

We, therefore, respectfully submit that the Fire Hazard Ordinance having been declared valid by the Supreme Court and the City Commission having caused an inspection to be made by the heads of the various departments, and the reports of these departments having been received by the City Commission before the application was acted upon, and after considering all of the facts the City Commission having determined the building of this apartment house with these numerous stores in that locality will create a fire hazard, the determination of the City Commission should not be set aside.

Respectfully submitted,

THOMAS J. BROGAN and
CHARLES HERSHENSTEIN,
Of Counsel for Respondents-Appellants.

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Notice of Appeal.

NOTICE OF APPEAL.

Filed January 20, 1927.

In Chancery of New Jersey

<i>Between</i>		10
SAM OLSHAN and GUSSIE OLSHAN, <div style="text-align: right; margin-right: 20px;"><i>Complainants,</i></div> <div style="text-align: center; margin: 5px 0;"><i>and</i></div> LOUIS CHRYSTAL, <i>et als.,</i> <div style="text-align: right; margin-right: 20px;"><i>Defendants.</i></div>	}	<i>On Bill, etc.</i> <i>Notice of Appeal.</i>

To defendant, A. W. Realty Co., or Irving Weinstein, its solicitor: 20

Complainants, Sam Olshan and Gussie Olshan, hereby appeal from the final decree made by the Chancellor on the advice of Vice-Chancellor Maja Leon Berry in the above-entitled cause on January 11, 1927, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes. 30

Dated: January 19, 1927.

CORN & SILVERMAN,
Solicitors for and of Counsel with Complainants.

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

JOS. J. CORN,
Of Counsel with Complainants.

Petition of Appeal.

Service of the within notice is hereby acknowledged this 19th day of January, 1927.

IRVING WEINSTEIN,
Solicitor of Defendant, A. W. Realty Co.

10

PETITION OF APPEAL.

Filed February 18, 1927.

New Jersey Court of Errors and Appeals

20

SAM OLSHAN and GUSSIE OLSHAN, <i>Complainants-Appellants,</i> <i>vs.</i> A. W. REALTY Co., a New Jersey corporation, <i>Defendant-Appellee.</i>	}	<i>On Appeal from the Court of Chancery.</i> <i>Petition of Appeal.</i>
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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

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The petition of Sam Olshan and Gussie Olshan, the appellants in the above-entitled cause, respectfully shows that:

40

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Maja Leon Berry, bearing date January 11, 1927, in a certain cause in said Court of Chancery wherein the said Sam Olshan and Gussie Olshan were complainants and Louis Chrystal, Ida Chrystal, Newark Industrial Company, a New Jersey corporation, and A. W.

Petition of Appeal.

Realty Company, a New Jersey corporation, were defendants, in this respect, to wit, that the said decree adjudges that:

(a) The exceptions to the Master's report are overruled.

(b) The Master's report is confirmed.

(c) Complainants' bill is dismissed with costs. 10

(d) The costs shall include the fees and costs of the Master.

(e) A counsel fee of Two Hundred and Fifty Dollars (\$250) shall be taxed with costs against the complainants.

And your petitioners appeal from the decree of the Chancellor which decrees as aforesaid, on the ground that the same is erroneous, in that:

1. The Court had no power or authority to make said final decree. 20

2. The Court erred in dismissing appellants' complaint.

3. The Court had no power or authority to order costs to be paid by appellants.

4. The Court erred in including the fees and costs of the Master in the taxed costs.

5. The Court had no power or authority to award a counsel fee against appellants. 30

6. The Court erred in overruling the exceptions to the Master's report.

7. The Court had no power or authority to confirm the Master's report.

8. The Court erred in referring the cause to a Master.

CORN & SILVERMAN,
Solicitors for and of Counsel with Appellants.

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Answer to Petition of Appeal.

Service of the within Petition is hereby acknowledged this 16th day of February, 1927.

IRVING WEINSTEIN,
Solicitor of Defendant-Appellee.

10

ANSWER TO PETITION OF APPEAL.

Filed April 14, 1927.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

SAM OLSHAN and GUSSIE OLSHAN,
Complainants-Appellants,

20

vs.

A. W. REALTY Co., a New Jer-
sey corporation,
Defendant-Appellee.

*On Appeal
from the
Court of
Chancery.*

*Answer to
Petition
of Appeal.*

To the Honorable Court of Errors and Appeals
in the last resort in all causes:

30 The petition of the A. W. Realty Co., a New
Jersey corporation, the defendant-appellee, in
the above-entitled cause, answering the petition
of appeal, filed by the complainants-appellants,
respectfully says that:

1. The Court did have power and authority to
make said final decree.

2. The Court did not err in dismissing appel-
lants' complaint.

40 3. The Court did have authority to order
costs to be paid by appellants.

Answer to Petition of Appeal.

4. The Court did not err in including the
fees and costs of the Master in the taxed costs.

5. The Court did have power and authority
to award a counsel fee against appellants.

6. The Court did not err in overruling the
exceptions to the Master's report.

10

7. The Court did have power and authority
to confirm the Master's report.

8. The Court did not err in referring the
cause to the Master.

IRVING WEINSTEIN,
Solicitor for and of Counsel with Defendant.

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Bill of Complaint.

BILL OF COMPLAINT.

Filed April 23, 1926.

IN CHANCERY OF NEW JERSEY.

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

Complainants, Sam Olshan and Gussie Olshan, residing in the City of Newark, County of Essex and State of New Jersey, respectfully show that:

1. On February 15, 1926, Louis Chrystal, being indebted to complainants in the sum of \$8,000, executed to them a bond of that date, to secure that sum, payable \$1,500 on May 1, 1926, \$1,500 on May 1, 1927, \$1,500 on May 1, 1928, \$1,500 on May 1, 1929, and the balance of \$2,000 on January 25, 1930, with interest at the rate of six per cent. per annum payable half yearly from the date of the bond.

2. To secure payment of the bond, said Louis Chrystal executed to complainants a mortgage of even date with the bond; and thereby conveyed to them in fee, the lands thereafter described, on the express condition that such conveyance should be void, if payment should be made according to the terms of the bond. Which mortgage having been first duly acknowledged, and the certificate of acknowledgment duly endorsed thereon, was recorded in the Register's Office of Essex County in Book E 56 of Mortgages for said county on page 557.

3. The mortgaged premises are described as follows: ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of

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40

Bill of Complaint.

Newark, County of Essex and State of New Jersey:

BEGINNING on the easterly side of Bruce Street at a point therein distant northerly one hundred forty feet and eighty-three hundredths feet from the corner formed by the intersection of said side of Bruce Street and the northerly side of Fifteenth Avenue; thence along said side of Bruce Street north twenty-one degrees forty-seven minutes east one foot and seventeen hundredths feet to the corner formed by said side of Bruce Street and the easterly side of Prospect Place; thence along said side of Prospect Place north thirty-nine degrees fifty-five minutes east seventy-three feet and ninety-three hundredths feet; thence south fifty-nine degrees forty-four minutes and four hundredths minutes east one hundred fifty-six feet and forty-eight hundredths feet; thence south thirty degrees sixteen minutes west seventy-four feet and five hundredths feet; thence north fifty-nine degrees forty-four minutes west one hundred sixty-eight feet and seventy hundredths feet to said side of Bruce Street and point and place of BEGINNING.

Being the same premises conveyed to the party of the first part by the party of the second part by deed bearing even date herewith and to be recorded simultaneously herewith, this mortgage being given to secure part of the purchase price for said conveyance.

4. Both bond and mortgage contained an agreement that if any installment of principal or interest should remain unpaid for thirty days after the same should fall due, then the whole principal sum with all unpaid interest should, at the option of the mortgagees, their representatives or assigns, become immediately due.

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Bill of Complaint.

5. The mortgage also contained an agreement that the mortgagor, his heirs or assigns would keep the buildings on the mortgaged premises insured against loss or damage by fire in an amount approved by the mortgagees and would assign the policy of insurance to the mortgagees, their representatives or assigns; and that in
 10 default of so doing, that the mortgagees, their representatives or assigns should be entitled to effect such insurance and the premiums paid for the same should be a lien on the mortgaged premises added to the amount of the bond and secured by the mortgage, payable on demand, with interest at the rate of six per cent. per annum from the date of payment of such premium or premiums.

20 6. Said Louis Chrystal is married and his wife's name is Ida. Any claim or interest she may have by way of inchoate right of dower or otherwise is subject to complainants' mortgage.

7. On April 1, 1926, said Louis Chrystal and Ida Chrystal, his wife, conveyed said land by deed of that date to Newark Industrial Company, a corporation of New Jersey, in fee; which deed was on April 12, 1926, recorded in the
 30 Register's office of Essex County. Any interest which said Newark Industrial Company has or may have in said land is subject to the lien of complainants' mortgage.

8. On April 10, 1926, said Newark Industrial Company conveyed said land by deed of that date to A. W. Realty Company, a New Jersey corporation, in fee; which deed was, on April 13, 1926, recorded in the Register's office of Essex County. Any interest which said A. W.

40

Bill of Complaint.

Realty Company has or may have in said land is subject to the lien of complainants' mortgage.

9. Said Louis Chrystal failed to keep the building on said land insured against loss or damage by fire in any sum, and on February 19, 1926, complainants caused the same to be insured in the Concordia Fire Insurance Company in
 10 the sum of \$8,000, for three years, and paid the sum of \$90.10 for insurance premium thereon; which sum, with interest at the rate of six per cent. per annum, is a lien on said premises, added to the amount of the mortgage debt and secured by complainants' mortgage, and is prior in lien to any interest in said premises which said Louis Chrystal, Ida Chrystal, Newark Industrial Company or A. W. Realty Company have or may have in the mortgaged premises.

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20

10. On March 4, 1926, complainants duly demanded of said Louis Chrystal immediate payment of said premium of \$90.10 and said Louis Chrystal has failed or neglected or refused to pay the same. No part of said sum of \$90.10 has been paid.

11. Said Louis Chrystal, Ida Chrystal, Newark Industrial Company and A. W. Realty Company, or one of them, have always been in possession of the mortgaged premises.

30

12. The whole amount of principal with interest thereon from February 15, 1926, is due upon complainants' bond and mortgage.

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

1. That Louis Chrystal, Ida Chrystal, Newark Industrial Company, a New Jersey corporation, and A. W. Realty Company, a New Jersey
 40

Bill of Complaint.

corporation, who are the defendants to this suit, may answer this bill of complaint and each statement therein made.

2. That an account may be taken of the amount due on complainants' bond and mortgage.

10

3. That the defendants, or one of them, may be decreed to pay complainants the amount so found due, with interest and costs, by a short day to be appointed by this Court; and that in default of so doing, they, and each of them, be debarred and foreclosed of all equity of redemption in said lands; or

20

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to complainants the amount so found due on their mortgage, with interest and costs;

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

CORN & SILVERMAN,
Solicitors for and of Counsel with Complainants.

30

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Answer.

ANSWER.

Filed May 24, 1926.

IN CHANCERY OF NEW JERSEY.

Between

SAM OLSHAN and GUSSIE OLSHAN,

Complainants,

and

LOUIS CHRYSTAL, *et als.,*

Defendants.

10

On Bill, &c.
Answer.

The defendant, A. W. Realty Co., a corporation of New Jersey, and one of the defendants in the above-entitled cause, answering the complaint filed herein, says:

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1. Paragraphs 1 to 8 inclusive in said complaint are admitted.

2. Paragraphs 9 and 10 are denied.

3. Paragraph 11 is admitted.

4. Paragraph 12 is denied.

5. The premises described in paragraph 3 of said complaint were up to the date of filing the bill of complaint herein, insured against loss by fire by Louis Chrystal and his assigns in an amount sufficient to cover complainants' mortgage, and the fire insurance policies assigned to the complainants.

30

6. On April 13, 1926, the defendant, A. W. Realty Co., by its president, Abram Weinstein, informed complainants that it was the new owner

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Answer.

of the premises and offered to pay the complainants any premium that might be due them on said policies, but that complainants informed defendant that no premiums were due them and that the policies had not yet been paid for.

10 7. The defendant, by its president, Abram Weinstein, thereupon inquired of complainants if they had any objection to the placing of new policies upon the premises of defendant and complainants informed defendant that they had no objection thereto.

20 8. Thereupon and on April 21, 1926, the defendant A. W. Realty Co., by its agents, Feist & Feist, a New Jersey corporation, insurance agents, tendered to the complainants fire insurance policies covering the premises described in said bill of complaint and in amounts sufficient to cover complainants' mortgage and caused the said policies to be assigned to the complainants, and that the said complainants did not refuse said policies at that time, but thereafter and on April 23, 1926, filed their complaint herein and subsequently and on April 28, 1926, returned the said policies to Feist & Feist aforementioned, thereby depriving the defendant of any
30 opportunity to satisfy said complainants, knowing fully well that said defendant was always ready, able and willing to pay for insurance already placed or to effect whatever insurance said complainants might require.

40 9. On May 6, 1926, the defendant, A. W. Realty Co., by its attorney, tendered a check of \$90.10 to one Samuel Kreitzberg, agent for the Concordia Fire Insurance Co., in payment of the policies referred to in paragraph 9 of the complaint filed herein; and the said Samuel

Answer.

Kreitzberg accepted said check in payment thereof, and gave defendant a receipt therefor, and that thereafter said check was returned by said agent.

10. The defendant A. W. Realty Company further says that its deed to said premises is not made subject to the assumption by it of the mortgage referred to in the bill of complaint filed herein and that it did not assume said mortgage nor the covenant to insure and that said covenant does not run with the land, so as to bind the said defendant. 10

11. The defendant A. W. Realty Company, says that the mortgage referred to in the bill of complaint filed herein does not contain a clause making the entire amount of principal and interest due immediately upon the failure to insure and that the complainants have no right to foreclose under the terms of said bond and mortgage referred to. 20

12. Complainants have never demanded of the defendant, A. W. Realty Co., payment of the premium alleged to have been paid by them.

Defendant, A. W. Realty Company, prays that it may be hence dismissed with its reasonable costs and charges in its behalf lawfully sustained. 30

IRVING WEINSTEIN,
Solicitor for and of Counsel
with Defendant, A. W. Realty Co.

Replication.

REPLICATION.

Filed June 8, 1926.

IN CHANCERY OF NEW JERSEY.

60/552

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Between

SAM OLSHAN and GUSSIE OLSHAN,

Complainants,

and

LOUIS CHRYSTAL, *et als.*,
Defendants.

On Bill, &c.
Replication.

20

Complainants, replying to the answer filed in this cause, say that:

1. They deny paragraph 5 of the answer.
2. They deny paragraph 6 of the answer.
3. They deny paragraph 7 of the answer.
4. They deny paragraph 8 of the answer.
5. As to the matters contained in paragraph 9 of the answer, they have not sufficient knowledge or information whereof to form a belief.
6. As to the matters contained in paragraph 10 of the answer, they have not sufficient knowledge or information whereof to form a belief.
7. They deny paragraph 11 of the answer.
8. They admit paragraph 12 of the answer.

CORN & SILVERMAN,
Solicitors for Complainants.

40

Decree Pro Confesso.

DECREE PRO CONFESSO.

Filed June 8, 1926.

IN CHANCERY OF NEW JERSEY.

60/552

Between

SAM OLSHAN and GUSSIE OLSHAN,

Complainants,

and

LOUIS CHRYSTAL, *et als.*,
Defendants.

On Bill, &c.
Decree Pro Confesso.

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This cause being opened to the Court by Corn & Silverman, solicitors for complainants, and it appearing that process of subpoena for the defendants to appear and answer the complainants' bill has been duly issued and returned served upon the defendants Louis Chrystal, Ida Chrystal, Newark Industrial Company, a New Jersey corporation, and A. W. Realty Company, a New Jersey corporation, and that the defendants Louis Chrystal, Ida Chrystal and Newark Industrial Company have not, nor have any or either of them appeared and pleaded, answered or demurred to the said bill within the time limited by law, or at any other time, but that they have wholly failed and neglected so to do:

It is, on this 8th day of June, 1926, ORDERED AND DECREED that the complainants' bill be and the same is hereby taken as confessed against the said defendants Louis Chrystal, Ida Chrystal and Newark Industrial Company, a New Jersey

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40

Interlocutory Decree.

corporation, to the end that such decree may be made against them as the Chancellor shall think equitable and just.

E. R. WALKER,
C.

10

INTERLOCUTORY DECREE.

Filed June 22, 1926.

IN CHANCERY OF NEW JERSEY.

Between

20 SAM OLSHAN and GUSSIE OLSHAN,

Complainants,

and

LOUIS CHRYSTAL, *et als.*,
Defendants.

On Bill, &c.
Interlocutory Decree.

30

This cause being opened to the Court by Corn & Silverman of counsel with complainants, and it appearing to the Court that due notice of motion was served upon Irving Weinstein, solicitor for defendant, A. W. Realty Co., and appearing to the Court that the answer of the defendant A. W. Realty Co. does not set up any defense or present any question except such as, in the opinion of the Court, may be properly referred to a Master,

It is, on this twenty-second day of June, 1926,
ORDERED that the above cause be referred to
40 John A. Bernhard, Esquire, one of the masters

Interlocutory Decree.

of this Court, to ascertain and report the amount due to the said complainants for principal and interest upon the mortgage held by them upon the premises mentioned and described in the said bill of complaint, and whether the said mortgaged premises should be sold together or in parcels, and if in parcels, in what order, and that the said Master do make his report thereon with all convenient speed. And all further equity is reserved until the coming in of the said Master's report.

E. R. WALKER,
C.

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Depositions.

DEPOSITIONS.

Filed December 20, 1926.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> SAM OLSHAN and GUSSIE OLSHAN, <i>Complainants,</i> <i>and</i> LOUIS CHRYSTAL, <i>et als.,</i> <i>Defendants.</i>	}	<i>Depositions.</i>
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20 Transcript of shorthand notes of testimony taken in the above matter, before John A. Bernhard, Esq., a Master in Chancery of New Jersey, at his office, 763 Broad street, Newark, New Jersey, on Tuesday, July 13, 1926, at 11:30 o'clock, in the forenoon.

Appearances:

Joseph J. Corn, Esq., of Corn & Silverman, solicitors for the complainants.

30 Irving Weinstein, Esq., solicitor of the defendants, Louis Chrystal, A. W. Realty Company.

MARGUERITE B. MULLIN, being duly sworn on her oath, according to law, says, I will faithfully and truly take stenographically and reproduce in typewriting the evidence to be given in the above matter.

MARGUERITE B. MULLIN.

40

Louis Chrystal, direct.

Sworn and subscribed to before me this 13th day of July, A. D. 1926.

JOHN A. BERNHARD,
A Master in Chancery of New Jersey.

10 LOUIS CHRYSTAL, defendant, being sworn, testifies as follows:

By the Master.

Q Where do you live? A 181 Schuyler avenue, Newark, New Jersey.

Mr. Corn: I object to the taking of the testimony of Mr. Chrystal.

20 Q Are you one of the defendants in these proceedings? A Yes, sir, I am.

Examination by Mr. Weinstein.

Q On March 4, 1926, were you the owner of the property described in the bill of complaint?

30 Mr. Corn: I object that it is immaterial, on the ground that the record is the best evidence.

The Master: What does the order direct me to find.

40 Mr. Weinstein: The Court, the order of reference to you is merely to ascertain the amount of the mortgage, and I spoke to Chancellor Walker about this and the Chancellor said the pleadings does not set up any defense, which may not be properly referred to a master. Under Rule 192, you are permitted to hear the evidence on both sides.

Louis Chrystal, direct.

The Master: I sustain Mr. Corn's objection, that the record is the best evidence.

Mr. Weinstein: It is admitted by the pleadings, he was the owner at that time.

10 Q Did anyone demand \$90.10 for insurance premiums from you? A I don't remember.

Q Do you remember if Corn & Silverman, attorneys for Mr. Olshan, demanded that money from you? A I don't remember.

Q Did Mr. Olshan ever demand \$90.10?

Mr. Corn: I object to that question.

A I don't remember.

Q Did you receive any demand for insurance?

20 A I don't remember.

Q If you received it, would you have remembered it?

Mr. Corn: I object to that question that calls for a conclusion.

The Master: Re-frame your question.

30 Q Have you any recollection of having received a demand from Mr. Olshan's attorney, or Mr. Olshan, or an insurance company for the payment of this \$90.10? A I don't remember anything.

Q If you did receive such a demand, you would remember? A Yes, sir.

By the Master.

Q Did you take out insurance on this property? A No, I didn't take out insurance.

40 Q Did you authorize anybody to take it out? A No.

Louis Chrystal, cross.

Q Did you receive any insurance policy covering this property? A Yes, from the bank.

Q What bank? A From the bank's agents.

Q What agents? A Insurance agents.

By Mr. Weinstein.

Q Did you receive it from Mr. Olshan's agents or from the third mortgagee? A I don't remember that. 10

Q When did you buy the property?

Mr. Corn: I object, that is immaterial.

The Master: Do you allege that he is the owner?

Mr. Corn: Yes, sir.

Cross examination by Mr. Corn.

20

Q Did you ever receive any certificate of insurance from anybody at all? A I don't remember.

Q Do you remember having any insurance certificate? A No.

Q Did you receive a letter dated March 4, 1926? A Yes, sir.

Q Did you receive this registered letter of March 4, 1926, sent by Corn & Silver? A I don't remember. 30

Q When you closed the title to these premises, to *who* did you sell this property? A Newark Industrial Corporation.

Q Did you give them any policy of insurance? A I did.

Q Where did you get these policies you gave them? A I had them.

Q Where did you get the—? A I suppose I received them. 40

Sam Olshan, direct.

Q From whom? A From the insurance agents.

Q Which insurance agents? A I didn't look them over.

Q How much insurance did you transfer to the company which you sold the property to? A
10 I don't remember exactly.

Q Have you got a copy of the closing statement? A I suppose I have got it some place.

Q Where is it? A I have it.

Letter of March 4, 1926, offered and marked for identification, D. 1 for identification.

Mr. Weinstein: I object to the letter.

Mr. Weinstein: I desire to offer letter of
20 April 21, 1926, from Feist & Feist, to be marked Exhibit D. 2 for identification. Letter April 28, 1926, D. 3 for identification. Letter from Samuel Kreitzberg, May 3, 1926, D. 4 for identification. Policies of American Insurance Co., D. 5 for identification. Check to K. Kreitzberg, 5/6/29 marked D. 6 for identification. Bill from Samuel Kreitzberg, marked D. 7 for identification. Deed Newark
30 Industrial Company to A. W. Realty Company, marked D. 8 for identification.

SAM OLSHAN, complainant, being sworn, testifies as follows:

By the Master.

Q Where do you live? A 526 Fifteenth
40 street, Newark, New Jersey.

Sam Olshan, direct.

Q You are one of the complainants in this cause? A Yes, sir.

Q Who is the other complainant? A My wife.

Q What is her name? A Gussie Olshan.

Examination by Mr. Corn.

10

Q You are one of the owners of this mortgage, made by Louis Chrystal? A Yes, sir.

Q How much is due on this mortgage for principal? A \$8,000.

Q How much is due now? A No, \$6,500.

Q How much interest is due? A February 15th and May 27th.

Q How much was the principal of this mortgage? A \$8,000, and on May 27th, \$1,500 was paid on account on May 27th, and interest is due
20 since then on \$6,500.

By the Master.

Q On May 27, 1926, he had paid you \$1,500 on account of principal, and all interest due to that date? A No.

By Mr. Corn.

Q Is this the bond that was given with the
30 mortgage? A Yes, sir.

Bond and mortgage, dated February 15, 1926, made by Louis Chrystal to Sam Olshan and Gussie Olshan, his wife, in the sum of \$8,000 offered in evidence and marked Exhibit C. 1 and C. 2.

By the Master.

Q Why did you begin foreclosure proceedings? A I wanted to.
40

Sam Olshan, cross.

Q Why did you do it? A He didn't pay the insurance.

Q What insurance did he not pay? A He didn't pay for the mortgage.

Q What mortgage? A My mortgage for \$8,000.

10 Q What insurance? A I don't know the company.

Q Have you the insurance policy here for the premium, which he has not paid? A Yes, sir.

Q How much was the insurance premium? A \$90.10.

Q Due to what company? A I don't know.

Examination by Mr. Weinstein.

20 Q You say you foreclosed this mortgage, because they didn't pay the insurance? A Yes, sir.

Q When did you find out that they didn't pay the premium? A Two months after I made the settlement.

Q When did you make the settlement? A February 15th.

Q So you found out on April 15th, they did not pay the premium? A April 10th.

30 Q You then found out they did not pay the premiums to whom? A Yes, from the insurance company I got the policy.

Q What insurance company gave you the policy? A I don't remember.

Q What did you do when you found they did not pay the premium?

40 Mr. Corn: I object to that question on the ground that the subject matter was referred to the Master to take evidence under

Sam Olshan, cross.

an order of reference, made by the Chancellor, by an interlocutory decree, referring the matter to John A. Bernhard, Esq., one of the Masters of this Court, to ascertain and report the amount due to the said complainants for principal and interest upon the mortgage held by them, upon the premises mentioned and described in the said bill of complaint, and whether the said mortgaged premises should be sold together or in parcels and if in parcels, in what order, and I respectfully state that the Master's authority does not extend beyond what is due on the mortgage.

Mr. Weinstein: I oppose this motion. Under Rule 192 of the Rules of the Court of Chancery which in effect says that, whenever in a suit for foreclosure, the answer or answers shall not appear to set up any defense or to present any question, except such as, in the opinion of the Court, may be properly referred to a Master, it shall not be necessary to set down the cause for hearing in order to obtain a reference, but the same may be granted on motion on notice to the solicitor of the answering defendant, or defendants, etc. and that the *answering* having been filed in this cause, and the notice of the motion that was served upon me, being only a notice for application for an order of reference under this rule, the Chancellor has the discretion of referring the proceedings to a Master to hear the testimony of both the complainant and defendant, and further that I spoke to Chancellor Walker, with reference to the order of reference. The Chancellor advised me that I would be per-

Sam Olshan, cross.

mitted to put in defense before the Master to whom the cause had been referred.

The Master: I will adopt this course and take the testimony, and if I find it is beyond my jurisdiction, I will strike it out.

10 Mr. Corn: I want to note an exception here to all the testimony on the part of the defendant.

Examination by Mr. Weinstein, continued.

Q On April 10th, when you found, they didn't pay the premium? A I told my lawyer I wanted to foreclose the house.

Q When did you see him the next day or the same day? A Same day.

20 Q On April 10th? A I can't tell, sure, between 9th or 10th of April.

Q That was the first time that you saw your lawyer? A Yes, sir.

Q About the premium? A Yes, sir.

Q Do you read English? A A little bit.

Q Did you ever read the mortgage?

30 Mr. Corn: I object, the mortgage appears of record, and we are bound by the mortgage.

A I looked at it.

Q Do you know what the mortgage says?

Mr. Corn: I object the mortgage speaks for itself.

The Master: I sustain the objection.

40 Mr. Weinstein: I note an exception to that ruling.

Sam Olshan, cross.

Q What did you do about paying the premium, when you went to the lawyer's office, did you pay the \$90.10? A My lawyer paid, he sent me a bill.

Q On April 10th, you told the lawyer to pay the premium for you? A No, I find he did not pay the insurance. 10

Q On April 10th you saw your lawyer and told him to foreclose the mortgage? A Yes, sir.

Q You told him to pay the premium for you? A Yes, sir.

Q Do you remember, Mr. Weinstein, this gentleman right here, coming to see you, while you were negotiating to sell the property? A Yes, sir.

Q That was about this time? A Yes, after a couple days, after. 20

Q Do you remember him asking you, whether it was a good buy, to buy the property?

Mr. Corn: I object this is wholly immaterial.

Mr. Weinstein: I will withdraw that question.

Q Do you remember about this time, Mr. Weinstein, coming to you and asking you if you paid the premium? 30

Mr. Corn: I object to that, on the ground that it is immaterial whether he remembers or not.

Q Did Mr. Weinstein ask if you had paid the premium, about this time, April 10th? A He didn't ask nothing, I told him the mortgagee had not paid the insurance on my mortgage. 40

Sam Olshan, cross.

Q Didn't he ask if he could put on new policies?

Mr. Corn: I object to that question.

Mr. Weinstein: I will withdraw that question.

10

Q Did you ever see Mr. Jack Simon, at your house with Mr. Weinstein? A Yes, sir.

Q Did you ever pay for the insurance? A The lawyer paid.

Q Did you pay the lawyer?

Mr. Corn: I object, that is immaterial.

The Master: Answer the question.

A I told him I would pay him, after the court.

20 Q You filed this suit April 23rd?

Mr. Corn: I object to that, the record speaks for itself.

Mr. Weinstein: I will withdraw that question.

Q On April 23, 1926, you received two insurance policies from Feist & Feist?

30

Mr. Corn: I object to that question.

The Master: Reframe your question.

Q Did you get this letter, from Feist & Feist (the original of this letter), together with two insurance policies? A Yes, sir.

Copy of letter, dated April 21, 1926, signed Feist & Feist, marked D. 2, for identification.

40 Mr. Weinstein: It is stipulated that the insurance policies were returned on April

Joseph J. Corn, direct.

28, 1926, by Corn & Silverman, with a letter, which is herewith produced. Letter dated April 28th, addressed to Feist & Feist, from Corn & Silverman, marked D. 3 for identification.

Q When you got these policies, you took them to your lawyer? 10

Mr. Corn: I object to that on the ground that it is immaterial.

Continuation of hearing before John A. Bernhard, Esq., a Master in Chancery of New Jersey, at his office, 763 Broad street, Newark, New Jersey, on Tuesday, July 13, 1926, at 2:30 o'clock in the forenoon. 20

Appearances:

Joseph J. Corn, Esq., and Emil R. Silverman, Esq., solicitors of the complainant.

Irving Weinstein, Esq., solicitor of the defendant, Louis Chrystal.

JOSEPH J. CORN, being duly sworn, testifies as follows: 30

By the Master.

Q Your office is located where? A Kinney Building, Newark, New Jersey.

Q You are a solicitor of the Court of Chancery of New Jersey? A Yes, sir, I am.

By Mr. Silverman.

Q Did you order the policy written, described in the bill of complaint, in this cause? A I did. 40

Joseph J. Corn, direct.

Q From whom? A Samuel Kreitzberg.

Q Were the policies written? A They were.

Q Have you the policies in your possession?

A Yes, sir, here they are.

10 Three policies, issued by Samuel Kreitzberg (2 for \$3,000, each and one for \$2,000), offered in evidence and marked Exhibits C. 3, C. 4 and C. 5.

Q Did you cause a certificate to be forwarded to the owner of the fee? A I did.

Q To whom? A Louis Chrystal.

Q When? A February 5, 1926.

Q At what address? A 183 Schuyler avenue, Newark, New Jersey.

20 Q Subsequent to the time, did you hear from Mr. Chrystal or his attorney? A I heard from Mr. Chrystal's attorneys.

Q Who was that? A Harry H. Koehler.

Q When did you hear from him? A March 4, 1926.

Q Have you that letter? A Yes, sir, here it is.

30 Letter from Koehler & Augenblick, dated March 4, 1926, offered in evidence and marked Exhibit C. 6.

Mr. Weinstein: I object to this, I don't see how it is material, it is a letter from Koehler & Augenblick, with reference to some policy, evidently not affecting this suit. This letter states that he desires to have them send their bill to Louis Chrystal. How is that a demand for the premium?

40 The Master: On what grounds do you object?

Joseph J. Corn, direct.

Mr. Weinstein: It is immaterial and incompetent.

The Master: I reject it on the ground that it is not competent, but not on the ground that it is not material. It is material but not competent. The signature has not been proved. 10

Mr. Silverman: I submit that it is material in this respect. Mr. Weinstein, this morning produced Mr. Chrystal, who testifies that he does not remember having received any bills or having received any demand for payment by letter from his attorney.

Q Did you make a demand for any one for the payment of these premiums? A I did. 20

Q Upon whom did you make the demand? A Mr. Louis Chrystal.

Q What date? A March 4th.

Q What year? A 1926.

Q How did you make that demand? A A letter addressed to Mr. Chrystal, at his address on Schuyler avenue.

Q Have you a copy of the letter? A I have.

Q Did you mail it? A I signed and mailed it. 30

Q Was that premium ever paid? A Yes, sir.

Q By whom was it paid? A Corn & Silverman.

Q To whom was it paid? A Samuel Kreitzberg.

Q Have you that check? A Yes, sir, here it is.

Q Does that check include anything else, any other item? A Yes, an item of \$1.60 additional premium. 40

Joseph J. Corn, cross.

Q On this policy? A Some other policy.

Q How much was the insurance premium of Louis Chrystal? A \$90.10.

Mr. Silverman: I desire to have this check offered and marked in evidence.

10 Mr. Weinstein: I object to this going in on the ground that the check is for an amount different from that alleged in the bill of complaint, and there is no actual proof of what the excess is for, outside of what Mr. Corn says, it is for some other thing. That is no proof.

The Master: Is that the only ground if objection?

20 Mr. Weinstein: That is first, and second, there is no proof of authority from Mr. Olshan, to Corn & Silverman, to pay this premium for him. My main contention is that there is no authorization to advance money for a client and create a cause of action.

The Master: Is that your only objection?

Mr. Weinstein: I cannot think of any other.

30 The Master: I overrule the objection.

Check dated 20th of February, 1926, for \$91.71 offered in evidence and marked Exhibit C. 7.

Q Was that premium paid for subsequently by the owner of the fee? A No, sir.

Examination by Mr. Weinstein.

40 Q Do you know what this item of \$1.71 covered?

Joseph J. Corn, cross.

Mr. Silverman: I object to that question.

The Master: Reframe your question.

Q Do you know what the excess was for? A For some additional item owned Mr. Kreitzberg.

Q You were friends of Mr. Kreitzberg? 10

Mr. Silverman: I object to that, otherwise *were* would not give him our insurance.

The Master: Do not attack the credibility of the witness.

Mr. Weinstein: I am not.

Q Are you a licensed broker?

Mr. Silverman: I object on that ground that it is not material. 20

The Master: I sustain the objection.

Mr. Weinstein: I take exception.

Q Did you receive commission for this policy?

Mr. Silverman: I object, on the same ground.

The Master: I sustain the objection.

Mr. Weinstein: I take exception. 30

Q Do you remember coming into my office on May 6, 1926, and showing me a receipted bill for the payment made by you of this insurance to Samuel Kreitzberg?

Mr. Silverman: I object, it is immaterial.

The Master: Answer the question.

A I don't remember. 40

Joseph J. Corn, cross.

Q Do you remember showing me this bill (referring to receipted bill from Samuel Kreitzberg)? Do you remember coming into my office?

A I don't.

Q Do you remember me coming into your office? A Yes, sir.

10 Q Do you remember what I came in for?

Mr. Silverman: I object to that question, it is not material.

The Master: Strike it out.

Q Did I speak to you about the payment of this premium by you?

Mr. Silverman: I object to that question, it is not material.

20 The Master: Strike it out.

Q I show you a letter from Mr. Kreitzberg, dated May 3, 1926, and ask if you have read that letter? A Yes, I have.

Q Did you have anything to do with dictating and the sending out of that letter? A I didn't.

Q You—did you know anything about this letter? A Knew what it was for.

30 Q Did you see Mr. Kreitzberg, the same day I saw him?

Mr. Silverman: I object to that question.

The Master: Re-frame your question.

Q Did you see him about the question of paying the bill when you saw Mr. Kreitzberg that day? A Yes, sir.

Q Did you give him any instructions?

40 Mr. Silverman: I object, that is immaterial.

Joseph J. Corn, cross.

The Master: I will allow it.

A No.

Q Did you say anything to him with reference to my appearance at your office?

Mr. Silverman: I object. The bill in this case was filed April 23, 1926. All matters that transpired after the bill was filed certainly cannot be binding, or any attempt they made to re-instate the mortgage is not binding, and your conversation transpired on May 6, 1926. 10

The Master: Why, is that not so?

Mr. Silverman: The mortgage specifically states that if any installment shall remain in the arrears for thirty days, and the refusal of the mortgagor to pay, and now if I show that I paid the premium—I now show that I paid the premium and filed the bill, and that they didn't pay. 20

The Master: What have you to say, Mr. Weinstein?

Mr. Weinstein: It proves that they have not cause of action.

The Master: Where are there any cases in support of that theory? 30

Mr. Weinstein: The mortgagor has the benefit, if the mortgagee fails to cover the premises with insurance, to insure the premises, and the amount of the premium shall become a lien, if payment is not made upon demand. Now, it does not say, if the premium is not paid, they can go ahead and foreclose the mortgage, it simply says it becomes a lien. 40

Samuel Kreitzberg, direct.

Mr. Silverman: I may suggest that this very question, as to whether the mortgage, had a right to foreclose this mortgage has been decided by Vice-Chancellor Church.

By the Master.

10 A I have no recollection.

Q You didn't know he came to see you after that letter? A No.

Letter from Samuel Kreitzberg, dated May 3, 1926, marked D. 4 for identification.

SAMUEL KREITZBERG, being duly sworn, on behalf of the complainants.

20 *Examination by Mr. Silverman.*

Q Your business is what? A Insurance business.

Q Look at these three *policies*, Exhibits C. 3, C. 4 and C. 5 and see whether or not they were issued from your office? A Yes, they were.

Q Upon whose instructions? A Mr. Corn, Joseph J.

30 Q What is the amount of the premium? A \$90.10.

Q Has it been paid? A Yes, sir.

Q By whom? A Joseph J. Corn.

Q Look at this check, what is that for? A This check for \$91.71, was in payment of an additional premium, upon another policy.

By Mr. Weinstein.

40 Q Have you records to show that? A Yes, I endorsed the policies.

Samuel Kreitzberg, cross.

Q Let me see your books showing the charge of \$91.10?

(Witness produces book called policy ledger.)

A Item: Louis Chrystal, No. 47067, for Corn & Silverman, \$2,000. 10

Q What is this 1.61? A Additional premium, Newark Pants Co.

By the Master.

Q Has it anything to do with this transaction? A No.

Q Where is it? A Here.

Q On what page? A Page 24 of the ledger, \$1.61. 20

By Mr. Weinstein.

Q Did you cross out this charge? A I did.

Q Why? A First it was out, and then a cancellation, and then put back and the policy was in effect.

Q When did you make this entry? A In January.

Q Do you remember my coming into your office and asking you if these policies had been paid, on May 6, 1926? 30

Mr. Silverman: I object on the ground that this conversation transpired after the bill was filed.

The Master: Answer the question.

A I do.

Q You showed me the book—they were paid?

A I did. 40

Samuel Kreitzberg, cross.

Q In addition, I handed you my check for \$90.10?

Mr. Silverman: I object on the ground that this transpired after the filing of the bill.

10 The Master: Answer the question.

A Yes, sir.

Q You gave me this receipt, marked D. 7 for identification? A Yes, sir.

By the Master.

Q Explain the transaction? A Mr. Weinstein came in about the Chrystal matter. I immediately spoke to Mr. Englander about the matter. There was a check in the matter from Corn & Silverman, and I took the check of Corn & Silverman that Mr. Englander had in his possession, for these items, which Mr. Englander had had in his pockets, and then I got in touch with Mr. Rebach, and he had received a check for that amount.

By Mr. Silverman.

30 Q Did you endorse the check, which Mr. Weinstein gave you? A No, sir.

By Mr. Weinstein.

Q You had his check? A No, Mr. Rebach, without my knowledge of it, had it, if I would have had that check in my possession, I would have marked the items.

40 Q Did you have the check? A No, I didn't know that the check was delivered.

Joseph J. Corn, direct.

Q What have you to say about this taking of my check?

Mr. Silverman: I object; it is not cross examination.

The Master: Answer the question.

A He didn't say anything with reference to the check. 10

Q Did you tell me that Mr. Englander had a check for you? A I had the check, which I didn't remember the exact about, to pay certain items, which I didn't know of. I had a complete list for policies, against Mr. Chrystal, and Corn & Silverman had sent a check, which my partner, Mr. Rebach, had received.

Q Was that check credited to your account? A Partnership account. 20

Q Can you explain why the items were not marked paid in your book?

Mr. Silverman: I object; that is not cross examination.

Question withdrawn.

JOSEPH J. CORN, recalled. 30

By the Master.

Q Was this check sent out in the ordinary course of business, ordinary serial number? A Yes, sir.

Q In the ordinary course of business? A Yes, sir. 40

Jack Reback, direct—cross.

JACK REBACK, being sworn on behalf of the complainant, testifies as follows:

Examination by Mr. Silverman.

10 Q Were you a partner of Samuel Kreitzberg in February, 1926? A I was.

Q Did you received this check (Exhibit C. 7) from our office? A I did.

Q Is that your endorsement on the back? A Yes, sir, it is.

Q When did you get that check? A Latter part of February.

Q From whom did you get it? A It came in the mail from Corn & Silverman.

20 Q What did you do with it? A I entered it in the cash book.

Q In which cash book? A Kreitzberg & Reback.

Q Who does that? A Either one of us.

Q You entered it in the cash book? A Yes, sir.

By Mr. Weinstein.

30 Q Are you still a partner of Samuel Kreitzberg? A Yes, sir.

Q Your ledger will be marked paid, would it not, at the time the check is received and entered in the cash book?

Mr. Silverman: I object; it is not cross examination.

The Master: Re-frame your question.

40 Q Should your ledger be marked paid after a check for payment is received and entered in your cash book?

Marion E. Heim, direct.

Mr. Silverman: I object; that is not cross examination.

The Master: Answer the question.

A It should be.

By the Master.

10 Q And it was not? A It was not.

Mr. Weinstein: I move for a dismissal of the complainant's bill on the ground that there is no proof of the assumption, by the defendant, A. W. Realty Company, not only of the mortgage, but particularly of the obligation to insure property. That is the first ground. Second ground, my contention at this time is that the insurance clause in the mortgage itself, by its terms give the right to foreclose for failure on the part of the mortgagor, or subsequent grantee to pay any part of the principal or interest, and that the mortgagee has an adequate remedy at law to enforce the payment of premiums, but he has not the right to foreclose. 20

The Master: Both counsel may submit a memorandum on this point. 30

MARION E. HEIM, sworn on behalf of the defendant, testifies as follows:

By Mr. Weinstein.

40 Q What is your business? A Stenographer and policy clerk, Feist & Feist—insurance brokers. 40

Marion E. Heim, direct.

Q Did you send out these policies covering property, 26-28-30 Prospect Place, Newark, New Jersey?

Mr. Silverman: I object, until the date is fixed.

10 A On April 21, 1926—

Mr. Silverman: I object to that on this ground, that it appears by the testimony of the complainant, there was a demand made on March 4th, for payment of this premium, and by the complainant and if the defendant had any right that right accrued on April 4th, thirty days after.

20 The Master: Answer the question.

A Yes, sir.

By Mr. Silverman.

Q Do you know where your company got these policies that were returned with this letter (D. 3 for identification)?

30 Mr. Weinstein: I object, I don't see how that is material.

The Master: Answer the question.

A From Mr. Weinstein.

40

Abraham Weinstein, direct.

ABRAHAM WEINSTEIN, defendant, being sworn, testifies as follows:

Examination by Mr. Weinstein.

Q Where do you live? A 69 Hillside avenue, Newark, New Jersey.

Q What is your business? A Real estate and insurance. 10

Q Are you president of the A. W. Realty Company? A Yes, sir.

Q One of the defendants in this suit? A Yes, sir.

Q Is this the deed to your property (D. 8 for identification)? A Yes, sir.

Mr. Weinstein: I offer this deed in evidence to be marked as an exhibit. 20

Mr. Silverman: I object on the ground, that it does not appear who the Newark Industrial Company is.

The master: I will mark it.

Deed dated April 10, 1926, offered in evidence and marked Exhibit D. 1.

Q When did you receive that deed? A Monday, April 12th. 30

Q And you saw Mr. Olshan? A Yes, sir.

Q That day? A Yes, sir.

Q Did you speak to him, with reference to the insurance? A Yes, sir.

Mr. Silverman: I object to that question as this conversation took place after our right to a cause of action had accrued, if it accrued at all.

The Master: Answer the question. 40

Abraham Weinstein, direct.

Mr. Silverman: May I have that objection go to all this testimony?

The Master: Note the exception.

10 A I asked him if he had any objection if I put another policy, and he said, so long as the policy would be acceptable, it was all right to him.

Q Did you ask whether he made any payments on account of the premiums? A No, not that day.

Q Did you tell him that you would secure policies for him? A I only asked him, as Feist & Feist, place all insurance, to have Feist & Feist renew the policies, and to make out all policies necessary for the full amount and so pay the unearned premium.

20 Mr. Silverman: I move that that be stricken out.

The Master: He means the earned premium.

Q Did you ask whether he paid the premium? A No, not that day.

Q When did you ask? A 5th of May.

30 Mr. Silverman: My objections are already stated.

Q What did he say? A He didn't pay it, and I asked shall I pay it.

Q What was the conversation, with reference to the payment of the premium?

Mr. Silverman: I object, reason already stated.

40 A He didn't know who the agent is.

Jack Simon, direct.

Q Did he tell you to pay it? A Sure.

Q Was Mr. Jack Simon, the gentlemen, sitting here, with you at the time? A Yes, sir, and the next morning I brought it to you to pay the premium.

Q Did you have any further conversation with reference to paying the premium? 10

Mr. Silverman: I object, he was not the owner of the fee at that time.

Mr. Weinstein: I note exception to that.

Q Did you have any negotiations with reference to the purchase of the mortgage?

The Master: Strike it out.

Examination by Mr. Silverman. 20

Q When was this conversation? A May 5, 1926.

Q Did you pay the earned premium? A He paid it.

Q Did you pay it? A No, I paid it to him, I gave him a check.

Q When? A The day after.

Q Where is the check? A I have not it here. 30

JACK SIMON, being sworn on behalf of the defendant, testifies as follows:

By Mr. Weinstein.

Q Were you with Mr. Weinstein on May 5, 1926? 40

Jack Simon, direct.

Mr. Silverman: I object. Reasons heretofore stated.

The Master: Answer the question.

A Yes, sir.

10 Q Why were you with him? A I went to look at a flat on Prospect Place.

Q Did you hear any conversation between Mr. Crystal and Mr. Weinstein? A Yes, sir.

Q What was it? A Mr. Weinstein asked Mr. Chrystal whether he paid the insurance and he said he did not and he wanted Mr. Weinstein to pay it and Mr. Weinstein asked who the agents were and he said he didn't know who the agents were.

20 *By the Master.*

Q That conversation took place May 5, 1926?
A Yes, sir.

30 Mr. Weinstein: On May 6, 1926, I saw my father, my father came to me and told me about these insurance policies, and I thereupon went over to the agents, and asked if their books showed the payment of three policies, and it did not show, and I said I will pay you now, and he said all right. I made out a check for \$90.10 and he gave me a receipted bill, which I used in evidence. That very day that I was in Krietzberg's office, I went to Corn & Silverman's office, and said, "How can you file a bill to foreclose on the ground that the insurance premium was due, when it was never paid? I paid it this very morning" and showed him the receipt, and he replied, he didn't want to know anything about it. The very next day I re-

40

Jack Simon, direct.

ceived a letter from Mr. Krietzberg, which is in evidence, without a signature, just typed, returning the check with the statement therein made.

The Master: Any further cross examination?

Mr. Silverman: No further cross examination. 10

Mr. Weinstein: That is all, we rest.

The Master: I have examined the check book stubs, and that I find that some checks were drawn, with the date February 20th, dated May 15th, and I will ask Mr. Corn for an explanation.

Mr. Corn: They are for personal use. When Mr. Silverman and I draw on the firm account we enter the items sometimes a week, sometimes two weeks and then again on the same day, and those for personal use are marked E. R. S. and J. C. C. with my initials if I draw them. 20

Checks which are not marked are checks of the firm.

30

40

Exhibit C. 6.

Exhibit C. 6.

Law Offices of
KOEHLER & AUGENBLICK
14 Mechanic Street
Newark, N. J.

10 In Chancery of N. J.
Between 60—552
Sam Olshan, Compl't
Louis Chrystal, Def't

Exhibit C. 6.

John A. Bernhard
Master in Chancery C. C. of N. J.

March 4, 1926.

20 Corn & Silverman,
Kinney Building,
Newark, U. J.

Re: 26-30 Prospect Place—#5177

Gentlemen:—

30 This is to acknowledge receipt of your check
to my order for \$10.58 in payment of the pre-
mium due to Savitz-Denbigh Co. on the \$2000.00
fire policy dated Feb. 10, 1926 issued by the
Great American Insurance Co., covering the
above property, which I have endorsed and
mailed to the Savitz-Denbigh Co.

For the item of \$90.10 due on the \$8000.00 fire
policy issued on the above property, I would ap-
preciate your mailing bill to Louis Chrystal, 183
Schuyler Avenue, Newark, New Jersey.
Dict. H. H. Koehler/E. B.

Very truly yours,
(H. H. Koehler)

Exhibit C. 7.

Exhibit C. 7.

In Chancery of N. J.
Between 60—522
Sam Olshan, Comp't
Louis Chrystal, Def't

Exhibit C. 7.

10

John A. Bernhard
Master in Chancery C. C. of N. J.

FEDERAL TRUST COMPANY 55-14
Newark, N. J. Feb. 20, 1926

Pay to the
Order of Samuel Kreitzberg \$91.71/100
Ninety One 71/100Dollars
No. 9397

CORN & SILVERMAN 20
By Jos. J. Corn

Corn & Silverman
Counsellors at Law

(Perforation reads)—“23”

Indorsed “Samuel Kreitzberg
Kreitzberg & Reback”

30

Received Payment
Through the Newark Clearance House
From Merchants Guaranteed
Feb 23 1926
Trust Co.
.....Branch No.

Exhibit D. 1 for Identification.

Exhibit D. 1 for Identification.

In Chancery of N. J.
Between 60—552
Sam Olshan, Comp't
Louis Chrystal, Def't

10 Exhibit D. 1 Identification

John A. Bernhard
Master in Chancery C. C. of N. J.

March 4, 1926

Mr. Louis Chrystal,
183 Schuyler Avenue
Newark, New Jersey

Dear Sir:

20 At the request of Mr. Harry H. Koehler, your attorney, we write to you direct for payment of the premium of \$90.10 of the three fire policies we sent you on February 25, 1926 covering 26 to 30 Prospect Place Newark N. J.—you as owner and Sam and Gussie Olshan as mortgagees. Please be advised that the mortgage will be called for payment if this premium is not paid at this office immediately. You have no doubt been advised by your attorney that the mortgage provides for the mortgagees to effect the insurance to cover their mortgage and for you to pay the premium. We do not expect to write you again with reference this matter.

30

Yours very truly
C.G. CORN & SILVERMAN

Exhibit D. 2 for Identification.

Exhibit D. 2 for Identification.

In Chancery of N. J.
Between 60—552
Sam Olshan, Compl't
Louis Chrystal, Def't

Exhibit D. 2 Identification

10

John A. Bernhard
Master in Chancery C. C. of N. J.

April 21, 1926

Mr. Samuel Olshan
#26 Prospect Place,
Newark N. J.

Dear Sir:—

Enclosed you will find policy #1687 City of New York Insurance Co., covering \$6000 on property at #28-30 Prospect Place, Newark.

20

Will you kindly return to us policies #47068 and #47069 Concordia.

We also enclose certificate of policy #592751, American, in the amount of \$5000. This is to replace policy #47069 Concordia. which we would ask that you return to us.

Your early attention will be appreciated.

Very truly yours,
FEIST & FEIST AGENCY, INC.,
By

30

Encl MEH:M

Exhibit D. 3 for Identification.

Exhibit D. 3 for Identification.

In Chancery of N. J.
Between 60—552
Sam Olshan, Comp't
Louis Chrystal, Def't

10 Exhibit D. 3 Identification

John A. Bernhard
Master in Chancery C. C. of N. J.

CORN & SILVERMAN
Counsellors at Law
Kinney Building
Newark, N. J.

April 28, 1926

20 Messrs. Feist & Feist
738 Broad Street
Newark, New Jersey

Attention Mr. Poggenburg

Dear Sir:

Your letter dated April 21st addressed to Mr. Samuel Olshan of 26 Prospect Place, Newark, N. J. was handed to us for reply.

30 We herewith return policy #1687 of City of New York Insurance Co. for \$6000 dated April 12, 1926, which is not desired by our clients who hold an \$8000 mortgage.

Yours very truly,
CORN & SILVERMAN
J J Corn

C. S.

(Time Stamp—
Rec'd Apr 29 1926
Feist & Feist.)

40

Exhibit D. 4 for Identification.

Exhibit D. 4 for Identification.

In Chancery of N. J.
Between 60—552
Sam Olshan, Compl't
Louis Chrystal, Def't

Exhibit D. 4 Identification

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John A. Bernhard
Master in Chancery C. C. of N. J.
790 Broad St. Newark, N J May 3, 1926

Irving Weinstein, Esq
31 Clinton St City

Dear Sir:

I return herewith your check for \$90.10 in payment of the Chrystal account.

I find that Mr. Englander has check in his pocket in payment of these items some time ago and forgot to turn it over to me.

Thanking you,

Very truly yours,
Samuel Kreitzberg

SK:EG
Enc

30

40

Exhibit D. 6 for Identification.

Exhibit D. 6. for Identification.

(Indorsed)

In Chancery of N. J.

Between 60-552

Sam Olshan, Compl't

10 Louis Chrystal, Def't

Exhibit D. 6 Identification

John A. Bernhard

Master in Chancery C. C. of N. J.

Newark, N. J. 5/6 1926

The BROAD & MARKET NATIONAL BANK
of Newark, N. J. 55-22

Pay to the Order of S. Kreitzberg,

20 Agent for Concordia Fire Ins Co 90.10/x

Collectible at Par through the Federal Reserve
Bank of New York

Ninety and 10/xxDollars

Policies #8000-3 yrs 26-28-30 Prospect Pl.

In re

Irving Weinstein

Irving Weinstein

Counselor at Law

31 Clinton St.

30

40

Exhibit D. 7 for Identification.

Exhibit D. 7. for Identification.

In Chancery of N. J.

Between 60-552

Sam Olshan, Compl't

Louis Chrystal, Def't

Exhibit D. 7 Identification

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John A. Bernhard

Master in Chancery C. C. of N. J.

Newark, N. J. 5/6 1926

M Louis Crystal

Fire

Liability

Automobile

Accident

Health

Plate Glass

Burglary

Steam Boiler

Bonds

To SAMUEL KREITZBERG, Dr.

General Insurance

Rooms 519-520 Kinney Bldg.,

790 Broad Street

Phone Mitchell 0018-0019

20

Date	Company	Number	Assured %	Amount
2/17/26	Concordia	47067	\$2000 26 Prospect Pl.	\$10.75
"	"	47068	3000 28 Prospect Pl.	38.25
"	"	47069	3000 30 Prospect Pl.	41.10
				\$90.10

Paid

S. Kreitzberg

5-6-26

Agent for Concordia Fire.

30

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Master's Report.

MASTER'S REPORT.

Filed December 20, 1926.

IN CHANCERY OF NEW JERSEY.

60-552.

10	<p><i>Between</i></p> <p>SAM OLSHAN and GUSSIE OLSHAN,</p> <p style="text-align: center;"><i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>LOUIS CHRYSTAL, <i>et al.</i>,</p> <p style="text-align: center;"><i>Defendants.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>Master's Report.</i></p>
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20 I, John A. Bernhard, one of the Masters in Chancery of New Jersey, to whom the above-entitled cause was referred, to ascertain and report the amount due to the complainants for principal and interest upon the mortgage in their bill of complaint mentioned, I do certify and report to his Honor, the Chancellor, that I designated Tuesday, July 13, 1926, at 11:30 o'clock in the forenoon, at my office, 763 Broad street, Newark, New Jersey, as the time and place for the hearing of said matter, at which time I proceeded to ascertain the truth of the allegations of complainants' bill and take an account of the amount due to the complainants for principal and interest on their mortgage.

I find and report that the bill charges, *inter alia*:

40 1. One of the defendants, Louis Chrystal, on February 15, 1926, being then the owner of the

Master's Report.

premises described in the bill of complaint, executed a bond in the sum of \$8,000, to secure that sum, payable—\$1,500 on May 1, 1926, and a like amount on May 1, 1927; May 1, 1928; May 1, 1929, and the balance of \$2,000 on January 25, 1930.

2. To secure the said sum, Chrystal executed a mortgage, which was subsequently recorded in Book E-56 of Mortgages for Essex County, on pages 537, etc. 10

3. The bond and mortgage contained an agreement that in the event of a default in the payment of the principal and interest for more than thirty days after the same became due, the whole principal sum, at the option of the mortgagee, is immediately payable.

4. That the mortgage also contained an agreement that the mortgagor, his heirs or assigns should keep the building and premises insured against loss or damage by fire, in an amount approved by the mortgagee and to assign the policy of insurance to the mortgagee, and in default, the mortgagee, or his representative, "should be entitled to effect such insurance and the premiums paid for the same should be a lien on the mortgaged premises, added to the amount of the bond secured by the mortgage, payable on demand, with interest at the rate of six per cent. from the date of such payment of premium or premiums." 20 30

5. That on April 1, 1926, Chrystal conveyed the premises to the Newark Industrial Company, by deed recorded April 12, 1926.

6. That on April 10, 1926, the Newark Industrial Company conveyed the premises to A. & W. Realty Company. 40

Master's Report.

7. That said Louis Chrystal failed to keep the buildings insured against loss by fire and on February 19, 1926, the complainants caused the same to be insured by the Concordia Fire Insurance Company, in the sum of \$8,000 for three years, and paid the sum of \$90.10 for insurance
10 premium thereon, which sum, with interest, at the rate of six per cent., is a lien on said premises, added to the amount of the mortgage debt and secured by complainants' mortgage, and is prior to any lien, in interest, which Louis Chrystal, Newark Industrial Company or A. & W. Realty Company may have in said premises.

8. On March 4, 1926, complainants duly demanded of Chrystal immediate payment of the premium of \$90.10, and that the said Chrystal
20 failed and neglected to pay said premium and that the full amount thereof, of \$90.10, has not been paid.

9. That the "whole sum of principal with interest" thereon from February 15, 1926, is due complainants.

The gravamen of the complaint is that because of Chrystal's alleged failure to pay the insurance premium a default in the conditions of the instruments therefore arose and that the full
30 amount due for principal and interest, and premium is payable.

The provision of the mortgage is as follows:

And it is also agreed, by and between the parties to these presents, that the said party of the first part, his heirs, executors, administrators and assigns shall and will keep the buildings erected and to be erected, upon the lands above conveyed, insured against
40 loss or damage by fire, by insurers, and in

Master's Report.

an amount approved by the said party of the second part, their heirs, executors, administrators or assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof it shall be lawful for the said party of the second part to effect such insurance, and
10 the premium and premiums paid for effecting the same shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

The provision of the bond is as follows:

And it is hereby expressly agreed, that
20 should any default be made in the payment of the said interest, or installments of principal, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent or other municipal or governmental rate, charge, impositions or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said interest or installments of principal remain unpaid and in
30 arrear for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien or any or either of them, remain unpaid and in arrear for the space for sixty days, then and from thenceforth, that is to say, after the lapse or expiration
40 of either of the said periods as the case may

Master's Report.

10 be, the aforesaid principal sum of Eight Thousand (\$8000) Dollars, with all arrearage of interest thereon; shall, at the option of the said Sam Olshan and Gussie Olshan, his wife, or their legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

20 The complainants seek to accelerate the payment of the full amount of the principal and interest because of an alleged default in the non-payment of insurance on premises of \$90.10, and claim that their rights rest in the conditions of the bond and mortgage above set out.

The order of reference directs me to ascertain and report the amount due to the said complainants for principal and interest upon the bond and mortgage held by them, upon the premises mentioned and described in the bill of complaint, etc.

30 I find and report that in my opinion that the time the bill of foreclosure was filed there was no amount due the complainants for principal and interest. My reasons are as follows:

(a) When Chrystal bought the property, the solicitors for the complainants caused the insurance to be placed upon the building and notified the then owner, Louis Chrystal, on March 4, 1926, to pay the insurance.

40 (b) When the A. & W. Realty Company purchased the property about April 20, 1926, the insurance premium had not been paid.

Master's Report.

(c) A day or two before the purchase of the property by the A. & W. Realty Company, Mr. Weinstein, the president of that company, interviewed Mr. Olshan, one of the complainants, as to the probable value of the property and at that time Olshan said nothing to Mr. Weinstein about the non-payment of the insurance premium. 10

(d) The evidence shows that Mr. Weinstein did not know that the insurance premium had not been paid and the evidence further clearly proves that Mr. Weinstein did not know that Chrystal nor his successors in title had not paid the premium on April 21 or April 22, 1926.

(e) There is no proof in the case that Messrs. Corn & Silverman, solicitors of the complainants, were authorized to send the notice of March 4, 1926. That notice, therefore, in my opinion, is a nullity, and the present owner and defendant, A. & W. Realty Company, cannot be charged with default in the non-payment of insurance. 20

The bill in this case was filed April 24, 1926, in accordance with instructions given April 21, 1926, by Mr. Olshan. When Mr. Weinstein learned definitely that the insurance premium had not been paid, he caused insurance policies to be issued by Feist & Feist, and forwarded to the owner or his representatives. These insurance policies were returned a few days later. The policies were mailed to Mr. Irving Weinstein, solicitor of the defendant, A. & W. Realty Company, who then sent his check for \$90.10 in payment of the premium to the agent of the Concordia Fire Insurance Company, who had issued the original policies to Louis Chrystal. Mr. Weinstein had been informed, according to 30

Master's Report.

his testimony, that even at that time, Messrs. Corn & Silverman had not paid the premium.

10 According to the evidence the complainants contend that the agents of the Concordia Fire Insurance Company were partners, and that one of the partners had received the check from the complainants' solicitors; that the other member of the firm, who had received the check, had not informed his partner of the payment by Messrs. Corn & Silverman, and that he carried the check for some time, and that is the reason the other partner did not know that the premium had been paid.

20 Finally there is proof in the case that leads me to conclude that Mr. Weinstein waived default in the non-payment of the premium. Upon these facts, as I find them, I conclude, as I have stated, that there is no amount due for principal and interest on the bond and mortgage.

Having reached this conclusion, that is not necessary to consider whether the non-payment of the insurance premium within thirty days of the service of the notice upon Louis Chrystal gives the right to foreclose under the provisions of the bond and mortgage, which I seriously doubt.

30 All of which is respectfully submitted this 18th day of December, 1926.

JOHN A. BERNHARD,
A Master in Chancery of New Jersey.

Exceptions to Master's Report.

EXCEPTIONS TO MASTER'S REPORT.

Filed December 24, 1926.

IN CHANCERY OF NEW JERSEY.

60/552

Between

SAM OLSHAN and GUSSIE OLSHAN,

Complainants,

and

LOUIS CHRYSTAL, *et als.*,
Defendants.

On Bill, &c.
Exceptions
to Master's
Report.

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Complainants hereby except to the report filed in this cause by John A. Bernhard, one of the Masters of this Court, bearing date December 18, 1926, for the following reasons:

1. The said Master has failed to ascertain and report the amount due to the said complainants, all of which he was required to do by the Interlocutory Decree and Order of Reference to him made and dated June 22, 1926.

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2. The said Master, without authority conferred upon him by this Court, nor by the rules of this Court, nor by law, and above complainants' objections, permitted defendant A. W. Realty Company to introduce evidence of defenses to the action in the following, among other respects:

(a) That said defendant cannot be charged with default in the non-payment of insurance premiums.

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Exceptions to Master's Report.

(b) That said defendant did not know that the insurance premiums had not been paid.

(c) That said defendant did not know that defendant, Louis Chrystal had not paid the insurance premiums.

10 (d) That complainants waived the default of non-payment of insurance premiums.

3. The findings of the said Master are contrary to the weight of the evidence.

CORN & SILVERMAN,
Solicitors of Complainants.

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Conclusions of Vice-Chancellor.

CONCLUSIONS OF VICE-CHANCELLOR.

Filed February 1, 1927.

IN CHANCERY OF NEW JERSEY.

<i>Between</i> SAM OLSHAN and GUSSIE OLSHAN, <i>Complainants,</i> <i>and</i> LOUIS CHRYSTAL, <i>et als.,</i> <i>Defendants.</i>	}	<i>On Bill to Foreclose.</i> <i>On Exceptions to Master's Report.</i> <i>Conclusions.</i>	10 20
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Not to be printed or published in any report, official or unofficial. 20

Corn & Silverman for complainants-exceptants.
Irving Weinstein, Esq., for defendants.

BERRY, V.-C.

The bill in this cause was filed to foreclose a mortgage, the default under the mortgage alleged in the bill being in payment of insurance premiums. An answer was filed to the bill denying default. The matter was referred to a Master by the Chancellor, who reported that there was no default under the mortgage and that, therefore, nothing was due. The matter came before me as on exceptions to the Master's report on December 28, 1926, and on December 31st, I informed the respective solicitors that I would advise a decree overruling the exceptions and confirming the Master's report. Notice of appeal from this decree having been filed, the reasons 40

Conclusions of Vice-Chancellor.

for my conclusions are herein stated in accordance with the constitutional provisions.

10 Although no exceptions to the Master's report are on file, I have considered the matter as though exceptions had been filed. The notice of argument sets out three reasons for sustaining the exceptions alleged therein to have been filed. These reasons and notice do not constitute exceptions, but as all of the papers for a consideration of the questions raised by such exceptions, if filed, are now before me, the matter is disposed of as on exceptions. The main objection to the Master's report is based upon the question of his jurisdiction or authority to make the findings disclosed by the report. The bill, answer and replication present a clear issue of fact as to the default alleged under the terms of the bond and mortgage and the Master in the order of reference was directed to ascertain and report the amount due the complainant for principal and interest upon his mortgage held by them, etc. This direction necessarily included the authority to determine whether or not any sum whatever was due. The fact of default must have been found by the Master before he could determine the amount due.

20 30 The order of reference recited that the answer did not set up any defence or present any question except such as in the opinion of the Court might properly be referred to a Master; that under such circumstances ample authority existed for the reference is indicated by the Chancellor's opinion in *Neale v. Stamm*, 5 N. J. Adv. Repts., page 4, at pages 6 and 7.

40 I have carefully examined the Master's report, testimony and exhibits accompanying same and while I do not feel it necessary to go into any

Conclusions of Vice-Chancellor.

details respecting the evidence on which the report is based, I have no hesitancy in saying that the report is fully warranted by that evidence and that the report should be affirmed and the objections, so-called, overruled.

Heard December 28, 1926.

Decided December 31, 1926.

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Final Decree.

FINAL DECREE.

Filed January 11, 1927.

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> SAM OLSHAN and GUSSIE OLSHAN, <i>Complainants,</i> <i>and</i> LOUIS CHRYSTAL, <i>et als.,</i> <i>Defendants.</i>	<i>On Bill, &c.</i> <i>Final Decree.</i>
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20 This matter coming on to be heard before me on Tuesday, December 28, 1926, on exceptions to the report of John A. Bernhard, Esq., Master, to whom the above-matter was referred, and the Court having heard the argument of Corn & Silverman, solicitors for the exceptants, and Irving Weinstein, solicitor for the defendant, A. W. Realty Co., and having considered the objections raised by the complainants to the

30 Master's report; and the Court being of the opinion that there is no merit to any of the exceptions filed by the complainants, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and it appearing to the Court that the complainants are not entitled to the relief sought and prayed for by them in their bill of complaint: It is on this 11th day of

40 January, 1927, by Edwin Robert Walker, Chancellor of the State of New Jersey, on motion of

Final Decree.

Irving Weinstein, solicitor for the defendant, A. W. Realty Co.,

ORDERED, ADJUDGED and DECREED, that the exceptions to the Master's report be and same are hereby overruled, and that the Master's report be and the same is hereby confirmed; and that the complainant's bill be and the same is hereby dismissed with costs and that the complainants pay to the defendant, A. W. Realty Co., the costs of this suit to be taxed against the said complainants, which shall include the fees and costs of the Master; and it is further

ORDERED, ADJUDGED and DECREED, that the complainants pay unto Irving Weinstein, solicitor for the defendant, A. W. Realty Co., a counsel fee of two hundred fifty dollars (\$250) same to be taxed with the costs against the complainants.

E. R. WALKER,
C.

Respectfully advised,

 MAJA LEON BERRY,
 V.-C.

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75 MAY. 1. 1927

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

SAM OLSHAN and GUSSIE OLSHAN, <i>Complainants-Appellants,</i>	}	<i>On Appeal from the Chancery Court.</i>
<i>vs.</i>		
A. W. REALTY Co., a corporation, <i>Defendant-Appellee.</i>		

BRIEF OF APPELLEE.

Statement of Facts.

The statement of facts set forth in appellants' brief substantially sets forth the issues, but it may be added that the mortgage was dated February 15, 1926, to mature in four years, to wit, February 15, 1930; that the original mortgagor, Chrystal, sold the property in question to Newark Industrial Co., which conveyed it to the appellee, A. W. Realty Co., on April 12, 1926. On April 23, 1926, the foreclosure bill was filed.

It may be further added here that certain typographical, stenographical and printer's errors in the State of the Case are corrected by stipulation of both counsel filed herein on May 6, 1927.

(I also have just noticed that the State of the Case does not show the notice to appellants on January 5, 1927, of application for an order settling the decree and awarding costs and counsel fees; but this notice was filed January 12, 1927, in the Court of Chancery and no doubt is before the Court of Errors and Appeals with all other papers filed in the cause.)

ARGUMENT.

Following the order of argument in appellants' brief, appellee will answer them point for point.

Point 1.—Counsel for appellants contends that, no reference by the Chancellor having been made to the Vice-Chancellor, the latter was without authority to make the final decree.

The decree is not made by the Vice-Chancellor, but by the Chancellor on the advice of the Vice-Chancellor. The notice of motion to settle the decree reads that counsel will apply to the Chancellor at the Chancery Chambers of Newark for an order settling the decree and awarding costs and counsel fees. The case came before the Vice-Chancellor on the appellants' own move, on exceptions to the Master's report. To give effect to the overruling of exceptions to the Master's report, the final decree was necessary and counsel for appellants having appeared before the Vice-Chancellor in pursuance to the notice aforementioned and having been heard by the Vice-Chancellor on the question of the decree and counsel fees, *and having offered at that time no objection to the power and authority of the Vice-Chancellor to make the decree and award costs and counsel fees, they cannot now be heard to complain about it.*

In the very case cited by appellants—*Delaware Bay v. Markley*, 45 N. J. E. 139—it was held that when the case was heard by the Vice-Chancellor without objection, and the Chancellor adopted his advice and signed a decree, that it was too late to raise on appeal the question as to the Vice-Chancellor's right to hear the case.

Point 2.—Counsel for appellants contends the Court erred in dismissing appellants' complaint, the reasons given being the same as in Point 1.

Appellee answers this point in the same manner as it has answered Point 1.

Point 3.—Appellant contends the Court had no power or authority to order costs to be paid by appellants.

It is fundamental that the successful party is entitled to costs. Appellant contends the Chancellor and not the Vice-Chancellor has the discretion of awarding costs. Appellant would apparently annul the legislation creating the offices of Vice-Chancellors and replace upon the Chancellor's shoulders the burden of considering every case in Chancery to determine personally if costs were proper.

If the Vice-Chancellor had the authority to advise the final decree, it follows he had the power and authority to advise that costs follow to the successful litigant.

Point 4.—Appellants contend that the Court erred in including the fees and costs of the Master in the taxed costs.

As the award of costs is within the discretion of the Court, it has power to include the necessary costs of the appellee, which in the instant case includes its share of the Master's fees and costs. Appellants are not harmed in any way, because if each of the parties paid his share to the Master in the first instance, the appellee's share would be taxed in the costs and the net result would be the same to appellant.

Point 5.—Appellants contend that the Court had no authority to award a counsel fee against appellants, again reasoning that the Chancellor and not the Vice-Chancellor has that authority.

Appellee answers this contention in the same manner as Points 1 and 3.

Appellants' remedy, if they were dissatisfied with the allowance of counsel fees by the Vice-Chancellor was to apply to the Chancellor to fix a proper sum.

McMullin v. Doughty, 68 N. J. E. 776.

Appellants' counsel contends that the sum of \$250.00 was not reasonable and proper. The amount of services performed by counsel for appellee in investigation and preparation of the cause and contesting the appellants' exceptions to the Master's report, is not before the appellate court in the State of the Case, nor anywhere else, but suffice it to say that appellant was heard by the Vice-Chancellor on the question of allowances to counsel on the return of the notice of application therefor, which notice stated that counsel would apply for \$500.00. The Vice-Chancellor considered the services rendered and there is nothing before the appellate court to show wherein the allowance was excessive.

Point 6.—Counsel for appellant contends that the Court erred in overruling the exceptions to the Master's report, first because the Master failed to ascertain and report the amount due to complainants as required by the Order of Reference.

In answer to this contention, the State of the Case (page 60, line 29) shows that the Master did report the amount due which he finds is nothing. In other words, at the time the bill

was filed there had been no default and nothing was past due, and at the time of the hearing there also was no default, because appellee had paid \$1,500.00 on account of principal and also the interest at the time it fell due, in May, 1926 (Case, page 23, line 19). The amount to become due upon the bond and mortgage was not an issue in the cause.

The order of reference to the Master to ascertain the amount *due* clearly means the amount that is *past due* by reason of a default either in payment of principal or interest, etc., and, of course, that is usually the full amount of the mortgage and interest because of the usual default clauses in mortgages.

The Master found no default and therefore nothing due. It was not incumbent upon him to report the amount to become due in the future, for that is not an issue by the pleadings.

PART 2 OF THIS POINT IN THE ARGUMENT deals in generalities with respect to the allowance of certain testimony of the defendant-appellee. Counsel for appellants does not set forth the questions asked so that the appellate court may readily determine whether the questions are proper or improper. It is well settled that, on appeal, the State of the Case should show what questions were allowed to be answered over objection. When brief does not show where exceptions will be found and they are not shown by bill of exceptions court will not search for them. *McAllister v. Benjamin Tamin*, 121 Atl. 263, 96 Vt. 475.

PART 3, IS THAT THE FINDINGS OF THE MASTER WERE CONTRARY TO THE WEIGHT OF THE EVIDENCE. The Court of Errors and Appeals cannot set aside a ver-

dict as against the weight of the evidence. *Joseph M. Byrne Co. v. Snead & Co.*, 118 Atl. 841, 98 N. J. L. 256. However, inasmuch as appellants argue on the evidence, appellee answers same.

Taking first complainants' side of the case, many important discrepancies are discovered. Complainant, Olshan, testifies on cross examination that on April 10, 1926, he found his lawyers had not yet paid the premiums (Case, page 27, lines 8-10), and on that day he told his lawyer to pay the premiums (Case, page 27, line 14). This is in contradiction to Mr. Corn's testimony (Case, pages 31-32) that he paid the premiums by check of February 20, 1926, in the sum of \$91.71.

This check is in excess of the amount that was due for the premiums, to wit, \$90.10 (Case, page 32, line 5) and the difference must be explained. The insurance agent is, therefore, called to testify that the excess covered some other item (Case, page 36, line 35). He produces his ledger showing the item (Case, page 37, lines 5 and 19). That item is gone over, crossed out, and re-written and the Master, upon inspection of it, and considering the rest of the testimony in the case, could have very well come to the conclusion that the item was put there with the express purpose of explaining the discrepancy in the amounts due for premiums. The check itself in evidence (C. 7, Case, page 49) has nothing written upon it, indicating for what it was given and no receipt was offered in evidence.

The check of February 20th, having been given, according to complainants, three days after the policies were written and the demand not having been made until March 4, 1926, (page 21, line 27) the Master may have considered it

of significance that complainants' counsel were making it appear that they had not followed the common business experience of first demanding payment of the premiums from the mortgagor and, upon failure, then paying the premiums themselves. Certainly it is peculiar that they first paid the premiums on February 20th, and then waited until March 4th, to make their demand, especially in the face of Olshan's testimony that he told his lawyers to pay the premium on April 10, 1926.

On behalf of the defendant-appellee, its solicitor, Irving Weinstein, testifies on (Case, page 46, line 24) that on May 6, 1926, he gave a check to the insurance agent in the sum of \$90.10 covering these premiums, upon the agent showing him the items open in his ledger; that Mr. Kreitzberg accepted his check and gave him a receipted bill; that the next day Mr. Kreitzberg returned the check by mail with the letter marked D. 4, (Case, page 53). This payment was made to the agent, Kreitzberg, after Mr. Abraham Weinstein, president of the defendant corporation, had learned on May 5, 1926, from complainant, Olshan, that the premiums were still unpaid (Case, page 44, line 32), (although the foreclosure bill was filed April 23, 1926), and Mr. Weinstein's testimony is corroborated by Jack Simon, who was present at the conversation (Case, page 46, line 13).

Complainants were thereupon put to an explanation as to why Kreitzberg accepted payment of the premiums as late as May 6, 1926, when they were supposed to have been paid on February 20, 1926, by complainant's solicitors, and why the agent's ledger had shown the items open and unpaid.

The explanation offered by complainants is by the check of \$91.71 above referred to and by the entry in the cash book instead of the ledger (Case, page 40, line 24). *The cash book was not produced*, before the Master although the ledger was. The agent, Kreitzberg's partner, Mr. Reback, admits on cross examination that when a check is entered in the cash book, the ledger should be marked paid (Case, page 40, line 38) (Case, page 41, line 9). *No explanation was offered why the ledger was not marked paid in this case.* Then again, Kreitzberg's testimony conflicts with his letter (D. 4, page 53) returning the check. In his letter he states that Mr. Englander (of his office) had a check in his pocket in payment of these items some time ago and forgot to turn it over to him. Then how, in the world, could he have been paid on February 20, 1926, and the entry get into his cash book at that time (Case, page 37, line 27) if Mr. Englander had a check from Corn & Silverman on these insurance premiums as late as May 6th? A glance at the letter itself is sufficient to arouse suspicion. It is antedated to May 3rd (although payment was made May 6th) for what reason does not appear, (unless it was intended at that time to deny the authenticity of it). The letterhead is torn off, the signature is typewritten instead of written.

Complainants produce Mr. Jack Reback, purporting to be a partner of Kreitzberg. The policies in evidence bear an advertive label "Samuel Kreitzberg—Insurance," and they are signed "Samuel Kreitzberg, Agent"—In neither place is any mention made of Reback's name. This also may have had some influence on the Master in deciding the issue of fact.

The testimony, therefore, on the question as to whether or not the complainants (or their agents for the purpose) had paid the insurance premiums prior to the filing of the bill, as they were bound to do, to acquire a lien on the premises secured by the mortgage sought to be foreclosed, was clearly conflicting and of sufficient weight in appellee's favor to support the finding that the premiums had not been paid to the insurance agents at all.

Further, the president of defendant corporation testified (Case, page 44, line 8) that on April 12, 1926, he got Olshan's consent to place new policies through Feist & Feist on the property to cover Olshan's mortgage. Accordingly Feist & Feist wrote the policies, April 21, 1926 (as per policies D. 5 offered, Case, page 22, line 20, etc.) and testimony Miss Heines of Feist & Feist's office (Case, page 42, line 2, etc.). A Master's finding on conflicting evidence will be sustained unless plainly wrong—*Wilson v. Sandall*, 92 N. J. E. 130, affirmed 92 N. J. E. 463.

Point 7.—Complainants contend the Court had no power or authority to confirm the Master's report.

This raises the same question as Point 1 and appellee answers it in the same manner.

Point 8.—Complainants contend that the Court erred in referring the cause to a Master.

The reference was made by the Chancellor, in his discretion, under Rule 192 of the Rules of the Court of Chancery which permits him to make such a reference where the answer does not set up any defense or present any question except

such as, in his opinion, may be properly referred to a Master.

Neale v. Stamm, 5 N. J. Adv. Repts. page 4—at page 6-7.

The order of reference was obtained at the request of an on motion of appellants' solicitors. (Case, page 16.) The cause having been at issue by that time, on bill, answer, and replication, it is to be presumed that the Chancellor considered the questions at issue and came to the conclusion that in his opinion the cause may be properly referred to a Master under Rule 192. Certainly the appellants can not now complain, because the Master's report was adverse, that the order of reference which they obtained was improper. Appellant could just as well have requested an order of reference to a Vice-Chancellor. Not having done so, they are bound by the order which they, themselves, sought and obtained.

LAW.

If it is not improper for counsel for appellee to raise this question of law at this time, it is doubtful if, admitting all of the allegations of complainants' bill, they have a right to foreclose by virtue of the decision in *Kapschandi v. Sipes*, 131 Atl. 587, decided by Vice-Chancellor Buchanan, January 7, 1926. That case holds that the covenant to insure gives the mortgagee no right to foreclose for the mortgagor's default in performance of the covenant to keep the premises insured for the benefit of the mortgagee.

And in that case the language of the covenant is much stronger than in this case, being

the language of the first paragraph of Section 6, Chapter 226, Laws of 1918 stating:

"That the whole of the principal sum shall at the option of the holder of the mortgage become due after default in keeping the premises insured against loss by fire for the benefit of and to the satisfaction of the holder of the mortgage."

In other words, the statute above referred to, construing certain language in mortgages and in this case interpreting that act clearly take away the right to foreclose for a default in the performance of the insurance covenant.

Certainly, if the language used in the mortgage sued on in the *Kapschandi* case was not sufficient to give complainants the right to foreclose, then the language in the mortgage here sought to be foreclosed cannot be construed to give such a right; for in the *Kapschandi* case the whole of the principal sum of the mortgage became due upon default and here it does not. That clause (paragraph 2 on first page of appellants' brief) must be strictly construed as the Courts of Chancery do not favor foreclosures. If it was intended that the principal sum should become immediately due upon default in the insurance covenant, it should have so read—as it does with references to principal, interest, tax defaults, etc.

In *Corpus Juris*, Cyc. Vol. 27, page 126, it is stated that the "Breach will give the mortgagees the right to take out insurance for the protection of his security at the mortgagor's expense, or even if the mortgage so provides to foreclose and have a sale of the property as in the case of any other default." *Walker v. Cockey*, 38 Md. 75. The mortgage in the case at bar does not so provide and the penalty for breach of the

covenant is interest on the premium, and not foreclosure.

Appellees, therefore, respectfully submit that the final decree of the Court of Chancery should be in all respects affirmed, with costs.

Respectfully submitted,

IRVING WEINSTEIN,
Solicitor for and of Counsel with
Defendant-Appellee.

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