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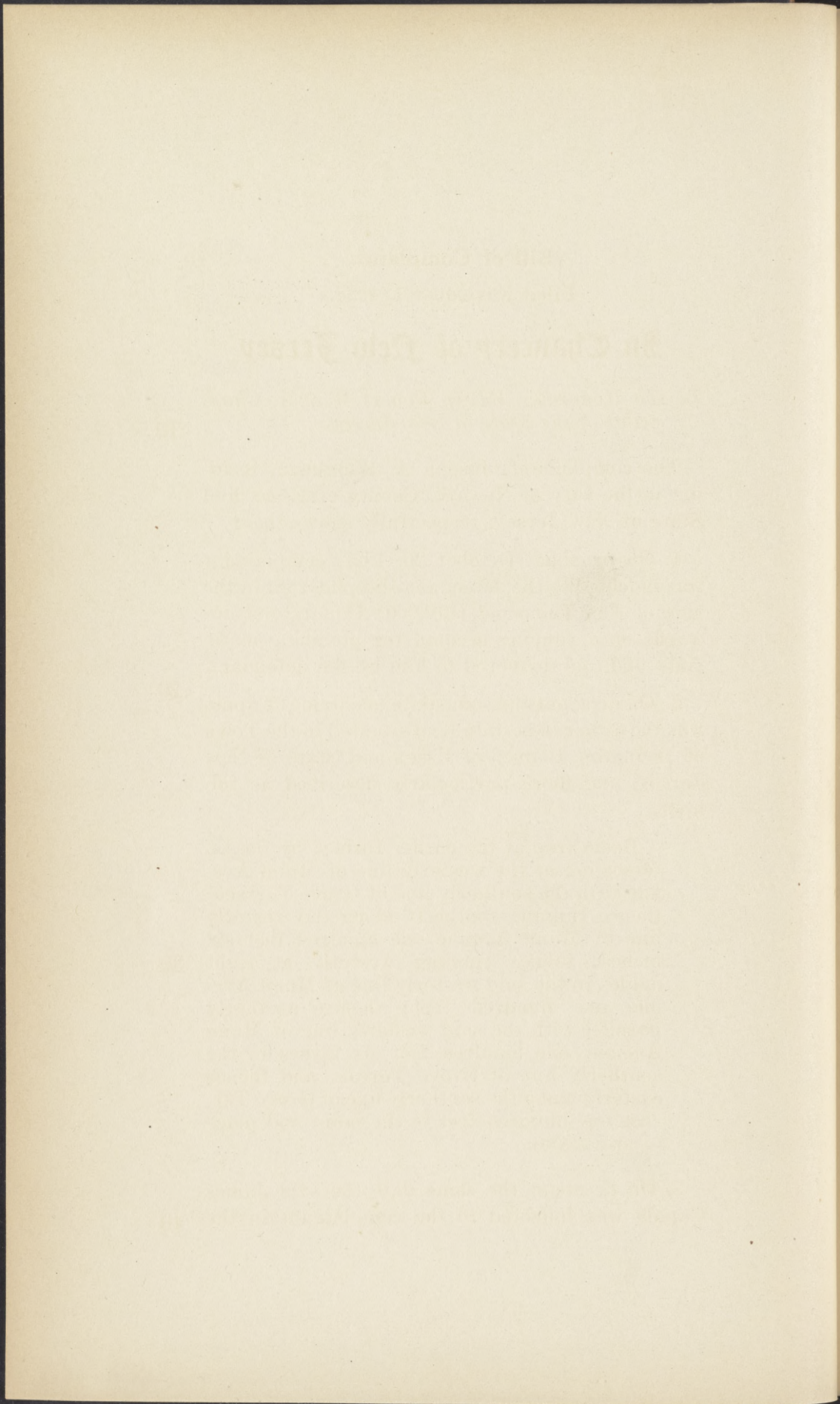
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Bill of Complaint.

(Filed November 1, 1928.)

In Chancery of New Jersey

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

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The complainant, Joseph A. Weissman, residing in the City of Newark, County of Essex and State of New Jersey, respectfully shows that:

1. On or about October 20, 1927, complainant was indebted to the defendant Joseph Grunt in the sum of Ten Thousand (\$10,000) Dollars and upwards on a running account for plumbing materials sold and delivered to him by the defendant.

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2. On or about the same date one James Cupola was the owner of certain land situated in the Town of Irvington, County of Essex and State of New Jersey, and more particularly described as follows:

BEGINNING at the corner formed by the intersection of the westerly line of Munn Avenue with the southerly line of Grove Terrace; thence running southerly along the westerly line of Munn Avenue one hundred feet six inches; thence running westerly at right angles to the said westerly line of Munn Avenue one hundred feet; thence northerly parallel with the said westerly line of Munn Avenue, one hundred feet six inches to the southerly line of Grove Terrace and thence easterly along the southerly line of Grove Terrace one hundred feet to the point and place of BEGINNING.

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3. On or about the same date the said James Cupola was indebted to the complainant in the

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Bill of Complaint.

10 sum of \$10,000 and upwards on account of certain plumbing material and labor which complainant had used and employed in the construction of a brick apartment house, situated on the premises described in paragraph 2 of this bill, by virtue of a certain contract wherein the complainant agreed in consideration of the sum of \$12,000 to well and sufficiently erect and furnish the plumbing materials and labor for the said construction.

4. On or about the same date complainant had completed the said plumbing contract for the said James Cupola to the extent of approximately five-sixths thereof, and was entitled to payment for the work in the sum of \$10,000 approximately.

20 5. On or about the same date the said James Cupola had refused and neglected to pay complainant for the work and materials furnished aforesaid. On or about the same date the defendant Joseph Grunt informed complainant that he had secured a party to advance the sum of \$12,000 on bond and mortgage, said mortgage to be an advance money mortgage upon the premises described in paragraph two of this bill, and that said sum of \$12,000 so advanced would be paid to James Cupola who in turn would pay it to the complainant in payment of his debt to him and to secure payment for the work and material remaining unfurnished or unfinished under the contract aforesaid and that complainant should then pay the said \$12,000 to the defendant Joseph Grunt in satisfaction of the indebtedness then and there owing to him.

30 6. On or about October 20, 1927, complainant was present along with Joseph Grunt, Joe Cagan, James Cupola and others unknown to this com-
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Bill of Complaint.

plainant, in the office of the defendant's attorney, at which time the defendant introduced Joe Cagan to complainant as the party who had agreed to advance the sum of \$12,000 under the condition aforesaid.

7. At the time and place aforesaid James Cupola and his wife Clementina executed a mortgage in the sum of \$12,000 and at the same time executed a bond in the penal sum of \$24,000, a copy of which is attached hereto and made a part hereof. At the same time the said Joe Cagan delivered a check in the sum of \$12,000 to James Cupola who endorsed the same to complainant who in turn endorsed the same to Joseph Grunt. 10

8. The defendant Joseph Grunt then and there accepted the said check in full satisfaction of all indebtedness then and there existing between himself and complainant. 20

9. At the same time the defendant Joseph Grunt, requested the complainant to execute the bond aforesaid stating as his reason therefor that it would be an added security to the mortgagee, Joe Cagan, whereupon complainant did then and there execute the bond hereinabove referred to.

10. Complainant executed the said bond without any consideration whatsoever and did so at the express representation that the said Joe Cagan was a bona fide mortgagee and that the said Joe Cagan had in fact advanced the sum of \$12,000 and accepted in return therefor an advance money mortgage and the bond aforesaid. 30

11. From that date and to the present time complainant has always considered that the in- 40

Bill of Complaint.

debtedness owed to him by James Cupola was paid and that the indebtedness which complainant owed to Joseph Grunt was similarly paid, to the end that complainant has taken no steps to collect any money from James Cupola, has forfeited his rights to a mechanic's lien, to a stop notice under the contract, and to the filing of any claim in bankruptcy to which he might have been entitled.

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12. Some time during the month of February, 1928, the defendant Joseph Grunt requested complainant to pay him the sum of \$9,345.34, for plumbing material which said Grunt had delivered to complainant, at which time said Grunt explained to complainant that the transaction of the bond and mortgage and the payment of the sum of \$12,000 as set forth in this bill was not a bona fide transaction but was purely a fiction and that the said Joe Cagan was not the actual mortgagee and was not possessed of the sum of \$12,000, but that the defendant Grunt had used his own check in similar sum to give the transaction a semblance of reality and to make it appear to the public and to the other creditors of James Cupola that the mortgage was an advance money mortgage and took precedence as such among the other claims. Said Grunt also informed complainant that at no time had Joe Cagan been in possession of the bond and mortgage, but that he, the defendant Joseph Grunt had always been in possession thereof.

13. On or about the 16th day of April, 1928, complainant was served with summons and complaint at the suit of the defendant Joseph Grunt in the Circuit Court of Essex County wherein the said Grunt claimed from complainant the sum of

Bill of Complaint.

\$9,345.34 on two counts for goods sold and delivered and on book account.

14. In reply to the said cause of action complainant filed an answer setting up the payment of \$12,000.

15. Thereupon the defendant Joseph Grunt amended the complaint to include a third count which said third count demanded the payment of \$12,000 on the bond, a copy of which is attached hereto and made a part hereof and named as defendants James Cupola and Clementina Cupola. 10

16. In answer to the said third count, complainant introduced an answer setting up the fact that the bond upon which said suit was brought was executed in conjunction with the execution of a certain mortgage described in paragraph seven of this bill and that unknown to the said complainant the said Joe Cagan, the defendant Joseph Grunt and James Cupola did then and there conspire by so doing to defraud the creditors of James Cupola by means of creating a fictitious mortgage lien upon premises described in paragraph two of this bill of complaint and by making it appear that a bona fide advance money mortgage had been placed upon the said premises and that the complainant relying upon these representations forfeited his rights to any claim for money against the said James Cupola, and for which reason the bond and mortgage were void on account of fraud and on the ground of being contrary to public policy as being a part of a transaction the purpose of which was to defraud creditors and that no recovery should be had thereon. 20 30

17. On the 26th day of October, 1928, before Honorable Nelson Y. Dungan, Judge of the Essex 40

Bill of Complaint.

County Circuit Court, defendant Joseph Grunt through his attorneys moved to strike out the answer of the complainant aforesaid on the ground that the same was sham, frivolous, false and constituted no legal defense, and upon hearing the arguments of counsel on both sides the
10 said Judge of the Essex County Circuit Court granted the motion to strike out the answer to the third count, delaying the entry of judgment thereon for the period of one week and reserving to the complainant an opportunity to seek redress in the Court of Chancery.

18. The said Joseph Grunt fraudulently obtained the execution by complainant of the said bond by representing to the complainant at that
20 time that the said Joe Cagan, the obligee named thereon, was a bona fide creditor of James Cupola in the sum of \$12,000, whereas the said Joe Cagan had no interest in the matter, had not advanced money and was at no time the creditor of James Cupola or anyone else and that the said defendant Joseph Grunt did fraudulently conspire and combine with the said James Cupola and Joe Cagan to create a fictitious and fraudulent lien in the nature of an advance money mortgage upon the lands of the said Cupola and to induce complainant to execute a bond which was in fact no obligation whatsoever between the parties hereto to
30 the end that the complainant relying upon the said fraudulent representations has lost his rights against his debtors and is now subjected to a judgment in the sum of \$12,000 as a result of the action at law in the Essex County Circuit Court.

Complainant is without adequate remedy in the court of law and therefore prays:

Bill of Complaint.

1. That Joseph Grunt, the defendant in this suit, may answer this bill of complaint and each statement therein made.

2. That the said defendant Joseph Grunt may be ordered and decreed to surrender the said bond for cancellation to the complainant. 10

3. That the said bond be decreed to be cancelled.

4. That the said defendant Joseph Grunt, and all persons claiming of, from or under him may be debarred and perpetually enjoined from collecting any money upon said bond either for principal or interest and that the said Joseph Grunt, his counsel, attorneys, solicitors, officers and agents and each and every one of them may be restrained and enjoined from proceeding further against complainant in the said action at law commenced against him in the Essex County Circuit Court and now pending and at issue therein for the recovery of any money due under said bond or for any money due on said book account or for goods sold and delivered for which the consideration of the said bond and mortgage purported to have been payment, and that a preliminary injunction shall issue restraining the said Joseph Grunt, his counsel, attorneys, solicitors, officers and agents and each and every one of them from proceeding further against complainant in the said action at law commenced against complainant in the Essex County Circuit Court and now pending and at issue thereon for the recovery of any money due under said bond or for any money due on said book account or for goods sold and delivered for which the consideration of the said bond and mortgage purported to have been payment. 20
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Affidavit of Joseph A. Weissman in Support.

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

POTTER & BERRY,
Solicitors of Complainant.

10

RAYMOND H. BERRY,
Of Counsel.

Affidavit of Joseph A. Weissman in Support.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

20

JOSEPH A. WEISSMAN, of full age, being duly sworn according to law upon his oath deposes and says:

1. I am the complainant in the foregoing bill of complaint mentioned. I have read the same and am familiar with the contents thereof, and the matters and things contained therein are true.

30

2. On or about October 20, 1927, I was indebted to the defendant Joseph Grunt in the sum of Ten Thousand (\$10,000) Dollars and upwards on a running account for plumbing materials sold and delivered to me by defendant.

3. On or about the same date one James Cupola was the owner of certain land situated in the Town of Irvington, County of Essex and State of New Jersey, and more particularly described as follows:

40

BEGINNING at the corner formed by the intersection of the westerly line of Munn Ave-

Affidavit of Joseph A. Weissman in Support.

nue with the southerly line of Grove Terrace; thence running southerly along the westerly line of Munn Avenue one hundred feet six inches; thence running westerly at right angles to the said westerly line of Munn Avenue one hundred feet; thence northerly parallel with the said westerly line of Munn Avenue one hundred feet six inches to the southerly line of Grove terrace and thence easterly along the southerly line of Grove Terrace one hundred feet to the point and place of BEGINNING. 10

4. On or about the same date the said James Cupola was indebted to me in the sum of \$10,000 and upwards on account of certain plumbing material and labor which I had used and employed in the construction of a brick apartment house situated on the premises described in paragraph 3 of this affidavit, by virtue of a certain contract wherein I agreed in consideration of the sum of \$12,000 to well and sufficiently erect and furnish the plumbing materials and labor for the said construction. 20

5. On or about the said date I had completed the said plumbing contract for the said James Cupola to the extent of approximately five-sixths thereof, and was entitled to payment for the work in the sum of \$10,000 approximately. 30

6. On or about the same date the said James Cupola had refused and neglected to pay me for the work and materials furnished aforesaid. On or about the same date the defendant Joseph Grunt informed me that he had secured a party to advance the sum of \$12,000 on bond and mortgage, said mortgage to be an advance money mortgage upon the premises described in paragraph three of this affidavit, and that the sum of \$12,000 40

Affidavit of Joseph A. Weissman in Support.

10 so advanced would be paid to James Cupola who in turn would pay it to me in payment of his debt to me and to secure payment for work and material remaining unfurnished or unfinished under the contract aforesaid and that I should then pay the said \$12,000 to the defendant Joseph Grunt in satisfaction of the indebtedness then and there owing to him.

7. On or about October 20, 1927, I was present along with Joseph Grunt, Joe Cagan, James Cupola and others unknown to me, in the office of the defendant's attorney, at which time the defendant introduced Joe Cagan to me as the party who had agreed to advance the sum of \$12,000 under the condition aforesaid.

20 8. At the time and place aforesaid James Cupola and his wife Clementina executed a mortgage in the sum of \$12,000 and at the same time executed a bond in the penal sum of \$24,000, a copy of which is attached hereto and made a part hereof. At the same time the said Joe Cagan delivered a check in the sum of \$12,000 to James Cupola who endorsed the same to me, and I, in turn, endorsed it over to Joseph Grunt.

30 9. The defendant Joseph Grunt then and there accepted the said check in full satisfaction of all indebtedness then and there existing between himself and me.

40 10. At the same time the defendant Joseph Grunt requested me to execute the bond aforesaid stating as his reason therefor that it would be an added security to the mortgagee, Joe Cagan, whereupon I did then and there execute the bond hereinabove referred to.

Affidavit of Joseph A. Weissman in Support.

11. I executed the said bond without any consideration whatever and did so at the express representation that the said Joe Cagan was a bona fide mortgagee and that the said Joe Cagan had in fact advanced the sum of \$12,000 and accepted in return therefor an advance money mortgage and the bond aforesaid.

10

12. From that date and to the present time I have always considered that the indebtedness owed to me by James Cupolo was paid and that the indebtedness which I owed to Joseph Grunt was similarly paid, to the end that I have taken no steps to collect any money from James Cupolo, have forfeited my rights to a mechanic's lien, to a stop notice under the contract, and to the filing of any claim in bankruptcy to which I might have been entitled.

20

13. Some time during the month of February, 1928, the defendant Joseph Grunt requested me to pay him the sum of \$9,345.34, for plumbing material which said Grunt had delivered to me, at which time said Grunt explained to me that the transaction of the bond and mortgage and the payment of the sum of \$12,000 as set forth in this affidavit was not a bona fide transaction but was purely a fiction and that the said Joe Cagan was not the actual mortgagee and was not possessed of the sum of \$12,000, but that the defendant Grunt had used his own check in similar sum to give the transaction a semblance of reality and to make it appear to the public and to the other creditors of James Cupolo that the mortgage was an advance money mortgage and took precedence as such among the other claims. Said Grunt also informed me that at no time had Joe Cagan been in possession of the bond and mortgage, but that

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Affidavit of Joseph A. Weissman in Support.

he, the defendant Joseph Grunt, had always been in possession thereof.

10 14. On or about the 16th day of April, 1928, I was served with summons and complaint at the suit of the defendant Joseph Grunt in the Circuit Court of Essex County wherein the said Grunt claimed from me the sum of \$9,345.34, on two counts for goods sold and delivered and on book account.

15. In reply to the said cause of action I filed an answer setting up the payment of \$12,000.

20 16. Thereupon the defendant Joseph Grunt amended the complaint to include a third count which said third count demanded the payment of \$12,000 on the bond, a copy of which is attached hereto and made a part hereof and named as defendants James Cupolo and Clementina Cupolo.

30 17. In answer to the said third count, I introduced an answer setting up the fact that the bond upon which said suit was brought was executed in conjunction with the execution of a certain mortgage described in paragraph eight of this affidavit and that unknown to me the said Joe Cagan, the defendant Joseph Grunt and James Cupola did then and there conspire by so doing to defraud the creditors of James Cupolo by means of creating a fictitious mortgage lien upon the premises described in paragraph three of this affidavit and by making it appear that a bona fide advance money mortgage had been placed upon the said premises and that I, relying upon these representations forfeited my rights to any claim for money against the said James Cupolo and for which reason the bond and mortgage were void
40 on account of fraud and on the ground of being

Affidavit of Joseph A. Weissman in Support.

contrary to public policy as being a part of a transaction the purpose of which was to defraud creditors and that no recovery should be had thereon.

18. On the 26th day of October, 1928, before Honorable Nelson Y. Dungan, Judge of the Essex County Circuit Court, defendant Joseph Grunt through his attorneys moved to strike out the answer which I filed to the third count on the ground that the same was sham, frivolous, false and constituted no legal defense, and upon hearing the arguments of counsel on both sides the said Judge of the Essex County Circuit granted the motion to strike out the answer to the said third count delaying the entry of judgment thereon for a period of one week and reserving to me an opportunity to seek redress in the Court of Chancery.

19. The said Joseph Grunt fraudulently obtained the execution by me of the said bond by representing to me at that time that the said Joe Cagan, the obligee named thereon was a bona fide creditor of James Cupolo in the sum of \$12,000 whereas the said Joe Cagan had no interest in the matter, had not advanced money and was at no time the creditor of James Cupolo or anyone else and that the said defendant Joseph Grunt did fraudulently conspire and combine with the said James Cupolo and Joe Cagan to create a fictitious and fraudulent lien in the nature of an advance money mortgage upon the lands of the said Cupolo and to induce me to execute a bond which was in fact no obligation whatsoever between the parties thereto to the end that, relying upon the said fraudulent representations, I have lost rights against my debtors, and am now subjected to a judgment in the sum of \$12,000 as

Bond, Annexed to Affidavit of J. A. Weissman.

the result of the action at law in the Essex County Circuit Court.

JOSEPH A. WEISSMAN.

Sworn and subscribed to before me }
 this 1st day of November, 1928. }

10

ARTHUR E. SCHMANDER,
 A Notary Public of
 New Jersey.

(SEAL)

Et D-2

Bond, Annexed to Affidavit of Joseph A. Weissman in Support.

20

KNOW ALL MEN BY THESE PRESENTS, that WE, JAMES CUPOLO and CLEMENTINA CUPOLO, his wife, and JOSEPH WEISSMAN, held and firmly bound unto JOE CAGAN, in the penal sum of. TWENTY-FOUR THOUSAND DOLLARS (\$24,000.00), lawful money of the United States of America, to be paid to the said JOE CAGAN, his heirs, executors, administrators or assigns, FOR WHICH PAYMENT well and truly to be made, we bind ourselves, our heirs, executors and administrators, firmly by these presents.

30

Signed with our seals. Dated the 20th day of October, One Thousand Nine Hundred and Twenty-seven.

THE CONDITION of the above obligation is such that if the above bounden, JAMES CUPOLO and CLEMENTINA CUPOLO, his wife, their heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named JOE CAGAN, his heirs, executors, administrators or assigns, the just and full sum of TWELVE THOUSAND

40

Bond, Annexed to Affidavit of J. A. Weissman.

DOLLARS (\$12,000.00) on the day of December, which will be in the year of One Thousand Nine Hundred and Twenty-seven, and the interest thereon, to be computed from the 20th day of October, 1927, at and after the rate of six per cent, and to be paid without any fraud or other delay, then the above obligation to be Void, otherwise to remain in full force and virtue. 10

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest or 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, imposition 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 principal remain unpaid and in 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 of sixty days, then and from thence forth, that is to say, after the lapse or expiration of either of the said periods, as the case may be the aforesaid principal sum of TWELVE THOUSAND DOLLARS (\$12,000.00) with all arrearage of interest thereon, shall, at the option of the said JOE CAGAN, or his 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 hereinabove contained to the contrary thereof in anywise notwithstanding. 20 30

This bond is accompanied by a Mortgage bearing even date herewith and the terms and condi- 40

Order to Show Cause and Restraining Order.

tions under the said mortgage are hereby made the terms and conditions on this bond, the same as if the said terms and conditions were fully incorporated herein.

10 Signed, Sealed and Delivered
in the presence of

M. J. CUPOLO
BENJAMIN SINGER

his
JAMES X CUPOLO (L. S.)
mark

her
CLEMENTINA X CUPOLO (L. S.)
mark

20 JOSEPH A. WEISSMAN (L. S.)

Order to Show Cause and Restraining Order.

(Filed November 1, 1928.)

IN CHANCERY OF NEW JERSEY.

30	<p><i>Between</i></p> <p>JOSEPH A. WEISSMAN, Complainant,</p> <p style="text-align: center;"><i>and</i></p> <p>JOSEPH GRUNT, Defendant..</p>	<p>} On Bill, &c. Order to Show Cause and Restraining Order.</p>
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40 This matter being opened to the Court by Thomas Potter, of the firm of Potter & Berry, solicitors of the complainants, and the Court having read the bill of complaint in the above entitled matter and the affidavit thereunto annexed:

Order to Show Cause and Restraining Order.

It is on this first day of November, 1927, ORDERED, that the defendant, Joseph Grunt, show cause before this Court, at No. 1060 Broad Street, Newark, Essex County, New Jersey, on Wednesday, the 7th day of November, 1928, and at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard, why the said defendant, Joseph Grunt, should not be enjoined and restrained according to the prayer of the said bill. 10

And it is further ORDERED that the said defendant, Joseph Grunt, his servants and agents, counsel, solicitors or attorneys in the meantime, and until the further order of this Court in the premises desist and refrain from proceeding with any suit or suits at law which they, or any one of them, are now prosecuting in any of the courts of this State, the subject matter of which is either the bond, the book account, or for moneys for goods sold and delivered, in the bill of complaint herein mentioned. 20

It is further ordered, that true but uncertified copies of said bill of complaint and the affidavit thereunto annexed, and of this Order be served on said defendant within 3 days from date hereof.

ALONZO CHURCH, 30
V. C.

A True Copy.

POTTER & BERRY,
Solicitors of Complainant.

Answering Affidavit.

(Filed November 7, 1928.)

IN CHANCERY OF NEW JERSEY.

10

*Between*JOSEPH A. WEISSMAN,
Complainant,*and*JOSEPH GRUNT,
Defendant.On Bill, &c.
Answering
Affidavit.

20

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

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

1. I am the defendant in the above entitled cause and I have read the Bill of Complaint and the affidavit thereto annexed filed by the complainant herein and I deny that I ever received from the complainant payment of the debt which is due me.

30

2. The situation is as follows: Complainant, Joseph W. Weissman, was and still is indebted to me in the sum of \$9,345.34 for plumbing materials which he purchased from me at various times. The complainant never disputed the correctness of his indebtedness to me. He simply stated that he was temporarily embarrassed and asked me to wait and be patient with him. Because of complainant's failure to pay me the money which was due, I instituted a suit in the

40

Answering Affidavit.

Essex County Circuit Court against him on or about April 13th, 1928, and such proceedings were had in such case that on October 26th, 1928, Judge Nelson Y. Dungan of the Essex County Circuit Court orally ordered that judgment should be entered against the complainant herein in the sum of \$9,345.34, the amount claimed by the defendant herein plus interest. 10

3. This judgment which has not yet been actually filed and entered, because of the service upon me of a restraining order and order to show cause which is returnable on November 7th, 1928, was based upon liability of the complainant herein to me, the defendant in the law action upon a bond which the complainant herein signed jointly with James Cupolo and Clementina Cupolo, his wife. 20

4. The action at law contained three Counts. The First Count charged the defendant there but the complainant here with an indebtedness upon a book account, the Second Count charged him with an indebtedness for goods sold and delivered, and the Third Count for liability upon the bond hereinabove referred to.

5. The defense interposed by the complainant here in the action on the bond in the Essex County Circuit Court was not considered a meritorious nor a legal one and the answer in that suit pleading payment was struck out and judgment was accordingly entered orally. 30

The history of the situation is as follows: The defendant in the law action, Joseph A. Weissman, purchased a great quantity of plumbing materials from me which went into the erection and construction of a number of buildings in which Joseph A. Weissman had plumbing and heating 40

Answering Affidavit.

jobs and particularly in the building which was being constructed by the defendant, James Cupolo, on Munn Avenue and Grove Terrace, Irvington, New Jersey.

10 On or about October 18th, 1927, Joseph A. Weissman owed me about \$7,000 and he came to my place of business to purchase plumbing fixtures for this Munn Avenue job. The order for the plumbing fixtures ran into several thousand dollars and I refused to furnish these fixtures unless Mr. Joseph A. Weissman would give me some money or security. Mr. Weissman then told me that Cupolo was willing to give me a mortgage to secure my money in a sum which would not only include Weissman's indebtedness
20 to me but would also include the balance due to Weissman from Cupolo on the plumbing and heating contract which Weissman had with Cupolo, and Weissman at that time stated that in order to secure me, he was willing to go on the bond accompanying the mortgage. I distinctly told Joseph A. Weissman that even if I accepted the bond and mortgage on the property and even if he would go on the bond that I would not discharge him; that he would still be liable to me on account of the merchandise which he had purchased from me.
30

Then I went down to my then lawyer and as a result of my conversation with him and having been advised that it would be stronger security for me, I had the mortgage taken in the name of my brother-in-law, Joe Cagan. It is true that I gave Joe Cagan a check for \$12,000. He deposited that check and then drew his own check to the order of James Cupolo, who endorsed it to Weissman, who, in turn, endorsed it to me. This was
40 really my own money, and one check washed

Answering Affidavit.

out the other. I deny that I ever contemplated any conspiracy of any kind or that I conspired to defraud or defeat the rights of creditors. At no time did I have \$12,000 due me from Joseph A. Weissman. The sum that was due me on or about October 20th, 1927, was approximately \$7,000 and since then purchases were made and credits given bringing the amount up to \$9,345.34, and this entire transaction about the execution of the bond and mortgage by the Cupolos and the going on the bond by Joseph A. Weissman was the idea offered by Joseph A. Weissman. He suggested it and I adopted it. 10

The mortgage itself was wiped out in the bankruptcy proceedings of James Cupolo as is charged in the Third Count of the Amended Complaint filed in the law action which is hereby referred to as if recited herein at length. 20

Such proceedings were had in the Bankruptcy Court that the mortgage was declared invalid and it was adjudicated that the mortgage constituted no lien against the property, but the order recited that this adjudication was without prejudice to the action on the bond in any other court. This bond was assigned to me by Joe Cagan.

7. The various affidavits filed in the Essex County Circuit Court by Joseph A. Weissman, the present complainant, admit the correctness of my book account against him and admit that he owes me the sum of \$9,345.34 for merchandise which I sold and delivered to him. Whether the giving of the bond is treated as satisfaction of the book account or not does not matter for the very good reason that no matter what position Joseph A. Weissman takes the fact remains that I have not been paid for the sum which is admittedly due me. 30
40

Answering Affidavit.

8. I deny that I ever accepted the \$12,000 check referred to in complainant's bill and affidavit in full satisfaction of all indebtedness then and there existing between complainant and myself. Complainant knew everything regarding this transaction and especially is this so because
10 it was the product of his own mind and he proposed it and I adopted it.

9. I deny that I said anything or did anything which deterred the complainant from filing his claim in the Bankruptcy Court or pursuing any right or remedy which he had against James Cupolo who was indebted to the complainant.

10. I deny paragraph 6 of complainant's affidavit that I had informed complainant that I had
20 secured a party to advance the sum of \$12,000 on bond and mortgage who would pay that sum to Cupolo, who, in turn, would pay it to complainant, and that complainant would pay it to me in satisfaction of the indebtedness due to me. That is not so at all. I was pressing complainant for payment and he desired to have more materials sent to the Cupolo job and in order to give me security for payment went with Cupolo on the bond which I now hold. It is further untrue that
30 the bond was executed without any consideration or by misrepresentation. Nothing that I did was calculated to nor did it prevent the complainant from filing a mechanic's lien or stop notices or a claim in bankruptcy or to sue for any other relief that was afforded him which he conceived he had the right to obtain.

11. It is further untrue that in February, 1928, I told the complainant that the bond and mortgage transaction was not a bona fide transaction. As
40 is previously stated, the complainant knew every-

Answering Affidavit.

thing about the matter and knew that my money had gone to Joe Cagan and that Joe Cagan paid it back to me; in other words, that one check washed out the other and that I really was never paid for the goods and materials that I sold to Joseph A. Weissman.

10

12. I deny that there was any intent to defraud creditors or that complainant has lost any rights against his debtors or that he is now subject to a judgment in the sum of \$12,000 in the action at law in the Essex County Circuit Court. Although the bond was conditioned for the payment of \$12,000, all that I desire is a check for the amount of money that is due me which is \$9,345.34 plus interest and costs and in this view Judge Dungan concurred.

20

13. I deny that the complainant is entitled to any equitable relief.

14. Moreover, there is now pending in the Court of Chancery a suit wherein Joseph Grunt is the complainant and Joseph A. Weissman, *et als.*, are the defendants to set aside certain conveyances made by Joseph A. Weissman on the ground of fraud.

30

Sworn and subscribed to before me }
 this day of November, 1928. }

 of New Jersey.

40

Affidavit of Thomas Potter.

(Filed November 7, 1928.)

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> JOSEPH A. WEISSMAN, Complainant, <i>and</i> JOSEPH GRUNT, Defendant.	} On Bill, &c. On Return of Order to Show Cause. Additional Affidavit.
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20 STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

THOMAS POTTER, of full age, being duly sworn on his oath according to law upon his oath deposes and says:

1. That he is a member of the firm of Potter & Berry, solicitors of the complainant in the above entitled cause of action.

30 2. That he has examined the records in the office of George W. W. Porter, Esquire, Referee in Bankruptcy, in the matter of James Cupolo, Bankrupt, and that attached to this affidavit is a true copy, each, of the affidavits made by Joe Cagan, dated February 8, 1928, and of the Order made by George W. W. Porter, dated June 26, 1928, both of which are on file in the office of George W. W. Porter, Referee in Bankruptcy.

40 3. That attached to this affidavit is a true copy of an affidavit made by Joseph Grunt on October 3, 1928, and which accompanied a Notice of Motion

Affidavit of Joe Cagan.

served upon Messrs. Potter & Berry, on October 4, 1928, in a law action in the Essex County Circuit Court, the subject matter of which was the bond set forth in the bill of complaint filed in the above entitled matter.

THOMAS POTTER. 10

Sworn and subscribed to before me }
 this 5th day of November, 1928. }

LOUIS A. FINKLESTEIN,
 An Attorney at Law of N. J.

Affidavit of Joe Cagan.

DISTRICT COURT OF THE UNITED STATES, 20
 DISTRICT OF NEW JERSEY.

IN THE MATTER

of

JAMES CUPOLO,
 Bankrupt.

} In Bankruptcy.

30

At Newark, in the district of New Jersey, on the 8th day of February, 1928, A. D. came Joe Cagan, of the City of Newark, County of Essex, in said district of New Jersey, and made oath and says that James Cupolo, the person against whom a petition for adjudication of bankruptcy has been filed was at and before the filing of said petition and still is, justly and truly indebted to said de- 40

Affidavit of Joe Cagan.

ponent in the sum of Twelve Thousand (\$12,000.00) Dollars; that the consideration of said debt is as follows: For money advanced by deponent to pay for plumbing materials furnished for the erection and construction of the apartment house owned
 10 by the said James Cupolo, and situated on the land described in the mortgage attached herewith; that no part of said debt has been paid; that there are no setoffs or counterclaims to the same; and that the only security held by this deponent for said debt is the following; a mortgage on the said premises hereinabove mentioned given by the said bankrupt, James Cupolo and Clementina Cupolo, his wife.

JOE CAGAN.

20 Subscribed and sworn to before me }
 this 8th day of February, 1928. }

EVELYN V. KRAEMER,
 An Atty. at Law
 of New Jersey.

A True Copy,

30 G. W. W. PORTER,
 Referee in Bankruptcy.

Order.

UNITED STATES DISTRICT COURT,
DISTRICT OF NEW JERSEY.

IN THE MATTER
of
JAMES CUPOLO,
Bankrupt.

In Bankruptcy.
Order.

10

This matter coming on to be heard in the presence of Michael G. Alenick, attorney of Joe Cagan, and George Furst, for Furst & Furst, Attorneys of the Trustee, Herman Waldman, on petition to determine the validity of a certain mortgage dated October 20, 1927, and executed by James Cupolo and Clementina Cupolo, his wife, to Joe Cagan for \$12,000 covering premises on Grove Terrace, Irvington, New Jersey, which mortgage is recorded in the Essex County Register's Office in Book S-62 of Mortgages for said County, on page 163, and the Court having duly considered the petition and having heard counsel and being of the opinion that the mortgage executed by the bankrupt, James Cupolo and by his wife Clementina Cupolo to Joe Cagan as aforesaid was not supported by a valuable consideration and did not operate nor become effective as a lien against the premises described in said mortgage and is not a lien against the funds in the hands of the Trustee and should be declared invalid.

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30

It is on this 28th day of June, 1928, ORDERED that the mortgage bearing date October 20, 1927, made by James Cupolo and Clementina Cupolo, his wife, to Joe Cagan in the sum of \$12,000 covering prem-

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Order.

ises on Grove Terrace, Irvington, New Jersey, and recorded in the Register's Office of Essex County in Book S-62 of Mortgages for said County, on page 163, be and the same is hereby declared and determined to be invalid and to be no lien against the lands and buildings therein described nor against the funds in the hands of Herman Waldman, the trustee in bankruptcy, realized from the sale of the said mortgaged premises and the said property and the said funds are hereby ordered and declared to be free and clear and discharged of any lien or any alleged right of lien of the aforesaid mortgage, but wholly without prejudice to the right of the holder of the bond accompanying said mortgage to any action or proceeding thereon in any other court.

10
20

G. W. W. PORTER
Referee in Bankruptcy.

A True Copy

G. W. W. PORTER
Referee in Bankruptcy.

30

40

Affidavit of Joseph Grunt.

ESSEX COUNTY CIRCUIT COURT.

JOSEPH GRUNT, trading as West Side Plumbing Supply Com- pany, Plaintiff, <i>vs.</i> JOSEPH A. WEISSMAN, JAMES CU- POLO and CLEMENTINA CUPOLO, Defendants.	}	Action at Law. Affidavit.	10
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STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.: 20

JOSEPH GRUNT, being duly sworn according to law on his oath deposes and says:

1. I am the plaintiff in the above entitled cause and I am personally familiar with the matters and things set forth in the complaint filed herein and with the subject matter of this suit.

2. The defendant, Joseph A. Weissman, is indebted to me in the sum of \$9,345.34 on a certain book account, a true copy of which is set forth in the schedule annexed to the complaint filed in this cause and is hereby referred to as if recited herein at length. The defendant, Joseph A. Weissman, has been given all the credits and allowances due to him and there are no set-offs or counterclaims to said account. 30

3. Moreover, at the special instance and request of the defendant, Joseph A. Weissman, I sold and delivered to him the goods, wares and merchan- 40

Affidavit of Joseph Grunt.

dise set forth in the schedule annexed to the complaint filed in this cause and hereinabove referred to and the defendant, Joseph A. Weissman, agreed to pay therefor the prices set opposite each item, which prices are reasonable.

10 4. The defendant, Joseph A. Weissman, at divers times admitted his indebtedness to me and promised to pay me as soon as he possibly could. He never disputed the correctness of the account. He simply stated that he was temporarily embarrassed and asked me to wait and be patient with him.

5. I verily believe the defendant, Joseph A. Weissman, has no legal defense to the action.

20 6. The defendant, Joseph A. Weissman, has not paid me anything on this account, nor have I received anything from him in payment thereof.

7. The defense of payment by means of a \$12,000 check of Joe Cagan has no substance because the transaction was as follows:

30 The defendant, Joseph A. Weissman, purchased a great quantity of plumbing materials from me which went into the erection and construction of a number of buildings in which Joseph A. Weissman had plumbing and heating jobs and particularly in the building which was being constructed by the defendant, James Cupolo, on Munn Avenue and Grove Terrace, Irvington, New Jersey.

40 On or about October 18th, 1927, Joseph A. Weissman, owed me about \$7,000 and he came to my place of business to purchase plumbing fixtures for this Munn Avenue job. The order for the plumbing fixtures ran into several thousand dollars and I refused to furnish these fixtures unless

Affidavit of Joseph Grunt.

Mr. Joseph A. Weissman would give me some money or security. Mr. Weissman then told me that Cupolo was willing to give me a mortgage to secure my money in the sum which would not only include Weissman's indebtedness to me but would also include the balance due to Weissman from Cupolo on the plumbing and heating contract which Weissman had with Cupolo, and Weissman at that time stated that in order to secure me, he was willing to go on the bond accompanying the mortgage. I distinctly told Joseph A. Weissman that even if I accepted the bond and mortgage on the property and even if he would go on the bond that I would not discharge him; that he would still be liable to me on account of the merchandise which he had purchased from me. 10

Then I went down to my then lawyer and as a result of my conversation with him and having been advised that it would be stronger security for me, I had the mortgage taken in the name of my brother-in-law, Joe Cagan. It is true that I gave Joe Cagan a check of \$12,000. He deposited that check and then drew his own check to the order of James Cupolo who endorsed it to Weissman, who, in turn, endorsed it to me. This was really my own money, and one check washed out the other. I deny that I ever contemplated any conspiracy of any kind, or that I conspired to defraud or defeat the rights of creditors. At no time did I have \$12,000 due me from Joseph A. Weissman. The sum that was due me on or about October 20, 1927, was approximately \$7,000 and since then purchases were made and credits given bringing the amount up to \$9,345.34., and this entire transaction about the execution of the bond and mortgage by the Cupolos and the going on the bond by Joseph A. Weissman was the idea offered by 20 30 40

Affidavit of Joseph Grunt.

Joseph A. Weissman. He suggested it and I adopted it.

The mortgage itself was wiped out in the bankruptcy proceedings of James Cupolo as is charged in the Third Count of the amended Bill of Complaint filed in this cause.

10 Such proceedings were had in the Bankruptcy Court that the mortgage was declared invalid and it was adjudicated that the mortgage constituted no lien against the property, but the order recited that this adjudication was without prejudice to the action on the bond in any other Court. This bond was assigned to me by Joe Cagan. Annexed hereto and made part hereof is a copy of the Order made by Referee Porter establishing the foregoing averments.

20 The previous affidavits filed by Joseph A. Weissman admit the correctness of my book account against him and admit that he owes me the sum of \$9,345.34, for merchandise which I sold and delivered to him. All I desire is the amount which is justly due and owing to me which is \$9,345.34, together with lawful interest thereon.

30 I aver that Joseph A. Weissman is indebted to me in the sum of \$9,345.34, together with interest.

JOSEPH GRUNT.

Sworn and subscribed to before me }
this 3rd day of October, 1928. }

HERBERT A. MONYCH,
Notary Public of N. J.

Order for Restraint Pending Final Hearing.

(Filed November 19, 1928.)

IN CHANCERY OF NEW JERSEY.

*Between*JOSEPH A. WEISSMAN,
Complainant,*and*JOSEPH GRUNT,
Defendant.On Bill, &c.
Order for
Restraint Pending
Final Hearing.

10

This matter being opened to the Court by Raymond H. Berry, Esquire, of the firm of Potter & Berry, Solicitors of the complainant, Joseph A. Weissman, in the presence of Milton M. Unger, Esquire, of counsel with Michael G. Alenick, Esquire, Solicitor of the defendant, Joseph Grunt; and the Court having considered the bill of complaint and affidavits filed herein, and the answer and affidavits on the part of the said defendant, and having heard and considered the arguments of counsel, and being satisfied that the complainant is entitled to an order restraining the said defendant, Joseph Grunt, and his agents and servants from proceeding with any suit or suits at law, the subject matter of which is either the bond, the book account, or for moneys for goods sold and delivered, mentioned in the bill of complaint; and from further proceeding with any action at law now pending, concerning the same subject matter; and from proceeding in any way upon the judgment entered in the Essex County Circuit Court on the 14th day of Novem-

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Order for Restraint Pending Final Hearing.

ber, 1928, in favor of the defendant and against the complainant, which said judgment was entered upon an Order striking out the answer filed in the cause of "Joseph Grunt vs. Joseph A. Weissman, et als.,"

10 It is on this 19th day of November, 1928,
 ORDERED, that the defendant, Joseph Grunt and his agents and servants be, and they are each and every one of them enjoined and commanded to desist and refrain from proceeding with any suit or suits at law, the subject matter of which is either the bond, the book account, or for moneys for goods sold and delivered, mentioned in the bill of complaint; and from further proceeding with any action at law now pending concerning
 20 the same subject matter; and from proceeding in any way upon the judgment entered in the Essex County Circuit Court on the 14th day of November, 1928, in favor of the defendant and against the complainant, which said judgment was entered upon an Order striking out the answer filed in the cause of "Joseph Grunt vs. Joseph A. Weissman, et als."

Respectfully advised,

30

MAJA LEON BERRY,
 V. C.

I hereby consent to the form of the within Order.

MICHAEL G. ALENICK,
 Solicitor for Defendant.

40

Answer.

(Filed November 22, 1928.)

IN CHANCERY OF NEW JERSEY.

<i>Between</i> JOSEPH A. WEISSMAN, Complainant, <i>and</i> JOSEPH GRUNT, Defendant.	}	On Bill, &c. Answer.	10
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The defendant, Joseph Grunt, residing in the City of Newark, County of Essex and State of New Jersey, answering the Bill of Complaint filed herein says that: 20

1. He admits paragraph 1 with the exception of the words "in the sum of Ten Thousand (\$10,000) Dollars", and states that on or about October 20th, 1927, the complainant was indebted to him in the sum of Seven Thousand (\$7,000) Dollars and upwards.

2. He admits paragraph 2. 30

3. He has no knowledge or information sufficient to form a belief as to the truth of the matters contained in paragraph 3 and therefore neither admits nor denies the same but leaves the complainant to his proof.

4. He has no knowledge or information sufficient to form a belief as to the truth of the matters contained in paragraph 4 and therefore neither admits nor denies the same but leaves the complainant to his proof. 40

Answer.

10 5. As to the allegation contained in paragraph 5 which reads, "On or about the same date the said James Cupolo had refused and neglected to pay for the work and materials furnished afore-said", the defendant has no knowledge sufficient to form a belief as to the truth of the matters so stated and therefore neither admits nor denies the same but leaves the complainant to his proof. As to the allegations contained in the remainder of paragraph 5 the defendant denies the same and refers to the first separate defense which is hereinafter set forth as if it were contained herein at length.

20 6. He admits that part of paragraph 6 which reads as follows: "On or about October 20th, 1927, complainant was present along with Joseph Grunt, Joe Cagan, James Cupolo * * * in the office of the defendant's attorney", but defendant denies the remainder of the allegations contained in said paragraph.

7. He admits the allegations contained in paragraph 7 except that complainant failed to state in said paragraph that complainant also executed the bond together with James Cupolo and Clementina Cupolo.

30 8. He denies the allegations contained in paragraph 8.

9. He denies the allegations contained in paragraph 9 and refers to the first separate defense hereinafter set forth as if it were recited herein at length.

10. He denies the allegations contained in paragraph 10.

40 11. He denies the allegations contained in paragraph 11.

Answer.

12. He denies the allegations contained in paragraph 12.

13. He admits the allegations contained in paragraph 13.

14. He admits the allegations contained in paragraph 14 but states that the answer and affidavits filed by the complainant herein in the law action admitted the indebtedness of the complainant herein to the defendant herein of the sum of \$9,345.34 and the defendant prays leave of Court to refer to the said answer and affidavits as if it were set forth herein at length. 10

15. He admits the allegations contained in paragraph 15.

16. He admits that the complainant herein filed an answer to the Third Count of the defendant's amended complaint in the law action and denies the remainder of said paragraph and prays leave that the answer so filed by the complainant herein in the law suit should be referred to as if herein set forth at length. 20

17. He admits that portion of paragraph 17 which reads as follows: "On the 26th day of October, 1928, before Honorable Nelson Y. Dungan, Judge of the Essex County Circuit Court, defendant Joseph Grunt through his attorneys moved to strike out the answer of the complainant aforesaid on the ground that the same was sham, frivolous, false and constituted no legal defense, and upon hearing the arguments of counsel on both sides the said Judge of the Essex County Circuit Court granted the motion to strike out the answer", and denies the remainder of said paragraph but avers that the entry of judgment was delayed by Judge Dungan for one week for the 30 40

Answer.

purpose of affording the complainant herein if he conceived that he had any ground for equitable relief to make application to the Court of Chancery during that period of one week to restrain the issuance of execution and further avers that annexed hereto and made part hereof as if recited herein at length is a copy of the Order made by Judge Dungan rendering judgment in favor of the defendant herein and against the complainant herein.

18. He denies the allegations contained in paragraph 18.

First Separate Defense:

1. Complainant, Joseph A. Weissman, purchased a great quantity of plumbing materials from the defendant which went into the erection and construction of a number of buildings in which complainant had plumbing and heating jobs and particularly in the building which was being constructed by James Cupolo on Munn Avenue and Grove Terrace, Irvington, New Jersey.

2. On or about October 18th, 1927, complainant owed defendant about \$7,000 and he came to defendant's place of business to purchase plumbing fixtures for this Munn Avenue property job. The order for the fixtures ran into several thousand dollars and defendant refused to furnish these fixtures unless complainant would give him a substantial payment on account or furnish him with adequate security. Thereupon complainant informed the defendant that James Cupolo was willing to execute a mortgage in a sum which would include complainant's indebtedness to the defendant and also the indebtedness from James Cupolo to complainant on the plumbing and heat-

Answer.

ing contract which complainant had with Cupolo and the complainant at that time in order to induce defendant to furnish the plumbing fixtures agreed to go on the bond with James Cupolo and Clementina Cupolo, his wife, in order to secure the defendant. The defendant expressly informed complainant that even if complainant went on the bond that would not discharge the debt to the defendant, that he would still be liable thereon and accordingly on October 20th, 1927, complainant and defendant carried out their intention and a bond and mortgage was executed in favor of one Joe Cagan who was a brother-in-law of the defendant and who held the bond and mortgage in trust for the defendant and thereafter assigned it to the defendant.

10

20

3. The mortgage itself was wiped out in the bankruptcy proceedings of James Cupolo but without prejudice to an action on the bond in favor of the holder thereof in any other Court.

Second Separate Defense:

1. The case is *res adjudicata* in that the issue involved in the present suit was heard, considered and determined in the action in the Essex County Circuit Court by his Honor, Judge Nelson Y. Dungan, a copy of said order for judgment being hereto attached and hereby made part hereof.

30

Wherefore defendant prays that the Bill of Complaint filed herein be dismissed with costs by the defendant most wrongfully sustained.

MICHAEL G. ALENICK,
Solicitor for and of Counsel with
Defendant.

40

**Order Striking Out Answer and for Entry
of Summary Judgment.**

ESSEX COUNTY CIRCUIT COURT.

10	JOSEPH GRUNT, trading as West Side Plumbing Supply Com- pany, <p style="text-align: center;">Complainant,</p> <p style="text-align: center;"><i>vs.</i></p> JOSEPH A. WEISSMAN, JAMES CU- POLO and CLEMENTINA CUPOLO, <p style="text-align: center;">Defendants.</p>	Action at Law. Order Striking Out Answer and for Entry of Summary Judgment.
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20 This matter coming on to be heard in the pres-
 ence of Milton M. Unger, of counsel with Michael
 G. Alenick, attorney of plaintiff, and Messrs.
 Potter & Berry, attorneys of the defendant,
 Joseph A. Weissman, pursuant to a notice of mo-
 tion to strike out the answer of the said defend-
 ant and to enter summary judgment against him,
 and the Court having read and considered the affi-
 davits presented on behalf of the plaintiff and
 those on behalf of the said defendant, and having
 30 heard and considered the arguments of counsel
 and being of the opinion that the answer of the
 defendant, Joseph A. Weissman, to the amended
 complaint is frivolous and sets forth no legal de-
 fense and should be struck out and that summary
 judgment should be entered thereon in favor of
 the plaintiff,

It is on this 2nd day of November, 1928, on
 motion of Milton M. Unger, of counsel with
 Michael G. Alenick, attorney of plaintiff, ORDERED
 40 that the answer to the amended complaint filed by

Interrogatories.

the defendant, Joseph A. Weissman, be and the same is hereby struck out, and

It is further ORDERED that summary judgment be entered in favor of the plaintiff, Joseph Grunt, trading as West Side Plumbing Supply Company, and against the defendant, Joseph A. Weissman, in the sum of \$9,345.34 together with interest of \$470.39 or a total of \$9,815.75 and costs of suit to be taxed. 10

NELSON Y. DUNGAN,
Judge Essex County Circuit Court.

Filed: November 14th, 1928.

Interrogatories.

20

(Filed January 4, 1929.)

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH A. WEISSMAN,
Complainant,

and

JOSEPH GRUNT,
Defendant.

On Bill, &c.
Interrogatories.

30

To the defendant Joseph Grunt:

You are hereby required to answer, under oath, the following interrogatories, and to serve your answers thereto upon me within ten days after service of the interrogatories upon you.

40

Interrogatories.

First Interrogatory. What was the date of the assignment of the bond executed by James Cupolo, Clementina Cupolo and Joseph A. Weissman to Joe Cagan, to you?

10 Second Interrogatory. Was the assignment in writing?

Third Interrogatory. If the answer to the second interrogatory be in the affirmative was the said assignment duly recorded and what was the consideration therefor?

20 Fourth Interrogatory. Did you as assignee of the bond and mortgage prove the same before the Referee in the bankruptcy proceedings of James Cupolo?

Fifth Interrogatory. On October 20, 1927, did Benjamin Singer represent you as counsel in the transaction which resulted in the execution of this bond?

30 Sixth Interrogatory. Did you on October 20, 1927, enter into an agreement with James Cupolo to furnish the balance of plumbing material necessary to complete the plumbing work on the apartment building of said James Cupolo situated on the corner of Munn Avenue and Grove Terrace, Irvington, New Jersey?

Seventh Interrogatory. If your answer to the sixth interrogatory be in the affirmative, was said agreement in writing?

40 Eighth Interrogatory. State the time and place when and where you informed Joseph A. Weissman that the check for \$12,000 advanced by Joe Cagan on the bond and mortgage was really your own money.

Interrogatories.

Ninth Interrogatory. Was the fact that Joe Cagan acted as Trustee for you in holding the bond and mortgage evidenced in writing?

Tenth Interrogatory. If your answer to the ninth interrogatory be in the affirmative who has held the trust agreement since its execution? 10

Eleventh Interrogatory. If your answer to the tenth interrogatory be in the affirmative did you notify Joseph A. Weissman, James Cupolo and Clementina Cupolo of the trusteeship?

Twelfth Interrogatory. If your answer to the eleventh interrogatory be in the affirmative state the times and manner of notification.

Thirteenth Interrogatory. If your answer to the second interrogatory be in the affirmative did you notify Joseph A. Weissman, James Cupolo and Clementina Cupolo of the assignment? 20

Fourteenth Interrogatory. If your answer to the thirteenth interrogatory be in the affirmative state the times and manner of notification.

POTTER & BERRY,
Solicitors of Complainant.

Service of a copy of the within Interrogatories is hereby acknowledged this 2nd day of January, 1929. 30

MICHAEL G. ALENICK,
Solicitor for Defendant.

Answers to Interrogatories.

(Not Filed.)

IN CHANCERY OF NEW JERSEY.

10

*Between*JOSEPH A. WEISSMAN,
Complainant,*and*JOSEPH GRUNT,
Defendant.On Bill, &c.
Answers to
Interrogatories.

20

The following are defendant's answers to the
interrogatories propounded by complainant:

First: June 28th, 1928.

Second: Yes.

Third: No.

Fourth: No.

Fifth: Yes.

Sixth: Yes.

Seventh: Yes.

30

Eighth: About October 20th, 1927, at Mr.
Singer's office, 164 Market Street, Newark, N. J.

Ninth: Cagan assigned bond in writing.

Tenth: Defendant held assignment.

Eleventh: Need not be answered.

Twelfth: Need not be answered.

Thirteenth: Yes.

40

Answer to Interrogatories.

Fourteenth: By my suit in the Essex County Circuit Court which resulted in a judgment being entered in my favor.

JOE GRUNT,
Defendant.

10

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

JOSEPH GRUNT, being duly sworn according to law on his oath deposes and says that he is the defendant in the above entitled cause and that the answers to the interrogatories herein set forth are true to the best of his knowledge, information and belief. 20

JOE GRUNT.

Subscribed and sworn to before me }
this 25th day of March, A. D. 1929. }

LOUIS C. SELENFRIEND,
An Attorney at Law of New Jersey.

30

40

Additional Interrogatories.

(Not Filed.)

IN CHANCERY OF NEW JERSEY.

10

Between

JOSEPH A. WEISSMAN,
Complainant,

and

JOSEPH GRUNT,
Defendant.

On Bill, &c.
Additional
Interrogatories.

20 *To the defendant, Joseph Grunt:*

You are hereby required to answer, under oath, the following additional interrogatories and to serve your answers thereto upon me within ten days after service of the interrogatories upon you.

30

First Additional Interrogatory: What disposition did you make of the check in the sum of Twelve Thousand (\$12,000.00) Dollars which was endorsed to you by Joseph A. Weissman on October 20, 1927?

Second Additional Interrogatory: Was this check deposited by you in your bank account?

Third Additional Interrogatory: If the answer to the second additional interrogatory is in the affirmative, state in what bank the deposit was made and on what date.

40

Answers to Additional Interrogatories.

Fourth Additional Interrogatory: Was this check paid by the bank upon which it was drawn?

POTTER & BERRY,
Solicitors of Complainant.

Dated: March 4, 1929.

10

Service of a copy of the within additional interrogatories is hereby acknowledged this 15th day of March, 1929.

MICHAEL G. ALENICK,
Solicitor for Defendant.

Answers to Additional Interrogatories.

20

(Not Filed.)

IN CHANCERY OF NEW JERSEY.

Between

JOSEPH A. WEISSMAN,
Complainant,

and

JOSEPH GRUNT,
Defendant.

On Bill, &c.
Answers to
Additional
Interrogatories.

30

The following are defendant's answers to the additional interrogatories propounded by complainant:

40

Answers to Additional Interrogatories.

First: Deposited in my bank.

Second: Yes.

Third: Springfield Avenue Trust Company.

Fourth: Yes.

10

JOE GRUNT,
Defendant.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX, } ss.:

20

JOSEPH GRUNT, being duly sworn, according to law, on his oath deposes and says that he is the defendant in the above entitled action and that the answers to the additional interrogatories herein set forth are true to the best of his knowledge, information and belief.

JOE GRUNT.

Subscribed and sworn to before me }
this 25th day of March, A. D. 1929. }

LOUIS C. SELENFRIEND,
An Attorney at Law of New Jersey.

30

40

Order of Reference.

(Filed January 17, 1929.)

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i> JOSEPH A. WEISSMAN, Complainant, <i>and</i> JOSEPH GRUNT, Defendant.</p>	}	<p>On Bill, &c. Order of Reference.</p>	10
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This matter being opened to the Court by Thomas Potter, of the firm of Potter & Berry, solicitors of the complainant, and it appearing that Michael G. Alenick, Esquire, solicitor of the defendant, has consented thereto, it is on this 17th day of January, 1929, on motion of Thomas Potter, of the firm of Potter & Berry, solicitors of the complainant, 20

ORDERED that the above entitled cause be referred to Hon. M. L. Berry, one of the Vice-Chancellors of this court to hear the same for the Chancellor, and to report thereon to him and to advise what order or decree should be made therein. 30

E. R. WALKER,
 C.

I hereby consent to the entry of the above order.

MICHAEL G. ALENICK,
 Solicitor of Defendant.

A true copy
 THOMAS BARBER,
 Clerk.

40

Order of Designation.

(Filed January 29, 1929.)

IN CHANCERY OF NEW JERSEY.

10	<i>Between</i> JOSEPH A. WEISSMAN, Complainant, <i>and</i> JOSEPH GRUNT, Defendant.	} On Bill, &c. } Order of } Designation.
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20 This matter being opened to the Court by Thomas Potter, of the firm of Potter & Berry, solicitors of the complainant, and Michael G. Alenick, Esq., the solicitor of the defendant consenting hereto,

It is on this 29th day of January, 1929, ordered, that the 3rd day of April, 1929, at the hour of ten o'clock in the forenoon at the Chancery Chambers, No. 1060 Broad Street, Newark, New Jersey, be designated as the time and place for the hearing of the above entitled cause.

30

MAJA LEON BERRY,
 Vice-Chancellor.

I hereby consent to the making of the above order.

MICHAEL G. ALENICK,
 Solicitor of Defendant.

40

Notice of Hearing.

(Filed March 13, 1929.)

IN CHANCERY OF NEW JERSEY.

*Between*JOSEPH A. WEISSMAN,
Complainant,*and*JOSEPH GRUNT,
Defendant.

10

On Bill, &c.

Notice of Hearing.

To MESSRS. POTTER & BERRY,
Solicitors of Complainant,
60 Park Place, Newark, N. J.

20

Sirs:

TAKE NOTICE of the hearing of this cause before Honorable Maja Leon Berry, the Vice Chancellor of this Court to whom the said cause has been referred, on the third day of April, 1929, at the hour of ten o'clock in the forenoon, at the Chancery Chambers, 1060 Broad Street, in the City of Newark, New Jersey, the time and place designated by the order of the said Vice Chancellor made on the 29th day of January, 1929.

30

MICHAEL G. ALENICK,
Solicitor for and of Counsel
with Defendant.

Service of the within Notice of Hearing is hereby acknowledged this 13th day of March, 1929.

POTTER & BERRY,
Solicitors for Complainant. 40

Final Decree.

(Filed June 11, 1929.)

IN CHANCERY OF NEW JERSEY.

10

*Between*JOSEPH A. WEISSMAN,
Complainant,*and*JOSEPH GRUNT,
Defendant.On Bill, &c.
Final Decree.

20

This matter coming on to be heard in the presence of Messrs. Potter & Berry, solicitors of the complainant, Joseph A. Weissman, and Michael G. Alenick, solicitor, for and Milton M. Unger of counsel with the defendant, Joseph Grunt; and the Court having read and considered the bill of complaint, answer, and affidavits and other pleadings in the case and having heard the testimony of the witnesses produced on behalf of the complainant and the defendant and having heard and considered the proofs and the arguments of counsel; and the Court being of the opinion that the complainant is not entitled to the relief prayed for in the bill of complaint filed herein and that the bill of complaint aforesaid should be dismissed;

30

It is on this 11th day of April, 1929, ORDERED, ADJUDGED and DECREED that the bill of complaint filed herein be and the same is hereby dismissed.

E. R. WALKER,
C.

Respectfully Advised,

40

MAJA LEON BERRY,
V. C.

Amended Notice of Appeal.

(Filed December 20, 1929.)

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i> JOSEPH A. WEISSMAN, Complainant, <i>and</i> JOSEPH GRUNT, Defendant.</p>	}	<p>On Bill, &c. Amended Notice of Appeal.</p>	10
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Complainant, Joseph A. Weissman, hereby appeals from the final decree made in the above entitled cause on the 11th day of April, 1929, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes. 20

Dated: December 19, 1929.

POTTER & BERRY,
 Solicitors for and of Counsel
 with Complainant.

I conceive there is good cause for appeal in the above entitled cause. 30

RAYMOND H. BERRY,
 Of Counsel with Complainant,
 Joseph A. Weissman.

Sat Below:

Hon. EDWIN ROBERT WALKER, C.
 Hon. MAJA LEON BERRY, V. C.

Service of the within Amended Notice of Appeal is hereby acknowledged this 19th day of December, 1929. 40

MICHAEL G. ALENICK,
 Solicitor for Defendant-Appellee.

Amended Petition of Appeal.

(Filed December 20, 1929.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

JOSEPH A. WEISSMAN,
Complainant-Appellant,*vs.*JOSEPH GRUNT,
Defendant-Appellee.On Appeal
from the Court
of Chancery.Amended
Petition of Appeal.20 *To the Honorable, the Court of Errors and Ap-
peals, in the Last Resort in All Causes:*

The petition of Joseph A. Weissman, appellant
in the above entitled cause, respectfully shows
that:

1. Petitioner finds himself aggrieved by a final
decree made in the Court of Chancery by his
Honor, Edwin Robert Walker, Chancellor of the
State of New Jersey, on the advice of his Honor,
30 Maja Leon Berry, Vice-Chancellor, bearing date
April 11, 1929, in a certain cause in the said Court
of Chancery where the said Joseph A. Weissman
was complainant and said Joseph Grunt was de-
fendant, in this respect, to wit, that the said de-
cree adjudges that:

a. That complainant was not entitled to the re-
lief prayed for in the bill of complaint filed herein.

40 b. The bill of complaint aforesaid should be
dismissed and petitioner appeals from the decree

Amended Petition of Appeal.

of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that:

1. The evidence justified a finding that Joseph A. Weissman had paid in full the obligation for which the defendant was bringing action both in law and in equity, which these proceedings were to restrain. 10

2. The evidence justified a finding that the petitioner, Joseph A. Weissman, knew nothing about the fact that the giving of a certain mortgage, as set forth in the testimony in this action, was a washed transaction.

3. The decree was erroneous in that it failed to grant the injunction prayed for by the complainant. 20

4. The bill of complaint was contrary to the weight of the evidence.

5. The decree was contrary to equity.

6. The decree was contrary to law.

7. The decree was erroneous in that it failed to give relief to the complainant, although the defendant was admittedly engaged in a tainted transaction. 30

8. The decree should have awarded the complainant the relief prayed for.

Petitioner, therefore, prays that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that the peti-

Answer to Amended Petition of Appeal.

tioner may have such other relief in the premises as to this Court shall seem proper.

POTTER & BERRY,
Solicitors of Complainant-Appellant.
RAYMOND H. BERRY,
Of Counsel.

10

Service of the within Amended Petition of Appeal is hereby acknowledged this 19th day of December, 1929.

MICHAEL G. ALENICK,
Solicitor for Defendant-Appellee.

20

Answer to Amended Petition of Appeal.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

JOSEPH A. WEISSMAN,
Complainant-Appellant,

vs.

JOSEPH GRUNT,
Defendant-Appellee.

On Appeal
from the Court
of Chancery.

Answer to
Amended Petition
of Appeal.

30

The answer of Joseph Grunt, the above-named defendant-appellee, to the amended petition of appeal of Joseph A. Weissman, the above-named complainant-appellant.

This respondent (defendant-appellee), not ac-
40 knowledging all or any of the matters which in

Answer to Amended Petition of Appeal.

the said amended petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the 11th day of April, 1929, made and entered in the Court of Chancery of New Jersey, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity, and he prays that the same may be affirmed with costs to be adjudged to this respondent (defendant-appellee). 10

MICHAEL G. ALENICK,
Solicitor for and of Counsel with
Respondent (Defendant-Appellee). 20

30

40

Testimony.

IN CHANCERY OF NEW JERSEY.

10	<p><i>Between</i></p> <p style="text-align: center;">JOSEPH A. WEISSMAN, Complainant,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">JOSEPH GRUNT, Defendant.</p>
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20 Transcript of testimony taken in the above entitled cause before Hon. Maja Leon Berry, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on April 3, 1929.

APPEARANCES:

MESSRS. POTTER & BERRY for Complainant.
MR. MICHAEL G. ALENICK and MR. MILTON
M. UNGER for defendant.

The Court: There are two cases which are to be tried together?

30 Mr. Unger: They cannot exactly be tried together, but all your Honor finds out in one case will certainly make unnecessary plenty of proof in the other case. We ought to try the suit to set aside the action at law and cancel the bond first, because if that should be granted, if your Honor should cancel the bond, and say our judgment was no good, then the suit to set aside a fraudulent conveyance predicated upon that bond would not go on.

The Court: Why not stipulate your facts?

40 Mr. Unger: It is admitted in October, 1927, Weissman, the complainant, owed Grunt, the de-

Argument.

fendant, \$10,000 and upwards, on a running account for plumbing materials sold and delivered by Grunt to Weissman.

The Court: For Cupolo's building?

Mr. Unger: On Cupolo's house and on other buildings Grunt was a plumbing supply man. In October, 1927, Cupolo owned premises on Munn Avenue, Irvington, and at the same time owed Weissman, the complainant, upwards of \$10,000 on Weissman's contract. Cupolo had a contract with Weissman, whereby Cupolo agreed to do the work for Weissman, Cupolo being owner and Weissman, contractor. 10

The Court: Do I understand you correctly, that Weissman had a contract to build a building?

Mr. Berry: Put the plumbing in the building.

The Court: Then Cupolo had a contract to do the work for Weissman? 20

Mr. Berry: No, Cupolo was the owner.

Mr. Unger: Cupolo was entitled to his money from Weissman.

The Court: Why was Cupolo entitled to any money from Weissman?

Mr. Berry: It was the other way around.

Mr. Unger: Weissman was entitled to money from Cupolo. Cupolo refused to pay for his materials, and at this stage, Grunt, the material man, told Weissman, according to the bill—I am afraid I cannot agree on that paragraph. Perhaps I had better not make that admission, because we differ on that. So far, the facts are not in dispute. 30

The bill then alleges that Grunt, the defendant, said he had a party who would advance \$12,000 on bond and mortgage, and that the money would come to Cupolo, the owner, who would pay it to Weissman, the contractor, and Weissman would pay it to Grunt. 40

Argument.

From now on let me state my contention, and then I will admit as many facts as I can.

10 Cupolo and wife gave a mortgage for \$12,000, which was accompanied by a bond of \$24,000, to Cagan, a third party. This was on October 20, 1927. Cagan drew a check for \$12,000 to Cupolo, the owner. Cupolo endorsed it to Weissman, the contractor. Weissman endorsed it to Grunt, the materialman. Grunt accepted it. At that point, there is no doubt but what the money came from Grunt, and I will tell you why Grunt wanted a security for the advance, and if he had merely taken a mortgage in his own name, that mortgage would, if anything happened to Cupolo, the owner, within four months, be nullified by the bank-
20 ruptcy act, because it would have been a preferential payment. Cagan is Grunt in the case, there is no doubt about it. The money came from Grunt, went to Cagan; Cagan gave his check to Cupolo; Cupolo endorsed it to Weissman, and Weissman paid it to Grunt, so that Grunt's money came back to Grunt, and the only change in the whole situation was that the payment of the \$12,000 had been secured by a mortgage on Cupolo's property made to Cagan and assigned to Grunt. Everything
30 would have been fine, had that mortgage stood up, but Cupolo went into bankruptcy, and the bankruptcy court proceeded to set aside the mortgage, and by an order decreed it to be no lien on the premises after a hearing, without prejudice to a suit on the bond.

So the situation, then, is this, that Weissman has advanced no money at all. The check which came to him came from Cagan, who got it from Grunt, so that the situation was precisely the same: Weissman had not paid a dollar's worth
40 of his indebtedness to Grunt, and Cupolo, the

Argument.

owner, had given a mortgage on the real estate and the mortgage had been declared to be no lien by the United States District Court. So that Grunt stood in this position; unless this wash check paid his book account, he was unpaid. If it did pay his book account, he had the bond of Cupolo, in which Weissman had joined; so that at law the mortgage having been wiped out, we stood on the book account in one account, and he made sales and delivery in another, and the court struck the answer out and entered judgment.

10

The Court: Were there other materialmen interested in this building?

Mr. Unger: Not so far as we are concerned.

The Court: Nobody but the contractor?

Mr. Unger: No.

The Court: Anybody have any right to lien there except the contractor?

20

Mr. Unger: I think not, for this reason, that the mortgage was set aside and decreed to be no lien at all, so that that mortgage resulted in the taking away of no part of the value of the property, or in the creation of no lien in favor of anybody, which was all clarified in subsequent bankruptcy proceedings. We sued at law. The fiction has failed. Nobody was harmed. The protection which was sought to gain for one person failed. It wasn't paid. I hadn't heard it here said that Weissman had paid his debt in any way.

30

The Court: Was this an attempt by Grunt to obtain a preference?

Mr. Unger: Yes, sir; I will admit that, and I think that, and I think that a debtor—an honest creditor may attempt to obtain an honest preference, if the money is coming to him from a debtor in failing circumstances, if it is not fraudulent.

40

Argument.

10 The Court: Unless he is attempting by that method to defeat the liens which law would otherwise give other people. For instance, if there were mechanic's lien claims here, which would be affected by this mortgage and which would be postponed by reason of the mortgage, then it would be a transaction which this court wouldn't countenance.

Mr. Unger: It couldn't be defeated by the mortgage, for this reason: they would have to postpone their liens and claim to the mortgage.

The Court: You mean because it was given subsequent to the obligation of the building?

Mr. Unger: Yes, anybody who had started to furnish work would have a right of lien, and he would make the mortgagee defendant.

20 The Court: I understood that he was attempting to secure himself?

Mr. Unger: Yes. And it failed, because during the prohibited time, the bankruptcy court stepped in and found out that it was given upon an antecedent debt.

The Court: Does not the whole thing rest on the question of knowledge of Weissman?

Mr. Berry: Knowledge and failure of consideration.

30 The Court: What did Weissman get for signing?

Mr. Berry: Not a thing.

Mr. Unger: This is what he got: First of all, Weissman bought more materials.

The Court: He may have gotten a postponement. Proceed with your proofs.

Joseph A. Weissman, Complainant—Direct.

JOSEPH A. WEISSMAN, complainant, sworn.

Direct examination by Mr. Potter:

Q. Mr. Weissman, what business are you engaged in? A. Plumbing business. 10

Q. What business were you engaged in, in the year 1927? A. Plumbing business.

Q. How long have you been in that business? A. Fifteen years, less two years in the army.

Q. You know the defendant in this case, Joseph Grunt? A. Yes.

Q. When did you first meet him? A. 1914.

Q. Do you know what business Mr. Grunt is in? A. Plumbing supplies.

Q. Do you know what business he was in, in 1927? A. Plumbing supplies. 20

Q. Did you ever buy any plumbing materials from Mr. Grunt? A. I did.

Q. How long have you been buying plumbing materials from Mr. Grunt?

The Court: Is it necessary to go into all this detail? I understood that it was admitted that this man was the builder and bought a bill of plumbing material approximating ten or twelve thousand dollars from Grunt that went into this building. 30

Mr. Potter: The only question at issue is the point of knowledge.

The Court: That seems to me is the important thing, to get down to this transaction with Grunt and Cagan, and Weissman and Cupolo.

Q. Mr. Weissman, did you owe Grunt any money on October 20, 1927? A. I owed him up to that time. 40

Joseph A. Weissman, Complainant—Direct.

Q. Do you know how much money you owed him? A. About ten thousand dollars.

Q. You had a contract with James Cupolo? A. Yes.

10 Mr. Potter: I offer in evidence contract between James Cupolo and Joseph A. Weissman, dated August 11, 1927.
(Marked Exhibit C-1.)

Q. Referring to this contract, Mr. Weissman, how much of that work did you do? A. It was about ninety per cent at the time.

The Court: At that time, October 20?

20 The Witness: No, the completion of the job, so far as Mr. Grunt delivered material.

Q. Why didn't you complete that contract? A. Mr. Grunt refused to deliver any more material.

Q. Had you paid Grunt for the material? A. I did.

Q. When did you pay him? A. October 20, 1928.

Q. How did you pay him? A. By check, which I received from Mr. Cupolo.

30 Q. Tell us, Mr. Weissman, the circumstances of receiving this check from Mr. Cupolo and the payment to Mr. Grunt. A. It was some time in October; Mr. Grunt refused to send up any more material on the job. Mr. Cupolo said if I could get the material and finish the job, I could get paid. I told Mr. Cupolo that Mr. Grunt would expect some money, so he should make arrangements to see Mr. Grunt. The working arrangements, that is, as far as further delivery of materials, was made between Mr. Grunt and Mr.

40 Cupolo.

Joseph A. Weissman, Complainant—Direct.

Q. Where was this check for \$12,000 paid by you to Grunt? A. Mr. Singer's office.

Q. Who is Mr. Singer? A. Mr. Grunt's attorney.

Q. And who told you to go to Singer's office? A. Mr. Grunt.

Q. Did he give you any reason for going there? A. He said he had made arrangements and fixed it up with Mr. Cupolo. 10

Q. Did he tell you what those arrangements were? A. He said that he had a man that will advance \$12,000 on second mortgage.

Mr. Unger: Who said that?

The Witness: Mr. Grunt.

Q. About when did he say that? A. That was around October 19. 20

Q. Did he tell you who that man was? A. Not at that time, no.

Q. Who else was present in Mr. Singer's office at the time this check was passed? A. It was Mr. and Mrs. Cupolo, Mr. Michael Cupolo and myself and Cagan, Mr. Grunt and Mr. Singer.

Q. Tell us what occurred in that office when you first got there. A. Mr. Singer had prepared a bond and mortgage which Mr. and Mrs. Cupolo had signed. Mr. Grunt asked me to sign it, saying that he wanted some sort of security for the \$12,000 that Mr. Cagan was advancing upon it, and that would also square the account. 30

Q. Did you know Joe Cagan at that time? A. He was a relative to Mr. Grunt.

Q. Had you known him before this time? A. Yes.

Q. Did you know at that time, Mr. Weissman, that this check represented Mr. Grunt's money? A. No, sir. 40

Joseph A. Weissman, Complainant—Direct.

Q. When did you first find that out? A. When he instituted suit, that was around February, 1928.

The Court: I thought it was October, 1928, that this transaction took place.

10 The Witness: 1927; that must have been after the signing of that bond and mortgage and the delivery of the \$12,000 check.

Q. Did Mr. Grunt send you any bills for plumbing materials? A. Yes, he did.

Q. Can you tell us what the bills were? A. It was plumbing material for various jobs.

Q. Do you know about what the amount was? A. I don't know what the monthly statements were, no.

20 The Court: Have you them?

The Witness: I haven't got them here.

The Court: Have you got them in your office?

The Witness: I may have. I don't know whether I would have the entire amount.

The Court: I should think it would be very important to have them here.

30 Q. When after October, 1927, did Mr. Grunt demand the payment from you for these plumbing materials? A. It was February, 1928.

Q. And in what way did he demand it? A. He served notices upon me.

Q. What kind of notices? A. Under them he instituted proceedings against me.

40 Q. Did you say anything to Mr. Grunt at that time about the circumstances of his having been paid? A. I told him I had paid him. He said that he gave the check to Mr.—he said that the passing of the check was a fake. He said that he gave the

Joseph A. Weissman, Complainant—Direct.

money to Mr. Cagan to make it prior to other liens and to—he simply had to pass it around.

Q. Mr. Weissman, did you after October 20, 1927, make any attempt to collect from James Cupolo the money that was owing to you on the plumbing contract which you have in your hands?

A. No, sir.

10

Q. Why didn't you? A. I thought he had paid me.

The Court: What was the contract price?

Mr. Berry: \$12,000.

The Court: This was the only payment under the contract?

The Witness: This here covered all my bills.

The Court: The \$12,000?

20

The Witness: Yes, up to that date.

The Court: Why did you give Grunt \$12,000, when you only owed him \$10,000?

The Witness: He said it would cover up the balance of the material on the job and would also cover—he wanted a little profit for himself, also, on it.

The Court: If you owed him only \$10,000, why should you give him \$12,000?

The Witness: I had no other way out of it.

30

The Court: You were getting only \$12,000 on the whole contract?

The Witness: Yes, but I was completing the labor on my end of it also. I had an agreement, regardless of that, to complete the labor also.

The Court: What were you going to get out of it?

The Witness: I had no way of getting out of it except to complete the building.

40

Joseph A. Weissman, Complainant—Direct.

The Court: How near was the job completed at the time payment was made, October 20, 1927?

The Witness: It took about two or three hundred dollars more to finish it.

10 Q. Did you on October 20, 1927, owe Mr. Grunt money for any other material except that which had gone into the Cupolo job? A. No, sir.

Q. At the time of signing that bond, Mr. Weissman, did you sign any other papers in Mr. Singer's office? A. I signed the material contract to finish it.

20 Q. I show you contract signed by Joseph A. Weissman, dated October 20, 1927, and ask you if that is the contract you signed at that time? A. That is right.

Mr. Potter: I offer that in evidence.

(Marked Exhibit C-2.)

Q. While you were in Mr. Singer's office at that time, did Joe Grunt make any agreement to furnish the balance of the material on the Cupolo job? A. Yes.

Q. Was that agreement in writing? A. Yes.

30 Q. Did you see him sign it? A. I did.

Q. Would you recall that agreement if I showed it to you? A. I believe I would.

Q. I show you this and ask you if that is the agreement which you signed at that time? A. That is right.

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

Mr. Unger: I admit it.

40 (Offered in evidence and marked Exhibit C-3.)

Joseph A. Weissman, Complainant—Cross.

Q. At the time of the signing of that mortgage at Mr. Singer's office, do you know whether or not Cupolo signed an affidavit? A. He did.

Q. Who prepared all the papers that were signed in the office that day? A. Mr. Singer.

Cross-examination by Mr. Unger:

10

Q. Before you signed this bond and mortgage on October 20, 1927, how much did you owe Grunt? A. I think it was around \$9,000.

Q. About \$7,000, wasn't it? A. I am not sure.

Q. You had a running account with him? A. Running account, yes.

Q. And after the twentieth of October, 1927, he furnished more materials to you? A. No, I paid him for those.

20

Q. You didn't pay him any cash after October 20? A. I gave him checks.

Q. After October 20? A. Yes, I gave him customer's checks for all material bought after that.

Q. In your papers in the law case you admit that you owed \$9,400 and some odd to him? A. Oh, October 20, yes.

Q. You say that was all furnished before October 20? A. All before.

Q. You didn't owe him \$12,000? A. I didn't say before October 20. It was paid up to date as far as the delivered material to that job.

30

Q. How much? A. Within the completion of that job, wherever he stopped off.

Q. What did you owe October 20? A. It was around \$10,000 with the completion of the building.

Q. I want to know how much you owed Grunt before you signed the bond and mortgage for materials already delivered? A. But the payment was to complete the building.

40

Joseph A. Weissman, Complainant—Cross.

Q. I want to know how much you owed him at that time for material? A. I don't know how much I owed him, offhand.

Q. Whatever you owed him, he was unwilling to furnish any more materials unless something was done? A. Yes.

10 Q. And then you and Cagan and Cupolo and all the others came down to Mr. Singer's office? A. Oh, no.

Q. Didn't you meet Mr. Cagan there? A. Yes, but I didn't make any arrangement for—

Q. I asked you if you met him down there? A. Yes.

Q. Was Cagan there? A. He was.

Q. Was Cupolo there? A. Wait, there were two meetings. Which meeting have you reference to?

20 Q. The time when you signed the bond and mortgage, on October 20. A. Yes.

Q. Cagan was there that day? A. Yes.

Q. You had never met him before? A. Oh, yes; I know him through the supply house; he is a relative of Mr. Grunt.

Q. You knew Cagan? A. Yes.

30 Q. You knew he was a brother-in-law of Grunt; you knew that he was the man that was going to take the bond and mortgage? A. I didn't know it until he was down there.

Q. He was introduced to you as being the man who was going to take— A. I don't know that.

Q. You were told he was the man? A. No.

Q. Did you know he was going to take the bond? A. I understood it as such after seeing the papers down there.

Q. You saw his name in the papers? A. Yes.

40 Q. Did you understand he was actually going to loan the money himself? A. That is the impression I was under.

Joseph A. Weissman, Complainant—Cross.

Q. Who gave you that impression? A. What right have I to question a man whether he has money or not?

Q. Who gave you the impression? A. When a man introduces himself as such, I take it for granted.

Q. Wasn't something else mentioned about what Cagan was doing in the transaction? A. No, never at all. 10

Q. Wasn't it said that it was going to be a wash transaction? A. No.

Q. You didn't believe that Cagan was giving \$12,000 on a fifth mortgage on this property in the course of construction? A. I don't know; I wasn't consulted.

Q. Did you believe it? A. I heard what I heard. 20

Q. Did you make any inducement as to interest to Cagan? A. I gave him a bond on it.

Q. Did you understand what Cagan was sharing? A. I was dealing with Mr. Grunt, not Mr. Cagan.

Q. The owner was Cupolo? A. Yes.

Q. Did Cupolo ask any questions as to how much he was to get out of this \$12,000 transaction? A. He never said a word.

Q. And the reason was because all of you understood that no money was to pass? A. I wouldn't have signed a labor material contract, if I understood it. I didn't understand anything. 30

Q. Why did you go on the bond? A. Why did I go on the mortgage?

Q. Yes. A. He said Mr. Grunt wouldn't furnish any more material to clear up the building.

Q. Weren't the people talking at that very meeting upon the possibility of the mortgage being no good, and still wanting to hold you? A. No, there wasn't any talk whatever. 40

Joseph A. Weissman, Complainant—Cross.

Q. Wasn't that the reason you went on the bond? A. No.

Q. Why did you go on the bond? A. I gave Mr. Grunt the security asked; I didn't ask any questions.

10 Q. Weren't you told why you had to go on the bond? A. He asked me to clear up the account and furnish material to finish the job. That satisfied me.

Q. Did you raise any question as to why you were asked to sign the bond, when your debt was paid? A. I did not.

20 Q. You were going on a bond, or did go on a bond, as a matter of fact, for \$12,000. You never owed Grunt that much money? A. He wanted a profit on top, and he wouldn't release it unless I gave it to him.

Q. You know that his whole claim only amounted to \$9,400? A. It would have amounted to more than that if the job had been completed.

Q. You know eventually it turned out that it only amounted to ninety-four hundred odd dollars? A. That isn't any fault of mine.

Q. You know that is the fact? A. I know it now.

30 Q. You knew it when you made an affidavit? A. No, I didn't.

Q. You made an affidavit in the law court that that is what you owed. A. How much?

Q. \$9,400. A. At the time he instituted suit.

Q. That is all you owed? A. At that time.

Q. You didn't owe any more since? A. No.

Q. That is all you ever owed him, or the most you ever owed him? A. When he stopped delivering material.

40 Q. Having only owed him \$9,400 and having gone on a bond for \$12,000, what arrangement was

Joseph A. Weissman, Complainant—Cross.

there between you and anybody else as to reimbursing you for the difference? A. But if he would have completed that job, that job would have went over \$10,000.

Q. You knew you were on a bond for \$12,000?

A. Yes, but he wouldn't release and furnish the material unless I gave him some leeway on it and gave him a guarantee to complete the job with labor outside.

10

Q. Did you ever get any bill from Grunt in which he credited you on the bill, or on the statement, with the amount of this mortgage, or any part of it? A. There isn't any way of stopping him.

Q. You never got any bill with any such credit on it? A. No.

Q. You continued to get bills from him, as usual, right up to the beginning of the suit? A. Yes, it is customary.

20

Q. Did you go to make complaint that you didn't owe the debt? A. Many a time.

Q. When? A. Every time I saw him; that is every month.

Q. Lately? A. No, I never saw him since December.

Q. Did you ever dispute the claim to him before you were sued on it? A. I had nothing to dispute with him.

30

Q. You didn't raise any question when he sent you these bills? A. What was the good or reason of disputing it?

Q. Didn't send the bills back and say they had been paid by the check transaction? A. What benefit would I get out of that?

Q. You didn't do it? A. No; I wouldn't get any benefit out of it.

40

*Joseph A. Weissman, Complainant—Cross.**Examination by the Court:*

Q. Did you receive bills from him after this mortgage was given and before suit was brought?

A. He sent bills, yes, sir.

10 Q. Showing this same indebtedness? A. The same and others, yes.

Q. And you didn't go to him and ask him why he didn't credit you with the \$12,000 which you paid? A. I did scrap around with him, in other words, but he said it was customary to send out the bills that way until collections were made.

20 Q. Hadn't he already made his collections? A. He did, but he insisted on sending it around. I had no way of preventing him from doing it. If I would give him a check for a thousand dollars, and if I would have five jobs running, and if this particular check of one thousand dollars were to be paid on one building, he would split it among the other five.

Q. But you didn't have but one job then on which he was furnishing material, did you? A. No, but I couldn't stop a man from sending me bills.

Q. But you owed him only one account, and that was on this building? A. He took over the entire account.

30 Q. I say— A. Yes, only one account for \$9,400.

Q. You owed him that at the time this mortgage was given? A. Yes.

Q. After the mortgage was given and after this check had passed, you still kept getting bills from him for the same \$9,400? A. That is right.

Q. You said nothing to him about it? A. I did tell it to him.

40 Q. What did you say? A. He said the whole thing was a fake.

Joseph A. Weissman, Complainant—Cross.

Q. What did you say? A. I told him I paid him with Mr. Cupolo's check of \$12,000.

Q. This is between the time the mortgage was given and the date the suit was brought? A. This was the time after the bankruptcy, when he stopped delivering material.

Q. How long after the money was given did the bankruptcy occur? A. The first time he instituted suit against me for claiming money was sometime in February, 1928. 10

Q. I asked you when did the bankruptcy occur, if you know? A. I don't know; I wasn't down there.

Q. Did you receive any bills from Grunt between the date of the passing of this check and the time when Cupolo went into bankruptcy? A. Yes. 20

Q. What did you say to him about it? A. I told him I paid it.

Q. What did he say? A. He said it was a fake check.

Further cross-examination by Mr. Unger:

Q. Cagan worked for you? A. He never worked for me.

Q. He works for you now? A. He doesn't. I don't know how much money a man has. 30

Q. He works for you now? A. He certainly does not.

Q. He worked with you at times? A. He sublets contracts to me. I get licensed men; he isn't. That is all since the case.

Q. You were asked by your solicitor if you had taken any steps to file any claim against Cupolo in the United States District Court, and you said "No"; isn't that so? A. Yes. 40

Joseph A. Weissman, Complainant—Cross.

Q. You got Cagan to file a claim for \$12,000 based upon this very bond against Cupolo in his bankruptcy proceeding and had your attorneys, Potter & Berry, file it? A. What right have I to collect a claim which I have been paid for?

10 Q. I am trying to find out whether this claim of \$12,000 has been put in by you in the name of Cagan? A. No, I had nothing to do with that case from the time of the bond.

Q. You didn't know that that was done? A. No, but I never had anything to do with it.

Q. You knew that Mr. Singer was attorney for Mr. Grunt? A. Yes.

20 Q. How many times did you go to his office after you had signed this bond and mortgage and while you were getting bills from Grunt? A. I never went down there.

Q. Weren't you there on numerous occasions? A. No, sir; I was only down there twice; that was when Mr. Grunt and Mr. Cupolo were there.

Q. You were only there twice? A. That is all.

Q. You are sure about that? A. Absolutely.

30 The Court: I cannot quite see as to why you took a contract to do certain plumbing work here for \$12,000 and give Grunt all you got out of the contract, namely, the full \$12,000, for a bill of \$9,400.

The Witness: Yes, but that \$9,400 was incompleated work yet.

The Court: You said it would only take about \$300 more to complete?

The Witness: No, labor. It would probably take a thousand dollars more on the material end of it.

40 The Court: That is \$13,000. That would be \$10,700. Why did you give him \$12,000 for a possible indebtedness of \$10,700?

Joseph A. Weissman, Complainant—Cross.

The Witness: He demanded a little fee for himself, to cover up all expenses.

The Court: What were you to get out of the contract?

The Witness: I was to get nothing out of it.

The Court: Why didn't you quit, then? 10

The Witness: He refused to deliver any more material.

The Court: What difference did it make to you if you were not going to get anything out of it?

The Witness: I had a contract signed with Mr. Cupolo. I couldn't back out of it. Here is a contract signed with a man. I had to go through with it. 20

Q. On the very day that you signed the bond and mortgage you conveyed the real estate you owned at 159 Isabella Avenue?

Mr. Potter: Are we trying the other case?

Mr. Unger: But I want to fit the transaction to see whether he knew the significance of the bond he signed.

The Court: I will permit the question. 30

Q. You sold to Evelyn Kraemer, your step-sister, your interest in 159 Isabella Avenue, on that day? A. That is right.

The Court: Did you sign both the bond and mortgage?

The Witness: Bond and mortgage—I don't know whether it was bond and mortgage; I know I signed the bond. Bond and mortgage, yes. 40

Michael J. Cupolo, for Complainant—Direct.

MICHAEL J. CUPOLO, sworn for complainant.

Direct examination by Mr. Potter:

10 The Court: There was never any mechanic's lien filed against this property by this man?

Mr. Berry: I don't think so.

The Court: The date of the bankruptcy hasn't appeared yet. How long after October 3?

Mr. Unger: We have the record here. I think it can be stipulated. I have a copy of the order showing that on June 28, 1928, the United States District Court set aside the mortgage.

20 The Court: I am asking for the adjudication in bankruptcy.

Q. Are you the son of James Cupolo? A. Yes, sir.

Q. Mr. James Cupolo, the owner of the property on the corner of Grove Terrace and Munn Avenue, where an apartment house was being built on October 20, 1927? A. He was.

Q. You were the attorney in fact for your father, were you not? A. Yes.

30 Q. Could your father read or write? A. Yes.

Q. Who was it that managed his business for him? A. I did.

Q. Tell us what you did for your father. A. I started off by purchasing the land, making all contracts; in fact, everything that was to be done on the job, was left to me.

Q. Did you sign contracts for your father? A. On some occasions.

40 Q. In your father's name or your name? A. My father's name.

Michael J. Cupolo, for Complainant—Direct.

Mr. Unger: I won't deny that he signed contracts for his father.

Mr. Potter: You will allow this to go in?

Mr. Unger: Yes.

Mr. Potter: I offer in evidence power of attorney from James and Clementina Cupolo to Michael Cupolo, dated August 1, 1927. 10

(Marked Exhibit C-4.)

Q. Did your father go into bankruptcy in the year 1928? A. Yes.

Q. Do you remember the date? A. No, I don't.

Q. Do you remember about when it was? A. I think the sale was some time in November; I am not sure of it.

Q. Were you familiar with the erection of the apartment house on the corner of Munn Avenue and Grove Terrace? A. I had full charge of it. 20

Q. What kind of a house was it? A. Fifteen-family apartment.

Q. Did Joe Weissman have a contract with you for the plumbing work? A. Yes.

Q. I show you this contract, Exhibit C-1, and ask you if that is the one?

Mr. Unger: I thought that was admitted. 30

A. Yes, that is the contract.

Q. Did Mr. Weissman do any extra work under that contract? A. Yes.

Q. Do you know about how much? A. The amount was \$800.

Q. Do you know how much of that work was done on October 20, 1927, approximately? A. I don't remember the date exactly, but you see the first work was in the roughing; we were stopped 40

Michael J. Cupolo, for Complainant—Direct.

on account of material. If that happened on that date, then there was possibly forty per cent, I should say, done.

Q. Forty per cent? A. That is, if it is at the roughing.

10 Q. How much of the work was ever done under that plumbing contract, do you know? A. I would say all but the setting of the radiators, and I would call that five per cent of the total amount of work.

Q. You would say about ninety-five per cent of the work was done? A. Yes.

The Court: When you say "work", do you mean labor, or labor and material?

The Witness: Completed, labor and material.

20

Q. Previous to October 20, 1927, did you pay Weissman anything under that contract? A. Not under the contract.

Q. Did you pay him anything for the extra work? A. For the extra work I gave him the payment of \$600; I think it was in two payments. I cannot remember just how I paid him, but I think I gave him \$150 and \$450.

30 Q. Did he ever make any demand on you for payment for the contract work? A. Yes.

Q. Did he stop the work under that contract? A. He didn't stop it; he stopped, due to non-delivery of material.

Q. Do you know who was delivering material on that job? A. The West Side Plumbing Supply.

Mr. Unger: That is Grunt?

The Witness: Grunt, I believe.

40 Q. Did you ask him to continue the work after he had stopped? A. Yes.

Michael J. Cupolo, for Complainant—Direct.

Q. What did he say to you? A. He told me he was ready to go ahead, but at that point, at the roughing, there was a payment due him which I couldn't make at that time, and he said unless I made arrangements with the supply company, that he couldn't work, but if I would get the material there, he would go ahead. 10

Q. Did you know Mr. Grunt at that time? A. No, I didn't.

Q. Did you make any arrangements with Mr. Grunt? A. Yes.

Q. Tell us about that. A. I went down to see Mr. Grunt. The first time he demanded money, in fact, he demanded it all in cash, so at that time I told him that I couldn't make any payments until at least the building was near completion. So that the next time I went to him, I suggested some method of security. 20

Q. Can you tell us what the dates were of these two visits to Mr. Grunt? A. No, I cannot, but they were within three or four days of each other.

Q. Do you recall the meeting in Mr. Singer's office, when your father and mother signed the mortgage of \$12,000? A. Yes.

Q. Can you with that date in mind tell us about when these two meetings with Mr. Grunt took place? A. About three weeks previous, to the best of my knowledge. 30

Q. Tell us what Mr. Grunt said at that time. A. There were three meetings with Mr. Grunt. The first time we couldn't agree, because he wanted cash; the second time, I offered him security of anything that his lawyer would suggest; so the third time, when I went back for my answer, he told me that he may consider a second mortgage, but he said that a second mortgage wouldn't do 40

Michael J. Cupolo, for Complainant—Direct.

him any good, so he said, "I will take a mortgage and I will have another man advance the money for the mortgage". That was the final settlement. That is what he settled on, and at that time I didn't know who was going to advance it.

10 Q. Who was present with you at these meetings with Mr. Grunt? A. Mr. Grunt, his son, and the stenographer, I believe, overheard it.

Q. After that last meeting with Mr. Grunt, or the third meeting with Mr. Grunt, when did you see him again? A. At the third meeting, he made an appointment to come down to Mr. Singer's office.

Q. Did you know Mr. Singer at the time? A. No.

20 Q. What did Mr. Grunt ask you to come down to Mr. Singer's office for? A. To give him an estimate of the creditors on the building.

Q. Did you go to Mr. Singer's office? A. Yes.

Q. And what occurred there? A. I signed an affidavit. I didn't sign it at the time, but I told him the debts that were on the building at that time.

Q. Who was present at that meeting? A. Mr. Singer, Mr. Grunt and myself.

30 Q. Was this mortgage discussed at that time? A. The affidavit was given to obtain the mortgage; that is what it was for. Yes, it was discussed.

Q. Did you make an affidavit? A. Yes.

Q. Can you tell us how many days before the actual signing of the bond and mortgage this was? A. I don't just recall that now, but it was within a short period of time.

40 Q. You say you signed an affidavit on that day? A. I don't remember whether I signed it or whether I had my father sign it, but I was the author of it.

Michael J. Cupolo, for Complainant—Direct.

Q. When did you next see Mr. Grunt? A. At the time of the signing of the mortgage.

Q. Who was present at that time? A. Mr. Grunt, my father, my mother, Mr. Weissman, and at that time I met Mr. Cagan.

Q. Do you remember what time of the day it was? A. In the morning, I believe. I wouldn't say; I don't remember whether it was morning or afternoon. 10

Q. Whom did you go down there with? A. My father and mother.

Q. Did you know Joe Cagan at that time? A. No.

Q. Did Mr. Grunt say anything to you about that bond and mortgage at that meeting? A. No.

Q. Did anyone say anything to you about it? A. No, other than my father and mother had to sign it. 20

Q. Who said that to them? A. Mr. Singer, I believe, told me.

Q. And was there a bond and mortgage prepared? A. You are talking about the first meeting or second meeting?

Q. I am talking about the meeting of October 20, 1927, the second meeting? A. That was the day the bond and mortgage were signed; what was the question? 30

(Last two questions read.)

A. The bond and mortgage were prepared that morning while we were there.

Q. Tell us what happened in Mr. Singer's office when that bond and mortgage was signed. A. I went out and we waited for Mr. Grunt for a while, and I believe that I went home with my mother and father and left Mr. Grunt there. That 40

Michael J. Cupolo, for Complainant—Direct.

is not quite so clear in my mind whether I went out with Mr. Grunt or not.

Q. Did you see Mr. Joe Cagan turn over a check for \$12,000 to your father? A. He turned it over to Mr. Singer.

10 Q. That was before or after the signing of the mortgage? A. After.

Q. What did Mr. Singer do with it? A. He got my father and mother to endorse it.

Q. What happened to the check then? A. He gave it to Mr. Weissman.

Q. Do you know what Mr. Weissman did with it? A. I believe he endorsed it over to Mr. Grunt.

20 Q. Did you know at that time, Mr. Cupolo, whether or not this check for \$12,000 represented Mr. Grunt's money? A. I did not.

Q. Do you know whether or not Mr. Weissman knew that? A. I do not.

Q. Did Mr. Weissman ever say anything to you about it? A. No.

Q. Whose money did you think it was? A. It was the only way that I could think at the time, that it was Mr. Cagan's money.

30 Q. Was there any arrangement made between you and Cagan or Joe Grunt previous to signing that bond and mortgage as to the expenditure of that money? A. What money do you mean?

Q. The \$12,000. A. Yes; Mr. Grunt was supposed to receive the \$12,000.

Q. When was that matter talked of to you? A. Not with Mr. Cagan; I never met him previous to the time I met him in Mr. Singer's office.

40 Q. I show you a copy of an affidavit which is unsigned, and ask you if that is the affidavit which was signed in Mr. Singer's office, either by you or by your father, at the time of signing the bond and mortgage? A. Yes.

Michael J. Cupolo, for Complainant—Direct.

Mr. Unger: Did you see him sign it?

The Witness: My father, yes. I don't remember whether I signed it or he signed it, but I know the affidavit was executed.

Mr. Unger: You read it over to him?

The Witness: It was read over to him by me, I believe. 10

Mr. Unger: No objection.

The Court: Whose affidavit does it purport to be?

Mr. Potter: James Cupolo.

The Court: Is that your name?

The Witness: That is my father's name.

The Court: All right. He says he doesn't remember whether he signed it or his father signed it.

The Witness: I remember that it was executed, as questions came up as to the amounts specified in that. We didn't want to sign it until we had all the amounts approximate, because we didn't have all the amounts at that time. 20

Mr. Potter: May I read this to your Honor?

Mr. Unger: It is pretty lengthy.

Mr. Potter: I offer this in evidence.

(Marked Exhibit C-6.) 30

Q. Do you know whether or not Joseph Weissman demanded any money from you or from your father for that contract work after October 20, 1927? A. He did not, to my knowledge.

Q. I show you an agreement, marked Exhibit C-3, signed by Joseph Grunt, and ask you if Joseph Grunt signed that in your presence? A. Yes, he did.

Q. Did Mr. Grunt ever supply the balance of 40

Michael J. Cupolo, for Complainant—Direct.

material on that job? A. He fulfilled this all up to delivering the radiators.

Q. He did not supply the radiators? A. No.

Q. When did you first find out, Mr. Cupolo, that the check for \$12,000 which was given at that time represented Mr. Grunt's money? A. At the
10 first creditors' meeting we had.

Q. Do you recall when that was? A. I don't recall the date.

Q. What were the circumstances under which you made this discovery? A. I had obtained a building loan of \$76,000 on that property, in which I gave Mr. Grunt an agreement directed to Lowy & Lowy, that they should accept no postponements of mortgages, and when we got Mr. Grunt to come down to the meeting to get his money, or
20 to take care of his second mortgage, then it came out that he did not have any second mortgage, that he didn't have any money in it; that he still claimed it on the mechanic's lien or something legally to that effect, and it upset our plans by paying out the first mortgage. We were planning to pay out the first mortgage and let Mr. Grunt stay behind the building and loan with a second.

Q. In October, 1927, how much was owing to other creditors on your father's property on Munn Avenue? A. I could give an approximate amount,
30 but not a correct amount.

Q. You could by consulting the affidavit, which has just been marked in evidence? A. No, that was at the roughing of the plumbing work, and between the giving of that affidavit and the finishing of the building to the extent that we went there were a lot of those creditors that had more money coming than they are listed for.

Q. Do you know whether or not any mechanics' liens were filed against that building? A. I believe there was.
40

Michael J. Cupolo, for Complainant—Cross.

Cross-examination by Mr. Unger:

Q. You signed this affidavit at the time your father and mother signed the bond and mortgage?

A. I don't recall whether I signed it or my father signed it.

Q. It was signed at that time? A. It was. 10

Q. According to this affidavit, there were about five mortgages on record ahead of Grunt's mortgage? A. There were three mortgages.

Q. It says here mortgage for \$8200, mortgage for \$4800, mortgage for \$7000, and mortgage for the Clinton Mortgage Company, \$40,000, that makes four? A. Yes.

Q. And another one for \$76,000, held by the Mountain Ridge Building and Loan, that would make five. A. The only way I can explain that is this: when we bought the land there was a purchase money mortgage there. 20

Q. Is it true there were five mortgages on the property at that time? A. The way you put it, yes.

Q. The way you put it in the affidavit; is that so? A. Yes.

The Court: Nothing had been advanced on the \$76,000 mortgage?

The Witness: No. 30

The Court: There was fifteen thousand and something still to be advanced on the \$40,000?

The Witness: Yes.

Q. Did you understand that Mr. Cagan was going to put \$12,000 cash into a mortgage which he was going to take on the property under those conditions at that time? A. I was under that impression. 40

Michael J. Cupolo, for Complainant—Cross.

Q. Who gave it to you? A. Mr. Singer.

Q. What did he say? A. He insisted on that affidavit; he told me that the man was investing \$12,000, because I didn't want to sign an affidavit, not being able to give accurate amounts at that time.

10 Q. You understood Cagan was putting up \$12,000 in cash? A. He didn't say that in words, but I got that impression.

Q. What did he say? A. When the question of the affidavit came up, Mr. Singer asked me to sign it; I said in doing that I was doing something that I couldn't do at that time. "Well", he said, "you know this man is putting in \$12,000; he will not put it in not knowing what he is doing."

20 Q. And that \$12,000 is not mentioned, of course, in the affidavit. The affidavit doesn't say that it is made because he is loaning \$12,000; there isn't anything in it like that? A. No, there isn't; the only reference to that, there is an item there that I owe Joseph Weissman \$12,000.

Q. At that time did you owe Weissman \$12,000? A. I did not.

30 Q. So you gave a mortgage on your property without owing \$12,000? A. On the strength of the agreement to complete the work, I gave that.

Q. At that time there was not owing to Weissman any \$12,000? A. No.

Q. How much was owing to him? A. I cannot say offhand, but I would say forty per cent of \$12,000.

Q. Forty per cent of \$12,000? A. Yes.

Q. Although you only owed forty per cent of the \$12,000, you gave a mortgage for \$12,000—your father did, to Weissman? A. Yes.

40 Q. And the check was made to your father,

Michael J. Cupolo, for Complainant—Cross.

and although he only owed forty per cent of \$12,000, he endorsed it over to Weissman? A. He did.

Q. Did you understand that Weissman was going to give you credit for \$12,000 at that time? A. I did.

Q. Then you knew that Weissman endorsed the check over to Grunt? A. I did. 10

Q. Did you know that Weissman didn't owe Grunt any \$12,000 at that time? A. I didn't.

Q. You didn't know that? A. I knew that he didn't owe it on my job.

Q. Knowing nobody who got this check, or received it, had coming to him, \$12,000 at the time, the check transaction was passed through? A. Well, Mr. Grunt had it coming. 20

Q. He didn't have it coming at that time. A. I considered at that time that the plumbing contract was paid in full.

Q. I asked you a moment ago if Grunt had \$12,000 coming to him at that time, and you said "No", as I understood. Is that so? A. No one had it coming at that time.

Q. You know what I mean; was there owing to Grunt at that time \$12,000? A. No, I didn't know what was owing Grunt.

Q. You didn't have \$12,000 coming to you? A. No. 30

Q. And Weissman didn't have \$12,000 coming to him from you? A. According to the terms of the contract he did have \$12,000.

Q. This was put through October 20, 1927, and your father went into bankruptcy on December 19, 1927, within two months? A. Something like that.

Q. Weissman wouldn't come around to your father and say he owed him any money if your 40

Michael J. Cupolo, for Complainant—Cross.

father was in bankruptcy? A. He was asked down at the meeting.

Q. You stated here that Weissman made no demand upon your father for the \$12,000. A. He didn't.

10 Q. Your father was in bankruptcy? A. Yes.

Q. He didn't owe him \$12,000 either? A. At that time?

Q. Yes. A. No.

Q. How much did he owe him? A. He owed him for the work finished on that particular building; possibly \$10,000 for the work done.

Q. When this bond and mortgage was signed, you knew your father and mother executed it, of course? A. Yes.

20 Q. Did you know that Mr. Weissman signed along with your father and mother? A. I did.

Q. Did you understand why that was done? A. No, I didn't.

Q. Wasn't there any explanation given when this was signed? A. The only explanation I asked was from Mr. Weissman himself.

Q. Was there any explanation given by anybody else outside of what Mr. Weissman told you? A. No.

30 Q. When did Mr. Weissman give you an explanation of that? A. We were waiting for something, I don't remember, I think it was out in the hall after we had signed. I asked him why he signed the bond. I said "That is unusual".

Q. What did he say? A. He said Mr. Grunt wanted it; it is only a matter of form, and it doesn't mean anything.

Q. He knew he had signed it? A. Yes.

40 Q. He said it didn't mean anything? A. He said Mr. Grunt asked him to sign, and it was just a matter of form.

Michael J. Cupolo, for Complainant—Re-direct.

Q. He didn't give any reason outside of that?

A. No.

Q. Didn't tell you that it was in order to hold him? A. The action itself told me that. I knew it from him signing it, and I wanted to know why he signed it, and he should be held.

Q. He knew he was held?

10

Mr. Potter: I object to what he knew Mr. Weissman knew.

Q. Weissman told you he knew it; you called it to his attention? A. Yes, and he said it was at Mr. Grunt's request.

Q. He didn't claim that he had been forced to sign it? A. There was nothing talked any more about it.

Q. You all wanted the work to go ahead? A. Yes.

20

Q. And in order to do that, Grunt had to put in more materials? A. Yes.

Q. And if Grunt stopped, Weissman would stop? A. At that time he wouldn't have stopped, because I would have went elsewhere to buy materials, as I threatened to do.

Re-direct examination by Mr. Potter:

Q. You say at the time of signing the bond and mortgage, Weissman's contract was forty per cent completed? A. Yes.

30

Q. You mean the actual work under the contract was forty per cent completed? A. He had just completed the roughing.

Q. How much would that entitle him to under the contract? A. You see, according to the payments, we figured the payments on about thirty-five per cent completed.

40

COMPLAINANT RESTS.

Cyrus D. Axtell, for Defendant—Direct.

The Court: There was never any mechanic's lien filed against this property by anyone?

10 Mr. Potter: I don't just remember, because everything came in a bunch. I believe there were mechanics' liens, but not at the time he executed the mortgage; there was none filed then. And after that I think there were, after the mortgage was executed, but I am only citing this from memory; I don't just remember now.

CYRUS D. AXTELL, SWORN for defendant.

20 *Direct examination by Mr. Unger:*

Q. You are secretary of the Fourteenth Ward Building and Loan Association? A. Yes.

Q. Does that association hold a mortgage on property 461-463 South Tenth Street, Newark, New Jersey? A. It does.

Q. And have you got the date of that mortgage? A. Granted in October, 1925.

Q. Who made the mortgage? A. Joseph A. Weissman and Lena Kraemer Weissman.

30 Q. Do your records show any assignment of the shares upon which the mortgage of the Building and Loan Association is based, to any purchaser at any future time? A. It shows an assignment of the interest of Joseph A. Weissman on October 30, 1928, to Abe J. Weiss.

Q. Does it show any assignment of the shares of Weissman prior to that time? A. On this property? No.

40 Q. How much is the amount of the mortgage? A. \$7,500.

Cyrus D. Axtell, for Defendant—Cross.

Q. And does your association hold a mortgage on property 159 Isabella Avenue? A. It does.

Q. And what is the date of that mortgage? A. Granted in August, 1924.

Q. And to whom? A. Joseph A. Weissman and Evelyn V. Kraemer.

Q. Do your records show that Weissman assigned the shares of stock on which that mortgage was based? A. Yes, the interest of Joseph A. Weissman was assigned on October 30, 1928, to Evelyn V. Kraemer. 10

Q. The same date as the other assignment? A. Yes.

Q. Was there any prior assignment of those shares from him according to your record? A. No.

Q. How much is the mortgage on that property? A. Ten thousand dollars. 20

Cross-examination by Mr. Potter:

Q. Can you tell us what was owing on the Building and Loan mortgage on the Tenth Street property on October 11, 1927? A. On the Tenth Street property, October, 1927—of course, the amount of the mortgage, which was \$7,500, there was a certain amount of share value accrued at that time; is that what you want? 30

Q. Yes. A. The amount of share value at that time and withdrawal value was \$964.06.

Q. Can you give us the same figures on the Isabella Avenue mortgage for the same month? A. The Isabella Avenue, on October 1, 1927, the amount of the loan was \$10,000, and the withdrawal value of the shares pledged at that time was \$1,912. 40

Benjamin Singer, for Defendant—Direct.

BENJAMIN SINGER, SWORN for defendant.

Direct examination by Mr. Unger:

Q. You are a member of the bar? A. Yes, sir.

Q. A lawyer of how long? A. Nine years.

10 Q. Did you represent the parties in this transaction at the time when the mortgage for \$12,000 and a bond for \$24,000 were drawn? A. I did.

Q. Before the papers were actually signed, had Mr. Grunt and Mr. Weissman been to see you about it? A. They were down to my office.

Q. Was anybody else with them? A. The first time, no.

Q. When was the first time? A. Several days prior to the actual signing of the mortgage.

20 Q. Will you tell us briefly what happened at that time? A. Mr. Grunt and Mr. Weissman came down and they told me that Weissman had performed certain plumbing work on a building on Grove Terrace, that Mr. Grunt had supplied certain materials there, which were not paid for; that Weissman wanted some additional materials; Mr. Grunt didn't want to sell them, unless he felt sure of receiving his money. They asked me what could be done. After asking them the condition of the building, I told them I didn't think I could advise them to do anything to secure their money, because unless it was—I did suggest to Mr. Grunt that if there was anybody that could give him a mortgage on a different piece of property, in that way he might be secured. They approached me and asked me how about a mortgage on the property, and I told them in my estimation it was worthless,—a mortgage taken on that property, considering that it was a building not yet completed.

40

Benjamin Singer, for Defendant—Direct.

Q. Which property was this? A. On the apartment house that was being worked on, and on which he was being asked to supply the material. I guess we spoke for twenty minutes to half an hour, and we couldn't dope out any method of securing the payment. It finally came down to where I told them that they had to send the material and that they had to take a mortgage. I suggested that it be done in the way that it was eventually done. 10

Q. What did you tell them? A. I said to Mr. Grunt that if this thing had to be gone through—personally, I told him, “If you can get out of it, get out of it, but if you have to continue”, I said, “the only way you can take a mortgage is to get some third party to pass a check, you financing, and then have the check go around in a circle, and finally get back to you, and then if the mortgage is contested, you have got a little bit more chance than if you actually take a mortgage for your material”. 20

Q. Did you know who the owner was? A. They told me Mr. Cupolo.

Q. Did anything come of it that day? A. Nothing.

Q. What happened after that? A. I think the next meeting Mr. Grunt brought Mr. Cupolo down for the purpose of ascertaining just how much mortgages were on the property. 30

Q. That is when that paper was signed? A. No. At that time I got information which I incorporated in that paper. We wanted to find out just how many creditors he had, how many mortgages were on the property, how much he figured it would cost to finish the building.

Q. Was it stated at that time how much was then owing to Mr. Grunt? A. I was under the im- 40

Benjamin Singer, for Defendant—Direct.

pression that Mr. Grunt had six or seven thousand dollars coming to him.

Q. Did they want more materials to go in the building? A. Yes, he wanted some four or five thousand dollars more material.

10 Q. What happened? A. After I got the information from Mr. Cupolo as to what mortgages were on there, I believe I suggested that I make some small continuation search to verify the figures and facts that he gave me, and I think I did make a continuation search, and it was arranged that I draw a mortgage under the terms that were suggested.

20 Q. How was it that Cagan came to be the mortgagee? A. At our first meeting with Mr. Weissman, at which I suggested that a third party be included in this transaction, even though I wasn't in favor of the whole thing, still I figured if a mortgage had to be taken, it would be a little safer if a third party took it.

Q. Was that explained to them? A. Mr. Grunt and Mr. Weissman, yes.

Q. Did you explain it to them? A. Yes.

Q. Did Cupolo know? A. They came down originally for me to have a mortgage given to Grunt, and I discouraged it.

30 Q. Did Cupolo know about it? A. Cupolo wasn't there the first time. The second time, I don't remember whether they spoke about the mortgage, but I do know that the first time, I told Mr. Grunt that he had better send down the owner—bring the owner down to me, so I can get some particulars as to the building.

40 Q. Come down to the time when the papers were signed, was that the second or third? A. That was the second time for Mr. Weissman, the

Benjamin Singer, for Defendant—Direct.

third time for Mr. Grunt, and the second time for Cupolo.

Q. Tell us what was said. A. This Mr. Cupolo that was on the stand brought his father down. I had a bond and mortgage drawn for \$12,000, to Cagan, and that closed the transaction in accordance with our first interview.

10

Q. Did you say that Cagan was making a loan of money to help out here, and that he was putting his own money into it? A. No, at the first meeting with Mr. Weissman, I told him that in order to make the mortgage a little bit stronger, it would be better to arrange to get a third party, to make it appear as though actual cash passed, although I believe Mr. Grunt thought he could give Mr. Cagan a check and he wouldn't even need the money, because that check would come back to him—his own check would come back to him.

20

Q. Did you tell Weissman that Cagan was putting money in the transaction and was making a loan of cash? A. No.

Q. What was said, if anything, about cancelling Weissman's debt to Grunt at that time; was that to be wiped out? A. Well, no, not wiped out. That would make it appear as though this full contract was being paid for by this check, and it was I who suggested that if the amount is wiped out, I said: "You still want to hold Weissman; we will get him on the bond", and it was on my suggestion that the bond was signed.

30

Q. And was that explained to Weissman at the time? A. Yes, he knew everything that was going on.

Q. And then was a check given by Cagan to Cupolo? A. Yes.

Q. And endorsed as has been testified to, and is this the check? A. That is the check.

40

Benjamin Singer, for Defendant—Direct.

Mr. Unger: I offer the check in evidence.

(Marked Exhibit D-1.)

10 Q. Did Cagan have \$12,000 to pay that check?
Did Cagan have any money to pay that check?
A. I don't know, but I know Mr. Grunt was going to give it to him.

Q. Do you know that it was given, or was it given while you were there? A. No.

Q. Who was Cagan? A. A relative of Mr. Grunt.

Q. Was he a man of means?

Mr. Berry: I object.

The Court: He says he doesn't know.

20 Q. You prepared a bond which went with the mortgage? A. Yes.

Q. And is this the bond? A. That is the bond.

Mr. Unger: I offer it in evidence.

(Marked Exhibit D-2.)

30 Q. Did you have charge of the matter after that relative to the mortgage in any proceeding commenced to nullify it in the United States District Court? A. Well, I attended several of the hearings in the United States District Court.

Q. Do you know what happened there? A. No, I don't know.

40 Mr. Unger: I wonder if we can admit that by an order of the United States District Court, dated June 28, 1928, this mortgage was set aside, without prejudice to a suit on the bond, and that this is a copy of the order; it is certified?

Benjamin Singer, for Defendant—Direct.

Mr. Berry: It is in the pleadings in the cause.

Mr. Unger: I offer this in evidence.

(Marked Exhibit D-3.)

Q. Mr. Singer, did you tell Cupolo at the time this affidavit was signed by his father, that he had to be careful because your client was putting \$12,000 in the transaction; that Cagan, the mortgagee, was loaning \$12,000? A. No, I didn't, but in all respects in carrying out my suggestion as given, as the mortgage had to be taken, I wanted to take all the steps that I would ordinarily take if actual cash were advanced. 10

Q. Did you at that time endeavor to obtain from any material men or laborers any postponement of liens, or stipulation, that the Cagan mortgage should be prior and paramount? A. No. 20

The Court: This order setting aside does not say why; it simply says it was invalid. Is it admitted that it was, because it was within the four months' period?

Mr. Unger: I wasn't there, but I understand that is what the Referee held.

The Court: I don't know the order simply says it is invalid, and not a lien. Was it held invalid for any other reason? I ask why it was declared invalid, if you know? Was it for any other reason than it was within the four months' period? 30

Mr. Berry: This says "failure of consideration".

The Court: Then that must be the reason. That is my mistake.

Q. Did Mr. Weissman come to see you at any time after the mortgage was signed and prior to 40

Benjamin Singer, for Defendant—Cross.

the time when suit was brought? A. I never saw Mr. Weissman after that until this morning.

10 Q. Was any complaint ever made to you representing Grunt, that this transaction wiped out the debt, and that no effort should be made to collect it against Weissman? A. No, except for appearing at one or two creditors' meetings in the Cupolo matter, I heard or did nothing in connection with this matter.

Cross-examination by Mr. Berry:

Q. Whom did you represent in this series of transactions? A. I assume that I was representing both parties, although I have been Mr. Grunt's attorney for about eight years.

20 Q. Who first approached you in the situation? A. They both came down to my office at the same time.

Q. Had you any communication by telephone or letter prior to their coming down? A. I don't recall, but I would say "No".

30 Q. How many meetings in all did you have in your office in this matter with anyone? A. The first time, Mr. Grunt and Mr. Weissman; the second time, Mr. Grunt and Mr. Cupolo; and the third time, all the parties; that is, Mr. Cagan, Mr. Grunt, Mr. Weissman, Mr. Cupolo and his father and mother.

Q. On this first occasion when Mr. Grunt and Mr. Weissman came down, who did the talking for the two? A. Both were talking.

Q. When was this first occasion? A. Several days prior to the actual signing of the paper.

Q. Would you say it was three days, or two days, or a week? A. Not more than a week; possibly three or four days.

40 Q. And the second meeting, with Mr. Grunt

Benjamin Singer, for Defendant—Cross.

and Mr. Cupolo, took place when? A. I think that was the next day after Mr. Weissman and Mr. Grunt were down.

Q. And this third time was on October 20? A. When the papers were signed.

Q. You said that they approached you and asked you about a mortgage, and you advised against it? A. Yes. 10

Q. You explained to them that the transaction would be better, did you say, if they had a third party? A. If a mortgage had to be taken for the material, then I suggested it would be a little safer; I discouraged them from it, but I told them that as between the two, the mortgage taken by a third party would hold a little more water in court, if it ever got there.

Q. In just what way would that be safer, Mr. Singer? A. I figured that if the third party could honestly show that he gave valuable consideration for the mortgage, and that money was actually used in the construction of the building, which it would show, if the check went to a materialman—in that way he might overcome anybody who might want to contest it. 20

Examination by the Court:

Q. You mean by that, it would be easier to convince the Court that something was so and so, that was not? A. I wouldn't put it that way, but I would say once we went through with it as a legitimate transaction, we could convince the Court. 30

Q. Was this a legitimate transaction? A. Well, on the face of it, it was.

Q. We are not concerned in this court with the face of things, we are concerned with actualities. A. No, I would say "No". The money was to be 40

Benjamin Singer, for Defendant—Cross.

advanced by Mr. Grunt, but we tried to make it appear as though the money was being advanced by Mr. Cagan.

Q. If the money had actually been advanced to Cagan by Grunt as a loan, it would be all right, wouldn't it? A. If the money was advanced by
10 Grunt to Cagan?

Q. If Grunt had advanced the money to Cagan, as a loan to Cagan, there would have been nothing the matter with it, would there? A. I figured if the money was actually all advanced and used in the building, he would have a much better chance than Mr. Grunt taking a mortgage.

Q. Was the money actually advanced by Grunt to Cagan as a loan? A. I didn't see that advance.

Q. How do you know it was Grunt's money, then? A. Except that at the first hearing when
20 I suggested that a mortgage be taken in the name of a third party, I told Grunt that if he would give security, and then he suggested his brother-in-law, Cagan—if he would give that third party the money, and have that third party give it to Mr. Cupolo as consideration for the mortgage, then Cupolo turn it back to Weissman, and Weissman to Grunt, I said he would get his money back. Instead of having a claim, he would have a mort-
30 gage.

Q. You don't know whether actually Grunt advanced the money or not? A. No, it wasn't done in my office, but the check from Cagan was passed in my office.

Q. Cagan was acting for Grunt, wasn't he? A. I knew that.

Q. He actually was? A. Yes.

Q. If he took a mortgage, it would be Grunt's mortgage, wouldn't it? A. That is right.

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Q. So that in the end, it would amount to exactly the same as though Grunt had taken the mortgage, wouldn't it? A. Pretty near, but it would give, I figured, a trifle better chance, than if he actually took it himself.

Q. Assume that Grunt had actually taken a mortgage from Cupolo in payment of Weissman's debt for the plumbing materials, no question but that would have satisfied Weissman's debt, is there? A. It probably would, but I figured on any contest it would be the easiest thing in the world to throw him out.

Q. As a matter of fact, it wouldn't have made a particle of difference, so far as the satisfaction of Weissman's debt was concerned, whether this mortgage was taken by Grunt or whether it was taken by Cagan, would it? A. No difference.

Q. What I am interested in knowing is, what the agreement between the parties was with respect to the giving of that mortgage, and as applied to the debt of Weissman, if you know. A. I don't know what their agreement was, except that they came down and wanted a mortgage drawn.

Further cross-examination by Mr. Berry:

Q. Mr. Singer, you said also to Mr. Grunt, "We will hold Weissman on this, too; we will get him on the bond"; did you say that before Mr. Weissman? A. Yes, sure.

Q. Mr. Weissman was present when you explained to Mr. Grunt that you were going to get him on the bond, anyway? A. Yes.

Q. You made a continuation search, you say? A. I believe I did; I am pretty sure I did.

Q. Do you know whether you did or didn't? A. I am pretty sure I did.

Benjamin Singer, for Defendant—Cross.

Q. Did you charge for it? A. I don't believe I did.

Q. You drew certain papers in this mortgage transaction, didn't you, Mr. Singer? A. I drew considerable papers at that time.

10 Q. That was for the purpose simply of making this appear to be a bona fide transaction?
A. Yes.

Q. Here is an affidavit of Mr. Cupolo's; did you dictate that? A. Yes.

Q. Here is Exhibit C-2, contract, signed by Mr. Weissman; did you dictate that? A. I think so.

Q. Do you know? A. I would say "Yes".

Q. You are very cautious about it. Do you know or don't you know? A. Yes, I dictated it.

20 Q. I show you Exhibit C-3, signed by Joe Grunt, and ask you whether you know whether you dictated that or not? A. I dictated that.

Q. I show you another paper, which runs to Lowy & Lowy, and ask you whether you dictated that in the same transaction? A. Yes.

Q. Was that executed? A. Yes.

Q. And it was sent to Lowy & Lowy? A. Yes.

Mr. Berry: I offer that in evidence.

(Marked Exhibit C-7.)

30 Mr. Unger: Signed by whom?

The Witness: By the Cupolos. I didn't read it, but I know we had a paper addressed to Lowy & Lowy.

Mr. Unger: I have no objection to it.

Q. Why? A. That was signed by Cupolo and the original sent to Lowy & Lowy.

40 Q. Mr. Singer, if you say that you carefully explained to every one that this transaction was not on the up and up, and not square from the

Benjamin Singer, for Defendant—Cross.

beginning, whom were you fooling with all of these papers?

Mr. Unger: I think that is a question of law.

The Court: Perhaps you had better say
 “Whom were you attempting to fool?” 10

Q. Whom were you attempting to fool with all these papers? A. No one, that I know of.

Examination by the Court:

Q. What was the purpose of them, if it was not intended to fool somebody as to the real nature of the transaction? A. I figured if the matter ever wound up in the bankruptcy court, on a question of possible priorities, by reason of this transaction, they might be able to prove that they are prior to anyone who made attempt to establish any priorities. There was nobody mentioned at that particular time. There might be in the future somebody who would be probably shoved behind or ahead of this mortgage. 20

Q. That wouldn't be so, however, if the real facts had been shown at the hearing in the bankruptcy court, would it? A. What real facts, may I ask? 30

Q. The real facts that this was merely a wash transaction. It wouldn't have made any difference then, would it?

Mr. Berry: And I would suggest to your Honor that it didn't.

A. I learn now that it didn't make any difference in the bankruptcy court.

Q. As I understand your testimony, it is, that the purpose of these various papers was to help 40

Benjamin Singer, for Defendant—Cross.

10 obtain for somebody, in a bankruptcy court or somewhere else, a preference over other creditors to which he was not entitled, or would not be entitled if the actual facts were brought to the attention of the Court, is that so? A. We tried to get in ahead of other creditors, in case of any trouble.

Q. You said something a moment ago about showing that this money, the \$12,000, actually went into the building; what did you mean by that?

A. I figured if the check went from the mortgagee to the owner, and then it was traced right back into some materialmen, that would be showing the money went into the building.

20 Q. What benefit was it that it be shown that the money went into the building? A. He would have that much stronger position in being able to prove that the consideration advanced on that mortgage was actually used in the building.

Q. As against whom? A. As against anybody who might subsequently on a division of any funds, contest or attempt to come in first, second or third.

30 Q. Did you have in mind other materialmen on this job at the time? A. Yes, anybody who was on the job or might come on the job later.

Q. As a matter of fact, this whole transaction was an attempt to obtain for Grunt, as a materialman, a preference over other materialmen, wasn't it? A. If you put it that way.

Q. Isn't that the fact? A. Give him a better position in the building.

40 Q. You engineered the transaction; you know what the intent was. Wasn't it the intent to obtain for Grunt a better position, or greater security, than other materialmen on the same job would have? A. That is right.

Benjamin Singer, for Defendant—Cross.

Q. That was the sole purpose of it? A. As between this transaction and the one which they suggested, where Grunt was to take a mortgage back. I figured that this might give him a little better chance.

Q. Grunt was satisfied to take this, and then if he did get this, he was willing to go on and furnish the rest of the material? A. That is right, together with Mr. Weissman's signature on the bond. 10

Q. When did the question of Mr. Weissman's signature on the bond first come up? A. Short time prior to the execution of the papers, that is, on the second visit of Mr. Weissman in my office.

Q. That is when they were all there ready to sign? A. Yes. 20

Q. How long before the bond was signed was it prepared? A. I don't remember whether I prepared the bond and mortgage the same day after Mr. Cupolo arrived and he gave me the information, or whether I prepared it on the morning that it was actually signed. 20

Q. You didn't put Weissman's name in until after it had been prepared, did you? A. That is right.

Q. So that when the bond was prepared in the first instance, there was no suggestion or intention that Weissman was to sign it? A. No. We didn't talk about that in the first instance; it was a short time before the papers were actually signed, that we spoke about having Weissman sign, and when it was decided that he would sign, I put his name in the papers. 30

Q. Just tell me what was said and who said it, about Weissman's signing the bond. A. I believe I said to Mr. Grunt, "Mr. Grunt, if you want still some more and added protection, you had better 40

Joseph Grunt, Defendant—Direct.

get Mr. Weissman to sign this bond.” He said, “Yes, I think so”, and he said, “Mr. Weissman, I want you to sign the bond”, and he said, “All right”.

Q. That is all that was said? A. That is all.

10

JOSEPH GRUNT, defendant, sworn.

Direct examination by Mr. Unger:

Q. You are Joseph Grunt? A. Yes.

Q. You trade as West Side Plumbing Supply Co.? A. Yes.

20 Q. And you got a judgment for \$9345.34 against Mr. Weissman? A. Yes.

Q. Before this bond and mortgage transaction was put through how much did Weissman owe you? A. Five or six thousand dollars; I am not sure.

Q. You furnished that on the building of Cupolo? A. No, sir; different kind of jobs.

Q. On other buildings? A. Yes.

Q. Did Weissman want you to furnish more material? A. Yes.

30 Q. Were you willing to do it? A. No, sir.

Q. What did you tell him? A. I told him I got to get some money, because his account is already too high.

Q. You then had coming to you six or seven thousand dollars, you say? A. About six thousand dollars.

Q. Did you go with Weissman to Mr. Singer's office? A. Yes.

40 Q. Did you talk over the matter with him? A. Yes.

Joseph Grunt, Defendant—Direct.

Q. After you left Mr. Singer's office, did you and Weissman and Cagan meet anywhere? A. Yes, sir.

Q. Where? A. At my office.

Q. Was Weissman there? A. Yes.

Q. Was Cagan there? A. Yes.

Q. Was Cupolo there? A. No, sir.

10

Q. Tell us what was said when you and Weissman and Cagan were together as to how this transaction was to be put through. A. That was first in Mr. Singers's office, and Mr. Singer told me and Weissman that it would be better to have a third party make that mortgage, in the third party's name, and we picked out—because Mr. Weissman knows Mr. Cagan very well, and Mr. Cagan is also my brother-in-law, we picked out Mr. Cagan; he should make that mortgage in his name, and we all decided—it was the night before; this was about October 19, in my office—we decided that the mortgage be made in Mr. Cagan's name.

20

Q. Who decided that? A. I and Mr. Weissman.

Q. And was Cagan there? A. Yes.

Q. And you were there? A. Yes.

Q. And did any of those men there understand, or did you tell them, that Cagan was putting any cash up for it? A. No, we all know that Mr. Cagan hasn't got no money, because he is only a short time in this country and is working for his living; everybody know that.

30

Q. Did Weissman know that this was not a regular transaction?

Mr. Berry: I object to what he knows.

The Court: You may test his knowledge.

Q. How do you know that Weissman knew what was going on? A. Because we was talking about it all the time. We talked a couple of days before

40

Joseph Grunt, Defendant—Direct.

about this transaction, and then on the nineteenth of October we came together and we decided we should give him a mortgage to Cupolo in Cagan's name, and I should advance the money for that mortgage to Cagan, and Cagan will give him that check back; and we came together again, and we went down to Mr. Singer's office.

10

Q. Do you know if Weissman knew that you gave Cagan the money to make his check good?

A. Positive.

Q. How do you know that? A. Because we was talking about it. I told him a dozen times, and Mr. Weissman told me many times that the only thing to do, if we want to take a mortgage, and if it is better this way, then we should take that mortgage in Mr. Cagan's name, and I should advance the money, so it should go through the bank.

20

Q. Did Cagan get a check from you for \$12,000? A. Yes.

Q. In order to make this check good? A. Yes.

Q. So that the \$12,000 which came back to you was your money? A. Yes.

Q. And you did it this way because you were advised that this was the right way to do it? A. Yes.

Q. You didn't get any money? A. No, sir.

30

Q. Do you know anything about why Weissman put his name on the bond with Cupolo and his wife? A. Yes.

Q. Why was that done? A. Because I didn't want to accept a mortgage just for payment, and of course I thought the mortgage maybe wouldn't be any good, and Mr. Weissman was good, he had a couple of houses, and I thought he is on the books anyway and I want him to secure the mortgage.

40

Q. Did you give any receipt or release to Weiss-

Joseph Grunt, Defendant—Direct.

man, telling him he was through on this transaction? A. No.

Q. He didn't owe you \$12,000 then? A. No.

Q. And you furnished the balance of the stuff after that? A. Yes,—after, I stopped it,—up to \$9400; not the full material necessary to finish the building; only a part, because Mr. Weissman told me I should not send anything more. 10

Q. Weissman stopped you eventually? A. Yes.

Q. That was when Cupolo went into bankruptcy? A. No, before, when he found out that people are going to put liens on he said he thinks he should not go ahead with the work.

Q. You never got any part of the ninety-four hundred dollars except as you got it through this check? A. No, sir.

Q. That was your own money? A. Yes, sir. 20

Q. And your mortgage was all you had in the bankruptcy court? A. Yes.

Q. You told the Referee there the transaction? A. Mr. Cagan told him because I was never called there.

Q. Did you continue to send Weissman bills after October? A. Yes.

Q. And did those bills show any credit or receipt for the mortgage? A. No, sir, no receipt, because I did not get nothing. 30

Q. And did he after that complain to you that the debt had been satisfied and that he did not owe you any money? A. No, sir.

Q. Did you tell him when he signed the bond that he was not to be held on it and that everything was settled between you or anything like that? A. I told him even if I will take the bond he is also responsible for the full amount of the money because I gave it to him and I expected he should pay it. 40

Joseph Grunt, Defendant—Direct.

Q. Why did you want to get this mortgage? A. I did not want to get the mortgage. He came to me to give him the rest of the material for the job and said, "Well, I want to have my money". He says he has not got the money, he cannot give me any, and the only thing—this was about October 10th, probably, or before—no, October 8th, and he said he has not got any money. He has got to collect some money, he has money coming from different people. I asked him where are they. He said, well, one place is—I got money, Mr. Payne, the lawyer, he is taking care of it. We went down to Payne about October 8th, and in his home in 38 or 40 Mercer Street. We went down one night, me and Mr. Weissman, and I talked to Mr. Payne about it. I asked him how soon can I get some money. He said it is a very hard job to get any money there, he thinks that the money will be lost because the people went bankrupt before they ordered that job. That was a job in Fourteenth Avenue some place. He said it looks to me you won't get no money. He said, "Well, we will see what he can do". He came down again for material for the Cupolo job. I told him he could not get nothing until I will get money. He said, "Well, I cannot get any money, all I can do is Mr. Cupolo offered me a mortgage on his house he is building, and he could get that mortgage if I would take it". I went down to Mr. Singer and told him about it. Mr. Singer said that mortgage would not be worth much because it got too much debts on the property and he is not sure that property will ever be finished, but a little bit of security probably would be. Anyway, if we would take a mortgage in a different name it would be better yet. I told Mr. Weissman I would take a mortgage and you go on the

Joseph Grunt, Defendant—Cross.

bond, then I will take the mortgage and I will deliver the material. I said probably I will help finish the building and maybe we will get some money. He was willing to go on the bond and we came together on the 19th and made up—

Q. That is what you told us about? A. Yes.

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Cross-examination by Mr. Berry:

Q. Mr. Grunt, this meeting that you say you had with Mr. Weissman and Mr. Cagan and yourself took place on what day? A. October 19, 1927.

Q. Where did it take place? A. In my office, 40 Sixteenth Avenue, Newark.

Q. What day of the week was that? A. In the evening.

Q. Who suggested at this meeting that Mr. Cagan give you a mortgage? A. Mr. Weissman and I.

20

Q. Did you both speak at the same time? A. Yes, we was talking together about it.

Q. Who first suggested it? A. I don't remember who first suggested it. We was talking about a dozen times before, and then we was all coming together to settle it up.

Q. You were talking about what a dozen times before? A. Getting the mortgage from Cupolo on Cagan's property and I advanced the money to Mr. Cagan, the man who gave me back that check.

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Q. You say you were talking about that a dozen times before? A. Yes.

Q. Where were these twelve other times? A. In the store, in the office, Mr. Weissman used to be all day long in my store when he was not working.

Q. Did some of these conversations take place the day before—or were the whole twelve conversations on the same day? A. Yes.

40

Joseph Grunt, Defendant—Cross.

Q. All on the same day? A. Yes.

Q. Did he mention it to you a dozen times before? A. Sure.

Q. When was the first time he ever mentioned it to you? A. When we went to Mr. Singer which was about the 17th or 18th, I don't remember exactly when it was. We went down to Mr. Singer's office together.

Q. When did Mr. Weissman first know that this whole transaction was false? A. Mr. Weissman came down to me three days before and he told me about that mortgage which he would get from Mr. Cupolo.

Q. He did not know about Mr. Cagan at that time, did he? A. He did not know how we should do it. That is why we went down to Mr. Singer's office.

Q. When did you first know that Mr. Cagan would do it but not put any money in it? A. When we was down to Mr. Singer's office, Mr. Singer told us to do it that way.

Q. What was the date of that? A. A day or two before we came together, probably the 17th or 18th, I don't remember exactly the date.

Q. You signed some answers to interrogatories in this action, didn't you? I show you a paper marked "Answers to Interrogatories" and I ask you if that is your signature? A. Yes.

Q. Is this your signature on this affidavit also (witness shown paper)? A. Yes.

Q. Here are some interrogatories and additional interrogatories, is that your signature? A. Yes.

Q. Is that also your signature attached to that affidavit? A. Yes.

Q. Were these questions explained to you that were asked by the lawyer? A. Little bit.

Joseph Grunt, Defendant—Cross.

Q. You were asked, were you not, in the Eighth Interrogatory: "State the time and place when and where you informed Joseph A. Weissman that the check for \$12,000 advanced by Joe Cagan on the bond and mortgage was really your own money" and your answer to that was "About October 20, 1927". At Mr. Singer's office, 164 Market Street, wasn't it? A. Yes. This was not the first time we was talking about it. 10

Q. You heard Mr. Singer testify, didn't you? A. Yes.

Q. Did Mr. Singer say that he suggested the matter to you? A. Yes.

Q. Was that so? A. Yes, Mr. Singer told me it would be better to take the mortgage in a third party's name. 20

Q. Then it was not Mr. Weissman that first suggested it, but Mr. Singer? A. Yes.

Q. Did you sign an affidavit in this action? I show you an affidavit, did you sign that affidavit? A. I don't see my signature on it.

Q. This is a copy. Did you sign the original? A. I don't read very well, if my lawyer will read it over for me then I would sign it.

Q. I show you this affidavit and ask you whether that is your signature and whether you signed that affidavit? A. That is my signature. 30

Q. This affidavit says this, and I assume if you did swear to this it is true: "The history of the situation is as follows: The defendant in the law action, Joseph A. Weissman, purchased a great quantity of plumbing materials from me which went into the erection and construction of a number of buildings in which Joseph A. Weissman had the plumbing and heating jobs, and particularly in the building which was being constructed by the 40

Joseph Grunt, Defendant—Cross.

defendant James Cupolo on Munn Avenue and Grove Terrace, Irvington, New Jersey. On or about October 18, 1927, Joseph A. Weissman owed me about \$7,000 and he came to my place of business to purchase plumbing fixtures for this Munn Avenue job. The order for the plumbing fixtures ran into several thousand dollars and I refused to furnish these fixtures unless Mr. Joseph A. Weissman would give me some money or security. Mr. Weissman then told me that Cupolo was willing to give me a mortgage to secure my money in a sum which would not only include Weissman's indebtedness to me but would also include the balance due to Weissman from Cupolo on the plumbing and heating contract which Weissman had with Cupolo, and Weissman at that time stated that in order to secure me he was willing to go on the bond accompanying the mortgage." Is that so? A. Yes.

Q. "I distinctly told Joseph A. Weissman that even if I accepted the bond and mortgage on the property and even if he would go on the bond that I would not discharge him; that he would still be liable to me on account of the merchandise which he had purchased from me." Is that so? A. Yes.

Q. See if this is so: "Then I went down to my then lawyer and as a result of my conversation with him, and having been advised that it would be stronger security for me, I had the mortgage taken in the name of my brother-in-law, Joe Cagan." Is that the occasion that you referred to in your testimony that you discussed this matter first with Mr. Singer? A. Yes, I and Mr. Weissman went down together.

Q. Your affidavit says nothing about Mr. Weissman going down with you? A. Probably the

Joseph Grunt, Defendant—Cross.

lawyer did not put it in, or I forgot to tell him, but we went down together.

Q. You did not put that in your affidavit? A. Probably we left out a word.

Q. "It is true that I gave Joe Cagan a check for \$12,000. He deposited that check and then drew his own check to the order of James Cupolo, who endorsed it to Weissman, who in turn endorsed it to me. This was really my own money and one check washed out the other. I deny that I ever contemplated any conspiracy of any kind or that I conspired to defraud or defeat the rights of creditors. At no time did I have \$12,000 due me from Joseph A. Weissman. The sum that was due me on or about October 20, 1927, was approximately \$7,000 and since then purchases were made and credits given bringing the amount up to \$9,345.34, and this entire transaction about the execution of the bond and mortgage by the Cupolos and the going on the bond by Joseph A. Weissman was the idea offered by Joseph A. Weissman. He suggested it and I adopted it." A. Yes.

Q. Did Mr. Weissman suggest to you that he go on the bond? A. Yes.

Q. Did you hear Mr. Singer's testimony; did you hear your former lawyer, Mr. Singer's testimony? A. Yes.

Q. Did you hear Mr. Singer testify as to the manner in which Mr. Weissman signed that bond? A. I told Mr. Weissman before Mr. Singer, because as much as it is I could not understand myself.

Q. Did you suggest that Mr. Weissman sign this bond to Mr. Singer? A. I told it to Mr. Weissman before we went down to Mr. Singer.

Q. Did you tell Mr. Singer that you thought it

Joseph Grunt, Defendant—Cross.

would be a good thing for Mr. Weissman to sign the bond? A. I guess I did tell him too. I don't remember exactly if Mr. Singer told me, but I said I told Mr. Singer too.

10 Q. You heard Mr. Singer say that he told you that it would be a good thing to get Weissman on this bond, didn't you hear him say that? A. Yes.

Q. Which one of you was telling the truth, you or Mr. Singer?

Mr. Unger: I object.

The Court: Objection overruled.

20 A. I don't exactly remember if Mr. Singer told me about the same thing. Probably Mr. Singer said the same thing, but when I talked to Mr. Weissman the first time I said I will accept that mortgage if you will go on the bond.

Q. (Reading) "I deny that I ever accepted the \$12,000 check referred to in complainant's bill and affidavit in full satisfaction of all the indebtedness then and there existing between complainant and myself. Complainant knew everything regarding this transaction. Especially is this so because it was the product of his own mind and he proposed it and I adopted it." A. Yes.

30 Q. Does that mean that Mr. Weissman proposed that Mr. Cagan advance the money in your name? A. No, sir.

Q. Your money in his name? A. No, this means Mr. Weissman made the offer if I shall take the mortgage and he shall go on the bond, not Mr. Cagan.

Examination by the Court:

40 Q. You say you wanted Weissman's bond because he owned a couple of houses? A. Yes.

Joseph Grunt, Defendant—Cross.

Q. You knew the bond was not a lien on those houses, didn't you? A. If he will sign the bond. I didn't understand.

Q. You said a few minutes ago that you wanted Weissman to sign the bond because you knew he owned a couple of houses? A. Yes.

Q. You knew also that the bond was not going to be a lien on those houses, you were not taking any mortgage on them? A. Yes, I would take it if he would give it to me.

Q. There had been no suggestion that you take a mortgage on them? A. No, he did not tell me he would give a mortgage—

Q. Weissman had gone with you because he owned the houses? A. Yes.

Q. And he had enough credit up to that time? A. Yes.

Q. Because he owned the houses? A. Yes.

Q. If this mortgage was not to pay Weissman's debt, or the debt which he still owed you, the debt which he had contracted would still be owing to you, wouldn't it? A. Pardon me, I cannot understand—

Q. If this mortgage which you were taken, given to cancel Weissman's debt, then he would still owe you the \$7,000 or whatever amount he owed you? A. Yes.

Q. Then he would be just as responsible for that \$7,000? A. Yes.

Q. So long as he owned these houses? A. Yes.

Q. As he would have been if he signed the bond, wouldn't he? A. Yes.

Q. You did not get any additional security by his signing the bond, did you? A. But I got security to deliver the rest of the material and I had two mortgages, I had his mortgage and I had him.

Joseph Grunt, Defendant—Cross.

Q. It was not a mortgage on his property, was it? A. No.

Q. What good did it do you for him to sign the bond? A. In case I thought I would not get paid there he will be responsible for it anyway.

10 Q. If this mortgage was not to pay the debt he would still be responsible on the account, wouldn't he? A. Yes, but this way I had at least security and maybe I will be able to get my money from Cupolo.

20 Q. Isn't the fact of the matter just exactly what Mr. Singer testified, that you never had any idea of getting a bond from Weissman and that you were about ready to close this transaction and then he suggested to you that it might be just as well to have Weissman on the bond, isn't that the fact? A. No, sir.

Q. You say that is not the fact? A. This was in my mind before Mr. Singer ever told me it.

Q. Why didn't you tell Singer in the first place to draw the bond from Weissman as well as from Cupolo? A. I probably forgot to tell him about it.

 AFTER RECESS.

30

Cross-examination by Mr. Berry:

Q. And you say in the affidavit that I was reading to you: "I deny that I ever accepted the \$12,000 check referred to in complainant's bill and affidavit in full satisfaction of all indebtedness then and there existing between complainant and myself. Complainant knew everything regarding this transaction, and especially is this so because it was the product of his own mind and he proposed it and I adopted it." Just what was

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Joseph Grunt, Defendant—Cross.

the product of Mr. Weissman's mind? A. He told me about that mortgage, and he told me I can get a mortgage from Cupolo; and I said: "I think the mortgage is not good enough, I don't think that mortgage worth all the money."

Q. That is what you mean, then, in this affidavit by the product of his own mind? A. Yes. 10

Q. That has nothing to do with knowledge on Mr. Weissman's part that the money that actually was advanced was your money? A. We went down to Mr. Singer's office, and he told us that we should do it this way. Then we accepted it.

Q. Did you mean that is a product of his own mind? A. No.

Q. You did not mean that Mr. Weissman suggested that this whole transaction be a washed one? A. No. What do you mean? 20

Q. Mr. Weissman proposed that Mr. Cagan advance this money, did he? A. We didn't talk about it, but we went down to Mr. Singer's office, and Mr. Singer was given the idea, and we both decided to do it.

Q. Then why did you say that "complainant knew everything regarding this transaction, especially is this so because it was the product of his own mind and he proposed it and I adopted it"? A. You mean about the mortgage? 30

Q. You are speaking here about this very suit. You are speaking here about his knowledge, are you not? A. I am speaking about the mortgage. He told me he can get the mortgage from Cupolo, and I told him all right.

Q. Listen very carefully once more; the affidavit which you signed, it is the eighth paragraph: "I deny that I ever accepted the \$12,000 check referred to in complainant's bill and affidavit in full satisfaction of all indebtedness then 40

Joseph Grunt, Defendant—Cross.

and there existing between the complainant and myself. The complainant knew everything regarding this transaction and especially is this so because it was the product of his own mind and he proposed it and I adopted it." Does that mean that Mr. Weissman suggested to you that you advance your own money on the mortgage through Mr. Cagan? A. Well, I don't know what that means.

Q. You don't know what this affidavit means that you signed? A. This affidavit means about the mortgage, but not about Cagan's transaction.

Q. But the affidavit says that Mr. Weissman knew personally? A. Knew about the mortgage.

Q. He knew there was a mortgage? A. He knew that Mr. Cagan was taking my money and he is approximately just a dummy in that transaction.

Q. Is that what Mr. Weissman suggested? A. He didn't tell me before we went down to Mr. Singer.

Q. Then it is not the product of his own mind? A. I mean about the mortgage.

Q. Did you attend a meeting of creditors in the Bankruptcy Court in the Cupolo transaction? A. I was there.

Q. Were you there once or more than once? A. I don't remember.

Q. Do you remember whether you were there once? A. Yes.

Q. Where did you go? A. I guess in the Commerce Building.

Q. Did you go alone? A. Yes.

Q. Why did you go? A. I just went to hear what was going on.

Q. Were you a creditor? A. Certainly I was a creditor.

Joseph Grunt, Defendant—Cross.

Q. A creditor of Mr. Cupolo? A. I was a creditor of Mr. Weissman.

Q. Mr. Weissman was not in bankruptcy? A. But I had money coming.

Q. From whom? A. From Cupolo's job and from Mr. Weissman.

Q. Then because you were a creditor of Mr. Weissman you attended a bankruptcy meeting of Mr. Cupolo? A. Certainly I went down to see and hear what was going on. 10

Q. You are the present owner of this bond and mortgage? A. I think so.

Q. Don't you know? A. I don't remember.

Q. You don't remember whether you hold it or not? A. I think I do.

Q. Has the bond ever been assigned to you? A. Yes. 20

Q. Are you sure of that? A. The bond?

Q. Yes. A. I am not sure about it, but I think it was.

Q. When did you go to the bankruptcy meeting of Mr. Cupolo? A. I don't remember when it was, but I was there.

Q. Was it in the spring of last year? A. Yes, in the spring of last year.

Q. Before the summer? A. Yes.

Q. When was the assignment of the bond executed by Mr. Cupolo and his wife and Mr. Weissman to Cagan—to you? A. In October. 30

Q. October of what year? A. 1927.

Q. When were you assigned Mr. Cagan's interest in the bond? A. Cagan to me?

Q. Yes. A. He assigned to me after some time when we started suit, in February some time I guess—in June, I guess.

Q. Is that assignment in writing? A. Never was. 40

Joseph Grunt, Defendant—Cross.

Q. Are you sure now what month it was? A. Yes, I think it was in June.

Q. You have answered that in the interrogatories, haven't you? You say the assignment took place June 28, 1928? A. Maybe, I don't remember exactly just now.

10 Q. That was after you attended the Cupolo bankruptcy meeting? A. Yes.

Q. What did you pay Mr. Cagan for the assignment to you? A. Nothing, because it was actually mine already.

Q. Was that assignment recorded? A. I don't think so, I am not sure, I don't remember.

20 Q. On October 20th was Mr. Benjamin Singer representing you as counsel in the transaction which forms the subject-matter of this suit? A. Yes.

30 Q. In the affidavit which I have just read to you you state that this whole matter was a matter of knowledge to Mr. Weissman because it was the product of his own mind. The Eighth interrogatory that was served on you "State the time and place when and where you informed Joseph A. Weissman that the check for \$12,000 advanced by Joe Cagan on the bond and mortgage was really your own money," and you said "About October 20, 1927, at Mr. Singer's office, 164 Market Street". Which of those two are true? If Mr. Weissman was the originator of this scheme you never informed him, isn't that so? A. I never said Mr. Weissman was the originator of this scheme. The mortgage given to Mr. Cagan was recorded by Mr. Singer. We were together and decided to do it anyway.

40 Q. Then your statement in this affidavit that he knew everything regarding this transaction and especially is this so because it was the product

Joseph Grunt, Defendant—Cross.

of his own mind, and he proposed it and I adopted it, is not true?

The Court: Mr. Berry, let's don't spend so much time on that. You have already asked him that question half a dozen times and he said the language referring to the mortgage was true, that that was Mr. Weissman's suggestion, but the transaction which resulted, or the suggestion which had resulted in the drawing of the mortgage from Cagan to him was Mr. Singer's suggestion and not Mr. Weissman's. He had nothing to do with it. 10

Mr. Berry: I would like at this time to offer in evidence a certified copy of the mortgage that was filed at that time. 20

(Marked Exhibit C-8.)

I call your attention to this portion of the mortgage reading as follows: "This mortgage is anterior to a mortgage in the sum of \$8,200; a mortgage in the sum of \$4,800; a mortgage in the sum of \$7,000; a construction mortgage in the sum of \$40,000; and a building and loan mortgage in the sum of \$76,000; it being represented that no part of the said building and loan mortgage has as yet been paid on account of said mortgage, and that at the time a payment is received on account of said mortgage, the mortgage for \$8,200; \$4,800; \$7,000 and \$40,000 will be paid off and cancelled, and not postponed, so that the within mortgage, at the time a first payment is received on account of the building and loan mortgage, will become a second mortgage lien, and that from the proceeds of said first pay- 30 40

Joseph Grunt, Defendant—Cross.

10 ment from said building and loan mortgage, the sum of \$6,000 will be paid on account of the principal of the within mortgage, and the balance remaining thereon, will be paid from the second and final payment from the building and loan, it being understood, that said second payment will be at least \$10,000, and that in any event the entire principal sum of the within mortgage, and the entire balance remaining thereon will be due within sixty days from date hereof, with interest to date of payment. It is expressly understood and agreed between the parties, that the proceeds of the within mortgage will be used by the parties of the first part herein, to pay the plumber for labor and material in the erection and construction of the fifteen-family apartment house being erected on the premises mentioned herein-
20 above.”

Q. Have you ever taken any second mortgages before? A. No, sir.

Q. You have never held any second mortgages before? A. No.

30 Q. Have you ever held any mortgages at all? A. No, sir.

Q. You understand my question? A. Never had any mortgages.

Q. On any property anywhere in New Jersey? A. I had once, I made a mistake.

Q. You have no other mortgages now? A. I got one now.

40 Q. Do you know the custom of second mortgages, as to whether or not generally there is a bonus paid for second mortgage money? A. I know that there is a bonus paid.

Joseph Grunt, Defendant—Re-direct.

Q. Isn't it true that the excess over and above what you were going to furnish to the building owned by Mr. Cupolo in this instance was a bonus?

A. Just a second, explain to me again.

Q. In this particular transaction isn't it true that the money in excess of what Mr. Weissman owed to you and the amount of the mortgage was a bonus to you for the acceptance of the mortgage? A. Positively not. 10

Mr. Unger: That contention is nowhere claimed in the papers or in the defenses.

Re-direct examination by Mr. Unger:

Q. You say Cagan assigned this bond to you? A. Yes. 20

Q. Is that Cagan's signature (witness shown paper)? A. I think so. 20

Q. You got that paper, did you? A. Yes.

Q. You received this assignment of the bond from Cagan? A. Yes.

Q. Who is Morris Grunt? A. My son.

Mr. Unger: I offer in evidence assignment from Joe Cagan to Joseph Grunt, dated June 26, 1928.

The Court: That is the date which is in the affidavit? 30

Mr. Berry: Yes.

(Assignment marked Exhibit D-5.)

Mr. Unger: I would like to have an admission to save the necessity of proving it, that Joe Cagan filed a proof of claim for \$12,000 against the James Cupolo Estate in the Bankruptcy Court and that it was filed by Mr. Berry's office. 40

Colloquy.

Mr. Berry: I had an idea at the beginning of this case that the question at issue here was the knowledge of Weissman.

10 The Court: I have entirely changed my mind on that question. I don't think it makes a whole lot of difference. I mean the knowledge of Weissman with respect to the advance of cash. I don't think it makes a whole lot of difference now for this reason, it is quite obvious that Cagan was a dummy acting for Grunt and whatever Cagan did he did for Grunt. The real question here now as I see it, in view of the testimony, is whether or not the mortgage was taken in payment, and that is the whole question.

20 Mr. Unger: We rest.

I have some more evidence which is a repetition of the circumstances under which the bond and mortgage and the note and check were given, by other people present, but which all is in corroboration of what Mr. Grunt has said. If you want more testimony on that point, I will give it to you.

30 The Court: I don't think so. That was not his idea, it was Singer's idea and carried out by Singer's advice, and it does not make any difference whether he knew or he didn't know. The purpose was to take a mortgage on this property, either as payment or as security for this debt, and the additional debt that was to be incurred by reason of the furnishing of some additional material, and that the proceeds of that mortgage should be applied to the payment for the plumbing materials. It is quite obvious that there never were any proceeds

40

Colloquy.

of the mortgage. The cash transaction was all water. It did not amount to anything. It is just a question of whether the mortgage was taken in payment or whether it was not.

Mr. Unger: I want to offer in evidence all the papers in the suit in the Essex County Circuit Court in the case of Joseph Grunt against Joseph Weissman, in which judgment for \$9,515.73 was entered on November 14, 1928. 10

The Court: The other case tried before the Court without a jury?

Mr. Unger: No, it was tried before the Court on a motion to strike out the defenses and enter summary judgment, and I have a transcript here which shows the pleadings. 20

The Court: There was no testimony taken?

Mr. Unger: The judgment was obtained in that case after the answer had been put in, upon the plaintiff's motion to strike the answer on the ground that it was sham and frivolous and did not state a defense, and the affidavits in support and opposition to the motion appear in the papers and the order of the Court entered thereon. I filed a bill here which sets up that the case is *res adjudicata* so far as the judgment and the debt is concerned by the findings in the Circuit Court. 30

The Court: That is what I am trying to get at, whether it is or is not. What was the judgment entered on?

Mr. Berry: I cannot understand it.

Mr. Unger: Mr. Berry was not there and 40

Colloquy.

10 naturally cannot understand it. But I told the Court there, as I tell your Honor here now, that if the bond is not good the book account exists, and if the book account is brought out the bond exists, and there being accounts to support it, there must be a judgment on one, and the Court agreed with me.

The Court: There must be a judgment on one unless the debt had been paid. Was the issue raised in the Circuit Court as to whether or not the debt was paid by the mortgage?

20 Mr. Unger: I say that the pleadings and the affidavit in the case raise it squarely and that everything that is in this case and everything that is in the bill in this case upon which the Court is asked to grant relief is in the defense in the law court and in the affidavits filed in support of the defenses and that the law court considered every one of these defenses and struck the answer and that this Court is now asked practically to sit in review upon the judgment of the law court.

30 The Court: Aside from that, if you obtain relief here you must obtain relief on the ground that this mortgage was in payment of the debt, must you not?

Mr. Berry: That is right.

The Court: Or on the ground that the signature to the bond was procured by fraud, which you allege in the bill. It must be one of those things.

Mr. Berry: That is right.

40 The Court: The burden is on you in either event, isn't it?

Colloquy.

Mr. Berry: It is.

The Court: I must confess that I don't think you have sustained the burden. I think this is a very peculiar transaction. It is hard for me to put my finger on the man who is telling the most lies. I say "most lies" and I say it advisedly. If I could pick that man out then I would know who to believe, but I cannot do it, and it is not up to me to guess at the proper result here. Unless I am convinced by the weight of the evidence, the probability of the evidence, that this was a payment, or unless I am convinced that the signature to the bond was procured by fraud, and that conviction is obtained by sufficient evidence to that end, I would not be warranted in advising the issuance of an injunction to prevent the issuance of an execution on the judgment at law, and that is what I am asked to do here. The purpose of delay in the law court in the first place was to give you an opportunity to file a bill in this court. That was done. Then I understand that the matter was held open for a time, then finally judgment was entered with the idea of perfecting the lien pending disposition of this question of fraud in this court. Is that the situation?

Mr. Berry: That is it.

The Court: I am perfectly free to admit that I don't like the looks of this transaction from any standpoint. At the same time the burden is on you, and what is there for me to base a decision on except the bare word of Weissman himself? There is not another single thing.

Joe Cagan, for Complainant—Direct.

Mr. Berry: And Mr. Cupolo.

10 The Court: Mr. Cupolo's testimony does not go to the point at all. Mr. Cupolo only knows that he was asked to give a mortgage on account of this contract which Weissman was to turn over to Grunt in order to satisfy him. The real point is, was it in payment or was it not? Weissman said that it was payment and Grunt says that it was not.

Mr. Berry: I think they should be left in the same—

20 The Court: That is what I am doing when I refuse to give you a decree. I leave you right where I find you. That does not mean that I can restrain a law court from proceeding on the judgment.

If you have any rebuttal evidence you may put it in, but I do not understand you have any, or I would not have said what I have said.

Mr. Berry: I would like to examine this Mr. Cagan. I thought he would be produced here.

Mr. Unger: He is here.

30

JOE CAGAN, sworn in rebuttal for complainant.

Direct examination by Mr. Berry:

Q. Are you the mortgagee of property owned by Mr. Cupolo? A. I gave a mortgage to Mr. Cupolo of \$12,000.

40 Q. When did you first hear anything about this transaction? A. This was October, 1927. Mr. Grunt was down in the office of Mr. Weissman and

Joe Cagan, for Complainant—Cross.

he told me he would give me a check for \$12,000 and I gave him a check for \$12,000 in exchange for the mortgage.

Q. What did you do after that? A. After that it was phony—Mr. Grunt come down about ten o'clock to the office of Lawyer Singer, in Market Street. I go down and find Joe Weissman and Mr. Grunt and Cupolo there, and I signed the check and I signed the mortgage, that is all.

10

Q. Where did you get the check, did you have a checking account? A. I got a checking account.

Q. When did you put the money in the bank? A. A couple of days after Mr. Grunt gave me a check.

Q. Did you give the check to him before you put the money in the bank? A. I gave it before.

20

Q. You gave a check before you put the money in the bank? A. I signed the check before I put Mr. Grunt's check in the bank, because the check was coming back to Mr. Grunt. Mr. Grunt didn't deposit the check, but he gave me his check.

Q. How long have you known Mr. Weissman? A. I have known him since I came to this country.

Q. Who suggested this whole thing? A. I know Mr. Grunt called me down to his office. I don't know who suggested it. There was there Mr. Weissman, Mr. Grunt and his son, that is all I know of.

30

Q. There was Mr. Weissman and Mr. Grunt? A. And Mr. Morris Grunt, his son.

Q. He was there, too? A. Yes, in Mr. Grunt's office.

Cross-examination by Mr. Unger:

Q. Is this the check which Joe Grunt gave to you? A. This is the check which Mr. Grunt gave to me, and this is my signature on the back.

40

Joe Cagan, for Complainant—Direct.

Q. You put it in the bank? A. Yes, the Market National Bank.

Q. Then you gave your check back? A. Yes.

Q. And you gave this check here? A. Yes.

Q. Did you have \$12,000 in the bank? A. No.

10 Q. You drew against this check? A. I deposited this check. Mr. Grunt deposited it.

Mr. Unger: I offer in evidence check for \$12,000.

(Marked Exhibit D-6.)

Further direct examination by Mr. Berry:

20 Q. Are you perfectly sure that Mr. Weissman knew all about the transaction? A. I think everybody who knows me in this country knows I have not got \$12,000, because if it was the case, I was only three years in this country, and I did not have \$12,000.

Q. You say Mr. Weissman did not know about it? A. I said everybody knows I could not have \$12,000.

Mr. Unger: You say Weissman was there that night?

30 The Witness: Yes, Mr. Weissman, Mr. Grunt and Mr. Morris Grunt.

Joseph A. Weissman, Complainant—Direct.

JOSEPH A. WEISSMAN, the complainant, recalled in rebuttal for complainant.

Direct examination by Mr. Berry:

Q. Did you file any proof of claim in bankruptcy— A. No, sir. 10

Q. Against Cupolo? A. No.

Q. Why not? A. Because I thought I had been paid.

Q. You heard Mr. Singer testify that you were in his office with Mr. Grunt some time prior to the transaction, on the 20th; that there was just you, Mr. Grunt and Mr. Singer there. Is that so? A. No, sir; I never was down there without Mr. Cupolo being present.

Q. You heard Mr. Grunt testify that you and he met on the 19th in his office and that there you discussed this transaction. Is that so? A. We never discussed any of it. 20

Q. Were you in his office at that time? A. I picked him up and we went down to Singer's office.

Q. Were you there on the evening of the 19th? A. Yes.

Q. Did you have any discussion with Mr. Grunt, Mr. Cagan and Mr. Morris Grunt? A. With Mr. Cagan I never spoke, and as far as Mr. Grunt's son, I never spoke about it, and Mr. Grunt here, it was about three or four in the afternoon when we went down to Singer's office. It was only on the 19th or 20th was the only time I was ever in Singer's office. 30

Q. And did you always after the signing of that bond and mortgage rely on that as payment of the plumbing account? A. I did. 40

Colloquy.

The Court: The evidence is plain as to just what happened, as to the method of handling this transaction. It was not the thought of Weissman or the thought of Grunt, it was entirely Singer's idea and was an attempt to cover up an effort to obtain a preference over some others who might have a claim against the property if things did not go just right. There is no question about that in my mind at all. I think that Weissman knew when it was finally carried out that that is the way that it was being done. I think he knew who the money came from, but I don't think it makes much difference if he did, so far as his rights were concerned. I did at the beginning of this case, but I don't now, because I think the real question is whether the mortgage was given in payment, and I don't care whether it was given to Cagan or whether it was given to Grunt, because Cagan was Grunt for all the purposes of this case anyway, and whatever Cagan did Grunt did, so that if the mortgage was actually taken in payment, then that settles it, but what evidence have I that it was taken in payment? Nothing except Weissman's word, and Grunt's word is the opposite, and the fact that Weissman signed the bond is quite a controlling circumstance here, particularly in view of the fact that he could not explain why Grunt was getting a \$12,000 mortgage for a \$9,000 debt, or really, a \$7,000 debt at that time. That inability to explain that situation satisfactorily to me convinces me that Weissman is not telling all he knows about this case. I cannot guess, and I will not attempt to do so. The burden is on him.

Your application was first to restrain a suit at law?

Mr. Berry: Yes.

Colloquy.

The Court: Then the answer having been stricken, judgment was entered, it did not make any difference why, for the purpose of the record. Now your suit resolves itself into one to restrain the execution of that judgment.

Mr. Berry: It was not that originally.

The Court: What difference does it make which it is? Suppose the judgment had not been entered and suppose I announced, as I have now, my intention to dismiss the bill, there would be no restraint on the court of law, would there, for the entry of the judgment, and how could you prevent it, the answer having been stricken?

10

Mr. Berry: I was assuming that by leaving the parties in the situation they were—

The Court: You did not begin quite quick enough for that. If you had begun before the suit at law was begun or when it was begun, you might have gotten somewhere on it, but you began too late. I will say again that I don't like the looks of this transaction, but I cannot guess one party out of court and the other in, so I will dismiss the bill.

20

30

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Exhibit C-1.

THIS AGREEMENT

Made the eleventh day of August One Thousand Nine Hundred and twenty seven

10 BETWEEN

JAMES CUPOLO,

of the City of Newark County of Essex and State of New Jersey party of the first part;

AND

JOSEPH A. WEISSMAN,

of the City of Newark County of Essex and State of New Jersey party of the second part:

20 WITNESSETH, FIRST, The said party of the second part does hereby for himself, his heirs, executors and administrators, covenant, promise and agree to and with the said party of the first part; his executors, administrators or assigns, that he said party of the second part his heirs executors or administrators shall and will, for the consideration hereinafter mentioned, on or before the first day of November, 1927 well and sufficiently erect and finish the new Building sixteen family apartment house to be located at the southwest corner of Grove Terrace and Munn Avenue Irvington, New Jersey, agreeably to the Drawings and Specifications made by hereto attached Architect, and signed by the said parties within the time aforesaid, in a good workmanlike and substantial manner, under the direction of the said

30 to be testified by a writing, or certificate, under the hand of the said

and also, shall and will find and provide such good, proper and sufficient materials of all kinds whatsoever, as shall be proper and sufficient for the

40 completing and finishing all the plumbing and

Exhibit C-1.

heating work and other works of the said Building mentioned in the said Specification for the sum of Twelve Thousand Dollars (\$12,000) Dollars,

AND the said party of the first part, does hereby, for himself, his heirs, executors and administrators, covenant, promise and agree, to and with the said party of the second part, his executors and administrators, that he the said party of the first part, executors or administrators, shall and will, in consideration of the covenants and agreements being strictly performed and kept by the said party of the second part as specified, well and truly pay, or cause to be paid unto the said party of the second part, his executors, administrators or assigns, the sum of Twelve Thousand Dollars (\$12,000) Dollars, lawful money of the United States of America, in manner following:

After roughing and plumbing is set.....	\$1500.00
After setting trim.....	\$3500.00
After plumbing fixtures are set.....	\$3000.00
Upon completion of entire work.....	\$4000.00
	<hr/>
	\$12000.00

SPECIFICATIONS

Sixteen one piece sink and tray combinations.
Fifty two inch iron enamel with round rim. Faucets for hot and cold one spout complete.

Sixteen bath tubs Recess' style concealed waste and concealed shower complete size 5' 6".

Sixteen pedestal basins 20" x 24" with unique waste and faucets complete.

Sixteen porcelain closet combinations and white seats.

Exhibit C-1.

Heating system according to plans, and all other connections required.

PROVIDED, That in each of the said cases a certificate shall be produced, signed by the said
 10 to the effect that the work is done in accordance with said Drawings and Specifications, said certificate, however, in no way lessening the total and final responsibility of the Contractor; neither shall it exempt the Contractor from liability to replace work if it be afterwards discovered to have been done ill or not according to the Drawings and Specifications either in execution or materials.

AND IT IS HEREBY FURTHER AGREED BY AND BETWEEN
 20 THE SAID PARTIES:

FIRST:—The Architect shall furnish to the Contractor all drawings or explanations of drawings as may be necessary to illustrate the work to be done, and the Contractor shall conform to the same as part of this contract, so far as they may be consistent with the original Drawings and Specifications, and all plans must be furnished to the Contractor at the time of signing contract.

30 SECOND:—The Contractor, at his own proper costs and charges, to provide all manner of materials and labor, of every description, for the due performance of the work as per Specifications herewith submitted.

40 THIRD:—Should the Owner at any time during the progress of the said BUILDING request any alterations, deviations, additions or omissions from the said contract, shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the contract, as the case may be, by a fair and reasonable valuation.

Exhibit C-1.

FOURTH:—Should the Contractor, at any time during the progress of said work, refuse or neglect to supply a sufficiency of materials or workmen, the Owner shall have power to provide materials and workmen, after three days' notice in writing being given, to finish the said works, and the expense shall be deducted from the amount of the contract. 10

FIFTH:—Should any dispute arise respecting the true construction or meaning of the Drawings or Specifications, the same shall be decided by and decision shall be final and conclusive; but should any dispute arise respecting the true value of the extra work, or of the work omitted, the same shall be valued by two competent persons—one employed by the Owner, and the other by the Contractor, and those two shall have power to name an umpire, whose decision shall be binding on all parties. 20

SIXTH:—The Owner shall not in any manner, be answerable or accountable for any loss or damage that shall or may happen to the said work, or any part or parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the same. 30

SEVENTH:—No alterations or extra work shall be done without a written order from the Owner approved by the and an express agreement in writing as to the cost.

EIGHTH:—The Owner will insure the building in the joint names and interest of and the Contractor against loss or damage by fire, in such sums as may from time to time be agreed upon with the Contractor to cover work and ma- 40

Exhibit C-1.

materials used in the building and around the premises, and the policies to be made payable to Owner and Contractor, as their interests may appear. The Contractor shall see to it that this insurance is satisfactorily effected.

- 10 NINTH:—All work and materials delivered on the premises to form part of the work, whether actually incorporated therein or not, are to be considered the property of the Contractor until the same shall have been paid for, in accordance with the terms hereof; unless said Contractor shall, after receiving a payment thereon, have refused to proceed with the work in accordance with the terms of this contract. And the Contractor shall have free access at all reasonable
- 20 times to the said material and to the said work until the same shall have been fully paid for as provided for by this contract. The Contractor shall remove all surplus material after the completion of the work.

TENTH:—Neither the Contractor nor the shall, without the written consent of the Owner, have authority to vary, alter, amend or change this contract, or any of the Plans or Specifications herein referred to.

- 30 ELEVENTH:—Whenever building permits shall be required by any municipality, or be necessary under any law, ordinance or other regulation, to the erection, alteration or repair of any building, the same shall be procured by the owner.

- 40 TWELFTH:—That the said Contractor shall produce and deliver to the Owner the release of all persons who may then have furnished materials or done work on said building, who may have a

Exhibit C-1.

lien on such building and the land whereon the same is erected, releasing their lien on said building and the land whereon the same is erected, with an affidavit by said Contractor thereto annexed, that no person or persons other than those named in said release have any lien upon such building or land for work done or materials furnished for the erection thereof according to the statute in such case made and provided. 10

IN WITNESS WHEREOF, the said parties hereto have hereunto set their hands and seals the day and year first above written.

JAMES CUPOLO (LS)

JOSEPH A. WEISSMAN (LS)

Signed, Sealed and Delivered }
in the presence of } 20

HARRY A. PINE

(Endorsed)

CONTRACT
FOR BUILDING

JAMES CUPOLO,
with 30
JOSEPH A. WEISSMAN,

Dated August 11th 1927

Filed 19

Law Offices
HARRY A. PINE
17 Academy Street
Newark, N. J. 40

Exhibit C-2.

IN CONSIDERATION of the sum of One Dollar (\$1.00) and other valuable consideration lawful money of the United States of America, to me in hand paid by JAMES CUPOLO, I hereby agree to complete the plumbing and steam fitting on premises Southwest Corner of Munn Avenue and Grove Terrace, Irvington, New Jersey, according to contract entered into between JAMES CUPOLO and myself, provided that no trouble arises on said job through no fault of mine, wherein it is impossible to complete said work.

Signed

JOSEPH A. WEISSMAN

Dated October 20th, 1927.

20

Exhibit C-3.

IN CONSIDERATION of the sum of One Dollar (\$1.00) and other valuable consideration lawful money of the United States of America, to me in hand paid by JAMES CUPOLO, I hereby guaranty that the plumbing and heating fixtures as mentioned in a agreement between JOSEPH WEISSMAN and JAMES CUPOLO will be delivered to the premises Southwest Corner of Munn Avenue and Grove Terrace, Irvington, New Jersey, provided nothing unforeseen occurs wherein it becomes impossible to deliver said fixtures, and provided further that no bankruptcy or receiver has been appointed, nor trouble with creditors arises, nor any other condition arises where it may be a risk to deliver such fixtures.

Signed

JOE GRUNT

40 Dated October 20, 1927.

Exhibit C-4.

KNOW ALL MEN, that we, JAMES CUPOLO and CLEMENTINA CUPOLO residing in the City of Newark, County of Essex and State of New Jersey, do hereby constitute and appoint MICHAEL CUPOLO, residing in the City of Newark, County of Essex and State of New Jersey, our true and lawful attorney, for us and in our names, 10

(a) To take possession and enter into our premises located on the southwest corner of Grove Terrace and Munn Avenue in the Town of Irvington, County of Essex and State of New Jersey, and in our names to erect a building or buildings thereon, and to enter into all contracts or agreements necessary and incidental for the erection of a building or buildings upon said premises; 20

(b) In our names to ask, collect, and receive any rents, profits, or income of any such lands, buildings, houses, or other structures, or any part or parts, thereof; and

(c) To make, execute and deliver any deed, mortgage, or lease, in respect of any such lands, buildings, houses or other structures, or any part or parts, thereof; and

(d) To manage any of such lands and to manage, repair, rebuild or reconstruct, any buildings, houses, or other structures or any part or parts thereof, which may now, or hereafter, be erected upon any of such lands, and 30

(e) To hire and pay any clerks, workmen, and others, necessary to, or useful in and about, the exercise of the foregoing powers, or any of them; and

Exhibit C-4.

10 (f) In such manner as our said attorney shall think fit, to begin, prosecute, adjust, compromise, submit to arbitration, and settle, all suits, or proceedings which hereafter shall, or may, be pending between ourselves and any person, firm or corporation, in respect of or arising out of any of the subject matters of these presents, or in respect of any of the powers herein conferred upon our said attorney; and

20 (g) Generally to do, execute and perform any other act, matter, or thing, whatsoever, which, in the opinion of our said attorney, ought to be done, executed or performed, in and about the premises, as fully as we, the said James Cupolo and Clementina Cupolo, could do, if personally present, and to sign our names with like effect as if we had signed the same.

And we, the said James Cupolo and Clementina Cupolo, do hereby ratify and confirm all that our said attorney shall lawfully do, or cause to be done, by virtue hereof.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 1st day of August, 1927.

30 his
JAMES X CUPOLO (LS)
mark

her
CLEMENTINA X CUPOLO (LS)
mark

In the presence of
FRANK B. CUPOLO

(Notarial Seal)

Exhibit C-4.

STATE OF NEW JERSEY }
 COUNTY OF ESSEX } ss.:

Be it remembered, that on this 1st day of August, in the year of our Lord One Thousand Nine Hundred and Twenty-seven, before me, the subscriber, personally appeared 10
 JAMES CUPOLO and CLEMENTINA CUPOLO, his wife, who, I am satisfied, are the grantors mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said CLEMENTINA CUPOLO being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband. 20

FRANK B. CUPOLO
 Notary Public.
 (Notarial Seal)

30

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Exhibit C-6.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

10 JAMES CUPOLO being duly sworn upon his oath according to law deposes and says:

That I am the builder and owner of a fifteen family apartment house on the southwest corner of Grove Terrace and Munn Avenue, Irvington, New Jersey, upon which premises JOE CAGAN has been asked by me to advance the sum of Twelve Thousand Dollars (\$12,000.00) on a mortgage, the proceeds of which are to be used by me to pay the plumber, JOSEPH WEISSMAN, for labor and material furnished by him, in the erection of said building; that as a material representation in order to induce the said JOE CAGAN to advance said sum, and accept therefore a mortgage, I make the following representations:

1. That the said premises are at the present time in the name of JAMES CUPOLO, and that I have the title in fee simple therein.

2. That the said premises are at the present time encumbered by a mortgage for \$8,200.00; a mortgage for \$4,800.00; and a mortgage for \$7,000.00, which three mortgages totalling Twenty Thousand Dollars (\$20,000.00), are for the purposes of convenience, designated as land mortgages.

3. That said premises are further encumbered by a construction mortgage in the sum of Forty Thousand Dollars (\$40,000.00), held by Clinton Mortgage Company upon which mortgage, I have to date received the sum of \$24,500.00 leaving a

Exhibit C-6.

balance of \$15,500.00 due me under the terms of same.

4. That under the terms of said construction mortgage, the sum of Eighty-two Hundred Dollars (\$8,200.00), is to be retained by the construction mortgagee to pay off the land mortgage of Eighty-two Hundred Dollars (\$8,200.00), so that if at any time the entire proceeds of the Forty Thousand Dollars (\$40,000.00) shall be used, the said land mortgage of Eighty-two Hundred Dollars (\$8,200.00) will be paid off, and cancelled, and a postponement of said mortgage will not be obtained. 10

5. That said premises are further encumbered by a building and loan mortgage in the sum of Seventy-six Thousand Dollars (\$76,000.00), held by the MOUNTAINRIDGE BUILDING & LOAN ASSOCIATION, upon which mortgage, the building and loan association have not advanced any payments whatsoever. 20

6. That to date, from the proceeds of said construction mortgage already advanced, the sum of Thirty-five Hundred Dollars (\$3,500.00) was paid to Cook and Genung; the sum of Five Hundred Dollars (\$500.00) was paid to the Branch Iron Works; the sum of One Thousand Dollars (\$1,000.00) was paid to the Victory Sash & Door Company, and Eleven hundred dollars was used for assessments, the balance of said moneys advanced being used for weekly pay rolls. 30

7. That at the present time, there is due to mechanics and material men, the following sums of money: 40

Exhibit C-6.

10 (a) Cook and Genung, whose monthly statement rendered on October 1st, 1927, showed a balance of Two Thousand Dollars (\$2,000.00), has a claim of approximately Five Thousand One Hundred Dollars (\$5,100.00), to date, said Cook and Genung and A. S. Reid, as mentioned hereinbelow, being the only places where all the mason materials used in said buildings were purchased except that there is still due \$370.00 to Weequahic Building Supply Co. where some material was purchased.

20 (b) The Branch Iron Works have a claim of Thirty-three Hundred Forty-eight Dollars (\$3,348.00), which claim represents the balance due them for all iron work supplied and to be supplied in the said building, said Branch Iron Works being the only place where the entire iron work was purchased for said building.

(c) The Victory Sash & Door Company, have a claim of Twenty-seven Hundred Twenty-eight Dollars (\$2,728.00), which represents the balance due them, for all the trim used and to be used in said building, through completion, said Victory Sash & Door Company being the only place where all the trim used in the said building was purchased.

30 (d) F. J. Durkin has a claim for Thirty-three Hundred Seventy-four Dollars and Sixty-five Cents (\$3,374.65) for lumber furnished, the said F. J. Durkin being the only one from whom all the lumber was purchased in the said building.

40 (e) That C. L. Chapman has a contract for the installation of all the electrical wiring used in the said premises, and who will have a claim for Fourteen Hundred and Fifty Dollars (\$1,450.00),

Exhibit C-6.

when said work is completed. That there is still due him the said sum of Fourteen Hundred and Fifty Dollars (\$1,450.00), and the said C. L. Chapman is the only one who supplied labor and material for such electrical work in said building.

(f) That Joseph Weissman, the plumber will have a claim for \$12,000.00, for all labor and material for the steam fitting and plumbing in said building, the said Joseph Weissman, being the only plumber and steam fitter who has or will furnish the entire steam fitting to be used in said building. 10

(g) That A. J. Milmoie the excavator, has a claim for Nine Hundred and Fifty Dollars (\$950.00), which represents the entire balance due for excavating. 20

(h) That A. S. Reid have a claim for Twenty-one Hundred Twelve Dollars and Eighty Cents (\$2,112.80), which represents the entire balance due them, the said A. S. Reid and Cook and Genung as mentioned hereinabove, being the only places where the mason materials were purchased except as to Weequahic Supply Co. mentioned hereinabove.

(i) That there are a number of other incidental small claims, the total of which do not exceed \$1,500.00. 30

8. That in order to complete said building, it is my opinion that the following amounts will be necessary, although said amounts are approximate, and are not intended to be relied upon, in the granting of said mortgage by the said JOE CAGAN:

Exhibit C-6.

	(a) Parquet floors	\$2,600.00
	(b) Electric fixtures	800.00
	(c) Tile and marble.....	3,000.00
	(d) Painting	2,600.00
10	(e) Frigidaires	2,550.00
	(f) Hardware	750.00
	(g) Oil Heater	925.00
	(h) Labor approximately.....	6,000.00

9. That none of said mortgages now on said premises are in default, have been foreclosed or in process of foreclosure, nor has foreclosure proceedings been threatened nor have any lien claims
20 been filed to date.

Sworn and subscribed to }
before me this day }
of October, 1927. }

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Exhibit C-7.

To: Lowy & Lowy, Attorneys for the MOUNTAIN-
RIDGE BUILDING & LOAN ASSOCIATION:

As a material representation and agreement, on my part to induce JOE CAGAN to advance to me the sum of Twelve Thousand Dollars (\$12,000.00) on a mortgage, the proceeds of which are to be used to pay for the plumbing being installed in the building on the southwest corner of Munn Avenue and Grove Terrace, Irvington, New Jersey, on which property the MOUNTAINRIDGE BUILDING & LOAN ASSOCIATION have granted a loan of Six Thousand Dollars (\$6,000.00), I have agreed to make the following irrevocable authorization to you:

1. That at the time any of the proceeds are advanced by you on account of said mortgage, you are to insist upon a cancellation of all prior mortgages, which I have represented to JOE CAGAN, the mortgagee, to be Eight Thousand Two Hundred Dollars (\$8,200.00); Seven Thousand Dollars (\$7,000.00); and a construction mortgage for Forty Thousand Dollars (\$40,000.00), and you are not to accept postponements of any of said mortgages.

SIGNED:

BY:

Dated October 20th, 1927.

Exhibit C-8.

JAMES CUPOLO, *et ux* \$12,000
 TO
 JOE CAGAN

10 THIS INDENTURE, Made the 20th day of October,
 in the year of our Lord One Thousand Nine Hun-
 dred and Twenty-seven, BETWEEN James Cupolo
 and Clementina Cupolo, his wife, of the City of
 Newark; in the County of Essex and State of New
 Jersey, party of the first part; AND Joe Cagan,
 of the City of Newark, in the County of Essex and
 State of New Jersey, party of the second part;
 WHEREAS, the said parties of the first part, are
 justly indebted to the said party of the second
 20 part, in the sum of Twelve Thousand (\$12,000.00)
 Dollars, lawful money of the United States of
 America, secured to be paid by their certain bond
 or obligation, bearing even date with these pres-
 ents, in the penal sum of Twenty-Four Thousand
 (\$24,000.00) Dollars, lawful money as aforesaid
 conditioned for the payment of the said first-men-
 tioned sum of Twelve Thousand (\$12,000.00) Dol-
 lars, lawful money as aforesaid, to the said party
 of the second part, his heirs, executors, adminis-
 trators or assigns on the day of December,
 30 which will be in the year One Thousand Nine Hun-
 dred and Twenty-seven, and interest thereon, to
 be computed from the 20th day of October, 1927,
 at and after the rate of six (6%) per cent. per
 annum, and to be paid AND
 IT IS THEREBY EXPRESSLY AGREED that should any
 default be made in the payment of the said inter-
 est or principal or of any part thereof, on any
 day whereon the same is made payable, as above
 expressed, or should any tax, assessment, water
 40 rent or other municipal or governmental rate,

Exhibit C-8.

charge, imposition or lien be hereafter imposed or acquitted upon the premises described in this mortgage, and become due and payable, and should the said interest or principal remain unpaid and in 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 of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Twelve Thousand (\$12,000.00) dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary hereof in anywise notwithstanding: as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear. Now THIS INDENTURE WITNESSETH, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the second part, and to his heirs and assigns forever, ALL that certain

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Exhibit C-8.

tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Irvington, in the County of Essex and State of New Jersey.

10 BEGINNING at the corner formed by the intersection of the westerly line of Munn Avenue with the southerly line of Grove Terrace; thence running southerly along the westerly line of Munn Avenue one hundred feet six inches; thence running westerly at right angles to the said westerly line of Munn Avenue one hundred feet; thence northerly parallel with the said westerly line of Munn Avenue, one hundred feet six inches to the southerly line of Grove Terrace and thence easterly along the southerly line of Grove Terrace and
20 one hundred feet to the point and place of BEGINNING. Being the same premises conveyed to James Cupolo by Cimirro Construction Company, Inc., by deed dated July 1st, 1927, recorded in the Essex County Register's Office on July 25th, 1927.

This mortgage is inferior to a mortgage in the sum of \$8,200; a mortgage in the sum of \$4,800.00; a mortgage in the sum of \$7,000.00; a construction mortgage in the sum of \$40,000.00; and a building and loan mortgage in the sum of \$76,000.00; it being represented, that no part of the
30 said building and loan mortgage has as yet been paid on account of said mortgage, and that at the time a payment is received on account of said mortgage, the mortgage for \$8,200.00; \$4,800.00; \$7,000.00 and \$40,000.00, will be paid off and cancelled, and not postponed, so that the within mortgage, at the time a first payment is received on account of the building and loan mortgage, will become a second mortgage lien, and that from the
40 proceeds of said first payment from said building and loan mortgage, the sum of \$6,000.00, will be

Exhibit C-8.

paid on account of the principal of the within mortgage, and the balance remaining thereon, WILL be paid from the second and final payment from the building and loan, it being understood, that said second payment will be at least \$10,000.00, and that in any event, the entire principal sum of the within mortgage, or any balance remaining thereon, will be due within sixty days from date hereof, with interest to date of payment. It is expressly understood and agreed between the parties, that the proceeds of the within mortgage will be used by the parties of the first part herein, to pay the plumber for labor and material in the erection and construction of the fifteen family apartment house being erected on the premises mentioned hereinabove.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof. AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances: TO HAVE AND TO HOLD the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to their own proper use, benefit and behoof forever. PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors or administrators, shall well and truly pay unto the said party of the second part, his heirs, executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the

Exhibit C-8.

interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void. AND the said parties of the first part, for themselves, their
10 heirs, executors and administrators, do covenant and agree to pay unto the said party of the second part, his heirs, executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond. AND IT IS ALSO AGREED, by and between the parties to these presents, that the said party of the first part, shall and will keep the buildings erected, and to be erected, upon the
20 lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, his 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 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
30 demand, with interest at the rate of six (6%) per cent. per annum, from the time of payment of such premium or premiums. AND THE SAID parties of the first part, the owners of the lands above described for themselves, their heirs and assigns do further covenant and agree to and with the said party of the second part, his heirs, executors, administrators and assigns, that they will pay in full, all taxes levied, or to be levied, upon the
40 lands embraced in this mortgage, and will not

Exhibit C-8.

claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto. 10

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

his
JAMES X CUPOLO [SEAL]
mark

her
CLEMENTINA X CUPOLO [SEAL] 20
mark

Signed, Sealed and Deliv- }
ered in the presence of: }

M. J. CUPOLO
BENJAMIN SINGER.

30

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Exhibit C-8.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, that on this 20th day of
 10 October, in the year of our Lord One Thousand
 Nine Hundred and Twenty-seven, before me, the
 subscriber, an Attorney at Law of New Jersey,
 personally appeared James Cupolo and Clemen-
 tina Cupolo, his wife, who, I am satisfied are the
 grantors mentioned in the within Instrument, to
 whom I first made known the contents thereof,
 and thereupon they acknowledged that, they signed,
 sealed and delivered the same as their voluntary
 act and deed, for the uses and purposes therein
 20 expressed. And the said Clementina Cupolo, wife
 aforesaid, being by me privately examined, sepa-
 rate and apart from her said husband, further
 acknowledged that she signed, sealed and deliv-
 ered the same as her voluntary act and deed,
 30 Freely, without any fear, threats or compulsion
 of her said husband.

BENJAMIN SINGER,
 An Attorney at Law of N. J.

Received in the office October 20th, A. D. 1927,
 30 at 2:33 P. M. No. 107.

Exhibit C-8.

Office of
 REGISTER OF DEEDS AND MORTGAGES
 Essex County, New Jersey

(Seal of the State of New Jersey)

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

10

I, HOWARD S. DODD, Register of Deeds and Mortgages of the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the record of a certain MORTGAGE made by JAMES CUPOLO, *et ux* to JOE CAGAN and also of the certificate of acknowledgment there-to annexed, as the same may be found recorded in my office in book S-62 of MORTGAGES for said County on pages 163-165.

20

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 17th day of May, A. D. 1928.

HOWARD S. DODD
 Register of Deeds and Mortgages

[SEAL]

(Endorsed)

30

Compared by 58 and 46.

Office of Register of Deeds and Mortgages,
 Essex County, New Jersey.

Certified Copy of Mortgage, JAMES CUPOLO, *et ux*, to JOE CAGAN.

Recorded October 20th, 1927, in Book S-62 of Mortgages, pages 163-165.

Potter & Berry, C. O. D. \$5.30.

40

Exhibit D-1.

Newark, N. J. Oct. 20, 1927 No. 328

AMERICAN NATIONAL BANK

10 Pay to the order of James Cupolo, \$12,000.00
Twelve Thousand 00/100 Dollars.

JOE CAGAN.

Endorsed: Pay to the order of
Joseph Weissman
his
James x Cupolo
mark

20 Witnessed by
Wm. J. Cupolo
530 Valley St.,
Maplewood, N. J.
and
Benjamin Singer
164 Market St.,

Pay to the order of
Joseph Grunt
Joseph Weissman

30 Credit a/c
Joseph Grunt

Endorsement Guaranteed
Springfield Ave. Branch Federal Trust Co.,
Newark, N. J.

~~Exhibit D-2.~~ *Mistake - See page 14*

~~JAMES CUPOLO, et ux~~ ~~\$12,000~~
~~to~~
~~JOE CAGAN~~

THIS INDENTURE, made the 20th day of October, 10
in the year of Our Lord One Thousand Nine Hun-
dred and Twenty-seven BETWEEN JAMES CUPOLO
and Clementina Cupolo, his wife, of the City of
Newark, in the County of Essex and State of New
Jersey, party of the first part; AND Joe Cagan
of the City of Newark, in the County of Essex and
State of New Jersey, party of the second part:
WHEREAS, the said parties of the first part, are
justly indebted to the said party of the second
part, in the sum of Twelve Thousand (\$12,000.00) 20
Dollars, lawful money of the United States of
America, secured to be paid by their certain bond
or obligation, bearing even date with these pres-
ents, in the penal sum of Twenty-four Thousand
(\$24,000.00) Dollars, lawful money as aforesaid
conditioned for the payment of the said first-men-
tioned sum of Twelve Thousand \$12,000.00 Dol-
lars, lawful money as aforesaid, to the said party
of the second part, his heirs, executors, adminis-
trators or assigns on the day of December, 30
which will be in the year One Thousand Nine Hun-
dred and Twenty-seven, and interest thereon, to
be computed from the 20th day of October, 1927,
at and after the rate of six (6%) per cent. per
annum, and to be paid AND IT IS THEREBY
EXPRESSLY AGREED that should any default be made
in the payment of the said interest or 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 40

Exhibit D-2.

10 municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquitted upon the premises described in this mortgage, and become due and payable, and should the said interest or principal remain unpaid and in 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 of sixty days, then and from thenceforth, that is to say, after the lapse or expiration of either of said periods as the case may be, the aforesaid principal sum of Twelve Thousand (\$12,000.00) Dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything herein before contained to the contrary hereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear. Now THIS INDENTURE WITNESSETH, that the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm, unto the said party of the

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Exhibit D-2.

second part, and to his heirs and assigns forever, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Irvington, in the County of Essex and State of New Jersey.

BEGINNING at the corner formed by the intersection of the westerly line of Munn Avenue with the southerly line of Grove Terrace; thence running southerly along the westerly line of Munn Avenue one hundred feet six inches; thence running westerly at right angles to the said westerly line of Munn Avenue one hundred feet; thence northerly parallel with the westerly line of Munn Avenue, one hundred feet six inches to the southerly line of Grove Terrace and thence easterly along the southerly line of Grove Terrace and one hundred feet to the point and place of BEGINNING. Being the same premises conveyed to James Cupolo by Cimirro Construction Company, Inc., by deed dated July 1st, 1927, recorded in the Essex County Register's Office on July 25th, 1927.

This mortgage is inferior to a mortgage in the sum of \$8,200; a mortgage in the sum of \$4,800.00; a mortgage in the sum of \$7,000.00; a construction mortgage in the sum of \$40,000.00; and a building and loan mortgage in the sum of \$76,000.00; it being represented that no part of the said building and loan mortgage has as yet been paid on account of said mortgage, and that at the time a payment is received on account of said mortgage, the mortgage for \$8,200.00; \$4,800.00; \$7,000.00 and \$40,000.00 will be paid off and cancelled, and not postponed, so that the within mortgage at the time a first payment is received on account of the building and loan mortgage, will become a second mortgage lien, and

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Exhibit D-2.

that from the proceeds of said first payment from
said building and loan mortgage, the sum of
\$6,000.00 will be paid on account of the principal
of the within mortgage, and the balance remain-
ing thereon, will be paid from the second and final
10 payment from the building and loan, it being
understood, that said second payment will be at
least \$10,000.00 and that in any event, the entire
principal sum of the within mortgage, or any
balance remaining thereon, will be due within
sixty days from date hereof, with interest to date
of payment. It is expressly understood and agreed
between the parties, that the proceeds of the within
mortgage will be used by the parties of the first
part herein, to pay the plumber for labor and
20 material in the erection and construction of the
fifteen-family apartment house being erected on
the premises mentioned hereinabove.

TOGETHER with all and singular the tenements,
hereditaments and appurtenances thereunto be-
longing, or in anywise appertaining, and the re-
version and reversions, remainder and remain-
ders, rents, issues and profits thereof. AND ALSO
all the estate, right, title, interest, property, pos-
session, claim and demand whatsoever, as well in
30 law as in equity, of the said party of the first
part, of, in and to the same, and every part and
parcel thereof, with the appurtenances: To HAVE
AND TO HOLD the above granted and described
premises, with the appurtenances, unto the said
party of the second part, his heirs and assigns,
to their own proper use, benefit and behoof for-
ever. PROVIDED ALWAYS, and these presents are
upon this express condition, that if the said party
of the first part, their heirs, executors or ad-
40 ministrators, shall well and truly pay unto the

Exhibit D-2.

said party of the second part, his heirs, executors, administrators or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void. AND the said parties of the first part, for themselves, their heirs, executors and administrators, do covenant and agree to pay unto the said party of the second part his heirs, executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of said bond. AND IT IS ALSO AGREED, by and between the parties to these presents, that the said party of the first part, shall and will keep the buildings erected and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part, his 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 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 (6%) per cent. per annum, from the time of payment of such premium or premiums. AND THE SAID parties of the first part, the owners of the lands above described for themselves, their heirs and assigns do further covenant and agree to and with the said party of the second part, his heirs,

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Exhibit D-2.

executors, administrators and assigns, that they will pay in full, all taxes levied, or to be levied upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to be levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto.

10

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

20

his
James X Cupolo [SEAL]
mark

her
Clementina X Cupolo [SEAL]
mark

Signed, Sealed and Delivered
in the presence of

30

M. J. Cupolo
Benjamin Singer.

40

Exhibit D-2.

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX, } ss.:

BE IT REMEMBERED, that on this 20th day of
 October, in the year of our Lord One Thousand
 Nine Hundred and Twenty-seven, before me, the
 subscriber, an Attorney at Law of New Jersey, 10
 personally appeared James Cupolo and Clemen-
 tina Cupolo, his wife, who I am satisfied are
 the grantors mentioned in the within Instrument,
 to whom I first made known the contents thereof,
 and thereupon they acknowledged that they
 signed, sealed and delivered the same as their
 voluntary act and deed, for the uses and purposes
 therein expressed. And the said Clementina
 Cupolo, wife aforesaid, being by me privately 20
 examined, separate and apart from her said hus-
 band, further acknowledged that she signed, sealed
 and delivered the same as her voluntary act and
 deed, Freely, without any fear, threats or compul-
 sion of her said husband.

BENJAMIN SINGER,
 An Attorney at Law of N. J.

Received in the office October 20th, A. D. 1927,
 at 2:33 P. M., No. 107. 30

Exhibit D-3.

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY.

10

IN THE MATTER
of
 JAMES CUPOLO,
 Bankrupt.

In Bankruptcy.
 Order.

20

This matter coming on to be heard in the presence of Michael G. Alenick, Attorney of Joe Cagan, and George Furst, for Furst and Furst, Attorneys of the Trustee Herman Waldman, on petition to determine the validity of a certain mortgage dated October 20, 1927, and executed by James Cupolo and Clementina Cupolo, his wife, to Joe Cagan for \$12,000 covering premises on Grove Terrace, Irvington, New Jersey, which mortgage is recorded in the Essex County Register's Office in Book S62 of Mortgages for said County on page 163 and the Court having duly considered the petition and having heard counsel and being of the opinion that the mortgage executed by the bankrupt, James Cupolo and by his wife Clementina Cupolo to Joe Cagan as aforesaid was not supported by a valuable consideration and did not operate nor become effective as a lien against the premises described in said mortgage and is not a lien against the funds in the hands of the Trustee and should be declared invalid,

30

It is on this 28th day of June, 1928, ORDERED that the mortgage bearing date October 20, 1927, made by James Cupolo and Clementina Cupolo, his wife,

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to Joe Cagan in the sum of \$12,000 covering prem-

Exhibit D-3.

ises on Grove Terrace, Irvington, New Jersey, and recorded in the Register's Office of Essex County in Book S62 of Mortgages for said County on page 163 be and the same is hereby declared and determined to be invalid and to be no lien against the lands and buildings therein described nor against the funds in the hands of Herman Waldman, the trustee in bankruptcy, realized from the sale of the said mortgaged premises and the said property and said fund are hereby ordered and declared to be free and clear and discharged of any lien or any alleged right of lien of the aforesaid mortgage, but wholly without prejudice to the right of the holder of the Bond accompanying said mortgage to any action or proceeding thereon in any other court.

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20

G. W. W. PORTER,
Referee in Bankruptcy.

A true copy
G. W. W. PORTER,
Referee in Bankruptcy.

30

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Exhibit D-5.

Newark, New Jersey,
June 28, 1928.

For value received I hereby assign, transfer and
set over unto Joseph Grunt, trading as West Side
10 Plumbing Supply Company, all my right, title and
interest in and to a certain bond bearing date
October 20, 1927 and executed by Joseph A. Weiss-
man, James Cupolo and Clementina Cupolo, his
wife, to me in the sum of \$12,000.00 with full
power and authority to sue for and collect the
same.

IN WITNESS WHEREOF, I have hereunto set my
hand and seal the day and year aforementioned.

20

JOE CAGAN (Seal)

Signed, Sealed and Delivered
in the presence of
MORRIS GRUNT
Notary Public, N. J.

Exhibit D-6.

30

WEST SIDE PLUMBING SUPPLY Co.
Joe Grunt, Prop.
38-40 Sixteenth Avenue
Newark, New Jersey Oct. 21, 1927 No. 4370

Springfield Avenue Trust Company

Pay to the order of Joe Cagan \$12000.00 Twelve
Thousand Dollars

JOE GRUNT

40 Endorsed: JOE CAGAN

IN CHANCERY OF NEW JERSEY

Between

JOSEPH A. WEISSMAN,

Complainant,

And

JOSEPH CRONT,

Defendant.

On Bill &c.,

ORDER

Michael S. Alenick,
Solicitor of Defendant,
24 Branford Pl.,
Newark, N. J.

V. O. V.

. O .

IN CHANCERY OF NEW JERSEY

Between)
 JOSEPH A. WEISSMAN,)
 Complainant,)
 And)
 JOSEPH GRUNT,)
 Defendant.)

On Bill &c.,
 ORDER

This matter duly coming on to be heard in the presence of Messrs. Potter & Berry, solicitors of the complainant, and Milton M. Unger, Esquire, of counsel with Michael G. Alenick, Esquire, solicitor of the defendant, on a motion of the solicitors of the complainant to strike out the Second Separate Defense interposed by the defendant herein, to wit, the defense of res adjudicate, and also on a motion of the solicitor of the defendant to vacate the injunction heretofore issued in this cause on the grounds specified in the notice of motion, and the Court having heard and considered the arguments of counsel on both of these motions and being of the opinion that the defense interposed by the defendant herein in his answer to the bill of complaint filed in this cause is proper and cognizable in this Court, and being of the opinion that the injunction heretofore issued was improvidently made and contrary to the statute in such case made and provided,

It is on this 26th day of December, 1928, on motion of Milton M. Unger of counsel with Michael G. Alenick, solicitor of the defendant, Joseph Grunt, ORDERED that the motion made to strike out the second separate defense set up in the defendant's answer to the bill of complaint filed in this cause be and the same is hereby denied with costs in favor of the defendant and

It is further ORDERED that the injunction heretofore issued in this cause restraining any action by the defendant herein on the judgment which he recovered in the law court be and the same is hereby dissolved, vacated and set aside unless the complainant, Joseph A.

New Jersey Court of Errors and Appeals

JOSEPH A. WEISSMAN,
Complainant-Appellant,

vs.

JOSEPH GRUNT,
Defendant-Appellee.

On Bills for
Cancellation and
to Set Aside
Conveyances in
Consolidated
Causes.

On Appeal from
Chancery.

Berry, V. C.

BRIEF OF APPELLANT.

Statement of the Case.

Joseph Weissman, the complainant, was engaged in the business of installing plumbing and fixtures. He purchased the major part of his plumbing material from the defendant, Joseph Grunt, and the account was carried on the books of the defendant Grunt in a running account (State of the Case, page 63, lines 9 to 35). About August 11, 1927, the complainant Weissman entered into a contract with one James Cupolo to supply all the plumbing material and the labor necessary to install it on premises at the southwest corner of Grove Terrace and Munn Avenue, in Irvington, New Jersey, the price of which work was to be \$12,000.00 (State of the Case, page 138, Exhibit C-1). The complainant Weissman purchased all of the materials which were installed on this job from the defendant Grunt, and on or about October 20, 1927, there was owing to the defendant Grunt from the complainant Weissman for this and other material, approximately \$10,000.00 (State of the Case, page 64, line 2).

No payments had ever been received by the complainant Weissman from the owner, James Cupolo, for the work and material furnished to the Cupolo job, and consequently no money had been paid by the complainant Weissman to the defendant Grunt. In this posture of affairs, and with the work on the Cupolo job in stagnation, the defendant Grunt refused to furnish any more material to the complainant Weissman, and in consequence thereof, the complainant Weissman was unable to proceed with the performance of his contract to Cupolo. Thus far the facts of this case are undisputed. In order to overcome this impasse a mortgage was arranged whereby both complainant and defendant would receive payment and security, which would enable both parties to continue with the completion of the contract. There is a dispute in the evidence as to which party, that is, complainant or defendant, suggested the mortgage scheme. On behalf of the complainant Weissman, complainant testified that the suggestion came and the scheme was devised by the defendant Grunt (State of the Case, page 65, lines 1 to 10), or that the suggestion came from the defendant Grunt's attorney, Benjamin Singer (State of the Case, page 65, lines 1 to 10). On the part of defendant Grunt, the defendant testified that the suggestion was born of a mutual conversation between himself and the complainant Weissman as a result of a visit to the office of the defendant's attorney, Benjamin Singer (State of the Case, page 180, line 36, to page 109, line 39). This testimony of the defendant is rendered somewhat doubtful by the testimony of his attorney, Benjamin Singer, who testified on his behalf that he was approached by both complainant and defendant, but that he made the suggestion of the mortgage transaction (State of the Case, page 100, line 20, to page 101, line

29). The Court's decree is silent in fixing upon either party the responsibility for devising the scheme. But in any event, on October 20, 1927, the following transaction took place in the office of Benjamin Singer, attorney for the defendant Grunt. James Cupolo and his wife executed a mortgage for \$12,000.00 which was accompanied by a bond of \$24,000.00 to one Joe Cagan on the premises upon which the work was being done. Joe Cagan drew a check for \$12,000.00 to the order of James Cupolo, the owner. James Cupolo endorsed the check to the complainant Weissman, the contractor. The complainant Weissman endorsed the check to the defendant Grunt, the material-man. Grunt accepted it, whereupon the complainant Weissman signed the bond of \$24,000.00, which this bill seeks to cancel. This transaction is related almost verbatim from the argument of the defendant Grunt's counsel, which argument states the defendant's contention, and is found in State of the Case (page 60, line 2 to line 35). The same contention of defendant's counsel is supported completely by all the testimony offered by the defendant, which was that this transaction was a fictitious one. Joe Cagan, the pretending mortgagee, was an impoverished relation of the defendant Grunt. He appeared at the office of the defendant's counsel, Singer, with a check for \$12,000.00, which defendant admits was the defendant Grunt's own money. The mortgage executed by James Cupolo and wife (State of the Case, page 154, Exhibit C-8), which purports to be the security for the advancement of the \$12,000.00, states as follows:

“It is expressly understood and agreed between the parties that the proceedings of the within mortgage will be used by the parties of the first part herein to pay the plumber for labor and material in the erec-

tion and construction of the fifteen family apartment house being erected on the premises mentioned hereinabove." (State of the Case, page 157, lines 12 to 20.)

This mortgage was recorded, and the bond which is attacked in this bill was delivered to Joe Cagan. It is further admitted that the defendant Grunt was a party with full knowledge to this fiction, and that he had a distinct purpose in creating it, in the following language which is quoted from the contention of defendant's counsel:

"At that point, there is no doubt but what the money came from Grunt, and I will tell you why Grunt wanted a security for the advance, and if he had merely taken a mortgage in his own name, that mortgage would, if anything happened to Cupolo, the owner, within four months, be nullified by the bankruptcy act, because it would have been a preferential payment. Cagan is Grunt in the case, there is no doubt about it. The money came from Grunt, went to Cagan; Cagan gave his check to Cupolo; Cupolo endorsed it to Weissman, and Weissman paid it to Grunt, so that Grunt's money came back to Grunt, and the only change in the whole situation was that the payment of the \$12,000.00 had been secured by a mortgage on Cupolo's property made to Cagan and assigned to Grunt" (State of the Case, page 60, lines 13 to 29).

The net result of this transaction, disregarding for a moment what part, either as instigator or party privy thereto, either of the parties to this bill played therein, was that a fictitious mortgage and bond was created upon the premises in order to secure to the defendant Grunt a lien upon the land to which he was not entitled. This is admitted by defendant in the following language of his counsel, Singer, who testified on his behalf:

“Q. What did you tell them? A. I said to Mr. Grunt that if this thing had to be gone through—personally, I told him, ‘If you can get out of it, get out of it, but if you have to continue’, I said, ‘the only way you can take a mortgage is to get some third party to pass a check, you financing, and then have the check go around in a circle, and finally get back to you, and then if the mortgage is contested, you have got a little bit more chance than if you actually take a mortgage for your material’” (State of the Case, page 95, lines 14 to 27),

and further by the testimony of the same witness:

“A. I figured that if the third party could honestly show that he gave valuable consideration for the mortgage, and that money was actually used in the construction of the building, which it would show, if the check went to a material-man—in that way he might overcome anybody who might want to contest it” (State of the Case, page 101, lines 20 to 27),

and further:

“Q. Was this a legitimate transaction? A. Well, on the face of it, it was.

Q. We are not concerned in this court with the face of things, we are concerned with actualities. A. No, I would say ‘No’. The money was to be advanced by Mr. Grunt, but we tried to make it appear as though the money was being advanced by Mr. Cagan.

Q. If the money had actually been advanced to Cagan by Grunt as a loan, it would be all right, wouldn’t it? A. If the money was advanced by Grunt to Cagan?

Q. If Grunt had advanced the money to Cagan, as a loan to Cagan, there would have been nothing the matter with it, would there?

A. I figured if the money was actually all advanced and used in the building, he would have a much better chance than Mr. Grunt taking a mortgage” (State of the Case, page 101, line 35, to page 102, line 19).

After the transaction was completed and the mortgage recorded, the owner of the premises, James Cupolo, was adjudicated a bankrupt (see Argument of Defendant's Counsel, State of the Case, page 60, line 30), and by order of the U. S. District Court, when Joe Cagan attempted to prove this mortgage, that Court adjudged that the mortgage was void on the ground that it was not supported by a valuable consideration (see State of the Case, page 170, Exhibit D-3), which Court, at the same time, and by the very order which discredited the mortgage, did so without prejudice to the right of the holder of the bond accompanying said mortgage to any action or proceeding thereon in any other court. Following this adjudication, the defendant Grunt demanded of the complainant Weissman payment for the plumbing material supplied on the Cupolo job, in the sum of approximately \$9,000.00. This sum the complainant Weissman refused to pay, and the defendant Grunt sued the complainant Weissman in the Essex County Circuit Court on a book account for that amount of money. To this suit the complainant Weissman interposed the defense of payment by the check of \$12,000.00, whereupon the defendant Grunt amended the complaint at law by adding a third count in which he sued on this bond, claiming only the amount of the book account, to wit, approximately \$9,000.00. To this amended complaint and to the third count, the complainant Weissman filed an answer setting up that the bond was part of a scheme to defraud creditors, and was hence invalid. The law Court, however, struck out the answer, and entered judgment in the sum of \$9,915.73 on the bond, that being the amount of the book account. The bill in the present case was brought to cancel the bond, and to restrain forever the judgment obtained under it or any proceedings thereon. At the hear-

ing of this matter, the facts stated so far are undisputed. The contention of the complainant was that he was induced to sign the bond, it being represented to him by the defendant Grunt that Joe Cagan, the mortgagee, was actually advancing money on a *bona fide* bond and mortgage; and that he had no knowledge at all of the actual fiction of the transaction. This knowledge was contested by defendant, who produced his attorney Singer to deny it, and the Court in its decision found that the complainant Weissman had knowledge at the time of the fictitious character of the scheme.

Specification of the Grounds of Appeal Relied Upon.

POINT ONE.

The evidence justified a finding that the complainant, Joseph A. Weissman, had no knowledge of the true character of the transaction, and that he did not participate in the scheme to defraud creditors.

POINT TWO.

The decree of the Court was erroneous in that it failed to grant the injunction prayed for by the complainant on the ground that the bond was admittedly an incident in a fraudulent scheme to defraud creditors, and that it was a mere incident to a mortgage given for the debt, both of which were admittedly fictitious according to the defendant's own testimony.

POINT ONE.

The evidence justified a finding that the complainant, Joseph A. Weissman, had no knowledge of the true character of the transaction, and that he did not participate in the scheme to defraud creditors.

The testimony of the defendant Grunt as to the only disputed point in this case, that is, the point of the knowledge of the complainant Weissman, is unworthy of belief. During the course of the hearing, this question of the complainant's knowledge was the paramount issue as so specified by the Court (State of the Case, page 62, lines 27, 28, to page 63, lines 31 to 38). A preliminary injunction issued in this cause and a hearing was had before Vice-Chancellor Berry as to whether or not the injunction should be continued. At that hearing, the defendant Grunt filed an affidavit in the cause, which affidavit appears on page 18 of the *State of the Case* and continues in full. Paragraph five of that affidavit contains a description of the events leading up to the mortgage transaction and a brief detail of the transaction itself. In paragraph five (State of the Case, page 21, lines 12 to 16) the following is quoted:

“and this entire transaction about the execution of the bond and mortgage by the Cupolos and the going on the bond by Joseph A. Weissman was the idea offered by Joseph A. Weissman. He suggested it and I adopted it.”

This sworn statement appearing in the cause is directly contradicted by the defendant Grunt in his own testimony:

“Q. In the affidavit which I have just read to you you state that this whole matter was a

matter of knowledge to Mr. Weissman because it was the product of his own mind. The Eighth interrogatory that was served on you 'State the time and place when and where you informed Joseph A. Weissman that the check for \$12,000 advanced by Joe Cagan on the bond and mortgage was really your own money', and you said, 'About October 20, 1927, at Mr. Singer's office, 164 Market Street'. Which of those two are true? If Mr. Weissman was the originator of this scheme you never informed him, isn't that so? A. I never said Mr. Weissman was the originator of this scheme. The mortgage given to Mr. Cagan was recorded by Mr. Singer. We were together and decided to do it anyway'' (State of the Case, page 124, lines 22 to 38).

On cross-examination concerning the paragraph of the affidavit just referred to, the following answers of the defendant Grunt were clearly contradictory:

"Q. Listen very carefully once more; the affidavit which you signed, it is the eighth paragraph: 'I deny that I ever accepted the \$12,000 check referred to in complainant's bill and affidavit in full satisfaction of all indebtedness then and there existing between the complainant and myself. The complainant knew everything regarding this transaction and especially is this so because it was the product of his own mind and he proposed it and I adopted it.' Does that mean that Mr. Weissman suggested to you that you advance your own money on the mortgage through Mr. Cagan? A. Well, I don't know what that means.

Q. You don't know what this affidavit means that you signed? A. This affidavit means about the mortgage, but not about Cagan's transaction.

Q. But the affidavit says that Mr. Weissman knew personally? A. Knew about the mortgage.

Q. He knew there was a mortgage? A. He knew that Mr. Cagan was taking my money and he is approximately just a dummy in that transaction.

Q. Is that what Mr. Weissman suggested? A. He didn't tell me before we went down to Mr. Singer.

Q. Then it is not the product of his own mind? A. I mean about the mortgage."

It is to be noted that in the affidavit he claims that the scheme was suggested by the complainant Weissman, and that in his testimony he denies that he ever said it. This same contradiction was directly placed before the witness.

"Q. Then why did you say that 'complainant knew everything regarding this transaction, especially is this so because it was the product of his own mind and he proposed it and I adopted it'? A. You mean about the mortgage?" (State of the Case, page 121, lines 25 to 30).

When thus faced with the contradiction, the answer of the defendant was: "You mean about the mortgage?"

The question was repeated to him at some length, and a close scrutiny of the continued cross-examination, which followed it, only goes to disclose the defendant's unreadiness to admit the truth. The answer to the first following up question is, "Well, I don't know what that means". The answer to the second question which deals with his knowledge of his own affidavit is to the effect that Weissman knew about the "mortgage" but not about "Cagan's transaction". Just what distinction there can be between the "mortgage" and "Cagan's transaction" is difficult to discern. The third question which repeats the challenge that he swore to Weissman's personal knowledge has for an answer "Knew about the mortgage",

which is apparently no answer at all. The fourth question which is, in brief, "I knew there was a mortgage", refers again to the duplex character of this mysterious knowledge, but in this case the answer alleges that the complainant Weissman knew about "Cagan's transaction" and is silent as to the "mortgage". The other two answers speak for themselves. They are not answers.

In view of this testimony, and in view of the defendant's inability to answer direct questions concerning a most vital point in this case which he has sworn to in affidavit, should have led the Court to discredit his testimony entirely.

It is admitted by the defendant through the testimony of his attorney Singer that the transaction of the bond and mortgage was a scheme to defraud creditors. The complainant Weissman denies that he had knowledge of or participated in the fraudulent scheme. This the defendant denies, and the Vice-Chancellor below in his opinion stated that he believed that the complainant Weissman knew all about the transaction (State of the Case, page 136, lines 12 to 17). It is urged that the knowledge of and the participation in the transaction of the complainant Weissman, as evidenced by the testimony of the defendant Grunt and his attorney Singer, are not proven by this evidence; and furthermore that such participation is incapable of proof. The fraud, if any, was not in the signing and recording of the mortgage nor in the actual passing of a check from the supposed mortgagee to the mortgagor and thence to the material-man Weissman. It could never have been challenged that Cagan did not advance the money had Grunt chosen to remain silent as to the fact that Cagan was using Grunt's money. The fraud consisted in the reservation in Grunt's mind that he would either insist that Cagan had actually advanced the money, and thus realize

upon the mortgage, or that he would confess the fraud and renounce the mortgage and hold Weissman on the book account or on the Bond. Holding in mind that this reservation of Grunt was the fraud, in what way could Weissman have participated therein in order to defraud creditors? If Cagan was to be treated as the actual expender of \$12,000.00, then the mortgage was valid as an advance money mortgage, and no creditor could have been defrauded. The complainant Weissman, when he accepted the check, with or without knowledge of the true nature of the transaction, was within his rights in accepting payment of his just debt from the proceedings of what was published to the world as a bona fide advance money mortgage. It was not until many months later, when the U. S. District Court repudiated the mortgage as being without valuable consideration (State of the Case, page 170, Exhibit D-3), that the defendant Grunt elected to expose the fiction. At that moment, and not until then did the fraud crystalize, and at that time it had passed completely beyond the scope of Weissman's power either to participate or to halt. The only evidence before the Court consisted in the assertion of the defendant Grunt and his attorney Singer that Weissman knew all about it. It is therefore urged that there is no testimony before the Court that the complainant Weissman participated in a fraud, first on the ground that the actual fraud did not exist until months after the signing of the bond and mortgage, and secondly on the ground that Weissman received no benefit therefrom.

POINT TWO.

The decree of the Court was erroneous in that it failed to grant the injunction prayed for by the complainant, on the ground that the bond was admittedly an incident in a fraudulent scheme to defraud creditors, and that it was a mere incident to a mortgage given for the debt, both of which were admittedly fictitious according to the defendant's own testimony.

On October 20, 1927, the complainant had furnished material and labor in the erection of an apartment house on the land of Cupolo, for which he had never been paid. The material had been purchased from the defendant Grunt, and this account had never been paid. In that posture of affairs, the complainant stood between his debtor and his creditor with a right against one and a liability owing to another, which, had all parties performed their obligation of payments, must have left him free of all debt, and entitled to the profit which his labor earned. Due, however, to the circumstances and to a shortage of funds, he was unable to procure money from his debtor and to pay his creditor. He was, at that time, armed with certain legal rights whereby he might have exacted from his debtor the money which was owing to him. He might have filed a lien claim against the building; he might have filed a stop notice against the funds in the hands of the mortgagee; or he might, as the matters turned out, have proved a claim in bankruptcy, and have obtained a dividend from the bankrupt's estate. Of none of these remedies did he avail himself. Instead thereof he signed a bond for \$24,000.00, and went through the gestures of accepting a check for \$12,000.00 from his debtor, and paying the same to his creditor. Dispensing with the ques-

tion of his knowledge of the fictitious character of this transaction, he was, nevertheless, induced to enter into it, and having once entered into it he was bound thereby, and by reason thereof, he surrendered his three legal rights above designated. Before his entry into this transaction, he had an opportunity to pay his creditor with the money of his debtor. As a result of his entry, he was left with nothing but the obligation to pay a bond in the penal sum of \$24,000.00. It is admitted by the defendant through his testimony that the purpose of creating this mortgage was to ultimately return to the hands of the defendant Grunt the bond and mortgage, which on the face thereof would be regular, and from which, had matters not ended in the bankruptcy court, would have enabled him to recover \$12,000.00 from the premises. It is further admitted that the fiction of the check from Joe Cagan was introduced in order to make the mortgage appear as an advance money mortgage, the proceeds of which were used in the erection of the building.

Section 15 of an act to secure mechanics' and others' payment for their labor and materials, etc., reads as follows:

"THE GENERAL ACT.

ALL RECORDED OR REGISTERED MORTGAGES, TO THE EXTENT OF THE MONEYS ACTUALLY ADVANCED AND APPLIED TO THE ERECTION, ALTERATION, OR REPAIR OF, OR THE ADDITION TO, A BUILDING, ARE PRIOR TO LIEN CLAIMS.

Every mortgage given or to be given upon lands in this State shall have priority over any claim that may be filed in pursuance of this act to the extent of the money actually advanced and paid by the mortgagee and applied to the erection of any new building upon the mortgaged lands or any alterations, repairs or additions to any building on said

lands: provided, such mortgage be registered or recorded before the filing of any such claim. 1898, p. 538, s. 15; 1895, p. 313, s. 6.”

This portion of the Mechanic's Lien Act gives a preference to that part of the consideration of an advance money mortgage, which has actually been used to pay laborers and material-men, for labor and material actually used in the work of construction, above the lien of a mechanic's lien claim, provided the advance money mortgage was filed before the filing of the lien claim. If, however, a mortgage is given as security only to an actual laborer or material-man who has supplied labor or material to the building, this is not such an advance money mortgage as the act contemplates and is not entitled to such priority. In the case of *Stiles v. Galbreath* (69 N. J. E. 222, Chancery 1905, Grey, V. C.), a mortgage given as security was foreclosed, and the lien claimants made parties to the foreclosure. It was urged that the security mortgage was an advance money mortgage, and in disposing of this claim, the Court held as follows:

“Notwithstanding the complainants, in their answers to the defendants' cross-bills, assert that the full consideration named in their mortgage was actually advanced and paid to the mortgagor, they offered no testimony in denial or explanation of the evidence of Mrs. Galbreath and her architect, Mr. Adams, showing the mortgage to have been given as a collateral security, nor did they even cross-examine those witnesses on that point.

Section 15 of the Mechanic's Lien Act applies to the taking of such mortgages, and declares that they shall have priority over the lien claims to the extent of the money actually advanced and paid by the mortgagee and applied to the erection of the building, provided

the mortgage be recorded before the filing of such claim.

The mortgage taken by Stiles & McClay from Mrs. Galbreath and foreclosed by them was, it is true, recorded before the filing of the defendants' lien claim, but the uncontradicted proofs show that no money whatever was either advanced or paid by them on account of the mortgage, and that no such money was applied to the erection of Mrs. Galbreath's building. That mortgage was in truth given as a collateral to secure to Stiles & McClay the debt owing to them under their contract to build the Galbreath apartment house. On this building, and the land whereon it is erected, they were entitled to have a mechanic's lien which should be concurrent with those filed by the defendant lien claimants, all sharing ratably in the values which might proceed from the application of the building and lands to the payment of all the debts incurred for work and material supplied to the building.

By taking their mortgage on the Galbreath house to secure solely their own debt, Stiles & McClay sought to withdraw that property from its liability to be applied to pay ratably all the concurrent liens held by themselves and other lienholders, and to appropriate it exclusively to pay their own lien."

This case was affirmed by the Court of Errors and Appeals in 71 N. J. E. (page 299).

From the consideration of the statute and the case cited, it is evident that the purpose of this transaction was to gain for the defendant Grunt a preference of \$12,000.00 over other lien claimants. The check of \$12,000.00 was a fiction, the mortgage itself was a fiction, and the bond upon which complainant's name appears and upon which judgment was had was an added fiction to fulfill the cycle of delusion which had been invented. Yet the defendant relies upon the bond and sues there-

on, and the court of law and the court of equity have proclaimed the bond a good and subsisting indenture.

The law concerning mortgages is peculiar. In every transaction which is commonly referred to as a mortgage there are three indivisible elements: primarily, a debt; secondarily, a mortgage to secure the debt; and thirdly, a bond to provide for the payment of the debt in case the mortgage fails. But without a debt there can be no bond and no mortgage, and it is admitted in this case that there never was a debt. Any suspicion that the debt may have been actual must be set at rest by the adjudication in the U. S. District Court, which held that the mortgage was invalid as not being supported by a valuable consideration (State of the Case, page 170, Exhibit D-3), which places the question beyond conjecture, and leaves it to all intents and purposes *res adjudicata*.

In the case of *Magie v. Reynolds* (51 N. J. E. 113, Chancery 1893, Pitney, V. C.), there was a bill to foreclose a mortgage. The defense was that the bond and mortgage had been procured by fraud, and the replication filed by the complainant, who was the assignee of the bond and mortgage, set up the theory that an assignee of a bond and mortgage without notice takes it free of all defenses. This point the court dealt with at length, and in analyzing the nature of the obligation contained in a bond and mortgage, held that the mortgage itself was a mere incident of the debt, and that if there was no debt there was no mortgage, and that the assignee took only what the assignor had. The following language is pertinent:

“The principle underlying this rule is that the mortgage is a mere incident of the debt which is intended to secure, and a defense to the debt is a defense to the mortgage.”

In the case at bar the Court of Chancery has in effect discredited the debt and discredited the mortgage, but has permitted recovery on the bond on the theory, no doubt, that the complainant's signature to the bond stands apart from the transaction between the mortgagor and the mortgagee, and leaves him after the fiction has been swept away, with an obligation to pay. To permit the defendant to recover on this bond would be to permit him to take advantage of his own fraud. Furthermore, the only theory upon which the Court's decree could have been based would be the theory that the solemn obligation of the bond, executed, as it was, simultaneously with the mortgage, was an obligation apart from the mortgage transaction, that is to say, the theory that the complainant Weissman obligated himself to pay to the defendant Grunt through the means of Cagan any sum of money which had been owing from him to Grunt prior to the execution of the mortgage, and which the machinations of the fraud did not avail to pay to Grunt. Such a theory is insupportable. The bond was executed, according to the defendant's own testimony, in order to give a semblance of genuineness to the mortgage transaction. It was merely an incident in the execution of a fraudulent scheme. It was just as unreal as the defendant's check for \$12,000.00 upon which it was founded, and which the defendant caused to be handed to himself as payment from Weissman, but which the defendant testifies was merely a gesture (State of the Case, page 110, line 25). How can it be possible that a defendant who admits his fraudulent participation in an entire transaction shall be permitted to retain therefrom one incident, that is, the bond, in order to save himself and inflict a loss upon another? Two objections can be foreseen to this argument. In the first place, it might well

be asked: Supposing the complainant Weissman had knowledge and participated in the fraud? Why should the court of equity aid him? In answer to this objection, it might be pointed out that this bill comes to the court of equity at the instance of a complainant who has failed to secure justice in the court of law, and he asks that the court of equity remedy a situation which the court of law refused to remedy. The court of law was bound by the terms of the bond, but equity "penetrates all disguises of form and, disregarding the shadows, grasps the substance" (Citing *Ward v. Cox*, 2 N. J. E.). With this maxim in mind, and supposing that both parties to this action participated in the fraud with knowledge, what has happened? Previous to the transaction the complainant Weissman owed a debt to Grunt and had a debt owing to him from Cupolo. The mortgage transaction on its face settled his debt to Grunt and settled his debt from Cupolo, but left him with an obligation on the bond. When the fiction had failed to yield result to the defendant Grunt he cast it aside and relied upon the bond. But it was then too late for the complainant Weissman to rejuvenate his claim against Cupolo, so that, as a result of the whole matter, he is left without a possibility of retrenchment. The appellant is aware of the sound rule of law which says that where two parties participate in a fraud the law will leave them where it finds them. Had this been done this bill would never have been filed. But the court of law did not leave complainant and defendant where it found them. It gave judgment to defendant Grunt on the bond. Whereupon the complainant Weissman appealed to the court of conscience, and asked that its remedial powers should be put into operation to correct the error in the court of law. The basis of complainant's prayers in the Court of Chancery is the fact

that as result of this transaction he has changed his possession and lost his rights. Yet the complainant Weissman denies that he had knowledge of this fraud, and under Point One of this brief it is strenuously argued that there is no creditable testimony to the contrary. Certainly, if he had no knowledge, his relief in equity is plain. However, another question arises in dealing with his knowledge of the fraudulent character of this transaction. To what extent could his knowledge have incriminated him in the actual participation in the execution of the fraud? The fraudulent scheme was a scheme to create a preferential mortgage lien in favor of the defendant Grunt. To accomplish this purpose it was necessary to procure the signatures of Cupolo and his wife upon the mortgage to record the mortgage, and to produce a bogus mortgagee who delivered a check to Cupolo, which Cupolo then delivered to Weissman. This completed the delusion. Yet the actual and significant fraud was not the mortgage or the delivery of the check, but it was the reservation which remained in the mind of the defendant Grunt as to whether or not he would admit that the check represented actual money or not. This took place on October 20, 1927. As late as February 8, 1928, Joe Cagan still had possession of the bond and mortgage, and was still asserting its validity. This was done by a proof of claim in the U. S. District Court (State of the Case, page 25, affidavit of Joe Cagan), and inasmuch as the defendant admits that Cagan was Grunt in this whole transaction (State of the Case, page 60, line 21), it is to be seen that Grunt's reservation as to the validity of the mortgage was still alive at that date. Now there can be no doubt in anyone's mind that if the mortgage had been allowed, either in the bankruptcy court or as a valid lien outside of the court, the defendant Grunt would

have relied on the fact that the \$12,000.00 check was in effect Cagan's money. The actual fraud consisted in his power to renounce or embrace the fiction at any time to suit his own convenience. How, then, could Weissman have participated in a fraud, the gist of which lay in the mental attitude of his opponent? It might well be said that by accepting the check he participated in the fraud, but his acceptance of the check gave him no benefit from the fraud, nor had he any power at all but to conform to whatever theory of the matter Grunt chose to adopt. It is upon this very delicate question that this bill in chancery hinges, and it is submitted that, despite the testimony, Weissman had no hand in the fraud, had no control over the scope thereof, and obtained no benefit therefrom, and therefore cannot be said to have been a participant in the fraud which the defendant Grunt and his attorney so blandly admit.

The second objection which might be raised, is that the complainant Weissman has an adequate remedy at law, and that the defense might have been set up that the consideration of the bond was illegal. In the case of *Cornish vs. Bryan* (10 N. J. E., 146, Chancery 1854, The Chancellor), there was a bill to cancel a bond and mortgage procured by fraud. Among the many objections raised as to the equity of the bill, the second one urged that the grounds upon which the jurisdiction of the Court of Chancery was invoked constituted a valid defense by plea or otherwise in the court of law, and the Court disposed of the question in the following language:

“The mere fact, that the grounds upon which the jurisdiction of this court is invoked may avail the party in an action at law, and constitute a valid defence by plea, or otherwise, is not a sound objection to the court's exercising this power. If a party holds an

obligation which ought to be cancelled, and persists in holding it for the purpose of harassing the obligor with a suit, he ought not to be permitted to select his own place, time, and circumstances for such prosecution. Where a suit at law is commenced and the defence at law is complete, then that is a good objection for this court's refusing to change the forum of litigation. Where, too, the defence is of a character plain and palpable, and within the command of the party at any time, this court ought not to encourage a resort to an expensive litigation in a Court of Chancery. In all cases, the court must exercise a sound discretion, and be regulated in its action by the propriety of the particular case before it. The case made by this bill is one entitling the complainant to relief. The grounds upon which he insists the bond and mortgage should not be enforced, while they might protect him against a recovery in any action at law brought against him, are of a character to render a defence at law embarrassing and hazardous. Besides, if the complainant's allegations are true, the mortgage ought not to remain an encumbrance or at least a blemish, upon his title. His only remedy to relieve himself of the embarrassment which this mortgage might occasion him, and of the serious injury to his title, is by a resort to this court. I think the complainant is rightly before this tribunal, and should be relieved, if he has sustained his case by proof."

In dealing with this point at law, it is well to consider the decision of the learned Vice-Chancellor below (State of the Case, page 137, line 19). In closing his remarks and in response to the suggestion of complainant's counsel, that, according to his finding, the transaction was an illegal one and that he should have restrained the law suit, the following is quoted:

"The Court: You did not begin quite quick enough for that. If you had begun before

the suit at law was begun or when it was begun, you might have gotten somewhere on it, but you began too late. I will say again that I don't like the looks of this transaction, but I cannot guess one party out of court and the other in, so I will dismiss the bill."

From the tone of this remark it is evident that the Court gave some consideration to complainant's equity, and suggested that had this bill been brought earlier, there might have been grounds for relief. Such, however, is not the rule in equity. If there is a wrong, equity will remedy that wrong; nor can an equitable right be lost by reason of an inequitable action at law having proceeded to judgment. The substantial equitable right remains constant, no matter to what lengths the litigants at law may have gone. It is therefore submitted that no matter what the ruling of the law court was as to the defense of illegality, the court of equity need not consider whether or not the law court has erred in disregarding that plea. Either the bond is a good and subsisting obligation or it is not. All the evidence in this case, the affidavit of the defendant, the contention of defendant's counsel, and lastly the opinion of the Court itself, have declared that the bond was a fiction and was a part of an illegal scheme to defraud creditors. For these reasons and for the reasons brought forth in this brief, it is urged that the decree of the Court of Chancery should have been to cancel the bond and to restrain all proceedings on any judgment obtained thereon.

Respectfully submitted,

POTTER & BERRY,
Solicitors for the Complainant-Appellant.

RAYMOND H. BERRY,
Of Counsel.

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New Jersey Court of Errors and Appeals

JOSEPH A. WEISSMAN, <i>Complainant-Appellant,</i> <i>vs.</i> JOSEPH GRUNT, <i>Defendant-Appellee.</i>	}	<i>On Appeal from Chancery.</i> HON. EDWIN R. WALKER, C. HON. MAJA LEON BERRY, V.-C.
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BRIEF OF DEFENDANT-APPELLEE.

By this appeal the complainant-appellant seeks to set aside a decree which dismissed his bill of complaint, the purpose of which was to compel the surrender and cancellation of a bond executed by the complainant and for an injunction restraining the defendant from proceeding with an action at law which resulted in the entry of a judgment in the defendant's favor.

The defendant-appellee respectfully maintains that the decree dismissing the bill of complaint was perfectly proper.

Facts.

The defendant in this Chancery suit brought an action at law against the complainant in the Essex County Circuit Court on three counts; first, on a book account; second, for goods sold and delivered; and third, on a bond which had been given as collateral security for the payment of complainant's indebtedness to the defendant. In the law action, this complainant admitted the correctness of the book account and admitted the delivery of the merchandise sold

to him, but pleaded payment by way of the bond and then as a defense to the action on the bond, set up that it was procured to defraud creditors of one, James Cupolo. The defendant (who was the plaintiff in the lawsuit) moved to strike out complainant's answer on the ground that it was frivolous and set forth no legal defense and after argument and deliberation, Judge Dungan struck out the answer and entered summary judgment in favor of the defendant and against the complainant in the sum of \$9,815.73. This order was never appealed from, although Weissman could have done so after judgment.

The complainant filed this bill setting forth virtually the same facts which he presented in the lawsuit, which he had fully argued and upon which Judge Dungan had rendered an opinion adverse to the complainant. By his bill, complainant sought to have the bond surrendered and cancelled and to have the plaintiff barred from collecting any money on the bond or on the judgment which had for its basis either the book account, the count for goods sold and delivered or the bond.

In other words, by the Chancery action, complainant proposed to try the case all over again and re-argue those matters which he had exhausted before the law court. He wanted to take two bites of the cherry. This procedure, the established law of our State emphatically discountenances.

ARGUMENT.

POINT I.

The case was *res adjudicata* and the Court was therefore justified in dismissing the bill of complaint.

The complainant had already had his day in Court. He had been afforded the opportunity to meet the defendant's case, but had lost. If he felt aggrieved, he could have appealed; but he could not use the Court of Chancery as an appellate tribunal. Authority for the foregoing is to be found in the learned opinion of Vice-Chancellor Van Fleet in the leading case of *Dringer v. Receiver of the Erie Railway*, 42 N. J. E. 573; (8 A. 811):

"Where a litigant has had his day in court and been afforded the opportunity which the law secures to every litigant to meet the case made by his adversary, and to overthrow it by proof and argument and judgment passes against him, if he believes that injustice has been done, he has a right to have such judgment reviewed by such legal method as may be appropriate to the redress of the wrong or error of which he complains. He may sue out a writ of error, apply for a new trial or rehearing, or take an appeal; *but he cannot maintain a bill in equity to retry the case on its merits, or retry any of the questions settled by the judgment on the ground that the judgment is a fraud because it is contrary to the real truth or right of the case.* The judgment may rest on perjured testimony or on a forged instrument; yet, if the defendant has had the opportunity given to him by the law to show that the testimony was false or the instrument was forged, *he stands irretrievably concluded by the judgment unless he can procure it to be reversed by a direct appellate proceeding.* It is certain that in

such a case he had no remedy in equity. *Vaughin v. Johnson*, 9 N. J. E. 173; *Stratton v. Allen*, 1 C. E. Gr. 229. The rule upon this subject is settled. Chief Justice Shaw stated it as follows, in *Greene v. Greene*, 2 Gray 361: 'The maxim that fraud vitiates every proceeding must be taken, like other general maxims, to apply to cases where proof of fraud is admissible. But where the same matter has been actually tried, proof of fraud is not again admissible. *The party is estopped to set up such fraud, because the judgment is the highest evidence and cannot be controverted.*' The rule as thus stated has been approved by the Supreme Court of the United States in *United States v. Throckmorton*, 98 U. S. 61.

Chancellor Williamson in *Tompkins v. Tompkins*, 11 N. J. E. 515, said:

"Even in a case where a judgment has been obtained in the absence of a party, and upon hearing entirely ex parte, a court of equity will not try the merits of the case over again, where the merits have been properly established by law to hear and adjudicate upon them."

On page 581 of 42 E. 573, *Dringer v. Receiver of the Erie Railway*, *supra*, Vice-Chancellor Fleet says:

"A court of equity may unquestionably annul a judgment or decree which has been obtained by fraud, but in order to justify such an exercise of power, it must be made clearly to appear that the judgment or decree has no other foundation than fraud; in other words, it must be made to appear that, if there had been no fraud, there would have been no judgment or decree. An attempt to exercise a wider or more liberal jurisdiction in cases of this class, would, it will be perceived, necessarily enlarge the jurisdiction of courts of equity so as to make them, practically, courts for the review of the judicial acts of other tribunals, and not

tribunals with just sufficient power to redress frauds by undoing what fraud has done."

Chancellor Green in the case of *Stratton v. Allen*, 16 N. J. E. 229 (cited with approval in the case of *Mechanics National Bank v. Burnet Manufacturing Company*, 33 N. J. E. 486) stated:

"Objections which relate to the regularity of a judgment, or to the validity of the instrument upon which it is founded, constitute no ground for the interference of this court. If the instrument upon which judgment is entered is without valid consideration, or invalid, or if the judgment itself is unauthorized, or illegal, the remedy for the party aggrieved would be by application to the court in which the judgment is entered, or by writ of error. They are questions exclusively for the cognizance of those courts. It seems to be conclusively settled that *a judgment can only be impeached in a court of equity for fraud in its concoction.*"

Citations of cases can be multiplied which will bear out defendant's contention that the bill filed in the Court of Chancery was without merit and could not be entertained and that the matter had already been adjudicated, but the foregoing authorities should suffice.

POINT II.

The Chancery Act expressly denies the injunction for which complainant prayed.

Section 64 of the Chancery Act, 1 C. S. 434 provides:

"No injunction shall issue to stay proceedings at law in any personal action after verdict or judgment, on the application of a defendant in the said proceedings at law, unless a sum of money equal to the amount due at the time of such deposit upon said

verdict or judgment, with costs, shall be first deposited with the clerk of the court by the applicant for such injunction, or unless said applicant shall give such security, by bond, as the Chancellor shall deem good, to the party or parties at law against whom such injunction is prayed, in double the amount then due on such verdict or judgment and the costs at law, with condition to abide such order or decree as the Chancellor shall make in the premises; or if the bill be dismissed, to pay the amount of the said verdict or judgment and costs, with the interest thereon."

In construing this statute, the Chancellor in the case of *Kinney v. Ogden's Adm'r*, 3 N. J. E. 168, said:

"* * * It means that a party who has obtained a judgment, shall not be stayed or hindered in any suit or proceeding he may institute for the recovery of it unless the amount of it, be first deposited in the office. Such is the true spirit of the section, and the reason of the thing."

Chief Justice Beasley, speaking for the Court of Errors and Appeals in the case of *Phillips v. Pullen*, 45 N. J. E. 157; 16 A. 915, in a situation similar to the one which exists in the present one stated:

"It is obvious that this injunction was inadvertently granted, for the proceeding is in plain violation of a statute of this state. The provision referred to is the eightieth section of the Chancery Act, which declares that no injunction shall issue to stay proceedings at law in any personal action after verdict or judgment, on the application of a defendant, unless the money due and costs be paid into court, or a bond in a prescribed form be given as security for such moneys. (Revision, p. 119, par. 90.) The language of the clause is so perspicuous as to leave no doubt as to its operative force.

It establishes the rule, subject to no exceptions, that proceedings at law, after verdict or judgment, in a personal action, shall not be stayed by injunction, except upon compliance with its defined conditions. And neither this court, nor the Court of Chancery, can dispense, even temporarily, with such conditions, or any part of them."

No pretense is made by the complainant that any deposit had been made in Court or any bond had been filed to secure and indemnify the defendant. On that ground alone, the Court was warranted in denying the restraint and dismissing the bill.

Answers to Points raised by Complainant-Appellant.

It simply remains to answer the points raised by the complainant-appellant in his brief.

The first point raised is:

"The evidence justified a finding that the complainant, Joseph A. Weissman, had no knowledge of the true character of the transaction, and that he did not participate in the scheme to defraud creditors."

The answer to that contention is that in dismissing the bill of complaint the Court found otherwise, because on page 136 of the State of the Case, line 28, etc., the Court said:

"* * * the fact that Weissman signed the bond is quite a controlling circumstance here, particularly in view of the fact that he could not explain why Grunt was getting a \$12,000 mortgage for a \$9,000 debt, or really, a \$7,000 debt at that time. That inability to explain that situation satisfactorily to me convinces me that Weissman is not telling all he knows about this case.
* * *"

The real question was whether or not the execution of the bond and mortgage constituted payment. It is admitted that the mortgage money came from Grunt and now what Weissman wants to have done is to have it declared that Grunt's money paid himself and that therefore the bond should be cancelled. To state the proposition shows its absurdity.

After the bond and mortgage transaction, the complainant still received bills for merchandise from Grunt which Grunt delivered after the execution of the bond and mortgage which helped comprise the \$9,000.00 indebtedness.

The Court found as a fact that the bond and mortgage and the check were not considered as payment and this finding, since there was evidence to support it, will not be disturbed by the Appellate Court on appeal.

Authority for this proposition is found in the cases of:

Matthew v. Lewis, 138 Atl. 511.

Whigham v. Seacoast Finance Corp., 145 Atl. 240.

Aird v. Hyde, 142 Atl. 309.

Bell v. Smith, 143 Atl. 819.

Miller v. Grossman, 140 Atl. 292.

Resky v. Meyer, 119 A. 68; 98 L. 168.

The second point raised by the appellant is that the decree was erroneous because the Court failed to grant the injunction that was prayed for.

The atmosphere that the appellant endeavors to create by charging fraud is not in any manner borne out and the cases cited under this point are not really relevant to the issues raised by the pleadings and which are disposed of in this brief.

In the case of *Stiles v. Galbreath*, 69 E. 222, cited by the appellant on page 15 of his brief, the Court also said:

“The mortgage taken by Stiles and McClay was good as between the mortgagor, Mrs. Galbreath, and complainants, Stiles and McClay, as security for the payment of the debt, the contract price which Mrs. Galbreath owed them for the building, Galbreath’s Apartment House.”

From the above the inference was that the bond was not invalid but was a subsisting obligation.

It is also to be remembered that in the case at bar the contest is not between lien holders. Although the mortgage was fiction, the bond was not; it was taken as added security.

In the cases cited under Section 15 of the Mechanics’ Lien Act, the courts may hold that the mortgage is not a lien against the property, but they will not destroy the existence of the bond which, after all, is the principal obligation and which in this case was given as further security for the materialman.

The fact that Mr. Grunt, the materialman, furnished Weissman with more materials after the execution of the bond by Weissman, constitutes sufficient consideration for the obligation which Weissman undertook when he executed the instrument.

The fact that later on the mortgage was declared invalid did not wipe out the bond. Authority for this proposition is found in a decision by Vice-Chancellor Backes in the case of *Douredour, et al. v. Humbert*, 95 A. 742, where it was held that:

“The taking of a bond secured by a mortgage in extinguishment of an existing debt,

without more, does not create the holder a purchaser for value, for the reason that in the merger, *the form of the debt only and not the substance is changed; it is the same debt* and under the settled rule a mortgage taken for a precedent debt does not constitute the mortgagee a purchaser for value."

So here in taking the bond, the form of the debt was changed, but the substance, the debt, still remained.

"Foreclosure of a senior mortgage may wipe out the lien of a junior mortgage, but not the debt," 234 Mass. 467.

The case of *Cornish v. Bryan*, 10 E. 146, cited by the appellant on page 21 of his brief, applies only where a suit is commenced in Chancery alleging the fraud and asking for cancellation but it is not applied where an action at law has been commenced and the fraud is set up in defense thereto and the question is tried and disposed of there.

In the *Cornish v. Bryan* case, *supra*, the following statement appears:

"Where a suit at law is commenced and the defense at law is complete, then that is a good objection for this court's refusing to change the forum of litigation. Where, too, the defense is of a character plain and palpable, and within the command of the party at any time, this court ought not to encourage a resort to an expensive litigation in a Court of Chancery."

The rather elaborate recitation of facts and what the appellant regards were facts in the first portion of his brief entitled "Statement of the Case" has the tendency to becloud the real issues that were presented by the pleadings to the Vice-Chancellor for determination. All of

which shows that the appellant's contentions are unsound.

CONCLUSION.

Having indicated that this case is merely an attempt on the part of the appellant to make of the Court of Chancery an appellate tribunal to retry the case which had already been disposed of in the Circuit Court and which therefore, made it *res adjudicata* and having also pointed out that under Section 64 of the Chancery Act and the cases construing that statute, the appellant had no standing to start or maintain this suit, and that the learned Vice-Chancellor in deciding that the bill of complaint should be dismissed was correct in his determination, it is, therefore, respectfully submitted that the decree appealed from should be affirmed.

Respectfully submitted,

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Solicitor for and of Counsel with
Defendant-Appellee.

