has declined so that the trustee is unable to obtain any bid subject to the prior incumbrances which will enable the trustee to reimburse itself. It is also said that subsequently this complainant, for convenience in keeping its accounts conveyed the property in question to the other complainant, the Anson Realty Company. It is also alleged that a mortgage which was a lien upon the property at the time of the execution of the declaration of trust has been reduced by instalments of principal required to be made by the terms of the mortgage from the sum of \$99,500 to the sum of \$83,000. It is finally alleged that the condition of the real estate market in Bayonne is now such that no sale of the trust property can be made sufficient to reimburse the trust- 20  
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40

tee; that it does not appear that conditions will presently permit of such a sale and that the trustee should be relieved of making any further advances. In short the bill discloses a very familiar situation whereby this property is not self-supporting.

10 After the filing of the bill an order was made referring the trustees' account to a master whose report has been filed and to whose report exceptions have been filed by the defendants, and it is with these exceptions that the present discussion deals.

In due course after the service of process there has been filed by the defendants an answer in which many of the allegations of the bill are denied and to which there is attached a counter-claim which has been duly answered. It seems  
20 to me that the reference of the account should never have been made in advance of the final hearing. There are involved issues upon which it will be necessary to pass before any proper account can be stated. In short I find myself at a loss to pass upon the account until these factual disputes shall have been determined, for example, the question of the alleged negligence of the trustee may have a profound bearing on the  
30 final determination.

Realizing that this litigation should be brought to an end in the interest of all the parties without any further lapse of time than is necessary I will agree now to arrange my engagements in such a manner as to hear this case as soon as the respective solicitors can arrange to bring it on. In the meantime I am going to hold everything that there is before me in *statu quo* because whatever damage may have befallen these  
40 parties cannot be substantially increased by the short further delay.

**Order of Re-reference to Fielder, V. C.**

(Filed April 17, 1930.)

The above stated cause having been duly referred to the Honorable John Bentley, formerly one of the Vice-Chancellors of this Court, and the same remaining unheard:

It is thereupon, on this seventeenth day of April A. D. nineteen hundred and thirty, ordered that said cause be now referred to the Honorable James F. Fielder, one of the Vice-Chancellors of this Court, to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,

C.

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**Order of Designation.**

(Filed May 5, 1930.)

This matter having been re-referred to the Honorable James F. Fielder, one of the Vice-Chancellors, to hear the same for the Chancellor, and application being now made by Carrick & Wortendyke, solicitors of the complainants, on notice to the solicitor of the defendants, to fix a day for the hearing of the said matter, and no one appearing for the defendants,

It is on this fifth day of May, 1930, ordered that Thursday the 26th day of June, next, at ten o'clock in the forenoon, at the Chancery Chambers in Jersey City, be and the same is hereby fixed as the time and place for hearing the above stated cause.

JAMES F. FIELDER,

V. C.

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**Notice of Hearing.**

(Filed May 5, 1930.)

To Samuel L. Hirschberg, Esquire, Solicitor of Defendants:

10 Please take notice that we shall bring on the final hearing in the above entitled cause before Honorable James F. Fielder, the Vice-Chancellor to whom the cause has been referred to hear the same for the Chancellor, on Thursday, the twenty-sixth day of June, next, at ten o'clock in the forenoon, at the Chancery Chambers in Jersey City, that time and place having been designated by the court for said hearing.

Dated, May 9, 1930.

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CARRICK & WORTENDYKE,  
Solicitors of Complainant.

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**Notice to Vacate Order of Re-reference to  
Fielder, V. C.**

(Filed May 13, 1930.)

To:—Carrick & Wortendyke, Solicitors for the above named complainants:

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Sirs:

Please take notice that I shall apply before the Chancellor, at the Chancery Chambers, State House, Trenton, N. J., on Tuesday, May 13, 1930, at 10:30 o'clock in the forenoon (daylight saving time) or as soon thereafter as counsel can be heard, for an order vacating the order of re-reference made in the above entitled cause, on April 25th, 1930, on the ground that the same was im-

40 properly and improvidently made for the following reason, to wit:

*Notice to Vacate Order of Re-reference to  
Fielder, V. C.*

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1. The aforesaid order was made in violation of Rule 120 of the Chancery Rules, in that the said order was made and entered without the consent of the above named defendants, or their solicitor, or in the presence of the above named defendant or their solicitor, or upon five (5) days' notice to the above named defendant or their solicitor. 10

Please take further notice that I shall rely upon the annexed affidavits, and the aforesaid order, on this application.

SAMUEL L. HIRSCHBERG,  
Solicitor for Defendants.

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State of New Jersey, } ss. :  
County of Hudson, }

Max Gollin and Betsey Gollin, of full age, being duly sworn according to law, depose and say:

We are the defendants in the above entitled action; that we, or either one of us, were not served with any notice of an application of an order of Re-Reference in this cause, which was made on April 25, 1930; that we did not consent to the making of the said order of Re-Reference and that the application for an order of Re-Reference was not made in our presence or in the presence of either one of us. 30

MAX GOLLIN.  
BETSEY GOLLIN.

Sworn and subscribed to before me this  
7th day of May, 1930.

THOMAS M. O'BRIEN, JR.,  
Notary Public of N. J.

*Order of Re-reference to Fallon, V. C.*

State of New Jersey, } ss.:  
 County of Hudson, }

Samuel Nashel, of full age, being duly sworn according to law, deposes and says:

10 I am a practicing counsellor-at-law of the State of New Jersey, and associated with Samuel L. Hirschberg, the solicitor for the above named defendants; that I am actually intrusted with this litigation; that the application for an order of Re-Reference made in this cause was not made with my consent, or in my presence, or upon five (5) days notice to me.

SAMUEL NASHEL.

Sworn and subscribed to before me this  
 7th day of May, 1930.

20 OTTO COOPER,  
 an Attorney of Law,  
 of New Jersey.

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**Order of Re-reference to Fallon, V. C.**

(Filed May 13, 1930.)

30 This matter being opened to the Court by Samuel L. Hirschberg, Solicitor and of Counsel with the defendants, in the presence of John F. Gough, appearing for Carrick and Wortendyke, Solicitors and of Counsel with the complainants; and it appearing that due notice of this application has been given, and

40 IT IS thereupon, on this thirteenth day of May, Nineteen Hundred and Thirty, ORDERED that the above stated cause be now referred to Hon. J. J. Fallon, one of the Vice Chancellors of this Court to hear the same for the Chancellor and to report thereon to him and advise what order or decree should be made therein.

E. R. WALKER,  
 C.

**Testimony.**

## IN CHANCERY OF NEW JERSEY.

Between	}	72—304.	10
ANNETT-MAHNKEN REALTY COM- PANY, and ANSON REALTY COMPANY,			
Complainants,			
<i>and</i>			
BETSEY GOLLIN, and others, Defendants.			
			On Bill, etc. Minutes of final hearing.

## APPEARANCES :

MESSRS. CARRICK & WORTENDYKE, for Complainants (Mr. John F. Gough, of Counsel).	20
MR. SAMUEL HIRSCHBERG, for Defendants (Mr. Samuel Nashel, of Counsel).	

Before—Hon. JOHN J. FALLON, Vice-Chancellor.

Chancery Chambers,  
Jersey City, May 29, 1930.

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The Court: You may go ahead gentlemen; I think I have enough information to warrant you in proceeding.

## COMPLAINANTS' CASE.

Mr. Gough: I am going to put in evidence the deed to the Annett-Mahnken Realty Company by Betsey Gollin and husband.

(Deed marked Exhibit C1 in evidence.) 40

Mr. Gough: I want to offer the trust agreement between the Annett-Mahnken Realty Company and Betsey Gollin.

Mr. Nashel: No objection.

(Trust agreement marked Exhibit C2 in evidence.)

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CHARLES E. ANNETT, being sworn.

Direct Examination by Mr. Gough:

Q. Where do you live, Mr. Annett? A. I live in Middletown.

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

20

Q. Do you remember when the Annett-Mahnken Realty Company took over these premises in Bayonne belonging to the defendants? A. Yes, sir.

Q. Will you describe that property? A. It is an apartment house on the northeast corner of the Boulevard and 34th Street, containing 34 apartments, and the janitor's apartment in the basement.

30

Q. State the condition of the property when the complainant took it over? A. It was supposed to be finished, but there was a number of odd things the contractors had to complete.

Q. Who saw to the completion of those? A. Why, Mr. Irving Gollin, to a great extent.

Q. And who is Irving Gollin? A. He was the man who built the building.

Q. How is he related to the defendants, if you know? A. A son.

40

Q. How long after this deed, C1, was executed was it that the Annett-Mahnken Realty Company

went into possession? A. I think the date of the deed.

Q. About the date of the deed? A. Yes, I think so.

Q. Did the Mahnken Realty Company collect rents thereafter? A. Yes, sir.

Q. And is there a statement of the rents collected attached to the bill of complaint in this case? A. I think there is. I made a number of them. I think one is attached. 10

Q. A statement of its disbursements? A. Receipts and disbursements.

Q. Those are the true receipts and true disbursements? A. They certainly are, yes, sir.

Q. Now, state what was done in endeavoring to effect a sale of this property, Mr. Annett? A. Why, I tried to dispose of it by talking to two or three different people. I tried to make a sale of it but was unable to get any satisfactory offer at all. 20

Q. State whether or not the defendants brought anybody in to purchase the property? A. They never brought any to me personally, no, sir.

Q. When did you make efforts to sell this property, Mr. Annett? A. From the time I obtained it.

Q. And who were the persons you tried to interest? A. I tried to interest Mr. Zeik, and I tried to interest Mr. Ambrey Otto. 30

Q. Anybody else? A. Why, I talked to two or three gentlemen. I don't think it amounted to anything.

Q. And nothing eventuated? A. Nothing at all. The only thing I might say I had an off-hand proposition that Mr. Zeik would get his brother to purchase it for \$115,000, but it never went any further than a verbal statement. 40

Q. State your recollection as to the time of these different efforts made by you? A. It must have been a year and a half ago.

Q. After the conveyance to you? A. Oh, yes.

Q. That is you mean within a year and a half after the conveyance? A. No. From the time  
10 of the conveyance I tried to interest people, but it was a year and a half ago I tried to interest Mr. Zeik. Mr. Zeik was going to build a new apartment house and I tried to tell him he could purchase it cheaper than he could build a new one, but I was unable to succeed.

Q. Will you state Mr. Annett why this property was conveyed by the Annett-Mahnken Realty Company to the Anson Realty Company? A. I  
20 wanted to take it out of the Annett and put it into a corporation which would speak for itself and not have it tied up.

Q. The Annett-Mahnken Realty Company conducts what sort of business? A. Real estate and insurance.

By the Court:

Q. Who made the agreement, the Annett-Mahnken Company? A. Yes.

Q. Did you consult the Gollins about transferring it to the other company? A. I don't think  
30 I did.

By Mr. Gough:

Q. Does the Anson Realty Company own any other property? A. Yes, we own some other property.

Q. Now then what was the state of the encumbrances on this property when the conveyance was made to the Annett-Mahnken Realty Company?

40 A. There was a first mortgage of \$99,500.

Q. Who held that? A. The Colonial Life Insurance Company.

Q. And under the terms of that mortgage what installments if any had to be paid? A. \$1,000 every three months.

Q. And what was done in regard to those installments? A. The mortgage has been reduced 10 I think to about eighty or eighty-one thousand.

Q. Through payments? A. Through payments of \$1,000 each.

Q. I see! Now immediately after was there a purchaser for the property to be found in Bayonne at that time? A. To the best of my knowledge I knew of no one.

By the Court:

Q. What efforts did you make to find out? A. 20 The usual real estate proposition of talking to men in the town.

Q. You made no special effort? A. Well, no special effort, I imagine.

Q. You are basing your answer on what you consider to be the general real estate market? A. It fell to pieces right after I took over this property and there was no sale for apartment houses.

Q. How can you say that if you made no effort 30 to find out? A. I did from two or three, and the real estate men in the town knew the property was for sale.

By Mr. Gough:

Q. Now what is the aggregate of the moneys advanced by you Mr. Annett—or the complainants? A. I haven't figured it up since we were before Mr. Hendrickson in the accounting. At that time I think it was about \$92,000.

Mr. Gough: I don't suppose your Honor wants to go into the details of that accounting.

The Court: No, not at this time.

Mr. Gough: Cross examination.

10 Cross Examination by Mr. Nashel:

Q. Mr. Annett, what were the circumstances that led up to the execution of the deed by the Gollins to the Annett-Mahnken Realty Company, and the trust agreement? A. Mr. Gollin, Sr., came to Mr. Roberson and myself and said his son was in financial trouble on the apartment house and that he had a chance to sell it for \$165,000; that the creditors were pressing him, and if we could carry him over he thought he  
20 could sell the property and clean it up. I unfortunately fell for it and went into the transaction.

By the Court:

Q. What do you mean by that that you fell for it? He is looking for an explanation. A. Your Honor, I discovered afterwards that the \$165,000 sale had fallen through before he came to me.

Q. Did you discover that before you entered  
30 into the trust agreement? A. No, after.

Q. He is asking you what the circumstances were leading up to the deed and the trust agreement. A. I don't quite gather—

Q. They came to you for some purpose or other. What conversation passed between you? A. That I was to pay the money to pay the creditors and take it over until he could sell the property.

By Mr. Nashel:

40 Q. What did you find out about their condi-

tion at that time? A. I didn't know what their condition was.

Q. You knew they had financial difficulties at that time? A. Yes.

Q. What did Mr. Irving Gollin say to you about that? A. I had no conversation with him.

Q. Mr. Max Gollin? A. Mr. Max Gollin asked me to finance it until he could get his financial condition straightened up. 10

Q. He told you that unless he received some financial assistance at that time the property would be taken away from him by his creditors? A. Yes, sir.

Q. And that was the reason that you took this property 880 Boulevard, Bayonne, and made a loan to the Gollins? A. I didn't make a loan to the Gollins. I paid his creditors. 20

Mr. Gough: I object to that. Doesn't the agreement state what the contract was?

The Court: You can bring out conversations leading up to that if it is not objected to. The reason is for the court to determine.

By Mr. Nashel:

Q. Prior to the execution of the deed by the Gollins to your company Mr. Irving Gollin gave you a list of creditors of the apartment house 880 Boulevard, Bayonne? A. Judge Roberson, and I saw it. 30

Q. You were there at the time he gave it to him? A. No, but I saw it after he had given it to Mr. Roberson.

Q. Will you produce that list?

Mr. Gough: It is produced.

Mr. Nashel: I offer it. 40

The Court: It is not your case yet. Let him see it and see if he identifies it.

The Witness: This is it.

Mr. Nashel. I ask it be marked for identification.

(List marked D1 for Identification.)

10 Mr. Gough: There are some pencil notations on there which were not there at the time it was handed to Mr. Roberson.

By Mr. Nashel:

Q. And the execution of the deed and the trust agreement were based on what this said?

Mr. Gough: I object. The agreement and the deed refers to themselves.

20 The Court: Do they refer to that statement?

Mr. Nashel: No, sir.

The Court: I will sustain the objection.

By Mr. Nashel:

Q. This list contained a statement of the creditors of 880 Boulevard, Bayonne? A. Yes, sir.

30 Mr. Gough: This is not proper cross examination. He can develop that in his own case.

Mr. Nashel: I will leave that go for the present.

40 Q. Since the execution of the trust agreement the Annett-Mahnken Realty Company has had control and the absolute management of this property? A. I wouldn't say absolute control and management for the reason that for a number of months Mr. Irving Gollin lived in the apartment, and he and his father assumed con-

siderable management and did also assume the obligation of renting some of the apartments, which I did not object to. It was a cross management there which was not financially successful.

Q. But the company collected all the rents and made all disbursements and made all the repairs to the building? A. We collected the rents. Some of the rents were collected by Mr. Gollin, Sr., and brought to the office. 10

By the Court:

Q. You received all the rents? A. We received all the rents which were collected.

By Mr. Nashel:

Q. For how long a period did that continue that Mr. Gollin collected the rents after the execution of the trust agreement? A. He collected some of the rents. 20

The Court: Any way they were all received by Mr. Annett, or his company.

By Mr. Nashel:

Q. And the company made all repairs to this property since the execution of this trust agreement? A. Yes, sir, we made repairs and paid for them. 30

Q. And in fact had practically the entire control and management of the property? A. Yes, sir.

The Court: The agreement gave them that didn't it? Wasn't that the effect of the agreement?

Mr. Gough: Yes, sir.

By Mr. Nashel:

Q. Your company opened a ledger accounting for the property? A. Yes, sir. 40

By the Court:

Q. Only a ledger account? A. From the cash book into the ledger—check book and cash book.

By Mr. Nashel:

10 Q. I show you a list or statement headed "Construction Account", and ask you if that is the account kept by your company relating to this property? A. No, that is not an account kept by the company. It is a transcript made from time to time at Mr. Irving Gollin's request as to what he owed so he could sell the property.

By the Court:

Q. It is a paper submitted by you or your firm to Mr. Gollin? A. Yes, sir.

20

By Mr. Nashel:

Q. Is that a true copy of the ledger account? A. It will prove up with the ledger.

Mr. Nashel: I ask it be marked for identification.

(Marked D2 for Identification.)

Mr. Nashel: At this time I think I would like to make Mr. Annett my own witness.

30

The Court: Why not recall him later and let the other side put in their case first?

Mr. Nashel: All right. That's all for the present.

40

HORACE ROBERSON, being sworn.

Direct Examination by Mr. Gough:

Q. Where do you reside? A. In Bayonne, New Jersey.

Q. And what is your business? A. Lawyer.

Q. How long have you been a member of the Bar? A. Since 1886-1887. 10

Q. Are you familiar with the premises described in the bill of complaint? A. Yes.

Q. At the time of the execution of this deed C1, and the trust agreement C2? A. Yes.

Q. State the condition of the premises.

The Court: You mean prior to its coming into his possession?

Mr. Gough: At the time of the execution of the deed. 20

(Witness) A. I went there to look at it after Mr. Max Gollin had come and asked me if I couldn't interest somebody and help him out.

Q. State the condition of the premises. A. It was a new building practically completed. Out of 32 apartments I think there were something like twenty of them rented. There were a lot of little things to be done. Some of the contractors hadn't finished their work. I don't remember particularly what it was, but some of them were not paid for several months after that while Mr. Irving Gollin was urging them to complete the work which they had agreed to do. 30

Q. State if you know who had erected that apartment house? A. Irving Gollin had erected that apartment house.

Q. How is he related to the defendants Betsey and Max? A. He is the son of Betsey Gollin and Max Gollin. 40

Q. Do you know in respect to the execution of the deed and the declaration of trust when the Annett-Mahnken Realty Company came into possession of the lands and building? A. I think they went into it immediately.

10 Q. Are you familiar with the accounts of the Annett-Mahnken Realty Company in regard to collections and disbursements on this property? A. Well, I have seen the books, and the statement which was attached to the bill was gotten out by one of my clerks under my direction. He went through the accounts and segregated them for that purpose.

20 Q. State whether or not you had anything to do with endeavors to sell this property, Mr. Roberson. A. From the time the deed was made and it was taken into Mr. Annett's hands I have spoken to many people. My practice is largely a real estate practice and people were there who were dealing in buildings, and I had spoken to many people and said "Here is a good buy for you", and tried to interest them in this building.

30 Q. What has been the results? A. I have never been able to sell it. I had, about a year ago, one man who came to me and said he thought he had a man who was a real estate man who had about \$20,000 in cash.

Mr. Nashel: I object. It is hearsay.

The Court: He is telling about a man who came to him.

By the Court:

40 Q. Did you inquire fully into it and inquire as to the name of the man? A. I urged him very strongly to have him bring his man there and we would make a bargain. So finally he said he couldn't get him there. He was a New York man.

By Mr. Gough:

Q. State whether or not you had known the defendants before? A. Yes, I had know them for twenty-five years or more.

Q. During this period of control by the complainants did the defendants or any one of them bring any possible purchasers to you? A. During the early part of that Mr. Irving Gollin came to me many times and said he had prospective buyers, and wanted to know what the standing of the account was. A reference to that document you have in the pocket there shows the list Mr. Irving Gollin gave me in the first place was modified. We didn't pay those amounts. For various reasons he secured deductions, and I don't know how many statements were made but a number were made, so he knew how much money had to be gotten out of the property to pay all the bills off. 10 20

Q. How many times did he have prospective buyers? A. Only one time he said he had somebody who would trade him vacant lots for the equity, and he asked me whether we would consider it. I said not. I didn't even go to Mr. Annett. I did not consider it.

Q. You were speaking for the complainant at that time? A. I was. 30

Q. Were you familiar with the encumbrances against the property at the time this deed was given and the declaration of trust made? A. I took Mr. Irving Gollin's statement to be true, and after an investigation I found they were true. There was a first mortgage of \$100,000 upon which he had paid \$500.00, and two other mortgages on it aggregating on another property \$15,000. Then there was a mortgage of some amount held by the Baldwin Lumber Company 40

upon which he said I should pay a certain amount of money which is stipulated in that statement.

Q. This mortgage of \$100,000 is held by whom?

A. The Colonial Life Insurance Company. It is there still.

Q. It is a permanent mortgage? A. Yes.

10

Mr. Gough: Cross examine.

Cross Examination by Mr. Nashel:

Q. Judge, you represented these people for quite some time before this trust agreement was executed? A. Twenty-five years or more. I have forgotten just when it was.

Q. And you were familiar with their properties? A. Most of them, I think.

20

Q. And the trust agreement was drawn by you? A. Yes, it was drawn and redrawn three or four times largely in consultation with Irving Gollin, before it was finally signed.

30

Q. There were quite a few negotiations which were had before the trust agreement was executed? A. I think the negotiations were going on over a period of ten days or two weeks, and either Irving Gollin or his father were in the office several times. I didn't make a note of how many times they were there, but the trust agreement was discussed many times with Irving Gollin and finally drawn and signed in the form in which it now is.

40

Q. Prior to the execution of the trust agreement Mr. Gollin gave you a list of creditors of the apartment house? A. I don't know when he gave me that list which is marked for identification. He gave me that list. May I see it if I am to testify to it? He gave me this document which I hold in my hand which had written on it a memorandum made by himself which is in green

ink. There are a lot of notations made by myself. The green ink writing was made by him.

By Mr. Gough:

Q. When was that given you? A. Before or at that time.

10

By Mr. Nashel:

Q. Before the execution of the agreement you required a list of creditors of the apartment house? A. I don't remember that.

Q. Wasn't it necessary for you to know the exact amount of creditors of the apartment house? A. No, that didn't enter into it. The first request was for me to obtain for them a second mortgage of \$40,000. That was impossible, and that \$40,000 would have taken care of their floating debts. I hadn't anybody who would loan that amount of money, and I think Mr. Irving Gollin told me he had somebody who would loan him \$45,000 provided he gave eight or ten per cent bonus, and he didn't want to do that. I don't know what it was, but that statement was made to me by Irving Gollin.

20

Q. You knew at the time of the execution of the trust agreement that the Gollins had other properties? A. Oh, yes.

30

Q. And you knew about the very properties that were involved in this litigation, how much they were encumbered by mortgages at that time?

Mr. Gough: I object.

The Court: I think he said he did know. I don't know about properties.

Mr. Gough: There is only one property.

By Mr. Nashel:

Q. You knew the Gollins had other properties? 40

Mr. Gough: I object. It is improper and irrelevant.

The Court: It can't hurt you.

(Witness) A. I don't know.

10 By Mr. Nashel:

Q. In other words judge, you were familiar with the holdings of these people? A. I said so before.

Q. I am referring particularly to the property in litigation between the Gollins and the Annett Realty Company.

Mr. Gough: How is it material?

The Court: I will let him say.

20 (Witness) A. Generally, but not specifically. I didn't know the extent of the mortgages nor the extent of the municipal liens.

By Mr. Nashel:

Q. You instituted various foreclosures on their other properties, isn't that right judge?

The Court: You mean as attorney?

Mr. Nashel: As attorney for the Annett-Mahnken Realty Company.

30 The Witness: Just one.

Q. How many pieces of property did that foreclosure cover?

Mr. Gough: If your Honor please, I think we have the records here.

The Court: If he knows, and there is no objection, he can state it to save time.

Mr. Gough: It is irrelevant too.

40 The Court: One of the reasons I will

let it go in is the fact there is a trusteeship here.

Mr. Gough: It is encumbering the record, your Honor.

Mr. Nashel: I will withdraw that.

Q. At the time the trust agreement was executed the Gollins had about a half a dozen other pieces of property? A. Yes. 10

Q. All of which you knew about at that time? A. Generally.

Q. And yet the only property in this trust agreement is this apartment house?

Mr. Gough: I object if your Honor please. Suppose he says no? Don't the agreement speak for itself? 20

The Court: What is the purpose of it?

Mr. Nashel: The purpose is to show that the Gollins had other property where the Annett-Mahnken Realty Company was satisfied to accept the apartment house itself.

The Court: All right, go ahead.

Mr. Gough: If your Honor please, I object because the agreement speaks for itself.

The Court: My recollection is the agreement relates to only one piece of property. 30

Mr. Nashel: That's right.

The Court: Is there anything in the agreement the trustee has a right to look to the other property?

Mr. Hirschberg: Except we counterclaim, and say in our counterclaim that the complainant should have managed as trustee and taken care of the trust relationship in such a way that certain other property which belonged to Betsey Gollin and 40

10 which were foreclosed through these very trustees, that those properties are being held now by them in trust for us. Now the object of Mr. Nashel's question is this: The trustee agreement provides that this particular apartment house shall be taken over by deed. Just before the agreement was entered into a list of claims against the Gollins was submitted to the trustee.

The Court: Did that list refer to other properties as well as the apartment house?

Mr. Hirschberg: It referred to claims which formed a basis for mortgages which were put on those other properties, which mortgages subsequently were purchased by—

20 The Court: It is your claim Mr. Hirschberg that the trustees were obliged to pay claims other than those arising out of or chargeable to this apartment house?

Mr. Hirschberg: No, sir. But our claim is that these mortgages which were the subject of foreclosure, the ownership of which is now in the trustees, were the result of claims which were paid by Betsey Gollin which should have been paid by the trustees, which claims were against the apartment house, and therefore—

30 The Court: Doesn't that come in principally in the nature of accounting?

Mr. Hirschberg: Yes. But your Honor, on the question of knowledge upon the part of the trustees that these claims formed the basis of mortgages on three or four other properties which they subsequently bought in and which they subsequently foreclosed, title to which property they have now, we

40

claim that since those claims formed the basis of the mortgages these questions as to the ownership of the properties at the time of the entering into of the trust agreement are relevant to what is now before the court.

The Court: I will receive it subject to Mr. Gough's objection. 10

Mr. Gough: If your Honor please, I suppose you know, and it is only for the sake of surety I am now stating to your Honor, that these foreclosures were all concluded against these defendants. Decrees *pro confesso* taken and various applications made by them to go into this trust agreement. There were arguments before Vice Chancellor Fielder. He decided the right of the complainants in those cases was not affected by the trust agreement. From his orders in the matter there was an appeal taken to the Court of Errors and Appeals and he was sustained. That is all *res adjudicata*, and counsel is now asking you to go into a situation which has been determined against the defendants. 20

Mr. Hirschberg: We differ with the statement of counsel, and my contention will be sustained by subsequent developments in the case. 30

The Court: I will receive it subject to the objection of Mr. Gough. I had one of these matters before me. I think it was relating to surplus moneys arising out of a foreclosure.

Mr. Hirschberg: Yes, sir.

The Court: I think we had better take a recess until two o'clock. 40

Afternoon session.

HORACE ROBERSON, Recalled.

Cross Examination continued by Mr. Nashel:

10 Q. And yet the only property in this trust agreement is this apartment house? A. My recollection it was the only property discussed in all of the negotiations.

Q. Prior to the execution of the trust agreement Mr. Gollin, Sr., related to you his entire financial difficulties? A. I think not. I think I have a recollection of him saying Irving would pull him down.

20 Q. He told you it was absolutely necessary they procure a mortgage loan, otherwise they would lose the property? A. Because the creditors of this particular building were pressing them. There was one judgment already. Somebody, I don't recall now, had a case in which they had a judgment which was paid off by us.

Q. James Brady & Son? A. No, it was another one. I think Judge Carey's office had it, or Mr. Pyle.

30 Q. Some of these creditors of the apartment house were secured by a mortgage on property of the Gollins? A. I discovered that afterwards. The De Vin mortgage covered three properties.

Mr. Nashel: That's all.

Mr. Gough: Now, if your Honor please, I think that completes our case, except we should like to extend the disbursements and the receipts to date of course. But your Honor is not concerned with that phase of the matter now. We rest if your Honor please.

## DEFENDANT'S CASE.

ISRAEL LIPSHITZ, being sworn:

Direct Examination by Mr. Nashel:

Q. Mr. Lipshitz, you are an attorney at law of the State of New Jersey? A. Yes, sir. 10

Q. And do you recall placing a mortgage, or being instrumental in connection with a mortgage loan on property 499 Broadway, Bayonne?

Mr. Gough: I object. It is leading and irrelevant.

The Court: He can say yes or no.

The Witness: Yes, I recall that.

By Mr. Nashel:

Q. Do you know what that money was used for? 20

Mr. Gough: I object, if your honor please.

The Court: What is the purpose of it?

Mr. Nashel. To show this money went into the apartment house—the trust property. It is very material.

The Court: Why wouldn't that be material, if that is so?

Mr. Gough: It is immaterial and irrelevant and incompetent so far as we are concerned. 30

The Court: It all relates to the apartment house we are concerned with now. That's what counsel says.

Mr. Gough: That's what he says. It is a leading question.

The Court: Repeat the question.

By Mr. Nashel:

Q. What was the money used for? 40

Mr. Gough: I object to that question if your honor please. The mortgage is the evidence of what the money was used for.

10 The Court: I think I will allow it subject to your objection. There might be considerable brought out here which is not strictly evidential. I see so many papers before me in relation to the Gollins.

Mr. Gough: That is why I stated to your Honor so far as these mortgages are concerned on other property the matter is *res adjudicata*.

(After further argument.)

20 The Court: I think I ought to hear it subject to your objection.

(Witness) A. At that time I represented Irving Gollin in the purchase of the lots at 880 Boulevard, and in connection with that I raised a mortgage on the 19th Street and Boulevard houses which were used to take over and in the construction of the 880 Boulevard premises.

By the Court:

30 Q. Was that long before Mr. Roberson and Mr. Annett came into the picture? A. It was. It was sometime in 1922.

The Court: What is your idea that it is in anywise significant as to whatever relief you are claiming here. That is preceding the time that Judge Roberson and Mr. Annett came into the matter.

40 Mr. Nashel: But the Annett-Mahnken Realty Company paid that mortgage and took an assignment and later foreclosed

that very mortgage, and that money was used in the purchase of that property 880 Boulevard, Bayonne.

The Court: All right. You may have some purpose.

Mr. Nashel: That's all.

Mr. Gough: No cross-examination. 10

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MORRIS NEWELL, being sworn:

Direct Examination by Mr. Nashel:

Q. Mr. Newell, where do you live? A. Bayonne.

Q. What street? A. 130 W. 33rd Street, Bayonne.

Q. Are you a member of the firm of Newell & Shilowitz? A. I am. 20

Q. Did your company perform some work on the property 880 Boulevard, Bayonne? A. Yes, sir.

Q. And did you receive a mortgage from Betsey Gollin and her husband? A. I did.

Q. For \$6,700.00, to secure you for the work that you had done on that building? A. I did.

Q. Was that mortgage paid? A. Yes, sir.

Q. By whom? A. It was paid by Mr. Rober-  
son or Mr. Annett. I don't recollect which office  
that was in. 30

The Court: Let Mr. Gough see the mortgage.

Mr. Gough: I object to that as incompetent and irrelevant. It doesn't concern this property.

The Court: He says it does.

Mr. Gough: No, it doesn't.

Mr. Nashel: This mortgage was given  
for work done on this trust property. 40

Mr. Gough: The mortgage speaks for itself, your honor.

The Court: Counsel states it does and you say it does not.

By the Court:

10 Q. Upon which property did you do work for which you say you had a claim? A. On the Boulevard and 34th Street property. The mortgage was not on that property; it was on another property.

Q. You did the work on that building and they gave you a mortgage on another property? A. Yes, sir.

Mr. Gough: Yes. How is that material?

20 Mr. Nashel: There is a recital in the mortgage until the mortgage is paid and accord and satisfaction of the balance of \$6,700.00 due to the second party by Irving Gollin and Betsey Gollin for plumbing work at 878, 880 and 882½ Boulevard, Bayonne.

The Court: I will overrule the objection and I will admit it.

30 (Mortgage marked Exhibit D1 in evidence.)

By Mr. Nashel:

Q. When you received payment for this mortgage Mr. Newell, did you sign a satisfaction piece? A. I cannot recollect whether I signed a satisfaction or any other paper, but I know I signed something, but I can't recollect what it was.

40 Mr. Gough: Now if your honor please I want you to understand we don't make

any charge as to the payment of the principal of this mortgage.

The Court: If that is so of what significance is it? I understood him to say they paid the money and took an assignment.

Mr. Nashel: They took a satisfaction piece, or an assignment. 10

The Court: I will leave it go in.

Mr. Gough: As a matter of fact your honor this mortgage was foreclosed and we held title to it. In our accounting in this suit we don't ask for any payment of it against this balance.

The Court: They are making some claim with respect to it.

Mr. Gough: I can't understand it. We say the foreclosure suit is settled and we have a decree, and we don't ask for any money. 20

The Court: I will receive it. I don't see the significance of it now.

Mr. Nashel: That's all.

Mr. Gough: No questions.

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JOSEPH BRADY, being sworn:

Direct Examination by Mr. Nashel: 30

Q. Mr. Brady, where do you live? A. Bayonne.

Q. Street address? A. 72 Avenue B.

Q. Are you an officer of the firm of J. Brady & Son? A. I am.

Q. What office do you hold? A. President.

Q. Did your Company supply materials to the property 880 Boulevard, Bayonne? A. We did.

Q. And did your company recover a judgment against the Gollins for that sum? A. We did.

Q. Was that judgment paid? A. It was. 40

Q. By whom? A. I do not actually know, but—

Mr. Gough: If he don't know I object to his testimony.

The Witness: My lawyer got the money.

10 The Court: If you don't know don't guess.

By Mr. Nashel:

Q. You received payment for that judgment?

A. We did, yes.

Mr. Nashel: That's all.

Mr. Gough: No cross-examination.

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20 IRVING GOLLIN, being sworn:

Direct Examination by Mr. Nashel:

Q. Where do you live, Mr. Gollin? A. 39 Avenue B, Bayonne.

Q. Are you the son of the defendants in this suit? A. I am.

30 Q. Will you tell us the proceedings that led up to the execution of the deed and trust agreement relating to the property 880 Boulevard, Bayonne?

Mr. Gough: If your honor pleases I object because those agreements speak for themselves, and it is an attempt to vary the contract.

40 The Court: I will admit it because they are charging fraud against your clients, and that is one of the things that takes it out of the statute of frauds. I will overrule your objection.

(Witness) A. I started to build this house in the spring of 1923, and during the summer of 1923 I learned of some facts and I went to my mother and asked her—

Mr. Gough: I object. It is hearsay.

The Court: Don't tell of your conversation with your mother. Tell us of your dealings with Mr. Roberson and Mr. Annett. 10

(Witness continuing) There was one proposition where a brick concern in Staten Island sold me—

The Court: Why not mention the name.

(Witness continuing) The Springstead Supply Company of Staten Island sold me some bricks in the amount of \$4,000. I paid them \$2,300.00 on account— 20

Mr. Gough: If your honor please these are matters with other people and not connected with the suit.

The Court: I suppose he is coming down to it that there was a \$1,700.00 balance.

(Witness continuing) That's right. There was a balance of \$1,700.00. They in turn handed that \$1,700.00 over for collection to the office of Roberson & Roberson. Roberson & Roberson got in touch with my father and— 30

By the Court:

Q. What did they say? A. Judge Roberson threatened to file a mechanics lien unless the balance was paid, and I went down to Judge Roberson's office and asked him if he would loan 40

us \$3,000 on my mother's house where she lived, and out of the proceeds of the \$3,000—

Mr. Gough: If your honor please how can that bind us?

10 The Court: We are only concerned what the arrangement was between Mr. Roberson and Mr. Annett, and what claims they undertook to pay.

The Witness: I want to bring out what this particular claim was.

The Court: Tell us what conversation you had with either one of them.

The Witness: I got the \$3,000. We only got \$1,700.00.

20 Q. From whom? A. Judge Roberson, and the other \$1,300.00 he gave to my father. That meant we owed him \$3,000. Now when the building was completed I owed general creditors \$37,000 and mortgages on the apartment house and other properties, which money was owed for the construction of the apartment house, a sum of about twenty-two or twenty-three thousand dollars, making a total sum of \$60,000 required to pay off on these bills. I went down with my father  
30 to Judge Roberson and I asked him for a second mortgage for \$60,000 and he told us to come back in a few days and he would let us know whether he would entertain this proposition. We came back about three or four days later and Judge Roberson said that the only way that they would go into the proposition is if I gave them a list of all these creditors, that they would pay out all these creditors and these mortgages if we would give them a clear warranty deed in consideration for paying out these claims, and I  
40 wanted to have some security if they would do

that because I really owned the apartment house. My mother didn't have any interest in it except to help me finance the project. A trust agreement was entered into.

The Court: Is that the one marked C2?

Mr. Nashel: That's right.

10

The Court: Show it to him so he will know what he is talking about.

By the Court:

Q. The paper which is handed to you is that what you refer to as a trust agreement? A. It is, yes, sir.

Q. Exhibit C2. All right. A. Judge Roberson asked me for a list of all these creditors and I gave him a list of all the mortgages and all the creditors to be paid, and within a period of a month or six weeks they were all paid. That was during the month of June and July of 1924.

20

By Mr. Nashel:

Q. I show you D1 for Identification, and ask you if that is the list you are referring to? A. This is the exact list that I gave to Judge Roberson in May 1924. The creditors on this page here and the mortgages and other accounts up to here—

30

The Court: On the second page?

The Witness: Yes.

By the Court:

Q. The green ink writing is yours? A. Yes.

Q. You find quite a number of other notations on that paper. They are not yours? A. None of them are mine.

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*Irving Gollin—Direct Examination.*

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Mr. Nashel: I offer it in evidence.

Mr. Gough: No objection.

(List marked Exhibit D2 in evidence.)

By Mr. Nashel:

10 Q. Mr. Gollin, will you tell us exactly what this list represents?

The Court: It speaks for itself, doesn't it?

Mr. Nashel: I want a statement of all the creditors and amounts.

The Court: You can ask him if it includes all the people he owed money to at that time.

By Mr. Nashel:

20 Q. Mr. Gollin, the list you have referred to, does it include all the creditors of 880 Boulevard Bayonne? A. Yes, it does.

The Court: My recollection is Judge Roberson testified he checked up on it.

Mr. Roberson: It was modified afterwards.

30 The Court: But you checked up on it and found it was correct?

Mr. Roberson: I relied upon him as to the correctness of it.

By Mr. Nashel:

Q. Now prior to the execution of the trust agreement you had secured some financial assistance from your mother and father? A. That's right.

40 Q. Now had you secured that assistance? A. There was one mortgage for \$11,000 and one for \$4,000 construction loan on the apartment house

—a sum of \$15,000. Before that the same people gave me \$65,000 on the same building.

By the Court:

Q. You mean your father and mother? A. No, the construction loan.

Q. Mention their names? A. The K. B. Investment Company of Newark. They loaned me \$65,000. I needed an additional \$15,000 and they wanted— 10

Q. Never mind that. You got it from your father and mother? A. Yes, but the mortgage covered two other properties—that \$15,000.

By Mr. Nashel:

Q. What are the other two pieces of property the mortgage covered? A. 249 Broadway, 501 Boulevard, and the apartment house. 20

Q. In Bayonne? A. That's right.

Q. And it was after your mother and father had exhausted all their means of obtaining money—

The Court: He didn't say that. I will overrule the question as to its form.

By Mr. Nashel:

Q. When was it you applied to the Annett-Mahnken Realty Company for assistance? A. After the apartment house had been completed and fully rented. 30

By the Court:

Q. Judge Roberson said his recollection was there were twenty tenants in the apartment house at the time they took it over. A. The account records will show it was fully rented at the time they took it over. 40

By Mr. Nashel:

Q. Why did you go to your father and mother for assistance?

Mr. Gough: I object to it as immaterial and incompetent.

10 The Court: I will sustain the objection.

By Mr. Nashel:

Q. Was the mortgage of \$15,000 held by the K. B. Investment Company paid? A. It was paid by Horace Roberson.

Mr. Gough: I object, if your Honor please. What does he know about it?

The Court: He said Judge Roberson paid it.

20 Mr. Gough: We are not claiming it, your Honor.

The Court: All right.

By Mr. Nashel:

Q. I show you D2 for Identification, and ask you if that is the list you received from Mr. Annett? A. It is not a list from Mr. Annett. It is a list from Mr. Roberson. He wanted to know—

30

The Court: You are not asked that.

The Witness: It is not a list from Mr. Annett.

By Mr. Nashel:

Q. This is a list you received from Judge Roberson? A. Yes.

Q. What does it represent?

40

The Court: That seems to speak for itself.

By Mr. Nashel:

Q. When was that list given to you? A. November 1, 1924.

Q. Why was it given to you? A. I wanted to know how much money he collected in and how much money he had paid out until that time.

10

Mr. Nashel: I offer the list.

Mr. Gough: No objection.

(List marked Exhibit D3 in evidence.)

The Court: Does it indicate on its face what it is? If it does the witness can't explain differently.

By Mr. Nashel:

Q. Do you know what the item of \$15,000 on this list represents, on Exhibit D3? A. The \$15,000 was for the mortgage on the apartment house and the other two properties.

20

By the Court:

Q. What other two properties? A. 249 Broadway and 501 Boulevard.

By Mr. Nashel:

Q. The proceeds of that mortgage were used in the construction of 880 Boulevard, Bayonne? A. Exactly.

30

Q. Was that mortgage paid? A. That mortgage was paid.

Q. That list shows all items that were paid by the Annett-Mahnken Realty Company up to the date specified on the list? A. Exactly, and corresponds with the list I gave them.

The Court: I will have to strike that last statement out. You may think it corresponds, and it may not.

40

By Mr. Nashel:

Q. The Annett-Mahnken Realty Company foreclosed the mortgage of \$15,000 held by the K. B. Investment Company? A. That's right.

Q. Now can you tell us what the item of \$6,500.00 on that list represents? A. That was  
10 a balance of plumbing work.

Mr. Gough: I object. It is immaterial and irrelevant, and we don't claim that here.

The Court: What is the significance of the items they do not claim?

Mr. Nashel: It is material for this reason. Our contention is that the Annett-Mahnken Realty Company agreed to pay the debts shown on the list given by Irving  
20 Gollin to Judge Roberson prior to the execution of the trust agreement.

The Court: Is this item one of those listed?

Mr. Nashel: Yes.

The Court: I will overrule the objection based on what you are contending for.

(Witness continuing) That amount was for  
30 plumbing work done by Newell & Shilowitz. When I got my mortgage for \$100,000—

Mr. Gough: I object.

(Witness continuing) \$6,500.00 was for plumbing work done on the apartment house, and I gave them a mortgage on 462 Broadway, Bayonne.

By Mr. Nashel:

Q. Is that the mortgage marked Exhibit D1?  
40 A. That's right.

Q. Do you know whether this mortgage is now open of record? A. As far as I know it is open of record at the present time.

Mr. Gough: I object to it.

The Court: I will strike it out. He prefixes it by saying "as far as I know". 10

Mr. Gough: The witness knew that mortgage has been foreclosed and a sale under the decree. The records of this court before your Honor will show it. If they are not here they ought to be.

The Court: In this case?

Mr. Gough: No, in the foreclosure.

The Court: I have four files of papers. What file are you referring to?

Mr. Gough: 66-221. 20

Mr. Roberson: And Vice Chancellor Lewis has them in his office in Paterson now.

The Court: In order to get this on the record I have here files 58-610, 58-611, 58-609, and 72-304.

Mr. Gough: Yes. The first three are foreclosure suits conducted by Judge Carrick, and the last number is this present case. 30

By Mr. Nashel:

Q. Now, Mr. Gollin, can you tell us what the item of \$3,200.00 represents on that list? A. On this list it shows Judge Roberson's handwriting "Lipschitz mortgage \$3,200.00". That was added to the list he gave me.

By the Court:

Q. What do you mean by that? A. I wanted to know how much money they laid out on the 40

apartment house, and Judge Roberson submitted a statement to me.

Q. It is typewritten? A. Yes, and in his handwriting inserted these few items (indicating).

Q. Was done at the time it was typewritten, or subsequently? A. I don't know.

10 Q. When you received this paper which is Exhibit D3, was it in the same condition it now is?

A. Of course this is six years old. It was in better shape.

Q. Are there any items added to it since? A. No, it is the same way.

By Mr. Nashel:

Q. That sum of \$3,200.00 was secured by a mortgage on what property? A. 499 Boulevard.

20 Q. Was that foreclosed by the Annett-Mahnken Realty Company too? A. Yes, sir.

Mr. Gough: That item is another for which we don't pray allowance.

The Court: I will receive it and deal with it later.

By Mr. Nashel:

30 Q. What does the item of \$3,000 shown on the list represent? A. The first item on the list of \$3,000 represents the mortgage that Judge Roberson loaned my mother on my mother's home.

By the Court:

Q. Where is that home? A. 772 Avenue C, Bayonne.

By Mr. Nashel:

Q. Was that mortgage foreclosed? A. That mortgage was also foreclosed.

40

Q. By whom? A. Annett-Mahnken Realty Company.

Mr. Gough: Your Honor my objection goes to all of this.

The Court: Yes, it goes to all this line of testimony.

10

By Mr. Nashel:

Q. What does the item of \$2,700.00 on the list represent? A. That was a mechanics lien turned into a judgment owing to James Brady Sons Company for mason materials on the apartment house only.

Mr. Gough: So far as that is concerned we claim allowance for that item.

20

By Mr. Nashel:

Q. Do you know to whom that judgment was assigned?

Mr. Gough: I will find out what the fact is and tell your Honor so we won't lose time. It is assigned to a nominee of complainants.

The Witness: Mildred J. Smith.

30

By Mr. Nashel:

Q. All the items shown on the list from which your are reading refer to payments that were made to creditors of the apartment house? A. That's right.

Mr. Gough: If your Honor pleases, you are not thinking I hope there is anything on that list which indicates that is the fact.

40

The Court: I haven't seen the paper yet.

Mr. Gough: The paper speaks for itself.

The Court: Yes.

By Mr. Nashel:

10 Q. What was the condition of the real estate market at the time of the execution of the trust agreement? A. Well, I was a builder at that time. The condition in 1924—

Mr. Gough: If your Honor pleases he is not entitled to qualify.

The Court: I think I will admit it. He said he was a builder.

20 (Witness continuing) I was a builder in 1919, 1921, 1923 and in 1924. While I wasn't building, conditions at that time were excellent.

By the Court:

Q. What do you mean by that? A. The slump in the real estate market then wasn't what it is today, or a year ago.

Q. I don't know what it is today or a year ago. The record doesn't show it. A. The conditions were good in 1924.

30

By Mr. Nashel:

Q. Do you know the value of the apartment house 880 Boulevard, Bayonne, at that time?

Mr. Gough: I object on the ground he is not entitled to state.

The Court: If he is a builder he can state it.

The Witness: The apartment was valued at \$185,000 to \$190,000.

40

By the Court:

Q. How many rooms? A. 102 rooms.

Q. What sort of construction? A. Up-to-date.

Q. What do you mean by up-to-date? A. I have a mortgage loan from the Colonial Life Insurance Company for \$100,000.

Q. I am trying to find out what construction it was? A. Brick. 10

Q. You builders and people dealing in building know there is a general way of ascertaining the value of buildings by the number of rooms and the manner of construction, instead of taking the cubic feet area which used to be taken years ago? A. That's right.

Q. Also that value per room depends upon the sort of construction, whether it is entirely fire proof? A. A semi fire proof building. 20

Q. How much a room do you say it was? A. I rented them in 1923.

Q. We are speaking about 1924. A. In 1924 at \$20.00 a room.

Q. How much a room? A. \$20.00 a room.

Q. For rental value? A. Yes.

Q. I am speaking of the cost value. A. The cost value is about \$175,000.

Q. You say that, but what do you base that on? Instead of figuring up the cubic feet— A. This list will show there was a \$100,000 mortgage. 30

Q. That doesn't indicate a thing on value. A. The income of the building brought it to around \$24,000 a year.

Q. You can't tell me the cost per room, can you? A. The cost per room I would say at that time was \$1,500.00 a room.

Q. That wouldn't bring it up to the price you are stating? A. That doesn't include the land.

Q. I am not including the land. A. With the land it would cost about \$1,750.00 a room. 40

Q. How many rooms in the house? A. 102 rooms, which did not include the janitor's apartments.

Q. How many rooms in the janitor's apartments? A. Four.

Q. Was it an elevator building? A. No, sir.

10 Q. Was there any steel construction in it? A. Yes, sir.

Q. To what extent? A. Well, it had steel until the second floor.

Q. How many stories in height? A. Four stories.

Q. You could have built a four story building without steel construction? A. The architect made the plans but the building code did not call for it at that time. But it has been modified  
20 now, and changed.

By Mr. Nashel:

Q. Were you present at the sheriff's sale at the Court House in Jersey City when the apartment house and two other properties were put up for sale? A. I was present, yes, sir.

The Court: Has this apartment house been sold?

30 Mr. Gough: If your Honor please, the situation there is this. In one of these suits there was a foreclosure which embraced the apartment house, and when we came to sell we did not sell the apartment house.

The Court: Was that by consent or an order of the court?

Mr. Gough: It was by agreement with Mr. Abramson who then represented the  
40 Gollins.

The Court: Was there a court order requiring the severance?

Mr. Gough: No.

The Court: The reason I ask is glancing through one of the files I notice a restraint against a foreclosure sale and it was lifted subsequently. There is so much complication in it I am asking for information to enlighten me. 10

Mr. Gough: There was no court order on that.

By Mr. Nashel:

Q. What were the numbers of the other two pieces of property? A. There were four pieces. There were three foreclosure suits.

Q. They came up at the same time? A. They all came up at the same time. 20

Q. State those properties. A. 249 Broadway was sold. 501 Boulevard was sold and 499 Boulevard was sold, and 772 Avenue C. was sold, excepting the apartment house. That was not sold.

By the Court:

Q. Was there a house on 10th Street? A. Yes, that is in the rear of 249 Broadway.

By Mr. Nashel: 30

Q. All these properties were formerly owned by your mother? A. That's right.

Q. And pledged to secure money which was used in the construction of 880 Boulevard, Bayonne? A. That's right.

Mr. Gough: It is leading.

The Court: There is a better way of proving it. His statement cannot determine it. 40

Mr. Gough: Nothing in the mortgage to that effect.

The Court: You can bring out conversations between the parties which will indicate there was a pledge.

10 By Mr. Nashel:

Q. Prior to the execution of the trust agreement do you know how long Judge Roberson had represented your mother and father? A. So far as I know all my lifetime Judge Roberson was our counsel.

By the Court:

Q. How old are you? A. Thirty-four.

20 The Court: That bears out what Judge Roberson said. He said about twenty five years.

By Mr. Nashel:

Q. Did you have any conversation with Judge Roberson prior to the execution of the trust agreement? A. No, sir.

By the Court:

30 Q. Did you help him to mould it into its present shape? A. No, sir.

Q. He said you had discussions with him upon which this paper was fabricated? A. No, sir.

By Mr. Nashel:

Q. Now getting back to the sheriff's sale. The apartment although included in the final decree was not sold? A. That's right.

Q. Were you present at that sale? A. Yes, sir.

Q. Was that done at your request? A. No, sir.

40 Q. Or at the request of any one representing you or your parents? A. No, sir.

By the Court:

Q. Mr. Roberson said it was done at the request of Mr. Abramson. Did Abramson ever represent you or your father or mother? A. No, sir.

Q. Do you know a man named Abramson? A. I know who he refers to.

Q. He is an attorney? A. Yes. 10

Q. Who is he? A. Charles Abramson, of Bayonne.

Q. You say he did not represent you in that transaction? A. No, sir.

Q. Was he in attendance at the sheriff's sale while you were there? A. He was there at that time.

Q. Was he there with your father and mother, or either one of you? A. He was there with my father and mother at that time. 20

Q. What was his purpose in being there? A. His father was a friend of my mother and father, and he tried to do something to help them out.

Q. He was there as an attorney? A. No, sir.

Q. Do you know whether he signed any written request as the attorney for you or your father? A. No, sir.

Q. Do you know, or is it the fact? A. His father sent him to my father to see if he could help him out. 30

By Mr. Nashel:

Q. Do you know why the apartment house was not sold at the sheriff's sale? A. As I recall at the sale Sheriff Hannon demanded from Judge Roberson that the apartment house be sold to comply with the fieri facias, and Judge Roberson answered back that it don't have to be sold because they had already a deed to that apartment. So the sheriff says—

Mr. Gough: I object, if your Honor please.

By Mr. Nashel:

Q. Was Mr. Roberson present at this conversation? A. Yes, sir.

10 Q. What did the sheriff say? A. The sheriff said "It is up to you". He wanted to get the record straight.

Q. After the execution of the trust agreement did you go to Judge Roberson and talk to him about a purchaser for the apartment house? A. I did about August or September of 1924. I had somebody who was interested.

By the Court:

20 Q. Give us his name? A. I just can't recall. There was some broker had some land on Eighth Street, between Avenue A and Newark Bay, on Ninth Street. I can't recall the street at this time. There was about eight or ten lots, and they wanted—

Q. What offer did you communicate to Mr. Roberson? A. This was the offer I got and gave Mr. Roberson. They wanted \$35,000 for those lots. They were free and clear—

30 Q. They wanted to make an exchange? A. Yes. If we sold them that apartment for \$170,000 and take back a mortgage for \$35,000 on the apartment and \$35,000 would be our equity in the other ten lots.

Q. Judge Roberson refused that, did he? A. They turned the offer down.

By Mr. Nashel:

Q. Did Judge Roberson or Mr. Annett ever come to you after the execution, of the trust agree-

40

ment and talk to you about the sale of that house?

A. Never.

Q. At the time the trust agreement was executed how was the apartment house rented? A. 100%.

Mr. Nashel: That's all.

10

Cross Examination by Mr. Gough:

Q. Did you ever go to them about a sale? A. Go to who?

Q. To Roberson or to Annett? A. I went to Roberson about the last proposition, yes.

Q. After that did you go to them? A. After that I didn't have anything up at that time.

Q. Did you go to Mr. Annett after that with any offer? A. No, sir.

20

Q. Were you trying to get offers? A. I was trying to get some decent offers that was satisfactory, but I couldn't—which seemed to be satisfactory to them.

By the Court:

Q. What offers did you get? A. I was going around and trying to find some one with money.

Q. You couldn't get anything satisfactory to them. You must have reported to them? A. I reported back to Mr. Roberson a few times that I couldn't really get anything that was satisfactory to them.

30

Q. What do you mean by that? A. They wanted the cash.

Q. What did they ask? A. They wanted all the money they put in.

Q. You mean they wanted all the money represented by this sheet they gave you? A. That's right.

40

By Mr. Gough:

Q. And after that money was paid they were out of the situation entirely? A. I suppose so.

Q. How much did they want to sell the property for? A. They were asking at all times \$175,000.

10 Q. And you couldn't get anybody to pay \$175,000? A. I couldn't, no.

Q. And what was the details of the offer that involved the exchange of the lots which was to be taken over at \$35,000? How much was that?

A. The land was \$35,000—\$170,000.

Q. But that wouldn't permit the payment to them of the moneys involved? A. I talked it over with Mr. Roberson and Mr. Roberson got in touch with Mr. Annett and gave him that proposition, and Mr. Annett threw it down.

20

By the Court:

Q. Is that so \$170,000 would not clear Mr. Roberson and Mr. Annett? A. At that time?

Q. Yes. A. I think it would, yes.

By Mr. Gough:

Q. If it was cash? A. Yes.

Q. But you couldn't get any cash? A. No.

Q. You didn't expect them to carry it forever, did you? A. I didn't know what they were to do with it.

30

The Court: Doesn't the trust agreement say how long it should be kept?

Mr. Gough: No, it doesn't your Honor.

The Court: That trust agreement would be taken most strongly against Mr. Roberson if he is the one that prepared it.

By Mr. Gough:

Q. You testified Mr. Abramson's father sent Mr. Abramson to your father? A. Yes, sir.

40

Q. Do you know that? A. When I went up to my father's house—

By the Court:

Q. Do you know it? A. Yes.

By Mr. Gough:

Q. How do you know it? A. Because Mr. Abramson's father was in my house at the time of the sale. 10

Q. On the morning of the sale? A. Yes, on the morning of the sale he was in my father's house.

Q. Where was he in the afternoon? A. He was with me at the Court House.

Q. And was Mr. Roberson there too? A. Yes.

Q. And did Mr. Abramson confer with Mr. Roberson then? A. I suppose he did. 20

Q. And he was there for your father only as a friend? A. That's why he was there—to see what took place at the sale.

Q. And did you hear the conversation between Mr. Roberson and Mr. Abramson at that time? A. No, sir.

Q. Was that the day the sale was held? A. Yes, sir, at the Court House.

Q. And did Mr. Annett deliver shortly after that or at that time to Mr. Abramson a paper which he gave to your father? A. I think so, after the sale; yes, sir. 30

Q. Have you that paper? A. I don't think I have that paper with me.

Q. But you have the paper anyway? A. I think there is a copy lying around.

Q. When was that sale? A. April 29, 1926.

Q. Will you read over that paper and tell me if that is a copy of it or a duplicate original of 40

it that was furnished to Mr. Abramson at that time? A. I think so; yes, sir.

Mr. Gough: I will have it marked for identification now.

(Paper marked C1 for Identification.)

10

Q. Who secured that paper from Mr. Abramson?  
A. As far as I know Mr. Abramson kept that for quite a while—for a period of six or eight months. He gave it to me about six or eight months later.

Q. When did you first see it? A. He told me he had something—

By the Court:

20 Q. When did you first see it? A. About six or eight months later.

By Mr. Gough:

Q. You saw the paper that day and read it, didn't you? A. No, sir.

Q. Don't you know that Mr. Roberson in his own handwriting made that paper up that day and gave it to Mr. Abramson to read it at that time? A. I wasn't there at the meeting between Mr. Abramson and Mr. Roberson.

30

The Court: Mr. Gough, the paper you are showing the witness is in typewriting. You said the paper was in Mr. Roberson's handwriting.

Mr. Gough: Yes.

By Mr. Gough:

Q. Where is that paper? A. I haven't got it.

40 Q. You had it? A. I haven't it here. I haven't seen the paper to tell you the truth for about three years.

By the Court:

Q. Was the paper you saw written out in long-hand or was it typewritten? A. It was in typewritten form. For a fact it is a duplicate of that one there.

By Mr. Gough:

10

Q. And it was given to Mr. Abramson at the day of the sale? A. Yes.

Q. At the sheriff's sales room at the Court House? A. Yes.

By the Court:

Q. How do you know that if you didn't see the paper? A. Because they were together at that time—Mr. Abramson and Mr. Roberson.

Q. Did you see Mr. Roberson give him the paper? A. No, sir. 20

Q. Did you see the paper that day? A. No. I know Abramson said he had something for my father's interest.

By Mr. Gough:

Q. And Abramson took the paper away? A. Yes.

Q. And you didn't see it for six or eight months? A. Yes.

Q. What became of it in the meantime? A. He had it all the time. 30

Q. You didn't have it? A. No, sir.

Q. Did your father have it? A. No, sir.

Q. Are you sure of that? A. Yes, sir.

Q. Did you visit Burnett & Murray in regard to it? A. Yes.

Q. Did you go with your father? A. No, sir.

Q. Who went with you? A. My mother.

Q. Did you have that paper? A. At that time I saw the paper first. 40

- Q. When was that? A. In March, 1927.
- Q. And you left that paper with them, didn't you? A. I think so, if I am not mistaken.
- Q. And that's where the paper is? A. Yes, that reminded me it was over there.
- Q. Where did you get the paper that day? A.
- 10 From Mr. Abramson. The sale was in April, and I went to them in March, 1927.
- Q. How did you get it from Mr. Abramson? A. I went up there to ask him to help me out.
- Q. Why did you go up there? A. Go up to who, to Mr. Abramson?
- Q. Yes. A. Because I knew he had something. He said he had something that will help me out sometime.
- Q. When did he tell you that? A. Right after
- 20 the sale.

Mr. Gough: That's all.

MAX GOLLIN, being sworn:

Direct Examination by Mr. Nashel:

- Q. Mr. Gollin, you are one of the defendants in this suit? A. Yes, sir.
- 30 Q. Where do you live? A. 878 Broadway.
- Q. How old are you? A. Sixty-three.
- Q. Do you remember going to Judge Roberson for a loan? A. Yes, sir.
- Q. When was that about? A. I couldn't tell you the date.
- Q. Do you remember when you and your wife executed a trust agreement and a deed to the Annett-Mahnken Realty Company? A. Yes, sir.

40 Mr. Gough: I object, if your Honor

please. There is no trust agreement executed by his wife.

The Court: You had better withdraw your question. You mentioned trust agreement.

By Mr. Nashel:

10

Q. Do you remember when you and your wife executed a deed to property 880 Boulevard, Bayonne, to the Annett-Mahnken Realty Company? A. Yes, sir.

Q. When with reference to the execution of the deed did you go to Judge Roberson? A. I couldn't tell you the date.

Q. I don't mean the exact date? A. About five years ago.

Q. It was before you made the deed to the company? 20

Mr. Gough: I object to it as leading, if your Honor pleases.

The Court: It must have been before he made the deed.

By Mr. Nashel:

Q. What did you say to Judge Roberson about this loan? A. I came to him and asked him for a loan. 30

By the Court:

Q. Tell us the conversation you had as best you remember it. A. I asked him for a loan on the apartment house, and he says I will go and see the apartment first and let me know in a few days.

Q. How much loan did you ask for? Tell us the conversation you had with Mr. Roberson. A. Then I went around in a few days— 40

Q. No, tell us the conversation you had that day. A. He told me he would let me know in a few days.

Q. You say you went there to get a loan. Was there a loan mentioned? A. I told him on the apartment house.

10 Q. You didn't ask him that day? A. No.

By Mr. Nashel:

Q. You came back a few days later? A. Yes.

Q. What conversation did you have with him that time? A. I asked him I wanted a second mortgage on the apartment of \$40,000. He says "I will see Mr. Annett and try to do that, but bring me a list of creditors and the amount, and how much money you need." I had a list prepared. I brought him a list of mortgages, judgments and everything.

20 Q. I show you Exhibit D2, and ask you if that is the list you are referring to? A. It was typewritten.

The Court: That is not the list. Why not call for the list if they have a typewritten list?

30 Mr. Nashel: Have you another list, Mr. Gough?

Mr. Gough: No typewritten list. That is the only list we have.

By Mr. Nashel:

Q. Will you examine this list again and tell us whether or not that is not the list you gave to Judge Roberson at that time?

Mr. Gough: The witness has already testified.

40

The Court: I will let him say. He might contradict himself.

(Witness) A. I never saw that list.

Mr. Gough: Referring to Exhibit D2?

The Court: Yes, D2.

10

By Mr. Nashel:

Q. You remember Mr. Gollin that a list was given to Judge Roberson before this deed was executed by you and your wife? A. He gave me a list in typewriting with his signature on it.

By the Court:

Q. Who gave it to you? A. Mr. Roberson.

20

By Mr. Nashel:

Q. You testified before that you had a list prepared of the creditors on the apartment house?

A. Yes, sir.

Q. Who prepared that list? A. My son.

Q. Do you know in whose handwriting Exhibit D2 is? A. This is my son's writing.

Q. That is in your son's writing? A. Yes.

Q. I ask you if that is the list which was given to Judge Roberson before you executed the deed to him?

30

Mr. Gough: I object to it as leading.

The Court: I will sustain the objection. I have a recollection of what became of that list. If he didn't give it to anybody how can he say who else did?

Mr. Nashel: That is what I am asking, if he gave that list to Judge Roberson.

The Court: I will let him answer that.

40

(Witness) A. I gave it.

By the Court:

Q. Do you mean to say you gave him that list? A. Yes.

10 Q. Was there any person present with you when you gave it to him? A. Not to my recollection.

The Court: I am pretty sure Irving Gollin testified he gave it to him. However, go ahead.

By Mr. Nashel:

Q. How long had Judge Roberson represented you and your wife before this transaction took place? A. Oh, about twenty-five years.

20 Q. Did you tell Judge Roberson at that time what property you owned? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. And a short time before this transaction Judge Roberson had made a loan on one of your properties? A. Yes, sir.

Mr. Gough: I object.

The Court: The questions are leading.

30 Mr. Nashel: He is a hard witness your Honor.

Q. Was a loan made on the property 772 Avenue C. Bayonne? A. Yes.

Q. Before this transaction? A. Yes.

Q. By whom? A. By Mr. Roberson.

By the Court:

Q. How much of a loan? A. \$3,000.

By Mr. Nashel:

40 Q. Before the execution of the deed to the

apartment house you and Mrs. Gollin were the owner of several pieces of property in Bayonne?

A. Yes, sir.

Q. Do you remember the numbers of those properties? A. Yes, sir.

Mr. Gough: Objected to as immaterial 10  
and irrelevant.

The Court: I will receive it subject to  
your objection.

By Mr. Nashel:

Q. State the numbers. A. 772 Avenue C.  
462 Avenue C. 499 Boulevard. 501 Boulevard.  
249 Broadway.

By the Court:

Q. Did you own a piece of property on West 20  
10th Street? A. No. 9 West 10th Street.

By Mr. Nashel:

Q. Before you executed the deed to the apart-  
ment house you had mortgaged those properties?

A. Small mortgages, yes.

Q. Through whom did you do that? A. Mr.  
Roberson.

Q. What did you put those mortgages on the  
properties for? A. Which mortgages do you 30  
mean?

The Court: The mortgages which were  
placed upon your several properties.

Mr. Gough: My objection is going to  
all these questions, if your Honor please.

The Court: How is it significant?

Mr. Nashel: To show where it went to.

Q. Why did you put the mortgages on the  
several properties you just testified to? 40

Mr. Gough: I object.

The Court: I will sustain the objection as to why he did it.

By Mr. Nashel:

10 Q. Why did you obtain the moneys on these mortgages?

Mr. Gough: I object to it.

The Court: I will overrule your objection. I understand that the purpose was to put it into the apartment house. Was it before the execution of the agreement?

Mr. Nashel: Yes.

The Court: How is it material?

20 Mr. Hirschberg: It is material because the list of claims or the list of debts which was submitted to the complainant before the trust agreement was executed contained items which were paid from the proceeds of these mortgages.

The Court: All right, I will receive it.

30 (Witness) A. Those mortgages I gave security to the K. B. Construction Company in Newark.

The Court: I don't know what he is referring to.

(Last question repeated.) A. To help pay the bills on the apartment house.

By Mr. Nashel.

40 Q. What security was the Annett-Mahnken Realty Company to have for the moneys advanced?

The Court: Tell us what was said between the parties.

By Mr. Nashel:

Q. How much money was the Annett-Mahnken Realty Company to advance?

10

The Court: I will overrule that. Ask him the conversation between the parties.

By Mr. Nashel:

Q. What conversation did you have with Judge Roberson before the deed was executed by you and your wife?

The Court: This means as to the advance of the moneys by Mr. Annett and Mr. Roberson.

20

(Witness) A. They told me they would loan me the money on the apartment house and clear off my property and they should have the apartment house.

By Mr. Nashel:

Q. And that included—

The Court: Don't be putting your own construction of it.

30

By Mr. Nashel:

Q. What was the condition of the real estate market? A. I couldn't tell you. My son was better than I. He could tell you.

Mr. Nashel: That's all.

40

Cross Examination by Mr. Gough:

Q. Mr. Gollin, when you borrowed this \$15,000 on this other property you have testified to who was your lawyer in that matter? A. A lawyer from Newark.

Q. Judge Roberson wasn't in that situation?

10 A. No, he was there.

Q. He was not in any of those situations at all? A. No.

Q. Only where he lent you \$3,000? A. Yes.

Q. So you didn't mean to testify before he represented you— A. In paying out the bills.

Q. Let me finish please. You didn't mean to say he represented you as to these three mortgages that were furnished? A. No, he only represented me to pay off the bills and lend me the  
20 money.

Mr. Gough: That's all.

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CHARLES E. ANNETT, recalled.

Direct Examination by Mr. Nashel:

30 Q. Immediately after the Annett-Mahnken Realty Company took possession of 880 Boulevard, Bayonne, your company opened a ledger and cash account for this property? A. That's right.

Q. And Exhibit D3 is a true copy of your ledger showing disbursements made by the company?

Mr. Gough: I object. The books are evidence to be produced. We have the books here.

40 The Court: Why not take the books?

By Mr. Nashel:

Q. This is a true copy—to save time? A. It is a detail copy taken from the books from time to time when we had a customer.

Q. Does this paper carry the exact figures? A. No.

Q. Does it carry all the figures? A. No, it doesn't carry the mortgages. 10

Q. The disbursements shown on Exhibit D3 are all charged against an account which you had opened known as 880 Boulevard, Bayonne, is that right? A. That is correct.

Q. You testified Mr. Annett before the Special Master, Charles E. Hendrickson, that you took assignments of various mortgages on other properties of the Gollins as collateral security in the event of a deficit arising out of the sale of the Boulevard property, is that right? A. I would have to read that testimony. 20

The Court: Read it to him.

Mr. Gough: I don't want to be technical, but he is his witness.

The Court: He is an interested party.

Mr. Gough: Yes.

By Mr. Nashel:

Q. In depositions taken before Judge Murphy on the 25th day of April, 1928, do you remember the following question and the following answer: "Q. And that is the reason why you did not attempt to sell the apartment house? A. I had been attempting to sell the apartment house— 30

Q. (Interrupting) At that time. A. At that time, there was no attempt made on my part. They were handling the proposition of the sale of the apartment house themselves?" A. I think I testified to that. 40

Q. "Q. And you made no attempt to sell the apartment house? A. I did not, at that time." Do you recall that? A. If I made that answer it is true.

10 Q. "Q. As to the mortgages that you took by assignment, you said something before about these mortgages being collateral for debts that were contracted in connection with the construction of the apartment house? A. Why, from the day that I went into it, I was of the personal opinion that the apartment house would never bring the amount of money that would be necessary to clear the debts against it, and these were given to take care of any deficiency in the sale when a sale could or would be made." Is that correct? A. Yes.

20 Q. Upon what do you base your answer that these mortgages were to be held by you as collateral? A. On what do I base my answer?

By the Court:

Q. Was there any conversation between you and the Gollins? A. Why, certainly. When I went into this transaction I could see on the face of it it would be impossible to get the amount of money they asked us to put in.

30 Q. Tell us the conversation? A. It is a good many years ago. On any deficiency I was to get the proceeds of the mortgages.

Q. Tell us the conversation. When you say *get* that is a conclusion. A. They were to turn over to me those mortgages.

The Court: I will have to strike that out. I have to make that deduction.

40 The Witness: I can't remember the exact conversation at all.

By Mr. Nashel:

Q. Why didn't you include these other properties in the trust agreement? A. Are they in?

The Court: He said why didn't you.

The Witness: I don't know. I didn't see it until after it was drawn. 10

By Mr. Nashel:

Q. You knew it covered the property at 880 Boulevard, Bayonne? A. Yes.

By the Court:

Q. If you were to have those mortgages as collateral security the question is why weren't they included in the trust agreement? A. I don't know. 20

Q. You only saw it after it was drawn? A. Yes.

Q. Did you see it before it was executed? A. I read it at the time I signed it.

By Mr. Nashel:

Q. You did not intend to take these mortgages as collateral? They were held by other people.

The Court: I will overrule that question. 30

By Mr. Nashel:

Q. Nothing was said at that time that you were to have the mortgages on any other property as collateral security? A. I was to have these mortgages.

By the Court:

Q. Why do you say that? That must be based on some agreement or talk. You may have thought you were to have them. Tell us what 40

that statement of yours is based on? A. There was one collateral mortgage there held by the Baldwin Lumber Company which I paid a large sum of money on, and that covered, if I remember correctly, property other than 880 Boulevard.

10 Q. Was you taking that over as a result of any talk with the Gollins? A. Yes.

Q. Well, tell us that talk. A. That I can't remember.

By Mr. Nashel:

Q. What was the condition of the real estate market at that time? The time I am referring to was the execution of the trust agreement. A. It was just on the break.

20 By the Court:

Q. What does that mean? A. The real estate market had reached its peak and was on its down grade as to values.

Q. What do you base that on? A. On the proposition that property which was selling for five and six thousand dollars was dropping to four and five thousand.

Q. In 1924? A. Yes.

30 Q. Were you in the County Board of Taxation at that time or was it before that? A. That was before that.

By Mr. Nashel:

Q. When would you say Mr. Annett you first saw the trust agreement? A. The trust agreement? I think about the same time the deed was signed.

Q. Would you say after it was executed? A. I saw it at the time I signed it.

40 Q. That is before you signed the agreement it

was presented to you. You signed it as president? A. Yes, I signed it as president of the Annett-Mahnken Realty Company.

The Court: And he said he read it before he signed it.

10

By Mr. Nashel:

Q. Why didn't you include these other properties at that time?

Mr. Gough: It is immaterial.

The Court: You can bring out conversations, but the question of intention is to be deduced from the conversation. I am the one to deduce what the intention was from the testimony elicited.

20

By Mr. Nashel:

Q. Do you remember Mr. Gollin, Sr., presenting a list to you of the debts against the apartment house before the trust agreement was executed? A. No, Mr. Gollin, Sr., didn't present it to me.

Q. Who presented it to you? A. I saw it in Mr. Roberson's office in the presence of Mr. Irving Gollin.

30

Q. Is Exhibit D2 the list? A. This exhibit in the blue ink or green ink is the one I saw.

Mr. Nashel: That's all.

Mr. Gough: No questions.

40

HORACE ROBERSON, recalled.

Direct Examination by Mr. Nashel:

Q. Judge, do you recall conversations that you had with Mr. Gollin, Sr., prior to the execution of the trust agreement?

10

The Court: That's a pretty hard question.

(Witness) A. Only one or two. His conversations with me were that he wanted me to try and help him out because of trouble his son had gotten him into, and to save him from disaster.

Q. And he told you at that time that he and his wife had mortgages on their properties to help their son? A. Yes, he told me that, and also there were some judgments against him and his wife—or his wife, rather.

20

Q. And they came to see you to help them out in their dilemma? A. Yes.

Q. And what was said at that time between you? A. That is about all. The conversation as to the amount of it and the particulars of it were carried on with Irving Golin largely. Irving came there several times. I might say almost every day Irving was in the office.

30

Q. And you represented the Gollins and the Annett-Mahnken Realty Company at that time? A. I thought I represented both of them.

Q. I show you a certified copy of a mortgage made by Betsey Gollin and her husband to Spencer D. Baldwin. Are you familiar with the execution of that mortgage? A. I will look at it. No.

40

Q. Was that mortgage cancelled by your office? A. I think so. Mr. Gollin told me to pay him thirty-five hundred and some odd dollars—it is

on that list—and this instrument was surrendered and cancelled.

Mr. Nashel: I offer it in evidence.

Mr. Gough: Objected to as irrelevant and immaterial. We are not basing any claim on it except the amount paid on it. 10  
That is right Mr. Roberson, isn't it.

The Witness: Yes.

The Court: All right.

(Mortgage marked Exhibit D4 in evidence.)

By Mr. Nashel:

Q. Now Exhibit D4 Judge is a mortgage for \$37,000 and that was cancelled on the payment of \$3,500.00 by you? A. By order of Irving Gollin. He told me what to give him. 20

By the Court:

Q. You mean a \$37,000 mortgage is cancelled on payment of \$3,500.00? A. Yes.

By Mr. Nashel:

Q. Why was that done? A. Because Mr. Gollin told me.

By the Court: 30:

Q. You are referring to Mr. Irving Gollin? A. Yes, because all the work was done through him.

Q. Was that the mortgage the assignment was taken of? A. No. Mr. Annett incorrectly referred to that. This covers the apartment house and was cancelled and paid off by us.

By Mr. Nashel:

Q. Do you remember Irving Gollin or his 40

father coming to you on several occasions and demanding that you cancel the mortgages on their other properties? A. Once, I think, Mr. Irving Gollin came and demanded that we should do so.

10 Q. Why was this mortgage Exhibit D4 cancelled and the mortgages on their other properties not cancelled? A. That mortgage involved only the apartment house, and we had no claim only on the apartment house, and we had a deed for it.

Q. The \$15,000 mortgage held by the K. B. Investment Company also covered the apartment house? A. And other properties.

Q. And that was the reason you did not cancel that mortgage of record? A. True.

20 Q. Later on that mortgage and the mortgages covering their other properties were foreclosed? A. Yes.

Q. Did you know Judge these moneys from other mortgages of the Gollins other than the Boulevard property was used in the Boulevard house? A. Only that seventeen or eighteen hundred that was paid to the brick company. I loaned them of our own funds \$3,000. The claim was paid to that brick company and the balance given to Mr. and Mrs. Gollin. What was done with it I don't know.

30

By the Court:

Q. That was before the trust agreement? A. Oh, yes; sometime before that.

By Mr. Nashel:

Q. Did Mrs. Gollin come to you on several occasions and demand that you cancel the judgments held on their other properties? A. Never.

40

Q. Did Mr. Gollin, Sr., even come to you? A. No.

The Court: You mean for that purpose.

(Witness) A. The only person that ever talked to me about it was Irving Gollin.

10

Mr. Nashel: That's all.

By the Court:

Q. Did Mr. Irving Gollin make any demand that you cancel the judgments? A. Yes.

Cross Examination by Mr. Gough.

Q. Judge, in regard to this Baldwin mortgage the account doesn't pray allowance for \$37,000, does it? A. No.

Q. Just the amount that was paid? A. Thirty-five hundred and some odd dollars.

20

Q. Judge Roberson, I show you C1 for identification. Will you look at that paper? Was that delivered to anybody for the defendants? A. A copy written in my own handwriting was delivered to Charles H. Abramson.

Q. Where? A. At the Sheriff's sales room in the Court House.

Q. On the date of the sale? A. Yes.

30

Q. Is that a true copy? A. It is the original copy—No, that's a copy.

By the Court:

Q. If you delivered the original of that how did you get it back? A. Mr. Abramson came to the office and we made duplicate copies from it.

By Mr. Gough:

Q. What's your recollection of that situation? A. Judge Carrick's assistant, Miss Maccracken

40

was there. I was sitting at the table with Miss Maccracken. Mr. Abramson came in and said he represented the Gollins. They were on the outside of the rail.

By the Court:

10 Q. Who? A. The Gollins, but I don't remember which ones.

Q. Was that statement of Abramson's said audibly so they could readily hear it? A. No, they stayed outside of the rail. He asked me what I could do. There were several adjournments and Vice Chancellor Fielder had dissolved the stay of the Sheriff. He asked me under what terms and within what time they could redeem. I consulted Mr. Annett and we added all the  
20 decrees. There were three decrees. It was agreeable to him. He went outside and consulted at the rail. I don't know what he said but he left and went outside of the rail. It was agreed between me and Mr. Abramson. He was a lawyer and I felt he had a right to represent them. We gave them thirty days, knowing it would be at least half that time before the sale could be confirmed, to pay to us or the Sheriff the amount of money represented by the decrees and then we  
30 would reconvey all the properties sold by the Sheriff at that time. It was further agreed however I should bid for these properties not more than \$30,000, and added to the amount of the three decrees was a certain amount which the Gollins owed to Mr. Annett or the Annett-Mahnen Realty Company for insurance premiums. Now that original agreement signed by Mr. Annett was delivered to Mr. Abramson. This is an exact copy of it. Mr. Abramson came to my  
40 office three or four times, and as I understood to Mr. Annett's office which is next door, saying

they were making efforts to raise this \$30,000, or whatever it was. Finally at the end of thirty days he came in and said "Go and take your deed because we can't raise the money," and we went in and paid the costs—that was all that was necessary to pay—and took the deed up sometime in May, I don't just remember when it was, the deed was taken for the two tracts. It was agreed between Mr. Abramson and me also that the amount due the Annett-Mahnken Company which was not in the decree—that that should not be sold at that time. We should sell the other buildings and not that, because the decree did not include our expenditures. When I say our, I am speaking about our clients. Those decrees only represented the mortgages which were being foreclosed.

10

20

Mr. Gough: I would like to offer that at this time.

The Court: All right.

(C1 for identification marked Exhibit C3 in evidence.)

Mr. Gough: That's all.

The Witness: I am in a strange position here.

Mr. Gough: I am through with you as far as cross-examination goes.

30

The Witness: There are some things I noted down in rebuttal.

Re-direct Examination by Mr. Nashel:

Q. Just a minute, Judge. Was anything said prior to the execution of the trust agreement with reference to the other mortgages on the property of the Gollins? A. Not a word that I remember. Excepting this, that at all times before and after

40

wards he was seeking to know how much money the property would have to be sold for in order to pay off the advances that the Annett-Mahnken Company had made, and had been made for these other mortgages. He always wanted to know that. That is the reason for this typewritten statement here marked—

Mr. Gough: Exhibit D3.

(Witness continuing) That statement was made up by me, and I think Mr. Gollin was standing alongside of me, from the Annett-Mahnken Company books, and I went to my office and had it copied.

20 Q. Do you remember receiving Exhibit D2 from either Mr. Gollin, Sr., or Irving Gollin? A. That was brought to me by Irving Gollin.

Q. And in that list is a statement as to the other mortgages on the property of the Gollins? A. On the back there is some statement—\$15,000, \$3,000 and \$3,200.00.

30 Q. Will you read what is stated on this statement as to the properties covered by those mortgages? A. De Vin, 772 Avenue C, and Lipschitz, 449 Boulevard. Lipschitz didn't hold that. A woman by name of Markowitz held it, and De Vin didn't hold it.

By the Court:

Q. What about the others? A. De Vin—Myrtle A. Reid.

Q. De Vin is \$15,000? A. Yes, two mortgages—eleven and four.

Q. There are only three mortgages? A. Four mortgages.

40 Q. Four mortgages in the three items? A. But the first page represents the claims we were to

pay as construction claims. These other claims were added.

Q. He said the both sheets were handed to you at the one time. A. Yes, but there was a type-written part too.

Q. Tell us what you mean? A. The first page were the claims that were mostly unsecured. The second were mortgages. Those three mortgages I have mentioned and some other items here were of secondary consideration. 10

Q. Why do you say that? What do you base that on? A. On what he said. These were the people who were pressing.

Q. The first page? A. Yes. The \$1,500.00 and \$500.00 belonged to their own sister and was never paid. A \$1,000 coal bill was never paid.

By Mr. Nashel: 20

Q. Do you know where this Newell and Shilowitz mortgage is now? A. I do not, but I am inclined to think it is in our possession.

Q. That mortgage was paid by the Annett-Mahnken Realty Company? A. Yes.

Q. Why wasn't it cancelled of record? A. Because we paid it off and had a right to hold it until we were repaid.

Mr. Nashel: I object to it. 30

Mr. Gough: He is your own witness.

The Court: He said he considered he had a right to hold it.

By Mr. Nashel:

Q. And that was the consideration with reference to the other mortgages that were paid and assigned to the Annett-Mahnken Realty Company and foreclosed by the Annett-Mahnken Realty Company? 40

The Court: What does that question comprehend?

Mr. Nashel: Whether he had a right to do it.

(Witness) A. The other two mortgages never  
10 were paid off by the Annett-Mahnken Realty Company. That \$3,200.00 mortgage I paid out of my own private funds and I assigned it to Mr. Annett, and they gave me security for it so they might foreclose it. The same thing happened to the \$3,000—from other funds.

By the Court:

Q. They were assigned for the purpose of foreclose? A. Yes, sir.

20 By Mr. Nashel:

Q. Why weren't those mortgages paid out of the funds of the Annett-Mahnken Realty Company? A. Because they didn't have the funds, and Mr. Irving Gollin was pressing me and Mr. Lipschitz was pressing me because it belonged to a client of his and she needed the money, and it happened some money came to me and I paid Mr. Lipschitz three thousand some odd dollars, and  
30 the Annett-Mahnken paid me the interest.

Q. Does the Annett-Mahnken Realty Company owe you that money now? A. They do. I have trusted them with it and I have a memorandum to show that money is mine.

Mr. Nashel: That's all.

(Further hearing continued to June 17, 1930.)

Continuation of Final Hearing before Hon. JOHN  
J. FALLON, Vice-Chancellor, Chancery Cham-  
bers, Jersey City, June 17, 1930.

Mr. Gough: If your Honor please, I think they 10  
have finished their direct examination of Judge  
Roberson whom they had called on their case,  
and there are a few questions I wish to ask Judge  
Roberson on re-cross.

The Court: All right.

HORACE ROBERSON, recalled.

Re-cross Examination by Mr. Gough:

Q. Will you state Judge Roberson, the conver- 20  
sation you had with Irving Gollin when this  
declaration of trust was being considered as to the  
amount to be raised?

Mr. Hirschberg: I would like to object  
on the ground that the declaration of trust  
speaks for itself.

The Court: Aren't you confined to the  
language of the declaration of trust in this  
matter Mr. Gough? 30

Mr. Gough: Your honor has permitted  
the other side to go outside of the declara-  
tion of trust.

The Court: If I have I will let you do  
it, but I don't say that I can consider it.  
If I did I will not stop you from doing it.  
I will receive it subject to your objection,  
Mr. Hirschberg.

(Witness) A. After the first visit to me by Mr. 40  
Max Gollin, probably a second time, all my nego-

tiations were with Irving Gollin. When we were drawing the declaration of trust he wanted me to put into it what Mr. Annett would charge for the services he was to render. I told him that would be a very difficult thing. We didn't know what moneys would be involved or what work  
10 would be involved and we had better leave it for a future settlement, and if we couldn't agree we would leave it to the court, which is not in the declaration. But he stated to me, showing me the statement showing \$36,000—

By Mr. Gough:

Q. You are referring to the first page of Exhibit D2? A. Yes. The first page was worrying him. Some one had offered him a loan of \$40,000.  
20 The other day in testifying I think I said he said they wanted eight per cent, but instead of that he said they wanted \$8,000, which would leave them only \$30,000, and it wouldn't be enough to cover this \$37,600 item. I told him at that time to my mind that was an exorbitant price to pay and he could not afford to pay that, and therefore our talk was how we could advance enough money to cover the items on the first page of this document D2. Then he said if that was taken  
30 care of the items on the second page could be taken care of.

Q. Now was there some talk by Irving Gollin at that time as to what price the apartment was to be sold at? A. Well, he told me he had an offer of \$165,000 for the building, and I think he told me it was not accepted. We learned afterwards sometime it had been rejected before that time. We didn't know that—At least I didn't know that.

40 Q. Will you state the circumstances under which the Devin mortgage and the mortgage con-

trolled by Mr. Lipschitz were paid? A. Sometime after Mr. Irving Gollin came to my office nearly every day for a long time that Devin must have his mortgage—must have his money, and I reported that to Mr. Annett and Mr. Annett said he thought he had some money that was coming into his company and that he would take the mortgage, so we took those mortgages from Mr. Devin by assignment to Mr. Annett. Then Mr. Lipschitz had a \$3,200.00 mortgage. Mr. Lipschitz was very insistent saying that his client—I have forgotten her name now—needed the money very badly; it had only been put out temporarily. After many requests I paid that myself and took an assignment in the name of one of my clerks. 10

Q. Now on this second page of Exhibit D2 there are two items, one to Harry Gollin cash loan \$500.00, and another to Winifred J. Gollin cash loan \$1,500.00. What was the situation in regard to those items? A. They are brother and sister of Irving Gollin and they constantly asked us to pay them. We thought that was in the family and we never raised the money to pay it. 20

Q. Was there any talk at the time of the declaration of trust about them being paid? A. If the building was sold and there was enough money. There is another item of \$225.00 for fees to Israel Lipschitz. That was not paid by us. They were begging us to pay that, but that was counsel fees and we didn't pay it. 30

Mr. Gough: That is all.

Re-direct Examination by Mr. Hirschberg:

Q. Now, Mr. Roberson, you say that the Devin mortgage was taken by assignment. Is that correct? A. Yes, two of them aggregating \$15,000. 40

Q. And the Devin mortgage was part of the items as shown on this exhibit? A. The second sheet.

Q. Now why did you take the Devin mortgage by assignment? Why didn't you pay it? A. That calls for a conclusion.

10 Q. You agreed under the trust agreement to pay the obligations as placed by Gollin and as appears on Exhibit D2, is that correct? A. No, we didn't agree to pay them.

Q. You accepted Exhibit D2 before you entered into the trust agreement, is that so? A. As far as was necessary—

Q. Just a minute! Will you answer the question please?

20 Mr. Gough: I think he answered it.

The Court: He can say yes or no.

The Witness: No.

By Mr. Hirschberg:

Q. Did you return to Mr. Gollin or to any of the Gollins Exhibit D2 with any objection that you might have had against it? A. Mr. Irving Gollin came to see me very often—

30 The Court: Why can't you answer that yes or no?

The Witness: No.

By Mr. Hirschberg:

Q. And in dealing with the trust agreement and dealing with the disbursements in connection with it Exhibit D2 was consulted by you and the Gollins? A. Irving Gollin.

Q. Is that right? A. Yes.

40 Q. And you recognized Irving Gollin as the representative of the Gollins in this matter? A. Yes.

Q. And the Devin mortgage was a mortgage that represented moneys that had been put into the building in the course of construction? A. I knew nothing about it except what Irving Gollin told me.

Q. And he did tell you that? A. He told me this, that he had a construction loan of \$65,000. The Colonial Life Insurance Company took a permanent loan on it of \$100,000. There wasn't enough money to pay the bills that had to be paid. The \$65,000 mortgage was cancelled and these two mortgages were taken back of the \$100,000 mortgage of the Colonial Life. 10

By the Court:

Q. You knew they were construction mortgages so to speak? A. Well, I suppose so. 20

By Mr. Hirschberg:

Q. And you agreed to pay the debts included in connection with moneys used for the construction of that building, isn't that so? A. As far as we were able to do so.

Q. And you did pay the Devin mortgage? A. We did, and took it by assignment.

Q. And why did you take it by assignment? Why didn't you take a cancellation? A. Because we had a right to take it by assignment. 30

Q. Where was that right? A. In the law even a trustee has a right to hold the securities that come into his possession for his reimbursement.

Q. Is there anything in the Gollin agreement to that effect?

Mr. Gough: I object. The agreement speaks for itself.

The Court: Yes. 40

By Mr. Hirschberg:

Q. When was the Devin mortgage paid? A. I can't tell you. The papers will show.

Q. How long after the trust agreement was entered into? A. A couple of months—within a couple of months.

10 Q. And in connection with the Devin mortgage, Devin held two mortgages on other properties? A. No. The mortgage covered three properties. These mortgages covered three properties.

Q. The apartment house and two other properties. Which other properties did it cover? A. 501 Boulevard, I think, and 249 Broadway, Bayonne.

Q. And in whose name was the title to those two properties? A. Betsey Gollin.

20 Q. And did you foreclose all those mortgages? A. I did not—Judge Carrick did.

Q. For whom? A. For the Annett-Mahnken Realty Company.

Q. And the Annett-Mahnken Realty Company was the same corporation mentioned in the trust agreement? A. Yes.

30 Q. And does the Annett-Mahnken Realty Company now hold the properties as a result of that foreclosure? A. Well, they do not. Their subsidiary holding corporation holds them, the Anson Realty Company.

Q. And that company is a subsidiary of the Annett-Mahnken Company? A. It is merely a holding corporation for the Gollin properties to segregate them from other properties of the Annett-Mahnken Realty Company.

By the Court:

40 Q. What was the purpose of doing that? A. Simply to separate them from the Annett-Mahnken

business. They didn't want to mix it with their affairs. There is no other property except the Gollins held in that company.

By Mr. Hirschberg:

Q. Have you the Devin mortgage here in court?  
A. I don't know whether I have or not, or whether Judge Carrick has them. Judge Carrick foreclosed the mortgage. 10

Q. On the second page of Exhibit D2 there is an item here of Myrtle R. Reid mortgage 772 Avenue C \$3,000? A. Yes.

Q. That item appeared on this page and was presented to you before the trust agreement was entered into, isn't that so? A. Myrtle R. Reid never held that mortgage. That is a misnomer.

Q. That item appears on the second page of Exhibit D2 and presented to you before the trust agreement was entered into? A. Yes. 20

Q. You say Myrtle R. Reid is a misnomer? A. She never owned it.

Q. Who did own it? A. John L. Dalrymple.

Q. And when did you discover it was a misnomer? A. I never paid any attention to it. It just occurred to me now when I looked at it.

Q. This mortgage was taken by assignment, wasn't it? A. Yes. 30

Q. And who took that by assignment? A. Annett-Mahnken Realty Company.

By the Court:

Q. Is that the one you said one of your clerks took? A. Another one. I took the \$3,200.00, one in the name of one of my clerks.

By Mr. Hirschberg:

Q. And did you attend to the execution of the assignment? A. I would have to see it to know. 40

Q. Were you present at the transaction involving the delivery of the assignment? A. I am not sure of that.

Q. Do you know who paid the money for this assignment? A. The firm of Roberson & Roberson.

10 Q. And where did Roberson & Roberson get the money from? A. Out of their bank account.

Q. And was it the money of Roberson & Roberson? A. It was the money of Roberson & Roberson.

Q. Did you advance it for the Annett-Mahnken Company? A. We did, and trusted them for it.

Q. And trusted them for it. So that is a debt which is due from the Annett-Mahnken Realty Company to Roberson & Roberson? A. It is.

20 Q. And that payment was made in connection with the transaction between Annett-Mahnken Company and the Gollins—the present transaction? A. I don't know its relation. My partner had charge of this matter, he and Judge Carrick, at the time the suits were started. I didn't have anything to do with it.

Q. And did the transaction take place? A. I had nothing to do with it, but it was somewhere near the time of the filing of the bills in foreclosure by Judge Carrick. Judge Carrick and my nephew had charge of it and I never had anything to do with it after it got into litigation—after the property was to be sold under the fi fa.

Q. And this mortgage was a mortgage on the property belonging to Betsey Gollin? A. Yes.

Q. And it was on the property, the number of which appears on this last page—page 2 of Exhibit D2, which was given to you by the Gollins? A. Yes.

By the Court:

Q. Did I understand you to say that was assigned to the Annett-Mahnken Company and the mortgage foreclosed by that company? A. Yes.

Q. But the Annett-Mahnken Company had not paid any money for the assignment? A. No, we trusted them for it. 10

Q. Why was it done in that way? The reason I ask is I have another case before me involving the same question. A. You will have to ask Judge Carrick. Judge Carrick was employed by Mr. Annett to foreclose the mortgage.

Q. The reason I ask you I have an impression that the Annett-Mahnken Company would not be the beneficial owner of the mortgage. That is my present impression, but I may be wrong. A. Mr. Annett told me I was too friendly with the Gollins and he went to Judge Carrick, and I had nothing to do with the case. 20

By Mr. Hirschberg:

Q. And the reason Mr. Annett went to another lawyer was because he wanted to hold the Gollins in connection with the trust agreement, is that so? A. I have told you all I know about it. When he told me that I dropped out of it and let somebody else do the work. 30

Q. And that mortgage was subsequently foreclosed? A. Yes.

Q. And the title to that property as a result of the foreclosure now belongs to whom? A. Annett-Mahnken Realty Company—No, the Anson Realty Company.

Q. Which is the same subsidiary company? A. Yes.

Q. Judge Roberson, do you remember Mr. Annett testifying on the 19th day of November, 1929, 40

before Charles E. Hendrickson, Master in Chancery, to the following effect in connection with this \$3,000 mortgage—"Q. Did you pay Horace Roberson the amount of \$3,000.00 for mortgage on property known as 772 Avenue C, Bayonne, in the amount of \$3,000.00? A. Is that in the account?

10 Q. That is not in the account. A. I will give the same answer. It is not in the account, I have the check, but it is not here." Do you remember him testifying to that effect? A. No, I don't.

By the Court:

Q. Were you present at that hearing in which he testified? A. Yes, but I don't remember that. I know that \$3,000.00 item is not in this account. It is before the court now.

20

By Mr. Hirschberg:

Q. Now there appears on page 2 of Exhibit D2 the item which reads "Israel Lipschitz, 499 Boulevard, \$3,200.00". What did that item represent? A. That was a mortgage held by a client of his named Markowitz, I think. I paid that out of my personal money and took an assignment of the mortgage.

30 Q. And that item was on page 2 of Exhibit D2 when Exhibit D2 was handed to you by the Gollins previous to the execution of the trust agreement, is that correct? A. It is on the document.

Q. Is that correct? A. Yes.

Q. In whose name is that mortgage? A. That property has been foreclosed. It is held by the Annett-Mahnken Realty Company.

Q. That assignment was taken by one of your clerks? A. Yes, it is my money and it belongs to me now, if we ever get it out of the property.

40

Q. And who holds this mortgage now? A. It has been foreclosed.

Q. Who holds the title? A. The Anson Realty Company.

Q. The subsidiary of the Annett-Mahnken Realty Company? A. Yes.

Q. Now who took the assignment of that mortgage? A. I don't remember. One of my clerks and afterwards transferred for the purpose of foreclosure to the Annett-Mahnken Realty Company. 10

Q. Wasn't it the reverse of the situation? Wasn't it taken in your name for the purpose of foreclosure? A. That may be.

Mr. Gough: This is all taken subject to my objection as being immaterial and irrelevant.

The Court: There is a lot of matter going in which is not material. You told me I allowed a lot of testimony to go in, and I might as well hear it all. 20

Mr. Gough: I want the record to show my objection.

(Witness continuing). I don't remember. I would have to refer to the record.

By Mr. Hirschberg:

Q. Have you the record here? A. No. 30

Mr. Gough: I think, Mr. Hirschberg, that mortgage was foreclosed and we have the foreclosure suit here.

By Mr. Hirschberg:

Q. Will you furnish us with that record? A. I mean the record at the Court House.

Q. Whatever record—whether you have the original papers, or a copy? 40

The Court: Judge Roberson said that assignment was taken in the name of one of his clerks and foreclosed by the Annett-Mahnken Company. He is now asked if it wasn't the reverse of that situation, whether it wasn't taken by him.

10

By Mr. Hirschberg:

Q. I am reading from the foreclosure bill which reads in paragraph 4—"By written assignment dated September 9, 1924, said mortgagee assigned said bond and mortgage to Horace Roberson, which assignment has not been recorded but is in the possession of complainant." And paragraph 5—"By written assignment dated July 20, 1925, said Horace Roberson assigned said bond and mortgage to complainant, which assignment has not been recorded but is in the possession of complainant". A. That evidently is true. That was a mistake we actually took the assignment in the name of one of our clerks, but that is evidently true.

20

Q. Now there was a mortgage of \$37,000 given to Spencer D. Baldwin, dated May 5, 1924? A. Yes.

30

Q. Mortgaging the apartment house. How did the Annett-Mahnken Company deal with the payment of that mortgage? A. That's one of the first items mentioned on the first sheet of Exhibit D2. Mr. Irving Gollin came to me and agreed how much money I should pay to Baldwin. The money that is paid is not the amount shown in green ink. Baldwin was to surrender the mortgage for cancellation. I paid the amount and it was surrendered to me for cancellation. I have no recollection of the amount of the mortgage.

40

Q. Now judge, what did you pay for the can-

cellation of the \$37,000 mortgage of Spencer D. Baldwin? A. I would have to refer to the account. I think there is something on the margin.

Mr. Gough: I think that question has already been answered.

Mr. Hirschberg: I think it is very important your Honor. The line I am asking now is very important. 10

The Witness: That's the amount I paid (indicating).

Q. Judge, how was it you obtained the cancellation of a \$37,000 mortgage on the payment of \$3,556.58?

Mr. Gough: I object to it as repetition. 20

The Court: Why is it repetition?

Mr. Gough: It was testified to before. The same question was asked. We make no charge except as to the actual payment in the account, if your Honor please, which is limited to something less than \$4,000.

The Court: All through a matter of this kind fraud is an essential element and I ought to receive all the testimony for various reasons. Mr. Roberson is not only a trustee but he is a member of the bar. 30

Mr. Gough: On page 79—"By Mr. Nashel: Q. Now Exhibit D4 judge is a mortgage for \$37,000, and that was cancelled on the payment of \$3,500.00 by you? A. By order of Irving Gollin. He told me what to give him. By the Court: Q. You mean a \$37,000 mortgage is cancelled on payment of \$3,500.00? A. Yes. By Mr. Nashel: Q. Why was that done? 40

10 A. Because Mr. Gollin told me. By the Court: Q. You are referring to Mr. Irving Gollin? A. Yes, because all the work was done through him. Q. Was that the mortgage the assignment was taken of? A. No. Mr. Annett incorrectly referred to that. This covers the apartment house and was cancelled and paid off by us."

Mr. Hirschberg: My line of questioning will cover matter which hasn't been testified to and read by Mr. Gough just now.

Mr. Gough: The question is a repetition of the question put at the last hearing.

Mr. Hirschberg: I will withdraw that question and ask this question.

20 By Mr. Hirschberg:

Q. Spencer D. Baldwin held this mortgage as trustee for several creditors, is that so, on the apartment house? A. I have only been informed of it here in these proceedings.

Mr. Gough: If your Honor please isn't that mortgage proof of what it was held for?

30 The Court: Maybe. Some people say in trust for John Jones and it turns out the word trustee is surplusage and they are not bound by it. I will receive it subject to your objection.

By Mr. Hirschberg:

40 Q. And you knew at the time the list was presented to you, D2, and also from your talks with Mr. Gollin and an examination of the mortgage that the mortgage was being held by Spencer D.

Baldwin as trustee for several creditors? A.  
No.

Mr. Gough: I object to what he knew. The mortgage speaks for itself, if your Honor please.

The Court: There is nothing in the mortgage it was held for creditors. 10

Mr. Hirschberg: My question calls for it. Here is a witness who is not a layman and has a \$37,000 mortgage, and by his own testimony he cancelled it by the payment of \$3,556.58. I think for the enlightenment of the court we ought to know from this witness who handled the entire matter, and who is a lawyer, to explain how this came about.

The Court: I think it is necessary to know why a \$37,000 mortgage was cancelled by the payment of \$3,500.00. 20

Mr. Gough: It was answered before.

The Court: He said he is going into a different line of questioning.

Mr. Gough: Why doesn't his question indicate it? He asked the same question.

The Court: He asked whether he didn't know that the mortgage was in the name of Baldwin and was held for others. I will receive it subject to your objection. 30

(Witness) A. My recollection is that Mr. Irving Gollin came to the office and told me how much money the Baldwin Lumber Company should have, and a check was drawn. They went to Mr. Annett and got it. Mr. Baldwin came to me and surrendered the mortgage signed for cancellation. I was told by Mr. Gollin he would do so. I

simply took the mortgage and don't think I looked at it just to see it was properly cancelled.

By Mr. Hirschberg:

10 Q. At the time the Gollins came to you regarding this trust agreement and regarding their financial affairs, didn't you inquire representing the Annett-Mahnken Company how the property was encumbered? A. I only took that list that confronts me.

The Court: Does that list say anything about Baldwin holding as trustee for others?

Mr. Hirschberg: No, sir.

20 Q. If you didn't know anything about the \$37,000 mortgage which was in the name of Spencer D. Baldwin, how did you accept a cancellation of the \$37,000 mortgage upon the payment of \$3,556.58?

Mr. Gough: I object to it as immaterial and irrelevant.

The Court: Why is it? There is a disparity between the two. The statement says \$3,500.00 and the mortgage is \$37,000.

30 Mr. Hirschberg: Especially since the witness did not deny the encumbrances.

The Court: One of the items is a Baldwin mortgage said to be \$37,000.

Mr. Gough: The Baldwin mortgage is not on that sheet.

The Court: What is the first item of Baldwin?

Mr. Hirschberg: \$3,522.90, and the other sheet your Honor reads \$37,607.98.

40 The Court: Is that the amount of the mortgage?

Mr. Hirschberg: The amount of the mortgage is \$37,000, and our contention is that this \$37,000 mortgage represented all of the items appearing on this sheet Exhibit D2 and that \$3,556.58 was paid to the Baldwin Lumber Company and Judge Roberson obtained a cancellation of that \$37,000 mortgage. That included in the \$37,000 mortgage was another mortgage and a judgment which was taken by assignment and subsequently foreclosed, title to which foreclosed property is now in the Annett-Mahnken Company. 10

The Court: I will receive it subject to your objection Mr. Gough, because I am frank to say there is a lot in this case which I am befuddled with. 20

(Witness) A. My recollection is that Mr. Gollin and Mr. Baldwin both said that was all that was due on that mortgage, and I paid the money and cancelled the mortgage.

By Mr. Hirschberg:

Q. Did you talk to Mr. Baldwin? A. Only to take the mortgage.

Q. Did you inquire from Mr. Baldwin before you paid the money as to whether or not he would cancel the mortgage? A. I had the check ready for him and he came there and laid the mortgage down and signed a receipt and walked away. 30

By the Court:

Q. Judge, it is represented that this \$37,000 mortgage contained a lot of items on the first page of Exhibit D2, if it is the mortgage of Baldwin. Did you make any inquiry as to what the items were on Exhibit D2? A. No. I didn't know it until long after. 40

Q. Did you pay any other items on Exhibit D2, page 1? A. Yes, they are nearly all paid individually to the various people.

Q. If that be so it can't relate to the \$37,000 mortgage? A. I paid one to the Sheriff.

10           The Court: What is the fact?

Mr. Hirschberg: The fact is there were two items on the first page paid and assignments taken and the mortgages foreclosed and the Annett-Mahnken Company, the trustee, now hold title.

The Court: I thought Mr. Hirschberg the aggregate amount of Exhibit D2 amounting to about \$37,000 were the items to be secured by the Baldwin \$37,000 mortgage.

20           Mr. Hirschberg: Yes, sir, and the mortgage is dated and executed before the trust agreement was entered into and these items were paid by the trustee, but two items, one a mortgage and one a judgment, were paid by taking assignments instead of getting cancellations and thereafter foreclosures were instituted and title taken and the Gollins deprived of that particular property which is now held by the trustee, although  
30           under the trust agreement and the arrangement they should have been paid and cancelled.

Mr. Gough: Your Honor asked a question as to what was paid on that first page.

The Witness: I think every item on that first page was paid by the Annett-Mahnken Company individually to the people who came either with Mr. Gollin and asked to have checks made out or checks were sent  
40           to them.

By the Court:

Q. The notations on the margin in ink is in your handwriting? A. Yes.

Q. They represented the claims that were paid to your knowledge? A. Yes.

Q. There are two items on Exhibit D2, page 1, that have no marks opposite them. A. I know they have been paid. I have checked them here. 10

Q. You have \$125.00 in your check mark. A. I don't think it has ever been paid.

Q. The lead pencil marking "Hold \$89.00", is that in your handwriting? A. I have no recollection of that. Irving Gollin came to me at different times and told me those things. There are some items we paid afterwards which he hasn't on the list. 20

By Mr. Hirschberg:

Q. Judge Roberson, have you the date when the \$3,556.00 was paid? A. It is in the account in our bill.

Mr. Gough: It is on the first page of Schedule B.

By Mr. Hirschberg:

Q. Have you the date when this mortgage was cancelled? A. No. 30

Q. Can you refer to it? A. No.

Mr. Gough: If your Honor pleases why should Mr. Roberson be asked that?

The Court: He should charge his memory.

By Mr. Hirschberg:

Q. I show you a certified copy of this mortgage and ask you whether it is true as appears on that mortgage it was cancelled on the 21st day of July, 1925? 40

The Court: How would he know the date of cancellation? The Register would be the one to tell you that. You might show him some receipt for the cancellation or some direction for cancellation if you have it there, if it bears any date.

10

By Mr. Hirschberg:

Q. Have you the original mortgage among the records of your office, or the Annett-Mahnken Company? A. No.

The Court: He has already said Judge Carrick might have it.

By Mr. Hirschberg:

20

Q. Do you remember judge whether or not when you paid the \$3,556.58, which was in July 1924, you received at that time the cancellation of the Baldwin mortgage? A. My recollection of it is that Mr. Baldwin came to see me at my office and I had the check ready for him and he gave me the mortgage receipted for cancellation.

By the Court:

30

Q. The date of your check might be significant. A. It may not. Mr. Annett drew the checks and the paper may not have come the same day.

By Mr. Hirschberg:

Q. Do you know whether the mortgage was presented for cancellation immediately after that time?

Mr. Gough: Objected to as immaterial.

The Court: He is trying to fix some date. I will receive it.

40

Witness: A. I don't know. We have a

box in our safe marked "Mortgages for Cancellation," and when this mortgage was cancelled I slipped it in that box and when the clerk took it up and had it cancelled I don't know.

By Mr. Hirschberg:

10

Q. But it was a short time after you paid Mr. Baldwin the \$3,556.58 and you obtained the cancellation of this mortgage that you had the mortgage sent to the Register's Office to be cancelled?

A. The last answer told all that I know about it.

Q. That is you gave it to your clerk? A. No. I said we had a box in our safe marked "Mortgages for Cancellation," and when I was through with it I put it in that box and just when the clerk took it to the court house and cancelled it I don't know. That may not have been sent up that day. When it went I haven't the slightest recollection. I know nothing about it after it passed out of my hands.

20

Q. Did you disburse these items Roberson & Roberson appearing on Exhibit D2, page 1? A. They were checks drawn by the Annett-Mahnken Realty Company and came to me, and I think I paid every one of them and took receipts from the various people. Those amounts are not correct. The amounts varied. Mr. Gollin had some fault to find with them. They were reduced and some interest added to them.

30

Q. Would you say judge that the Baldwin mortgage was not cancelled until after you had paid a major part if not all of the items which appears on page 1 of Exhibit D2? A. The record will show the dates of payments, I don't know. I haven't the slightest idea.

40

By the Court:

Q. Those dates on the left margin of Schedule B, do they refer to the dates of payment? A. These are taken from Mr. Annett's books and I presume they are the dates he drew the checks and passed over to me.

10 Q. They will not indicate the date of payment because they may have been in your possession for a while before delivered? A. I know this is correct because it was drawn under my supervision.

Q. You mean Schedule "B" attached to the bill of complaint? A. Yes.

By Mr. Hirschberg:

20 Q. You can't tell us judge, can you, whether or not—I will withdraw that question. Will you say that this Spencer Baldwin mortgage was cancelled on account of the single payment of \$3,556.58 to Baldwin?

Mr. Gough: Objected to. It calls for an opinion.

The Court: He wants to know whether any other further consideration was paid.

30 Mr. Hirschberg: And the reason I say that, to get my drift if the court will permit me, the mortgage is dated May 8, 1924, the \$3,556.58 payment according to their records was made in July, 1924—two months thereafter. The Register certifies that the original mortgage having been presented to me on the 21st day of July, 1925, by Roberson & Roberson—one year thereafter—it was cancelled. Now which I am driving at is to try to show that the witness paid these other items which  
40 were included in the mortgage and held by

Baldwin, trustee, before the same was cancelled. I am trying to ascertain that. One year having passed by the \$3,556.00 payment and the date when it was delivered to the Register for cancellation, if we establish that, then the witness knew or must have known that this Baldwin mortgage did not cover only the \$3,556.00 but all the other items, and it was a trust mortgage. 10

The Court: If that is the case I will permit it subject to your objection, Mr. Gough. It does seem strange on its face why a \$37,000 mortgage should be cancelled for \$3,556.58. I judge from what he said before that first page of Exhibit D2 contains items aggregating about \$37,000 which items included this Baldwin item of \$3,556.00. Therefore I will receive the testimony subject to your objection. 20

By Mr. Hirschberg:

Q. Now, judge, will you tell us whether or not the Register didn't certify that the mortgage was received on the 21st day of July, 1925, for cancellation, and you having stated that upon the payment of this item—or rather upon the cancellation of the mortgage by Baldwin—you put it in a box which was taken by your clerk, or should have been taken by your clerk, the next day or some time thereafter, whether or not one year having passed you paid other items which appears on the first page of Exhibit D2 before that mortgage was cancelled? 30

Mr. Gough: I object to that because it is argumentative. The question ought to 40

be framed state whether you made any payments by such and such a date.

10 The Court: I think it is complicated. He must have a statement of account showing the dates he made the various payments. The witness calls my attention to Schedule B attached to the bill of complaint which indicates quite a number of items above the item of \$3,556.58 said to have been paid to the Baldwin Lumber Company for construction bill. Why not compare these items with page 1 of Exhibit D2?

Mr. Hirschberg: Yes, I will do that, your Honor.

20 By Mr. Hirschberg:

Q. You testified in the beginning of your testimony this morning that all items on page 2 of Exhibit D2 were to be paid when the property was sold—that that was your understanding with Mr. Irving Gollin?

The Court: He qualified that by saying if there was enough obtained with which to pay them.

30 By Mr. Hirschberg:

Q. What did you mean if enough money was obtained? A. To sell the building.

Q. In order to pay the items which appears on page 2 of Exhibit D2, the understanding was the building would have to be first sold, is that right?

A. Well, whenever it should be sold.

Q. Whenever it should be sold. You would pay no items on page 2 until it was sold? A. I didn't say that.

40

Q. What did you say? What was your understanding? A. My understanding of it was that the items on the first sheet were items owed to creditors who were pressing hard for their money and must be paid at once. The others could wait when the building was sold, and he also told me about the \$165,000. If there was enough money the items on the second sheet could be paid. I think if it had brought \$165,000 it could be paid. 10

Q. Was the understanding it was to be paid, and if it didn't bring \$165,000, or if it wasn't sold, the items on page 2 would not be paid? A. Of course not.

Q. Now, I show you an item which reads "Alex Levy, coal, \$1,000," on page 2 of Exhibit D2? A. Yes.

Q. That appeared on Exhibit D2 when it was presented to you? A. I think so. It is in green ink. 20

Q. I show you a copy of Schedule B and refer you to the seventh items from the bottom, and ask you whether or not the item appearing on the copy of Schedule B is not the same item that appears on page 2 of Exhibit D2? A. Yes, it is.

The Court: You said \$1,000, and this item is \$1,103.00. 30

Mr. Hirschberg: It is \$1,103.00, but he said it is the same item.

The Witness: Mr. Annett paid that. I didn't pay that. This man was furnishing—

By Mr. Hirschberg:

Q. Just a minute. I didn't ask any questions. One year having passed between the time of the payment of the \$3,556.00 item to the Baldwin 40

Lumber Company and the presumed cancellation of the Baldwin mortgage, can you tell us now whether any of these other items appearing on the first page of Exhibit D2 were paid at the cancellation of the Baldwin mortgage? A. If it is a year afterwards they were nearly all probably

10 paid.

Q. What was that last statement they were all probably paid? A. All probably paid. As far as the account shows they were all paid at the time of that cancellation.

Q. Now, in those items, Judge Roberson, appears Newell & Shilowitz mortgage, \$6,500.00 Is that correct? A. Yes.

20 Q. And when that was paid was an assignment or a cancellation taken of that mortgage? A. It was delivered to us.

Q. What was delivered to you? A. The bond and mortgage of Newell & Shilowitz.

Q. And was an assignment taken or a cancellation taken in payment of the \$6,500.00 item? A. My recollection of it is I don't know where that mortgage is. It has been foreclosed and wiped out by a previous mortgage.

30 Q. And who was the complainant in that foreclosure? A. The Annett-Mahnken Realty Company.

Q. And the Annett-Mahnken Realty Company is now the holder of the property? A. Yes.

Q. And the mortgage covers the same item which appears on this list page 1 of Exhibit D2? A. Yes.

Q. Now, on page 1 of Exhibit D2 appears an item described as James Brady Sons Company, \$2,600.00. That represented a judgment, didn't it, judge? A. Yes.

40 Q. And that was included in this mortgage also,

wasn't it? A. I know nothing about what was included in the mortgage.

The Court: What mortgage are you referring to?

Mr. Hirschberg: The Baldwin mortgage.

Q. And the Brady judgment was paid, wasn't it? A. Yes. 10

Q. And was a satisfaction of judgment taken or an assignment of the judgment? A. An assignment of judgment in the name of Miss Smith, who was a clerk in my office at that time.

Q. And for whose benefit was he used? A. It was a woman used for the benefit of Annett-Mahnken Realty Company.

Q. And that judgment is now held by the Annett-Mahnken Realty Company? A. Yes. 20

By the Court:

Q. Whose moneys were used for the payment of that? A. Annett-Mahnken Realty Company.

By Mr. Hirschberg:

Q. And the \$6,500.00 that was used to pay the Newell & Shilowitz mortgage was also the money of the Annett-Mahnken Realty Company? A. Yes. 30

Q. Now, there is another one appearing on page 1 for \$900.00 Hudson Structural Iron Works. Do you know when that was paid? A. No, I would have to refer to the account.

The Court: The last item on Schedule B shows July 14th, John Hannan—Hudson Structural Iron Works, \$1,094.97.

By Mr. Hirschberg:

Q. Was it a judgment in that case? A. I think 40

we paid the item to the sheriff in satisfaction of an execution he had.

Q. You paid that? A. Yes.

Q. And that was paid last year, wasn't it?

The Court: It says July 14, 1924.

10

By Mr. Hirschberg:

Q. When was the judgment taken off record?  
A. I haven't the slightest idea. I presume when you pay it to the sheriff that settles it, and he returns it satisfied. I don't know.

Mr. Hirschberg: That's all.

Re-cross Examination by Mr. Gough:

20

Q. State the circumstances, judge, under which that payment of the coal bill to Alex Levy was made. A. That coal was furnished for the running of the apartment house and it was necessary to have coal there in order to keep the tenants in the building, and Mr. Annett told me he would pay that bill out of the rents he collected because it was not a part of the construction account but a part of the collection of the rents and the expenses of operating the building, and he concluded to pay this bill for coal before we took the apartment over. I didn't pay it. I had nothing to do with it.

30

Q. Did any of the Gollins speak to you about it? A. I think so. Irving Gollin took it up with Mr. Annett, and Mr. Annett paid it in addition with extra coal that was delivered.

Re-direct Examination by Mr. Hirschberg:

40

Q. Judge, why didn't you tell me that on your direct examination before when you said all the items on page 2 of Exhibit D2 was to be paid

when the property was to be sold? A. I didn't notice that item.

Q. There were only five items on D2 on the second page. A. I have told you all I know about it. I didn't know at the time I made that answer it was the coal bill.

Q. Will you look at page 2 again? Perhaps there are some other items you can explain. A. There isn't any items of debit on page 2 I haven't explained. There are some items in lead pencil I might explain. 10

The Court: The Alex Levy coal bill is written in green ink.

Mr. Hirschberg: Yes, sir.

Q. If that was your understanding why didn't you make some notation or entry or some reference to the items which appear on page 2? A. If I put down all the conversations I had with Irving Gollin it would be a volume instead of two sheets of paper. 20

Q. Would you say a discussion involving the payment of bills amounting to \$25,000 was an immaterial item? A. No.

Q. If it was material and if Exhibit D2 represented the moneys you were to pay out, why wasn't some notation or entry in writing made on this page or in any other way? 30

Mr. Gough: That question is not only argumentive but it is hypothetical.

(Witness) A. I haven't any recollection about it.

Mr. Hirschberg: That's all.

Mr. Gough: If your honor please Mr. Annett was called by the defense. He was 40

confronted with a statement of his testimony before Judge Murphy. I want to ask him a question or two on that.

The Court: All right.

10 Mr. Hirschberg: Mr. Devin is here your honor and he asked to be called as quickly as possible.

Mr. Gough: All right.

---

BERNARD DEVIN, being sworn.

Direct Examination by Mr. Hirschberg:

Q. Mr. Devin, you are an attorney at law of this state? A. Yes.

20 Q. And you were interested in a \$15,000 mortgage loan on an apartment house in Bayonne belonging to the Gollins at 880 Boulevard, Bayonne?  
A. I personally interested?

Q. As a lawyer, or otherwise? A. Yes, I represented a client.

Q. And did you attend to the disbursement of moneys under that mortgage? A. I did.

Q. What was the money disbursed for?

30 Mr. Gough: Objected to as immaterial.

The Court: How is it material?

Mr. Hirschberg: To show the money went into the apartment and this trust agreement dealing with the apartment house, that the \$15,000 mortgage which had with it two other mortgages should have been cancelled and the two other mortgages not taken by assignment subsequently foreclosed and taken by the trustee.

40

The Court: I will receive it subject to the objection.

(Witness) A. Is that a construction mortgage?

Q. Yes. A. It has always been my practice in construction mortgages—

10

Mr. Gough: I object.

By Mr. Hirschberg:

Q. In this particular case did this \$15,000 mortgage carry two other mortgages on other properties? A. I have no personal recollection. The matter is six years old.

Q. Do you know what the money was used for? A. Yes.

Q. What for?

20

Mr. Gough: My objection still goes as to that.

The Court: Yes.

(Witness) A. It was paid to material-men and laborers for material supplied to and labor performed in connection with the erection of that building.

Mr. Hirschberg: That's all.

30

Cross Examination by Mr. Gough:

Q. How much was that? A. The full amount of the mortgage.

Q. How much was it? The full amount of the \$15,000 mortgage? A. I beg your pardon.

Q. The full amount of this \$15,000 mortgage? A. Less fees.

Q. How much was the original construction

40

mortgage for? A. You mean the mortgage prior to that one?

Q. Yes.

10 Mr. Hirschberg: I object to that question because the trustee recognized the amount of the mortgage by having paid it and taken it by assignment.

The Court: You brought it on yourself and I am going to permit the examination.

(Witness) A. My recollection is it was a mortgage of seventy or seventy-five thousand prior to this one.

By Mr. Gough:

20 Q. And all of it went into the construction of this house? A. Yes.

Q. And prior to the refinancing there was executed to the Colonial a mortgage for \$100,000? A. There was a mortgage to a title company or an insurance company—I don't recall—and they paid us off our mortgage.

Q. Entirely? A. Yes, my recollection is entirely paid off.

30 Q. How did you come out of the situation with the \$15,000 mortgage then? A. I believe it was all paid.

Q. First you had a construction mortgage of \$70,000? A. Yes.

Q. All right. Then the property was refinanced? A. I think before it was refinanced this additional loan was put on.

Q. Of \$15,000? A. Yes.

40 Q. Then you subordinated that mortgage to the first permanent mortgage, is that right? A. I have no recollection.

Q. You have no recollection about it? A. Not as to the fact we subordinated it to the permanent mortgage.

Q. You did, didn't you? A. That may be the fact, but I don't recall it.

Q. How do you know there was a mortgage by a title company? A. Because I attended at the office of the Guaranty Company that placed the mortgage. 10

Q. Was your construction mortgage then paid in full? A. I believe it was, yes.

Q. And a new mortgage was executed by the Gollins? A. That was executed to the permanent mortgagee.

Q. Yes, but where did the \$15,000 mortgage arise? A. That arose before the permanent mortgage was placed on. 20

Q. I see. And you don't know whether or not you became subordinated? A. No, I have no present recollection whether we subordinated it or whether we were paid and assigned it.

Q. After that permanent financing you didn't pay out any money for construction or material, did you? A. I don't think we did, no.

Re-direct Examination by Mr. Hirschberg:

Q. That mortgage was paid, wasn't it? A. All mortgages we had on that building were paid in full. 30

Q. Did you execute a cancellation or an assignment? A. That I don't recall. If you show me the paper I can tell you.

Mr. Hirschberg: That's all.

CHARLES E. ANNETT recalled.

Cross Examination by Mr. Gough:

10 Q. Mr. Annett, when you were called by the defense on your direct examination, you were asked some questions about depositions taken before Judge Murphy on the 25th day of April, 1928. The questions put to you were: "Q. And that is the reason why you did not attempt to sell the apartment house? A. I had been attempting to sell the apartment house. (This is on page 73, if the court please.) Q. (Interrupting) at that time? A. At that time, there was no attempt made on my part. They were handling the proposition of the sale of the apartment house themselves." A. I think I testified to that.

20 "Q. And you made no attempt to sell the apartment house? A. I did not, at that time." Do you recall that? A. If I made that answer it is true.

30 "Q. As to the mortgages you took by assignment, you said something before about these mortgages being collateral for debts that were contracted in connection with the construction of the apartment house? A. Why, from the day that I went into it, I was of the personal opinion that the apartment house would never bring the amount of money that would be necessary to clear the debts against it, and these were given to take care of any deficiency in the sale when a sale could or would be made. It that correct? A. Yes." Now in answering before Judge Murphy that you did not at that time make any attempt to sell the apartment house, state why you didn't make any attempt to sell the apartment house at that time?

40

Mr. Hirschberg: I object.

The Court: What is the purpose of the objection?

Mr. Hirschberg: I object on the ground his reasons are immaterial. It is what was done.

The Court: Why isn't that so?

Mr. Gough: He was put on as a witness 10  
to testify that he did not make any at-  
tempt at that time to sell the apartment  
house. That was put in as an admission  
against the interests of complainants. I  
am entitled to show what he meant by  
that answer at that time. It is cross ex-  
amination— He is their witness.

The Court: I will permit it because  
he testified from the very time he took  
up this matter he never considered the 20  
property would bring the amount of money  
necessary to take it out of its difficulty.

The Witness: What is the date?

Mr. Gough: April 25, 1928, and the  
reference to the testimony is 1924, when  
the deed was given.

The Witness: Well, at that time Max  
Gollin and Irving Gollin were the parties  
who were trying to sell the property. I  
submitted one or two statements made 30  
from time to time showing the money  
necessary to clear me up, and he was  
handling the property so far as selling  
same for a year or a year and a half. Mr.  
Irving Gollin was living in the property  
rent free. He and his father from time to  
time obtained tenants for the property  
which I accepted.

Mr. Gough: That's all.

Re-direct Examination by Mr. Hirschberg:

Q. Now, Mr. Annett, were you present with Mr. Gollin delivered Exhibit D2 to Mr. Roberson?

10 Mr. Gough: Now if your Honor please that is not re-direct.

Mr. Hirschberg: It is something he just opened the door to. He said he didn't think that the apartment house would bring enough to satisfy the money that was being advanced. Mr. Gough put him on to tell why he made a certain statement in support of that thought. We claim that thought was never in the witness's mind, and in order to prove it was never in his mind I want to ask these questions.

20 The Court: I will overrule your objection, Mr. Gough.

By Mr. Hirschberg:

Q. Were you present when Exhibit D2 was shown and presented to Mr. Roberson by Irving Gollin? A. I don't know whether I was present, but I saw it during some part of the transaction.

30 Q. You did see it. And you did not ask Mr. Roberson to make any agreement with Mr. Irving Gollin relating to the items on Exhibit D2? A. No.

Q. And you read the trust agreement before it was executed? A. I certainly must have read it if I signed it.

Q. Now, before Mr. Hendrickson, sitting as a Master in Chancery, did you testify on the 19th day of November, 1929, as follows: "Q. Why—"

40 The Court: You are examining him as your witness.

Mr. Hirschberg: I want to ask your Honor for permission before I examine him on this point.

The Court: All right—He is your own witness.

“Q. Why did you foreclose on these mortgages? 10  
 A. To protect my cash advanced on the apartment house. Q. Did you agree to pay off any of these mortgages on the apartment house for \$15,000 and the other mortgages on 772 Avenue C and 499 Boulevard, Bayonne, New Jersey? A. I agreed to pay the list you presented to me. Q. On the list I presented to you, Exhibit No. 1? A. Yes.” Do you remember testifying in that manner? A. That must be correct, Mr. Hirschberg. 20

Mr. Hirschberg: That’s all.

Mr. Gough: That’s all.

Mr. Hirschberg: Just one minute, Mr. Annett. Mr. Gough, will you concede that Exhibit D1, marked November 19, 1929, as appears here is now Exhibit D2 in this proceeding?

Mr. Gough: I think there is no question about that.

The Court: You concede that? 30

Mr. Gough: Yes.

By Mr. Hirschberg:

Q. Mr. Annett, did you in testifying before James J. Murphy, Master in Chancery, on the 25th day of April, 1928, testify as follows: “Q. Did you agree to pay off the mortgage on the apartment house—the \$15,000 mortgage? A. I agreed to pay all the claims, assignments and debts against the apartment house, and to pay 40

from time to time the \$4,000 per year on the first mortgage held by the Colonial Life Insurance Company." Did you testify to that? A. It must be so if it is in the testimony.

10 Q. That's correct, isn't it, Mr. Annett, the testimony you gave? A. I imagine you read it correctly.

Q. Outside of that imagination is the testimony correct as given by you? A. I am not so certain about that.

The Court: Put the direct question again. The way the record stands now that which was before Mr. Murphy is not in evidence here.

20 By Mr. Hirschberg:

Q. Do you say your answer—

The Court: Why not put the question again?

By Mr. Hirschberg:

Q. Did you agree to pay off the mortgage on the apartment house—the \$15,000 mortgage? A. Is it on that original agreement Exhibit D2?

30 Q. Yes. A. If it is we agreed to take it.

Q. And you agreed to pay everything on this list? A. Subject to Mr. Gollin's O. K. as to the amount.

Mr. Hirschberg: That's all except Mr. Gollin.

Mr. Gough: You are still on your main case, Mr. Hirschberg.

40 Mr. Hirschberg: I think Mr. Gollin will rebut Mr. Roberson. I am through with my main case except this your Honor, I

am putting Mr. Gollin on to rebut, or attempt to rebut, what Judge Roberson testified to as to a conversation between them at the time Exhibit D2 was delivered over to Mr. Roberson.

The Court: All right. What else have you to offer Mr. Gough? 10

Mr. Gough: We come back to our answer to their counterclaim. We have kept that intact.

The Court: I will let him call his witness.

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IRVING GOLLIN, recalled.

Direct Examination by Mr. Hirschberg:

Q. At the time Exhibit D2 was delivered to Mr. Roberson was there any understanding had with him or the Annett-Mahnken Company as to the time when the items appearing on page 2 of Exhibit D2 were to be paid? 20

Mr. Gough: I object if your Honor please.

The Court: I will sustain the objection as to the word "understanding" in your question. 30

By Mr. Hirschberg:

Q. Did you have any conversation with Judge Roberson at the time that Exhibit D2 was delivered over to him?

Mr. Gough: If your Honor please—

The Court: I will let him say yes or no.

(Witness) A. Yes. 40

Mr. Gough: I object. It is part of their main case.

The Court: I will permit it. I want to get the facts.

(Witness continuing.) When I gave Judge  
10 Roberson the list it was agreed—

Mr. Gough: If your Honor please won't the question be this—"I call your attention to Judge Roberson's—

The Court: You can object to the form of the question.

Mr. Hirschberg: Will your Honor permit Mr. Gough to advise me as to the question of any objection.

20 Mr. Gough: I object.

The Court: If it is rebuttal I will sustain the objection.

By Mr. Hirschberg:

Q. Did you agree with Judge Roberson that the items appearing on page 2 of Exhibit D2 should not be paid until the apartment house should be sold and it should not be sold for less than \$165,000?

30 Mr. Gough: If your Honor please I object.

The Court: I will sustain the objection.

By Mr. Hirschberg:

Q. What was said with reference to the items if anything on page 2 of Exhibit D2?

40 The Court: That is not a proper way to rebut that which you are attempting to rebut.

By Mr. Hirschberg:

Q. Did you have any understanding with Judge Roberson as to the payments on the second page of Exhibit D2?

The Court: I will have to overrule that form of question. You can't show what the understanding was. 10

Q. Was anything said between you and Judge Roberson as to the items on page 2 of Exhibit D2?

Mr. Gough: Objected to as not proper rebuttal.

The Court: I will sustain the objection as to the form of the question inasmuch as it is supposed to be in rebuttal. 20

Q. Did you hear the testimony read by the stenographer, which testimony was the testimony of Judge Roberson, as to what took place between you at the time Exhibit D2 was presented to him? A. Yes, sir.

Q. And what he testified was his understanding, and what he said you said, was that true or not?

Mr. Gough: Objected to. 30

The Court: I will sustain the objection. That is no way to conduct an examination.

By Mr. Hirschberg:

Q. Did you tell Judge Roberson that the items on page 2 of Exhibit D2 should be paid when the building was sold?

Mr. Gough: I object to it. 40

Mr. Hirschberg: I think that is proper.

The Court: The form of the question is not proper on rebuttal.

By Mr. Hirschberg:

10 Q. Was anything said by you to Judge Roberson as to the items on page 2 of Exhibit D2?

Mr. Gough: Objected to.

The Court: I will sustain the objection. It is not proper on rebuttal.

Mr. Hirschberg: It isn't leading.

The Court: It is not proper.

Mr. Hirschberg: Judge Roberson made a statement. I asked it three ways.

20 The Court: Every one of the ways you asked was wrong. If you are going to try to rebut you will have to follow the rules of evidence as to rebuttal.

Mr. Hirschberg: Judge Roberson brought out this matter when he testified.

The Court: I am only speaking about rebuttal now. Reframe your questions.

30 Mr. Hirschberg: I am not attempting to lead the witness. Judge Roberson brought out some new matter, and he is a witness for the defense. This is a new matter, because nothing was brought out by the defense up to the time Judge Roberson testified that Gollin had agreed verbally as to the items on page 2, and I am asking him on rebuttal as to the new matter brought out.

The Court: I am telling you the way you are asking your questions is not proper on rebuttal.

By Mr. Hirschberg:

Q. Did you have the talk which Judge Roberson testified he had with you? A. On the stand this morning?

Q. At the time you presented Exhibit D2. A. I heard him speak here this morning, yes.

Q. Is it true that you said that the items on page 2 could wait until the property was sold? 10

A. No, sir, I never said anything of the kind.

Mr. Hirschberg: That's all.

Mr. Gough: No cross examination.

The Court: Is that the case now?

Mr. Hirschberg: Except your Honor we want to introduce in evidence certain records.

The Court: Now is your time. The other side wants to go on with their case. 20

Mr. Hirschberg: I will withhold that for the present.

The Court: Withhold what? You are closing your case, are you?

Mr. Hirschberg: Yes, sir.

Mr. Gough: Without reservation?

The Court: I am not adding anything to it.

Mr. Gough: If your Honor please I want to offer in evidence a bill to foreclose No. 1 Docket 58 page 609 in this court, bill filed July 31, 1925, between Annett-Mahnken Realty Company, a corporation of New Jersey, complainant, and Betsey Gollin, Max Gollin and others, defendants. I don't suppose we need have them marked in evidence. 30

The Court: No.

Mr. Gough: I offer the final decree in that suit. 40

The Court: You might want to call my attention to something in it.

10 Mr. Gough: Filed January 11, 1926. I offer the bill of complaint in a suit docketed 58 pages 610 between Annett-Mahnken Realty Company complainant and Betsey Gollin and Max Gollin and others, defendants, Suit No. 2, bill filed July 31, 1925. I offer in evidence the final decree in that suit filed January 11, 1926. I also offer in evidence bill of complaint docketed 58 page 611 between Annett-Mahnken Realty Company, a corporation of New Jersey, complainant and Betsey Gollin and Max Gollin and others, defendants, in Suit No. 3, filed July 31, 20 1925. I offer in evidence the final decree in that suit filed January 11, 1926. Now I want to offer in evidence a petition filed in this court by Betsey Gollin and Max Gollin docketed 58 page 609, filed April 8, 1926. I want to offer an order to show cause made on that petition filed April 8, 1926. I want to offer in evidence an order denying that petition in that case filed June 7, 1926, and the answering affidavits filed to that petition on April 27, 1926. 30 I will call Judge Roberson.

Mr. Hirschberg: I want to object to the offer.

The Court: What is the objection?

Mr. Hirschberg: On the ground they are immaterial and incompetent and absolutely collateral to the issue now before the court.

40 The Court: I will receive it subject to your objection.

HORACE ROBERSON, recalled.

Direct Examination by Mr. Gough:

Q. Judge Roberson, looking at Exhibit D2, the second page, and the Devin mortgage noted there, was that mortgage subject to a foreclosure suit?

A. Yes.

10

Q. Who conducted that foreclosure suit? A. Judge Carrick. There are two mortgages, one for \$11,000 and one for \$4,000—aggregating \$15,000.

Q. Were you familiar with that property? Where was that property? A. The mortgage covered the apartment house 880 Boulevard; it covered the tenement house at 501 Boulevard, and it covered the store and dwelling building at 249 Broadway.

20

Q. Do you know which mortgage foreclosure suit covers that situation? A. Not without looking at them.

Q. Will you look at the bill in suit No. 1? A. No, this isn't it.

Q. Look at bill No. 2 and look at bill No. 3, and then state with reference to the property in D2 when the bill of complaint was filed. A. No. 1 applies to that item of \$3,200.00, 449 Boulevard, Israel Lipschitz—but the mortgagee was Lillian Moskowitz. No. 1 applies to that item. No. 2 relates to the \$3,000.00 item, 772 Avenue C, and No. 3 relates to the \$15,000 item—the Devin mortgage, so-called. The Kay-Bee Investment Company were the actual mortgagees.

30

Re-cross Examination by Mr. Hirschberg:

Q. You were associated with Judge Carrick in the prosecution of these foreclosures? A. I stated before I was not. My partner, Horace K. Roberson, and Judge Carrick did that.

40

Q. You were in court when various moves were being made in connection with these foreclosure proceedings?

Mr. Gough: What difference does that make, your Honor?

10

The Court: I will receive it.

By Mr. Hirschberg:

Q. Isn't that so judge? A. You will have to refer me to some items so I can get my recollection.

20

Q. Whenever Judge Carrick appeared in the Court of Chancery or at the Sheriff's sale, you appeared with Judge Carrick and associated yourself with him in the moves and arguments and steps that were taken? A. My recollection is that my first appearance was at a hearing on an order to show cause issued by Vice-Chancellor Bentley why the Sheriff should not be restrained from selling the property under the executions under these three suits. I haven't any recollection of having a thing to do with the matter.

Q. Weren't several appearances made before Vice-Chancellor Fielder in connection with these prosecutions?

30

The Court: What is the purpose of this line of examination?

Mr. Hirschberg: Your Honor, Judge Roberson testified he had divested himself of these foreclosures which related to the mortgages which we claim were assigned and which we claim should have been paid. I want to show he was in the heart and midst of it all the time.

40

The Court: All right.

(Witness) A. It is quite a long story, but I will tell it. The Gollins went before Vice-Chancellor Bentley and filed a long petition charging Mr. Annett and me with gross fraud.

By Mr. Hirschberg:

Q. Pardon me judge. My question was as to 10  
moves before Vice-Chancellor Fielder as to the  
foreclosures you just referred to.

The Court: Repeat the question.

Mr. Hirschberg: I will without my  
previous question.

Q. When Judge Carrick made applications be-  
fore Vice-Chancellor Fielder, or appeared before  
Vice-Chancellor Fielder for any purpose in con- 20  
nection with the foreclosures that you have just  
testified to, were you associated with him in  
court? A. No.

Q. At none of these hearings? A. Before  
Fielder, none.

Q. Who consulted with Judge Carrick before  
the bills to foreclose were filed? A. I have stated  
two or three times my partner, Horace K. Rober-  
son.

Mr. Hirschberg: That's all. 30

Mr. Gough: I call Mr. Annett.

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CHARLES E. ANNETT, recalled.

Direct Examination by Mr. Gough:

Q. Mr. Annett, what is your business? A. Real  
estate and insurance.

Q. Where? A. 23 West 8th Street, Bayonne, 40  
New Jersey.

Q. State what your experience has been in the real estate business? A. I have been in it since 1882.

Q. And during that forty-eight years what has been your experience in buying and selling in Bayonne? A. Well, I have bought and sold considerable property in Bayonne.

Q. About how much? A. I don't know.

Q. Well, approximately?

The Court: Do you concede he is competent as a real estate expert?

Mr. Hirschberg: No, I do not.

By the Court:

Q. You were a member of the County Board of Taxation? A. Three years and a half.

Q. When was that? A. My memory is so bad I can't tell the year.

By Mr. Gough:

Q. Will you state in your opinion what was the value of the apartment house conveyed to the Annett-Mahnken Realty Company by virtue of C-1, in May, 1924?

Mr. Hirschberg: Objected to on the ground it makes no difference what the value is in connection with the issues before the court, or was at that time. The trust agreement has been entered into and the court has heard the arrangements that were made.

The Court: I think I will let him answer it because I have in mind some testimony he has given here.

(Witness) A. In my opinion the property might have been sold for \$130,000.

The Court: I call your attention to page 74 of the previous day's testimony wherein Mr. Annett said he was of the personal opinion that the apartment house would never bring the amount of money necessary to clear the debts against it.

10

By Mr. Gough:

Q. And has the value of that property since May 1924 increased or decreased? A. Decreased.

Q. Has it ever increased? A. No, sir.

By the Court:

Q. Property values in Bayonne did increase after 1924? A. Not apartment houses.

Q. Generally, land values increased. The rates were increased about \$30,000,000 one year.

20

A. The increase was generally on manufacturing properties.

Mr. Gough: That's all.

By the Court:

Q. What, in your judgment, was the value of that apartment house at the time it was taken over by the Annett-Mahnken Realty Company under the trust agreement? A. I made no calculation as to value at that time.

30

Q. Why not? A. You were taking it over? A. I took it over because Mr. Max Gollin and Mr. Irving Gollin stated to me the property had been sold for \$165,000.

Q. You took that as the valuation at that time? A. Yes, that the property would be taken off my hands as soon as the sale would be consummated.

Mr. Gough That's all. That's our case.

Mr. Hirschberg: No questions.

40

The Court: The thing that I have in mind Mr. Gough is what jurisdiction has the court in this case. It appears from the bill of complaint the trustee has parted with the property and therefore what right has the trustee to look to this court for the fixation of the amount of moneys required to be paid for fees in the account between the parties. I understand that rule of law is as to the right of a trustee to look to this court where the property still remains in the possession of the trustee. Why hasn't the trustee a right at law. I am referring to the case of *Turton v. Grant*, in 86 N. J. Eq., page 191. I have in mind the statement on page 198 in which it says: "The last point argued is, that complainant has a remedy at law by proceeding against the defendants for his advancements. It is not necessary to decide on this motion whether complainant has a legal claim against the defendants, for he has a lien on the property which he is not required to give up—he has a right to first exhaust his lien, and then, if there be a deficiency, to a decree against the defendants, if they are liable, for the unpaid balance." My understanding is that which I just read is a pretty well-established rule of law. But in this case the Annett-Mahnken Realty Company has parted with the property. I appreciate it is said they parted with it to a concern known as Anson Realty Company, but what right have they to divest themselves of the property and then come into court and seek the redress they are seeking? I note by the prayer of the bill that:

"2. That an account may be taken of all advances and disbursements made by the complainants in pursuance of the terms of said declaration of trust, and of all interest, commissions

and compensation earned by them, and of all receipts by them from rents, or otherwise, to which the defendants are properly entitled."

"3. That the balance due to the complainants may be ascertained, and that the defendants may be decreed to pay such balance to the complainants at a short day to be fixed by this court; and that in default thereof the defendants may be foreclosed of all equity in the premises, and that the premises by decree of this court may be sold to raise and satisfy the amount which shall be ascertained to be due to the complainants for their advancements, and interest thereon, and for such reasonable sum for services as trustee as shall be ascertained and fixed by this court, in accordance with the provisions of the declaration of trust. I think I would like to hear you on that. 10 20

Mr. Gough: We state in the bill and the testimony is clear that the second complainant is simply a dummy so far as the main complainant is concerned.

The Court: I appreciate that, but nevertheless the legal title has passed from the trustee to the other corporation even though the other corporation is a holding corporation.

Mr. Gough: We are in a court of equity. The equitable title is still in the Gollins subject to redemption. We are here offering them their chance to redeem and we are entitled to rid ourselves of the situation. 30

The Court: As trustee you cannot because as trustee you don't hold title to the property.

Mr. Gough: The Anson Company is a co-complainant, if your Honor please.

The Court: I know it is, but what right have they to ask that any fees be fixed?

Mr. Gough: They are not asking for any fees. 40

The Court: I didn't examine the pleadings in the case particularly to see whether or not there was any application to strike the answer, but even if there was not the court on its own motion can take cognizance of that situation.

10 Mr. Gough: We have the complainant here and we have the dummy owner. Your Honor has before you all the proceedings in the situation and the only difference raised is that this apartment property should be charged with the burden of the mortgages. Your Honor is simply raising difficulties.

The Court: I am raising the jurisdictional question. I have a case now before me which is for the foreclosure of a mortgage whereby a party assigned a mortgage to a dummy merely for the  
20 purpose of foreclosure and it was stated the trustee had no interest in that property and yet that mortgage was foreclosed.

Mr. Gough: Suppose the Gollins came along and filed the bill against the Anson Company which has the deed. Your honor would exercise jurisdiction, of course.

The Court: Why would I? There is no contractual relation between it and the Gollins?

30 Mr. Gough: The application of the property by the Anson Company.

The Court: How could they look to it? There is no fiduciary relationship between them.

Mr. Gough: The trust agreement gives them the right to sell the property. The conveyance to the Anson Company for the purpose of convenience to sell is contemplated by the agreement of trust, and nobody but your Honor has suggested it.

40 The Court: I will hear your argument of the case.

Mr. Gough: Does your Honor want to hear anything further from me?

Mr. Hirschberg: Before your Honor begins I intend to ask that the counterclaim be amended to conform with the proofs.

The Court: Who filed the counterclaim?

Mr. Hirschberg: The Gollins.

10

The Court: You want to amend that?

Mr. Hirschberg: Yes, to conform to the proof.

The Court: Any objection?

Mr. Gough: I don't know what it is.

Mr. Hirschberg: That the property now held by the Annett-Mahnken Company and its holding company be declared to be held in trust for the Gollins, and that the properties acquired through foreclosure as a result of assignments of mortgages taken by the Annett-Mahnken Realty Company or its representatives be directed to be reconveyed to the Gollins.

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Mr. Gough: That presents a large situation. I would like to see modeled in terms.

Mr. Hirschberg: I can frame that with deliberation, but that is the purpose of the amendment. I think under the rules the court will allow me before the time of argument or before we submit briefs—

The Court: I can permit it up until the decree if your adversary knows what it is.

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Mr. Gough: Why not let Mr. Hirschberg make up his proposed amendment and have the testimony written up and submit briefs to your Honor on the whole question?

Mr. Hirschberg: That suits me.

The Court: Touch upon that jurisdictional question. I have in mind any determination I make unless it is on the proofs will be of no avail.

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**Memorandum Opinion of Fallon, V. C.**

(Filed July 16, 1931.)

(Not for publication in the official and unofficial reports) :

- 10 Messrs. CARRICK & WORTENDYKE, Solicitors for  
Complainants.  
Mr. SAMUEL L. HIRSCHBERG, Solicitor for Defend-  
ants.

FALLON, V. C.

- 20 In the matter *sub judice* I have concluded that  
the complainant Annett-Mahnken Realty Com-  
pany, as trustee of the defendants under a declara-  
tion of trust bearing date May 16, 1924, has  
failed to fulfill the obligations assumed by it under  
and by virtue of said instrument. The extent to  
which the defendants may have been injured  
thereby (they claim to be grievously injured) I  
cannot determine from the established proofs  
herein. A thorough inquiry, investigation and re-  
port should be made thereof by a Special Master  
whom I will designate for such purpose. The ac-  
count stated and reported by Special Master  
30 Hendrickson to whom the matter was referred by  
the order of Vice Chancellor Bentley dated Sep-  
tember 9, 1929, and which was referred to and  
commented upon at the hearing before me, does  
not manifest, in my judgment, a proper accounting  
between the parties. It certainly will not suffice  
as to the present day status of the respective  
parties hereto in their dealings with each other;  
nor do the proofs established herein, evidenced  
principally by statements in writing, the accuracy  
of which were contraverted by the defendants, en-  
40 able me to determine the particulars of defend-

ants alleged grievances or state an account of the matters in controversy between the parties. It appears to me that a finding thereof can best be ascertained through inquiry and investigation by a Special Master. I do not appreciate why a reference was made to Special Master Hendrickson *in limine*, nor am I aware of any authority therefor. Such reference was premature. I do not consider that I am obliged herein to confirm or overrule the report filed by Special Master Hendrickson. If I were to act thereon I would be constrained to overrule several, at least, of the Master's findings which are erroneous. The defendants urge that their trustee, Annett-Mahnken Realty Company, was perfidious to its trust in many respects. The full extent thereof can be ascertained by a Special Master's inquiry and investigation. The proofs now before me do not sufficiently disclose the same, although I am convinced that the defendants' claim that they have been aggrieved by their trustee's activities and inactivities and acts of commission and/or omission have been substantiated in divers respects. Defendants urge that activities of their said trustee with respect to certain of their property other than that specifically mentioned in the declaration of trust were inimical to their interests and that the trustee inequitably benefited thereby and should account to defendants therefor. The trusteeship expressly mentions a four story brick apartment house and the land whereon same is erected. The property is known by street number 880 Boulevard, Bayonne, New Jersey. It appears that the complainant—trustee, paid mortgages, a judgment, and other claims which were liens upon the premises 880 Boulevard, Bayonne, New Jersey, and other property of the defendants, and acquired by

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assignment the rights of the mortgagees, judgment creditor, etc., which the trustee appropriated to its own use. Defendants urge that said trustee is not entitled thereto and is legally obliged to afford the defendants the benefit thereof. Defendants urge that under the declaration of trust aforesaid

10 Annett-Mahnken Realty Company was obliged to make full payment of *all* debts owing by defendants. The third clause of said declaration obligates the trustee—"To endeavor to settle with all creditors of said Betsey Gollin and Irving Gollin, and as far as necessary to advance such sum or sums of money as may be necessary for the settle-

20 ment of all such claims". I deduce from the quoted clause of said declaration that the obligation assumed thereunder and thereby and imposed upon Annett-Mahnken Realty Company relate to debts of Betsey Gollin and Irving Gollin which arose out of the construction of the apartment house mentioned therein and the mortgage and other liens thereon, and the lands upon which said apartment house was erected, together with debts in anywise contracted which enabled the *cestuis* to obtain moneys used and employed in and about such construction. Defendants urge (but the

30 proofs herein are not sufficiently clear) that moneys derived by mortgage loans and otherwise upon certain property of the defendants other than the apartment house mentioned were used in and about the construction of the aforesaid apartment house. A further inquiry should be made with respect to such matters with a view of ascertaining whether the mortgagees and other parties who made loans may be regarded as creditors of Betsey Gollin and Irving Gollin (or either thereof) within the purview of the declaration of

40 trust aforesaid. It appears to me that the above

quoted clause of the declaration of trust relates to creditors of Betsey Gollin and Irving Gollin for debts arising from any and every source whatever incident to the construction of the above-mentioned apartment house, which, it will be noted, is specifically mentioned in the preamble of the declaration of trust, including mortgage debts and the like which were made a charge upon the lands upon which the apartment house was erected. If, as indicated by the proofs herein, the trustee was negligent and unreasonably procrastinated in the performance of its duties and assumed the imposed obligations of its trust relationship with the defendants, whereby and by reason whereof losses were sustained which might have been avoided by promptitude and the exercise of reasonable diligence and prudence upon the part of the trustee, it is incredible to me that the trustee may now reasonably urge that it be absolved therefrom and that the defendants are not entitled to reimbursement by way of damages for losses thus occasioned to and sustained by them. The report of Special Master Hendrickson indicates a loss of \$55,721.17 in the maintenance of the property from the end of the year 1924 to the date of the Master's report. Whether such loss is chargeable to the trustee and whether the trustee was derelict in its duty in not having made sale of the property at a time when a sale thereof may have been of advantage to the defendants may be ascertained through an inquiry and investigation by the Special Master. I am of the opinion that the figures and calculations mentioned in the report of Special Master Hendrickson should not be considered as evidence in the matter *sub judice*. An independent inquiry and investigation should be made. There was some

proof adduced herein to the effect that all liens upon the apartment house building and the lands upon which same was erected, and all debts incident to and arising out of the construction of said apartment house, the accuracy of which were certified to the trustee by Irving Gollin, were not

10 paid by the trustee. There was some proof adduced that Irving Gollin claimed to be the *equitable* owner of the apartment house and although such claim of equitable ownership was well-known to the trustee the trustee disregarded the rights of said Irving Gollin in the premises. Inquiry should be made by the Special Master with respect thereto. The trustee does not appear to have acquired any deed of conveyance from Irving Gollin as to any right, title or interest which he might

20 be found to have in the property. The fact that the trustee conveyed the premises 880 Boulevard, Bayonne, New Jersey, to Anson Realty Company, one of the complainants herein named, on or about April 1, 1928, for the reason ascribed by the trustee, as manifested by the proofs herein, might be regarded as questionable, and to deny to the trustee the right to an accounting herein (*Turton v. Grant*, 86 N. J. Eq. 191), but inasmuch as it is conceded in the case *sub judice* that Anson

30 Realty Company disclaims any beneficial right or interest in the property such conveyance to it may be regarded as of little moment; but it seems to me that the trustee should require Anson Realty Company to forthwith reconvey said property to Annett-Mahnken Realty Company and thus put an end to any question, legal or equitable, which the Anson Realty Company, or its successors, might hereafter urge with respect thereto, and thus also insure that judgment creditors of Anson Realty

40 Company, if any may not cause trouble and ex-

pense to the trustee or to the defendants by levy upon the property. The Anson Realty Company should account to the Annett-Mahnken Realty Company for receipts and disbursements while it has had the legal title to and the management and maintenance of the apartment house. Much controversy was manifested at the hearing of the case *sub judice* as to the dealings of the trustee with one who held a mortgage in the principal sum of \$37,000, the cancellation of which was effected by payment by the trustee to the mortgagee of only \$3,556.58. The particulars of said transaction should be inquired into and investigated by the Special Master. 10

I have not given any serious consideration herein to the several orders advised by Vice Chancellors in various matters of *ad interim* litigation considered and determined by them wherein the parties hereto are involved. It appears to me that such are *dehors* the matter *sub judice*. 20

The jurisdiction of this court in the matter *sub judice* was urged disputed and argued at the final hearing. I am convinced that this court has undoubted jurisdiction in the premises not only to hear and determine the matters in dispute but to grant ample relief to the respective parties. If there be any serious question as to whether the court should sustain or dismiss the exceptions filed to the report of Special Master Hendrickson, in order to warrant a reinvestigation by another Special Master of the controversy between the parties herein as to negligence, mismanagement of the trust estate, and other reasons upon which defendants predicate their alleged grievances, their alleged claim for damages and for an accounting against complainants, I will advise an order sustaining the exceptions. 30 40

The Annett-Mahnken Realty Company, as trustee, cannot reasonably urge that it is in anywise aggrieved by the requirement to now account, after final hearing, for its activities and inactivities, and for its acts of commission and/or omission, relating to the declaration of trust, and its duties, responsibilities and obligations thereunder, even though the trustee may claim that because of a depressed condition in the realty market or because of general business depression or financial stringency the requirement to strictly perform all of the duties and obligations assumed by it or imposed upon it, and/or reasonably comprehended within, under and by virtue of the declaration of trust aforesaid may be onerous. It appears that the declaration of trust was drawn by Horace Roberson of the law firm of Roberson & Roberson, who were parties in interest in the Annett-Mahnken Realty Company. It appears also that Mr. Roberson and Mr. Annett prior to the execution of the deed by the Gollins to Annett-Mahnken Realty Company obtained from Mr. Irving Gollin a list of creditors of the apartment house No. 880 Boulevard, Bayonne, New Jersey. It does not appear that any inquiry was made of Betsey Gollin as to debts, mortgages or other charges against said premises. It appears to me that one who undertakes to act as a trustee for purposes such as the matter *sub judice* should make a thorough inquiry as to the particulars and burdens which might in anywise reflect the duties, responsibilities and obligations to be assumed by such trustee. A prudent person would not be expected to assume the responsibilities of a trusteeship without carefully inquiring into all matters which might reasonably be comprehended within such trusteeship, and if

he fails so to do he cannot thereafter complain that he was not informed of matters that he might reasonably have acquired knowledge of if he had made due inquiry. It is a well established rule of law that where a party by his own contract creates a duty or charge upon himself, he is bound to make it good, if he may, and for failure to specifically provide in the contract exemption from liability for contingencies that might happen while the contract is in force must be strongly regarded against him. Likewise, in the case *sub judice*, as to exemption from the payment of mortgages, judgments, mechanics' liens, and the like, chargeable against the premises 880 Boulevard, Bayonne, New Jersey. As is said in *School Trustees of Trenton v. Bennett*, 27 N. J. Law 513, he that agrees to do an act should *do it*, unless it is absolutely impossible for him to do it; and where one of two innocent persons must sustain a loss, the law casts it upon him who has agreed to sustain it. I consider said rule of law applicable, by analogy, to the matter *sub judice*. I do not consider that there is anything ambiguous about the trust agreement. If there was any ambiguity with respect thereto, the instrument would have to be construed most strongly against the party preparing it or employing the words concerning which doubt arises—the Annett-Mahnken Realty Company. See *Fletcher v. Interstate Chemical Co.*, 94 N. J. Law 332. If the trustee had any doubt as to the meaning of the declaration of trust it would have a right to ask and receive the aid and direction of this court to the extent that its necessities in such regard might require. *Traphagen v. Levy*, 45 N. J. Eq. 448. Defendants urge that Annett-Mahnken Realty Company paid various obligations of Irv-

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ing Gollin and Betsey Gollin, among which the obligation of two mortgages held by Kay-Bee Investment Co., represented by Bernard DeVin, aggregating the sum of \$15,000, one of said mortgages being in the sum of \$11,000 and the other in the sum of \$4,000, which mortgages were a

10 lien upon the premises above-mentioned (880 Boulevard, Bayonne, New Jersey), and two other pieces of property known as 249 Broadway and 501 Boulevard, Bayonne, New Jersey; and also paid a certain \$3,000 mortgage held by Myrtle A. Reed (which in fact belonged to Mr. Rober-

20 son) which covered premises known as 772 Avenue C. Bayonne, New Jersey; and also paid to Israel Lipschitz, representing Lillian Markowitz, a \$3,200 mortgage which covered premises known as 499 Boulevard, Bayonne, New Jersey; and also paid to Alexander Seclow, attorney for James Brady's Sons, a sum of money to satisfy a judgment entered on mechanics lien claim for building materials furnished in the erection of the aforesaid apartment house (which judgment was also a general judgment against Irving Gollin); and also paid a \$6,500 mortgage to Newall & Shillowitz covering property known as 462 Avenue C, Bayonne, New Jersey; and that such mort-

30 gage debts, etc., arose out of the erection of the apartment house aforesaid, and that the entire proceeds thereof, except the mortgage of Newall & Shillowitz which was given to secure their claims for plumbing work performed on said apartment house, were used and employed in and about the erection of said apartment house. It is claimed by defendants that Annett-Mahnken Realty Company instead of cancelling said mortgages, etc., and relying upon such apartment

40 house property as security for such advances (as

contemplated and provided for in the aforesaid trust agreement) took assignments of said mortgages, etc., and thereafter instituted and prosecuted to finality foreclosure proceedings thereon, as a result of which the several parcels of property were sold to Annett-Mahnken Realty Company. Defendants urge that the trustee, Annett-Mahnken Realty Company, directly and indirectly bought in all of the aforementioned properties at Sheriff's sale, and thereafter claimed ownership thereof in its own right until April 1928 when all of such properties were conveyed by it to Anson Realty Company, its affiliate. Defendants urge that their trustee aforesaid should exonerate the apartment house from mortgage liens, etc., and make satisfaction of the moneys advanced by it in acquiring by assignment, and by sheriff's sale, property of the defendants other than the premises 880 Boulevard, Bayonne, New Jersey, out of the properties thus acquired. I am of the opinion that the trustee should effect such exoneration in the matter *sub judice* notwithstanding the activities of defendants with respect to mortgage foreclosure proceedings in the suit of the Provident Institution for Savings of Jersey City v. Betsey Gollin, et al. (Docket 61, p. 588), and otherwise. The fact that the defendants were defeated in such matters in questioning the regularity of the mortgage sales, etc., does not estop this court, in the case *sub judice*, to require Annett-Mahnken Realty Company, defendants' trustee under the declaration of trust aforesaid, to account to defendants for such moneys or real estate value as flowed to the trustee from defendants' aforesaid properties. It is a well established and guiding principle of equity that an individual trustee (and likewise a corpo-

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- rate trustee) may derive no profit from his trust (1 Perry on Trusts (7th Ed. 1929) Sec. 427), and as a necessary corollary a trustee cannot acquire by purchase or otherwise the property of the trust estate committed to the care of such trustee (See 2 Pom. Eq. Jur. (4th Ed. 1915) Sec. 951, 958), and to remove all temptation to be unfaithful the rule is applied with literal strictness. A lone exception is made where the trustee, to protect an interest of his own in the trust property, buys at a court sale with the court's consent after a hearing. *Sholee v. Sholee*, 101 N. Y. 167. Nether indirect purchase (*Hartman v. Hartle*, 95 N. J. Eq. 123), nor good faith (*Smith v. Miller*, 98 Va. 535) serve to protect the trustee, even though he has given fair value.
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- 20 If any profits are made, though not at the expense of the trust fund (*Magruder v. Drury and Maddoz*, 235 U. S. 106) the trustee must account to the *cestui*. *Skinnell v. Mahoney*, 197 App. Div. 808, 189 N. Y. Supp. 845. The proofs herein establish that at the time Annett-Mahnken Realty Company took possession of the premises 880 Boulevard, Bayonne, New Jersey, under the deed of trust mentioned, the apartment house was fully rented and in good tenantable condition, and that a monthly rental of approximately \$2,000 was realized thereon. Defendants urge that the trustee at the end of the year 1924 was aware that the upkeep of the apartment house would result in considerable loss if the property were retained (see statement annexed to bill of complaint of receipt of rents from June 30 to December 31, 1924) and managed by the trustee, and that it then became the duty of the trustee to sell the property in order to avoid continued
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- 40 losses. Defendants urge also that the trustee,

notwithstanding, was inactive, inefficient and imprudent for approximately 4½ years thereafter within which time a considerable amount of loss was sustained from the maintenance of the house, for which loss complainants now seek credit from defendants, and which credit defendants urge their said trustee is not entitled to. Defendants 10  
urge also that it was the duty of the trustee to minimize such loss as the trustee might reasonably apprehend would result from its retention and management of the apartment house, and that the trustee should not now be allowed its claim for reimbursement for loss resulting from its retention of the house, when, as claimed herein, the trustee's mismanagement and negligence occasioned such loss. Defendants urge that the 20  
loss resulting from the operation of the house for the year 1924, which they claim should be chargeable to the trustee, should not be imposed upon or chargeable against the defendants. The trustee was not warranted in utilizing such mortgages, etc., which were liens on defendants' property, and which it acquired through the advancement of its own moneys, to its own advantage. Any sale of the property thus acquired by the trustee redounds to the benefit of the defendants. 30  
If the property thus acquired has not been resold to a *bona fide* purchaser, the trustee will be answerable to its *cestui* for the value thereof, as hereinabove mentioned. In *Marshall v. Carson*, 38 N. J. Eq. 250, the Court of Errors and Appeals held that no trustee can directly or indirectly become a purchaser, in his own behalf, of the trust property, and hold it against the *cestui que trust*. Defendants urge that the trustee was obligated to make payment of mortgage liens, etc., on the apartment house mentioned. It is 40

urged in behalf of the trustee that it should require very clear and explicit undertaking to obligate the trustee to discharge claims or debts of the defendants of an unknown amount. As hereinabove indicated I conceive it to have been the duty of the trustee, before assuming the trust relationship, to have fully informed itself of the obligations which defendants sought to have the trustee assume, and that it was incumbent upon the trustee, whose attorney was the draftsman of the trust agreement, to clearly express therein the duties, responsibilities and obligations to be assumed, and the limitation of its liability in the premises. I find that the undertaking in question, the declaration of trust, clearly comprehended all that defendants claim therefor. As I have hereinabove indicated, the trustee, Annett-Mahnken Realty Company, was under a duty, in the fulfillment of its trust, to advance moneys necessary for the satisfaction of all claims and liens whatsoever against the apartment house property hereinabove mentioned, and liens and debt claims for moneys borrowed and used by the *cestuis* and defendants in and about and concerning the apartment house property aforesaid, and to rely upon the security of said apartment house property for reimbursement. As stated hereinabove the mortgages acquired by the trustee through the advancement of moneys for the payment of mortgages covering the apartment house property and other property, and the property acquired by the trustee through purchase at Sheriff's sales, must be regarded as being held by the trustee by a continuing trust, and if sold to a *bona fide* purchaser, the trustee will be held to account for the profits thereof. In *Mulford v. Minch*, 11 N. J. Eq. 16, the court held that if

a trustee acted without moral turpitude a court of equity may protect him, so far as to give him a lien on the property which he purchased for any advances of a reasonable nature which he may have made. In *Romaine v. Hendrickson*, 27 N. J. Eq. 162, at page 165, Vice Chancellor Van Fleet says: "So jealous is the law of the interest of the *cestui que trust*, that it will not tolerate the slightest antagonism on the part of the trustee." In *Staats v. Bergen* 17 N. J. Eq. 297, it was held to be the recognized law of this state, that a trustee, in the exercise of his duty as trustee, cannot become the purchaser of the property of his *cestui que trust*, and that the rule applies, as well where the sale is made by a Sheriff or master, as by the trustee himself. In the same case it was held that a trustee is not relieved from his incapacity to become a purchaser in the sale of the real estate of his *cestui que trust*, by the fact that the *legal estate* therein is not in him. I find no merit in the claims made in behalf of complainants that the defendants are debarred or estopped by any of their activities in this or other suits, particularly the mortgage foreclosure suits mentioned, in controversy between the parties. I understand that the property of defendants which was acquired by defendants' trustee, Annett-Mahnken Realty Company, by virtue of sheriffs' sales, is still owned by said trustee, notwithstanding the nominal ownership thereof and *legal* title thereto is in Anson Realty Company, which is concededly a holding company for the trustee.

I will retain the bill and all proceedings thereunder until the filing of the report of the Special Master whom I will designate to inquire and investigate into the matters in controversy between

the parties. The complainants by their bill pray *inter alia* that an account may be taken of all advances and disbursements made by the complainants in pursuance of the terms of said declaration of trust, and of all interests, commissions and compensation earned by them, and  
10 of all receipts by them from rents, or otherwise, to which defendants are properly entitled; and that the balance due to the complainants may be ascertained; and that the defendants may be decreed to pay such balance to the complainants at a short day to be fixed by this court; and, that in default thereof, the defendants may be foreclosed of all equity in the premises, and that the premises by decree of this court may  
20 shall be ascertained to be due to the complainants for their advances, and interest thereon, and for such reasonable sum for services as trustee as shall be ascertained and fixed by this court, in accordance with the provisions of the declaration of trust. The defendants by their counterclaim pray *inter alia* that the complainants' bill be dismissed with costs; that the complainants be compelled to give a true and accurate account of all rents, issues and profits received by them  
30 from the trust property with allowances to these defendants, for the trustee's unfaithful and imprudent maintenance of the trust property. Both parties seek an accounting, and such will be ordered by an appropriate order to be made herein.

Dated, Hoboken, N. J., July 14, 1931.

**Final Decree Advised by Fallon, V. C.**

(Filed September 15, 1931.)

This cause coming on to be heard in the presence of Carrick & Wortendyke, solicitors of the complainants, and Samuel L. Hirschberg, solicitor of the defendants; and the Court having read and considered the pleadings and having taken testimony orally in open court, and having heard and considered the arguments of counsel, and sufficient reason appearing for the making of this decree;

It is thereupon, on this 15th day of September, 1931, ORDERED, ADJUDGED and DECREED that the exceptions filed by the defendants herein to the report of the Special Master filed in this cause under an order made by this Court dated September 9th, 1929, be and the same are hereby sustained;

And it is further Ordered, Adjudged and Decreed that none of the orders and decrees entered in the prior foreclosure proceedings in this court in which the complainant Annett-Mahnken Realty Company was complainant and the defendants herein were defendants, which are set up in the complainant's answers to the counterclaim and amended counterclaim filed by the defendants, are a bar, nor do they estop the defendants from setting up and asserting the defenses and claims to affirmative relief which are stated in their answer and counterclaim and amended counterclaim.

And it is further Ordered, Adjudged and Decreed that a true construction of the third clause in the Declaration of Trust dated May 16th, 1924, a true copy of which is annexed to the bill of

complaint filed herein, imposed upon and obligated the trustee Annett-Mahnken Realty Company, a corporation of New Jersey, one of the complainants herein, to pay all debts of Betsey Gollin and Irving Gollin which arose out of the construction of the apartment house mentioned therein and the mortgage and other liens thereon, and the lands upon which the said apartment house was erected, together with debts in anywise contracted which enabled said Betsey Gollin and Irving Gollin to obtain moneys used and employed in and about such construction, and for the moneys so advanced to rely upon the security of said apartment house commonly known as 880 Boulevard, Bayonne, New Jersey, and more particularly described in the bill of complaint filed herein, for reimbursement, which clause in the Declaration of Trust is in the following language: "To endeavor to settle with all creditors of said Betsey Gollin and Irving Gollin, and as far as necessary to advance such sum or sums of money as may be necessary for the settlement of all such claims";

And it is further Ordered, Adjudged and Decreed that the complainants Annett-Mahnken Realty Company and Anson Realty Company, corporations of the State of New Jersey, make and give a true and accurate account of all rents, issues and profits received by them from the trusts properties referred to herein; and for the better taking of said account, the complainants are to produce all books and papers in their custody and power relating thereto, and are to be examined as the Master hereafter named shall direct, who in taking said account is to make all just allowances to the defendants herein resulting from the inactivity, mismanagement and

negligence on part of said complainants in the maintenance of the said trust properties.

And it is further Ordered, Adjudged and Decreed that the Master inquire and investigate to what extent the complainant Annett-Mahnken Realty Company, as trustee of the defendants under the Declaration of Trust aforesaid, failed to fulfill the obligations assumed by it under and by virtue of said instrument; to what extent the defendants have been injured by the inactivity, mismanagement and negligence of said trustee in their dealings; to make a thorough inquiry as to the particulars and burdens which might in anywise reflect the duties, responsibilities and obligations assumed by the complainant Annett-Mahnken Realty Company, a corporation, under the said Declaration of Trust; and to ascertain whether the moneys derived by the mortgage loans and otherwise upon certain properties other than apartment house aforesaid which are commonly known as 249 Boulevard, 501 Boulevard, 772 Avenue C, 499 Boulevard and 462 Avenue C, in the City of Bayonne, were used in and about the construction of the apartment house described in the Declaration of Trust, and whether the mortgagees and other parties who made such loans may be regarded as creditors of Betsey Gollin and Irving Gollin within the purview of the Declaration of Trust aforesaid; to ascertain whether the said complainants hold the properties referred to above as trustee for said defendants, and if so, to make a thorough inquiry and investigation as to the rights of the parties therein.

And it is further Ordered, Adjudged and Decreed that this cause be referred to Samuel Herman, Jersey City, New Jersey, one of the

*Notice of Appeal.*

Special Masters of this Court, to take the said accounting and to inquire and investigate into the matters in controversy between the parties, and to report the same to this Court with all convenient speed.

10 And it is further Ordered, Adjudged and Decreed that the consideration of the counsel fees and costs of the defendants, and all other questions not herein adjudicated, are reserved until the coming in of said report.

E. R. WALKER,  
C.

Respectfully advised,  
JNO. J. FALLON,  
V. C.

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**Notice of Appeal.**

(Filed September 29, 1931.)

To:

Samuel L. Hirschberg, Esq.,  
Solicitor for Defendants.

30 Please take notice that the complainants in the above entitled cause hereby appeal from the final decree made in this court dated September 15, 1931, on the advice of Honorable John J. Fallon, Vice Chancellor, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes; the parts of the decree complained of as erroneous, being:

40 That portion of the decree which adjudges that the exceptions filed by the defendants to the report of the Special Master (Charles E. Hendrickson, Esquire) be sustained; and

*Notice of Appeal.*

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That portion of the decree which adjudges that none of the orders and decrees entered in the prior foreclosure proceedings between the parties are a bar to, nor do they estop the defendants from, setting up and asserting the defenses and claims to affirmative relief stated in their answer and counterclaim and amended counterclaim; and 10

That portion of the decree which construes the third clause in the declaration of trust dated May 16th, 1924, and imposes certain obligations upon the trustee, the complainant Annett Mahnken Realty Company, as particularly stated in said decree; and

That portion of the decree which directs the giving of an account by the complainants, and prescribes the manner of such accounting as particularly stated in said decree; and 20

That portion of the decree which contains directions to the Master as to his procedure in his inquiry and investigation as particularly stated in said decree; and

That portion of the decree which refers said accounting, inquiry and investigation to a Special Master as particularly stated in said decree.

Dated September 28th, 1931.

CARRICK & WORTENDYKE, 30  
Solicitors and of Counsel with Complainants.

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

CHARLES L. CARRICK,  
Of Counsel with Complainants. 40

**Petition of Appeal.**

(Filed October 2, 1931.)

NEW JERSEY COURT OF ERRORS AND  
APPEALS.

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Between

ANNETT-MAHNKEN REALTY COM-  
PANY and ANSON REALTY COM-  
PANY,

Complainants-Appellants,

*and*

BETSEY GOLLIN and MAX GOLLIN,  
Defendants-Respondents.

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On Appeal  
From Chan-  
cery.

Petition of  
Appeal.

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The petition of Annett-Mahnken Realty Com-  
pany and Anson Realty Company, appellants, in  
the above entitled cause, respectfully shows that  
your petitioners find themselves aggrieved by a  
final decree made in the Court of Chancery by his  
Honor Edwin Robert Walker, Chancellor of New  
Jersey, on the advice of Honorable John J. Fallon,  
Vice-Chancellor, bearing date the 15th day of  
September, in the year one thousand nine hundred  
and thirty-one, wherein the said appellants were  
complainants, and the respondents were defend-  
ants, in these respects, to wit:

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The said decree adjudges that the exceptions  
filed by the respondents to the report of the special  
master, filed in said cause under an order made by  
said court, dated September 9th, 1929, should be  
sustained; and your petitioners humbly appeal  
from that part of the decree upon the ground that  
the same is erroneous, for that the said exceptions

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should have been overruled.

The said decree also adjudges that none of the orders and decrees entered in the prior foreclosure proceedings in said court, in which the appellant Annett-Mahnken Realty Company was complainant, and the respondents were defendants, which are set up in the appellant's answer to the counterclaim and amended counterclaim filed by the respondents, are a bar, nor do they estop the defendant, from setting up and asserting the defenses and claims to affirmative relief which are stated in their answer and counterclaim and amended counterclaim; and your petitioners humbly appeal from that part of the decree, upon the ground that the same is erroneous, for that the said orders and decrees entered in said prior foreclosure proceedings were a bar, and estopped the respondents from setting up and asserting the defenses and claims to affirmative relief which are stated in their answer and counterclaim and amended counterclaim. 10  
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The said decree also construes the Third clause in the declaration of trust, dated May 16th, 1924, as imposing upon and obligating the trustee Annett-Mahnken Realty Company, one of the appellants, to pay all debts of Betsey Gollin and Irving Gollin which arose out of the construction of the apartment house mentioned therein, and the mortgage and other liens thereon, and the lands upon which the said apartment house was erected, together with debts in anywise contracted, which enabled said respondents to obtain money used and employed in and about such construction, and for the moneys so advanced to rely upon the security of said apartment house, commonly known as 880 Boulevard, Bayonne, New Jersey, for reimbursement; and your petitioners humbly appeal from that part of the decree upon the ground that 30  
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10 the same is erroneous, for that said clause of said declaration of trust did not impose upon said trustee such obligations and duties as aforesaid, but required said trustee to advance to the respondents only such funds as said trustee might be able to raise from the income and from the proceeds of the sale of said trust property, and did not require said trustee to look solely to the said apartment for reimbursement for money advanced.

20 The said decree also directs the giving of an account by the appellants of all rents, issues and profits received by them from the properties referred to in said decree, including therein properties other than said apartment house which is the subject of said declaration of trust; and your petitioners humbly appeal from said portion of the decree as aforesaid, upon the ground that the same is erroneous, for that the appellants had already truly accounted in said cause for all the rents, issues and profits received by them from the care and management of the apartment house which is alone the subject of the trust.

30 The said decree also contains directions to the master to inquire and investigate to what extent the appellant Annett-Mahnken Realty Company, as trustee of the respondents under the declaration of trust aforesaid, failed to fulfill the obligations assumed by it under and by virtue of said instrument, and further contains specific directions to the master as to his procedure in said inquiry and investigation; and your petitioners humbly appeal from that part of the decree upon the ground that the same is erroneous, for that all the testimony relating to the subject matter so referred to the master for inquiry and investigation had been theretofore produced before the court upon the  
40 final hearing, and the case had been closed, and

*Petition of Appeal.*

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said matters were not the appropriate subject of reference to a master for report, but should have been ascertained and determined by the court upon the proofs submitted by the parties upon the final hearing.

The said decree also refers the cause to a special master to take said accounting, and to inquire and investigate into the matters in controversy between the parties; and your petitioners humbly appeal from that portion of the decree, on the ground that the same is erroneous, for that the appellants had already fully and truly accounted in the cause, and that the matters in controversy between the parties had been heard before the court and submitted, and should have been determined by the court. 10

Your petitioners therefore pray that the decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioners may have such other relief in the premises as to this honorable court may seem meet. 20

CARRICK & WORTENDYKE,  
Solicitors and of Counsel with Appellants.

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## Abstract of Exhibit C-1.

## DEED.

10	Between: BETSEY GOLLIN and MAX GOLLIN, her husband, <i>and</i> ANNETT MAHNKEN REALTY COMPANY, a corporation.	Dated May, 16, 1924 Ack'd. May 16, 1924 bef. Israel Lipshitz, Master in Chan- cery of N. J. Rec'd May 22, 1924 Book 1530 page 235 Cons'd. \$1.00 & other good & val. Consideration. County block No. 239.
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## Conveys in fee

20 Premises: ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey, described as follows:

30 Beginning at the intersection of the northerly line of West Thirty fourth Street with the easterly line of the Hudson County Boulevard; thence running (1) easterly along the northerly side of West Thirty fourth Street, eighty two and five tenths (82.5) feet; thence (2) Northerly and parallel with the Hudson County Boulevard, eighty seven and five tenths (87.5) feet; thence (3) westerly and parallel with West Thirty fourth Street, eighty two and five tenths (82.5) feet to the easterly side of the Hudson County Boulevard; thence (4) southerly along the same, eighty seven and five tenths (87.5) feet to the point or place of beginning.

Habendum in fee

No covenants

40 (Signed) BETSEY GOLLIN (L.S.)  
                                   MAX GOLLIN (L.S.)

**Exhibit C-2.**

Declaration of Trust, May , 1924 (printed as Schedule A, to Bill of Complaint, p. 5).

**Exhibit C-3.**

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Option Agreement, April 29, 1926 (printed as Exhibit A, annexed to affidavit of Horace Roberson, p. 326).

**Final Decree—Suit No. 1—(58-609).**

(Filed January 11th, 1926.)

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This cause coming on to be heard in the presence of Carrick & Wortendyke, solicitors and of counsel with the complainant the complainant's bill having been heretofore taken as confessed against Betsey Gollin and Max Gollin, her husband, and Mildred J. Smith, being all of the defendants, whereupon, and upon reading a report on file, made by Frank W. Hastings, Jr., Esquire, one of the Masters of this Court, bearing date on the twenty-first day of December in the year of Our Lord One Thousand Nine Hundred and Twenty-five from all which it appears that there was due to the complainant on the day of making of the said report, for principal and interest on its mortgage, the sum of Thirty-six hundred and eighty-five Dollars and thirty-three cents, and to the defendant Mildred J. Smith, on her judgment the sum of Twenty-nine hundred thirty-nine Dollars and six cents, that the same premises are comprised in the respective mortgages of the

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complainant and last aforesaid defendant, and that the mortgage of complainant is first in registry and execution, and is entitled to priority of payment; and that the judgment of defendant Mildred J. Smith is second in registry and execution, and is entitled to be secondly paid;  
10 and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid; and no cause being shown or appearing to the contrary.

IT IS, THEREUPON, on this 11th day of January in the year of Our Lord One Thousand Nine Hundred Twenty-six by Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the  
20 said Chancellor doth, by virtue of the power and authority of this Court hereby order, adjudge and decree that the said report, and all the matters of things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant and defendant, that is to say, in the first place to the complainant the aforesaid sum of thirty-six hundred and eight-five dollars and thirty-three cents  
30 and interest thereon, to be computed from the twenty-first day of December in the year of Our Lord One Thousand Nine Hundred and Twenty-five being the date of the Master's Report, with the complainant's costs in this cause to be taxed; and in the second place, to pay unto the defendant Mildred J. Smith the sum of Twenty-nine hundred and thirty-nine and 06/100 Dollars together with lawful interest thereon as aforesaid, with her costs to be taxed, and to the complainant a counsel fee of \$73.70 Dollars, and that a  
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*Final Decree—Suit No. 2.*

writ of *feri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Hudson commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale, he pay, in the first place, to the complainant or to its solicitor said debt, interest and costs; and in the second place to the aforesaid defendant Mildred J. Smith or to her solicitor said debt, interest and costs, in manner aforesaid, and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this Court, to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ. 10

AND IT IS FURTHER ORDERED adjudged and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises when sold as aforesaid by virtue of this decree. 20

E. R. WALKER,  
C.

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**Final Decree—Suit No. 2—(58-610).**

(Filed January 11, 1926.)

This cause coming on to be heard in the presence of Carrick & Wortendyke solicitors and of counsel with the complainant, the complainant's bill having been heretofore taken as confessed against Betsey Gollin and Max Gollin, her husband, and Mildred J. Smith, all of the defendants, 40

whereupon, and upon reading a report on file, made by FRANK W. HASTINGS, Jr., Esquire, one of the Masters of this Court, bearing date on the twenty-first day of December in the year of Our Lord One Thousand Nine Hundred and twenty-five from all which it appears that there was due to the complainant on the day of making of the said report, for principal and interest on its mortgage, the sum of thirty-three hundred and eighty-four dollars and fifty cents, and to the defendant Mildred J. Smith the sum of twenty-nine hundred thirty-nine dollars and six cents, that the same premises are comprised in the respective mortgages of the complainant and last aforesaid defendant, and that the mortgage of complainant is first in registry and execution, and is entitled to priority of payment; and that the judgment of said Mildred J. Smith, defendant is second in registry and execution, and is entitled to be secondly paid; and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid; and no cause being shown or appearing to the contrary.

IT IS THEREUPON, on this 11th day of January in the year of Our Lord One Thousand Nine Hundred Twenty-six by Honorable EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree that the said report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant and defendant, that is to say, in the place to the complain-

ant the aforesaid sum of thirty-three hundred eighty-four dollars and fifty cents and interest thereon, to be computed from the twenty-first day of December in the year of Our Lord One Thousand Nine Hundred and Twenty-five being the date of the Master's Report, with the complainants' costs in this cause to be taxed; and in the second place, to pay unto the defendant Mildred J. Smith the sum of twenty-nine hundred thirty-nine dollars and six cents together with lawful interest thereon as aforesaid, with her costs to be taxed, and to the complainant a counsel fee of \$67.68 dollars, and that a writ of *feri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Hudson commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale, he pay, in the first place, to the complainant or to its solicitor said debt, interest and costs; and in the second place to the aforesaid defendant Mildred J. Smith said debt, interest and costs, in manner aforesaid, or to her solicitors, and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this Court, to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

AND IT IS FURTHER ORDERED, adjudged and decreed, that the defendant stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

E. R. WALKER, 40  
C.

**Final Decree—Suit No. 3—(58-611).**

(Filed January 11, 1926.)

10 This cause coming on to be heard in the presence of Carrick & Wortendyke, solicitors and of counsel with the complainant, the complainant's bill having been heretofore taken as confessed  
20 against Betsey Gollin and Max Gollin, her husband and Mildred J. Smith, all of the defendants, whereupon, and upon reading a report on file, made by FRANK W. HASTINGS, Esquire, one of the Masters of this Court, bearing date on the twenty-first day of December in the year of Our Lord One Thousand Nine Hundred and twenty-five from all which it appears that there was due to the complainant on the day of making of the said report, for principal and interest on its mortgages, the sum of sixteen thousand eight hundred and seven dollars and ninety-nine cents, and to the defendant Mildred J. Smith the sum of twenty-nine hundred and thirty-nine dollars and six cents that the same premises are comprised in the respective mortgages of the complainant and last aforesaid defendant, and that the mortgage of complainant is first in registry and execution, and is entitled to priority of payment; and that the judgment of defendant Mildred J. Smith is second in registry and execution, and is entitled to be secondly paid; and that it is necessary and advisable that the whole of the mortgaged premises should be sold to raise and pay the money so due as aforesaid; and no cause being shown or appearing to the contrary.

30 IT IS THEREUPON, on this 11th day of January in the year of Our Lord One Thousand Nine Hundred Twenty-six by Honorable EDWIN ROBERT WALKER, Chancellor of the State of New Jersey,  
40 ordered, adjudged and decreed, and the said Chan-

cellor doth, by virtue of the power and authority of this Court, hereby order, adjudge and decree that the said report, and all the matters and things therein contained, do stand ratified and confirmed, and that the said mortgaged premises be sold to raise and satisfy the several sums of money due to the said complainant and defendant, that is to say, in the first place to the complainant the aforesaid sum of sixteen thousand eight hundred and seven dollars and ninety-nine cents and interest thereon, to be computed from the twenty-first day of December in the year of Our Lord One Thousand Nine Hundred and twenty-five being the date of the Master's Report, with the complainant's costs in this cause to be taxed; and in the second place, to pay unto the defendant Mildred J. Smith the sum of twenty-nine hundred thirty-nine dollars and six cents together with lawful interest thereon as aforesaid with her costs to be taxed, and to the complainant a counsel fee of \$184.00 dollars, and that a writ of *feri facias* do issue for that purpose out of this Court, directed to the Sheriff of the County of Hudson commanding him to make sale, according to law, of the said mortgaged premises, and that out of the money arising from such sale, he pay, in the first place, to the complainant or to its solicitor said debt, interest and costs; and in the second place to the aforesaid defendant Mildred J. Smith, her interest and costs, in manner aforesaid, or to her solicitors, and in case more money should be raised by the said sale than shall be sufficient to answer such several payments, that such surplus be brought into this Court, to abide the further order of the Court, unless otherwise previously disposed of by the order of this Court; and that the said Sheriff make return without delay of his proceedings by virtue of the said writ.

Petition to Open Decrees—Suits Nos. 1, 2 and 3.

AND IT IS FURTHER ORDERED, adjudged and decreed, that the defendants stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the said mortgaged premises, when sold as aforesaid by virtue of this decree.

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E. R. WALKER,  
C.

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**Petition to Open Decrees—Suits Nos. 1, 2 and 3—(58-609; 58-610; 58-611).**

(Filed April 8, 1926.)

20 TO THE HONORABLE EDWIN ROBERT WALKER,  
CHANCELLOR OF THE STATE OF NEW JERSEY:

The petition of Betsey Gollin and Max Gollin, her husband, two of the defendants in the foregoing suit, respectfully shows unto your Honor:

30 1. Sometime during the year 1923, one Irving Gollin, son of your petitioners, was the owner of a tract of land at the northeast corner of Hudson Boulevard and West 34th Street, in the City of Bayonne, County of Hudson and State of New Jersey, and more particularly described as the first tract set out in paragraph 3 of the complainant's Bill of Complaint filed in this cause and known as premises 880 Boulevard, Bayonne, and that the said Irving Gollin was erecting and constructing upon the said tract of land a thirty-two family apartment dwelling house.

40 2. That your petitioner, Betsey Gollin at that time was the owner in her own name of two other tracts of land in the City of Bayonne,

*Petition to Open Decrees—Suits Nos. 1, 2 and 3.*

County of Hudson and State of New Jersey, one situate at the northwest corner of Broadway and West 10th Street and described as the second tract of land in the complainant's Bill of Complaint and known as premises 249 Broadway, Bayonne, and the other situate on the westerly side of the Boulevard between West 19th Street and Bayonne City Park and described as the third tract of land in the complainant's Bill of Complaint and known as premises 501 Boulevard, Bayonne. 10

3. In or about the month of July or August, 1923, said Irving Gollin was in need of moneys to aid him in the completion of the said apartment house and applied to the Kay-Bee Investment Co. for an advance on its construction loan to which he was not entitled, and the Kay-Bee Investment Co. refused to advance such moneys. Thereupon an agreement was entered into with the Kay-Bee Investment Co. whereby said Irving Gollin executed and delivered to the said Betsey Gollin his deed conveying the premises at the northeast corner of the Boulevard and 34th Street, and known as 880 Boulevard, Bayonne, to said Betsey Gollin and thereupon the Kay-Bee Investment Co. advanced to Betsey Gollin additional moneys which said Betsey Gollin turned over to Irving Gollin for the purpose of enabling him to complete the construction of said building. 20 30

4. Thereafter in December, 1923, said Betsey Gollin borrowed from the Kay-Bee Investment Co. an additional sum of Eleven thousand Dollars and executed to the said Kay-Bee Investment Co. her bond and mortgage with the defendant, Max Gollin, her husband, joining in the mortgage. Said mortgage was recorded in the office of the 40

*Petition to Open Decrees—Suits Nos. 1, 2 and 3.*

Register of Hudson County as mentioned in the Bill of Complaint herein.

5. Thereafter said Betsey Gollin borrowed from the said Kay-Bee Investment Co. an additional sum of Four thousand Dollars and on January 7, 1924, executed and delivered to the said  
10 Kay-Bee Investment Co. her bond and mortgage with Max Gollin, her husband, joining in the mortgage on premises described as tract number three in the Bill of Complaint herein and known as premises 501 Boulevard, Bayonne.

6. Thereafter said Irving Gollin continued to complete the erection of the said building and during the course of completion incurred debts in the sum of One hundred and sixty-two thousand  
20 Dollars, all of which included the construction loan of Sixty-five thousand Dollars, the additional two loans above mentioned herein, Eleven thousand Dollars and Four thousand Dollars, and a number of personal loans from other persons and moneys due to laborers and materialmen.

7. In or about February, 1924, Betsey Gollin on behalf of Irving Gollin, who was the equitable owner of the property, obtained from the Colonial Life Insurance Company a first mortgage loan on the premises at the northeast corner of the  
30 Boulevard and 34th Street and known as premises 880 Boulevard, in the sum of One hundred thousand Dollars, and said Betsey Gollin executed and delivered her bond and mortgage with Max Gollin, her husband joining, to secure the payment of such sum and out of the proceeds of said mortgage, said Betsey Gollin caused to be paid all liens then existing against the premises except the two mortgages above recited held by the Kay-Bee Investment Co., the first in the sum  
40 of Eleven thousand Dollars and the second in

*Petition to Open Decrees—Suits Nos. 1, 2 and 3.*

the sum of Four thousand Dollars, which by agreement with the Kay-Bee Investment Co. were subordinated to the lien of the said Colonial Life Insurance Company's first mortgage, and became second and third mortgages on the premises at the northeast corner of the Boulevard and 34th Street and known as premises 880 Boulevard, Bayonne, and were also liens against the other properties described in the Bill of Complaint. 10

8. In November 1923, Max Gollin applied to one, John L. Dalrymple, for a loan of Three thousand Dollars in order to enable said Irving Gollin to complete the building, and said John L. Dalrymple agreed to lend the said Max Gollin the said sum of Three thousand Dollars if the said Max Gollin would give him as security a mortgage on certain other property owned by Betsey Gollin and described as premises number 772 Avenue C, in the City of Bayonne, which was the residence of Max Gollin and Betsey Gollin, and thereupon Betsey Gollin with her husband executed and delivered to John L. Dalrymple their bond and mortgage for Three thousand Dollars and received the money which was given to Irving Gollin for the purpose of enabling him to complete the building. 20

9. On June 11, 1923, Betsey Gollin borrowed from one, Lillian Markowitz, Thirty-two hundred Dollars, which was given to Irving Gollin for the purpose of enabling him to complete the building, and as security for said Thirty-two hundred Dollars, executed and delivered to said Lillian Markowitz her bond and mortgage on premises known as 499 Boulevard, in the City of Bayonne, Hudson County, New Jersey, then owned by the said Betsey Gollin. 30

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*Petition to Open Decrees—Suits Nos. 1, 2 and 3:*

10. Sometime in February, 1924, the creditors of Irving Gollin began to press him for payment of their debts and Irving Gollin and your petitioners being unable to pay the same, applied to said Horace Roberson for a loan of sufficient moneys to pay the creditors of said Irving Gollin and offered to give to said Horace Roberson a mortgage on the premises first described in the Bill of Complaint herein and situate at the northeast corner of the Boulevard and 34th Street and known as 880 Boulevard, Bayonne, but said Horace Roberson refused to accept a mortgage on said premises and to lend money, but agreed with your petitioners that he would accept from your petitioners a deed conveying to him the premises known as 880 Boulevard and hold the same in trust for your petitioners and receive and collect the rents, issues and profits thereof, and after the payment of all carrying charges thereon to apply any balance remaining in his hands to the payment of all of the encumbrances and debts then existing against the said premises, and said Horace Roberson further agreed that he should endeavor to effect settlements with the creditors of said Irving Gollin, and if necessary advance out of his own moneys such sums as might be required for the purpose of making such settlements, and that upon the repayment to him of the moneys so advanced, together with interest and compensation for his services, he would return to your petitioners the premises so conveyed to him. Said Horace Roberson further demanded of your petitioners an absolute deed of conveyance so that he might without the consent of your petitioners sell the said premises as in his discretion he might deem best and apply the proceeds of such sale as above set forth,

*Petition to Open Decrees—Suits Nos. 1, 2 and 3.*

and said Horace Roberson further agreed that he would account to your petitioners regularly for all of the receipts of the said premises together with his disbursements thereon.

11. Pursuant to said agreement with said Horace Roberson, your petitioners agreed to execute and deliver to the said Horace Roberson, a deed conveying the premises as above set forth, upon the terms and conditions above recited, and with the request of said Horace Roberson, did execute and deliver their deed conveying the said premises to the Annett-Mahnken Realty Company, who was the nominee of the said Horace Roberson, and the said Annett-Mahnken Realty Company, the complainant herein, did thereupon execute and deliver to your petitioners an agreement in writing, a copy of which is hereto annexed, specifically setting forth the terms and conditions of the agreement so made by your petitioners with the said Horace Roberson. Said agreement further provided that the said complainant agreed that it would not do, or suffer or permit any act, deed, matter, or thing, whereby the said premises could, should or might be in anywise impaired, destroyed or injured in title, interest, estate or otherwise, excepting as might be necessary to carry out and fulfill the conditions of said trust.

12. Your petitioners further show that the said Horace Roberson took possession of the premises on May 16, 1924, and from that time on has had absolute possession and control of said premises, and has received and collected all of the rents, issues and profits thereof, and has enjoyed the said premises to the fullest extent as if the same were his absolute property, and has failed to render unto your petitioners any account of his trust, and has failed to pay and discharge all of the en-

*Petition to Open Decrees—Suits Nos. 1, 2 and 3.*

cumbrances against the said premises as he had agreed to do but instead of paying and discharging the said encumbrances, has purchased all outstanding mortgages and liens and now holds the same to his own use.

- 10 13. Your petitioners further show that the said Horace Roberson has purchased or caused to be purchased in the name of the complainant herein the mortgage made by your petitioners to John L. Dalrymple and that he is now the owner thereof, that he has purchased the mortgage made by your petitioners to Lillian Markowitz and that he is now the owner thereof; that he has purchased from the Kay-Bee Investment Co. the two mortgages above set forth and is now the owner thereof; that he has purchased from James  
20 Brady's Sons Co. the certain judgment described in the Bill of Complaint and is now the owner thereof; and that he has purchased a number of other claims against the said Irving Gollin and is now the owner thereof, but that he has failed in all respects to account to your petitioners in any way for the purchase of the said encumbrances and that he has failed to give your petitioners the benefit of such purchase, and that he has failed to discharge the same of record as he had agreed  
30 to do.

14. Your petitioners further show that contrary to his agreement and for the purpose of cheating and defrauding your petitioners, the said Horace Roberson has caused to be instituted three suits in foreclosure in the Court of Chancery of New Jersey, the first suit under the mortgages given by your petitioners to the Kay-Bee Investment Co., the second suit for the foreclosure of the mortgage given by your petitioners to Lillian Markowitz  
40 and the third suit for the foreclosure of the mort-

Petition to Open Decrees—Suits Nos. 1, 2 and 3.

gage given by your petitioners to John L. Dalrymple.

15. Your petitioners further show that immediately upon the service upon them of the subpoena in each of said suits, your petitioners retained the firm of Dembe & Dembe of the City of Bayonne to represent them and that they were led to believe that their interests were being protected, but learned later on that no answer had been filed for them or on their behalf, and that a decree in Foreclosure had been entered and that a Writ of Fi Fa had been issued to the Sheriff of Hudson County and that the said premises were then being advertised for sale. 10

16. Thereupon your petitioners immediately retained George E. Cutley, Esquire, Counsellor at Law of this State, and that said George E. Cutley informed your petitioners that he was taking care of the matter and would endeavor to have the Decrees of Foreclosure set aside and opened, and your petitioners are now informed that no action has been taken by the said George E. Cutley and that the Sheriff will on April 8th sell the said premises at public auction. 20

17. Your petitioners further show that the premises at the northwest corner of the Boulevard and 34th Street and known as 880 Boulevard, Bayonne, were reasonably worth the sum of One hundred and sixty-five thousand dollars at the time of the execution of the deed to the said Annett-Mahnken Realty Company and that sufficient moneys could have been raised by a sale of the said premises to pay all of the obligations and encumbrances of your petitioners and Irving Gollin, and that your petitioner, Betsey Gollin, could have saved herself the premises known as 249 Broadway, 501 Boulevard, 772 Avenue C and 880 Boule- 30  
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Petition to Open Decrees—Suits Nos. 1, 2 and 3.

vard, Bayonne, if the said Horace Roberson had properly executed the trust reposed in him.

10 18. Your petitioners further show unto your Honor that they are illiterate persons, absolutely ignorant in the English language and can neither read nor write and that the paper writing annexed to this petition and given to them by said Horace Roberson was represented to them as is particularly set forth in this petition and that they did not have the benefit of independent advice before accepting the same and executing the deed to the said Annett-Mahnken Realty Company.

20 Wherefore your petitioners respectfully pray that your Honor will make an Order opening, vacating and setting aside the Decrees entered in all three foreclosure suits and restrain and enjoin the sheriff from exposing the said premises for sale until the further order of this Court in the premises and for an Order permitting your Petitioners to interpose an Answer in all three foreclosure suits and for such other and further relief in the premises as to your Honor shall seem meet.

And your petitioners will every pray, etc.

BETSEY GOLLIN,  
MAX GOLLIN,  
30 Petitioners.

State of New Jersey, } ss.:  
County of Hudson, }

40 Betsey Gollin, of full age, being duly sworn on her oath deposes and says; that she is one of the defendants in the above entitled cause, and is one of the petitioners in the foregoing petition named; that she has had read to her and has heard fully

Petition to Open Decrees—Suits Nos. 1, 2 and 3.

and particularly all of the contents of the foregoing petition, and the same are true.

BETSEY GOLLIN.

Sworn and subscribed to before me this  
this 8th day of April, 1926.

10

ANN FEDER,  
Notary Public,  
of New Jersey.

State of New Jersey, }  
County of Hudson, } ss.:

Max Gollin, of full age, being duly sworn on his  
oath deposes and says; that he is one of the de-  
fendants in the above entitled cause, and is one of  
the petitioners in the foregoing petition named;  
that he has had read to him and has heard fully  
and particularly all of the contents of the fore-  
going petition, and the same are true.

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MAX GOLLIN.

Sworn and subscribed to before me  
this 8th day of April, 1926.

30

ANN FEDER,  
Notary Public,  
of New Jersey.

40

Petition to Open Decrees—Suits Nos. 1, 2 and 3.

State of New Jersey, } ss.:  
 County of Hudson, }

Irving Gollin, of full age, being duly sworn on his oath deposes and says; that he is the Irving Gollin mentioned in the foregoing petition, and  
 10 that he has read the same fully and particularly, and the same is true.

IRVING GOLLIN.

Sworn and subscribed to before me  
 this 8th day of April, 1926.

ANN FEDER,  
 Notary Public,  
 of New Jersey.

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COPY OF TRUST AGREEMENT

TO ALL TO WHOM THESE PRESENTS SHALL COME, the Annett-Mahnken Realty Company, a corporation of State of New Jersey, sends,

GREETINGS:

30 WHEREAS, on May 16th, 1924, Betsey Gollin and Max Gollin, her husband, in consideration of One Dollar and other valuable consideration to them in hand paid, by deed under their hand and seal, did grant and convey in fee unto said Annett-Mahnken Realty Company, all that certain tract, piece or parcel of land and premises, situate, lying and being in the City of Bayonne, in the County of Hudson and State of New Jersey, described as follows: Beginning at the  
 40 intersection of the northerly line of West 34th

*Petition to Open Decrees—Suits Nos. 1, 2 and 3.*

Street, with the easterly line of the Hudson County Boulevard; thence running (1) easterly along the northerly side of West 34th Street (82.5) feet; thence (2) Northerly and parallel with the Hudson County Boulevard (87.5) feet; thence (3) westerly and parallel with West 34th Street (82.5) feet to the easterly side of the Hudson County Boulevard; thence (4) southerly along the same (87.5) feet to the point or place of beginning. 10

NOW KNOW YE, that the said Annett-Mahnken Realty Company does in consideration of the sum of One Dollar to it paid by the said Betsey Gollin, hereby make known, admit and declare that said premises were so conveyed to it, and that it now holds and will continue to hold the same in trust for the use and benefit of the said Betsy Gollin, her heirs and assigns and for the several creditors of said Betsy Gollin and one Irving Gollin for the furnishing and of labor and materials for the construction and erection of the four story brick apartment house building erected upon the above described lands, and said Company does for itself, its successors and assigns covenant and agree to and with the said Betsey Gollin or her heirs and assigns that said Company will at all times hereafter hold said herein described lands and promises upon the following trusts, and not otherwise, that is to say: 20 30

FIRST: To collect the rents, issues and profits thereof from the several tenants which occupy apartments in said building.

SECOND: To pay out of said rents and profits, the interest due upon the mortgages that are liens upon said premises; to pay taxes, water rents, insurance premiums and for the necessary repairs and other expenses that are proper and incident to the management of said building. 40

*Petition to Open Decrees—Suits Nos. 1, 2 and 3.*

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THIRD: To endeavor to settle with all creditors of said Betsey Gollin and Irving Gollin, and as far as necessary to advance such sum or sums of money as may be necessary for the settlement of all such claims.

10 FOURTH: That in order to raise moneys sufficient for the settlement of said claims, if a satisfactory price is offered, to sell and convey said premises without the written consent of the said Betsey Gollin, but to render to said Betsey Gollin a just and true account of all moneys received from the sale of said premises and all expenditures. That it has been agreed between the parties hereto that said Annett-Mahnken Realty Company is to receive a commission of five per cent (5%) for the collection of said  
20 rents; that said Company is to receive a just and reasonable compensation for procuring loans for all moneys advanced in the settlement of said claims and is to receive lawful interest upon all moneys invested in said property. To pay all other legal and necessary expenses that may become necessary in the management of said property, and also to receive such compensation as may be mutually agreed upon hereafter between the parties hereto and if they fail to agree, to  
30 receive such compensation as the Chancellor or any of the Vice Chancellors upon proper issue framed in the Court of Chancery allows to said Company for its services in the capacity as trustee.

FIFTH: That after said premises have been freed from all of said debts and claims, and said Company has received its just compensation for the management thereof, to sell and convey said lands and premises to such person or persons as  
40 said Betsey Gollin may require by writing, free

*Order to Show Cause—Suits Nos. 1, 2 and 3.*

and clear and discharged of and from all and every encumbrance thereon by said Company or its successors or assigns, except such as may be necessary to pay said claims.

And it does further for itself, its successors and assigns covenant and agree to and with the said Betsey Gollin or her heirs, devisees, executors, administrators and assigns that said Company shall not do, or suffer or permit any act, deed, matter or thing, whereby said premises, can shall or may be in anywise impaired, destroyed or injured in title, interest, estate or otherwise, excepting as may be necessary to carry out and fulfill the conditions of this trust. 10

In witness whereof, the said Annett-Mahnken Realty Company has caused its corporate seal to be hereto affixed and attested by its Secretary and these presents to be signed by its President, this \_\_\_\_\_ day of May, nineteen hundred and twenty-four. 20

ANNETT-MAHNKEN REALTY COMPANY,  
a corporation of New Jersey,  
By: CHAS. E. ANNETT, Pres.

Attest:

MARY E. ANNETT, Sec.

30

**Order to Show Cause—Suits Nos. 1, 2 and 3—  
58-609; 58-610; 58-611).**

(Filed April 8, 1926.)

The defendants, Betsey Gollin and Max Gollin, her husband, having filed their petition in this Court, duly verified, setting forth that they have 40

*Order to Show Cause—Suits Nos. 1, 2 and 3.*

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10 certain legal and equitable defenses to the Bills of Complaint heretofore filed in three certain causes now pending in this Court, and praying that an Order to Show Cause why the Decree heretofore entered in said three causes should not be opened, vacated and set aside to the end that the said defendants may have leave to interpose their answers in said three causes, now therefore, on motion of Heyman & Heyman, solicitors for the said defendants Betsey Gollin and Max Gollin, her husband, it is on this 8th day of April, 1926,

ORDERED that Annett-Mahnken Realty Company the complainant in said three causes be, and it is hereby

20 ORDERED and directed to Show Cause before this Court on the 26th day of April, 1926, at 10 o'clock in the forenoon or as soon thereafter as counsel can be heard at the Chancery Chambers, No. 1 Exchange Place, Jersey City, Hudson County, New Jersey, why an Order should not be made herein opening, setting aside and vacating the Decrees heretofore entered in said three causes, and why the defendants Betsey Gollin and Max Gollin, her husband, should not be permitted to file answers to the Bills of Complaint  
30 filed in said three causes or to take such other steps as shall be necessary to protect their interest in and to the premises more particularly described in the Bills of Complaint filed in said three causes, and why the said Betsey Gollin and Max Gollin, her husband, shall not have such other and further relief in the premises as shall seem equitable and just; and it is further

40 ORDERED that in the meantime and until the further order of the Court in the premises, the Sheriff of the County of Hudson and all other

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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persons acting under him, be, and they hereby are restrained from exposing for sale or selling the said lands and premises; and it is further

ORDERED that a copy of this Order, together with the petition upon which the same is founded, both to be certified by the Solicitors for the petitioner be served upon Annett-Mahnken Realty Company within five days from the date of this Order, and that such service shall be deemed good and sufficient service. 10

Application to modify or vacate on 2 days notice.

Respectfully advised,

JOHN BENTLEY, V. C.

E. R. WALKER,  
C. 20

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**Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3—(58-609; 58-610; 58-611).**

(Filed April , 1926.)

State of New Jersey, } ss.:  
County of Hudson, }

Max Gollin of full age, being duly sworn according to law on his oath deposes and says: 30

During the year 1923, my son, Irving Gollin, purchased a tract of land at the Hudson County Boulevard & West 34th Street, in the city of Bayonne, New Jersey more particularly described as the First Tract set out in paragraph 3 of the complainant's Bill of Complaint and known as premises 880 Boulevard, Bayonne, N. J., upon which Irving Gollin planned to erect a thirty-two family apartment dwelling house. 40

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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At the same time, my wife, Betsey Gollin, was the owner of five other tracts of land in the City of Bayonne and known respectively as No. 249 Broadway, No. 501 Boulevard, No. 499 Boulevard, No. 772 Avenue C and No. 462 Avenue C.

10 In June 1923, my son required some additional moneys for the purpose of taking the title to the land and for the purpose of enabling him to build the building and my wife arranged with one, Lillian Markowitz, to borrow from said Lillian Markowitz, through an attorney by the name of Israel Lipschitz, the sum of \$3,200.00 and to give her as security, a mortgage on premises No. 499 Boulevard, Bayonne, N. J.

20 After receiving the said moneys and paying the costs of examining the title, my wife turned the balance over to my son, who used the same for the purpose of taking the title and for the commencement of the erection of the building.

30 In June 1923 my son arranged with the Kay-Bee Investment Co. for a construction loan of \$70,000.00 and executed and delivered to the Kay-Bee Investment Co. a mortgage on the premises for that amount, which mortgage was to be used for the purpose of erecting the building and which mortgage provided for the payment of certain sums of money during the course of the said construction.

40 In November of 1923, one of the creditors of my son, Springstead Supply Co., placed with Horace Roberson, a claim against my son for bricks sold to him in the erection of the said building, for the sum of approximately \$1,800.00 and my son requested that I go to Horace Roberson and see if I could make some arrangement about the payment of this money. I went to see

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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Mr. Roberson and I asked him if he would lend me \$3,000 on a mortgage on premises No. 772 Avenue C so that my son would be able to pay the Springstead Supply Co. and so that he would have some more moneys to pay off other creditors. Mr. Roberson agreed to give me the money and thereupon my wife made a mortgage on premises at No. 772 Avenue C to John L. Dalrymple for \$3,000.00, and Mr. Roberson deducted the Springstead Supply Co. claim and gave me the balance, less his charges for searching the title, and I gave that balance to my son who used it in the erection of the building. 10

In December 1923, my son required more moneys and my wife then arranged with the Kay-Bee Investment Co. to borrow \$11,000.00 and to give as security, a mortgage on the apartment house which my son was then erecting and which had been transferred to my wife, and also two other parcels at No. 249 Broadway and No. 501 Boulevard, Bayonne, N. J. This money was turned over to my son who used the same in the erection of the building. 20

In January 1924, my son again required more moneys and my wife again arranged to borrow from the Kay-Bee Investment Co. the sum of \$4,000.00 and to give them as security another mortgage on the same three parcels of property. The proceeds of this mortgage were given to my son for the erection of the building. 30

In February 1924, my son arranged to borrow \$100,000.00 from the Colonial Life Insurance Company and to give them a first mortgage on the apartment house. Out of the proceeds of these moneys, he paid the first construction loan of \$70,000.00 with interest and costs, the land 40

*Affidavits in Support of Petition--Suits Nos. 1,  
2 and 3.*

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mortgage of \$16,000.00, the architect's fees for the Colonial Life Insurance Company of \$1,500.00, the Baldwin Lumber Co. and Junction Milling Co. for approximately \$5,500.00, the New Jersey Title Guarantee & Trust Co. the sum of \$750.00, 10 the Colonial Life Insurance Company the sum of \$500.00, The First National Bank of Jersey City the sum of \$3,500.00; and the second and third mortgages of \$11,000.00 and \$4,000.00 held by the Kay-Bee Investment Co. were subordinated to the lien of the Colonial Life Insurance Company mortgage.

Shortly thereafter I went to see Mr. Roberson and asked Mr. Roberson if he would lend \$50,000.00 on a second mortgage on the apart- 20 ment house which my son had just completed and Mr. Roberson said that he would not lend the money on a second mortgage, but that he would consider the matter and let me know what he could do. Within a few days Mr. Roberson advised me that he would accept a clear deed to the apartment house and that he would hold and manage the property and that he would attempt to make a settlement with all of the creditors and if he could make any settlement, he would 30 advance enough moneys to do so and that he would hold the property until he could get a buyer and if he sold the property, then out of the moneys which he would receive, he would pay himself all of the moneys which he so advanced and he would pay over whatever was left to my son. He insisted upon a clear deed to the prop- erty without any right on my wife's part to prevent him from selling at any time that he might choose. I conferred with my wife and son, and 40 my wife agreed to give him such a deed. I thereupon notified Mr. Roberson and he told me

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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to bring to him a complete list of all persons to whom there was due any moneys on this building. My son prepared that list and I took it to Mr. Roberson. Mr. Roberson then prepared the deed and my son got the deed from him and brought it to my home and my wife and I executed the same before Israel Lipshitz, and Mr. Lipshitz signed the acknowledgment and my son delivered the deed to Mr. Roberson. Within a few days thereafter, I saw Mr. Roberson and told him that my son insisted upon a Trust Agreement to protect our interest in that building. Mr. Roberson told me that he would prepare such an agreement and within a few days he told me that it was ready and I took my wife to his office and there Mr. Roberson read to us the agreement annexed to the petition. Mr. Roberson read this agreement to us and I and my wife asked him if he would clear all of the debts and all of the mortgages on the other properties and the Brady judgment, and he said that he would and that this agreement contained such a provision. We thereupon signed the agreement. Mr. Roberson told us at that time that he and Mr. Annett would advance the moneys necessary to pay all of the claims against this building.

On May 16, 1924, said Horace Roberson took possession of said premises and from that time on has had absolute possession and control thereof and has received and collected all of the rents, issues and profits and has enjoyed the said premises to the fullest extent as if the same were his absolute property and has failed to render to us any account of his trust and has failed to discharge any of the mortgages against the other properties as he had agreed to do, but on the contrary, he has paid the mortgages existing

*Affidavits in Support of Petition--Suits Nos. 1,  
2 and 3.*

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against the other properties and instead of discharging the same has taken an assignment of all said mortgages as well as the Brady judgment above mentioned and now holds the same to his own use.

10 At the time that I asked Mr. Roberson to take a second mortgage of \$50,000.00, I informed Mr. Roberson that my son had received an offer to purchase this property by William N. Hutchinson for \$168,000.00, but that my son had refused to sell because there would be nothing left for him after the payment of commissions.

I am informed that Mr. Roberson has paid all of the persons who had claims against the said building, but he has never given me any statement  
20 of the amount which he has expended in making such payments.

Said Horace Roberson has caused to be instituted in this Court three suits in foreclosure; the first suit under two mortgages given by my wife to the Kay-Bee Investment Co., the second suit under the mortgage given by my wife to Lillian Markowitz and the third suit under the mortgage given to John L. Dalrymple.

The Markowitz mortgage was assigned to Horace Roberson and by Horace Roberson to the complainant; the Dalrymple mortgage was assigned to Myrtle A. Reid and by said Myrtle A. Reid to the complainant; the Kay-Bee Investment Co. mortgages were assigned to Mildred J. Smith and by Mildred J. Smith to the complainant and the Brady judgment was assigned to Mildred J. Smith who now holds the same. Deponent avers that Myrtle A. Reid and Mildred J. Smith are persons acting in behalf of the complainant and Horace  
30 Roberson.

40 When the subpoena in these several causes were

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

served upon us, I went to see Mr. Dembe and he told me that it would be necessary to file an Answer. I asked Mr. Dembe to file an Answer and left the papers with him. I did not do anything further in the matter until about two weeks later when my wife received a letter from Mr. Dembe to call at his office. My wife called there and Mr. Dembe gave her back the papers and we thought that the matter was being taken care of, but we later learned that no Answer had been filed and that a Decree in foreclosure had been entered and that the sheriff had advertised the property for sale. When we learned that the property was about to be sold, we retained George E. Cutley and Mr. Cutley informed us that he would take care of the matter and endeavor to have the decrees in foreclosure opened, but are now informed that Mr. Cutley took no action in that behalf and the only thing that Mr. Cutley did, was to adjourn the sale from week to week until April 8, 1926. We learned from Mr. Cutley on April 7, that he had not taken any steps to open the Decrees and we then retained Messrs. Heyman & Heyman to take such action in the matter.

I am not well versed in the English language and I do not understand the intricate legal phraseology such as is employed by Mr. Roberson and did not understand the contents of the agreement which he had prepared and which he read to us at the time of the signing of that agreement in his office.

MAX GOLLIN.

Sworn to and subscribed before me this  
14th day of April, 1926.

JOHN FLANIGAN,  
Master in Chancery,  
of New Jersey.

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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State of New Jersey, }  
County of Hudson, } ss. :

10 Betsey Gollin, of full age, being duly sworn according to law on her oath deposes and says: I am one of the defendants in the above entitled suit and in the other two suits brought by the same complainant and I am the owner of six parcels of real estate in the City of Bayonne. They are as follows: No. 880 Boulevard, No. 249 Broadway, No. 501 Boulevard, No. 499 Boulevard, No. 772 Avenue C and No. 462 Avenue C. The premises at No. 880 Boulevard were conveyed to me by my son, Irving Gollin, in or about July or August of 1923 as will hereafter appear.

20 Sometime in 1923, my son bought the premises at No. 880 Boulevard and intended to erect an apartment house thereon. At the time that it became necessary to take the title, my son did not have sufficient moneys and I then borrowed from Lillian Markowitz, through Israel Lipshitz, who was her attorney, the sum of \$3,200.00 and gave her a mortgage on property which I owned at No. 499 Boulevard, Bayonne, N. J. The proceeds of this mortgage I turned over to my son, 30 who used them for the purpose of taking the title and for the purpose of commencing the excavation of the plot and for the foundation of the building. My son had arranged with the Kay-Bee Investment Co. to borrow \$70,000.00 on a construction loan on the apartment house and my son informed me that the \$70,000.00 would be given to him as the building progressed.

40 In July or August of 1923 my son informed me that he needed some moneys and that the Kay-Bee Investment Co. would not advance any because he was not entitled to them in accordance

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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with the progress of the building, but that if a deed were given to me for the property, they would advance to me the moneys under this mortgage, regardless of whether or not the building warranted the same. My son then conveyed the property to me and the Kay-Bee Investment Co. 10 advanced the moneys to me and I turned same over to my son for use in the erection of the building.

In December 1923, my son required more moneys and I borrowed from the Kay-Bee Investment Co. \$11,000.00 and gave them a mortgage on the apartment house and two other houses, one at No. 249 Broadway and the other at No. 501 Boulevard. This money I also turned over to my son. 20

In January 1924, I borrowed \$4,000.00 from the Kay-Bee Investment Co. and gave them another mortgage covering the same premises and again I turned this money over to my son for the apartment house building.

My son then arranged for a first mortgage of \$100,000.00 with the Colonial Life Insurance Company and I signed the bond and mortgage to the Colonial Life Insurance Company and the same were disbursed for liens against the building, 30 then existing.

In November 1923, I borrowed from Horace Roberson the sum of \$3,000.00 and executed my mortgage to one John L. Dalrymple, of premises No. 772 Avenue C.

After the Colonial Life Insurance Company mortgage had been placed, my husband told me that he had asked Mr. Roberson to lend \$50,000.00 on a second mortgage on the apartment house, but that Mr. Roberson had refused to take a mortgage, but that he would consider some way to 40

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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- help us out and a few days later, my husband told me that Mr. Roberson had said that if I would execute a clear deed to the property to him, giving him the ownership of that property so that he might collect the rents, he would hold
- 10 the property and manage it for us and that he would then attempt to settle the claims of the creditors and would advance his own moneys to that end, so that we might have the advantage of such settlements and that he would attempt to sell the property and if he sold it, that he would pay himself all of the moneys so advanced together with his interest and charges thereon, and if any moneys were left, he would return them to us. I asked my husband if that meant
- 20 that Mr. Roberson would clear my other properties and he told me that it did and I thereupon agreed to do it. Shortly thereafter I signed a deed conveying the property to Mr. Roberson. Within a few days thereafter, my son insisted upon having a writing from Mr. Roberson to protect our interest and I went with my husband to Mr. Roberson and he prepared such an agreement. I asked Mr. Roberson if that agreement
- 30 said that he would clear all of the debts on my other properties and the Brady judgment and Mr. Roberson told me that it did and I thereupon signed the agreement. I can neither read nor write the English language, and I asked my husband if that agreement said that Mr. Roberson would clear all of my debts on my other properties and the Brady judgment and my husband asked Mr. Roberson the same question and received the same answer. We thereupon signed the agreement. Mr. Roberson immediately took
- 40 possession of the property which was about May

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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16, 1924, and has had the absolute possession thereof since that time and has collected all of the rents, issues and profits and has enjoyed the premises to the fullest extent, and has failed to pay and discharge the mortgage against my other properties and the Brady judgment, but on the contrary, he has paid and taken by assignment, all of the mortgages against my other properties and the Brady judgment. 10

The Markowitz mortgage was assigned to Horace Roberson and by Horace Roberson to the complainant; the Dalrymple mortgage was assigned to Myrtle A. Reid and by said Myrtle A. Reid to the complainant; the Kay-Bee Investment Co. mortgages were assigned to Mildred J. Smith and by Mildred J. Smith to the complainant, and the Brady judgment was assigned to Mildred J. Smith, who now holds the same. Deponent avers that Myrtle A. Reid and Mildred J. Smith are persons acting in behalf of the complainant and Horace Roberson. 20

Mr. Roberson has failed to give me the benefit of any settlement which he has made, if any, but on the contrary, has caused three foreclosure suits to be brought against me; one under the two Kay-Bee Investment Co. mortgages; one under the Markowitz mortgage and one under the Dalrymple mortgage. 30

My husband took the subpoenae to Mr. Dembe and in about two weeks I received a letter to call at Mr. Dembe's office. I went to Mr. Dembe and he gave me back the papers. I did not know that no answer had been filed and I did not do anything further in the matter until I was informed that the property was advertised for sale. We then went to Mr. Cutley who told us that he 40

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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would take care of the matter and on April 7th, we were informed that nothing had been done and that no further adjournments of sale could be had and we immediately went to Messrs. Heyman & Heyman and placed the matter in  
10 their hands.

BETSEY GOLLIN.

Sworn to and subscribed before me,  
this 14th day of April, 1926.

JOHN FLANIGAN,  
Master in Chancery  
of New Jersey.

20

State of New Jersey, } ss.:  
County of Hudson, }

Irving Gollin of full age, being duly sworn according to law on his oath deposes and says: I am the son of Max and Betsey Gollin. I purchased a tract of land at 34th Street and the Boulevard in Bayonne, upon which I intended to erect an apartment house.

30 In June 1923, my mother borrowed the sum of \$3,200.00 from Lillian Markowitz and gave her bond and mortgage on premises No. 499 Boulevard, and turned over the money to me. With this money I took the title and commenced the excavation and the foundation of the building.

In June 1923, I arranged with the Kay-Bee Investment Co. for a construction mortgage loan of \$70,000.00. This mortgage provided for the

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*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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payment of moneys at various stages of the construction of the building.

In July or August of that year, I was unable to continue with building and asked the Kay-Bee Investment Co. to advance moneys in advance of the times when I was entitled to receive them and they refused to do so. I was told, however, that if I would convey the title to my mother, her credit would enable the Kay-Bee Investment Co. to make such advance and I did thereupon convey the property to my mother and she received from the Kay-Bee Investment Co. the advances so made and turned them over to me and I used them in the erection of the building. 10

In November 1923, I owed the Springstead Supply Co. about \$1,800.00 for bricks, and Horace Roberson wrote me a letter that he had received the claim for collection. My father went to Mr. Roberson and arranged with Mr. Roberson to borrow the sum of \$3,000.00 on the property owned by my mother at No. 772 Avenue C, and she gave him a mortgage in the name of John L. Dalrymple for that amount. 20

In December 1923, I caused my mother to borrow from the Kay-Bee Investment Co. the sum of \$11,000.00 and to give her bond secured by a mortgage covering three parcels of property, namely, No. 880 Boulevard, No. 249 Broadway and No. 501 Boulevard. My mother turned over to me the moneys on this mortgage. 30

In January 1924, I borrowed an additional sum of \$4,000.00 from the Kay-Bee Investment Co. and my mother gave her bond and mortgage on the three parcels above mentioned to secure the loan. I received the moneys and put them into the erection of this building. 40

*Affidavits in Support of Petition—Suits Nos. 1,  
2 and 3.*

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10 In February 1924, I arranged for a first mortgage loan with the Colonial Life Insurance Company of \$100,000.00 and out of the proceeds I paid all of the existing mortgages and encumbrances against the property, except the two mortgages of \$11,000.00 and \$4,000.00, which mortgages were subordinated to the lien of the Colonial Life Insurance Company mortgage.

20 Shortly thereafter my father applied to Horace Roberson for a mortgage of \$50,000.00 which would be a second mortgage on the apartment house. I had at that time received from one, William N. Hutchinson, an offer for this building of \$168,000.00, but I figured out that after the payment of all moneys, charges and the cost of construction and the commissions of the brokers, there would be nothing left for me and I refused the offer.

30 I received word from my father that Mr. Roberson would accept a deed for the property and that he had agreed to hold and manage the property and try to settle the claims of my creditors and that if he could sell the property, he would do so and pay himself whatever moneys he advanced, together with his interest and charges for making the loan and for examining the property, and if anything was left, he would turn it over to us. We agreed to make such a deed. I received from Mr. Roberson the deed in question which was taken to my mother's home and there executed by my mother and father and I delivered the same to Mr. Roberson. Mr. Roberson, immediately went into actual possession of the premises and took control thereof and has been in possession and control from that time on,  
40 down to the present day and has received all the

*Affidavits in Support of Petition—Suits Nos. 1,  
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rents, issues and profits and has never given me any statement of his accounts, nor has he told me what claims he has paid or purchased, nor has he in any way informed me how much there is now due to him for his advances on this building.

10

I am informed that he purchased the mortgages of \$11,000.00 and \$4,000.00 held by the Kay-Bee Investment Co., also the Dalrymple mortgage of \$3,000.00 as well as the Markowitz mortgage of \$3,200.00, and that he has also purchased the Brady judgment of \$2,700.00 and that the same are now held for his benefit and that he is the absolute owner thereof.

I went to Mr. Roberson on many occasions and asked him to give me a statement of accounting showing how much moneys he had collected and what moneys he had expended, what claims he had paid, and asked him if he would give me back all the mortgages on my mother's property and in each instance, he promised that he would furnish me with an accounting and that he would give me back the mortgages for cancellation.

20

All of the moneys which are now due under all of these mortgages were moneys borrowed by my mother and given to me to enable me to erect the apartment house at 34th Street and Boulevard, Bayonne, N. J. At the time of the making of the deed by my mother to Mr. Roberson, I prepared and delivered to Mr. Roberson, a full and true statement setting forth the amounts of moneys which I had borrowed and invested in that apartment house, and that statement shows that the moneys borrowed by my mother on these various mortgages were included in the list and

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*Affidavits in Opposition to Petition—Suits Nos. 1,  
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would have to be repaid out of the proceeds of the apartment house.

IRVING GOLLIN.

10 Sworn to and subscribed before me  
this 14th day of April, 1926.

JOHN FLANIGAN,  
Master in Chancery of New Jersey.

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**Affidavits in Opposition to Petition—Suits Nos.  
1, 2 and 3—(58-609; 58-610; 58-611).**

(Filed April 26, 1926.)

20

**Affidavit of Horace Roberson.**

State of New Jersey, }  
County of Hudson, } ss.:

30 Horace Roberson, of full age, being duly sworn according to law on his oath deposes and says; that he is an Attorney and Counsellor at Law, practicing his profession in the Courts of the State of New Jersey, having his place of business and office located at No. 29 West 8th Street, Bayonne, New Jersey. That deponent has read the petition and affidavits filed by Betsey Gollin and Max Gollin, her husband, and Irving Gollin in the above entitled matter. That deponent is well acquainted with said Betsey Gollin and Max Gollin, her husband, that he has acted in various capacities for them in legal matters for the past twenty-five years, or more. That during the summer of 1923,  
40 said Max Gollin and Irving Gollin, his son, came

*Affidavits in Opposition to Petition—Suits Nos. 1,  
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to deponent on various occasions seeking assistance in financing the building then in the course of construction on the northeast corner of the Hudson County Boulevard and West 34th Street, Bayonne, New Jersey, now known as No. 880 Boulevard. That at the request of Betsey Gollin and Max Gollin, her husband, the firm of Roberson & Roberson, of which deponent is a member, procured from one John L. Dalrymple a loan of \$3,000.00 covering, as a second mortgage the property owned by Betsey Gollin known as No. 772 Avenue C, Bayonne, New Jersey. Said bond and mortgage were duly executed by said Betsey Gollin and Max Gollin, her husband, and the \$3,000.00 secured thereby turned over to them. 10

That early in 1924, Max Gollin and Betsey Gollin, came to this deponent and stated that the creditors of Irving Gollin were pressing them very hard for the payment of their bills incurred in the construction and erection of said apartment house, and asked this deponent for the loan of sufficient funds to pay the creditors. Deponent told them immediately that he had not sufficient funds to make the loan that was necessary to pay these creditors. The property was covered by a mortgage for \$100,000.00 given to the Colonial Life Insurance Company and as deponent remembers it, they would be required to have at least \$60,000.00 to pay off all of the bills which Irving Gollin and his parents stated were necessary to satisfy all claims. 20 30

At the earnest request and solicitation of Max Gollin in particular, deponent went to Charles E. Annett with whom Max Gollin had had many dealings and tried to enlist Mr. Annett in the hope of saving Max Gollin and his wife, Betsey Gollin, 40

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from financial ruin, and there were many consultations in which Mr. Annett and the Gollins and this deponent canvassed the situation. It was finally agreed that if Betsey Gollin would convey the premises known as No. 880 Boulevard, Bayonne, New Jersey, to the Annett-Mahnken Realty Company of which Mr. Charles E. Annett was the President and chief owner, that the Annett-Mahnken Realty Company would assume charge of the building known as No. 880 Boulevard, Bayonne, New Jersey, collect the rents, and take all necessary care of the building and would endeavor to raise in various ways the moneys to pay off and satisfy the creditors and save the property from sale, either by foreclosure or under executions upon judgments that had been recovered or that were likely to be recovered by suits then pending, and in order that there would be no mistakes or misunderstandings about the relationship between the Annett-Mahnken Realty Company and the Gollins, this deponent drew a Declaration of Trust, and its terms were carefully discussed by Max Gollin and especially in his presence, and in the presence of Betsey Gollin and Irving Gollin, their son, who asked many questions about it. During these discussions, which were held on several different dates and the document redrafted, the compensation of the Annett-Mahnken Realty Company for the collection of rents was agreed upon, also the compensation for services which the Annett-Mahnken Realty Company was to render to the Gollins was to be fixed by future considerations, as it was then impossible to determine what would be required, and how long the Trust Relationship would continue. Gollin informed Mr. Annett in my presence that they had been offered \$165,000.00

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for the property in question. He stated, however, that they could not accept this because it was not sufficient to pay all debts which had been incurred by Irving Gollin in the construction of said building, and that they would not sell at that price. Nobody ever offered to deponent, and as far as deponent knows to the Annett-Mahnken Realty Company, \$165,000.00 or any other sum near it. Money was raised by Mr. Annett, and under the direction of the deponent many bills were paid. The John L. Dalrymple mortgage which Gollin states was a mortgage covering other lands of Max and Betsey Gollin, but the proceeds of which had been used for the construction of that building, fell due, and in order to keep this mortgage from being foreclosed, it was purchased by the Annett-Mahnken Realty Company for the full principal sum with interest. Likewise a certain bond and mortgage made by the Gollins to Lillian Markowitz for \$3,200.00 covering other property upon which foreclosure proceedings were threatening and in order to save it from foreclosure, the Annett-Mahnken Realty Company purchased said bond and mortgage for the full principal sum with accrued interest. Likewise the judgment held by James Brady's Sons Company was paid for by moneys raised by the Annett-Mahnken Realty Company and an assignment thereof was taken. Likewise the Annett-Mahnken Realty Company paid to the Kay-Bee Investment Company the sum of \$15,000.00 with interest upon the mortgage which this Investment Company held against said property and took an assignment thereof.

During all this time the Annett-Mahnken Realty Company were taking care of the property to the best of their ability. Irving Gollin, the son of

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Betsey and Max Gollin occupied one of the most expensive apartments in the apartment building and he refused to pay any rent therefor, and many complaints were made to me by the Annett-Mahnken Realty Company about the inference of Irving Gollin in the management of the property and Irving Gollin came to see deponent many times complaining about the management by Annett-Mahnken Realty Company of said property. Deponent never had possession of the premises at No. 880 Boulevard, but he has frequently been consulted by Mr. Annett and the Gollins about its management. The relationship between the Gollins and Mr. Annett became very unpleasant and they used deponent as the medium of exchanging complaints. One matter of dispute was Irving Gollin's occupancy of an apartment without paying any rent.

It was not until early in January, 1926, that this deponent induced Irving Gollin to become a tenant and to begin to pay rent for the apartment which he occupied and still occupies. He paid to this deponent \$72.00 rent for the month of January. He had been permitted to remain there without the payment of rent at the earnest solicitation of his mother, although the property was constantly running behind and the income was not sufficient to pay all current claims besides the quarterly payment of \$1,000.00 on the mortgage held by the Colonial Life Insurance Company.

Deponent says that the Gollins were frequently given statements of the amounts collected and disbursed by the Annett-Mahnken Realty Company. Deponent went with Irving Gollin to the Annett-Mahnken Realty Company's Office where Mr. Annett showed Irving Gollin the ledger account

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which set out in detail the receipts and expenditures. Irving Gollin and Max Gollin were frequently consulted about the corrections of the claims presented and payment was not made without their approval except as to such debts as were incurred by the Annett-Mahnken Realty Company for the care and management of the property. Deponent heard Mr. Annett direct his bookkeeper in Irving Gollin's presence to permit him to see the account at any time and to give him any information that he might desire. Irving Gollin's requests for such information were usually made when there was a prospective purchaser at hand and it was necessary to know what must be realized from the apartment at No. 880 Boulevard to discharge the debts. Deponent never agreed with the Gollins or any one of them to raise money and pay off and discharge mortgages and liens on their other properties and surrender them to the Gollins for cancellation and depend on their equity in the apartment at No. 880 Boulevard for re-imbusement. They were told in the beginning that neither this deponent nor Mr. Annett believed that there was sufficient equity for that purpose. At every conference it was agreed that at least the sum of \$175,000.00 would be required and prospective purchasers were asked that latter sum in order to do so.

The Dalrymple, the Markowitz and the Kay-Bee Investment Company mortgages and the Brady judgment were all taken over to prevent foreclosure and sale, because deponent and Mr. Annett hoped that the apartment at No. 880 Boulevard might be sold and that some of these liens might be thereby released and discharged from the proceeds, but the Gollins were distinctly informed that they would not be cancelled without payment.

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Deponent further said that neither Charles E. Annett nor this deponent had any thought whatever in their minds of cheating or defrauding said Max Gollin or Betsey Gollin or anybody else, and that neither deponent nor Charles E. Annett did  
10 deceive said Gollins in any manner.

That after the trouble between the Annett-Mahnken Realty Company and the Gollins became acute, Mr. Annett speaking for the Annett-Mahnken Realty Company demanded that the Gollins repay to the Annett-Mahnken Realty Company all the moneys which they had invested in the property and settle with him in accordance with the terms of the Declaration of Trust. They thereupon refused to do so. That Irving Gollin did  
20 appeal to this deponent to raise sufficient money and pay to the Annett-Mahnken Realty Company the money so due to it. Deponent did not have the money to loan for that purpose, neither did deponent have any other clients to whom he could go and procure said funds to loan to the Gollins to pay for the indebtedness to the Annett-Mahnken Realty Company.

That thereupon Mr. Annett went to Messrs. Carrick & Wortendyke, Counsellors at Law, in Jersey  
30 City, and authorized them to bring foreclosure proceedings against the properties covered by the mortgages, and as far as deponent knows and verily believes, the proceedings were carried on in an orderly and public manner, and that no answers were filed and no efforts were ever made to stay the proceedings until the first day to which the sale had been adjourned, and then at the request of Mr. George E. Cutley, a Counsellor at Law of this State, the sale of the premises under  
40 the three executions was adjourned from time to time till April 8th, 1926.

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This deponent further says that Betsey Gollin and Max Gollin, her husband, are not illiterate persons and do understand the English language. This deponent has been doing business with them for the past twenty-five years, and that deponent does not know any other language and cannot speak any other language than the English language, and has always spoken the English language in the presence of the Gollins, and that the Gollins have never at any time complained that they could not understand the language which deponent speaks and that deponent has never had any trouble during all the time in understanding such English language as they used in their conversations. 10

HORACE ROBERSON. 20

Subscribed and sworn to this  
13th day of April, 1926, before me,

GEORGE E. GRISWOLD,  
Notary Public,  
of New Jersey.

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**Affidavit of Charles E. Annett.** 30

State of New Jersey, }  
County of Hudson, } ss.:

Charles E. Annett of full age being duly sworn according to law on his oath, deposes and says that he is the President and General Manager of the Annett-Mahnken Realty Company, that the Annett-Mahnken Realty Company is organized to buy and sell real estate, collect rents, negotiate 40

*Affidavits in Opposition to Petition—Suits Nos. 1,  
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insurance contracts, and to transact a general real estate business.

10 That deponent is well acquainted with Max Gollin and Betsey Gollin, his wife, and their son, Irving Gollin. That he has had many transac-  
20 tions with them during the past twenty years, or more. That early in 1924, Horace Roberson, a member of the firm of Roberson & Roberson, Counsellors at Law, called upon deponent and stated to him that the Gollins were in financial trouble because of the creditors of Irving Gollin who had erected a building known as No. 880 Boulevard, Bayonne, New Jersey. That these creditors were pressing for the payment of their claims for labor and material in the construction of the said building. That some of the claims had already been reduced to judgments; that other suits were pending; and that other suits were threatening, and that unless somebody came to their aid the whole of the Gollin property would be swept away, as they were without any means to satisfy the creditors.

30 After several conferences with the Gollins and with Horace Roberson, it was finally agreed that Betsey Gollin and her husband, Max Gollin, would convey the property absolutely to the Annett-Mahnken Realty Company so that it would have a free hand in its management, and that then deponent, acting through said Annett-Mahnken Realty Company would, to the best of his ability, secure funds and thus keep the creditors from enforcing their claims. That in order that there be no misunderstanding, deponent agreed for his company to execute a Declaration of Trust, and that the terms of the trust should  
40 be carefully and fully stated, and after several conferences on that point and a redrafting of the

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document, the instrument as now attached to the petition of the Gollins in the above entitled matter, was executed by the deponent. Deponent did assume management of the property in May 1924, and collected the rents, and raised monies in various ways and paid off many of the creditors, and from time to time rendered statements to the Gollins showing fully all his transactions. That deponent had many conferences with the Gollins about the correctness of many of the claims, and at their request refused payment on some of them until the claimants had corrected defective work in the building, or corrected errors in the bills presented. 10

That the building is constructed for thirty-two tenants. That at the time the premises were conveyed to him, Irving Gollin occupied one of the apartments, which at that time was renting for \$80.00 per month. Deponent insisted that Irving Gollin should pay rent, but at the earnest solicitation of Betsey Gollin, deponent desisted for a time until as she said, Irving Gollin got something to do. 20

Deponent further says that Irving Gollin was constantly interfering with the other occupants of the building, and causing dissension between the tenants of the building and this deponent's Company, so that deponent informed the Gollins that he wanted them to pay off the monies advanced and take the building themselves, as he could not manage it with the constant annoyance caused by Irving Gollin's interference. Then at the most urgent solicitation of Betsey Gollin and Max Gollin, and the further solicitation of Horace Roberson, who had been very friendly with them for many years, deponent did desist upon their assurance that they had some pur- 30 40

*Affidavits in Opposition to Petition—Suits Nos. 1,  
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chasers, and they would soon bring to him a purchaser who would take the property, and out of the proceeds of the sale, deponent's Company would be reimbursed for its advances and paid for its services. Many statements were made at  
10 that time showing the financial condition of the building, but no definite offer was ever made that was acceptable to the Gollins, nor that would pay the indebtedness on the building. Deponent further says that in order to save the Gollins from the pressure of creditors he was forced to acquire mortgages covering other property owned by the Gollins, and that finally when the condition with Irving Gollin became unbearable and said Betsey Gollin did not raise the money to pay deponent's  
20 company, nor bring a suitable purchaser, that deponent was forced to begin foreclosure proceedings against the Gollins upon the mortgages which he had been forced to acquire.

Deponent further says that he never agreed or had the slightest suggestion that he should pay off the mortgages on other properties than No. 880 Boulevard and cancel and surrender them to the Gollins without receiving anything for it excepting the equity in the property at No. 880  
30 Boulevard.

That he never deceived nor attempted to deceive the Gollins in any way in anything. That Roberson has been acting as counsel in the matter, but has in no way assumed any control of the property, but has been a "go between" between this deponent and the Gollins in trying to smooth out difficulties that arose.

Deponent further says that as Irving Gollin was often the spokesman for his mother Betsey Gollin and Max Gollin, that he instructed his  
40 bookkeeper in his absence to give any informa-

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tion to said Irving Gollin, and to show him the account with this building so that he might have any information that was necessary concerning its financial condition and the amount that would be necessary to discharge the total indebtedness. This was done not only for their information, but also to assist said Irving Gollin in finding a purchaser for the building upon such terms as would discharge the debts. Deponent also at all times furnished and was willing to furnish him with such statements, and he would furnish them to Mr. Roberson who asked for them for the Gollins and to Irving Gollin and Max Gollin, and that deponent has tried in every possible way to aid and assist the Gollins and to manage the property in such way as to make it profitable.

Some of the other properties covered by these mortgages which deponent's company acquired in order to save the Gollins were not cared for. Taxes were far in arrears and one property in particular known as No. 499 Boulevard which was constructed for a six family house was tenanted by only two families and unless the property was taken into possession by some responsible party it would soon wipe out the equity which the second mortgage covered. That the first mortgagees on these properties, because of the non-payment of taxes and other municipal liens and of the lack of repair would foreclose their mortgages.

CHARLES E. ANNETT.

Subscribed and sworn to this  
16th day of April, 1926, before me,

GEORGE E. GRISWOLD,  
Notary Public,  
of New Jersey.

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### Affidavit of George E. Cutley.

State of New Jersey, }  
 County of Hudson, } ss.:

George E. Cutley, being duly sworn according to law upon his oath says:

10 I am an attorney and counselor at law of the State of New Jersey, having my office and practicing my profession at 586 Newark Avenue, Jersey City.

20 About the time the first advertisement of sale in the above entitled foreclosures appeared, Mr. and Mrs. Gollin and their son Irving Gollin, talked with me about preventing the sale of the property. They informed me that Messrs. Dembe & Dembe had been their attorneys, and that no defense had been interposed, and also that they had paid no fee to Messrs. Dembe & Dembe for their services. I advised them that the sales could only be averted by the payment of what was due upon the mortgages, and that they should procure someone with sufficient means to bid in at the foreclosure sale. I pointed out to them that under the declaration of trust, the complainant could, if it chose, have sold the property practically without consultation with them.

30 On Saturday, April 3rd, the Gollins, in consultation with me, found that about thirty thousand dollars was needed to take care of the mortgages and liens as they appeared in the Sheriff's notice of sale. We endeavored through loan brokers, to find someone who would advance the required funds, but without success. During all the time that the Gollins were visiting my office, they were in consultation with the Sheriff, and the Sheriff's office, and in the presence of Mr. Enright,  
 40 of the Sheriff's office, it was agreed that Irving

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Gollin would have a man ready to bid at the sale on the following day, Thursday, April 8th. Prior to this arrangement, the Gollins had asked me to proceed in the Court of Chancery to stay the sales, but I advised them that unless they could show their ability to take care of the mortgages either by cash or a surety bond, they could not succeed, and that, as the mortgages and liens had to be paid sooner or later, I advised against litigation. I also advised them that under the deed of trust, the agreement by the trustee to pay creditors did not mean to clear the property of mortgages—merely to pay general creditors and interest on the mortgages out of the rents and profits of the property. 10

The action of the Gollins in applying in this cause for a stay, through Messers. Heyman & Heyman, was a complete surprise to me, as I was informed by Irving Gollin on the previous day, in the presence of Mr. Enright, that he had someone who was going to bid in at the sale, and he expressed himself as very much satisfied that the matter could be adjusted through a foreclosure sale. 20

I never received any fee for services in this case, nor did I consider myself retained in any way. Prior to the time the Gollins consulted me in this matter, they had come to me regarding the estate of one Mr. Gluckman, brother of Mrs. Gollin. 30

GEORGE E. CUTLEY.

Subscribed and sworn to before me,  
at Jersey City, this 17th day of  
April, A. D. 1926.

ANN G. HAGAN,  
Notary Public  
(Seal) of New Jersey.

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**Affidavit of Harry B. Dembe.**

State of New Jersey, } ss.:  
 County of Hudson, }

Harry B. Dembe, of full age, being duly sworn on his oath, according to law, deposes and says:

10 That he is a member of the law firm of Dembe & Dembe, with offices in the City of Bayonne, County of Hudson and State of New Jersey;

The deponent's attention has been called to the following allegation contained in a petition filed by the defendants, to wit: "Your petitioner further shows that immediately upon service upon them of the subpoenas in each of said suits, your petitioners retained the firm of Dembe & Dembe to represent them. That they were led  
 20 to believe that their interests were being protected, but found out later that no answer had ever been filed for them, or on their behalf and that a decree in foreclosure had been entered and a writ of fi fa had been issued to the Sheriff of the County of Hudson and that said premises were then being advertised for sale." Deponent says that the said allegation of the defendants, as recited above, is absolutely and unqualifiedly untrue.

30 That in the early part of August, 1925, the defendant, Betsy Gollin, called upon the deponent and consulted with him concerning a prospective purchaser she then had for the property located on the corner of the Boulevard and West 34th Street, in the City of Bayonne, and particularly to ascertain if she could sell the said property in the face of an agreement she had made, under which the said property had been placed in the management of the Annett-Mahnken Realty  
 40 Company.

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At the time of the said conference, Mrs. Gollin had with her the subpoenas which had been served in the three foreclosure suits, and she inquired of the deponent how much time she would have before the premises covered by the mortgages and involved in the foreclosures would be put up for sale. Mrs. Gollin did not have with her the agreement under which the property at the corner of the Boulevard and West 34th Street, Bayonne, was placed under the management of the said Annett-Mahnken Realty Company, and the deponent thereupon informed her that he could give her no opinion with regard to the same until he could first see the existing agreement with the said Annett-Mahnken Realty Company, and that the sale under the foreclosures could not be held until the ordinary and regular procedure of a Master's reference, advertising, etc., in the event of no answer being filed, requiring a period of about three months, and furthermore, that if answers were filed, then under an Order of Reference to a Vice-Chancellor, advertising, etc., it would take anywhere from six months to a year before the sales could be held. Mrs. Gollin, thereupon, left the subpoenas with the deponent and promised to bring in a copy of the agreement existing between her and the Annett-Mahnken Realty Company for the property at the corner of the Boulevard and West 34th Street, within a few days. The deponent was at the time of the said conference about to leave on a vacation until after Labor Day, and informed Mrs. Gollin of that fact, with the assurance, however, that arrangements would be made in the meantime with the Solicitors of the complainant for an extension of time within which

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to file answers, if it should be determined that answers should be filed, after his return from the said vacation.

10 The deponent, thereupon, arranged to procure copies of the bills of complaint from the Solicitors of the complainant, and also that the time for the filing of answer in the said suits be extended until the 15th of September, 1925. That a day or two following the said conference in the early part of August, 1925, Mrs. Gollin called upon the deponent with a copy of the agreement made between her and the said Annett-Mahnken Realty Company, and after going over the same with Mrs. Gollin, the deponent informed her that she had a right of negotiating a sale of the property  
20 located on the corner of the Boulevard and West 34th Street, providing, of course, that out of the proceeds of sale she pay the amount due the Annett-Mahnken Realty Company, for the moneys advanced and due thereunder.

30 Shortly after returning from the said vacation in the early part of September, 1925, the deponent communicated with Mrs. Gollin asking her to call concerning the said foreclosure suits, and to decide whether or not it was her desire to contest the same. That Mrs. Gollin called upon the deponent a few days prior to September 15th, 1925, asking for the return of the papers which she had left and informed the deponent that she desired him to have nothing further to do in the matter as she had made other arrangements for the handling of the same. The deponent thereupon gave Mrs. Gollin the papers which she had left with him together with copies of the bills of complaint and told Mrs. Gollin to inform who-  
40 ever it was that was to handle the matter for her

*Order Discharging Order to Show Cause—Suits  
Nos. 1, 2 and 3.*

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that the time for the filing of answers had been extended until September 15th, 1925.

Mrs. Gollin inquired at the time thereof as to whether or not she was indebted to the deponent for the consultations and services rendered, and was informed by the deponent that there was no charge. No charge was made by the deponent and no money was ever paid by Mrs. Gollin or anyone else for her to the deponent or the firm of Dembe & Dembe in connection with the matters hereinabove recited. 10

HARRY B. DEMBE.

Sworn to and subscribed before me this  
14th day of April, 1926. 20

SAMUEL LEWIN,  
Attorney-at-Law of N. J.

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**Order Discharging Order to Show Cause—  
Suits Nos. 1, 2 and 3—(58-609; 58-610;  
58-611).**

(Filed April 26, 1926.) 30

This matter being opened to the court by Benjamin Heyman, Esquire, of counsel with the petitioners, upon the return of the order to show cause heretofore made in the above entitled causes, and upon reading and filing the affidavits of Betsey Gollin, Max Gollin and Irving Gollin, served and filed since the making of said order to show cause, and upon reading and filing the affidavits of Harry B. Dembe, George E. Cutley, 40

*Order Discharging Order to Show Cause—Suits  
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Horace Roberson and Charles E. Annett, presented by Charles L. Carrick, Esquire, of counsel with the complainant Annett-Mahnken Realty Company, and upon hearing counsel in regard thereto, and the court having considered the same,

- 10 It is on this 26th day of April, in the year one thousand nine hundred and twenty-six ordered that the order to show cause made in said cause on the eighth day of April, nineteen hundred and twenty-six, be and the same is hereby discharged, and the stay therein granted restraining the Sheriff of the County of Hudson until the further order of this court in the premises, from exposing for sale or selling the lands and premises mentioned in the above entitled foreclosure suits, be
- 20 and the same is hereby vacated and set aside.

And it is further ordered that the said Betsey Gollin and Max Gollin, the petitioners in this proceeding, do pay unto Carrick & Wortendyke, solicitors and of counsel with the complainant, the Annett-Mahnken Realty Company, a counsel fee of one hundred and fifty dollars.

E. R. WALKER,

C.

- 30 Respectfully advised,  
JAMES F. FIELDER, V. C.

**Notice to Vacate Order of April 26, 1926—  
Suits Nos. 1, 2 and 3 (58-609-610-611).**

(Filed June 7, 1926.)

To Messrs. Carrick & Wortendyke,  
Solicitors for the Complainant.

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Gentlemen :

PLEASE TAKE NOTICE, that on Tuesday, the first day of June, 1926, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, I shall apply to his Honor, Vice Chancellor Fielder, at Chancery Chambers, Jersey City, to vacate the Order entered on the 26th of April, 1926, in this cause, and to re-argue the Rule to Show Cause issued in the above entitled cause, on the 8th day of April, 1926; that I shall, at the same time and place, ask leave to amend the Petition upon which said Rule to Show Cause was issued in this cause, by adding paragraph 19 to same, to read as follows :

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"19. Your petitioners further show, that in the latter part of 1924, Horace Roberson, Esquire, for himself, and for the complainant, the Annett-Mahnken Realty Company, handed your petitioners an account, showing that there had been collected in rents from the Boulevard apartment house described by metes and bounds in the Trust Agreement annexed to and made a part of this petition, from May 28th to November 1, 1924, the sum of \$8,198.49, and that on the construction account inclusive of the \$100,000 mortgage held by the Colonial Life Insurance Company, the complainant would have to pay the sum of \$162,257.22. Said statement is itemized and

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*Notice to Vacate Order of April 26, 1926—Suits  
Nos. 1, 2 and 3.*

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10 among the items is the \$3,000 mortgage which has been foreclosed, and which was originally given to John L. Dalrymple, and is shown on said statement as being held by H. Roberson, and on said statement also appears a mortgage of \$15,000 under the name of B. DeVin, which represents the \$11,000 mortgage, and the \$4,000 mortgage originally given to the Kay-Bee Investment Co.; that said statement further shows below the typewritten items, and added to said account in the handwriting of said Horace Roberson, Lipschitz mortgage \$3,200, which is the mortgage originally given to Lillian Markowitz, and which said mortgages are the ones being foreclosed by the complainant herein. Among said items is also listed the judgment of James Brady Sons Co. for \$2,700, in the name of a claim owing to A. Seclow, who is the attorney for the James Brady Sons Co.

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30 20. That said complainant, under the terms of the agreement entered into with your petitioners, as evidenced by the Trust Agreement annexed hereto and made a part hereof, undertook, and was required to pay said mortgages, and judgment, which said complainant has now foreclosed, and to be reimbursed out of the income, or proceeds of sale of the apartment house described in the said Trust Agreement; that said complainant carried out its duty in paying said mortgages, but should have caused same to be cancelled of record, instead of taking assignments to it and foreclosing same, and should have advanced the money and paid the claim of James Brady Sons Co., instead of leaving it

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*Affidavit of Irving Gollin.*

open and permitting it to be assigned to Mildred J. Smith.”

PLEASE TAKE FURTHER NOTICE, that at said time and place, I shall read the affidavit, a copy of which is hereto annexed, in support of said application.

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Dated, May 27, 1926.

Respectfully yours,

PHILIP J. SCHOTLAND,  
Solicitor for Defendants.

**Affidavit of Irving Gollin.**

20

State of New Jersey, }  
County of Essex, } ss.:

Irving Gollin, being duly sworn, on his oath deposes and says:

I have read the notice addressed to Messrs. Carrick & Wortendyke, in the above entitled cause, bearing this date, and know of my own knowledge that the allegations alleged in the proposed paragraphs 19 and 20 to be added to the petition in the above cause are true. Said allegations being as follows:

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“19. Your petitioners further show, that in the latter part of 1924, Horace Roberson, Esquire, for himself, and for the complainant, the Annett-Mahnken Realty Company, handed your petitioners an account, showing that there had been collected in rents from the Boulevard apartment house described by metes and bounds in the Trust Agreement an-

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10 nexed to and made a part of this petition, from May 28th to November 1, 1924, the sum of \$8,198.49, and that on the construction account, inclusive of the \$100,000 mortgage held by the Colonial Life Insurance Company, the complainant would have to pay the sum of \$162,257.22. Said statement is itemized and among the items is the \$3,000 mortgage which has been foreclosed, and which was originally given to John L. Dalrymple, and is shown on said statement as being held by H. Roberson, and on said statement also appears a mortgage of \$15,000, under the name of B. DeVin, which represents the \$11,000 mortgage, and the \$4,000 mortgage originally given to the Kay-Bee Investment Co.; that said statement  
20 further shows below the typewritten items, and added to said account in the handwriting of said Horace Roberson, Lipschitz mortgage \$3,200, which is the mortgage originally given to Lillian Markowitz, and which said mortgages are the ones being foreclosed by the complainant herein. Among said items is also listed the judgment of James Brady Sons Co., for \$2,700, in the name of a claim owing to A. Seclow, who is the attorney for the James Brady Sons Co.

30 20. That said complainant, under the terms of the agreement entered into with your petitioners, as evidenced by the Trust Agreement annexed hereto and made a part hereof, undertook, and was required to pay said mortgages, and judgment, which said complainant has now foreclosed, and to be reimbursed out of the income, or proceeds of sale of the apartment house described in the said Trust Agreement; that said complainant carried  
40 out its duty in paying said mortgages, but

*Affidavit in Answer to Application to Vacate  
Order of April 26, 1926—Suits Nos. 1, 2 and 3.*

should have caused same to be cancelled of record, instead of taking assignments to it and foreclosing same, and should have advanced the money and paid the claim of James Brady Sons Co., instead of leaving it open and permitting it to be assigned to Mildred J. Smith." 10

IRVING GOLLIN.

Sworn and subscribed to before me  
this 27th day of May, 1926.

HELEN J. EDELL,  
Notary Public of N. J.

**Affidavit in Answer to Application to Vacate  
Order of April 26, 1926—Suits Nos. 1, 2  
and 3—(58-609-610-611).** 20

(Filed June 7, 1926.)

State of New Jersey, }  
County of Hudson, } ss.:

Horace Roberson, of full age, being duly sworn according to law upon his oath deposes and says: 30

After the order discharging the stay of the sale under the executions in foreclosure in the above entitled causes was entered, the property was brought to sale by the Sheriff of Hudson County, and the defendants took up with the complainant the obtaining of some time to redeem, if the property should be bought in by the complainant. The defendants were represented in that case by Charles H. Abramson, Esquire, an attorney and counselor of Bayonne, and, as 40

*Affidavit in Answer to Application to Vacate  
Order of April 26, 1926—Suits Nos. 1, 2 and 3.*

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10 a result of the negotiations, the complainant entered into an agreement giving the defendants thirty days within which to redeem the premises under the terms stated in said instrument; of which a copy is hereto annexed and marked "Exhibit A." The sale thereupon proceeded on the twenty-ninth day of April, and the property was then struck off by the Sheriff at public sale, to the complainant. Mr. Abramson exerted himself actively to secure funds for the defendants, but on Tuesday, last, June 1st, advised me that he was unable to raise the money necessary to redeem the property, and that he no longer was interested for the defendants. The time within which to redeem having expired, the Sheriff has  
20 delivered to the complainant the deeds conveying the premises in pursuance of their purchase on April 29th, last.

My attention has been called to the application made by Philip J. Schotland, Esquire, now representing the defendants, in substitution for Messrs. Heyman & Heyman, who formerly represented them, and to the affidavit of Irving Gollin, which is annexed to the notice of motion which was to have been made on the first day of June, and  
30 which now stands adjourned until the seventh day of June, 1926. As attorney for Max Gollin, Betsey Gollin and Irving Gollin, in and about the settlement of claims against the apartment house known as Number 880 Boulevard, in the City of Bayonne, New Jersey, I transacted their business. The Annett-Mahnken Realty Company rendered to the Gollins, including said Irving Gollin, numerous statements showing rents received from the premises, and also disbursements of all kinds accruing in the management of the property. I  
40 do not remember the specific statement of ac-

*Affidavit in Answer to Application to Vacate  
Order of April 26, 1926—Suits Nos. 1, 2 and 3.*

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count to which the affidavit of Irving Gollin refers in his affidavit of May 27, 1926, because statements were many times rendered whenever there was a prospective purchaser for the property, and in each case said Irving Gollin inquired how much money would be needed to pay off the specific liens on the property 880 Boulevard, as well as the other liens on the other properties, which liens, Irving Gollin informed me, were created for the purpose of raising funds for the construction of the building known as 880 Boulevard, Bayonne, and which liens said Irving Gollin wished to be paid out of the proceeds of the sale of Number 880 Boulevard. I always gave to said Irving Gollin information as to the amount due upon the specific liens mentioned by him covering other properties of Betsey Gollin, but at no time did Irving Gollin suggest to me, nor did I suggest to him or to anyone else, that the complainant, or this deponent, would discharge said liens against other properties owned by Betsey Gollin or Max Gollin, and rely upon the property No. 880 Boulevard for reimbursement. I believe that the equity in the property Number 880 Boulevard is insufficient to pay all these outstanding liens, but I always encouraged Irving Gollin, and myself tried to interest prospective purchasers to purchase the premises No. 880 Boulevard, at a price sufficiently large to discharge at least some of the outside liens. I was interested in a friendly way in the welfare of Betsey Gollin and Max Gollin, the parents of said Irving Gollin, and hoped that the premises Number 880 Boulevard might be sold at a price sufficient to pay off some of these

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*Affidavit in Answer to Application to Vacate  
Order of April 26, 1926—Suits Nos. 1, 2 and 3.*

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outside liens, and thus save these other properties for the parents of Irving Gollin.

HORACE ROBERSON.

10 Subscribed and sworn to before me  
this 7th day of June, A. D. 1926.

CHAS. RUBENSTEIN,  
Master in Chancery of New Jersey.

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**Exhibit A.**

20 (Note: This paper received in evidence as  
Ex. C3.)

Bayonne, N. J., April 29th, 1926.

30 WHEREAS the Sheriff of Hudson County has in his possession three several writs of *feri facias* issued by the Court of Chancery, in three suits therein, wherein the Annett-Mahnken Realty Company is complainant, and Betsey Gollin and others are defendants, and WHEREAS said sheriff is this day about to execute said writs by sale of the premises therein described, excepting therefrom the premises known as No. 880 Boulevard, Bayonne, N. J., and

WHEREAS the said defendant Betsey Gollin has been unable to raise the amount necessary to satisfy said writs; and

40 WHEREAS said Betsey Gollin has requested the privilege of redeeming said tracts if the complainant should purchase at said sale;

*Affidavit in Answer to Application to Vacate  
Order of April 26, 1926—Suits Nos. 1, 2 and 3.*

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NOW THEREFORE, in consideration of the sum of one dollar (\$1.00) to it in hand paid by said Betsey Gollin, the receipt whereof is hereby acknowledged, the said Annett-Mahnken Realty Company agrees that in the event of its purchase of said properties to reconvey the same or assign its bid whichever may be necessary, if within thirty days from the date hereof said Betsey Gollin shall pay all moneys due on said decrees besides all costs and expenses as well as the claims said Annett-Mahnken Realty Company has against said Betsey Gollin and her husband Max Gollin, and the Bayonne Hardware Company, for premiums on sundry policies of fire insurance issued by it covering the several properties of said Gollins. The full amount due on said decrees to be paid whether or not the bids at the sheriff's sale amount to the sum total of said decrees and costs.

IN WITNESS WHEREOF the said Annett-Mahnken Realty Company has the day and year above written caused its seal to be annexed and signed by duly constituted officer of the Company.

ANNETT-MAHNKEN REALTY CO.,  
By CHARLES E. ANNETT,  
Prest. 30

**Order Denying Application to Vacate—Suit  
No. 1 (58-609).**

(Filed June 7, 1926.)

10 This matter being opened to the Court by Philip J. Schotland, Esquire, solicitor and of counsel with the defendants, upon notice to Messrs. Carrick & Wortendyke, solicitors and of counsel with the complainant, and upon reading and filing the petition in behalf of the defendants and the supporting affidavit of the defendant Irving Gollin, and the affidavit of Horace Roberson, Esquire, filed in behalf of the complainant, and having heard the argument of counsel,

20 It is thereupon on this 7th day of June, 1926, ordered that the application of the defendants be, and the same is hereby denied, with costs to the complainant.

E. R. WALKER,  
C.

Respectfully advised,

JAMES F. FIELDER,  
V. C.

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## Abstract of Exhibit D-1.

Betsey Gollin and Max Gollin, her husband	MORTGAGE for \$6,700.00 Dated February 7, 1924 Ack. " " 1924, before Alexander Sec- low, M. C. C.	
to		
Morris Newell and Israel Shillowitz.	Rec. Feb. 8, 1924, Book 1213, p. 417.	10

Mortgages premises in Bayonne, Hudson County, N. J.

BEGINNING at the corner formed by the intersection of the southerly side of West 20th Street, with the easterly side of Avenue C; thence running (1) easterly along the southerly side of West 20th Street, one hundred and one and fifty hundredths (101.50) feet; thence running (2) southerly and parallel with the easterly side of Avenue C, twenty-seven and sixty-seven hundredths (27.67) feet; thence running (3) westerly and parallel with the first course, one hundred and one and fifty hundredths (101.50) feet to the easterly side of Avenue C; thence running (4) northerly along the easterly side of Avenue C, twenty-seven and sixty-seven hundredths (27.67) feet to the point or place of beginning.

BEING lot numbered twenty-six (26) in City Block 315-N on the Official Assessment Map of the City of Bayonne, as now in use.

The execution of this mortgage is not until this mortgage is paid an accord and satisfaction of the balance of \$6,700.00 due to the second party by Irving Gollin and Betsey Gollin, for plumbing work at 878-880-882½ Hudson Boulevard, Bayonne, N. J.

(Signed) Betsey Gollin (L. S.)  
Max Gollin (L. S.) 40



10 + 1/2 + 1/2 = 2

Sullivan Walker  
see Roberson

25000

11/19/29  
2/19/29  
2001.  
Charles H. Hurd  
Master.

Corrected  
P.G.

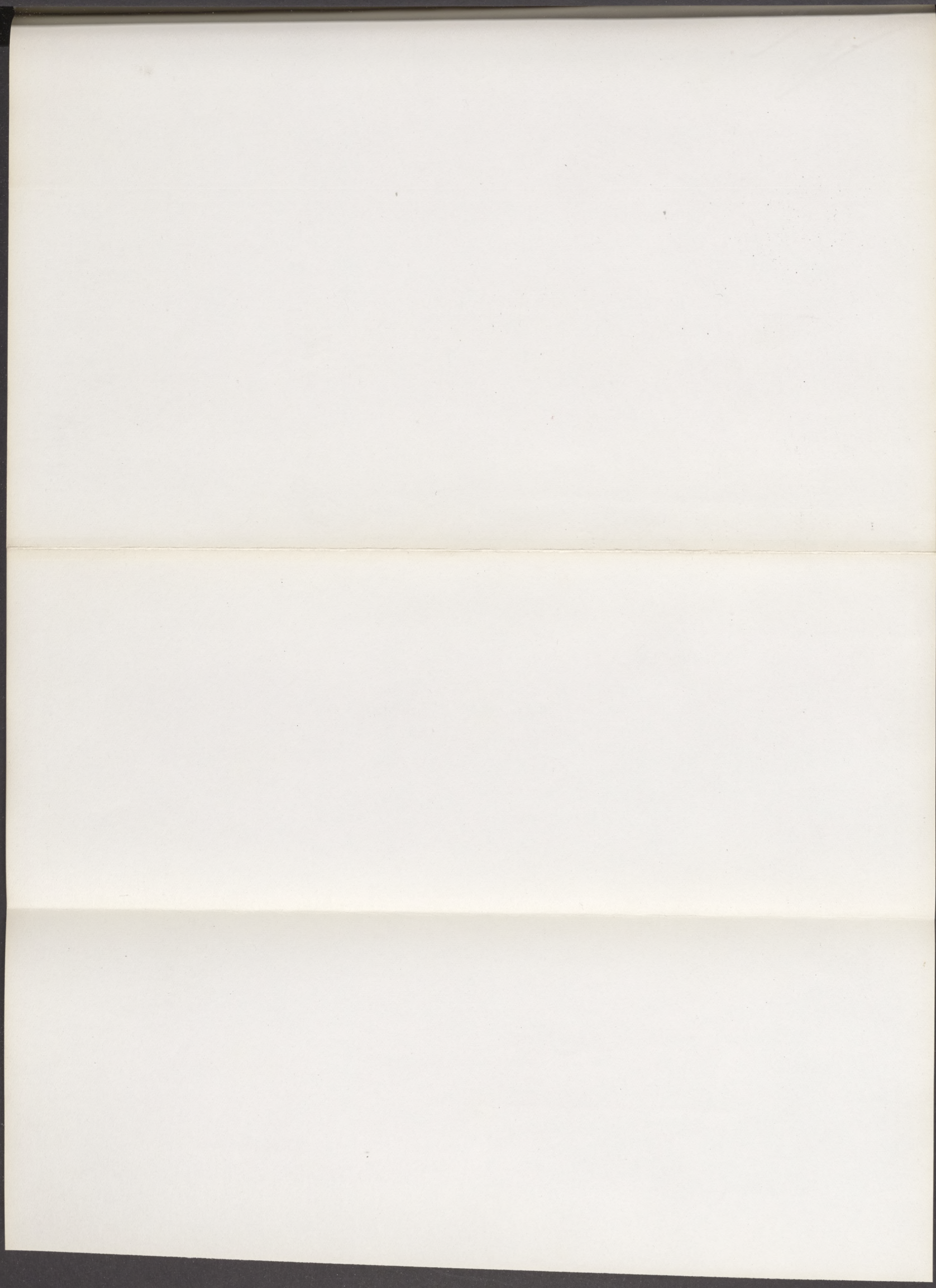
BUILDING

SHEET NO.

Grand St	Baldwin Lumber Co 2	✓	3522.90	3556.58
145 W 22	Junction Milling Co	✓	4379.70	Pd ok
145 W 22	Howell & Shillowitz	only	6500.00	Pd
145 W 22	Ideal Marble & Mosaic Co	✓	3000.00	3250
206 W 17	Jos. Bradipous Co (second)	✓	2600.00	Pd
206 W 17	Jersey Portland Stone Works	✓	1000.00	Pd ✓
80 W 17	M. Jacobowitz	✓	1800.00	Pd
45 Wall Street	M. Pavitt	✓	1700.00	
45 Wall Street	Bayonne Supply Co	✓	1541.00	
45 Wall Street	John Hess	Hold \$1000	2000.00	ok
762 Broadway	Liberty Lighting Fixture Co	✓	1223.00	1234.1 Pd
762 Broadway	Bayonne Hardware Co	✓	1250.00	
762 Broadway	Builders Material Co	Hold	643.12	689.12
762 Broadway	Hudson Structural Iron Works	✓	90.00	
762 Broadway	David May Co	note	242.00	
762 Broadway	Meyers Rub Co	✓	375.00	311.10
762 Broadway	Popack & Turkish	?	207.95	217.20
762 Broadway	Chas. J. Kavanaugh Inc	\$600 note	800.00	Pd
762 Broadway	Dartose	✓	385.00	ok
762 Broadway	Columbia Metal Dr Co	✓	200.00	ok
762 Broadway	Cuzco Diggins	Judly *	225.00	254.18
762 Broadway	New Jersey Roofing	✓	275.00	ok
762 Broadway	Louis Bertler	✓	500.00	ok
762 Broadway	Behr & Shapiro	✓	500.00	ok
762 Broadway	Leviner Seal	note	650.00	ok
762 Broadway	M. Karahowsky	✓	325.00	
762 Broadway	Dege & Sons	✓	300.00	ok
762 Broadway	W.M. Luder	✓	24.31	
762 Broadway	Mc Cube Bros.	Hold \$89	125.00	125
762 Broadway	Naehou Felitoff	✓	125.00	
762 Broadway	Wheeler Lloyd Seape Co	Hold	159.00	
762 Broadway	John Seidman	Hold	75.00	

37,607.98

Lehman Borsoner #112 Suffolk St. N.Y. 100 - shares



11/19/25  
#1

2362

BUILDING

SHEET NO.

R. & E.

P. G.

Wm. ...

Bernard Lavin	11,000 - 4,000	15,000 00
Mirtle A. Reed	72 ac.	3,000 00
Israel Lipschitz	1499 Bond	3,200 00
Harry Solomon (Cash Loan)		500 00
Thimpa J. Alex Levy - Cash	22,850	1,500 00
		7,000 00

Israel Lipschitz (Cash)	24,700.00
	225 00

Be 22	24,445
	37,607.98

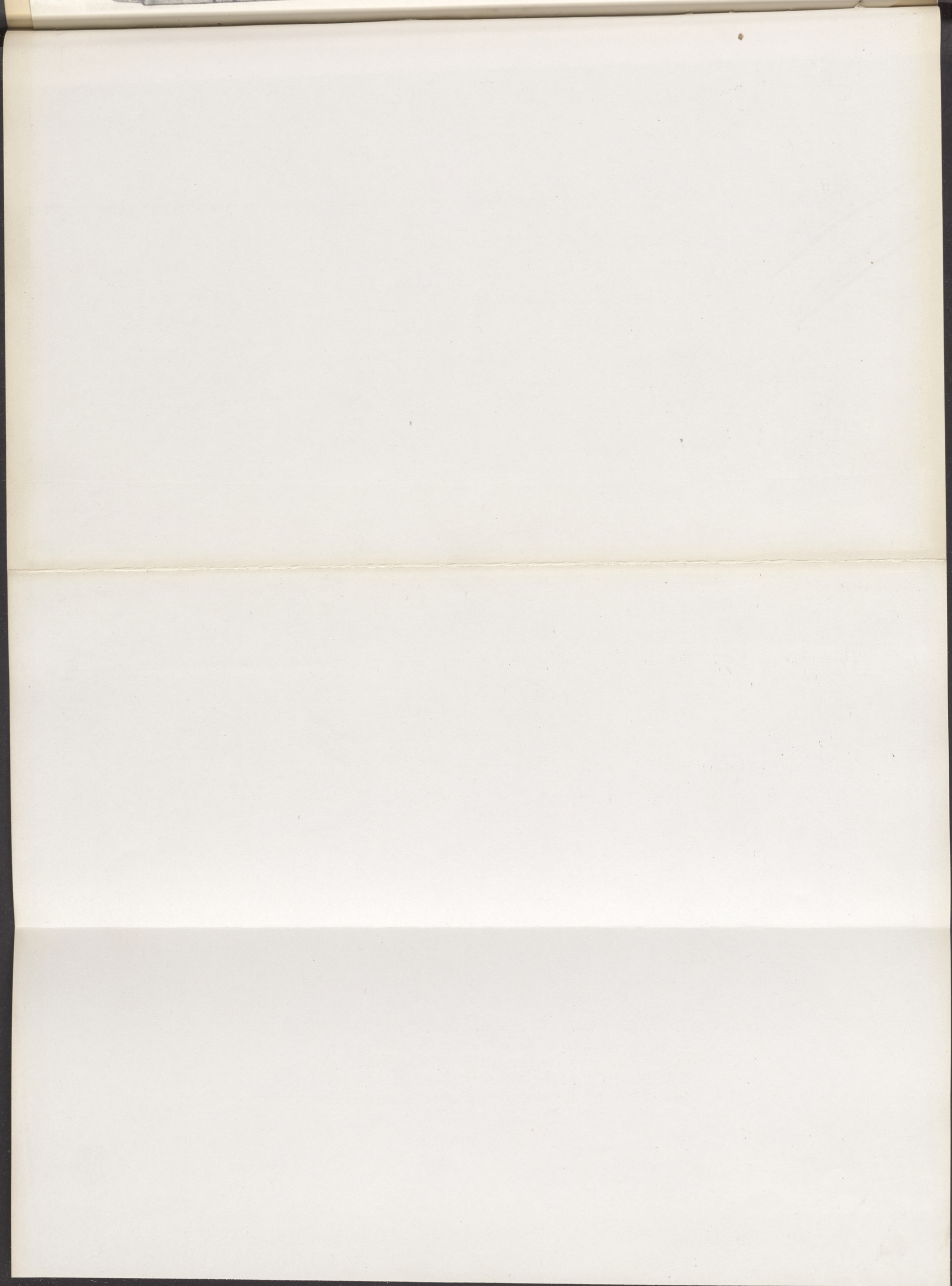
62,052.98

1st Mfg Colonial Life Ins.	100,000 -
Aunt - W. M. ... Ins.	321 12
Morris Cohen	98 75

1st Mfg ... due May 6. (3 mos)	1500	16,246.410
9c ...	1000	
	2500	

M. Koempfer (Hold because over Max Soling)	Hold	20 -
Max Black (shades)	PH	35 -
Julius Bayroff 96 W 28 <sup>th</sup> (Coffin)	Hold	75 - (\$175)
M. Ziffer 52 <sup>nd</sup> St grading	Hold	35 -

(NOTE: The large writing above the horizontal red lines on the foregoing pages of Ex. D-2, under the printed words "Sheet No."; also the figures above the horizontal red lines under the printed letters "R. & E.", are in green ink. The other notations are in black ink or pencil.)



*Deft. Sec. E. S.*

NAME	CONSTRUCTION ACCOUNT	INTEREST & Prim.	TAXES & WATER	REPAIRS	RENTS
					8198.49
Mortgage	100,000.00				
H. Roberson	3,000.	<i>What does?</i>			
P.S. Elec. Co.				7.30	
Col. Life Ins. Co.		500.00			
P.S. Elec. Co.				.80	
H. Roberson				4.00	
Janitor				50.	
B. DeViv	15,000.	,455.17			
A. Seclow <i>H. Brady</i>	2,700.	<i>Account - Mahukin check. Judgment</i>			
M. Blum <i>Screens</i>	307.				
Raska & Horstein <i>a. Beate</i>	251.03	<i>note</i>			
Jas. E. Pyle <i>J. Jackson</i>	1,833.85	<i>note</i>			
Junction Mill. Co.	4,379.70				
Meyer & Ruh	390.80				
R. Carey <i>C. J. Kavanaugh</i>	617.62				
Liberty Fix. Co.	1,234.11				
J.C. Stone Wks.	1,000.	<i>note 500</i>			
Hudson Elec. Co.	500. ✓				
Col. Metal Box Co.	200. ✓				
S. Barkas	385. ✓				
Ideal Dumbwaiter Co.	300. ✓				
J. Warshawsky	325. ✓				
Newell & Shilowitz	6,570.22	<i>(note) 2 per Sec. Sec.</i>			
Bayonne Supply Co.	2,1,599.52	<i>should be 1541.00 - per Comm</i>			
M. Leavitt	1,700.				
Taxes First Half 1924			810.02		
Ideal Marble Co.	3,000.				
Elkins & Shapiro	500. <i>note</i>				
Levine & Siegel	650. <i>note</i>				
<b>FORWARD</b>	<b>\$ 126,443.85</b>	<b>955.17</b>	<b>810.02</b>	<b>62.10</b>	<b>8198.49</b>



NAME	CONSTRUCTION ACCOUNT	INTEREST & PRIN.	TAXES & WATER	REPAIRS	RENTS
BR'T. FWD.	146,443.85	,955.17	810.02	62.10	8198.49
Baldwin Lumber Co.	3,556.58				
Mech. Trust Co.		20.00			
David Max	200.	<i>note</i>			
Leibmann & Söwower	100.				
Pennock & Turkish	207.95				
Alex. Levy				1,103.	
Builders Mat'l. Corp.	643.12				
H. J. Roofing Co.	275.				
Builders' Mat'l. Corp.	46.				
John J. Hess	1,500.				
Hudson Structural Iron Works	1,094.97				
J. E. Muller Sons				770.59	
O. K. Clothes Dryer Co.	82.				
N. Welitoff	125.				
Bayonne Hardware Co.	1,250.00				
Col. Life Ins. Co.		2,489.17			
Jenitor				50.00	
A. W. Booth & Bro.				67.50	
Chas. D. Bauer				69.02	
P. S. Elk. Co.				9.84	
Wheeland Landscape Co.	149.00				
Bayonne Times				7.20	
Morris Cohen	98.75				
J. Bayroff	75.00				
A. W. Booth & Bro.				27.00	
Max Black	35.00				
Ideal Marble Mosaic Co.	450.00				
BR'T. FORWARD	156,332.22	3,464.34	810.02	2,166.25	8198.49

*Judgment - Paid*



**Abstract of Exhibit D-4.**

<p>Betsey Gollin and Max Gollin, her     husband</p> <p>    to</p> <p>Spencer D. Baldwin.</p>	<p>MORTGAGE for \$37,000. Dated May 5, 1924 Ack. May 6, 1924, be- fore Israel Lipschitz, M. C. C. Rec. May 8, 1924, Book 1234, p. 91.</p>	<p>10</p>
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Mortgages in fee.

Premises corner Hudson County Boulevard and West 34th Street, Bayonne, N. J. being trust property in question.

Covenants:

“6. That the mortgagors within ten days, upon written request of the holder hereof will furnish at the expense of said holders a statement of the amount due on this mortgage.”

(Signed) Betsey Gollin (L. S.)  
Max Gollin (L. S.)

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30

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(7912)

71

# New Jersey Court of Errors and Appeals

—————  
FEBRUARY TERM, 1932.  
—————

Between

ANNETT-MAHNKEN REALTY COM-  
PANY and ANSON REALTY  
COMPANY,

Complainants-Appellants,

*and*

BETSEY GOLLIN and MAX GOLLIN,  
Defendants-Respondents.

On Bill &c.,  
On Appeal  
from  
Chancery.

## BRIEF FOR RESPONDENTS.

—————

### Statement of Facts.

In the Spring of 1923, Irving Gollin, being the owner of a plot of ground known as No. 880 Boulevard, Bayonne, New Jersey, erected on said plot a large apartment house consisting of 32 families (Case, p. 139), and running short of funds, during the course of construction, arranged to borrow money by giving as security mortgages on properties belonging to his mother, the respondent Betsey Gollin, known as 249 Broadway, 501 Boulevard, 499 Boulevard, and 772 Avenue C, all located in the City of Bayonne, and in order to have the mortgagees accept said mortgages, he conveyed

the said apartment house to his mother (Case, pp. 142, 153).

After Irving Gollin had exhausted all the funds raised on the security of the property belonging to his mother, he was still indebted to his creditors, and he and his parents applied to Horace Roberson, Esq., who had for many years acted as attorney for them (Case, p. 126) for a loan of sufficient monies to pay off all his creditors, and to discharge the mortgage loans procured on the other properties of his parents, and offered to secure such a loan by a mortgage on the said Boulevard apartment house (Case, p. 140). Said Horace Roberson endeavored to procure such a loan, and did procure it, but instead of a mortgage, a deed (Case, p. 262, Ex. C-1) was given by the respondents Betsey Gollin and Max Gollin to the appellant Annett-Mahnken Realty Company for the monies to be advanced by the said appellant, and a trust agreement (Case, p. 263, Ex. C-2) entered into dated May , 1924 (Case, p. 141).

During the negotiations leading up to the trust agreement and deed of conveyance, the said Horace Roberson, Esq., and Charles E. Annett of the Annett-Mahnken Realty Company in order to ascertain the amount of money required to pay the creditors of Irving Gollin and Betsey Gollin on the said apartment house, and to be advanced by the appellant Annett-Mahnken Realty Company by virtue of the trust agreement, requested the respondents to furnish them with a statement of the creditors, and thereupon a list (Case, pp. 330-331, Ex. D-2) was submitted to said Horace Roberson and the appellant Annett-Mahnken Realty Company (Case, pp. 141, 220-222).

Pursuant to the provisions of the trust agreement, the appellant Annett-Mahnken Realty Com-

pany paid various creditors of Irving Gollin and Betsey Gollin, among which were the obligations of two mortgages (covering the apartment house, 249 Broadway, and 501 Boulevard), held by the Kay-Bee Investment Co., represented by Bernard Dvin, Esq., one mortgage for \$11,000.00, and the other for \$4,000.00; and also paid a certain mortgage (covering 772 Avenue C) held by Myrtle A. Reed, but in fact belonging to Horace Roberson, in the sum of \$3,000.00; and also paid to Israel Lipschitz, Esq., representing Lillian Markowitz, on her mortgage (covering 499 Boulevard) the sum of \$3,200.00; and also paid to Alexander Seclow, Esq., attorney for James Brady's Sons' Co., the sum of \$2,700.00, to satisfy a mechanic's lien judgment for building materials supplied in the erection of the apartment house (Case, pp. 137-138); and further paid to Newell & Shillowitz on their mortgage (covering 462 Avenue C) the sum of \$6,500 (Case, pp. 332-334, Ex. D-3). The proceeds of these mortgages were used in the erection and completion of the apartment house (Case, pp. 134, 178, 214-217), except the mortgage held by Newell & Shillowitz given them to secure their claim for plumbing work performed at the apartment house (Case, p. 329, Ex. D-1).

The appellant Annett-Mahnken Realty Company, after paying the above-mentioned mortgages and judgment, instead of cancelling said mortgages and judgment and keeping the apartment house as security for the said advances, as was contemplated in, and provided for, by the said trust agreement, it took assignments of the same (Case, pp. 189, 191, 210, 211) and then began foreclosure proceedings on said mortgage (Case, pp. 153, 184, 190).

Decrees *pro confessor*s were taken and entered in said foreclosure suits, and final decrees were

entered thereon (Case, pp. 263-265-268), and writs of execution issued to the Sheriff of Hudson County.

The appellant Annett-Mahnken Realty Company, at the foreclosure sales bought in the properties known as 499 Boulevard, 501 Boulevard, 249 Broadway, and 772 Avenue C (Case, p. 95). The apartment house which was included in one of the foreclosure proceedings was not offered for sale (Case, pp. 154, 155). Said appellant continued in possession and ownership of the aforementioned properties together with the apartment house, until April, 1928, when it conveyed these properties, including the apartment house, to the appellant Anson Realty Company, its affiliate (Case, p. 52, ll. 20-25).

The appellants' trustees filed the bill of complaint in this cause for an accounting under the provisions of the trust agreement and to sell the apartment house to satisfy the amount which shall be ascertained to be due to the appellants' trustees for their advancements (Case, p. 1). Answer and counterclaim (Case, p. 45) and amended counterclaim (Case, p. 49) were filed by the respondents Betsey Gollin and Max Gollin (*cestuis que trustents*) in which they asserted that the appellant trustee Annett-Mahnken Realty Company, violated and breached the terms of the trust agreement, and that the appellant trustee Anson Realty Company holds all the properties aforementioned as trustee for these respondents, *cestuis que trustents*.

The final decree entered (Case, pp. 253-256) sustained the exceptions filed by the respondent herein to the report of the Special Master (Case, p. 59); that none of the orders and decrees entered in the prior foreclosure proceedings referred to

in the appellants' answer (Case, p. 53) to the respondents' amended counterclaim are a bar to the respondents' affirmative relief sought in the instant case; that a true construction of the third clause of the declaration of trust imposed upon and obligated the trustee Annett-Mahnken Realty Company to pay all debts of Betsey Gollin and Irving Gollin in anywise contracted which enabled said Betsey Gollin and Irving Gollin to obtain monies used and employed in and about the construction of the apartment house, and for the monies so advanced to rely upon the security of said apartment house; that a true and accurate account be taken between the parties; that this matter be investigated by a Master, who shall make a report to the Court of Chancery; and that all other questions not adjudicated therein are reserved until the coming in of said report. This decree is the subject of the appeal before this Court.

#### POINT I.

**The Annett-Mahnken Realty Company, appellant-trustee, was bound to pay the debt of the respondents arising out of the construction of the apartment house under the declaration of trust.**

Counsel for the appellants (on p. 11 of his brief) urges that the declaration of trust does not contain any agreement to pay the debts of the Gollins arising out of the erection of the apartment house. This conclusion is a palpable misstatement of the contents and purport expressly stated in the declaration of trust.

Paragraph 3 of the Declaration of Trust (Case, pp. 5-8, Ex. C-2) reads as follows:

“To endeavor to settle with all creditors of said Betsey Gollin and Irving Gollin, and as far as necessary to advance such sums of money as may be necessary for the settlement of all such claims.”

It is clearly evident from the foregoing provision of the trust agreement that the appellant-trustee, Annett-Mahnken Realty Company, assumed to pay and satisfy the debts of the Gollins arising out of the construction of the apartment house. That this was the intention of the declaration of trust is forcefully borne out by the fact that the trustee (appellant Annett-Mahnken Realty Co.) actually undertook to pay and in fact did pay the debts of the Gollins (Case, p. 332, Ex. D-3). *There is no better test of what the duties and obligations of the trustee were, than what was done by the trustee to effectuate the trust.*

It is urged by counsel for the appellants (p. 11 of his brief) that there was no consideration to pay the debts of the Gollins. Inasmuch as a valid consideration expressly appears in the declaration of trust (see p. 5, appellants' brief), this contention is too obvious for argument.

In the light of the foregoing, it is clearly apparent that the appellant-trustee, Annett-Mahnken Realty Co., agreed to pay and did pay under the declaration of trust the debts of the Gollins arising out of the construction of the apartment house.

## POINT II.

**The appellant-trustee was bound to an honest and faithful performance of its duties and obligations under the declaration of trust.**

Counsel for the appellants, under Point II of his brief, urges that there was no mismanagement of the apartment house by the trustee. This question was not and has not yet been determined by the decree of the Court below (Case, pp. 253-256). The final decree reserved the determination of this matter until the coming in of the Master's report. Consequently, this question is not part of the subject matter upon which the appeal can properly be based, and at this posture of the case is not open for argument.

Counsel for the appellants (on p. 15 of his brief) misstates the respondents' case when he says the following: "Under the construction (referring to the declaration of trust) for which the defendants contended, and which has been adopted as the basis of the decree, it was the duty of the trustee to pay not only the then outstanding claims incurred in the building of the apartment house which should be approved by Irving Gollin and certified to the trustee, but also to reimburse both Irving Gollin and Betsey Gollin for all moneys that they had advanced to enable him to go on with the building operation." This is not so. The gravamen of the respondents' grievance is that it was the duty and obligation of the appellant-trustee to pay all debts of Betsey Gollin and Irving Gollin which arose out of the construction of the apartment house mentioned therein together with debts in anywise contracted which en-

abled the respondents to obtain monies used and employed in and about such construction, and for the monies so advanced to rely upon security of said apartment house; that the trustee having paid the debts of the Gollins violated their trust by instituting the foreclosure suits hereinbefore mentioned, and that the trustee having purchased the properties at the foreclosure sales now hold said properties in trust and for the benefit of the respondents, *cestuis que trustents*. It is also the contention of the respondents that the trustee neglected and mismanaged the apartment house mentioned in the trust agreement.

In its argument (p. 16) the appellant-trustee seems to imply that under the terms of the declaration of trust, the trustee was to pay the debts of the Gollins, after paying from the rents the carrying charges of the apartment house. This contention is absurd and militates against the very purpose of the trust agreement, and obviously would obviate the necessity of a declaration of trust, in the first instance. Not only does the definite and distinct provisions of the trust agreement clearly demonstrate the fallacy of the appellant's contention, but the trustee's action in paying these debts not out of the rents but out of the monies they agreed to advance under the trust agreement, belies the appellant's present contention.

Prior to the consummation of the trust agreement, the appellant-trustee, Annett-Mahnken Realty Company, being desirous to know the outstanding obligations it had to pay by advancements, requested a list from the respondents showing the creditors on the apartment house. Among the creditors were the mortgages held by Kay-Bee Investment Co., covering the apartment

house and 2 other tracts of land; a mortgage held by Lillian Markowitz, covering 499 Boulevard; a mortgage held by Myrtle A. Reed covering 772 Ave. C; a mortgage held by Newell & Shillowitz covering 462 Ave. C; and a mechanic's lien judgment on the apartment house held by Jas. Brady's Sons' Co. The trustee paid these obligations, and took assignments of the same in lieu of cancelling them of record, and later foreclosed those mortgages, and purchased the properties known as 249 Broadway, 501 Boulevard, 499 Boulevard and 772 Ave. C located in the City of Bayonne, but the apartment house was not offered for sale.

Counsel for the appellant is manifestly in error (pp. 16-18) that the amount of the outstanding debts of Betsey Gollin and Irving Gollin, was unknown to the trustee. The above mentioned mortgages and judgment, and all other debts, were known by the trustee from the list of creditors furnished to it before it assumed the administration of the trust. That this is apparent is evidenced by the testimony of Chas. E. Annett, an officer of the Annett-Mahnken Realty Co., who testified as follows (Case, pp. 119-120):

“Q. Prior to the execution of the deed by the Gollins to your company Mr. Irving Gollin gave you a list of creditors of the apartment house 880 Boulevard, Bayonne? A. Judge Roberson, and I saw it.

Q. You were there at the time he gave it to him? A. No, but I saw it after he had given it to Mr. Roberson.

Q. Will you produce that list?

Mr. Gough: It is produced.

Mr. Nashel: I offer it.

The Court: It is not your case yet. Let him see it and see if he identifies it.

The Witness: This is it.

Mr. Nashel: I ask it be marked for identification.

(List marked D1 for Identification.)”

(Case, p. 221):

“Q. Did you agree to pay off any of these mortgages on the apartment house for \$15,000 and the other mortgages on 772 Avenue C and 499 Boulevard, Bayonne, New Jersey? A. I agreed to pay the list you presented to me. Q. On the list I presented to you, Exhibit No. 1? A. Yes. Do you remember testifying in that manner? A. That must be correct, Mr. Hirshberg.”

If the appellant was not required to pay those obligations, why did the appellant pay the holders of said mortgages and said judgment, and take assignments? These respondents were at the mercy of the mortgagees, and made the conveyance of the completed and fully rented apartment house to the appellant for the purpose of relieving and saving these other properties. If this were not so, what difference could it possibly make to the respondent whether the original mortgagees foreclosed, or whether the appellant—Annett-Mahnken Realty Co. as assignees foreclosed. It is readily seen from the foregoing that the appellant-trustee's pretended ignorance as to the debts of the Gollins is unfounded.

It may be further observed that the appellant-trustee is precluded from pleading ignorance. Vice-Chancellor FALLON in his opinion (Case, pp. 244-245) says:

"It appears to me that one who undertakes to act as a trustee for purposes such as the matter *sub judice* should make a thorough inquiry as to the particulars and burdens which might in anywise affect the duties, responsibilities and obligations to be assumed by such trustee. A prudent person would not be expected to assume the responsibilities of a trusteeship without carefully inquiring into all matters which might reasonably be comprehended within such trusteeship, and if he fails so to do he cannot thereafter complain that he was not informed of matters that he might reasonably have acquired knowledge of if he had made due inquiry. It is a well established rule of law that where a party by his own contract creates a duty or charge upon himself, he is bound to make good, if he may, and for failure to specifically provide in the contract exemption from liability for contingencies that might happen while the contract is in force must be strongly regarded against him."

### POINT III.

**The prior decrees in the foreclosure suit are not *res adjudicata* against the respondents.**

The appellant-trustee having filed a bill of complaint for an accounting (Case, pp. 1-45), the respondents have filed an answer and counterclaim setting forth the appellant's abuse of trust and praying that the properties purchased at the foreclosure sales by the appellant-trustee be decreed as being held in trust for the respondent Betsey Gollin.

The appellant-trustee now urges that since it took decrees *pro confesso* in the foreclosure suits, and the respondents were not permitted to file answers on the ground of laches, that the respondents are now estopped from setting up the trustee's derelictions and abuse of trust in the present suit for an accounting. This contention is obviously unsound.

In a suit for an accounting the *cestui que trustent* as a matter of right is entitled to bring before the court acts of abuse of the trustee that has been injurious and detrimental to the *cestui-trustent*. To hold otherwise would deprive the *cestui que trustent* of the protective cloak that our Courts have thrown about a *cestui que trustent*. So jealous is the law of the interest of the *cestui que trustent*, that it will not tolerate the slightest antagonism on the part of the trustee. *Romaine v. Hendrickson*, 27 N. J. E. 162.

It has been previously demonstrated that the appellant-trustee, was under a duty in the performance of its trust, to pay the mortgages and judgment hereinbefore mentioned, and to look to the apartment house for reimbursement as contemplated in the trust agreement; and that these mortgages were foreclosed to finality, and the premises foreclosed, except the apartment house, were sold at the Sheriff's Sales to the appellant-trustee. As these mortgages should have been cancelled by the appellant-trustee under the declaration of trust, the properties acquired by the appellant-trustee at the Sheriff's Sales, should be considered as being held by the appellant-trustee by a continuing trust.

It is a well established principle of equity that a trustee cannot profit at the expense of the *cestui que trustent* (*1 Perry on Trusts*, 7th Ed., Sec. 427).

Counsel for the appellant-trustee in his brief cites numerous cases on the question of *res adjudicata*. These cases have no application to the instant case and accordingly do not support the appellant's contention that the defense and counterclaim of the respondents are estopped by the decrees in the foreclosure suits. As this Court will observe from the State of the Case that there was never a construction of the trust agreement until these proceedings were determined by the Court below in favor of the respondents.

In the case of *Bragg v. King*, 104 N. J. L. 4, Chief Justice GUMMERE, speaking for the Supreme Court said,

"The doctrine of *res adjudicata*, as defined by our Court of Errors and Appeals, is that the judgment of a court of competent jurisdiction on a question of law or fact, when litigated and determined, is, so long as it remains unreversed, conclusive upon the parties and their privies not only in the suit in which it is pronounced but in all future litigations between the same parties or their privies, touching upon the same subject-matter."

In the foreclosure suits the trust agreement was not construed; hence, the decrees entered in the foreclosure suits are not *res adjudicata* against the respondents for the relief sought in their counterclaim.

This Court has held in the case of *Smith v. Fischer Baking Co.*, 105 N. J. L. 567, that a matter is not *res adjudicata*, unless the judgment in the former suit be so in point as to control the issue in the pending action.

In the case of *Russell v. Place*, 94 U. S. 606, Court said:

“In order that the judgment in a former case may be conclusive in a second suit between the parties, it must be shown either by the record or by extrinsic evidence that the same question was necessarily raised and determined in the other suits. If there by any uncertainty of this head in the record, the whole subject-matter will be at large and open to a new contention unless extrinsic evidence to be given to show the precise point involved and determined. If, upon the face of the record, anything left to conjecture as to what was involved and decided there is no estoppel when it is pleaded and nothing conclusive when it is offered in evidence.”

#### POINT IV.

**The matters referred by the decree to Master for inquiry and report are the proper subject of reference.**

Counsel for the appellant, as his Point IV, says that the final decree below is erroneous because the reference to the Special Master goes far beyond the bounds usually set for inquiry by a Master and the reference is not predicated upon supported proofs.

The order of reference gives definite directions as to the principle by which the Master is to be guided and is within the scope of the allegations and proofs of the parties. That the Court below had the power in its discretion cannot be disputed.

In the case of *Hudson v. Trenton Locomotive, etc., Mfg. Co.*, 16 N. J. E. 475, it was held, that upon a reference for an accounting it is usual to give special directions as to the matter of taking the account and the principle to be applied in taking it. In the instant case the reference to the Master prescribed the principles to be applied and the manner in which the account should be taken, hence, the rule enunciated in the case above cited applies to the case at bar.

#### POINT V.

**The exceptions to the report of the Special Master, Mr. Hendrickson, have been properly sustained.**

Counsel for the appellants, as his Point V, says that the decree appealed from should be reversed and the exceptions filed to the Master's report be overruled. It is apparent from the appellants' argument that the same is predicated upon its construction of the declaration of trust. It having been demonstrated herein that the appellants' arguments under its preceding points are untenable; hence, this argument based upon a faulty premise must fail.

#### POINT VI.

**The decree below should be affirmed.**

It has been demonstrated herein (Point I) that the appellant-trustee Annett-Mahnken Realty Co. was bound to pay the debts of the Gollins arising out of the construction of the apartment house;

that (Point II) the trustee-appellant was under a duty, in the fulfillment of his trust, to advance monies to pay all debts of Betsey Gollin and Irving Gollin arising out of the construction of the apartment house, mentioned in the declaration of trust, and the mortgages and other liens thereon, together with the debts in anywise contracted which enabled Irving Gollin and Betsey Gollin to obtain money used and employed in and about such construction, and for the money so advanced to rely upon the security of said apartment house known as 880 Boulevard, Bayonne; and that (Point III) decrees entered in the foreclosure proceedings are not *res adjudicata* against the claim of the appellants in this suit.

It is respectfully submitted that the decree below should be affirmed.

SAMUEL L. HIRSCHBERG,  
Solicitor of Defendants-Respondents.

Of Counsel:  
JAMES F. MINTURN.

# New Jersey Court of Errors and Appeals

FEBRUARY TERM, 1932.

Between

ANNETT-MAHNKEN REALTY COM-  
PANY and ANSON REALTY  
COMPANY,

Complainants-  
Appellants,

*and*

BETSEY GOLLIN and MAX GOLLIN,  
Defendants-  
Respondents.

On Bill &c.,  
On Appeal  
from Chancery.

## BRIEF FOR APPELLANTS.

This is an appeal from a decree advised by Vice Chancellor FALLON.

The complainants, trustees, filed their bill for a judicial settlement of their account with the defendants, under a declaration of trust made May 16, 1924, and to have the trust property situate in Bayonne, Hudson County, sold, in order to repay to them advances made for the benefit of the defendants, pursuant to the terms of the declaration of trust. Defendants answered and counterclaimed. In their amended counterclaim they charge the complainant Annett-Mahnken Realty Company with neglect and mismanage-

ment of the trust property, and with failure to discharge with proper diligence its duty as trustee, whereby the chance to sell the trust property in a good market was lost. The defendants also claim that, under a true construction of the language of the declaration of trust, it was the duty of the trustee to pay, from its own funds, four mortgages upon other property of the defendants, cancel them, and look solely to the trust property for reimbursement. The Annett-Mahnken Realty Company having taken assignments to itself of the mortgages in question, for its protection in advancing the amounts due and demanded, afterwards foreclosed them and bought in the property at sheriff's sale. The defendants in their counterclaim charge that the property so purchased is trust property, held for their benefit.

No evidence was offered at the final hearing to support the defendants' charges of neglect and mismanagement. Whether the Annett-Mahnken Realty Company was obligated to pay and cancel the mortgages in question, without reference to the amount which shall ultimately be received by it from the trust property, or was justified in holding the mortgages for its protection, depends upon the construction to be put upon the language of the declaration of trust, and the effectiveness of that instrument, as construed, to impose such obligation. The complainants insist that the Annett-Mahnken Realty Company was under no duty to cancel the mortgages so purchased by it with its own funds; that the construction sought to be placed by the defendants upon the language of the declaration of trust is not only palpably erroneous, but has been so held by prior orders advised by Vice Chancellor FIELDER, in a litigation between the same parties, which orders were reviewed on appeal and affirmed by this Court.

In addition, in each of the foreclosure actions for the sale of the premises described in the mortgages assigned to the Annett-Mahnken Realty Company, to which both defendants were parties, decrees were made in favor of the complainants, the property was sold by the sheriff, bought in by the Annett-Mahnken Realty Company, and the sale in each case confirmed, from which decrees and proceedings no appeals were taken. All of the decrees were entered more than three years before the institution of the present suit.

It is therefore the insistence of the appellants that not only were the business and dealings of the Annett-Mahnken Realty Company with the trust property entirely fair, just and consonant with the duties of the trustee under the declaration of trust, but that the respondents are bound by the former adjudications in litigation between the same parties, and that the defenses upheld by the final decree herein upon the answer and amended counterclaim had, prior thereto, been finally determined against the defendants, and were no longer open to judicial examination. The decree now brought into this court by appeal, necessarily implies that the former adjudications in the Court of Chancery—affirmed in one instance by this Court—did not preclude that court from examining anew the defenses alleged by the defendants' answer and amended counterclaim, and that the meaning of the language used in the declaration of trust was still open to examination and construction by the Court of Chancery, despite the former proceedings had between the same parties in which the same contention regarding the meaning of the declaration of trust had been ruled against the defendants, and such ruling affirmed on appeal.

### The Facts.

In the month of May, 1924, the premises in question, upon which an apartment house had been erected and was nearing completion, at the corner of West 34th Street and the Hudson County Boulevard, Bayonne, were owned by the defendant, Betsey Gollin. They had been conveyed to her by her son, Irving Gollin. In erecting the apartment house, while holder of the legal title, he became financially embarrassed and unable to raise funds to complete the building (*Bill of Complaint*, par. 2, p. 2; *Amended Counterclaim*, par. 2, p. 50). He thereupon conveyed the property to his mother in order that she might raise funds by mortgage or otherwise to finish the building, and to make sale for a sum sufficient to discharge the indebtedness of Irving Gollin to material men and contractors. At this time the property in question was encumbered by a mortgage held by the Colonial Life Insurance Company, upon which there was then due the principal sum of \$99,500 (*Judge Roberson*, p. 125, ll. 35-40). By the terms of the mortgage, the mortgagor was required to pay installments on account of principal of \$1,000 quarterly, besides interest.

Mrs. Gollin found it impossible to raise the required funds by subsequent mortgage upon the property, and after talks with Judge ROBERSON, who had for many years acted as attorney for her husband and herself, the arrangement was made by the defendants, acting principally through their son, Irving Gollin, with the Annett-Mahnken Realty Company, of which Mr. Charles E. Annett was and is president, that said Company should accept a conveyance of the property

and hold the same upon certain trusts which are particularly declared in the instrument dated May 16, 1924 (*Ex. C2*, pp. 5-8) as follows:

NOW KNOW YE, that the said Annett-Mahnken Realty Company does in consideration of the sum of One dollar to it paid by the said Betsey Gollin, hereby make known, admit and declare that said premises were so conveyed to it, and that it now holds and will continue to hold the same in trust for the use and benefit of the said Betsey Gollin, her heirs and assigns and for the several creditors of said Betsey Gollin and one Irving Gollin, for the furnishing of labor and materials for the construction and erection of the four story brick apartment house building erected upon the above described lands and said Company does for itself, its successors and assigns covenant and agree to and with the said Betsey Gollin or her heirs and assigns, that said Company will at all times hereafter hold said herein described lands and premises upon the following trusts, and not otherwise, that is to say:

FIRST:

To collect the rents, issues and profits thereof from the several tenants which occupy apartments in said building.

SECOND:

To pay out of said rents and profits, the interest due upon the mortgages that are liens upon said premises; to pay taxes, water rents, insurance premiums and for the necessary repairs and other expenses that are

proper and incident to the management of said building.

THIRD:

To endeavor to settle with all creditors of said Betsey Gollin and Irving Gollin, and as far as necessary to advance such sum or sums of money as may be necessary for the settlement of all such claims.

FOURTH:

That in order to raise moneys sufficient for the settlement of said claims, if a satisfactory price is offered, to sell and convey said premises without the written consent of the said Betsey Gollin, but to render to said Betsey Gollin a just and true account of all moneys received from the sale of said premises and all expenditures. That it has been agreed between the parties hereto that said Annett Mahnken Realty Company is to receive a commission of five per cent (5%) for the collection of said rents; that said Company is to receive a just and reasonable compensation for procuring loans—for all moneys advanced in the settlement of said claims and is to receive lawful interest upon all moneys invested in said property. To pay all other legal and necessary expenses that may become necessary in the management of said property, and also to receive such compensation as may be mutually agreed upon hereafter between the parties hereto and if they fail to agree, to receive such compensation as the Chancellor or any of the Vice Chancellors upon proper issue framed in the Court of Chancery allows to said Company for its services in the capacity as trustee.

## FIFTH:

That after said premises have been freed from all of said debts and claims, and said Company has received its just compensation for the management thereof, to sell and convey said lands and premises to such person or persons as said Betsey Gollin may require by writing, free and clear and discharged of and from all and every encumbrance thereon by said Company or its successors or assigns, except such as may be necessary to pay said claims.

The Annett-Mahnken Realty Company took possession of the property at once and proceeded to rent and manage the same, to complete the unfinished portions of the building, and to pay all claims for work upon the building which were passed upon and approved by Irving Gollin. A particular account of their advances is annexed to the bill of complaint as Schedule B (pp. 9-45) from which it appears that the trustee advanced, under the declaration of trust, for the purposes therein declared, in excess of rents collected, \$68,431.76. This is without the addition of interest upon the sums so advanced, which, as computed by the master Charles E. Hendrickson, Esquire, up to December 1, 1929, the date of his report, amounts to \$15,291.77 (*Master's Report, Ex. D, p. 75*) in addition. The account was found to be established by the master in his report (pp. 59, 66) although the defendants' exceptions to the report were sustained by the Vice Chancellor (*p. 253, ll. 16, 23*).

The trustee was unable to find a purchaser for the property at a price which was satisfactory to the defendants, or which would enable it to pay

off the charges against the property and the advances which had been made by the trustee. Irving Gollin testifies (*p. 141, ll. 4, 8*) that he really owned the apartment house, his mother having no interest in it except to help him finance it. He himself tried to get offers for the property but could not sell (*p. 157, l. 20 to p. 158, l. 20*). As the condition of the real estate market was such that it became evident no sale could be effected which would accomplish the purpose in view, the complainants filed their bill to have their account settled, the amount due to them ascertained, and the property sold so that the proceeds thereof, above the mortgage of the Colonial Life Insurance Company, might be applied on account of the advances so made by the trustee. Solely for the purpose of convenience in keeping an account of the Gollin property a deed was made on or about April 1, 1928, conveying the premises in question to the Anson Realty Company. Since that time all collections of rent have been made by the Anson Realty Company, and all disbursements about the maintenance and management of the apartment house have been paid by that Company. The Anson Company is, of course, in precisely the same position, legally, as the Annett-Mahnken Realty Company, its grantor, and holds the property subject to all claims and accounts existing against the Annett-Mahnken Realty Company under the declaration of trust. It is a co-complainant.

The defendants' counsel at the hearing stressed, as if of great significance, the fact that the trustee paid to Spencer D. Baldwin, who held a mortgage in the principal sum of \$37,000.00 only the sum of \$3,556.58 and procured the cancellation of the mortgage (*pp. 204, 208*). As the trustee is

seeking allowance only for the amount actually paid, it is not perceived how the cancellation of this large mortgage could have been otherwise than beneficial to the defendants, rather than a cause of complaint against the trustee. From an examination of the dates, and with knowledge of the usual procedure of creditors of an involved builder, it seems not at all unlikely that this mortgage dated May 5, 1924 for \$37,000.00 (*Ex. D4, p. 335*) was given to secure creditors of Irving Gollin to that amount, and represents the same claims which are shown upon the first sheet of the list of claims presented by Irving Gollin to Judge Roberson (*Ex. D2, pp. 330, 331*). This list shows as the first item the Baldwin Lumber Co., \$3,522.90. Irving Gollin testifies (*p. 141, ll. 18, 23*) that all these claims were paid within a month or six weeks, during the months of June and July, 1924. It seems evident that when Irving Gollin had arranged with the trustee that all the claims on the first sheet should be paid, and the trustee was actually paying or had paid them, Mr. Baldwin appeared with his mortgage, got a check for what was due to the Baldwin Lumber Co. with interest, and receipted the mortgage. That this was a mortgage to secure several creditors, finds support in the unusual language of the covenant (*Ex D4, p. 335*) in which the *mortgagors* agree to give to the holder a statement of the amount due on the mortgage.

## POINT I.

**The duties and obligations of the trustee under the declaration of trust relate solely to the apartment house conveyed to it by the deed of May 16, 1924.**

The Vice Chancellor has misconceived fundamentally the relation created by the delivery to the Annett-Mahnken Realty Co. of the deed for the apartment house 880 Boulevard, Bayonne, and the simultaneous execution of the declaration of trust. This transaction is assumed by the decree to have raised a contract whereby this appellant obligated itself to pay not only the claims then outstanding against the Gollins for work done and materials furnished in the construction of the building, but also to repay to Betsey Gollin, mother of Irving Gollin, all the money, of an undetermined amount, which she had at any time furnished to her son to enable him to carry on the building project. The decree appealed from, following the language of the opinion (*p. 240, ll. 17, 28; p. 250, ll. 20, 30*) adjudges that a true construction of the third clause of the declaration of trust (*p. 254, ll. 1, 18*)

“imposed upon and obligated the trustee \* \* \* to pay all debts of Betsey Gollin and Irving Gollin which arose out of the construction of the apartment house mentioned therein and the mortgage and other liens thereon, and the lands upon which the said apartment house was erected, together with debts in anywise contracted which enabled said Betsey Gollin and Irving Gollin to obtain moneys used and employed in and about such con-

struction, and for the moneys so advanced to rely upon the security of said apartment house commonly known as 880 Boulevard, Bayonne, New Jersey."

The sole purpose of vesting the trustee with title to the apartment house was to enable it to so manage and, if possible, sell the property that the debts of the *cestuis que trustent* might be paid. Such payment was to be made from the rents of the trust property, or its proceeds, if sold. While in the third clause of the declaration of trust advances by the trustee are provided for (*p. 7, ll. 9, 12*), such advances were to bear legal interest (*p. 7, ll. 25, 28*) and the trust property was to be conveyed to the nominee of the beneficiaries after payment of all debts and claims and the compensation of the trustee (*p. 7, l. 38; p. 8, ll. 4, 10*). The transaction bears no resemblance to a *contract* to pay the debts of the Gollins. There is no consideration, nor any agreement to pay such debts, except as growing out of and incident to the management and prospective sale of the apartment house. Yet the Vice Chancellor conceives that the trustee had entered into a binding agreement to pay all debts incurred in the erection of the building, from which it could not escape because of ignorance of the amount of such debts, as it was under a legal liability to inquire and inform itself of "the particulars and burdens which might in anywise reflect the duties, responsibilities and obligations to be assumed by such trustee" (*pp. 244, ll. 33, 36*). The decree is founded upon this conception of the relations created by the deed and declaration of trust. It then imposes upon the trustee the penalties which follow the breach by one of the parties to a con-

tract of obligations to which he has bound himself.

It is submitted that the decree is erroneous in measuring the liability of this trustee to its *cestuis que trustent* by the tests properly to be applied to one who has for consideration assumed contractual obligations. What the trustee undertook was to administer faithfully the trust property, and that it has done.

## POINT II.

**The relation created between the parties by the deed and declaration of trust was not contractual, but was limited to a faithful and honest administration of the trust property.**

There is no testimony in the record to impeach the management of the apartment house. Neither on the final hearing, nor upon the reference before Special Master Hendrickson was any instance of neglect or mismanagement pointed out. Before the Master (*p. 59, l. 36*) the receipts and disbursements were approved and accepted. It is true that the apartment was not sold, but that was not because of lack of effort on the part of the trustee, of Irving Gollin and of Judge ROBERSON. The trustee was set an impossible task to sell the property, on a falling market, for a price which would be sufficient to pay the debts and repay the advances. The experienced builder, Irving Gollin, himself as he says the beneficial owner of the house (*p. 141, ll. 2, 5*) and extremely active in his efforts to dispose of it, was unable to get any offer which would furnish the cash necessary to take care of the claims. The defendants seem to have persuaded the Vice

Chancellor (*p. 241, ll. 29, 36*), by the mere fact that the rentals from the apartments did not pay the construction debts and the carrying charges, that this was evidence of dereliction, and that the failure to sell the property in the more advantageous market which then existed, as contrasted with the later depressed conditions of real property in Bayonne, was further proof of dereliction of duty. This despite the fact that the united effort of the trustee, its attorney and the real owner of the property produced no buyer who would offer sufficient cash to clear the debts.

Annett testifies that when the property was taken over by the trustee there was a first mortgage upon it for \$99,500 held by the Colonial Life Insurance Co. on which \$1,000 of principal was payable quarterly (*p. 116, l. 40*). The elder Gollin said his son was in financial trouble on the apartment house, and had a chance to sell for \$165,000; that creditors were pressing him, and if we would carry him over, he thought that he could sell and clean it up (*p. 118, ll. 10, 20*).

Judge ROBERSON testifies (*p. 124, ll. 17, 30*) that from the time the deed was made he had spoken to many persons in endeavoring to sell the property; that his practice has largely to do with real estate, he had spoken to many people in regard to the building, but without success.

Irving Gollin himself, who really owned the apartment house, his mother having no interest in it except to help him finance the project (*p. 141, ll. 2, 5*), and who was a builder in 1919, 1921, 1923 and 1924 (*p. 150, l. 19*) testifies to his efforts to sell the property and his inability to get any offers, except an exchange for lots, which would not provide the cash required to clear the property (*pp. 156, 157 and 158*).

It is evident that the trustee in dealing with this apartment house suffered from the general conditions affecting real property, no doubt aggravated by the local assessment and tax situation, to which all owners were subject. The loss incurred in carrying this property, which unfortunately must be borne by the complainants, as the defendants are wholly irresponsible, is not due to any doubt arising from the language as to the meaning of the declaration of trust, as suggested in the opinion (*p. 245, ll. 33, 38*). It is not the function of a court of equity to advise trustees in matters of business judgment, nor can it safeguard its wards from losses incident to depreciation in value of the corpus of the trust, due to changed economic conditions. There was no time since the trust was created, after the supposed offer reported by Irving Gollin of a purchaser for \$165,000.00 failed to materialize, when the trustee could have sold for a price to repay the money invested in the property.

(a) *The defendants' contentions.*

1. The defendants in paragraph 7 of their answer (*p. 46, l. 19*) claim that the appellants have "negligently violated the terms of the trust agreement" by refusing to make advances of all moneys necessary to discharge the debts incurred by Betsey Gollin and Irving Gollin, about the erection of the apartment house, claim that the building was allowed to become untenable and depreciated in value, and that it had not been managed in a careful and prudent manner, also charged the trustee with misappropriating trust property. The amended counterclaim merely repeats these charges (*p. 51, l. 18*).

No evidence whatever has been offered on final hearing in support of these allegations of the answer and counterclaim. It is conceded that the property was not sold, but this was because there never has been a time when the trustee could obtain a price for the property which would enable it to pay off the claims of creditors and repay its advances made in accordance with the terms of the declaration of trust. Irving Gollin has always been active in endeavoring to effect a sale which would be satisfactory to himself and his father and mother, and has had cooperation from the trustee in endeavoring to make sale. He testifies that he really owned the apartment house, that his mother had no interest in it (*p. 141, ll. 2, 5*). Neither he, nor the trustee under the market conditions which have prevailed since the declaration of trust, has been able to bring the property to actual sale. Nor was Judge ROBERSON more successful (*pp. 124, 125*).

2. The defendants in paragraph 10 of their amended counterclaim (*p. 52, l. 5*) reiterate the claim which had been already dealt with by Vice Chancellor Fielder, and by this Court, that the trustee has failed to carry out its duties according to the terms of the declaration of trust (*Annett-Mahnken Realty Co. v. Gollin, 100 N. J. Eq. [15 B. Stock.] 556 [1927, E. & A.]*). Under the construction for which the defendants contended, and which has been adopted as the basis of the decree, it was the duty of the trustee to pay not only the then outstanding claims incurred in the building of the apartment house which should be approved by Irving Gollin and certified to the trustee, but also to reimburse both Irving Gollin and Betsey Gollin for all moneys that they had advanced to

enable him to go on with the building operation. This contention of the defendants, which is the substantial point in controversy and which has been strenuously and continuously insisted upon, even after the ruling of Vice Chancellor Fielder, affirmed by this Court, presents the important issue on this appeal.

(b) *Duty of Trustee under declaration of trust.*

It is contended by the appellants:

1. That under the terms of the declaration of trust, the sole duty of the trustee, after paying from the rents collected taxes, water rents, necessary repairs and other expenses, proper and incident to the management of the building, was to endeavor to settle with all creditors of the said Betsey Gollin and Irving Gollin "for the furnishing of labor and materials" in the construction of the apartment, and to advance such sums of money as might be necessary for the settlement of all such claims.

The subject matter of the declaration of trust was the apartment house, and that alone. It was subject to a mortgage, at the date of the declaration of trust, upon which \$99,500 was due. To hold that this trustee, a business corporation, assumed the obligation of discharging all the indebtedness of Irving Gollin and Betsey Gollin, without reference to how such indebtedness was incurred, or its amount, so long as it had some relation to the apartment house, and look solely to the proceeds of the apartment house for reimbursement, would require not a declaration of trust, but a contract, expressed in unmistakable language. Such an unlimited obligation, if as-

sumed, might run into very large figures and bankrupt the trustee. At any rate, as is shown in the present case, it means a very heavy loss without any compensating advantage to the trustee. Such a construction of the language of the deed of trust is forced and unnatural and contrary to what one would expect even in a contract made upon consideration by business people with any ordinarily sensible view of the probable outcome of the agreement. The purpose of the trust, so far as relates to the payment of claims against Betsey and Irving Gollin, is expressly declared to be for the creditors of the Gollins "for the furnishing of labor and materials" for the construction of the apartment house (*p. 6, ll. 24, 30*).

The Master in his report pursuant to the order of reference advised by Vice Chancellor Bentley concludes (*p. 63, ll. 32, 33*) "I am unable to find any proof to substantiate Mr. Gollin's position, and I find to the contrary." And again in his report the Master says (*p. 65, ll. 23, 35*):

"I cannot find in the trust agreement any obligation upon the part of the complainants to pay off the above items, a, b, c, g and h, and to look only to the property 880 Boulevard and the personal responsibility of the defendants for the repayments of the moneys advanced by complainants to take them over at the request of the defendants. They were secured liabilities created by the defendants and on payment I find that complainants were entitled to the security. They evidently were paid by complainants to insure an extension of the due date for the interest of defendants."

It should require a very clear and explicit contractual undertaking to obligate one to discharge

the claims against an improvident debtor, heavily involved, to an unknown amount, and look for repayment to a specific piece of property of a known and limited value. No person of ordinary sense, certainly no man of business comprehension, would incur such an undertaking. The clause of the declaration of trust in question does not, on any reasonable view, imply any such obligation. Not only so, but the Court of Chancery has already said so, and this Court has affirmed the decree.

2. Even if the construction of the declaration of trust adopted by the Vice Chancellor as the basis of the decree should be accepted, the defendants are now debarred from asserting any claim to relief thereunder, because of the proceedings which had theretofore been taken in the foreclosure of the mortgages purchased by the Annett-Mahnken Realty Company, and foreclosed, which makes the questions now attempted to be raised by the defendants *res adjudicata* (see Point III, *infra*).

(c) *The defense is palpably fictitious.*

The defense urged on the final hearing in the Court of Chancery is that the complainant, Annett-Mahnken Realty Company, in paying the four mortgages which had been given by the defendant Betsey Gollin, to third persons for the purpose of raising funds in assisting Irving Gollin in building the apartment house, was performing an obligation assumed at the time when the declaration of trust was made. That is, that it paid those mortgages in discharge of its obligations to the *cestuis que trustent* and should have cancelled

the mortgages; that in taking an assignment of these mortgages, and afterwards foreclosing them, it acted in contravention of its duty, and should now be compelled to treat the properties which were taken over under the foreclosures as trust property, held for the benefit of the defendant Betsey Gollin. According to the testimony of Irving Gollin, who is an intelligent and shrewd man, and who testifies that he is the real party defendant (*p. 141, ll. 2, 5*), the duty to pay these mortgages was assumed by the trustee, as was thoroughly understood by all the parties at the time when the deed was given and the declaration of trust executed. If this is so, it would seem clear that when the foreclosure bills were filed by the Annett-Mahnken Realty Company, and the defendants brought into court, this obvious defense would have been asserted, and the trustee compelled to cancel the mortgages in fulfillment of the duty assumed under the declaration of trust. No such defense was asserted. On the contrary it appears by the affidavits filed in the proceeding before Vice Chancellor Fielder (*pp. 270, 318*) that Mrs. Gollin's solicitor, Harry B. Dembe, to whom she first went, heard nothing of such defense, advised Mrs. Gollin that there was no defense, and returned her papers (*pp. 314, 317*). She then went to Mr. Cutley who gave her like advice (*pp. 312, 313*). This appears from the affidavits filed in that proceeding. Of course neither she nor Irving Gollin ever told the solicitors whom they were then consulting of the defense which they now assert existed, and which would have been effective to prevent the entry of decrees in the foreclosures. It is incredible that they should have remained silent at that time, if the trustee had in fact assumed the obligation which they later set up as a defense to the bill in this case.

## POINT III.

The defendants are estopped by the prior adjudications of the Court of Chancery (in one case affirmed by this Court) from now claiming the relief sought by their counterclaim.

But even if the facts were as the defendants now assert, they are debarred from setting them up as a defense in this suit. In each of the foreclosure suits in which they had conferred with solicitors and filed no answer, a final decree was entered adjudging a sum of money to be due from the defendants to the Annett-Mahnken Company, and it was directed that the respective properties be sold to raise and satisfy the amount so found to be due, and that the defendants should stand absolutely debarred and foreclosed of and from all equity of redemption in the mortgaged premises when sold by virtue of the decree (*pp.* 263, 270). The mortgaged premises were brought in by the Annett-Mahnken Realty Company to protect advances which it had made in taking assignments of the mortgages. After the sale, and at the urgent solicitation of the defendants, and Mr. Abramson, the solicitor who then represented them, the complainants allowed thirty days for redemption by written option in evidence (*Ex. C-3, pp.* 326, 327). It has not been testified by anyone that at the sale, or at any time before the institution of the present suit, any claim was asserted by the defendants that there existed a defense against the payment of the amounts decreed to be due the Annett-Mahnken Company in the respective foreclosures. If any such defense had actually existed it unquestionably would then have been disclosed. It seems plain almost to

demonstration that there was no agreement on the part of the trustee as part of the trust to pay these mortgages. Certainly it finds no support in the language of the declaration of trust, and it is not shown by any credible evidence that such a duty on the part of the trustee was even suggested at the time when the conveyance was made to it.

But even if a binding agreement in writing on the part of the Annett-Mahnken Company, as part of its trust, to pay the mortgages on the premises and to cancel them should now be produced and proved, it could not avail the defendants. The effect of the adjudications by the final decrees in the foreclosure cases is conclusive upon the defendants in the present suit. They cannot now be heard to say that that court, in finding the defendants indebted to the appellant in the specific amounts set forth in the decrees, erred, and that in fact there was then no such indebtedness.

As was stated by BEASLEY, C. J., in the case of *Town of Belvidere v. Warren R. R. Co.*, 34 N. J. L. (5 Vr.) 193-197, quoting from Broom's Legal Maxims:

“After a recovery by process of law, there must be an end of litigation; if it were otherwise, there must be no security for any persons, and great oppression might be done under color and pretense of law. To unravel the grounds and motives which may have led to the determination of a question once settled by the jurisdiction to which the law has referred it, would be extremely dangerous. It is better for the general administration of justice that an inconvenience should sometimes fall upon an individual, than that the whole system of the law should be overturned

and endless uncertainty be introduced.  
*Broom's Legal Maxims* 243."

Vice Chancellor Van Fleet, in the case of the *City of Paterson v. Baker*, 51 N. J. Eq. (6 Dick.) 49, which, according to our present Chancellor, "has been repeatedly cited approvingly by the courts of this State, and is a leading authority" (*Cleaves v. Yeskel*) 104 N. J. L. (19 Gum.) 497-500, uses this language (p. 52) :

"For in my judgment, nothing is better settled, as a principle of jurisprudence, than that the judgment of a court of competent jurisdiction, on a point of law or a question of fact, or on a question of blended law and fact, does, so long as it remains unreversed, have the effect, as between the parties and those standing in privity with them, to put the question or matter adjudged at rest finally and forever and for all purposes. The principle and the reason on which it rests were stated by Chief Justice SHAW, in *Sawyer v. Woodbury*, 7 Gray 499, 502, as follows: 'It is a principle lying at the foundation of all well-conducted jurisprudence, that when a right or a fact has been judicially tried and determined by a court of competent jurisdiction, the judgment thereon, so long as it remains unreversed, shall be conclusive upon the parties, and those in privity with them in law or estate. The ground of such principle, we think, when rightly understood, is, that the judgment presents evidence of a fact of so high a nature, that nothing which could be proved by evidence *aliunde* would be sufficient to overcome it; and therefore it would

be useless for a party against whom it can be properly applied to adduce any such evidence, and accordingly he is estopped or precluded by law from doing so.' There can be no doubt, then, that if the complainant's right to relief in this suit rests upon the same point or question which, in essence and substance, was litigated and determined in the suit at law, the matter in controversy here must be regarded, as between these parties, as having been finally and conclusively settled by the judgment at law, and to stand *res adjudicata*. After judgment final, in case no appellate proceedings are taken, in the words of Mr. Justice FIELD, in *Bissell v. Spring Valley*, 124 U. S. 225, 236, 'the fact and the law are adjudged matters between the parties, and not open, therefore, to any further contest.' "

For convenience, reference is made to some of the leading New Jersey cases applying the rule of *res adjudicata*.

*In re: Walsh's Estate*, 80 N. J. Eq. (10 Buch.) 565 (1912, E. & A.).

Here the Prerogative Court affirmed the decree of Judge JOLINE in the Orphans Court upon his opinion. This Court affirmed (p. 575) "upon the very satisfactory opinion of Judge JOLINE."

The opinion so adopted by the appellate court, quotes at length from *City of Paterson v. Baker*, 51 N. J. Eq. (6 Dick.) 57; *Cromwell v. Sac County*, 94 U. S. 351, 352; 24 L. Ed. 195; *Mershon v. Williams*, 63 N. J. L. (34 Vr.) 401; *Clark Thread Co. v. William Clark Co.*, 55 N. J. Eq. (10 Dick.) 662; *Mercer County Traction Co. v.*

*U. R. R. & Co.*, 64 *N. J. Eq.* (19 *Dick.*) 594; and proceeds (pp. 569, 570) :

“The judgment is final between the parties as to all defenses which were or could have been set up in the earlier suit. *Thompson v. Williamson*, 67 *N. J. Eq.* (1 *Robb.*) 212, 214. ‘It is not necessary that the action in which the judgment is found, and that in which it is relied on as an estoppel, should be of the same kind, or for the same cause of action.’ *Sawyer v. Woodbury*, 7 *Gray (Mass.)* 502; 66 *Am. Dec.* 518; \* \* \*. It is a rule of law based upon two grounds: The first, that there should be an end to litigation, and the second, that a person should not be twice vexed for the same cause—24 *Am. & Eng. Encycl. L.* (2d *Ed.*) 713, 714 and cases cited.”

*Rosenstein v. Burr*, 80 *N. J. Eq.* (10 *Buch.*) 424, 428 (1912, *Howell, V. C.*).

A contract for the sale of land was attacked as invalid because of fraud, and because executed on Sunday. It was held valid. In a subsequent suit for specific performance, the *V. C.* says:

“Two grounds of invalidity were asserted; two further grounds of invalidity existed but were not alleged and are now made the basis of a second attack upon the validity of the contract. It is quite manifest that the question now raised was raised and decided adversely to the present defendant in the former suit, and he therefore cannot have the question re-litigated in this proceeding. He is bound by the decree in the former suit.”

*W. N. Y. Imp. Co. v. Town of W. N. Y.*,  
88 *N. J. Eq.* (3 *B. Stock*) 571 (*E. & A.*  
1917, BERGEN, J.) page 573.

"This decree finally adjudged the rights of the parties to that litigation because the township, having been made a party, was bound to set up every claim or interest which it had antagonistic to the prayer of the bill, and if the right to accept the alleged dedication, based upon the map then existed, not having been accepted for a period of forty years, the township was bound to make that claim at that time, and if it did not, the decree in the litigation to which it was a party finally determined all questions that it should have set up."

*Sarson v. Maccia*, 90 *N. J. Eq.* (5 *B. Stock.*) 433 (1919, Backes, V. C.).

This was a bill to restrain an action of deceit at law. The V. C. (p. 436) says:

"The record of the case exhibits beyond question all the essential elements of a plea of *res adjudicata*—the identity of the parties, the cause of action, and the subject matter. The only difference between the suit in equity, decided, and the action at law, pending, is the forum, the form of the remedy and the nature of the relief. \* \* \* This difference does not prevent the decree from operating in estoppel." The court cites and quotes from *City of Paterson v. Baker*, 51 *N. J. Eq.* 49; *Cromwell v. County of Sac*, 94 *U. S.* 351; *Sawyer v. Woodbury*, 7 *Gray* 499 (at p. 502) and *In re Walsh's Estate*, 80 *N. J. Eq.* 568.

*N. J. Zinc Co. v. Faucher*, 96 N. J. Eq. (11 B. Stock.) 65 (1924, Backes, V. C.).

The predecessors in title of the complainant having obtained a decree upon a bill to quiet title, the defendant seeks to defend an application for an injunction against trespass, upon the ground that while the title was settled, the location of the land was not *res judicata*. The V. C. cites *City of Paterson v. Baker*, 51 N. J. Eq. 49, and says (p. 68): "They had their day in court and are estopped from again litigating the point \* \* \* (p. 69). They were called on by that bill to defend all their rights. They made no claim under their title to the thirty-nine acres, and it is now too late to assert it."

*W. D. Cashin & Co. v. Alamac Hotel Co., Inc.*, 98 N. J. Eq. (13 B. Stock.) 432 (1925, Walker, C.).

The defendant seeking to restrain a sale by the sheriff of real and personal property, pledged by a mortgage which had not been recorded as a chattel mortgage, the Chancellor (p. 442) says that this defense was as available to the defendants upon the hearing of a former order to show cause, as on the present application. He holds the defendants barred by the principle of *res adjudicata*, quoting at length from *City of Paterson v. Baker*, 51 N. J. Eq. 49, and *In re: Walsh's Estate*, 80 N. J. Eq. 565, 569, 570, and citing other N. J. cases.

*McGarvey v. Young*, 100 N. J. Eq. (15 B. Stock.) 174, 180 (1926, Ingersoll, V. C.).

Here, after citing and quoting at length from the earlier authorities in our state, the Vice Chancellor proceeds:

“It would be a travesty on court procedure were complainants permitted to repeatedly present the same facts to the court, only claiming different forms of relief. Such procedure would strike at the basic principle of the doctrine of *res adjudicata*, and would be trifling with legal procedure, and with stability of legal decisions.”

*Perth Amboy Dry Dock Co. v. Crawford*, 103 N. J. L. (18 Gum.) 440, 444 (E. & A. 1926, KATZENBACH, J.);

To same point, citing earlier cases, and quoting at length from *Clark Thread Co. v. William Clark Co.*, 55 N. J. Eq. 658.

*Cleaves v. Yeskel*, 104 N. J. L. (19 Gum.) 497, 500 (E. & A. 1928, WALKER, C.).

After discussing authorities the court proceeds:

“This is but a statement of a familiar rule with reference to judgment *res judicata*, and that is, that parties and those in privity with them are precluded, not only as to every mater offered to sustain or defeat a demand, but as to any other admissible matter which might have been offered for that purpose.”

*In re: Allison*, 106 N. J. Eq. 55 (1930,  
LEWIS, V. O.).

The Vice Ordinary says (p. 62), speaking of the rule of *res adjudicata*:

“This doctrine is not a mere rule of procedure, but one of justice, unlimited in its operation, which must be enforced whenever its enforcement is necessary for the protection and security of rights, as well as for the preservation of the stability and repose of society.”

See also:

*Mendel v. Berwyn Estates*, 109 E. 11  
(Ad. R. Oct. 3, 1931);  
*Point Breeze & Co. v. Jersey City*, 8 A. R.  
80 (E. & A. Feb. 8, 1930, Per. Cur.).

To same point, citing the earlier cases.

*White v. Mindes*, 8 A. R., 125, 127 (E. &  
A. Febr'y 15, 1930, Per Cur.).

Approves and quotes *In re: Walsh*, 80 N. J. Eq. 565, and from *City of Paterson v. Baker*, (51 N. J. Eq. 49), which latter quotation includes:

“Parties and those in privity with them are concluded, not only as to every matter offered and received to sustain or defeat the demand, but as to any other admissible matter which might have been offered for that purpose.”

## POINT IV.

The matters referred by the decree to the master for inquiry and report are not the proper subject of reference, but should have been determined by the Court from the proofs on final hearing.

It is submitted that the terms of the reference go far beyond the bounds usually set for inquiry by a master. As stated by Chancellor WALWORTH (*Taylor v. Reed*, 4 Paige Ch. 561, 568), "The object of a reference to a master is for the convenience of the court, to ascertain disputed facts, and to make computations which would take up too much of the time of the court." In the case at bar the instructions to the master are based not upon evidence produced on the final hearing, but on loose allegations of the defendants' answer and counterclaim, entirely unsupported by proofs. He is directed (*p. 254, l. 38*) in taking the account to

"make all just allowances to the defendants herein resulting from the inactivity, mismanagement and negligence on part of said complainants in the maintenance of the said trust properties."

This direction would necessarily be taken by the master as a finding that the trustee had been so derelict, and that his office was merely to assess the damages. Yet the only evidence bearing upon inactivity is the fact that the apartment house had not been sold, altho Irving Gollin himself, the real owner and the builder, was unable to find a purchaser at a price to pay the claims

of creditors. The case is entirely barren of any support for the charge of mismanagement or negligence.

So in the further directions to the master, the decree assumes, without proof, that the trustee failed to fulfill the obligations assumed by it under the declaration of trust, and directs the master's inquiry only to the extent of the trustee's failure (*p. 255, l. 5*):

“to what extent the complainant Annett-Mahnken Realty Company, as trustee of the defendants under the Declaration of Trust aforesaid, failed to fulfill the obligations assumed by it under and by virtue of said instrument; \_\_\_\_\_

“to what extent the defendants have been injured by the inactivity, mismanagement and negligence of said trustee in their dealings; to make a thorough inquiry as to the particulars and burdens which might in anywise reflect the duties, responsibilities and obligations assumed by the complainant Annett-Mahnken Realty Company, a corporation, under the said declaration of trust; and to ascertain whether the moneys derived by the mortgage loans and otherwise upon certain properties other than apartment house aforesaid \* \* \* were used in and about the construction of the apartment house described in the declaration of trust, and whether the mortgagees and other parties who made such loans may be regarded as creditors of Betsey Gollin and Irving Gollin within the purview of the declaration of trust aforesaid; to ascertain whether the said complainants hold the properties referred to above as trustee for

said defendants, and if so to make a thorough inquiry and investigation as to the rights of the parties therein."

In order that the authority of the Master might not be too much circumscribed, he is directed (*p. 256, l. 4*) "to inquire and investigate into the matters in controversy between the parties."

When it is considered that the defendants had had their day in court and presumably submitted such proofs as they had to sustain the allegations of their answer and counterclaim, it would seem not unreasonable to expect the court to decide the issues in the light of the evidence before it. The whole controversy is transferred by its decree to a master, involving the delays and expense incident to that method of litigation. The expense must necessarily be borne by the complainants, who thus far have been unable to collect any portion of costs and counsel fees heretofore awarded them in their prior litigations. Even if the forum to which they are sent for the next stage in this proceeding to settle their account and secure their discharge were in the presence of a judicial officer of equal experience and learning with the equity judge to whom the hearing was committed by the Chancellor, the expense and delay necessarily incident to such a reference constitutes a burden to which the complainants should not be subjected. It would seem that the decree extends the function of the master into realms which have always heretofore been ruled by the judge who conducts the final hearing.

## POINT V.

**The exceptions to the report of the special master, Mr. Hendrickson, should have been overruled and the report confirmed.**

The exceptions to the master's report (*pp. 104, 105*) are based upon the construction placed by the Vice Chancellor upon the language of the declaration of trust, and the obligations which it is held were assumed thereunder by the appellant, Annett-Mahnken Realty Co. If the contentions hereinabove made (Points I and II) are sound, the sole duty of the appellants was to account faithfully and honestly for their management of the apartment house. This they have done. But if that argument is not convincing, then under Point III, *supra*, the defendants are now estopped from setting up such defenses as were available to them until barred by adjudications in the Court of Chancery (in one case affirmed in this Court), which by lapse of time had become conclusive upon all parties before the filing of the bill of complaint.

No exception questions the regularity and fairness of the proceedings before the master under the order of reference. The account of receipts and disbursements was admitted to be correct (*p. 59, ll. 36, 39*). All that remains to be done to ascertain the true state of the account between the parties is to complete and carry down to date the statement shown as Exhibit A before the master (*pp. 66, 70*). This will supply the data needed for a decree for the sale of the apartment house to repay from the proceeds, as far as they will extend, the advances made by the trustee in excess of the rents.

It is submitted that the decree appealed from should be reversed, the exceptions filed to the master's report be overruled, and the complainants' account be referred back to the master to continue the statement of the account to date, as the basis for a decretal order of sale.

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