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Notice of Appeal.

Filed March 5, 1930.

In Chancery of New Jersey.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	67/302. On Bill, etc. Notice of Appeal.

To the Complainant, or, SAMUEL DANIELS, his Solicitor:

Defendants Davis Bender, Harry Bender, Mollie Bender, Profit Realty Company and Bender Construction Company hereby appeal from the Final Decree made by the Chancellor, on the advice of Vice-Chancellor Alonzo Church, in the above-entitled cause on February 21, 1930, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

CORN & SILVERMAN,
Solicitors and Counsel with Defendants Davis Bender, Harry Bender, Mollie Bender, Profit Realty Company and Bender Construction Company.

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

JOS. J. CORN,
Of Counsel with said Defendants.

Filed March 5, 1930.

Notice of Appeal.

Service of the within Notice of Appeal is hereby acknowledged this 28th day of February, 1930.

SAMUEL DANIELS,
Solicitor of Complainant.

Petition of Appeal.

Filed March 18, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

JACOB WILLIAMSON, Complainant-Respondent, vs. DAVIS BENDER, HARRY BENDER, MOLLIE BENDER, PROFIT REALTY CO., and BENDER CONSTRUCTION CO., Defendants-Appellants.	On Appeal from Court of Chancery. Petition of Appeal.

To the Honorable The Court of Errors and Appeals in the Last Resort in All Causes.

The petition of Davis Bender, Harry Bender, Mollie Bender, Profit Realty Co. and Bender Construction Co., the appellants in the above-entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a final decree made in the Court of Chancery by His Honor Edwin Robert Walker, Chancellor of the State of New Jersey, on the advice of Vice-Chancellor Alonzo Church, bearing date February 21, 1930, in a certain cause in said Court of Chancery wherein the said Jacob Williamson was complain-

ant and the said Davis Bender, Harry Bender, Mollie Bender, Profit Realty Co., and Bender Construction Co., were defendants, in this respect, to wit, that the said decree adjudges that the said defendants participated in the fraudulent conveyances referred to in the bill of complaint with knowledge thereof, and for the purpose of injuring, defrauding and delaying complainant from satisfying his judgment; and that the said conveyances be set aside and declared and held to be fraudulent and null and void and of no effect; and that defendants pay to complainant a counsel fee of Sixteen Hundred Dollars ($1600); and that the counterclaim of defendant Davis Bender be dismissed.

2. Petitioners appeal from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that:

I. The Court, by its order of October 18, 1928, ordered discovery without requiring a certified copy of said order to be served on defendant Davis Bender.

II. The Court, by its order of November 13, 1928, dismissed defendants' petition to restrain the taking of testimony in discovery until defendant Davis Bender be served personally with an order for discovery.

III. The following questions were admitted:

To the witness Louis J. Feit:

(a) "Mr. Feit, I show you chattel mortgage from Davis Bender to the Sivad Realty Co. dated June 11, 1926, and ask you if you prepared that instrument?"

(b) "Did you see any money passing at

the time that this chattel mortgage, Exhibit 3, was made and delivered?"

To the witness Davis Bender:

(c) "How much money did you give her in the year 1927?"

(d) "Have you any idea of where your wife got $10,000 on September 16, 1927?"

To the witness Harry Bender:

(e) "And your first deposit was $3845?"

(f) "You know that prior to the time of June, 1926, that this company only had a nominal bank account of about $125 or $150, don't you?"

IV. There were admitted in evidence:

(a) Bank statement of Mollie Bender.

(b) Bank statement of Bender Construction Co.

(c) Bank statement of Sivad Realty Co.

V. There was no proof that the questioned conveyances were made for the purpose of defrauding creditors.

VI. There was no proof that the questioned conveyances were made to avoid the payment of complainant's judgment.

VII. The Court held that a grant by a parent to a child, based on services rendered, is invalid as to creditors.

VIII. The Court held that a voluntary conveyance by one indebted raises an irrebuttable presumption of fraud.

IX. Complainant was not an existing creditor when the questioned conveyances were made.

X. Davis Bender was solvent when the questioned conveyances were made.

XI. There was no proof that "defendants Davis

Bender, Harry Bender, Mollie Bender, Hortence Bender, Profit Realty Company and Bender Construction Company all participated in the fraudulent conveyances, assignments, encumbrances, connivances and collusive agreements and undertakings referred to in the bill of complaint and with knowledge thereof, for the purpose of hindering defrauding and delaying complainant from satisfying his said judgment."

XII. The proofs showed that the questioned conveyances were bona fide and were made for a good and valuable consideration.

XIII. Defendant Davis Bender proved all the allegations of his counterclaim, complainant sustained none of the defenses to the counterclaim, and the relief prayed for in the counterclaim should have been awarded.

XIV. The counsel fee awarded to complainant was unreasonable and excessive.

XV. The counsel fee awarded to complainant included reimbursement of complainant's expenses in connection with discovery proceedings.

XVI. The Court's findings were contrary to the great weight of the evidence.

Petitioners therefore pray that said decree of said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

CORN & SILVERMAN,
Solicitors and Counsel with
Defendants-Appellants.

Answer to Petition of Appeal.

Filed April 9, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

JACOB WILLIAMSON, Complainant-Respondent, vs. DAVIS BENDER, HARRY BENDER, MOLLIE BENDER, PROFIT REALTY CO., and BENDER CONSTRUCTION CO., Defendants-Appellants.	On Appeal, &c. Answer to Petition of Appeal.

The answer of Jacob Williamson, the above named respondent to the petition of appeal of Davis Bender, Harry Bender, Mollie Bender, Profit Realty Co. and Bender Construction Co., the above named appellants, respectfully shows that:

This respondent not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless admits that a decree was on February 21st, 1930 made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this respondent begs leave to refer thereto when the same shall be produced.

The said 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 taxed in favor of this respondent.

SAMUEL DANIELS,
Solicitor for and of Counsel
with Respondent.

Bill of Complaint.

Filed Feb. 20, 1928.

IN CHANCERY OF NEW JERSEY.

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

The complainant, Jacob Williamson, residing in Yonkers, in the State of New York, respectfully shows that:

1. On June 16, 1925 Davis Bender, one of the defendants herein, was indebted to the complainant on a negotiable promissory note which the said Davis Bender gave to the complainant as and for part of the purchase price of certain lands sold by the complainant to the said Davis Bender. The said note bore interest and was payable by its terms on June 16, 1926. It was not paid at maturity.

2. On March 28, 1927, the complainant instituted a suit against the said Davis Bender on the said note in the Essex County Circuit Court of the State of New Jersey and on February 3, 1928, the complainant recovered a judgment on the said promissory note against the said Davis Bender in the said Essex County Circuit Court for $11,575.00 besides the costs of the said suit.

3. On April 22, 1926, after the delivery of the said note, but shortly before its maturity, and while the complainant was a creditor of the said Davis Bender as herein stated, the said Davis Bender was seized in fee simple of the following tracts or parcels of land and premises situated in the City of Newark, County of Essex and State of New Jersey:

Parcel A: BEGINNING in the southerly line of Goldsmith Avenue at a point therein distant 215.98 feet westerly from the westerly line of Bergen

Street; thence running (1) along the southerly line of Goldsmith Avenue North 46 degrees 5½ minutes West 60 feet; thence (2) south 43 degrees 54½ minutes west and at right angles to Goldsmith Avenue 100 feet; thence (3) south 46 degrees 5½ minutes East 60 feet; and thence (4) North 43 degrees 54½ minutes East 100 feet to the southerly line of Goldsmith Avenue and the point or place of BEGINNING.

Parcel B: BEGINNING in the easterly line of South Broad Street as widened at a point distant 30 feet southerly from the southwest corner of land formerly of John L. Jackson, thence (1) south 60 degrees 45 minutes East 88 feet; thence (2) south 26 degrees 30 minutes West 30 feet; thence (3) north 60 degrees 45 minutes west 84 feet to South Broad Street; thence (4) north 29 degrees 15 minutes East 30 feet to the place of BEGINNING.

Parcel C1: BEGINNING in the northerly line of King Street at a point 119 feet distant south 70 degrees East from the corner formed by the intersection of said line with the Easterly line of Essex and Middlesex Turnpike Road; thence (1) running through the centre of the partition wall of the two houses, north 20 degrees East 81 feet; thence (2) South 69 degrees and 15 minutes East 22 feet; thence (3) South 20 degrees West 80 feet to said King Street; thence (4) along the same north 70 degrees West 22 feet to the place of BEGINNING.

Parcel C2: BEGINNING in the northerly line of King Street at a point 100 feet distant south 70 degrees East from the corner formed by the intersection of said line with the Easterly line of Essex and Middlesex Turnpike Road; thence (1) running north 20 degrees East 81 feet 6 inches; thence (2)

south 69 degrees 15 minutes East 19 feet; thence (3) south 20 degrees West 80 feet through the center of the two dwelling houses to said King Street; thence (4) along the same north 70 degrees west 19 feet more or less to the place of BEGINNING.

Parcel D1: BEGINNING at a point in the easterly line of Broad Street distant southerly 65 feet from the southeast corner of Broad Street and Vanderpool Street at the line of property reputed to be owned by Will C. Headley, thence (1) running easterly along the line of last mentioned land, parallel with said southerly line of Vanderpool Street 92.9 feet to the rear line of land fronting on Broad Street; thence (2) southerly along same and parallel with Broad Street, 30 feet; thence (3) westerly and parallel with second course, 95.8 feet, to said line of Broad Street; thence (4) along said line of Broad Street, northerly 330 feet to the point and place of BEGINNING.

Parcel D2: BEGINNING on the east side of the Essex and Middlesex Turnpike Road at a point 100 feet south of the north line of the house lot of Caleb Snow; thence (1) south 60 degrees 45 minutes East 100 feet; thence (2) south 29 degrees 15 minutes West 30 feet; thence (3) north 60 degrees 45 minutes West 100 feet; thence (4) north 29 degrees 15 minutes East 30 feet to the place of BEGINNING.

Parcel E: BEGINNING at the center line of Wright Street on the Eastern side of Avenue C; thence (1) easterly 225 feet; thence (2) northerly 50 feet thence (3) westerly 100 feet to said Eastern side of Avenue C thence (4) northerly along the easterly line of Avenue C 80 feet to the place of BEGINNING.

Parcel F: BEGINNING in the easterly line of

Avenue C at a point in the center line of Wright Street thence (1) along easterly through the center of Wright Street 225 feet to the line of land of Arthur Devine; thence (2) northerly parallel along his line 130 feet to a point 100 feet south of Emmet Street; thence (3) westerly parallel with Emmet Street 200 feet more or less to the northwesterly line of land belonging to the estate of Sayrus Coe; thence (4) southerly along that line 50 feet more or less to Avenue C; thence (5) along southerly along the said 93 feet more or less to the center of Wright Street and place of BEGINNING.

4. On February 7, 1928, the complainant caused an execution to be issued out of the said Essex County Circuit Court on the said judgment directing the Sheriff of the County of Essex to make good the said judgment and costs out of the goods and lands of the said Davis Bender. The said execution was returned by the said Sheriff wholly unsatisfied.

5. Harry Bender who is also made a defendant herein is a son of the defendant, Davis Bender, and resides with his parents.

6. Mollie Bender who is also made a defendant herein is the wife of the defendant, Davis Bender.

7. Hortense Bender who is also made a defendant herein is a daughter of the defendant, Davis Bender, and resides with her parents.

8. On April 22, 1926, while the said Davis Bender, was indebted to the complainant as herein stated, the said Davis Bender, together with his wife, Mollie Bender, executed a deed purporting to convey all of the said lands hereinabove described as parcels A, B, C1, C2, D1, D2, E and F to his said son, Harry Bender, one of the defendants herein, for the stated consideration of One

Dollar which said deed was recorded in the Register's Office of the said County of Essex in Book G-74 of Deeds for said County on pages 269 et seq.

9. The said conveyance was voluntary and was without the support of an adequate valuable consideration and was fraudulent as against the complainant as a creditor of the said Davis Bender.

10. The said Davis Bender purported to divest himself of the legal title to all of the real property and estate he then owned by the said transfer and conveyance to his said son for the purpose of hindering, defrauding and delaying the complainant as a creditor of the said Davis Bender and for the purpose of preventing the complainant from impressing the said judgment as a lien against the said premises hereinabove described as parcels A, B, C1, C2, D1, D2, E and F.

11. The defendant, Harry Bender, participated in the said conveyance while cognizant of and chargeable with knowledge of all of the facts herein recited.

12. On March 26, 1927, and with notice that the defendant, Davis Bender, was being sued upon the said note, the defendant, Davis Bender and Harry Bender did further fraudulently embarrass, hinder and delay the complainant from impressing the said judgment as a lien against the said premises herein designated as Parcel A by fraudulently conniving, colluding and agreeing to organize and by causing to be organized under the laws of the State of New Jersey, the Profit Realty Co., a New Jersey corporation, one of the defendants herein, with the intention and for the purpose of embarrassing, hindering and delaying the complainant from enforcing the said judgment as a lien against the said premises designated as Parcel A.

13. Pursuant to the said fraudulent connivance, collusion and agreement, the said Harry Bender did convey the said land herein designated as Parcel A to the said defendant, Profit Realty Co., after the suit was instituted on the said note, voluntarily for the stated consideration of One Dollar and without the support of an adequate valuable consideration by a deed which was recorded on April 12, 1927, in the Register's Office of Essex County in Book C76 of Deeds for said County on page 164, et seq.

14. At the time of the said conveyance to the said profit Realty Co., the said corporation was cognizant of and was chargeable with knowledge of all of the facts herein recited.

15. In furtherance of the said connivance and collusion, and fraudulent agreement, the defendant, Profit Realty Co. did thereupon execute and deliver to the defendant, Harry Bender, bond and mortgage, the latter covering the said land herein designated as Parcel A, which bond and mortgage are dated April 11, 1927 and which mortgage is in the principal amount of $15,000.00 and is recorded on April 12, 1927 on the same day with the said mentioned deed in the office of the Register of Deeds for Essex County in Book R-60 of mortgages for said County on pages 210, et seq.

16. The said bond and mortgage were executed and delivered to the said Harry Bender as a result of the said fraud, collusion, connivance, agreement and understanding and upon the further understanding that the said Harry Bender would hold the said bond and mortgage in trust for the said Davis Bender and for the purpose and intention of hindering, delaying and defrauding the complainant by preventing him from impressing the lien of his said judgment on the said land

herein designated as Parcel A, and by preventing the complainant from causing a levy to be made on the moneys due and about to become due on the said bond and mortgage.

17. The defendant, Profit Realty Co. participated in the said conveyance to it and in the execution and delivery of the said bond and mortgage by its officers, agents and stockholders who were all cognizant of or chargeable with knowledge of all the facts hereinabove recited.

18. The defendant, Harry Bender, still holds the said bond and mortgage in his name, but in trust for the said Davis Bender.

19. The defendants, Davis Bender, Harry Bender, Hortense Bender and Mollie Bender have been in possession of the said premises designated as Parcel A prior to and since June 16, 1925, and they are still in possession thereof, said premises being the home of these defendants.

20. On or about February 28, 1927, while the said Davis Bender was indebted to the complainant as herein set forth, the said Davis Bender caused the said Harry Bender to convey the said land herein described as parcels E and F to one Isaac Elson for the stated consideration of One Dollar by deed which was recorded on April 6, 1927 in the office of the Register of deed in County of Essex in Book B-76 of deeds for said County on pages 296 &c.

21. This last mentioned conveyance was voluntary and without the support of an adequate valuable consideration and was fraudulent as against the complainant as a creditor of the said Davis Bender.

22. The said Isaac Elson participated in the said conveyance cognizant of or chargeable with

knowledge of the facts hereinabove recited and of the further fact that the said Harry Bender made this last mentioned conveyance for the purpose of further preventing the complainant from impressing the said judgment as a lien against the said land herein described as Parcels E and F and as a part of the said connivance and collusion agreement between the said Davis Bender and the said Harry Bender.

23. The said Davis Bender and Harry Bender remained in possession of the said premises herein designated as Parcels E and F after the execution and delivery of the said deed and they are still in possession thereof.

24. On or about April 6, 1927, while the said Davis Bender was a creditor of the complainant, the defendants, Davis Bender, Harry Bender, Hortense Bender and Mollie Bender did connive, collude and agree among themselves to fraudulently embarrass, hinder and delay the complainant as a creditor of the said Davis Bender from impressing the said judgment as a lien against the said premises herein designated as Parcels B, C1, C2, D1 and D2 by causing a corporation to be organized under the laws of the State of New Jersey, to wit, the Bender Construction Co., a New Jersey corporation, and as a result of the said connivance, collusion and agreement, the said Harry Bender conveyed to the said Bender Construction Co. for the stated consideration of One Dollar the said land herein designated as Parcels B, C1, C2, D1 and D2 to the said defendant, Bender Construction Co., voluntarily and without the support of an adequate valuable consideration by a deed recorded on May 17 1927 in the office of the Register of Deeds for Essex County in Book I-76 of deeds for

said County on pages 161 et seq.

25. The defendant, Bender Construction Co. by its officers, agents and stockholders participated in the said last mentioned conveyance to it while cognizant of or chargeable of knowledge of all of the facts hereinabove recited.

26. The defendants, Davis Bender, Hortense Bender, Mollie Bender and Harry Bender have been in possession of the said premises designated as Parcels B, C1, C2, D1 and D2 prior to June 16, 1925 and they are still in possession thereof.

27. On January 25, 1926, a bond was executed and delivered by G. L. & S. Holding Company, a New Jersey corporation, to the said Davis Bender in the amount of $4,000.00 together with a mortgage securing the said bond and covering real property on Brunswick Street, in the said City of Newark and which mortgage was recorded in the Register's Office of Essex County in Book P-56 of mortgages for said County on page 400.

28. On April 22, 1926, and while the complainant was a creditor of the said Davis Bender, the said Davis Bender transferred and assigned the last mentioned bond and mortgage to his said son, Harry Bender, for the fictitious consideration of One Dollar, which assignment was recorded in the Register's Office of Essex County in Book 179 of Assignments of mortgages for said County on page 290.

29. Said assignment was voluntary and was without the support of an adequate consideration and was fraudulent as against the complainant as a creditor of the said Davis Bender.

30. By the said assignment the said Davis Bender divested himself of the legal title to said bond and mortgage by the said transfer for the

purpose of hindering, defrauding and delaying this complainant as a creditor of the said Davis Bender and for the purpose of preventing the complainant from causing a levy to be made on the moneys due and to become due on the said bond and mortgage.

31. Said defendant, Harry Bender, participated in the assignment of the said bond and mortgage and received the same while cognizant of and chargeable with knowledge of all the facts herein recited, upon an understanding that he holds the same in trust for the said Davis Bender.

32. The said Harry Bender still holds the said last mentioned bond and mortgage on the said understanding.

33. On and subsequent to June 16, 1925, the defendant, Davis Bender, placed in the hands of the said Harry Bender, a large sum of money and other personal property and real property to be kept by the said Harry Bender for the said Davis Bender in the name of the said Harry Bender for the purpose of protecting the said sum of money and property from the creditors of the said Davis Bender, including the complainant, and the said Harry Bender has since held and still holds the said money and property in trust for the said Davis Bender.

34. Complainant is credibly informed and believes it to be true that said defendant, Davis Bender also has large sums of money on deposit in various banks and banking institutions, the names of which, and the exact amounts of which deposits, are unknown to complainant.

35. Complainant is credibly informed and believes it to be true that the said defendent, Davis Bender has debts owing him by various persons

for large amounts, but complainant has been unable to ascertain the names of such persons or the exact amount of said debts.

36. Complainant is credibly informed and believes it to be true that the said defendant, Davis Bender has equitable interests and things in action which might and should be applied to the payment of said judgment.

37. Complainant is credibly informed and believes it to be true that said defendant, Davis Bender, has other valid debts due him and also various equitable interests.

38. The complainant has been and is unable to find any other property of the said Davis Bender out of which to satisfy his said judgment and has exhausted his legal remedy against the said Davis Bender.

The complainant is without adequate remedy in the courts of law and therefore prays:

1. That Davis Bender, Harry Bender, Mollie Bender and Hortense Bender, Profit Realty Co., a corporation, G. L. & S. Holding Co., a New Jersey corporation, and Isaac Elson and Bender Construction Co., a corporation, who are the defendants to this suit may answer this bill of complaint and each statement therein made.

2. That the said defendants may make discovery of who has possessed and occupied the said lands and premises and received the rents, issues and profits thereof since the pretended conveyances hereinabove set forth were made.

3. That the said defendants or some or one of them may be decreed to pay to the complainant the full amount due and owing to him on said judgment together with the costs and execution fees accrued thereon.

4. That the said fraudulent conveyance by the defendants, Davis Bender and Mollie Bender to the said Harry Bender may be set aside and held to be fraudulent and declared null and void and of no effect as against the complainant's said judgment.

5. That the said fraudulent conveyance by the defendant Harry Bender, to the said defendants, Profit Realty Co., Isaac Elson and Bender Construction Co. may be set aside and held to be fraudulent and declared null and void and of no effect as against the said complainant's said judgment.

6. That the said mortgage made by the Profit Realty Co. to Harry Bender may be decreed to be held in trust for the said Davis Bender and the proceeds thereof or so much as may be necessary to be applied to the payment of the complainant's said judgment.

7. That all of the said land and premises may be sold free, clear and discharged of and from the said fraudulent conveyances under the said writ of execution and the proceeds thereof or so much as may be necessary be applied to the payment of the complainant's said judgment.

8. That the court may order the said defendant, Davis Bender, to make discovery of all property or things in action belonging to him and of any property, money or thing in action due him or held in trust for him except such property as is now reserved by law.

9. That the said bond and mortgage made by the said G. L. & S. Holding Co. to Davis Bender and assigned by the said Davis Bender to the said Harry Bender may be decreed to be held in trust for the said Davis Bender and the proceeds thereof

or so much as may be necessary to be applied to the payment of the complainant's said judgment.

10. That this court may make an order forbidding the payment or transfer to or the receipt by the said defendant, Davis Bender of the debts due to said defendant, Davis Bender, from said defendant, Harry Bender, or of any money or property, in possession or action, held in trust by said defendant, Harry Bender for him or for his use, except such property as is now reserved by law, and except any trust which has been created by or where the fund held in trust has proceeded from some person other than the said Davis Bender himself and the income from such trust does not exceed the sum of $4000.00 per annum, until the further order of this Court.

11. That this court may appoint a receiver pendente lite of all property and things in action belonging or due to or held in trust for the said Davis Bender by the said defendant, Harry Bender, or by any other person; which receiver shall have authority to possess, receive, and in his own name, as such receiver, sue for said property or things in action, and shall in all respects be subject to the authority of this court, in accordance with the practice of this court, and shall and may dispose of said property and things in action in conformity with the final decree of this court, pursuant to the statute in such case made and provided.

12. That this court may order said defendant, Davis Bender and said defendant, Harry Bender, to convey and deliver to said receiver all such property and rights in action and the evidence thereof.

13. That this court may order the said defendants, Davis Bender and Harry Bender to pay the amount of said judgment, with costs and interest thereon and Sheriff's fees, and the costs of this suit, and to apply for that purpose any property and things in action belonging or due to or held in trust for said defendant, Davis Bender.

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

SAMUEL DANIELS,
Solicitor for and of Counsel
with Complainant.

Affidavit of Jacob Williamson.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, HARRY BENDER, HORTENSE BENDER, MOLLIE BENDER, PROFIT REALTY CO., a corporation, BENDER REALTY CO., a corporation, G. L. & S. HOLDING CO., a corporation and ISAAC ELSON, Defendants.	On Bill, &c. Affidavit.

State of New York, }
City of Yonkers, } ss.
County of Westchester }

Jacob Williamson, being duly sworn on his oath, deposes and says:

1. I am the complainant in the foregoing bill of complaint named and the matters and things therein are true to the best of my knowledge, information and belief.

2. On June 16, 1925, Davis Bender, one of the defendants therein, was indebted to me on a negotiable promissory note which the said Davis Bender gave to me as and for part of the purchase price of certain lands sold by me to the said Davis Bender. The said note bore interest and was payable by its terms on June 16, 1926. It was not paid at maturity.

3. On March 28, 1927, I instituted a suit against the said Davis Bender on the said note in the Essex County Circuit Court of the State of New Jer

sey and on February 3, 1928, I recovered a judgment on the said promissory note against the said Davis Bender in the said Essex County Circuit Court for $11,575.00 besides the costs of the said suit.

4. I am credibly informed and believe that on April 22, 1926, after the deliverey of the said note, but shortly before its maturity, and while I was a creditor of the said Davis Bender as herein stated, the said Davis Bender was seized in fee simple of the tracts or parcels of land and premises situate in the City of Newark, County of Essex and State of New Jersey described in detail in the said bill of complaint as Parcels A, B, C1, C2, D1, D2, E and F.

5. On February 7, 1928, I caused an execution to be issued out of the said Essex County Circuit Court on the said judgment directing the Sheriff of the County of Essex to make good the said judgment and costs out of the goods and lands of the said Davis Bender. The said execution was returned by the said Sheriff wholly unsatisfied.

6. Harry Bender, whom I made a defendant herein, is a son of the defendant, Davis Bender, and resides with his parents at 92 Goldsmith Avenue, Newark, N. J., the premises described as Parcel A in my bill of complaint.

7. Mollie Bender whom I also made a defendant herein is the wife of the defendants, Davis Bender, and the mother of the said Harry Bender.

8. Hortense Bender whom I made a defendant herein is a daughter of the defendant, Davis Bender, and resides with her said parents.

9. I am credibly informed and believe that on April 22, 1926, while the said Davis Bender, was indebted to me as herein stated, the said Davis

Bender, together with his wife, Mollie Bender, executed a deed purporting to convey all of the said lands in the bill of complaint described as parcels A, B, C1, C2, D1, D2, E and F to his said son, Harry Bender, for the stated consideration of One Dollar which said deed was recorded in the Register's Office of the said County of Essex in Book G-74 of Deeds for said County on pages 26 et seq.

10. I am credibly informed and believe that the said conveyance was voluntary and was without the support of an adequate valuable consideration and was fraudulent as against me as a creditor of the said Davis Bender.

11. I am credibly informed and believe that the said Davis Bender purported to divest himself of the legal title to all of the real property and estate he then owned by the said transfer and conveyance to his said son for the purpose of hindering, defrauding and delaying me as a creditor of the said Davis Bender and for the purpose of preventing me from impressing the said judgment as a lien against the said premises hereinabove described as parcels A, B, C1, C2, D1, D2, E and F.

12. I am credibly informed and believe that the defendant, Harry Bender, participated in the said conveyance while cognizant of and chargeable with knowledge of all of the facts herein recited.

13. I am credibly informed and believe that on March 26, 1927, and with notice that the defendant, Davis Bender, was being sued upon the said note, the defendants, Davis Bender and Harry Bender did further fraudulently embarrass, hinder and delay me from impressing the said judgment as a lien against the said premises herein designated as Parcel A by fraudulently conniving, colluding and agreeing to organize and by causing to be

organized under the laws of the State of New Jersey, the Profit Realty Co., a New Jersey corporation, one of the defendants herein, with the intention and for the purpose of embarrassing, hindering and delaying me from enforcing the said judgment as a lien against the said premises designated as Parcel A.

14. I am credibly informed and believe that pursuant to the said fraudulent connivance, collusion and agreement, the said Harry Bender did convey the said land herein designated as Parcel A to the said defendant, Profit Realty Co., (after the suit was instituted on the said note) voluntarily for the stated consideration of One Dollar and without the support of an adequate valuable consideration by a deed which was recorded on April 12, 1927, in the Register's office of Essex County in Book C-76 of deeds for said County on page 164, et seq.

15. I am credibly informed and believe that at the time of the said conveyance to the said Profit Realty Co. the said corporation was cognizant of and was chargeable with knowledge of all of the facts herein recited.

16. I am credibly informed and believe that in furtherance of the said connivance and collusion, and fraudulent agreement, the defendant, Profit Realty Co. did thereupon execute and deliver to the defendant, Harry Bender, bond and mortgage, the latter covering the said land herein designated as Parcel A, which bond and mortgage are dated April 11, 1927 and which mortgage is in the principal amount of $15,000.00 and is recorded on April 12, 1927 on the same day with the said mentioned deed in the office of the Register of Deeds for Essex County in Book R-60 of mortgages for

said County on pages 210, et seq.

17. I am credibly informed and believe that the said bond and mortgage were executed and delivered to the said Harry Bender as a result of the said fraud, collusion, connivance, agreement and understanding and upon the further understanding that the said Harry Bender would hold the said bond and mortgage in trust for the said Davis Bender and for the purpose and intention of hindering, delaying and defrauding me by preventing me from impressing the lien of my said judgment on the said land herein designated as Parcel A, and by preventing me from causing a levy to be made on the moneys due and about to become due on the said bond and mortgage.

18. I am credibly informed and believe that the defendant, Profit Realty Co. participated in the said conveyance to it and in the execution and delivery of the said bond and mortgage by its officers, agents and stockholders who were all cognizant of or chargeable with knowledge of all the facts hereinabove recited.

19. I am credibly informed and believe that the defendant, Harry Bender, still holds the said bond and mortgage in his name, but in trust for the said Davis Bender.

20. I am credibly informed and believe that the defendants, Davis Bender, Harry Bender, Hortense Bender and Mollie Bender have been in possession of the said premises designated as Parcel A prior to and since June 16, 1925, and they are still in possession thereof, said premises being the home of these defendants.

21. On or about February 28, 1927, while the said Davis Bender was indebted to the complainant as herein set forth, I am credibly informed

and believe, that the said Davis Bender caused the said Harry Bender to convey the said land herein described as Parcels E and F to one Isaac Elson for the stated consideration of One Dollar by deed which was recorded on April 6, 1927 in the office of the Register of deeds in County of Essex in Book B-76 of deeds of said County on pages 296 &c.

22. I am credibly informed and believe that this last mentioned conveyance was voluntary and without the support of an adequate valuable consideration and was fraudulent as against me as a creditor of the said Davis Bender.

23. I am credibly informed and believe that the said Isaac Elson participated in the said conveyance cognizant of or chargeable with knowledge of the facts hereinabove recited and of the further fact that the said Harry Bender made this last mentioned conveyance for the purpose of further preventing me from impressing the said judgment as a lien against the said land herein described as Parcels E and F and as a part of the said connivance and collusive agreement between the said Davis Bender and the said Harry Bender.

24. I am credibly informed and believe that the said Davis Bender and Harry Bender remained in possession of the said premises herein designated as Parcels E and F after the execution and delivery of the said deed and they are still in possession thereof.

25. I am credibly informed and believe that on or about April 6, 1927, while the said Davis Bender was my creditor the defendants, Davis Bender, Harry Bender, Hortense Bender and Mollie Bender did connive, collude and agree among themselves to fraudulently embarrass, hinder and delay

me as a creditor of the said Davis Bender from impressing the said judgment as lien against the said premises herein designated as Parcels B, C1, C2, D1 and D2 by causing a corporation to be organized under the laws of the State of New Jersey, to wit, the Bender Construction Co., a New Jersey corporation, and as a result of the said connivance, collusion and agreement the said Harry Bender conveyed to the said Bender Construction Co. for the stated consideration of One Dollar the said land herein designated as Parcels B, C1, C2, D1 and D2 to the said defendant, Bender Construction Co. voluntarily and without the support of an adequate valuable consideration by a deed recorded on May 17, 1927 in the office of the Register of Deeds for Essex County in Book I-76 of deeds for said County on pages 161 et seq.

26. I am credibly informed and believe that the defendant, Bender Construction Co. by its officers, agents and stockholders participated in the said last mentioned conveyance to it while cognizant of or chargeable of knowledge of all of the facts hereinabove recited.

27. The defendants, Davis Bender, Hortense Bender, Mollie Bender and Harry Bender have been in possession of the said premises designated as Parcels B, C1, C2, D1 and D2 prior to June 16, 1925 and they are still in possession thereof.

26. I am credibly informed and believe that on January 25, 1926, a bond was executed and delivered by G. L. & S. Holding Company, a New Jersey corporation, to the said Davis Bender in the amount of $4,000.00 together with a mortgage securing the said bond and covering real property on Brunswick Street, in the said City of Newark and which mortgage was recorded in the Reg-

ister's office of Essex County in Book P-56 of mortgages for said county on page 400.

29. I am credibly informed and believe that on April 22, 1926, and while the complainant was a creditor of the said Davis Bender, the said Davis Bender transferred and assigned the last mentioned bond and mortgage to his said son, Harry Bender, for the fictitious consideration of One Dollar, which assignment was recorded in the Register's Office of Essex County in Book 179 of assignments of mortgages for said County on page 290.

30. I am credibly informed and believe that said assignment was voluntary and was without the support of an adequate consideration and was fraudulent as against me as a creditor of the said Davis Bender.

31. I am credibly informed and believe that by the said assignment the said Davis Bender divested himself of the legal title to said bond and mortgage by the said transfer for the purpose of hindering defrauding and delaying me as a creditor of the said Davis Bender and for the purpose of preventing me from causing a levy to be made on the moneys due and to become due on the said bond and mortgage.

32. I am credibly informed and believe that said defendant, Harry Bender, participated in the assignment of the said bond and mortgage and received the same while cognizant of and chargeable with knowledge of all the facts herein recited, upon an understanding that he holds the same in trust for the said Davis Bender.

33. I am credibly informed and believe that the said Harry Bender still holds the said last mentioned bond and mortgage on the said understanding.

Affidavit of Jacob Williamson.

34. I am credibly informed and believe that prior and subsequent to June 16, 1925, the defendant, Davis Bender, placed in the hands of the said Harry Bender, a large sum of money and other personal property and real property to be kept by the said Harry Bender for the said Davis Bender in the name of the said Harry Bender for the purpose of protecting the said sum of money and property from the creditors of the said Davis Bender, including me and the said Harry Bender has since held and still holds the said money and property in trust for the said Davis Bender.

35. I am credibly informed and believe it to be true that the said defendant, Davis Bender also has large sums of money on deposit in various banks and banking institutions the names of which, and the exact amounts of which deposits, are unknown to me.

36. I am credibly informed and believe it to be true that the said defendant, Davis Bender has debts owing him by various persons for large amounts, but I have been unable to ascertain the names of such persons or the exact amount of said debts.

37. I am credibly informed and believe it to be true that the said defendant, Davis Bender has equitable interests and things in action which might and should be applied to the payment of said judgment.

38. I am credibly informed and believe it to be true that said defendant, Davis Bender, has other valid debts due him and also various equitable interests.

39. I have been and am unable to find any other property of the said Davis Bender out of which to satisfy my said judgment and have ex-

hausted my legal remedy against the said Davis Bender.

JACOB WILLIAMSON.

Subscribed and sworn to before me
this 14th day of February, A. D. 1928.
Albert C. Jordan,
Commis. of Deeds,
City of Yonkers, N. Y.
(Westchester County affidavit
annexed to origanl)

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, HARRY BENDER, HORTENSE BENDER, MOLLIE BENDER, PROFIT REALTY CO., a corporation, BENDER REALTY CO., a corporation, G. L. & S. HOLDING CO., a corporation and ISAAC ELSON, Defendants.	On Bill, &c. Affidavit.

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

Samuel Rous, being duly sworn according to law on his oath deposes and says:

1. I am a clerk in the law office of Samuel Daniels, solicitor for and of counsel with the complainant in the foregoing bill of complaint and at his request I examined the records in the offices

of the Clerk and of the Register of Deeds of the County of Essex.

2. My said examination reveals the following facts:

3. On April 22, 1926, Davis Bender was the record owner in fee simple of the lands and premises described in paragraph 3 of the bill of complaint to be filed in the cause, but only as to an undivided one-half interest in Parcels E and F as therein described.

4. On April 22, 1926, the defendants, Davis Bender and Mollie Bender, his wife, executed a deed to the said lands designated in the bill of complaint as parcels A. B, C1, C2, D1, D2, E and F to Harry Bender by deed recorded on that day in the office of the Register of Deeds for Essex County in Book G 74 of deeds for Essex County on pages 269 &c. for the stated consideration of One Dollars and other valuable considerations.

5. On April 11, 1927, the defendant, Harry Bender, executed a deed to the Profit Realty Co., a corporation, for the stated consideration of One Dollar and other valuable consideration covering the lands designated in the bill of complaint as Parcel A, which deed was recorded on April 12, 1927 in the said Register's Office in Book G 76 of deeds for said County on page 164.

6. On April 11, 1927 the Profit Realty Co. executed a mortgage to Harry Bender securing a bond given to him which mortgage is in the principal amount of $15,000.00 and covers the said land designated as Parcel A and was recorded on April 12, 1927 in the said Register's Office in Book R 60 of mortgages for the said County on pages 210, et seq.

7. Harry Bender is still the record holder of the said bond and mortgage.

8. The said Profit Realty Co. was incorporated on March 26, 1927 and is still the record owner of the said land designated as Parcel A.

9. Harry Bender conveyed the said land designated as Parcels E and F to one Isaac Elson by a bargain and sale deed dated February 28, 1927, for the stated consideration of One Dollar and other valuable considerations which deed was recorded on April 6, 1927 in the said Register's Office in Book B 76 of deeds for said County on pages 296 etc.

10. Isaac Elson is still the record owner of the said land designated as Parcels E and F.

11. On August 13, 1926, Harry Bender, Mollie Bender and Hortense Bender organized the corporation, Bender Construction Co. under the laws of New Jersey, Harry Bender subscribed to 28 shares of its stock of the par value of $100.00 each and is the registered agent of the company and stated his address to be 92 Goldsmith Avenue, Newark, N. J., Mollie Bender and Hortense Bender each subscribed to one share of its stock.

12. Harry Bender conveyed the said land designated as Parcels B, C1, C2, D1 and D2 to the Bender Construction Co. by deed dated April 6, 1927 for the stated consideration of One Dollar and other valuable considerations. This deed was recorded in the said Register's Office on May 17, 1927 in Book 176 of Deeds for said county on pages 161 etc.

13. Bender Construction Co. is still the record owner of the said parcels B, C1, C2, D1 and D2.

14. On January 25, 1926, a mortgage was executed by G. L. & S. Holding Company, a New Jersey Corporation to the said Davis Bender in the amount of $4,000.00 which secured a bond and

covering real property on Brunswick Street, in the City of Newark, New Jersey, and which mortgage was recorded in the Reguster's Office of Essex County in Book P 56 of mortgages for said County on page 400.

15. On April 22, 1926, Davis Bender assigned the last mentioned bond and mortgage to Harry Bender for the stated consideration of One Dollar and other valuable considerations, which assignment was recorded in the Register's office of Essex County in Book 179 of Assignments of mortgages for said County on page 290. Harry Bender is still the record owner of the said bond and mortgage.

SAMUEL ROUS.

Subscribed and sworn to before me
this 20th day of February, A. D.
1928.

Ralph H. Jacobson,
An Attorney at Law
of New Jersey.

Order for Discovery and Restraint.

Filed February 20, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, HARRY BENDER, HORTENSE BENDER, MOLLIE BENDER, PROFIT REALTY CO., a corporation, BENDER CONSTRUCTION CO., a corporation, G. L. & S. HOLDING CO., a corporation and ISAAC ELSON, Defendants.	On Bill, &c. Order for Discovery and Restraint.

The complainant having filed his bill of complaint herein, duly verified, wherein he alleges that he is the holder of a judgment recovered against the defendant, Davis Bender, in the Essex County Circuit Court; that an execution has been duly issued out of said court against the property of the said defendant, and returned wholly unsatisfied by the Sheriff of the County of Essex; that there remains due upon said judgment a balance exceeding $100., exclusive of costs; that the defendant, Harry Bender, is indebted to said defendant Davis Bender, and holds certain property in trust for said defendant, Davis Bender, which trust was created by said defendant, Davis Bender; and upon reading said bill and the affidavits thereunto annexed;

It is, on this 20th day of February, 1928, ORDERED, that the said defendant, Davis Bender appear and make discovery on oath concerning his prop-

erty and things in action before Roger E. Salmon, a master of this court, on the 25th day of February, 1928, and at the hour of 9:30 o'clock in the forenoon, at the office of said master, Roger E. Salmon, Room 638 Prudential Building, 763 Broad Street, Newark, N. J.

It is further Ordered that the said Davis Bender and the said Harry Bender show cause before this court on Tuesday, the 6th day of March, 1928, at the hour of ten o'clock in the forenoon or as soon thereafter as counsel can be heard in the Chancery Chambers at 1060 Broad Street, Newark, N. J., why the said defendant, Harry Bender should not be restrained from paying or transferring to the said defendant, Davis Bender, or to any other person or persons, any portion of the property, money or things in action, due from him to or held in trust by him for the said defendant, Davis Bender, and why the said defendant, Harry Bender, should not be restrained from paying or transferring to the said defendant, Davis Bender, or to any other person or persons any portion of the bond and mortgage made by the Profit Realty Co. to Harry Bender in the amount of $15,000.00, which mortgage was recorded on April 12, 1927 in the Essex County Register's Office in Book R 60 of mortgages for said County on page 210 and a bond and mortgage made by the G. L. & S. Holding Co., a corporation, to Davis Bender in the amount of $4,000.00 dated January 25, 1926, which mortgage was recorded in Book P 56 of mortgages for said county on page 400 and assigned by the said Davis Bender to said Harry Bender by assignment recorded in said Register's Office in Book 179 of Assignments of Mortgages for said County on page 290 or any moneys due thereunder; and

why the said defendant, Davis Bender should not be restrained from paying or transferring to any person or persons, and from receiving from any person or persons, any property, money or thing in action belonging to him, or held in trust for him, except such property as is now reserved by law, or where said trust has been created by or the fund held in trust has proceeded from some person other than said Davis Bender himself, and the income from said trust does not exceed the sum of four thousand dollars per annum, until the further order of this court,

And it is further Ordered that the said defendant, Harry Bender, in the meantime and until the further order of this court on the premises desist and refrain from paying or transferring to the said defendant, Davis Bender, or to any other person or persons, any portion of the property, money or things in action, due from him or held in trust by him for the said defendant, Davis Bender, and that the said defendant, Harry Bender desist and refrain from paying or transferring to the said defendant, Davis Bender, or to any other person or persons any portion of the bond and mortgage made by the Profit Realty Co. to Harry Bender in the amount of $15,000.00 which mortgage was recorded on April 12, 1927 in the Essex County Register's Office in Book R 60 of mortgages for said County on page 210 and a bond and mortgage made by the G. L. & S. Holding Co., a corporation, to Davis Bender in the amount of $4,000.00 dated January 25, 1926, which mortgage was recorded in Book P 56 of mortgages for said county on page 400 and assigned by the said Davis Bender to said Harry Bender by assignment recorded in said Register's Office in Book 179 of Assignments of Mortgages for said County on page

290 or any moneys due thereunder; and that the said defendant, Davis Bender, desist and refrain from paying or transferring to any person or persons, and from receiving from any person or persons, any property, money or thing in action belonging to him, or held in trust for him, except such property as is now reserved by law, or where said trust has been created by or the fund held in trust has proceeded from some person other than said Davis Bender himself, and the income from said trust does not exceed the sum of four thousand dollars per annum, until the further order of this court.

It is further Ordered that true but uncertified copies of this order be served on the said defendant, Davis Bender and Harry Bender within seven days after the date hereof.

E. R. WALKER,
C.

Respectfully Advised,
ALONZO CHURCH,
V. C.

New Jersey State Library

Order of March 6, 1928.

Filed March 6, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, HARRY BENDER, HORTENSE BENDER, MOLLIE BENDER, PROFIT REALTY CO., a corporation, BENDER CONSTRUCTION CO., a corporation, G. L. & S. HOLDING CO., a corporation and ISAAC ELSON, Defendants.	On Bill, &c. Order.

This matter being opened to the court by Samuel Daniels, Solicitor for the complainant herein and it appearing that an order was entered herein on February 20, 1928, requiring the defendant Davis Bender, to appear and make discovery on oath concerning his property and things in action before Roger E. Salmon, Esq., Master of this court on the 25th day of February, 1928,

And it appearing by the verified petition of the complainant that said Davis Bender could not be served with the said order before the 25th of February, 1928, it is therefore on this 6 day of March, 1928,

ORDERED that the said defendant, Davis Bender, appear and make discovery on oath concerning his property and things in action before Roger E. Salmon, Esq., one of the Masters of this court, on the 24 day of March, 1928 at the hour of 9:30 o'clock in the morning at the office of the said Master in Room 638 of Prudential Building at

Order of March 6, 1928.

763 Broad Street, Newark, N. J., and it is further ORDERED that a true but uncertified copy of this order be served upon the defendant, Davis Bender on or before March 20, 1928.

E. R. WALKER,
C.

Respectfully Advised,
ALONZO CHURCH,
V. C.

Order of March 7, 1928.

Filed March 7, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, HARRY BENDER, HORTENSE BENDER, MOLLIE BENDER, PROFIT REALTY CO., a corporation, BENDER CONSTRUCTION CO., a corporation, G. L. & S. HOLDING CO., a corporation and ISAAC ELSON, Defendants.	On Bill, &c. Order.

This matter being opened to the court by Samuel Daniels, solicitor of the complainant herein, and it appearing that the complainant filed his bill of complaint herein duly verified, wherein he alleges that he is the holder of a judgment recovered against the defendant, Davis Bender, in the Essex County Circuit Court; that an execution

has been duly issued out of said court against the property of the said defendant, and returned wholly unsatisfied by the Sheriff of the County of Essex; that there remains due upon said judgment a balance exceeding $100., exclusive of costs; and upon reading said bill and the affidavits thereunto annexed;

And it appearing that an order to show cause was entered herein on February 20, 1928, ordering the said Davis Bender and the said Harry Bender to show cause before this court on March 6, 1928, why the said defendant, Harry Bender should not be restrained from paying or transferring to the said defendant, Davis Bender, or to any other person or persons, any portion of the property, money or things in action, due from him to or held in trust by him for the said defendant, Davis Bender, and why the said defendant, Harry Bender, should not be restrained from paying or transferring to the said defendant, Davis Bender, or to any other person or persons any portion of the bond and mortgage made by the Profit Realty Co. to Harry Bender in the amount of $15,000.00, which mortagage was recorded on April 12, 1927 in the Essex County Register's Office in Book R 60 of mortgages for said County on page 210 and a bond and mortgage made by the G. L. & S. Holding Co., a corporation, to Davis Bender in the amount of $4,000.00 dated January 25, 1926, which mortgage was recorded in Book P 56 of mortgages for said county on page 400 and assigned by the said Davis Bender to said Harry Bender by assignment recorded in said Register's Office in Book 179 of Assignments of Mortgages for said County on page 290 or any moneys due thereunder; and why the said defendant, Davis Bender, should not be re-

strained from paying or transferring to any person or persons, and from receiving from any person or persons, any property, money or thing in action belonging to him, or held in trust for him, except such property as is now reserved by law, or where said trust has been created by or the fund held in trust has proceeded from some person other than said Davis Bender himself, and the income from said trust does not exceed the sum of four thousand dollars per annum, until the further order of this court,

And it further appearing that the defendant, Harry Bender by his attorney has acknowledged service of the said order to show cause upon the said Harry Bender,

And it further appearing that the said Harry Bender by his attorney has consented to the entering of the following order, it is on this 7th day of March, 1928,

ORDERED that the defendant, Harry Bender, desist and refrain from paying or transferring to the said defendant, Davis Bender, or to any other person or persons any portion of the property, money or things in action, due from him to or held in trust by him for the said defendant, Davis Bender, and that the said defendant, Harry Bender desist and refrain from paying or transferring to the said defendant, Davis Bender, or to any other person or persons any portion of the bond and mortgage made by the Profit Realty Co. to Harry Bender in the amount of $15,000.00 which mortgage was recorded on April 12, 1927 in the Essex County Register's Office in Book R 60 of mortgages for said County on page 210 and a bond and mortgage made by the G. L. & S. Holding Co., a corporation, to Davis Bender in the amount of

$4,000.00 dated January 25, 1926, which mortgage was recorded in Book P 56 of mortgages for said county on page 400 and assigned by the said Davis Bender to said Harry Bender by assignment recorded in said Register's Office in Book 179 of Assignments of Mortgages for said County on page 290 or any moneys due thereunder;

It is further Ordered that true but uncertified copies of this order be served on the said defendant, Harry Bender within seven days after the date hereof, and that neither party shall have costs in this order.

E. R. WALKER,
C.

Respectfully Advised,
ALONZO CHURCH,
V. C.

Personal service of the Rule to Show Cause entered herein on February 20, 1928, is hereby acknowledged to have been made on Harry Bender as of time, and the entry of the foregoing order is hereby consented to on behalf of the defendant, Harry Bender.

CORN & SILVERMAN,
Solicitor of Defendant, Harry Bender.

Defendant's Letter.

Re Order filed June 4, 1928.

CORN & SILVERMAN
Kinney Building,
Newark, N. J.

May 28, 1928

Mr. Samuel Daniels
24 Commerce Street
Newark, N. J.

Re: Williamson vs. Bender

Dear Mr. Daniels:

We herewith enclose draft of order dissolving the restraint so far as the $4000 mortgage is concerned, which please consent to and return. Also copy for your file.

This is to confirm our telephone promise and agreement that the proceeds of this mortgage are to be received and retained by us in escrow until the final determination of the pending Chancery action; if it shall be decreed that the assignment of said mortgage is fraudulent we are to deliver up the money we received to Williamson to be applied on the judgments recovered by you against Davis Bender.

Yours very truly,

CORN & SILVERMAN
By J. J. Corn

JJC.AL
Del.

Order of June 4, 1928.

Filed June 4, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	On Bill, etc. Order.

This matter being opened to the Court by Corn & Silverman, solicitors of defendant Harry Bender, and with the annexed consent of Samuel Daniels, Solicitor of complainant;

It is, on this 4th day of June, 1928, ORDERED, ADJUDGED AND DECREED that the restraint heretofore imposed prohibiting said defendant Harry Bender from paying or transferring to defendant Davis Bender or to any other person or persons any portion of the bond and mortgage made by G. L. & S. Holding Co., a corporation to Davis Bender in the sum of Four Thousand Dollars ($4000), dated January 25, 1926, which mortgage was recorded in Book P 56 of Mortgages for Essex County on page 400 and assigned by the said Davis Bender to the said Harry Bender by assignment recorded in the Essex County Register's Office in Book 179 of Assignments of Mortgages for said County on page 290, or any moneys due thereunder, be and the same is hereby vacated, to the effect that said Harry Bender may have, receive and keep any and all moneys for principal and interest under said bond and mortgage, and that he

may cause the said bond and mortgage to be cancelled or discharged as fully and freely as if this action had never been instituted nor a Lis Pendens therein filed nor any restraining order made herein; neither party shall have costs in this order.

E. R. WALKER,
C.

Respectfully Advised,
ALONZO CHURCH,
V. C.

I hereby consent to the entry of the foregoing order.

SAMUEL DANIELS,
Solicitor of Complainant.

Answer and Counterclaim of Davis Bender.

Filed June 20, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	On Bill, etc. Answer and Counter-claim of Defendant Davis Bender.

Defendant Davis Bender, of the City of Newark, County of Essex and State of New Jersey, answering separately the bill filed in this cause, says that:

Answer and Counterclaim of Davis Bender.

1. Paragraph 1 is admitted except he denies he was or is indebted to complainant.

2. Paragraph 2 is admitted.

3. Paragraph 3 is admitted except that he alleges he held the title to said premises in trust for defendant Harry Bender, said Harry Bender being the true owner thereof, and denies complainant was or is a creditor of this defendant.

4. As to Paragraph 4, he has not sufficient knowledge or information whereof to form a belief.

5. Paragraph 5 is admitted, except he denies said Harry Bender resides with this defendant.

6. Paragraphs 6 and 7 are admitted.

7. Paragraph 8 is admitted, except he was or is indebted to complainant.

8. As to Paragraphs 13, 14 and 15, he has not sufficient knowledge or information whereof to form a belief.

9. Paragraphs 16, 17, 18, 19 and 20 are denied.

10. As to Paragraphs 21 and 22, he has not sufficient knowledge or information whereof to form a belief.

11. Paragraphs 23, 24, 25 and 26 are denied.

12. Paragraph 27 is admitted.

13. Paragraph 28 is admitted, except he denies the consideration was fictitious.

14. Paragraph 29 is denied.

15. Paragraph 30 is denied, except "by the said assignment the said Davis Bender divested himself of the legal title to said bond and mortgage" which is admitted.

16. Paragraphs 31 to 37 inclusive are denied.

17. Paragraph 38 is admitted.

FIRST SEPARATE DEFENSE.

1. All the allegations set forth in the annexed counter-claim are repeated as a defense, and made part hereof.

SECOND SEPARATE DEFENSE.

1. On or about November 14, 1924 this defendant was indebted to defendant Harry Bender in the sum of Six Thousand One Hundred Dollars ($6100.00) as nearly as this defendant can now specify.

2. On or about November 14, 1924 this defendant, in his own name, but as trustee for said Harry Bender, took title from one Michael J. Tansey of certain premises on Avenue C and East Vanderpool Street, in the City of Newark Essex County, New Jersey, paying for the equity thereof, in cash, said sum of Sixty-one Hundred Dollars ($6100) as due from him to said Harry Bender.

3. On or about June 15, 1925 this defendant and said Harry Bender conveyed said premises to the Fidelity Union Trust Company, and received, for the equity thereof, in cash, the sum of Thirty Nine Thousand Dollars ($39,000.00) as nearly as this deponent can specify.

4. Said sum of Thirty-nine Thousand Dollars ($39,000.00) was rightfully due and rightfully belonged to said Harry Bender.

5. On or about June 15, 1925 this defendant and said Harry Bender entered into an agreement whereby this defendant sold all his equity, right, title and interest in and to the premises described in Paragraph 3 of the Bill of Complaint, to said Harry Bender for the sum of Thirty-five Thousand Dollars ($35,000.00).

6. This defendant was then not in this State, but agreed to execute a deed of conveyance for said premises to said Harry Bender upon request.

7. On or about April 22, 1926 this defendant, upon request of said Harry Bender, and for the aforementioned consideration duly paid, executed the deed mentioned in Paragraph 8 of the Bill of Complaint.

8. Said deed was executed in good faith, for a good and valuable consideration.

THIRD SEPARATE DEFENSE.

1. Paragraphs 1, 2, 3 and 4 of the Second Separate Defense are repeated and made part hereof.

2. On or about April 22, 1926 this defendant, for the consideration of the sum of Four Thousand Dollars ($4,000) being the balance due from this defendant to said Harry Bender out of said sum of Thirty-nine Thousand Dollars ($39,000) above mentioned, assigned to said Harry Bender his mortgage mentioned in Paragraph 27 of the Bill of Complaint.

3. Said assignment was executed in good faith for a good and valuable consideration.

BY WAY OF COUNTER-CLAIM AGAINST COMPLAINANT, THIS DEFENDANT SAYS THAT:

1. On or about June 16, 1925 this defendant and one Harry A. Lack purchased from complainant and Rose Williamson, his wife, H. E. Glickman and T. Glickman, his wife, by warranty deed, premises known as lots 1 and 2, Block 44 of Ocean Beach addition No. 3, the same being a Subdivision of South Half of section 3, Township 54 South of Range 42 East, according to the plat thereof recorded in Plat Book 2, at page 81 of the public

records of Dade County, Florida, a copy of which said deed is hereto annexed, marked Exhibit A and made part hereof.

2. This defendant and said Harry A. Lack paid therefor the sum of Thirty-seven Thousand Five Hundred Dollars ($37,500) of which said sum Thirteen Thousand Five Hundred Dollars, ($13,500.00) was by way of a first mortgage on said premises, Two Thousand Dollars ($2,000) was by way of a second mortgage on said premises Ten Thousand Dollars ($10,000) by way of a purchase money mortgage made to said complainant accompanied by a note in such sum, and the balance of Twelve Thousand Dollars ($12,000) by cash.

3. Said note was made the subject to a suit instituted in the Essex County Circuit Court by said complainant against this defendant in which said suit, on February 3, 1928, a judgment was entered in favor of complainant and against this defendant for Eleven Thousand Five Hundred Seventy-five Dollars ($11,575.00) besides costs.

4. On said day, and on various dates prior thereto, said complainant represented to this defendant that said premises were located on Ninth Street, said street being at Miami Beach, in the County of Dade, State of Florida.

5. Said representation was untrue in that said premises were located on Tenth Street, and not on Ninth Street.

6. This defendant, believing said representations to be true, and being induced thereby, purchased said premises and paid therefor said consideration.

7. This defendant would not have purchased said premises or paid therefor said consideration,

had he not believed said representations to be true.

8. Said complainant knew said representations were untrue and knowingly made the same to defraud and cheat this defendant.

9. On March 16, 1926 said Harry A. Lack conveyed his undivided one-half interest in said premises to this defendant, a copy of which said conveyance is hereto annexed, marked Exhibit B and made part hereof.

10. On or about January 31, 1928 this defendant discovered said representations to be untrue but by reason of the fact that said action pending in the Essex Circuit Court was then in daily call he was unable to interpose the same as a defense or counter-claim to defendant's action therein.

11. On February 9, 1928 and at various times thereafter, this defendant duly tendered to complainant a proper deed of conveyance for said premises and demanded return of said sum of Twelve Thousand Dollars ($12,000) besides interest thereon and cancellation of said note and satisfaction of said judgment.

12. This defendant still tenders himself ready, willing and able to reconvey to complainant all the right, title and interest of this defendant in and to said premises.

13. Complainant has refused and still refuses to return said sum of Twelve Thousand Dollars ($12,000) besides interest thereon, or cancel said purchase money mortgage or return said note or cancel the judgment rendered under said note.

14. On or about February 9, 1928 this defendant, as plaintiff, instituted a suit in the Essex County Circuit Court against complainant as one of the defendants, in attachment, for rescission of

the deed, mortgage and note mentioned in paragraph 1 of this Counter-Claim, but complainant has refused and still refuses to enter a general appearance in said suit or submit himself to the jurisdiction of said Circuit Court.

15. Complainant does not reside in the State of New Jersey but is a resident of the State of New York and has or may have land and personal property, moneys, effects, rights and credits within this state.

16. Said Rose Williamson does not reside in the State of New Jersey but is a resident of the State of New York, and service cannot be made upon her in this action.

17. Said H. E. Glickman, and T. Glickman are not residents in the State of New Jersey but are residents of the State of Florida and service cannot be made upon them in this action.

This defendant is without adequate remedy in the courts of law, and therefore prays:

1. That said complainant may answer this counter-claim and each statement therein made;

2. That the deed, mortgage and note mentioned in Paragraph 1 of the Counter-Claim be in all respects cancelled; that upon delivery to complainant by this defendant of a proper deed of conveyance for the premises described in the Counter-claim, complainant be decreed to return to this defendant all moneys paid by this defendant in and for the purchase price of said premises, with interest thereon; that the judgment recovered by complainant against this defendant in the Essex County Circuit Court be cancelled and made void, or, in the alternative, that complainant be decreed to pay to this defendant the amount of said judgment, costs and interest, the same to be applied in satisfaction of said judgment.

3. That a writ of sequestration may issue against the real and personal property, moneys, effects, rights and credits of the complainant within this state, directed to a Master of this Court, commanding said Master to take sufficient of said property to answer the demand of this defendant, and to hold the same subject to the orders and decrees of this court.

CORN & SILVERMAN,
Solicitors of Defendant Davis Bender.

EXHIBIT A.

This Indenture, Made this 20th day of May, A. D. 1925, Between Jacob Williamson and wife, Rose Williamson, and H. E. Glickman and wife, T. Glickman, of the County of Dade, in the State of Florida parties of the first part, and

Harry A. Lack, and Davis Bender of the County of Dade in the State of Florida, party of the second part,

Witnesseth, That the said parties of the first part, for and in consideration of the sum of Ten Dollars ($10.00) and Other Valuable Considerations Dollars to them in hand paid by the part— of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said party of the second part, their heirs and assigns forever, the following described land, situate, lying and being in the County of Dade and State of Florida, to-wit:

Lots One (1) and Two (2), Block Forty-four (44) of Ocean Beach Addition No. 3, the same being a Subdivision of South Half (S½) of fractional section 3, Township 54 South of Range 42 East, according to the plat thereof recorded in

Plat Book 2, at page 81 of the public records of Dade County, Florida.

Subject, However, to a mortgage in the sum of $13,300.00, and a second mortgage in the sum of $2000.00, which mortgages the Grantee herein assumes and agrees to pay, and this Grantee takes this deed subject to the stipulations and conditions of the said mortgages. Subject to all taxes and assessments now pending against the above described property.

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year above written.

Signed, sealed and delivered in presence of us:

JACOB WILLIAMSON (Seal)
ROSE WILLIAMSON (Seal)
H. E. GLICKMAN (Seal)
T. GLICKMAN (Seal)

William J. Wallin
Carolyn H. Rohlfs
As to Williamson and wife:
Benjamin Akelroad
E. A. Poppell
As to Glickman and wife:

EXHIBIT B.

This Indenture, Made this 16th day of March, A. D. 1926 Between Harry A. Lack, a single man, of the County of Dade, and State of Florida, party of the first part, and

Davis Bender of the County of Dade and State

of Florida, party of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of Ten Dollars ($10) and other valuable consideration Dollars, to him in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and transferred, and by these presents does grant, bargain sell and transfer unto the said party of the second part and his heirs and assigns forever, all that certain parcel of land lying and being in the County of Dade and State of Florida more particularly described as follows: An undivided one-half interest in Lots One (1) and Two (2), Block Forty-four (44) of Ocean Beach Addition #3, the same being a subdivision of South Half (S½) of fractional Section 3, Township 54 South of Range 42 East, according to the plat thereof recorded in Plat Book 2, at page 81 of the Public Records of Dade County, Florida.

Subject, however, to a mortgage in the sum of $13,500.00, and a second mortgage in the sum of $2,000.00, which mortgages the grantee herein assumes and agrees to pay and the grantee takes this deed subject to the stipulations and conditions of the said mortgages. Subject to all taxes and assessments now pending against the above described property; subject also to a third mortgage in the principal sum of $9,500 now encumbering the said property.

This deed is intended to convey the entire interest of the grantor in and to the above described property.

Together with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto be-

longing or in anywise appertaining To Have and to Hold the same in fee simple forever.

And the party of the first part does covenant with the said party of the second part that he is lawfully seized of the said premises, that they are free from all incumbrances and that he has good right and lawful authority to sell the same; and the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year above written.

Signed, Sealed and Delivered in the Presence:

HARRY A. LACK (Seal)

M. D. Hawthorne

Opal Given

Amended Answer of Harry Bender.

Filed July 31, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	On Bill, etc. Amended Answer of Defendant Davis Bender.

Defendant, Harry Bender, of the City of Newark, County of Essex and State of New Jersey, answering separately the bill filed in this cause, says that:

1. As to the allegations in paragraphs 1 to 4 inclusive, he has not sufficient knowledge or information whereof to form a belief.

2. As to paragraph 5, he admits that he is the son of defendant Davis Bender, and denies he resides with his parents. He alleges that his parents reside with him.

3. He admits paragraphs 6 and 7.

4. He admits paragraph 8 except as to the allegation that Davis Bender was indebted to complainant, this defendant has not sufficient knowledge or information whereof to form a belief.

5. He denies paragraphs 9, 10 and 11.

6. As to paragraph 12 he admits the incorporation of Profit Realty Co., and denies the remainder of the paragraph.

7. As to paragraph 13 he admits that he conveyed Parcel A to defendant Profit Realty Co., and denies the remainder of the paragraph.

Amended Answer of Harry Bender.

8. He denies Paragraph 14.

9. As to paragraph 15 he admits that Profit Realty Co., executed and delivered to him the bond and mortgage therein mentioned and denies "in furtherance of said connivance and collusion, and fraudulent agreement."

10. He denies paragraphs 16 and 17.

11. As to paragraph 18, he admits that he holds the said bond and mortgage in his name, but denies "in trust for the said Davis Bender."

12. As to Paragraph 19 he admits that he has been in possession of part of Parcel A and is still in possession thereof and that said premises is the home of this defendant and denies the remainder of the paragraph; he avers that he is in possession of a flat in said premises as tenant of Profit Realty Co., under tenancy from month to month, created on or about April 12, 1927, this defendant paying to Profit Realty Co., the sum of One Hundred Twenty-five Dollars ($125) per month as rental for said flat.

13. As to paragraph 20 he admits the conveyance therein mentioned and denies the remainder of the paragraph.

14. He denies paragraphs 21, 22 and 23.

15. As to paragraph 24, he admits the incorporation of Bender Construction Co. and denies the remainder of the paragraph.

16. He denies paragraphs 25 and 26.

17. He admits paragraph 27.

18. As to paragraph 28, he admits the assignment of said bond and mortgage and denies the remainder of the paragraph.

19. He denies paragraphs 29 to 33 inclusive.

20. As to the allegations contained in paragraphs 34 to 38 inclusive, he has not sufficient

knowledge or information whereof to form a belief.

FIRST SEPARATE DEFENSE.

1. On or about November 14, 1924, Davis Bender was indebted to this defendant in the sum of Sixty-one Hundred Dollars ($6100) as nearly as this defendant can now specify.

2. On or about November 14, 1924 said Davis Bender in his own name and as trustee for this defendant took title from one Michael J. Tansey of certain premises on Avenue C and East Vanderpool Street in the City of Newark, Essex County, New Jersey, paying for the equity thereof, in cash, said sum of Sixty-one Hundred Dollars ($6100) so due from him to this defendant.

3. On or about June 15, 1925 said Davis Bender and this defendant conveyed said premises to The Fidelity Union Trust Company and received, for the equity thereof, in cash, the sum of Thirty-nine Thousand Dollars ($39,000) as nearly as this defendant can specify.

4. Said sum of Thirty-nine Thousand Dollars ($39,000) was rightfully due and rightfully belonged to this defendant.

5. On or about June 15, 1925 said Davis Bender and this defendant entered into an agreement whereby said Davis Bender sold all his equity, right, title and interest in and to the premises described in Paragraph 3 of the Bill of Complaint to this defendant for the sum of Thirty-five Thousand Dollars ($35,000).

6. Said Davis Bender was not then in the State of New Jersey, but agreed to execute a conveyance for said premises to this defendant upon request.

7. On or about April 22, 1926 said Davis Bender, upon request of this defendant, and for the

aforesaid consideration, duly paid, executed the deed mentioned in Paragraph 8 of the complaint.

8. The said deed was executed in good faith for a good and valuable consideration, as aforesaid.

9. By virtue thereof this defendant became the bona fide purchaser for value of said premises and still remains such bona fide owner for value of said premises.

10. This defendant purchased said premises without any notice of infirmity or equity not appearing of record in its chain of title.

SECOND SEPARATE DEFENSE.

1. On or about April 12, 1927 this defendant, for good and valuable consideration, to wit, the sum of Twenty-two Thousand Dollars ($22,000) sold and conveyed to Profit Realty Co. the premises described as Parcel A in the complaint.

2. Said purchase price was paid as follows: the sum of Fifteen Thousand Dollars ($15000) by the execution and delivery by said Profit Realty Co., to this defendant of a purchase money bond and mortgage in that sum, described in Paragraph 15 of the complaint, the balance of the consideration having been paid by said Profit Realty Co., to this defendant in cash.

2. By virtue thereof this defendant became the bona fide holder for value of said bond and mortgage and still remains the bona fide holder for value of said bond and mortgage.

3. This defendant acquired said bond and mortgage without any notice of infirmity or equity not appearing of record in its chain of title.

Amended Answer of Harry Bender.

THIRD SEPARATE DEFENSE.

1. Paragraphs 1, 2, 3 and 4 of the First Separate Defense are repeated and made part hereof.

2. On or about April 22, 1926 said Davis Bender, for the consideration of the sum of Four Thousand Dollars ($4000) being the balance due from the said Davis Bender to this defendant out of said sum of Thirty-nine Thousand Dollars, ($39,000) above mentioned, assigned to this defendant the mortgage mentioned in Paragraphs 27 and 28 of the bill of complaint.

3. By virtue thereof this defendant became the bona fide holder for value of said bond and mortgage and still remains the bona fide holder for value of said bond and mortgage.

4. This defendant purchased said bond and mortgage without any notice of infirmity or equity not appearing of record in its chain of title.

FOURTH SEPARATE DEFENSE.

1. This defendant reserves the right to move at, before or after final hearing to dismiss the bill of complaint on the ground that it discloses no cause of action as against this defendant.

CORN & SILVERMAN,
Solicitors of Defendant Harry Bender.

Amended Answer of Profit Realty Co.

Filed July 31, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	On Bill, Etc. Amended Answer of Defendant Profit Realty Co.

Defendant, Profit Realty Co., a New Jersey corporation of Newark, New Jersey, answering separately the bill filed in this cause, says that:

1. As to the allegations in paragraphs 1 and 2 it has not sufficient knowledge or information whereof to form a belief.

2. As to paragraph 3 it admits that Davis Bender was seized in fee simple of premises described as Parcel A and as to the allegations contained in the remainder of said paragraph it has not sufficient knowledge or information whereof to form a belief.

3. As to the allegations contained in paragraphgraphs 4, 5, 6 and 7, it has not sufficient knowledge or information whereof to form a belief.

4. As to paragraph 8 it admits that Davis Bender and his wife Mollie Bender executed a deed to Harry Bender as to Parcel A and as to the allegations contained in the remainder of said paragraph it has not sufficient knowledge or information whereof to form a belief.

5. It denies the allegations contained in paragraphs 9, 10 and 11 insofar as they affect Parcel A and insofar as they affect the other parcels this defendant has not sufficient knowledge or information whereof to form a belief.

6. As to paragraph 12 it admits that this defendant was organized as a corporation under the laws of the State of New Jersey, and denies the remainder of said paragraph.

7. As to paragraph 13, it admits that Harry Bender conveyed Parcel A to this defendant and denies the remainder of the paragraph.

8. It denies paragraph 14.

9. As to paragraph 15 it admits the execution and delivery to said Harry Bender of the bond and mortgage therein referred to and denies the remainder of said paragraph.

10. It denies paragraphs 16 and 17.

11. As to the allegations contained in paragraph 18 this defendant has not sufficient knowledge or information whereof to form a belief.

12. As to Paragraph 19, it admits that Harry Bender is in possession of part of Parcel A; it avers that said Harry Bender is in possession of a flat in said premises, as tenant of this defendant, under tenancey from month to month, created on or about April 12, 1927, said Harry Bender paying to this defendant the sum of One Hundred Twenty-five Dollars ($125) per month as rental of said flat.

13. As to the allegations contained in Paragraphs 20 to 38 inclusive, this defendant has not sufficient knowledge or information whereof to form a belief.

Amended Answer of Profit Realty Co.

FIRST SEPARATE DEFENSE.

1. On or about April 12, 1927 Harry Bender conveyed to this defendant premises described in the bill as Parcel A for a good and valuable consideration, to wit, the sum of Twenty-two Thousand Dollars ($22000) by this defendant executing to said Harry Bender a purchase money mortgage in the sum of Fifteen Thousand Dollars ($15,000) and the payment to said Harry Bender by this defendant in cash of the sum of Seven Thousand Dollars ($7000) less the adjustments for taxes, rents, water rents and insurance premiums.

2. By virtue thereof this defendant became the bona fide purchaser of said premises for value, and still remains the bona fide owner for value of said premises.

3. This defendant purchased said premises without any notice of any infirmity or equity not appearing of record in its chain of title.

SECOND SEPARATE DEFENSE.

1. This defendant reserves the right to move at, before or after final hearing, to dismiss the bill of complaint on the ground that it discloses no cause of action as against this defendant.

CORN & SILVERMAN,
Solicitors of Defendant Profit Realty Co.

Amended Answer of Bender Construction Co.

Filed July 31, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	On Bill, &c. Amended Answer of Defendant Bender Construction Co.

Defendant, Bender Construction Co., a New Jersey corporation of Newark, New Jersey, answering separately the bill filed in this cause, says that:

1. As to the allegations in paragraphs 1 and 2 it has not sufficient knowledge or information whereof to form a belief.

2. As to paragraph 3 it admits that Davis Bender was seized in fee simple of premises described in Parcels B, C1, C2, D1 and D2 and as to the allegations contained in the remainder of said paragraph it has not sufficient knowledge or information whereof to form a belief.

3. As to the allegations contained in pargraphs 4, 5, 6 and 7 it has not sufficient knowledge or information whereof to form a belief.

4. As to paragraph 8 it admits that Davis Bender and his wife Mollie Bender executed a deed to Harry Bender as to Parcels B, C1, C2, D1 and D2, and as to the allegations contained in the remainder of said paragraph it has not sufficient knowledge or information whereof to form a belief.

Amended Answer of Bender Construction Co.

5. It denies the allegations contained in paragraphs 12 to 23 inclusive, it has not sufficient C1, C2, D1 and D2, and insofar as they affect the other parcels this defendant has not sufficient knowledge or information whereof to form a belief.

6. As to the allegations contained in paragraphs 12 to 25 inclusive, it has not sufficient knowledge or information whereof to form a belief.

7. As to paragraph 24, it admits that this defendant was organized under the Laws of the State of New Jersey as a corporation and that Harry Bender conveyed to this defendant Parcels B, C1, C2, D1 and D2 and denies the remainder of the said paragraph.

8. It denies paragraphs 25 and 26.

9. As to the allegations contained in paragraphs 27 to 38 inclusive, it has not sufficient knowledge or information whereof to form a belief.

FIRST SEPARATE DEFENSE.

1. On or about May 17, 1927 Harry Bender conveyed to this defendant premises described in the bill as Parcels B, C1, C2, D1 and D2 for a good and valuable consideration, to wit, the issuance by this defendant to said Harry Bender of one hundred ninety shares of the capital stock of this defendant of the par value of One Hundred Dollars ($100) each.

2. By virtue thereof this defendant became the bona fide purchaser for value of said premises and still remains such bona fide owner for value of said premises.

3. This defendant purchased said premises without any notice of any infirmity or equity not appearing of record in its chain of title.

Amended Answer of Bender Construction Co.

SECOND SEPARATE DEFENSE.

1. This defendant reserves the right to move at, before or after final hearing to dismiss the bill of complaint on the ground that it discloses no cause of action as against this defendant.

CORN & SILVERMAN,
Solicitors of Defendant Bender
Construction Co.

Replication and Answer to Counterclaim.

Filed August 25, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	On Bill, &c. Replication and Answer to Counterclaim.

The complainant joins issue on the amended answers of the defendants, Davis Bender, Harry Bender, Bender Construction Co. and Profit Realty Co.

As to the counterclaim contained in the answer of the defendant, Davis Bender, the complainant says:

1. Paragraphs 1, 2, and 3 are admitted.
2. Paragraphs 4, 5, 6, 7 and 8 are denied ex-

cept that the complainant says that the said premises sold by him to the defendant, Davis Bender, are located on Tenth Street.

3. The complainant has not knowledge or information sufficient to form a belief as to the statements in paragraph 9.

4. Paragraph 10 is denied.

5. Paragraphs 11, 12 and 13 are denied, and the complainant further says that on or about February 11, 1928, the defendant, Davis Bender did not own the premises described in the said deed, neither did he then have any equity, right, title or interest in the said property, the same having been foreclosed by virtue of a decree entered in the courts of the State of Florida on or about December 23, 1926 as the result of a foreclosure suit instituted in the said foreign courts on or about July 1, 1926, in which said foreclosure suit the defendant, Davis Bender appeared and filed an answer. The complainant further says that there is nothing due and owing by him to the defendant, Davis Bender.

6. Paragraphs 14 and 15 are denied and the complainant further says that the complainant was not properly brought within the jurisdiction of the said Essex County Circuit Court by the defendant, Davis Bender in the said attachment suits, in that the defendant, Davis Bender, failed to make proper and legal service upon the complainant; but the complainant admits that he is a resident of the City of Yonkers in the State of New York.

7. Paragraph 16 is admitted.

8. Paragraph 17 is denied.

9. As to the allegations set forth in the said counterclaim and particularly the allegations set

forth in paragraphs 4 to 15 inc. therein contained, the complainant further says that all of the matters, things and controversies therein contained, have been fully and finally determined and adjudicated in a suit between the complainant, Jacob Williamson against the defendant, Davis Bender in the Essex County Circuit Court referred to in paragraph 3 of this counterclaim, in which said Circuit Court suit Jacob Williamson was the plaintiff and Davis Bender was the defendant, and which said suit resulted in a judgment for the plaintiff therein, the complainant herein, against Davis Bender the defendant therein and herein, and the complaint therefore says that the matters, things and controversies set forth in this counterclaim are res adjudicata.

10. The complainant denies the allegations in paragraphs 4 to 14 inc. and further says that the defendant, Davis Bender, is guilty of laches in attempting to set up the allegations contained in this counterclaim and particularly the allegations contained in paragraphs 4 to 15 inclusive therein recited, in that the alleged misrepresentation by the complainant therein referred to, if made, were made in May, 1925 over two and one-half years prior to the defendant, Davis Bender's alleged and attempted rescision of the said sale in February, 1928; and in that the defendant, Davis Bender, had an opportunity of setting forth the allegations contained in this counterclaim as defenses in the Essex County Circuit Court suit referred to in paragraph 9 hereof and has a counterclaim against the complainant in the said Essex County Circuit Court suit; and in that the defendant, Davis Bender, on January 30, 1928, which was before the trial of the said Essex County Circuit Court suit, served or caused to be served upon the complain-

ant, the plaintiff in the said suit, a Notice of Motion that the defendant, Davis Bender, would interpose in the said Essex County Circuit Court suit the defenses set forth by the defendant, Davis Bender, in the counterclaim herein and in paragraphs 4 to 15 inclusive in particular, a copy of which Notice of Motion is hereunto annexed and is made part hereof and is designated as Schedule A; and in that at the said trial in the Essex County Circuit Court the defendant Davis Bender, abandoned the said motion and in that the defendant, Davis Bender, attempted to rescind the said sale only after Jacob Williamson, the plaintiff in the said suit, had obtained a judgment against the defendant, Davis Bender, in said suit, which was entered on February 3, 1928, (the said attempted rescision was purported to have been made on February 11, 1928) and in that the said alleged misrepresentations of the complainant, if made, were known to the plaintiff in September, 1926, about a year and a half before he attempted to rescind the sale of the said lands to him, and in that since September, 1926, the market value of the real estate which was the subject matter of the said sale has greatly depreciated.

11. The complainant repeats the allegations in the preceding paragraphs #9 and 10 and says that the defendant, Davis Bender, is precluded from obtaining the relief prayed for by him in his counterclaim, in that the demands set forth therein were not set off by him against the complainant in the said Essex County Circuit Court suit referred to in the said preceding paragraphs 9 and 10.

SAMUEL DANIELS,
Solicitor of Complainant.

SCHEDULE "A".

ESSEX COUNTY CIRCUIT COURT.

JACOB WILLIAMSON,
Plaintiff,

vs.

DAVIS BENDER,
Defendant.

Action at Law.

Notice.

To the Plaintiff, or SAMUEL DANIELS, his attorney.

Take Notice that the trial of this cause the defendant will move for leave of the Court to amend the Answer filed in this cause by adding the following:

THIRD DEFENSE.

1. On or about May 20, 1925 plaintiff and one H. E. Glickman were the owners of two certain lots at Miami, in the County of Dade and State of Florida.

2. On or about May 20, 1925 said plaintiff and said H. E. Glickman, by their agents, servants, attorneys or employees, to induce defendant to purchase said lots, did represent to defendant that said lots were on Ninth Street.

3. Said representation was untrue in that, in fact, said lots were on Tenth Street.

4. Plaintiff knew said representations to be untrue.

5. Defendant, believing said representations to be true, and being induced thereby, bought said

lots and paid therefor the sum of Sixty Thousand Five Hundred Dollars ($60,500).

6. As part of the consideration for said purchase, defendant executed to plaintiff a purchase money mortgage on said premises in the sum of Ten Thousand Dollars ($10,000), and the note described in the complaint in this cause, said mortgage being given to secure the payment of the said note.

7. Defendant thereby suffered a loss of Twenty-five Thousand Dollars ($25,000.00).

FOURTH DEFENSE.

1. The note set forth in the complaint was given to secure a purchase money mortgage of even date therewith made by the defendant to plaintiff and embracing premises in the County of Dade and State of Florida.

2. Thereafter plaintiff instituted a foreclosure action in the Circuit Court, Eleventh Judicial District, Dade County, Florida, for the purpose of foreclosing said mortgage and for the entry of a deficiency decree therein.

3. Said action is still pending.

4. No decree has been entered in said Court or any other Court for a deficiency.

5. Thereafter the Legislature of the State of Florida passed an act which is still the law of that state, as follows:

Chapter 119933 No. 188

An Act to Provide for the Entry of Deficiency Decrees in Suits to foreclose Mortgages; to Provide for the Procedure in Obtaining Deficiency Decrees in Equity and Judgments for Deficiencies in Common-Law Actions; to Repeal all laws and

parts of laws in conflict with this Act and to provide when this Act shall take effect.

Be it enacted by the Legislature of the State of Florida:

Section 1. That in all suits for the foreclosure of mortgages heretofore or hereafter executed the entry of a deficiency decree for any portion of a deficiency, should one exist, shall be within the sound judicial discretion of the Court, but the Complainant shall also have the right to sue at common-law to recover such deficiency.

Section 2. That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed.

Section 3. This Act shall take effect upon its becoming a law.

Approved May 7, 1927."

CORN & SILVERMAN,
Attorneys of Defendant.

Replication of Davis Bender.

Filed Sept. 5, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	67/302. On Bill, etc. Replication

Defendant Davis Bender joins issue on complainant's answer to the counterclaim.

CORN & SILVERMAN,
Solicitors of Defendant Davis Bender.

Order of October 18, 1928.

Filed Oct. 18, 1928.

IN CHANCERY OF NEW JERSEY.

Between

JACOB WILLIAMSON,

Complainant,

and

DAVIS BENDER, HARRY BENDER, *et als.*,

Defendants.

On Bill, &c.

Order.

This matter being opened to the court by Samuel Daniels, Solicitor for the complainant herein, and it appearing that an order was entered herein on February 20, 1928, requiring the defendant, Davis Bender, to appear and make discovery on oath concerning his property and things in action before Roger E. Salmon, Esq., Master of this Court on the 25th day of February, 1928,

And it appearing by the verified petition of the complainant that said Davis Bender could not be served with the said order before the 25th day of February, 1928,

And it appearing that an order was entered herein on October 2, 1928 requiring the defendant, Davis Bender, to appear and make discovery before the said Master on the 13th day of October, 1928,

And it appearing by the verified petition of the complainant that by inadvertance, proper service of the said order was not made on the said Davis Bender,

And it appearing that since the entry of the said

order on February 25, 1928, that the defendant, Davis Bender, entered an appearance in this cause by his solicitors, Corn & Silverman, Esqs., it is therefore, on this 18 day of October, 1928,

ORDERED that the said defendant, Davis Bender, appear and make discovery on oath concerning his property and things in action before Roger E. Salmon, Esq., one of the Masters of this court, on the 27 day of October, 1928, at the hour of 9:30 o'clock in the morning at the office of the said Master in Room 638 of Prudential Building at 763 Broad Street, Newark, New Jersey, and it is further

ORDERED that a true but uncertified copy of this order be served upon the defendant, Davis Bender, personally or by leaving a copy with his solicitors, Corn & Silverman, Esqs., at their office before October 24th, 1928.

E. R. WALKER,
C.

Respectfully Advised,
ALONZO CHURCH,
V. C.

Petition.

Filed Nov. 5, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	On Bill, etc. Petition.

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

The petition of defendants Davis Bender, Harry Bender, Profit Realty Co., and Bender Construction Co. respectfully shows that:

1. Defendants have filed answers in the above-entitled cause and said cause has not yet been referred for hearing.

2. On February 20, 1928 an order was made in this cause for defendant Davis Bender to appear and make discovery on oath concerning his property and things in action on February 25, 1928 before Roger E. Salmon, a Master of this Court.

3. Complainant caused subpoenas to be issued on defendants Harry Bender and Mollie Bender and on Abraham Kaplan and Samuel Kaplan who are officers of defendant Profit Realty Co.

4. Said order of discovery was not personally served on defendant Davis Bender.

5. On February 25, 1928 a petition was presented to this Court on behalf of said defendants

to suppress any testimony taken before said Master under said order of discovery and on said day this Court made an order to show cause returnable March 6, 1928 why such testimony should not be suppressed.

6. Thereafter, on or about March 6, 1928 this Court made said rule to show cause absolute and ordered that all testimony taken before said Master be suppressed and that no further testimony be taken in said order of discovery until the further order of this Court.

7. Thereafter, on or about October 18, 1928 this Court made an order for the said Davis Bender to appear and make discovery before said Master on October 27, 1928. This order was not served personally on said Davis Bender for the copy thereof was left with his solicitors.

8. On or about October 25, 1928 complainant caused to be served on said Samuel Kaplan, an officer of defendant Profit Realty Co. a subpoena to appear and testify in said examination.

Petitioners respectfully pray that the service of subpoena upon said Samuel Kaplan be set aside and that no testimony be taken under said order of discovery until defendant Davis Bender be personally served with an order therefor, and until such personal service upon said defendant all further proceedings under said order of discovery be restrained.

CORN &SILVERMAN,
Solicitors of Petitioners.

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

I, Joseph J. Corn, of full age, being duly sworn according to law on my oath say that I am of the firm of Corn & Silverman, solicitors of petitioners;

that I have read the foregoing petition and the same is true to the best of my knowledge, information and belief.

JOS. J. CORN.

Sworn and subscribed to before me
this 2d day of November, 1928.
Rose Greene,
A Notary Public of
New Jersey.

Order to Show Cause.

Filed Nov. 5, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	On Bill, etc. Order.

This matter being opened to the Court by Corn & Silverman, solicitors of petitioners-defendants, and upon reading and filing the petition of defendants:

It is, on this 5th day of November, 1928, ORDERED that complainant show cause before the Chancellor, at the Chancery Chambers, Newark, New Jersey, on the 13th day of November, next, at ten o'clock in the forenoon or as soon thereafter as

counsel can be heard, why the prayer of said petition shall not be granted.

And it is further ORDERED that in the meantime, until the further order of this Court, no further proceedings be taken in discovery in this cause.

And it is further ORDERED that a copy of this Order, and of the petition and affidavit on which the same is based, all of which shall be certified to by the solicitors of petitioners-defendants, be served upon complainant's solicitor, within three days from the date hereof.

E. R. WALKER,
C.

Respectfully Advised,
ALONZO CHURCH,
V. C.

Order of November 13, 1928.

Filed Nov. 13, 1928.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, *et als.*, Defendants.	On Bill, &c. Order.

This matter being heard in the presence of Corn and Silverman, Esqs., solicitors of the petitioners defendants and Samuel Daniels, Esq., solicitor of

Order of November 13, 1928.

the complainant, and it appearing that the defendant, Davis Bender, entered an appearance in this cause of action by filing an answer by his solicitors, the said Corn & Silverman, and it further appearing that a copy of the order entered by this court on October 18, 1928 directing the defendant, Davis Bender, to appear and make discovery before Roger E. Salmon, Esq., one of the Masters of this court on October 27, 1928, was served in the manner provided for in the said order, to wit, by leaving a copy of the said order with the said Corn & Silverman, Esqs., solicitors for the said David Bender, and the court being of the opinion that the said manner of service upon the said Davis Bender by leaving a copy of the said order with his solicitors is a sufficient compliance with the statute and sufficient personal notice to the defendant, Davis Bender, it is on this 13th day of November, 1928

ORDERED that the rule to show cause entered herein on November 5, 1928 be and the same is hereby dismissed and restraint discontinued.

E. R. WALKER,
C.

Respectfully Advised,
JOHN H. BACKES,
V. C.

Conclusions of Vice-Chancellor.

Filed Dec. 6, 1929.

IN CHANCERY OF NEW JERSEY.

JACOB WILLIAMSON,
Complainant,

and

DAVIS BENDER, HARRY BENDER, HORTENSE BENDER, MOLLIE BENDER, PROFIT REALTY CO., a corporation, BENDER CONSTRUCTION CO., a corporation, G. L. & S. HOLDING CO., a corporation and ISAAC ELSON,
Defendants.

Opinion.

SAMUEL DANIELS, ESQ. for complainant.

ALBERT C. JORDAN, ESQ. for complainant.

CORN & SILVERMAN, ESQS. for defendants.

C. WALLACE VAIL, ESQ. of counsel with defendants.

Syllabus:

1. A grant by a parent to a child, based on the consideration of services rendered by the child to the parent, is invalid as to creditors.

2. A voluntary conveyance by one indebted raises an irrebuttable presumption of fraud.

3. Evidence examined and held that conveyances should be set aside.

CHURCH, *V.C.*

This is a suit to set aside the following conveyances as fraudulent:

A. Deed to Harry Bender dated April

22, 1926, to 92 Goldsmith Avenue, Newark, N. J., recorded in Book G 74-269.

Deed of Harry Bender on same property to Profit Realty Company, on April 11, 1927, recorded in Book G 76-164.

To set aside a mortgage of Fifteen Thousand ($15,000.) Dollars by Profit Realty Company to Harry Bender, which is a purchase money mortgage on same property, and have this mortgage decreed to be the property of Davis Bender and subject to the complainant's judgment. This mortgage is recorded in Book R 60-210.

B. Deed to Harry Bender dated April 22, 1926, recorded in Book G 74-269, covering:

1. Plot on easterly side of South Broad Street, Newark.
2. Two plots on King Street, Newark.
3. Plot on South Broad Street, adjoining 1.
4. Plot on Essex Turnpike.

All of these properties were conveyed by Harry Bender to Bender Construction Company by deed dated April 6, 1927, and recorded May 17, 1927, in Book I 76-161.

C. Mortgage of Four Thousand ($4,000.) Dollars of defendant, G. L. & S. Holding Company to Davis Bender, dated January 25, 1926, recorded in Book P 56-400 in Essex County, which was assigned by Davis Bender to Harry Bender on April 22, 1926, by assignment, recorded in Book 179-290. By stipulation the sum of Two Thousand Thirty-five ($2,035.) Dollars is held by defendants' attorneys, representing the balance due on this mortgage and which shall be subject to the disposition of this Court.

The defendants, Harry Bender and Hortense Bender, are children of Davis Bender, and Mollie Bender is the latter's wife.

Conclusions of Vice-Chancellor.

The complainant, Jacob Williamson, recovered a judgment against Davis Bender on February 3, 1928, for $11,661.52.

The Profit Realty Company is a New Jersey corporation organized by Louis J. Feit, attorney, on March 26, 1927, and its incorporators were Abraham Kaplan, one share, Samuel Kaplan, eight shares, and Celia Kaplan, his wife, one share. The Kaplans are friends of Davis Bender and Feit was Bender's personal attorney. None of its stock was ever transferred.

The company was controlled by Samuel Kaplan; it never had a meeting of stockholders or directors, never paid a dividend nor filed a statement of earnings, and never had any business except as a title receptacle of 92 Goldsmith Avenue, Newark. It had a bank account, where only money received as rents from 92 Goldsmith Avenue were deposited and checks signed by Samuel Kaplan were paid in various and irregular amounts to Harry Bender and Bender Construction Company.

Bender Construction Company was, likewise, a domestic corporation in which the incorporators were Harry Bender, twenty-eight shares, Mollie Bender, one share, Hortense Bender, one share. Its principal place of business was 92 Goldsmith Avenue. Harry Bender was in control; no meetings of stockholders or directors were ever held, no dividends were paid, no stock transferred. Its sole purpose was to take title to certain of Davis Bender's property through Harry Bender.

Sivad Realty Company is not a defendant but is mentioned prominently through the testimony; this was composed of Harry Bender, Samuel Kaplan (of Profit Realty Co.) and Harry Hoffman, a quondam partner of Harry Bender and an inti-

mate friend of the Bender group. Harry Bender controlled this corporation which spells the name DAVIS backward. This company, with a nominal bank account of One Hundred Thirty-seven ($137.) Dollars in 1926, suddenly became enriched with checks of Three Thousand ($3,000.) Dollars and Ten Thousand ($10,000.) Dollars, etc., loans from Harry Bender, who borrowed the money from his mother, Mollie Bender. Almost from its organization, the company was in the hands of Louis Feit.

In April, 1925, Davis Bender sold property on Vanderpool Street, Newark, to the Fidelity Title Company. Although the contract of sale was signed by Davis Bender and Harry Bender, the deposit of Five Thousand ($5,000.) Dollars was deposited in Davis Bender's account. Title was closed on June 17, 1925, and a check for Thirty-one Thousand Three Hundred Twenty-three and 50/100 ($31,323.50) was deposited in Davis Bender's account, which amounted to Forty-four Thousand Four Hundred Twenty-six and 53/100 ($44,426.53) Dollars on that day. The check was made out to Davis Bender. Harry Bender and Mollie Bender, but the actual money came to Davis Bender.

On June 16, 1925, Davis Bender executed the note to Williamson.

On April 22, 1926, Davis Bender, by a bargain and sale deed, conveyed to Harry Bender everything he owned in the way of real estate. No consideration was given by Harry for this deed or the assignment of the Four Thousand ($4,000.) Dollar Mortgage which was simultaneously executed.

On June 11, 1926, Davis Bender and his wife executed a chattel mortgage covering his entire

household furniture at 92 Goldsmith Avenue and his automobile. This was done to secure a loan of Two Thousand ($2,000.) Dollars to the Sivad Realty Company, which was entirely controlled by Harry Bender. Harry says he gave the Sivad money to his father. Davis says he does not know who gave it to him. The furniture remained in Davis Bender's home and still is used by him. At the time he executed this mortgage, Davis Bender had on deposit Twenty-seven Thousand Four Hundred Forty-seven and 99/100 ($27,447.99) Dollars.

On March 2, 1926, Davis Bender contracted to sell his garage property, which he owned, for over $75,000. He was under this contract when he transferred to Harry all his real estate.

On June 16, 1926, the Williamson note became due and was protested. From that time on Davis Bender's bank account shrank to nearly nothing. The bank statement shows checks drawn as follows:

May 24, 1926	$40,000.00
June 4, 1926	3,500.00
June 9, 1926	1,000.00
June 12, 1926	5,000.00
June 14, 1926	12,000.00
June 17, 1926	3,000.00
June 26, 1926	3,590.00

None of these checks was produced. Davis Bender says they were lost. At the same time the Sivad Realty Company's bank account increased very largely, as did that of Harry Bender.

This is a very brief statement of the voluminous testimony taken in this case, but it clearly appears from this and the other testimony which I have read that these conveyances were made for the ex-

press purpose of defrauding creditors, particularly the Ten Thousand ($10,000.) Dollar note. A grant by a parent to a child, based on services rendered, has been held invalid as to creditors. See Dodson vs. Severs, 54 New Jersey Equity, 305. Moreover, a voluntary conveyance by one indebted raises an irrebuttable presumption of fraud. Horton vs. Bamford, 79 New Jersey Equity, 354. I do not think it necessary to go further into a discussion of the numerous cases that sustain the above statement of law. I think, under the evidence, as a matter of fact, that these conveyances were made to avoid the payment of this judgment, and I will advise a decree that they be set aside.

Final Decree.

Filed Feb. 21, 1930.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, HARRY BENDER, HORTENSE BENDER, MOLLIE BENDER, PROFIT REALTY COMPANY, BENDER CONSTRUCTION COMPANY *et als.*, Defendants.	On Bill, etc. Final Decree.

This cause coming on to be heard in the presence

of Samuel Daniels, solicitor of complainant, and Albert C. Jordan, of counsel with complainant, and Corn & Silverman, solicitors of defendants Davis Bender, Harry Bender, Mollie Bender, Profit Realty Company and Bender Construction Company, and C. Wallace Vail, of counsel with said defendants; and the Court having examined all of the pleadings filed herein and having taken proofs orally and in open court and having considered all the testimony taken herein, and having heard and considered the arguments of counsel herein, and being satisfied that the allegations alleged by the complainant in the bill of complaint filed herein are true;

And the court being satisfied that the defendants Davis Bender, Harry Bender, Mollie Bender, Hortense Bender, Profit Realty Company and Bender Construction Company all participated in the fraudulent conveyances, assignments, encumbrances, connivances and collusive agreement and understandings referred to in the bill of complaint and with knowledge thereof, for the purpose of hindering defrauding and delaying complainant from satisfying his said judgment;

It is on this 21st day of February, 1930, ORDERED, ADJUDGED AND DECREED that the said deed made by Davis Bender and Mollie Bender, his wife, to Harry Bender dated April 22, 1926 and recorded in the Register's Office of Essex County in Book G74 of deeds for said county on page 269 et seq. for all those certain tracts or parcels of land and premises lying and being in the City of Newark, County of Essex and State of New Jersey hereinafter more particularly described as follows:

Parcel A: BEGINNING in the southerly line of

Goldsmith Avenue at a point therein distant 215.98 feet westerly from the westerly line of Bergen Street; thence running (1) along the southerly line of Goldsmith Avenue north 46 degrees 5½ minutes West 60 feet; thence (2) south 43 degrees 54½ minutes west and at right angles to Goldsmith Avenue 100 feet; thence (3) south 46 degrees 5½ minutes East 60 feet; thence (4) north 43 degrees 54½ minutes East 100 feet to the southerly line of Goldsmith Avenue and the point or place of BEGINNING.

Parcel B: BEGINNING in the easterly line of South Broad Street as widened at a point distant 30 feet southerly from the southwest corner of land formerly of John L. Jackson, thence (1) south 60 degrees 45 minutes East 88 feet; thence (2) south 26 degrees 30 minutes West 30 feet; thence (3) north 60 degrees 45 minutes West 84 feet to South Broad Street; thence (4) north 29 degrees 15 minutes East 30 feet to the place of BEGINNING.

Parcel C1: BEGINNING in the northerly line of King Street at a point 119 feet distant south 70 degrees East from the corner formed by the intersection of said line with the Easterly line of Essex and Middlesex Turnpike Road; thence (1) running through the centre of the partition wall of the two houses, north 20 degrees East 81 feet; thence (2) south 69 degrees and 15 minutes East 22 feet; thence (3) south 20 degrees West 80 feet to said King Street; thence (4) along the same north 70 degrees West 22 feet to the place of BEGINNING.

Parcel C2: BEGINNING in the northerly line of King Street at a point 100 feet distant south 70 degrees East from the corner formed by the intersection of said line with the Easterly line of Essex and Middlesex Turnpike Road; thence (1) runninng north 20 degrees East 81 feet 6 inches; thence (2) south 69 degrees 15 minutes East 19 feet; thence (3) south 20 degrees West 80 feet through the center of the two dwelling houses to

said King Street; thence (4) along the same north 70 degrees west 19 feet more or less to the place of BEGINNING.

Parcel D1: BEGINNING at a point in the easterly line of Broad Street distant southerly 65 feet from the southeast corner of Broad Street and Vanderpool Street at the line of property reputed to be owned by Will C. Headley, thence (1) running easterly along the line of last mentioned land, parallel with said southerly line of Vanderpool Street 92.9 feet to the rear line of land fronting on Broad Street thence (2) southerly along same and parallel with Broad Street, 30 feet; thence (3) westerly and parallel with second course, 95.8 feet to said line of Broad Street; thence (4) along said line of Broad Street, northerly 30 feet to the point and place of BEGINNING.

Parcel D2: BEGINNING on the east side of the Essex and Middlesex Turnpike Road at a point 100 feet south of the north line of the house lot of Caleb Snow; thence (1) south 60 degrees 45 minutes East 100 feet; thence (2) south 29 degrees 15 minutes West 30 feet; thence (3) north 60 degrees 45 minutes West 100 feet; thence (4) north 29 degrees 15 minutes East 30 feet to the place of BEGINNING.

Parcel E: BEGINNING at the center line of Wright Street on the Eastern side of Avenue C; thence (1) easterly 225 feet; thence (2) northerly 50 feet thence (3) westerly 100 feet to said Eastern side of Avenue C thence (4) northerly along the easterly line of Avenue C 80 feet to the place of BEGINNING.

Parcel F: BEGINNING in the easterly line of Avenue C at a point in the center line of Wright Street thence (1) along easterly through the center of Wright Street 225 feet to the line of land of Arthur Devine; thence (2) northerly parallel along his line 130 feet to a point 100 feet south of Emmet Street; thence (3) westerly parallel

with Emmet Street 200 feet more or less to the northwesterly line of land belonging to the estate of Sayrus Coe; thence (4) southerly along that line 50 feet more or less to Avenue C; thence (5) along southerly along the said 93 feet more or less to the center of Wright Street and place of BEGINNING.

be and the same is hereby set aside and held to be fraudulent, null and void and of no effect as against the judgment recovered by complainant against said Davis Bender in the Essex County Circuit Court on February 3, 1928 for $11,575.00 damages and the $86.52 taxed costs thereon and the executions issued on the said judgment;

And it is further ORDERED, ADJUDGED AND DECREED that the said deed made by said Harry Bender to said Profit Realty Company dated April 11, 1927 and recorded in the Register's Office of Essex County in Book G76 of deeds for said County on page 164 covering the said Goldsmith Avenue property hereinabove designated as Parcel A, be and the same is hereby set aside and declared and held to be fraudulnt and null and void and of no effect as against the said judgment recovered by complainant against said Davis Bender in the Essex County Circuit Court on February 3, 1928 for the amount of the said judgment and the taxed costs thereon and the executions issued thereunder to the end that said Davis Bender shall hold the said title to the said premises free and clear of the said deed to the said Profit Realty Company;

And it is further ORDERED, ADJUDGED AND DECREED that the said mortgage of $15,000.00 recorded in the said Register's Office of Essex County in Book R60 of mortgages on page 210 with all interest thereon and the bond accompanying the

same made by said Profit Realty Company to said Harry Bender on the said Goldsmith Avenue property hereinabove described as Parcel A, is hereby declared and decreed to be null and void and of no effect as against the said judgment recovered by complainant against said David Bender in the said Essex County Circuit Court and the said taxed costs and executions on the said judgment;

And it is further ORDERED, ADJUDGED AND DECREED that the said deed made by defendant Harry Bender to defendant Bender Construction Company, dated April 6, 1927 and recorded on May 17, 1927 in the said Essex County Register's Office in Book I-76 of deed for said county on page 161, et seq. for those certain tracts or parcels of land and premises hereinabove described as Parcels B, C1, C2, D1 and D2 be and the same is hereby set aside and held to be fraudulent and null and void and of no effect as against the said judgment recovered by the said complainant against the said Davis Bender in the said Essex County Circuit Court and the said damages and costs and executions on the said judgment and that the said premises described in the said parcels B, C1, C2 and D1 and D2 be and the same are hereby decreed to be owned and held by said Davis Bender free, clear and discharged of and from the said deeds made by said Davis Bender and Mollie Bender to said Harry Bender recorded in the said Register's Office in Book G74 of deed page 269 and from the deed made by said Harry Bender to said Bender Construction Company recorded in the said Register's Office in Book I-76 page 161;

And it is further ORDERED, ADJUDGED AND DECREED that the said mortgage of $4,000.00 and the

bond accompanying the same made by said G. L. & S. Holding Company to said Davis Bender, which said mortgage was recorded in the Register's Office of Essex County in Book P56 of mortgages for said county on page 400, was the property of the said Davis Bender at the time of the filing of the bill of complaint herein and that the said assignment of mortgage by said Davis Bender to said Harry Bender made on April 22, 1926 and recorded in Book 179 of assignments of mortgage for Essex County page 290 be and the same is hereby set aside and held to be fraudulent null and void and of no effect as against the said judgment recovered by the said complainant against said defendant, Davis Bender, for the amount of the said damages and costs and executions thereon as of the time of the filing of the bill of complaint filed herein, and it appearing to the court that subsequent to the filing of the bill of complaint, to wit, on June 4, 1928, defendant Harry Bender by his said solicitors, Corn & Silverman, received the sum of $2,035.00 for principal and interest on the said mortgage made by the said G. L. & S. Holding Company to Davis Bender and assigned by Davis Bender to Harry Bender in accordance with the written agreement and understanding made by the said Harry Bender through his said solicitors on May 28, 1929, to wit, that the proceeds of this mortgage are to be received and retained by the said Corn & Silverman in escrow until the final determination of the within cause of action and that if it shall be decreed that the assignment of the said mortgage is fraudulent, that the said Corn & Silverman are to deliver up the said sum of $2,035.00 to the complainant to be applied on the

said judgment recovered by the complainant against Davis Bender;

It is therefore ORDERED, ADJUDGED AND DECREED that the said solicitors of defendant Harry Bender, Corn & Silverman, pay to complainant or to his solicitor within thirty days of the date of the entry of this order the said sum of $2,035.00 which they so received for the said balance of principal and interest on the said mortgage made by the G. L. & S. Holding Company in accordance with the said agreement;

And it is further ORDERED, ADJUDGED AND DECREED that the defendants, Davis Bender, Harry Bender, Mollie Bender, Profit Realty Company and Bender Construction Company pay to the complainant the costs of this suit to be taxed including a counsel fee of Sixteen hundred Dollars which is hereby allowed to the said complainant said allowance to include all disbursement, Dollars which is hereby allowed to the complainant to reimburse him for the expenses incurred by him in connection with the examinations in these proceedings conducted before Roger E. Salmon, Esq. one of the Masters of this court and under its direction.

And it is further ORDERED that unless the said defendants, Davis Bender, Harry Bender, Mollie Bender, Profit Realty Company and Bender Construction Company, shall within thirty days after service upon them of certified copies of this decree and of said taxed bill of costs, pay to the complainant or his said solicitor the amount due him upon his said judgment together with interest thereon and the taxed costs thereon and the costs of the executions thereon and the taxed costs of these proceedings a writ of execution shall issue

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for the amount of the said taxed costs in these proceedings against the goods and chattels, lands and tenements, hereditaments and real estate of the defendants, Davis Bender, Harry Bender, Mollie Bender, Profit Realty Company and Bender Construction Company, according to the practice of this court and directed to the Sheriff of the said County of Essex and that the said sheriff shall proceed to sell the lands and premises hereinabove described by virtue of the said writ of execution and of the writ of execution heretofore directed and delivered to the said sheriff or by virtue of any alias writ of execution which may have been heretofore or may hereafter be directed and delivered to him by virtue of the said judgment obtained by the said complainant against the said Davis Bender as aforesaid, free, clear and discharged of and from the said deeds and conveyances made by the said Davis Bender to Harry Bender as aforesaid and free, clear and discharged of and from the said deed made by the said Harry Bender to the Bender Construction Company as aforesaid and free, clear and discharged of and from the said deed made by said Harry Bender to the Profit Realty Company as aforesaid and free and clear of the said $15,000.00 mortgage made by the said Profit Realty Company to Harry Bender as aforesaid and of and from all claims of the said defendants, Harry Bender, Bender Construction Company, Profit Realty Company and Mollie Bender thereunder or by virtue thereof.

And the court having examined the counterclaim filed by defendant Davis Bender herein and all of the pleadings pertaining to the said counterclaim, and having taken proofs orally and in open court on the said counterclaim, and having

heard and considered the arguments of counsel thereon, and having considered all the proofs and testimony offered by and in behalf of complaint and defendant Davis Bender pertaining to the said counterclaim;

And the Court being satisfied that the relief prayed for in said counterclaim should be denied;

It is further ORDERED, ADJUDGED AND DECREED that the said counterclaim of the defendant Davis Bender against the complainant be and the same is hereby dismissed with costs.

E. R. WALKER,
C.

Respectfully Advised,
ALONZO CHURCH,
V. C.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between
JACOB WILLIAMSON,
Complainant,

and

DAVIS BENDER, *et als.*,
Defendants.

Transcript of shorthand notes of testimony taken in the above-entitled cause before ROGER E. SALMON, a Master in Chancery of New Jersey, at Room 638 Prudential Building, Newark, New Jersey, on November 20, 1928, at four P. M., by virtue of an order of reference made by Vice Chancellor Alonzo Church, in the presence of SAMUEL DANIELS, for complainant; CORN & SILVERMAN (by JOSEPH CORN) for defendants.

Mr. Corn: I want to note on the record at this time that Mr. Samuel Kaplan and any other witnesses who may be subpoenaed are testifying without the defendants waiving their right to review an order in this cause dismissing a rule to show cause why this testimony should not be quashed. The order was made on November 13, 1928.

SAMUEL KAPLAN, sworn for complainant.

Direct-examination by Mr. Daniels:

Q. What is your name? A. Samuel Kaplan.

Q. Where do you live? A. 196 Renner Avenue.

Q. Renner what? A. Renner Avenue, Newark.

Q. What is your wife's name? A. Celia Caplan.

Q. Does she live with you at the same address? A. Yes.

Q. Are you an officer of the defendant, the Profit Realty Company in this case? A. Yes.

Q. What office do you hold in that company? A. Secretary treasurer.

Q. Who is the president of the company? A. Abraham Kaplan.

Q. What relation is Abe Kaplan to you? A. Brother of mine.

Q. Where does he live? A. 151 Scherer Avenue.

Q. Are there any other officers of the company? A. No.

Q. Besides you and your brother? A. My wife.

Q. What office does your wife hold? A. She doesn't hold any office, but just by having three it makes the corporation.

Q. Who are the stockholders of the corporation? A. Myself and my brother.

Q. Which brother? A. Abraham Kaplan.

Q. Who else? A. And my wife, she got one share.

Q. How many shares have you got? A. All of it except two shares; one is assigned to—one is my brother and one is my wife.

Q. You mean, you have all of the shares of the corporation, except that your brother, Abraham Kaplan has one share, and that your wife, Celia Kaplan, has one share? A. Yes.

Q. Were there at any time any other stockholders of the Profit Realty Company besides you, your brother, Abraham, and your wife? A. No.

Q. Who are the directors of this corporation, the Profit Realty Company? A. No directors.

Q. I beg pardon. A. None of them; there is no directors there.

Q. Did you ever have a directors meeting of this corporation? A. No.

Q. Did you ever elect directors of this corporation? A. No.

Q. When was this corporation organized? A. About a year and a half ago. It was in April, 1926, I guess.

Q. That is your best recollection?

Mr. Corn: You have all the corporation books here.

Q. April, 1926? A. Yes.

Q. Who— A. No. In April, 1927. Now is 1928. It was 1927 I guess.

Q. Did you have your corporation organized through a lawyer? A. Yes.

Q. What is the name of the lawyer? A. Feit over in Elizabeth.

Q. When did you hold the first corporate meeting? A. When we organized—

Q. When did the shareholders have their first meeting? A. There is no shareholders in there except me and my wife and my brother.

Q. Well, didn't the three of you as shareholders ever hold any meetings? A. No.

Q. Never held any meetings at all? A. No.

Q. I see. Who paid for the corporation of this company? A. I did.

Q. Out of your own pocket? A. Yes.

Q. By cash or check? A. I guess I paid by check.

Q. Was it your own check? A. Yes, Samuel Kaplan check, yes.

Q. Samuel Kaplan's check. How much did you pay? A. How much do I pay?

Q. Yes. A. They charge me, I guess, $135. I can't remember to recall exactly.

Q. You are sure you paid it by your own check? A. Yes.

Q. What relation are you, if any, to Davis Bender? A. None, no relation.

Q. Is Abraham Kaplan related to him in any way? A. No.

Q. Is your wife, Celia Kaplan, related to him in any way? A. No.

Q. How long have you known Davis Bender? A. Since we were boys, about eight or nine years old.

Q. How long have you known his son, Harry Bender? A. Since he is born.

Q. You were pretty intimate with Davis Bender and Harry Bender, weren't you? A. I know them; we live in the same neighborhood, and I knew the old man Bender from the other side yet.

Q. Yes, you are quite friendly with him. A. Like with every one of them.

Q. When did the Profit Realty Company buy this property on Goldsmith Avenue, which was owned by Davis Bender at one time? A. I don't know when it was owned by Davis Bender, but I bought it from Harry Bender.

Q. When did you buy it from Harry Bender? A. In April, 1927.

Q. In April, 1927? A. It was April or maybe March; in those months.

Q. Who represented you when you bought this property? A. Feit.

Q. Feit & Feit represented you? A. Yes, sir.

Q. Who represented Harry Bender when you bought this property? A. The same lawyer represented the two of us.

Q. He represented both of you? A. Yes.

Q. Where did the sale take place? A. In his office.

Q. In whose office? A. In Feit's office.

Q. Who was present when this sale was consummated? A. Myself and Harry Bender and Feit.

Q. Was there any previous contract for the sale of this property before the deed was given to the corporation? A. Yes.

Q. Have you got the contract with you? A. Maybe I have got it, but the contract was not made to the corporation, it was made only personally with me.

Q. When was the contract made? A. It was made before I took title, about a month or five weeks, something like that.

Q. How much did you agree to pay for the property? A. Twenty two thousand.

Q. Were there any mortgages on the property? A. When I bought it, no.

Q. You agreed to pay twenty-two thousand cash? A. Yes—not cash. I paid them some cash and some a mortgage.

Q. Yes. Well, how many days—how soon before the deed was transferred—how long before the deed was transferred did you enter into the contract for the purchase of this property? A. How long before?

Q. Before you got the deed? A. Yes.

Q. Did you enter into this contract to buy this property. A. About a month or some—till, when the corporation was drawn I took title; when I went down to buy the property I went down to

buy it and then Mr. Feit told me I had to sign an individual bond; instead of signing an individual bond, I suggested his having a corporation made, and while I was in Mr. Feit's office I told him to do it.

Q. Did Feit ever represent you in any other transactions before this purchase from Harry Bender? A. No.

Q. Of the Goldsmith Avenue property? A. No.

Q. How did you happen to go to Mr. Feit? A. Why, by buying the property Harry Bender told me to go to his lawyer.

Q. And how much did you pay for this property? A. Twenty two thousand.

Q. And in what manner did you pay for this property? A. Seven thousand dollars in cash and fifteen thousand dollars in mortgage.

Q. How did you pay this seven thousand dollars in cash? A. How did I pay it? With a check.

Q. Whose check was it? A. The check was the Profit Realty Company.

Q. Profit Realty Company's check? A. Yes.

Q. For seven thousand dollars? A. Yes.

Q. And how did you pay the balance of fifteen thousand dollars? A. By a mortgage, by a first mortgage.

Q. To whom was the first mortgage made? A. Harry Bender.

Q. Has it been paid? A. No.

Q. How long was this first mortgage to run? A. The first mortgage is to run for a year.

Q. Run for a year? A. Yes, but he promised me he didn't need the money and I will have the privilege to keep on as long as I want.

Q. In other words, the mortgage is now past due? A. I guess the mortgage—it is not—it isn't

past due, but they didn't ask me for the money.

Q. Who signed the bond that went with this mortgage? A. The Profit Realty Company.

Q. Did you sign the bond personally? A. No.

Q. Did anybody sign the bond personally besides this corporation? A. No.

Q. What is the address of this property that we are talking about on Goldsmith Avenue? A. 92.

Q. What kind of a house is it? A. It was a two and a half story, but I turned it now in a three family.

Q. What is the construction of this house? A. Frame.

Q. What is the size of the lot? A. 60 by 100.

Q. Who occupies this house at this time? A. A fellow by the name of Gordon, lawyer Gordon, and a fellow by the name—a New York fellow just moved in—his name is Fishner—something like that, I don't remember his name exactly and on the third floor Harry Bender lives there.

Q. Harry Bender? A. Yes.

Q. You say that somebody has just moved in on the second floor? A. Yes, from New York.

Q. When did he move in? A. He moved in last Monday the 27th or 28th.

Q. How much rent is paid by the tenant on the first floor? A. One hundred twenty-five.

Q. A month? A. Yes.

Q. How much is paid by the tenant on the second floor? A. One hundred twenty.

Q. One hundred and— A. Twenty.

Q. —twenty. Who occupied the second floor before the present tenant moved into it? A. Harry Bender.

Q. Are you sure it was Harry Bender? A. Harry Bender, yes.

Q. Are you sure it was not Davis Bender? A. I have got the rent from Harry Bender. I don't care who lives there.

Q. Did you ever have a lease for the second floor before this new tenant moved in? A. No.

Q. Who occupied the third floor before Harry Bender occupied it? A. Harry Bender.

Q. You say Harry Bender occupied both the second floor and third floor before this new party moved in? A. Yes, it was a two family before, see?

Q. Yes. Who lived on the second floor before this new party moved in? A. Harry Bender.

Q. Harry Bender alone? A. With his mother.

Q. With his mother? A. (Witness nods yes.)

Q. His mother's name is Mollie, isn't it? A. Yes, sir.

Q. Did Davis Bender ever live on the second floor? A. I suppose when Mrs. Bender lived there maybe Mr. Bender lived there.

Q. Do you know, as a matter of fact, whether Davis Bender ever lived on the second floor or not? A. He did.

Q. He did. He lived with his wife? A. Yes.

Q. And is Harry Bender married? A. No, sir.

Q. Who else lived with Davis Bender and Mollie Bender on the second floor while they occupied that apartment? A. Who else?

Q. Who else? A. Harry Bender.

Q. Harry Bender. In other words Harry Bender lived together with his father and mother? A. With his father and mother.

Q. Yes. On both the second floor and the third floor? A. Yes, the third floor was only a few rooms, but now it is fixed for a floor. There was no—there was nothing there, but I fixed it up now.

Q. When did you fix it up? A. Lately, about a month and a half, two months.

Q. You mean two months ago? A. Yes, sir.

Q. Are there any garages in the rear of the house? A. Yes, sir.

Q. What kind of a garage? A. The garage, a big garage for two machines.

Q. And who occupies those two garages? A. On the first floor, the second floor, the two of them occupy it.

Q. And who occupied these garages before this new tenant moved in on the second floor? A. The first floor and another man from the street.

Q. Did the Benders, any of the Benders ever occupy any of the garages? A. No, not since I bought the house, but I lived for a few months, too.

Q. What arrangements did you have with the Benders for their occupancy of the second floor and the third floor before this new tenant moved in? A. They usually pay me rent, one hundred twenty-five dollars.

Q. One hundred twenty-five dollars for what? A. For the second floor.

Q. Without the third floor, or with the third floor? A. With the third floor.

Q. You mean you had an arrangement for one hundred and twenty-five dollars a month rent for the second and third floors? A. Yes, sir.

Q. Who made this arrangement for you? A. I made it with Harry Bender.

Q. You made it with Harry Bender. Did he ever pay you this one hundred and twenty-five dollars a month? A. Yes, sir.

Q. When did he pay it to you? A. Every month he pays the rent.

Q. When was the first time he paid it to you?

A. The first time he paid it to me was, I guess, May, 1927, or after I took title to the house. I can't recall just the date.

Q. I see. And did he ever pay you anything after that? A. Every month.

Q. Every month? A. Yes, sir.

Q. You mean to say every month beginning with the first—(interrupted) A. Since I took title to the house.

Q. Since you took title right down to what date? A. Up to—let's see, now is November—up to November 1st.

Q. You mean to say that since you took title—(interrupted) A. Not up to November 1st, but up to—October, November—up to October.

Q. And you say that from the time that the Profit Realty Company took title to this house up to and including October 1st, 1928— A. Yes.

Q. —Harry Bender paid you one hundred twenty-five dollars every month? A. Every month.

Q. For rent? A. Yes.

Q. Of the second and third floor? A. You can't call it the third floor for a floor, just the second floor and the rooms go with it.

Q. The rooms on the third floor went with it? A. Yes. Now it is a floor. I put in a sink and a bathroom and everything, but before it wasn't a floor.

Q. And how was this money paid to you? A. Sometimes he paid it check, sometimes he paid it cash.

Q. Did he pay it to you—how did he pay the rent for October, 1928? A. He paid it in cash.

Q. And what did you do with this money when you got it every month? A. What did I do with it?

Mr. Daniels: Withdraw that question.

Q. Who collected these rents? A. I do.

Q. You did? A. What is the name, lawyer lives on the first floor; he mails me a check always.

Q. You mean he mailed the check to the Profit Realty Company? A. Eh?

Q. You mean, he mailed a check to the Profit Realty Company? A. He mailed it to 96 Renner Avenue, to my house, yes.

Q. To whom is the check made out? A. Profit Realty Company.

Q. And how did the Benders use to pay their rent? A. When he made a check, he made it to the Profit Realty Company, but sometimes I used to meet him and he gave it to me in cash.

Q. I see. And what did you do with the money? A. What I have done with the money? Sometimes I deposited it and sometimes I kept it in my pocket. What does a man do with money?

Q. That is what I asked you. What did you do with the money when you got it? A. I keep it in my pocket.

Q. Did you ever deposit any money to the Profit Realty Company that you got, rents? A. I always deposit it.

Q. Have you got the bank book in the name of— A. Certainly.

Q. Profit Realty Company? A. Yes.

Q. What bank is it? A. Clinton Trust.

Q. When did you open this bank account? A. About a day or two before I arranged to take title.

Q. And who has the power of drawing checks out of this account? A. Myself; nobody else.

Q. In other words, you are practically the whole

corporation? A. The whole corporation; it is my money in it.

Q. Your wife and your brother, Abraham Kaplan, have no real interest in the corporation, except they are merely share holders for the purpose of having three people to a corporation? A. That is right.

Q. And has the Profit Realty Company any books of account? A. No; no books.

Q. No books of account at all? A. (Witness nods no.)

Q. Has it got a check book? A. Check book I got.

Q. Where is the check book? A. I got it right here.

Q. Got it with you? A. Got all the checks.

Q. Have you got bank statements? A. Bank statements?

Q. Have you got statements from the bank? A. I got the checks.

Q. Have you got the statements from the bank? A. Yes; I can't get the checks without a statement.

Q. Where are they? A. The bank statements?

Q. Yes. With the cancelled checks. A. I have got them here.

Q. You have got them here? A. Yes.

Q. And what other books of account did you keep for the Profit Realty Company? A. I don't keep any books at all.

Q. Any other books at all? A. No.

Q. Have you got a deposit book? A. I got a deposit book.

Q. Who has the minute book of the Profit Realty Company? A. There is two books. When we

made the company into a corporation Mr. Feit gave it to me and nobody writes in them.

Mr. Daniels: Have you got the vouchers and the cancelled checks?

Mr. Corn: Yes.

Mr. Daniels: Will you produce them?

(Mr. Corn does as requested.)

Q. Where are the bank statements, Mr. Kaplan? A. The bank statements?

Q. Yes. A. If you want them I will bring them to you; some of them I got and some I ain't got. I can't guarantee I got them all.

Mr. Daniels: Will you produce them, Mr. Corn?

Mr. Corn: I will produce whatever I can get.

Mr. Daniels: I don't want to go to the trouble of subpoenaing the Clinton Trust Company.

Mr. Corn: It is not necessary. Whatever he has got he will bring. I may state on the record I asked Mr. Kaplan to search for all the papers of the Profit Realty Company and bring them here, and I brought all that he said he could find.

Q. Mr. Kaplan, I call your attention to a check drawn by the Profit Realty Company on the Clinton Trust Company on April 11, 1927, for $6700 to the order of Harry Bender. A. Yes.

Q. I show you this check. A. Yes, I know that check.

Q. You know that check? A. Yes.

Q. You signed that check as president—as

treasurer of the—how did you sign it? You signed it as treasurer of the Profit Realty Company? A. That is it.

Mr. Daniels: I offer it.

(Check marked Exhibit C-1.)

Q. Now, this check, Mr. Kaplan, which has been introduced in evidence as Exhibit C-1 and which I have just described to you, is for sixty seven hundred dollars. A. Yes.

Q. And was paid by the bank on April 12, 1927, to Harry Bender. A. Yes.

Q. I ask you what this check was for. A. The time when I settle the house with Harry Bender.

Q. I don't get you. A. When I took title to the house.

Q. What of it? A. I gave him seven thousand dollars.

Q. You mean, when you took title to the house, the Profit Realty Company gave him that? A. Gave him that check for sixty-seven hundred dollars.

Q. For what? A. For taking title to the house.

Q. Which house? A. 92 Goldsmith Avenue.

Q. I show you a check, another check drawn by the Profit Realty Company and signed by Samuel Kaplan as treasurer. A. Yes.

Q. Is that your signature? A. Yes, sir.

Q. This check is dated April 12, 1927, and is for $200 to the order of Samuel Kaplan, and was paid by the bank on April the 18th. A. Yes, sir.

Mr. Daniels: I ask this go in evidence.

(Check marked Exhibit C-2.)

Witness: I made a loan.

Q. What was that check for, Mr. Kaplan? A.

For myself, I needed it, two hundred dollars.

Q. You said you paid seven thousand dollars to Bender? A. Yes, sir.

Q. How did you pay the balance of three hundred dollars? A. I only paid him two hundred dollars, a deposit, and I gave him that check and it was some allowance that day, the day of the settlement, for water, and other things, that amounted to, I guess, about one hundred and something, fixed it up in the check, but I really—the money, I gave him the date—in checks I gave him sixty-nine hundred dollars.

Q. Now, Mr. Kaplan, I call your attention to a check dated October 17, 1928, drawn by the Profit Realty Company and signed by Samuel Kaplan as treasurer, and ask you if that is your signature. A. Yes, sir.

Mr. Daniels: I ask it be marked.

(Check marked Exhibit C-3.)

Q. This check is marked—which is marked Exhibit C-3 in evidence, is dated October 17th and is made payable to the order of Bender Construction Company and was paid by the Clinton Trust Company. A. Yes, sir.

Q. On October the 18th. What was this check for, Mr. Kaplan? A. 1928, isn't it?

Q. October 17, 1928.

Mr. Corn: Let me look at the check, please.

Witness: Yes.

Q. What was that check for? A. Harry Bender, the Construction—the Bender Construction Company, they fixed it for me.

Q. They fixed it for you? A. The third floor supplies, some checks drawn.

Q. In other words, this check marked C-3 is for repairs? A. Repairs, yes, done on the third floor.

Q. That was done on the third floor? A. Yes, by the Bender Construction Company.

Q. By the Bender Construction Company on which property? A. 92 Goldsmith Avenue.

Q. Who is the Bender Construction Company, do you know? A. It is Harry Bender.

Q. The Bender Construction Company, Harry Bender? A. Yes.

Q. How do you know that? A. Well, I done business with him, I know it.

Q. Do you know of anybody else that is part of the Bender Construction Company? A. No, I don't know.

Q. Do you know whether Davis Bender is part of the Bender Construction Company? A. I don't know.

Q. I show you a check dated October 5, 1928, drawn by the Profit Realty Company and signed by you as treasurer, to the order of Bender Construction Company for four hundred dollars on the Clinton Trust Company? A. Yes.

Q. Is that your signature? A. Yes, sir.

Mr. Daniels: I ask it be marked.

(Check marked Exhibit C-5.)

Q. This last check I spoke to you about is for four hundred dollars and is marked Exhibit C-5, what was that for, Mr. Kaplan? A. For turning in the house from two and a half stories to three stories.

Q. Is that in connection with the same transaction? A. The same transaction.

Q. Where you gave him the three hundred dollar check which is marked C-4 in evidence? A. Yes, sir. There are a lot of checks.

Q. Yes. We will find them Mr. Kaplan. I show you a check dated September 8, 1928, and signed by the Profit Realty Company by you as treasurer, to the Bender Construction Company, and ask you if that is your signature? A. My signature.

Mr. Daniels: I offer it.

(Paper marked Exhibit C-6.)

Q. This check is for three hundred dollars and was paid by the Clinton Trust Company on September 11, 1928. What was this for? A. The same thing, for turning in the house 92 Goldsmith Ave—(interrupted)

Q. This was part of the cost of making alterations you speak about? A. Yes, sir.

Q. What was the total cost of those alterations? A. Thirteen hundred dollars.

Q. Thirteen hundred dollars? A. Thirteen or fourteen.

Q. And did you have a written contract for these alterations? A. No.

Q. You didn't have a written contract? A. (Witness nods no.)

Q. Who made these improvements, do you know? A. Harry Bender had some men there doing it, that done it.

Q. He had some men? A. Yes.

Q. Do you know who the men were? A. No, I don't know.

Q. Do you know who the contractors were? A. No, I do not.

Q. Who hired the contractors, you? A. Harry Bender.

Q. Harry Bender hired the contractors? A. (Witness nods yes.)

Q. What arrangement did you have with him for doing this work? A. A certain amount of money he shall turn it in from two and a half story to three story.

Q. Did you have a written contract? A. No, sir.

Q. Did you have specifications? A. No, sir.

Q. When did you make this agreement with him? A. It was a verbal agreement.

Q. When did you make it? A. Some time in September.

Q. Was anybody around when you made this agreement with him? A. Nobody was around, me and him.

Q. You and him personally? A. Yes, sir; I asked him whatever it would cost and he figured it out and he told me it will cost so much; I told him to go ahead with it.

Q. What line of business are you in, Mr. Kaplan? A. Lumber business.

Q. Lumber business? A. (Witness nods yes.)

Q. You are an officer of the Chancellor Lumber Company, aren't you? A. Yes.

Q. Ever have occasion to have work like this done before? A. Did I have what?

Q. Did you ever have occasion to have work like this done before, altering houses? A. No. I have built new houses years ago; I was a builder; I built new houses, but I didn't do no alterations.

Q. Now, Mr. Kaplan, I show you a check dated September 6, 1928, and drawn by the Profit Realty Company on the Clinton Trust Company and signed by Samuel Kaplan, treasurer. Is that your signature? A. They are all my signatures, yes.

Harry Bender, nine hundred dollars.

Mr. Corn: Just answer. Is that your signature.

Q. Is that your signature? A. Yes.

Mr. Daniels: I offer it.

(Check marked Exhibit C-7.)

Q. This check Exhibit C-7, is dated September 6, 1928, and is drawn to the order of Harry Bender of the Clinton Trust Company, is that right? A. Yes, sir.

Q. What was this check for, Mr. Kaplan? A. Interest.

Q. Interest on what? A. On 92 Goldsmith Avenue.

Q. How did you figure that out? A. It was a year's interest.

Q. You paid interest? A. Yes, sir.

Q. From what date? A. From what date?

Q. Yes. A. A year's interest, I owed him for a year's interest.

Q. You owed him for a year's interest on what? A. On the mortgage, on the fifteen thousand—(interrupted)

Q. When did the interest begin? A. Interest begin. I bought the house in April, May, June, July, August, September, I guess it is due September, it is due twice a year, but I paid that—I didn't pay it for the first six months interest and then when I met him and he told me. "Interest is due," I told him, "When is it due?" He said it was another month or two months will be interest a year, and when I had the money I gave him a check for the year, not to bother with it.

Q. Is this the only interest you ever paid him? A. Yes, sir; the only interest so far.

Q. And did any of this cover interest in advance? A. It covered, maybe two or three weeks in advance, that is all.

Q. It covered two or three weeks in advance? A. But the first six months were over—when the interest was due he didn't ask me for it and I didn't pay him and then he met me once and he said, "You owe me interest pretty near for a year." I said, "When is the year up?" He said, "The year is up in another month or five weeks," he told me. I said, "Come in; I got money now; I will give you a check for the whole year."

Q. This was in September, wasn't it, Mr. Kaplan? A. Yes, sir.

Q. I thought you said you bought the property in April, 1927, and that you gave a mortgage at the time you bought the property. A. When was the mortgage?

Q. Never mind. I asked you—

Mr. Daniels: I withdraw that question.

Q. Did you give the mortgage to Harry Bender at the time you bought the property? A. Yes.

Q. And you bought the property in about April, 1927, isn't that what you said? A. April. I know the deposit was given in April, but the exactly date when I took title to it I don't remember.

Q. Well, you said before, it was only a few weeks after you gave the deposit that you took a deed, isn't that so? A. Yes; passed by about five or six weeks.

Q. Five or six weeks? A. I don't remember how much it passed. When he was ready with it —when Feit was ready with the settlement I settled it.

Q. Didn't you say, before, it was only a week

or two after you signed the contract that you took title? A. I didn't say a week or so; I said when Feit let me know that the corporation is ready, then I did settle.

Mr. Corn: Let him refer to the checks.

Witness: That deposit was made—(interrupted).

Mr. Corn: Well, tell the date; give the date.

Witness: April the 11th I made a deposit.

Q. April the 11th of what year? A. 1927. And I took title—(interrupted)

Q. You made a deposit of how much? A. Eh? Seven thousand dollars and I took title maybe a week—(interrupted)

Q. You mean the Profit Realty Company made the deposit? A. Yes.

Q. Yes. A. And I took title a week after or maybe ten days after I made the deposit.

Q. In other words, about April the 20th, 1927—(interrupted) A. I can't recall the date except as I look at the deeds. I know the date of the deeds.

Q. I show you check which has been introduced in evidence and marked Exhibit C-1 to Harry Bender for April 11th for sixty seven hundred dollars. A. April the 11th? Yes.

Q. Does that refresh your memory as to when the corporation took title? A. Took title in the 11th.

Q. April the 11th, 1927. A. We didn't take the title in the 11th. The check was made in the 11th, but we took the title a day or two days later. The check I made out the 11th.

Q. This bank statement shows this check was

deposited on April 11th, 1927. A. Yes.

Q. Did you give them the check on the same day that you took title? A. Yes, sir.

Q. All right. And you made—the company gave this mortgage of fifteen thousand dollars to Harry Bender on the same date? A. I don't know whether it was the same day or not the same day. Can I remember?

Q. You don't remember whether you gave him a mortgage on the same day you took title? A. The same day I took title, but the date I don't remember.

Q. And so this interest of nine hundred dollars covered the interest from the very beginning until a few days after that date of the check for nine hundred dollars? A. After a few days I don't—(interrupted)

Q. Yes. Didn't you say that that nine hundred dollar check for interest covered interest from—(interrupted) A. When Harry Bender made the loan he said, "Kaplan, you got to give me interest on the mortgage." I said, "When is it due?" He said, "It will—in a short time it will be due for a year." I said, "How long will it—when is the year up?" He said, "It is a couple of weeks." I say, "Come in; I have got money now; I will give you the interest for the whole year," and I gave him for a year interest.

Q. Nine hundred dollars? A. Nine hundred. I didn't ask him the dates and the minute.

Q. And you never paid any other interest of any kind, did you? A. No; only one check I gave him for the interest.

Q. I see. And do you know up till what date this interest check of nine hundred dollars covers? A. I don't know up to what date.

Q. But you are sure it was up to—at least up to the date when you gave him the check. A. When I gave him the check it was not due for the year's interest yet, but he told me it will be a year pretty soon and I gave him for the year, whatever—(interrupted)

Q. But you never paid any other interest than this nine hundred dollars to Harry Bender? A. No, no.

Q. I show you a check drawn by the Profit Realty Company on defendant Trust Company on February the 2nd, 1928, for four hundred and fifty dollars, payable to the order of Harry Bender; is that your signature on the check? Mr. Kaplan, is that your signature on the check? A. Yes.

Mr. Daniels: I ask it be marked in evidence.

(Check marked Exhibit C-8.)

Q. And what was this check for, this check marked Exhibit C-8? A. I can't remember what this check is for.

Q. It was not for interest, was it? A. Maybe it was, I don't know, I couldn't remember.

Q. Have you any record anywheres that will tell what this check was for? A. I don't keep no books. I have no records.

Q. You don't know what this check was for? Was this for any work done that Harry Bender did for you? A. I don't know. Sometimes when I need money I ask him, "Give me a few hundred dollars." Sometimes I gave him a few hundred dollars.

Q. I see. You are pretty intimate with him? A. Yes, sir.

Q. Pretty friendly with him? A. Yes. I couldn't recall what the check was for.

Q. I show you a check dated June 3, 1927, and drawn by the Profit Realty Company on the Clinton Trust Company to the order of Nathan Rice. A. Yes.

Q. And ask if that is your signature. A. Yes, this is the paint.

Mr. Daniels: I offer it.

(Check marked Exhibit C-9.)

Mr. Corn: Wait until you are asked.

Q. Now, this check for two hundred and fifty dollars to Nathan Rice, what was that for? A. Painting outside the house.

Q. Has the Profit Realty Company any other bank accounts other than this account with the Clinton Trust Company? A. No, sir.

Q. Where is the Clinton Trust Company located? A. On Clinton Avenue.

Q. Corner of Chadwick Avenue? A. Corner of Chadwick, yes, between Chadwick and some other street.

Q. Do you know Mollie Bender? A. Yes, sir.

Q. What is her present name? A. Mollie Bender.

Q. Is she married? A. She is married.

Q. Oh, I mean Hortense Bender. A. Hortense Bender?

Q. Do you know Hortense Bender, the daughter of Davis and Mollie Bender? A. Yes.

Q. What is her present name, do you know? A. I did know, but I forget.

Q. Where does she live now, do you know? A. She lives over in East Orange.

Q. You don't know her name since she is married? A. Eh?

Q. You don't know what her name is now that she is married? A. No.

Q. Do you know where Davis Bender is now? A. Out south somewhere.

Adjourned to November 30, 1928.

IN CHANCERY OF NEW JERSEY.

April 24, 1929.

Between

JACOB WILLIAMSON,
Complainant,

and

DAVIS BENDER, *et als.*,
Defendants.

Transcript of shorthand notes of testimony taken in the above-entitled cause before ROGER E. SALMON, a Master in Chancery of New Jersey, on April 24, 1929, at 11 A. M., at the Chancery Chambers, Newark, New Jersey (1060 Broad Street), in the presence of SAMUEL DANIELS and ALBERT C. JORDAN, for complainant; JOSEPH CORN and C. WALLACE VAIL, for defendants.

CELIA KAPLAN, called as a witness on behalf of complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Jordan:

Q. Where do you live? A. 196 Renner Avenue.

Q. What city? A. Newark.

Q. What is your husband's name? A. Samuel Kaplan.

Q. Are you a stockholder in the Profit Realty Co? A. No.

Q. Are you an officer in that company? A. I don't think so. I don't know. Maybe. I don't

read English, that is the trouble. I don't know anything about it.

Q. Well, did you ever pay any money to the Profit Realty Co? Yes or no. A. No.

Q. What consideration, if any, did you give for the one share of stock that you hold in that company? A. Well, I had a little money and I gave—

Q. What consideration did you give for the one share of stock that you hold in that company? A. Of course, Mr. Kaplan bought a house from Mr. Bender—

Q. No. What— A. I don't understand.

Q. Do you understand me? A. Yes—I don't.

Q. What did you personally give to the Profit Realty Co. for the one share of stock that you have in your name? A. My husband gave it to me.

Q. I see. Your husband gave it to you. Now, how long do you know Davis Bender? A. Not long.

Q. How many years? A. How many years? A few years, that is all.

Q. How many years? A. A short while, since we got the house.

Q. How long have you been in the United States? A. Twenty-six years.

Q. Now, don't you know Davis Bender from the other side? A. My husband knows him.

Q. Don't you know him from this side? A. A little, not much.

Q. What? A. I know him just lately.

Q. How long ago is the first time you met Davis Bender? A. About two years ago.

Q. Did he ever live at your house before that time? A. Yes, a few times.

Q. And have you visited his house? A. I was there.

Q. Do you know his son, Harry? A. Yes, I know him.

Q. Harry has been in your home? A. Yes.

Q. Do you know his sister? A. What is her name?

Q. Hortense. A. I met her on the street.

Q. Did you sign any checks for this Profit Realty Co? A. No.

Q. Did you ever get any dividends from it? You have to talk so Mr. Salmon can hear you. A. Yes.

Q. Did you ever get any dividends from it? A. No, not yet.

Q. Do you know anything about the company? A. No.

Q. Do you know what property it owns? A. (Witness nods "No.")

Q. Do you know anything about its debts? A. I don't know anything about it.

Q. Nothing at all? A. No. I just know Mr. Kaplan bought a house from Mr. Bender; that is all I know.

Mr. Jordan: That is all.

Mr. Corn: That is all.

DAVIS BENDER, called as a witness for complainant, being duly sworn, testified as follows:

Direct-examination by Mr. Jordan:

Q. Mr. Bender, how old are you? A. Fifty-four.

Q. And how long have you been in this country? A. Oh, about thirty.

Q. And where have you lived for the greater part of that thirty years? A. I lived in New York, I lived in Newark.

Q. And name the persons in your family. A. Harry Bender, Hortense, and Frances.

Q. Who is Harry Bender? A. He is here.

Q. Who is he? A. My son.

Q. How old is he? A. Thirty—about twenty-eight, twenty-nine.

Q. And who is Hortense Bender? A. My daughter.

Q. How old is she? A. She is over thirty.

Q. And what is her present name? A. She got married, and I don't remember the second name.

Q. You don't know her married name? A. No.

Q. Where does she live? A. She kept moving and I don't remember, because I just came from Florida and I am not much acquainted.

Q. Who is Frances Bender? A. My daughter.

Q. How old is she? A. She must be about 26—25 or 26.

Q. And where does she live? A. The same thing. I don't remember.

Q. You don't know where your daughter lives? A. I just get back from Florida and I don't know, because they keep moving.

Q. Where does your son, Harry, live? A. Well, he was in Florida. He was 92 Goldsmith Avenue.

Q. Does Frances live there with him? A. No.

Q. What? A. No, sir.

Q. Does Mrs. Bender, your wife, live there? A. No. We were away. We were taking care of my health, you know, this winter.

Q. What? A. They were away this winter. That is closed up. They closed up the house. They closed up the house.

Q. Where are you living now? A. Florida.

Q. What? A. Florida.

Q. No. Where are you living right now? A. I came back for this trial.

Q. Where did you stay last night? A. 92 Goldsmith Avenue.

Q. And is Mrs. Bender there with you? A. Yes, sir.

Q. Your wife? A. Yes.

Q. Have you; lived any other place in the city of Newark than 92 Goldsmith Avenue, in the past five years? A. Yes.

Q. Where? A. Florida.

Q. No. I say, in the City of Newark. A. I understood you—(interrupted)

Q. Listen to what I am asking you, Mr. Bender, and we will save a lot of time. When you are in the City of Newark, did you ever live any place else in the last five years than 92 Goldsmith Avenue? A. No.

Q. And your family, up until the time your daughter got married, moved to some place which you don't know, always lived at 92 Goldsmith Avenue? A. Before she got married?

Q. What? A. Before she got married, yes.

Q. I mean, the rest of them, they always lived at 92 Goldsmith Avenue? A. Yes.

Q. And they still maintain an apartment there, don't they? A. At 92 Goldsmith Avenue? No, sir.

Q. Don't they live there? A. No, sir.

Q. Well, they have an apartment there, haven't they? A. At 92? No, sir.

Q. Who did you live with, then, at 92 Goldsmith Avenue? A. My son.

Q. Well, I say, he maintains an apartment there, doesn't he? A. Yes. You say "they."

Q. And you live there with your son when you come to Newark, don't you? A. Yes.

Q. Is your son married? A. No.

Q. Who keeps house for him? A. His mother.

Q. Then, you and your wife are separated, are you? A. I didn't say that.

Q. Well, who keeps house for Harry when your wife—(interrupted). A. When I am in Florida, my wife is there, and sometimes my wife is in Florida.

Q. I see. Your wife stays there while you are in Florida? A. Not all the time.

Q. But a greater part of the time? A. Yes.

Q. Isn't it a fact that last night the whole family including your married daughter, was also in this apartment in 92 Goldsmith Avenue? A. I don't know.

Q. What was your answer? A. I don't know.

Q. Were you there? A. When?

Q. Last night. A. Yes, sir.

Q. Who else was there? A. That is all I know, I was there.

Q. Who did you see there? A. What do you mean, whom I saw?

Q. Whom did you see in the apartment where you were last night, at 92 Goldsmith Avenue? A. Last night I was there myself.

Q. Well, alone? A. Yes, sir.

Q. Nobody else there? A. Not last night.

Q. Nobody else there? A. No.

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

Q. Where did your son stay all night? A. I don't know.

Q. He didn't come home? A. No.

Q. How about the night before, Monday night? Was your whole family there then? A. Let's see? What is today? Today is Wednesday?

Q. Yes. A. Tuesday, Tuesday night. I don't remember.

Q. What is that? A. I got home late.

Q. Who was there when you got home late? A. Well, I didn't look in.

Q. Who did you see the next morning? A. I know I was there and my wife was there.

Q. Who did you see the next morning? A. Then I got dressed and I got out.

Q. What? A. I was there, my wife was there, and I got dressed and I went out.

Q. Who did you see, outside of your wife, there the next morning? A. My wife. That is all.

Q. And that is all? A. I haven't looked into my son's bed-room.

Q. Do you own any of the— A. No.

Q. —furniture in that apartment? A. No.

Q. Where is your furniture? A. I have none.

Q. What? A. I have no furniture.

Q. What did you do with it? A. My home is in Florida.

Q. What did you do with your furniture? A. I sold it.

Q. To whom? A. I had a mortgage on it, I believe, and it was sold.

Q. To whom did you sell your furniture? A. I haven't sold it—the sheriff—the sheriff, whoever it was, sold.

Q. When was it sold? A. I don't remember.

Q. What? A. Maybe about a year ago, something like that.

Q. Are you sure about that? A. Yes, sir.

Q. Who held a mortgage on your furniture? A. I don't remember that.

Q. When did you give the mortgage? A. Oh, that was a long time ago.

Q. When? A. A couple of years ago.

Q. What year? A. I don't remember whether it was 1926 or 1927.

Q. For how much? A. It was $2,000.

Q. Who gave you the money? A. I don't remember now.

Q. You don't remember who gave you $2,000? Did somebody give it to you? A. Yes.

Q. Where? A. In Newark.

Q. Where in Newark? A. I don't remember now where it took place.

Q. You don't remember the month? A. No, sir.

Q. Was it a man or a woman that gave it to you? A. A man, a man.

Q. What is his name? A. I don't remember now because it is a few years, I think it is about two years, two or three years.

Q. Did you ever see him before? A. I don't remember when I got it.

Q. Did you ever see him before the time you got the money from him? A. If you look up the record, the record will show you.

Q. No. I am asking you: Did you ever see this man before they gave you $2,000? A. I don't remember from whom I got it. I don't know.

Q. Did you ever see him before? A. I don't remember.

Q. Did you ever see him after you got the $2,000? A. If I would remember from whom I got it, I could tell you.

Q. No. Did you ever see him after you got the two thousand? A. Perhaps I did and perhaps I didn't.

Q. You don't know? A. I don't remember.

Q. Would you know if you saw him in court today? A. Maybe I would remember.

Q. Would you know him, if you saw him in court today? A. Well, maybe I would.

Q. But you wouldn't be sure? A. My memory

is short, is very poor. I mean, my eyes is poor.

Q. What did you do with the $2,000? A. Took it to Florida.

Q. And you say your furniture was sold by a sheriff— A. I believe, yes.

Q. —on account of that? Who bought it? A. My son bought it.

Q. Your son, Harry? A. (Witness nods yes.)

Q. And where is the furniture now? A. 92 Goldsmith Avenue.

Q. Did this mortgage cover all of your furniture? A. Yes, sir.

Q. Everything in the line of furniture that you owned? A. (Witness nods yes.)

Q. Did you have an automobile at the time? A. Yes, sir.

Q. Did it include that? A. Yes.

Q. Everything? A. Yes.

Q. And you don't know today where it was in Newark that you got the $2,000? A. I don't remember.

Q. What particular building? A. What?

Q. What particular place or building? A. No, I don't remember.

Q. A bank? A. I don't remember.

Q. Was it cash? A. I don't remember just now.

Q. Was it check? A. I don't remember just now.

Q. Now, you remember giving a note of $10,000 to Jacob Williamson, don't you? A. In Florida.

Q. Yes. And that on June 16, 1926, wasn't it? A. That is about it.

Q. And you remember, in September of that same year, your coming to Yonkers to see Mr. Williamson, don't you? A. Yes, sir.

Q. You had a talk with Mr. Williamson about

that note and about that debt, in Yonkers? A. Yes, sir.

Q. September of the same year? A. About that time.

Q. And you know, at that time, that Mr. Williamson was going to demand payment of that entire note from you, didn't you? A. No, sir.

Q. Do you remember when you were first sued in the United States District Court, in March? A. That was after I went to Williamson.

Q. Yes, it was after. How long after? A. I don't remember.

Q. Now, Mr. Bender, you were served in the United States District Court action, in which Jacob Williamson was a complainant and you were the defendant, on February 19, 1927, weren't you? A. 1927? What court? When he got a—

Q. The United States District Court. The first action. A. The first action?

Q. Yes. A. Before Judge Clark when you withdrew the case.

Q. No, when you were first served in that case was February 19, 1927, wasn't it? A. I want to understand you, first. Was that the case you withdrew because I was living in Florida?

Q. Yes. A. Yes. Well, I suppose the date shows.

Q. Yes. And subsequent to that time an action was begun in the State Court of New Jersey against you on the same note, wasn't it? A. No. Then you withdraw that case and then you drawed another action.

Q. Yes. A. After, not at the same time.

Q. The action in the District Court was withdrawn and then an action was begun in the State Court of New Jersey? A. I don't know what

court, but you brought it in another court an action.

Q. Yes. When were you served with the papers in the action in the State Court? A. You mean, in the first court?

Q. The second. A. I don't remember the date.

Q. That was in March, 1927, wasn't it? A. I don't remember the date.

Q. Do you remember whether it was in the month of March that that action was begun? A. I only know after you withdraw the case from Judge Clarks' court. Judge Clark.

Q. And when was that? A. The date I don't remember.

Q. Well, that was in March, wasn't it? A. I can't say. I don't remember the date.

Q. You are a business man? A. Yes.

Q. What business have you been in? A. Building.

Q. How many years were you in building? A. Oh, for about twenty.

Q. And in that time you had a good deal to do with real estate, didn't you? A. When I was building, that is real estate. I don't know what you call it.

Q. You bought and sold quite a few parcels of real estate? A. I didn't buy much; I didn't buy parcels, I bought lots.

Q. You bought lots? A. Lots, and built on them.

Q. And built on them and sold them, and you knew about mortgages? A. Yes.

Q. And you knew about bonds? A. Yes, I suppose I do.

Q. How many years before 1925 were you in the building business? A. Well, about—I should say about sixteen years, something like that.

Q. And you were so engaged in and about the city of Newark? A. Yes.

Q. How long have you known Abram Kaplan? A. For a long time.

Q. How long? A. Oh, since the other—since they are in the United States.

Q. About thirty years? A. I don't remember whether they are here thirty years or not, but since they are here—a long time.

Q. And how long have you known Samuel Kaplan? A. About the same time.

Q. And his wife, Celia, the same time? A. About the same time.

Q. Were you very friendly with them? A. Yes, sir.

Q. They visited your home? A. Yes, sir.

Q. And you visited theirs? A. Yes, sir.

Q. Did you ever tell any of the Kaplan family of your troubles on this Williamson note? A. No, sir.

Q. Did you ever tell them that you were being sued? A. I don't think so. I went to tell them my troubles.

Q. Did you ever talk that over with any of the Kaplans? A. We may have talked in the house, but I don't know whether I went to Kaplan's to tell them purposely about the Williamson note.

Q. But when Kaplan came to your house on a visit— A. Maybe.

Q. You might have talked to him about it? A. Maybe we talked in the family.

Q. Do you remember whether you did or not? A. No, I don't.

Q. The subject of Williamson's note and the law suit was pretty well talked about in your own family, wasn't it? A. I don't know.

Q. Did you ever tell your son, Harry, about

that? A. He knows it himself, I suppose.

Q. Well, did you tell him about it? A. Well, I don't remember, because a lot of my times I was in Florida most of them.

Q. This is your only son, isn't it? A. Yes, sir.

Q. And you were having trouble on this Williamson note, weren't you? A. Yes, lately.

Q. And didn't you talk that over with your son? A. Lately, since we started the suit; I suppose he know about it.

Q. You knew that, when you were being sued in the United States District Court—that you had your son, Harry, make an affidavit for you that you lived in Florida? A. I don't remember that.

Q. Didn't you? A. I don't remember that.

Q. Well, you talked about the case to him at that time, didn't you? A. I don't remember.

Q. What business is Harry in? A. Building.

Q. The same as you? A. Yes, sir.

Q. And under what name does he do business? A. Well, I believe his own name, or a corporation, I don't know.

Q. You don't know. Are you sure about that? A. I believe, in his own name, or a corporation.

Q. How long has he been in business for himself? A. I don't remember the time, but I know he has built nineteen—let's see, about eighteen, or something like that, put up some houses.

Q. Did he work for you? A. And he worked for me. He helped me build a lot of stuff.

Q. How long did he work for you? A. Oh, a long time, since he is out of school.

Q. I don't quite hear you. A. Since he is out of school.

Q. And when did he stop working for you? A. Well, he still worked for me after I sold the garage.

Q. What year was that? A. 1926, I believe.

Q. He was working for you up until 1926? A. He was in the garage, yes, as manager.

Q. What kind of work did he do for you? A. Well, when I was in Florida, I had to go out, and he managed the garage.

Q. Yes, but what kind of work did he do for you, outside of the garage? A. Well, when I was building, he did the same as I did; you know, helping, getting things together.

Q. Was he on a salary? A. He hasn't made out the exact amount of salary I should pay him so and so.

Q. How much did you pay him? A. What I told you. I didn't pay him anything at the time.

Q. You didn't pay him anything at the time? A. Yes. The only time he worked for me.

Q. I suppose you gave him spending money every week? A. Spending money.

Q. And he worked at home with you? A. Yes.

Q. And if he needed clothes or shoes, why, you bought those for him, didn't you? A. Yes.

Q. But you didn't give him any regular salary? A. No, I didn't fix the salary.

Q. Did you ever put any money in the bank for him? A. No. But when he worked, he asked for a salary and I told him I am going to take care of him.

Q. I see, you are going to take care of him. A. That I am going to figure out some way and going to give him.

Q. Did you ever put any money in the bank for him? A. No.

Q. Up until the year 1926, do you know whether he had a bank account or not at all? A. Up to what year?

Q. 1926. A. I don't know. I don't remember.

Q. Well, wouldn't you know if he did have a bank account? A. I don't remember now.

Q. Did you have a bank account at that time? A. Yes.

Q. What bank? A. Up to 1926 I was a depositor in the Broad & Market.

Q. Broad & Market? A. Broad & Market, and I was a depositor in Florida.

Q. Where in Florida? A. Bank of Bay of Biscayne, and another bank there.

Q. Bank of Bay Biscayne. Have you any bank account today? A. No, sir.

Q. When did you close out your bank account at the Broad & Market Street Bank? A. That was a long time. I don't remember.

Q. How many years? A. I don't remember that. I may have a few dollars there.

Q. When did you close that account out? A. I don't remember.

Q. What was your average balance in that bank? A. Lately?

Q. No, in the year 1926. A. I had a big amount there.

Q. How much? A. I don't remember exactly, but I should say about $60,000 or $70,000.

Q. And how much did you have in the Bank of Bay Biscayne, in Florida? A. Well, I was—that was in 1925, 1926, the beginning, I believe.

Q. Yes. How much did you have down there in Florida in 1926? A. Well, I was drawing money from this bank in Florida, in the Florida bank.

Q. And transferring it, depositing it there some money.

Q. Did you draw any checks to the order of your son, Harry, when you closed out your account with the Broad & Market bank? A. Checks? No, sir, no, sir.

Q. Have you your check books here? A. No, sir.

Q. Where are they? A. Well, I have them in Florida.

Q. When did you see them last? A. I haven't brought any checks.

Q. When did you see your check book last? A. I don't remember.

Q. Where did you see it last? A. I had it in Florida.

Q. And how long ago? A. I don't remember when I looked at it.

Q. Do you know where it is today? A. I haven't got any checks now.

Q. No. Do you know where your check book is that you did have in the Broad & Market Street? A. No, sir; I don't know today.

Q. You haven't any idea where that is? A. No, sir.

Q. You couldn't locate it, no matter how hard you searched? A. Well, I wouldn't say that.

Q. Did you turn it? A. No, sir.

Q. Did you destroy it? A. Well, I tell you, some of my stuff was destroyed by hurricane in Florida. They had a hurricane in Florida in 1926 and I had a lot of papers that were destroyed.

Q. Well, was this bank book there? A. Well, I don't remember whether that bank book was there or not.

Q. Will you swear now that you have not seen that bank book or had it in your hands since A. You can go through my pockets.

Q. No, no. Do you understand the question? A. You say "in my hands."

Q. Do you understand the question? A. Well, you had asked me whether I had it in my hands.

Mr. Jordan: Will you read the question?

(Question read as follows:)

"Q. Will you swear now that you have not seen that bank book or had in in your hands since 1926?" A. You are talking about a bank book from Newark?

Q. Yes. A. I don't remember.

Q. Are you sure that that is not in your apartment in Goldsmith Street? A. Sure.

Q. Did you look there for it? A. No, sir.

Q. Are you sure you had it in Florida last? A. I am sure I had it in Florida.

Q. What year? A. In 1926, I believe. I believe, but I am not sure.

Q. Where in Florida? A. But I am not sure positive.

Q. And where in Florida? A. Well, I was living in so many places in Florida I don't remember.

Q. Where did you see that bank book last—check book? A. I don't remember now, because it is so many years back. It is about three or four years.

Q. Did you check that account all out? A. Yes, sir.

Q. To whom? A. I only had a few dollars left and it was laying in the bank and they charged me, I believe, a dollar for not having sufficient enough. It was only a few dollars, I believe.

Q. Have you your bank book on the Bank of Biscayne in Florida? A. I believe.

Q. Check books? A. Check books. That is, the deposit book.

Q. Check books? A. Check books I don't remember because their deposit books is very little see.

Q. Well, where is the check book? A. In Florida?

Q. Yes. A. I haven't got it here.

Q. When did you have that last? A. That was 1926.

Q. Haven't had any bank book since 1926? A. I did.

Q. Where? A. In Florida I had a bank book in this winter, too.

Q. Where did you have your account this winter? A. In—what was the name?—Satum Bank, Satum Trust Co.

Q. Saturn, S-a-t-u-r-n? A. Something like that.

Q. The Southern Trust Co? A. I think that is the name.

Q. Where? A. In Miami.

Q. Have you got that check book? A. No, sir.

Q. Where is that? A. I don't remember what I did with it. Maybe I left it in Florida.

Q. Where did you see it last? A. Before I come down, because I am only down here a few days.

Q. Where did you see it last? A. Florida.

Q. And how much money have you got in that bank? A. Nothing.

Q. Nothing at all? A. No, sir.

Q. Not a dollar? A. No, sir.

Q. What is the greatest amount of money you ever had in the Southern Trust Co? A. Oh, a few hundred dollars.

Q. And where did you get that from? A. Well, I had a lot of money and I had that left.

Q. Where did you get it from? A. Well, 1926, I had a lot of money.

Q. Did you commence your deposits in this trust company in 1926? A. In this Southern bank?

Q. Yes. A. No, sir.

Q. When did you commence your account there? A. Only lately.

Q. When? A. Oh, say six or seven months ago.

Q. Where did you get the money? A. I had it left.

Q. Where did you have it left from? A. I had about $60,000 or more in cash, about seventy.

Q. When you commenced your account with the Southern Trust Co., what did you give them, a check or cash? A. I don't remember what I gave them.

Q. How much did you commence your account with? A. It was a few hundred dollars. I don't remember the exact amount.

Q. Did you have the money in your pocket? A. If I would have the money, they wouldn't—(interrupted).

Q. Didn't you have it in your pocket? A. At that time? When I made this deposit, of course, I had it.

Q. Then you do know it was cash you made the deposit with? A. But I don't remember it was check or cash.

Q. And you haven't got any check books here? A. No, sir.

Q. Do you know where they are? A. No, sir.

Q. You know where that check book is—in Florida, isn't it? A. I suppose it is in Florida, because—(interrupted).

Q. Who had it down in Florida? A. (Continued.) Because it is canceled already.

Q. Who has got the book in Florida? A. I left a lot of junk there.

Q. And you left that with the junk? A. I am not sure whether it is there with the bank. Maybe I threw it away, because it is not worth anything more to me.

Q. And you closed that out? A. Yes.

Q. You have got no money in that? A. No.

Q. And you have got no money in the Broad & Market Bank? A. No.

Q. And you have got no money in the Bank of Bay Biscayne? A. No.

Q. That is all cleaned out? A. Yes.

Q. And your furniture is sold and your son, Harry, has it? A. I don't know whether he has it or not, but I believe so.

Q. Did you draw any checks on those Southern banks to the order of your son? A. I don't think so, no, sir.

Q. Will you swear you did not? A. I don't think so; I won't swear, but I don't think so, that I did.

Q. Did you receive any money from your son? Maybe my son to me, yes.

Q. Did you receive some money from your son? A. Yes, sometimes.

Q. When? A. I don't remember the exact times.

Q. Within the last six months did you receive some money from your son? A. Different times, yes.

Q. How much did you receive within the last six months? A. I don't remember. Different sums.

Q. Five thousand dollars? A. Oh, no, not that amount.

Q. How much? A. Small amounts.

Q. What do you call a small amount? A. Fifty dollars one hundred, sometimes.

Q. How often would he send you fifty or one hundred dollars? A. If I needed it.

Q. How often would he send it? A. Well, I didn't need it lately.

Q. How much did you get from him altogether in the last six months? A. I don't get much because I had my own.

Q. How much? A. Sometimes it was only a few dollars, sometimes.

Q. How much? A. I don't remember the exact amount. It was small.

Q. How long did you live in Florida this last time? A. About six or seven months.

Q. And where were you living in Florida? A. Different places.

Q. Hotels? A. Sometimes hotels and the rest I was 1142 Southwest 4th Street.

Q. Did you have any business there? A. I was there for my health. I was looking for business.

Q. Did you have any occupation there? A. Well, I had some business I left in the middle, you know.

Q. Were you employed there? A. No.

Q. Did you make any money while you were there? A. I didn't make no money.

Q. And you started in with $200 and you lived six months on $200, did you? A. My son was there.

Q. When was your son there? A. Well, he was there about four or five months, I guess.

Q. Did he pay your bills? A. He paid some of them.

Q. Must have paid pretty near all your bills, didn't he? A. Some of it.

Q. And in addition he gave you some money? A. I had a little money sometimes, different times.

Q. Did you get any money from him directly? A. Different times, small amounts.

Q. In the last six months? A. Yes.

Q. Yes. Now, do you know Mr. Louis J. Feit, in Elizabeth? A. Yes.

Q. He was your lawyer? A. Yes.

Q. How long have you known him? A. Oh, I don't remember. About—maybe about eight years.

Q. And he was your lawyer when you were first sued by Williamson in the District Court, wasn't he? A. Yes.

Q. He appeared there for you? A. Yes, sir.

Q. And defended you, and he was also your lawyer in the State Court, at first, wasn't he, in the second suit? A. Second suit?

Q. Yes. In the second suit. A. I don't think—I don't remember. I don't think so.

Q. You know him very well? A. Yes, sir.

Q. And he knew all about your difficulties with this Williamson note? A. He was not my lawyer in the second case, on the second court.

Q. When did you change lawyers? A. I believe Brand was the second lawyer.

Q. When did you change lawyers? A. I don't remember the date.

Q. Now, you know Mr. Feit very well, don't you? A. I know him.

Q. And he knew all about your troubles on this Williamson note, didn't he? A. I don't know whether he knowed all my troubles.

Q. Well, you told him all your difficulties, didn't you? A. Well, maybe.

Q. What? A. Maybe, as much as I knowed at that time.

Q. Yes. You know Mr. Feit was the lawyer for the Profit Realty Co? A. I don't remember. I don't know.

Q. Where does Mr. Samuel Kaplan live? A. On Renner Avenue.

Q. Newark? A. Newark.

Q. Do you know whether Feit was his lawyer

or not? A. What do you mean by "his lawyer?"

Q. The lawyer that represented him. A. He may have more lawyers.

Q. That is right. He may have. Do you know whether Louis J. Feit was the lawyer for Samuel Kaplan? A. I know Samuel Kaplan was doing a lot of business and he has more than one lawyer.

Q. Did you ever meet him in Feit's office? A. I don't remember.

Q. Could you have met him and forgot it? A. Possibly. If I say I don't remember, possible.

Q. Does Feit have a Newark office? A. Yes.

Q. Did you ever meet Kaplan in Feit's office here in Newark? A. I don't remember.

Q. Did you ever have a talk with either Abram or Samuel Kaplan and tell them to go to Feit? A. I don't think so, no, sir.

Q. Do you know about this Bender Construction Co? A. Not much.

Q. Got any interest in that? A. No, sir.

Q. Are you a stockholder? A. No, sir.

Q. Or a director? A. No, sir.

Q. Or an officer? A. Never was.

Q. Did you ever receive any checks from the Bender Construction Company? A. No, sir.

Q. You are sure about that? A. Yes, sir.

Q. Did you ever receive any checks from your son, Harry Bender? A. I don't remember.

Q. You know your son, Harry Bender, is the principal officer in that company, don't you? A. The Bender Construction?

Q. Yes. A. I believe so.

Q. And who were the other officers? A. I don't know.

Q. Are you sure about that? Don't shake your head. Talk. Are you sure about that? A. I just said that I don't know.

Q. Don't you know that your wife is an officer in that company? A. Maybe she is, maybe she isn't. I don't know his business.

Q. You don't know that? A. No, sir.

LOUIS J. FEIT, sworn for complainant, testified as follows:

Direct-examination by Mr. Jordan:

Q. You are an attorney of the State of New Jersey? A. I am.

Q. And where are your offices? A. At 2 South Broad Street, Elizabeth, N. J.

Q. And you have an office in Newark? A. I did have. I don't have, at the present time.

Q. When did you discontinue that office? A. Why, I believe it might have been last year.

Q. How long do you know Davis Bender? A. Oh, I have known him for a period of about—let me see—somewhere in the neighborhood of ten years.

Q. Have you acted as his attorney off and on for ten years? A. I have in various matters.

Q. You represented him in the first suit brought by Jacob Williamson in the District Court in Newark, didn't you? A. Yes, sir, in the United States District Court.

Q. The United States District Court, yes. You appeared for him and filed affidavits and made motions? A. I entered a special appearance, I believe, for the purpose of contesting the jurisdiction.

Q. How long have you known his son, Harry? A. Well, I have known him, I believe, ever since I have known Mr. Davis—Mr. Bender.

Q. The action in the United States District Court was begun in or about the month of February, 1927, wasn't it? A. Well, I can't remember that, but if the papers so say, it must be so.

Q. Haven't you any records with you on this matter. A. No. I was not asked to bring any records.

Q. Well, you knew you were coming here to be examined about the Williamson and Bender matter. A. I had a suspicion I did.

Q. Didn't the subpoena state that? A. The subpoena? All I recollect about it is that they asked me to produce any records I may have with respect to two companies, but it happened—that suit was around that time.

Q. And it was discontinued in the month of March, 1927, wasn't it? A. Well, it wasn't—as far as I remember, it was. The Court ordered it, the Court gave us—told us that it had no jurisdiction.

Q. That was in March, 1927? A. I believe so.

Q. And then, in the action that was begun in the State Court thereafter between the same parties, Williamson and Bender, did you appear for Bender? A. I don't believe I did. I didn't try the case, I know that. I wasn't—(interrupted).

Q. Didn't you put in an answer for him? A. I don't remember, sir. I might have and then again, I might not. I don't believe so.

Q. Did you come here prepared to testify or didn't you? A. I absolutely do.

Mr. Corn: If you will let me—

The Witness: Have you any papers there?

(Papers shown to witness.)

The Witness: Yes. Then I must have filed an answer for him.

Q. On April 18, 1927, you filed an answer in the action then pending in the New Jersey State Court between Williamson and Bender? A. Yes, sir.

Q. Can you tell us now whether your services were discontinued in that action? A. Well, I told them originally that I—(interrupted).

Q. No. Wait. Just the date. A. It—Oh, I can't remember the date, sir. It was some time after the filing of the answer or perhaps at the time of filing of the answer.

Q. (Paper shown to witness.) A. Well, that shows that I was in it at that time.

Q. You were in the case as the representative of David Bender up until December 12, 1927, weren't you? A. That letter shows it to be so.

Mr. Jordan: Well, I will offer them both in evidence so we won't have any difficulty about it.

(Two letters marked Exhibits C-1 and C-2.)

The Witness: I think it is—(interrupted).

Mr. Jordan: Just a minute, now, Mr. Feit.

The Witness: I know. This is off the record. I want to see if I have a copy of that subpoena, because I don't want it to appear on the record that I deliberately failed to bring any papers with me.

Mr. Jordan: I think you need not have that. Mr. Feit. The subpoena is here. I will show you the original of it, if it will mean anything to you. That is off the record.

Q. When did you first meet Samuel Kaplan? A. Why—oh, why, years ago.

Q. How many years ago? A. Oh, I remember some years ago I had some transaction of a mortgage with him.

Q. How many years ago? A. It must have been about—I can't tell you just how many years ago it was, sir.

Q. Are you sure that you did not meet Samuel Kaplan first in March, 1927? A. No; I knew Mr. Kaplan long before.

Q. Who introduced Kaplan to you? A. The Benders.

Q. When? A. Why, that was some years ago.

Q. Well, you said about 8 or 9 years ago? A. Well, I couldn't say if it was 8 or 9, but it was before that time, a few years before 1927.

Q. But Bender brought him to you? A. Bender, I am sure, introduced him to me.

Q. Yes. Now, you were the attorney who organized the Profit Realty Co., on March 26, 1927, weren't you? A. Yes, yes.

Q. Right in your office? A. Yes.

Q. Was Bender there with Kaplan at the time? A. Well, I don't know. I can't tell you that.

Q. Was Harry Bender there? A. If he was one of the incorporators, he was there.

Q. No. I am not asking you if he was one of the incorporators, I am asking you—(interrupted). A. I can't remember, sir, if he was there.

Q. Do you remember the time that the certificate of incorporation was signed? A. Well, there was a certificate of incorporation—

Q. Do you know— A. —signed. I have no specific recollection of the actual occurrence, but I know there was one.

Q. Well, did you bring your records on that corporation today? A. I only came—

Q. No. Did you? A. No, I did not, because I

Q. Don't you know the subpoena served on you directed you to bring those records? A. I have no records of the incorporation except that I had a folder with a couple of letters in it and—

Q. When did you— A. —and a certificate of incorporation.

Mr. Vail: Now, Mr. Jordan, this man is not subpoenaed here today. I think that question is very unfair. Whether he knows or not has nothing to do with the case. He is not subpoenaed here today.

Mr. Jordan: I understand this is the subpoena that was served on him and he requests an opportunity to be heard and examined.

The Witness: I have not requested an opportunity to be heard and examined. I received a subpoena and being I am to be heard and examined, I want to be examined as soon as possible.

Mr. Jordan: Now—

Mr. Vail: For the record, the subpoena Mr. Jordan refers to is a subpoena to Mr. Feit to appear here at the final hearing today.

Mr. Jordan: Why not offer it? Here it is. This is the thing.

Mr. Vail: This is a hearing in supplementary proceedings that was suggested just before the final hearing, and it is only natural to presume that Mr. Feit did not bring his records here, because there is nothing directing him to bring them here.

Q. Is this the subpoena that was served on you, Mr. Feit? A. Yes, it is the original.

Q. All right. Is this a court record as it stands or do we offer it in evidence?

Mr. Vail: It will be filed.

Mr. Jordan: I offer it in evidence, so that we may have it identified by the witness at that time.

Mr. Vail: You are offering in evidence the subpoena of Mr. Feit to appear here this morning at the final hearing in this matter.

Mr. Daniels: That is a subpoena, it was annexed to it.

The Witness: Duces tecum.

(Subpoenas marked Exhibits C-3 and C-4.)

The Witness: I might say, Mr. Jordan, that the only record I have of the Profit Realty Co. is a few unimportant letters, for instance addressed to the Secretary of State, showing certificate filed, and so forth, and the certificate of incorporation, which to my chagrin, I just find now that I did not bring that particular folder, and instead picked up a folder concerning the Department of Banking and Insurance. But the only thing in that folder and the only record which I had possession of that is of any value to you is the certificate of incorporation. That is all.

Mr. Daniels: You remember you loaned me that. You ought to have it.

The Witness: Yes, and it is—

Mr. Daniels: He has a copy of the certificate of the Profit Realty Co.

The Witness: I will admit this is a copy of that certificate of incorporation and that

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is the only thing I have. Now, as far as the Bender Construction Co. is concerned, I have no record and don't know anything about it.

Q. All right. This certificate is dated March 26, 1927 and is signed by Samuel Kaplan, Celia Kaplan and Abram Kaplan before you that day? A. Yes.

Q. And you are the registered agent of that Profit Realty Co? A. I was the registered agent, but—

Q. Yes. A. —I told the gentlemen that I didn't want to be the registered agent.

Q. When did you cease being the registered agent? When did you cease to be its registered agent? A. Why, I believe that when the annual report and insurance came in and I wanted to charge a license fee—

Q. Can't you tell us when, Mr. Feit? A. A year later.

Q. So that, in March, 1928, is when you ceased to represent that company? A. Yes—I didn't represent the company after the incorporation.

Q. Yes. A. That is, I don't believe I have ever done anything for them after the incorporation, to my recollection.

Q. Did you incorporate the Bender Construction Co? A. No.

Q. Did you have anything to do with it? A. I don't—I have no record in the office. I looked in the office for any record about it but I see absolutely nothing.

Q. Do you know Harry Bender? A. Oh, yes.

Q. And Molly Bender? A. Yes.

Q. And Hortense Bender? A. Yes. I know the whole family.

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Q. The whole family? A. Yes.

Q. You have known them for a long time? A. Yes.

Q. Do you remember drawing a deed from Davis Bender and Molly Bender, his wife, dated April 22, 1926, to his son, Harry Bender? A. Well, I don't actually remember the transaction, but I might have.

Q. You say now that you don't remember that transaction? A. No. I drew several papers for Mr. Bender. I don't remember that particular transaction?

Mr. Jordan: Will you produce that deed?

Mr. Corn: No.

Mr. Jordan: You mean, you haven't got it?

Mr. Corn: I suppose we have it. I haven't it here.

Mr. Jordan: Where is it?

Mr. Corn: Mr. Bender may have it. I will see.

(Paper produced.)

Q. (Paper shown to witness.) A. I believe that that was drawn in my office. I naturally took the acknowledgment.

Mr. Jordan: I offer that in evidence.

(Deed marked Exhibit C-5.)

Q. Was this deed, Exhibit 5, prepared under your direction? A. I can't absolutely say that it was or it was not.

Q. Who else could have directed that? A. Well, it could have either been done by my secretary or could have either been done by my brother.

Q. Do you know which of them did it? A. I don't know.

Q. Isn't it a fact that your signature appears here as a Master in Chancery taking the acknowledgment, sufficient proof to you that you did it? A. It indicates that I did do it.

Q. That is all. A. But, to be positive about it, I don't know.

Q. And at the time that this deed was delivered, I suppose that was in your presence, to his son? A. Oh, yes.

Q. And his son was there? A. Undoubtedly.

Q. What consideration, if any, did you witness passing? A. I don't remember that I witnessed any consideration.

Q. You didn't see any consideration? A. I cannot state that I did not see any, but I do not remember any consideration.

Q. Did you at that time see any formal contract for the conveyance of these various properties described in this deed between these parties? A. I can't remember, sir.

Q. Did you ever draw such a contract? A. I might have. I can't say whether I did or I did not.

Q. Will you swear now that you did? A. I won't swear that I did and I won't swear that I didn't. I can't remember. I cannot be expected to remember so far back as that.

Q. Just answer yes or no. A. Very well, sir.

Q. Yes or no will get us along nicely. A. All right.

Q. Was this deed prepared on your advice? A. No, Mr. Bender—(interrupted).

Q. Your answer is "No"? A. No.

Q. You knew, at the time that this deed was

prepared in your office, that Bender was in fear of a suit on a note of $10,000 by Mr. Williamson?

Mr. Vail: Just—

A. I will answer that, no.

Mr. Jordan: Just a minute. Do you want to make an objection?

Mr. Vail: I don't see how this witness—I object to the question because I don't see how this witness can be expected to know what was in Mr. Bender's mind.

Mr. Jordan: I am asking if he knew what was in his mind.

Mr. Vail: And any testimony he might give has no bearing at all on the situation.

Q. I am asking you now, at the time that you prepared this deed, if you personally know that your client, Bender, was indebted to Williamson on a note for $10,000? A. I—

Q. Yes or no. A. I can't tell unless you give me the date that the suit was instituted in the Federal Court, again. Then I can tell you, because that is the only time that Mr. Bender consulted with me was when he got that summons about the Williamson matter.

Q. You mean to say that before the actual beginning of the suit in the United States District Court that you never knew that he was indebted to a man named Williamson for $10,000 and that he feared a law suit? A. Never, never.

Mr. Vail: Now, just—

The Witness: I will answer that. As a matter of fact, I thought—

Mr. Jordan: You have answered it.

The Witness: —he had money—
Mr. Jordan: You have answered it.
The Witness: —instead of lost money.
Mr. Jordan: You have answered that.

Q. Who paid you for the drawing of this deed? A. Why, either Mr. Bender or Mr. Harry Bender.

Q. No. Who paid you? Not "either or". A. Either one or the other is the best answer I can give you.

Q. You don't know? A. I don't know until I have recourse to my records.

Q. Now, you were examined here before, weren't you? A. Not here—in the Prudential Building.

Q. In this proceeding? A. I believe so. I was.

Q. Yes. A. (Continuing.) Examined in some

Q. And in that case you did not produce your records, either, did you? A. I produced everything that was required of me to produce.

Q. I see. And today you cannot tell us who paid you for the drawing of this deed, can you? A. I cannot, sir, but I can this way, that it was either Mr. Bender or his son.

Q. How much did they pay you? A. I don't remember, sir. My generally charge, probably, would amount to ten—(interrupting).

Q. I am not asking you what your general charge probably was, I am asking you how much they paid. A. I don't know, sir.

Q. All right. That is your answer. A. I was not requested to bring any records of that nature. Well, it is unfair to ask me those questions.

Q. We will ask them to you at a different time and under different circumstances, as far as that is concerned. A. I will be very glad to answer them.

Q. Now, who paid you for drawing this Profit Realty Co? A. Profit Realty Co.

Q. Did you get a check from them? A. I suppose I did.

Q. No. Did you? A. I don't remember, sir. I can't remember that.

Q. Who signed the check that you got? A. I don't know. I haven't the slightest recollection.

Q. How much did you get? A. I don't know.

Q. Was it one of the Benders that paid you? A. I will say, no.

Q. You have just a moment ago sworn that you didn't know who paid you. A. Well, I will say—

Q. Just a moment. A. —"No", because I didn't do the work for Mr. Bender, that is all.

Q. Do you wish to withdraw that statement? A. I wish to say it in this form—

Q. No. Do you wish to withdraw that statement? A. Well, I will, yes. I will do that.

Q. Do you wish to withdraw the statement that you made that you don't know who signed the check? A. I certainly—no, I do withdraw it. I don't know and have no recollection whether it was check or cash or how it was paid.

Q. Do you know, then, that one of the members did not sign a check to you for drawing that company? A. I don't know.

Mr. Corn: Pardon me, Mr. Jordan. This may help him (showing witness check).

The Witness: Here is a check that purports to be signed by Samuel Kaplan, Treasurer. Now, a hundred and seven—

Mr. Corn: "Which was just handed to me." Now, just keep your testimony clear.

The Witness: Yes, which was just handed to me by—what is your name, sir?

Mr. Corn: By Mr. Corn.

The Witness: —by Mr. Corn, and I don't know about any other service that I have rendered Mr. Kaplan for which that check could be in payment.

Q. All right; will you say now that this check was in payment of your fees in drawing that corporation? A. I—

Q. Yes or no. A. I believe it was.

Mr. Jordan: I offer it in evidence.

(Check marked Exhibit C-6.)

Q. Who drew this deed from Harry Bender to the Profit Realty Co? A. Have you the deed, sir? I will be able to tell you.

Q. Do you know? A. I can't tell you unless I have the deed.

Q. Wasn't it drawn in your office? A. I don't know, sir.

Mr. Jordan: I will ask for the production of that deed.

Mr. Corn: What deed are you talking about now?

Mr. Jordan: From Harry Bender to the Profit Realty Co.

The Witness: I think Sam Kaplan has that with him.

Mr. Vail: I think Mr. Kaplan has that, Mr. Jordan: If he has, he will be here at two o'clock.

Mr. Jordan: Mr. Kaplan?

Mr. Vail: We think he has.

Q. Will you state now whether or not you did

draw that deed? A. I can't tell, sir, unless I see the instrument.

Q. Was it drawn in your office? A. I can't tell unless I see the instrument. I will be very glad to tell you when I see the instrument.

Q. Do you remember the transaction when Harry Bender sold this property to the Profit Realty Co? A. I don't recollect, except that there was—

Q. Do you remember? Yes or no. A. Not all of it.

Q. Do you remember any of it? A. I only remember that a corporation was organized at that time and there were some papers drawn in connection with it.

Q. How much money did you see passing the date that this Harry Bender deed was given to the Profit Realty Co? A. I can't say that I saw any.

Mr. Jordan: Well, I think that we will have to bring Mr. Feit back. I think it is entirely unsatisfactory to proceed with this. I think we will have to have all of these records. I am not going to have him stand up there and say "I don't know unless you show me something. I have got to have"—(interrupted).

Mr. Vail: If you will give us a memorandum of the records that you want, I don't suppose Mr. Feit has any objection to bringing them here.

The Witness: I have none. I want to say this to you, Mr. Jordan—(interrupted).

Mr. Jordan: You needn't say a word to me, Mr. Feit.

The Witness: I want to explain to you where the records are. I won't want to

leave it appear—the gentleman has just—that I have these records, and I say I haven't them.

Mr. Jordan: I didn't say you had.

Mr. Corn: Have you subpoenaed Mr. Kaplan to bring them?

Mr. Jordan: I want the deed to the Profit Realty Co. and I want the mortgage back to him; and I also would like that chattel mortgage that was drawn, two thousand.

Mr. Corn: Well, we haven't it. If you want it, there are records, and we will get certified copies.

Mr. Jordan: All right. That is one of the reasons I say I don't think we can get very far with Mr. Feit—his memory is extremely faulty.

The Witness: If you—

Mr. Corn: Well, ask him if he signed it.

The Witness: May I ask Mr. Jordan this: does your record of that instrument show that I was the attesting witness, or acknowledged it?

Mr. Jordan: I don't want you to depend on my records at all.

The Witness: If it was, I will answer it.

Mr. Jordan: I don't want you to answer any "if" and "and," because you might harm yourself.

The Witness: I won't harm myself at all.

Mr. Jordan: I just want you to answer directly and on your own oath, not on anything I tell you or anything I show you. I want you to answer yourself. Did you draw the mortgage of $15,000 from the Profit Realty Co. back to Davis Bender?

The Witness: I can't tell you, sir, unless I have the record before me.

Q. Did you draw a chattel mortgage from Davis Bender to Sival Realty Co?

Mr. Daniels: Sivad.

Q. Sivad Realty Co., covering all his properties, household goods, at 99 Goldsmith Avenue? A. When was that?

Q. June, 1926, the chattel mortgage. A. I can't recollect, sir, unless—(interrupted).

Q. Do you know the Sivad Realty Co? A. I know of them.

Q. Who are they? A. The only man that I know in connection with it is—know of is Harry Hoffman.

Q. What is their business? A. So far as I know, they were in the building business, or construction business.

Q. I see. They were not pawn brokers or dealers in second hand furniture, were they? A. I don't know, sir. As far as I know, I told you they were in the building business.

Q. Yes. Do you remember drawing that chattel mortgage? A. I have no absolute recollection of it.

Q. Have you any recollection of it? A. I drew so many instruments for this man, during the time I represented him—(interrupted).

Q. No. Yes or no. A. —that I can't tell. He would merely come in and give the instrument to me to draw and I did it.

Q. Do you remember the time that this chattel mortgage was made? A. I have no absolute recollection.

Mr. Jordan: Well, I think you will have to come back. He says he knows him. (To witness:) Do you know Harry Hoffman, the President of that company?

The Witness: I only know him casually rather casually.

Q. Do you know him? A. I—

Q. Yes or no. A. I am acquainted with him.

Q. All right. A. That is, if he was in court—(interrupted).

Q. How long were you acquainted with him? A. —I don't know whether I would absolutely recognize him. That is about all.

Q. All right. How long are you acquainted with him? A. Why, I might have met the man about twice.

Q. How long have you been acquainted with him? A. Well, I told you it is—that might have been the first time that I met him, might have been a few years ago.

Q. How long have you been acquainted with him? A. I met the man twice, and the first time I met him was about a few years ago.

Q. How few— A. That is the only answer I can give you.

Q. How few or how many years ago? A. It might have been three or four years ago, or five years ago.

Q. I see. And he was a client of yours? A. No; I wouldn't call him a client of mine.

Q. Did you ever do any work for him in a professional capacity? A. Yes, I believe I have.

Q. You got paid for it? A. In connection with something—yes, I got paid by the corporation, not by him personally.

Q. Yes. You did work for this Sivad Realty Co? A. Well, I wouldn't say that I did, except perhaps that I might have on some transactions of conveyance to the Sivad. Now, I won't say that I have done anything—(interrupted).

Q. Well, either way, you have done work? A. One where the Sivad was involved, yes.

Q. Do you remember drawing a lease from the Benders to this same Sivad Realty Co? A. Yes, I remember that.

Q. So that Bender and Hoffman knew each other? A. Why, yes, I guess so.

Q. And they were both clients of your office, on and off, around this time? A. Not Hoffman, I wouldn't say Hoffman was a client of mine.

Q. Well, what is your definition of a client? A. Well, a client is a man who patronizes you, we will say, consistently. If a man just drops in for a casual transaction, it doesn't mean to say he is a client of mine.

Q. What would you call him? A. Why, he happens to be the receiving end of a transaction where a client of mine is involved; that is about the size of my services to Hoffman and Sivad.

Q. Did he ever pay you any money? A. Well, I believe they must—Sivad did, not he personally.

Q. Well, the Sivad did? A. Yes, they must have paid me for their share of this lease.

Q. Would you call that being a client of your office? A. No, I wouldn't call that being a client.

Q. All right. You remember drawing this lease, however, from Bender to the same realty company, covering 1246 Broad Street, don't you? A. Yes, sir.

Q. Yes? A. Yes, I remember that.

Q. And also a property on Wright Street? A. Yes, sir.

Q. And that was about February 8, 1926, wasn't it? A. Yes, sir; I remember that.

Q. You remember that quite well? A. The reason I remember—

Q. No. I am not asking the reason. A. Yes, sir. I remember that fairly well. I remember I drew it.

Mr. Jordan: Now, what are we going to do about these other instruments, the deed and the mortgage?

Mr. Corn: You want to prove it?

Mr. Jordan: Yes.

Mr. Corn: Go ahead and prove it.

Mr. Jordan: He has no recollection. I mean, if you have the paper, we can show it to him. I think you have stated the other man is coming back.

The Witness: If my name is on it—(interrupted).

Mr. Vail: I say, we believe Mr. Kaplan has it and we believe he will be back here at two o'clock.

Q. On the occasion of drawing this deed from Davis Bender and Harry Bender to Harry Bender, his son, on April 22, 1926, who came in to see you about that, first? A. I can't tell you that, sir, but I believe it was Mr. Bender.

Q. You mean the father? A. Yes.

Q. And how long before the actual signature of the deed was that? A. Oh, I don't remember that, sir.

Q. Who furnished you with the particulars of the descriptions? A. I believe it was Mr. Bender.

Q. Are you sure you did not have those descrip-

tions in your office? A. Maybe I did. I don't know.

Q. Were you familiar with Mr. Bender's property? A. You mean, 92 Goldsmith Avenue?

Q. No. All of his property? A. I never visited the properties personally, except that I know he lived at 92 Goldsmith Avenue.

Q. Were you familiar with any of the properties that were described in this deed? A. No.

Q. Exhibit 5? A. No.

Q. I ask you to take that deed, Exhibit 5, Mr. Feit, and look at it carefully and tell me whether, after examining it carefully, you ever did any law business for Mr. Bender in regard to those various properties, prior to drawing this deed? A. Well, I might have searches of them when he bought them, and so forth. From your last questions, I gathered you mean any physical acquaintance.

Q. No, I mean— A. Oh.

Q. —purely legal. A. Oh, yes. I believe I did.

Q. And you acted for him, probably, when he purchased those properties? A. Yes, I believe I did.

Q. And you knew all about their existence and their descriptions and the fact that he owned them? A. I believe so.

Q. Yes. Have you any idea of real estate values? A. I am not a real estate man, I don't own any real estate myself.

Q. Have you any idea of real estate values? A. I have some; not in Newark, though.

Q. Do you know of any property that Mr. Davis Bender owned, after he executed this deed, Exhibit 5? A. I don't—that is, I don't know whether he had any more, whether he had a thousand more or whether he had five.

Q. No, I am asking in regard to real estate. A. I say, real estate. I don't know.

Q. Is there any other property that you remember his owning than what is in here? A. I don't know, sir. That is not my business with my clients.

Q. Well, it is your business to answer a question, if you have knowledge of it. A. Well, I say, I don't know.

Mr. Vail: I think, Mr. Jordan, you are going entirely too far.

Mr. Jordan: Well, I wouldn't be surprised if you think that way. I have.

Mr. Vail: If this man signed those things —(interrupted).

The Witness: All right. I have no objection to answering these questions.

Mr. Vail: That is a personal question and I think, if he doesn't want to answer it, it is entirely improper to push him.

Mr. Jordan: That is a personal objection, don't you think so?

Mr. Vail: It may be a personal objection that we have an interest in.

Mr. Jordan: You can note your objection.

The Witness: There is one thing I want to correct. There was a statement made that I don't want to answer. I have been most willing to answer and am still willing to answer.

Mr. Jordan: Yes, certainly you are. You are great at answering. However, that serves a double purpose to our friend.

The Witness: If he were in my office over the last few years, he would understand. I would like to answer the questions.

Mr. Jordan: I don't want to be in your office.

The Witness: Well, then, don't talk that way when you don't know the conditions of my office.

Mr. Jordan: I—

The Witness: I am a pretty busy man and I don't remember these things.

Mr. Jordan: I don't doubt it.

The Witness: Yes.

Mr. Jordan: Surely.

The Witness: This happened two or three years ago.

Q. Are you familiar with the mortgages that were on these properties embraced in this deed, Exhibit 5? A. I have no personal familiarity with any of these properties or their mortgages, except as they might have been disclosed by some record in my office.

Q. Do you know whether your office records would show such mortgages or not? A. They would have to speak for themselves.

Q. I see. So that, coming here—(interrupted). A. If I have any such records.

Q. Coming here today and on this examination you have not taken the trouble to look at your records, have you? A. Nobody has asked me to, sir. I have brought every record that I have in the office, except to get that folder—

Q. I have only asked you one question. A. —which I mislaid and which contained the certificate of incorporation. Outside of that I have no other records as requested by the subpoena. Now, that is the answer.

Q. Now, are you through? A. Yes.

Q. All right. Have you examined your records before coming here today? A. Yes, sir.

Q. And do you know from your examination of the records whether they show any encumbrances on the properties contained in this Exhibit 5? A. What records? I haven't examined any records with respect to these properties, because the subpoena only called for the production of records relating to the Profit Realty Co. and the Bender Construction Co.

Q. Then, a moment ago when you said you did examine your records, that was an error? A. It was not. It was the records that I examined that were set forth in the subpoena.

Q. And those only— A. Because those were all I was requested to bring.

Q. You did not examine any records in regard to the Davis Bender properties, did you? A. Of course not.

Q. Did you receive any message from Corn & Silverman about this case? A. I have never spoken to Mr. Silverman—Mr. Corn or Mr. Silverman, except to say "how do you do," when I came into the court on these two examinations.

Q. Has Davis Bender been in your office lately? A. I have not seen Davis Bender since the last examination, till today.

Q. When was that? A. This is the first time I have seen him in court.

Q. When was that? A. Well, I can't remember the exact date, but it was in this case, when I was examined.

Q. How long ago? A. Well, oh, it must be—I can't remember the last date. Can't you give me the date of the last examination?

Q. I was not there. A. Well, Mr. Daniels

could give it to me. I don't believe I saw him there then.

Q. You know—(interrupted). A. It was some time prior to that time that I have not seen him.

Q. You knew, didn't you, Mr. Feit, that the purpose of this proceeding was to discover property of Davis Bender? A. I did, sir.

Q. And you knew that when you were subpoenaed to come here today you would most likely be interrogated upon those questions, didn't you? A. No, sir. Having knowledge of the law—

Q. You have answered the question when you say "No." A. All right.

Q. Now, you were questioned previously, on a similar examination, weren't you? A. Yes, sir.

Q. And at that time, at that examination, you did not have any more knowledge about those things than you have today, did you? A. I wouldn't say—

Q. Yes or no.

Mr. Corn: I will ask that the witness be allowed to answer the question in full, not the way Mr. Jordan is doing.

Mr. Jordan: I am satisfied with the Master's ruling.

(Question read as follows:)

"Q. And at that time, at that examination, you did not have any more knowledge about those things than you have today, did you?"

The Master: You can answer that yes or no.

The Witness: No, I don't suppose I did.

Q. And in between those two examinations you did not take any pains or trouble to acquaint your-

self with the matter of Davis Bender's property, did you? A. Of course not.

Q. Did you ever have any money belonging to Davis Bender? A. Never, to my—since when?

Q. Well, at any time. A. Well, I might have had some money on some transaction, that might have been.

Q. Have you got any now? A. Left in escrow with me.

Q. Have you got any now? A. Well, no.

Q. When is the last time you had it? A. Oh, I don't remember at all. If it was, it was years ago, because I haven't really represented the man since that suit; I haven't seen him or talked with him.

Q. How many bank accounts do you have? A. I have—let me see—oh, I have three; that is, three in which I am interested.

Q. What account do you keep in the National State Bank? A. All of them.

Q. All three? A. Yes. Not only that, but you can send an accountant any time to the office and look over every single check and transaction.

Q. I am not interested in that. You know, as an attorney, don't you, that that is not required? Why waste time? I am taking you out of your order. Do you have an account "Feit & Feit, Attorneys"? A. Yes, sir.

Q. In what is that account? A. In the National State Bank.

Q. And what money do you keep in that account? A. Oh, we keep the firm's money.

Q. Do you keep your client's money in that account? A. No.

Q. Why do you mark it "attorneys"? A. Oh, we did keep our clients' money in the account or have a separate ledger for it.

Q. What do you call that account where you keep your clients' money? A. That is Feit & Feit, Attorneys.

Q. And what is the name of the account where you keep the firm's individual moneys? A. Well, I have a personal account, Louis J. Feit, Attorney.

Q. And so that the account that you keep your clients' money in, escrow moneys, is Feit & Feit, Attorneys? A. Yes, yes.

Q. And you put the word "attorneys" there to show that it is not your money, don't you? A. No—I just designated it as that.

Q. Yes, but that is the reason for it, to show that? A. No, there is no special reason for it. I just designated that so it will be separate and distinct from the other.

Q. And you only have one account "Feit & Feit, Attorneys"? A. That is right.

Mr. Jordan: Now, I don't know what you want to do about the balance of the examination. I want to have Mr. Feit certainly identify a deed and a mortgage.

The Witness: I don't know whether you have that straight, Mr. Jordan, with regard to the—

Mr. Jordan: And chattel mortgage, also.

The Witness: With reference to the last statement, Mr. Jordan, I would like to clear that up. That "Feit & Feit, Attorneys" includes those moneys as well as other moneys, but we have a separate trust account ledger; in the ledger that shows what—and that account is set out in full, which moneys are the attorneys'—are the clients' moneys held in trust.

Q. Then you mean in this one account, Feit & Feit, Attorneys, that you keep your own money and your clients' money, also? A. Yes, sir.

Q. Did you ever see that deed before (showing witness paper)? A. Yes, sir.

Q. Did you draw that deed? A. I believe I did. The signatures—

Q. You also put the acknowledgment on there? A. Yes; it indicates it.

Q. Was that deed delivered in your office? A. Yes.

Mr. Jordan: I will offer that.

(Deed marked Exhibit C-7.)

Mr. Vail: Please designate the deed on the record.

Mr. Jordan: Yes. It is a deed from Harry Bender to Bender Construction Co., dated April 6, 1927.

Mr. Daniels: On the back you will find the book and page.

Mr. Jordan: And acknowledged April 6, 1927, and recorded on May 17, 1927, in Book I-76 of Deeds, page 161-162.

Q. At the time you drew this deed to the Bender Construction Co., Exhibit 7, did you see any money or consideration passed in your presence? A. I don't remember any—remember seeing any. They might have and they might not have.

Q. Your answer is, you don't remember? A. No, I don't remember.

Q. You are not sure whether there was and you are not sure that there was not. You are sure, though, that you did draw this deed? A. Yes, sir.

Q. And, of course, you drew it on date that you took the acknowledgment? A. Well, may I see it?

It woud seem so, from the date and the acknowledgment.

Q. Mr. Feit, do you know whether, on the date that you drew this deed, Exhibit 7, that Harry Bender was not the owner of the properties named in that deed? A. I don't know whether I did know it or I didn't know it.

Q. Don't you know it today? A. That what?

Q. That Harry Bender, on the date that you drew this dead, Exhibit 7, was not the owner of this property? A. I don't know at all.

Q. I see. A. I have not seen Harry Bender for

Q. Now, look at this deed, Exhibit 5. That shows that it was not until April 22 that Harry Bender owned this property, doesn't it? A. It seems to indicate that.

Q. Yes. A. I would state, this was April 22, 1926.

Q. Yes. A. And that is twenty-seven.

Q. This is a year later? A. Yes, sir.

Q. I see. A. Yes. You see, that is where you are in error about that.

Q. While Mr. Harry Bender was the owner of this property, did you represent him? A. I represented Harry Bender in some transactions, but I evidently—others represented him, because I never incorporated—(interrupted).

Q. No. I am asking about your representing him. A. In some instances I did.

Q. Yes? A. Yes.

Q. Now, during the time that you had this property, from 1926 to 1927, you represented him as an attorney, didn't you? A. In the instances—in the particular instances that he requested me to.

Q. And he was in and out of your office quite a

good deal? A. I wouldn't say quite a good deal, some.

Q. Was that deed, Exhibit 5, returned to you by the Register? A. I can't—

Q. (Showing witness paper) A. Evidently not, because it is crossed out.

Q. No. Was it? A. Not—it doesn't look—seem that way.

Q. Do you know whether it was or not? A. I believe it was not, because that is what is generally done.

Q. To whom would it be returned, according to your knowledge of it? A. H. Bender, 92 Goldsmith Avenue, because that is what is generally done when you want it returned.

Q. Did you write that "H. Bender" on there? A. No, sir. That is not my handwriting.

Q. Did you record this deed yourself, Exhibit 5? A. I can't tell you, sir, offhand, whether I did or not.

Q. Did you record this deed, Exhibit 7, yourself? A. I can't say, sir, now.

Q. Do you know who did? A. I can't say, sir.

Q. Did you ever do any work for the Bender Construction Co? A. I have no recollection of doing any work. I see even this deed has escaped me until you showed it to me.

Q. Do you remember on the occasion that this deed Exhibit 7, from Harry Bender to Bender Construction Co., was delivered—do you remember who was in your office at that time? A. No, sir, I cannot—I presume—may I see that deed? I think I can tell from—well, I couldn't tell from the deed either, but apparently somebody representing the Bender Construction Co. and Harry Bender.

Q. No, not "apparently;" I want you to tell me if you remember today. A. I don't remember.

Q. I see. Now, I show you examination at the last hearing, on page 12, and ask you to examine that and see if it will refresh your recollection (handing witness book)? A. Well, it is about the

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Q. No. Does it refresh your recollection? A. No, it does not refresh my recollection, no more than what that testimony shows.

Q. All right. Let me have it. Do you remember testifying, on February 25, 1928, before this same Master, Roger E. Salmon, in this matter? A. In what matter, sir.?

Q. Do you remember that? A. Oh, yes, I remember that.

Q. And do you remember a question and answer as follows: "Do you remember who was present at the time those papers were executed and delivered from Harry Bender to Bender Construction Co?" And your answer "Well, I know that Harry Bender must have been present, and maybe Davis Bender, I guess he was there, and maybe a fellow by the name of Hoffman." Did you answer that in that fashion? A. If it is there, I must have.

Q. Well, did you? A. Well, I did.

Q. Is that the same Hoffman who is the President of the Sivad Realty Co? A. No—well, I don't know, but I believe so.

Q. How many Hoffmans do you have in and out of your office? A. I told you I only met this man, Hoffman, about twice. That is all.

Q. No, I am asking you an entirely different question. A. Well, there may be several Hoff—

Q. How many do you know? A. I don't know as I know any of them real well.

Q. Yes. Does this testimony refresh your recollection that, at the time of giving this deed, Exhibit 7, there was in your office Harry Bender, Davis Bender and Harry Hoffman? A. I can't say. It does not, sir.

Q. But you did testify to that effect? A. I did.

Q. On the previous hearing? A. I did. That is, I testified in the manner as set forth in that book that you showed me.

Q. Exactly. A. I was doubtful about it, then.

Q. Do you know a man named Isaac Ellson? A. Why, casually. I believe that I met him maybe once.

Q. A client of your office? A. No.

Q. Ever do any work for him? A. Well, the man seems to be very familiar to me and I—(interrupting).

Q. Did you ever do any work for him? A. I couldn't tell, but perhaps I may have, because the name is familiar to me.

Q. Do you know where he lives? A. No.

Q. Do you know what his business is? A. Oh, I know now how the man is familiar to me, because we had some foreclosure proceedings in Chancery and I believe he was a witness then and I think he resided somewhere out of the State.

Q. How often did you see him in your office? A. I might have seen him with reference to that foreclosure or with reference to some other matter, but I cannot recall now.

Q. Do you remember drawing a deed from Harry Bender to Isaac Ellson on February 28, 1927? A. I have no positive recollection of it.

Q. And do you remember taking Harry Bender's acknowledgment on that deed? A. Perhaps I did. I don't have any positive recollection of it, sir.

Q. Do you remember what Isaac Ellson looks like? A. Why, he was on the stand in the Court of Chancery, I believe, and I don't have any special recollection of him now.

Q. Do you remember seeing any money passed in that transaction? A. No, I don't remember seeing any.

Q. What? A. I don't remember. I don't remember the transaction at all.

Q. And you cannot recollect drawing that deed unless you see the deed? A. I cannot possibly recollect it.

Q. I see. A. It does not come to my mind.

Q. I see. In fact, you cannot recollect any of these transactions in regard to Bender's property unless you see the documents, can you? A. Positively, because—

Q. Is there something you want to forget? A. Absolutely not.

Q. Is there something— A. My office is up there—

Q. You have answered the question. You said no. A. Yes.

Q. Was it something that was so small and unimportant to you that you could not bother thinking about it? A. Mr. Bender—

Q. Yes or no. A. —come in innumerable times and told me to draw instruments and I drew them and after I am done with them I don't bother with them any more. I do my work and I am through.

Q. Did you direct or advise Mr. Bender, in view of the pending suit by Williamson, to convey his property to his son? A. I did not.

Q. Yes or no. A. I never knew of this situation—

Q. You have answered. A. —with that Mr.

Williamson until he brought him the summons in the Federal Court.

Q. You have answered the question. A. As a matter of fact, I was under the impression that Mr. Bender made a lot of money in Florida, until that time.

Mr. Jordan: Now, I would like to move to strike out that answer as immaterial and irrelevant.

The Witness: It explains it. You want to infer that I advised him.

The Master: Your motion is noted and it will be passed on by the Vice-Chancellor.

Q. Will you tell me, yes or no, did you advise Davis Bender to make himself judgment-proof? A. No, sir.

Q. In view of the impending suit by Williamson? A. No, sir.

Mr. Vail: I must object to this, even if the answer is "No". This is a relationship between counsel and a client whom I represent, and such answers as are elecited by such questions I object to on the ground that this attorney, representing Mr. Bender, has no right to disclose that information.

The Witness: Well, I am sorry, sir, but I particularly—I personally particularly want to answer questions of that kind.

Q. Now, you don't remember drawing a chattel mortgage covering all of Davis Bender's furniture and his automobile, do you? A. I have—

Q. Yes or no. A. I have no positive recollection of it.

Q. Although you know the Sivad Realty Co. that had that chattel mortgage, didn't you? Yes or no. A. Well, what do you mean? Know the Sivad Realty Co?

Q. You knew of them? A. I knew only of Hoffman.

Q. Yes. And he was the President? A. And that slightly.

Q. Yes. And you had the money at various times from the Sivad for services you rendered them? A. Yes, sir, but I—

Q. All right. You have answered it. A. (Continuing) But trust funds, I don't believe I ever had ten cents from any of these.

Mr. Jordan: I ask to strike out after the word "yes".

Mr. Vail: It is responsive to the question and I think it should be left in.

Mr. Jordan: I think that is for the Master to determine.

Master: It is for the Vice-Chancellor to determine on review of the testimony.

Q. You were the party who drew the deed, Exhibit 5, here, from Davis Bender to his son, covering at least eight pieces of property? A. Yes, yes.

Q. And at that time you don't remember any consideration? A. I—

Q. Yes or no A. No, I don't remember—

Q. You are the man that drew the deed from Harry Bender to the Profit Realty Co? A. Yes.

Q. And you are the man that drew the mortgage from Profit Realty Co. back to Harry Bender? A. Well, I don't—were those papers in evidence before? If they are the ones?

Q. I am just asking. You can deny or— A. I

don't remember the transactions. I honestly don't remember these transactions unless the records are shown me.

Q. You were the man that oganized the Profit Realty Co? A. I didn't organize it at all. I drew the papers as they were—

Q. Exactly. A. —requested of me to be drawn.

Q. And at that time, when that property was conveyed from Harry Bender to the Profit Realty Co., do you remember seeing any money passed? A. I have no recollection of the transaction other than drawing the papers.

Q. You were the man that drew the deed from Harry Bender to the Bender Construction Co., weren't you? A. Yes, sir, yes.

Q. And you don't remember anything in the way of consideration passing then, do you? A. No, no. I drew many others—

Q. That is all right. You—A. —besides this, and I have no recollection of Mr. Bender and have no recollection of any consideration of money.

Mr. Jordan: I ask it be stricken out as not responsive.

Q. And you are the man that has been conversant with Davis Bender's affairs for some 7 or 8 years? A. Since Bender went—(interrupted).

Q. Yes or no. A. No.

Mr. Vail: This is arguing the question and—

The Witness: I would like to answer that.

Mr. Vail: —this cannot be confined to a yes or no answer. He has a right to answer that in such a way as he sees fit.

The Witness: Since Mr. Bender went

down to Florida, which is a few years ago, I have not been conversant with his affairs at all, and Mr. Bender is the type of man who is reticent; he knows his affairs thoroughly and he does not consult an attorney about it except to give one instructions to draw certain papers. Any one who knows him knows that to be a fact.

Q. In other words, you know that your client, Davis Bender, is a shrewd business man? A. He is a very capable man.

Q. Yes. A. In my estimation, and knows his affairs thoroughly.

Q. And he had long familiarity with deeds and mortgages and real estate? A. Yes; he was a builder.

Q. Yes. A. For many years.

Q. And to your knowledge, he knew all about those things? A. Yes, perfectly.

Q. You also represented Davis Bender in the suit brought by Jacob Williamson in the United States District Court, didn't you? A. Yes.

Q. And you represented him right up to the month of December, 1927, didn't you? A. Here was the situation—I did and I didn't. I would like to explain that. It is only fair for me to explain it—

Mr. Jordan: We object.

The Witness: —the way Mr. Bender came with these suits.

Mr. Jordan: We are going to object to anything except a yes or no answer.

Mr. Vail: Well, we are going to insist on the witness being permitted to answer the question.

Mr. Jordan: Well, what do we care about it?

The Master: I will allow him to answer.

The Witness: The first time I knew—had any knowledge—of any difficulties that Mr. Bender had with Mr. Williamson was when he brought the papers, he or his son, I don't know which (I believe it was his son who brought them to me) and that Mr. Bender was down in Florida at the time, and I told him that I didn't know anything about the matter and therefore it was very difficult for me to represent him. His son then telegraphed or wrote letters to him and I contested the matter on the jurisdictional question. I had no knowledge of the merits of the case at the time. Then, later, Mr. Danielson instituted a suit and Mr. Bender then first came to see me about the matter of Mr. Danielson instituting the suit in the Circuit Court. Mr. Bender explained the circumstances to me and I told him—I fixed my price with him—we had some difficulties about the fees—about the contest—and the time was getting short for the filing of an answer, so I filed the answer. He said he would pay me for it and then he went to Mr. Clark. Mr. Clark got in touch with me and I told him it was perfectly all right. When Mr.—

Q. Now, I will ask you again: in December, 1927, in view of this Exhibit 1, didn't you represent him (showing witness paper)? A. Just a moment. I haven't finished yet.

Q. Yes or no. A. I haven't finished with my answer yet.

Q. Oh, you want to make another speech. All right.

The Witness: When Mr. Bender had his Florida attorneys—(interrupted).

Mr. Jordan: We object to any further answer about this defendant as entirely unresponsive.

The Witness: And when he first—

The Master: I will allow it.

The Witness: When he first informed me about this matter he told me that he had been taking the same up with his Florida attorneys and that he had expected a suit in Florida and not in this State. Prior to that time, I had not seen Bender for many months, because he was in Florida.

Q. Now, do you feel better, Mr. Feit? A. Yes.

Q. All right. A. I would like to explain the facts.

Q. Now, I show you this letter, dated in April, 1927, and ask you if, at that time, you did not still represent Bender? A. Yes, I did.

Mr. Jordan: I offer that in evidence.

(Letter marked Exhibit C-8.)

Mr. Corn: State on the record what that is.

The Witness: A demand for security costs.

Mr. Jordan: Demand for security costs in the Essex County Surrogates Court in the case of Williamson vs. Bender.

Q. Mr. Feit, when Davis Bender signed this deed, Exhibit 5, did he tell you why he was doing it? A. Why, I believe he said he was doing it to

make his home in Florida, that he was troubled with an asthmatic condition, or what not. That is just a recollection.

Q. Yes. A. Now, just when that conversation occurred I cannot definitely say to you. I cannot, under oath, conscientiously tell you about it.

Q. Your recollection is that he came in on the day that you drew that deed, Exhibit 5, and gave you directions to draw a deed for all of his properties to his son? A. Well, I cannot absolutely state that under oath, because I, cannot fully recollect the situation—

Q. Now, let me get you— A. —but I know that there was some talk about it.

Q. You did not direct him or advise him to make that deed, did you? A. I never directed Mr. Bender to make that deed or any other deed. He always directed me.

Q. So he in this instance directed you to make this deed? A. Yes, sir; he or his son or both.

Q. Or both? A. Yes. Somebody directed me and it wasn't anybody else.

Q. It wasn't any outsider? A. No. Either one of those parties.

Q. I see. And you didn't see any money? You do not recollect today seeing any consideration passed for that, do you? A. I don't recollect any consideration. There might have been and there might not have been.

Mr. Jordan: What arrangements can we make about the conclusion of Mr. Feit's examination? I would like to show him these other papers: I will have a certified copy of that chattel mortgage in the office of the—what is it, City Clerk?

Mr. Vail: Register.

Mr. Jordan: Register, and you will have the other papers by two o'clock, won't you?

Mr. Corn: I am not telling you we will have any papers. We are telling you, if we have them we will produce them.

Mr. Jordan: Well, then, if you do not produce them, we will have to get certified copies. That is easy enough. They are matters of record.

Mr. Vail: If you just want those papers identified, why don't you let him go over before the Master and identify the papers?

Mr. Jordan: Surely.

The Witness: May I ask if that is a certified copy, I will readily admit what they are.

Mr. Jordan: I don't want that kind of admission or answer.

The Witness: I cannot tell you anything different from a certified copy, any way.

Mr. Jordan: I want to show you the papers and then have you answer that "if" or "and" but exactly. I don't want any "if's" or "and's" or conditions on your answers. I want to know exactly what you say about those instruments.

The Witness: The only—

Mr. Jordan: Answer. If you say you cannot say until you see them, I want to show them to you.

The Witness: Well, I cannot until I do see them. I cannot tell you what they provided for two years ago, unless I see them.

Mr. Corn: I think, Mr. Master, we ought to have some determination of this matter.

At this rate, we will take until the 29th to finish.

(Discussion.)

Mr. Jordan: It is admitted on the record that the witness Louis J. Feit prepared a deed from Harry Bender to Sivad Realty Co., dated April 11, 1927, recorded the following day in the Register's Office, covering the premises 92 Goldsmith Street, Newark.

Mr. Corn: Goldsmith Avenue.

Mr. Jordan: Goldsmith Avenue, Newark, and as Master in Chancery, took the acknowledgment on that deed.

Mr. Corn: What date have you got for that deed?

Mr. Jordan: April 11, 1927.

Mr. Corn: And recorded April 12?

Mr. Jordan: Yes.

Mr. Corn: All right.

Mr. Jordan: And that the same witness prepared a mortgage from the Sivad Realty Co. to the same Harry Bender, on the same date, April 11, 1927, for the sum of $15,000, covering the same premises—$15,000 purchase money mortgage covering the same premises, 92 Goldsmith Avenue, which was recorded the following day, April 12, 1927, in the Register's office.

Mr. Corn: Book R-60-210.

Mr. Jordan: Book R-67—

Mr. Corn: Sixty.

Mr. Jordan: Book R-60, page 219. That is right. And that he also acted as Master in Chancery, taking the acknowledgment of that mortgage.

Mr. Corn: Is that all right, Feit?

The Witness: Yes.

Mr. Corn: That is perfectly all right, as far as the defendant is concerned.

Mr. Jordan: All right. I think with that we can excuse Mr. Feit.

The Witness: Of course, in saying all right—

Mr. Corn: Well, that is an admission on the record.

The Witness: —by him, I don't want to have it appear that I—

Mr. Corn: The defendants have not—

Mr. Jordan: How about the chattel mortgage, too? Now, that is the only thing remaining on there.

Mr. Corn: Well, he did testify that he drew it. You have the abstract of it. I will admit it.

Mr. Jordan: All right.

The Witness: Have you the abstract of it?

Mr. Daniels: We get your abstract the same way and we won't have to bother with Feit coming back.

Mr. Jordan: It is also admitted that the same witness prepared a certain chattel mortgage from Davis Bender and Molly Bender, his wife, to Sivad Realty Co., dated June 11, 1926, recorded in Book 456, page 176, on June 12, 1926, covering goods and chattels in 92 Goldsmith Avenue, for a consideration of $2,000, and that the same witness, Louis J. Feit, took the acknowledgment of the mortgagor in that instrument.

The Witness: May I see that mortgage?

Mr. Corn: That shows, also, you took the asknowledgment. You will find that has

been verified by us. You see, this is an admission by the defendant.

The Witness: Who took the affidavit here?

Mr. Corn: That doesn't show, but they are going to produce a certified copy of it. They just want to identify that chattel mortgage.

The Witness: Who took the affidavit on that chattel mortgage?

Mr. Jordan: You did, according to the record.

The Witness: Who made the affidavit?

Mr. Corn: Harry Hoffman, President of the Sivad Realty Co.

The Witness: I don't remember the situation.

Mr. Corn: Well, they are going to produce the certified copy of it, any way.

Mr. Jordan: I guess that is about all.

The Witness: Yes.

ABRAM KAPLAN, sworn for complainant, testified as follows:

Direct-examination by Mr. Jordan:

Q. Where do you live, Mr. Kaplan? A. 151 Scheerer Avenue.

Q. Newark? A. Newark, yes.

Q. You are a brother of Samuel Kaplan, in court? A. Yes, sir.

Q. You are a stockholder in the Profit Realty Co? A. Yes, sir.

Q. Are you an officer in that company? A. No, sir.

Q. Are you a director? A. No, sir.

Q. Do you know anything about its business? A. Nothing.

Q. Did you ever attend a director's meeting? A. A. No, sir.

Q. Stockholders' meeting? A. No, sir.

Q. Do you know Davis Bender? A. Yes, sir.

Q. How long? A. Oh, I know him a long time, about twenty years.

Q. How did you happen to get to be a stockholder of this company? A. I understand that my brother and his wife was the company and they simply gave me one share of it.

Q. As a dummy? A. Eh?

Q. As a dummy? A. That is right.

Q. You don't know anything about any transaction? A. No, sir.

Q. How long do you say you knew Davis Bender? A. Oh, about twenty years.

Q. And his son, Harry? A. Since he was a child.

Q. What is your business? A. Building.

Q. What do you build? A. Houses, of course.

Q. Of all kinds? A. All kinds is right.

Q. And you make alterations? A. Yes, sir.

Q. All kinds? A. (Witness nods yes.)

Q. How long have you been engaged in that business? A. Oh, about twenty-six years.

Q. Did you ever do any work on this building at 92 Goldsmith Avenue? A. No, sir.

Q. Did you ever know what work was done there? A. No, sir.

Q. Were you ever in the building? A. Yes, sir.

Q. When? A. I was in at the time Bender was living there.

Q. How lately were you in the building? A. Oh, probably a couple of years, a couple of years that I was in there.

Q. When did you see the building last? A. Oh, I can't remember, but it is quite some time.

Q. Did you have anything to do with the purchase of that building? A. No, sir.

Q. Do you know anything about the deed that was given to the company by Harry Bender? A. I do not.

Q. Or the mortgage that was given back as part of the price? A. No, sir.

Q. Do you know the price of the building? A. No, sir.

Q. Where does this company, Profit Realty, keep its bank account? A. I don't know. I really don't know.

Q. Did you ever handle any money for it? A. No, sir, I never had anything to do with it altogether.

Q. Did you ever receive any salary from it? A. No, sir.

Q. Did you ever do any work for it? A. No.

Q. Ever receive any money in any way from it? A. No, sir.

Q. Did you ever pay any money in to it? A. No, sir.

Q. For stock or otherwise? A. No.

Q. Or never transferred any property to it? A. No.

Q. In other words, you don't know anything about this property? A. No, sir, I do not.

Q. Except that you are holding one share of stock? A. That is right.

Q. Are you a director? A. No—I don't know whether I am or not.

Q. I see. You never attended any directors' meetings? A. No, sir, I did not.

Q. Did your brother, Samuel, ever confer with

you about the operating of this company? A. No, sir.

Q. Never told you anything about it? A. No, sir.

Q. Or Davis Bender? A. No.

Q. Did you ever collect any rents for the company? A. No, sir.

Q. You don't know the state of its bank account? A. No.

Q. Or how many accounts it might have? A. I really haven't got a thing to do with the entire thing, except that they made—they gave me one share in the company.

Q. Do you live with your brother? A. No, sir.

Mr. Jordan: That is all.

SAMUEL KAPLAN, recalled.

Direct-examination by Mr. Jordan:

Q. How old are you, Mr. Kaplan? A. Fifty-three.

Q. And how long have you been in the country? A. Since 1899.

Q. And how long have you known Davis Bender? A. Since—mostly all my life.

Q. You have known him since you were boys in the old country? A. That is right.

Q. And you have always been steadfast friends? A. Most of the time, yes.

Q. What is your business? A. My business at present is lumber business.

Q. And how long have you been in the lumber business? A. About three or four years.

Samuel Kaplan—Recalled—Direct.

Q. And what business were you in prior to that? A. Building business.

Q. And what did you build? A. Houses.

Q. All kinds of houses? A. All kinds of houses.

Q. Alterations? A. Sometimes.

Q. How long were you in the building business? A. Since 1905.

Q. Were you ever engaged with Davis Bender in doing a job? A. No, sir.

Q. Did you ever work with him in any way? A. In the United States?

Q. Yes. A. No.

Q. Did you in the old country? A. Yes, sir. We worked lumber in the old country.

Q. You know the Sivad Realty Co., don't you? A. I don't know them.

Q. Are you sure about that? A. Sivad?

Q. Sivad, S-i-v-a-d Realty Co. A. First I hear it. I have never known it.

Q. Where do you live? A. 196 Renner Avenue, Newark.

Q. Don't you know that you are a stockholder in the Sivad Realty Co? A. I don't know about it.

Q. Did you sign a certificate of incorporation for that company? A. Sivad Realty Co? I do remember I did—I had a share in some company, but I don't know absolutely the name of it.

Q. What company was that? A. I don't know.

Q. Was it a company of Harry Hoffman? A. That is right, yes, sir, Harry Hoffman and Harry Bender.

Q. And Harry Bender? A. Yes.

Q. Harry Bender was also in that company? A. Yes, sir.

Samuel Kaplan—Recalled—Direct.

Q. And you— A. I had a share, just a share for it.

Q. In whose office was this company formed? A. In Feit's office. It is years ago.

Q. That is the same gentleman who was on the stand this morning, Louis J. Feit? A. I don't know if he was on the stand. I was not here.

Q. How long do you know Mr. Feit? A. Oh, a couple of years.

Q. How many years? A. Four or five years.

Q. Do you remember signing a certificate of incorporation of that Sivad Realty Co? A. I do remember signing a certificate of incorporation in Mr. Feit's office, but I don't remember the name of the corporation. Maybe it is the Sivad.

Q. What was your idea in signing this certificate of incorporation in a company that you knew nothing about? A. The same idea the way I hand my brother a share in the Profit Realty Co.

Q. Who asked you to become a stockholder in this Sivad Realty Co? A. Harry Hoffman and Harry Bender.

Q. Do you know anything about that company? A. Very little.

Q. Did you ever give anything in exchange for those shares? A. No, sir.

Q. Do you know anything of the operations of that company? A. I knew a little about it. They built two houses in Hillside, N. J.

Q. Did you do the work for them? A. No, sir.

Q. Sell them any lumber? A. No, sir.

Q. Did you ever attend a directors' meeting? A. No, sir.

Q. A stockholders' meeting? A. The only time what I have been to it was once at Mr. Feit's office, by signing a certificate of incorporation. I don't

know—I don't remember what it is. It is a matter of 4 or 5 years and I don't remember what it was.

Q. Do you know a man named Herriger? A. Herriger?

Q. Yes. A. No.

Q. You don't know anybody by that name? A. Herriger? No.

Q. Were you an officer of this Sivad Realty Co? A. I don't know if I was an officer or not an officer. The only thing I remember being in Mr. Feit's office and being a third party to the corporation, I suppose; and since then I never attend to it and I never done anything and I don't know if it is in existence or not. I can't tell you anything about it.

Q. You don't know whether that company ever had a bank account, do you? A. I don't know.

Q. What interest did Harry Bender have in that Sivad Realty Co? A. What interest?

Q. Yes. How was he interested? A. I don't know. I know Harry Bender and Harry Hoffman built the two houses in Hillside and I was told to be a third person. I was there about five minutes and signed something at Mr. Feit's office and went out and since then I never heard of it.

Q. Who asked you to come there? A. Harry Bender and Harry Hoffman. Harry Hoffman used to work for me.

Q. And that is all you know about the company? A. Yes, sir.

Q. Well, in this regard, in that company you were doing that, acting as a stockholder, to help out Harry Bender and Harry Hoffman, weren't you? A. Mostly Harry Hoffman.

Q. But you were doing it at the request of both

of them and as a favor to them? A. Yes, sir.

Q. Harry Bender was a boy that you had known all his life? A. Yes, sir.

Q. And how long had you known Harry Hoffman? A. Since he arrived in this country.

Q. How long is that? A. He arrived here in 1921—in 1920 or 1921, I can't tell exactly, or maybe 1920, I couldn't tell.

Q. So that, really, you knew Harry Bender a great deal longer than you knew Hoffman? A. Yes, sir.

Q. You were very friendly with Bender, also, weren't you? A. Yes, sir.

Q. Were you more friendly with him than with Hoffman? A. Just as—the same.

Q. I see. A. I used to work for Harry Hoffman's father in Europe and when he arrived here I gave him a job and he was working for me, and to help him out after he started that company with Harry Bender, he asked me a favor to do and I went there and done it for him mostly.

Q. How many other corporations were you interested in with Harry Bender? A. Not any.

Q. Are you interested with Davis Bender in any corporations? A. No, sir.

Q. You are the owner of the Profits Realty Co., aren't you? A. Yes, sir.

Q. And you are the man that directs the whole machinery.

Q. And your wife and your brother are merely dummies for you? A. Yes, sir.

Q. That company was organized? A. Nineteen

Q. In March? A. —twenty-six.

Q. What month? A. March or April, I can't remember.

Q. March or April, 1926? A. Yes.

Q. Did you ever know how—

Mr. Jordan: I think at this time, before we go further, I will ask to have excluded the Benders from the court room and if your brother is through, I would like to have him excluded.

Mr. Corn: I don't see any reason for that.

Mr. Jordan: Well, pehaps we may.

Mr. Corn: This is a hearing in court.

Mr. Jordan: That is true, but, owing to the circumstances here where we allege that this witness is the prime mover in the Profit Realty Co. and defendant in an action to set aside conveyances and the two men with whom we say he acted in conspiracy and connivance being right here have the benefit of knowing what he answered to certain questions, would undoubtedly influence their answers on their examination, and for that reason I ask to have all the other witnesses excluded from the court-room.

(Discussion.)

Master: I will grant the motion to exclude the witnesses from the room.

Mr. Vail: I want to note my objection to that ruling, because I think it is not proper; it is not in the nature of a criminal proceeding.

(Witnesses excluded from room.)

Q. Now, when you bought this property, 92 Goldsmith Avenue, did you have a contract with Harry Bender? A. Yes, sir.

Q. Where is it? A. I don't know where it is now. I even don't know where the deed is. The

deed must be—(interrupted).

Q. Where did you see that contract last? A. The contract was last in Mr. Feit's office. I didn't took it with me.

Q. You haven't seen it since? A. No.

Q. You are sure you did sign a contract? A. Yes, I did sign a contract, in a little sort of friendly—(interrupted).

Q. You have dealt extensively in real estate, haven't you? A. It is according with whom you make a deal in real estate, that you make a deal with a man you know, you believe in him, and if you make a deal with a man you don't know, you take more care of it.

Q. You have had a lot of experience in real estate? A. Yes.

Q. And you have been dealing and buying and selling for a long time? A. Yes.

Q. When you went to have this property searched, to whom did you go? A. I didn't have it searched at all.

Q. You didn't have it searched at all? A. No.

Q. Now, when you closed this transaction by which the Profit Realty Co. became the owner of this 992 Goldsmith Avenue property, did you ever receive a statement showing the adjustments made? A. Oh, maybe I did and maybe I didn't. I can't remember it.

Q. Well, do you remember it enough to say that there were adjustments made on taxes? A. There were adjustments made on taxes, yes, a little one.

Q. How much? A. The only thing, I think, instead of giving Mr. Bender $7,000, I gave him a check of sixty-eight and the rest was adjusted. How shall I—Maybe Mr. Feit has got all the statements and adjustments; I don't know what adjustment

was and was not made. I know I didn't gave him the full $7,000. That is what I know.

Q. Is the $6800 the entire sum that you gave Bender? A. Yes, Harry Bender, yes.

Q. You did not give him any more money than that? A. I did gave him some deposit. I gave him a deposit, 100 or 50 dollars, I don't know what it was. It was a friendly transaction, between two friends, what we knew one another all our life.

Q. Yes, but you were buying the property, weren't you? A. Positively.

Q. You were paying your own money for this property? A. Yes, sir.

Q. And if there was any money due you, why, of course, Mr. Bender would give it to you, wouldn't he? A. Mr. Bender would give it to me?

Q. Yes, Harry Bender would allow you any money that was due you? A. Yes, sir.

Q. Did you ever receive or see a statement of the adjustment actually on this building? A. I left it everything to Mr. Feit.

Q. I see. A. And he made the adjustment and he made the transaction. Everything was done in Mr. Feit's office.

Q. Now,— A. And then he sent me a bill and I paid him for it.

Q. How much was the bill? A. I know it was a little more than $100. I can't remember it now. I guess there is a check for it. If you will look for the check you will find the check for it.

Q. Now, in this Profit Realty Co., what other property than 92 Goldsmith Avenue does that company own? A. The Profit Realty Co?

Q. Yes. A. No other property.

Q. How many pieces of real estate do you own

altogether? A. Two, and of course, the Chancellor Lumber Co. is me.

Q. Do you have any other corporations outside of the Chancellor Lumber Co. and the Profit Realty Co? A. No, sir.

Q. And where is the— A. Not at present. I had, but not at present.

Q. What was the other company you had? A. I used to be connected with The Samuel Kaplan Incorporated. I had the K. and K. Corporation, but it is long ago.

Q. Long ago? A. Yes.

Q. In your trading and real estate, you very often take title in your own name, don't you? A. I used to.

Q. Don't you now? A. Now? I ain't trading in real estate now.

Q. No, but when you were trading in real estate, you took it in your own name, individually? A. It was—I used to take my name sometimes—my brother's name.

Q. Sometimes in your wife's name? A. Well, a little in my wife's name.

Q. Very little? A. I do business in my own name, not in my wife's name.

Q. You and your wife get along well together? A. Oh, very good.

Q. That is fine. Do you know Nathan Rice? A. Yes, sir.

Q. He is a painter, isn't he? A. Yes, sir.

Q. How long have you known him? A. How long have I known Nathan Rice? A couple of years. We are members in one organization.

Q. Is Davis Bender a member of the same organization? A. Yes, sir.

Q. Does he know Rice? A. I suppose he—I

suppose he knows him. I don't know exactly if he knows him. I know I know him.

Q. Did Rice do some work for the Profit Realty Co? A. Yes, sir.

Q. When? A. In 1928 or—1928, I think it was —painted a house.

Q. Well, that was in June, 1927, wasn't it? Look at these two checks. A. He done a couple of times work.

Q. (Two checks handed to witness.) A. Nathan Rice? A. Yes, sir.

Mr. Jordan: I am now referring to two checks, one dated June 3, 1927, for $250, and the other dated June 24, 1927, for $100, by the Profit Realty Co. to Nathan Rice.

Q. Did you have a contract with Mr. Rice to do that work? A. No, sir.

Q. A written contract? A. I had a written— I had a contract with him, a verbal, but not a written.

Q. But no written contract? A. No.

Mr. Jordan: I offer those.

(Two checks marked Exhibit C-11, April 24, 1929, and Exhibit C-12, April 24, 1929.)

Q. I show you check dated October 10, 1927, to the same man, for $180. A. Without looking at it, I do know he done more work for me.

Q. What work did he do for this $180? A. He is a painter and decorator and done the work inside and outside the household, which means a painter.

Q. What particular work did he do for the one hundred eighty? A. Painting.

Q. Where? A. Outside and inside.

Samuel Kaplan—Recalled—Direct.

Q. What inside work did he do? A. Walls, ceiling, painting.

Q. What floor? A. All floors.

Q. How many rooms? A. There is six rooms in each apartment.

Q. You mean, he went all over all of those rooms? A. He done the work outside, too. I don't know whether that check means for the inside or outside, but he done painting—him and a shoemaker is the painters, all makes checks. It is for painting.

Q. Have you got a bill from him? A. No, sir. I had a bill. I don't know where she is.

Q. Have you got any written agreement with him to do this work? A. I haven't any agreement.

Q. Were you— A. I haven't any agreement with him. I know him very good, a man worked for me for years.

Q. Have you had any painting work done since October, 1927? A. Painting work? Yes, I have.

Q. Who did that? A. Another man done it.

Q. What is his name? A. I don't know exactly his name. Let's see, what is his name? A gentile man, but he done very little.

Mr. Jordan: I offer this check of October 10, 1927, in evidence—to Nathan Rice.

(Check marked Exhibit C-13.)

Q. I show you five checks, Mr. Kaplan, and ask you if you remember all of those checks? A. Yes, sir.

Mr. Jordan: I showed the witness checks of February 2, 1928, for $450, to the order of Harry Bender; September 6, 1928, Harry Bender, $900; September 8, 1928, Bender Construction Co., $300; October 5, 1928,

Samuel Kaplan—Recalled—Direct.

Bender Construction Co., $400; October 17, 1928, Bender Construction Co., $300, being Exhibits 3, 5, 6, 7 and 8 on a previous hearing of the same witnesses.

Q. Mr. Kaplan, I understand that your explanation of the checks that you gave to the Bender Construction Co. was for work that they did in repairs and alterations to 92 Goldsmith Avenue? A. Yes, sir.

Q. Did you have a written contract for that work? A. No, sir.

Q. Did you have any plans and specifications? A. There was no work done to have plans and specifications, merely—(interrupted).

Q. Now, just a moment, Mr. Kaplan. The work was done, principally, on the floor occupied by Harry Bender, himself, wasn't it? A. Yes, sir.

Q. When you paid this money to Harry Bender did you get from him a release of lien claims? A. When I say Harry Bender checks that means it must be for interest. The Bender Construction—I turned a house in from a 2-family to a 3-family, that is Bender Construction. That is two differet kinds of checks there.

Q. That is right. Now, when you paid this money to the Bender Construction Co.— A. Yes, sir.

Q. —for alterations and repairs— A. Yes—no repairs, just turning in from a two and a half story—from a two story—from a two and a half story to a three family.

Q. And you did that without any writing? A. Yes, sir.

Q. And without any plans and specifications? A. We didn't need any plans and specifications.

Q. Well, you didn't have any? A. Eh?

Q. You didn't have any? A. No.

Q. I see. And before you paid that money to that company, did you get from them a release of lien claims? A. No, sir.

Q. Well, you know as a builder that that is quite important, don't you? A. It is not important.

Q. Don't you know that a subcontractor under this company might compel a lien against your company? A. He was not a subcontractor, he was a contractor.

Q. Exactly. A. Yes.

Q. But he had the doing of the work, didn't he? A. Yes, sir.

Q. And if he let out part of that work or got materials from somebody else, then they could put a lien on your property, couldn't they? A. Yes, sir.

Q. What precaution, if any, did you take to see that there wasn't any such lien? A. Merely a matter of trust one another. I trusted him.

Q. A matter of trust, you didn't do anything about that? A. I didn't care to do it.

Q. Yes. Were you talking to Davis Bender before you came in today? A. I didn't talk to him today, but I did talk to him when he got back from Florida.

Q. When was that? A. A few days ago.

Q. Was he with you when you went to Feit's office to have the Profit Realty Co. organized? A. Harry Bender was with me.

Q. Was Davis Bender with you? A. No, sir; Davis Bender was in Florida, I guess, at that time.

Q. Harry Bender was the one who took you to Feit's office, wasn't he? A. Yes, sir.

Q. And when you were going to buy this build-

ing and have the corporation formed, he told you to go to Feit's office to have it done? A. Feit is his lawyer.

Q. Yes. Who is your lawyer? A. Sometimes it is Corn & Silverman, William Greenfield, Brant, whatever I get hold of a lawyer, if he don't charge too much, he is my lawyer.

Q. Do you think they usually charge too much? A. Mostly Newark lawyers charge too much. I don't know about New York lawyers.

Q. On April 11, 1927, you made a deposit to the order of the Profit Realty Co. of $7,000? A. Yes, sir.

Q. Was that cash or check? A. Check.

Q. And whose check was it? A. Samuel Kaplans.

Q. And on what bank? A. The Clinton Trust.

Q. The same bank? A. The same bank.

Q. Did you on that day or about that time receive any money from Harry Bender or Davis Bender? A. No, sir.

Q. Had you, previously to that time, ever received any money from Harry Bender or Davis Bender? A. Previously? About that time?

Q. Previous to that time. A. Well, at least, when I received the last money of Davis Bender was in 1924, something like that.

Q. From 1924 you never received any money from him or his son? A. No. He borrowed off me money once, a thousand dollars, once three hundred, and he gave it back; but since 1924, as far as I can remember, he did not borrow no money off me and he didn't give me any money. Maybe 1923. I couldn't tell you. A long time ago he didn't borrow any money off me.

Q. Who collects the rents on this Goldsmith Ave-

nue? A. Mostly they send the checks to me to my office.

Q. Did you ever personally go there to collect the rents? A. No, sir. There is a lawyer living on the first floor, Mr. Gordon, mailed me checks, and there is another party used to live there—he left, he moved out yesterday—a New York party by the name of Schwenger, although I had a lease with him what he spoiled the house. I released him of the lease and I made him go out.

Q. Anybody else collect the rent there for you? A. No, sir.

Q. Did Harry Bender ever bring the rent to you? A. He mails me a check.

Q. For his own apartment? A. For his own apartment.

Q. Does he always pay you in check? A. Always in checks.

Q. Never pays you in cash? A. Well, I don't remember; even from Florida he mailed me a check.

Q. Did Harry Bender ever collect the rents from the other tenants? A. No, sir.

Q. And you never went there personally? A. They mailed me the checks.

Q. How long do you know this tenant Gordon? A. When I bought the house, he was in there.

Q. That is in 1927? A. In 1927, yes.

Q. I see. A. He was in there.

Q. This company ever paid any dividends? A. I don't have to pay any dividends to myself.

Q. You say it never has paid any dividends? A. No.

Q. This check of May 21, 1927, to your order, for $150— A. Yes, sir.

Q. —what is that for? A. I needed a little money and I was—

Samuel Kaplan—Recalled—Direct.

Q. And you borrowed money from the company? A. I suppose so. Who is the company? I myself am the company.

Q. Of course. Did you ever pay it back to the company? A. One hundred and fifty dollars? I suppose maybe I deposited it to the company, I can't remember.

Q. Did you—could you tell by looking at your book, your deposit book (handing witness book)? A. One hundred and fifty dollars on deposit book or check book.

Mr. Jordan: Have you got a check book there?

(Check book produced.)

Q. Here is your check book, with the stubs. A. Yes, sir.

Q. Could you tell from that? A. I couldn't tell from that. Somebody else can tell. I can't write. I could read printed, but not—I must have needed money and I drawed $150. If I deposited it back or not, I can't tell. Maybe I did and maybe I didn't.

Mr. Jordan: I offer that check of May 21, 1927.

(Check marked Exhibit C-14.)

The Witness: Counselor, on the other side is somebody endorsed?

Q. You did. A. I drawed cash, I suppose.

Q. I show you check dated July 19, 1927, to your order, for $200, and ask you what that was for. A. If it is no other signature here, then I drawed the cash.

Q. That was a loan from the company to you? A. You can call it a loan.

Q. Yes.

Mr. Jordan: I offer this check in evidence.

(Check marked Exhibit C-15.)

Q. Did you ever give any part of this $150 or this $200 shown by these checks 14 and 15 to Harry Bender? A. I didn't gave no check—no money to Harry Bender—except for the work he done, and that is Bender Construction. If it is any check, Bender, why, it is interest. I have to give him a check in a few days again for interest.

Q. Did you ever give him any part of those two hundred dollars you drew in July, 1927? A. If I drew—if a check is drawn to my order, I used the money and if a check is given to Harry Bender it is a different check.

Q. You never gave Harry Bender or Davis Bender any money from this Profit Realty Co? A. No, sir.

Q. And you say these checks, 7 and 8, to the order of Harry Bender, were for interest? A. It must be interest, yes.

Q. You don't owe them for anything else, do you? A. Not for anything else. If it is drawn to Harry Bender personally, it is interest.

Q. Have you paid him any interest since September 6, 1928? A. Interest since September? No; I have to pay him in a few days. I didn't pay him no interest lately. September 6, 1928. Oh, yes, that is a check—that is an interest check; that is for a year's interest. He was away—

Q. Yes, but did you pay him any money since that date? That is what I am asking. Since last September. A. 1928?

Q. Yes. A. September, 1928? No; I don't believe I did. I did not.

Q. All right. And these three other checks, 3, 5 and 6, totaling a thousand dollars, to the Bender Construction Co., you say that was for alterations on that building? A. Yes.

Q. Do you know anything about the chattel mortgage that Davis Bender gave the Sivad Realty Co. on his furniture? A. I don't know anything about it.

Q. Although you were a stockholder of the company and a director, you don't know anything about that? A. I explained to you, counselor, before, I only was once there and I knew—I signed the stock certificate. I even didn't remember the name, if it was Sivad or Seashore, or any—I don't know anything about it. Since then I never heard of it.

Q. Never heard of it? A. I don't know what become of it.

Q. What is your usual balance in the Clinton Trust Co., in your own account? A. In my own account now is sometimes 150, 200, sometimes 400 and sometimes more, sometimes less.

Q. What was your average balance in the bank? A. Big balance.

Q. How big? A. Used to be a thousand, two thousand; money drawn out and drawn in.

Q. Well, you understand, Mr. Kaplan, what I mean by a balance, don't you?

Mr. Vail: Mr. Master, this man is not a defendant here, personally, and there is no order directing an examination into his own personal affairs. He is here as an officer of this Profit Realty or Construction Co., and I think there is no right in the complainant

to examine into his personal bank account.

The Master: I think that is so.

Mr. Jordan: We, of course, want to find out where this money came from that went to—

The Witness: Mr. Clark, I—

Mr. Jordan: —finance the transaction—to the Profit Realty Co.

The Witness: —I gave you a check from the—drawn from the same—

Mr. Vail: Now,—

The Witness: —Samuel Kaplan account to the Profit Realty Co., and show them the check, they will know it where is the check.

Mr. Jordan: Let us see the check.

Mr. Corn: I don't know what you want. If you will only say what you want.

The Witness: He asked me where I took it. I didn't steal it. If I would steal it I would be in jail.

Mr. Corn: Is this going down?

The Master: Yes.

Mr. Corn: Don't talk unless you want it to go on the record.

Mr. Jordan: In other words, we want to interrogate this witness as to where this money came from. The simple fact that he said it came out of his own account should not preclude us from possibly showing it came from a source that would make the transaction fraudulent. For that reason, we think we have a right to go fully into the details of just where he got this money from.

Mr. Vail: You may have the right to ask him where he got the money from, but as to how much personal balance he had has no

bearing in this proceeding. He may have carried $100 or he may have carried nothing.

(Discussion.)

Q. Mr. Kaplan, this $7,000 that you paid the company— A. Yes.

Q. —that was in your personal bank account? A. Yes, sir.

Q. How long had it been in your personal bank account? A. Very short time.

Q. And where did it come from? A. I had money on my bank account. I always keep a little of money and I always have my money invested. Before I was in the lumber business and before I had bought that property I had a lot of money in building and loan certificates.

Q. Yes. A. When I had money and I can't use it in my business, I belong to a building and loan, I go in and take a prepaid stock or I loan somebody out on second mortgage for a short time or I give—money should always bring interest.

Q. Will you tell me or can you— A. Eh?

Q. Can you tell me where—specifically where you got this $7,000 that you put in your bank account? A. I took some out from the building and loan, some money I had and some money I drawed out from the Chancellor Lumber Co.

Q. How much did you get from the building and loan? A. From the building and loan—(interrupted).

Mr. Vail: Well, now, I can't see where that makes any difference, Mr. Master. The whole point of this is whether he got this money from Bender, and if that is from the building and loan that is his own personal business. He says he got it from the build-

ing and loan and how much he got from the building and loan has nothing to do with it, or how much he got from the building and loan certificates or from the Chancellor Lumber Co. is entirely aside from this issue.

Q. What building and loan did you get the money from? A. City Hall Building and Loan.

Q. And you got some from the Chancellor Lumber Co? A. Yes, sir.

Q. Do you know how much you got from that company? A. Whatever I need.

Q. No. How much? A. A couple of hundred, a thousand, two thousand. It is a matter of two years. Who could remember how much I got?

Q. And where did you get the balance of the money from? A. I had it in the bank.

Q. In the Clinton Trust Co? A. Yes.

Q. Had you drawn any checks on the Profit Realty Co. since November 9, 1928? A. I did.

Q. Where are they? A. Eh?

Q. Where are they? A. I gave you all the checks.

Mr. Daniels: Did you?

The Witness: Certainly, I gave you the checks, to the last checks I drawed, I gave him checks.

Mr. Vail: Do you intend to offer this $7,000 check in evidence, Mr. Jordan?

Mr. Jordan: No.

Mr. Vail: Then we will offer it and ask to have it marked. That is the check from Samuel Kaplan individually?

The Witness: Yes.

Mr. Vail: Of April 11, 1927, to the order

of the Profit Realty Co. for $7,000, and indorsed "For deposit" by the Profit Realty Co.

(Check marked Exhbiit D-1.)

Q. There is a check here dated November 1, 1928, for $100. Where is that? It is on the stub. I don't find that check. A. To whom is it made?

Q. Bender Construction. Do you remember giving a check on November 1, 1928, to the Bender Construction Co. for $100? A. Have you got the check?

Q. No. The check is not here, but it is in your check book. A. The check is not here?

Q. The check is not here. A. I don't know.

Q. That one right there? A. Yes.

Q. For $100? A. Yes.

Q. You gave him that check? A. I suppose I gave him it. It is marked here. Maybe—if it is marked here, he got the check.

Q. What was that $100 for? A. Bender Construction?

Q. Yes. A. The balance that he done some work there, finished up.

Q. How much was that work to cost? A. It was not originally agreement how much it would cost. After he done it, he told me he spent so much and so much and I used to give him. I don't have the time to bother with it.

Q. When did he start to do that work? A. Start to do that work, I guess, in August or September, something like that. It was done in those months.

Q. Do you know, Mr. Kaplan, the total amount that you paid Bender Construction Co. for those repairs and alterations? A. I don't know exactly a total. The checks—everything was paid by

checks. You can see how much the checks is.

Q. And when you authorized those alterations, you didn't know how much they would run into? A. No, sir.

Q. I show you a check dated December 26, 1928, for $300. What was that for? A. December 26, 1928, that is for work done.

Q. The same job? A. The same job.

Mr. Jordan: I offer that inevidence.

(Check marked Exhibit C-16.)

Q. Have you paid the last half of the 1928 taxes on this property? A. The last half? Yes, it is paid.

Q. Would you show me what check here in your book shows the payment of that. A. I couldn't show you. I don't know.

Q. Have you any check here? A. Have you a check, Mr. Corn?

Mr. Corn: To show that payment.

Mr. Jordan: Have you got it there?

Mr. Corn: I have a check, yes, May 22, 1928.

The Witness: May 22, 1928?

Mr. Corn: Yes.

Mr. Jordan: The whole year?

Mr. Corn: The whole year was paid at one clip.

The Witness: Look at the check. You will find the check for it.

Mr. Jordan: If this is the bill, that is the best evidence.

Mr. Corn: Here it is, marked "Paid."

Mr. Jordan: "Interest for the entire year." That is all.

Samuel Kaplan—Recalled—Cross.

Cross-examination by Mr. Corn:

Q. Just a minute, Mr. Kaplan. This is a bill for 1928 taxes? A. Yes, sir.

Mr. Corn: I will put that in evidence.

(Bill marked Exhibit D-2.)

(Adjourned to Thursday, April 25, 1929.)

IN CHANCERY OF NEW JERSEY.

April 25, 1929.

Between

JACOB WILLIAMSON,
Complainant,

and

DAVIS BENDER, *et als.*,
Defendants.

Transcript of shorthand notes of testimony taken in the above entitled cause before the Master and counsel as before.

DAVIS BENDER, sworn for complainant, testified as follows:

Direct-examination by Mr. Jordan:

Mr. Jordan: At this time, I would ask that Mr. Harry Bender, one of the defendants in this action, who is in the court, step out until the examination of this witness is completed.

The Master: We will do the same as yesterday and exclude the witness.

Mr. Corn: With the same exception.

The Master: Yes.

Mr. Jordan: Could I have that deed that you had yesterday?

The Master: Here are all the exhibits.

The Witness: Are you excepting to this, Mr. Corn?

The Master: He did, yes.

Q. Mr. Bender, when did the sale of your household furniture and automobile take place? A. I don't remember. I suppose the record will show.

Q. No, there is no record on that. How long after you gave the mortgage was it foreclosed? A. I believe it was in 1927, if I am not mistaken.

Q. And what part of 1927? A. I don't remember the exact time.

Q. I see. Would your son, Harry, know more about that? A. Well, I don't know.

Q. It was in May, 1925, in Florida, that you bought some property from Jacob Williamson? A. Yes.

Q. And it was at that time that you gave him the note for $10,000, wasn't it? A. May. No. I suppose the record shows.

Q. What? A. I suppose the record shows the date. I don't remember the exact date.

Q. At the time you bought the property from him you gave him the note? A. When I got a deed?

Q. Yes, when you got a deed, you gave him a note for $10,000? A. Yes.

Q. Do you remember a law suit in Bade County, Florida, Emma E. Howard, a foreclosure action against you and other people interested in the property that Williamson sold you? A. I do. That is for foreclosure, you mean?

Q. Yes. A. When was this foreclosure?

Mr. Corn: Wait, Mr. Bender. Just wait until you are asked the question.

Q. Do you remember July 21, 1926, sending a telegram to the clerk of the court down there in Miami from Newark, in which you asked for an

extension of time to answer the complaint in that foreclosure action?

Mr. Corn: Just a moment. Now, I object to this line of testimony. This question, which I supposed from the beginning has nothing to do with the discovery of his assets, and if of any value at all, it is on Mr. Bender's counterclaim—in answer to his counterclaim—and that is not the purpose of this proceeding here.

Mr. Jordan: We are not concerned with the counterclaim. I am trying to find out what happened to this property that he owned in Florida.

Master: I will allow the question. You may answer.

The Witness: What was that, again?

(Question read as follows:)

"Q. Do you remember July 21, 1926, sending a telegram to the clerk of the court down there in Miami from Newark, in which you asked for an extension of time to answer the complaint in that foreclosure action?" A. I don't remember that.

Q. I show you those two papers and ask you to kindly examine them. A. If I don't remember—

Q. Will you kindly examine those papers? A. (Witness does as requested.) I can't—

Q. Don't you read? A. Very little.

Q. It says: "Clerk of the Circuit Court, Eleventh District, Dade County, Miami, in Chancery, on July 1: I send you letter requesting copy of bill of complaint in the case of Emma E. Howard, complainant, versus Jacob Becker and Rachael Becker, his wife, and Davis Bender and Mrs. Davis Bender, his wife, and Jacob Williamson, defend-

ants, together with check for five dollars: Time expires for filing answer July 26, therefore will not be able to answer in time allowed through your delay. Will you, therefore, extend time for filing same and inform me of the date thereof and send copy of bill of complaint at once to Davis Bender in care of Feit & Feit, 2 South Broad Street, Elizabeth, New Jersey," signed "Davis Bender." A. I don't remember.

Q. Did the lawyers, Feit & Feit, of Elizabeth, New Jersey, represent you in that foreclosure action? A. The bankruptcy took place over there in Florida.

Q. Exactly. A. They were in Florida.

Q. Did they represent you in that action? A. I don't remember what—whether I brought an action. I don't remember now.

Q. You were a party to that action, weren't you? A. Whether they made me a party or not I don't know. I suppose—

Q. Do you know anything about that telegram I just read you? A. I don't remember.

Q. Did you sign your name to such a telegram? A. I don't remember that.

Q. Do you know whether your attorneys, Feit & Feit, did? A. If I would remember, I would tell you that I do know, but I don't remember.

Q. In about the month of July, 1926, did you know that there was a foreclosure suit going on in Florida on this property that you bought from Williamson?

Mr. Corn: Mr. Salmon, I suppose you are noting my objection to this entire line of questions?

The Master: Yes.

Mr. Corn: If the idea is to find out what

happened to the property, you might just as well ask and be done with it, instead of taking all day about it.

The Master: The exception noted. You may answer.

The Witness: What was the question?

(Question read as follows:)

"Q. In about the month of July, 1926, did you know that there was a foreclosure suit going on in Florida on this property that you brought from Williamson?" A. I believe I did know.

Q. And did you go to see the attorneys, Feit & Feit, about that? A. That I don't remember.

Q. Did you sign an answer in that case? A. I don't remember.

Q. Did you talk about that case to Mr. Louis J. Feit? A. I don't remember now, it is so long ago.

Q. Did you sign a telegram such as I have shown to you? A. I said before that I don't know.

Q. You could have signed it and you don't remember; is that it? A. If I don't remember, I can't say yes or no.

Q. Do you read and write English? A. Very little.

Mr. Jordan: Are you familiar enough with the proceedings to admit that that was an answer filed in behalf of this man and his wife in that bankruptcy proceeding in Florida?

Mr. Corn: Is this a certified copy of the proceeding?

Mr. Jordan: Yes.

Mr. Corn: I will admit anything it shows. All right?

Mr. Jordan: Yes.

Mr. Corn: Offer the whole shootin' match. If it is certified, we won't object to it.

Mr. Jordan: Offer the whole thing. That makes it very easy.

Mr. Corn: That telegram is a copy of one the clerk has on his file?

Mr. Jordan: Yes.

Mr. Corn: All right. Put the whole thing in.

Mr. Jordan: It will be a nice record on appeal.

Mr. Corn: I don't know whether it will be yours or mine.

Mr. Jordan: I hope it won't be yours, for your sake.

(Proceedings marked Exhibit C-17.)

The Master: And you object to it, do you, to the relevancy?

Mr. Corn: I object to it as to its relevancy. I admit anything it shows there, but I object to its relevancy in this matter now of discovery.

Q. Do you remember talking to Mr. Feit and telling him that you had an agreement with Emma A. Howard to extend the time of her mortgage on that property?

Mr. Corn: I object, again, that that has nothing to do with the discovery of his assets.

Mr. Jordan: Well, it has this to do, that we want to show what was the frame of mind of this man at the time these various transfers were made, that we introduced into evidence yesterday.

The Master: All right. You may answer.

A. I don't remember.

Q. Eh? A. I don't remember.

Q. Did you sign any papers over in Mr. Feit's office, in that Florida foreclosure? A. I don't remember that now.

Q. I see. You were in Florida when this property was sold, weren't you? A. Yes, sir.

Q. Do you know how much it brought? A. No, sir.

Q. Did you buy it in? A. I was not there, even.

Q. Do you know who did buy it in? A. I don't know.

Q. Did you inquire? A. I was not interested.

Mr. Corn: Mr. Jordan, why not put on record where that property is you have been talking about?

Mr. Jordan: Yes. Well, it is described in this.

Mr. Corn: I mean, let us get it on record just where the property is, because there are a lot of properties in Florida which I know he was interested in.

Mr. Jordan: It is conceded that I am questioning the witness in regard to property described as Lots 1 and 2 in Block 44, and Lots 1 and 2 in Block 70 on a map of Miami Beach.

Conceded that the foreclosure action covers Lots 1 and 2 in Block 44. These Lots 1 and 2 in Block 44 that you bought from Williamson, you paid $37,500 for those, didn't you?

The Witness: I don't know whether they were the lots.

Q. Well, the property that—you were interested in four lots, weren't you? A. You are talking

something else.

Q. Yes. You were interested in four lots, weren't you? A. But I am talking of these here which you just mentioned.

Q. All I want to know— A. Lots 1, Block 44.

Q. How much did you pay for the lots? A. For Block 1 and 2?

Q. Yes? A. You mean?

Q. Yes. A. There was not any block—

Q. How much did you pay for what you got? A. I think it was thirty-seven, five.

Q. Thirty-seven thousand, five hundred dollars. Were the other lots, 1 and 2 in Block 70, sold at foreclosure? A. I don't get you what you mean about the other lots.

Q. Well, you know you had a partner named Lack, Harry A. Lack, don't you? A. Yes, sir.

Q. Now, which property did you give to Lack? A. I think it was Meridian Avenue.

Mr. Jordan: I have this certified copy of the deed (handing paper to Mr. Corn).

Mr. Corn: It will be admitted.

Mr. Jordan: All right. We will offer that in evidence.

(Certified copy of deed marked Exhibit C-18.)

Mr. Jordan: And these are offered, first, a deed dated May 20, 1925, Jacob Williamson and Rose Williamson, his wife, and H. E. Glickman, and his wife, T. Glickman, to Harry A. Lack and Davis Bender, covering lots 1 and 2, Block 70.

Mr. Corn: We will admit that.

(Photostatic copy marked Exhibit C-19.)

Mr. Jordan: Also deed—

The Witness: But that was not the lots.

Mr. Corn: Wait a minute, Mr. Bender.

Mr. Jordan: Also, deed dated May 20, 1925, Jacob Williamson and his wife, Rose Williamson, and H. E. Glickman and wife, T. Glickman, to Harry A. Lack and Davis Bender, covering premises Lots 1 and 2, Block 44, in Dade County, Florida.

(Photostatic copy marked Exhibit C-20.)

Q. Have you any interest—(interrupted).

Mr. Corn: Wait a minute. I think you have got these wrong—C-17.

(Exhibits re-marked.)

Q. When you conveyed these lots to Harry Lack, did you have any mortgage or interest in those lots? A. In those lots?

Q. Yes. A. The mortgages was on record at the time these lots—(interrupted).

Q. No. When you transferred these two lots to Lack, did you take a mortgage back on them? A. No, sir.

Q. Or did you have any interest left in them? A. No, sir.

Q. These two lots that you kept, did Lack have any interest in those? A. He gave me the deed for it.

Q. Yes. A. The exchange deed.

Q. The exchange deeds, he kept one pair of lots and you took the other. Referring to this deed of April 6, 1926, Exhibit 5, at the date that you executed this deed, April 22, 1926, what was the value of the property, 92 Goldsmith Avenue? A. You are talking Newark property now?

Q. Yes. A. About $16,000.

Q. Sixteen thousand dollars? A. You are talking about Goldsmith Avenue?

Q. I am talking about 92 Goldsmith Avenue. A. Yes, sir.

Q. About $16,000? A. About.

Q. Was there any mortgage on it? A. Let's see, no—yes—no, no, there was no mortgage.

Q. You have been very familiar with property in and about the city of Newark, haven't you? A. Well, I was and I was not. I don't know.

Q. And you were engaged in building and in real estate for about twenty years in Newark, weren't you? A. Yes, sir.

Q. And you are familiar with the value of this Goldsmith Avenue property? A. Yes, sir.

Q. And has that property changed in value from the time you gave it to your son? A. Well, I was in Florida and I don't know what took place here all this time.

Q. Have you any idea what the value of it is today? A. No, sir. Today it is different houses today.

Q. How much is it worth today? A. I don't know. I have not looked into the matter.

Q. How much was it worth during the year 1927? A. I don't remember now.

Q. Would it have changed from the valuation that you gave? A. No, I believe here at different times in the city of Newark this price went up and that price went down different times; that I can't remember, the times that—probably is high and low.

Q. How many months were you in Newark in the year 1927? A. I can't remember just now.

Q. Do you know this property on the east side of South Broad Street? A. Yes, sir.

Q. You bought that from a man named Rosalsky? A. Yes.

Q. What was the value of that property, the day you signed this deed, April 22, 1926? A. I tell you, I don't remember now the exact values you are asking me, but we figured the values and I gave deed to my son.

Q. Well, I am asking you now if you can tell me what kind of property was that. A. Empty property.

Q. Empty lot? A. I think there was no—I think at that time there was a wagon, a lunch wagon on it, when I bought it, a lunch wagon.

Mr. Corn: Mr. Jordan, you will note there are three properties on Broad Street, so you might mislead the witness by not telling him which lot you have reference to.

Mr. Jordan: Could you in any way give me the numbers here, a certain number?

Mr. Corn: This is 1240.

Mr. Jordan: Where is that?

Mr. Corn: There is one is 1242 and there is one is 1240, and this one here, I don't know the number; you might ask him; I think he will give you the number.

Mr. Jordan: I see.

Mr. Corn: One is a disconnected lot and the other two went together.

Q. Do you know the number on South Broad Street of this second parcel? A. What do you call what I bought from Thesky, whatever you said?

Q. Rosalsky. A. Rosalsky, there was a lunch wagon at the time I bought it.

Q. Do you know the street number? A. I believe it was 1246, if I am not mistaken.

Mr. Corn: The others are 1240 and 1242.

Q. You say that was a vacant lot? A. No, that was a lunch wagon.

Q. With a lunch wagon on it? A. Yes.

Q. And how big was that lot? A. And then they took off the lunch wagon, after I had it.

Q. Yes. How big was that lot? A. I believe it was thirty feet in front. The depth I don't know, I don't remember.

Q. Aren't those lots usually 100 feet deep? A. No, sir; they are short, short.

Q. How big was that lot? A. I can't remember. They are short lots.

Q. How much was it worth on this date? A. Today? I don't know the value today.

Q. No. That day when you turned it over to your son Harry? A. We figured at that time what it was worth, when we turned it over.

Q. How much did you figure it was worth? A. I don't remember, because I haven't got a figure.

Q. How much did you pay for it? A. I believe I paid $9,000 for it, but it was not worth it and I sold.

Q. Was there a lunch wagon on it when you bought it? A. Yes. When I bought it, I believe I had the lunch wagon, too.

Q. Did you buy the lunch wagon? A. The lunch wagon, I believe it went with the lot.

Q. Are you sure? A. I believe so.

Q. Was there any mortgage on that lot? A. I don't remember.

Q. Was there a mortgage on it when you bought it? A. I don't remember now.

Q. Did you put a mortgage on it? A. I don't remember.

Q. How long did you own it? A. Until I sold it to my son.

Q. How many years? A. I don't remember. The record will show more.

Q. Do you know the property on King Street? A. Yes, sir.

Q. It is designated in this deed as the third tract. A. I—

Q. What number King Street was that? A. I don't remember the number.

Q. What kind of a piece of property was it? A. When I bought it, it was a house on it.

Q. What kind of a house? A. It was a house—it was two families in that house, two houses, and after it was condemned and we had to break it up. It was broke down, but when I bought it there was a house there.

Q. Did you buy that as a vacant house and build the house? A. No, sir.

Q. How big—(interrupted). A. There was a house on it and the house—and there is no house today. It was broken up.

Q. Was there a house on it when you conveyed it to your son, Harry? A. I don't remember that. I know it is a vacant

Q. You bought that from Harry Hoffman, didn't you? A. Yes, yes, yes.

Q. How much did you pay for that? A. I don't remember the price now.

Q. What was the value of it on the day that you transferred it to your son? A. We figured it was —we figured out the value what it was.

Q. How much did you figure? A. I don't remember now.

Q. How much are the mortgages on this house? A. There was a building and loan mortgage, but the amount I don't remember.

Q. Well, about how much was it? A. Well, it is being paid off and I don't remember.

Q. Was that on it when you transferred it to your son? A. I believe it was.

Q. You build a house on that property yourself, didn't you? A. It is vacant.

Q. No, but when you had it, did you build anything on it? A. No, sir.

Q. Then when did—did you borrow the money from the building and loan on it? A. I don't remember. I think it was a mortgage on it.

Q. Well, did you get the mortgage or was it there when you bought it? A. I don't remember that.

Q. And you don't know how much of that mortgage there was when you transferred it to your son? A. No, sir, I don't remember. It was paid off, you know, monthly.

Q. Can you tell us about how much it was? A. I don't remember that.

Q. Was it $10,000? A. No; no, sir.

Q. Was it more than that? A. Much less.

Q. How much less? A. I don't remember the exact amount.

Q. Was it $5,000? A. It was a small amount. It was a small amount, because the property did not cost much.

Q. Was it 5,000? A. The mortgage? A. I don't remember the amount of the mortgage.

Q. Was it two and a half thousand? A. The record will show.

Q. No. I am asking you. A. I don't remember the amount of the mortgage.

Q. Was it more or less than $2,000? A. I say, I don't remember. I say, I don't remember the amount of the mortgage.

Q. What did you pay for the property? A. That I don't remember now.

Q. What rent did you get from it? A. That I don't remember now.

Q. How many tenants did you have? A. Don't remember whether there was any tenants or not.

Q. Didn't you say, a moment ago, that there were two tenants there? A. Two families, for two families—

Q. A two family house? A. It was a house on two lots, I suppose, with a party wall. It was old, a very old house, remodeled.

Q. Were there people living in that house? A. I don't remember that.

Q. How big was that lot? A. I think the two lots—(interrupted).

Mr. Corn: Just a minute, Mr. Jordan. You see, there are two lots on King Street.

Mr. Jordan: Are there two lots on King Street?

Mr. Corn: Yes. There was another one. These two are described as the third tract, and there were two lots, two separate descriptions. You might ask him both together or separately.

Q. Do you know how big these two lots were together, on King Street? A. They are about forty feet.

Q. Together? A. Together.

Q. Forty by one hundred? A. No, no. Short lots.

Q. How short? A. I don't remember the size of them, the depth.

Q. And you don't remember what you paid for them? A. It is on the map.

Q. I say, you don't remember what you paid for them? A. Not exactly, no.

Q. This fourth tract, the property known as 1242 Broad Street, Newark, how big was that lot? A. 1242? That was two together, I think.

Q. Yes, but now take this one, 1242; can you describe them separately or do you want to describe them together? A. Better make it together.

Q. All right. 1240 and 1242, and how big was that plot? A. I think it was sixty feet front.

Q. About how much depth? A. The depth I don't know. I don't know whether—

Q. And near what street are they situated? A. —that is the last block of—

Q. Near the railroad? A. Near the railroad.

Q. Any building on them? A. Yes, sir.

Q. What kind of building? A. Old shacks.

Q. How many of them? A. Two.

Q. How many families in each one? A. Two families in each one.

Q. And how many rooms in each house? A. I don't remember that.

Q. Did you build the houses? A. Old, very old. They are older than the two of us, maybe.

Q. You were inside them many times, weren't you? A. I was.

Q. You bought those from a party named Florence Reynolds? A. Yes.

Q. In 1924? A. Yes, sir.

Q. How much did you pay for those? A. I don't remember now.

Q. Approximately, how much did you pay? A. I don't remember.

Q. Fifty thousand? A. (Witness laughs.) Well, it was around fifteen.

Q. It was around fifteen for both lots? A. Yes.

Q. And the houses? A. Yes.

Q. How much mortgage was on those? A. I don't remember the mortgage.

Q. Was there any mortgage on it? A. Yes.

Q. Who held it? A. I believe Reynolds had a mortgage, the same woman.

Q. You gave her back a mortgage? A. Yes.

Q. How much? A. I don't remember the amount.

Q. About how much? A. I don't remember.

Q. How much cash did you put into it? A. That I don't remember.

Q. Did you put as much as 10,000? A. No, sir.

Q. As much as five? A. I don't remember that.

Q. Was it as much as five? A. I don't remember.

Q. Those houses were on there when you transferred the property to your son; weren't they? A. Yes, sir.

Q. Now, the property known as the fifth tract, on Wright Street, on the east side of Avenue "C", do you remember that property? A. I don't remember the number.

Q. How big was that property? A. I haven't got the size. I don't remember it.

Q. If I told you it was 50 by 80, would you say that was about right? A. No.

Q. It is more than that? A. Yes.

Q. What dimension? Is it deeper than 80 or wider than 50? A. Well, it is not lots yet, it is a garden, you know; it is not developed.

Q. Are there two tracts that you are interested in or were interested in on Avenue "C", two pieces of property? A. I was only interested in half of them.

Q. All right. You were interested. You owned half of it? A. Yes.

Q. But were there two lots? A. There was two sets, two pieces, yes, together.

Q. Were they vacant or improved? A. Vacant.

Q. And how big were they? A. The size I don't remember; they were big lots, deep, a garden, not developed.

Q. How much frontage was there—100 feet? A. It was more than 100 feet.

Q. 150 feet? A. Maybe 150, maybe 200.

Q. Who was the party that owned the other half of that property? A. I don't remember his name now. You got the name, haven't you?

Q. I don't see it here.

Mr. Corn: Doesn't your record show it, Mr. Jordan?

Mr. Jordan: No.

(Discussion.)

Q. Don't you remember now, after hearing Mr. Cohen mention the name of Isaac Elson, that he is the man that owns the other half of this property? A. Yes, sir.

Q. Who is Mr. Isaac Elson? A. He is Isaac Elson.

Q. Well, what is he otherwise? Do you know what his business is? A. New York. He is in New York.

Q. What is his business? A. Lumber business.

Q. And where? A. 22nd Street, I believe, New York.

Q. And does he do business under his own name or a company name? A. That I don't know.

Q. How long do you know him? A. He is a brother-in-law to me and I know him since—

Q. I see. A. For a long time.

Q. Mrs. Bender is his sister? A. No, sir.

Q. Well, how is it, then? A. By marriage.

Q. Well, is his sister your wife? A. My wife is his wife's sister.

Q. Oh, I see. You and he married two sisters? A. Uh, huh.

Q. Are you very friendly with Elson? A. Yes; my brother-in-law.

Q. Yes. Was there any mortgage on this property, on Avenue "C"? A. Yes, sir.

Q. How much was that property worth altogether? A. When?

Q. At the time you gave this deed, in 1926? A. I don't remember that. We figured that up.

Q. No. When you bought it with Elson, how much did you pay for it? A. I put in was about twelve—about $1250.

Q. And did Elson put in the same? A. What Elson put in I don't know. Elson bought it at a later date.

Q. Did he buy from you? A. No. No, sir.

Q. He bought from another party? A. Yes, sir.

Q. So you put in 1250 for your half? A. About, about.

Q. And who owned the half with you at that time? A. I said before that I don't remember the name, and that is what I have reference to.

Q. I see. It was not Elson, though? A. It was not Elson, when I bought it—somebody else.

Q. How much was the mortgage on that property? A. I don't remember the mortgage. Elson—you can—I don't remember the mortgage.

Q. About how much was it? A. It must be about ten or eleven thousand dollars—no, maybe about ten thousand, eight or ten thousand dol-

lars. I don't remember. Something like that.

Q. And do you know who held the mortgage? A. No, sir; I don't remember the names.

Q. Did you ever pay the interest? A. I don't remember whether I paid.

Q. When you executed this deed of April 22, 1926, Exhibit 5, Mr. Bender, transferring this real estate to Harry Bender, what, if any property, did you have left? A. I had the garage.

Q. Where is the garage? A. Plane Street.

Q. Where? A. And Essex.

Q. In what city? A. City of Newark.

Q. What number is that garage? A. Well, it takes up a lot of numbers there on Essex Street and on Plane Street I believe about eighty-two.

Q. You own that in your own name? A. I did own it, yes, sir.

Q. And what have you done with it? A. I sold it.

Q. To whom? A. Some trucking company.

Q. When? A. I don't remember the date.

Q. Was it before you gave this property to your son? A. After.

Q. How long after? A. I haven't got the date. I don't remember.

Q. Was it a year after? A. No, sir.

Q. And it was in your own name? A. I believe it was.

Q. Are you sure? A. I said, I believe it was.

Q. Have you got the deed to that property? A. I have no deeds now.

Q. What other properties did you own, after you executed this deed to your son? A. I had in Florida property.

Q. Where? A. I had a piece of property 9th Street and Pennsylvania Avenue, what I signed a

note for. I had a lot of money with the Gotham Realty Co., and still have.

Q. What? A. The Gotham. I had some property 28th Avenue, I believe.

Q. Twenty-eighth Avenue, Miami? A. Yes. I don't remember now what I had at that time.

Q. What money did you have with the Gotham Realty Co? A. Money?

Q. Yes. A. I don't understand your question, what money.

Q. Well, you said you had money with the Gotham Realty Co. A. Oh, yes, I put in money and they bought acreage, a lot of acreage.

Q. How much did you put in? A. I put in with them, I believe, about between twelve and fourteen thousand dollars.

Q. And is that company still going? A. I don't know.

Q. It has gone in bankruptcy, hasn't it? A. I don't know, today.

Q. Have they any place of business? A. I don't know.

Q. Did you ever get any of your money back? A. No, sir.

Q. Now, this property on Twenty-eighth Street, how much did you pay for that? A. Did I say Twenty-eighth Street? I think it was Twenty-eighth Avenue.

Q. All right, Twenty-eighth Avenue. How much did you put into that? A. I paid in—I don't remember exactly whether I paid in 18,000 cash or 21,000 cash.

Q. Have you got the deed to that? A. No, sir.

Q. What happened to the property? A. I still got it.

Q. You still have it? A. Yes, sir.

Q. What kind of property is it? A. Lots, empty lots.

Q. How many lots? A. Four.

Q. How big are they? A. I believe it was two corners, and two lots 100 feet by—one hundred and something, I don't remember the depth.

Q. Where is that in Miami? Where are those lots? A. I said Twenty-eighth Avenue.

Q. Well, isn't that a long street? A. That I don't remember, the numbers, no.

Q. Have you got the deed? A. No, sir.

Q. Where is it? A. I never had the deed. It was a contract.

Q. Have you the contract? A. No, sir, not now.

Q. Where is it? A. I don't remember.

Q. When did you see it last? A. Oh, a long time ago.

Q. How long ago? A. I don't remember now, because I still owe on it.

Q. You still owe money on it? A. $5,000, and I don't take care of it.

Q. You don't take care of it? A. No, I don't take care of it.

Q. It is not worth what you paid for it, is it? A. Today?

Q. What? A. Today, I would say it is not worth today, but I am not taking care of it.

Q. No, you are not taking care of it. You let it go? A. Well, I don't know what's left—

Q. You never had a deed to that property, did you? A. No, sir.

Q. Outside of that, did you have anything else when you signed this deed, Exhibit 5? A. I don't remember what else I had now.

Q. Did you have any property in Newark other than this? A. In Newark, no, sir.

Q. How much of a mortgage was there on that garage that you sold? A. Small mortgage.

Q. How much? A. Maybe about $8,000, something like that.

Q. Who did you buy it from? A. What, the garage?

Q. Who did you buy the property from? A. I built.

Q. All right. Who did you buy the lots from? A. I don't remember the man.

Q. Did you buy it in your own name? A. Yes.

Q. You are sure about that? A. I am quite sure.

Q. Have you any data on that transaction that you can clear up the date?

Mr. Corn: We have the date of the deed here, I think. I have an agreement of sale, if you care to have it.

Mr. Jordan: Let us have that agreement of sale.

I offer this agreement of March 2, 1926, between Davis Bender and his wife and Roemer Brothers Trucking Co., a corporation, covering premises on the westerly line of Essex Street.

(Agreement marked Exhibit C-21.)

Q. Now, on this contract, Exhibit 21, for the sale of this garage, you got $5,000 on the signing of that contract, didn't you? A. Yes.

Q. And on the day that you delivered the deed, May 15, 1926, you received more than $65,000 in cash, didn't you? A. About.

Q. What did you do with that money? A. I

was—well, the money went into the theatre I was building.

Q. Well, was that in the form of a check you drew, the $65,000? A. Yes, sir.

Q. And where did you deposit it? A. Broad Street Bank. In the Broad Street Bank.

Q. And what did you do with it? A. Well, there was—I built a theatre.

Q. Where? A. Roselle Park.

Q. When? A. I don't remember when I started building. I think it was 1926, the latter part of 1926.

Q. Were you a contractor? A. By trade?

Q. No. Were you a contractor on that job? A. No, sir.

Q. You were the owner? A. Well, it was not in my—it was a corporation.

Q. What was the name of the corporation? A. Roselle Park Building Co.

Q. And who else was in that corporation with you? A. Goldin.

Mr. Corn: G-o-l-d-i-n.

Q. What is his first name? A. Nathan Goldin.

Q. Who else was with you in that corporation? A. The corporation was my wife and I was in and his wife was, his brother—I don't remember.

Q. And that Broad & Market Street Bank where you put this $65,000 check in is the same bank that you said you had no record of today, you had no check books or checks or vouchers, you got nothing? A. I haven't got it.

Q. You lost that all in Florida? A. I don't know where.

Q. You don't know where it is. Well, what did you do with this $65,000 that you put in that bank? A. Well, about twenty—between twenty and twen-

ty-five thousand dollars went into the theatre.

Q. Yes. Is it still there? A. The building is there.

Q. Who owns it now? A. It was sold at auction, sold or the first mortgage.

Q. Yes. And what happened to the rest of the money? A. Well, that was—when I got that money, it was spent a lot of money living.

Q. For what? A. Living from that money. My wife—(interrupted).

Q. Living? A. Living expenses, yes. My wife was in a sanitorium and I am sick.

Q. Where did you spend $45,000 in living? A. Well, I believe it is about three years from now.

Q. Yes. Where did you spend this money for living? A. Well, I was paying doctor bills and sanitorium.

Q. How much did you pay the doctors? A. Oh, different sums.

Q. How much in the total? A. I don't remember now.

Q. Give me an idea of it. A. I cannot.

Q. Who were the doctors, their names? A. Well, when my wife was in the sanitorium, she was in Morristown—above Morristown somewhere, I forget the name of the sanitorium where she was.

Q. How much did you pay the sanitorium there? A. I don't remember.

Q. How much did you pay the doctors there? A Well, I don't remember. We were paying so much a week and so much to the doctors, and for private doctors.

Q. How much a week were you paying? A. I don't know what they were charging. It was in Roll, Roll something. Something that starts with "R".

Q. How long was she there? A. She was there about all summer, I think.

Q. How long, how many months? A. 1926, it was, 1926.

Q. How many months? A. I don't remember now.

Q. And you don't know how much a week or how much a month you were paying? A. I don't remember what I was paying.

Q. And, at that time, where were you living? A. That was in 1926. I don't remember whether I was in Florida or here.

Q. How much were you paying for your board and lodging in Florida? A. Why, I stopped in different places.

Q. How much were you paying? A. I have no record of this, what I was paying.

Q. Were you spending $500 a week? A. I didn't spend $500 a week, but maybe some weeks I spent more.

Q. What for? A. Well, as I say, some doctors.

Q. What doctors did you see in Florida? A. For myself?

Q. Yes. A. Well, not only in Florida, but I was here.

Q. What doctor in Florida, I am asking you. A. Florida I believe his name was Kedan.

Q. How do you spell that? A. I don't know.

Mr. Jordan: Spell it K-e-d-a-n.

Q. Where is his office? A. It used to be on 4th Street, 4th Street.

Q. Miami? A. Miami.

Q. Now, how much did you pay him altogether? A. Dr. Dubrin.

Q. Dubrin? Where is his office? A. In some

office building, in an office building.

Q. Where? A. In Miami.

Q. Where is that building? A. I don't remember the name of it.

Q. How much did you pay him? A. I don't remember what I paid.

Q. What did you pay the first doctor that you named? A. I don't remember what I paid him now.

Q. How much a visit did you give him? A. I don't remember what it was.

Q. How many visits did you make to him? A. Oh, a lot of them. I had more doctors.

Q. What are their names—in Florida? A. Well, one advised me an operation.

Q. What is his name? A. Took an X-ray of me.

Q. What is his name? A. I can't remember now. He is on Lincoln Road.

Q. How much did you pay him? A. I don't remember. He took X-ray pictures and advised an operation and I had to go to Cuba.

Q. Did you go to Cuba? A. Yes, sir.

Q. And what did you do in Cuba? A. For my health.

Q. What did you do, just live there? A. That is all.

Q. Did you have the operation? A. No, I did not.

Q. How much were you paying, when you were in Florida, for your board? A. In Florida, I went out for meals.

Q. How much were you spending for your room and board there? A. Well, I had different terms because I spend more than for room and board—I spend for—(interrupted).

Q. Just let me ask you that. First, tell me how

much money you are spending for room and board. A. Well, I spent about three dollars a meal.

Q. Where you were rooming? A. Oh, in different places I was rooming.

Q. How much were you paying for your room? A. I don't remember now.

Q. On the average? A. Well, some places five dollars a day, six dollars a day.

Q. Were they hotels? A. Hotels.

Q. What is the name of them? A. And ten dollars a day, too.

Q. What is the name of them, that you paid that price? A. I don't remember now the names of them. It is a long time.

Q. In the year 1927, how much did you spend that year? A. I don't remember.

Q. How many maids or servants do you keep? A. Well, when I was in Florida, I didn't have any.

Q. How many did you keep in Newark? A. We had a maid.

Q. One? A. One.

Q. One. And how much did you pay her? A. I don't remember what she got, seventy dollars, I think, 70 or 80 dollars.

Q. Did you keep a chauffeur? A. No, sir.

Q. You spent this money just for yourself and your wife, didn't you? A. No, sir; no, sir.

Q. What else did you spend it for? A. Well, different people, you know, going out.

Q. What people? A. Well, you know, treating sometimes.

Q. Treating to what? A. I was to theatre parties and some things.

Q. Where? A. Florida.

Q. And how many people did you take out any

one time to the theatre? A. Sometimes three, four.

Q. How much did you spend, during the year 1927, altogether? A. I don't remember. I didn't keep track of it.

Q. How much did you spend during the year 1928? A. Didn't keep track of it.

Q. Did you give any money to Samuel Kaplan? A. No, sir.

Q. Never? A. No, sir.

Q. Do you know Nathan Rice? A. Nathan Rice? What is he?

Q. Don't you know Nathan Rice? A. I can't remember.

Q. He is a painter. A. I don't remember.

Q. He belongs to the same lodge with you. A. He may belong to the same lodge, but I don't meet him.

Q. Do you know anybody by the name of Nathan Rice at all? A. I can't remember now.

Q. How much of that sixty-five or seventy thousand dollars have you left now? A. Nothing.

Q. When did you spend it all? A. During all the time.

Q. When did you spend the last of it? A. The last money I spent in Florida.

Q. You spent the last money of this $70,000 right before you came North for this trial, did you? A. Yes, about.

Q. Did you give any of that money to your wife? A. That money? To the corporation, to the Roselle Park.

Q. No, to your wife? A. No.

Q. Did you give any of that money to your son? A. No, sir.

Q. Did you give any of that money to your daughters? A. No, sir.

Q. Did you give any of that money to any other person who is keeping it for you? A. Nobody is keeping it for me.

Q. I say, did you give it to anybody to keep for you? A. No, sir.

Q. Have you any bank accounts today? A. No, sir.

Q. No place? A. No, sir.

Q. And you want to say that you have spent all of this sixty-five or seventy thousand dollars? A. Yes, sir.

Q. It has all gone? A. Yes, sir.

Q. Cannot produce the checks or the vouchers or the statements from the bank, can you? A. I haven't got them now.

Q. You haven't got them? A. No, sir.

Q. And you want to say that you spent that money since May, 1926, for yourself and your wife, on living, entertaining and whatever doctors you had? A. We had children.

Q. What? A. Yes, sir.

Q. That is what you want to say? A. Yes, sir.

Q. And you don't know how much of it you spent in the year 1926, do you? A. I don't remember.

Q. Or the year 1927? A. I didn't keep track of it.

Q. Or the year 1928? A. The same answer, I didn't keep track of it.

Q. Or the year 1929? A. I didn't keep track of it.

Q. You didn't know how much you had left on the first of the year 1927, did you? A. No, sir.

Q. Or the first of the year 1928? A. I don't know now. I don't remember.

Q. Or the first of the year 1929? A. I don't remember it.

Q. Did you make an income tax report for the year 1926 for the United States Government? A. I did.

Q. Did you report this sixty-seventy thousand dollars? A. I did.

Q. How much of that was profit to you? A. I don't remember that.

Q. How much income tax did you pay for that year? A. I don't remember.

Q. Did you buy any stocks or bonds with that money? A. No, sir. I don't deal in that.

Q. Did you buy any property and put it in somebody else's name? A. No, sir.

Q. Or any mortgages? A. No, sir.

Q. Or any building and loan stock? A. No, sir. I didn't buy it.

Q. You are penniless today? A. I got a couple of pennies.

Q. How much have you got? A. Got a few dollars.

Q. How many? A. Five or six dollars.

Q. And that is all? That is all you own in the world today? A. Yes, sir.

Q. Isn't it? A. Yes, sir.

Q. Outside of five or six dollars, you have got in your pocket, you don't own a thing? A. I have —I have in Florida property.

Q. Well, you mean, you got a contract for the property, that is on Twenty-eighth Avenue, isn't it? A. On Twenty-eighth Avenue.

Q. Have you got any other property than Twenty-eighth Avenue? A. I got the Gotham Realty Co.'s money.

Q. Where is the Gotham Realty Co. today? A. Today, I don't know.

Q. How long since you heard about them? A. Well, one of them, I believe, is in Florida, one brother from the Gotham Realty Co.

Q. Did it go into bankruptcy? A. I don't know. I can't tell his name.

Q. When did you put your money in that? A. 1925.

Q. How much did you put in? A. Between twelve and fourteen thousand dollars, something like that.

Q. And when did they stop business? A. I don't know.

Q. When is the last time that you saw their office? A. I don't remember that.

Q. When you executed this deed to your son, Harry Bender, on April 22, 1926, what did you get from him for this deed? A. For this deed?

Q. Yes. A. I got from him—I got from him something like $40,000.

Q. In cash? A. Yes, sir.

Q. That day? A. No, sir, not that day, before.

Q. When before? A. After he sold a piece of property on Avenue "C", Vanderpool Street.

Q. And when was that? A. That was about—I don't remember the date—right after the deed was closed.

Q. What deed? A. When Vanderpool Street was sold.

Q. How long before you gave this property did you get that money, a week, two weeks, a month? A. No; it was later. I took—I don't remember the dates, you see, that is the whole thing.

Q. Well, you remember the date you gave this deed, don't you? A. What deed?

Q. April 22, 1926. A. To whom?

Q. To your son, Harry? A. Yes, sir.

Q. Where did you give him that deed? A. Here.

Q. Where? A. Here in Newark.

Q. Where in Newark? A. I suppose, in my house.

Q. Don't you remember where you gave it to him? A. I don't remember whether it was in a lawyer's office or in my house.

Q. Did you get the money that day from him? A. I got the money before.

Q. How long before? A. When the property was conveyed to the Fidelity Union Co., at that time.

Q. How long before you gave the deed did you get $40,000 from your son, Harry? A. It was quite some time before.

Q. How long, a month? A. It was more than a month.

Q. Two months? A. I forgot the day that it was.

Q. It was more than a month, wasn't it? A. It was the day when—after when it was conveyed to Fidelity Union Co., Vanderpool and Avenue "C".

Q. And your son gave you $40,000 in cash? A. Yes, sir.

Q. Where did he give you that? A. That was —well, that property, Vanderpool and Avenue "C", was bought by my son, but I took the title—the contract—in my name, because they wanted me to be on the bond, the people who sold him that, and he had it for about four months or five months, the Vanderpool Street property, and then he sold it to the Fidelity Union Title Co. or Trust Co.

Q. Well, that property was always in your name, wasn't it? A. Well, I took it—

Q. Yes or no. A. I took it in my name.

Q. Yes. It was in your name. A. But it belonged to him.

Q. So that, really, your son did not hand you $40,000 in cash, did he? A. No. The check was made out to me.

Q. From the purchaser of this property? A. Yes, sir; I presume so, made the check—

Q. What did you do with that check? A. — was made out in his name. I don't remember that.

Q. What did you do with the check for $40,000? A. I deposited it.

Q. Where? A. I don't remember that.

Q. Broad & Market Street? A. I don't remember whether that was the Broad & Market or in Florida.

Q. Well, you got that right here in Newark, didn't you? A. The money, yes. Let me see, I wasn't there at the time of the closing, I think. I think I was in Florida. I think he took that money. I don't remember that, whether that was deposited here in Newark or in Florida.

Q. Well, now, tell me exactly what other moneys your son, Harry, gave you for this deed of April 22, 1926. A. That was—no, there was no more money for this deed.

Q. That is the only thing? A. For this deed?

Q. Yes. Now, did you have a contract with your son to sell this property? A. No, sir. He bought it.

Q. Well, you know when you sell property you usually have a contract to sell it, don't you? A. When we sell—when we sell it, yes; we had the contract with the Fidelity Union, yes.

Q. No, I am speaking now of this property that you sold to your son. A. Yes.

Q. Did you have a contract with your son? A. We had.

Q. A contract with your son? A. That I bought —that I bought for him, yes, sir.

Q. No, I am speaking now of the property that you turned over to your son—not bought. A. You mean, the money?

Q. No. A. Well, I don't know what you mean.

Q. I am speaking about Goldsmith Avenue. A. Oh!

Q. Understand? A. I see.

Q. Did you have a contract with your son, to sell that to him? A. Yes, sir.

Q. Where is it? A. I haven't got it.

Q. When did you see that last? A. That contract?

Q. Yes. A. When I conveyed the property to him; we figured up what it was worth, all this property, Goldsmith property and others, and I made out a deed to him.

Q. Did you have a written contract? A. I don't remember. I think we had.

Q. Have you got it today? A. No, sir.

Q. Where did you see it last? A. Well, that was at the time that we settled up, when we closed up the deal.

Q. How much did you figure these properties were worth that you were turning over to your son? A. We figured less than what I got for them.

Q. No. How much did you figure these properties were worth? A. I don't know exactly now. The figures will come out and maybe my son will be able to explain.

Q. You don't remember? A. I don't remember,

but I know it was a little bit less than this amount what I got from my son.

Q. Outside of the property of the garage which you were under contract to sell, did you have any other property in Newark except what you turned over to your son in this deed? A. You mean, at that time, when I turned over to my son?

Q. Yes. A. That was the garage.

Q. Outside of that? A. No.

Q. And, of course, you were under a contract to sell the garage, weren't you? A. I believe I was.

Mr. Jordan: Would you produce, Mr. Corn, the assignment of the mortgage from Davis Bender to his son?

Mr. Corn: No, I haven't got it.

Mr. Daniels: The mortgage was paid off. Maybe it can be stipulated on the record.

Mr. Corn: It was paid off since the institution of the suit and that assignment was turned over to the mortgagor.

Mr. Jordan: Will you produce the contract that he speaks about, whereby he sold this property to the Fidelity Union Co.?

Mr. Corn: Yes.

Mr. Jordan: I would like to see that.

(Paper produced.)

Mr. Corn: It was not made by the Fidelity Union. The property on Avenue "C" and Vanderpool Street, which was conveyed by Davis Bender and his wife and Harry Bender, was originally purchased from Davis Bender and his wife and Harry Bender by David Houston, who acted as agent for the Fidelity Union Trust Co.

Mr. Jordan: Of course, we are not bound by any such statement as that, but we have

no objection to Mr. Corn putting it on the record; but I have no knowledge of that statement.

Mr. Corn: You asked for the contract. I am showing you the contract.

Mr. Jordan: If this is the contract, that is all I am asking for; I am not asking for your statement.

Mr. Corn: You asked for the contract of the Fidelity Union. I am not showing you a contract of the Fidelity Union, I am showing you a contract on which the transaction was closed.

Mr. Jordan: That is the contract that you say that was sold on?

Mr. Corn: Yes, sir.

Mr. Jordan: I will offer that in evidence.

(Contract marked Exhibit C-22.)

Mr. Jordan: This is a contract made April 17, 1925, between Davis Bender, Molly Bender, his wife, and Harry Bender, vendors, and one David Houston.

Now, could you produce the deed to this property to Mr. Bender and his son?

Mr. Corn: No, that deed, as I understand it, was turned over to the Fidelity Union Trust Co., at the time the title was passed, but we haven't it.

Mr. Jordan: You haven't got it?

Mr. Corn: We haven't it.

Mr. Jordan: All right. Now, Mr. Corn, I want to read from this order about this four thousand dollar mortgage.

Mr. Daniels: That was a consent order.

Mr. Corn: Yes, that is in the record. The Vice-Chancellor will have it with his papers.

Mr. Jordan: I see.

Mr. Corn: You have got the abstract of the mortgage right in your complaint, and the assignment; you can question him from that. I admitted it in my answer.

(Discussion.)

Q. Mr. Bender, you remember the same day that you signed the deed, which is Exhibit 5, April 22, 1926, that you also turned over to your son, Harry, a bond and mortgage for $4,000, didn't you? A. Yes, sir.

Q. Did he pay you any money other than what you have told us about already for that assignment of mortgage? A. That takes in—we have figured it up what I owe and how much the property amounts to and then takes in that mortgage to cover and that was not enough yet to cover the debt.

Q. Can you tell me whether this property that you sold to the Fidelity Union Title Company was ever in the name of Harry Bender? A. I don't remember.

Mr. Jordan: I think that is all.

HARRY BENDER, sworn for complainant, testified as follows:

Direct-examination by Mr. Jordan:

Q. How old are you, Mr. Bender? A. Twenty-seven.

Q. Single? A. Huh?

Q. Where do you live? A. 92 Goldsmith Avenue, right now.

Q. And how long have you lived there? A. I have been living there since, I think it is, 1923.

Q. Is that when the house was built? A. That is when the house was built.

Q. Did your father build that house? A. He did.

Q. Did you engage in business with your father? A. Yes.

Q. Until when? A. Until he sold the garage.

Q. That was in 1926? A. That is right.

Q. Were you engaged with any other occupation or with any other person than your father, up to that time? A. With the exception of about six months, I was always with my father.

Q. And where were you in that six months? A. I was working for a furrier in New York.

Q. What arrangement did you have with your father about salary or wages? A. Well, when I was working for him, he just kept me and gave me spending money.

Q. That is, up until 1926? A. No.

Q. Well— A. That is previous to that, why, he gave me larger sums of money.

Q. Well, how long did he keep you as his boy, you might say, giving you spending money and keeping you at home? A. Until he left the State of New Jersey to make his residence in Florida; that is after he sold everything he had up here and he went to Florida to live there.

Q. Well, when was that? A. Well, he decided he was going to live in Florida when he sold the garage.

Q. Well, that was in 1926? A. Yes.

Q. So that, really, up to that time, you had not received any real money from your father, had you? A. I did.

Q. Well, when did you start to receive real money from your father? A. The first money I received from him was in 1923.

Q. Now, let me get this straight. Up to 1923 you were really living at home and he was giving you spending money? A. Yes, sir.

Q. Now, commencing in 1923, how much did your father pay you? A. He would—1923 he gave me a thousand dollars to go into business for myself, and I did that, and also took—and still took care of his business, for which he still continued keeping me and giving me spending money.

Q. What business were you in for yourself? A. Real estate business.

Q. When? A. I was building—during 1923, I started building some houses in Hilton.

Q. Under your own name? A. Under my own name and a partner.

Q. What was his name? A. Harry Hoffman.

Q. Did you have a corporation? A. No.

Q. How many houses did you build? A. We built two houses.

Q. And what type of houses were they? A. Well, one family.

Q. And what did they sell for? A. They sold one—oh, it was about $7500. The other one we still own, besides a lot.

Q. Now, you did that in 1923? A. We started that in 1923, yes.

Q. Now, in 1924, were you still working for your father? A. Yes.

Q. How much did you receive from your father in 1924? A. In 1924, he bought for me a parcel of land, in which he paid in for me—oh, it was about $6,000.

Q. Where was that parcel of land? A. That was on Avenue "C" and Vanderpool Street.

Q. Is that the property that was afterwards sold to the Fidelity Title Co.? A. Yes, sir, they took title to it.

Q. Now, your father bought that property for you? A. Yes.

Q. Just what do you mean by that statement? A. Well, he owed me some money then.

Q. For what? A. For the work I had done for him.

Q. What kind of work? A. Well, I did carpenter work, I took care of all of his books, I collected rents for him.

Q. And how much did he owe you for that? A. Well, there was no definite sum, but he promised that if I saw or he saw, a good parcel of land, to invest some money for me, he would do so. There was nothing—(interrupted).

Q. And did he buy that land and put it in your name? A. No, it was not in me, but he bought it.

Q. Did he put his money into it? A. It was my money, that is, he was giving—it was understood between us that it was my money that he was putting into it.

Q. I see. But it was really the money from his bank account that bought the lot? A. Yes.

Q. And you say that by doing that he was squaring himself for something he owed you for work you had done for him? A. That is correct.

Q. I see. Now, that was in the year 1924. Who built the garage on that property? A. My father built the garage.

Mr. Jordan: Well, this is off the record. (Discussion.)

Q. Well, now, Mr. Bender, is Mr. Corn correct in saying that this lot that your father bought for

$6,000, in 1924, just had some old factory buildings on it? A. It cost more than $6,000. That was the cash we put into it.

Q. How much did it cost altogether? A. About $20,000.

Q. And what did it have on it? A. It had on it a two story brick factory that was part of the old McCormick Leather Tannery.

Q. Did your father make any additions to those buildings, or changes in them? A. No.

Q. He sold them as they were, later on, didn't he? A. Yes, sir, we did.

Q. In the year 1924, did you have any other income except what you received from your father? A. I don't think so, unless—because I don't remember just the six months I was in the fur business, unless in the year 1924, that is when I was in the fur business.

Q. Assuming that it was, what were you being paid in the fur business? A. When I went in the fur business, I received, to start with, a salary of ten dollars a week. I was learning the business.

Q. And you were in it six months? A. About six months.

Q. And what were you getting when you left it? A. When I left the fur business, I was getting about twenty dollars a week.

Q. That wasn't very profitable, was it? A. No.

Q. Well, now, is it your recollection that that was in the year 1924? A. I wouldn't say—it is about that time, 1923 or—no, 1923 I was building, so it was probably in 1924.

Q. Did you file an income tax report in the year 1924? A. I did.

Q. How much did you make, altogether, that year? A. In 1924, no, I don't believe I did, be-

cause I had not sold property—that is, I didn't have an income of a thousand dollars that year.

Q. I see. Now, during 1925, how much did you receive from your father that year? A. In money?

Q. Yes. A. Why, I didn't receive any cash.

Q. What did you receive other than cash? A. I received some property.

Q. Where? A. Newark.

Q. Well, where in Newark? A. That was some property on Broad Street.

Q. I don't want to puzzle you, but do you refer to that property (handing witness paper)? A. Yes, that is right.

Q. Well, that is in the year 1926. A. Well, yes, this deed was made out in 1926, but we had an agreement between ourselves—

Q. I am only asking you as to what you actually received. Now, what did you actually receive from your father in the year 1925? A. Well, is that—nothing except the spending money.

Q. Did you have any other source of income? A. Nothing whatsoever.

Q. And did you file any income tax statement for that year, 1925? A. I believe I did.

Q. And do you remember how much you reported as having made that year? A. Well, I know I had—because profits that I had made on Vanderpool Street and Avenue "C".

Q. When was that property on Avenue "C" actually sold and the money delivered? A. It was in the spring of 1925.

Q. Well, now, look at this Exhibit 22 and refresh your recollection on that. A. (Witness does as requested.)

Q. Now, can you state when you received the money for the property on Avenue "C"? A. Why, I told you before, I didn't receive cash.

(Copy of deed produced.)

Q. Speaking of this property on Avenue "C"—

Mr. Daniels: There are two properties.

Mr. Jordan: I am speaking now of the Tansey property. Understand that?

Q. Did you ever have any title to the property? A. I had no recorded title, no.

Q. Can you tell me why it was that you signed this deed to the Fidelity Union Trust Co. on June 15, 1925? A. Yes, because it was my property and the agents for the property knew it was my property and they had me join in the deed.

Q. But you had no title of record, did you? A. No.

Q. The record title was always in your father? A. That is right.

Q. Now, in the year 1925, outside of the money that you received for this property from the Fidelity Union Trust Co., did you receive any other money? A. From my father?

Q. From any place. A. I believe I did.

Q. Where? A. Why, I borrowed some money.

Q. From whom? A. My mother.

Q. How much did you borrow from her? A. Oh, I couldn't tell you just how much it was that I borrowed in 1925. It was—(interrupted).

Q. About how much? A. It was various sums.

Q. Small or large? A. Well, it may be several thousand dollars.

Q. A couple of thousand dollars, altogether? A. No, it was probably more than that.

Q. How much more than that? A. Oh, I don't know. Probably between 1925 and since then I know I have borrowed as much—(interrupted).

Q. No. Now, just stick to 1925. A. 1925.

Q. Did you make any money in 1925 other than the transaction with the Fidelity Title Co.? A. In my own name?

Q. Yes. A. No.

Q. And were you borrowing from your mother at various times during 1925? A. Not in my own name.

Q. Well, now, I understood you to say that you borrowed some moneys from your mother? A. Yes, I did; that is right, I did.

Q. Well, were you borrowing that every once in a while? A. Yes.

Q. During the year 1925. And have you borrowed money during the year 1926? A. I did.

Q. And the year 1927? A. Yes.

Q. And the year 1928? A. I don't believe I borrowed any from her in 1928.

Q. Did you have a bank account in the year 1925? A. I don't recall.

Q. Did you have one in the year 1926? A. Yes.

Q. Where? A. At the Broad & Market National Bank.

Q. Have you still got that account? A. No; I closed it out last year.

Q. What was your average balance in that bank? A. I never stopped to figure it out.

Q. Well, was it ten thousand? A. No.

Q. More or less? A. Less.

Q. How much less? Would it average a thousand? A. I imagine so.

Q. About a thousand dollars? A. About that. I don't know.

Q. Didn't you have any other bank account? A. In my own name?

Q. Yes. A. Well, when I left—I left the Broad

& Market and I started an account at Hayes Circle National Bank.

Q. Hayes Circle National Bank? A. I think that is the name of the bank, the one at Hayes Circle.

Q. Have you still an account there? A. No, I have not.

Q. When did you close that out? A. I closed that out when I went to Florida.

Q. When was that? A. That was the beginning of December, last year.

Q. What other bank account did you have in the year 1926? A. I may have had a couple of small savings accounts, just probably a few hundred dollars in it.

Q. Have you still got them? A. No, I have not.

Q. In the year 1927, how many bank accounts did you have? A. About the same.

Q. An average balance, say, of about a thousand dollars? A. About that.

Q. And the year 1928, the same? A. I guess so.

Q. And in 1929, about the same? A. No. My balance this year has been less than that.

Q. Commencing in the year 1926, how much did you pay your father or give to him? A. 1926, I don't believe I gave him any money.

Q. When did you start to give your father money? A. Well, I gave to him some sums for the past six months or so.

Q. Before the past six months did you ever give him any money? A. I don't believe so.

Q. When did you first hear about this note for $10,000 that your father owed Williamson? A. Oh, in—when Williamson commenced suit.

Q. Didn't you hear about it before then? A. No.

Q. Are you sure about that? Don't nod your head, the stenographer has to get it. A. Yes.

Q. Is your father confidential with you? A. On some matters, and some matters he is not.

Q. Then he does not tell you his business? A. No.

Q. He never has? A. Yes.

Q. You have never felt that he told you all his business, have you? A. Well, he has always told me most his business, because I took care of it for him; that is, while he was up here.

Q. I see. And when he went to Florida in 1925, did you know about it? A. I knew he went to Florida, yes.

Q. Did you know he had bought some property down there from a man named Williamson? A. I did not.

Q. When did you first know that? A. When Williamson started suit.

Q. You didn't know it any time before that? A. No.

Q. That your father was living at home with you in September, 1926, wasn't he? A. I don't know.

Q. Do you know what time that year he was living at home? A. I do not. He used to come up here on—(interrupted).

Q. Did you ever hear of him coming to Yonkers, in September, 1926? A. No.

Q. Did he ever tell you that he was there? A. I don't recall that he ever did.

Q. When he was up North from Florida, he lived in the same house with you, did he? A. Yes, sir.

Q. And you are his only son? A. That is right.

Q. You worked for him and been in business with him since you are a boy? A. That is right.

Q. And he didn't tell you anything about this $10,000 note, did he? A. No.

Q. Not until the suit was commenced? A. That is right.

Q. You never knew a thing about it until that time? A. No.

Q. You were living home all the time, weren't you? A. That is right.

Q. And you saw a good deal of your father when he was North? A. When he was North?

Q. Yes; you saw a good deal of him, didn't you? A. I saw a good deal of him when he was North.

Q. Yes. How many months of the year in 1925 was he out of Newark? A. In 1925 he was out of Newark the greater part of the year, I believe.

Q. How many months? A. I don't remember how many months.

Q. In the year 1926, how many months was he out of Newark? A. I couldn't tell you how many months. I don't know, I don't remember.

Q. And the year 1927, how many months was he out of Newark? A. I don't remember how many months.

Q. Or the year 1928? A. 1928, he was in Newark the greater part, I believe, of 1928.

Q. Yes. You are single? A. Yes.

Q. Never been married, have you? A. No.

Q. Does your mother go to Florida? A. Yes, sir.

Q. Does she always go with your father? A. Well, they lived together down there.

Q. No. Is she always with him when he is in Florida? A. I don't know what you mean.

Q. Well, that is a simple question. A. Well, I said they lived down there together and then you asked me, is she always with him.

Q. When he is in Florida. A. Yes.

Q. She never stays up here when he goes to Florida, does she? A. Yes.

Q. She does that, too? A. Yes.

Q. So there are times when he is in Florida that she is up home here? A. Yes, very often.

Q. What do you know about the Sivad Realty Co.?

Mr. Corn: I would like an objection at this time, to any such question, as this is an examination of assets of Davis Bender.

Mr. Jordan: Yes. And he said he mortgaged his household furniture to the Sivad Realty Co. It is about that that I am questioning this witness.

The Master: I will allow it.

The Witness: What is the question?

Q. What do you know about the Sivad Realty Co.? A. About this mortgage?

Q. No. What do you know about the company? A. Why, the company has had an auction sale and I bought—that is, they held a chattel mortgage on the furniture to my house and I bought the furniture in at public auction.

Q. When was the auction? A. The auction was —I don't remember the date it was.

Q. The mortgage was made in June, 1926. A. That is it, the mortgage.

Q. (Handing witness paper). When was the auction? A. November the 25th, 1927.

Q. Are you a stockholder of the Sivad Realty Co.? A. Yes.

Q. Are you an officer of that company? A. Yes.

Q. Are you a director of that company? A. I believe I am.

Q. And were you all of those since the beginning of the company? A. No.

Q. When did you first acquire stock in the company? A. Oh, a few months after the company was organized.

Q. And at that same time you became a director and officer, didn't you? A. I believe so.

Q. And in whose office did you purchase the stock or have it transferred to you, some lawyer? A. I don't remember.

Q. Who was the lawyer in charge of that company? A. I don't know. Let's see. I think it was Feit was in charge later. I don't know whether he organized the company or not.

Q. But when you were interested in it, Louis Feit was the lawyer, wasn't he? A. I believe so.

Q. How many shares did that company have? A. Well, it has a paid-up capital of twelve hundred —of twelve shares.

Q. And how many shares did you own? A. I don't know. About four or five, I think.

Q. Did Samuel Kaplan own some? A. Yes.

Q. And did Harry Hoffman own some? A. Yes.

Q. What was the business of that company? A. Well, general real estate.

Q. Was it in the business of loaning money on chattel mortgages? A. It was in the business of loaning money on almost anything it could make money on.

Q. Did you make any other chattel mortgages than this one on your father's furniture? A. No.

Q. Did you make any other loans of any kind except this one to your father through that company? A. Yes.

Q. To whom? A. That is, chattel mortgage loans?

Q. That is the only chattel mortgage? A. Yes.

Q. What did that company do? A. Loan money out on mortgages.

Q. Has it still got that money out on mortgage? A. Yes.

Q. How much money did it loan out? A. Well, about $20,000.

Q. And who put up the money? A. I loaned it to the company.

Q. How much? A. About 20,000.

Q. When? A. At various times.

Q. Beginning when? A. After I entered the company.

Q. How much did you loan the company in the year 1926? A. I don't remember just how much.

Q. Who has charge of the books and records of that company now? A. I don't know. I believe I have them.

Q. At home? A. I don't know whether they are at home or whether I have them in Florida.

Q. Are you living in Florida now? A. I intend to go back to Florida as soon as this case is over.

Q. I see. Those goods and furniture covered by this chattel mortgage was the property of your father, wasn't it? A. That is right.

Q. And was in the home that you and he were living in? A. That is right.

Q. Was it ever moved out of that home? A. It has been moved out, yes.

Q. Was it ever moved out before this sale? A. No.

Q. Where is it now? A. I have some at that address and some in storage.

Q. Who used this automobile, Studebaker sedan, after this mortgage? A. After the mortgage? Well, we both used it.

Q. Where was it kept? A. Why, when my father was in Newark, when I was using it, it was kept in the rear of 92 Goldsmith Avenue. I know I loaned it to him and he went and took it down to Florida with him.

Mr. Jordan: I see. I will offer this in evidence, chattel mortgage sale in November, 1927, together with a sheriff's bill of sale attached.

(Paper marked Exhibit C-23.)

Q. Where did you get the $20,000 that you loaned the Sivad Realty Co.? A. I borrowed it.

Q. From whom? A. My mother.

Q. All of it? A. Yes, sir.

Q. Do you know where she got it? A. I believe I do.

Q. Where? A. I believe she got it from my father.

Q. Did you ever have $20,000 in your own bank account at one time? A. No.

Q. Did you ever have $10,000 in your own bank account at one time? A. Yes.

Q. When? A. Why, I don't recall the dates.

Q. And in what bank? A. Broad & Market National Bank.

Q. And was that your own money or— A. Why, it was either my own money or money I had borrowed.

Q. And would that be the same money that you borrowed from your mother? A. Probably.

Q. Now, when was the Bender Construction Co. incorporated? A. It was in August, I think, 1926.

Q. And the parties interested in that concern are yourself; your mother, Molly Bender, and your sister, Hortense Bender? A. That is correct.

Q. How many shares of that company do you own? A. I own all the shares except two.

Q. And those two shares that you do not own, aren't they really held for you? A. That is right.

Q. Have you ever had a directors' meeting of that company? A. Yes.

Q. When? A. I don't recall offhand just when.

Q. Where do you hold the directors' meetings? A. Well, it may have been up in my house or at the office of the lawyer.

Q. Who is the lawyer? A. The lawyer that represents me in most of the work of that company, Max Schwartz.

Q. Didn't Louis J. Feit file this certificate for you? A. No, he never had anything to do with it.

Q. You never had anything to do with him? A. (Witness nods no.)

Q. Where are the books of this Bender Construction Co. today? A. I don't know. You see, when I went to Florida I left some books home and some I took with me, and I may have them here and I may have them there.

Q. You don't know. When did you see them last? A. Oh, just before I left for Florida.

Q. When was that? A. Beginning of December, last year.

Q. Has this company a bank account? A. Yes.

Q. Where? A. At the Broad & Market.

Q. Who signs checks? A. I do.

Q. Anybody else? A. No.

Q. Do you draw a salary from this company? A. When the company is actively engaged in doing building, why, I draw a salary; otherwise, I do not.

Q. Did this company ever do any building? A. Yes.

Q. When? A. 1926.

Q. What did it build? A. It built some houses in Hillside.

Q. For whom? A. Myself.

Q. How many houses? A. Two.

Q. Did it build those houses as contractors? A. Not as contractors for me. It built them as contractors for itself.

Q. I see. The corporation built the houses? A. The corporation built the houses.

Q. Who put the money in to build the houses? A. I did.

Q. Your father was also building in Hillside, wasn't he? A. No.

Q. He had built there? A. Never, as far as I can remember.

Q. What other building operations did this Bender Construction Company do? A. Those are the only complete buildings that they erected.

Q. Did they make a contract? A. For what?

Q. To build? A. To build, no.

Q. Do they own any property today? A. Yes.

Q. What? A. They own some property on Broad Street.

Q. What number? A. 1240, 1242 and 1246.

Q. That is property that you conveyed to the company? A. Yes.

Q. What else does it own? A. It owes 8 and 10 King Street.

Q. Is that property that you got from your father? A. That property was sold to me.

Q. Yes. And you gave that to this company, also? A. Yes.

Q. And what else? A. Let's see. What else? I think that's all I transferred to that company. There may be something else, I don't know.

Harry Bender—Direct.

Q. When you transferred these properties to the company, what did you get from the company? A. Stock.

Q. You told me that the company was organized in August, 1926? A. Yes.

Q. Is that the time that you transferred the property to that company? A. No.

Q. When did you transfer the property to the company? A. Oh, I don't know. It was some time later. I don't remember the date.

Q. Well, didn't you own 28 shares of this stock from the beginning? A. Yes.

Q. So that the company really does not own, and never did own, any other property and money except what you transferred to it? A. And what I built.

Q. And what you built? And the money you supplied for the building, didn't you? A. Yes.

Q. Did this company sell those buildings? A. Yes.

Q. And did you then repay the money to yourself —to the company that you loaned it? A. No.

Q. What happened to that money? A. Why, I paid back most of it to people that I owed.

Q. Yes. You withdrew money from that company to pay your bills? A. Yes.

Q. And it was withdrawn, though, on your account? A. I presume so.

Q. When is the last directors' meeting that you were at for the construction company? A. I don't remember.

Q. When was the last stockholders' meeting of this company? A. I don't remember. It would be at the same time.

Q. You are the whole company, aren't you? A. Yes.

Q. You are the principal officer? A. Yes.

Q. And have all the stock and run the company? A. Yes.

Q. Do you draw a salary from it? A. As I say before, just when it is actively engaged in building.

Q. And was it active in the year 1927? A. I drew salary until the houses were completed.

Q. When were the houses completed? A. Well, I don't recall the date.

Q. When is the last salary you drew? A. When? I don't know. And since then, since the houses have been completed, from time to time, if I needed some money for something, I drew the money out as salary, but no weekly salary.

Q. How much did you draw on the average for salary? A. While I was building the houses?

Q. Any time. A. I don't know. I forget the average.

Q. Haven't you any idea? A. No. It must be a small average. I don't know. Less than fifty dollars.

Q. How much did you draw from that company in the year 1928? A. I don't remember.

Q. Well, the company conducted some alterations at 92 Goldsmith Avenue, didn't it? A. Yes.

Q. And under whose direction? A. Under my direction.

Q. And what did it do there? A. It converted the house from a two family to a three family house.

Q. And how did it do that, by making the necessary changes in the house on the upper floor? A. Yes.

Q. And that is what you occupied? A. The second floor, yes.

Q. So that the company did the work in the

floor that you occupied? A. And—yes.

Q. And did the company have a written contract? A. No.

Q. What kind of an agreement were you working under there? A. Why, I was working under a percentage agreement, whatever—

Q. What kind of percentage agreement? A. Why, whatever the job cost, I would do about 5% above that.

Q. Who did you have that understanding with? A. With Mr. Kaplan.

Q. Was it in writing? A. No.

Q. When did you make it? A. Made the agreement just before I started to work.

Q. When was that? A. Oh, I must have started to work—I think it was about October of last year.

(Noon Recess.)

Q. How long did that job take you? A. It took several months.

Q. What did you do? A. Partitions, redecorated the second and third floors, had the floors scraped, refinished, had the—down in the basement had fireproof doors put in, had the ceiling covered to comply with the tenement laws.

Q. Under what— A. To make the house comply with the tenement laws.

Q. How many new rooms did you create? A. Well, some of the partitions were up. There were no actual new rooms.

Q. I see. A. There was a new hallway put in.

Q. And did you have to raise the roof? A. No.

Q. Did you file a plan for that? A. Yes.

Q. In the Building Department? A. Yes, right on this floor here, in the back.

Q. And who prepared that plan? A. That plan

was one of the original plans that the house was built with, but I made some changes on it myself.

Q. I see. You changed the plan? A. Yes.

Q. And filed it as an amendment. Did you subcontract the work? A. Some of it.

Q. What? A. The painting.

Q. To whom did you give that? A. The painting to—I don't remember his name. He is from Montclair, he used to do business under the—or was connected with the Rose Decorating Co.

Q. And how much did that contract call for? A. I don't remember just exactly what it was.

Q. How much? A. Oh, cost four or five hundred dollars.

Q. Did you have it in writing? A. Yes, I think so.

Q. Have you got that contract here? A. Not here. I have it with my papers.

Q. What other contract did you have? A. I guess that is the only subcontract I gave out.

Q. Did you employ men? A. Yes.

Q. How many? A. I employed a carpenter to put up the partitions, and laborers.

Q. How long did you have a carpenter? A. Carpenter—oh, I don't know. He didn't work steady, he worked on and off, probably the total amount of work that he did on and off was probably two weeks.

Q. How many partitions did you build? A. One partition.

Q. How many laborers did you have? A. Two.

Q. And what work did they do? A. They filled in the stairs, broke out the walls about close to the ceiling and we had to fill in all the walls around the front and rear stairways with ashes and make them fireproof.

Q. That is, in the halls? A. Yes, around the stairways, on the hall partition.

Q. I see. Did they do any other work than that? A. The laborers—I think that is all they did.

Q. How many rooms are there on the third floor? A. There is four rooms.

Q. Are those the rooms you occupy? A. Yes, sir.

Q. How much rent did you pay for those? A. Thirty dollars a month.

Q. And to whom do you pay it? A. The Profit Realty Co.

Q. Have you got a lease with them, written lease? A. I don't think so.

Q. You pay your rent in cash or check? A. Check.

Q. All the time by check? A. Yes.

Q. How many rooms on the second floor? A. Six rooms and sun parlor.

Q. Who lives there? A. It is vacant.

Q. How long has it been vacant? A. Two or three days.

Q. Who lived there before? A. Some people by the name of Schwenger and some people by the name of Zanitzsky, a couple of families were there.

Q. I see. Who else lives on the first floor? A. Robert Gordon.

Q. How much rent do they pay for the second floor? A. I think they paid $120. They did pay, when they were there.

Q. How much do they pay for the first floor? A. When they were my tenants, they were paying $125 a month.

Q. Do you know how much they pay now? A. I don't know what they pay now.

Q. You hold a mortgage of $15,000 on that building, don't you? A. Yes, sir.

Q. How much interest, if any, is owing to the owner of that mortgage? A. Six months' interest.

Q. Since when? A. That was due this month.

Q. April? A. Yes.

Q. How well do you know Samuel Kaplan? A. I know him ever since he lived in Newark; it is about twenty years.

Q. Been in his home? A. Not very much, no.

Q. Has he been in yours? A. Yes.

Q. He is an old friend of your father's, isn't he? A. Yes, sir.

Q. You have known him all your life? A. Ever since we lived in Newark, it is about twenty years.

Q. Been in his home? A. Not very much, no.

Q. Has he been in yours? A. Yes.

Q. He is an old friend of your father,s isn't he? A. Yes, sir.

Q. You have known him all your life? A. I am more than twenty years old.

Q. Well, you have known him ever since you were a boy? A. Yes.

Q. Do you pay any money from the Bender Construction Co. to your father? A. No.

Q. Have you ever paid him any money from that company? A. I don't know. There is a possibility that I may have.

Q. For what would it be, if you did? A. Probably just give it to him.

Q. Did you pay your father any money from the Sivad Realty Co.? A. I don't believe so.

Q. Are you sure? A. I said, "I don't believe so."

Q. If you did pay him any money, would that be a loan? A. No.

Q. What would it have been for? A. It would

have been because he was short of a little money and I gave it to him.

Q. That would be a loan, wouldn't it? A. Well, you can call it a loan or a gift, a few dollars, nothing very large.

Q. When the Sivad took this chattel mortgage, did they give the money to your father in check or cash? A. I don't recall.

Q. Who gave it to him? A. I don't get that clear.

Q. Who gave it to him? A. The mortgage?

Q. No, the money. Who handed the money to your father? A. Oh, I guess I did.

Q. And where? A. It may have been in the house.

Q. Can you tell me where this deed of April 25, 1926, Exhibit 5, was delivered to you (showing witness paper)? A. I think I can.

Q. Where was it? A. This deed was signed, I guess, in Feit's office and was mailed to me by the Recorder.

Q. Did you ever have that deed in your hands before you received it from the Recorder? A. I may have.

Q. Will you swear that you did? A. No, it is too long back, again, I wouldn't swear that I did.

Q. Louis J. Feit is not your attorney, is he? A. Not at the present time.

Q. When was the first time that you knew that this deed was made? A. When the deed was signed.

Q. Did you know it that day? A. Yes.

Q. Who told you? A. Well, I know they were going over to Mr. Feit's office to sign a deed. I may have been there.

Q. Who told you that—you might have been

there? A. I might have been there.

Q. Will you say you were there? A. No. My recollection is too hazy. I won't swear that I was there.

Q. You have been in Feit's office? A. Yes, a great many times.

Q. Yes. What was the value of this Goldsmith Avenue property, the first tract, on the day that you took this deed? A. Oh, about $16,000.

Q. And what was its value in the next year, 1927? A. Well, the value of it was more than $16,000, of the house.

Q. What was the value of it then at the date of the deed? A. Well, I don't know just exactly what the value of it was; I know I took it in for sixteen thousand dollars, was about what the house cost to build.

Q. Did you have any contract with your father to take this property, written contract? A. No.

Q. Were there any mortgages on this Goldsmith Avenue property? A. No.

Q. Now, this second parcel, 1246 South Broad Street; what was the value of that property on the date of this deed? A. Well, I don't know just exactly what the value of it was, at that time, but before that deed was made I had made verbal agreement with my father that that property belonged to me.

Q. What was the value of it on this day? A. I don't know what the market value of it was.

Q. Did you know the property? A. Yes.

Q. What mortgages were on it? A. There was a mortgage on it for—one for $2500; I think there was one for $3300; I think there was one for about $5,000—I think—or something of that sort.

Q. Who holds those mortgages? A. One by Glick.

Q. Glick. What is his first name? A. E. Glick. One by—it was either Headley—and one is Brown; I don't remember the first name.

Q. And were those mortgages on account of the transfer of the property from one party to another? A. Those mortgages were on there a long time.

Q. And what did they total? A. The mortgages? 10

Q. Yes. Perhaps you can tell us. A. I think about $9600.

Q. I see. And what would you say the value of the property was? A. Oh, about $12,000.

Q. Now, this third tract on King Street, do you know that property? A. Yes.

Q. Two vacant lots, were they? A. There was a house on it when I took it over.

Q. What are the dimensions of that property? A. That property ran through from King Street 20 to Wright Street, is about eighty feet, I think.

Q. What was the width of it on the street? A. I don't know. I think it is about forty feet, or so.

Q. And what were they worth the day that you took them? A. Oh, about $6,000.

Q. Any mortgage on it? A. Yes; there was a building and loan mortgage on it.

Q. Was it on at that time? A. Yes.

Q. How much? A. There was a $2200 building 30 and loan mortgage.

Q. Is that all? A. Yes.

Q. Have you reduced that? A. Yes.

Q. The property 1240 and 1242 Broad Street, what are the dimensions of that property—the fourth tract? A. The two together?

Q. Yes. A. Has a frontage of about sixty feet and the back of it is not—is irregular, runs on an angle; it must be about 80, 85 feet.

Q. And what was that worth the day that you 40

took this deed? A. I don't know. We took—we figured the three of them together.

Q. What would you say that these two lots were worth? A. About $8,000.

Q. What mortgage was on them? A. The Brown and Headley mortgages.

Q. Now, let me get this straight. A. I think that is the way it stands.

Q. There was only one mortgage on each of these— A. No. I am wrong on that, I think. I don't know just which mortgages are on which property. I believe it is the Brown and Headley mortgages on the property.

Q. One mortgage on each of these lots on Broad Street? A. To tell you the truth, I don't know.

Q. You have owned this property since 1926? A. Yes, sir.

Q. And it is now owned by the Bender Construction Co., of which you are the whole director? A. Yes.

Q. And you cannot tell us the amount of the mortgages on this property? A. Yes. I have told you the amounts of the mortgages.

Q. Well, tell me the amount of the mortgage on 1240 Broad Street. A. No; I can't tell you what individual mortgage is on each individual parcel.

Q. Well, is there more than one mortgage on any one parcel? A. I don't believe so.

Q. Do you mean, when you say $8,000, that each of these properties is worth $8,000? A. No.

Q. Taken together, they are worth $8,000? A. You asked me once 1240 and 1242 are worth.

Q. Yes. And I told you—(witness nods yes)—$8,000 for two. Just say yes, so the stenographer can get it.

Q. Now, this property, the fifth tract, on the

eastern side of Avenue "C", and the sixth tract, which is an adjoining property, you own a half interest in those, don't you? A. I did.

Q. Well, the company owns them now, is that what you mean? A. No.

Q. Who does? A. I sold them.

Q. When? A. I sold them—well, I guess it must have been in 1927.

Q. To whom? A. To Isaac Elson.

Q. For how much? A. I got $2500.

Q. Is that all that you got— A. Yes.

Q. —for the two plots, five and six? A. For my half interest.

Q. Yes. And what did you do with that money? A. I guess I used it.

Q. For what? A. I may have loaned it to the Sivad.

Q. At the time you sold that half interest in those two lots, they were owned by the Bender Construction Co., weren't they? A. No.

Q. Owned by you, individually? A. Yes.

Q. Isaac Elson is your uncle? A. That is right.

Q. Where does he live? A. He lives in New York.

Q. Where? A. I haven't been to where he lives in the past—probably seven or eight years.

Q. Where did he live then? A. I don't know just where it was.

Q. Where is his place of business? A. It is downtown New York, in the twenties.

Q. Where? A. In the twenties somewheres. I don't know.

Q. What is his business? A. Lumber business.

Q. Do you know what name he goes under? A. I guess he uses his own name.

Q. When did you see him last? A. It might be a couple of years ago.

Q. Did he come to you about these lots? A. Yes; he wanted to make an investment out here.

Q. Well, he owned the half of them before that, didn't he? A. Yes.

Q. So, you sold him your half and he then owned the whole thing? A. Yes.

Q. Did you take back any mortgage on those? A. No.

Q. On the day that you received this deed from your father, April 22, 1926, did you give him any money or property? A. Not on that day.

Q. What day did you? A. That was on a day —it was immediately following the sale of the Vanderpool property—Vanderpool and Avenue "C".

Q. That was to the Fidelity Company? A. That is right.

Q. That was on June 15, 1925, wasn't it? A. About that time.

Q. Well, I want you to look at this Exhibit 22 and make sure of it, as to the date when you gave him the money. A. Well, I didn't hand him the money.

Q. Well, what you are saying is that on the date that this contract, Exhibit 22, was closed, June 15, 1925— A. Yes.

Q. —your father received for that property money that you say was yours? A. Yes.

Q. Is that correct? A. Yes.

Q. That is the money that you say that you gave your father for the deed which he delivered and signed on April 22, 1926? A. That is right.

Q. Is that correct? A. Yes.

Q. That is the money that he got on June 15,

1925, from the Fidelity Title Company, that was for the conveyance of all of these six pieces of property and the mortgage of $4,000, on April 22, 1926? A. Yes, sir; that is correct.

Q. Don't you want to change that now? A. No.

Q. You are sure about it? A. Yes.

Q. Was there any agreement between your and father, in writing, as to this agreement, Exhibit 22, the property which the Fidelity Title Company bought? A. We had no legal agreement.

Q. Nothing in writing? A. No legal agreement.

Q. Just let me get it straight; was there anything in writing, legal or otherwise? A. Yes.

Q. Where is it? A. There were letters that we wrote back and forth to each other. You see, he was in Florida.

Q. And have you those letters? A. No.

Q. When were the letters written? A. Before the conveyance took place.

Q. How long before? A. Well, we are talking about it every time he came up here, but we couldn't make the conveyance because my mother and father were not both here at the same time. You see, one would be down there and one would be here; they would be traveling back and forth.

Q. I am asking you about these letters that went back and forth between you and your father. When were they received? A. Well, just prior to this conveyance.

Q. You mean, this conveyance of June, 1925? A. No.

Q. You mean, the conveyance of April 22, 1926? A. Yes.

Q. And you have not those letters? A. No.

Q. Where did you see them last? A. My mother saved them.

Q. And since the 22nd of April, 1927, you have been, I suppose, collecting any rents? A. Yes.

Q. And you have been attending to expenses, and so forth, on this property? A. Yes.

Q. You pay for those out of your own bank account? A. Out of the Bender Construction Co.

Q. Bender Construction Co. While it was in your name, did you pay for those carrying charge out of your own money? A. Yes.

Q. And they were in your control about a year, weren't they? A. Yes.

Q. What you mean to say now, Mr. Bender, is that, on the 15th day of June, 1925, your father received for you from the sale of this Tansey property how much money? A. That belonged to me?

Q. Yes. A. About $39,000.

Q. And he did not pay you that money at any time, did he? A. No.

Q. And that you went along and that he kept that money, I suppose, in his own bank account, didn't he? A. I guess so.

Q. It was not in yours? A. No.

Q. And you did not have any agreement with him about what he was to give you for that $39,000 until a short time before the deed of April 22, 1926, when you exchanged letters? A. He was supposed to give me the cash.

Q. Yes. A. And he asked me to loan him that money, to let him have the use of it while he was investing it in Florida.

Q. Yes. A. And I said, "All right," but later on, I wanted to make use of it myself.

Q. Yes. A. And I asked him for it and he said, "Well, I haven't got it. I invested it here in Florida and I think I will stay here. Everything is nice down here. I will give you a property up in

Newark to make up that amount of money."

Q. When your father owed you this $39,000, in June, 1925, did he give you a note for it? A. No.

Q. You didn't ask him for any note? A. No.

Q. And it was understood what the amount was? A. Yes.

Q. And you didn't have any security of any kind for this, did you? A. None but my knowledge of my father's word for it.

Q. Yes. A. And it was not until a short time before April 22, 1926, that you agreed to take and he agreed to give you this property in Newark for this $39,000, was it? A. It all depends on what you call a short time.

fore that.

Q. You told me— A. It was a few months be-

Q. Now, what do you say is a few months—1,2, 3? A. Well, it might be 3 or 4 months.

Q. Three or four months? It wouldn't be further than three months and it might be four months? A. Yes.

Q. How many servants did your father ever have in his home? A. One at a time.

Q. And did he have any chauffeurs? A. No.

Q. Did your father live expensively? A. Moderately.

Q. How much would you say he spent a year on his living? A. I have no knowledge of it.

Q. Would he spend as much as $20,000?

Mr. Corn: You will note an objection to that. This witness is not qualified to answer.

Mr. Jordan: To his knowledge.

Mr. Corn: If you put it on his own personal knowledge, all right, I will withdraw the objection.

A. I have no knowledge of what he spends.

Q. You don't know how much it costs your father to live? A. No.

Q. Do you know where he lives in Florida, when he is there? A. Different hotels.

Q. And what are their names? A. I know he stopped—he stopped at different times, of course; I don't know just when he stopped at each hotel. I know he has stopped at the William Penn Hotel; he has stopped at the Mare Vista Apartments.

Q. What is that? A. Mare. And he stopped at the Knickerbocker Hotel.

Q. Have you stayed at those places? A. What is that?

Q. Have you stayed at those places? A. No, I have not.

Q. Where do you stay when you go down there? A. I have only been down there once the past last years at that. We stayed at 1142 Southwest 4th Street.

Q. What is there? A. That is an apartment house.

Q. How many rooms did you have there? A. We had three rooms.

Q. How much did you pay for those rooms? A. I paid fifty dollars a month.

Q. And you had your meals out? A. Had them in the house.

Q. Is there a restaurant there? A. No. My mother did the cooking.

Q. I see. A. Went out occasionally, the way we felt about it.

Q. You didn't have a servant there, then? A. No.

Q. I believe you said your father did not employ any servants? A. Not up here.

Q. Did he employ a chauffeur in Florida? A.

Not while I was there.

Q. Did he ever, to your knowledge, employ a chauffeur? A. I don't know; I wasn't there.

Q. Did you ever live in a single family house in Newark? A. I did not.

Q. Never, to your knowledge? A. No.

Q. And you say you don't know—you have no knowledge what it cost your father to live for a year, have you? A. No.

Q. How long has your sister Hortense been married? A. Over a year.

Q. What is her name? A. Her present name?

Q. Yes. A. Gorren; Hortense Gorren.

Q. And where does she live? A. 10 Lehigh Avenue.

Q. And what is your other sister's name? A. Straver.

Q. How old is she? A. She is two years younger than I. She is twenty-five, I guess.

Q. And what does she do for a living? A. Housework.

Q. Helps your mother? A. Helps her husband.

Q. Oh, she is married? A. Yes. I gave you the name.

Q. What is her name? A. I just gave it to you —Straver.

Q. Oh, I see. I thought that was her first name. A. No.

Q. What is her first name? A. Frances.

Q. And where does she live? A. 2 Keer Avenue, Newark.

Q. How long has she been married? A. Been married four or five years.

Q. Have you any other brothers or sisters? A. No.

Q. Mr. Bender, I understand that your attor-

neys, Messrs. Corn & Silverman, are holding $4,000 which was paid in on account of a mortgage. Is that correct? A. No.

Q. What is the fact as to that? A. It is about $2,000.

Mr. Corn: Two thousand dollars. That $4,000 mortgage was reduced to about 2,000.

The Witness: They paid off about 500 every six months.

Q. And the balance of $2,000 was paid to you while you were holding that mortgage, wasn't it? A. Yes.

Q. And what did you do with that money? A. I guess I used it.

Q. For what? A. I don't remember. Put it in the bank with the rest of the money.

Q. In what bank? A. Broad & Market.

Q. When did you close your account in the Broad & Market Street Bank? A. About the middle of last year, I think.

Q. And had you received no money from this mortgagee after you closed that account? A. I don't believe so.

Mr. Jordan: I think that is all.

Q. Mr. Bender, do you recollect the $2,000 that you gave your father through the Sivad Realty Co. on chattel mortgage; was that in cash? A. I guess—I don't know whether I gave them cash or a check.

Q. Have you looked to find out? A. No, I have not.

Q. Well, will you do so? A. Yes, sir. If there is anything else you want me to look up, I will be glad to do it between now and Monday.

Q. How about the Profit Realty Co. mortgage

and the deed? A. I was looking for the mortgage this morning and couldn't find it, but I will look again. I will see if I can get it. And the deed: have you got the deed?

Mr. Jordan: No, I have not. The deed to the Bender Construction Co.?

Mr. Corn: Well, I have it here.

Mr. Jordan: Have you got that one? I know we are minus one deed. (This is off the record.)

Mr. Corn: The deed we are minus is the deed from the Profit Realty Co—or rather, Harry Bender to the Profit Realty Co. Here it is.

Cross-examination by Mr. Corn:

Q. Do you owe any money to your mother now? A. I do not.

Q. You paid back all that you borrowed from her? A. Yes.

Q. What is your birthday? A. My birthday is May 16.

Q. And you will be 27 or 28 within the next month? A. I will be twenty-eight next month.

IN CHANCERY OF NEW JERSEY.

April 29, 1929.

Between

JACOB WILLIAMSON,
Complainant,

and

DAVIS BENDER, *et als.*,
Defendants.

Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor, ALONZO CHURCH, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on April 29, 1929, at M., in the presence of SAMUEL DANIELS, ESQ., and ALBERT C. JORDAN, ESQ., for complainant, and JOSEPH CORN, ESQ., and C. WALLACE VAIL, ESQ., for Defendant.

Mr. Jordan: If your Honor please, we have practically concluded the taking of the testimony in this discovery proceeding, Williamson against Bender, and I should like, at this time, to give the Court a short summary of what I conceive to be the effect of that evidence that was brought out.

We have shown that Davis Bender, the defendant in this action, in 1925 was a reputable businessman here in Newark, had been in the building business for over twenty years, and his property at that time, would be conservative at $150,000. He had a bank account in the Broad and Market Street Bank and was actively engaged in building houses, in improving vacant property. He was familiar with bonds and mortgages and contracts, a versa-

tile real estate speculator and builder. At that time, he was the owner of a property in "C" Street, Newark.

The Court: Where? "C" Street?

Mr. Jordan: Is that the name?

Mr. Corn: Avenue "C".

The Court: Oh, yes.

Mr. Jordan: And that I will refer to by name. What was his grantor in that property?

Mr. Corn: Tansey.

Mr. Jordan: As to the Tansey property, because it furnishes a background of the defense that is tried to be put forth to the Court.

The Tansey property was bought in Davis Bender's name, about three years before, in 1923; the cash invested, at that time, was about $6,000; it was invested by Davis Bender himself, came from his bank account, and the title to the property was at all times in Davis Bender. He sold that property in 1925, June of that year, realizing from it forty thousand dollars in cash, in addition to what he had on the down-payment on the contract, roughly, $5,000; and it is intimated to this Court that, when he bought that property in 1923, he did so as a gift and in the name of his son, Harry Bender, to whom I will refer later.

It is said by both the Benders, father and son, that, although this property was bought with the father's money, that although the title was taken in the father's name, that it was, nevertheless, understood between them by an agreement, not in writing but in the back of their minds, that that was at all times to be Harry's property, and so they argue and they will try to tell this court that when this property was sold in 1925, June, and the father had a check paid to his order for $40,000 by the Fidelity Title Co. of this city, that that

money was Harry's money and not the father's money and that therefore, there was a debt, a quasi relation of debtor and creditor between the father and son in respect to the $40,000 which the father took and appropriated to his own uses. There was no note, there was no writing, there was nothing tangible before this Court or before anybody, from which we can show that that is an actual fact, so that I refer to that as a foundation of any defense in this case, because we will find later on, when there is a reason and a purpose for this defendant to conceal his assets fraudulently—to defraud a creditor, that is a transaction that they hark back on as showing that there was no real consideration for the transfers, which I will follow along with. That took place in June of 1925 and we find Davis Bender at that closing with $40,000 in cash. He said he deposited that in the Broad and Market Bank of this city. He could not produce the check book, vouchers, books of deposit, checks, or anything in relation to this bank account. He last saw them he does not know where, whether it was here or in Florida. He doesn't remember except that he lost them; he has made no effort to find them and he is quite sure that, if he did make an effort, he would not find them anywhere.

Now we come to the year 1925, when this cause of action on the part of the present plaintiff arose, because it was in June of that year that Bender gave a note of $10,000 to Williamson, the plaintiff, in part payment of a tract of ground down in Florida, and that note by its terms became due the year 1926, one year later. In June, 1926, the Court is familiar, and as a matter of judicial knowledge, can state what was the trend of real

estate values in Florida. In the years 1925 and 1926, we all know, as a matter of public knowledge, that real estate values were far inflated, that there was a boom, that there was rife speculation by all kinds of people in Florida, at that time, and that the year 1925 and especially the year 1926 saw the bursting of that boom, saw the depression of real estate values and saw these fictitious values, that had heretofore been paid on paper for property, fade away to nothing. But, if the Court were in doubt or needed any explanation of that condition in Florida, we have introduced in the record here the foreclosure suit in Florida, in the early part of the year 1926, by the woman who held a first mortgage on that property that Bender bought from Williamson, so that that property he knew was being taken right away from him and he knew by the values of real estate there that he could never hope to gain anything from that, and a note was given defendant in June of 1926.

Now, we find in April, 1926, the beginning of what I state to this Court to be one of the most insidious widespread and openly fraudulent conveyances of a man's property to defeat his creditors that it has been my luck ever to see. The thing has been so complete, the design and the plan was worked out so carefully so as to disseminate and distribute his property to various agencies that, after cross-examining the defendant himself, Davis Bender, both in this and in other cases, I have concluded that it could not be his own design and plan, and therefore that there must have been a mind which was far more acute and astute and ready and knowing to conceive such a plan as that. Who that person was, what his interest was in planning this we can only believe when we see the mass

of papers, because there cannot be any plan made by any man or any woman that does not leave its marks. That is inevitable as the thing winds along, and when you come following a path as through a forest, and you see a foot print here and a foot print there and a foot print the other place and you see it is the same foot print in each place, it leads you inevitably to say that this is the one man who has planned and plotted this way through this maze.

Now, in April of 1926, we find Davis Bender by a bargain and sale deed conveys eight separate and distinct pieces of property in the city of Newark to his only son, Harry Bender. The man in whose office that deed was prepared, Louis J. Feit, of Elizabeth, New Jersey, also took the acknowledgment. He testified here before the Court that he, at no time prior to the drawing of the deed, knew of any difficulties that his client, Bender, had with Williamson. He says that Davis Bender is a shrewd business man, that he never needed to advise Davis Bender as to what to do, because Davis Bender came in and ordered him, directed him what to do. He had been Davis Bender's attorney for years, he had the searches of each of these individual eight pieces of property in his office, he had represented Bender at the time he purchased each and every one of those properties, so that he was absolutely familiar with the entire situation.

But, of course, the intention of this man, Davis Bender, in making this transfer is of great importance to the Court, and therefore, if we can show in what frame of mind he was, or anybody with whom he collaborated and planned, that would also be of interest to the Court.

Colloquy.

Mr. Feit, the attorneys representing Davis Bender, testified here, under oath, that he had no knowledge at any time that Davis Bender had any trouble with Williamson before he drew this deed. Now, Mr. Feit evidently did not search his recollection very well, or else he wanted to mislead this Court, I cannot say which; but I will say that the records that are here in evidence show that Louis J. Feit represented Davis Bender in the foreclosure suit in Florida, which was then under way, and in which Williamson, being a holder of that subsequent lien, was made a party, and all of that must have been known to Mr. Feit when he drew this deed, because he represented Davis Bender in Florida and put in an answer down there, a verified answer. Of course, they did not think enough of their answer of their defense to spend their time there to go down and swear to it, but nevertheless, the answer was put in in Mr. Feit's name for Davis Bender, and that I say shows conclusively that Feit knew, when he was drawing this deed in April, 1926, what the situation was between Bender and Williamson, and knew that Williamson was going to ask Bender for $10,000 and knew that Bender could not get it out of the property that was then being taken from him by foreclosure. So that we find here in April 22, 1926, a man that was represented by the financial agencies as being conservatively worth $150,000, and who had received within less than a year of that time forty thousand dollars in cash, now disposing of everything of value that he had to his son, eight pieces of property he transferred that day to his son, Harry Bender.

Mr. Feit says—the lawyer—that he saw no consideration passed. The father and son do not at-

tempt to say that there was any consideration passed that day, but they refer back again to this antecedent transaction of the June before and say that by reason of that understanding between them that the real consideration was that debt of $40,000.

Now, of course, it is necessary in judging of a man's credibility and of the probability of the story, that they should be sustained, so that we have here a father and a son, acting as a father and a son might well act. I can well imagine if a father owed a son $40,000 that the son would not exact a note, a legal instrument from him; I can well understand it, but what do we find next in this case? We find this transfer, in April; we find in May of the same year, May 15, 1926, Davis Bender received $65,000 in cash as a consideration of transferring another piece of property, a garage which he held in his own name, and this man with his $65,000 on May 15, 1926, within thirty days of that time, June 10, 1926, gives a chattel mortgage, covering his household goods, the bed that he sleeps in, the chinaware that he eats from and the automobile that he drives around in—he gives a chattel mortgage to a company named the Sivad Realty Corporation. That chattel mortgage goes on file.

The evidence here from the mouth of Harry Bender, the son, shows that he owns, operates and controls the Sivad Realty Company, and we find here the very inconsistency that I say brands this entire story and the underlying defenses to this action to set aside these conveyances as false and fraudulent, in the fact that, although the son was willing to permit his father to owe him forty thousand dollars for upwards of a year, without any

legal instrument or without any acknowledgment, he does not trust him to the extent of two thousand dollars, within thirty days, but takes, instead, a chattel mortgage on his father's furniture, on his automobile, on everything that he has.

I might say that 92 Goldsmith Avenue, this city, is where all the Benders live; they have always lived there, since the house was built. The father built the house, and except for his infrequent visits to Florida, which he magnifies before this Court and did magnify on other occasions, to make it appear that he was leaving Newark forever and transferring all of his interests to the South, that place at 92 Goldsmith Avenue is still the residence of Davis Bender, is still the place where he gets his mail and is still the residence of his wife and his children, except one daughter who is married and lives with her husband in another location. Harry is not married—the son. He lives there, another daughter lives there, and the mother lives there with them. And this furniture, if the Court please, was located at 92 Goldsmith Avenue in their own apartment, it was never moved out of there, it always remained in their possession.

The son, Harry, when he is pressed to say in what form the $2,000 was paid, cannot recollect. The old story, your Honor, when a witness finds himself in a corner: "I don't remember, I can't recollect, I can't just say whether it was cash or check," because if it were check, we would ask him to produce the check, and if it were cash, we would ask him to show where he got the cash from. So that we now have the son demanding, apparently, and receiving from his father, a chattel mortgage, within thirty days after his father received upwards of $65,000 on a transfer of a piece of prop-

erty and if anything was necessary to complete that picture it is the fact that that chattel mortgage was foreclosed and the chattels sold, at 92 Goldsmith, and the chattels bought by Harry, his son, at the same address.

Now, to complete the story, this transfer of April 22, 1926, is the one which we are going to ask this Court to set aside as fraudulent as to its creditor, Jacob Williamson, and I have given your Honor, as briefly as I could, a little of the picture leading up to that transfer.

Now, as to the actual tranfer itself, when that was made, on April 22, 1926, they immediately realized that probably that transfer might be successfully attacked and that the circumstances surrounding that afforded them a defense that was entirely too shallow for them to stand on, so, then they immediately proceeded to organize some corporations. Now, by far the most valuable of these eight pieces of property is the first piece of property, which is known as 92 Goldsmith Avenue. When I question about it, the father and the son on the witness stand, as to the value of that particular piece of property, they were both identical in their answers; they both said that the property was worth $16,000, so that now we find that on April 11, 1927, a company known as the Profit Realty Co. is organized, and the organizers of that company are a man named Samuel Kaplan, together with his brother, Abram Kaplan, and his own wife, Celia Kaplan. The latter two are merely dummies. They say so, everybody says so. They didn't know anything about this Profit Realty Co. and I don't believe they did. They were simply put in there to complete the necessary legal requirement.

Colloquy.

This Profit Realty Co. was organized in the office of Louis J. Feit. Samuel Kaplan says that he was not in Feit's employ—that is, Feit had never been his attorney before, that he was sent there by Harry Bender. I asked him: "When you were going to buy this piece of property, did you have a contract with Harry Bender?" "Yes, we did, but I can't find it, I don't know where that is." "Well, when you were going to have this piece of property searched, why didn't you go to your own lawyer, why did you go to the lawyer of the man that was selling it to you?" "Well, Harry Bender told me to go there and I was satisfied with whatever Harry Bender, did, any way." And the story is that Samuel Kaplan, a lifelong friend of Davis Bender, a man about his own age and who knows him since they were both ten years old, little boys playing on the other side, he is the man who is back of and says that he controls, and always did control, the Profit Realty Co.; and he is the man that says that on this date, April of 1927, he bought No. 92 Goldsmith Avenue for $22,000. Seven of that he says he paid in cash and the balance of $15,000 in a purchase money mortgage to Harry Bender.

It is a lucky thing for the public in this case that the mortgage was not assigned or transferred in some fashion before we began operating on this entire situation, but it still remains in the hands of Harry Bender, a purchase money mortgage.

We claim that this transfer to the Profit Realty Co. was only a wash transaction, that it was only done out of friendship by Samuel Kaplan to assist his old boyhood chum, Davis Bender, out of some trouble that he knew about, that this price of $22,000 was fictitious, that it was never the value

of the property, that there was never any bona fide sale, and that this purchase money mortgage of $15,000 now and at all times does represent the true and full value of the property, which was given back to Harry Bender, so that there can never be any question in case anything should happen to Kaplan or his company that the Benders would always have enough interest in the property so that they could not lose.

And we state that that mortgage is a thing that should also be set aside as the property of Davis Bender, coming back to the original fraudulent conveyance from father to son of the property; that the mortgage on that represents, at all events, the father's interest in that property and should be subjected to the claims of this judgment creditor.

Now, the operations of this Profit Realty Co. through Samuel Kaplan are interesting. It is the only piece of property they ever bought—owned anywhere—never did, never with any other piece of property, never had a directors meeting, never had a stockholders meeting. They have a bank account. The only thing they have in that bank account is rents which they say they got from this property, 92 Goldsmith Avenue—nothing else done. Samuel Kaplan is the only one that signs the checks. But a little examination of this bank account discloses further interesting things, because there is no doubt, your Honor, that this house was bringing in on the average about $300 a month in rent, and of course, Samuel Kaplan, whom I take to be an honest man, did not want to keep that money from his old friend, Davis Bender, so he had to get it back to him in some fashion. A check to Davis Bender, nevertheless,

would be out of the question, because that would be too open and that would be too patent as to what the whole transaction meant, so that they used a company known as the Bender Construction Co. as the go-between. The Bender Construction Co., as your Honor can infer from its name, was organized by Harry Bender, and the stockholders and directors of that company are his mother and his sister. He is the controlling genius in that.

Could I have the record of that incorporation?

(Paper produced by Mr. Daniels.)

Mr. Jordan: This corporation was organized in August of 1926, just four months after Harry Bender obtained the deed to the eight parcels of property, and at the same time as its organization, and within a few days Harry conveyed to it four pieces of property that had been then in his own name and which he took from his father. Now, the Bender Construction Co. is the recipient of several interesting donations from the Profit Realty Co. We find, on September 8, 1928, $300; October 5, $400; October 17, $300; December 26, $300.

When questioned about these checks, Mr. Kaplan said: "Oh, yes, I remember that." He said, "That was for some alterations and repairs that the Bender Construction Co. were doing to the house at 92 Goldsmith Avenue." "Well, I presume, Mr. Kaplan, you had a written contract?" "No; we didn't have any written contract." "Did you know how much that work was going to cost you, before you gave that contract?" "No; I didn't know; I couldn't tell until it was finished." "When did it begin?" "I couldn't tell you." "When was it finished?" "I don't know that." "What was the work?" "Well, it was alteration,

in the upper part of the house." "Well, isn't that the part of the house that is occupied by the Bender family?" "Yes".

Q. So that we find here checks of $1100, and there is a missing check for which we introduce the check stub of $100; we show payments of $1200 direct to the Bender Construction Co. as an oral contract for work which was admittedly done within the very apartment that the Bender family occupied.

When questioned about this transaction, Harry Bender said that it involved the making of a few partitions; that there were no more rooms made in that house on this work than existed originally, that the main part of the work was the sheathing in of a staircase in order to comply with the fire and tenement house laws of the city of Newark. He said he had no contract with the owner, that it was a word of mouth arrangement, that the owner did not get a certificate of payment of liens or certificate of non-existence of the liens, that it was all done in good faith, that there were no papers, that there was nothing but this oral understanding.

The Court: Don't they have to have a permit from the Building Department for alterations, in Newark?

Mr. Jordan: That I don't know, except that Harry Bender did state that he made the plans for this alteration himself from an old blue print which was used in the original construction of the house, that that is what he filed in the Building Department. He made it himself, not the owner, not the person who is supposed to be interested in actually owning this house, he does it himself, in his own apartment, and gets back his $1200.

Colloquy.

We say these $1200 were only a repayment to the Bender family on the income of 92 Goldsmith Avenue, which the Profit Realty Co. got from the other two tenants there. We say that as to any rent that Bender says that he paid to the Profit Realty Co., that is wholly fictitious, because they cannot prove and cannot show anything of that kind. They may show a check now and then, but according to their own story it was mostly cash payment of the Bender rents, and so we say that the checks showed a repayment of the profits of that house over the running expenses.

At this point, too, we call the court's attention to a new figure in the case, a man by the name of Nathan Rice. We have not been able to locate Mr. Nathan Rice, we don't know what he looks like, we don't know what his antecedents are, or his business, but Samuel Kaplan says that he knows Nathan Rice for a lifetime, that Nathan Rice knows Davis Bender the same time, that they are very good friends and belong to the same lodge and the same society, and we find coincident with the payment of these checks to the Bender Construction Co., the payment of three checks totalling $530. The first check is June 3, 1922, $250; June 24, $100; October 10, $180, these all being in the first year that the Profit Realty Co. owned this building.

He says that Nathan Rice is a painter. Kaplan says that he painted the inside and the outside of the house and he had no written contract with him; he didn't know which cost more, the inside or the outside; he doesn't know, doesn't recollect particularly what directions he gave to Nathan Rice except that he painted all over the house.

My own construction of these things, your Honor

please, is this: that Nathan Rice was merely a go-between between this Profit Realty Co. and Davis Bender, or his son, whom I conceive to be one, and that these three checks show that there was simply a conveyance, a way to get the money back from the Profit Realty Co. into the Bender family, and that Nathan Rice may have been innocently used at that time and that later on he refused to lend his name or his assistance further to this fraudulent scheme, and that is the reason why they then employed the Bender Construction Co., which comes in in 1928, because, strange as it may seem, although that house from 1927 has been painted several times, Nathan Rice is never given another opportunity; there are no more checks to Nathan Rice, he is out; there is a new painting contractor whom they don't know the name of and they don't know how much they paid to him there are no more checks to Nathan Rice, therefore, and I conceive that the very amounts of these checks, the dates when they were given, showing a variance there of about four months, shows that it was not given for any painting job, that it was simply given as a way to return the money.

Now, we have here three other checks from the Profit Realty Co: one is dated April 11, 1927, to the order of Kaplan himself, $200; May 21, the same order, $150; July, the same order, $200. We questioned about these checks. Kaplan says, "Oh, probably I was short of money and I took this money from the company, it was a loan to me." There is no way of disputing or disproving that, except that Samuel Kaplan himself is a wealthy man, he is well to do, he has a very good sized bank balance, and there was no reason, apparently, that anybody should reasonably advance, why

he should need these particularly small sums of money at monthly intervals, unless, as I state again to the Court, these checks were cashed and the money again turned back to the Bender family, showing the surplus of income over outgo for 92 Goldsmith Avenue.

Now, we have three more checks from this Profit Realty Co., and I might state that this $15,000 mortgage was given on April 11, 1927, at the same time that the deed passed to the Profit Realty Co., and provided for the payment of interest semi-annually; we do not find any payment of interest of any kind until February 2, 1928, but we come across a check to Harry Bender for $450, February 22, 1928, in other words, ten months after the mortgage was made a check was given, as they say, to pay the first six months' interest. Now, that is not according to the usual custom of business men. If a man gives a mortgage and agrees to pay interest in six months he usually does so, or within the thirty days of grace which are customarily allowed. But in this case there seems to be a more familiar, easy-going method of business, so Kaplan didn't think a thing about the interest until one day Harry met him on the street and said, "You owe me some interest." Kaplan said, "All right. I got some money. Come on up and I will give you some." And that is the story of the check of $450 for interest, they say.

Q. But what is the explanation regarding the check of September 6, 1928, to the order of Harry Bender for $900? According to that, Kaplan was paying his interest that time away in advance—it was not due until October; they had apparently skipped the April payment of interest altogether—and it was not until the following September

that Harry Bender again met Kaplan and said, I suppose in the same offhand fashion, "You owe me some interest." "Come on up and I will give it to you." How unusual, Judge, how improbable and how fictitious that is!

These checks, I say, and I claim before you, are only a part of this same fraudulent transaction and a way to get back the profits of this Goldsmith property back into Harry Bender; but there was never any bona fide mortgage given there, that this $15,000 is only a cloak used to try to deceive you and to try to prevent us from collecting a legal judgment, and the very dates and the very explanations and the very practice of these men in dealing with this money and these unusual and practically illegal times, shows that there was something underneath that that is not apparent on the surface. That ends 92 Goldsmith Avenue, as far as we can go under the records.

Now we come to tracts second, third, fourth, out of the eight. These tracts were all conveyed by Harry Bender to the Bender Construction Co. by a deed dated April 6, 1927, almost coincident with the conveyance to the Profit Realty Co. and incidentally, practically coincident in every particular of time with the commencement of this present law suit in the Circuit Court of Essex County. That conveyance, Harry Bender admits, was for no consideration except the stock in the company, that he received no money from the company, he did not even know the amount of the encumbrances on his own property. I asked him to tell me what the amount of the mortgages was. He couldn't tell us, didn't know. He paid no particular attention to it.

The deed into the Bender Construction Co. was

again drawn by Louis J. Feit, the attorney, who took the acknowledgment and was representing Bender at that time in our law suit upon this $10,000 note in the Essex County Court. Now, it was not Mr. Feit's first experience or his first knowledge of the pendency of this action, because, originally, Williamson began a law suit in the United States District Court of Newark on this $10,000 note, alleging diversity of citizenship and that Bender resided in Newark. They contested that point and rather than to waste time as to whether Bender, who came in and said he was a resident of Florida, actually resided in Florida or Newark, we discontinued that suit and brought our suit in the State court and served him immediately in the State court, where there was no question of jurisdiction depending on his residence, so that Feit knew, at that time, and he knew from the beginning of the United States District Court suit, in February, and he knew from the time in 1926 when he represented Bender in that foreclosure action in Florida, that there was a $10,000 note there that was due and would have to be paid, and when he drew this conveyance from the father to the son, he knew that. And when he drew this conveyance of the son to the Bender Construction Co., he knew that. And at the time when he drew this second conveyance of which I am speaking, to the Construction Co., he knew that we were then proceeding and would have to quickly come to a trial before a jury as to the validity of our claim for $10,000. The Bender Construction Co. still holds these four properties, has not disposed of them, has not done anything with them. I suppose they have paid the interest on the mortgages, if any. We have not been able to get the state of

the mortgages particularly well from Harry Bender, but at any rate, we say that these four parcels of property are absolutely fraudulently—that the conveyance to Harry Bender, originally, was fraudulent—by his father—without consideration and for the purpose of defrauding us, and secondly, of course, this conveyance by Harry Bender to the Bender Construction Co., of which he is the sole owner and the whole guiding and controlling genius, amounts to the same thing before a court of law. If the conveyance to Harry Bender is bad, then the conveyance to his father is also bad.

Now we come to the latter part of this conveyance. Mind you, this is all working on one deal of the eight pieces of property. Now we come to the conveyances of five and six, and again we come upon a mysterious figure, a man named Isaac Elson. The Benders say that he is their uncle; Mr. Bender and Isaac Elson married two sisters, but no one knows where he is, no one knows where he lives; he is over in 20th Street, New York, some place—don't know anything. Further than that, he was a half owner in these two lots which comprise tracts five and six, and shortly after the institution of our suit on our note, Harry Bender transfers the balance of that five and six to Isaac Elson.

That conveyance is not before the Court except as to show the fraudulent and illegal disposition of these defendants in conveying away their property. Isaac Elson we could not get jurisdiction of. He does not reside in Jersey, and rather than wait and publish against him and go through all of that, we decided that we would forego that part of the conveyance and simply bring it before the Court to show the disposition and the way of act-

ing, completely divesting Davis Bender of his property.

Now, your Honor might well inquire, if these things are so, Davis Bender still should have these amounts of money, because we say that in June, 1925, he got $40,000; the following May he got $70,000; and my questions to him were to find out where this money went to; and in each instance he says, "I deposited that check in the Broad & Market Street Bank," but again, your Honor, the records, as far as the checks that he has, cannot be found; he doesn't know where his check book is; he doesn't know how much he had in 1925; he doesn't know how much he had in 1926; he doesn't know how much he had in 1927; he doesn't know how much he had in 1928, but, ah, he knows one important fact, that, before he came from Florida to testify before you in this case, that the last of the money went and that today, sitting before you, he has five or six dollars to his name and nothing more. How complete, how perfect! What figuring they must have done to have that hundred thousand dollars last exactly until this hearing should be had!

Now, how probable, how true is this story as to the disposition of this $100,000? We proved that for many, many years, this family lived—the Bender family lived—in a very moderate way, that recently they got one servant, that they live in one apartment in this two family house at 92 Goldsmith Avenue. Certainly, they never employed a chauffeur, they never were in the habit or traveling abroad or traveling to other places that required large sums of money; they all agree on that; but here we find a man in four years disposing completely of $100,000, so completely that he

spends the last of it just before he comes here.

Now, when faced with that explanation, he says this: "Well, my wife was sick and my health was bad and I spent a lot of money for my health and for my wife's health." Fine! "Now, Mr. Bender, who were the doctors that attended your wife?" "Well, there was several in Florida." "Name them." He names one. "How much did you pay him?" "I don't remember." He names another. "How much did you pay him?" "That I don't know." "Did she have an operation?" "I think she did, I am not sure." "How much did you pay for it?" "Well, somethings I forgot. I—I—such things I cannot keep in my mind." "You had a big hospital bill?" "Yes." "What hospital and how much did you pay?" "Oh, those things, I cannot think about those things; I cannot imagine—I cannot carry that in my mind; that was all in my check books that were destroyed in the tornado in Florida," showing that tornadoes have their uses as well as other things. Again we asked him: "Now, what hotels did you live at in Florida?" —of course, I can conceive how people can spend $100,000 in Florida, too. Well, he ate at some place, he roomed at a place where they did not serve meals and he had to get his meals out and his son Harry, when his father is outside the room —excluded on my motion from the room—testifies they lived in Florida in a furnished apartment for which they paid $50 a month and took their meals out. So that we have traced a very contrary picture of the spending of $100,000 in three years compared with the actual living and the actual mode that these people had of spending money.

Now, your Honor, what happened to that $100,000? I think I can tell you. When Harry Bender was being questioned here on the witness stand

as to the activities of the Sivad Realty Corporation, which I will recall to your Honor was the one that took a $2,000 mortgage on his father's furniture and sold him out, I asked him if that company was in any other business, if they made any other loans. "Yes." "How many loans did they have?" Well, he thought about $20,000. "Well", I said, "who put in $20,000?" "Why, I did." Harry. "Well," where did you get it from?" "I borrowed it from my mother." Twenty thousand dollars? He borrowed $20,000 from his mother and this company is lending it out. I might state here, Harry Bender's life history is that of an ordinary young American boy who is doing his best to follow in the footsteps of a worthy father. He never had a job outside of his father's business except one experience in the fur business in Manhattan, where he got ten dollars a week to begin with and twenty dollars a week he wound up with, and at the end of six months he decided that that was not the place for him and he left the fur business, and your Honor, up to the year 1926, the time of this actual fraudulent conveyance, he says—and his father corroborates him, both of them being in here and testifying in the other's absence—that he never gave Harry any money, never gave him any real money except spending money, money for clothes, and he lived at home, so that we establish conclusively that Harry had no money and no means of buying these properties from his father. We showed that, so that if they came along with a defense of actual consideration, we were ready for them. He never filed an income tax until for the year 1925, and that income tax was filed for the purpose of showing the Government—or rather, of obtaining

a double allowance from the Government on this huge profit which his father made on the sale of this property to the Fidelity Title Co. He was put in there solely as a party to that transaction for that purpose and for no other, because, at that time, in June of 1925, they had not then commenced to formulate the scheme to defeat Williamson, because Williamson's note had just come into existence, but, at that time, Harry had not anything, he hadn't a dollar, he had never filed an income tax in his life, he had never had a thousand dollars to his name at any time, he never in his bank account had that much money, he said, up to that time, and then he did not get it, because his father kept the money; but they tell your Honor that it was that transaction that gave rise to a debtor and creditor relationship which afterwards furnished the consideration of a year later, when the father is faced with the payment of a $10,000 note, they say that is the consideration for the conveyance of eight pieces of property.

Now, in what situation was Davis Bender when he did convey these eight pieces of property? And at that time, or within a few days, his household furniture was mortgaged and taken from him; he didn't have a stick left in the city of Newark; he didn't have a piece of property; he didn't even own the table he sat at. He says, "Oh, I have some property in Florida," in an attempt, of course, before the Court, to show that he did not entirely divest himself of everything and that there was something left for his creditors to go after, and thus show that it was an honest transaction. So I said, "What property did you have in Florida?" "Well, I had property on Twenty-eighth Street." "Well, was that in your name?"

Colloquy.

"Well, no; you see, I never took the property; I had a contract for it; I defaulted on the contract and abandoned it." That is one piece of property. Another source of his wealth, which he retained for the benefit of his creditors, was an investment which he called the Gotham Realty Co., a Florida enterprise, made at or about the time of the Williamson note. From the time they made that investment, he said, "Well, they closed up there in about three months. One brother I used to see in Florida; the other brother, I don't know where he is." Apparently, two brothers running the Gotham Realty Co. there in Florida, in which Bender says he invested. "Have they any office?" "No, they haven't had any office in a long time." "Any assets to that company?" "No, never was able to discover any." "Have they got any bank account?" "No, that is all." "Then, to all intents and purposes, that money was gone from the time you put it in?" "Well, I didn't think so, but I think so now."

He knew it was. Now, then, your Honor, that is what this defendant advances to show that he honestly made a transfer of all of his property to his son, and that is the kind of property that he claims was left for his creditors, was left for Williamson for a $10,000 note that was coming to him.

Now, your Honor, in conclusion: I probably have gone further in outlining this evidence than I intended to originally, but in matter of this kind your Honor knows there is a variety of circumstance and there is a wealth of detail that it embraces, as you read it through; it is not alone from one transaction can the Court say that that transaction is fraudulent or honest, because, after all, we have a presumption about it, in business deal-

ings. But we have here, first, the transaction between the father and son and the immediate family and his immediate and bosom friend; there is in this record no name of a bona fide purchaser whom we have attacked; there is in this record not a single conveyance that we have attacked that is not held and is now being held for the benefit of the Bender family, whether it is held in the name of the Benders or in the name of some dummy corporation, as we say, and it is for the Court to say; so that we say, first, that the badges of fraud here are the fact that Davis Bender conveyed to his son; secondly, that he conveyed to his son without consideration; thirdly, that he conveyed those properties at a time when he knew that he was facing a law suit and knew that he was going to be called upon to pay $10,000 for a piece of property that had been taken away from him by his foreclosure suit and which it would be of no use to redeem, anyway, on account of the business conditions in Florida; and we say, fourth, that these transfers to his son, Harry, and the resultant mortgage back and the operations of this Profit Realty Co. in handling this 92 Goldsmith Avenue, and the payments back, all corroborate what we said in the beginning, that these properties were and still are the properties of Davis Bender, and that this Court should sweep aside this maze of fraudulent planning, these deeds and these mortgages, which are valueless, except to encumber property and keep it away from a just and legal creditor. These corporations and all of these instruments which bear the imprint of Louis J. Feit, were made in his office, were sworn to before him, and I say were part of a plan by him for collaborating and conniving with his client, Davis Bender, knowing at

the time the purpose and the reason for making that plan, to keep them from Jacob Williamson, who held a good note against them; I say that all of these should be swept aside, that the Court should look at the real intent, the real purpose of this entire situation, and give us a decree setting aside these transfers and saying that the mortgage which Harry Bender now holds is fraudulent and should be considered as the property of Davis Bender.

One last word, your Honor, and I am through. Included in these eight transactions of April—and at the same time, there was an assignment of a mortgage which Davis Bender held in his own name and which he likewise assigned to his son —a four thousand dollar mortgage, no consideration, nothing; that mortgage was paid down to $2,000 before we instituted the present discovery action and succeeded in getting a restraining order stopping any further payments on that mortgage, but that was a four thousand dollar mortgage, and during the pendency of this action, the owner of that mortgaged premises desired to pay its half and it was agreed between the attorneys on both sides that that two thousand dollar mortgage could be satisfied despite the restraining order, and the money is now held by Mr. Corn who represents the defendant in this action, and is take the place of any judgment your Honor may give as to the mortgage at this time.

Mr. Vail: In order to get at the real reason for the transfer of these properties, I think it is necessary for the Court to go back to the testimony that we will show of the facts that took place long before these transfers were made, a series of transactions between father and son here, Davis Bender

and Harry Bender, about five or six years, possibly, before these transfers took place.

We will show that Davis Bender was in the construction business and dealt, to some extent, in real estate, and that his son, Harry, was employed by him and worked continually and constantly for his father over this period of years. During this time he was paid only nominal sums; he was given his board and lodging and home; he was permitted to make his home with his father; and that there was then an agreement between Davis Bender and Harry Bender that such an amount of profit from these transactions to compensate the son for his services would be paid to him, when the father came into the cash; and later on the son managed a garage business for his father, which was also a part of the consideration, and it will appear that there was some $10,000 owed by the company to the son and that the father told the son that, if he wanted the $10,000, he would give it to him, or if he wanted to buy a piece of property, he would pay for the property for him, so the son went out and selected a piece of property, property at Vanderpool Street in the city of Newark, and Avenue "C", about which you have heard this morning. The son made the arrangements for the purchase of this property and the father went around and paid for the property. I think there was about $6,000 involved in this transaction. The property was then taken in the father's name to hold for the son, and it would appear that—(interrupted).

The Court: Did it say so in the deed?

Mr. Vail: It doesn't say so in the deed, but later on, we can show you by the transaction that took place when they disposed of this property, that that is what was done, that the son had an inter-

est in that property. The property was bought for about $21,000 and it was later on sold for—I don't remember the figure—about $56,000, so they made a handsome profit on it.

When the property was sold, the son took care of the negotiations of sale when the contract was made for the selling of the property in 1925, which was long before this note transaction between the complainant here and Davis Bender, and it could not possibly have been with any thought that they were going to defraud Williamson out of any moneys that he might have coming to him, because Williamson was never heard of, at that time; so that, without ever knowing anything about Williamson, this property, whereby the son made money, was sold to David Houston. The contract was signed by Davis Bender and Molly Bender and Harry Bender, which shows rather conclusively that Harry Bender had an interest in this property. It does not show what interest, but it shows that he had an interest in the property.

Later on, that contract was assigned over or handed over in some way to the Fidelity Trust Co. and the title was conveyed to the Fidelity Trust Co., pursuant to this contract with David Houston. When the title was closed at the Fidelity, we will show that the deed of conveyance was not only signed by the father, but was also signed by Harry Bender, and that the Fidelity Trust Co. went to the precaution of taking an affidavit of title from the son, Harry Bender, at that time. And I think we will also show that the check in payment of the consideration of this property was made out to both Harry and Davis Bender and so there, if your Honor please, began the making of money by Harry Bender; and, at the time of closing of that title

with the Fidelity, there was some $37,000 in cash which the father told the son that he wanted to take to Florida with him and invest in property and what not; and it was then agreed between the son that, if the father desired to do that, that he might do that, but that he would make sufficient conveyance of property here in the city of Newark of a value equal to the thirty-seven or thirty-nine thousand dollars that belonged to the son. That was given to the father on that day of the closing of title, and these two transactions that are claimed by the complainant in this case to be fraudulent, are the result of satisfying an agreement between the father and son to make the son hold that money that he had given to the father. And, that transaction relating to this property on Vanderpool Street began long before this Williamson note, so it could not have been with the purpose to defraud the complainant here out of any moneys. He had none coming to him at that time.

And then Davis Bender, in 1925, bought a piece of property in Florida from the complainant and someone else in this case. He bought a piece of property, I think it was Ninth Street and Avenue "C", but, at the time the property was conveyed to him, they conveyed him a different piece of property; they conveyed him property on Tenth Street instead of Ninth Street. A part of the consideration for that property was given by Davis Bender to the complainant in this cause by a note which was secured by mortgage. That was given in June, 1925.

And, then, later on, no payments were made on account of the mortgage—of the note. The complainant brought his note up here to this State and began an action against Davis Bender to se-

cure the judgment. That is the judgment, if your Honor please, that they are trying to collect now, a judgment which was obtained on consideration for property which was wrongfully conveyed, which was not purchased by Bender, but at the time the transfer was made, he should have transferred to him a different piece of property, and the complainant so testified in the suit before the Circuit Court of this State.

The Court: I cannot go back of the judgment, can I?

Mr. Vail: This is a counterclaim. We have filed here a counterclaim, if your Honor please, to rescind that contract for the purchase of the Florida property and to set aside this judgment, as it was obtained by fraudulent conveyance to Davis Bender the wrong piece of property.

The Court: Well, as I see it now, you can't do that, because, if you want to set aside some judgments of the Circuit Court, you should have appealed. I don't think this Court has any jurisdiction to set aside a judgment.

Mr. Vail: That is being appealed, I understand, your Honor please.

The Court: Well, that is my feeling about that part of it.

Mr. Vail: Yes. And then, if your Honor please, Harry Bender had these properties conveyed to him in satisfaction of the obligation that his father owed to him, which began back years before they ever heard of Williamson or ever heard about going to Florida, and I think, from the testimony of the witnesses, your Honor will be satisfied that this original obligation was honestly incurred and that the conveyances were made pursuant to that obligation and without any intention of defraud-

ing this complainant out of the collection of his judgment.

The Court: I suppose the testimony on the discovery ought to be offered.

Mr. Jordan: Yes, sir. I will offer the testimony on the discovery, if your Honor please, and include in that the testimony of Samuel Kaplan, which was taken at a previous hearing.

You know about that, Mr. Corn?

Mr. Corn: Yes.

The Court: Is this the testimony?

Mr. Jordan: That is the testimony that we took during the hearing, your Honor.

The Court: All right.

Mr. Jordan: And this is the testimony of Samuel Kaplan, which was taken.

(Testimony marked Exhibits C-1 and C-2, 4/29/29.)

Mr. Jordan: And of course, the record which we have offered will include all of the exhibits which were received in evidence during the hearing.

The Court: Yes, let that go on the record. And then you can mark the exhibits later. All the exhibits offered in the discovery proceedings are now offered in the minutes.

Mr. Jordan: Yes, sir. And I wish, also, to offer, at this time, a certified copy of the chattel mortgage of which I spoke.

The Court: You haven't any objection to any of this?

Mr. Vail: No; I haven't any objection.

The Court: All right. Let it be marked.

Mr. Jordan: Mortgage between Davis Bender and Molly Bender, his wife, to the Sivad Realty Co., dated June 11, 1926, recorded in the Register's

Office in Book 456 of Chattel Mortgages, page 176-177.

(Mortgage marked Exhibit C-3, 5/29/29.)

Mr. Jordan: Also a mortgage which is mentioned in the bill of complaint, from the Profit Realty Co. to Harry Bender, to secure $15,000, made April 11, 1927, covering the property 92 Goldsmith Avenue, Newark, which was recorded in the Register's Office of Essex County in Book R-60 of Mortgages, page 210 to 212.

(Mortgage marked Exhibit C-4, 4/29/29.)

Mr. Jordan: Also, for the purpose of the record, I wish to offer the original note, dated June 15, 1925, to show the time at which the obligation arose.

(Note marked Exhibit C-5, 4/29/29.)

Mr. Jordan: I wish to offer in evidence, at this time, a report of R. G. Dunn & Co., under date of June 29, 1926, in which the information is given, and from their information, Davis Bender was of a reputed worth of $160,000.

Mr. Vail: If your Honor please, I do not think that should be read into the record, if it is not to be admitted.

Mr. Jordan: Well, I don't know whether his Honor wants to admit it or not.

The Court: Do you object to it?

Mr. Vail: It is a report of R. G. Dunn & Co.; I have not seen it. I would like to see it.

The Court: It will be stricken out, if it is not admitted.

Mr. Vail: I will have to object to the admission of this report in evidence, your Honor.

The Court: Why?

Colloquy.

Mr. Vail: It is a report made by a mercantile agency, and I think that it should be proven, as to who gathered the information that made the report; simply offering in evidence the information that comes here, either for or against an individual, is not evidence against him one way or another. There is no proof of any character as to whether that information is correct or whether it has any semblance of proof.

Mr. Jordan: That is right. We don't know it is correct, but R. G. Dunn & Co. is a well known mercantile agency; these papers bear the stamp of R. G. Dunn and show that this request was made from the Yonkers Trust Co., of Yonkers, N. Y., regarding Davis Bender of Newark, giving his address 92 Goldsmith Avenue, so that, at best, it is their best information.

The Court: I don't think that you can—if you want to introduce it, you ought to bring somebody here that made out the report and give Mr. Vail a chance to cross-examine him as to how he came to that conclusion. I don't think that is of any evidential value as it is.

Mr. Jordan: Could I just have it marked, then, for identification?

The Court: If you are going to follow it up by bringing the man here that signed it.

Mr. Jordan: I do not expect to, Judge.

The Court: Well, then, I won't allow it to be marked any way.

Mr. Jordan: Yes.

The Court: If you tell me that you will follow it up, I will allow it to be marked.

Mr. Jordan: No, Judge, I do not expect to do that.

The Court: Very well, then, I won't allow it.

Colloquy.

Mr. Jordan: I offer in evidence, at this time, for the purpose of the record, a state of the case on appeal, Williamson against Bender, simply on the defense of res adjudicata as to their counterclaim of misrepresentation in the property.

The Court: All right.

Mr. Jordan: To show the pleadings and the results in that court.

The Court: No objection to it.

(State of the case marked Exhibit C-6, 4/29/29.)

Mr. Jordan: Your Honor please, would it be proper, at this time, for the complainant to move to dismiss the counterclaim of the defendant in this action, based upon the alleged misrepresentation of property as a counterclaim, which is merged in the judgment?

The Court: You can make the motion and I will decide it when I decide the rest of the case.

Mr. Jordan: Yes.

The Court: Just as I said to Mr. Vail, I do not think this Court has any jurisdiction to interfere with the judgment of a court at law, that has been properly entered. The proper procedure, if they object to the judgment at law, is to take an appeal. They submitted themselves to the jurisdiction of the law court and, as I understand, that was appealed?

Mr. Jordan: Yes.

The Court: Now they come in here and ask me to set it aside before their appeal was heard, without coming to any definite conclusion, at this time. I don't think they have got much of an argument.

Mr. Jordan: For the purpose of the record, I will make the motion at this time.

The Court: All right. And I will reserve decision.

Mr. Jordan: I move to dismiss the counterclaim on the ground that that counterclaim is merged in the judgment of the case of Williamson against Bender in the Esssex County Circuit Court and that judgment in that case is res adjudicata as to all questions involved in the counterclaim, at this time.

The Court: Is that your case?

Mr. Jordan: Yes, sir. We rest.

Mr. Vail: We would like to offer in evidence—I don't know whether Mr. Jordan has any objection or not—this notice served by Davis Bender.

Mr. Jordan: We have no objection, except I would like to have it marked with the time at which you make this offer.

The Court: What is the notice?

Mr. Vail: This is a notice of rescission to Jacob Williamson and Rose Williamson, by Davis Bender, of this conveyance in Florida.

Mr. Jordan: We object to it as immaterial and irrelevant.

The Court: I will sustain the objection. All that is merged in the state of the case, which is before me.

Mr. Vail: Well, if your Honor please, in the law court I don't think the defense of fraud was interposed, and here the—(interrupted).

The Court: Well, that is a misfortune. You can plead fraud in a law court just the same as you can in a court of equity.

Mr. Vail: The difficulty with that is, if your Honor please, the fraud was not discovered until afterwards.

Mr. Jordan: We say that is not so, your Honor

please. They knew all about it.

The Court: However, I will admit it for what it is worth. I don't think it is worth anything.

Mr. Vail: And also the deed by which it was offered to reconvey to the complainant.

The Court: All right.

Mr. Vail: This property.

Mr. Jordan: I will take an exception to the Court's ruling.

The Court: You do not have to take an exception, Mr. Jordan; in Chancery.

Mr. Jordan: All right.

The Court: Just appeal. The time must be fixed of that notice.

Mr. Vail: We will have to fix it by the witnesses.

Mr. Jordan: I could look up my copy when that was served on us.

Mr. Vail: It was served on February 14, 1928. The deed—

The Court: That was long after this suit was brought, wasn't it?

Mr. Jordan: Yes, sir.

The Court: That is very patent what that was for.

Mr. Jordan: Long after the foreclosure in Florida.

The Court: I will admit it. I do not think it is worth anything.

Mr. Vail: Both the notice and the deed were served, at that time.

The Court: All right.

Mr. Jordan: The notice, your Honor, was received by me on February 10, 1928, and the deed shows my deed stamp also as February 14, 1928.

The Court: All right.

Mr. Jordan: Bearing upon that, also, your Hon-

or, I would like to introduce here a notice which was served upon the plaintiff's attorney of record shortly before the action in the law court, in which we were notified that they intended, at that time, to introduce this evidence of fraud.

The Court: All right.

Mr. Corn: This is a notice that we are going to put that in, that we are going to apply to amend the answer filed. Now, with that there should go a notation that that motion was not pressed at the trial.

Mr. Jordan: The minutes show that.

The Court: Let it be marked.

(Notice marked Exhibit C-7, 4/29/29.)

Mr. Jordan: I think, your Honor, there is a slight piece of evidence that I should like to introduce, at this time, to complete the case. I will call Mr. Strope, Donald Strope.

DONALD STROPE, sworn for complainant.

Direct-examination by Mr. Jordan:

Q. What is your occupation, sir? A. I am connected with the Sheriff's Office as a process server.

Q. Of Essex County? A. Yes, sir.

Q. And did you, on February 23, 1928, about 11:30 in the morning, see Samuel Kaplan for the purpose of serving a subpoena upon him? A. I saw Samuel Kaplan and served a subpoena, but I do not recall the exact date. It was in the early part of the year, February or March of last year.

Q. Well, would this affidavit of service, which you made at that time, refresh your recollection

(handing witness paper)? A. Yes, sir. That is my signature.

Q. Did Samuel Kaplan say anything to you, at the time you served the subpoena upon him? A. He did.

Q. What was it? A. Why, I had had considerable trouble serving the Benders and I was making some remark to him about the trouble I had with them, and he said, "Well, as far as the Profit Realty Co. is concerned," he says, "I don't know anything about that." He says, "I am just a dummy officer in it and I didn't think that Mr. Bender would get away with it at the time."

Q. He told you that? A. Yes, sir.

Q. Did he say who made him a dummy director? A. He did. He said Mr. Bender had made him a dummy officer in the corporation.

Mr. Jordan: Your witness.

The Court: Any cross?

Cross-examination by Mr. Vail:

Q. Mr. Strope, what realty company are you talking about? A. As I recall it, I think it was the Profit Realty Co.

Q. I see. It might have been some other real estate company though, might it not? A. I don't think so. I only served Mr. Kaplan once and it was in reference to this case where Williamson was plaintiff and the Bender family and the Profit Realty Co., as I recall it, were defendants.

Q. And did you know that Mr. Kaplan was interested in any other corporations besides this Profit? A. No, sir.

Q. Well, he might have meant some other corporation, then, so far as you know; he might have

meant the Sivad corporation? A. No. He was talking about this case, at the time. I was talking to him five or ten minutes, as I recall it. I told him I had had considerable trouble serving Davis Bender and I finally served him in the evening; I had to go to his home and the maid let me in and I served him at the dinner table, and they gave me quite an argument, at the time, I recall that, he denied his identity.

Mr. Vail: Why, now, I would like to put on a couple of short witnesses out of order. We have subpoenaed them here.

The Court: All right.

Mr. Vail: Mr. Houston.

DAVID HOUSTON, sworn for defendant.

Direct-examination by Mr. Vail:

Q. Mr. Houston, what is your business? A. Real estate.

Q. In the city of Newark? A. Yes.

Q. Do you know Mr. Bender, Mr. Davis Bender? A. Yes, sir.

Q. Do you know Mr. Harry Bender? A. Yes, sir.

Q. Did you, at any time, ever buy any property from him? A. In 1925.

Q. What property did you purchase? A. Property of East Vanderpool Street and Avenue "C".

Q. Did you make a contract for the purchase of that property? A. Yes, sir.

Q. Who did you make the contract with?

Mr. Jordan: We object. The paper speaks for itself.

Mr. Vail: Well, he may recall who made it.

Mr. Jordan: You have got the paper there.

The Court: I think the contract should speak for itself, Mr. Vail.

Q. Is this the contract that you made, Mr. Houston? A. Yes, it is.

Mr. Vail: I would like to offer in evidence contract dated April 17, 1925, between Davis Bender and Molly Bender, his wife, and Harry Bender, single, of the first part, and David Houston, of the second part, for premises on Vanderpool Street and Avenue "C". It does not say—the consideration is stated as $56,000.

Mr. Jordan: No objection. We have already offered that same contract and it is before the Court.

The Court: Oh, well, then I will—

Mr. Vail: This contract, if your Honor please, has not been offered here. It was in evidence on behalf of Mr. Jordan, when he put his evidence in on the discovery.

Mr. Jordan: That is what I meant.

The Court: Well, why offer it again?

Mr. Jordan: I beg your pardon?

The Court: Why offer it again?

Mr. Vail: We want to get it on the record in here.

The Court: Well, it has all been offered. All the discovery proceedings have been offered in evidence, with the exhibits, without any objection on your part.

Mr. Vail: This has not been marked in this hearing. It should be marked again.

(The paper under discussion was originally marked Exhibit C-22.) (Now marked Exhibit D-3.)

The Court: They are all going to be marked, the checks and everything, that were in the discovery, are to be put in here.

Q. Who did you have your negotiations with, Mr. Houston, when you made this contract for the purchase of this property?

Mr. Jordan: We object to that. It is merged in the written instrument.

The Court: I will allow it.

Mr. Jordan: Exception.

The Witness: Answer the question?

The Court: Yes.

A. With Mr. Davis Bender.

Q. Did you talk with anybody else besides Mr. Davis Bender in these negotiations? A. I don't remember so, no.

Q. And when you were negotiating with Mr. Davis Bender, did he tell you who was the owner of the property?

Mr. Jordan: I object to that.

The Court: I will allow it.

A. He informed me—he didn't tell me he was the owner, he informed me his son had an interest in the property; therefore, the contract was drawn in both names.

Q. Did he tell you what interest his son had in the property? A. No; he didn't say anything about that.

Q. Did you take title to this property, Mr. Houston? A. No, sir. I was representing a New York

concern who were purchasing down there and the property title was taken in the name of the Fidelity Trust Co. as trustee.

Q. Did you assign the contract over to the Fidelity, do you remember? A. I rather thought I had done it. I looked through my files. I haven't got the contract in my files of that property, but I assume that that was done.

Q. Do you know whether the property was conveyed to the Fidelity or not? A. Yes, the property was conveyed to the Fidelity.

Q. Was that conveyance pursuant to this contract or some other contract? A. Pursuant to that contract.

Mr. Vail: That is all.

Mr. Jordan: No questions.

The Court: That is all.

Mr. Vail: Mr. McCarthy.

JAMES J. McCARTHY, sworn for defendant.

Direct-examination by Mr. Vail:

Q. Mr. McCarthy, what is your business? A. I am an attorney.

Q. Practice in Newark? A. Employed by the Fidelity Union Title & Mortgage Guarantee Co.

Q. What is your business over there? A. Why, my work now is a general nature, drawing contracs, reading titles.

Q. Did you have anything to do with this title to the property on Vanderpool Street— A. I closed—

Q. —owned by Davis Bender and Harry Bender? A. I closed the title.

Q. And did you bring your records of the closing with you? A. I did.

Q. And you have them there? A. Yes.

Q. May I see them? A. (Papers produced.)

Q. Mr. McCarthy, what records did you make at the closing of this title? A. The closing affidavit and the statement of the closing figure.

Q. I show you here an affidavit of Harry Bender, dated June 15, 1925, and asigned by Harry Bender, which states that—(interrupted).

The Court: What is the date of this note to Mr. Williamson?

Mr. Jordan: The date is June, 1925.

The Court: Just June?

Mr. Jordan: Yes. The contract being made—June 16.

The Court: And this is what?

Mr. Vail: And this is the closing of a title in which Harry Bender sold the property on that June 15.

The Court: Yes.

Mr. Vail: That is—

The Court: That is dated June 15?

Mr. Vail: This is dated June 15.

Mr. Jordan: The note in Florida was given pursuant to a contract made earlier.

The Court: When was the contract made? Is that in evidence?

Mr. Jordan: We have not proven that yet.

The Court: You want to put in the contract.

Mr. Jordan: We unfortunately have not got the contract, your Honor.

The Court: Oh, I see. All right.

Mr. Vail: I do not believe there was a contract, your Honor.

Q. Mr. McCarthy, is that the affidavit that was signed by Mr. Bender at the closing of title, then?

Mr. Jordan: We object on the ground that it is immaterial, irrelevant and incompetent, and shows no interest of record in Harry Bender.

The Court: I will allow it for what it is worth. Of course, it is a self-serving declaration.

Mr. Vail: But this was made, your Honor please, before there was any obligation in Florida, or simultaneously with the obligation itself and before the obligation became due.

The Court: That might be before the obligation came due, but it could not possibly be before the obligation was entered into. The note itself was in June and the contract must have been made before this affidavit was made.

Mr. Vail: There is no evidence here that it was.

The Court: All right. I will allow it.

(Paper marked Exhibit D-4, 4/29/29.)

Q. Now, Mr. McCarthy, I show you what appears to be a part of your record of the closing of this title to the Vanderpool Street property, and ask you if that statement was made by you?

Mr. Jordan: We object to this as incompetent and irrelevant.

The Court: I will allow it.

A. This is a statement of the closing figures, and it was made by me at the time of closing.

Q. What was the purchase price for the property?

Mr. Jordan: I object to that as immaterial. I will withdraw it.

The Court: It is already in. Fifty-six thousand dollars.

A. Fifty-six thousand dollars.

Q. How much cash was paid over at the closing of title, according to that statement you have? A. According to this statement, the balance of cash, $37,023.50.

Q. Does that statement show to whom it was paid? A. This statement shows that it was paid to the grantors.

Mr. Vail: I offer that.

Mr. Jordan: May I see it? (To witness:) Mr. McCarthy, look at that statement—

The Court: Wait a minute. Have you finished?

Mr. Vail: Yes; I have finished.

Mr. Jordan: I just want to cross-examine on this statement, before your Honor rules on it.

The Court: All right.

Cross-examination by Mr. Jordan:

Q. Look at that statement. On any part of it, can you tell who were the grantors? A. This statement does not state the names of the grantors.

Q. All right. Isn't it a fact that the statement itself shows that the money was paid to grantor,

singular? Look at it. A. Yes, I know. The printed form has the word "grantor."

Q. Yes. Not plural. A. Singular.

Q. Yes. And can you tell from your statement who it was represented the grantor in that transaction? A. I have the names of the attorneys who were present.

Q. Who are they? A. Mr. Haines and Mr. Feit.

Q. Can you tell what Mr. Feit it was? A. Mr. Louis Feit is written here, as one of the persons who were present.

Q. I see.

Mr. Jordan: We object to the instrument on the ground that it is incompetent, irrelevant and immaterial.

The Court: I will admit it. Let it be marked. Then give it back to the witness, because it is an original. Then, if we need it, we can get copies.

(Statement marked Exhibit D-5, 4/29/29.)

Redirect-examination by Mr. Vail:

Q. Did you have a contract before you when you closed that title, Mr. McCarthy? A. Yes, sir.

Q. I show you what appears to be a contract for the conveyance of that property and ask you if that is the contract pursuant to which your closing statement relates? A. I believe that it is.

Mr. Vail: And that contract is marked here Exhibit C-22 and Exhibit D-3, April 29, 1929.

Q. Now, a conveyance was made, at the time of the closing of title, was there not? A. That is right.

Q. I show you here a conveyance dated June 15, 1925, between Davis Bender, Molly Bender and Harry Bender, of the first part, and Fidelity Union Trust Co., a corporation, of the second part, for premises on Avenue "C" and Vanderpool Street, and I ask you if that is a copy of the deed that was made at the time of closing title? A. I couldn't tell you that from this here, unless I could refer to the book and page of the deed in my records.

Q. Well, have you, Mr. McCarthy, any records made by you at the closing of title, which show the book and page number of the deed that was recorded—

The Court: Why, no, of course not, because he didn't know what the book and page number was going to be until after the title was closed.

The Witness: But I have an abstract of the deed involved in this transaction.

Q. What was that? A. I have an abstract of the deed. The abstract was made after the deed was recorded.

Q. Well, is that abstract that you made after in the usual course of your business? A. That is right, yes.

Q. To show the deed that was given—to show where the deed that was given at the closing of title was recorded? A. Yes, sir.

Q. And can you now tell us whether or not that was the deed, by referring to your records?

Mr. Vail: I have discovered the original deed, your Honor.

The Court: Very well, then, put the original deed in.

The Witness: If I can see the original deed, I can tell.

Q. (Showing witness paper:) Is that the deed that was given at the closing of title, Mr. McCarthy? A. Yes, it is.

Mr. Vail: I would like to offer in evidence deed dated June 15, 1925, between Davis Bender, Molly Bender, his wife, and Harry Bender, single, of the first part, and Fidelity Union Trust Co., of the second part, covering premises on Avenue "C" and on Vanderpool Street, in the City of Newark, which is recorded in Book P172 of Deeds for Essex County, page 499.

Mr. Jordan: We object to it as a self-serving instrument as to Harry Bender.

The Court: I will allow it.

(Deed marked Exhibit D-6, 4/29/29.)

Mr. Vail: That is all.

Recross-examination by Mr. Jordan:

Q. Can you tell us from your abstract who was the prior owner of record, before this deed that was introduced last in evidence? A. Yes, I can tell from this certificate of title that I have.

Q. And who was it? A. According to this certificate, it was Michael J. Tansey, widower.

Q. And to whom did he convey? A. Davis Bender.

Q. Does the name of Harry Bender appear of record? A. No.

Q. Did you obtain from Davis Bender a similar affidavit of title to this Exhibit D-4? A. That is the only affidavit I procured at the closing. My

recollection is that Davis Bender was not present.

Q. That he was not present? A. That is my recollection.

Q. If Davis Bender was present, you would undoubtedly insist upon an affidavit of title from the record owner, wouldn't you? A. We usually take it from the record owner.

Q. And isn't it a fact that it was because Davis Bender was not present that you took this affidavit from Harry as being the next best thing you could get? A. For that reason and for the reason that we had notice that he had some interest in the property.

Q. Did you have such notice from the record? A. No.

Q. Just from what they told you? A. From what they told me at the closing and from the fact that his name appeared on the contract.

Q. And that is all? A. And that is all. That is all the notice that I had.

Q. Do you remember when this contract was made? A. When the contract was made?

Q. Yes. A. No.

Q. You were not present? A. No.

Mr. Jordan: That is all.

Mr. Vail: That is all, Mr. McCarthy. You may take the exhibit.

Mr. Munro.

The Court: Another short witness?

Mr. Vail: Yes.

JOHN MUNRO, sworn for defendant.

Direct-examination by Mr. Vail:

Q. What is your business, Mr. Munro? A. Charge of the real estate, Fidelity Union Trust Co.

Q. And were you in charge of the real estate over there in the Fidelity Union Trust Co. at the time of the transaction between Davis Bender, Molly Bender and Harry Bender and Fidelity Union Trust Co., relating to property on Avenue "C" and Vanderpool Street in the City of Newark? A. I—the man that was in charge left. I was his assistant, at that time.

Q. I see. And did you have anything to do, at that time, with the transaction? A. I kept along with it to take care in case the manager was out.

Q. I see. And were you there at the time title was closed? A. Yes, sir. It was closed upstairs.

Q. Did you disburse any of the moneys at the closing of title? A. I—I saw that the checks went through and were paid.

Q. I see. And did you bring those checks with you, that were used on the closing of title? A. Yes, sir.

Q. Will you produce them, please? A. (Witness does as requested.) Here is the check that went to the Benders.

Mr. Vail: Mr. Munro produces a check of the Fidelity Union Trust Co. dated June 15, 1925, made payable to the order of Davis Bender, Molly Bender and Harry Bender, for $31,323.50, which is indorsed by Davis Bender, Molly Bender and Harry Bender for deposit, and it is also indorsed "For deposit, Davis Bender."

Mr. Jordan: No objection.

The Court: Let it be marked.

Q. That check was— A. Final payment.
Q. —finally paid? A. Yes.

(Check marked Exhibit D-7, 4/29/29.)

Q. Were there any other checks used at the closing of title, Mr. Munro? A. Yes.
Q. And did you bring them with you? A. Yes.
Q. May I see them? A. (Papers handed to counsel by witness.)

Mr. Vail: Mr. Munro produces check of the Fidelity Union Trust Co. dated June 15, 1929, to the order of Louis J. Feit, attorney for Davis, Molly and Harry Bender, for $2800.

Mr. Jordan: Do you offer that?

Q. Was that check finally paid? A. Yes, sir.

Mr. Vail: I offer it in evidence.
Mr. Jordan: Could I see it?
Mr. Vail: Certainly.
Mr. Jordan: We have no objection.
(Check marked Exhibit D-8, 4/29/29.)

Q. Were there any other checks? A. (Witness produces checks.)

Mr. Vail: Mr. Munro produces check of Fidelity Union Trust Co. to the order of Fidelity Union Title & Mortgage Co. for $16,976.50.

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

Mr. Jordan: I object to this as irrelevant.

It seems it has no bearing on the issue before the court.

The Court: What is the object of this?

Q. What is this check for? A. I think that was to pay off a mortgage that was on the property.

Mr. Vail: I don't think it makes any difference—just to show what the transaction was, that is all.

Mr. Jordan: We object to it as irrelevant.

The Court: Do you want it introduced?

Mr. Vail: I think it better be in evidence.

The Court: I will receive it.

(Check marked Exhibit D-9, 4/29/29.)

Q. Now, Mr. Munro, I show you check marked Exhibit D-7 of this date for $31,323.50, to the order of Davis Bender, Molly Bender and Harry Bender, and ask you if you know what that check was given for? A. It was given in payment of a piece of property which we took title to on Vanderpool Street and Avenue "C".

Q. Was that taken in payment of the consideration or mortgage money? A. Consideration.

Q. At the closing of title? A. Yes, sir.

Q. I also refer you again to check marked D-8 of this date, to the order of Feit & Feit, attorneys, and ask you what that check was given for, at the closing? A. It was my understanding that check was given for a deed, for David Houston's commission.

Q. Was that a part of the consideration? A. The purchaser paid the consideration.

Q. And then that was a part of the money due to defendant at the closing of title? A. No, that was not due to Bender.

Mr. Vail: I see. All right. That is all.

The Court: You better take back those checks, Mr. Munro.

The Witness: Yes.

Mr. Jordan: There is only one thing, your Honor, in case this check of $31,000 should not again reach you, that I want to call your specific attention to, and that is that the name Davis Bender on this check is written twice, first at the top and lastly. Now, these two signatures are very much unlike. They could not possibly be written by the same hand.

The Court: Have you noticed that?

Mr. Vail: The first—

The Court: The first Davis Bender apparently written in the same hand as Molly Bender and Harry Bender and then Davis Bender an entirely different hand, you see.

Mr. Vail: What probably happened there was the person who indorsed the checks put it in Davis Bender's account for collection, so that that is where the money went, irrespective of who endorsed the check.

The Court: What I am getting at and what Mr. Jordan is getting at is this: Those three signatures are in an entirely different hand than this one.

Mr. Vail: Yes.

The Court: In other words, whoever indorsed these for receipt, indorsed all three, one person wrote all those three names.

Mr. Vail: That is right.

The Court: And then somebody else—do you agree to that?

Mr. Vail: Yes, I will agree to that.

Mr. Jordan: And further, that the last signature on this check is probably the only authentic signature there of the defendant.

Mr. Vail: Oh, I won't agree to that.

The Court: Oh, no.

Mr. Jordan: If that is the case, could your Honor have this impounded during the trial, until we examine him?

The Court: Yes, I will do that. We will return this particular one (referring to Exhibit D-7).

Mr. Vail: Now, I have another witness that is a little out of order, but it is short, if you want to take it before lunch.

The Court: Yes, I think we might get the small ones out of the way before luncheon. There is no use beginning on the Benders, at this time. What is the other one?

Mr. Vail: Mr. Roemer.

CHARLES T. ROEMER, sworn for defendant.

Direct-examination by Mr. Vail:

Q. Mr. Roemer, what is your business, sir? A. Trucking contractor.

Q. Do you know Davis Bender and Molly Bender and Harry Bender? A. I do.

Q. And did you ever buy any property from them, or any of them? A. Yes, I did.

Q. And what property did you buy from them? A. I bought a garage, running from Plane Street into Essex Street, Newark.

Q. From whom did you buy that? A. From Mr. Bender.

The Court: Davis Bender?

The Witness: Mr. Davis Bender, yes, sir.

Q. And in whose name was that property purchased? A. In whose name? In the name of Roemer Brothers Garage.

Q. I see. Did you make a contract for the purchase of that property? A. I did.

Q. I show you a contract dated March 2, 1926, between Davis Bender and Molly Bender, parenthesis, also known as Mollie, parenthesis, Bender, his wife, of the first part, and Roemer Brothers Trucking Co., a corporation, of the second part, and for which the consideration appears to be $77,750 for the premises on Essex Street in the City of Newark, and ask you if that is a contract that you made with Mr. and Mrs. Bender?

The Court: What is the date on it?

Mr. Vail: March 2, 1926.

The Court: Well, this note in the Florida transaction was in 1925, wasn't it?

Mr. Jordan: Yes.

Mr. Vail: Yes, sir.

The Witness: Yes, sir.

Q. Mr. Roemer, do you remember, or did you bring any record with you to show how much money you paid Mr. Bender at the closing of this title? A. Well, I believe this will answer what you are asking for: it is a statement that I got from Emanuel Lowenstein, the lawyer representing the Uptown Building & Loan, who made a loan. I think you will get all your information there.

Q. And is this a statement of the transaction—

A. Yes.

Q. —between you and Mr. and Mrs. Bender? A. Yes.

Q. Of the adjustments at the closing of title? A. At the closing of title.

Q. And does this statement show how much money in cash? A. Yes.

Q. Mr. Bender received? A. Yes.

Q. Can you look at it and tell us how much you paid him, at that time? A. How much we paid him? In all, why—(interrupted).

Q. At the closing of title, how much passed over to Mr. Bender and Mrs. Bender, at that time? A. In the neighborhood of $62,000, at the closing of the title.

Q. And did you take a deed for this property, Mr. Roemer? A. Yes.

Q. Did you bring the deed with you? A. Yes (witness produces paper).

Mr. Vail: Witness produces deed dated May 20, 1926, between Davis Bender and Molly Bender, (also known as Mollie Bender), his wife, of the first part, and Roemer Garage, Inc., of the second part, covering premises on the westerly side of Essex Street, in the city of Newark, recorded in the Essex County Register's Office in book Z-73 of Deeds, page 375. I offer this.

Mr. Jordan: No objection.

(Deed marked Exhibit D-10, 4/29/29.)

Q. Was the consideration of $65,000, approximately, paid in money or part of it in mortgage? A. Why, it was paid in a check, it was paid by check to Mr. Bender. I believe Mr. Bender cleared off a small mortgage; I think it was a $7,000 mortgage that he cleared off.

Q. And, after paying that $7,000 mortgage, there was this approximately $65,000 left? A. Right.

Mr. Vail: That is all.

Mr. Jordan: No questions.

The Court: You can take back your exhibits. If we want them, we will call for them.

Mr. Jordan: I might state, Judge, that the contract was marked in evidence in our discovery proceedings and is part of the record before you.

Mr. Vail: Now, we have no more short witnesses.

The Court: How many more witnesses have you, Mr. Vail?

Mr. Vail: We have got about three or four more witnesses.

The Court: Are they all long?

Mr. Vail: Well, I think that cross-examination of the Benders—

The Court: Yes.

Mr. Vail: —will be rather long.

The Court: Yes.

Mr. Vail: I have Mr. Feit here, an attorney. I don't know—

The Court: He threatens to be long too.

Mr. Jordan: Your Honor, I don't believe the cross-examination of any of those witnesses will be very long, because their examination on the discovery proceedings is certainly the cross-examination that I would have, any way.

Mr. Vail: I can put Mr. Feit on. I don't think he will be long.

The Court: All right. Put him on.

LOUIS J. FEIT, sworn for defendant.

Direct-examination by Mr. Vail:

Q. Mr. Feit, what is your business, sir? A. I am a practicing attorney in this State.

Q. And for how long have you been practicing here? A. For about ten years.

Q. How did you come to be here today? A. By subpoena.

Q. Who subpoenaed you? A. Mr. Daniels, I believe.

Q. And you know the Benders, do you? A. Yes.

Q. Molly Bender, Davis Bender and Harry Bender? A. Yes, I have known them for a long time.

Q. You represent Davis Bender at any time? A. I have represented Davis Bender for a number of years, up to about—well, I haven't seen him except in court here the last time that I testified and here, for more than a year, I believe it is.

Q. Did you represent Davis Bender when he purchased the property on Vanderpool Street in Newark? A. I did.

Q. And from whom did he buy that property? A. That was bought from Michael Tansey.

Q. Mr. Feit, I show you an agreement dated October 11, 1924, between Michael Tansey, widower, of the first part, and Davis Bender, of the second part, in which the consideration named is $20,000 and the premises described therein as on Vanderpool Street near Avenue C, city of Newark; and ask you if that is the contract by which Bender purchased that property? A. Yes, sir.

Q. Did you prepare that contract? A. In collaboration with Mr. Tansey.

Q. I see. A. He is an attorney, also.

Mr. Vail: I offer that in evidence.

Mr. Jordan: May I see it?

Mr. Vail: Certainly.

Mr. Jordan: No objection.

(Agreement marked Exhibit D-11, 4/29/29.)

Q. Mr. Feit, this contract is drawn in the name of Davis Bender. Do you know whether or not the property was owned by Davis Bender for himself or—for himself and any one else—or in trust for—(interrupted) A. There was some—(interrupted).

Mr. Jordan: We object to that.

The Court: I think the record ought to speak for itself, in the first place.

Mr. Vail: I think, if your Honor please, this is an action to set aside some conveyances which are alleged to be fraudulent.

The Court: Yes.

Mr. Vail: And I think that any testimony that may be given by any one to prove that this was not a planned transaction and that —(interrupted).

The Court: I will receive it. Then I will pass on it later.

Mr. Jordan: Our objection is that it is incompetent.

Mr. Vail: What was the question?

(Question read as follows:)

"Q. Mr. Feit, this contract is drawn in the name of Davis Bender. Do you know whether or not the property was owned by Davis Bender for himself or—for himself and any one else—or in trust

for—" A. Well, you mean at that time, that the contract was—

Q. Yes. A. Well, that was owned by Tansey.

Q. Well, this contract was made in the name of Davis Bender. Did you attend at the closing of title pursuant to that contract? A. Yes.

Q. To whom was the title conveyed? A. Well, I would like to see the deed to refresh my recollection.

The Court: We know to whom it was conveyed. It was conveyed to Davis Bender.

Mr. Vail: To Davis Bender, yes.

Q. And do you know whether or not Davis Bender got that property or held it in trust for some one?

Mr. Jordan: I object as incompetent, irrelevant and immaterial.

The Court: Well, I don't know. I think that is going a little too far, Mr. Vail.

Mr. Jordan: It would establish a trust, your Honor, an oral trust of real estate.

Mr. Vail: Well, I think that is permissible, to establish a parole trust with real estate. The only time when you cannot use it is when one of the persons to the agreement may be trying to upset it.

The Court: I will receive it. I do not think it is competent, Mr. Vail, but I want to be perfectly fair in the matter. I will receive it.

Mr. Vail: Well, if you do not think it is competent, I—

The Court: No. If you think it is competent, put it in.

Mr. Vail: I will withdraw the question.

Q. Do you know of any arrangement made between Davis Bender and any one else, relating to the title to that property?

Mr. Jordan: We object to that, immaterial and irrelevant.

The Court: I will allow it.

Mr. Jordan: And incompetent.

The Court: I will allow it.

A. The only time I learned of it was at the time that Mr. Houston—that Mr. Bender told me he had—there was a contract prepared, I think by the firm of Haines & Channalis, somebody from that office, and asked me to come to Newark, and Mr. Houston—at that time, when I inspected the contract, I saw Harry Bender's name in it and I inquired about it, because I had known that the deed was in the name of Davis Bender, and Mr. Bender then informed me that his son had an interest in it, that he was indebted to him. That is about the gist of the conversation. I don't say that was the exact conversation, because I cannot recall it.

Q. Yes. Now, Mr. Feit, you also represented the Benders at the time Davis Bender and Molly Bender conveyed these properties on Goldsmith Avenue and South Broad Street and King Street and Wright Street, did you not? A. Was that that long deed that was shown to me the other day? May I see it?

Q. (Paper handed to witness.) A. Yes, sir.

Q. Was that conveyance and arrangement suggested by you—

The Court: That is enough. Was it.

The Witness: No, sir.

Q. By whom was it suggested? A. By Davis Bender.

Q. And what did he say to you, when he made the suggestion? A. He said—

Mr. Jordan: I object to this. It is self-serving.

The Court: I will allow it.

A. He said his wife was exceedingly ill, and I knew her to be ill for many years. As a matter of fact, she—

The Court: No. That is enough.

The Witness: Yes. I knew her to be ill for many years.

The Court: You are telling us what Mr. Bender told you, now?

The Witness: Yes, sir. He told me that, also, and which I knew to be the fact.

The Court: Well, don't tell what you knew. Say what he told you.

The Witness: And he told me he was very ill, suffering from a chronic asthmatic condition, that he could not stay in this climate, he had to have a warmer climate, and he said that he was indebted to his son, he didn't want to have any active participation any more in his business and so he instructed me to make these conveyances, which I did—or this conveyance.

Mr. Jordan: I move to strike out the testimony. The answer is hearsay.

The Court: I will let it stand.

Q. Did Molly Bender come there at the time of closing? A. No. I almost invariably had to get her signature.

Q. Was Harry Bender there? A. Yes.

Q. And— A. That is, to my best recollection. I cannot say yes or no. That is what I believe.

Q. Was he there at the closing of title? A. Well, there was only, I believe, the deed drawn.

Q. And did you make up a statement of closing? A. I don't think so. I might have, but I don't think so. I don't recall anything that would require it.

Q. Do you know what the consideration was for that conveyance? A. Well, I will—I knew—

The Court: Was there any money passed?

The Witness: Not that I recall, your Honor.

Q. Well, what was the consideration for it, then?

The Court: How does he know? There was not any—money passed.

Mr. Vail: I think it was testified the contract—(interrupted).

The Court: He said that Mr. Bender told him he was ill and his wife was ill and he didn't want to bother with real estate any more, that he owed him some money and therefore to make the deed, and the deed was made, and no statement was made at those closing and no cash was turned over.

Mr. Vail: Yes.

The Court: Now, if there was any consideration, he could only know from what Mr. Bender told him.

Mr. Vail: All right, sir.

Q. Now, you represented Mr. Bender on and off, didn't you, Mr. Feit? A. Yes. I always did.

Q. At the time this deed of conveyance was made

for these various pieces of property by Davis Bender to Harry Bender, do you know about the suit in Florida by Williamson against Bender? A. The only time that I had any knowledge of that suit was when Harry Bender, his son, brought in the papers to me, when the Federal District Court suit was started, and I didn't know anything about the transaction at all, except that he told me his father was no longer living in Newark, and I made the motion for him, after he telegraphed to his father, before Judge Clark and Judge Clark sustained me, but the other side discontinued the cause then, after he had sustained me.

Q. Was that before the conveyance to Harry Bender of these properties or afterwards? A. I haven't the dates. I don't know—the dates are in the papers—just what was what. I believe there was—(interrupted).

Q. That is all.

The Court: Did you file an answer in the foreclosure suit in Florida?

The Witness: No, your Honor. I have absolutely no recollection of filing any answer.

Cross-examination by Mr. Jordan:

Q. I show you a telegram dated July 21, 1926, to the Circuit Court in Florida, which is included in this record before the Court, Exhibit C-17, and ask you if you sent that telegram in the name of Davis Bender? A. I do not recall it at all, sir.

Q. I show you, incorporated in the certified copy of the same suit, a letter purporting to come from Messrs. Feit & Feit, under date of July 1, 1926, to the same Court, and ask you if you wrote that let-

ter? A. That is a copy of our stationery and a letter and seems to be signed by me, but I have no absolute recollection of it—just requests the bill of complaint.

Q. I show you answer of defendants, Davis Bender and Mrs. Davis Bender, in that Florida action, and ask you if you prepared that for the Benders? A. I have no recollection of preparing any answer at all for the Benders in that suit in Florida.

Q. Do you know whether you did or not? A. I am pretty certain I did not, because there is not any record in my office at all.

Q. Did you talk to the Benders at all about this foreclosure suit in Florida? A. I was not interested in any foreclosure suit in Florida, because I did not know how to defend it.

Q. I didn't ask you that. A. No.

Q. You did not talk to them about it? A. Outside of, perhaps, they might have told me or Harry or his father might have come in and told me that they were sued and I got the bill of complaint after that, I wouldn't have anything else to do with it.

Q. Did you have the bill of complaint? A. I don't know whether I did or I didn't. I don't believe I did, because I don't see anything in my files.

Q. You sent five dollars down there to get that, didn't you? A. Apparently. It says that in the letter. It might have been that I told Mr. Bender that that was the charge, or he might have paid it, either he or his son might have.

Q. You say here in this letter: "We are enclosing our check for five dollars". A. Well, it might be that I—(interrupted).

Q. Now, did you do that? A. I don't have any absolute recollection of it.

Q. Look at this letter and refresh your recollec-

tion. A. I would say the letter seemed to indicate that I did, but I have no recollection of the matter, because I did not represent him in that foreclosure at all.

Q. This is the third time you have been examined in this suit, isn't it? A. Yes.

Q. And each time you come in and say you have no recollection. Now, you knew the last day you were here, last week, examined by me— A. Yes.

Q. —that I asked you about your knowledge of Bender's affairs— A. Yes.

Q. —didn't I? A. Yes, sir; with respect to the properties.

Q. And you said you didn't know anything unless I showed you those documents? A. That is right.

Q. Now when you received the subpoena today, you knew you were going to be examined more about Bender's affairs, didn't you? A. I obeyed the subpoena implicitly.

Q. Did you make any effort, when you knew you were coming to any of these hearings, to prepare yourself to refresh your memory and to tell the Court what you could about this case? A. The subpoena was sent—

Q. Yes or no. A. I made as much effort as the time allowed.

Q. When were you examined first in this case? A. Oh, I don't remember.

Q. Why, it was the 25th day of February of last year, wasn't it? A. Yes, yes.

Q. Well, you had lots of time since a year ago February to prepare yourself on your relations with Bender, haven't you? A. I didn't think it was necessary to prepare myself with my relation to Bender at the time.

Q. Now, as a matter of fact, you did not? A. I did the best I could, under the circumstances. I will give you anything you want or answer any question you want me to answer.

Q. Did you receive the bill of complaint from the Circuit Court of Florida? A. I don't believe I did, because I have nothing in my records to show it. You have something about a foreclosure suit in Florida and my records—I have no record whatever to show what the situation in Florida was, and I am certain that I did not participate in those proceedings. As a matter of fact, I have no knowledge—real knowledge—of the whole situation now.

Q. I see. Now, let me go a little further on this.

The Court: If you are going to take much longer, I will have an adjournment.

Mr. Jordan: I don't think I will take much longer.

The Court: I don't want to hold you, though. Oh, no, if you are not going to take very long, we might as well finish it.

Mr. Jordan: No.

The Court: Well, I think we better adjourn, then.

Mr. Jordan: All right, Judge.

The Court: You can look up your records during the adjournment.

(Noon Recess.)

Q. Mr. Feit, I show you chattel mortgage from Davis Bender to the Sivad Realty Co., dated June 11, 1926, and ask you if you prepared that instrument.

Mr. Vail: I want to object to any questions whatsoever in regard to this chattel mortgage, because that has nothing whatever to do with the conveyance. That is something that might properly be brought out on discovery proceedings, but so far as the conveyance here is concerned, that has nothing to do with whether or not this man conveyed away his property. That was a chattel mortgage he gave on his property—

The Court: Is there anything in the discovery about that chattel mortgage?

Mr. Jordan: There is, your Honor.

The Court: All right, I will allow it.

(Discussion.)

The Court: I have not read the complaint, but I understand that you charge that he divested himself of everything.

Mr. Jordan: Yes, that he divested himself of everything.

The Court: Very well. I think that is quite proper. I will allow it.

(Question read as follows:)

"Q. Mr. Feit, I show you chattel mortgage from Davis Bender to the Sivad Realty Co., dated June 11, 1926, and ask you if you prepared that instrument." A. I did.

Q. And that acknowledgment was taken before you as a Master in Chancery? A. It was, sir.

Mr. Jordan: I offer that.

(The paper offered had been previously marked Exhibit C-3, 4/29/29.)

Q. You knew something of the workings of the

Sivad Realty Co., also, didn't you? A. Well, I didn't know of the workings of it.

Q. Yes or no. A. I knew something about the Sivad Realty Co. I didn't incorporate it or—(interrupted).

Q. It was brought into your office by Harry Bender, wasn't it? A. The Sivad Realty Co.?

Q. Yes. A. Either Harry Bender or Davis Bender or Harry Hoffman, I don't know which one of the three.

Q. Did you see any money passing at the time that this chattel mortgage, Exhibit 3, was made and delivered?

Mr. Vail: Just a moment. Your Honor please, I have to object to that, unless Mr. Jordan wants to make Mr. Feit his own witness. That is not cross-examination. There was no direct testimony that had to do with the chattel mortgage or whether or not any consideration was passed on the chattel mortgage.

Mr. Jordan: I am satisfied to do that.

The Court: Very well. Proceed.

A. I believe there was a check passed.

Q. Did you see it? A. I believe it was passed in my office.

The Court: No. Now, did you see it?

The Witness: I can't—I haven't an absolute recollection of the thing, your Honor, but my best recollection is that there was.

Q. Who signed the check? A. I believe it was the Sivad Realty Co. by Harry Hoffman.

Q. Are you sure about that? A. I cannot, sir,

say positively on these things that occurred so long ago.

Q. Yes. Did you also represent Davis Bender the time that this contract was made with Roemer Brothers Trucking Co.? A. May I see the contract, sir?

Q. Exhibit C-21. A. I believe I did.

Q. And at the closing date of that contract, on May 15, 1926, did you represent Davis Bender? A. I can't say positively, but I believe I did.

Q. You know, don't you, that on that closing Davis Bender collected over $60,000 cash? A. Well, I don't know whether it was cash or the exact amount, but I presume that he got what he bargained for.

Q. When you drew this chattel mortgage covering the man's home furniture, automobile and everything movable in his home, on June 11, immediately following the receipt by him of $60,000, didn't it occur to you that that was an unusual transaction? A. Well, I cannot question my clients as to their motives when they come in and ask me.

Q. I didn't ask you that. A. He was not interested in that—yes, he was. That was Davis Bender. I won't say that he did not—(interrupted).

The Court: Wait a minute. Doesn't that call for a conclusion?

Mr. Vail: It does, your Honor please, call for a conclusion, and furthermore—

The Court: Do you object to it?

Mr. Vail: I object.

The Court: I will sustain the objection. That calls for a conclusion, Mr. Jordan.

Mr. Jordan: Yes, sir.

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Q. Did you have any knowledge of any particular change in the financial situation of Davis Bender between May 15 and June 11, 1926? A. Well, I did, to this extent, that—

Q. Yes or no. A. Yes.

Q. Did you have knowledge which would lead you to believe that this chattel mortgage was a bona fide transaction?

Mr. Vail: If the Court please, I think that calls for a conclusion. I object to it.

The Court: I will sustain the objection. That calls for a conclusion.

Mr. Jordan: All right.

Q. Were you the attorney for the Sivad Realty Co., when this chattel mortgage was foreclosed and the sale had? A. I—it was the first time that I knew of the foreclosure.

Q. Did you ever know about the foreclosure of that chattel mortgage? A. Hadn't any knowledge of it until you mentioned it the other day here in front of me.

Q. Did you advise that that chattel mortgage be made and foreclosed so as to divest Davis Bender of any value that he might have in his household fixtures? A. Absolutely not.

Q. You did organize the Profit Realty Co., didn't you? A. I did not organize it; I drew the papers of incorporation.

Q. And you represented the Profit Realty Co. and Harry Bender, also, in this transfer of 92 Goldsmith— A. Yes.

Q. —Avenue, to that company? A. Yes, I did.

Q. You drew the deed? A. Yes.

Q. And you drew this mortgage, Exhibit 4, that

I show you, didn't you? A. I believe I did, sir. My name appears at the acknowledgment—at the foot of the acknowledgment, rather.

Mr. Jordan: That is all.

Redirect-examination by Mr. Vail:

Q. Mr. Feit, did you incorporate the Bender Construction Co.? A. No, sir.

Q. Did you incorporate the Sivad Co.? A. No, sir.

Mr. Vail: That is all.

The Witness: Very well, sir.

DAVIS BENDER, sworn for defendants.

Direct-examination by Mr. Vail:

Q. Mr. Bender, you are one of the defendants in this suit? A. Yes, sir.

Q. And you are the father of Harry Bender? A. Yes, sir.

Q. And the husband of Molly Bender? A. Yes, sir.

Q. Were you ever in the construction business, Mr. Bender? A. Building business.

The Court: What?

The Witness: Building business.

Q. And how long ago was that? A. Well, about twenty years.

Q. About twenty years ago. And when did you stop this business? A. Well, about a year and a half ago, something like it.

The Court: Just speak a little louder.

The Witness: About a year and a half ago. Year and a half ago.

The Court: About a year and a half ago?

The Witness: Something like it.

Q. And tell us, what was the nature of the construction— A. Beg pardon?

Q. Tell us, please, the nature of the construction business you were in. Were you building houses or doing public work? A. I was taking contractors carpenter work, mason work; I was building for myself houses, apartments, theatre.

Q. And did your son, Harry, ever work for you? A. Yes, sir.

Q. When did he begin to work for you? A. When he come out of school.

Q. How long ago was that? A. Oh, when he was about seventeen years old.

Q. How many years ago? Can you tell us in what year? A. He is now 28. That would be about 11 years.

The Court: I cannot hear him.

Q. You will have to speak louder. A. About 11 years.

Q. About how long ago? A. About 11 years.

The Court: Speak so Mr. Vail can hear you.

The Witness: Eleven, maybe twelve. I don't know. Something like that.

Q. And you say your son, Harry, was about how old, then? A. About seventeen.

Q. About seventeen. And what did he do for you? You said he worked for you. A. He was

keeping the books, he looked after them and the work; he engaged men to work.

Q. Did he go to the properties? A. Oh, on the properties, yes, sure—all day.

Q. What? A. All day on the properties while I was building, looking after the men—whether the men was working; writing down the time of the work.

Q. What? A. Writing down the time of the work, looking how much work they did.

Q. Did he work for you steadily? A. Yes, sir.

Q. I mean, did he work for you every day in the week? A. Yes.

Q. Did he have any other employment? A. No, sir.

Q. And did he have any title, such as other people that—

The Court: That is enough: did he have any title.

Q. Did he have any title? A. I don't know that question. I don't understand.

The Court: What did you call him?

The Witness: I can't—

The Court: What was he on the work?

The Witness: Oh, what he was doing on the work?

The Court: No. What did they call him on the work?

The Witness: Well, he was manager—like manager.

Q. And did you pay him any money when he worked for you? A. No, sir.

Q. Did you give him any money at all? A. Just spending money.

Q. And where did he live? A. With me.

Q. At what address? A. Well, at that time we was living on 18th Street yet, and then we moved to Goldsmith Avenue.

Q. And how long did he work for you as general manager or manager? A. Well, he worked till—until I sold the garage.

Q. After you sold what garage? A. Plane Street, Plane Street and Essex Street.

Q. To whom did you sell the garage? A. To Roemer Brothers.

Q. And how many years was that he worked for you? A. Well, I was there probably a year and a half ago. Let me see: Well, about ten years, I should say—about.

Q. Is that all that your son Harry ever did for you is to work as sort of a manager? A. In the business, yes.

The Court: I cannot hear the answers. Can you?

Q. You will have to talk louder, Mr. Bender. A. Yes.

Q. Did he ever have anything to do with the garage? A. Yes, sir.

Q. What did he do with that? A. He managed the garage.

Q. For how long a period of time did he manage the garage? A. Well, all the time that I had it.

Q. How long did you have the garage? A. I think about three—between three and four years that I did; but the garage was leased, a lease on it for a long time, and then they broke the lease and he went in managed it, because it was not steady, you see; the lessee was there only a short

time and then they broke the lease and he was all the time there—manager.

Q. Do you mean that you leased the garage to Roemer Brothers? A. No. It was leased to some other people; they couldn't stay there, they couldn't make out—I don't know they couldn't make out, but they couldn't run it; they broke their lease and then my son took care of it.

Q. Oh, they broke their lease? A. The other people.

Q. What was it? Tell us what kind of a garage business it was. A. Well, it was a garage about—took in about 150 cars, a big garage—and repairs.

Q. Did you do anything but store cars there? A. Stored cars there; yes, sir—and repairs.

Q. Did you take any active management in that garage business? A. Beg pardon?

Q. Did you have any active management in that garage business? A. He was doing the business; I was away to Florida.

Q. And while he was doing the garage business where did he live? A. 92 Goldsmith Avenue.

Q. Did he live with you? A. I was in Florida and he was living 92 Goldsmith Avenue.

Q. How much a week did you pay him for managing the garage? A. I didn't pay him any salary.

Q. Did you not give him any money at all? A. Spending money and board.

Q. So that, altogether, your son Harry worked for you approximately ten years? A. About.

Q. Both in the garage business— A. Yes.

Q. —and in the construction business? A. Yes.

The Court: How many years after he was twenty-one?

Q. How many years was that after he was twenty-one years of age? A. Oh, about six, seven years.

Q. What arrangement, if any, did you have with Harry as to compensating him for working for you in this construction business and garage business? A. I told him if he will work for me I will give him—I will pay him in one sum and that I will put him in business; that I will put him on his feet.

Q. And when did you tell him that? A. All the time, because he was asking for wages and I told him, "You don't need any money, because you will spend it. You don't have to have any. When you are with me, you will save it and when you will need it, I will give it to you—when you need it for something to invest."

Q. And what did he say— A. "All right."

Q. —when you told him that? A. "All right." Of course, he liked to spend; he liked to get wages; but I told him, "No, I will save it for you, and if it is with me, then you will have it; but if I pay you, you may go out and spend it if you get it."

Q. Do you remember the year that you stopped the construction business? A. That I stopped?

Q. Yes. A. It was in 1921.

Q. And were you still in the construction business when you were operating the garage? A. While I was operating in the garage I was in Florida.

Q. Then you had stopped the construction work before you had started the garage? A. When the garage was there I stopped the construction business; yes, sir.

Q. Did you have any construction business that you remember, after you started operating the garage? A. After, I had the theatre.

Q. What theatre was that? A. Roselle Park.

Q. New Jersey? A. Roselle Park, New Jersey.

The Court: Roselle Park.
The Witness: New Jersey.

Q. And can you describe that Roselle Park operation to us, how large the building was and how much it cost? A. Well, the building cost about—the building was about close to 100 feet in front and it was a very deep lot and it was built on our lot and I think it cost about—over $200,000.

Q. About how much money did you put into that building? A. Well, I put in $20,000 at one time in one lump—$20,000—and then some more, about $5,000.

Q. What was that money that you put in used for? A. Used to build the garage—I mean, to build the theatre, not the garage.

Q. To build the theatre? A. Yes.

Q. And did your son Harry look after the— A Yes, sir.

Q. —theatre building? A. He did.

Q. Do you still own the Roselle theatre? A. No, sir. That was sold for the first mortgage at auction.

Q. The mortgage was—by its being sold for the first mortgage, you mean the mortgage was foreclosed? A. It was bought in for the amount of the first mortgage—about the amount of the first mortgage. Then there is still creditors not paid yet.

Q. Was that garage in your own name or in the name of some one else for you?

The Court: No. This is a theatre.

Q. Was this theatre in Roselle in your own name? A. No. Some one else's.

Q. In whose name was it? A. It was the Roselle Park Building Co.

Q. And what happened to the Roselle Park Building Co.? A. Nothing. It was lost. I put in my share, $20,000, and another man put in $20,000 when we organized, and that was lost.

Q. What was his answer? A. And that was lost.

Q. Is this corporation still in existence? A. No, sir, because we didn't made out any papers. We thought everything is lost and we haven't got anything, and it isn't enough money to cover for the lumber and material.

Q. And then you lost the twenty and the five thousand that you put into this corporation? A. Yes, sir.

Q. And when did you put that money into the corporation, Mr. Bender? A. Well, that was in 1926, I believe—the later part.

Q. Both the 20,000 and the 5,000? A. Well, the five went in in small amounts yet.

The Court: The latter part of 1926?

The Witness: The latter part of 1926.

Q. Is that when you put—

The Court: You mean, November or December?

The Witness: I think it was in October or November, some of these months.

The Court: Yes. October or November.

The Witness: Some of these months.

The Court: Yes.

Q. And then you were in Florida, were you, at the time that theatre was being built? A. No. I was here.

Q. You were here? A. Yes; building it.

Q. I see. Did you ever give your son Harry the money that you promised to him? A. Well, I gave him—I gave him the property for the money.

Q. How much money did you and your son Harry—(interrupted). A. I gave him—

The Court: Wait a minute!

Q. —did you and your son—

The Court: Wait a minute. You gave him what? What was that?

The Witness: I bought the deed—the property on Vanderpool and Avenue "C".

Q. Did you and your son Harry ever agree on how much money was coming to him for doing these services for you? A. Yes, sir.

Q. And when did you make that agreement? A. Well, at the time when I bought him first, he claimed more when I bought it, and I put in $6,000 at that time, and he claimed more money for services.

Q. Before this Vanderpool property was purchased, did you and your son ever come to any agreement as to the amount of money that you owed him? A. Well, we figured much more than the $6,000.

The Court: When was this Vanderpool property purchased?

Mr. Jordan: 1923.

The Court: No, in 1924.

The Witness: 1924.

Mr. Vail: October, 1924.

The Court: How old was Harry then?

The Witness: He must have been about twenty-six.

The Court: Twenty-six. All right.

The Witness: About twenty-five, twenty-six.

Q. I don't think, Mr. Bender, you have answered my question yet. How long before you bought this Vanderpool property did you and your son Harry come to an agreement as to the amount of money that you owed him? A. Well, he was always asking me for money, when I am going to give him, how much I owe him. And at that time we figured it up and then—(interrupted).

The Court: Mr. Vail wants to know how long before you bought the Vanderpool property did you and Harry talk about the money that you owed him; four or five years, or what was it?

The Witness: Oh, no; that was lately—that was before I bought the Vanderpool, maybe a few months.

The Court: Just a few months?

The Witness: Yes. He spoke different times.

The Court: That would be, perhaps, in 1923 that is?

The Witness: No. That was 1924.

The Court: All right.

The Witness: I think, 1924.

Q. And did you and your son Harry agree on the amount that you owed him, before you bought this property, or not? A. Yes. We had figured something like—of course, he said I owed him at least $10,000 and I ought to pay this. And of

course, I said, "When anything comes along"—and I left plenty of money—"I will give you some more."

Q. Well, now, how did you find out about this Vanderpool Street property; did you look it up yourself? A. No. My son told me about it. My son told me about it, that there was an auction sale to be on and he asked me to go down to look at it. Well, we went down together. I looked at it and we didn't buy at the auction sale. A later day we went down to Tansey's office, Tansey & Judge —I forget his name now—Judge Dillon or—I forget his name—and we bargained together to buy it. We asked Tansey how much he will take for it. I don't remember what he was asking, but finally he sold it for $20,000.

Q. Mr. Tansey sold the property to whom for $20,000? A. Well, I told Tansey and the Judge there—because the Judge told me that he had some interest in it—that my son is buying it.

Mr. Jordan: I object to that as not responsive.

The Court: Yes. It is hearsay, any way.

Q. Was this property on Vanderpool Street taken in your name or your son's name? A. Well, I had to take it in my name.

Q. I see.

The Court: Why?

The Witness: He wanted to be—the Judge told me that he would sooner see it in my name, because he wanted me to be on the bond.

The Court: He wanted you to what?

The Witness: He wants me to be on the bond.

Q. What bond, Mr. Bender? A. Mortgage.

Q. How much was that bond? A. Well, it was $20,000, $6,000, including—(interrupted).

Q. No. How much was the bond? A. It was $14,000.

Q. Oh, then you gave back a bond and mortgage for $14,000? A. Yes, sir.

Q. And how much cash was put in there? A. $6,000.

Q. Did you tell Mr. Tansey that the property was to go into your son's name? A. Yes, sir.

Q. Was there any other reason why Mr. Tansey would not take the bond from your son? A. Well, he said to me—the Judge said—"well, I would sooner see you taking it in your name." Then I said, "What is the use of taking it in both names? I might as well take it in my name, if you want us both to sign," and then I took it in my name.

Q. Now, you say you put $6,000 in cash in your property. Was that the $6,000—

The Court: Is that it? Did you put—(interrupted).

The Witness: Yes, sir.

Q. Was that, Mr. Bender, a repayment of part of the money that you owed your son? A. Yes, sir.

The Court: Now, strike that out. You know yourself that that is absolutely leading, don't you?

Mr. Vail: Yes.

The Court: Strike it out.

Mr. Vail: I will withdraw the question.

Q. And when you took that title to the Vanderpool property, how much money did you consider that you owed your son? A. Oh, about $10,000.

Q. And did you and your son have any agreement as to this Vanderpool Street property after you took the title or before you took the title? A. It was—

Mr. Jordan: We object to that, unless it is in writing.

The Court: I will allow it.

A. Yes, sir. We had some agreement.

Q. What was the agreement? A. Let me see. I have forgotten now. Well, I owed him that money and I bought this property for him—for the money that I owed him—and I invested it for him, this money; and after—yes, that is what it was.

Q. What did you finally do with that property, Mr. Bender? A. Sold it.

Q. To whom did you sell it? A. To Houston.

Q. Who procured Mr. Houston as a purchaser—you or your son?

Mr. Jordan: We object to that. The defendants have already proven by their own witnesses that it was the witness here. It would only be impeaching their own witness to prove otherwise.

Mr. Vail: They sold—

Mr. Jordan: Mr. Houston said he had a negotiation with Davis Bender.

The Court: Yes, he did. But you can go on, if you want. It is rather dangerous.

Mr. Vail: It is rather dangerous.

Q. You made an agreement with Mr. Houston, you said? A. Yes, sir.

Q. And did you sign that agreement yourself?

Mr. Jordan: We object. The agreement is in evidence, before the Court.

The Court: No. I shall allow it.

Q. Can you read, Mr. Bender? A. Well, a little.

Q. I show you an agreement, Mr. Bender, marked Exhibit D-3, of this date, between yourself, Molly Bender and Harry Bender, and ask you if you signed that agreement. A. Davis Bender and Harry Bender, yes, sir.

The Court: Did you sign it?

The Witness: Yes.

The Court: Did you sign it?

The Witness: Yes, sir.

The Court: You signed it yourself?

The Witness: I signed it. There is my son's hand.

The Court: Which is your signature?

The Witness: There (indicating).

The Court: Did you write that yourself?

The Witness: Yes, sir.

Q. Do you know whether or not the words "Harry Bender" at the end of this agreement, is your son's signature? A. What is that?

Q. Do you know whether the words "Harry Bender" at the end of this agreement, is your son's signature? A. Yes, sir.

The Court: Well, is it?

The Witness: It is, yes, sir; because he was selling it—possibly.

Q. Why, Mr. Bender, did your son sign this agreement? A. Because he was the practical own-

er of it; but I had it in my name, that is all; and I told the man that he is the owner of it, that my son is the owner of it; and he demanded he should sign it.

Q. What man did you tell? A. Houston.

Q. Houston. And did you tell Mr. Houston that your son was the owner— A. Yes, sir.

Q. —or that he had an interest in the property? A. No, no. I told him that I had it in my name, but he is the real owner of it.

Q. And did you convey this property to Mr. Houston or did some one else? A. No, sir, somebody else.

Q. To whom was it conveyed? A. It was to the bank, the Fidelity.

Q. The Fidelity? A. —Trust or Title Company.

Q. And how much did you sell it for, again; do you remember? A. Well, it was seventy-odd thousand dollars; I don't remember the exact amount —seventy-eight or seventy-seven, seventy-nine— something like it. The contract will show.

Q. No. We are talking now, Mr. Bender, about this Vanderpool Street property. A. Oh, Vanderpool. Oh—

Q. How much did you sell that for? A. That was sold for $56,000.

Q. And how much mortgage was on that property when you sold it? A. Oh, that was about— maybe about eight thousand dollars.

Q. And wasn't this the property that you said a little while ago you went on the $14,000 bond? A. Yes, sir.

Q. Was that the mortgage that was still on here at the closing of title, when you sold it? A. I can't—I don't understand.

Q. Was that $14,000 bond and mortgage still on

this property when you sold it? A. Yes, sir.

Q. And how much cash— A. I beg your pardon. I made a mistake when I said "about $8,000," because I had reference to the Plane Street property when I said $8,000.

Q. We are referring now only to this Vanderpool Street property. How much money was left over at the closing of title, after deduction of mortgages and other incidentals? A. About $40,000, something like that; $40,000, thirty-nine; between thirty-nine and forty.

The Court: About thirty-seven?

Q. It was something like that? A. Thirty-seven.

Q. And were you there at the closing of title? A. I don't remember—no, sir.

Q. Where were you when the title was closed? A. Florida.

Q. Now, was that money at the closing of title paid to you? A. Well, that was in Florida—it was deposited in my name, yes.

Q. It was deposited in your name? A. Yes, sir.

Q. And how was it it was deposited in your name, Mr. Bender? You said your son owned this property. A. Well, they made out the check—I don't know—remember—to me and to my son, I believe.

Q. And do you know whether that money actually went into your account? A. Yes, sir.

Q. And did you have any conversations with your son, or agreements, relating to that money? A. Yes, sir.

Q. What agreement did you have with your son relating to that money? A. Well, I have made up my mind to live in Florida at that time—or before yet—and I told my son that I will use the money

and that he shall let me have that money for Florida and I will give him for that money—I will give him property in Newark. And I told him this what I told him before yet, that we figured out before how much it would amount to, the property that I had here in Newark what—for what I gave him a deed; and it amounted to about—something like $37,000 or $38,000, something like; I don't remember. Maybe my son has the figures. We figured up and then I gave him a deed for it and then I had left the garage here; I thought I will have a lot of money yet from the garage and I will have enough money to go along in Florida with that money and do business there.

Q. Well, now, Mr. Bender, at the time you received this money that you were just telling us about, in the sale of the Vanderpool property, you owned some other properties here in Newark? A. Yes, sir.

Q. Did you? A. Yes, sir.

Q. What properties were they that you owned? A. At the time that you say I was here for the Vanderpool property?

Q. Yes. A. Well, I had a garage..

Q. On what street was the garage? A. On Plane Street and Essex Street.

Q. Yes? A. Through both streets.

Q. How much was the—go ahead and answer my question. I will withdraw that. A. I had Goldsmith Avenue, I had on Broad Street, I had on King Street and on Avenue "C" I had a half interest.

The Court: Now, when you got this money and went to Florida and asked your son to give you the money, you owed him $10,000?

The Witness: No.

The Court: Eh?

The Witness: No, sir.

The Court: How much did you owe him?

The Witness: I owed him about—it was more than—it was close to fifty, because I took—(interrupted).

The Court: How—

The Witness: I took—

The Court: How did it come that you owed him $50,000?

The Witness: Well, about thirty-nine or forty thousand dollars from the Vanderpool Street property.

The Court: You told me that you owed him about $10,000 for wages and expenses. How did it get up to $50,000 is what I want to know?

The Witness: After he bought this Vanderpool Street property, he paid for it $20,000; he sold it for $56,000.

The Court: Very well.

The Witness: He made a—

The Court: He made a profit on it?

The Witness: Yes. And I took that money to Florida and I told him that he can have some property which we figured out how much it will amount to, here in Newark, and I am going to use the money in Florida, which I did.

The Court: Uh.

Q. And how much more did your son owe you than the money that you received from the Vanderpool property? A. My son owed me, you mean?

Q. Or that you owed your son. A. Well, we haven't figured up, at that time; we haven't fig-

ured up for the garage yet, what I owe him he was managing.

Q. Well, now— A. And the balance from before yet.

The Court: Now, wait a minute. How much money did you owe?

Q. And the balance from what? A. I put in about $6,000, it should be about $10,000, that would be about $4,000, and then I had a—of course, we haven't figured interest on it—and then—(interrupted).

The Court: How much did you owe him?

The Witness: Four thousand dollars from before. I only put in six and I would owe him about ten and I owe him for staying in the garage.

The Court: Yes.

The Witness: Until the time I sold.

The Court: And how much is that?

The Witness: Well, that would be at least about—

The Court: Yes.

The Witness: —$2500 or $3,000, about.

The Court: And then how much more did you owe him?

The Witness: Of course, we haven't figured interest on that; we haven't figured—

The Court: Well, include the interest.

Q. You owed him money on the Vanderpool—(interrupted). A. I didn't give him any interest on anything.

The Court: I am interested to know how you can owe your son fifty thousand dollars.

The Witness: Well, the fifty—that was

about $40,000 from the Vanderpool property which I took that money and I took it to Florida.

Q. And then there was $4,000 balance, was there not, Mr. Bender? A. Yes, sir.

Q. That your son owed? A. Yes.

Q. And then you say there was some— A. He was working in the garage.

Q. —interest he had not paid you? A. Yes, yes.

Q. And there was money for working in the garage? A. In the garage, yes, sir.

Q. And that is how you arrive at about the sum of $50,000, is it?

The Court: Well, now, perhaps I am mistaken, but as I understand it, this man owed his son $10,000, so he bought for him a property and he got back $40,000.

Mr. Vail: He bought the property.

The Witness: Fifty —

Mr. Vail: But he put $6,000 in that property, so—

The Court: Why didn't he pay his son $10,000 and keep the thirty?

Mr. Vail: Because the property—

The Court: And why did it go up to fifty in the meantime?

The Witness: Fifty-six.

The Court: Fifty-six.

The Witness: That was the price.

Q. When you bought this property, Mr. Bender, or your son bought it, you paid— A. 20,000.

Q. —$20,000. And how long did you hold the

property? A. We had it for about four months, something like, or five months.

Q. And what year was that? A. We bought it in 1924 and sold it beginning 1925.

Q. I see. And you sold it for fifty— A. Six.

Q. —six thousand dollars? A. Yes.

Q. And the difference between the $20,000 he paid and the fifty-six was profit? A. That was $36,000.

Q. And according to your agreement with your son that money belonged to him? A. Yes, sir.

Q. So that that is how you came to owe him— A. Yes.

Q. —the $40,000?

The Court: Who is testifying, Mr. Vail?

Mr. Vail: It is all in, your Honor. I did not mean to lead, except I did want to get the facts straight.

Q. Well, now, Mr. Bender, do you have any other assets besides these properties that you mentioned here in New Jersey? A. Florida.

Q. In New Jersey, we are talking about. A. In New Jersey.

Q. Did you have any bonds or mortgages or other property in New Jersey? A. No, sir—yes, there was a four thousand dollar mortgage, I don't know whether I mentioned it or not.

Q. And what was that mortgage on, what property? A. That was—I forget the name of the street—maybe you got a record of it, for $4,000.

Q. Was that on Brunswick Street? A. Yes, sir, right.

Q. And what did you do with that mortgage? A. Well, that was in order to make the thirty-seven or thirty-nine thousand dollars—which fig-

ures—I suppose my son has the figures. I put that mortgage in and there was not enough—the $4,000.

Q. Oh, you put that mortgage in. What do you mean by you put that mortgage in? A. We figured it so much for that house, so much for this house, and it was not enough; then I put in the mortgage, $4,000, and that was not—that didn't cover the deed.

Q. You put in the mortgage for your son, did you? A. Yes, sir.

Q. Now, Mr. Bender, you have said that you owned a garage property. Do you still owe it? A. No, sir.

Q. When did you sell that? A. It was sold in 1926.

Q. In 1926. In what month, do you remember? A. The early part of the year; I don't remember the month. You have the record there. I can't remember dates exactly.

The Court: It is in. It is an exhibit.

Mr. Vail: Yes. I would like to have him see it, to refresh his recollection as to the transaction.

The Witness: I think it was in June.

Q. Is this the contract that you made for the sale of the garage, Mr. Bender (showing witness paper)? Just look at the front of it. A. What?

Q. Just look at the front of it (indicating). A. Davis Bender, yes, sir.

Q. And what is the date on that contract?

Mr. Vail: Well, that contract is in evidence, your Honor please, and it is dated. Just let me have it—March 2, 1926.

Q. Now, this contract is for $77,550? A. Yes, sir.

Q. Is that the actual price for which you sold this— A. Yes, sir.

Q. —garage? A. Yes, sir.

Q. And did you close the title pursuant to this contract? A. Yes, sir.

Q. And how long after you made the contract did you close the title? A. Oh, maybe about six weeks, something like that.

Q. And was this $77,550 paid to you? A. Yes, sir.

Q. And how much did you receive at the closing of title, after you paid off the adjustments? A. All. There was a mortgage, small mortgage of about seven—(interrupted).

The Court: Let him finish. "A small mortgage." How much?

The Witness: About $7,000 or $8,000. I don't know exactly.

The Court: And what has—(interrupted).

The Witness: Small mortgage.

The Court: And how much did you get in cash?

The Witness: The balance.

The Court: Well, how much was it?

The Witness: Seventy-seven—

The Court: About sixty-two thousand, wasn't it?

The Witness: About sixty, something like that.

(Discussion.)

Q. Now, what did you do with this money that you got from this sale, Mr. Bender? A. Well, I was

—some of the money went into the building yet, in the theatre, and I believe I owed some money on this—from this, and I was living on it all the time, paying doctors, myself and the wife always sick.

Q. Did you take any of that to Florida with you? A. Took to Florida, yes, sir, I believe I paid some of that money into Florida yet, some payments.

Q. And how much of it did you pay into Florida, and for what? A. Well, I put in about $21,000, I believe, too—on four lots, and I think I made some payments out of this money.

Q. On what four lots? A. Twenty-eighth Avenue, I believe.

Q. Yes. And did you put it into anything else in Florida? And if you did, in what? A. I don't know whether I put in for anything else, but I had a lot of expense, you know, I was paying always there, Florida.

Q. Did you ever meet Mr. Williamson in Florida? A. No, sir.

Q. Did you buy anything of him? A. What did you say?

Q. Did you buy anything of Mr. Williamson? A. Yes.

Q. And what did you buy from him? A. I bought a—two lots on Ninth Street and Pennsylvania Avenue.

Mr. Jordan: We object to this. If it is on the counterclaim, it is immaterial.

The Court: I will allow it.

Mr. Jordan: It is irrelevant and immaterial.

The Court: I will allow it.

Q. And what did you agree to buy from Mr. Williamson in Florida?

Mr. Jordan: The same objection.

The Court: That is all right. This line of testimony is objected to by Mr. Jordan and I will allow it to be received, because I have not decided the motion yet, but I have intimated my views on the subject.

Q. I think the question was, Mr. Bender, what property did you agree to buy from Mr. Williamson in Florida. A. Ninth Street and Pennsylvania Avenue.

Mr. Jordan: If your Honor please, again I must object, on the ground that the witness has testified that he never met Williamson in Florida; consequently, I don't see how he could have bought anything from him, under the state of the record.

Mr. Vail: Well, I think the pleadings in this case, if your Honor please, show that he did take title to some property in Florida from Mr. Williamson, and the deed is on record here.

The Court: Well, did he take title?

Mr. Vail: Yes, your Honor.

The Court: Go on.

Mr. Vail: He took title—

Mr. Jordan: That is the property for which he gave the $10,000 note.

The Court: All right. I will receive the testimony.

Q. Did you agree to buy any property from Mr. Williamson in Florida? A. Yes, sir.

The Court: Where did you see Mr. Williamson?

The Witness: Mr. Williamson had his lot with another party, Glickman, a party by the name of Glickman, and I met Glickman with an agent—with his agent; I believe; I don't remember—I think it was in front of the Seabreeze Hotel, now, and they proposed their property to me and Mr. Glickman said to Apfelbaum—Appleton was the agent—he told him to take Mr. Bender along and show him the Ninth Street lot, and Mr. Appleton took me over and showed me the Ninth Street lot.

The Court: Mr. Williamson was not there, was he?

The Witness: Not at that time.

Q. What was the answer? A. Not at that time.

Q. Did you, at any time, see Mr. Williamson in Florida? A. I don't remember whether I did or not. I don't think so.

Q. Well, you bought this lot, did you not, Mr. Bender? A. I did.

Q. On Ninth Street? A. Yes, sir.

Q. How much did you pay for that? A. Thirty-six, seven.

Mr. Jordan: We object, again, immaterial and irrelevant.

The Court: I will allow it.

Mr. Jordan: And as not binding on complainant Williamson, because here we have the situation where he is not present, he has no—(interrupted)

The Court: That is a matter of argument, Mr. Jordan.

Mr. Jordan: Yes.

Q. How much did you pay for that lot? A. Thirty-seven, five—$37,500.

Q. And how much was the mortgage on it? A. There was two mortgages. One for $13,500 and one for $2,000, and Mr. Williamson took a third mortgage for $10,000.

Q. And did you sign that third mortgage? A. Yes, sir.

Q. Did you sign any other papers when you signed the mortgage? A. I believe I signed a note, I don't know. There may be something else. I don't know.

Q. Did you sign—this is the note that was put in evidence here this morning that you signed, was it not? A. Yes, sir.

Q. For $10,000? A. Yes.

Q. And how much cash did you pay at the closing of that title? A. I think I paid about $12,500.

Q. Did you ever get any part of that cash back? A. No, sir.

Mr. Jordan: Your Honor, I want to object, of course, to the entire line of questions, and I trust you will consider each question as objected to.

The Court: Yes, surely.

Mr. Jordan: Even though I do not state it.

Mr. Vail: Of course, these questions, your Honor please, prove a double purpose here, also, as to what this man did with his money. He lost $12,000 right there.

Q. Where did you close this title, do you remember? A. Florida.

Q. To this Ninth Street property? A. Florida.

Q. And who was there at the time of closing? A. Mr. Williamson's lawyer.

Q. Who? A. Mr. Williamson's lawyer.

Q. Oh, yes. And who else? A. I don't remember whether Mr. Appleton was there, the agent that showed me the land.

Q. Was Mr. Glickman there? A. And Glickman.

Q. Were you there? A. Yes, sir.

Q. And who had the deed? When you closed the title, from whom did you get the deed? A. Well, Glickman signed, at that time, and Mr. Williamson's name was on it already. Of course, I did not see Mr. Williamson.

Q. No. Who had possession of the deed? A. It was turned over to me by the lawyer.

Q. And did you have the deed recorded? A. Well, I think I did.

Q. Did you, at the time you received the deed, Mr. Bender, have any conversation with Mr. Williamson's lawyer as to where the property was located? A. Yes, sir.

Mr. Jordan: We object to that as incompetent, irrelevant and immaterial and not binding on Mr. Williamson.

Mr. Vail: He was a representative, his agent, his attorney.

The Court: You are trying to prove that he did not get the right to realese the lot?

Mr. Jordan: That is what he is trying to prove.

The Court: I have indicated very plainly my attitude on that, but if you want to

put it in, I will allow it.

Mr. Jordan: Of course, the present testimony is coming from a stranger, as far as we are concerned.

The Court: Yes.

Mr. Jordan: A mere representative, who, apparently, had it put into his hands to deliver for a certain amount of money.

The Court: I will receive the testimony.

Q. Was anything said, Mr. Bender, as to what property that deed covered, when you received it? A. Yes, sir.

Q. And who said it? A. Glickman.

Q. And what did he say? A. Why, in fact, before he gave me the deed, he offered me a profit I should not take the deed for that property.

Q. Yes? A. Glickman. And Glickman was the partner to Williamson.

Q. And did he say anything about the location of the property? A. Yes. Always spoke about it. He said how nice a lot it is and how nice—it is close to the big hotel—what do they call it?—the William Penn, and close to the water, to the ocean.

Q. Did he tell you what street it was on? A. Yes. I believe Ninth Street and Pennsylvania Avenue.

Q. And what street was the property on that was actually conveyed to you?

Mr. Jordan: I object—

A. Well, I found it out later.

Mr. Jordan: —the same reason.

The Court: Does he know?

Mr. Vail: Yes, he knows.

The Court: All right. Go on.

Q. Where was the property located that in fact he conveyed to you? A. It was, I believe, Tenth Street.

The Court: How do you know?

The Witness: Well, when I go—(interrupted)

The Court: Did somebody tell you?

The Witness: I did—(interrupted).

The Court: Who told you it was on Tenth Street?

The Witness: A party told me that it was on Ninth, that he had a lot on Ninth Street. His name was Bedell.

The Court: How did you find out it was on Tenth Street? How did you find out it was on Tenth Street?

The Witness: Well, because that party who—in Ninth Street—told me he has Ninth Street—that he is the owner of Ninth Street.

The Court: And the party in Ninth Street told you?

The Witness: Then I want to find out where my lot is.

The Court: And how did you find out?

The Witness: And I found out the deed was in Tenth Street, because it told—

The Court: How did you find out?

The Witness: I bought a map, I got from somebody a map, at that time, later, at a later date, and I looked at the map and I saw the lot numbers, lots numbers 1 and 2, I believe it was, and block—I don't remember—forty—44, I believe, but not on Ninth

Street. Then I know it was not on Ninth Street, it is another block.

Q. And what map did you look on, Mr. Bender? A. I have it here.

Q. Is this the map you looked at? A. No. This is the map that I ordered now two weeks, while I was in Florida.

The Court: That map was made two weeks ago, while you were in Florida?

Mr. Vail: This is a certified copy of the map, your Honor please, in Florida.

The Witness: This map I looked at.

Q. You looked on this map? A. Yes, sir.

Q. And where is it?

Mr. Vail: I can point out the location of the property that the deed covered.

The Court: Now, wait a minute. Are you offering the map?

Mr. Vail: Yes. I offer that map in evidence.

The Witness: I can't hardly see it.

The Court: Wait a minute. Let Mr. Jordan look at it.

The Witness: I can hardly see it.

The Court: Is it a certified copy of a map from the Register's Office of Florida?

Mr. Vail: No, but we have a certified copy of it here which will show where the property is located.

The Court: Very well.

Mr. Vail: And I am offering, also, the certified copy in evidence.

The Court: You can offer the certified copy.

Mr. Vail: Which bears the mark on it of the County Clerk in the County of Dade.

The Witness: I can't see now. I can't read.

The Court: Never mind.

The Witness: If you will show me it is on Ninth Street, but I haven't got glasses.

The Court: Do you object to the introduction of it?

Mr. Jordan: No, Judge, except it is irrelevant and incompetent, under the view that we take of the situation; that has already been adjudicated.

The Court: All right.

Mr. Jordan: As far as it having been properly authenticated, we raise no objection.

The Court: All right. Let it be received.

(Map marked Exhibit D-12, 4/29/29.)

The Witness: The clerk from the court give me a letter explaining—

Mr. Vail: Now, just a moment, Mr. Bender.

And I also offer, at the same time, a certified copy from the clerk—the city clerk, showing the change of name of some streets on this map, that came with the map.

Mr. Jordan: No objection, if the Court determines it is relevant.

The Court: Let it be marked.

Mr. Jordan: We object to its being incompetent, irrelevant and immaterial.

(Certified copy marked Exhibit D-13, 4/29/29)

Mr. Vail: Now, if your Honor please, I would like to draw your attention, at this

time, to a copy of a deed which has been offered in evidence in the discovery proceeding, dated May 20, 1925, between Jacob Williamson and Rose Williamson, his wife, and H. E. Glickman and wife, P. Glickman, of the first part, and Harry A. Lack and Davis Bender, of the second part, in which is described this land in Florida as being in the County of Dade, in the State of Florida, and known as Lots Nos. 1 and 2, Block 44, of Ocean Beach Addition No. 3, the same being a subdivision of South half of frontal section 3, township 54, south of range 42 east, according to the plat thereof, recorded in plat book 2 at page 81 of the public records of Dade County, Florida; and the map will speak as to whether or not that is Ninth Street or Tenth Street.

Q. Now, Mr. Bender, did you buy any other property in Florida with this money that you received from the garage, from your son? A. I may have paid off a little on the mortgage and interest, but I have not bought any more property from the garage.

Q. Well, did you buy any other properties with any money in Florida? A. Well, before I bought this property in Florida, sure, before the garage I bought property.

Q. All right. What did you buy there? A. I bought Twenty-eighth Avenue and Seventh Street, that is together, four lots.

Q. Did you buy— A. And twenty-six—

Q. Did you— A. At—

Q. Did you buy them as one parcel? A. One parcel.

Q. And how much did you pay for that parcel? A. That was $26,000, the price, and I put in—(interrupted).

Q. And how much did you—how much cash did you put in that? A. I don't remember whether it was eighteen thousand or twenty-one thousand dollars.

Q. And do you still own that property? A. Yes, sir.

Q. You do? A. Yes, sir.

Q. How much is that property worth today? A. I don't know how much I owe on it, about $5,000, a little more.

Q. Now, Mr. Bender, did you ever make a conveyance of this property in Florida that you bought from Mr. Williamson or of any interest in it? A. Where?

Q. I show you a deed, Mr. Bender—

Mr. Jordan: It is the other way; back to him.

Q. Now, you purchased from Mr. Lack a half interest in the property? A. Yes, sir.

Q. That you bought from Williamson and Lack, didn't you? A. Yes, sir.

Q. And how did you pay for that? A. For the half interest?

Q. Yes, for that half interest that you got from Lack. A. I paid about $12,500.

Q. Did you make any other conveyances to him? A. After—we had two lots—I mean, four lots; in other words, it is two parcels, four lots, some other street we had two lots, and after, when we settled Lack, I took the Pennsylvania Avenue, the Ninth Street lot, and Lack took the other lot.

Q. I see.

Mr. Vail: I offer this in evidence as part of the transaction, your Honor please.

The Court: I think, to make the record complete, Mr. Vail, we ought to have both deeds.

Mr. Corn: Lack has the other one.

Mr. Vail: We don't have the other one.

Mr. Jordan: I see. I think the other deed is here in evidence. We have no objection, except it is incompetent, irrelevant and immaterial.

The Court: I will allow it.

(Paper marked Exhibit D-14, 4/29/29.)

Q. Well, Mr. Bender, do you own any property here now in this State? A. No, sir.

Mr. Vail: That is all.

The Witness: I had another piece of property in Florida, the Gotham Realty Co.

Mr. Vail: I think there, your Honor, he is referring to the investment he made in the Gotham Realty Co., that I told you about this morning.

The Court: You can examine him on that if you care to.

Q. How much did you invest in the Gotham Realty Co.? A. I don't remember the exact amount, but between twelve and fourteen thousand dollars.

Q. And what did you get for your twelve or fourteen thousand dollars? A. I had an individed share in the fourteen thousand—

Q. You had what? A. Individed interest in fourteen thousand, or about $14,000.

Q. And how much is that undivided interest in that property? A. Well, for that amount.

The Court: Is it one-third or one-fourth or one-tenth or what?

The Witness: No, sir. I think about one-fourth—about one twenty-eighth share.

Q. Have you ever demanded your money from the Gotham Realty Co. on this transaction? A. Well, they bought it. I bought a claim, but it is still in court, in Florida.

Q. Then, you had some litigation with the Gotham Realty Co.? A. Yes.

Q. Is that to recover back your $12,000? A. Yes, sir.

Q. Where is that litigation, what State? A. Florida, Miami.

Q. So you have never received any part of your $12,000 back? A. No, sir, none.

Cross-examination by Mr. Jordan:

Q. Now, when you say you have a property in Florida, do you refer to Twenty-eighth Avenue? A. Yes, sir.

Q. Why, you only had a contract on that, didn't you? A. I took in so much money.

Q. Yes or no? A. Yes.

Q. Did you only have a contract on it? A. Contract for a deed.

Q. How many years ago did you make that contract? A. In 1925.

Q. And you never fulfilled your part of it, you never went and paid the balance on the contract, did you? A. Well, it is still due.

Q. You never got a deed, did you? A. Well, if I paid $5,000, I get a deed.

Q. But you never did? A. No.

Q. You thought so little of it that you wouldn't go and pay $5,000? A. I didn't pay the $5,000.

Q. Did I understand you properly when you said that on the occasion at which you took title to the property that you bought from Glickman and Williamson, that Glickman then and there offered you a profit if you would not take the deed? A. Yes, sir.

Q. That is true? A. Yes, sir.

Q. How much proft did he offer you? A. Well, we didn't discuss how much.

Q. He didn't offer you any specific amount? A. We didn't discuss how much.

Q. You said you wouldn't take anything for the property, didn't you? A. He said, "I would give you a profit."

Q. Isn't it a fact, Mr. Bender, that you were offered $40,000 profit on that lot? A. I don't remember. I was offered a profit, but I don't remember how much.

Q. How much of a profit? A. I don't remember what it was.

Q. Well, give the Judge an idea. A. Well, I think maybe about $30,000 on the lot.

Q. Yes. Even though the lot was on Tenth Street, even though it was not described to you properly? A. No.

Q. You were still offered a profit of $30,000 on it, weren't you? A. That offer was not any good.

Q. Well, was Glickman's offer good? A. Well, I don't know.

Q. Well, did you take the $30,000? A. No, I—if I would get I would take.

Q. Were you willing to take it? A. Why, I would take it if I could get it.

Q. You would today, but at that time? A. At

that time, I would grab it, if they gave it, but they didn't gave it.

Q. Well, Glickman was ready to give you a profit, wasn't he? A. Well, he said, "I will give you profit."

Q. And you wouldn't take it? A. Not in—(interrupted)

The Court: Well, did you take it?

The Witness: No, sir.

Q. Now, to get this transaction straight before the Court, you had a partner named Harry Lack, didn't you? A. Yes.

Q. And you and Lack bought four lots from Williamson and a man named Glickman, who owned those four lots jointly— A. Yes.

Q. —didn't you? A. Yes.

Q. And you paid them so much money and then, when the four lots came to you and Lack, you and Lack divided them? A. No, not divided them, no; no, sir.

Q. But later on you did? A. They were divided in 1926, I think. It must have been March or April.

Q. Yes. You divided them in March or April, 1926? A. About.

Q. Now, at the time you were giving two of these lots to Lack, didn't you know where they were? A. Well, all I know is that we had—(interrupted).

Q. Yes or no, did you know where they were? A. I thought it was in Ninth Street.

Q. Did you ever look at the map? A. You couldn't—at that time, in the boom, you couldn't get a map.

Q. How long before June of 1925 did you buy

these lots from Williamson and Glickman? A. How long—what did you say?

Q. How long before you actually paid your money did you sign a contract for them? A. That I sold them, you mean?

Q. No. A. I didn't get the question.

Q. Well, now, you know, in June, 1925, you bought four lots from Glickman and Williamson? A. Yes, sir.

Q. Now, how long did you have the contract before that time? A. Well, that must be about twenty days, something like that.

Q. Twenty days or a month? A. About.

Q. Now, Williamson was not present and did not talk to you at all about the lots, did he? A. Glickman and Appleton—Appleman—Appleton—Appleton, that is his name.

Q. But you never saw Williamson in the transaction, did you? A. Not personally.

Q. Yes. Isn't it a fact that the first time you saw the complainant in this suit, Jacob Williamson, is in September, 1926, when you came to Yonkers to his store to talk to him? A. No, I think it was a little before September.

Q. Well, was it about that time and in that year? A. Why, I don't remember exactly what date it was. I had a lot of telephone conversations with Williamson.

Q. You first called him on the telephone and then you came up to see him a few days later, didn't you? A. Yes.

Q. And that is the first time that you ever laid eyes on Williamson, isn't it? A. Well, I am not sure whether I saw him in Florida or not, but I don't think I saw him in Florida. I am not positive, but I don't think I did.

Q. Have you got any of these checks to show your losses on Florida real estate? A. No.

Q. Where are they? A. Well, I have a lot of stuff in Florida, I was there in Florida, and a lot of papers.

Q. Where are they? A. Well, and a lot of them are missing and are gone.

Q. Where did they go? A. The hurricane blowed away a good many.

Q. What? A. I say, the hurricane blowed away a good many, that was destroyed in the hurricane.

Q. And where were you when the hurricane came? A. Well, I was for a short time here and a couple of days after the hurricane I was in Florida again.

Q. Where were you staying in Florida? A. At that time?

Q. Yes. A. After the hurricane, I stopped on Flagler Street.

Q. What number? A. I don't know.

Q. You were doing business then with the Broad and Market Bank, right here in Newark, weren't you? A. I was taking my money out of the Broad & Market and putting it in the Florida bank.

Q. And didn't you have the records of your bank deposits right here in Newark? A. I don't remember. I might have had them in Florida where—(interrupted).

Q. Do you know where you had them, here or in Florida? A. I don't remember, now.

Q. But all you remember is that you have not them now? A. Haven't got them now.

Q. And the last time you saw them was when there was a hurricane; is that right? A. Well, I don't remember exactly, but I believe, because I looked for them and I couldn't find them now. I

believe they were gone because the—(interrupted).

Q. You never have produced them to this court, have you? A. I didn't think that we would need it.

Q. Yes.

Mr. Jordan: Could I see the check that we impounded this morning?

(Check produced.)

Q. I show you Exhibit C-7, as of this date, Mr. Bender, and call your attention to four signatures on the back of that check, and ask you to kindly indicate to the Court which of those signatures, if any, is yours. A. Well, can I look at it, at the date?

The Court: Just a minute. Did you write those (indicating)?

The Witness: This? No, sir.

The Court: Did you write that (indicating)?

The Witness: No, sir. That must be my son's.

The Court: That is your son's. All those three are your son's?

The Witness: Well, I wouldn't say all three, but this is not my signature.

The Court: Is this your signature, the next one, "Mollie"?

The Witness: My wife's signature. This is not mine.

The Court: That is not yours?

The Witness: No.

The Court: Well, that is not yours?

The Witness: No.

The Court: And that is not yours?

The Witness: No.

The Court: Is that yours?

. The Witness: I cannot write that good.

The Court: That is not yours?

The Witness: No, sir.

The Court: Well, none of these signatures on this check are yours, then?

The Witness: No, sir.

Q. I show you Exhibit No. 5, as of this date, and ask you if that is your signature on that note? A. Yes, sir.

Q. Now, I call your attention, again—(interrupted).

The Court: Ask him to write his name on a piece of paper.

Q. Will you kindly write your name on this piece of paper. A. This is my signature.

The Court: Well, now, just look at this, again. Now, are you sure that is not your signature?

The Witness: I am sure, yes, sir.

The Court: You are sure it is not?

The Witness: Positive.

The Court: All right. Now, write your name there—write your name on the top.

(Witness does as requested.)

The Court: Now, write it again.

(Witness does as requested.)

The Court: Now, write it again.

(Witness does as requested.)

The Court: All right. Now, let that be marked in evidence.

(Paper with three signatures written by witness marked Exhibit C-9, 4/29/29.)

Q. Is that your signature on that paper? A. Yes, sir.

Q. Sure about that? A. Yes, sir.

Mr. Jordan: I offer that in evidence. This is the mortgage that he gave back on the property in Florida, on the Williamson property.

Mr. Vail: May I ask, what was the answer to that question?

The Court: Yes. It was his signature.

Mr. Vail: No objection.

The Court: Let it be marked.

(Mortgage marked Exhibit C-10, 4/29/29.)

Q. Mr. Bender, is there any doubt in your mind that this $31,323 was deposited to your account in the Broad & Market Street Bank? A. Yes, it was.

Q. It was? A. Yes.

Q. Do you know who did that? A. My son, I believe.

Q. You think it is your son? A. I believe so.

Q. That signed your name in both places on this check? A. Both places?

Q. Exhibit C-5. A. I see my name in one place.

Q. Have you any idea of whose handwriting that is, the last signature on that check? A. No, sir.

The Court: Who wrote "Davis Bender" the first time up there?

The Witness: I did not.

The Court: You did not?

The Witness: No, sir.

The Court: You told me a few minutes ago it was your son's writing.

The Witness: I believe it was my son's. I say, "I believe."

The Court: And is this your son's writing down here, too?

The Witness: It doesn't look—I don't know. It doesn't look.

Q. Did you ever see this check before today? A. I don't think so.

Q. Are you sure? A. It didn't come back to me. It isn't my check. It was only paid to me. Then I didn't get it back, no, sir.

Q. Now, you are a man accustomed to real estate transactions and have been so for twenty years or more, haven't you? A. Yes, sir.

Q. And your story to the Court is that in November, 1926, you invested $6,000 in the Vanderpool Street property for your son? A. That was in 1924.

Q. In November, 1924. You put in about $6,000 of your own money for him, didn't you? A. Yes, sir.

Q. And you say that the reason you took that property in your name was because they wanted you on the bond? A. Right.

Q. Don't you know that you could have gone on the bond as well without taking title as you could by taking title? A. Well, then they would want everybody—my wife—and it would mean so many people, I was thinking at that time.

Q. You think that all that man who sold you the property wanted was your name as security on the bond? A. No, he wants me. Then I said, "I might as well take in my name and be done with it."

Q. Why, don't you know you could have signed

the bond without taking the title? A. I didn't-- (interrupted).

Q. You know that, don't you? A. I don't think so.

Q. You don't think so? A. No.

Q. Now, after the transaction was completed, and that property was in your individual name and you were on the bond, didn't you know that if anything happened to you and you died that that property would not go to your son, that it would go to the rest of your children and your wife? A. Well, if I would die—(interrupted)

Q. No, no. Did you know that? A. —he would get some if I die.

Q. Do you know that? A. I didn't think of it, I didn't figure what; but I knew if I died, he would get more because I had more.

Q. Didn't you know, Mr. Bender, that, with that property in your name, if you died that your son would only get a share of it, along with the rest of your children and your wife? A. I did not think of it.

The Court: There is no proof there are other children.

Mr. Jordan: Yes, your Honor, in the examination here last week, there is proof that there are two other children besides the son Harry.

The Court: All right.

Q. To clear it up, you have three children in all, haven't you? A. Yes, sir.

Q. Two daughters and a son? A. Yes, sir.

Q. They were all living at the time you took this conveyance at Vanderpool Street, in 1924, weren't they? A. (Witness pauses.)

Q. They were all living then? A. Yes, sir.

Q. So that you knew, at that time, then, if anything happened to you and you died, that your son would not get that property, didn't you? A. I didn't think of this, of dying.

Q. Did you make a will leaving them that property? A. No, sir, I didn't make no will.

Q. Did you make any contract to deed them that property, in writing? A. We have so many—(interrupted)

Q. Yes or no. A. Not in writing.

Q. Didn't you know, Mr. Bender, that you could have signed a deed to that property to your son, if you wanted to give it to him? A. Why go through so much transactions and so long?

Q. Did you know that? A. I didn't think of it, and if I did, why put in so many time the transfers and transfers when you could do it one time?

Q. You knew that, if that property belonged to your son—he was over age, wasn't he? A. Yes, sir.

Q. —that the easiest way to give to him was to sign a deed and give it to him, didn't you? A. Then we have to come to—(interrupted).

Q. No. Did you know that? A. I didn't think of it.

Q. Did you know it, if you happened to think about that? A. Well, if I had stopped to think, maybe I would do it, but I didn't think of it.

Q. You didn't happen to think to give any interest in this Roselle Park Building Co. to your son, did you?

Mr. Vail: Now, your Honor please, I think that has nothing to do with the agreements that were made by this man. He

might have thought about a lot of things or he might not have thought about that, whether he gave an interest in his Goldsmith Avenue or Florida property or some other to his son has nothing to do as to whether his son had an interest in this Vanderpool property.

The Court: I will sustain the objection.

Q. You mentioned your son's management of the property, management of the garage property, and didn't you say, in connection with that, that your son only managed that property for a few months, while it was swinging between tenants? A. The tenants were there for a few months, but he managed all the time.

Q. How long did he manage it, how many months, how many years? A. It must be three years, four years, all the time. The records will show. When I got the property, I start to build right after I bought it, until I sell it, between three and four years, I think.

Q. And how long did your leases cover, at that time? A. A short time, maybe about three months, four months, they run.

Q. Now, you state in your answer to this complaint—and, by the way, your attorney read you what you signed in this case, didn't he? A. In what case?

Q. In this case we are trying before the Court. You knew what you were signing when you went to your lawyer's office and told him about your defense here, didn't you? A. I don't know which lawyer you mean.

Q. Mr. Corn. A. Oh, in this case?

Q. Yes. A. Of course, I told him in this case.

The Court: You have not finished your cross-examination?

Mr. Jordan: No, Judge.

The Court: Very well. We will adjourn and Mr. Salmon will fix another day.

Mr. Jordan: I have several representatives of the banks here with their records.

The Court: I am very sorry, I cannot sit until after four o'clock.

Mr. Jordan: My adversary might consent that certain papers be admitted and leave them in the possession of the Court and let them go.

The Court: If Mr. Vail feels that way, you can put it on the record.

Mr. Vail: I don't quite understand what you want, Mr. Jordan.

Mr. Jordan: I have here certain records from the banks. All I have to do is to have the records brought here and admitted in evidence that they are authentic records from those banks.

Mr. Vail: We will look at it.

(Adjourned to May 2, 1929.)

IN CHANCERY OF NEW JERSEY.

May 2, 1929.

Between
JACOB WILLIAMSON,
Complainant,

and

DAVIS BENDER, *et als*,
Defendants.

Transcript of shorthand notes of testimony taken in the above entitled cause before the Court and Counsel as before.

Mr. Jordan: I think we were working with Davis Bender.

DAVIS BENDER, recalled for further cross-examination by Mr. Jordan.

Q. Mr. Bender, at our last hearing, you recollect that, in June of 1925, you collected from the sale of the Tansey property about $32,000? A. Yes.

Q. Did that go in your own bank account? A. My son deposited it to my own bank account.

Q. And I believe we talked to you, at that time, about a check that we showed you and the signatures to that check. Do you remember that? A. You mean that I signed the—something?

Q. Yes. A. Yes.

Q. And you will also recollect that, when you sold the garage to Roemer Brothers, that you got

in the neighborhood of sixty-five to sixty-five thousand dollars that day, May 15, 1926, didn't you? A. Something like.

Q. That also went in your bank account? A. Yes, sir.

Q. Do you remember drawing a check, on May 24, 1926, for $40,000? A. I don't remember it now.

Q. Do you remember what you did with that check of $40,000, to whom it went and for what it was? A. When was that, you say?

Q. May 24, 1926. A. May 24. I don't remember exactly, but I think I took that money to Florida.

Q. Were you in Florida at that time, in May? A. I don't remember the date.

Q. Well, a sum like $40,000, wouldn't you remember what you did with that? A. I can't remember now, but I think I took it out and I took it to Florida.

Q. I call your attention to check of June 14, 1926, of $12,000, and ask you if you know to whom you gave that check. A. I don't remember.

Q. I call your attention to a check dated two days previous, June 12, 1926, for $5,000 and ask you— A. Wouldn't the check tell whom I gave it to?

Q. Have you the check? A. No, sir. I thought that you got it there.

Q. Well, now, you know where the checks were that were in your possession? A. Well, you are reading something. I thought you got it.

Q. Never mind what you think I got. Can you tell me what you did with that $5,000 check? A. I don't remember now.

Q. Can you give his Honor any idea of what

your bank balance was on June 11 to the 15th, the time that you borrowed $2,000 as a chattel mortgage on your furniture? A. Well, I had money in the bank. I don't remember how much.

Q. How much did you have? A. I don't remember how much I had.

Q. If I told you you had $27,000 that day, would you think that was about right? A. Well, whatever it says there I suppose is right.

Q. You don't know? A. I don't remember now what I had.

Q. Were you in need of money when you took this $2,000 mortgage? A. No, sir.

Q. You had plenty of money? A. I had.

Q. Now, you are familiar with your wife's affairs and banking business, aren't you? A. No, sir.

Q. You say "No"? A. No.

Q. Do you know whether, in the year 1927, she had a bank account? A. I don't know much about it.

Q. Do you know whether she had a bank account after that or not? A. I don't know.

Q. How much money did you give her in the year 1927?

Mr. Vail: If your Honor please, I have to object to that. I don't think it makes any difference how much balance his wife had or how much money he gave to her in 1927. There is no testimony here, in any place at all, that he gave his wife any money. This action is to set aside certain conveyances which were made to Harry Bender and there is no allegation in here in this proceeding that any conveyances were made to his wife, and if he gave money to his wife

and they want to set aside those payments, they should bring his wife into this proceeding.

Mr. Jordan: The question is whether he secreted his assets.

The Court: I will allow the question.

Mr. Jordan (continuing:) And left himself without money.

Q. How much money did you give your wife in 1927? A. I didn't give her any.

Q. How much did you give her in 1928? A. None.

Q. And in 1929? A. Didn't give her any.

Q. Have you any idea of where your wife got $10,000, on September 16, 1927?

Mr. Vail: I have to object, your Honor please. This is not an insolvency proceeding to inquire into the wealth of this man at that time; this is a proceeding to set aside certain conveyances that were listed to be made to his son.

The Court: Yes, and in every creditors case—it is alleged in the bill, I suppose, that he divested himself of all his money?

Mr. Jordan: Yes.

The Court: I will allow the question.

Q. Do you know where she got $10,000 on September 16, 1927? A. No, sir.

Q. She didn't get it from you, did she? A. Not from me, no.

Q. Do you know any place else where she could get it from? A. I don't know.

Q. What do you know about the Sivad Realty Co.? A. I don't know anything about it.

Q. Don't you know that their name "Sivad" is your own name spelled backwards? A. What do you mean? I don't know anything about it.

Q. Don't you know that the name Sivad, S-i-v-a-d, spelled backwards is "Davis, D-a-v-i-s"? A. I don't know, I am not so tricky. I don't know what you got in your mind.

Q. Wasn't it your name that they wanted to put on that corporation? A. I never was interested in that corporation. I don't know anything about it.

Mr. Jordan: That is all.

The Court: That is all, sir.

Mr. Vail: Just a minute, Vice-Chancellor. Just a question or two that I want to ask you about the Florida property that was mentioned the other day.

By Mr. Vail:

Q. Mr. Bender, as I remember, you testified the other day that a conveyance was made to you of the property in Florida, which was located on Ninth Street? A. Yes, sir.

Redirect-examination by Mr. Vail:

Q. And you also testified, if I remember correctly, that you thought you were getting property on Tenth Street? A. Right.

Q. Or was it the other way around, that you thought you were getting it on Tenth Street—which property were you supposed to get? A. Ninth Street.

Q. You were supposed to get Ninth Street? A. Yes.

Q. And what property was conveyed to you? A. Tenth Street.

Q. Do you know whether there is any difference in value between Ninth Street and Tenth Street property? A. Yes, sir.

Mr. Jordan: I object on the ground the witness is incompetent.

The Court: I will allow it.

Q. What, in your opinion, was the value of the Tenth Street property? A. At what time?

Q. When the conveyance was made to you. A. Well, the Tenth Street property would be worth much more, because Ninth Street is nearer to the crossway where you go over the bridge from Miami to Miami Beach, and it is nearer to the big hotels, like the William Penn; it is nearer to the ocean and a two story building alongside of it, a two-story apartment, and Tenth Street close to it, one lot is a three story apartment which closed out the air; it would be a big difference in the price.

Q. How much, again, did you pay for it? A. I don't remember.

Q. How much did you pay Mr. Lack and Mr. Williamson for the property that you—(interrupted). A. $27,500, I think.

Q. And that was for the Ninth Street property? A. Yes.

Q. And how much do you think the Tenth Street property was worth, at that time? A. Oh, Tenth Street was worth a lot less.

Q. How much? A. Maybe about eight or ten thousand dollars less.

Q. Now, Mr. Bender, your attention was brought to the fact, a minute ago, that a chattel mortgage was made in 1926 on your furniture. A. Yes.

Q. And is that the correct date? A. Yes, sir.

Q. Or was it a different date? A. I don't remember the date, but the papers will show that.

Q. Wasn't it 1927 that this chattel mortgage was made? A. I don't remember the date. I think it is in—you will find it in the papers. Dates I don't remember.

Q. Exhibit C-3, 4/29/29, the chattel mortgage, Davis Bender to Sivad Realty Co., and dated June 11, 1926, is that the chattel mortgage you referred to— A. Yes.

Q. —a minute ago? A. Yes, sir.

Mr. Vail: That is all.

The Court: That is all, sir.

Mr. Jordan: That is all. No questions.

HARRY BENDER, sworn for defendants.

Direct-examination by Mr. Vail:

Q. Mr. Bender, you are some relation to Davis Bender? A. Yes.

Q. What is the relationship? A. He is my father.

Q. And how old are you, Mr. Bender? A. I am twenty-eight this month.

Q. And when did you finish your schooling? A. Finished my schooling—

Q. How old were you? A. Oh, about seventeen.

Q. And where were you living, at that time? A. Either 17th Street or 18th Street, in Newark.

Q. Were you living with your father? A. Yes.

Q. And for whom were you working? A. My father.

Q. And did you work for any one else besides

your father when you finished school? A. I worked for my father then.

Q. What did you do for him? A. I took care of the books, kept the time, went to the job to see what men were working, footed material and checked it up to see that everything came, and did a little work myself, such as carpenter work.

Q. And your father's business at that time was what? A. Building business.

Q. And how long did you work for him doing the things you just mentioned in the building business? A. I worked for him until after he sold the garage.

Q. And do you remember when that was, how many years? A. That was 1926.

Q. How old were you then? A. I was twenty-five.

Q. And did you do any work for him in relation to the garage? A. Yes.

Q. What did you do? A. I was managing the garage; I had complete charge of it.

Q. Where was that garage located? A. Located 82 Plane Street and ran through Essex Street.

Q. And how large a garage was it? A. The garage had a capacity of 150 automobiles.

Q. How much time did you spend at the garage? A. All my time. Sometimes I put in thirty-six hours before I went home to sleep.

Q. And did you give any attention, at that time, to the construction business? A. While I was in the garage, not much; that is, unless in the evenings I just took care of books, and so forth.

Mr. Jordan: Your Honor, at this time, I must object, on the state of the pleadings, to any further evidence in respect to this

garage. The only defense they have put into the bill here to set aside the conveyances is that the father was indebted to his son in $39,000, in June of 1925, by reason of the sale of that piece of property to the Fidelity Title Co., and the garage is not mentioned.

Mr. Vail: If your Honor please, the purpose of this testimony is to show in what manner the company was indebted to the son and I think it is entirely relevant on a bill of this nature to show that this money belonged to the son and just how it came to belong to him.

The Court: All right. I will allow it. Of course, you cannot claim for services until after he is twenty-one—can he?

Mr. Vail: Well, he was twenty-five at the time they finished the garage. He worked a few years before he was twenty-one.

The Court: And the father was supposed to be indebted to him for how much in those four years?

Mr. Vail: From six to ten thousand dollars.

Mr. Jordan: Ten thousand dollars.

Q. When did you finish working for your father in the construction business? A. Well, I helped him in the construction business in 1927. That was in the theatre in Roselle Park.

Q. That was after the garage business, was it not? A. That was after the garage business.

Q. That was the second time you worked for him in the construction business, was it? A. Yes, sir.

Q. Tell us just what you did for your father after you stopped working for him in the garage business. A. Well, I didn't do anything for him until the theatre, after the garage.

Q. And where was that theatre located? A. In Roselle Park, N. J.

Q. How large a theatre was it? A. The building was about 96 by 180, I think.

Q. How long did it take you to construct that theatre?

Mr. Jordan: Now, your Honor, we must object to any testimony as regards services for that theatre, because it is testified by his father that the father was only a half owner in that theatre, the Roselle Park company, and secondly, any money that would be due to this young man from that company, he would simply be a creditor of that corporation and could not prove it against his father.

The Court: Wasn't the theatre erected by a corporation?

Mr. Jordan: Yes, sir; the Roselle Park.

Mr. Vail: Of which the father—

Mr. Jordan: —was a half owner.

Mr. Vail: —was a half owner in.

The Court: His claim is against the corporation, then, not against the father.

Q. Mr. Bender, did your father ever pay you for working for him in the construction business and in the garage business? A. Yes.

Q. And what was the agreement that you had with him about payment? A. Well, we had an agreement that whenever I needed any money to invest that he would advance it to me.

Q. Did he pay you every week? A. No.

Q. Every month? A. No.

Q. How did you live? A. Well, he—I lived with him and he gave me just spending money every week.

Q. Did you pay any board to him? A. No.

Q. And when did you come to an agreement, if at all, with your father, as to how much money he would pay you for this? Give us the dates, please. A. The first money he gave me was in 1923. All I needed at that time was $1,000 and he gave it to me on account of what he owed me at that time.

Q. Yes. A. Then, in 1924, I saw an opportunity to buy a parcel of land cheap, and I told him about it and went down to buy it, and it required $6,000. He owed me more than that so he put in $6,000 for me.

Q. How much did he owe you at that time? A. It was about $10,000.

Q. And when did you come to the agreement that he owed you 10,000, when you bought this property or some time before? A. No; it was just prior to that.

The Court: What year was that?

Mr. Jordan: 1924.

The Court: 1924.

Mr. Jordan: I also call your Honor's attention to the bill that alleges that this agreement, if any, was made in June, 1925, or was made—I am wrong again. It was made in April, 1926.

Mr. Vail: If I may correct Mr. Jordan, this agreement was dated April 17, 1925, Davis Bender, Molly Bender and David Houston. The property was bought on Oc-

tober 11, 1924, the agreement with Mr. Tansey, and was sold in 1925.

The Court: All right.

Q. So, with whom did you negotiate the purchase of that property, Mr. Bender?

Mr. Jordan: We object to that on the ground, as far as the evidence already shows, he did not negotiate that sale—

The Court: Well, ask him if he negotiated it.

Q. Did you negotiate that sale?

Mr. Jordan: We object to that on the ground it would tend to make their own witness make a misstatement here. The man Houston is the one that testified that he had all negotiations with the father.

The Court: You can contradict your own witness. You cannot impeach him, but you can contradict him.

Q. What did you do, Mr. Bender, if anything, with relation to this property on Vanderpool Street, before the agreement was signed A. I was reading a newspaper and I saw a notice in the newspaper there was an auction sale to be held, and I was a little familiar with the neighborhood and I went down there and looked it over. It looked good to me. There was about 300 feet of railroad—right along the railroad—and I went home and told my father about it, and we went down and attended the auction sale.

Q. Who by "we" do you mean? A. My father and I.

Q. All right. Proceed. A. And we were the only ones that showed up at the auction sale, so it was not sold; nobody bid on it; so, later on, why, my father and I went up to Mr. Tansey's office and I think it was Judge Moore was the receiver of that property, at that time, was a partner of Tansey, and we discussed the purchase of that property with him, and we finally bought it.

Q. And did David Houston have anything to do with the transaction at the time you purchased the property? A. No.

Q. So, then, you and your father did all the negotiating for the purchase of that property? A. Yes.

Q. And an agreement was finally drawn for the purchase of it? A. Yes.

Q. In whose name was the property purchased? A. It was purchased in my father's name.

Q. And why was that done? A. Well, Judge Moore wanted my father to go on the bond and my father said, well, as long as he was going on the bond, he might as well take it in his own name, and I also think, if he took it in my name, he was afraid I would squander it, and he wanted to make doubly sure.

Mr. Jordan: We object to what he thought and ask it be stricken out.

The Court: Yes. Strike it out.

Q. Did you have any agreement with your father with relation to the title to that property other than that which you stated, and what would happen to the proceeds of the sale, who would get the proceeds of the sale? A. Yes.

Q. What was the agreement? A. Well, prob-

ably it belonged to me and any profits I derived from the sale of it would belong to me.

Q. And did you sell that property? A. Yes.

Q. When did you sell it? A. I sold it about four or five months later.

Q. To whom did you sell it? A. Sold it to David Houston, the contract, and later on, delivered title to the Fidelity Union.

Q. For how much did you sell it? A. $56,000.

Q. And did your father keep the money or did he give it to you, that was had at the sale of the property? A. I loaned it to my father.

Q. Well, tell us just what transpired between you and your father at the sale of that property? A. Well, just prior to the sale of that property, I was discussing what I was going to do with the money or I was going to invest it. I said I didn't know, I would probably look around and see what else I could buy, too, and he said, "Well, I am going down to Florida." He said, "I am making a lot of money down there." He said, "I will give you the Newark property for it."

Q. And what became of the moneys when the title was actually closed? A. Well, I deposited it to his account.

Mr. Vail: Have you got that check there, Mr. Jordan?

Mr. Jordan: I think Mr. Salmon has it.

(Check produced.)

Q. From whom did you receive money at the closing of title? A. The Fidelity Union Trust Co.

Q. At that the check that was received at the closing of the title? A. Yes.

Q. Referring to Exhibit D-7, 4/29/29, which is made out in the name of Davis Bender, Molly Ben-

der and Harry Bender, for $31,323.50. Now, that check was handed to you at the closing of title, Mr. Bender? A. Yes.

Q. And then what did you do with it? A. I deposited it to my father's account.

Q. Did you sign the names of Davis Bender, Molly Bender and Harry Bender on the back of it? A. Yes.

Q. And who signed, or who put on the words "For deposit—Davis Bender?" A. I don't know.

Q. Did you put them on? A. No.

Q. What bank did you deposit that check in? A. Broad & Market National Bank.

Q. And was that on there when you put the check in the bank for deposit? A. I don't think so.

Q. So far as you know, that could have been put on there by—or that was put on there by somebody besides yourself or your father?

The Court: No.

Mr. Jordan: We object to that.

The Court: He said he doesn't know anything about it. He didn't do it. That is all.

Q. And those words were not on there when you deposited the check? A. I don't think so.

Q. Now, why did you sign your father and your mother and your own names on the back of that check?

Mr. Jordan: Object to that as immaterial and irrelevant.

The Court: I will allow it.

A. At the closing, my father was not here, he had to go back to Florida, he was in a hurry, he said,

and I agreed to loan him this money, and he told me to indorse his name on it, my mother's name and my name, and deposit to his account.

Q. And that is what you did? A. That is what I did.

Q. Did your father ever pay you that money? A. No.

Q. You sold this property first to Mr. Houston? A. Yes.

Q. Did you talk to Mr. Houston at all at the time that the sale was made, or negotiations was made, with him? A. I believe so.

The Court: Well, do you know so?

The Witness: Yes.

Q. And was that before the contract to sell was made or afterwards? A. Before.

Q. And what did you say to him, if anything, as to your interest in that property? A. Why, I told him I owned the property.

Mr. Jordan: We object to that and ask it be stricken out, as a self-serving declaration.

The Court: I will allow it. I understood Mr. Houston to say that all the negotiations were with Davis Bender.

Mr. Jordan: Yes. You are correct in that.

Q. Well, did you sign the contract to sell this property to David Houston? A. Yes, I think so.

Mr. Jordan: The contract is in evidence; it shows the signatures.

Mr. Vail: I want to find out if he signed it.

Q. I show you Exhibit C-22 and D-3, of 4/29/29, an agreement of sale between Davis Bender, Molly Bender and Harry Bender, of the first part, and Davis Houston, of the second part, and ask you if that is your signature, at the end of the contract? A. Yes.

Q. Now, who drew that contract, Mr. Bender, do you know? A. I don't remember right now, no, not if I—(interrupted).

Q. You did not draw it, did you? A. No.

Q. Was it presented to you by some one already prepared? A. Well, I don't know whether it was already prepared or was prepared while I was sitting in the office ready to sign it.

Q. In whose office were you sitting, Mr. Houston's, or some one else's office? A. I don't know. It may have been Mr. Houston's office or Mr. Feit's office.

Q. Was Mr. Houston's attorney present at the time? A. I don't remember.

Q. Now, after you took this—or tell us, altogether, what was the proceeds of that sale? You got at the closing of title some money and the contract indicates that some money was paid at the time the title was closed—or the contract was made. Tell us what was the amount of money that you received or your father received at the closing of that title. A. At the closing?

Q. Yes. A. Well, the check of closing was $31,000.

Q. And was that all the money that you received as the proceeds of the closing of that sale? A. No.

Q. What was the whole amount? A. Well, the whole amount for the sale was $56,000 and—

Q. Did you—what did you receive? A. Received about $39,000.

Q. And was any part of the $39,000 ever paid back to you? A. No.

Q. Did your father ever convey any property to you for that money? A. Yes.

Q. And what property did he convey to you? A. He conveyed to me the Broad Street property, King Street property, Avenue "C" property, Goldsmith Avenue, and a mortgage.

Q. What mortgage? A. That was a $4,000 mortgage covering the Brunswick Street property.

Q. When did you and your father, if at all, figure out what properties would be conveyed to you for that approximately $39,000? A. Well, that was right after the sale of the garage, because I wanted to—

Mr. Jordan: I ask it be stricken out after "right after the sale of the garage," as not responsive.

Mr. Vail: I think, if your Honor please—

Mr. Jordan: The reason, "because."

The Court: The date of the sale of the garage is on record?

Mr. Jordan: Yes, sir.

The Court: Well, that sufficiently identifies it. (To witness:) How long after the sale?

The Witness: It was immediately right after the sale of the garage, because I wanted to take the garage as my thirty-nine thousand.

Mr. Jordan: We object to this, as to the reason, and ask it be stricken out.

The Court: Yes.

Q. And when you say it was after the sale of

the garage, do you mean after the closing of title or the agreement for sale? A. After the closing of title.

Q. And did you and your father ever make up a statement when you closed these titles or when you took over these titles to the Goldsmith property?

Mr. Jordan: We object to this continuous leading of counsel. I think the witness is sufficiently intelligent.

The Court: That is a very leading question.

Q. When did you and your father, if at all, fix the value of these properties? A. If I can get the date of the sale of the garage, then I can get that date clear. I am a little confused.

Q. Did you fix the values before the conveyances to you or afterwards? A. Before.

Q. I show you, Mr. Bender, a contract, Exhibit C-21, for the sale of the garage to Roemer Brothers, and ask you if that will help you to fix the date? A. Yes.

Q. Now, when did you agree upon the value of these properties? A. It must have been some time in March, 1926.

Q. And how much did you agree would be the value of each particular property? A. Well, we were—we figured out the equity he had in each property.

Q. Did you figure that out yourself or did you figure it out with your father? A. We figured it out together.

Q. Did you keep any record of your figures? A. I don't know whether I have any record of those figures when we were figuring it out at that time, or not.

Q. Did you make up a regular statement at the closing of these titles or when you made the transfer? A. I believe we did.

Q. And do you have that? A. I don't know whether I have it or not.

Q. Have you seen it recently? A. I have seen —I have seen one recently, but it was not very correct. It was one I just figured on before the actual agreement.

Q. Do you know where it is now? A. I don't know where it is now. I know I had it. I haven't got it right now. I don't know just what I did with it.

Q. Now, Mr. Bender, when you took title to the Goldsmith Avenue property, do you remember what mortgages were on it? A. There were no mortgages on it.

Q. And what did you and your father figure the value of that property to be, at the time you took it? A. I took it over about what it cost to build.

Q. How much was that? A. About sixteen thousand dollars.

Q. And how much did you figure the value of the South Broad Street property to be, at the time you took it over? A. Well, the value of it was about $22,000, but his equity was—oh, about twelve.

Q. And the difference between the twelve and the twenty-two is what? A. Well, the mortgage on it amounted to about $9,600 and the difference is equity.

Q. And how much did you value the King Street lot at? A. The value of it was about $6,000.

Q. Were there any mortgages? A. Yes.

Q. What did they amount to? A. There was a $2200 building and loan mortgage on it.

Q. Were there any assessments or taxes, or anything of that nature? A. I don't remember. There were some adjustments. I don't know.

Q. And what was the value of the Wright Street and Avenue "C" lot? A. I don't know what the value was. He had an equity in it of about $1250, something of that sort.

Q. Did he own the entire premises? A. No, he did not.

Q. How much of it did he own? A. He had a half interest in it.

Q. And were there any other properties that you took over from your father, at that time? A. On that day, no, but it was still short, so a little later he conveyed to me that $4,000 mortgage.

Q. On what property? A. That was on the Brunswick Street property.

The Court: Did he own any more properties?

The Witness: Yes.

Q. Did he still own the garage, at that time? A. Yes.

Q. Did he own any other properties in New Jersey, that you know of? A. Not that I can recall, no.

Q. Did he own any property in Florida, at that time, that you know of? A. Well, what he was doing in Florida, I didn't know anything about that.

Mr. Vail: That is all.

Mr. Jordan: I have just one question to ask Mr. Bender before I start with Harry Bender: On this contract in April 17, 1925, between yourself and your wife and your son, and David Houston, there was a down

payment of $5,000 made. Did you deposit that in your bank account?

Mr. Davis Bender: I don't remember. I guess I did. If I did, the statement shows.

Cross-examination by Mr. Jordan:

Q. When you say, Mr. Bender, that your father owned a garage at the time he made these various conveyances to you, you know, don't you, that he was under obligation to sell that to Roemer Brothers? A. Yes.

Q. You know that he had already signed a contract to sell and deliver that property, don't you? A. Yes.

Q. You are twenty-eight years old this month? A. Yes.

Q. So that, in May, of 1922, you were twenty-one, weren't you? A. Yes.

Q. Now, according to your statement and that of your father, it was in November, 1924, that you arrived at a definite sum that he owed you, wasn't it? A. Yes.

Q. And between May, 1922, and November, 1924, there is about two and a half years, isn't there? A. Yes.

Q. And you and your father agreed that you should have $10,000 in payment for your services for two and a half years, in addition to the money that he had given to you for spending money and in addition to your board and lodging, which you had free with him; is that correct? A. No.

Q. In what respect is it not correct? A. In the respect that you state for two and a half years.

Q. Well, is that the only respect?

The Court: What period did it cover?

The Witness: Well, I have been working for him since I was about seventeen.

The Court: Well, then, this covered from the time you were seventeen until you were twenty-four, did it?

The Witness: Yes.

The Court: I see. Then, apparently, you are claiming wages during minority.

The Witness: Well, I would get them if I worked for somebody else.

The Court: Yes. All right.

Q. Isn't it a fact that the greatest amount you were ever able to earn working for an outsider was twenty dollars a week? A. The only time I worked for an outsider, yes.

Q. Yes. A. I was learning a business at that time.

Q. That is all right. When was it that you worked for the fur concern over in Manhattan? A. I don't know. It was either 1923 or 1924.

Q. That is when you worked there for six months? A. Yes.

Q. You were not working for your father during that time, were you? A. Well, I took care of his affairs at night.

Q. And you expected to be paid for that, also, did you? A. Yes.

Q. Now, you have talked over this case pretty thoroughly with your father, haven't you? A. I have talked it over with him a little, yes.

Q. You have been talking it over for the past two years or more, haven't you? A. I don't know. I don't think it is that long since we started—first started suit.

Q. And did you discuss this evidence that you

are giving before the Court with your attorney, Mr. Feit? A. No.

Q. Did you discuss it with your attorney, Mr. Corn? A. Yes; I discussed it with Mr. Corn.

Q. And on how many occasions have you and your father and Mr. Corn been in consultation on this? A. Probably, two or three times.

Q. Is that all? A. Yes.

Q. And you, in the two years that have elapsed, have talked to your father very frequently about this affair, haven't you? A. No.

Q. How many times would you say you talked with your father about this?

Mr. Vail: Just a minute. I will have to object to that, if your Honor please; I do not think that is proper cross-examination.

The Court: I do not think it is very material, Mr. Jordan, because, of course, we all know that these cases are talked over before they are brought into court. I do not think there is anything remarkable about that.

Mr. Jordan: That is true, except that it gives them a chance to plan and to coincide on their testimony.

The Court: Yes, I understand that.

Mr. Vail: They would do that, anyway.

The Court: Probably would, anyway.

Mr. Jordan: I will withdraw the question. I won't pursue it further. We will assume that they talked it over.

The Court: Yes.

Q. You first opened a bank account in June of 1926, didn't you? A. I don't know. It is either 1925 or 1926.

Q. With the Broad & Market St. Bank? A. Yes.

Q. And your first deposit was $3845?

Mr. Vail: I have to object, your Honor please; this is a suit to discover assets of Davis Bender and the properties that are named in this bill are the ones that have been testified here, part of it being on Goldsmith Avenue and these other streets. There is no allegation that any moneys were given by Davis Bender to his son, and there is no attempt anywhere in these proceedings to show this boy got moneys from his father that should now go back to the father.

The Court: I understand the gravamen of this bill is, that he divested himself of all his money. Now counsel is trying to trace some of this money which he is supposed to have divested from himself. I think it is perfectly proper.

Mr. Jordan: Not only that: we may show he was paid many times over this sum he is talking about.

The Court: That is true, too. I will allow it.

Q. Where did you get that money from that you started your bank account with? A. Which account is that?

Q. Broad & Market St. A. I don't remember now. It may have been some money I got from the sale of that house up in Hilton.

Q. Why, don't you know that the very first check that you got to start this Broad & Market Street account came directly from your father's bank account, his check to you? A. I don't remember.

Q. It could have been so and you forgotten it;

is that correct? A. It could have been, but I forget.

Q. Don't you know that that money is the money that you used, on June 9, 1926, to draw a check of $2,000 to the Sivad Realty Co.? A. No, I don't know.

Q. Well, you did that, though, didn't you—out of your own moneys? A. I don't know.

Q. Don't you know that you are the one that gave the Sivad Realty Co. the $2,000 that was loaned to your father? A. No, I did not.

Mr. Vail: I have to object again, if your Honor please. Mr. Jordan is giving these facts to the Court, rather than getting them from the witness. Even then, it is cross-examination. I do not think those questions are proper. There are no facts in this case anywhere upon which he can base that statement.

Mr. Jordan: Only his own cross-examination in the discovery proceeding, which is here before the court.

The Court: I will allow the question.

Mr. Jordan: He said he did.

The Court: Now he says he did not.

Q. Well, if you did not give the $2,000 to the Sivad, who did?

The Court: If you know.

Q. If you know? A. I don't remember. I can't tell from your looking at those records.

Q. Will you state now, under oath, that you did not give the $2,000 to the Sivad Co. on June 9, 1926? A. No.

Q. And will you now state, under oath, that you did not—

The Court: Wait a minute. He says he won't say under oath.

Mr. Jordan: Yes, that is correct.

Q. And will you state whether or not that very money was not received from your father on June 4, 1926? A. Yes.

The Court: I don't quite get this, what the answers "Yes and no" mean. (To witness:) Did you give this $2,000 check to the Sivad? Did you?

The Witness: I don't remember whether I did or not.

The Court: Very well. Now, what is the other question?

Mr. Jordan: I asked him whether he received the $3845 from his father.

The Court: Did you receive this $3845 from your father on June 4?

The Witness: No.

Q. You are positive?

The Court: Where did you get it?

The Witness: I say I may have gotten some from the Hilton—I had some property up in Hilton that I sold and I may have gotten it from my mother.

Q. Well, can you tell the Judge where you did get it? A. No, I can't remember that far back. I haven't got my own records here. I can't see.

Q. Wait a minute. Don't you know that your mother never had a bank account in 1926? A. I

don't know whether she did or not.

Q. When is the first time you ever got a check from your mother? A. I don't know—the first money I ever got from my mother was about 1925 or 1926.

Q. Were you the one that got the $10,000 check from your mother on September 16, 1927? A. I don't know.

Q. You might have and forgotten about it? A. It is possible.

The Court: I am sure I would not, if I got a check for $10,000.

Mr. Jordan: It would be rather nice, wouldn't it, Judge!

Q. Who originated the name "Sivad"? A. I don't know.

Q. Did you? A. No.

Q. Did your father? A. I don't know.

Q. You are familiar with the operations of that company, aren't you? A. Yes, fairly well.

Q. And the bank account of that company was in your care at 92 Goldsmith Avenue, where you lived; that was the address of the company, wasn't it? A. It is now.

The Court: Well, was it then?

The Witness: No.

The Court: What was the office of the company then?

The Witness: The first man to sign the checks for the Sivad was—I believe it was Harry Hoffman.

The Court: Where was the office, I asked you?

The Witness: I don't know where the office was.

Q. When did you take it over?

The Court: No. Wait a minute.

Mr. Jordan: Yes, sir.

The Court: If you don't know where it was, why do you say it was not in Goldsmith Avenue?

The Witness: Because I was not a member of that corporation, when it was first organized.

The Court: All right.

Q. Do you know anything about a deposit in that company on June 14, 1926, of $14,250? A. I don't know. I can't recall from just dates and figures that way.

Q. Well, when did you first become active in this company? A. Several months after it was organized.

Q. Well, if I tell you it was organized in August of 1925, will that help your memory? A. No. It was several months afterwards. I don't remember just when.

Q. I was incorrect there. It was organized in December, 1925. And you say you became a member of that company a few months after it was organized, did you? A. Yes; several months afterwards.

Q. Do you know anything about this $14,250 that went in on June 14, 1926? A. Yes. I may have borrowed it from my mother and put it in the corporation.

Q. You may have? A. Yes, sir.

Q. You did not get it from your father, did you? A. Oh, no.

Q. But you are sure you are the one that put it in that company? A. I think I put in part of

that, and Harry Hoffman put in part.

Q. Now, to make the thing exact to you, that is three days after that company took a chattel mortgage on your father's furniture: you remember that time, don't you? A. Well, if your record shows three days after. I don't remember myself.

Q. No. Does it associate itself in your mind in any way? A. No, it does not.

Q. You don't remember taking the mortgage on your father's property, do you? A. Yes, I remember.

Q. You did that, didn't you? A. Yes.

Q. For the company? A. Yes.

Q. At your home; is that correct? A. Well, I agreed to take a mortgage at my home.

Q. Well, the mortgage was actually signed at your home, your father says. Now, is he correct? A. He might be correct. I don't know whether it was at my home or at the lawyer's office.

Q. Who gave him the money? A. The corporation.

Q. Yes, but what person? A. It may have been me.

Q. Yes. You are not sure? A. I don't know whether I signed checks at that time or not. I may have. I don't recall.

Q. On June 17, 1926, there is $3,000 more in that company. Do you know where that came from? A. I don't know. Either Hoffman put it in or I did.

Q. You don't know. Is Hoffman still in the company? A. Yes.

Q. Still active? A. Yes.

Q. What position does he hold? A. He is the president.

Q. And what position do you hold? A. I am Treasurer.

Q. Who signs the checks? A. I do.

Q. On July 19, 1926, you checked out $8,489.50. What was that for? A. I don't know just what it was for. We may have invested it.

Q. On August 28, 1926, you received $7,000. Where did you get that? A. I don't know. I couldn't say just where I got it.

Q. On October 28, 1926, you got $2500. Where did that come from? A. I don't know. Sometimes I took money out of the Bender Construction Co. or my own account and I put it in there and I kept putting it back and forth, as I needed it; when I wanted to use it different ways.

Q. You know that prior to the time of June, 1926, that this company only had a nominal bank account of about $125 or $150, don't you?

Mr. Vail: Your Honor please, I must interpose another objection to this entire line —not only this question, but all these questions that have to do with the Sivad Realty Co. There has been no conveyance by Davis Bender to the Sivad Realty Co. This is not cross-examination. Mr. Jordan is doing the testifying. He is not asking the questions. He is getting a record in here in this proceeding that there is absolutely no basis for; there has been no ground laid for it; it is not cross-examination. The records of the Sivad have not been introduced here in evidence that he is using to get this information from. I think it is entirely improper and irrelevant. The Sivad is not a defendant to this proceeding.

Mr. Jordan: No, but these defendants are

—this man and his father are—and we are showing his Honor that the money that he has received—over $100,000—received from these two real estate deals and which he says he hasn't got any more, were really turned over to this young man and the father and boy put it again back into this Sivad Realty Co., which has been a cloak for this whole business.

The Court: I will overrule the objection.

Q. Now, can you tell me—

Mr. Jordan: What was the question?

(Question read as follows:)

"Question: You know that prior to the time of June, 1926, that this company only had a nominal bank account of about $125 or $150, don't you?"

A. I don't remember the bank balances.

Q. You were not interested in that, were you? A. I don't know what the date was.

Q. Do you know where you got $2,000 on November 8, 1926? A. No, I couldn't tell you where I got any of the money from, you looking at that record and me without anything.

Q. You don't know where you— A. No.

Q. —got any of the money that you paid into that Sivad Realty Co.? A. I couldn't tell you where I got those moneys, without my records.

Q. And you don't know where you paid out any of that money, either, do you? A. Without my records, no.

Q. Well, doesn't the reading of these large sums of money bring anything back to your mind as to where you began to get all this money in such a

short space of time? A. Yes; I borrowed some of it from my mother.

Q. And did you borrow it from anybody else? A. I did not, no.

Q. No? A. Except that I may have taken some out of the Bender Construction Co. or some of the money I had previous from my building operations in 1923.

Q. So that your best explanation is that you got all these sums of money by either borrowing them from your mother or out of the Bender Construction Co.; is that it? A. Or else some money I had from 1923.

Q. Some of the money you had? A. Yes.

Q. Where did you get that money in 1923? A. I told you from building a couple of houses in 1923.

Q. Why, you told me you sold them. A. I built them in 1923.

Q. Yes? A. Yes.

Q. And when did you sell them? A. I told you —I sold one; I still own one.

The Court: Where did you get the money to build them?

The Witness: I got that from my father, in 1923.

The Court: Yes.

Q. How much did you get from him? A. A thousand dollars.

Q. And how much did you get out of the house that you sold—cash? A. I don't remember just what I got out.

Q. You had a partner there, too, didn't you? A. Yes.

Q. He was a half owner with you, wasn't he? A. Yes.

Q. And the house was sold for $7500, you told me. A. Yes, that is right.

Q. How much of that was cash? A. Well, I think we got all cash.

Q. Didn't you have any mortgage on it? A. No second mortgage. We got all cash from the building and loan mortgage, from the first mortgage we got that.

Q. How much was that? A. I don't remember what the mortgage was.

Q. About how much was it? A. I don't know. It must be about 5,000, 5500.

Q. And half of that went to your partner, didn't it? A. No; most of it went to pay our bills.

Q. I see. So, how much did you have left when you got through paying your bills? A. I don't know just how much we had left.

Q. Well, give us an idea. You didn't have anything like $7,000 left, did you? A. No.

Q. Did you have $2,000 left? A. It might have been about $2,000.

Q. And you divided that with your partner, didn't you? A. Yes.

Q. So that you had about a thousand dollars, didn't you, out of that? A. Probably a thousand or it may have been a little more.

Q. Yes. So you couldn't have gotten these sums that I have read off to you from that concern, could you? A. No; I didn't say that. I said part of them.

Q. Do you know where, on November 8, 1926, you got $7710? A. No, I don't remember.

Q. Or on November 15, you got $2125? A. (Witness nods no.)

Q. Or on November 15, you got a similar sum of $2125? A. No.

Mr. Vail: Your Honor please, I will have to object to this question, because there is no evidence here that this man got this money; the Sivad Realty Co. got the money.

Mr. Jordan: That is what I mean.

Mr. Vail: The questions are put to this man as to where he got the money.

Mr. Jordan: Well, he says he put it in.

The Court: That is what he says. He says he got the money and put it in the company. Mr. Jordan is trying to find out where he got the money, but he didn't seem to know.

Mr. Vail: He also said that Harry Hoffman put money in here and I think these questions are improper, anyway.

The Court: Only in one case.

Mr. Vail: And I have a further objection that these questions must be limited as to whether this money came from his father or not, because I do not think this man should be compelled here to testify as to where a corporation got its money from, as long as it did not come from Davis Bender.

Mr. Jordan: But it did come from him. Now, what I am trying to show the court is that here is a young man who, up to that time had earned only twenty dollars a week, suddenly becomes possessed of these large and continuous inflows of gold that he puts in this company. Now, there is only one place, according to my view of this case, where that could come from: that is his father. If he has got any other way where he got that money, will you tell us?

The Witness: I have.

Q. Where? A. I told you several time, I borrowed some from my mother.

Q. All right. Then, outside of your father and mother, is there any place in the world that you got this money from, in these short spaces of time? A. I got some from the sale of Avenue "C".

Q. What is Avenue "C"? A. That is Avenue "C" and Wright Street.

Q. Why, you told me that you got $2500 from that. A. Yes. Well, you asked me where I got $2100 from.

Q. Yes. A. I can't tell. I don't remember. All those moneys, mortgage moneys, taken out from the corporation, were redeposited again, and you asked me where that came from. It was paid back to the corporation. Those are deposits.

Q. You deposited it, didn't you? A. Yes.

Q. Where did you get the money to deposit? That is what I am asking you. A. I just told you where I got it.

Q. That is your best answer, isn't it? A. Yes; I can't remember just from your looking at them.

Q. Yes. Let us go ahead a little bit. On December 7, 1926, you deposited $5400. You don't know where you got that from, do you? A. No.

Q. And on March 14, 1927, you deposited $2502. You don't know where you got that from, do you? A. No.

Q. April 16, 1927, $2516. Don't know that, do you? A. No.

Q. April 20, four days later, $2053. Do you know where that came from? A. No.

Q. On June 6, $2080, $1042, $1393, all in one day.

Mr. Vail: Your Honor please, I object to any further statements as to what money

was deposited, unless the bank record is put in evidence here.

Mr. Jordan: I will promise the Court I will do that.

The Court: Well—

Mr. Jordan: I didn't want to call the men out of order, but I will promise the Court right now that I am reading from the original records of the bank, which I will most certainly put in evidence.

The Court: All right.

Q. Now, on this June 6, 1927, where did you get all those sums? A. Those were similar deposits on one day?

Q. Yes, four of them. A. Four of them?

Q. Five, in fact. A. Yes, I know; I remember that.

Q. Where did that come from? A. Bender Construction Co.

Q. For what? A. Return of loans.

Q. Oh, you loan money to your own company and then you swing it back to this company? A. Yes. I done that.

Q. I see. A. A great many times.

Q. What did you use the money in the Bender Construction for? A. To build houses. It shows. You can see it on the statement.

Q. So, you do remember where you got some of this money from, don't you? A. Yes, because there were five in one day, there were five notes put in the bank.

Q. Where, on September 2, 1927, did you get $1633? A. I don't know.

Q. Your answer, then, to all these questions and to this bank account which I am reading to you

from, the Sivad Realty Co., is that you don't know; that outside of your father and your mother and the sources that you have already spoken of, the sale of the house that you owned with Hoffman, you don't know where you got the money from, do you? Those are the only sources that you know of that you could get this amount of money in this short space of time? A. No.

Q. Aren't they? A. No.

Q. What is that? A. No.

Q. Any place else? A. You have included too many.

Q. Which one did I include that I should not? A. Davis Bender.

Q. Well, I didn't mean to include him—if I did. A. Well, you did mean to.

Q. You got no money at all from your father, did you? A. None of those deposits, no.

Q. Not a nickel? A. No.

Q. Do you know where your mother got the money that she loaned you? A. I know she had it for quite some time.

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

Q. You handled her bank account and her affairs? A. I did not.

Q. How much money have you given your father in the year 1929? A. This year. I don't know. Maybe I have given him fifty or one hundred dollars.

Q. How much have you given him in the year 1928? A. A couple of hundred dollars.

Q. And the year 1927? A. None.

Q. 'Twenty-six? A. None.

Q. 'Twenty-five? A. Gave him $39,000.

Q. I see; that was on the transaction you have already told us about, isn't it? A. Yes.

Q. You don't mean that you actually loaned him any cash, do you, in 1925, to the extent of $39,000? A. No.

Q. This was only according to your arrangement with him, wasn't it? A. Yes, it was the arrangement for the sale of property.

Q. And I believe that you stated here that when you made that agreement with your father was at the time that you closed title to the Tansey property and he took the $31,000, didn't he? A. Will you repeat that again?

Q. The agreement that you made with your father was at or about the time of the closing of the Tansey property, when he took the $31,000, wasn't it? A. It was not the definite agreement.

Q. Well, wasn't that the time the agreement that you wanted the money from your father and your father says, "I will give you Newark property for the money. I want to take this to Florida with me"? A. Yes.

Q. And you were satisfied to let him have the money, weren't you? A. Absolutely.

Q. And it was not until the following April that you got anything for that money, was it? A. That is when I got the deed.

Mr. Jordan: Yes. I think that is all.

The Court: That is all?

Mr. Vail: Just a minute. Just another question or two.

Redirect-examination by Mr. Vail:

Q. What was the business of the Sivad Realty Co., Mr. Bender? A. Well, it was a general real estate.

Q. And did you do business with anyone besides

the Bender Construction Co. you mentioned? A. Yes.

Q. And what was the nature of the business you did with them? A. Loans.

Q. Where did you get the money to make these loans? A. The most of it I borrowed from my mother I put into the corporation.

Q. And you loaned the money out to other people, did you? A. Yes.

Q. Was that money ever repaid to you? A. Yes.

Q. You did a small amount or large amount of business of this nature? A. Quite a bit.

Q. Mr. Bender, did you have any sisters or brothers? A. Yes, sir.

Q. And how many? A. Two sisters.

Q. And when did they begin working? How old were they when they began working? Did they work before they were twenty-one years of age? A. Oh, yes.

Q. And how long before they were twenty-one did they begin working? A. Well, one of them started working—must have been about 16 or 17. I guess they both started within about that age.

Q. And did they live at home? A. Yes.

Q. Did they keep their money— A. Yes.

Q. —or did they use it? A. They kept whatever they made.

Q. When you started to work for your father in 1917, was it agreed between you and him then that you would be paid for your services, or were you simply to get your board and lodging at home? A. I was to be paid for my services and he was going to keep the money for me.

Mr. Vail: That is all.

DANIEL STRAVER, sworn for defendants.

Direct-examination by Mr. Vail:

Q. What is your name? A. Daniel Straver.

Q. And are you related to Mr. Davis Bender? A. I am.

Q. What is the relationship? A. I am his son-in-law.

Q. And do you know anything about his business affairs? A. No, sir.

Q. Do you know that he was in Florida? A. Yes, I do.

Q. And when was he in Florida? A. He must have been in Florida for a number of years.

Q. Do you remember when he first went there? A. The first time that I have known Mr. Bender to go to Florida was in 1922 or 1923.

Q. And was he there after that time? A. Yes, he was.

Q. When? A. In 1925.

Q. Were you there in 1925, when he was there? A. I was.

Q. And can Mr. Davis Bender write? Can Mr. Davis Bender correspond, can he write? A. No.

Q. Did you do that work for him? A. I did.

Q. Did he ever write to his son, Harry Bender, in 1925?

Mr. Jordan: We object to this: immaterial, irrelevant, and incompetent.

The Court: I will allow it.

Mr. Jordan: And we object to it as tending to prove a writing which is not before the Court. It is not the best evidence.

The Court: He has not got to that yet. He simply asks him did he do this act and he says yes.

Q. Did you ever write to Harry Bender for your father-in-law? A. I did.

Q. And when did you do that? A. Well, throughout the time that I was there.

Q. Do you mean the 1922 time or the 1925? A. 1925 was the only time that I was there.

Q. And did Harry Bender ever write to his father? A. He did.

Q. And what became of those letters? A. I don't know. They were left with Mr. Bender.

Q. Did you see them? A. I did; I read them to Mr. Bender.

Q. And was there anything said in those letters —(interrupted).

The Court: No, no.

Mr. Jordan: I object.

The Court: Yes. That is not the right way to ask him.

Q. You saw the letters and read them to your father-in-law, you say? A. I did.

Q. What was said in the letters that Harry Bender sent to his father?

Mr. Jordan: We object as not the best evidence, immaterial, irrelevant, and incompetent.

The Court: Well, you have to prove what became of the letters, first, I suppose.

Q. Do you know what became of those letters? A. I don't know.

Q. Have you got them? A. I have not, no.

Q. Have you seen them since? A. No, I have not.

Q. Particularly the letters that came to Mr. Ben-

der from his son? A. His letters that I read to Mr. Bender were handed over to him, but what he did with them I have no idea.

Q. Did you keep copies of the letters that you wrote for him to his son? A. I made copies that I left with Mr. Bender.

Q. And have you seen those copies since? A. No, sir; I have not.

Q. Have you any copies yourself? A. No, I have not.

Mr. Vail: Well, if your Honor please, we will have to recall Mr. Bender to prove that these letters have been lost, if Jordan insists on putting us to that proof.

Mr. Jordan: I insist upon everything in regard to a document of this kind which we claim never had any existence.

The Court: All right.

Mr. Vail: May I recall, then, Mr. Bender?

The Court: Yes.

Mr. Vail: Could I ask him here or put him on the stand?

The Court: Well, Mr. Jordan is entitled to cross-examine.

DAVIS BENDER, recalled for defendants.

Examined by Mr. Vail:

Q. Mr. Bender, did you ever receive any letters from your son in Florida? A. Yes, sir.

Q. And were these received in the year 1925? A. Yes, sir.

Q. And what did you do with those letters that

you received from your son? A. Well, I haven't got them now. I haven't got a lot of papers, and I think those letters were lost, too. I didn't think that those letters will be important just now.

Q. Do you know where they are? A. No, sir.

Q. Have you got any place that you might get those letters from? A. Well, I don't know. I can't say.

Mr. Vail: That is all.

Examined by Mr. Jordan:

Q. Do you read, Mr. Bender? A. Yiddish.

Q. Do you read English? A. Very little.

The Court: He said "Yiddish."

Q. Can your son write Yiddish? A. No; no, sir.

Mr. Vail: Which son?

Mr. Jordan: His only son.

The Court: He has only got one.

Mr. Vail: All right. Now I will have to recall Harry Bender.

HARRY BENDER, recalled for defendants.

Redirect-examination by Mr. Vail:

Q. Mr. Bender, did you have any correspondence with your father while he was in Florida? A. Yes.

Q. And in what years was that? A. Why, I had correspondence with him all the time he was in Florida, each year.

Q. And did you receive letters from him? A. Yes.

Harry Bender—Recalled—Redirect.

Q. And were those letters written by him or some one else for him? A. Those letters were written by some one else for him.

Q. Do you know who wrote them? A. Some, my brother-in-law, some strangers sent—people I didn't know; strange handwriting.

Q. And do you have those letters that your father wrote to you or some one else wrote for him? A. No; I never kept any of them.

Q. Do you know where they are now? A. No; I generally threw them away.

Q. Did you write to your father in English or Yiddish when you wrote to him? A. In English. That is the only language I can write.

Mr. Vail: That is all.

Mr. Jordan: No questions.

DANIEL STRAVER, resumed the stand on behalf of defendants.

Direct-examination (continued) by Mr. Vail:

Q. Now, Mr. Straver, can you tell us what, if anything—can you tell us what was said in these letters that you read to Mr. Davis Bender from his son?

Mr. Jordan: I object on the ground that it is, again, not the best evidence.

The Court: Well, he has proved that these letters were lost—if there were any such letters—and that is the only way. Then, I suppose, under the rule, you can prove the contents.

Mr. Jordan: Well, we thought that was usually done by copies.

The Court: Well, his theory is that the letters and copies and everything else was burned up.

Mr. Vail: These letters were letters that were written in script, your Honor please.

The Court: No. He kept copies, he said, and gave the copies to Mr. Bender—and strangely enough, the whole correspondence vanished.

However, prima facie, he proved the disappearance. I suppose he is entitled to examine him as to the contents.

Mr. Jordan: Your Honor overrules the objection?

The Court: I do.

Q. Any letters that you received from Harry Bender and read to Mr. Davis Bender: what, if anything, was said in there with relation to any of the property transactions between father and son? A. There was just one letter that I recall, in which Harry Bender asked Mr. Bender for his deed.

Q. Deed to what? A. Properties in Newark. He didn't state which.

Q. Well, tell us everything that was said in that letter.

The Court: Well, that you can remember!

Q. That you can remember, yes. A. Well, the letter was more of an informal letter, but there was just one paragraph that I recall, in which he requested Mr. Bender to give him a deed for the Newark property. The reason I recall that—(interrupted).

Mr. Jordan: We object to that as not responsive, the reason.

The Court (To witness:) No, do not say the reason that you recall it. Just say what you said. He said that he wanted his father to give him a deed to the Newark property?

The Witness: Yes.

Q. Did he mention what property? A. No, he did not.

Q. Is that all he said in the letter? A. That was all in reference to any real estate.

Q. And did you write a letter in reply to that for your father-in-law— A. I did.

Q. —to Davis Bender? A. I did.

Q. And what was stated in that letter with relation to the property? A. Mr. Bender wrote back that, when he returned to Newark, he would deliver his son a deed.

Q. And did he mention any particular property in it? A. No, he did not.

Q. Was that all that he said? A. That was all, outside of that he hoped they were all well up here.

Mr. Vail: That is all.

The Court: That is all. Do you want to cross-examine?

Mr. Jordan: Well, I think I won't.

The Court: That is all, sir.

Mr. Vail: Well, we had two other witnesses, but they have vanished.

The Court: I am sorry. Can't you find them?

Mr. Vail: One of them did not show up here this morning; the other one said he would have to go and would come back at

two o'clock. I thought these witnesses here would take up the intervening time.

The Court: What is the purpose of putting them on the stand?

Mr. Vail: They have known the Benders for years and they know the nature of the business Mr. Bender was in and they know the work that was done by the son, Harry Bender, for his father, the number of years he worked for him, and how much work he did for them, and they were in close relationship, as has been brought out in this case; and to show that the son did actually perform a lot of services for his father.

The Court: Well, I suppose if you feel that the testimony ought to go in, I ought to receive it; but I do not like to sit around and wait until two o'clock.

Mr. Jordan: Your Honor, I have a few short witnesses from the bank; I can fill in between now and one, maybe.

The Court: All right.

Mr. Jordan: Broad and Market Street Bank.

The Court: Perhaps Mr. Vail will admit it.

Mr. Vail: The records I don't have any objection to.

Mr. Jordan: I just want to have one or two transactions verified.

The Court: All right.

GEORGE HAY, sworn for the complainant.

Direct-examination by Mr. Jordan:

The Court: Now, Mr. Jordan, if those are the correct sheets from the bank, all you have to do is to have them marked.

Mr. Jordan: Yes.

The Court: I don't suppose Mr. Vail will object to that.

Mr. Vail: No. If these records came from the bank, I have no objection to them going in—as long as the accounts of Molly Bender should not go in—Sivad, Davis Bender and Harry Bender.

The Court: Well, you object because you do not think they are relevant, but you do not object on the ground that they are not properly proved?

Mr. Vail: Oh, no.

The Court: All right. I will admit them.

Mr. Jordan: First, Molly Bender.

Mr. Vail: I object to the admission of this on the round it is irrelevant, but not as to proof that Molly Bender—(interrupted).

The Court: I understand you object because they are irrelevant and Molly Bender and the Sivad—whatever the name is—have nothing to do with the case.

Mr. Vail: And the Bender Construction Co.

The Court: Yes.

(Sheets marked Exhibits C-1, 5/2/29.)

Mr. Jordan: Now the Sivad.

(Sheet marked Exhibit C-2, 5/2/29.)

Mr. Jordan: Now the one of Davis Bender.

(Sheet marked Exhibit C-3, 5/2/29.)

Mr. Jordan: Now Bender Construction Co.

(Sheet marked Exhibit C-4, 5/2/29.)

Q. Now, Mr. Hay, will you tell the Court what the balance of Davis Bender was with the Broad & Market Street Bank on June 11, 1926?

The Court: Doesn't that appear on the record?

Mr. Jordan: Yes, sir.

The Court: Well, the record is in evidence. You don't have to ask him. Announce from the exhibit.

Mr. Jordan: Very well, then, if that is the case; I want to cut it as short as possible.

It shows that on June 11 Davis Bender had a balance of $27,449.40. That is on Exhibit C-3. The same account shows that on June 14, 1926, Davis Bender drew a check of $12,000 and that on the same day, June 14, 1926, the Sivad Realty Co. deposited $114,250; the account shows that on June 14, 1926, Davis Bender drew a check of $3,000 and The Sivad Realty Co. made a deposit the same day of $3,000.

These accounts further show that on June 9, 1926, the account of Harry Bender was drawn on to the extent of $2,000 and that on June 15, 1926, a deposit was made in the Sivad Realty Co. account of $2,000.

The accounts further show that the balance of the Sivad Realty Co. on April 30, 1926, was $137.25. And commencing June 14, 1926, there was a deposit of $14,250; on June 17, the same year, $3,000; August 28, $7,000; October 28, $2500; November 8, $2,000; November 8, $7710; November 15, $2125; November 20, $2125; December 7, $5400;

April 16, 1927, $2516; March 14, $2502; April 20, $2053; September 2, 1927, $6833; November 22, $1200; November 29, $1550; January 14, 1928, $2355; January 20, same year, $2170; October 17, 1928, $6057; 1929, January 22, $1517; February 16, $1091.

I don't mean, your Honor, to represent that these are all of the accounts; I am simply reading the large sums as we go through from that company.

The account shows that Molly Bender started a bank account on August 5, 1927, in this bank, and that on September 16, 1927, she deposited $10,000; that on September 23 she drew checks of $3,000; on January 27, 1928, $3,000; January 26, 1928, $3500, and at this time, she has a balance of $258.75.

The account of Davis Bender shows that on April 18, 1925, he deposited $5,000. The purpose of that, your Honor, is to show that that $5,000 was the initial deposit on the Tansey property that he said he didn't know whether he had in his bank account or not.

Mr. Vail: Well, your Honor please, I didn't know we were going to argue this case now.

Mr. Jordan: I am simply trying to show the Court the relevancy of what I am reading to him.

Mr. Vail: These things are all in evidence. They either should all go in and stay in or else this whole recitation should be stricken from the evidence.

The Court: It seems to me, as long as you have got these things in, that at the time you file the memorandum you can do all this. I think Mr. Vail is right about this and he ought to have a chance to look these things over. You are just picking out the items that appeal to you. There may be some that might appeal to him.

Mr. Jordan: I have no doubt about that, your Honor. The only thing I thought was this, whether you were going to keep these original records of the bank before you or ask the bank to furnish copies.

The Court: I am going to ask the bank to furnish copies, because I do not think we ought to keep the original records of the bank. It is a habit among lawyers, you know, and stenographers, to lose exhibits; so you give it back to Mr. Hay and ask if he won't please send us copies.

Mr. Vail: A copy for Mr. Jordan and a copy for our use.

The Witness: That is going to be a lot of work.

The Court: Well, they will have to compensate you for it, I suppose.

Now, is there any other bank?

Mr. Jordan: Yes, sir.

The Witness: Photostatic copies?

The Court: That would be all right.

Mr. Vail: Yes.

The Witness: I think that would be the cheaper method. How many copies will you want,—two copies each—and we will render the bill to whom?

The Court: Send them to Mr. Vail and then we will decide who is to pay for them.

The Witness: And you want them when?

Mr. Jordan: Well, as soon as you can get them, reasonably. Do you know where Mr. Vail is in Newark?

The Witness: No, I do not.

The Court: 810 Broad Street, Mr. Vail is—C. Wallace Vail.

Mr. Jordan: How about Mr. Daniels? Take his address: Samuel Daniels, 746 Broad Street.

Clinton?

The Court: Let that take the same course and just introduce—what are these banks?

Mr. Jordan: This is on the Profit Realty Co. The Profit Realty Co. is the one that bought Goldsmith Avenue and gave back a mortgage to Harry Bender.

The Court: Now, I suppose Mr. Vail will make the same objection.

Mr. Vail: The same objection.

The Court: Very well, they will be admitted and marked, and photostatic copies sent to counsel.

I suppose we will have to come back at two o'clock?

Mr. Vail: I have some exhibits here I think Mr. Daniels wanted the other day, one or two more I can introduce, if you want to do it, before adjournment.

The Court: Is there any objection to it?

Mr. Vail: I think there is a check Mr. Daniels wanted.

Mr. Jordan: We wanted that check, oh, yes. No objection.

Mr. Vail: We will introduce them afterwards, with the Court's permission.

The Court: All right. I will be back at two o'clock.

(Noon Recess)

Mr. Vail: I want to introduce in evidence a check that I think Mr. Jordan called for the other day.

Mr. Jordan: No objection.

The Court: I thought you did that before lunch.

Mr. Vail: A check to the Bender Construction Co. to the Profit Realty Co., for $300, dated November 1, 1928.

(Check marked Exhibit D-1, 5/2/29.)

Mr. Vail: Then, I introduce a check from Harry Bender to the Sivad Realty Co., dated November 28, 1927, for $1,450, which is marked "Paid into the Sivad Realty Co.," from Harry Bender on the chattel mortgage transaction on the Goldsmith Avenue property.

(Check marked Exhibit D-2, 5/2/29.)

Mr. Vail: And another check from Harry Bender to the Sivad Realty Co. for $100, dated November 28, 1927, money paid into the corporation by Harry Bender on the automobile transaction.

The Court: You mean, the garage?

Mr. Jordan: No; that is only paid, Judge, when he brought the foreclosure suit of the chattel mortgage; he bought his father's automobile.

The Court: Yes.

(Marked Exhibit D-3, 5/2/29.)

Mr. Vail: Then I have here on the repair of 92 Goldsmith Avenue property, a certificate from the Board of Tenement House Supervision, showing that there was some work done there.

The Court: How much?

Mr. Vail: It doesn't show the amount of the work, it just shows that there was some work done there and that it passed their inspection. It doesn't show the amount or anything of that sort. The purpose is to prove that there was some real work done there. It was done under the supervision of the Board of Tenement House Supervision and the date when the work was done is shown.

Mr. Jordan: We object to it as irrelevant.

Mr. Vail: I can prove it.

The Court: What?

Mr. Vail: I can prove and put it in, if Mr. Jor-

dan has any objection to it.

The Court: I will receive it, if you want to follow it up.

Mr. Vail: Yes.

The Court: Just the statement about the Tenement House Commission.

Mr. Jordan: That it came from there we have no doubt, but it appears on its face—I say it is without probative value here of any sort before you.

Mr. Vail: Now, then, Mr. Kaplan.

The Court: I want to say this to counsel: When I was going out to lunch today, I went down in the elevator with this last witness, Mr. Hay, or whatever his name is.

Mr. Vail: Hays.

The Court: Yes. And he said to me (which he should not have done, but of course, he didn't understand it) and he spoke to me about that indorsement on that check. And he explained it to me. He said that that was an indorsement by one of the tellers. Now, if you want that proven, you will have to recall him; otherwise, if there isn't any objection, I will forget it.

Mr. Vail: The only thing that indorsement amounts to, your Honor please, is nothing more than as though a rubber stamp was put there "for deposit."

The Court: That is just what he said; but I thought it was only fair to counsel to say so, because, of course, I couldn't stop the man.

Mr. Jordan: Of course not.

The Court: Of course, it was highly improper for him to have spoken to me about the case, but I didn't want to say anything. But I said, "I will see counsel when I go back." That is all.

Mr. Jordan: I think there is no question, as far as we are concerned, that the indorsement was made in some such fashion.

The Court: That is what he told me, and I said, "Oh, very well." I didn't criticize him. I said, "I will explain that to counsel." Now, if you don't want that on the record, why, I will forget about it. But is there any point in it, really?

Mr. Vail: There is no point, as far as I am concerned.

Mr. Jordan: None as far as we are now.

ABRAM KAPLAN, sworn for defendants.

Direct-examination by Mr. Vail:

Q. Mr. Kaplan, are you any relation to the Samuel Kaplan of the Profit Realty Co.? A. Yes, sir; he is a brother of mine.

Q. A brother. And some time ago were there ever any papers served on you in connection with this case, brought by Mr. Williamson against Mr. Bender? A. Yes, sir.

Q. And the Profit Realty Co., and others? A. Yes, sir.

Q. And what was served upon you, and where? A. It was subpoenaed on me in my own house about a year ago, and a few times after that.

Q. And who subpoenaed you the first time? A. I really don't know the man, but he said he is from the Sheriff's office.

Q. And did you have a conversation with him, at that time? A. Well, for the moment, I told him that I haven't had anything to do with the Profit

Realty Co. and I don't want to be bothered about it altogether.

Q. And do you know whether your brother Samuel has anything to do with the Profit Realty Co. or not? A. Yes, he has—him an his wife.

Q. I see.

The Court: How does he know?

Q. Well, how do you know? A. Well, I have known him to have that house—

The Court: From what he said to you?

The Witness: Oh, no; I have known him to collect rents there and do repairs.

The Court: Well, that won't do. You must tell us what you know.

Q. Well, tell us how you knew your brother Samuel had anything to do with it. Did he tell you; did he ever have any conversation with you? A. I was at the house—

Q. Wait a minute. Did you ever have any conversation with your brother Samuel about the Profit Realty Co., from which you gained any knowledge as to his connection with it? A. Well, I talked with him several times about it.

Q. And is that the way that you learned that he had connection with the Profit Realty Co.? A. Yes, sir.

Mr. Jordan: We move it be stricken out.

The Court: Yes. That is hearsay.

Mr. Jordan: Hearsay.

Q. Now, Mr. Kaplan, you have known the Benders for some time, haven't you? A. Yes.

Q. How long? A. Oh, about twenty years.

Q. You know the young fellow, Harry Bender? A. Yes.

Q. You remember him when he went to school? A. Yes, I do.

Q. Do you remember when he finished his schooling? A. Yes.

Q. Do you know what he did after he finished school, by way of work? A. He worked with his father.

Q. And where did he work for his father? A. Oh, on building lines, wherever they put up houses.

Q. Did you ever go to any of these jobs and see him working? A. More than once, lots of times; we are on the same line and we used to come to each other as friends.

Q. And do you know of any other time that Mr. Harry Bender worked for his father in any other business? A. Not that I know of.

Q. Do you know this garage on Plane Street? A. Yes, sir.

Q. Did you ever see that? A. Yes, sir.

Q. Did you ever go there? A. Oh, yes.

Q. And who did you find in charge there when you went? A. Harry Bender.

Q. Do you know how long a period of time he was in charge of that garage? A. Oh, I couldn't say. It was a couple of years.

The Court: How do you know that?

The Witness: Well, we were very well acquainted; we visited one another often enough.

The Court: How often did you see him in the garage?

The Witness: I probably saw him there lots of times.

The Court: Well, what do you mean by "lots of times"?

The Witness: Oh, about 25 or 30 times.

The Court: Over what period of years?

The Witness: It was during 1926, 1927 and 1925, and they had the garage there. I didn't mark the time down, your Honor, but I know I was there.

The Court: 1925, 1926 and 1927?

The Witness: Yes, sir.

The Court: All right.

Q. And what was he doing there at the garage when you saw him? A. Managing.

The Court: For all those three years?

The Witness: I couldn't very well remember on the time, because I have never expected—(interrupted).

The Court: Well, but during these three years when you went there, he was there, apparently, as a manager, was he?

The Witness: Well, yes.

The Court: All right.

The Witness: Yes, sir; yes, sir.

Q. And how large a garage was this, Mr. Kaplan? A. Eh?

Q. How large a garage was this? A. Oh, it was quite a big garage, but I never measured the side of it.

Q. Now, did it appear to you that they were busy there? A. Yes.

Q. Were they doing much? A. Yes.

Mr. Vail: That is all.

Mr. Jordan: No questions.

Mr. Vail: I have a witness with which I expected to prove this contract. He didn't show up, so I will have to ask the Court to allow me to recall Harry Bender to prove it.

HARRY BENDER, one of the defendants, recalled.

Examined by Mr. Vail:

Q. Mr. Bender, I show you a paper which purports to be a contract, dated February 11, 1927, in which Harry Bender, single, is stated to be the party of the first part, Samuel Kaplan is stated to be the party of the second part; consideration is $22,000; the premises described as the southerly line of Goldsmith Avenue, in the city of Newark, and ask you if that is your signature (handing witness paper) to that contract? A. Yes.

Q. And does this contract cover this property, 92 Goldsmith Avenue? A. It does.

Mr. Vail: I offer that in evidence.
The Court: What is the date of it?
The Witness: The 11th of February, 1927.
Mr. Jordan: No objection.
The Court: Let it be marked.
(Contract marked Exhibit D-4, 5/2/29.)

Cross-examination by Mr. Jordan:

Q. Mr. Bender, do you recollect making an affidavit on behalf of your father, Davis Bender, in the United States District Court, in an action in which he was sued by Jacob Williamson on this $10,000 note, and that your affidavit was made in

the month of February, 1927, in which you stated, in substance, that he was no longer a resident of Newark and he was a resident of Florida? A. I don't remember having signed it, but I may have.

Q. Well, that is what I will show you then.

Mr. Jordan: Have you that affidavit, Mr. Corn?

Mr. Corn: I didn't have anything to do with that case at all.

Q. This contract which you have identified and which is in evidence as Exhibit D-4: was that made in the office of Louis J. Feit? A. Can I see it?

Q. (Showing witness paper.) A. Yes.

Mr. Jordan: I think, your Honor, that is all, except that I would like to produce that affidavit. I will keep searching for it. If we find it by the end of this session, I would like to show it to this witness.

Mr. Vail: There is not anything more, except this one witness. He has not come back, and, of course, I cannot ask the Court to wait for him.

The Court: I am willing to wait. I will wait ten minutes more. Perhaps Mr. Jordan can find his affidavit in that time.

Mr. Vail: I know Mr. Kaplan is on his way here.

The Court: I will wait ten minutes.

(Short recess.)

Mr. Jordan: If your Honor please, we offer an affidavit by Harry Bender, verified March 7, 1927, in the case of Jacob Williamson again Davis Bender, in the United States District Court, District of New Jersey.

(Affidavit marked Exhibit C-5, 5/2/29.)

Mr. Jordan: That, I might state to the Court, is for the purpose of showing knowledge on Harry Bender's part of the fact that Williamson was not suing him; and it was just about that time that this contract came into being.

The Court: That is the one you discovered in the interim?

Mr. Jordan: Yes, sir.

The Court: All right.

Mr. Vail, do you want Mr. Bender?

Mr. Vail: No further examination.

Mr. Jordan: No further cross-examination.

Mr. Vail: It appears now Mr. Samuel Kaplan, who was sworn in this proceeding the other day, has arrived.

SAMUEL KAPLAN, recalled.

Direct-examination by Mr. Vail:

Q. Mr. Kaplan, do you remember testifying you had some work done as an officer of the Profit Realty Co. on this 92 Goldsmith Avenue property? A. Yes, sir.

Q. And that Mr. Nathan Rice did the work? A. Yes.

Q. I show you a bill—or I will show you what purports to be a bill on the stationery of Nathan Rice, painter and paper hanger, 74 Canfield Place, Irvington, N. J., made out to the Profit Realty Co., for $100. A. Sure.

Q. And ask you what that represents. A. He done—he painted a house for me outside; the

amount was $350, and he got some money off me, but when I gave him the last check, he gave me that bill that—like a receipt like.

Q. And when did you get that bill? A. The time when I gave him the check.

Q. Do you remember the date? A. For one hundred dollars, the last check.

Q. Do you remember the date? A. I don't remember the date. There is no date on it.

Mr. Vail: I offer that in evidence, if your Honor please.

Mr. Jordan: No objection.

The Court: Let it be marked.

(Bill marked Exhibit D-5, 5/2/29.)

Q. And when you had this work done, did the Board of Tenement House Supervision have anything to do with it? A. Yes, sir.

Q. And did you have it inspected by the Board of Tenement House Supervision? A. Yes, sir.

Q. Did you get a certificate? A. I did. It was mailed to my house.

Q. I show you Certificate No. 1031-1928, dated 10/31/28, relating to 92 Goldsmith Avenue, Newark, N. J., to the Profit Realty Co., and ask you if that is the certificate that you got? A. Yes, sir.

Mr. Vail: I offer that in evidence.

Mr. Jordan: Wait a minute. Can I see that?

Mr. Vail: Surely.

Mr. Jordan: All right.

The Court: Let it be marked.

(Certificate marked Exhibit D-6, 5/2/29.)

Samuel Kaplan—Recalled—Cross.

Cross-examination by Mr. Jordan:

Q. Was this certificate given to you when the work was completed? A. Yes. After they inspect and everything is satisfactory, they mail it. They don't give it to you, they mail it.

Mr. Jordan: No objection.

(Exhibit heretofore marked Exhibit D-6, 5/2/29.)

Mr. Vail: And the envelope.

The Court: That is not necessary; if Mr. Jordan does not object, there is no objection. There is no objection about the date, is there?

Mr. Vail: I don't think there is. It is dated October 31, 1928.

The Court: October what?

Mr. Vail: October 31, 1928.

The Court: All right. Is that all, now?

Mr. Vail: And do you know whether or not Harry Bender worked for his father at any time?

The Witness: I know Harry Bender worked for his father since he was a boy about sixteen, seventeen years old.

Redirect-examination by Mr. Vail:

Q. And do you know what he did for his father? A. Taking care of the jobs and watching the jobs and handling a little the books for him and bills, and so on.

Q. Did he ever work in the garage business for his father? A. Yes, sir.

Q. And what did he do there? A. Managing the garage while Bender was away to Florida.

Q. And do you know for how long a period he

did that? A. I don't know exactly, but so far as I know, about six or eight months.

Q. And was that—did you ever go to the garage? A. I don't—I used to be often there.

Q. Did you find him there? A. Yes; I always find him there.

Q. And were you ever served, Mr. Kaplan, with a subpoena from the Sheriff's office, in this suit? A. When they brought the subpoena from the Sheriff's office, I was not present, but they left it with my wife.

Q. So that you never had any conversation with the man from the Sheriff's office? A. No, sir; I was served personally by a Jewish young boy, I seen him here the other day, two or three times.

Q. Was that the original service of the subpoena to answer the suit? A. There was—once there was a subpoena I should appear on Broad Street in the Fidelity—Prudential Building, then I was served again to appear here by the same young man.

Q. Those two services that you mentioned were subpoenas to testify, were they not? A. Yes. That was certainly served to me.

Q. Did you ever tell anybody serving subpoenas on you that you had nothing to do with the Profit Realty Co.? A. No, sir.

Mr. Vail: That is all.

The Court: Cross-examine.

Mr. Jordan: Just a minute.

The Court: Wait a minute.

Recross-examination by Mr. Jordan:

Q. Referring to Exhibit D-5, who wrote "Profit

Realty Co." on the top there? A. I don't know who did. I did not.

Q. Did Mr. Rice write that? A. I don't know if he did or not. I don't know whose writing that is.

Q. Did you see him writing anything on that paper? A. No. When I gave him the check he merely signed it and he gave it to me.

Q. When did you get this paper? A. When he was all completed with his work.

Q. When was that? A. That was on Friday, but I can't recall what date it was.

Q. What year was it? A. Eh? 1928, nineteen twen—last year—it was 1927, the end of the year, about September or October, I don't know, but it was 1927. It was right after I bought a house, a couple of months later, when I painted the house outside.

Q. Do you remember testifying here last week in the discovery proceedings? A. Yes.

Q. Do you remember telling me that you got no receipt from Mr. Rice? A. I told you I didn't had no receipt.

Q. Do you remember that? A. I said I haven't got it with me, but I—(interrupted).

Q. Do you remember saying that you had no contract with Mr. Rice? A. No; I didn't had no contract with him.

Q. Do you remember saying that you had no receipt from him? A. I had a receipt, but not a contract. That is not a contract.

Q. Did you say that? A. I had a verbal contract with him.

Q. Did you say that? A. Yes, sir.

Q. Did you say last week that you did not have any receipt from him? A. I don't remember if I

said I hadn't a receipt. You asked me about a contract and I told you I didn't make no contract with him.

Q. Now I am talking to you about a receipt. A. Yes.

Q. Did you say under oath here last week, that you had no receipt from Mr. Rice for the work he did for you? A. You will have to look in the—(interrupted).

The Court: No. Answer the question.

The Witness: I don't remember, your Honor, if I did or not.

Q. Well, if you did say last week—(interrupted). A. I am positive I didn't have no contract with him, but about the receipt I wasn't positive of it.

Q. Did you get this paper, Exhibit 5, since you were talking here last week? A. No, sir, I didn't see—(interrupted).

Q. Where did you find it? A. I find it in my house.

Q. Did you have it last week? A. No, sir; I didn't have it with me.

Q. Did you have it in your house last week? A. Where I find it, then it was in my house.

Q. Did you see Mr. Nathan Rice since last week? A. No, sir.

Q. Who wrote the body of this receipt in here (indicating)? A. I don't know who wrote it. He brought it to me all written.

Q. When did he bring it to you? A. The time when he got his last check, the last check of $100.

Q. How long since you saw Mr. Rice? A. I saw Rice about a month or six weeks after in the—at a meeting.

Q. Do you remember telling the Court here, on your last examination, that this work that Rice did was painting the whole inside of the house? Did you say that? A. Yes, sir.

Q. Well, now, this receipt that you produce says work done on the outside of the house. A. First he done—(interrupted).

Q. Wait a minute, now. A. Yes.

Q. Did he do work on the inside or did he do it on the outside? A. He done it on the outside.

Q. Have you got a receipt for the inside work? A. I have no receipt, but I have a check.

Q. You have no receipt for the inside work? A. No.

Q. Did you overlook that part when you had Mr. Rice give you this receipt?

The Court: No. Strike that out.

Q. Will you say now that the words "Profit Realty Co." at the top of this receipt was not written by you? A. No, sir.

Q. Did you see who wrote it? A. No, sir.

Q. You don't know? A. No. He brought it to me that way. It was all written, except when I gave him the check, he signed it in the bottom.

Q. On February 23, 1928, did you live at 528 Chancellor Avenue? A. My business is out there.

Q. Did you see a man there about 11:30 o'clock that morning? A. If I seen 11 o'clock?

Q. On the morning of February 23, 1928. A. That is a hard thing to tell, there is so many people coming in and out I couldn't tell.

Q. Do you know a man named Donald Strope? A. Maybe, if I just see him, I know him.

Q. Did you see a man by that name in the court-

room when you were here last week? A. When I —no, sir.

Q. Would you know the man, if you saw him again, that served a subpoena on you? A. Positively.

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

Q. You don't know a Deputy Sheriff by the name of Donald Strope, do you? A. No, sir.

Q. How many different men served subpoenas upon you? A. There was only two young fellows served subpoenas on me.

Q. And do you know their names? A. No, sir.

Q. And do you know when they served subpoenas on you? A. They served two or three subpoenas on me.

Q. And do you know when? A. I don't recall the dates.

Q. Now, this Exhibit No. 6 from the Tenement House Department— A. Yes.

Q. —did you go down and ask them for that? A. The way—(interrupted).

Q. Yes or no, did you go down and ask them for it? A. Certainly.

Q. And when did you go and ask them for it? A. When the job was completed.

Q. When did this job commence? A. It commenced in October—in Setpember or October, something in those months.

Q. What year? A. 1928.

Q. Sure about that? A. Positively. Whether it was done September or October I don't remember.

Q. You were well supplied with money in 1928, weren't you? A. Well supplied with money? Sometimes I am supplied and sometimes not, I can't tell.

Q. Well, in the year 1928, when you were having this work done, you had plenty of money, didn't you? A. I had money, but not plenty. What do you call "plenty of money"?

The Court: That is just what I am thinking. That is purely a relative statement, I think, Mr. Jordan.

Mr. Jordan: All right, Judge.

Q. The work was finished on October 31, 1928? A. Yes, sir.

Q. How much before that was it finished? A. It was finished about a week before.

Q. Do you remember testifying in regard to this check, Exhibit C-16 of December 26, 1928, to the Bender Construction Co., for $300? A. Yes, sir.

Q. That that was given to him when he finished the job? A. Was given later—after the job was finished.

Q. Do you remember testifying— A. Yes.

Q. —that that was given— A. To him.

Q. —at the time he finished the job? A. Yes, sir.

Mr. Jordan: That is all.

Redirect-examination by Mr. Vail:

Q. Mr. Kaplan, do you remember on direct-examination the other day, being asked what work he did, referring to Rice, for $180, and you answered, "He is a painter and decorator"? A. Yes, sir.

Q. "And done the work inside and outside, the household, which means a painter"? A. Yes, sir.

Q. Is that what you meant, that he worked both inside and out? A. On the outside, I had a price with him. The price was $350, but on the inside

I didn't made no price with him, and he charge me accordingly, whatever it would be worth, and so on; being in the building business, I know he can't overcharge me too much, and he worked it on the honor.

Q. Well, now, Mr. Kaplan, do you also remember being asked on direct-examination: "Have you got a bill from him," and answering, "No, sir; I had a bill; I don't know where she is?" A. Yes, sir.

Q. And was that correct? A. Correct.

Q. Can you write? A. No, sir. I just could write my name. I could read printed or typewriting.

Q. Will you try to write for us the words "Profit Realty Co." on a piece of paper?

The Court: Do you want a pen?

Mr. Vail: I think he better have a pen. This is written with a pen.

The Witness: How do you spell it?

Mr. Vail: You write it.

The Court: No, Profit Realty Co.

(Witness writes on paper.)

Mr. Vail: Realty Co.

(Witness hands paper to counsel.)

The Court: Let me see.

Mr. Vail: I will show you the bill, also.

The Court: Do you want this in evidence?

Mr. Vail: I would like to offer this sheet in evidence, upon which Mr. Kaplan has written the words "Profit Realty Co."

The Court: All right, sir. Is that all?

Mr. Jordan: Complainant rests.

The Court: I suppose you want the testimony written out. How long do you want for memorandums?

Mr. Vail: I think Mr. Jordan will want to write the first memorandum. He is the moving party.

The Court: You can exchange briefs and Mr. Jordan can exchange with you, just as you please.

Mr. Jordan: I was going to suggest this, your Honor, if it would meet your Honor's approval, that we would exchange briefs and come here at such time as you would fix, say two weeks from now, and close the matter with an oral argument to cover it.

The Court: No, I don't care for any oral argument. I have heard as much oral argument as I desire, in this case.

Mr. Jordan: Yes.

The Court: I want the memorandums and whenever is most convenient for you gentlemen.

Mr. Vail: I would like an opportunity of answering Mr. Jordan's brief.

Mr. Jordan: Certainly.

The Court: Why don't you exchange briefs and then each one have another week in which to reply? Would that be satisfactory?

Mr. Vail: I think Mr. Jordan and I can agree upon a time for exchanging briefs, and if we cannot, we will appear before you.

Mr. Jordan: No objection. I am agreeable.

The Court: You see, the testimony has got to be written out.

Mr. Vail: After we get the testimony, we will get our briefs together and submit them to you.

Mr. Jordan: All I ask is that Mr. Salmon send Mr. Daniels the transcript of his notes and then I will get right busy and have a brief up in a week.

Motion to Dismiss Counterclaim of Defendant, Davis Bender.

Before we finish the case, your Honor, I would like to put on record a motion on behalf of the complainant to dismiss the counterclaim of the defendant Davis Bender, in regard to the misrepresentation, first, on the ground that they are res adjudicata; second, on the ground of laches; third, on the ground that there is no damage shown, and fourth, on the ground that the evidence fails to show a cause of action, inasmuch as there are no misrepresentations of any kind proven on the part of the complainant, Jacob Williamson.

The Court: This case, as I understand, has been adjudicated by the Circuit Court and is now on appeal, and then they come into this Court on practically the same pleadings and ask me to adjudicate on that.

Mr. Vail: Your Honor please—

Mr. Jordan: On the ground of fraud.

The Court: Yes.

Mr. Vail: If your Honor please, we come into this court now bringing here evidence which was not available at the trial at the Circuit Court.

The Court: Yes, I know, but that is in your appeal. On your appeal from the Circuit Court you say that it was not available and you say that you did not have time to submit it to Judge Dungan, and he denied you the opportunity of putting it in, I understood.

Mr. Vail: Yes, sir.

The Court: And then, you appealed from that and now you come in here, while your appeal is still pending, and ask me to do what? Why, I can't understand that.

Mr. Corn: I conducted the pleadings in the Circuit Court. In that action there was no defense of this kind raised whatsoever. There was a de-

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fense there raised of an agreement of cancellation of the note. No fraud was raised. There was no rescission raised there whatsoever.

The Court: Yes, but my dear man, you had a chance to put in all your defenses and you responded to the forum and, after the Circuit Court decided against you, you made an effort—or something during the proceeding—you made an effort to get in this extra testimony, which the Court denied. Then you took an appeal on the very same ground that you bring in now before me, asking me to sustain your counterclaim.

Mr. Corn: That is not the case.

Mr. Jordan: They did that before they went in the law court, before they served us with a proposed amendment, setting up this very cause of action, and they knew all about it, and when we went in there and when we claimed surprise before the Court, he abandoned it, withdrew it.

Mr. Corn: There is no appeal being taken here from the discretion of the Circuit Court. Of course, the motion was not even made to the Court, at that time.

The Court: Isn't there an appeal from the Circuit Court?

Mr. Jordan: Yes, sir.

Mr. Corn: There is an appeal on the evidence, not from the refusal, but we say that we could not have raised this as a defense in the action. This is a separate cause of action, it is a counterclaim. It is not a defense to the note; this is a separate cause of action on a counterclaim and of course, the pleadings in the Circuit Court are all here; the appeal is here, the grounds of appeal are noted in there, and have nothing to do whatsoever with this particular matter that is being raised.

We allege in this complaint that fraud was committed, and was discovered, I think, about—just shortly before the trial in the law court.

The Court: Well, why—(interrupted).

Mr. Corn: We could not have raised it in the law court, your Honor pleases, because of this reason, that in law, the law court, we could not possibly succeed there because we would have to prove fraud, we had to prove scienter.

The Court: Well, you haven't proved that in this court.

Mr. Corn: We don't have to prove scienter, we don't have to prove guilty knowledge, to make equitable fraud, and if your Honor recalls from hearing the facts, we have no representation made by Williamson himself and of course, we could not in a law court prove guilty knowledge by Williamson when he himself did not make those representations; but in the Court of Chancery fraud can be found even though there was no guilty knowledge, even if there was a misrepresentation on which was actual damage, that is equitable fraud. It is not legal fraud unless we prove guilty knowledge.

The Court: You mean to say if you do not prove it in the law court, it is fraud in equity?

Mr. Corn: No, but it could not be fraud in law.

The Court: Well, it cannot be fraud in equity, either.

Mr. Corn: That is right, but in law we have to prove scienter, where in equity we don't have to prove it; and that was the exact point where we could not bring it in the law court, I mean, we could not hope to succeed in the law court.

The Court: Well, I can't see anything at all myself in the counterclaim.

Mr. Vail: Well, if your Honor please, may I ask

that you not dispose of that motion, at this time, and argue that in the brief as well?

The Court: Surely; I am perfectly willing to do that, but I say that I cannot see how you can come in here with a counterclaim on exactly the same state of facts that were before the Circuit Court, and from which you have appealed. Now, at the same time, you have come in here and practically you are running two strings to your bow. You know that just as well as I do.

Mr. Corn: None of this evidence is before the Circuit Court, your Honor.

The Court: That is your misfortune, then. It should have been.

Mr. Corn: Well, I just thought I—

The Court: You made an effort to get it before the Circuit Court and the Circuit Court refused to receive it.

Mr. Corn: No. It was entirely discretionary with the Court, whether they would allow an amendment or not.

The Court: But they refused to amend.

Mr. Corn: No. The motion was not presented.

Mr. Jordan: No; you are wrong there.

Mr. Corn: The motion was never presented and there is nothing in the case.

The Court: Your motion was never presented. Why didn't you present it?

Mr. Corn: It was not presented because, at the time of the trial, I knew I could not hope to succeed, because I could not possibly prove guilty knowledge.

The Court: Why do you hope to succeed here, then? I can't see that. Fraud can be proved in a law court just as well as it can in equity.

Mr. Jordan: There was no adjournment asked to produce any such evidence.

The Court: Very well, I won't decide it now. Mr. Vail asked me to withhold the opinion until the briefs are in and I am perfectly willing to do that. But I will tell you quite frankly that I cannot see anything in your counterclaim.

Mr. Vail: It may be, your Honor please, that you will want to delay your decision in this entire matter until the Court of Errors decides that case, because, if the Court of Errors decides there in favor of the defendant, there will be no need of deceding the other until that case is tried over again, because there could be nothing done here. They could not levy their execution against this property.

Mr. Jordan: That is entire supposition. We have no bond on that appeal. We have no way of satisfying that judgment. We have been held up two years already by the dilatory tactics of counsel for the defendants. With all due respect, he has done everything possible to evade the trial of this action. We have a judgment and we want to collect it, if it is possible and legal, with the setting aside of these conveyances, and there is no reason in the world that I see why the decision of this Court should be held up pending any other appeal, because, as I understand it, after this appeal that they are now prosecuting from the law court, they intend to take a second appeal. They have told me so in their letter.

Mr. Vail: Your Honor please—(interrupted).

The Court: Is this appeal taken directly to the Court of Errors or—

Mr. Jordan: No, sir.

The Court: —to the Supreme Court?

Mr. Vail: Mr. Corn has just told me it was to the Supreme Court.

The Court: Now, that doesn't sound very well.

Mr. Vail: Now, if your Honor please, if the Supreme Court decides for the defendant in this case, then it will be tried over again and nothing can be done with the property, any way.

The Court: Now, whatever comes, it will be appealed to the Court of Errors and Appeals. You see, you have taken advantage of our judicial system and you have taken two steps instead of appealing—and to shorten the matter, you could have appealed straight to the Court of Errors and Appeals. Apparently, you did not do that.

Mr. Vail: I don't know that, your Honor. I had nothing to do with that. Mr. Corn just told me.

The Court: If that is so, I won't hold up my decision. If you had appealed directly to the Court of Errors and Appeals, that is a different matter. Now, you appeal to the Supreme Court, with the chance of getting another appeal, and of course, that makes it a year or two longer.

Mr. Vail: But if the Supreme Court decides for the defendant and says that the trial court erred, and sends it back for a new trial and you decide here that there has been a conveyance here in fraud of creditors, there can be nothing done with the property, any way.

The Court: Why not? These are concurrent courts, the Supreme Court and Court of Chancery have concurrent jurisdiction, and then you will have to appeal directly to the Court of Appeals from my decision.

Mr. Vail: But the case will have to be tried over

again, in the meantime; they cannot levy their execution and take the property.

The Court: I am not so sure about that.

Mr. Jordan: That is, you hope it cannot.

I want to thank you, Judge, for the courteous treatment I have had and your patience in listening to the case.

The Court: I am very glad to have had the opportunity.

Mr. Jordan: And I want to thank Mr. Vail and Mr. Corn, likewise, and hope we can do as well for them if they ever come to New York.

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Exhibit C-1—11/20/28.

CLINTON TRUST COMPANY
Newark, N. J. April 11, 1927

Pay to the
Order of Harry Bender $6700.00/100
Sixty seven hundred 00/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Harry Bender.

Exhibit C-2—11/20/28.

CLINTON TRUST COMPANY
Newark, N. J. April 11, 1927

Pay to the
Order of Samuel Kaplan $200.00/100
Two hundred 00/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Samuel Kaplan.

Exhibit C-3—11/20/28.

CLINTON TRUST COMPANY
Newark, N. J. Oct.17, 1928

Pay to the
Order of Bender Construction Co. $300.00/100
Three hundred 00/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Bender Construction Co.

Exhibit C-5—11/20/28.

CLINTON TRUST COMPANY
Newark, N. J. Oct. 5, 1928

Pay to the
Order of Bender Construction Co. $400.00/100
Four hundred 00/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Bender Construction Co.

Exhibit C-6—11/20/28.

CLINTON TRUST COMPANY
Newark, N. J. Sept. 8, 1928

Pay to the
Order of Bender Construction Company
$300.00/100
Three hundred 00/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Bender Construction Co.

Exhibit C-7—11/20/28.

CLINTON TRUST COMPANY
Newark, N. J. Sept. 6, 1928

Pay to the
Order of Harry Bender $900.00/100
Nine hundred 00/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Harry Bender.

Exhibit C-8—11/20/28.

CLINTON TRUST COMPANY
Newark, N. J. Feb. 2, 1928

Pay to the
Order of Harry Bender $450.00/100
Four hundred fifty 00/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Harry Bender.

Exhibit C-9—11/20/28.

CLINTON TRUST COMPANY
Newark, N. J. June 3, 1927

Pay to the
Order of Nathan Rice $250.00/100
Two hundred fifty 00/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Nathan Rice.

Exhibit C-3—4/24/29.

The State of New Jersey, to

Davis Bender, Harry Bender, Mollie Bender, Louis J. Feit, Samuel Kaplan, Celia Kaplan, Abraham Kaplan, Hortense Bender, T. Burton Crane, Treasurer of the Clinton Trust Company, a corporation, Gertrude Kaplan, Jennie Kaplan, Donald Strope and John MacLaughlan,

(L.S.)

Greeting: For certain reasons offered before us in our Court of Chancery, we command you that you personally be and appear before Alonzo Church, Esquire, one of the Vice Chancellors of our Court of Chancery at 8th floor, 1060 Broad Street, in Newark, on Wednesday the 24th day of April, 1929, at 10 o'clock in the forenoon, to give evidence in a certain cause now pending in our said Court of Chancery, wherein Jacob Williamson is complainant and Davis Bender, et als., are defendants. Hereof fail not, under penalty of two hundred dollars.

Witness his Honor, EDWIN ROBERT WALKER, our Chancellor, at Trenton, the 17th day of April, in the year of our Lord one thousand nine hundred and twenty-nine.

FERD GARRETSON,
Clerk.

SAMUEL DANIELS,
Sol's.

Exhibit C-4—4/24/29.

IN CHANCERY OF NEW JERSEY.

Between JACOB WILLIAMSON, Complainant, and DAVIS BENDER, HARRY BENDER, HORTENSE BENDER, MOLLIE BENDER, PROFIT REALTY CO., a corporation, BENDER CONSTRUCTION CO., a corporation, G. L. & S. HOLDING CO., a corporation and ISAAC ELSON, Defendants.	On Bill, &c. Subpoena Duces Tecum.

To LOUIS J. FEIT:

You are commanded to diligently search for and bring with you and produce at the same time and place mentioned in the subpoena attached hereto the certain minute books, correspondence, files, stock books, stock certificates and certificates of incorporation of Bender Construction Co. and Profit Realty Co., New Jersey corporations, as well as any and all agreements, instruments, writings, deeds, mortgages, books, letters, checks, checkbooks, papers and documents of any nature, kind or description whatever, pertaining to any and all transactions and agreements by and between any of the said defendants and by and between any two or more of them, and any and all pleadings, notices or copies thereof in connection with a certain foreclosure suit instituted in Dade County, Florida, against Davis Bender and Mol-

lie, his wife, wherein or in connection with which you represented Davis Bender and Mollie Bender.

FERD GARRETSON,
Clerk.

SAMUEL DANIELS,
Solicitor.

Exhibit C-5—4/24/29.

This Indenture, Made the twenty-second day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-six,

Between Davis Bender and Mollie Bender, his wife, of the City of Newark, in the County of Essex and State of New Jersey,

And Harry Bender, of the City of Newark, in the County of Essex and State of New Jersey, party of the second part:

Witnesseth, That the said party of the first part, for and in consideration of One Dollar ($1.00) and other good and valuable consideration, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, All those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey.

Exhibit C-5—4/24/29.

First Tract: Beginning in the southerly line of Goldsmith Avenue at a point therein distant 215.98 feet westerly from the westerly line of Bergen Street; thence running along the southerly line of Goldsmith Avenue north 46 degrees 5½ minutes west 60 feet; thence south 43 degrees 54½ minutes west and at right angles to Goldsmith Avenue 100 feet; thence south 46 degrees 5½ minutes east 60 feet; and thence north 43 degrees 54½ minutes east 100 feet to the southerly line of Goldsmith Avenue and the point or place of Beginning.

Being the same premises conveyed to Davis Bender by Deed of Horace B. Tobin and Ralph W. Tobin, et als, dated November 21st, 1922 and recorded in the Register's Office of the County of Essex in Book H-67 of Deeds for said County on pages 394-395.

Second Tract: Beginning on the westerly side of South Broad Street as widened at a point distant thirty feet (30′) Southerly from the Southwest corner of land formerly of John L. Jackson; thence South sixty degrees forty-five minutes East eighty-eight feet; thence South twenty-six degrees thirty minutes west thirty feet; thence North Sixty degrees forty-five minutes West eighty-four feet to South Broad Street; thence North twenty-nine degrees and fifteen minutes East thirty feet to the place of Beginning.

Being the same premises conveyed to Samuel Rosalsky by Deed of Florence Reynolds, et vir, dated Feb. 19th, 1923 and recorded in the Register's Office of the County of Essex in Deed Book S-67 for said County on page 449, etc.

Third Tract: Beginning in the northerly line of King Street at a point one hundred and nine-

teen feet distant south seventy degrees east from the corner formed by the intersection of said line with the easterly line of Essex and Middlesex Turnpike Road; thence running thru the centre of the partition wall of the two houses north twenty degrees east eighty-one feet; thence south sixty-nine degrees and fifteen minutes east twenty-two feet; thence south twenty degrees west eighty feet to said King Street; thence along the same north seventy degrees west twenty-two feet to the place of Beginning.

Beginning in the northerly line of King Street at a point one hundred feet distant south seventy degrees east from the corner formed by the intersection of said line with the easterly line of Essex and Middlesex Turnpike Road; thence running north twenty degrees east eighty-one feet six inches; thence south sixty-nine degrees fifteen minutes east nineteen feet; thence south twenty degrees west eighty feet thru the centre of the two dwelling houses to said King Street; thence along the same north seventy degrees west nineteen feet more or less to the place of Beginning.

Being the same premises conveyed to Davis Bender by Deed of Harry Hoffman (single) dated December 28th, 1923 and recorded in the Register's office of the County of Essex in Book M-69 of Deeds for said County on page 484.

Fourth Tract: Beginning at a point in the Easterly line of Broad Street, distant Southerly sixty-five (65) feet from the southwest corner of Broad Street and Vanderpool Street, at the line of property reputed to be owned by Will C. Headley. Thence (1) running Easterly along line of last mentioned land, parallel with said Southerly line of Vanderpool Street, ninety-two feet and

Exhibit C-5—4/24/29.

nine-tenths of a foot to the rear line of land fronting on Broad Street. Thence (2) Southerly along same, and parallel with Broad Street, thirty (30) feet. Thence (3) Westerly and parallel with second course, ninety-five feet and eight tenths of a foot, to said line of Broad Street. Thence (4) along said line of Broad Street, Northerly thirty (30) feet to the point and place of Beginning.

Being and including the property known and designated as street number 1242 Broad Street in said City of Newark.

Beginning on the East side of the Essex and Middlesex Turnpike Road at a point One hundred feet South of the North line of the house lot of Caleb Snow; thence South sixty degrees forty-five minutes East One hundred feet; thence South twenty-nine degrees fifteen minutes West thirty feet; thence North sixty degrees forty-five minutes West One hundred feet; thence North twenty-nine degrees fifteen minutes East Thirty feet to the place of Beginning.

The aforesaid premises being known and designated as Street Number 1240 Broad Street in the said City of Newark.

There is excepted out of the above tracts so much of the said tracts as was taken and appropriated by the Mayor and Common Council of the City of Newark for the widening of Broad Street.

Being the same premises conveyed to David Bender by Deed of Florence Reynolds and John Reynolds, her husband, dated May 14th, 1924 and recorded in the Register's Office of the County of Essex in Book T-70 of Deeds for said County, on pages 98-99.

This conveyance is expressly subject to all en-

cumbrances and restrictions appearing of record and also lease not appearing of record, which lease so not appearing of record is as follows: A lease from Davis Bender to the Sivad Realty Co., dated February 8th, 1926, covering premises #1246 Broad Street and premises on Wright Street, in the City of Newark, New Jersey.

Fifth Tract: All of the equal undivided one half part of that tract or parcel of land of the premises described as follows:

Beginning at the Centre line of Wright St on the Eastern side of Avenue C; thence Easterly Two hundred twenty five feet; thence Northerly fifty feet; thence Westerly One Hundred feet to said Eastern side of Avenue C; thence Northerly along the Easterly line of Avenue C, eighty feet to the place of Beginning.

Sixth Tract: All of the equal undivided one half part of the tract or parcel of land of the premises described as follows:

Beginning in the Easterly line of Avenue C, at a point in the Center line of Wright St; thence along Easterly through the center of Wright St and Two Hundred twenty five feet to the line of land of Arthur Devine; thence Northerly parallel along his line one hundred thirty feet to a point One Hundred feet South of Emmet St. thence Westerly parallel with Emmet St two hundred feet; More or less to the North westerly line of land belonging to the estate of Sayrus Coe; thence Southerly along that line 150 ft. more or less to Avenue C; thence along Southerly along the said Ninety-three feet more or less to the center of Wright St. and Place of Beginning.

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges,

Exhibit C-5—4/24/29.

and advantages, with the appurtenances to the same belonging or in anywise appertaining:

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

To Have and to Hold, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, heirs and assigns forever:

In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

DAVIS BENDER (LS)
MOLLY BENDER (LS)

Signed, Sealed and Delivered
in the presence of
Louis J. Feit,

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

Be it Remembered, That on this 22nd day of April in the year of our Lord One Thousand Nine Hundred and Twenty-six, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Davis Bender and Mollie Bender, 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 Mollie Bender, wife of Davis Bender, being by me privately examined, separate and

apart from her said husband, I having first made known to her the contents, 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.

LOUIS J. FEIT,
Master in Chancery of N. J.

Endorsed Deed. Davis Bender and Mollie Bender, his wife, to Harry Bender. Dated, April 22, A. D., 1926. Received in the Register's Office of the County of Essex, N. J. on the 22nd day of April, A. D., 1926, at 3:00 o'clock in the afternoon, and Recorded in Book G-74 of Deeds for said County, on pages 269-271.

Howard S. Dodd,
Register.

Exhibit C-6—4/24/29.

CLINTON TRUST COMPANY
Newark, N. J. Dec. 13, 1927

Pay to the
Order of Feit and Feit $107.50
One Hundred Seven and 50/100 Dollars

PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Feit & Feit Atty For Deposit.

Exhibit C-7—4/24/29.

This Indenture, Made the Sixth day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-seven,

Between Harry Bender (single) of the City of Newark in the County of Essex and State of New Jersey, party of the first part;

And Bender Construction Company, a corporation of the State of New Jersey, having its principal office in the City of Newark in the County of Essex and State of New Jersey, party of the second part:

Witnesseth, That the said party of the first part for and in consideration of One Dollar and other good and valuable consideration, lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to its successors and assigns, forever. All those tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey.

First Tract:

Beginning on the Easterly side of South Broad Street as widened at a point distant thirty feet (30′) southerly from the Southwest corner of land formerly of John L. Jackson; thence South sixty degrees forty-five minutes East eighty-eight feet; thence South twenty-six degrees thirty minutes

Exhibit C-7—4/24/29.

West thirty feet; thence North sixty degrees forty-five minutes West eighty-four feet to South Broad Street; thence North twenty-nine degrees and fifteen minutes East thirty feet to the place of Beginning.

Second Tract:

Beginning in the northerly line of King Street at a point one hundred and nineteen feet distant south seventy degrees east from the corner formed by the intersection of said line with the easterly line of Essex and Middlesex Turnpike Road; thence running thru the centre of the partition wall of the two houses north twenty degrees east eighty-one feet; thence south sixty-nine degrees and fifteen minutes east twenty-two feet; thence south twenty degrees west eighty feet to said King Street; thence along the same north seventy degrees west twenty-two feet to the place of Beginning.

Beginning in the northerly line of King Street at a point one hundred feet distant south seventy degrees east from the corner formed by the intersection of said line with the easterly line of Essex and Middlesex Turnpike Road; thence running north twenty degrees east eighty-one feet six inches; thence south sixty-nine degrees fifteen minutes east nineteen feet; thence south twenty degrees west eighty feet thru the centre of the two dwelling houses to said King Street; thence along the same north seventy degrees west nineteen feet more or less to the place of Beginning.

Third Tract:

Beginning at a point in the Easterly line of Broad Street, distant Southerly sixty-five (65) feet from the southeast corner of Broad Street and Vanderpool Street, at the line of property reput-

Exhibit C-7—4/24/29.

ed to be owned by Will C. Headley. Thence (1) running Easterly along line of last mentioned land, parallel with said Southerly line of Vanderpool Street, ninety-two feet and nine-tenths of a foot to the rear line of land fronting on Broad Street. Thence (2) southerly along the same, and parallel with Broad Street, thirty (30) feet. Thence (3) Westerly and parallel with second course, ninety-five feet and eight-tenths of a foot, to said line of Broad Street. Thence (4) along said line of Broad Street, Northerly thirty (30) feet to the point and place of Beginning.

Being and including the property known and designated as street number 1242 Broad Street in said City of Newark.

Beginning on the East side of the Essex and Middlesex Turnpike Road at a point one hundred feet South of the North line of the house lot of Caleb Snow; thence South sixty degrees forty-five minutes East one hundred feet; thence South twenty-nine degrees fifteen minutes West thirty feet; thence North sixty degrees forty-five minutes West one hundred feet; thence North twenty-nine degrees fifteen minutes East thirty feet to the place of Beginning.

The aforesaid premises being known and designated as Street Number 1240 Broad Street in the said City of Newark.

There is excepted out of the above tracts so much of the said tracts as was taken and appropriated by the Mayor and Common Council of the City of Newark for the widening of Broad Street.

This conveyance is expressly subject to all encumbrances and restrictions appearing of record and also lease not appearing of record, which lease so not appearing of record is as follows: A

lease from Davis Bender to the Sivad Realty Co., dated February 8th, 1926, covering premises #1246 Broad Street and premises on Wright Street, in the City of Newark, New Jersey.

Together with all and singular, the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining:

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

To Have and to Hold, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use, benefit, and behoof of the said party of the second part, its successors and assigns forever:

And the said Harry Bender does for himself, his heirs, executors and administrators covenant and agree to and with the said party of the second part, its successors and assigns, that he, the said Harry Bender, is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

And also that the said party of the first part

Exhibit C-7—4/24/29.

now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid:

And also, that Harry Bender will Warrant, secure, and forever defend the said land and premises unto the said Bender Construction Company, its successors and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrances whatsoever.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

HARRY BENDER.

Signed, Sealed and Delivered
in the Presence of
Louis J. Feit.

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

Be it Remembered, That on this Sixth day of April in the year of our Lord One Thousand Nine Hundred and Twenty-seven before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Harry Bender (single) who, I am satisfied, is the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that, he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

LOUIS J. FEIT,
Master in Chancery of N. J.

Endorsed: Deed. Harry Bender (single) to Bender Construction Company, a corporation.

Exhibit C-7—4/24/29.

Dated, April 6th, 1927. Received in the Register's Office of the County of Essex, N. J. on the 17th day of May, A. D. 1927, at 1:44 o'clock in the afternoon, and Recorded in Book 1-76 of Deeds for said County, on page 161-162.

Howard S. Dodd,
Register.

Exhibit C-11—4/24/29.

Same as C. 9—11/20/28.

Exhibit C-12—4/24/29.

CLINTON TRUST COMPANY
Newark, N. J. June 24, 1927.

Pay to the
Order of Nathan Rice $100.00/100
One hundred 00/100 Dollars

PROFIT REALTY CO.
Samuel Kaplan, Pres.

Endorsed on back: For deposit in Clinton Trust Company Newark, N. J. to the credit of Nathan Rice.

Exhibit C-13—4/24/29.

CLINTON TRUST COMPANY
Newark, N. J. October 10, 1927

Pay to the
Order of Nathan Rice $180.00/100
One hundred eighty 00 /100 Dollars

PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Nathan Rice.

Exhibit C-14—4/24/29.

CLINTON TRUST COMPANY
Newark, N. J. May 21, 1927

Pay to the
Order of Samuel Kaplan $150.00/100
One hundred fifty no/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Secy & Treas.

Endorsed on back: Samuel Kaplan.

Exhibit C-15—4/24/29.

CLINTON TRUST COMPANY
Newark, N. J. July 19, 1927

Pay to the
Order of S. Kaplan $200.00/100
Two hundred 00/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Pres.

Endorsed on back: Samuel Kaplan.

Exhibit C-16—4/24/29.

CLINTON TRUST COMPANY
Newark, N. J. Dec. 26, 1928

Pay to the
Order of Bender Const. Co. $300.00/100
Three Hundred and 00/100 Dollars
PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed on back: Bender Const Co.

Exhibit C-17—4/24/29.

IN THE CIRCUIT COURT, ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, STATE OF FLORIDA. IN CHANCERY.

EMMA A. HOWARD,
Complainant,

vs.

JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON,
Defendants.

To the Honorable Judges of the Circuit Court, Eleventh Judicial Circuit, in and for Dade County, State of Florida. In Chancery Sitting.

Your oratrix, Emma A. Howard, by H. H. Eyles, her Solicitor, brings this her Bill of Complaint against Jacob Becker and Rachel Becker, his wife, Davis Bender and Mrs. Davis Bender, his wife, and Jacob Williamson, and alleges,

1st. That the Complainant and the defendants Jacob Becker and Rachael Becker, his wife, are residents of Dade County, Florida. That the defendant Davis Bender and Mrs. Davis Bender, his wife, reside at No. 92 Goldsmith Avenue, Newark, New Jersey; That the defendant Jacob Williamson, resides at No. 16 Main Street, Yonkers, State of New York. That the Complainant and each of said defendants are over the age of twenty-one years.

2nd. That on the 11th day of March, A. D. 1925, the defendant, Jacob Becker, being indebted unto

Exhibit C-17—4/24/29.

your oratrix, Emma A. Howard, in the sum of Thirteen Thousand Five Hundred ($13,500.00) Dollars, executed and delivered to your oratrix, Emma A. Howard, his promissory note bearing said date, payable to the said Emma A. Howard on or before one (1) year after the date thereof, and bearing interest at the rate of eight percent per annum, payable semi-annually; a copy of said promissory note being hereto attached as complainant's Exhibit No. 1, and prayed to be considered a part hereof, as if herein fully set forth in extenso.

3rd. That in order to secure the payment of the said promissory note above described, the said Jacob Becker and Rachael Becker, his wife, did on the 11th day of March, 1925, execute and deliver unto your oratrix, Emma A. Howard, their certain mortgage deed wherein and whereby they did convey unto your oratrix Emma A. Howard, in fee simple, the following described lands then owned by the said Jacob Becker, lying and being situate in the County of Dade, State of Florida, to-wit:

Lots One (1) and Two (2) of Block Forty-four (44) of Ocean Beach, Florida, Addition No. 3, according to the Plat thereof recorded in Plat Book 2, page 81 of the Public Records of Dade County, Florida.

Subject, however, to a condition of defeasance upon the payment of the promissory note aforesaid, principal and interest, and the performance of each and every the covenants and provisions of the said promissory note and the said mortgage deed. The said mortgage deed was on the 13th day of March, 1925, duly filed for record in the office of the Clerk of the Circuit Court of Dade

County, Florida, and on said date was duly recorded in Mortgage Book 351, page 400 of the Public Records of said County. A certified copy of said mortgage and the certificate of record thereof is hereto attached and made a part thereof, as Complainant's Exhibit No. 2.

4th. Your oratrix further shows unto the Court that the indebtedness owing to your oratrix Emma A. Howard, and to secure which the said mortgage deed was executed, represents a portion of the purchase price of the above described property.

5th. Your oratrix further shows unto the Court that at the time of the execution and delivery by the said Jacob Becker and Rachel Becker, his wife, to your orators of the promissory notes and mortgage deed hereinabove referred to, the said Jacob Becker was lawfully seized and possessed of a fee simple estate and title in and to the above described lands, but that thereafter the said Jacob Becker and Rachel Becker, his wife, conveyed the said lands to Jacob Williamson and H. E. Glickman, by deed dated March 30th, 1925, filed for record March 31st, 1925, Clerk's File No. A-33547, of the Public Records of Dade County, Florida. That thereafter Jacob Williamson, Rose Williamson, his wife, and H. E. Glickman and T. Glickman, his wife, by deed dated May 20th, 1925, filed for record June 16th, 1925, Clerk's File #A-75117 of the Public Records of Dade County, Florida, conveyed said lands to Harry A. Lack and Davis Bender. That thereafter Harry A. Lack, a single man, by deed dated March 16th, 1926, filed for record March 17th, 1926, Clerk's File No. B-28111 of the Public Records of Dade County, Florida, conveyed his undivided one-half interest in and to

said lands to the defendant Davis Bender, and your orators allege that the said Davis Bender is now the owner, and seized and possessed of a fee simple title and estate in and to the above described lands.

6th. Your oratrix further show unto the Court that on the 24th day of March, 1925 the said Jacob Williamson and wife, Rose Williamson, and H. E. Glickman and wife, T. Glickman, executed and delivered to the defendant Jacob Becker, a certain mortgage upon the property hereinabove described, purporting to secure an indebtedness of $2,000.00, but that the said mortgage so executed and delivered to the said Jacob Becker is inferior in dignity and subject to the mortgage hereinabove referred to, held by your oratrix Emma A. Howard.

7th. Your oratrix further allege that on the 16th day of June, 1925, Harry A. Lack and Davis Bender, executed and delivered to the defendant Jacob Williamson, a certain mortgage upon the property hereinabove described, purporting to secure an indebtedness of $10,000.00, but that the said mortgage so executed and delivered to the said Jacob Williamson is inferior in dignity and subject to the mortgage hereinabove referred to, held by your oratrix Emma A. Howard.

8th. Your oratrix further show unto the Court that the mortgage deed hereinbefore referred to, executed by the said Jacob Becker and Rachel Becker, his wife to your oratrix Emma A. Howard, among other things, contains a provision to the effect that if any of the sums of money therein referred to be not promptly and fully paid within thirty days next after the same severally become due and payable, the principal sum of said prom-

issory note and interest thereon, shall immediately become due and payable.

Wherefore, and inasmuch as your oratrix is without remedy save in a Court of Equity, your oratrix bring this their Bill of Complaint against Jacob Becker, Rachel Becker, his wife, Davis Bender, Mrs. Davis Bender, his wife, and Jacob Williamson, and thereupon respectfully pray:

1st. That this Court take jurisdiction of this cause.

4th. That the defendant Jacob Becker may be required by a short day to be fixed by this Court, to pay the sums of money so found to be due unto your oratrix as principal, interest, counsel fees and costs of court herein.

5th. That in default of the payment of the sums of money hereinabove described, that the mortgaged premises hereinabove described, or so much thereof as may be necessary, may be sold, and the proceeds thereof applied to the payment of the sums of money so found to be due unto your oratrix.

6th. That upon the sale of such property being made, the defendants, to-wit: Jacob Becker, Rachel Becker, his wife, Davis Bender, Mrs. Davis Bender, his wife, and Jacob Williamson, and all persons claiming by, through or under them, or either of them, since the execution of said mortgage, and since the commencement of this suit, be forever barred and foreclosed of and from any and all right, title, interest, claim and equity of redemption in and to said mortgaged premises.

And may the Court grant unto your oratrix the State's most gracious Writ of Subpoena in Chancery, issuing out of and under the Seal of this Honorable Court, directed to the defendants, Ja-

Exhibit C-17—4/24/29.

cob Becker, Rachel Becker, his wife, Davis Bender, Mrs. Davis Bender, his wife, and Jacob williamson, requiring them and each of them upon a day therein to be named, and under a penalty therein to be fixed, to be and appear before this Honorable Court, and then and there, true, full and perfect answer make to this your oratrix bill of complaint, but not under oath, answer under oath being hereby specifically waived.

And your oratrix will ever pray.

H. H. EYLES,
Solicitor for Complainant.

Exhibit C-17—4/24/29.

IN THE CIRCUIT COURT, ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, STATE OF FLORIDA. IN CHANCERY.

EMMA A. HOWARD,
Complainant,

vs.

JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON,
Defendants.

It appearing by affidavit filed in said cause that the defendants, Davis Bender and Mrs. Davis Bender, his wife, are residents of Newark, New Jersey, residing at No. 92 Goldsmith Avenue in said city of Newark, New Jersey, and that the defendant, Jacob Williamson is a resident of Yonkers, New York; residing at #16 Main Street, Yonkers, New York; that each of said defendants is over the age of 21 years, and that there is no person or persons in the State of Florida, the service of subpoena upon whom would bind the said Davis Bender, Mrs. Davis Bender and Jacob Williamson.

It is therefore ordered that the said Davis Bender, Mrs. Davis Bender and Jacob Williamson, be and each of them is hereby required to appear to the bill of complaint filed in said cause on or before the 26th day of July 1926, otherwise the allegations of said Bill will be taken as confessed.

It is further ordered that this Order be published once a week for four consecutive weeks in the Homestead Enterprise, a newspaper of general

Exhibit C-17—4/24/29.

circulation, published in said county and state.
This 22nd day of June, A. D. 1926.

GEO. F. HOLLY,
Clerk Circuit Court.
By E. W. Trammell D. C.

(Ct. Ct. Seal)
Filed Jun 22, 1926
Geo. F. Holly, Clerk.

WESTERN UNION TELEGRAM.

1926 Jul 21 PM 9 16

Received at 21-23 West Flagler Street, Miami, Flo.
0153 108 NL 1/66
New ark NJ 21
2108

Clerk of the Circuit Court

11 Judical District in and for Dade County Miami Flo In Chancery On July first I sent you letter requesting copy of Bill of Complaint in the case of Emma A Howard complainant versus Jacob Becker Rachel Becker his wife Davis Bender Mrs. Davis Bender his wife and Jacob Williamson Defendants together with check of Five Dollars time expires for filing answer on July twenty six therefore will not be able to answer in time allowed through your delay will you therefore extend time for filing same and inform me of the date thereof and send copy of Bill of Complaint at once to Davis Bender in care of Feit and Feit Two South Broad Street Elizabeth New Jersey.

DAVIS BENDER.

Exhibit C-17—4/24/29.

Louis J. Feit
Charles T. Feit

Reply to Elizabeth Office
LAW OFFICES
231 Market Street
Newark, N. J.
Phone Mulberry 4609

FEIT AND FEIT

2 South Broad Street
Opposite Court House
Elizabeth, N. J.
Phone Emerson 6440

July 1st, 1926.

Clerk of the Circuit Court, 13425
11th Judicial District, in and for Dade Co.,
State of Florida.
(In Chancery)

Dear Sir:

Will you kindly forward us a copy of the bill of Complaint filed in the following cause in the above-stated court:

EMMA A. HOWARD,
Complainant,
vs.
JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON,
Defendants.

We are inclosing herewith our check for $5.00 to cover costs of same.

Exhibit C-17—4/24/29.

Please forward this immediately as we have not much time to answer the complainant.

Very truly yours,

FEIT and FEIT
By Louis J. Feit

LJF:RS
incl.
Filed Jul 22, 1926
Geo. F. Holly, Clerk.

IN THE CIRCUIT COURT, ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, STATE OF FLORIDA. IN CHANCERY.

EMMA A. HOWARD,
Complainant,
vs.
JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON,
Defendants.

The Clerk of the above Court will please enter an appearance in the above entitled action for the defendant Jacob Williamson.

SIMEON SLOSBERG
Solicitor for Defendant,
Jacob Williamson.

Filed Jul. 26, 1926
Geo. F. Holly, Clerk.

Exhibit C-17—4/24/29.

IN THE CIRCUIT COURT, ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, STATE OF FLORIDA. IN CHANCERY.

EMMA A. HOWARD,
Complainant,
vs.
JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON,
Defendants.

It appearing by affidavit filed in said cause that the defendants, Davis Bender and Mrs. Davis Bender, his wife, are residents of Newark, New Jersey, residing at No. 92 Goldsmith Avenue in said City of Newark, New Jersey, and that the defendant, Jacob Williamson is a resident of Yonkers, New York, residing at No. 16 Main Street, Yonkers, New York, that each of said defendants is over the age of 21 years, and that there is no person or persons in the State of Florida, the service of a subpoena upon whom would bind the said Davis Bender, Mrs. Davis Bender and Jacob Williamson.

It is therefore ordered that the said Davis Bender, Mrs. Davis Bender and Jacob Williamson, be and each of them is hereby required to appear to the bill of complaint filed in said cause on or before the 26th day of July 1926, otherwise the allegations of said bill will be taken as confessed.

It is further ordered that this Order be published once a week for four consecutive weeks in The

Exhibit C-17—4/24/29.

Homestead Enterprise, a newspaper of general circulation, published in said County and State.
This 22nd day of June, A. D. 1926.
(Circuit Court Seal)

GEO. F. HOLLY,
Clerk Circuit Court.
By E. W. Trammell
Deputy Clerk

36-40B

Filed Aug. 2, 1926
Geo. F. Holly, Clerk.

IN THE CIRCUIT COURT, ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, STATE OF FLORIDA. IN CHANCERY.

EMMA A. HOWARD, Complainant, vs. JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON, Defendants.	Answer of the Defendants Davis Bender and Mrs. Davis Bender.

By way of Answer to the Bill of Complaint filed in the above cause, the defendants each severally state:

1. They have no sufficient knowledge or information to form a belief as to the allegations contained in paragraphs 1, 2, 3, 4 of the Bill of Complaint, but leave the complainant to proof thereof.

2. They have no sufficient knowledge or information to form a belief as to the allegations con-

tained in Paragraph No. 5, except that they admit the conveyance from Williamson and Glickman and also the conveyance of Harry A. Lack to Davis Bender, and that the said Davis Bender is possessed of the title described in said paragraph.

3. They have no sufficient knowledge or information to form a belief as to the allegations contained in paragraph No. 6.

4. They admit Paragraph No. 7.

5. They have no sufficient knowledge or information to form a belief as to the allegations contained in Paragraph No. 8.

6. They have no sufficient knowledge or information to form a belief as to the allegations contained in Paragraph No. 9.

7. They deny the allegations contained in Paragraph No. 10.

FIRST SEPARATE DEFENSE.

In the first part of March, 1926, and prior to the mature date of the mortgage described in the Bill of Complaint, the defendant, Davis Bender, entered into an agreement with the complainant, Emma A. Howard, whereby, in consideration of the said Davis Bender agreeing to pay eight per cent (8%) interest on the sum of $14,040, the said Emma A. Howard, did agree to extend the payment of the said mortgage for another year, to wit, to March 11th, 1927, the interest on the said sum of $14,040 to be paid by Davis Bender semi-annually.

DAVIS BENDER
MOLLY BENDER
Solicitors pro se.

Filed Aug. 2, 1926
Geo. F. Holly, Clerk.

Exhibit C-17—4/24/29.

IN THE CIRCUIT COURT, ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, STATE OF FLORIDA. IN CHANCERY.

No. 13425

EMMA A. HOWARD,
Complainant,

vs.

JACOB BECKER, *et al.*,
Defendants.

Clerk of said Court will please enter a decree Pro Confesso against the defendants, Jacob Becker, Rachel Becker, his wife, Davis Bender and Mrs. Davis Bender, his wife, and Jacob Williamson, as of the Rule Day of August, 1926, for want of plea, answer or demurrer to the complainant's bill.

H. H. EYLES,

Solicitor for Complainant.
Filed Aug. 2, 1926
Geo. F. Holly, Clerk.

Exhibit C-17—4/24/29.

IN THE CIRCUIT COURT, ELEVENTH JUDICIAL CIRCUIT IN AND FOR DADE COUNTY, STATE OF FLORIDA. IN CHANCERY.

EMMA A. HOWARD, *et al.*,
Complainants,

vs.

JACOB BECKER, *et al.*,
Defendants.

The Clerk of said Court will please enter a decree pro confesso against the defendant, Jacob Williamson, as of the Rule Day of September, 1926, for want of a plea, answer or demurrer to the complainant's bill.

H. H. EYLES
Solicitor for Complainants.

Filed Sep. 6, 1926
Geo. F. Holly, Clerk.

Exhibit C-17—4/24/29.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY. IN CHANCERY.

No. 13425.

EMMA A. HOWARD, joined by EDSON C. HOWARD, her husband and next friend, Complainants, vs. JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON, Defendants.	Master's Report of Testimony.

The above styled cause having been referred to the undersigned General Master by order of this Honorable Court dated the 30th day of September, A. D. 1926, I named 2 o'clock P. M. Monday, November 8th, A. D. 1926 at 1001-11 Seybold Building at the time and place for taking testimony, notice of which was given by mail to Davis Bender, Mrs. Davis Bender, his wife, and the defendants, Jacob Becker and Rachel Becker, his wife, being represented at the hearing by Patterson and Knight by Mr. Knight, and a Decree Pro Confesso having been entered against Jacob Williamson and the cause proceeding Ex Parte as regards Jacob Williamson, and the complainants being represented by E. E. Eyles,

Whereupon the complainant to substantiate further the allegations of her bill of complaint offers

in evidence mortgage bearing date of 11th day of March, A. D. 1925, bearing the signature of Jacob Becker and Rachel Becker.

Received in evidence and marked Complainant's Exhibit No. 1.

There being no further testimony I declared said hearing adjourned, until 2:00 P. M. November 22nd, A. D. 1926.

Whereupon, on November 9th, A. D. 1926, Davis Bender and Mary Bender have filed an answer in Pro Per without the assistance of a solicitor, and there being no solicitor within the jurisdiction of this Court or of record for the said Davis Bender and Mrs. Davis Bender, I inclosed a written notice to the said Davis Bender and Mrs. Davis Bender, a duplicate original of which is hereto attached, and made Exhibit No. 5, of this report, with a letter in an envelope properly stamped and addressed to said Davis Bender and Mrs. Davis Bender at 92 Goldsmith Avenue, Newark, New Jersey, registering the said letter, and requesting a return receipt. Whereupon, at a later date I received the registered return receipt showing that the said notice had been received. However, on November 22nd, A. D. 1926, at 2:00 P. M. nor at any time thereafter until the filing of this report, has the said Davis Bender and Mrs. Davis Bender or any person in their behalf offered any testimony.

Whereupon, on November 22nd, A. D. 1926 I declared the said hearing closed.

I find upon examination of the files that the equities are with the complainant; that the relief prayed for in the bill of complaint should be

Exhibit C-17—4/24/29.

granted; that the court has jurisdiction of the parties and subject matter, and there is due and owing the complainant the sum of $13,500.00 as principal and a further sum of $1,321.93 as interest.

Whereupon I recommend that the relief prayed for in the bill of complaint be granted the complainant.

Respectfully submitted,
NORRIS McEYLA,
General Master.

NMc/B

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY. IN CHANCERY.

No. 13425

EMMA A. HOWARD, joined by EDSON C. HOWARD, her husband and next friend, Complainant, vs. JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON, Defendants.	Notice of Filing Final Report

To E. E. Eyles, Solicitor for Complainants, Patterson and Knight, Solicitors for Jacob Becker and Rachel Becker, and Davis Bender and Mrs. Davis Bender:

Notice is hereby given that I have this day filed

Exhibit C-17—4/24/29.

the Master's Report and Testimony in the above styled cause.

Dated this 11th day of December, A. D. 1926.

NORRIS McELYA

I have this day mailed a copy of the above notice of filing of said report to Davis Bender and Mrs. Davis Bender at 92 Goldsmith Avenue, Newark, New Jersey, by registered mail.

Dec. 11th, 1926.

NMc/B NORRIS McEYLA

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIAD IN AND FOR DADE COUNTY: IN CHANCERY.

No. 13425

EMMA A. HOWARD, *et al.*,
Complainants,
vs.
JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON,
Defendants.

To Davis Bender and Mrs. Davivs Bender, his wife, 92 Goldsmith Avenue, Newark, New Jersey.

Notice is Hereby Given, that on the 22nd day of November, A. D. 1926, at 2 o'clock P. M., I will sit as General Master in Chancery, in my offices at 1003 Seybold Building, Miami, Dade County,

Exhibit C-17—4/24/29.

Florida, to take such testimony as may be submitted by the parties in the above styled cause, at which hearing you have the privilege of being present.

Duplicate Original
Mc/D

NORRIS McELYA
General Master in Chancery.

Exhibit 5 Filed Before Me This 22nd Day of Nov. A.D.1926.

NORRIS McELYA
General Master in Chancery.

Filed Dec. 11, 1926
Geo. F. Holly, Clerk.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, IN AND FOR DADE COUNTY. IN CHANCERY.

No. 13425

EMMA A. HOWARD, joined by EDSON C. HOWARD, her husband and next friend,
Complainants,

vs.

JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON,
Defendants.

} Final Decree.

This cause coming on to be finally heard, this 22nd day of December, A. D. 1926, and it appear-

Exhibit C-17—4/24/29.

ing to the Court that the General Master's report was filed in this cause on the 11th day of December, 1926, and was on said date duly entered upon the docket of said Court, and that no exceptions have been filed thereto,

It is Therefore Ordered, Adjudged and Decreed, That said General Master's report stand confirmed.

And it is Further Ordered, Adjudged and Decreed, that in the event of the failure on the part of the Defendants to pay the sum of money hereinbefore set forth, and upon the sale of said property as herein decreed, then the said Defendants, Jacob Becker and Rachel Becker, his wife, Davis Bender and Mrs. Davis Bender, his wife, and Jacob Williamson, and all persons claiming by, through or under them, or either of them, since the commencement of this suit, be and they are hereby forever barred and foreclosed from all equity of redemption and claim of, in and to the said mortgaged premises, or any part thereof.

Done and Ordered in Chambers, at Miami, Dade County, Florida, this the 22 day of December, A. D. 1926.

H. F. ATKINSON,
Circuit Judge.

Filed this 23 day of Dec. A. D. 1926 and recorded in Chancery Order Book 49, on Page 334, Geo. F. Holly, Clerk Circuit Court. By M. C. Hawkins, Deptuy.

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA IN AND FOR DADE COUNTY. IN CHANCERY.

EMMA A. HOWARD, joined by EDSON C. HOWARD, her husband and next friend,
Complainant,

vs.

JACOB BECKER, RACHAEL BECKER, his wife, DAVIS BENDER, MRS. DAVIS BENDER, his wife, and JACOB WILLIAMSON,
Defendants.

No. 13,425

This cause coming on to be heard upon the Report of Sale of the General Master heretofore appointed in said cause to make a sale of the mortgaged property described in Complainant's bill of complaint and in the Final Decree heretofore entered in said cause; and it appearing by an examination of the files and said General Master's Report of Sale, that said sale was duly advertised in accordance with law, and that said sale was fairly and properly conducted, and that said property at said sale brought its reasonable market value; and the Court being advised in the premises,

It is Ordered, Adjudged and Decreed that said sale of said property to Emma A. Howard for the sum of Fifteen Thousand Dollars ($15,000.00), be and the same is hereby confirmed, and the said General Master in Chancery, Norris McElya, is hereby ordered and authorized to execute and deliver to the said Emma A. Howard, his deed of conveyance for said mortgaged property.

Exhibit C-17—4/24/29.

And it further appearing from said General Master's Report of Sale that after the payment of attorney's fees and the costs and expenses of said foreclosure proceeding and the taxes due upon said property, and the application of the balance of the amount bid for said property to the amount due to the Complainants, there will still remain due from the Defendants Jacob Becker and Davis Bender to the Complainants Emma A. Howard and Edson C. Howard, her husband, the sum of $2,086.84,

It is Therefore Ordered, Adjudged and Decreed that the Complainants, Emma A. Howard and Edson C. Howard, her husband, do have, receive and recover of and from the Defendants Jacob Becker and Davis Bender the said sum of Two Thousand and Eighty-six and 84/100 Dollars ($2,086.84) for which let execution issue.

Done and Ordered in Chambers at Miami, Dade County, Florida, this 17 day of February, A. D. 1927.

H. F. ATKINSON,
Circuit Judge.

Filed Feb. 18, 1927, Geo. F. Holly, Clerk.

State of Florida }
County of Dade } ss.:

I, E. B. Leatherman, Clerk of the Circuit Court, in and for Dade County, Florida, Do Hereby Certify that the above and foregoing pages numbered from one to Eighty-six, inclusive, contain a true and correct copy of all the papers filed in the case of Emma Howard vs. Jacob Becker, et al, according to the files of this office.

In Witness Whereof, I hereunto set my hand

and affix my official seal this 27th day of February, A. D. 1928.

E. B. LEATHERMAN,
Clerk Circuit Court.
By B. S. Peeler, D. C.

(Seal)

Exhibit C-18—4/24/29.

This Indenture, Made this 15th day of March A. D. 1926, Between Davis Bender, joined by his wife Mollie Bender, of the County of Dade, and State of Florida, parties of the first part, and Harry A. Lack, a single man, of the County of Dade, and State of Florida, party of the second part, Witnesseth, That the said parties of the first part, for and in consideration of the sum of Ten dollars and other valuable considerations to them in hand paid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and transferred, and by these presents do grant, bargain, sell and transfer unto the said party of the second part, and his heirs and assigns forever, all that certin parcel of land lying and being in the County of Dade and State of Florida, more particularly described as follows: an undivided one-half interest in lots one (1) and two (2) block seventy (70) of Ocean Beach, Florida, Addition #3, according to the Plat thereof recorded in Plat Book 2, at page 81 of the Public Records of Dade County, Florida. Subject, however, to a mortgage in the sum of $11,000.00 and a second mortgage in the sum of $4,000.00, which mortgage the grantee herein assumes and agrees to pay, and the grantee herein takes this deed subject to the stipulations and conditions of the said mortgages. Subject to

Exhibit C-18—4/24/29.

all taxes and assessments now pending against the above property.

Subject also to a third mortgage in the principal sum of $9500.00 now encumbering said property.

This deed is intended to convey the entire interest of the grantors in and to the above described property.

Together with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining: To Have and To Hold the same in fee simple forever.

And the said parties of the first part do covenant with the said party of the second part that they are lawfully seized of the said premises, that they are free from all incumbrances and that they have good right and lawful authority to sell the same; and the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, The said parties of the first part have hereunto set their hands and seals, the day and year above written.

DAVIS BENDER (Seal)
MOLLY BENDER (Seal)
($1.00 I. R. Stamps)
(Cancelled)

Signed, Sealed and Delivered in our Presence:
Opal Given
Evelyn Moon

Exhibit C-18—4/24/29.

State of Florida, }
County of Dade, } ss.:

I Hereby Certify, That on this 15th day of March A. D. 1926, before me personally appeared Davis Bender and Molly Bender, to me known to be the persons described in and who executed the foregoing conveyance to Harry A. Lack and severally acknowledged the execution thereof to be their free act and deed for the uses and purposes therein mentioned; and the said Molly Bender, the wife of the said Davis Bender on a separate and private examination taken and made by and before me, and separately and apart from her said husband, did acknowledge that she made herself a party to the said Deed of Conveyance for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether of dower or of separate property, or equitable, in and to the lands therein described, and that she executed said deed freely and voluntarily, and without any constraint, fear, apprehension or compulsion of or from her said husband.

Witness my signature and official seal at Miami in the County of Dade and State of Florida, the day and year last aforesaid.

OPAL GIVEN (Seal)
Notary Public State of Florida
(N. P. Seal) My commission expires 9/5/28

State of Florida, }
County of Dade, } ss.:

Be it Remembered, That on the 16 day of Mar. 1926, the foregoing deed was filed for record and duly recorded in Deed Book 621, at page 228, at 3:46 o'clock P. M.

In Witness Whereof, I have hereunto set my hand and official seal.

GEO. F. HOLLY, Clerk Circuit Court.
By M. Paris, D. C.

Exhibit C-19—4/24/29.

This Indenture, Made this 20th day of May A. D. 1925, Between Jacob Williamson, and wife, Rose Williamson and H. E. Glickman, and wife, T. Glickman of the County of Dade, in the State of Florida, parties of the first part, and Harry A. Lack, and, Davis Bender of the County of Dade, in the State of Florida, party of the second part.

Witnesseth, That the said party of the first part for and in consideration of the sum of Ten Dollars ($10.00) and other valuable considerations Dollars to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said party of the second part, his heirs and assigns forever, the following described land, situate, lying and being in the County of Dade and State of Florida, to-wit:

Lots One (1) and Two (2), Block Seventy (70) of Ocean Beach, Florida, Addition #3, according to the plat thereof recorded in Plat Book 2, at page 81, of the Public Records of Dade County, Florida.

Subject However, to a mortgage in the sum of $11,000.00, and a second mortgage in the sum of $4000.00, which mortgages the Grantee herein assumes and agrees to pay, and the Grantee herein takes this deed subject to the stipulations and conditions of the said mortgages. Subject to all taxes and assessments now pending against the above described property.

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said parties of the first

Exhibit C-19—4/24/29.

part have hereunto set their hands and seals the day and year above written.

Jacob Williamson (Seal)
Rose Williamson (Seal)
H. E. Glickman (Seal)
T. Glickman (Seal)

Signed, sealed and delivered in presence of us:
Carolyn H. Rohlfs
William J. Wallin
As to Williamson and wife.
Benjamin H. Axlerod
As to Glickman and wife.

($22.50, I. R. Stamps Cancelled)

State of Florida, }
County of Dade, } ss.:

I hereby certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, H. E. Glickman and wife, T. Glickman to me well known to be the persons described in and who executed the foregoing deed, and acknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

And I Further Certify, That the said T. Glickman known to me to be the wife of the said H. E. Glickman on a separate and private examination taken and made by and before me, separately and apart from her said husband, did acknowledge that she made herself a party to said deed for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether dower, homestead or of separate property, statutory or equitable, in and to the lands described there

in, and that she executed the said deed freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

Witness my hand and official seal at Miami, County of Dade and State of Florida, this 16th day of June, A. D. 1925.

E. A. POPPELL,
Notary Public, State of Florida.
My commission expires Mar. 23, 1929.
(N. P. Seal)

State of New York, }
County of Westchester } ss.:

I Hereby Certify That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Rose Williamson and Jacob Williamson to me well known to be the persons described in and who executed the foregoing deed, and asknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

And I Further Certify, that the said Rose Williamson, known to me to be the wife of the said Jacob Williamson on a separte and private examination taken and made by and before me, separately and apart from her said husband, did acknowledge that she made herself a party to said deed for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether dower, homestead or of separate property, statutory or equitable, in and to the lands described therein, and that she executed the said deed freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

Exhibit C-19—4/24/29.

Witness my hand and official seal at Yonkers, County of Westchester and State of New York this 20th day of May, 1925.

WILLIAM J. WALLIN

Notary Public, Westchester County, New York. My commission expires March 31, 1927.

(N. P. Seal)

State of New York, } ss.:
County of Westchester }

I, Louis N. Ellrodt, Clerk of the County of Westchester, and also Clerk of the Supreme and County Courts in and for the said County, the same being Courts of Record.

Do Hereby Certify, that William J. Wallin whose name is subscribed to the deposition of Certificate of the Proof or acknowledgment of the annexed instrument and thereon written was, at the time of taking such deposition, or proof and acknowledgment, a Notary Public in and for such County, duly commissioned and sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyance of land, tenements or hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate or proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my

hand and affixed the Seal of the said Courts and County, the 20 day of May, 1925.

LOUIS N. ELLRODT Clerk.

(County Clerk Seal)

Filed for record June 16, 1925, at 2:53 P. M. Re-Corded in Deed Book 657, on page 274. Witness my hand and official seal.

Geo. F. Holly, Clerk.

By J. M. Kerman, D. C.

Exhibit C-20—4/24/29.

This Indenture, Made this 20th day of May, A. D. 1925, Between Jacob Williamson and wife, Rose Williamson, and H. E. Glickman and wife, T. Glickman, of the County of Dade, in the State of Florida, parties of the first part, and Harry A. Lack, and Davis Bender, of the County of Dade, in the State of Florida, party of the second part.

Witnesseth, That the said parties of the first part, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable considerations Dollars, to them in hand paid by the part.. of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold to the said party of the second part, their heirs and assigns, forever, the following described land, situate, lying and being in the County of Dade, and State of Florida, to-wit:

Lots One (1) and Two (2), Block Forty-four (44) of Ocean Beach, Addition #3, the same being a subdivision of South Half (S½) of fractional section 3, Township 54 South, of Range 42 East, according to the plat thereof recorded in

Exhibit C-20—4/24/29.

Plat Book 2, at page 81, of the public records of Dade County, Florida.

Subject, However, to a mortgage in the sum of $13,500.00, and a second mortgage in the sum of $2,000.00, which mortgages the Grantee herein assumes and agrees to pay, and the Grantee takes this deed subject to the stipulations and conditions of the said mortgages. Subject to all taxes and assessments now pending against the above described property.

And the said parties of the first part do hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said parties of the first part have hereunto set their hands and seals the day and year above written.

Jacob Williamson (Seal)
Rose Williamson (Seal)
H. E. Glickman (Seal)
T. Glickman (Seal)

Signed, sealed and delivered
in presence of us:
William J. Wallin
Carolyn H. Rohefs
As to Williamson and wife:
Benjamin H. Axelroad
E. A. Poppell
As to Glickman and wife.

($22.00 I. R. Stamps, cancelled)

State of Florida, }
County of Dade, } ss.:

I hereby certify that on this day personally appeared before me, an officer duly authorized to

Exhibit C-20—4/24/29.

administer oaths and take acknowledgments, H. E. Glickman and wife, T. Glickman, to me well known to be the persons described in and who executed the foregoing deed, and acknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

And I Further Certify, That the said T. Glickman, known to me to be the wife of the said H. E. Glickman, on a separate and private examination taken and made by and before me, separately and apart from her said husband, did acknowledge that she made herself a party to said deed for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether dower, homestead or of separate property, statutory or equitable, in and to the lands described therein, and that she executed the said deed freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

Witness my hand ,and official seal at Miami County of Dade and State of Florida, this 16th day of June, A. D. 1925.

E. A. POPPELL
Notary Public, State of Florida. My commission expires Mar. 23, 1929.

(N. P. Seal)

State of New York, }
County of Westchester } ss.:

I Hereby Certify that on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments Jacob Williamson and Rose Williamson, to me well known to be the persons described in and who executed the foregoing deed, and acknowledged be-

fore me that they executed the same freely and voluntarily for the purpose therein expressed.

And I Further Certify, That the said Rose Williamson known to me to be the wife of the said Jacob Williamson on a separate and private examination take and made by and before me, separately and apart from her said husband, did acknowledge that she made herself a party to said deed for the purpose of renouncing, relinquishing, and conveying all her right, title and interest, whether dower, homestead or of separate property, statutory or equitable, in and to the lands described therein, and that she executed the said deed freely and voluntarily and without compulsion, constraint, apprehension or fear of or from her said husband.

Witness my hand and official seal at Yonkers, County of Westchester, and State of New York, this 20th day of May, A. D. 1925.

WILLIAM J. WALLIN,

Notary Public, Westchester County, New York.

March 31, 1927.

My commission expires:

(N. P. Seal)

State of New York, }
County of Westchester } ss.:

I, Louis N. Ellrodt, Clerk of the County of Westchester, and also Clerk of the Supreme and County Courts in and for said County, the same being Courts of Record, Do Hereby Certify, that William J. Wallin, whose name is subscribed to the deposition or certificate of the Proof or acknowledgment of the annexed instrument, and thereon written, was at the time of taking such deposition, or proof, and acknowledgment, a Notary Public in and for such County, duly commissioned and

sworn, and authorized by the laws of said State, to take depositions and to administer oaths to be used in any Court of said State, and for general purposes; and also to take acknowledgments and proofs of deeds, of conveyances of land, tenements or hereditaments in said State of New York. And further that I am well acquainted with the handwriting of such Notary Public, and verily believe that the signature to said deposition or certificate or proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Courts and County, the 20 day ofMa y, 1925.

LOUIS N. ELLRODT, Clerk.

(County and Courts Seal)

Filed for record June 16, 1925 at 2:54 P. M. Recorded in Deed Book 643, page 321. Witness my hand and official seal,

Geo. F. Holly, Clerk.

By J. A. Andrews, D. C.

Exhibit C-21—4/24/29.

Articles of Agreement, made the Second day of March in the year of Our Lord One Thousand Nine Hundred and Twenty Six.

Between Davis Bender and Molly (also known as Mollie) Bender, his wife, of the City of Newark, in the County of Essex and State of New Jersey, party of the first part;

And Roemer Brothers Trucking Co., a corporation, having its principal office in the City of Newark in the County of Essex and state of New Jersey, party of the second part;

Exhibit C-21—4/24/29.

Witnesseth, That the said party of the first part, for and in consideration of the sum of Seventy Seven Thousand Seven Hundred and Fifty ($77,750) Dollars, to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they, the said party of the first part, will well and sufficiently convey to the said party of the second part, its successors, heirs and assigns, by Deed of Warranty free from all encumbrance, except as hereinafter mentioned, on or before the fifteenth day of May next ensuing the date hereof, all those lots, tracts, or parcels of land and premises, hereinafter particularly described situate, lying and being in the City of Newark in the County of Essex and State of New Jersey.

Beginning in the westerly line of Essex Street at a point therein distant 113 feet two inches northerly from the northerly line of James Street; thence running along the property adjoining on the south, north 57 degrees 24 minutes west 76 feet; thence along property adjoining on the west, north 30 degrees 56 minutes east 57 feet 3 inches; thence along the same north 57 degrees 56 minutes west 16.72 feet; thence north 29 degrees 30 minutes east 35 feet 7 7/8 inches to a point; thence on a course north 63 degrees 36 minutes west 72 feet 8 5/8 inches to a point in the easterly line of Plane Street therein distant 197 feet 11 5/8 inches north from James Street; thence along Plane Street north 26 degrees 4 minutes east 27 feet 4 inches; thence south 63 degrees 36 minutes east 85 feet 4 3/4 inches; thence north 30 degrees 16 minutes east 29 feet 4 1/4 inches to a point; thence south

59 degrees 48 minutes east 39 feet 9 inches to a point; thence south 29 degrees 30 minutes west 2.02 feet to a point; thence south 60 degrees 30 minutes east 40 feet to the westerly line of Essex Street; thence along said line of Essex Street south 29 degrees 30 minutes west 152 feet 6 inches to the point and place of Beginning.

The above description being in conformity with a survey of the premises made by Lehlbach Bros. April 3, 1923.

Being the same premises conveyed to the said Davis Bender by deeds from Harry Minchin, individually and as executor, and Harriett Morgan Mitchell.

And the said party of the second part, for itself, its successors and assigns, doth covenant, promise and agree to and with the said party of the first part, their heirs, executors, administrators and assigns, that it the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Seventy Seven Thousand Seven Hundred and Fifty ($77,750) Dollars, as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

On Execution of this agreement for which this is also a receipt $5,000.

On delivery of deed, cash on day of closing $65,450.

By accepting a conveyance expressly subject to, agreeing and assuming to pay mortgages on the premises as follows:

Mortgage recorded in Book T-37, page 591 in the nominal sum of Two Thousand ($2,000) Dollars 2,000.

Exhibit C-21—4/24/29.

Mortgage recorded in Book A-34, page 74 in the nominal sum of Eleven Hundred and Fifty ($1150) Dollars	1,150.
Mortgage recorded in Book A-30, page 71 in the nominal sum of Eleven Hundred and Fifty Dollars	1,150.
A further mortgage in the sum of Three Thousand ($3,000) Dollars duly recorded in the Essex County Register's Office	3,000.
Total	$77,750.

It is represented that the above mortgages either by reason of prior maturity of express provision therein contained may all be discharged and paid on the day of closing.

It being represented, agreed and understood that none of the said mortgages are at the present time in default for any matter or thing whatsoever and are not now under foreclosure and that there will be no default in any of the mortgages on the due date, excepting that the time for the payment of principal as in said mortgages set forth may have matured. In the event that a bill is filed to foreclose any or all of the mortgages between the day of contract and the day of passing title, the vendor agrees to discharge the said mortgage and shall be entitled to receive from the vendee the principal amount of said mortgage or mortgages by him discharged in cash on the day of closing, anything hereinafter contained to the contrary notwithstanding. The title shall not be rejected by the party of the second part because of the fact that immaterial encroachments on the

street line of Plane and Essex Sts., may be disclosed, as shown on the above survey of Lehlbach Brothers.

It is further understood and agreed that the vendee shall have the right to assign this contract to a new corporation which it is about to form under the name of Roemer Garage Co. or any other name which it may select and on notice to the vendor that the deed shall be executed and delivered in favor of the said new corporation upon the discharge of the said corporation of all of the undertakings herein set forth to be carried out and performed on the part of Roemer Brothers Trucking Company.

And it is Further Agreed, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of Joseph Steiner, 914 Kinney Building, 790 Broad St., Newark, N. J., between the hours of ten in the forenoon and four o'clock in the afternoon on the said fifteenth day of May next ensuing the date hereof.

The rents of said premises, insurance premiums, water rents, taxes, and interest on Mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

Gas and electric fixtures, gas stoves, hot water heaters and chandeliers, carpets, linoleum, mats and matting in halls, screens, shades, awnings, ash cans, heating apparatus, if any, and all other personal property appurtenant to or used in the operation of said premises is represented to be owned by seller and is included in this sale.

The risk of loss or damage to said premises by fire or other wise until the delivery of said deed is assumed by the party of the first part.

In case the premises shall suffer injury beyond

the ordinary wear and tear, the party of the first part, shall repair the damage before the date set for delivery of said deed or make an appropriate deduction from the purchase price herein stated.

It is understood and agreed that the buildings upon said premises are all within the boundary lines of the property as described in the deed therefor, and that there are no encroachments thereon and that the buildings comply with municipal ordinances and regulations and the provisions of the New Jersey State Tenement House Act as enforced by the State Board of Tenement House Supervision, to be shown by the report of the department or board enforcing the same where such ordinances, regulations and said act apply.

It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any Martin Act proceedings or any Act for the Sale of Land for nonpayment of the municipal taxes or assessments, or adverse or color of title possession.

The premises above described are sold subject to restrictions appearing of record, if any.

If at the time for the delivery of the deeds, the premises or any part thereof shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected therby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

Exhibit C-21—4/24/29.

And for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators.

In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

Signed, Sealed and Delivered
in the presence of

ROEMER BROTHERS TRUCKING COMPANY
Charles T. Roemer,
President.
(Seal)

Attest: Clarence J. Roemer,
Secretary.

Endorsed—Contract for the Sale of Property. Davis Bender and Molly (also known as Mollie) Bender, his wife to Roemer Brothers Trucking Co. a corp. Dated, March 2nd, 1926.

Exhibit C-22—4/24/29.

Aritcles of Agreement made the Seventeenth day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-five,

Between Davis Bender and Molly Bender, his wife, and Harry Bender, single, of the City of Newark in the County of Essex and State of New Jersey, party of the first part;

And David Houston, of the Township of Maplewood in the County of Essex and State of New Jersey, party of the second part;

Witnesseth, That the said party of the first part

Exhibit C-22—4/24/29.

for and in consideration of the sum of Fifty Six Thousand Dollars ($56,000.00) to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they the said party of the first part, will well and sufficiently convey to the said party of the second part, by Deed of Warranty free from all encumbrance, except as hereinafter set forth on or before the Fifteenth day of June hereof, all those lots, tracts, or parcels of land and premises, hereinafter particularly described situate, lying and being in the City of Newark, County of Essex, State of New Jersey,

Being the same premises described in a deed from Michael J. Tansey to said Davis Bender, dated November 14th, 1924, and recorded in Book E-71 of Deeds for Essex County on pages 492 etc., together with all easements or other rights described in or mentioned in said deed and also together with all right, title and interest of the party of the first part of in and to all streets, Avenues or Walks through said premises abutting thereon or contiguous thereto.

Said conveyance to be made subject to an assessment for the laying of a sewer in Vanderpool Street not exceeding the sum of Three Hundred and Sixty Dollars ($360.00) at date of closing and is also subject to whatever amount may be a lien on said premises of a water assessment originally made for Fifty Dollars ($50.00).

And the said party of the second part for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said

Exhibit C-22—4/24/29.

party of the first part, their heirs, executors, administrators and assigns, that he, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Fifty Six Thousand Dollars ($56,000.00) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

On Execution of this agreement for which this is also a receipt, Five Thousand Dollars $5,000.00

Balance on delivery of deed, cash, $

This contract is entered into upon the knowledge of the parties as to the value of the land and whatever buildings are upon the same, and not on any representations made as to character or quality.

It is expressly understood and agreed that the party of the second part hereto has a right to assign this contract, in which event the deed shall be made to the assignee.

And it is further Agreed by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the date of passing title next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

And it is further Agreed by the parties hereto, that the said deed of warranty shall be delivered and received at office of Feit & Feit, 231 Market Street, Newark, New Jersey, between the hours of ten in the forenoon and four o'clock in the afternoon on the said fifteenth day of June next ensuing the date hereof.

Exhibit C-22—4/24/29.

The rents of said premises, insurance premiums, water rents, taxes, and interest on Mortgage if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

The risk of loss or damage to said premises by fire or otherwise until the delivery of said deed is assumed by the party of the first part.

In case the premises shall suffer injury beyond the ordinary wear and tear, the party of the first part, shall repair the damage before the date set for delivery of said deed or make an appropriate deduction from the purchase price herein stated.

It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any proceedings or any Act for the Sale of Land for non-payment of the municipal taxes or assessments, nor is it found upon adverse possession.

In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

DAVIS BENDER (L.S.)
HARRY BENDER (L.S.)
DAVID HOUSTON (L.S.)

Signed, Sealed and Delivered
in the Presence of
John J. Feit,
as to Davis Bender, Harry
Bender and David Houston.

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

Be it Remembered, That on this ..... day of April, in the year of our Lord One Thousand Nine Hundred and Twenty-five, before me, the subscriber, a Master in Chancery of New Jersey, person-

ally appeared Davis Bender and Harry Bender, single, 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.

LOUIS J. FEIT,
A Master in Chancery of New Jersey.

Endorsed—Contract for the Sale of Property. Davis Bender and Molly Bender, his wife, and Harry Bender, single to David Houston. Dated, April 17th, 1925.

Exhibit D-1—4/24/29.

CLINTON TRUST COMPANY
Newark, N. J. Apr. 11, 1927

Pay to the
Order of Profit Realty Co. $7000
Seven Thousand Dollars

SAMUEL KAPLAN.

Endorsed: For deposit
Profit Realty Co.

Exhibit D-2—4/24/29.

Make Checks Payable to John Howe, Receiver.

TAXES OF 1928

REAL ESTATE

City of Newark, N. J.

16th B Taxing District

Page 277 Line 17

Name Profit Realty Co.

Location 90-94 Goldsmith Ave.

RATE $3.83 Per Hundred Dollars Valuation.

Tax Rate for City exclusive of Schools	$1.9806
Tax Rate for Local Schools	.8975
Tax Rate for County	.5201
State School Tax	.2663
State Tax for Roads	.1000
State Institutional Tax	.0500
State Tax for Soldiers' Bonus	.0152
Total Tax Rate	$3.8300

Block 3693. Lot 55. Assessed Valuation 18,000.

Exemption ——— Tax 689.40.

1928

When remitting by mail kindly forward entire bill and receipt will be returned.

Exhibit C-3—4/29/29.

Davis Bender et ux to Sivad Realty Co.

Know all Men by these Presents: That We, Davis Bender and Molly Bender, his wife, of the City of Newark, in the County of Essex, and State of New Jersey, party of the first part, for securing the payment of the money herein mentioned, and in consideration of the sum of One Dollar to us duly paid by Sivad Realty Co., a corpora-

tion of the State of New Jersey having its principal office in the City of Newark, County of Essex and State of New Jersey, party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have bargained and sold, and by these presents do bargain and sell unto the said party of the second part, its successors, and assigns, all the goods and chattels mentioned in the schedule hereunto annexed and now in a building situate at No. 92 Goldsmith Avenue, Newark, New Jersey. To Have and to Hold, all and singular the said goods and chattels above bargained and sold or intended so to be, unto the said party of the second part, its successors and assigns, forever. And we, the said party of the first part, for ourselves, our heirs, executors, and administrators all and singular the said goods and chattels above bargained and sold, unto the said party of the second part, its successors and assigns, against us, the said party of the first part, and against all and every person or persons whomsoever shall and will warrant and forever defend.

Upon Condition, that if we, the said party of the first part, shall and well and truly pay unto the said party of the second part, its successors and assigns, the sum of two thousand dollars ($2,000.) payable in one (1) year with interest at six per cent (6%); then these presents shall be void. And we, the said party of the first part, for ourselves, our heirs, executors, administrators and assigns, do covenant and agree to and with the said party of the second part, its successors and assigns, that in case default shall be made in the payment of the said sum above mentioned; or in case the said party of the first part shall, at

any time before the day of payment herein provided for, remove the said goods and chattels or any of them, or permit or suffer any attachment or other process against property to be issued against said chattels or permit or suffer any judgment to be entered up against said goods and chattels, then the said sum of money herein mentioned shall become instantly due and payable, and then it shall and may be lawful for, and we, the said party of the first part do hereby authorize and empower the said party of the second part, its successors and assigns with the aid and assistance of any person or persons to enter said dwelling-house, store and other premises and such other place or places whatsoever in which the said goods and chattels, or any of them, are or may be placed and take and carry away the said goods and chattels, and to sell and dispose of the same for the best price they can obtain; and out of the money arising therefrom to retain and pay the said sum above mentioned, and all charges touching the same, rendering the overplus (if any) unto us, the said party of the first part, our heirs, executors, administrators or assigns. And it is Expressly Agreed by and between the parties of these presents that the said parties of the first part, shall and will keep the goods and chattels in said mortgage schedule, set forth insured against loss and damage by fire, by insurers, and in amount approved by the said party of the second part, 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

Exhibit C-3—4/29/29.

goods and chattels, added to the amount of the said mortgage or obligation, and secured by these presents, and payable on demand with interest at the rate of six per cent per annum.

In Witness Whereof, we, the said party of the first part have hereunto set our hands and seals the 11th day of June, in the year of our Lord One Thousand Nine Hundred Twenty-six.

Davis Bender (Seal)
Molly Bender (Seal)

Sealed and Delivered
in the presence of
Louis J. Feit

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

Harry Hoffman, President of the Sivad Realty Co. the mortgagee in the foregoing mortgage named, being duly sworn on his oath says that the true consideration of said mortgage is as follows, viz: the sum of two thousand dollars ($2,000.) loaned this day by the Sivad Realty Co. to Davis Bender, in cash, and repayable in one year from the date hereof, with interest at six per cent. and deponent further says that there is due on said mortgage the sum of Two Thousand Dollars ($2,000.) besides lawful interest thereon from the eleventh day of June, Nineteen Hundred and Twenty-six.

HARRY HOFFMAN.

Sworn and subscribed this 11th
day of June, A. D. 1926 before
me, at Elizabeth.
Louis J. Feit
Master in Chancery of New Jersey.

Exhibit C-3—4/29/29.

SCHEDULE

The following is a Schedule of the goods and chattels referred to in the foregoing Mortgage and is hereby made a part thereof, to wit:

All the household goods and furniture now on the second and third floors of a building commonly known and designated as No. 92 Goldsmith Avenue, Newark, New Jersey, and all substitutions and replacements thereof, and additions thereto.

Also one 1923 Studebaker automobile, serial number 3047647 Engine number 48950, Sedan.

DAVIS BENDER
MOLLY BENDER

Attest:
Louis J. Feit.

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

Be it Remembered, That on this eleventh day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-six, before me, the subscriber, a Master in Chancery of New Jersey personally appeared Davis Bender and Molly Bender, his wife, who, I am satisfied are the mortgagors 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 volutary act and deed, for the uses and purposes therein expressed. And the said Molly Bender, wife of Davis Bender, being by me privately examined, separate and apart from her said husband, I having first made known to her the contents thereof, further acknowledged that she signed, sealed and delivered

Exhibit C-3—4/29/29.

the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

Louis J. Feit, Master in Chancery of N. J.

Received in the Office June 12th, A. D. 1926, at 10:26 A. M. No. 15.

Office of
Register of Deeds and Mortgages
Essex County, New Jersey.

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

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 Chattel Mortgage made by Davis Bender et ux to Sivad Realty Co., and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book 456 of Chattel Mortgages for said County on pages 176-177.

In Testimony Whereof, I have hereunto set my hand and official seal this 26th day of April A. D. 1929.

(Seal)

HOWARD S. DODD,
Register of Deeds and Mortgages.

Endorsed:

Office of Register of Deeds and Mortgages, Essex County, New Jersey. Certified Copy of Chattel Mortgage. Davis Bender et ux to Sivad Realty Co. Recorded June 12th, 1926. In Book 456 of Chattel Mtgs. Pages 176-177.

Exhibit C-4—4/29/29.

This Indenture, Made the 11th day of April in the year of our Lord One Thousand Nine Hundred and Twenty-seven,

Between Profit Realty Co., a corporation of the State of New Jersey, having its principal office in the City of Newark in the County of and State of party of the first part;

And Harry Bender of the City of Newark in the County of Essex and State of New Jersey, party of the second part;

Whereas, the said Profit Realty Co. is justly indebted to the said party of the second part ,in the sum of Fifteen Thousand ($15,000) Dollars, lawful money of the United States of America, secured to be paid by its certain bond or obligation, bearing even date with these presents, in the penal sum of Thirty Thousand ($30,000) lawful money as aforesaid conditioned for the payment of the said first-mentioned sum of Fifteen Thousand ($15,000) Dollars, lawful money as aforesaid, to the said party of the second part, his executors, administrators and assigns on the 11th day of April, which will be in the year One Thousand Nine Hundred and Thirty-two and interest thereon, to be computed from April 11th, 1927, at and after the rate of six per cent. per annum, and to be paid semi-annually.

And it is Thereby Expressly Agreed that should any default be made in the payment of the said interest 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 this mortgage, and become due and payable, and should the said in-

terest or any part thereof 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 Fifteen Thousand ($15,000) Dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives or assigns, become and be due and payable immediately thereafter although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding; and the holder of this mortgage, may, at his option, pay such tax, assessment, or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum secured by the said bond and by this mortgage, and shall be payable on demand with interest at six per centum per annum, 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 it 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 has granted, bar-

gained, sold, aliened, released, conveyed and confirmed, and by these presents does 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 tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey,

Beginning in the southerly line of Goldsmith Avenue at a point therein distant 215.98 feet westerly from the westerly line of Bergen Street; thence running along the southerly line of Goldsmith Avenue north 46 degrees 5½ minutes west 60 feet; thence south 43 degrees 54½ minutes west and at right angles to Goldsmith Avenue 100 feet; thence south 46 degrees 5½ minutes east 60 feet; and thence north 43 degrees 54½ minutes east 100 feet to the southerly line of Goldsmith Avenue and the point or place of Beginning.

Being the same premises conveyed to Profit Realty Co. by deed of Harry Bender, single, bearing even date with these presents, which deed is recorded simultaneously herewith; this mortgage being given to secure part of the purchase money in the said deed mentioned.

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, and 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

Exhibit C-4—4/29/29.

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 his and 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, its successors or assigns, shall well and truly pay unto the said party of the second part, his heirs, executors, administrators and 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 Profit Realty Co. for itself, its successors or assigns does covenant and agree to pay unto the said party of the second part, his heirs, executors, administrators and 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, its successors and assigns 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 and 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 prem-

Exhibit C-4—4/29/29.

ises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums.

And the said Profit Realty Co. the owner of the lands above described for itself its successors and assigns does 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 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.

And the said mortgagor Profit Realty Co. do covenant with the mortgagee that it is seized of an indefeasible estate in fee simple in said premises, and will warrant and forever defend the title thereof unto the mortgagee, his heirs, executors, administrators and assigns, against all lawful claims whatsoever.

All of the covenants and conditions hereinabove contained shall be for the benefit of and shall apply to and bind the said parties hereto and their respective heirs, executors, administrators, successors and assigns.

In Witness Whereof, the said party of the first part has caused these presents to be signed by its President, attested by its Secretary, and its cor-

porate seal to be hereunto affixed, the day and year first above written.

PROFIT REALTY CO.

Attested:

By Abraham Kaplan,
President.

(Seal)

Samuel Kaplan,
Secretary.

Signed, Sealed and Delivered
in the presence of

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

Be it Remembered, That on this eleventh day of April in the year of our Lord One Thousand Nine Hundred and Twenty-seven before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Samuel Kaplan, who being by me duly sworn, doth depose and make proof to my satisfaction, that he well knows the corporate seal of Profit Realty Co., the mortgagor mentioned in the within Indenture; that the seal there to affixed is the proper corporate seal of the said company; that the same was so affixed thereto and the said deed signed and delivered by Abraham Kaplan, who was at the date and execution thereof, the President of said company, in the presence of the said deponent, as the voluntary act and deed of the said company, and that the said deponent thereupon signed the same as subscribing witness.

SAMUEL KAPLAN.

Sworn and subscribed before me
on the day and year aforesaid.
Louis J. Feit,
Master in Chancery of N. J.

Exhibit C-5—4/29/29.

Endorsed—Mortgage. Profit Realty Co., a corp., to Harry Bender. Dated, April 11th, 1927. Received in the Register's Office of the County of Essex, N. J. on the 12th day of April A. D., 1927, at 2:13 o'clock, in the afternoon and recorded in Book R 60 of Mortgages for said County, on page 210-212.

Howard S. Dodd, Register.

Exhibit C-5—4/29/29.

No. 1 $10,000.00 Miami, Florida June 16 1925

On or before One (1) year after date, for value received, we promise to pay to the order of Jacob Williamson Ten Thousand and no/100 Dollars. Payable at Bank of Bay Biscayne of Miami, Flordia, with interest thereon at the rate of 8 per cent. per annum from date until fully paid. Interests payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent per annum, payable semi-annually.

HARRY A. LACK Seal)
DAVIS BENDER (Seal)

Due June 16 1926

Stamped across face of note:

Miami, Fla., July 16, 1926
Protested for Non-Payment
Lola M. Kelly
Notary Public.

Exhibit C-6—4/29/29.

Complaint.

Filed March 28, 1927.

ESSEX COUNTY CIRCUIT COURT.

JACOB WILLIAMSON, Plaintiff, vs. DAVIS BENDER, Defendant.	Action at Law. Complaint.

The plaintiff, residing at Yonkers, New York, complains of the defendant and says:

1. That at all times herein stated the laws of the State of Florida legalized and directed that the legal rate of interest in said State and all obligations therein contracted was and still is the sum of 8% per annum.

2. That on or about June 16, 1925, at Miami, Florida, for a valuable consideration the defendant executed and delivered to the plaintiff, his promissory note of which the following is a true and correct copy:

> No. 1 $10,000.00 Miami, Florida June 16, 1925. On or before One (1) year after date for value received We promise to pay to the order of Jacob Williamson Ten Thousand and No/100.....Dollars Payable at Bank of Bay Biscayne Miami, Florida, with interest therein at the rate of 8 per cent. per anum from date until fully paid. Interests payable semi-annually. The

Exhibit C-6—4/29/29.

Complaint.

maker and endorser of this note further agree to waive demand notice of non-payment and protest, and in case suit shall be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay personally attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent per annum payable semi-annually, Due June 16, 1926.

HARRY A LACK (Seal)
DAVIS BENDER (Seal)

3. That at maturity of said note it was duly presented for payment at the Bank of Bay Biscayne, Miami, Florida according to its terms and payment then and there demanded which was refused and the same was thereupon duly protested for non-payment.

4. That no part of said note has been paid and there is now due to the plaintiff thereon from the defendant the sum of $10,800.00 with interest from June 16, 1926 at and after the rate of 8% per annum together with the costs and disbursements of this proceeding.

WHEREFORE, plaintiff prays judgment against the defendant for the sum of $10,800.00 with interest from June 16, 1926 at and after the rate of 8% per annum together with the costs and disbursements of this proceeding.

SAMUEL DANIELS,
Attorney for Plaintiff,
26 Commerce Street,
Newark, N. J.

Dated Newark, N. J.
March 28, 1927.

Exhibit C-6—4/29/29.

Answer.

Filed April 18, 1927.

ESSEX COUNTY CIRCUIT COURT.

JACOB WILLIAMSON, Plaintiff, vs. DAVIS BENDER, Defendant.	Action at Law. Answer.

The answer of the defendant, Davis Bender, to the complaint filed herein, is as follows:

1. He has no knowledge sufficient to form a belief as to the allegations alleged in paragraph 1 and leaves the plaintiff to proof thereof.

2. He admits execution of the note set forth in paragraph 2.

3. He has no knowledge sufficient to form a belief as to the allegations contained in paragraph 3 and leaves the plaintiff to proof thereof.

4. He denies the allegations contained in paragraph 4.

FIIRST SEPARATE DEFENSE.

The debt evidenced by the note set forth in the complaint in this cause is a joint debt or obligation, executed by one Harry A. Lack, and the defendant, and this suit was instituted only against the defendant without joining the other joint debtor, to wit, Harry A. Lack, and, therefore, the same is contrary to the Statute of this

Exhibit C-6—4/29/29.

Answer.

State in such case made and provided, to wit, 3 Compiled Statutes, 1910, page 3777, Section 2.

SECOND SEPARATE DEFENSE.

On or about September 23, 1926, the plaintiff entered into an agreement with the defendant in Yonkers, New York State, that in consideration of the defendant, his agents or servants in that behalf, foregoing the right to bid at the foreclosure sale of the property described as follows:

> "Lots One, and Two, Block forty-four of Ocean Beach Addition #3, the same being a subdivision of South Half of fractional section 3, Township 54 South of Range 42 East, according to the plot thereof recorded in Plat Book 2, at page 81 of the public records of Dade County, Florida,"

which foreclosure sale was held in Dade County, Florida, on or about February 7, 1927, and which sale was the result of the foreclosure of a first mortgage of $13,500, held by one Emma Howard, the plaintiff holding a third mortgage upon the property, in the sum of $10,000, which third mortgage accompanied and secured the note set forth in the complaint herein, that he, the plaintiff, would surrender the said note set forth in the bill of complaint, to the defendant, and consider the indebtedness created thereby as being fully paid and satisfied.

The defendant did then and there agree to forego the right to bid at the foreclosure sale as stated, in consideration of the promise made by the plaintiff as aforestated, and the said defend-

ant and his agents or servants actually did forego the right to bid at the foreclosure sale aforestated, but the plaintiff, without notice or warning to this defendant, instead of surrendering the said note, and canceling the same as being paid and satisfied, instituted these proceedings, all of which was contrary to the agreement aforestated.

FEIT & FEIT,
Attorneys for Defendant.

Exhibit C-6—4/29/29.

Reply.

Filed May 11, 1927.

ESSEX COUNTY CIRCUIT COURT.

JACOB WILLIAMSON, Plaintiff,	Action at Law.
vs.	Reply.
DAVIS BENDER, Defendant.	

The plaintiff, by way of reply to the answer of the defendant, states:

He denies the allegations contained in the second separate defense, and joins issue with the defendant as to the allegations contained in paragraphs 1, 2, 3 and 4, of the answer.

SAMUEL DANIELS,
Attorney for Plaintiff.

The defendant does hereby waive the first separate defense to the complaint filed herein, which first separate defense is contained in the defendant's answer.

FEIT & FEIT,
Attorneys for Defendant.

Exhibit C-6—4/29/29.

Judgment.

Filed February 3, 1928.

ESSEX COUNTY CIRCUIT COURT.

JACOB WILLIAMSON, Plaintiff, vs. DAVIS BENDER, Defendant.	Action at Law.

On verdict by jury.
Judgment entered February 3, 1928.

Damage	$11,575.00
Costs	86.52
Total	$11,661.52

Samuel Daniels, attorney of plaintiff.

This action was tried before Judge Nelson Y. Dungan with a jury at the Essex County Circuit Court on February 3, 1928.

The cause having been heard and submitted to the jury they return their verdict as follows:

They find in favor of the plaintiff Jacob Williamson and against the defendant Davis Bender for the sum of eleven thousand five hundred seventy-five dollars ($11,575.00) damage.

Whereupon it is adjudged that the plaintiff recover of the defendant the sum of eleven thousand five hundred seventy-five dollars ($11,575.00) damage and costs which are taxed at eighty-six dollars and fifty-two cents making in the whole

Exhibit C-6—4/29/29.

Judgment.

the sum of eleven thousand six hundred sixty-one dollars and fifty-two cents. Judgment entered and signed February 3, 1928.

JOHN H. SCOTT,
Clerk.

Book 104 Circuit Court Judgments, page 121.

Exhibit C-6—4/29/29.

Notice of Appeal and Grounds of Appeal.

Filed January 28, 1929.

ESSEX COUNTY CIRCUIT COURT.

JACOB WILLIAMSON, Plaintiff, vs. DAVIS BENDER, Defendant.	Action at Law. Notice and Grounds of Appeal.

To Samuel Daniels, attorney of plaintiff.

Take Notice that defendant appeals to the New Jersey Supreme Court from the whole of the judgment entered in this cause, on the following grounds:

1. At the close of plaintiff's case there was no proof as to the amount due on the note sued on herein.

2. There was no proof as to the laws of the State of Florida concerning the rate of interest allowed on a note such as sued on herein.

3. The following question to defendant was overruled: "What did he say at that time with reference to this note?"

4. The following question to defendant was admitted: "Well, as a matter of fact in 1926, things were pretty bad in Florida, weren't they?"

5. The following question to defendant was overruled: "What did you pay for this lot?"

Exhibit C-6—4/29/29.

Notice and Grounds of Appeal.

6. The following question to plaintiff was admitted: "Now proceed and tell us what else was discussed at that first meeting?"

7. The following question to plaintiff was overruled: "Did you foreclose your mortgage?"

8. The following question to plaintiff was admitted: "Is this your signature or the signature of your clerk on Exhibit D-1?"

9. Interest was allowed on the note sued on herein.

10. The following question to defendant was overruled: "Where was this property located that was being foreclosed?"

CORN & SILVERMAN,
Attorneys of Defendant.

Service of the within notice and grounds of appeal is hereby acknowledged this 25th day of January, 1929.

SAMUEL DANIELS,
Attorney of Plaintiff.

Exhibit C-6—4/29/29.

Testimony.

ESSEX COUNTY CIRCUIT COURT.

February 3, 1928.

JACOB WILLIAMSON, vs. DAVIS BENDER,	Action at Law.

Before Hon. Nelson Y. Dungan, *J.*, and a jury.

For plaintiff appears Samuel Daniels and Albert C. Jordan, of the New York Bar, who is admitted *pro haec vice* for the purposes of this case.

For defendant appear Corn & Silverman.

(A jury is called and sworn).

Mr. Jordan opens for plaintiff.

Mr. Corn opens for defendant.

The Court: Now, just a minute. You admit the making of the note?

Mr. Corn: We admit the making of the note.

The Court: You admit nothing has been paid on it, I mean in dollars and cents; you will admit that nothing was paid on the note in dollars and cents?

Mr. Corn: No, we don't admit that.

Mr. Jordan: We admit there was one payment, six months interest, paid on the note.

Mr. Corn: We deny paragraph 4.

Mr. Jordan: One payment of interest for the first six months was paid.

The Court: And you deny that?

Exhibit C-6—4/29/29.

Opening.

Mr. Corn: No, we admit that. We deny what is alleged in paragraph 4, in the complaint; there they say the whole amount is due.

The Court: (Addressing Mr. Jordan) Well, now, they admit that?

Mr. Corn: I don't know.

The Court: (Addressing Mr. Corn) You admit that?

Mr. Jordan: Yes.

The Court: (Addressing Mr. Jordan) Well, put in your note and rest.

Mr. Jordan: That is not set up as a defense here. It should be an affirmative defense.

The Court: He admits the execution of the note in the second paragraph. He admits execution of the note set forth in paragraph 2.

Mr. Corn: That is true.

The Court: Dated Miami, Florida. And you may offer your note and rest.

Mr. Corn: The first paragraph of the complaint sets up a law in the State of Florida, and we have asked the proof of that in our answer. There is no reason to believe that the laws of Florida permit the interest asked, unless there is proof of it. We admit the note, but we don't admit they can get eight per cent. interest.

The Court: It don't make any difference whether you knew or not. You have not set up as a defense the usurious or illegal rate in your answer. You admit the note made in Florida. The note may be admitted and the plaintiff may rest.

Mr. Jordan: The note plaintiff produces to this attorney; whatever the difference in amount that makes now may be added, and I have sent for a witness and with the reservation of proving

by him what the fair and reasonable legal services may be worth, I would like to rest.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(Note was marked Exhibit P-1).

Plaintiff Rests.

DAVIS BENDER, defendant, sworn as a witness in his own behalf.

Direct-examination by Mr. Corn:

Q. Mr. Bender, did you speak to Mr. Williamson in September of 1926 with reference to this note? A. Yes, sir.

Q. Where? A. At his store at the corner of Main Street.

Q. Where was his store? A. What is the name there; I forget the name.

The Court: Well, you are asked; you will have to answer.

The Witness: I was at 10 Main Street; I forget the name, New York—

The Court: He can't tell you; he can't tell you what it was; you are asked the question.

The Witness: Was it Yonkers? I think Yonkers.

The Court: All right.

What State? A. New York.

Q. What did he say at that time with reference

to this note? A. I had a talk; I came to him and I told him that the lot was not in that place where I bought it—

Mr. Jordan: I object to this as setting out a different defense than set forth in the pleadings; and as immaterial and irrelevant. I ask that it be stricken from the record

The Court: What he says about anything else but this note is entirely irrelevant and immaterial in the case. You must stick to the text.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. What did he say to you with reference to this note? A. That I am going to get the note back.

Q. Anything else? A. There was a long conversation, but I am not allowed to answer.

The Court: Let's have it; you can tell us anything he said about this note; oh, yes, tell us anything he said about this note.

The Witness: Well, the question was at that time about not being the right lot, and that is why I came up to him about that note.

Mr. Jordan: Objected to.

The Court: We will hear it.

The Witness: (Continuing) And that is why I came up about that note.

Q. What did he say about this note? A. He agreed that he will return the note and he will buy the lot back on the first mortgage.

Q. Which lot; where is this lot situated? A. Miami Beach, Pennsylvania and Ninth Street, on Miami Beach, Florida.

Q. Did you bid it in at the sheriff's sale? A. No, sir.

Q. Why didn't you bid it in at the sheriff's sale? A. Because our agreement was that I shouldn't be there, and Mr. Williamson would return the note.

Q. When was that sale held? A. January, I believe, 1927.

Q. Where was it held? A. At Miami, Florida.

Q. Did you ever get back the note? A. No, sir.

Q. (By the Court.) That is where this note was signed, was it, Miami? A. Miami.

Q. You signed it in Miami? A. Miami.

Cross-examination by Mr. Jordan:

Q. Mr. Bender, you now state that in September, 1926, you saw Mr. Williamson and had an agreement with him about the return of this note, didn't you? A. Yes, sir.

Q. And at that time you agreed that you would not bid on the property? A. Yes, sir.

Q. Did you get the note? A. No, sir.

Q. Why not? A. Because he didn't give me the note.

Q. How many times did you go to Yonkers to talk with Mr. Williamson? A. Twice.

Q. When was the conversation at which you agreed not to bid? A. September.

Q. I mean, which of the two conversations was it, at which you agreed not to bid? A. The second one, because I told Mr. Williamson the first time I was there to tell him if he didn't give me

the note, that I would bring a lawsuit against him for taking all my money; that he didn't give me the property, and that is why the agreement was made; I shouldn't bring the loss against my people.

Q. Now, when you made that agreement you knew that you were entitled to this $10,000 note, didn't you? A. Yes, sir.

Q. And you didn't get it? A. No, sir; didn't.

Q. Did you ever go again and ask him for it? A. I asked him and he told me he didn't got it.

Q. When did you ask him after that time you were in Yonkers? A. I wasn't there after this time.

Q. Did you ever write him a letter? A. No, sir.

Q. You knew that this note of $10,000 was then your property, didn't you? A. Yes.

Q. Did you take any steps whatever to take it? A. I was waiting he should send me this, because he kept promising, the first time—

Mr. Jordan: I ask to strike the answer out as not responsive.

The Court: Yes.

Q. Did you write to him and ask him for this note? A. I didn't write, but I—

Q. Did you go to him and ask him for it, personally? A. I did go to him and ask him in September; that was the second time, and he promised to send it, but he didn't.

Q. That was the time you made your agreement, wasn't it? A. Yes, and in the beginning of that year—

Mr. Jordan: I ask to strike that out.

The Court: Yes.

Exhibit C-6—4/29/29.

Davis Bender—Cross.

Q. Did you ever go, after that time in September, and demand your note of Williamson? A. After September I didn't go; I was waiting he should send it to me.

Mr. Jordan: Strike that out.
The Court: Yes.

Q. Didn't you think that note was worthwhile enough?

Objected to.
Objection sustained.

Q. This note was worth $10,000 to you, wasn't it? A. Yes; I was waiting he should send it to me.

Q. You didn't think enough of it to go to Yonkers and ask for it? A. I couldn't go so many times.

Q. You only asked for it once, didn't you, the day you were there and made the agreement? A. Then he said he was going to take it up with his lawyer, and get it, because he didn't know where it was, whether in Florida or somewhere else.

Q. Now, were you present at this foreclosure sale? A. No, sir.

Q. Did you go at all? A. No, sir.

Q. Were you in Miami? A. I was in Miami, yes.

Q. You knew about the sale? A. Yes.

Q. Was Williamson there? A. I didn't see him.

Q. You knew it as a fact, that Mr. Williamson was never there? A. I don't know.

Q. Do you know whether Williamson ever bid in this property? A. I don't know.

Exhibit C-6—4/29/29.

Davis Bender—Cross.

Q. Do you know whether Williamson ever went to the sale? A. I don't know. I believe Williamson would be there as he agreed.

Q. You want this judge and jury to believe that Williamson thought it was worth $10,000 to bid in that property without being there, don't you?

Objected to.

Objection sustained.

Q. Do you know who bid in the property? A. No, sir.

Q. You were in Miami at the time, weren't you? A. Yes.

The Court: You were?

The Witness: I was in Miami, but I didn't go to the auction; I couldn't go; I couldn't go; I knew they were selling, but I couldn't go to see about this here being sold; I couldn't see it; I lost so much money in Florida—

The Court: No, no.

Q. Did you ever put this agreement of which you spoke in writing? A. No, sir.

Q. Did you ever ask Williamson to sign anything to that effect? A. No; Williamson told me

---

Q. No; did you; yes or no. A. Not in writing.

Q. You know that Williamson wasn't in Florida at the time of the foreclosure, don't you? A. I didn't; no, sir, I didn't know.

Q. Well, you were there; did you see him? A. No, sir.

Exhibit C-6—4/29/29.

Davis Bender—Cross.

Q. You know him very well, don't you? A. Not very well; I only saw him twice.

Q. How long have you been operating in Florida real estate? A. Only in the boom.

Q. How long was that? A. A couple of months.

Q. What year? A. 1925.

Q. Where do you live now? A. Well, at the present time I am here in Newark.

Q. You made an affidavit before the Federal Court here that you were a resident of Florida, didn't you?

Mr. Corn: I object.

Mr. Jordan: Simply to attack his credibility.

The Court: It may be answered.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(Question read.)

The Court: I don't see the relevancy of that.

(Question withdrawn.)

Q. Isn't it a matter of fact, Bender, that when you came to Yonkers in September of 1926, that you offered Williamson a certain amount of money in settlement of this note? A. No, sir.

Mr. Corn: I object, if your Honor please. This is going to be a matter of—

The Court: He did answer it.

The Witness: Note, but no money.

Q. Isn't it a fact, Bender, that when you came there on your first visit to Williamson about this

note, that you offered him $3,000 and he refused to take it? A. I came to tell him—

Q. No; yes or no. A. No.

Q. And isn't it a fact that you then came two weeks later and offered him $4,000, and he wouldn't take it? A. No, sir.

Q. You are certain about that? A. No, sir; I am certain it was only when I told him I was going to sue him.

Q. How old are you? A. Fifty-three.

Q. What is your business? A. I was a builder.

Q. You are interested in developing property, aren't you? A. No, sir.

Q. Do you know the Roselle Realty Company?

Objected to as irrelevant.

The Court: I don't see the relevancy.

Mr. Jordan: Except to show your Honor that he was a business man of large interests and that an agreement as important as this might have taken more definite steps.

Objection sustained.

Q. Now, when you came to Yonkers nobody asked you to come there, did they? A. No.

Q. And you came up of your own free will? A. The second time, yes, sure.

Q. How about the first time? A. The first time I came up I told him that wasn't the lot he sold me.

Q. Well, no one asked you to come to Yonkers then, did they? A. Well, I—

The Court: Did anybody ask you?

The Witness: No, sir.

The Court: Just answer the question and not something else.

Exhibit C-6—4/29/29.

Davis Bender—Redirect.

Q. Isn't it a fact when you came to Yonkers, Mr. Bender, and tried to get Mr. Williamson to accept less than the face value of this note, that you told him on that evening that the property on all sides of this property that you were in was falling fast in value and that it wouldn't bring enough for the first mortgage? A. I didn't say that.

Q. And isn't it a fact, that because this property was falling that Mr. Williamson's mortgage was worth less than nothing? A. I didn't say that.

Q. Well, as a matter of fact, in 1926, things were pretty bad in Florida, weren't they?

Objected to.

Objection overruled.

The Witness: I believe it was not as valuable as in the boom, because in the boom everybody was crazy.

Q. And, therefore, Williamson's mortgage and this note was not as valuable then as when it was given? A. It was worth more than that money at that time.

Q. You knew that the property was dropping, didn't you? A. It dropped from those big prices to a lower amount, but it didn't drop so much.

Q. And it was still in the course of going down; wasn't it? A. I don't know any more; I wasn't interested any more.

Mr. Jordan: That is all.

Redirect-examination by Mr. Corn:

Q. What did you pay for this lot?

Exhibit C-6—4/29/29.

Jacob Williamson—Direct.

Mr. Jordan: Objected to as immaterial.

Objection sustained.

Mr. Corn: If your Honor please, it was brought out on cross-examination that the property was dropping; we want to get how far it dropped.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(By Mr. Corn): How much did this property drop from the time you bought it until September, 1926; in price? A. Well, it wasn't sold in 1926; I don't know. It was sold in 1927.

Mr. Corn: That is all.

DEFENDANT RESTS.

JACOB WILLIAMSON, plaintiff, sworn as a witness in his own behalf.

Direct-examination by Mr. Jordan:

Q. Mr. Williamson, you are the plaintiff in this action and you are in business at Main Street, Yonkers? A. Yes, sir.

Q. How long have you been in business at Main Street, Yonkers? A. Twenty-six years.

Q. And you are thoroughly familiar with the giving of this note of $10,000 by Bender in this case? A. Receiving it.

Q. Receiving it? A. I did.

Q. Now, I want to direct your attention to the second conversation which Bender claims he had with you at your store in Yonkers in September,

Exhibit C-6—4/29/29.

Jacob Williamson—Direct.

1926. Will you tell the Court and jury what Bender said the first time he came to see you? A. It is true he came to see me about September 23, 1926, and bringing a Miami Herald with him showing comparative values that existed then and as before when he bought it, trying to influence me to accept the offer that he then made at his first call of $3,000.

Q. Now, this Miami Herald is a newspaper published in Miami? A. That is the leading paper, counselor, of Miami.

Q. And what did he offer you $3,000 for? A. For settlement of the note and mortgage.

Q. Did he at that time say anything to you about your not going to Florida to bid at the foreclosure sale? A. Nothing mentioned of that.

Q. The property was under foreclosure at that time, wasn't it? A. That is the information he gave me.

Q. Now proceed and tell us what else was discussed at that first meeting. A. I told him that I had information that he sold the property for $67,500, and had he—had the deal gone through, he would have given me nothing additional than the face price and I was entitled to the face value on the note—

Mr. Corn: I object to this and ask it be stricken; it is no more relevant than what I asked. It has nothing to do with the note.

The Court: You asked him to tell all that was said about the note?

Mr. Jordan: Yes

The Court: Now, then, I suppose this conversation related, he says to the extinguishment of the note.

Exhibit C-6—4/29/29.

Jacob Williamson—Direct.

Mr. Jordan: Yes.

The Court: Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Witness: And I told him I am accustomed to doing business with people, when I sign my name on a paper I make good, and I expect no more when it is the other party that makes an agreement with me.

Q. What did you say to him about the $3,000 offer? A. I refused it.

Q. Was there anything said at that time, about whether or not Bender would go to Florida and bid on this foreclosure sale? A. No conversation of that kind.

Q. Did you ever at any time agree to surrender this note, if Bender would not bid on the piece of property? A. Never discussed it.

Q. Now, come to the second conversation which was about how long after the first? A. I believe a couple of weeks following that, he called me up again and he asked me if I would be in and I told him I would, and he came up and he raised that offer to $4,000 and I didn't consider it then. I told him—stated the same reasons as on the first visit, that I wouldn't take any less than the amount of the note, face value.

Q. On the second conversation did he say to you that he wouldn't go to Florida and bid at the foreclosure sale if you would surrender this note? A. No such conversation.

Q. Mr. Bender testified that the reason he didn't obtain the note was because you told him you didn't have it and it was in the hands of your

lawyer? A. I had that note in my hands all the time.

The Court: You did not answer the question correctly.

The Witness: I beg your pardon.

(Question read.)

Q. Did you tell him that? A. No, sir.

Q. Did you at any time request Bender to come to see you? A. No, sir.

Q. In the month of January, or February, 1927, when this property was sold at foreclosure at Miami, where were you? A. At home.

Q. At Yonkers? A. At Yonkers.

Q. Did you ever go to Florida to bid on this property? A. No.

Q. Did you ever bid through any attorney or representative? A. No, sir.

Q. Were you interested in any way? A. No, sir.

Mr. Corn: I object.

The Court: It may be answered. Whether he was interested, I sustain that objection, but whether or not he went to Florida and bid upon the property either by himself or attorney, or Bender, that will remain, of course.

Q. Do you know who bid in the property down there? A. I don't.

Q. Did you or anybody in your behalf bid it in? A. I did not.

Q. Do you own that property today? A. No, sir.

Q. Did you ever have any intention of bidding it in? A. No, sir.

Mr. Corn: Objected to.

The Court: Objection sustained.

Exhibit C-6—4/29/29.

Jacob Williamson—Cross.

Cross-examination by Mr. Corn:

Q. What was the second time that you spoke to Mr. Bender? A. I believe it was two weeks following his first visit.

Q. His first visit I see was September 23, 1926? A. Around that day.

Q. Did you ever write to Mr. Bender about this note?

The Court: The note was given, I assume, as part of the purchase price of property you had sold to Mr. Bender, is that right?

The Witness: That's right.

Q. Where was this land located? A. On Pennsylvania Avenue and Ninth Street, Miami Beach.

Q. And Ninth Street? A. Ninth Street.

Q. Are you sure it was on Ninth Street now? A. I believe it was.

Q. You say you never wrote to Mr. Bender about this note? A. No, sir.

Q. I show you this, and ask you if you recall that letter (showing letter to witness.) A. Yes, that is our letter. Please let me read it.

Q. Surely. A. Will you please read that to the jury.

The Court: Just a minute, Mr. Williamson. You have been asked but one question, whether that is your letter.

Mr. Corn: I ask that that be put in evidence.

The Court: It will be received.

Mr. Jordan: No objection.

Exhibit C-6—4/29/29.

Jacob Williamson—Cross.

(Letter received in evidence and marked Exhibit D-1, and read to the jury.)

Q. Do you recall now of your writing to Mr. Bender about this note? A. I don't recall any correspondence with him, with the exception of this business correspondence.

Q. And you say that this property is located on Ninth Street?

Mr. Jordan: Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

Q. Did you foreclose your mortgage?

Mr. Jordan: Objected to.

Objection sustained.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q. At this time, in October, 1926, did you know that the first mortgage was foreclosed? A. Mr. Bender advised me of such action; I didn't know anything about it.

Q. Weren't you a defendant in that action? A. I was not. If I was I wasn't served, legally, by publication or otherwise; I had not knowledge of that.

Q. You never received notice by the Court? A. Never received any.

Q. You had a mortgage on this property, didn't you? A. My mortgage—the foreclosure was the first mortgage.

Q. And you had a subsequent mortgage? A. I had a subsequent mortgage.

Exhibit C-6—4/29/29.

Jacob Williamson—Cross.

Q. Now, Mr. Williamson, will you tell us just what conversation took place on September 23, 1926, with reference to this note? A. Mr. Bender called upon me and related the condition that existed in Florida and wanted me to submit to his offer, by showing his evidence through the Miami paper, of the falling prices, and I should accept his offer of $3,000; that was on his first visit.

Q. And was that all the conversation that took place? A. In substance that is about all.

Q. And what conversation took place at the next meeting? A. Precisely the same, only he raised it to $4,000.

Q. Did the conversation turn to the foreclosure of the first mortgage? A. He mentioned that the first mortgage was foreclosing.

Q. Did you say what you would do? A. I told him I wasn't interested.

Q. Did you tell him why you were not interested? A. I didn't want to purchase it?

Q. Did you file any answer in that foreclosure action? A. None at all; wasn't served with any.

Q. Did you sign the bond on the first mortgage?

Objected to as immaterial.

The Court: Well, I think it is, in view of his present answer that he wasn't interested.

Q. Did you sign the bond on the first mortgage? A. I believe we signed a paper there when we took title on the mortgage, of $2,000.

The Court: Do you understand the question?

Exhibit C-6—4/29/29.

Jacob Williamson—Redirect.

The Witness: I believe I did. Will you please state it?

The Court: The question was whether you signed a bond?

The Witness: On the first mortgage?

The Court: Yes.

The Witness: No, I don't believe I did.

Q. There was a second mortgage there? A. Yes.

Q. How much? A. $2,000.

Q. Did you sign a bond on that? A. Yes, I did.

Q. So you were interested in this property? A. Yes, to the extent of my interests.

Redirect-examination by Mr. Jordan:

Q. Is this your signature or the signature of your clerk on Exhibit D-1?

Objected to.

The Court: He acknowledges the letter, but in view of his answer to you—

The Witness: That is my secretary's signature.

The Court: Just one moment. In view of his statement that there was no correspondence, I think he is entitled to give an explanation.

Q. Now, tell us whether that was signed by you. A. No, sir.

Q. Who signed it? A. My secretary.

Q. What is her name? A. Miss Coney, Miss Elizabeth Coney.

Mr. Jordan: Your Honor, do you think

Exhibit C-6—4/29/29.

Jacob Williamson—Recross.

it material on the record to have Mr. Williamson testify to the amount of interest due to date?

The Court: I think it would be well.

Q. Mr. Williamson, have you calculated the amount of interest due on this note? A. Yes, sir, I had my secretary do that.

Q. And how much is that? A. $1,575.

Recross-examination by Mr. Corn:

Q. From what date did you calculate this interest? A. December 6, 1925.

The Court: Is that the correct date. I am inclined to think that I misconceived the wording of that first paragraph. I believe it would be a very good thing for you to introduce that Florida statute on the rate. I see that you say that at all times hereinstated the laws of the State of Florida requires and directs that the legal rate of interest in said state, on all obligations, was and still is, the sum of 8 per cent. per annum. Now, it is true that the note calls for that and that there is no defense that the rate of interest is excessive or is an excessive or usurious rate, but since you have pleaded before the statute, I think it would be well to introduce it in evidence.

Mr. Jordan: If your Honor please, we are not permitted to do that; we have not that statute here, because I rested on the theory that the pleadings did not raise any issue of that; first, because the statute

Exhibit C-6—4/29/29.

Jacob Williamson—Recross.

of any state is a matter of record, and the defendant denying that does not raise any sufficient denial as a matter of record.

The Court: Still, under our statutes, a matter which is pleaded it is necessary to be proven, if not specifically denied is admitted, unless the answer in this case, I observe, "He has no knowledge sufficient to form a belief as to what the allegations alleged in paragraph 1 and asks the plaintiff for proof thereof" leaves it precisely in the same position, as far as proof is concerned, as though it was denied under the New Jersey statute.

Mr. Jordan: However, I don't make any great mention of the matter of interest; that is not the thing we are here for; I understand the legal rate in New Jersey is six per cent.

The Court: Yes.

Mr. Jordan: We will calculate it at that.

Mr. Corn: I don't believe that is proper. Either they are entitled to their interest or they are not.

The Court: You mean when they agree to cut their interest to the legal rate in New Jersey, you can take technical advantage of something which they had not presented here, if they haven't proven what the established and legal rate in New Jersey is?

Mr. Corn: No, I think that under our Usury Act—

The Court: He is willing to take it now.

Mr. Corn: Our Usury Act provides that

Exhibit C-6—4/29/29.

Davis Bender—Recalled—Direct.

he shall forfeit all the interest and the action—

Mr. Jordan: Unfortunately, that is not set up here.

The Court: No, I called your attention to that that usury is not alleged here. It will be accepted.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

DAVIS BENDER, recalled.

Direct-examination by Mr. Corn:

Q. Where was this property located that was being foreclosed?

Objected to.

The Court: What difference does it make where it was located. I took this case with the distinct understanding that it would be finished at four o'clock. Now, I am not going to sit here—

I sustain the objection.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

The Court: Exception will be noted to every adverse ruling.

Exhibit C-6—4/29/29.

Samuel J. Kaufman—Direct.

SAMUEL J. KAUFMAN, sworn in behalf of plaintiff.

Direct-examination by Mr. Jordan:

Q. Mr. Kaufman, are you a counsellor at law, regularly admitted to practice in the courts of New Jersey? A. I am.

Q. Where is your office? A. 124 Commerce Street, in the City of Newark, this State.

Q. How long have you been engaged in the practice of law? A. Since 1918.

Q. And have you, during your practice, had occasion to sue upon litigated notes, checks and other instruments? A. I have.

Q. Assuming, Mr. Kaufman, that a plaintiff is suing on a $10,000 note, has filed his summons and complaint and answer and the trial has been had on that, what in your best judgment is the fair and reasonable value of the legal services of the attorney for the plaintiff?

Mr. Corn: I object. The complaint here is for $10,800 with interests, and of course any disbursements in this proceeding; there is no demand in the complaint for reasonable counsel fees.

Mr. Jordan: We move to amend at this time, your Honor providing for a counsel fee of not greater than $1,000?

Mr. Corn: I object to that. I am not prepared to contradict that.

Objection sustained.

Mr. Jordan: The note in the complaint is set forth properly and is notice to the defendant that that claim is included.

Exhibit C-6—4/29/29.

Charge to Jury.

The Court: Exception to the ruling of the Court may be noted. I do not think it is claimed by the complaint. If counsel say they are surprised by it, and you think that is an important matter, why I will continue it for you and a juror may be withdrawn.

Mr. Jordan: No, sir, I don't wish—

The Court: I will deny the amendment.

Plaintiff Rests.

Defendant Rests.

Mr. Corn sums up for the defendant.

Mr. Jordan sums up for the plaintiff.

CHARGE.

The Court charges the jury as follows:

DUNGAN, *J.*

Gentlemen of the Jury: This action is initiated upon a promissory note, dated at Miami, Florida, June 16, 1925, admittedly given by the defendant, payable to the order of the plaintiff, for the sum of $10,000 with interest at the rate of eight per cent. per annum.

Counsel for the plaintiff has voluntarily reduced the rate of interest to six per cent. because of the failure to produce here the Florida statute, since six per cent. is the legal rate of interest in the State of New Jersey.

The defendant admits he has not paid any portion of this note. The note is now in the possession of the plaintiff; therefore, if that was the only thing that appeared in this case, I should

Exhibit C-6—4/29/29.

Charge to Jury.

not hesitate to say to you that it would be your duty to render a verdict in favor of the plaintiff and against the defendant for $10,000, with interest at the rate of six per cent. from June 16, 1925, to the 3rd day of February, 1928, which the plaintiff has figured at $1,575, making altogether the sum of $11,575, and that is the amount which you should award to the plaintiff, if you decide that the plaintiff is entitled to your verdict.

However, the defendant says that in September, 1926, the property, for the purchase of which from Mr. Williamson this note was given as part payment, was under foreclosure; that he went to Mr. Williamson and discussed the matter and that Mr. Williamson told him that if he would give up the note that he, Bender, would not go to Florida and bid in that property at the foreclosure proceedings; and to this he said Mr. Williamson agreed, but at that time, or at no time after, it appears, was the note ever delivered to the defendant. That would be good consideration for the cancellation of this note if Mr. Williamson agreed to it, not because Mr. Bender proposed it, for, of course, the minds of the two people must have met upon that agreement. Mr. Williamson must have agreed to deliver up this note if the plaintiff would refrain from going to Florida and bidding in this property at the foreclosure proceedings. He admits he was at Miami at the time the property was sold under the foreclosure proceedings, but says he did not go over to the sale, and refrained from bidding in the property at that time. But the burden of proving that, that Mr. Williamson made such an agreement, by the preponderance of the evidence in the case, that is by the greater

weight of the evidence in the case, is upon Mr. Bender. If the greater weight of the evidence in the case does not show that Mr. Williamson made that agreement, then Mr. Williamson is entitled to your verdict, as I have indicated.

Mr. Williamson denies that there ever was such an agreement; he denies that the matter was ever proposed to him by Mr. Bender. He says there were two conversations at that time, the first of which Mr. Bender offered him $3,000 in settlement of the mortgage and the note and the second conversation in which he offered him $4,000, both of which he refused; but that the proposition that the defendant should refrain from bidding on that property was never mentioned to him; and, as a matter of fact, he says that he did not go to Florida, did not bid on the property himself, nor had any attorney or agent there to bid the property in for him, and that he is not now the owner or in any way interested in that property.

There is the testimony, gentlemen, and it is for you to decide whether, as I have already indicated, the plaintiff is entitled to your verdict in this case for $11,575, unless you decide that Mr. Bender has established, by the greater weight of the evidence, that Mr. Williamson agreed to give and deliver up this note to him if he should refrain from going to Florida and bidding at that foreclosure sale.

(The jury retires).

Exhibit C-6—4/29/29.

Exhibit D-1.

Phone Yonkers 1837

10 Main Street
Yonkers
The Fashion Shop

Yonkers, N. Y., June 4th, 1926

Mr. D. Bender,
92 Goldsmith Ave.
Newark, N. J.

Dear Sir:

Complying with your request as per your telephone call to me some time ago, the Mortgage of $10,000 on property located at Pennsylvania Ave. and Ninth St. Miami Beach, Florida, is due and payable June 16th., this month, at the Bank of Bay Biscayne or my bank, Yonkers Trust Co. Yonkers, N. Y.

Very truly yours,

JACOB WILLIAMSON
THE FASHION SHOP

By.....

Exhibit C-9—4/29/29.

Davis Bender.
Davis Bender.
Davis Bender.

Exhibit C-10—4/29/29.

This Mortgage Deed, Executed the 16th day of June A. D. 1925, by Harry A. Lack and Davis Bender, hereinafter called the Mortgagors, to Jacob Williamson, hereinafter called the Mortgagee

Witnesseth, That for divers good and valuable considerations, and also in consideration of the aggregate sum named in the promissory note of even date herewith, hereinafter described, the said Mortgagors do grant, bargain, sell, alien, remise, release, convey and confirm unto the said Mortgagee, his heirs and assigns in fee simple, all the certain tract of land, of which the said Mortgagars are now seized and possessed, and in actual possession, situate in Dade County, State of Florida, described as follows:

Lots One (1) and Two (2) in Block Forty-four (44) of Ocean Beach, Florida, Addition Number Three, according to the plat thereof recorded in Plat Book 2, at page 81 of the Public Records of Dade County, Florida.

Note: Said Block Forty-four (44) lies wholly within the North Half (N½) of Section Three (3), Township Fifty-four (54) South, Range Forty-two (42) East.

The above land is embraced within the corporate limits of the city of Miami Beach, Florida.

This is a purchase money mortgage and is given to secure the balance of the purchase price of the conveyance by the mortgagees herein to the mortgagors herein of the above described property.

To Have and to Hold the same together with the tenements, hereditaments, and appurtenances unto the said Mortgagee and his heirs and assigns, in fee simple.

And said Mortgagors, for themselves and their heirs, legal representatives and assigns do coven-

ant with said Mortgagee, his heirs, legal representatives and assigns that said Mortgagors are now indefeasibly seized of said land in feet simple; that the said Mortgagors have full power and lawful right to convey said land in fee simple as aforesaid; that it shall be lawful for said Mortgagee, his heirs, legal representatives and assigns, at all times peaceably and quietly to enter upon, hold, occupy and enjoy said land; that said land is free from all incumbrances; that said Mortgagors, their heirs and legal representatives, will make such further assurance to perfect the fee simple title to said land in said Mortgagee, his heirs, legal representatives and assigns, as may reasonably be required; and that said Mortgagors do hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever.

Provided Always, that if said Mortgagors, their heirs, legal representatives or assigns, shall pay unto the said Mortgagee, his legal representatives or assigns, the certain promissory note, of which the following in words and figures is a true copy, to-wit:

No 1 $10 000.00 Miami, Florida June 16 1925

On or before One (1) year after date for value received We promise to pay to the order of Jacob Williamson Ten Thousand and no/100 Dollars. Payable at Bank of Bay Biscayne of Miami, Florida.

with interest thereon at the rate of 8 per cent per annum from date until fully paid. Interests payable semi-annually. The maker and endorser of this note further agree to waive demand, notice of non-payment and protest, and in case suit shall

be brought for the collection hereof, or the same has to be collected upon demand of an attorney, to pay reasonable attorney's fees for making such collection. Deferred interest payments to bear interest from maturity at 8 per cent per annum, payable semi-annually.

HARRY A. LACK (Seal)
DAVIS BENDER (Seal)

Due June 16, 1926.

and shall perform, comply with and abide by each and every the stipulations, agreements, conditions and covenants of said promissory note and of this deed, then this deed and the estate thereby created shall cease and be null and void.

And the said Mortgagors for themselves and their heirs, legal representatives and assigns, hereby covenant and agree:

1. To pay all and singular the principal and interest and other sums of money payable by virtue of said promissory note and this deed, or either, promptly on the days respectively the same severally become due.

2. To pay all and singular the taxes, assessments, levies, liabilities, obligations, and incumbrances of every nature on said described property each and every, and if the same be not promptly paid the said Mortgagee, his heirs, legal representatives or assigns, may at any time pay the same without waiving or affecting the option to foreclose or any right hereunder, and every payment so made shall bear interest from the date thereof at the rate of 8 per cent. per annum.

3. To pay all and singular the costs, charges and expenses, including lawyer's fees, reasonably incurred or paid at any time by said Mortgagee,

his heirs, legal representatives or assigns, because of the failure on the part of the said Mortgagors, their heirs, legal representatives or assigns to perform, comply with and abide by each and every the stipulations, agreements, conditions and covenants of said promissory note and this deed, or either, and every such payment shall bear interest from date at the rate of eight per cent. per annum.

4. To keep the buildings now or hereafter on said land insured in a sum not less than dollars, in a company or companies to be approved by said Mortgagee, and the policy or policies held by and payable to said Mortgagee, heirs, legal representatives or assigns, and in the event any sum of money becomes payable under such policy or policies, the Mortgagee, heirs, legal representatives or assigns, shall have the option to receive and apply the same on account of the indebtedness hereby secured or to permit the Mortgagor to receive and use it or any part thereof for other purposes, without thereby waiving or impairing any equity, lien or right under or by virtue of this mortgage, and may place and pay for such insurance or any part thereof without waiving or effecting the option to foreclose or any right hereunder, and each and every such payment shall bear interest from date at the rate of per cent. per annum.

5. To permit, commit or suffer no waste, impairment or deterioration of said property or any part thereof.

6. To perform, comply with, and abide by each and every the stipulations, agreements, conditions and covenants in said promissory note, and in this deed set forth.

Exhibit C-10—4/29/29.

7. If any of said sums of money herein referred to be not promptly and fully paid within thirty days next after the same severally become due and payable, or if each and every the stipulations, agreements, conditions and covenants of said promissory note and this deed, or either, are not fully performed, complied with and abided by, the said aggregate sum mentioned in said promissory note shall become due and payable forthwith or thereafter at the option of the Mortgagee, his heirs, legal representatives or assigns, as fully and completely as if the said aggregate sum of Ten Thousand Dollars was originally stipulated to be paid on such day, anything in said promissory note or herein to the contrary notwithstanding.

In Witness Whereof, the said Mortgagors have hereunto set their hands and seals the day and year first above written

HARRY A. LACK (Seal)
DAVIS BENDER (Seal)

Signed, sealed and delivered
in the presence of:
Bonnie Bush.
Benjamin Kaplan.

State of Florida, }
County of Dade, } ss.:

I, an officer authorized to take acknowledgments of deeds according to the laws of the State of Florida, duly qualified and acting, Hereby Certify that Harry A. Lack and Davis Bender, to me personally known, this day personally appeared and acknowledged before me that they executed the foregoing mortgage, and I Futher Certify that I know the said persons making said acknowledg-

ment to be the individuals described in and who executed the said mortgage And I Further Certify that said is known to me to be the wife of said and that she this day acknowledged to and before me, separately and apart from her husband, that she executed the said mortgage deed for the purpose of renouncing and reliquishing her dower and right of dower and separate estate in and to the lands therein described, and that she executed the same freely and voluntarily and without compulsion, constraint, apprehension or fear of or from her husband.

In Witness Whereof, I hereunto set my hand and official seal at Miami, said County and State, this 16th day of June A. D., 1925.

BONNIE BUSH,
Notary Public,
State of Florida at Large.

My commission expires Feb. 15, 1919.

Endorsed—Mortgage Deed. Harry A. Lack and Davis Bender to Jacob Williamson. Abstract of Description. Filed for record on the 16 day of June, 1925 and recorded in Mortgage Book 426, Page 190 public records of Dade County, Florida.

GEO. F. HOLLY,
Clerk Circuit Court.
By M. Boggs, D. C.

Exhibit D-1—4/29/29.

This Indenture, made this 6th day of February, A. D. 1928 Between Davis Bender and Molly Ben-

Exhibit D-1—4/29/29.

der, his wife, of the County of Essex and State of New Jersey, parties of the first part, and Jacob Williamson and wife, Rose Williamson, and H. E. Glickman and wife, T. Glickman, of the County of Dade and State of Florida, parties of the second part,

Witnesseth, That the said parties of the first part, for and in consideration of the sum of Ten Dollars ($10.00) and other valuable considerations to them in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold to the said parties of the second part, their heirs and assigns forever, all the right, title and interest, if any, of the parties of the first part in and to the following described land, situate, lying and being in the County of Dade and State of Florida, to wit:

> Lots One (1) and Two (2) Block Forty-four (44) of Ocean Beach Addition #3, the same being a subdivision of South Half (S½) of fractional Section 3, Township 54 South of range 42 east, according to the plat thereof recorded in plat book 2, at page 81 of the public records of Dade County, Florida.

Being the same premises conveyed by the parties of the second part to the said Davis Bender and one Harry A. Lack by deed dated May 20, 1925 and recorded in Book 643 of Public Records of said County page 321; and the same premises thereafter conveyed by the said Harry A. Lack to the said Davis Bender by deed dated March 16, 1926 and recorded in Book 972 of Public Records of said County on page 73.

Subject, however, to a mortgage in the sum of

Exhibit D-1—4/29/29.

Thirteen Thousand Five Hundred Dollars ($13,500) and a mortgage of Two Thousand Dollars ($2,000). Subject also to all taxes and assessments pending against the above-described property.

In Witness Whereof said parties of the first part have hereunto set their hands and seals the day and year above written.

DAVIS BENDER (Seal)
MOLLY BENDER (Seal)

Signed, sealed and delivered
in presence of us
Rose Greene
Jos. J. Corn.

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

I Hereby Certify That on this day personally appeared before me, an officer duly authorized to administer oaths and take acknowledgments, Davis Bender and Molly Bender, his wife, to me well known to be the persons described in and who executed the foregoing deed, and acknowledged before me that they executed the same freely and voluntarily for the purposes therein expressed.

And I Further Certify, That the said Molly Bender, known to me to be the wife of the said Davis Bender, on a separate and private examination taken and made by and before me, separately and apart from her said husband did acknowledge that she made herself a party to said deed for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether dower, homestead or of separte property, statutory or equitable, in and to the lands de-

scribed therein, and that she executed the said deed freely and voluntarily and without any compulsion, constraint, apprehension or fear of or from her said husband.

Witness my hand and official seal at Newark, County of Essex and State of New Jersey, this 6th day of February, A. D. 1928.

JOS. J. CORN,
Notary Public, State of New Jersey.
(Seal) My Commission expires June 24, 1932.

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

I, John H. Scott, Clerk of the County of Essex (and also Clerk of the Circuit Court and Court of Common Pleas, the same being Courts of Record of the aforesaid County, having by law a seal)

Do Hereby Certify, that Joseph J. Corn, Esquire, whose name is subscribed to the attached certificate of acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public, duly commissioned and sworn and residing in said State, and was as such Notary Public, an officer of said State duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds for the conveyance of land, tenements or hereditaments, and other instruments in writing to be recorded in said State, and that the said acknowledgment is duly executed and taken according to the laws of said State, and that full faith and credit are and ought to be given to his official acts; and I further certify that I am well acquainted with his handwriting and verily believe the signature to the attached certificate is his genuine signature.

Exhibit D-2—4/29/29.

And I do further certify that the impression of the seal of such Notary Public is not required by the laws of this State to be filed in my office.

In Witness Whereof, I have hereunto set my hand and affixed my official seal this 6 day of February A. D., 1928.

JOHN H. SCOTT,
(Seal) Clerk.

Exhibit D-2—4/29/29.

To: Jacob Williamson, Rose Williamson, H. E. Glickman and T. Glickman, or Samuel Daniels, Attorney of one or more of them:

Take Notice, that I, Davis Bender, individually as to an undivided one-half right, title and interest and as assignee of Harry A. Lack as to the remaining undivided one-half right, title and interest, do hereby rescind the contract and conveyance made by you to me and the said Harry A. Lack on or about May 20, 1925 for Lots 1 and 2, Block 44 of Ocean Beach Addition No. 3, at Miami Beach, Dade County, State of Florida.

I do hereby require and demand of you that you do forthwith return and repay to me the sum of Twenty-two Thousand Dollars ($22,000) together with interest thereon at the rate of six per cent per annum from May 20, 1925 amounting to the sum of Thirty-five Hundred and Ninety-seven Dollars ($3597), a total of Twenty-five Thousand Five Hundred Ninety-seven Dollars ($25,597), said sum of Twenty-two Thousand Dollars ($22,000) having been made up of Twelve Thousand Dollars, ($12,000) cash paid to you for the conveyance of said premises, and Ten Thousand Dollars

Exhibit D-2—4/29/29.

($10,000) by way of purchase money note and mortgage made to you.

The reason for my said rescission is that you represented the said premises to be situated on Ninth treet, Miami Beach, in said County and State on which said representation I relied in purchasing from you said premises, and which said representation I have now found to be false in that the said premises are located on Tenth Street, Miami Beach, in said County and State.

I hand you herewith a deed made by me and Molly Bender, my wife, to you, properly executed and acknowledged, for the reconveyance to you of the said premises.

Dated: February 9, 1928.

DAVIS BENDER (L.S.)

Witness:

Rose Greene.

Exhibit D-3—4/29/29.

Same as C-22—4/24/29.

Exhibit D-4—4/29/29.

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

Harry Bender, being duly sworn on his oath says that he is one of the persons named in and who executed a certain Deed about to be given to Fidelity Union Trust Company bearing date June 15th, 1925 and embracing premises located in the City of Newark on the Easterly line of Avenue C, 169.37 feet South of Miller Street more particularly described in said Deed being known by street

Exhibit D-4—4/29/29.

No. as 9-17 East Vanderpool Street and 6-8 East Vanderpool Street, and that all the persons who executed said instrument are over twenty-one years of age.

Said premises have been held in peaceable and undisturbed possession by deponent since November 17th, 1925, and the title has never been disputed, questioned or rejected to his knowledge or belief, nor does deponent know any facts by reason of which said possession or title might be disputed or questioned, or by reason of which any claim to any part of said premises or any interest therein adverse to deponent might be set up or made.

There are no judgements, decrees, bail bonds, sheriff's bonds or recognizances unsatisfied of record in any Court of the State of New Jersey, or of the United States for the District of New Jersey against deponent, and there are no actions pending against deponent or to which he is a party. No proceedings in Bankruptcy have ever been instituted by or against deponent in any Court or before any Officer of any State or of the United States, nor has deponent at any time made an assignment for the benefit of creditors.

Said premises are free from all encumbrances recorded or unrecorded, except a certain mortgage held by George T. James and James W. Pittenger recorded in Essex County in Mortgage Book W20 page 200 also an assessment for East Vanderpool sewer for $80.40.

No municipal improvements have been made benefitting said premises for which assessments have not been made and confirmed.

No one has any rights in said premises as tenant, lessee or occupant.

Exhibit D-4—4/29/29.

No contract for the sale of said premises has been made and no option to purchase same has been given to any one by deponent, except the contract for the above mentioned conveyance made with David Houston and by him assigned to Fidelity Trust Company.

Deponent has never been married to any person or persons now living.

No new building has been erected or repairs, alterations or additions made to any building on said premises within four months last past.

This Affidavit is made for the purpose of inducing said Fidelity Union Trust Company to take title to the above described premises and to induce Fidelity Union Title and Mortgage Guaranty Company to guarantee the same with knowledge that the said Fidelity Union Trust Company and Fidelity Union Title and Mortgage Guaranty Company relies upon the truth of the statements herein contained.

HARRY BENDER.

Subscribed and sworn to before me
this 15th day of June, 1925.
Louis J. Feit,
Master in Chancery
of New Jersey.

Exhibit D-5—4/29/29.

No. 62356

The parties to this transaction or their representatives are requested to sign the following:

Statement as of June 15, 1925.

Credit

Paid on signing Contract	5000.—
Mortgage held by James & Pittenger	14075.16
Total Credit	19075.16

Debit.

Purchase Price	56000.—
Rebate on Ins.	89.37
Rebate on taxes	9.29
Total Debit	56098.66
Total Credit brought over	19075.16
Bal. Paid to {grantor / mortgagor	37023.50

$2900 Held per agn'st, disbursed as follows:

Stamps for Deed	56.00
Add'l Int. on Mtge	.79
to Louis Feit Atty	2843.21
	$2900.00

$1.34 Returned

OR, The consideration money has been satisfactorily delivered and received and no money has been left with Fidelity Union Title and Mortgage Guaranty Company to hold or disburse.

The following instruments have been delivered:

Send Deed to Hold in papers.

Endorsed—No. 62356. Closing Certificate. Fidelity Union Title and Mortgage Guaranty Co.

Exhibit D-5—4/29/29.

Newark, New Jersey. Title Department. Report of Closing. I hereby report to Fidelity Union Title and Mortgage Guaranty Company that this title was closed at office of Company on June 15, 1925, by delivery of Deed as herein contemplated. The consideration therefor was paid to grantor in my presence. A purchase money mortgage was given back by
Persons present at said closing were Mr. Haines Mr. Louis Feit, Harry Bender, Mrs. Bender, Mr. The identity of the persons executing the papers was established by Mr. Haines—Mr. Feit. Dated June 17, 1925. J. J. McCarter, of Fidelity Union Title and Mortgage Guaranty Co.

Exhibit D-6—4/29/29.

Davis Bender ux et al
to
Fidelity Union Trust Co.

This Indenture, Made the Fifteenth day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-five, Between Davis Bender and Mollie Bender, his wife, and Harry Bender, single, of the City of Newark, in the County of Essex and State of New Jersey, party of the first part; And Fidelity Union Trust Company, a corporation having its principal office in the City of Newark in the County of Essex, and State of New Jersey, party of the second part; Witnesseth, that the said party of the first part, for and in consideration of One Dollar and other good and valuable consideration lawful money of the United

Exhibit D-6—4/29/29.

States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to its successors and assigns forever, All those certain lots tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey.

First Tract: Beginning in the Easterly line of Avenue C at a point therein distant 169.37 feet southerly from the southerly line of Miller Street; from thence running along said Easterly line of Avenue C South 32 degrees 23 minutes West 30 feet and 28 hundredths of a foot to the northerly side of the brick building standing on the lot hereby conveyed; thence along said building North 57 degrees 44 minutes West 25.18 feet to the Northwesterly corner of said brick building; thence still along said brick building south 32 degrees 9 minutes West and in continuation thereof 229.32 feet to the right of way of the Waverly and Passaic Branch of the New York Bay Railroad; thence along the same North 88 degrees 19½ minutes East 264.65 feet to line of land as described in Book A 62 of Deeds for Essex County, on page 47; thence along that line North 32 degrees 23 minutes East 55.76 feet to the southerly line of East Vanderpool Street; thence along the same

Exhibit D-6—4/29/29.

North 57 degrees 37 minutes West 168.18 feet to an angle in the same; thence still along the same North no degrees and 37 minutes East 29.40 feet; thence still along the same north 12 degrees 4 minutes East 32.66 feet to its intersection with the Easterly line of Avenue C and the place of Beginning. According to a survey made by Edward G. Kempf, surveyor, October 25, 1924.

Second Tract: Beginning at the Northeasterly corner of East Vanderpool Street as shown on map of property of Theodore Coe dated 1898; from thence running South 57 degrees 37 minutes East along the Northerly line of East Vanderpool Street 62 feet; thence North 32 degrees 23 minutes East 50 feet; thence North 57 degrees 37 minutes West 80.50 feet to the Easterly line of East Vanderpool Street; and thence—the same South 12 degrees 4 minutes West 53.31 feet to the place of Beginning. Being known and designated as lot No. 14 as shown on the aforesaid map.

Together with the perpetual use of the driveway adjoining said premises and described as follows:

Beginning in the Southerly line of Vanderpool Street at a point therein distant 31.80 feet easterly from the westerly line of Avenue C produced; from thence running South 32 degrees 23 minutes West and along the Easterly side of the Brick Building and in continuation thereof 181.78 feet to the northerly line of the right of way of the Waverly and Passaic Branch of the New York Bay Railroad; thence along the same North 88 degrees 19½ minutes East 22.80 feet; thence North 32 degrees 9 minutes East 169.01 feet to the Southerly line of Vanderpool Street; and thence along the same North 57 degrees 37 minutes West 18.29 feet to the place of Beginning. It is hereby cov-

enanted by and between the respective parties hereto, their respective heirs, executors, administrators, successors and assigns, that the said party of the second part, its successors and assigns, may and can perpetually keep and maintain the stairway which now encroaches on the said driveway and repair the same, and replace the same, by any other stairway not to exceed the dimensions as to width and length of the present stairway. The afore-described driveway is to be subject to the use as a driveway by the adjoining owner on the West. The grantors herein shall not be obligated to make any repairs to the said driveway. Also the right, title and interest of the parties of the first part in and to all Streets, Avenues or walks through said premises abutting thereon or contiguous thereto. Being the same premises conveyed by Michael J. Tansey, widower, to Davis Bender, by Deed dated November 14th, 1924, and recorded in the Essex County Register's Office in Deed Book E-71 for said County on Pages 492-493. This conveyance is expressly subject to an assessment made by the City of Newark against a part of the above-described premises for the laying of a sewer in East Vanderpool Street not exceeding Three Hundred Eighty Dollars and Forty Cents ($380.40) and also subject to whatever amount may be a lien on said premises of a water assessment originally made for Fifty Dollars ($50).

Together with all and singular the houses, buildings, trees, ways, waters, profits, privileges and advantages, with the appurtenances to the same belonging or in anywise appertaining, Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the

Exhibit D-6—4/29/29.

first part, of, in and to the same, and of, in and to every part and parcel thereof, To Have and to Hold, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to the only proper use, benefit and behoof of the said party of the second part, its successors and assigns forever; And the said Davis Bender and Mollie Bender, his wife, and Harry Bender, single do for themselves, their heirs, executors and administrators covenant and agree to and with the said party of the second part, its successors and assigns, that they, the said Davis Bender and Mollie Bender, his wife, and Harry Bender, single, are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents are not encumbered by any mortgage, judgment or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever; except as hereinbefore stated. And Also, that the said party of the first part now have good right, full power and lawful authority, to grant, bargain, sell and cconvey the said land and premises in manner aforesaid; And Also, that Davis Bender and Harry Bender will Warrant, secure, and forever defend the said land and premises unto the said Fidelity Union Trust Company, its successors and assigns forever, against the lawful claims and de-

Exhibit D-6—4/29/29.

mands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Davis Bender (Seal)
her
Mollie Mollie Bender *Bender* (Seal)
name
Harry Bender (Seal)

Signed, Sealed and Delivered
in the presence of
Louis J. Feit

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

Be it Remembered, That on this fifteenth day of June, in the year of our Lord One Thousand Nine Hundred and Twenty-five, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Davis Bender and Mollie Bender, his wife, and Harry Bender, single, 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 Mollie Bender, being by me privately examined, separate and apart from her husband, did further acknowledge that she signed, sealed and delivered the same as

Exhibit D-6—4/29/29.

her voluntary act and deed, Freely, without any fear, threats or compulsion of her said husband.

Louis J. Feit, A Master in Chancery of New Jersey.

Received in the Office June 16th A. D. 1925 at 3:16 P. M. No. 103.

Office of
Register of Deeds and Mortgages
Essex County, New Jersey

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

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 Deed made by Davis Bender, ux et al to Fidelity Union Trust Co. and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book B 72 of Deeds for said County on pages 499-500.

In Testimony Whereof, I have hereunto set my hand and official seal this 23rd day of April A. D. 1929.

(Seal)

HOWARD S. DODD,
Register of Deeds and Mortgages.

Exhibit D-7—4/29/29.

FIDELITY UNION TRUST COMPANY

Newark, N. J. June 15, 1925 No. E2210

ESSEX COUNTY TRUST COMPANY
East Orange, N. J.

Pay to the Order of
Davis Bender, Mollie Bender and Harry Bender $31,323.50
Thirty One Thousand, Three Hundred Twenty Three and 5/100 Dollars

Countersigned
T. Hampson.
Asst. Trust Officer

D. McDONALD,
Asst. Trust Officer

The endorsement of this check constitutes a receipt in full for the items listed within.
No other receipt is necessary or desired.
Davis Bender
Mollie Bender
Harry Bender
For Deposit
Davis Bender.

(On back of check)

June 15, 1925. Davis Bender, Mollie Bender and Harry Bender. Balance consideration in re sale East Vanderpool St. $31,323.50.
Real Estate Sales Suspense Account.

Exhibit D-8—4/29/29.

Date To Dr. No. $2212
June 15, 1925 Louis J. Feit, Attorney for
Davis, Mollie and Harry Bender
In re Sale of East Vanderpool St. Property
2,800.00
Real Estate Suspense Account
Charge
Approved
CM Registered 4447G Posted S

TRUST DEPARTMENT
June 15/25 Check No.
Warrant No. Folio $2800.
Draw check to order of Louis J. Feit, Atty for
Davis, Mollie & Harry Bender
For in re sale East Vanderpool St. property
Charge R. E. Sales Susp. a/c
Ledger
Approved for payment F. E. R.

FIDELITY UNION TRUST COMPANY 55-9
Newark, N. J. June 15, 1925 No. E 2212
ESSEX COUNTY TRUST COMPANY 55-159
East Orange, N. J.

Pay to the Order of
Louis J. Feit, Attorney for Davis, Mollie
and Harry Bender $2,800.00
Twenty-eight Hundred and 00/100 Dollars
Paid 6-18-25 L. G. McDOUALL
Asst. Trust Officer

Countersigned
T. Hampson
Asst. Trust Officer

Exhibit D-9—4/29/29.

Date To Dr. No. E2211
June 15, 1925
In re-Sale of East Vanderpool St. property
16,976.50
Fidelity Union Title and Mortgage Guaranty Co.
Charge Real Estate Sales Suspense Account
Approved C M Registered 4447 G Posted

TRUST DEPARTMENT
Date June 15/25 Check No.
Warrant No. Folio $16976.50/
Draw Check to order of Fidelity Union Title & Mtge Gty Co.
For In re sale East Vanderpool St. ppty.
Charge R. E. Sales Susp. a/c
Ledger Approved for Payment F E R

FIDELITY UNION TRUST COMPANY 55-9
Newark, N. J., June 15, 1925 No. E2211
ESSEX COUNTY TRUST COMPANY 55-159
East Orange, N. J.

Pay to the order of
Fidelity Union Title and Mortgage Guaranty Co. $16,976.50
Sixteen Thousand Nine Hundred Seventy Six and 50/100 Dollars

L. G. McDOUALL
Asst. Trust Officer

Countersigned
T. Hampson
Asst. Trust Officer

Exhibit D-11—4/29/29.

Articles of Agreement, made the Eleventh day of October in the year of our Lord One Thousand Nine Hundred and Twenty-four

Between Michael J. Tansey, (Widower) of the City of Newark in the County of Essex and State of New Jersey, party of the first part;

And Davis Bender of the City of Newark in the County of Essex and State of New Jersey, party of the second part;

Witnesseth, That the said party of the first part, for and in consideration of the sum of Twenty Thousand Dollars ($20,000.00) to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty free from all encumbrances *whatsoever* (T. J. F.) on or before the Fifteenth day of November next ensuing the date hereof, all those lots, tracts, or parcels of land and premises, hereinafter particularly described situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey.

Beginning at the westerly line of the Building at the intersection of the Northerly side of Vanderpool Street with the Southerly end of Avenue C, known as Building No. 6 on Diagram of the McCormick Tannery property made for Patrick J. Dolan, Receiver, and thence (1) running Southerly along the Westerly line of said building the length thereof and extending therefrom to the Northerly line of the Freight line of the

Exhibit D-11—4/29/29.

Waverly and Passaic Railroad, now the Pennsylvania and Lehigh Valley, thence (2) Northeasterly along said Northerly line of the aforesaid Railroad to a point about 96 feet Westerly from the intersection of said line with the Southerly line of East Vanderpool Street; thence (3) running Northerly 55 feet to the Southerly line of East Vanderpool Street; thence (4) Westerly along the Southerly line of East Vanderpool Street to the intersection of East Vanderpool Street and Avenue C; thence (5) running North Westerly 30 feet along E. Vanderpool St., thence Southerly to the Northerly edge of said building and thence (6) running Westerly along the Northerly edge of said building to the intersection of Vanderpool Street and Avenue C aforesaid, the point and place of Beginning.

Any encroachments at present existing of said building on the adjoining land will be allowed for. Together with the perpetual use of the driveway adjoining said premises entering from Vanderpool Street and Avenue C, and now used for the whole property. The same to be kept open for the use of the Grantee and the other adjoining land owners for the entire length thereof.

Also lot on the Northerly side of East Vanderpool St., at the intersection of East Vanderpool Street and Avenue C, being 62 feet on East Vanderpool Street; 53.30 feet on Avenue C and 80.50 feet on the Northerly line and 50 feet on the Easterly line thereon. Containing about 2500 sq. ft.

The deed is to contain description pursuant to an accurate survey

And the said Davis Bender, for his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first

part, his heirs, executors, administrators and as signs, that he, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Twenty Thousand Dollars ($20,000.00) as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

On Execution of this agreement for which this is also a receipt	$ 1,000.00
On delivery of deed, cash	$ 5,000.00
On Bond and Mortgage, same containing usual interest, tax, assessment, insurance and default clauses, and an agreement not to claim credit on the interest payable on the bond and mortgage, by reason of any tax assessed, or to be assessed against the premises, with interest at six per cent payable semi-annually for five years,	$14,000.00
	$20,000.00

with permission to pay off not less than $1,000 thereof or the whole principal sum thereof on any interest day during the term thereon with interest.

And it is further Agreed, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the Fifteenth day of November next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

And it is further Agreed, by the parties hereto, that the said Deed shall be delivered and received

at the office of Michael J. Tansey, 164 Market Street, Newark, N. J., between the hours of ten in the forenoon and three o'clock in the afternoon on the said Fifteenth day of November next ensuing the date hereof.

The rents of said premises, insurance premiums, water rents, taxes, and interest on Mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

Gas and electric fixtures and chandeliers, carpets, linoleum, mats and matting in halls, ash cans and heating apparatus, if any, are included in this sale.

The risk of loss or damage to said premises by fire or otherwise until the delivery of said deed is assumed by the party of the first part.

In case the premises shall suffer injury beyond the ordinary wear and tear, the party of the first part, shall repair the damage before the date set for delivery of said deed or make an appropriate deduction from the prchase price herein stated.

It is understood and agreed that the buildings upon said premises are all within the boundary lines of the property as described in the deed therefor, and that there are no encroachments thereon and that the buildings comply with municipal ordinances and regulations and the regulations of the New Jersey State Board of Tenement House supervision, to be shown by the report of the Secretary, where such ordinances and regulations apply.

It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any Martin Act proceedings or any Act for the Sale of Land for non-

Exhibit D-11—4/29/29.

payment of the municipal taxes or assessments.

If at the time for the delivery of the deeds the premises or any part thereof shall be or shall have been effected by an assessment or assessments which are or may become payable in annual installments of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

And for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators, and they hereby agree to pay, upon failure to perform the same, the sum of which they hereby fix and settle as liquidated damages therefor.

In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

MICHAEL J. TANSEY (L.S.)
DAVIS BENDER (L.S.)

Signed, Sealed and Delivered
in the presence of
Louis J. Feit subsequent to
corrections made at places initialed by me.

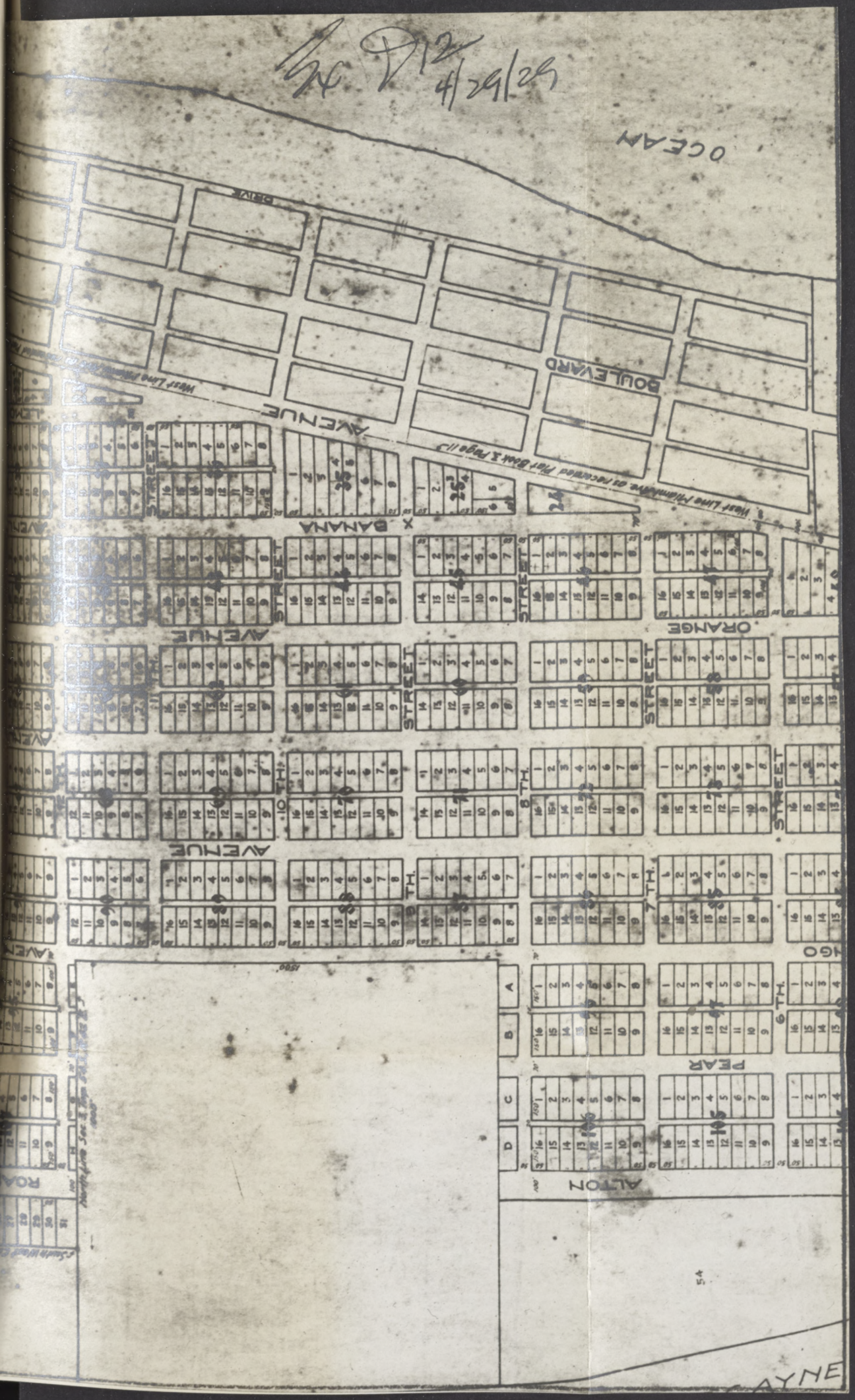
Exhibit D-11—4/29/29.

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

Be it Remembered, That on this 11th day of October, in the year of our Lord One Thousand Nine Hundred and twenty-four, before me, the subscriber, A Master in Chancery of New Jersey, personally appeared Michael J. Tansey, Widower, who, I am satisfied, is the grantor mentioned in the within Instrument to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

LOUIS J. FEIT,
Master in Chancery of New Jersey.

Endorsed—Contract for the Sale of Property. From Michael J. Tansey, (widower) to Davis Bender. Dated, October 11th, 1924.



OCEAN
DRIVE
BOULEVARD
AVENUE
West Line Miramar as recorded Plat Book 3 Page 115
BANANA
STREET
ORANGE
AVENUE
STREET
10TH
8TH
7TH
6TH
PEAR
ALTON
ROAD
GAYNE

Exhibit D-13—4/29/29.

J. N. Lummus, Jr., Mayor — C. W. Tomlinson, City Clerk

CITY OF MIAMI BEACH
Incorporated
MIAMI BEACH, FLORIDA

State of Florida, } ss.:
County of Dade, }

I, C. W. Tomlinson, City Clerk in and for the City of Miami Beach, Florida, do hereby certify that on the 18th of January, 1922, an Ordinance designated No. 170 was passed and adopted by the City Council of the said City of Miami Beach, Florida, which changed a number of street names within said City, one of which was a change in the name of Banana Avenue, making it for the future Pennsylvania Avenue, and that said Ordinance is at present in full force and effect.

In Witness Whereof I have hereunto set my hand and affixed the official seal of the City of Miami Beach, Florida, on this the 12th day of April, A. D. 1929.

(Seal) C. W. TOMLINSON.

Exhibit D-14—4/29/29.

This Indenture, Made this 16th day of March A. D. 1926, Between Harry A. Lack, a single man, of the County of Dade and State of Florida, party of the first part, and Davis Bender of the County of Dade and State of Florida, party of the second part, Witnesseth, that the said party of the first part, for and in consideration of the sum of Ten Dollars and other valuable considerations, to him

New Jersey State Library

Exhibit D-14—4/29/29.

in hand paid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and transferred, and by these presents does grant, bargain, sell and transfer unto the said party of the second part and his heirs and assigns forever, all that certain parcel of land lying and being in the County of Dade and State of Florida, more particularly described as follows: An undivided one-half interest in Lots (1) and Two (2), Block Forty-four (44) of Ocean Beach Addition No. 3, the same being a subdivision of South Half (S½) of fractional Section 3, Township 54 South of Range 42 East, according to the plat thereof recorded in Plat book 2, at page 81 of the Public Records of Dade County, Florida.

Subject, however, to a mortgage in the sum of $13,500.00, and a second mortgage in the sum of $2000.00, which mortgages the grantee herein assumes and agrees to pay and the grantee takes this deed subject to the stipulations and conditions of the said mortgages. Subject to all taxes and assessments now pending against the above described property; subject also to a third mortgage in the principal sum of $9500.00 now encumbering said property. This deed is intended to convey the entire interest of the grantor in and to the above described property.

Together with all the tenements, hereditaments and appurtenances, with every privilege, right, title, interest and estate, dower and right of dower, reversion, remainder and easement thereto belonging or in anywise appertaining: To Have and to Hold the same in fee simple forever.

And the said party of the first part does covenant with the said party of the second part that he

Exhibit D-14—4/29/29.

is lawfully seized of the said premises, that they are free from all incumbrances and that he has good right and lawful authority to sell the same; and the said party of the first part does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year above written.

HARRY A. LACK (Seal)

Signed, Sealed and Delivered
in our Presence:
W. D. Hawthorne
Opal Given

State of Florida, }
County of Dade, } ss.:

I Hereby Certify, That on this 16 day of March A. D. 1926, before me personally appeared Harry A. Lack, to me known to be the person described in and who executed the foregoing conveyance to Davis Bender and severally acknowledged the execution thereof to be his free act and deed for the uses and purposes therein mentioned, and the said the wife of the said on a separate and private examination taken and made by and before me, and separately and apart from her said husband; did acknowledge that she made herself a party to the said Deed of Conveyance, for the purpose of renouncing, relinquishing and conveying all her right, title and interest, whether of dower or of separate property, statutory or equitable, in and to the lands therein described, and that she executed said deed freely and voluntarily and with-

out any constraint, fear, apprehension or compulsion of or from her said husband.

Witness my signature and official seal at Miami in the County of Dade and State of Florida the day and year last aforesaid.

OPAL GIVEN (Seal)
Notary Public State of Florida
at large.

My commission expires 9/5/28

Endorsed—Warranty Deed. Harry A. Lack, single, to Davis Bender. Abstract of Description. State of Florida, County of Dade. On this 17 day of Mar. A. D. 1926, this instrument was filed for record, and being duly acknowledged and proven, I have recorded the same on pages 73 of Book 927 in the Public Records of said County. In Witness Whereof, I have hereunto set my hand and affixed the seal of the Circuit Court of the 11th Judicial Circuit of said State, in and for said County. Geo. F. Holly, Clerk. Z. L. Gardner, D. C.

Filed Mar. 16, 1926 at 10:36 o'clock A. M., and recorded in the Book noted above. Geo. F. Holly, Clerk Circuit Court Dade County, Florida.

Exhibit C-1—5/2/29.

Name Molly Bender

Exhibit C-1—5/2/29.

Name Molly Bender

Old Balance	Date	Checks in Detail		Date	Deposits	Date	New Balance
		Balance Brought Forward		Aug 5'27	750.00	Aug 5 '27	750.00*
750.00	Aug 9 Ex	425.00—				Aug 9 Ex	325.00*
325.00	Aug 10 Ex	30.00—				Aug 10 Ex	295.00*
295.00	Aug 10 '27	40.00—	25.00—			Aug 10 '27	230.00*
230.00				Sep 3' 27	502.50	Sep 3 '27	732.50*
732.50	Sep 10 '27	55.00—				Sep 10 '27	677.50*
677.50	Sep 13 Ex	400.00—				Sep 13 Ex	277.50*
277.50	Sep 15 '27	100.00—				Sep 15 '27	177.50*
177.50				Sep 16 '27	10,000.00	Sep 16 '27	10,177.50*
10,177.50	Sep 23 Ex	3,000.00—				Sep 23 Ex	7,177.50*
7,177.50				Sep 28 '27	255.00	Sep 28 '27	7,432.50*
7,432.50	Oct 1 Ex	25.00—				Oct 1 Ex	7,407.50*
7,407.50				Nov 1 Cl	253.75	Nov 1 '27	7,661.25*
7,661.25				Nov 5 '27	162.50	Nov 5 '27	7,823.75*
7,823.75				Sep In	3.89		
				Oct In	12.16		
				Nov 29 In	12.71	Nov 29 In	7,852.51*
7,852.51				Dec 1 Cl	255.00	Dec 1 '27	8,107.51*
8,107.51	Dec 13 '28	800.00—				Dec 13 '28	7,307.51*
7,307.51				Dec 30 In	12.22	Dec 30 In	7,319.73*
7,319.73				Jan 3 Cl	256.25	Jan 3 '28	7,575.98*
7,575.98	Jan 7 '28	60.00—				Jan 7 '28	7,515.98*
7,515.98	Jan 13 '28	300.00—				Jan 13 '28	7,215.98*
7,215.98	Jan 20 '28	3,000.00—				Jan 20 '28	4,215.98*
4,215.98	Jan 26 '28	3,500.00—				Jan 26 '28	715.98*
715.98						3560.	
726.23				Jan 30 In	10.25	Jan 30 In	726.23*
983.73	Feb 3 '28	983.73—				Feb 1 '28	983.73*
				Feb 1 Cl	257.50		
						Feb 3 '28 Hold	00*
				Mar 1 Cl	258.75	Mar 1 '28	258.75*
258.75	Mar 3 '28	258.75—				Mar 19 '28	.00*

Exhibit C-2—5/2/29.

Name, Sivad Realty Co.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance.
		Balance Brought Forward					Apr. 30 '26	137.25
137.25					Jun 14 '26	14,250.00	Jun 14 '26	14,387.25*
14,387.25	Jun 15 '26	2,000.00—	2,000.00—				Jun 15 '26	10,387.25*
10,387.25					Jun 17 '26	3,000.00	Jun 17 '26	13,387.25*
13,387.25	Jul 19 cc	8,489.50—					Jul 19 '26	4,897.75*
4,897.75	Jul 22 ex	514.15—					Jul 22 ex	4,383.60*
4,383.60	Jul 23 '26	232.15—					Jul 23 '26	4,151.45*
4,151.45					Jun in	7.23	Jun in	4,158.68*
4,158.68					Jul in	16.66	Jul in	4,175.34*
4,175.34					Aug 5 '26	45.00	Aug 5 '26	4,220.34*
4,220.34					Jun in	1.87	Jun in	4,222.21*
4,222.21					Jul in	1.09	Jul in	4,223.30*
4,223.30	Aug 6 ex	59.30—					Aug 6 ex	4,164.00*
4,164.00	Aug 14 ex	1,000.00—			Aug 14 ec	1,000.00	Aug 14 ex	4,064.00*
4,064.00	Aug 23 ex	7.50—						
	Aug 14 ex	100.00—					Aug 23 ex	4,056.50*
4,056.50					Aug in	6.63	Aug in	4,0063.13*
4,063.13					Aug 28 '26	7,000.00	Aug 28 '26	11,063.13*
11,063.13					Sep 11 '26	68.66	Sep 11 '26	11,131.79*
11,131.79	Sep 11 '26	1,333.60—					Sep 11 '26	9,798.19*
9,798.19	Sep 24 '26	1,000.00-					Sep 24 '26	8,798.19*
8,798.19					Sep in	16.11	Sep in	8,814.30*
8,814.30	Sep ec	16.11—			Sep in	16.38	Sep in	8,814.57*
8,814.57					Oct 5 '26	45.00	Oct 5 '26	8,859.57*
8,859.57	Oct 6 ex	500.00-					Oct 6 ex	8,359.57*
8,359.57	Oct 7 '26	2,000.00—					Oct 7 '26	6,359.57*
6,359.57					Oct in	11.67	Oct in	6,371.24*
6,371.24					Oct 28 '26	2,500.00	Oct 28 '26	8,871.24*
8,871.24	Nov 3 cc	1,507.50—	1,837.50—	3,000.00—				
	Nov 3 cc	1,515.00—					Nov 3 '26	1,011.24*
1,011.24					Nov 4 '26	45.00	Nov 4 '26	1,056.24*
1,056.24					Nov 8 '26	2,000.00	Nov 8 '26	3,056.24*
3,056.24					Nov 8 '26	7,710.00	Nov 8 '26	10,766.24*
10,766.24					Nov 15 '26	2,125.00	Nov 15 '26	12,891.24*
12,891.24	Nov 15 '26	690.00—	9,710.00—				Nov 15 '26	2,491.24*
2,491.24	Nov 16 '26	2,125.00—					Nov 16 '26	366.24*
366.24					Nov 20 '26	2,125.00	Nov 20 '26	2,491.24*
2,491.24					Nov in	7.73	Nov in	2,498.97*
2,498.97					Dec 7 '26	5,400.00	Dec 7 '26	7,898.97*
7,898.97	Dec 8 '26	300.00—					Dec 8 '26	7,598.97*
7,598.97					Dec 11 '26	300.00	Dec 11 '26	7,898.97*
7,898.97	Dec 13 '26	500.00—					Dec 13 '26	7,398.97*
7,398.97	Dec 29 ex	1.20—					Dec 29 ex	7,397.77*
7,397.77					Dec in	9.81	Dec in	7,407.58*
7,407.58	Jan 11 '27	500.00—					Jan 11 '27	6,907.58*
5,907.58	Jan 21 '27	1,000.00—					Jan 21 '27	5,907.58*
5,927.58					Jan 29 '27	20.00	Jan 29 '27	5,927.58*
5,938.98	Feb 18 '27	2.84—			Jan 29 in	11.40	Jan 29 in	5,938.98*
5,945.84					Jan 29 in	9.70	Feb 18 '27	5,936.14*
5,936.14					Feb 10 '27	43.67	Feb 28 in	5,945.84*
5,989.51							Mar 10 '27	5,989.51*
8,491.60					Mar 14 cl	2,502.09	Mar 14 '27	8,491.60*
8,576.60					Mar 23 '27	85.00	Mar 23 '27	8,576.60*
8,588.11	Apr 1 '27	2,573.33—			Mar 29 in	11.51	Mar 29 in	8,588.11*
6,014.78	Apr 6 '27	2,000.00—					Apr 1 '27	6,014.78*
4,014.78	Apr 11 '27	1,700.00—					Apr. 6 '27	4,014.78*
4,314.78	Apr 12 '27	400.00—					Apr 11 '27	2,314.78*
							Apr 12 '27	1,914.78*

Exhibit C-2—5/2/29.

Old Balance	Date	Checks in Detail		Date	Deposits	Date	New Balance.
6,492.50	May 24 '27	1,013.81—		Apr 16 '27	2,516.25	Apr 16 '27	4,431.03*
6,484.53				Apr 20 '27	2,053.50	Apr 20 '27	6,484.53*
5,178.78				Apr 28 in	8.06	Apr 28 in	6,492.59*
5,478.78	May 26 '27	300.00				May 24 '27	5,478.78*
5,489.19						May 26 '27	5,178.78*
5,189.19				May 27 in	10.41	May 27 in	5,189.19*
5,789.19				May 27 '27	300.00	May 27 '27	5,489.19*
11,332.26				Jun 4 '27	300.00	Jun 4 '27	5,789.19*
				Jun 6 cl	514.58		
11,347.93	Jun 30 '27	6,256.43—		Jun 6 cl	512.16		
5,091.50				Jun 6 cl	2,080.67		
5,099.72	Aug 18 ex	1.20—		Jun 6 cl	1,042.50		
5,098.52				Jun 6 cl	1,393.16	Jun 6 '27	11,332.26*
5,106.74				Jun 28 in	15.67	Jun 28 in	11,347.93*
11,940.67						Jun 30 '27	5,091.50*
				Jul 29 in	8.22	Jul 29 in	5,099.72*
11,952.89	Sep 30 '27	9,000.00—				Aug 18 ex	5,098.52*
2,952.89				Aug 26 in	8.22	Aug 26 in	5,106.74*
2,957.66	Nov 1 ex	1,200.00—		Sep 2 '27	6,833.93	Sep 2 '27	11,940.67*
1,757.66	Nov 10 ex	22.68—		Sep 29 in	12.22	Sep 29 in	11,952.89*
1,734.98						Sep 30 '27	2,952.89*
2,934.98				Oct 28 in	4.77	Oct 28 in	2,957.66*
2,937.99						Nov 1 ex	1,757.66*
				Nov 10 ex		Nov 10 ex	1,734.98*
				Nov 22 '27	1,200.00	Nov 22 '27	2,934.98*
				Nov 29 ex	3.01	Nov 29 ex	2,937.99*
4,487.99	Dec 1 ex	30.00—		Nov 29 '27	1,550.00	Nov 29 '27	4,487.99*
4,457.99	Dec 6 ex	208.40—		Dec 1 ex		Dec 1 ex	4,457.99*
4,249.59	Dec 20 ex	1,500.00—	400.00—	Dec 6 ex		Dec 6 ex	4,249.59*
2,349.59				Dec 29 in	6.25	Dec 20 ex	2,349.59*
2,355.84						Dec 29 in	2,355.84*
4,530.34	Jan 24 ex	1,000.00—		Jan 14 '28	2,355.84	Jan 14 '28	2,355.84*
3,530.34	Jan 26 ex	41.63—		Jan 20 '28	2,174.50	Jan 20 '28	4,530.34*
3,488.71	Feb 8 '27	1,003.35—				Jan 24 ex	3,530.34*
3,493.15				Jan 26 ex		Jan 26 ex	3,488.71*
2,489.80				Jan 27 in	4.44	Jan 27 in	3,493.15*
2,494.35						Feb 8 '27	2,489.80*
2,535.98				Feb 28 in	4.55	Feb 28 in	2,494.35*
2,539.98				Mar 16 '28	41.63	Mar 16 '28	2,535.98*
2,809.98				Mar 29 in	4.00	Mar 29 in	2,539.98*
2,814.14				Apr 24 '28	270.00	Apr 24 '28	2,809.98*
2,991.14				Apr 27 in	4.16	Apr 27 in	2,814.14*
3,591.14				May 11 '28	177.00	May 11 '28	2,991.14*
3,595.96				May 23 '28	600.00	May 23 '28	3,591.14*
3,654.46	Jun 28 in			May 28 ex	4.82	May 28 ex	3,595.96*
3,660.27				Jun 14 '28	58.50	Jun 14 '28	3,654.46*
3,718.52				Jun 28 in	5.81	Jun 28 in	3,660.27*
3,724.49				Jul 18 ' 28	58.25	Jul 18 '28	3,718.52*
3,754.49	Aug 20 '28	600.00—		Jul 27 in	5.97	Jul 27 in	3 724.49*
3,154.49				Aug 7 '28	30.00	Aug 7 '28	3,754.49*
3,160.35						Aug 20 '28	3,154.49*
3,276.10	Sep 19 ex	10.00—		Aug 27 '28	5.85	Aug 27 '28	3,160.35*
3,266.10				Sep 6 '28	115.75	Sep 6 '28	3,276.10*
3,271.36	Oct 9 ex	1.20—		Sep 19 ex		Sep 19 ex	3,266.10*
3,270.16				Sep 27 in	5.26	Sep 27 in	3,271.36*
9,327.66	Oct 19 ex	6,000.00—				Oct 9 ex	3,270.16*
3,327.66				Oct 17 '28	6,057.50	Oct 17 '28	9,327.66*

Exhibit C-2—5/2/29.

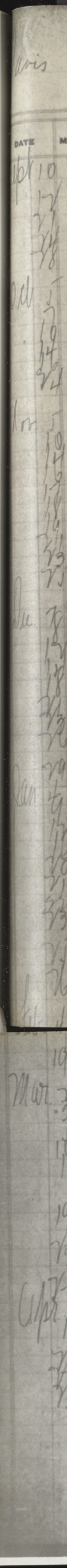
3,332.98	Nov 2 '28	150.00—	Oct 19 ex		Oct 19 ex	3,327.66*
3,182.98	Nov 2 '28	375.00—	Oct 30 in	5.32	Oct 30 in	3,332.98*
2,807.98	Nov 5 ex	25.00—			Nov 2 '28	3,182.98*
2,782.98	Nov 14 ex	400.00—			Nov 2 '28	2,807.98*
					Nov 5 ex	2,782.98*
2,382.98	Nov 16 '28				Nov 14 ex	2,382.98*
2,440.23			Nov 16 '28	57.25	Nov 16 '28	2,440.23*
2,710.23	Nov 26 '28	1,500.00—	Nov 21 '28	270.00	Nov 21 '28	2,710.23*
1,210.23					Nov 26 '28	1,210.23*
1,214.94			Nov 30 in	4.71	Nov 30 in	1,214.94*
1,514.94			Dec 10 '28	300.00	Dec 10 '28	1,514.94*
			Dec 28 in	2.25	Dec 28 in	1,517.19*
	Jan 22 ex	500.00—	Jan 22 ex	1,517.19		
1,017.19			Jan 22 ex		Jan 22 ex	1,017.19*
1,021.14			Jan 30 in	3.95	Jan 30 in	1,021.14*
2,112.14	Feb 25 ex	1,000.00—	Feb 16 '29	1,091.00	Feb 16 '29	2,112.14*
1,112.14			Feb 25 ex		Feb 25 ex	1,112,14*
1,168.89			Mar 19 '29	56.75	Mar 19 '29	1,168.89*
			Mar 28 in	1.64	Mar 28 in	1,170.53*
1,170.53	Apr 16 '29		Apr 16 '29	56.50	Apr 16 '29	1,227.03*
1,227.03	Apr 19 '29		Apr 19 '29	180.00	Apr 19 '29	1,407.03*
1,407.03	Apr 23 '29	400.00—	Apr 23 '29		Apr 23 '29	1,007.03*

C & C 3

Davis Bender.

DATE	MEMO.	DEBITS	CREDITS	BALANCE
Nov 17	Gard.	5 11 4 54		66 41 97
19		1 1 50		1 58 04 43
20		74 81		1 46 40 93
22		7 37		1 44 03 12
26		61 75		1 41 01 30
29	Nov Sub		6 90	1 35 54 55
Dec 1	Dis	3 00		1 32 54 55
2		99	7 46	1 80 87 45
3			3 16	1 80 09 45
4		70 56		1 79 38 89
5			1 75	1 79 37 14
7		3 00		1 79 34 14
9		3 00		1 79 31 14
10			8 16 65	1 71 47 49
11		1 20		1 71 46 29
12		60		1 71 45 69
14		1 13 45		1 71 32 24
15		34 47		1 71 32 77
18		1 50		1 71 31 27
19		2 50		1 71 28 77
20		9		1 71 19 77
		19 54		1 71 00 23
21			2 70	1 70 97 53
24		1 35 0		1 70 96 03
27		1 34 25		1 70 61 78
		2 00		1 70 59 78
	Dec Sub		2 58	1 70 57 20
Jan 2		16 04		1 70 41 16
3		16 03		1 70 25 13
6		16 93		1 70 08 20
7		16 86		1 69 91 34
8		1 53		1 69 89 81
9		1 50		1 69 88 31
10		10 15		1 69 78 16
			1 45 70	1 69 05 40
14		2 50		1 66 55 40
16		7 30		1 66 48 10
21		7 22 67		1 66 25 43
23			25	1 66 00 43
28	Jan Sub	7 00		1 65 93 43
29			116 87	1 65 76 56
30		3 19 45		1 65 57 11
31		3 50		1 65 53 61
Feb 2		3 10 30		1 65 20 31
6		75		1 65 19 56
9			125	1 65 07 31
10		1000		1 64 07 31
13			1000	1 63 07 31
14		1500		1 61 57 31
17			1530	1 60 27 31
18			90	1 60 17 31
19		8 37		1 60 08 94
20			101 5	1 59 98 44
24		7 00		1 59 91 44
25		8 4		1 59 83 04
27		1 80		1 59 81 24
Mar 5		8 7 13		1 59 72 37
10			1 50	1 59 70 87
16		20		1 59 68 87
26	Dis	1 00		1 59 67 87
30			64 56 83	1 59 03 04
31			185	1 58 85 04
Apr 3		7 35 44		1 51 49 60
		6 00 0		1 51 43 60
7		18 44		1 51 25 16
			158	1 51 09 16

DATE	MEMO.	DEBITS	CREDITS	BALANCE
Apl. 13				0 04 44
		3 50	89 55	8 46 00 49
14			100	1 46 49 49
18		3 50		1 46 45 99
		7 00		1 46 38 99
		38 95	1000 ✓	1 46 53 30
		83 60		1 46 54 90
		2 00		1 46 52 90
28		17 13 73	190	1 46 87 63
		8 00	8 45	1 46 79 18
May 5			6 39 88	1 40 39 30
12		5 00		1 40 34 30
13		1 00 5 83		1 40 28 47
14		1 00 0		1 40 27 47
18		7 50		1 40 19 97
19	750		38 364	1 40 30 33
23		28 50		1 40 01 83
		3 29 93		1 39 72 90
		3 30 50		1 39 69 40
May Sub			5 97	1 39 63 43
27		6 00		1 39 57 43
		6 00		1 39 51 43
		8 50		1 39 43 93
		3 68		1 39 40 25
		86 70		1 39 53 95
			147 98	1 39 05 97
		4 20		1 39 01 77
June 1		6 00		1 38 95 77
		4 50		1 38 91 27
		16 35		1 38 74 92
		15 60		1 38 59 32
		20 30		1 38 39 02
7		20 00		1 38 19 02
		3 38 43 21		1 34 80 81
		2 35		1 34 78 46
		2 80		1 34 75 66
			169 75	1 34 59 91
June Sub		4 09		1 34 55 82
10		23 65 43		1 34 32 17
		6 13		1 34 26 04
			185	1 34 07 19
		70		1 34 06 49
		26 5 10		1 33 80 39
		1 5 06		1 33 74 33
10		10 00		1 33 64 33
July 10			12 5 49	1 33 51 83
		20	2 18 75	1 31 52 58
		84		1 31 44 74
			6 68	1 31 38 06
		3 64 94		1 34 03 00
		1 30		1 34 01 70
		1 89 32		1 32 11 38
		4 00	90	1 32 07 38
		2 00		1 32 05 38
July Sub			44 71	1 31 60 67
11		2 00		1 31 58 67
		10 00		1 31 48 67
		10 00		1 31 38 67
				1 31 28 67



Chris Binder.

DATE	MEMO.	DEBITS	CREDITS	BALANCE	DATE	MEMO.	DEBITS	CREDITS	BALANCE
Apr 10			170	16 38 46 0					
17		400	150	16 54 60					
21		7000		16 30 46 60					
28		300		13 30 46 60					
	Sept Qua.		1783	11 33 62 77					
Oct 5		45		11 05 62 77					
10		500	780	10 46 00 97					
14		300		10 16 43 43					
24	Oct Qua.	800	1540	10 54 33 43					
			1786	8 68 13 43					
Nov 5		1340		6 54 80 03					
10		2619		4 14 61 03					
14		1600		2 54 61 03					
16		150		2 39 61 03					
21		375		2 02 61 03					
23		775		1 27 61 03					
25	Nov Qua.	260	877	0 76 44 03					
Dec 2		2000		0 76 44 03					
12		2000	730	1 52 61 44 03					
18		45		1 07 61 44 03					
23 Dec		40	4417	0 63 61 44 03					
26		2000		0 63 61 44 03					
29	Dec Qua.	130	301	0 33 61 44 03					
29		75		0 26 36 44 03					
Jan 4		440	4750	3 52 36 44 03					
17		3876		3 52 36 44 03					
28			6976	3 52 36 44 03					
31		500		3 52 36 44 03					
Feb 3		350		3 52 36 44 03					
7		1750	1943	3 52 36 44 03					
11		2800		3 52 36 44 03					
16	Jan Qua.	3000	510	3 52 36 44 03					
16		438		3 52 36 44 03					
19			1960	3 52 36 44 03					
19	Feb Qua.		500	3 52 36 44 03					
Mar 3		100	3749	3 52 36 44 03					
			178	3 52 36 44 03					
10		100		3 52 36 44 03					
15			30008	3 52 36 44 03					
19	Dec		3648	3 52 36 44 03					
		17000	11940	3 52 36 44 03					
19		450		3 52 36 44 03					
23			150	3 52 36 44 03					
23	Mar Qua.	900	1019	3 52 36 44 03					
Apr 5		300		3 52 36 44 03					
15			10700	3 52 36 44 03					
20		17000		3 52 36 44 03					
23		1000		3 52 36 44 03					
23		850		3 52 36 44 03					
	Apr Qua.		614	3 52 36 44 03					

Davis Bender,
92 Goldsmith Ave.,

Exhibit C-3—5/2/29.

Exhibit C-3—5/2/29.

Davis Bender,
92 Goldsmith Ave.,
Newark, N. J.

Old Balance	Date	Checks in Detail.			Date	Deposits	Date	New Balance
		Balance Brought Forward					Apr 30	1,503.78
1,503.78					May 7 '26	170.00	May 7 '26	1,673.78*
1,673.78					May 14 '26	1,000.00	May 14 '26	2,673.78*
2,673.78	May 18 '26	1,164.38—					May 18 '26	1,509.40*
1,509.40					May 19 '26	2,055.67	May 19 '26	3,565.07*
3,565.07					May 20 '26	66,061.73	May 20 '26	69,626.80*
69,626.80					May 22 '26	72.00	May 22 '26	69,698.80*
69,698.80	May 24 '26	40,000.00- -					May 24 '26	29,698.80*
29,698.80					May 26 '26	196.83	May 26 '26	29,895.63*
29,895.63	May 27 '26	115.50—					May 27 '26	29,780.13*
29,780.13	May 28 in				May 28 in	2.52	May 28 in	29,782.65*
29,782.65					May in	11.56	Jun 2 '26	29,794.21*
29,794.21	Jun 3 ex	22.03—					Jun 3 ex	29,772.18*
29,772.18	Jun 4 ex	10.00—	64.50—	22.50			Jun 4 ex	29,666.82*
	Jun 4 ex	8.36—					Jun 4 '26	26,166.82*
29,666.82	Jun 4 '26	3,500.00—					Jun 8 ex	26,138.82*
26,166.82	Jun 8 ex	28.00—			Jun 9 '26	2,460.65	Jun 9 ex	26,128.75*
26,138.82	Jun 9 ex	10.07--					Jun 9 '26	28,589.40*
26,128.75							Jun 9 '26	27,589.40*
28,589.40	Jun 9 '26	1,000.00--					Jun 10 ex	27,449.40*
27,589.40	Jun 10 ex	65.00—	75.00—		Jun 11 cc	22.38	Jun 11 ex	27,419.61*
27,449.40	Jun 11 ex	1.41—	28.38—				Jun 11 '26	27,447.99*
27,419.61							Jun 12 '26	22,447.99*
27,447.99	Jun 12 '26	5,000.00—					Jun 14 '26	10,447.99*
22,447.99	Jun 14 '26	12,000.00—					Jun 15 ex	10,439.63*
10,447.99	Jun 15 ex	8.36—			5 '26	4,000.00	5 '26	14,439.63*
10,439.63							Jun 17 ex	14,425.78*
14,439.63	Jun 17 ex	13.85—					Jun 17 '26	11,425.78*
14,425.70							Jun 18 ex	11,400.78*
.08	Jun 17 '26	3,000.00—					Jun 26 ex	7,810.78*
11,425.78	Jun 18 ex	25.00—					Jun 26 '26	7,660.78*
11,400.78	Jun 26 ex	3,590.00—			Jun 28 in	33.48	Jun 28 in	7,694.26*
7,810.78	Jun 26 '26	150.00—					Jun 29 ex	6,419.26*
7,660.78							July 2 '26	6,319.26*
7,694.26	Jun 29 ex	1,275.00—					Jul 16 ex	6,245.66*
6,419.26	Jul 2 '26	100.00—					Jul 17 ex	6,232.83*
6,319.26	Jul 16 ex	8.60—	65.00—				July 20 '26	6,182.83*
6,245.66	Jul 17 ex	12.83—					Jul 24 '26	6,082.83*
6,232.83	Jul 20 '26	50.00—					Jul 29 ex	6,009.83*
6,182.83	Jul 24 '26	100.00--			Jul 30 in	10.41	Jul 30 in	6,020.24*
6,082.83	Jul 29 ex	73.00—					Jul 31 ex	6,010.24*
6,009.83							Aug 3 ex	5,945.24*
6,020.24	Jul 31 ex	10.00—					Aug 4 '26	5,845.24*
6,010.24	Aug 3 ex	65.00—					Aug 5 ex	5,826.74*
5,945.24	Aug 4 '26	100.00—					Aug 11 ex	5,826.74*
5,845.24	Aug 5 ex	18.50—					Aug 11 ex	5,743.74*
5,826.74	Aug 11 ex	83.00--					Aug 12 ex	5 678.63*
5,743.74	Aug 12 ex	65.11—					Aug 13 ex	5,594.63*
5,694.63	Aug 13 ex	1,500.00—					Aug 13 '26	4,094.63*
4,094.63	Aug 14 '26	50.00—					Aug 14 '26	4,044.63*
4,044.63	Aug 17 '26	100.00--					Aug 17 '26	3,944.63*
3,944.63	Aug 19 ex	6.44—					Aug 19 ex	3,938.19*
3,938.19	Aug 20 ex	72.00—					Aug 20 ex	3,851.64*
3,851.64	Aug 20 '26	50.00—					Aug 20 '26	3,801.64*
3,801.64	Aug 21 '26	150.00—					Aug 21 '26	3,651.64*
3,651.64					Aug 27 in	8.06	Aug 27 in	3,659.70*

Exhibit C-3—5/2/29.

Old Balance	Date	Checks in Detail.	Date	Deposits	Date	New Balance
						2,204.79*

Exhibit C-3—5/2/29.

Old Balance	Date	Checks in Detail.		Date	Deposits	Date	New Balance
						Aug 28 '26	3,304.70*
3,659.70	Aug 28 '26	255.00—	100.00—			Sep 1 ex	3,231.70*
3,304.70	Sep 1 ex	73.00—				Sep 4 ex	3,158.70*
3,231.70	Sep 4 ex	73.00—				Sep 8 ex	3,107.89*
3,158.70	Sep 8 ex	42.50—	8.31—			Sep 9 ex	3,025.89*
3,107.89	Sep 9 ex	82.00—				Sep 11 ex	3,014.82*
3,025.89	Sep 11 ex	11.07—				Sep 11 '26	2,914.82*
3,014.82	Sep 11 '26	100.00—				Sep 17 ex	2,797.82*
2,914.82	Sep 17 ex	67.00—	50.00—				
2,797.82				Sep 20 '26	150.00	Sep 20 '26	2,947.82*
2,947.82	Sep 20 '26	100.00—				Sep 20 '26	2,847.82*
2,847.82	Sep 21 ex	6.04—				Sep 21 ex	2,841.78*
2,841.78	Sep 23 '26	75.00—				Sep 23 '26	2,766.78*
2,700.78	Sep 25 ex	2.35—				Sep 25 ex	2,764.43*
2,764.43				Sep 29 in	4.93	Sep 29 in	2,769.36*
2,769.36	Sep 30 '26	100.00—				Sep 30 '26	2,669.36*
2,669.36	Oct 2 ex	1,100.00—				Oct 2 ex	1,569.36od
1,569.36	Oct 2 '26	500.00—				Oct 2 '26	1,069.36*
1,069.36	Oct 4 '26	1,000.00—		Oct 4 ec	1,100.00	Oct 4 '26	1,669.36*
1,669.36	Oct 6 '26	500.00—		Oct 4 ec	500.00		
1,169.36						Oct 6 '26	1,169.36*
1,171.72	Oct 29 '26	50.00—		Oct 28 in	2.36	Oct 28 in	1,171.72*
1,121.72	Nov 6 ex	121.50—				Oct 29 '26	1,121.72*
1,000.22	Nov 10 '26	100.00—				Nov 6 ex	1,000.22*
900.22	Nov 13 ex	215.00—				Nov 10 '26	900.22*
685.22	Nov 15 '26	100.00—				Nov 13 ex	685.22*
585.22	Nov 23 ex	200.00—				Nov 15 '26	585.22*
385.22				Nov 23 '26	6.00	Nov 23 ex	385.22*
1,398.28	Nov ex	11.48—	16.59—	Nov 23 '26	1,007.06	Nov 23 '26	1,398.28*
1,370.21						Nov 24 ex	1,370.21*
1,585.21	Nov 30 '26	300.00—		Nov 30 '26	215.00	Nov 30 '26	1,585.21*
1,285.21	Dec 2 ex	32.76—		Nov 30 '26		Nov 30 '26	1,285.21*
1,252.45	Dec 3 '26	200.00—				Nov 30 '26	1,285.21
1,052.45	Dec 4 ex	4.85—				Dec 2 ex	1,252.45*
1,047.60	Dec 13 ex	14.83—				Dec 3 '26	1,052.45*
1,032.77	Dec 13 '26	49.60—				Dec 4 ex	1,047.60*
983.17	Dec 15 ex	12.84—				Dec 13 ex	1,032.77*
970.33	Dec 17 '26	100.00—				Dec 13 '26	983.17*
870.33	Dec 30 '26	300.00—		Dec 15 ex		Dec 15 ex	970.33*
570.33	Jan 14 ex	10.50—				Dec 17 '26	870.33*
559.83	Jan 15 ex	132.00—	109.69—			Dec 30 '26	570.33*
318.14	Jan 20 ex	13.92—				Jan 14 ex	559.83*
304.22						Jan 15 ex	318.14*
1,304.22	Jan 20 '27	600.00—				Jan 20 ex	304.22*
704.22	Feb 7 ex	31.25—		Jan 21 '27	1,000.00	Jan 21 '27	1,304.22*
672.97	Feb 16 ex	200.00—				Jan 20 '27	704.22*
472.97	Feb 21 ex	26.00—				Feb 7 ex	672.97*
446.97	Feb 23 ex	300.00—				Feb 16 ex	472.97*
146.97	Feb 28 ex	25.00—				Feb 21 ex	446.97*
121.97	Mar 7 ex	75.00—				Feb 23 ex	146.97*
46.97						Feb 28 ex	121.97*
						Mar 7 ex	46.97*
196.97	Mar 11 ex	6.00—		Mar 7 ex	150.00	Mar 7 ex	196.97*
190.97	Mar 12 ex	51.40—				Mar 11 ex	190.97*
139.57	Mar 14 ex	50.00—				Mar 12 ex	139.57*
89.57	Mar 18 ex	30.00—				Mar 14 ex	89.57*
59.57						Mar 18 ex	59.57*
209.57	Mar 23 '27	150.00—		Mar 23 '27	150.00	Mar 23 '27	209.57*

Exhibit C-3—5/2/29.

Old Balance	Date	Checks in Detail.	Date	Deposits	Date	New Balance
59.57					Mar 23 '27	59.57*
459.57	Apr 13 '27	400.00—	Apr 12 '27	400.00	Apr 12 '27	459.57*
59.57	Apr 22 '27	5.00—			Apr 13 '27	59.57*
54.57	May 24 ex	21.69—			Apr 22 '27	54.57*
32.88	May 28 ex	14.93—			May 24 ex	32.88*
17.95					May 28 ex	17.95*
28.04			Jun 6 '27	10.09	Jun 6 '27	28.04*
228.04	Jul 13 ex	80.00—	Jul 6 '27	200.00	Jul 6 '27	228.04*
148.04	Jul 23 ex	100.00—			Jul 13 ex	148.04*
48.04	Jul 25 ex	10.00—			Jul 23 ex	48.04*
30.04					Jul 25 ex	38.04*
38.05					Jul 29 '27	30.04*
38.04					Jul 29 '27	38.05*
138.04	Aug 4 '27	50.00—	Jul 29 '27	100.00	Jul 29 '27	138.04*
88.04	Aug 9 ex	35.00—			Aug 4 '27	88.04*
53.04	Jan 23 '28	40.00—			Aug 9 ex	53.04*
13.04					Jan 23 '28	13.04*
565.24	Jan 30 '28	550.00—			Jan 27 '28	565.24*
15.24	Jan 30 mo	1.00—	Jan 27 '28	552.20	Jan 30 '28	15.24*
14.24	Feb 25 ex	14.24—			Jan 30 '29	14.24*
			Jan 30 '29		Feb 25 ex	00*

Exhibit C-4a—5/2/29.

Bender Construction Co.

Old Balance	Date	Checks in Detail	Date	Deposits

Exhibit C-4a—5/2/29.

Bender Construction Co.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
		Balance Brought Forward						
2,819.50	Aug 14 '26	35.00—			Aug 13 '26	2,819.50	Aug 13 '26	2,819.50*
2,784.50	Aug 19 ex	12.96—					Aug 14 '26	2,784.50*
2,771.54	Aug 21 '26	35.00—					Aug 19 ex	2,771.54*
2736.54	Aug 28 '26	35.00—					Aug 21 '26	2,736.54*
2,701.54	Aug 30 ex	700.00—					Aug 28 '26	2.701.54*
2,001.54	Sep 1 ex	150.00—	50.00—				Aug 30 ex	2,001.54*
1,801.54	Sep 4 '26	35.00—	500.00—				Sep 1 ex	1,801.54*
1,266.54	Sep 7 ex	16.00—					Sep 4 '26	1,266.54*
1,250.54							Sep 7 ex	1,250.54*
2,584.14	Sep 11 '26	35.00—	23.66—		Sep 11 '26	1,333.60	Sep 11 '26	2,584.14*
							Sep 11 '26	2,525.48*
2,525.48	Sep 13 ex	15.24—	828.52—	481.41—			Sep 13 ex	1,200.31*
1,200.31	Sep 14 ex	4.00—					Sep 14 ex	1,196.31*
1,196.31	Sep 14 '26	78.60—					Sep 14 '26	1,117.71*
1,117.71	Sep 17 ex	88.13—	7.10—				Sep 17 ex	1,022.48*
1,022.48	Sep 18 '26	50.00—					Sep 18 '26	972.48*
972.48	Sep 20 ex	150.00—					Sep 20 ex	822.48*
822.48	Sep 23 ex	3.25—					Sep 23 ex	819.23*
819.23	Sep 24 ex	500.00—	83.00—				Sep 24 ex	236.23*
236.23					Sep 24 '26	1,000.00	Sep 24 '26	1,236.23*
1,236.23	Sep 24 '26	50.00—	500.00—				Sep 24 '26	686.23*
686.23	Sep 25 '26	188.00—					Sep 25 '26	498.23*
498.23	Sep 27 ex	75.00—					Sep 27 ex	423.23*
423.23					Sep 27 '26	78.60	Sep 27 '26	501.83*
501.83	Sep 29 ex	150.00—					Sep 29 '26	351.83*
351.83	Sep 29 '26	50.00—					Sep 29 '26	301.83*
301.83	Oct 1 ex	150.00—					Oct 1 ex	151.83*
151.83	Oct 2 '26	50.00—					Oct 2 '26	101.83*
101.83	Oct 4 ex	8.00—					Oct 4 ex	93.83*
93.83	Oct 5 ex	40.50—					Oct 5 ex	53.33*
53.33					Oct 5 '26	150.00	Oct 5 '26	203.33*
203.33	Oct 6 ex	21.00—					Oct 6 ex	182.33*
182.33	Oct 7 ex	100.00—					Oct 7 ex	82.33*
82.33					Oct 7 '26	2,000.00	Oct 7 '26	2,082.33*
2,082.33	Oct 7 '26	50.00—					Oct 7 '26	2,032.33*
2,032.33					Oct 7 ec	100.00	Oct 7 '26	2,132.33*
2,132.33	Oct 8 ex	50.00—					Oct 8 ex	2,082.33*
2,082.33	Oct 9 ex	225.00—					Oct 8 '26	1,857.33*
1,857.33	Oct 9 ex	169.94—					Oct 9 ex	1,687.39*
1,687.39	Oct 11 ex	2.00—	500.00—				Oct 11 ex	1,185.39*
1,185.39	Oct 13 ex	2.00—					Oct 13 ex	1,183.39*
1,183.39	Oct 14 ex	74.82—					Oct 14 ex	1,108.57*
1,108.57	Oct 14 '26	250.00—					Oct 14 '26	858.57*
858.57	Oct 15 ex	10.80—					Oct 15 ex	847.77*
847.77	Oct 15 '26	50.00—					Oct 15 '26	797.77*
797.77s	Oct 20 ex	200.00—					Oct 20 ex	797.77*
97.77	Oct 20 ex	500.00—					Oct 20 ex	97.77*
292.77	Oct 22 '26	200.00—			Oct 22 '26	195.00	Oct 22 '26	292.77*
92.77	Oct 29 '26	37.00—					Oct 22 '26	92.77*
55.77	Oct 30 ex	5.60—					Oct 29 '26	55.77*
50.17					Oct 30 ex		Oct 30 ex	50.17*
5,050.17	Nov 6 ex	150.00—	68.68—		Nov 4 '26	5,000.00	Nov 4 '26	5,050.17*
4,831.49	Nov 6 '26	25.00—					Nov 6 ex	4,831.49*
,806.49	Nov 8 ex	456.65—					Nov 6 '26	4,806.49*
,349.84	Nov 9 ex	500.00—	15.00	200.00—			Nov 8 ex	4,349.84*
634.84	Nov 9 '26	730.00—					Nov 9 ex	3,634.84*

Exhibit C-4A—5/2/29.

Exhibit C-4A—5/2/29.

Old Balance	Date	Checks in Detail.			Date	Deposits	Date	New Balance
							Nov 9 '26	2,904.84*
2,904.84	Nov 10 ex	8.60—	512.90—				Nov 10 ex	2,383.34*
2,383.34	Nov 12 ex	43.52—					Nov 12 ex	2,339.82*
2,339.82	Nov 12 '26	900.00—					Nov 12 '26	1,439.82*
1,439.82	Nov 15 '26	500.00—					Nov 12 '26	1,439.82*
939.82	Nov 16 ex	100.00—			Nov 12 '26		Nov 15 '26	939.82*
839.82	Nov 18 '26	25.00—					Nov 16 ex	839.82*
814.82	Nov 22 ex	4.20—					Nov 18 '26	814.82*
810.62	Nov 26 ex	9.00—	9.05—				Nov 22 ex	810.62*
792.57	Nov 29 ex	225.00—	2.80—				Nov 26 ex	792.57*
564.77	Nov 29 '26	50.00—					Nov 29 ex	564.77*
514.77	Nov 30 '26	20.00—					Nov 29 '26	514.77*
494.77	Dec 4 ex	90.00—					Nov 30 '26	494.77*
404.77	Dec 4 '26	100.00—					Dec 4 ex	404.77*
304.77					Dec 4 ex		Dec 4 '26	304.77*
804.77	Dec 14 ex	450.00—					Dec 13 '26	804.77*
354.77	Dec 17 ex	10.00—			Dec 13 '26	500.00	Dec 14 ex	354.77*
344.77	Dec 18 ex	25.00—					Dec 17 ex	344.77*
319.77	Dec 18 '26	195.00—					Dec 18 ex	319.77*
124.77	Dec 24 ex	19.42—					Dec 18 '26	124.77*
105.35							Dec 24 ex	105.35*
605.35	Jan 12 ex	50.00—	260.00—				Jan 11 '27	605.35*
295.35	Jan 29 ex	85.00—			Jan 11 '27	500.00	Jan 12 ex	295.35*
210.35	Feb 25 ex	36.00—					Jan 29 ex	210.35*
174.35	Mar 8 ex	49.23—					Feb 25 ex	174.35*
125.12	Mar 31 ex	8.00—					Mar 8 ex	125.12*
117.12	Apr 18 ex	6.40—					Mar 31 ex	117.12*
110.72	Apr 23 '27						Apr 18 ex	110.72*
185.72	Apr 26 ex	.80—					Apr 23 '27	185.72*
184.92	May 2 ex	5.44—	17.60—		Apr 23 '27	75.00	Apr 26 ex	184.92*
161.88	May 7 ex	6.30—	.60—				May 2 ex	161.88*
154.98	May 10 ex	25.00—					May 7 ex	154.98*
129.98							May 10 ex	129.98*
529.98	May 20 ex	29.65—					May 16 '27	529.98*
500.33	May 20 '27	14.00—			May 16 '27	400.00	May 20 ex	500.33*
							May 20 '27	486.33*
486.33	May 21 ex	14.18—					May 21 ex	472.15*
472.15	May 24 ex						May 24 ex	1,575.96*
1,575.96	May 25 ex	2.00—			May 24 ex	1,103.81	May 25 ex	1,573.96*
1,573.96	May 26 ex	11.50—	138.56—	1,013.81—			May 26 ex	410.09*
410.09							May 26 '27	710.09*
710.09	May 27 '27	609.00—			May 26 '27	300.00	May 27 '27	101.09*
101.09							May 27 '27	583.09*
583.09	May 27 '27	300.00—			May 27 '27	482.00	May 27 '27	283.09*
283.09	Jun 3 '27	75.00—					Jun 3 '27	708.09*
708.09	Jun 3 '27				Jun 3 '27	500.00	Jun 3 '27	6,770.57*
6,770.57	Jun 6 '27	1,393.16—	1,042.50—	2,080.67—	Jun 3 '27	6,062.48	Jun 6 '27	1,227.50*
	Jun 6 '27	512.16—	514.58—				Jun 7 ex	1 161.00*
1,227.50	Jun 7 ex	66.50—					Jun 8 ex	1,101.20*
1,161.00	June 8 ex	39.80—	20.00—				Jun 13 ex	1,026.20*
1,101.20	Jun 13 ex	75.00—					Jun 14 ex	1,006.20*
1,026.20	Jun 14 ex	20.00—					Jun 14 ex	395.70*
1,006.20	Jun 14 '27	610.50—					Jun 17 '27	470.70*
395.70					Jun 17 '27	75.00	Jun 18 ex	371.70*
470.70	Jun 18 ex	99.00—					Jun 23 '27	961.70*
371.70					Jun 23 '27	590.00	Jun 25 '27	861.70*
961.70	Jun 25 '27	100.00—					Jun 25 '27	831.70*
861.70	Jun 25 '27	30.00—	800.00—		Jun 25 ec	800.00		

Exhibit C-4A—5/2/29.

Exhibit C-4A—5/2/29.

Old Balance	Date	Checks in Detail.		Date	Deposits	Date	New Balance
						Jun 27 ex	795.70*
						Jun 29 '27	720.70*
						Jul 2 ex	709.76*
						Jul 5 '27	674.76*
				Jul 6 '27	168.48	Jul 6 '27	843.24*
						Jul 11 ex	835.24*
				Jul 11 '27	221.00	Jul 11 '27	1,056.24*
831.70	Jun 27 ex	36.00—				Jul 11 '27	1,036.24*
795.70	Jun 29 '27	75.00—				Jul 12 ex	1,026.24*
720.70	Jul 2 ex	10.94—				Jul 13 ex	1,025.64*
774.76	Jul 5 '27	35.00—				Jul 18 '27	1,000.64*
843.24	Jul 11 ex	8.00—				Jul 27 '27	970.64*
835.24						Jul 29 ex	930.64*
1,036.24	Jul 11 '27	20.00—				Aug 3 '27	905.64*
1,035.24	Jul 12 ex	10.00—				Aug 7 ex	903.61*
1,026.24	Jul 13 ex	.60—				Aug 9 ex	896.39*
1,025.64	Jul 18 '27	25.00—				Aug 9 '27	871.39*
1,000.64	Jul 27 '27	30.00—				Aug 13 ex	739.39*
970.64	Jul 29 ex	40.00—				Aug 18 '27	736.39*
930.64	Aug 3 '27	25.00—				Aug 27 ex	735.39*
905.64	Aug 7 ex	2.03—		Sep 13 ex	187.00	Sep 13 ex	922.39*
903.61	Aug 9 ex	7.22—				Sep 16 ex	918.59*
896.39	Aug 9 '27	25.00—				Sep 16 '27	908.09*
871.39	Aug 13 ex	132.00—				Sep 26 ex	871.09*
739.39	Aug 18 '27	3.00—		Sep 26 ec	55.00	Sep 26 ex	906.09*
736.39	Aug 27 ex	1.00—		Sep 30 '27	27.00	Sep 30 '27	933.09*
735.39						Nov 10 ex	896.64*
922.39	Sep 16 ex	3.80—		Nov 10 '27	116.00	Nov 10 '27	1,012.64*
				Nov 28 '27	100.00	Nov 28 '27	1,112.64*
918.59	Sep 16 '27	10.50—		Nov 29 '27	18.00	Nov 29 '27	1,130.65*
908.09	Sep 26 ex	2.00—	35.00—			Nov 30 ex	116.83*
871.09				Dec 1 ex	150.00	Dec 1 ex	266.83*
906.09	Nov 10 ex	36.45—				Dec 2 ex	266.63*
933.09						Dec 2 ex	167.83*
896.64						Dec 15 '27	160.33*
1,012.64						Dec 17 '27	85.33*
1,112.64				Dec 23 '27	114.00	Dec 23 '27	199.33*
1,130.64	Nov 30 ex	1,013.81—		Jan 9 '28	173.89	Jan 9 '28	373.22*
116,83						Jan 14 ex	241.22*
266.63						Jan 17 '28	231.22*
266.83	Dec 2 ex	99.00—		Feb 8 '28	1,003.35	Feb 8 '28	1,234.57*
167.83	Dec 15 '27	7.50—				Feb 10 ex	226.82*
160.33	Dec 17 '27	75.00—		Feb 11 '28	170.00	Feb 11 '28	396.82*
85.33						Mar 16 ex	387.82*
199.33				Mar 16 ec	9.00	Mar 16 '28	396.82*
373.22	Jan 14 ex	132.00—				Mar 16 '28	387.82*
241.22	Jan 17 '28	10.00—		Apr 10 '28	175.00	Apr 10 '28	562.82*
234.22	Feb 10 ex	1,003.35—	4.40—			Apr 10 '28	312.82*
1,234.57				May 16 ex		May 16 ex	311.82*
226.82				May 29 ex		May 29 ex	187.82*
396.82	Mar 16 ex	9.00—		Jun 7 ex	177.00	Jun 7 ex	364.82*
387.82						Jun 14 ex	289.82*
562.82	Apr 10 '28	250.00—				Jun 14 ex	283.32*
312.82	May 16 ex	1.00—		27 '28	20.70	27 '28	304.02*
311.82	May 29 ex	25.00—	99.00—	Jul 7 '28	162.00	Jul 7 '28	466.02*
187.82				Jul 11 '28	183.00	Jul 11 '28	649.02*
364.82	Jun 14 ex	75.00—		Jul 14 ex		Jul 14 ex	517.02*
289.82	Jun 14 ex	6.50—		Jul 20 ex		Jul 20 ex	509.58*
283.32							
304.02							
466.02							
649.02	Jul 14 ex	132.00—					
517.02	Jul 20 ex	7.44—					
509.58	Sep 7 '28	300.00—					

Exhibit C-4A—5/2/29.

Exhibit C-4A—5/2/29.

Old Balance	Date	Checks in Detail.			Date	Deposits	Date	New Balance
							Sep 7 '28	209.58*
209.58	Sep 8 '28	15.00—					Sep 8 ex	194.58*
194.58					Sep 8 ex		Sep 10 '28	683.58*
683.58	Sep 10 '28	30.00—			Sep 10 '28	489.00	Sep 10 '28	653.58*
653.58	Sep 12 ex	51.40—			Sep 10 '28		Sep 12 ex	602.18*
602.18	Sep 14 ex	10.00—					Sep 14 ex	592.18*
592.18	Sep 29 ex	5.00—			Sep 14 ex		Sep 29 ex	587.18*
587.18	Oct 2 ex	41.00—	52.00—		Sep 29 ex		Oct 2 ex	494.18*
494.18	Oct 4 ex	50.00—	21.00—	66.00—			Oct 4 ex	357.18*
357.18	Oct 5 ex	22.50—					Oct 5 ex	334.68*
334.68	Oct 6 ex	18.13—	11.94—		Oct 5 ex		Oct 3 6 ex	304.61*
304.61					Oct 6 ex	1 da	Oct 6 '28	704.61*
704.61	Oct 6 cc	85.00—					Oct 6 '28	619.61*
619.61	Oct 8 ex	100.00—			Oct 6 '28	400.00	Oct 8 ex	505.11*
505.11	Oct 9 ex	22.00—	8.00—	6.50—			Oct 9 ex	483.11*
483.11	Oct 15 ex	110.00—					Oct 15 ex	329.11*
329.11	Oct 16 ex	18.09—	10.00—	34.00—			Oct 16 ex	311.02*
311.02	Oct 17 ex	25.00—					Oct 17 ex	286.02*
286.02					Oct 17 ex		Oct 17 '28	686.02*
686.02	Oct 17 '28	150.00—			Oct 17 '28	400.00	Oct 17 '28	536.02*
536.02	Oct 18 ex	1.02—			Oct 17 '28		Oct 18 ex	165.00*
536.02	Oct 20 ex	300.00—	700.00—		Oct 18 ex	1.02	Oct 18 ex	536.02*
231.02	Oct 22 ex	190.00—	5.00—		Oct 18 ex	700.00	Oct 20 ex	231.02*
116.02	Oct 22 ex	115.00—					Oct 22 ex	116.02*
26.02							Oct 24 ex	26.02*
160.02	25 '28	7.00—			Oct 24 ex		Oct 24 '28	160.02*
153.02	Oct 29 ex	115.00—			Oct 24 '28	134.00	25 '28	153.02*
38.02	Nov 1 '28	7.00—			25 '28		Oct 29 ex	38.02*
131.02	Nov 2 ex	1.44—	5.40—		Oct 29 ex		Nov 1 '28	131.02*
124.18	Nov 5 ex	4.51—			Nov 1 '28	100.00	Nov 2 ex	124.18*
119.67	Nov 8 ex	15.00—	5.95—	21.25—			Nov 5 ex	119.67*
104.67	Nov 13 ex	10.00—					Nov 8 ex	104.67*
67.47	Nov 23 ex	20.00—					Nov 13 ex	67.47*
47.47	Nov 27 ex	2.00—			Nov 13 ex		Nov 23 ex	47.47*
45.47					Nov 23 ex		Nov 27 ex	45.47*
225.47					Nov 27 ex		Nov 27 '28	225.47*
282.47	Dec 5 ex	99.00—			Nov 27 '28	180.00	Dec 4 '28	282.47*
183.47					Dec 4 '28	57.00	Dec 5 ex	183.47*
208.47	Dec 11 '28	10.00—			Dec 5 ex		Dec 10 '26	208.47*
198.47	Dec 19 ex	75.00—			Dec 10 '28	25.00	Dec 11 '28	198.47*
123.47	Dec 22 ex	16.50—					Dec 19 ex	123.47*
106.97					Dec 19 ex		Dec 22 ex	106.97*
406.97	Dec 31 ex	300.00—			Dec 22 ex		Dec 27 '28	406.97*
406.97	Jan 2 ex	300.00—			Dec 27 '28	300.00	Dec 31 ex	406.97*
106.97					Dec 31 ex	500.00	Jan 2 ex	106.97*
268.97	Jan 9 ex	5.00—					Jan 7 '29	268.97*
263.97	Jan 12 ex	132.00—			Jan 7 '29	162.00	Jan 9 ex	263.97*
131.97	Feb 7 ex	4.38—					Jan 12 ex	131.97*
127.59							Feb 7 ex	127.59*
147.59					Feb 7 ex		Feb 8 '29	147.59*
354.61	Apr 18 ex	14.05—			Feb 8 '29	20.00	Apr 16 '29	354.61*
340.56	Apr 24 ex	5.00—			Apr 16 '29	207.02	Apr 18 ex	340.56*
					Apr 18 ex		Apr 24 ex	335.56*
					Apr 24 ex			

Exhibit C-4b—5/2/29.

Harry Bender

Exhibit C-4b—5/2/29.

Harry Bender

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
			Balance Brought Forward					
3,845.00	Jun 7 ex	1,339.68—	366.15—	99.00—	Jun 4 '26	3,845.00	Jun 4 '26	3,845.00*
2,040.17	Jun 7 '26	75.00—					Jun 7 ex	2,040.17*
1,965.17							Jun 7 '26	1,965.17*
2,665.17	Jun 9 cc	562.50—	2,000.00—		Jun 9 '26	700.00	Jun 9 '26	2,665.17*
102.67							Jun 9 '26	102.67*
1,102.67	Jun 21 ex	84.07—			Jun 17 ex	1,000.00	Jun 17 ex	1,102.67*
1,018.60					Jun 21 ex	81.70	Jun 21 ex	1,0100.30*
1,100.30	Jul 3 ex	135.00—					Jul 3 ex	965.30*
965.30					Jul 7 '26	3,806.27	Jul 7 '26	4,771.57*
4,771.57	Jul 10 ex	132.00—					Jul 10 ex	4,639.57*
4,639.57	Jul 15 '26	28.00—					Jul 15 '26	4,611.57*
4,611.57	Jul 16 ex	20.00—					Jul 16 ex	4,591.57*
4,591.57	Jul 17 '26	3,600.00—					Jul 17 '26	991.57*
991.57					Jul 22 '26	45.00	Jul 22 '26	1,036.57*
1,036.57	Jul 24 ex	4.28—	100.00—				Jul 24 ex	932.29*
972.29					Jul 27 '26	620.00	Jul 27 '26	1,552.29*
1,552.29					28 '26	43.15	28 '26	1,595.44*
1,595.40					Aug 5 '26	125.00	Aug 5 '26	1,720.44*
1,720.40	Aug 5 '26	15.00—					Aug 5 '26	1,705.44*
1,705.44	Aug 29 ex	24.50—					Aug 29 ex	1,680.94*
1,680.94	Aug 13 '26	1,319.50—					Aug 13 '26	361.44*
361.44	Aug 14 ex	42.00—					Aug 14 ex	319.44*
319.44	Aug 18 ex	13.50—					Aug 18 ex	305.94*
305.94	Aug 19 ex	13.85—					Aug 19 ex	292.09*
292.09	Aug 23 '26	53.62—					Aug 23 '26	238.47*
238.47	Sep 4 ex	10.00—	185.00—				Sep 4 ex	43.47*
43.47					Sep 4 '26	125.00	Sep 4 '26	168.47*
168.47	Sep 8 ex	5.00—					Sep 8 ex	163.47*
163.47	Sep 11 ex	38.52—					Sep 11 ex	124.95*
624.95	Oct 4 ex	100.00—			Oct 2 '26	500.00	Oct 2 '26	624.95*
124.95							Oct 4 ex	524.95*
524.95	Oct 4 '26	500.00—					Oct 4 '26	24.95*
24.95					Oct 5 '26	125.00	Oct 7 '26	649.95*
149.95					Oct 7 '26	500.00	Oct 7 '26	549.95*
649.95	Oct 8 ex	50.00—					Oct 8 ex	599.95*
599.95	Oct 11 ex	100.00—					Oct 11 ex	499.95*
499.95	Oct 15 ex	10.76—					Oct 15 ex	489.19*
489.19	Oct 16 ex	11.66—	200.00—				Oct 16 ex	277.53*
277.53	Oct 19 ex	4.00—					Oct 19 ex	273.53*
273.53	Oct 19 '26	100.00—			Oct 23 ex		Oct 19 '26	173.53*
173.53	Oct 23 ex	150.00—			Oct 23 '26	228.34	Oct 23 ex	23.53*
23.53					Oct 28 '26	250.00	Oct 23 '26	251.87*
251.87							Oct 28 '26	501.87*
108.87	Oct 30 ex	47.00—					Oct 28 '26	61.82*
14.82							Nov 30 '26	602.32*
204.82								
264.82	Nov 24 ex	12.50—			Nov 4 '26	190.00	Nov 4 '26	204.82s
252.32	Nov 26 ex	99.00—			Nov 20 '26	60.00	Nov 20 '26	264.82*
153.32	Nov 29 ex	115.50—					Nov 24 ex	252.32*
37.82							Nov 26 ex	153.32*
602.32	Dec 2 ex	398.58—					Nov 29 ex	37.82*
203.74	Dec 4 ex	64.50—			Nov 30 '26	564.50	Nov 30 '28	602.32*
139.24							Dec 2 ex	203.74*
264.24							Dec 4 ex	139.24*
493.24	Dec 21 ex	135.00—			Dec 7 '26	125.00	Dec 7 '26	264.24*
334.24								

Exhibit C-4B—5/2/29.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
358.24	Dec 24 ex	4.00—			Dec 13 '26	90.00	Dec 13 '26	354.24*
354.24	Dec 30 '26	75.00—			Dec 18 '26	139.00	Dec 18 '26	493.24*
279.24							Dec 21 ex	358.24*
579.24	Jan 3 ex	196.00—					Dec 24 ex	354.24*
383.24							Dec 30 '26	279.24*
508.24					Dec 30 '26	300.00	Dec 30 '26	579.24*
658.24	Jan 12 ex	86.64—					Jan 3 ex	383.24*
571.60	Jan 18 ex	520.00—	2.35—		Jan 4 '27	125.00	Jan 4 '27	508.24*
49.25	Jan 19 ex	13.50—			Jan 10 '27	150.00	Jan 10 '27	658.24*
35.75							Jan 12 ex	571.60*
335.75	Jan 24 ex	84.00—					Jan 18 ex	49.25*
251.75	Jan 25 ex	23.00—					Jan 19 ex	35.75*
228.75	Jan 25 '27	25.00—			Jan 21 '27	300.00	Jan 21 '27	335.75*
203.75	Jan 29 '27	25.00—					Jan 24 ex	251.75*
783.75	Jan 31 ex	7.00—					Jan 25 ex	228.75*
776.75	Feb 4 '27	30.00—					Jan 25 '27	203.75*
774.75	Feb 4 ex	125.00—			Jan 29 '27	605.00	Jan 29 '27	783.75*
716.55	Feb 15 '27	30.00—					Jan 31 ex	776.75*
686.55	Feb 18 '27	30.00—					Feb 4 '27	746.75*
656.55	Feb 23 ex	9.00—			Feb 5 '27	125.00	Feb 5 '27	746.75*
647.55	Feb 25 ex	3.00—					Feb 14 ex	716.55*
644.55	Feb 25 '27	30.00—					Feb 15 '27	686.55*
614.55	Feb 25 '27	100.00—					Feb 18 '27	656.55*
514.55							Feb 23 ex	647.55*
639.55	Mar 4 '27	30.00—					Feb 25 ex	644.55*
609.55	Mar 7 ex	150.00—					Feb 25 '27	614.55*
459.55	Mar 9 ex	84.00—					Feb 25 '27	514.55*
375.55	Mar 10 ex	19.65—	27.90	8.80—	Mar 2 '27	125.00	Mar 2 '27	639.55*
319.20	Mar 12 '27	25.00—					Mar 4 '27	609.55*
294.20	Mar 15 ex	8.76—					Mar 7 ex	459.55*
285.44	Mar 23 '27	250.00—					Mar 9 ex	375.55*
35.44	Apr 4 ex	6.00—					Mar 10 ex	319.20*
29.44							Mar 12 '27	294.20*
154.44							Mar 15 ex	285.44*
6,854.44	Apr 13 ex	6.44—	50.00—	10.50—	Mar 23 '27		Mar 23 '27	35.44*
6,787.50	Apr 21 ex	10.78—	5.00—				Apr 4 ex	29.44*
6.771.72	Apr 21 '27	200.00—			Apr 6 '27	125.00	Apr 6 '27	154.44*
6.571.72	Apr 23 '27	2,000.00—			Apr 11 '27	670.00	Apr 11 '27	6,854.44*
4,571.72							Apr 13 ex	6,787.50*
4,896.72	Apr 28 '27	2,000.00—					Apr 21 ex	6,771.72*
2,896.72	Apr 29 '27	25.00—					Apr 21 '27	6,571.72*
2,871.72	May 2 ex	4.50—					Apr 23 '27	4,571.72*
2,867.22	May 4 '27	2,000.00—			Apr 26 '27	325.00	Apr 26 '27	4,896.72*
867.22	May 7 ex	10.95—					Apr 28 '27	2,896.72*
856.27	May 7 '27	25.00—					Apr 29 '27	2,871.72*
831.27	May 13 ex	125.00—					May 2 ex	2,867.22*
706.27	May 3 '27	25.00—					May 4 '27	867.22*
681.27	May 16 ex	9.94—					May 7 ex	856.27*
671.33	May 24 ex	25.00—					May 7 '27	831.27*
646.33	May 25 ex	125.00—					May 13 ex	706.27*
521.33	May 26 ex	7.00—	1.00—				May 3 '27	681.27*
513.33	May 31 ex	70.09—					May 16 ex	671.33*
443.24	May 31 '27	25.00—					May 24 ex	646.33*
418.24	Jun 4 ex	25.00—					May 25 ex	521.33*
393.24	Jun 6 ex	182.52—	129.20—				May 26 ex	513.33*
81.52							May 31 ex	443.24*
151.61	Jun 8 ex	10.40—					May 31 '27	418.24*

Exhibit C-4B—5/2/29.

Old Balance	Date	Checks in Detail	Date	Deposits	Date	New Balance

Exhibit C-4B—5/2/29.

Old Balance	Date	Checks in Detail			Date	Deposits	Date	New Balance
141.21	Jun 29 ex	125.00—					Jun 4 ex	393.24*
366.21							Jun 6 ex	81.52*
241.21	Jun 21 ex	10.92—			Jun 6 '27	70.09	Jun 6 '27	151.61*
230.29	Jun 22 ex	135.00—					Jun 8 ex	141.21*
95.29	Jun 28 ex	4.00—			Jun 17 '27	225.00	Jun 17 '27	366.21*
91.29							Jun 20 ex	241.21*
126.29	Jul 9 ex	13.50—					Jun 21 ex	230.29*
112.79	Jul 11 ex	12.69—					Jun 22 ex	95.29*
100.10							Jun 28 ex	91.29*
250.10	Jul 25 ex	115.00—			Jul 6 '27	35.00	Jul 6 '27	126.29*
135.10	Jul 26 ex	9.56—					Jul 9 ex	112.79*
125.54	Aug 3 '27	25.00—					Jul 11 ex	100.10*
100.54					Jul 22 '27	150.00	Jul 22 '27	250.10*
125.54	Aug 7 ex	11.35—					Jul 25 ex	135.10*
114.19							Jul 26 ex	125.54*
314.19	Aug 10 ex	250.00—					Aug 3 '27	100.54*
64.19	Aug 12 ex	7.00—			Aug 3 ec	25.00	Aug 3 '27	125.54*
57.19							Aug 7 ex	114.19*
647.19	Aug 17 '27	49.60—			Aug 9 '27	200.00	Aug 9 '27	314.19*
597.59							Aug 10 ex	64.19*
892.59	Sep 16 ex	125.00—	11.00—	11.58—			Aug 12 ex	57.19*
745.01	Sep 19 ex	4.00—			Aug 14 '27	590.00	Aug 14 '27	647.19*
741.01	Sep 27 ex	42.40—					Aug 17 '27	597.59*
698.61	Oct 13 ex	46.26—	125.00—		Sep 13 ex	295.00	Sep 13 ex	892.59*
527.35	Oct 14 ex	11.05—	12.26—				Sep 16 ex	745.01*
504.04	Nov 1 ex	15.63—					Sep 19 ex	741.01*
488.41	Nov 7 ex	125.00—					Sep 27 ex	698.61*
							Oct 13 ex	527.35*
363.41	Nov 10 ex	32.25—					Oct 14 ex	504.04*
331.16	Nov 12 ex	13.08—					Nov 1 ex	488.41*
318.08	Nov 15	134.65—	18.21—				Nov 7 ex	363.41*
165.22	Nov 21 ex	13.05—					Nov 10 ex	331.16*
152.17							Nov 12 ex	318.08*
183.17							No 15	165.22*
							Nov 21 ex	152.17*
1,983.17	Nov 25 ex	31.00—			Nov 22 '27	31.00	Nov 22 '27	183.17*
1,952.17					Nov 23 '27	1,800.00	Nov 23 '27	1,983.17*
2,052.17	Nov 28 ec	100.00—	100.00—		Nov 25 ex		Nov 25 ex	1,952.17*
1,852.17	Nov 29 '27	100.00—			Nov 28 '27	100.00	Nov 28 '27	2,052.17*
1,822.26	Nov 29 '27	1,400.00—					Nov 28 '27	1,852.17*
422.20					Nov 29 '27	70.09	Nov 29 '27	1,822.26*
422.26	Nov 29 '27	1,450.00—					Nov 29 '27	422.26*
372.26	Nov 30 ex	35.87—					Nov 29 '27	422.20*
					Nov 29 ec	1,400.00	Nov 29 '27	372.26*
336.39	Dec 1 ex	150.00—					Nov 30 ex	336.39*
186.39	Dec 2 ex	70.09—					Dec 1 ex	186.39*
116.30	Dec 8 ex	11.99—					Dec 2 ex	116.30*
104.31							Dec 8 ex	104.31*
904.31	Dec 14 ex	4.00—			Dec 13 '28	800.00	Dec 13 '28	904.31*
900.31	Dec 15 ex	7.50—	12.60—				Dec 14 ex	900.31*
880.21							Dec 15 ex	880.21*
					Dec 15 ec	7.50	Dec 15 '27	887.71*
887.71	Dec 16 ex	324.20—					Dec 16 ex	563.51*
					Dec 16 '27	91.67	Dec 16 '27	655.18*
563.51							Dec 17 ex	530.18*
655.18	Dec 17 ex	125.00—					Dec 17 ex	455.18*
530.18	Dec 17 ex	75.00—			Dec 17 ec	75.00	Dec 17 '27	530.18*

Exhibit C-4B—5/2/29.

Old Balance	Date	Checks in Detail	Date	Deposits	Date	New Balance

Exhibit C-4B—5/2/29.

Old Balance	Date		Checks in Detail	Date	Deposits	Date	New Balance
455.18							
530.18				Dec 19 '27	142.50	Dec 19 '27	672.68*
672.68	Dec 20 '27	65.00—				Dec 20 '27	607.68*
607.68	Dec 22 ex	121.50—				Dec 22 ex	486.18*
486.18	Dec 23 ex	135.00—				Dec 23 ex	351.18*
351.18	Dec 23 '27	60.00—				Dec 23 '27	291.18*
291.18	Dec 30 '27	60.00—		Dec 30 '27		Dec 30 '27	231.18*
231.18	Jan 3 ex	1.00—				Jan 3 ex	230.18*
230.18	Jan 4 ex	7.50—				Jan 4 ex	222.68*
222.68	Jan 6 ex	125.00—				Jan 6 ex	97.68*
97.68	Jan 10 '28			Jan 10 '28	33.34	Jan 10 '28	131.02*
131.02	Jan 12 ex	12.45—				Jan 12 ex	118.57*
118.57	Jan 13 '28	60.00—		Jan 13 '28	300.00	Jan 13 '28	358.57*
358.57	Jan 14 ex	6.50—	33.34—			Jan 14 ex	318.73*
318.73	Jan 17 ex	13.06—				Jan 17 ex	305.67*
305.67	Jan 17 '28	10.00—				Jan 17 '28	295.67*
295.67	Jan 20 ex	3.00—				Jan 20 ex	292.67*
292.67	Feb 3 '28			Feb 3 '28	450.00	Feb 3 '28	742.67*
742.67	Feb 4 ex	125.00—				Feb 4 ex	617.67*
617.67	Feb 6 ex	28.00—				Feb 6 ex	589.67*
589.67	Feb 7 ex	40.50—	13.21—			Feb 7 ex	535.96*
535.96	Feb 10 ex	100.00—				Feb 10 ex	435.96*
435.96	Feb 11 '28	50.00—				Feb 11 '28	385.96*
385.96				Feb 14 '28	575.00	Feb 14 '28	960.96*
960.96	Feb 15 ex	11.07—				Feb 15 ex	949.89*
949.89	Feb 17 '28	75.00—				Feb 17 '28	874.89*
874.89	Feb 23 ex	6.00—				Feb 23 ex	868.89*
868.89	Feb 23 '28	70.00—				Feb 23 '26	798.89*
798.89	Feb 25 '28	50.00—				Feb 25 '28	748.89*
748.89	Feb 29 '28	115.00—				Feb 29 '28	633.89*
633.89	Mar 2 '28	50.00—				Mar 2 '28	583.89*
583.89	Mar 6 ex	40.50—				Mar 6 ex	543.39*
543.39	Mar 7 ex	19.73—				Mar 7 ex	523.66*
523.66	Mar 7 ex	125.00—				Mar 7 ex	398.66*
398.66	Mar 13 '29	25.00—				Mar 13 '28	373.66*
373.66	Mar 15 ex	11.03—				Mar 14 ex	273.66*
262.63	Mar 16 '28	75.00—				Mar 15 ex	262.63*
187.63	Mar 16 '28	9.00—				Mar 16 '28	187.63*
178.63	Mar 17 ex	100.00—				Mar 16 '28	178.63*
78.63						Mar 17 ex	78.63*
256.63	Mar 23 '28	75.00—		Mar 20 '28	178.00	Mar 20 '28	256.63*
181.63	Mar 31 '28	75.00—				Mar 23 '28	181.63*
106.63						Mar 31 '28	106.63*
115.63				Mar 16 ec	9.00	Mar 16 '28	115.63*
240.63	Apr 7 '28	75.00—		Apr 7 '28	125.00	Apr 7 '28	240.63*
165.63						Apr 7 '28	165.63*
415.63	13 ex	125.00—		Apr 10 '28	250.00	Apr 10 '28	415.63*
290.63	Apr 16 '28	75.00—				13 ex	290.63*
215.63						Apr 16 '28	215.63*
415.63	Apr 17 cc	200.00—		Apr 17 '28	200.00	Apr 17 '28	415.63*
215.63	Apr 18 ex	12.63—				Apr 17 '28	215.63*
203.00	Apr 19 ex	40.50—	8.57—			Apr 18 ex	203.00*
153.93				Apr 19 ex		Apr 19 ex	153.93*
193.93	May 12 ex	125.00—		Apr 19 '27	40.00	Apr 19 '28	193.93*
68.93	May 14 ex	10.92—		May 12 ex		May 12 ex	68.93*
58.01	May 14 '28	25.00—				May 14 ex	58.01*
33.01	May 15 ex	8.04—		May 14 '28		May 14 '28	33.01*
				May 15 ex		May 15 ex	24.97*

Exhibit C-4B—5/2/29.

Exhibit C-4B—5/2/29.

Old Balance	Date		Checks in Detail		Date	Deposits	Date	New Balance
24.97	May 17 ex	4.00—			May 17 ex		May 17 ex	20.97*
20.97	May 19 ex	10.00—			May 19 ex		May 19 ex	10.97*
10.97	May 31 ex				May 31 ex	70.84	May 31 ex	81.81*
81.81					Jun 7 ex	300.00	Jun 7 ex	381.81*
381.81	Jun 8 ex	70.84—					Jun 8 ex	310.97*
310.97	Jun 14 ex	10.70—	6.50—		Jun 14 ex		Jun 14 ex	293.77*
293.77					Jun 14 ec	6.50	Jun 14 ex	300.27*
300.27	Jun 15 ex	9.40—					Jun 15 ex	290.87*
290.87					Jun 22 '28	146.27	Jun 22 '28	437.14*
437.14	Jun 26 ex	125.00—	2.50—		Jun 26 ex		Jun 26 ex	309.64*
309.64	27 ex	135.00—			27 ex		27 ex	174.64*
174.64	Jun 28 ex	8.77—			Jun 28 ex		Jun 28 ex	161.37*
	Jun 28 ex	4.50—			Jul 17 ex		Jul 17 ex	140.37*
161.37	Jul 17 ex	6.00—	10.00—	5.00—	Jul 17 ex	6.00	Jul 17 ex	161.37*
140.37					July 17 ex	10.00		
161.37	Jul 19 ex	125.00—			Jul 17 ex	5.00		
36.37	Jul 21 ex	6.68—			Jul 19 ex		Jul 19 ex	36.37*
29.69	Jul 27 '28	1.00—			Jul 21 ex		Jul 21 ex	29.69*
28.69	Aug 6 ex	7.13—			Jul 27 '28		Jul 27 '28	28.69*
21.56	Aug 7 mo	.50—					Aug 6 ex	21.56*
21.56							Aug 7 '28	21.06*
21.06	Aug 9 '28	21.06—					Aug 9 '28	.00*

Exhibit C-5—5/2/29.

UNITED STATES DISTRICT COURT,

DISTRICT OF NEW JERSEY.

JACOB WILLIAMSON,
Complainant,

vs.

DAVIS BENDER,
Defendant.

Action at Law.

Affidavit.

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

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

1. I am the son of Davis Bender, the defendant herein. I have owned the premises known as No. 92 Goldsmith Avenue, Newark, New Jersey, for about a year. My sister, Hortense Bender, has resided with me at this address since my ownership of this property. My father, Davis Bender, has been a resident and domiciled in the State of Florida since February, 1925, and until the present day, making only intermittent visits to his children, all of whom reside in New Jersey. During the entire month of February, 1927, my father was in Florida, coming only into this State on March 5th, 1927, pursuant to my letter informing him of this suit. My sister maintains her residence with me, exclusively and independently of my father. She goes to business and earns her

own livelihood and compensates me for her board and room rent.

Signed, HARRY BENDER.

Sworn and subscribed to before me
this 7th day of March, A. D. 1927.
Louis J. Feit,
Master in Chancery of N. J.

Exhibit D-1—5/2/29.

CLINTON TRUST COMPANY
Newark, N. J. Nov. 1, 1928.

Pay to the
Order of Bender Construction Co. $100.00
One hundred 00/100 Dollars

PROFIT REALTY CO.
Samuel Kaplan, Treas.

Endorsed: Bender Construction Co.

Exhibit D-2—5/2/29.

Newark, N. J. Nov. 28, 1927
The Broad & Market National Bank 55-22
of Newark, N. J.

Pay to the
Order of Sivad Realty Co. $1450.00/100
Fourteen hundred and fifty 00/100 Dollars

HARRY BENDER.

Endorsed: Sivad Realty Co.

Exhibit D-3—5/2/29.

Newark, N. J. Nov. 28, 1927
The Broad & Market National Bank 55-22
of Newark, N. J.

Pay to the
Order of Sivad Realty Co. $100.00/100
One hundred 00/100 Dollars
HARRY BENDER.

Endorsed: Sivad Realty Co.

Exhibit D-4—5/2/29.

Articles of Agreement, made the eleventh day of February in the year of our Lord One Thousand Nine Hundred and Twenty-seven.

Between Harry Bender, single, of the City of Newark in the County of Essex and State of New Jersey, party of the first part; And Samuel Kaplan, of the City of Newark in the County of Essex and State of New Jersey, party of the second part;

Witnesseth, That the said party of the first part for and in consideration of the sum of Twenty-two thousand ($22,000) Dollars to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty, free from all encumbrance except as hereinafter stated; on or before the first day of April next ensuing the date hereof, all that lot, tract, or parcel, of land

and premises, hereinafter particularly described situate, lying and being in the City of Newark in the County of Essex and State of New Jersey.

First Tract. Beginning in the southerly line of Goldsmith Avenue at a point therein distant 215.98 feet westerly from the westerly line of Bergen Street; thence running along the southerly line of Goldsmith Avenue north 46 degrees 5½ minutes west 60 feet; thence south 43 degrees 54½ minutes west and at right angles to Goldsmith Avenue 100 feet; thence south 46 degrees 5½ minutes east 60 feet; thence north 43 degrees 54½ minutes east 100 feet to the southerly line of Goldsmith Avenue and the point or place of Beginning.

And the said Samuel Kaplan for himself, his heirs, executors and administrators, doth covenant, promise, and agree to and with the said party of the first part, his heirs, executors, administrators and assigns, that he the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the sum of Twenty-two thousand ($22,000) Dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

On Execution of this agreement for which this is also a receipt, in cash	$ 200 00
On Delivery of Deed, cash	6,800.00

On purchase money bond and mortgage, same containing usual interest, tax, assessment, insurance and default clauses, and an agreement not to claim credit on the interest payable on the bond and mortgage, by reason of any tax assessed, or to be assessed, against the premises,

Exhibit D-4—5/2/29.

with interest at 6% payable semiannually for five (5) years 15,000.00

Total $22,000.00

It is hereby agreed that Samuel Kaplan can assign this contract to a corporation to be organized by him, and the seller will accept a purchase money bond and mortgage executed by such corporation.

And it is further Agreed, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the day of taking title and from thence take the rents, issues and profits to his and their use.

And it is further Agreed, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of Feit and Feit, 2 S. Broad Street, Elizabeth, N. J., between the hours of nine in the forenoon and four o'clock in the afternoon on the said day of taking title

And for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of ..... which they hereby fix and settle as liquidated damages therefor.

In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

HARRY BENDER (L.S.)
SAMUEL KAPLAN (L.S.)

Signed, Sealed and Delivered
in the presence of
Louis J. Feit.

Exhibit D-4—5/2/29.

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

Be it Remembered, That on this 11th day of February in the year of our Lord One Thousand Nine Hundred and Twenty-seven before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Harry Bender, single, who, I am satisfied, is the grantor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

LOUIS J. FEIT,
Master in Chancery of N. J.

Endorsed—Contract for Property. Harry Bender, single, to Samuel Kaplan. Dated, February 11th, 1927.

Exhibit D-5—5/2/29.

Telephone Essex 0043.

Irvington, N. J. 192

Profit Realty Co.

196 Renner Ave.

Newark, N. J.

NATHAN RICE

Painter and Paperhanger

General Contractor

74 Campfield Place

Work done at 92 Goldsmith Ave. Newark, N. J.

All the exterior work painted two (2) coats of paint

For the sum of Three Hundred & Fifty Dollars $350.00

Received on account 250.00

Balance $100.00

Paul N. Rice.

Exhibit D-6—5/2/29.

Certificate No. 1031-1928 Plan No. 1116 1928

BOARD OF TENEMENT HOUSE SUPERVISION
Of the State of New Jersey

Offices: 1060 Broad Street

Newark, N. J. 10/31 1928

This is to Certify, That the tenement house known as 92 Goldsmith Avenue located in the City of Newark, State of New Jersey, conforms to the requirements of the Tenement House Act.

Issued in accordance with provisions of Par. 183, of Chapter 61, P. L. of New Jersey of 1904, Approved March 25, 1904, on this 31st day of October 1928 to Profit Realty Co., owners of said tenement house.

Board of Tenement House Supervision,
A. Ray Swain,
Secretary.

Samuel Kaplan,
196 Renner Av.

Stipulation.

New Jersey Court of Errors and Appeals

Between JACOB WILLIAMSON, Complainant-Respondent, and DAVIS BENDER, HARRY BENDER, MOLLIE BENDER, PROFIT REALTY CO., and BENDER CONSTRUCTION CO., Defendants-Appellants.	On Bill &c. On Appeal from the Court of Chancery. Stipulation.

The parties hereto stipulate and agree that the State of the Case in the above entitled cause on appeal to the New Jersey Court of Errors and Appeals be amended by adding thereto Vol. III, which is to include this stipulation and the annexed notice which was offered to and received in evidence and marked Exhibit C-7 by the Court of Chancery at the hearing on April 29, 1929, which said offer appears in Vol. I of the State of the Case herein on page 322, and which was omitted when Vol. II of the State of the Case was printed.

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

SAMUEL DANIELS,
Solicitor for and of Counsel
with Complainant-Respondent.

Exhibit C-7.

ESSEX COUNTY CIRCUIT COURT.

JACOB WILLIAMSON,
Plaintiff,

vs.

DAVIS BENDER,
Defendant.

Action at Law.
Notice.

To the Plaintiff, or SAMUEL DANIELS, his Attorney:

Take Notice that at the trial of this cause the defendant will move for leave of the Court to amend the Answer filed in this cause by adding the following:

"THIRD DEFENSE

1. On or about May 20, 1925 plaintiff and one H. E. Glickman were the ownenrs of two certain lots at Miami, in the County of Dade and State of Florida.

2. On or about May 20, 1925 said plaintiff and said H. E. Glickman, by their agents, servants, attorneys or employees, to induce defendant to purchase said lots, did represent to defendant that said lots were on Ninth Street.

3. Said representation was untrue in that, in fact, said lots were on Tenth Street.

4. Plaintiff knew said representations to be untrue.

5. Defendant, believing said representation to be true, and being induced thereby, bought said

lots and paid therefor the sum of Sixty Thousand Five Hundred Dollars ($60,500).

6. As part of the consideration for said purchase, defendant executed to plaintiff a purchase money mortgage on said premises in the sum of Ten Thousand Dollars ($10,000.), and the note described in the complaint in this cause, said mortgage being given to secure the payment of the said note.

7. Defendant thereby suffered a loss of Twenty-five Thousand Dollars ($25,000.00).

FOURTH DEFENSE.

1. The note set forth in the complaint was given to secure a purchase money mortgage of even date therewith made by the defendant to plaintiff and embracing premises in the County of Dade and State of Florida.

2. Thereafter plaintiff instituted a foreclosure action in the Circuit Court, Eleventh Judicial District, Dade County, Florida, for the purpose of foreclosing said mortgage and for the entry of a deficiency decree therein.

3. Said action is still pending.

4. No decree has been entered in said Court or any other Court for a deficiency.

5. Thereafter the Legislature of the State of Florida passed an act which is still the law of that State, as follows:

Chapter 11993 No. 188

An act to provide for the Entry of Deficiency Decrees in Suits to foreclose Mortgages; to Provide

for the Procedure in Obtaining Deficiency Decrees in Equity and Judgments for Deficiencies in Common-Law Actions; to Repeal all laws and parts of laws in conflict with this Act and to Provide when this Act shall take effect.

Be it enacted by the Legislature of the State of Florida:

Section 1. That in all suits for the foreclosure of mortgages heretofore or hereafter executed the entry of a deficiency decree for any portion of a deficiency, should one exist, shall be within the sound judicial discretion of the Court, but the Complainant shall also have the right to sue at common-law to recover such deficiency.

Section 2. That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed.

Section 3. This Act shall take effect upon its becoming a law.

Approved May 7, 1927."

CORN & SILVERMAN,
Attorneys of Defendant.

Exhibit C-7.

Endorsed on back:

ESSEX COUNTY CIRCUIT COURT.

JACOB WILLIAMSON,
Plaintiff,

vs.

DAVIS BENDER,
Defendant.

Action at Law.
Notice.

CORN & SILVERMAN,
Attorneys of Defendant
790 Broad Street
Newark, N. J.

Service of the within notice is hereby acknowledged this 30th day of January, 1928.

SAMUEL DANIELS
Attorney for Plaintiff

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NEW JERSEY COURT OF ERRORS AND APPEALS

JACOB WILLIAMSON, Complainant-Respondent, vs. DAVIS BENDER, HARRY BENDER, MOLLIE BENDER, PROFIT REALTY CO. and BENDER CONSTRUCTION CO., Defendants-Appellants.	On Bill, etc.

RESPONDENT'S BRIEF.

This is an appeal from a decree of the Court of Chancery in a judgment-creditor's suit which decree set aside as fraudulent certain conveyances and mortgages by a judgment-debtor, Davis Bender, to the other defendants.

The final decree was filed February 21st, 1930, upon the advice of Vice Chancellor Alonzo Church and sustained the bill of complaint in every particular. The learned Vice Chancellor found that all of the defendants participated in the fraud with guilty knowledge.

Facts.

The facts shown by the complainant on the trial and in the examination prior thereto and

which were found by the Court of Chancery, are diametrically opposed to all of the statements and inferences drawn therefrom which are stated by the appellant in his statement of facts so that a recitation at this point of the facts as claimed by the complainant would negative each and every conclusion and statement of fact set forth in the appellant's brief under that heading.

An appropriate reference will be made in the various points in this brief to the facts as found by the Court of Chancery and the inferences to support the conclusion of fraud as well as the citations of the testimony and exhibits which will show this Court the true state of affairs.

POINT I.

Findings of fact made by the Court of Chancery are conclusive in the absence of bias and prejudice.

The Vice Chancellor in his lengthy opinion which is found in the record at pages 81-86 inclusive, found all facts substantially claimed by complainant. If the Court in reading this brief will have those particular pages in the record at hand for consultation, the various points of fact made under this heading will be easily apprehended.

The facts regarding the Profit Realty Company are found in pages 97, 98, 99 to 107, 193; regarding Bender Construction Company at pages 264, *seq.*, and as to Sivad Realty Company at pages 353-354, 261 *seq.;* Exhibit C3 of

4/29/29. There were many additional facts proven to substantiate clearly the allegations of fraud which the Vice Chancellor did not find it proper to recite in his opinion, but to which he adverted in the last paragraph. Chronologically stated the facts proved on behalf of the complaint were as follows:

1924.

Davis Bender is an affluent contractor and builder, real estate improver; in Newark twenty years, sound banking connections and the owner *in his own name* of ten or more pieces of real estate in Newark. He purchases a property known as the Tansey property on Vanderpoole Street and put in Six thousand ($6,000) Dollars in cash, the deed is in his own name (pp. 343, 247, 333).

Harry Bender, who was twenty-one years in April, 1922, works for his father, lives at home and gets his food and spending money from his father (pp. 133, 134).

1925.

In April Davis Bender sold the Tansey property to the Fidelity Title Co., conducted the negotiations of sale himself (pp. 369, 326, 331, 333), made a contract of sale at a profit of over Twenty thousand ($20,000) Dollars and although the contract of sale (Exhibit D3) is signed by Davis Bender and Harry Bender, the deposit of Five thousand ($5,000) Dollars is deposited in Davis Bender's account on April 18th, 1925 (see photostat Essex and Market Street Bank account Davis Bender, Exhibit C3, 5/2/29).

The title was closed June 17th and a check for Thirty-one thousand three hundred twenty-three and 50/100 ($31,323.50) Dollars was deposited in Davis Bender's account, which amounted to Forty-four thousand four hundred twenty-six and 50/100 ($44,426.50) Dollars that day. The check was made out to Davis Bender, Harry Bender and Mollie Bender (Exhibit D7) for reasons of income tax, but the actual money came to Davis Bender. The transaction throughout was handled by Louis Feit, his attorney (see Davis Bender bank account, Exhibit C3, *supra*).

On June 16th, 1925, Davis Bender executed the Ten thousand ($10,000) Dollar note to Williamson in Florida (Exhibit C5, p. 561 case).

1926.

The Court can take judicial notice of the collapse of the Florida boom during 1925 and 1926, Exhibit C17, pages 504-526, case, in this case is the foreclosure of Bender's property in Florida. This was in June, 1926. The property which Davis Bender bought for Thirty-seven thousand five hundred $37,500) Dollars in 1925 and refused a profit of Thirty thousand ($30,000) Dollars (p. 393), was sold in 1926 for Fifteen thousand ($15,000) Dollars.

April 22nd, 1926, Davis Bender by a bargain and sale deed conveyed to Harry Bender everything he owned in the way of real estate by one deed, Exhibit C5, page 490. Exhibit C3, page 637 (bank statement), shows Davis Bender on April 8th, 1926, had on deposit Five thousand nine hundred fifty-eight and 14/100

($5,958.14) Dollars and deposited on April 15th, 1926, Ten thousand two hundred ($10,200) Dollars bringing his balance to Sixteen thousand one hundred fifty-eight and 14/100 ($16,158.14) Dollars.

No money or visible consideration was given by Harry for this deed or the assignment of the Four thousand ($4,000) Dollars mortgage which was simultaneously executed in the office of Louis J. Feit, attorney, pages 152, 278.

June 11th, 1926, Davis Bender had on deposit Twenty-seven thousand four hundred forty-seven and 99/100 ($27,447.99) Dollars (Exhibit C3, p. 637). Yet the same day he and Mollie, his wife, executed a chattel mortgage (Exhibit C3, p. 637), covering his entire household furniture at 92 Goldsmith Avenue and his automobile to secure a fictitious loan of Two thousand ($2,000) Dollars to the Sivad (Davis) Realty Co. entirely controlled by Harry Bender who swears he gave the Sivad money to his father in their home in secret (p. 273). Davis Bender swears he doesn't know who gave him the money (p. 128, fols. 10, 20).

The mortgage was prepared by Louis J. Feit and recites that the Two thousand ($2,000) Dollars given was in cash (Exhibit C3, 4/29/29, p. 549) (p. 185), although Feit says it was a check (p. 354).

The furniture remained at Davis Bender's home, 92 Goldsmith Avenue, and still is used by him and his family although the mortgaged property was sold at auction at the same place and was bought in by Harry Bender; also the automobile which his father had used continuously in Florida (pp. 127, 128-129, 214, 261, *seq.*).

March 2nd, 1926, Davis Bender contracted with Roemer Bros. to sell a valuable garage property which he owned for over Seventy-five thousand ($75,000) Dollars cash and received Five thousand ($5,000) Dollars deposit on the signing of the agreement and Sixty-six thousand sixty-one and 73/100 ($66,061.73) Dollars on the closing of title on May 20th, 1926 (p. 236), at which date his bank balance was Sixty-nine thousand six hundred twenty-six and 80/100 ($69,626.80) Dollars in the Broad and Market Street Bank. This whole transaction was with Louis Feit, his attorney (p. 538, and see Davis Bender bank account, Exhibit C3; p. 355, Exhibit D10, 4/29/29).

He was under this contract when he made the sweeping deed of April 11th, 1926, which transferred to Harry Bender all tangible real estate except this Roemer garage which he immediately thereafter sold for cash leaving him judgment proof (pp. 232, 248, 426).

June 16th, 1926, the Williamson note became due and was protested for non-payment.

From May 20th to June 26th, 1926, Davis Bender's bank balance shrank from Sixty-nine thousand six hundred twenty-six and 80/100 ($69,626.80) Dollars to Seven thousand six hundred sixty and 78/100 ($7,660.78) Dollars. The bank statement (Exhibit C3, 5/2/29) shows checks drawn as follows:

May 24th, 1926,	$40,000.00
June 4th, 1926,	3,500.00
June 9th, 1926,	1,000.00
June 12th, 1926,	5,000.00
June 14th, 1926,	12,000.00

June 17th, 1926, 3,000.00
(Exact amount of Sivad deposit on same day)
June 26th, 1926, 3,590.00

None of these checks are available. Davis Bender states they are lost somewhere between Newark and Florida. He does not remember what a single item was for. He had bank accounts in Florida which are all closed out and the records likewise mysteriously lost (pp. 136, 137, 139).

Meanwhile the Sivad Realty Co. bank account (Exhibit C2, p. 634) flourishes from a meager One hundred thirty-seven and 25/100 ($137.25) Dollars on April 30th, 1926, to a balance of Twelve thousand eight hundred ninety-one ($12,891) Dollars on November 15th the same year. It receives:

June 14th, 1926,	$14,250.00	
June 17th, 1926,	3,000.00	(note above)
August 28th, 1926,	7,000.00	
October 28th, 1926,	2,500.00	
November 8th, 1926,	2,000.00	
November 8th, 1926,	7,710.00	
November 15th, 1926,	2,125.00	
November 20th, 1926,	2,125.00	
December 7th, 1926,	5,400.00	

Harry Bender does well too, his account shows deposits (Exhibit C4, p. 646).

June 4th, 1926, $3,845.00
(probably from Davis Bender, p. 429.)
June 17th, 1926, 1,000.00
July 7th, 1926, 3,806.27

which for a youth of twenty-four years who never earned but Twenty ($20) Dollars a week

outside of his father's business, was very good (p. 254).

Bender Construction Co. organized on August 13th, 1926, started business with a deposit on that day of Two thousand eight hundred nineteen and 50/100 ($2,819.50) Dollars and this did not come from Harry Bender as his account shows no check of that amount (Exhibit C4 [b] 642).

June 22nd, 1926, the Florida foreclosure suit by Emma A. Howard is begun. Davis Bender, Mollie Bender and Jacob Williamson are defendants. The records show a letter on July 1st, 1926, by Louis J. Feit to the clerk of the Florida Court, asking for a copy of the complaint, for which Feit enclosed his check for $5.00 (p. 512). On July 1st, 1926, a telegram signed "Davis Bender" was sent to the same clerk (p. 511).

Davis Bender swears he never sent it (p. 216).

Louis Feit swears he never sent it (p. 349).

Either one is deliberately lying.

Davis Bender served an answer containing a fictitious defense. It is quite evidently the work of a lawyer although by the Benders *per se* (p. 515).

Feit swears he never prepared it (p. 349). Bender says he knows nothing about it (p. 219).

The Benders did not appear on the hearing and a judgment of foreclosure and sale was made and the property sold to Emma Howard on February 7th, 1927.

This record and Feit's name in it are illuminating in view of his absolute denial that he (Feit) knew anything of Williamson's note until an action was begun in 1927 and Bender brought him the summons and complaint (pp. 153, 180).

According to Feit, Davis Bender came on April 22nd, 1926, and directed the preparation of the wholesale deed and mortgage assignment which conveyed that day to Harry Bender all of his father's property (pp. 175, 182).

"All property" is used advisedly because all he had left was a breached contract for Florida lots which were unpaid by him and a bad investment in the Gotham Realty Co. which failed in 1925 (p. 233).

The record of Williamson's lawsuit shows that in September of 1926, Bender visited Yonkers twice to attempt to settle with Williamson without success (p. 584).

1927.

Williamson began in February a lawsuit in the United States District Court. Louis J. Feit appeared and contested on the ground Bender was a resident of Florida. To escape delay that action was discontinued and a new action begun on March 28th in the Circuit Court of Essex County. Feit & Feit again appeared for Davis Bender and filed an answer and continued as attorney for him until 1928, although Feit's memory needed constant refreshing by looking at his own papers and letters to establish this.

Davis Bender's bank account shrank to Forty-six and 97/100 ($46.97) Dollars on March 7th, 1927, Seventeen and 95/100 ($17.95) Dollars on May 28th and remained at Fifty-three and 04/100 ($53.04) Dollars from August 9th for the remainder of 1927.

Almost coincident Mollie Bender's account acquired Ten thousand ($10,000) Dollars on September 16th, 1927, and shrank to no dollars on February 3rd, 1928, the day of the trial of Williamson's lawsuit in the Circuit Court, and Davis Bender's account from January 30th, 1928, was Fifteen and 24/100 ($15.24) Dollars to February 25th, 1929, when it was closed entirely. Davis Bender testified he gave her no money in 1927, 1928 or 1929 (p. 408). Harry Bender contradicts this (p. 264, fol. 20).

Immediately following the institution of Williamson's lawsuit and on March 29th, 1927, Samuel Kaplan was brought or sent by Bender to Louis J. Feit who proceeded to organize the Profit Realty Co. Feit was not Kaplan's lawyer, he was Bender's (p. 101, fol. 10). Celia Kaplan and Abraham Kaplan were dummies (pp. 107, 121, 195), who acted as incorporators.

Harry Bender and Davis Bender both valued 92 Goldsmith Avenue at Sixteen thousand ($16,000) Dollars (pp. 221-274) but Harry sold this to Kaplan and the Profit Realty for Twenty-two thousand ($22,000) Dollars and took back Seven thousand Dollars in cash and a Fifteen thousand ($15,000) Dollar mortgage (p. 100). The deed is dated April 11th, 1927, and recorded the following day in Book G, 76-164, the mortgage likewise in Book R, 60-

210. Both were prepared and acknowledged by Feit. There was no written contract and no search (p. 100). Feit says he saw no consideration (p. 157). The corporation owned no other property at any time (p. 196).

The Bender's are now thoroughly aware that Williamson means business.

Bender Construction Co. has been organized in August, 1926. Realizing the precariousness of Harry's title, they seek to bury it in a deed from him to Bender Construction Co. dated April 6th, 1927, and recorded May 17th, 1927, in Book I, 76-161, which conveys the balance of the Davis Bender holdings, lock, stock and barrel. There was no consideration except the issuance of the entire capital stock to Harry, Mollie and Hortense Bender (p. 170). This deed was prepared and acknowledged by Louis Feit (Exhibit C7, p. 497) (p. 170).

Profit Realty Co., which kept no books (p. 107), by Samuel Kaplan now collects rents from Harry Bender and the other tenants at 92 Goldsmith Avenue. But how to get this money back to Bender? First Kaplan draws checks to himself (pp. 485, 6, 7) then to one Nathan Rice, a bosom lifelong friend of Davis Bender; for painting, inside and outside (p. 198), alas the bill receipted by Rice calls only for outside work (p. 657); interest on Harry Bender's mortgage is paid, first by a check of Nine hundred ($900) Dollars on September 6th, 1928, which Kaplan said was a year's interest, and at first the only interest he ever paid. He changed his story on seeing a check of Four hundred fifty ($450) Dollars dated February 2nd, 1928 (Exhibit C8) and first said (examined November 20th, 1928):

"I can't remember what this check is for" (p. 118, fol. 20) but on April 24th, 1929, he remembers it is for interest (p. 205). The mortgage was dated April 11th, 1927, and interest was payable semi-annually on the 11th days of October and April. The checks were not for interest, they were used to return to Harry the income from 92 Goldsmith Avenue (p. 114).

Again Kaplan made a secret agreement with Bender Construction Co. orally with Harry Bender to do work in the very apartment Bender was occupying (pp. 269, *seq.*). There were no plans or specifications. No set price, no contract, no time limit (pp. 111, 112, 113). These "improvements" resulted in Fourteen hundred ($1400) Dollars being turned into Bender Construction Co.

Kaplan drew a check to the Profit Realty on April 11th, 1927, for Seven thousand ($7,000) Dollars and on the next day gave a check to Harry Bender for Six thousand seven hundred ($6,700) Dollars to take title. This Six thousand seven hundred ($6,700) Dollars was deposited to his account (H. Bender) the same day. Harry Bender drew checks.

April 23rd, 1927,	$2,000.00
April 28th, 1927,	2,000.00
May 4th, 1927,	2,000.00

(Exhibit C4, p. 646).

Insufficient time to examine these bank statements in the midst of a trial made it nigh impossible to establish where this money went but it is interesting.

These Profit Realty transactions show that

Kaplan was using this company merely as a cover to conceal the most valuable property of his old friend, Davis Bender, and that the pretended payment of interest and repaid bills to Bender Construction Co. was merely to return to Bender the income from the house at 92 Goldsmith Avenue.

Donald Strope, a deputy Sheriff, who served a subpoena on Samuel Kaplan, testified that Kaplan told him.

> "Well, as far as the Profit Realty Co. is concerned, I don't know anything about that. I am just a dummy officer in it and I didn't think Mr. Bender would get away with it at the time" (p. 323, fol. 10).

The Court will observe that Samuel Kaplan, who is the treasurer and secretary of the Profit Realty Company (pp. 97 and 98), and practically the whole corporation (pp. 98, 99) which took the title for Davis Bender to his home at 92 Goldsmith Avenue, was also an incorporator of and stockholder with Harry Bender in the Sivad Realty Co. (pp. 190, 191) which took and foreclosed the fraudulent chattel mortgage on Davis Bender's household furniture and family automobile. By Samuel Kaplan's own admissions (p. 191) he had, through the Profit Realty Company and the Sivad Realty Co., a common interest with the Benders in these transactions.

This evidence clearly shows the participation by these two corporations through Samuel Kap-

lan with fraudulent intent and their connivance with Harry Bender and Davis Bender in all of the fraudulent conveyances and acts charged in the bill of complaint.

1928

February 3rd, Williamson's lawsuit on the note goes to trial and judgment entered in the Circuit Court for Eleven thousand five hundred seventy-five ($11,575) dollars and costs.

February 7th, execution issued and returned wholly unsatisfied.

February 14th, present action instituted and *lis pendens* filed.

	Davis Bender bank balance	$15.24
Aug. 9, 1928	Harry Bender bank balance	.00
Mar. 18, 1928	Mollie Bender bank balance	.00
Feb. 10, 1928	Bender Construction Co. bank balance	226.82
Feb. 9, 1928	Sivad Realty Co. bank balance	2,489.80
Oct. 17, 1928	Sivad Realty Co. bank balance	9,327.66

1929

Davis Bender testifying on April 25th (p. 241):

> "Q. How much of that 65 or $70,000 have you left now? A. Nothing.
> "Q. You spent the last money of this $70,000 right before you came north for this trial, did you? A. Yes.
> "Q. Have you any bank accounts today? A. No, sir.
> "Q. You are penniless today? A. I got a couple of pennies.

"Q. How many? A. Five or six dollars."

His explanation of the spending of Seventy thousand ($70,000) dollars in a little over two years in living and entertaining is pure fabrication entirely unsupported by his appearance, history and mode of living (pp. 240, 241, 81, *seq.*).

To contradict this overwhelming array of fraudulent practices knowingly contrived by all of the defendants in this action, the defendant attempts to foist upon the Court a story to the effect that in 1924 Davis Bender was indebted to his son, Harry, for Six thousand ($6,000) dollars for services rendered by the son to the father. That during that year, 1924, the father invested the Six thousand ($6,000) dollars in a piece of property on Vanderpoole Street, Newark, which was subsequently sold at a profit of Thirty-six thousand ($36,000) dollars and therefore that the father was upon the sale of the property indebted to his son for Forty-two thousand ($42,000) dollars. In addition, the father claims that his indebtedness to the son in 1924 was in reality Ten thousand ($10,000) dollars, of which sum Six thousand ($6,000) dollars was invested in the Vanderpoole property and that his total indebtedness to the son was Forty-six thousand ($46,000) dollars. At pages 365, 371, 372, 373, 374, 375, 376 and 377 the details of this fictitious story are set forth as an oral agreement between the father and son. The record displays the effect this story had upon the Vice Chancellor as well.

There is not a slip of paper to substantiate the defense nor a single reliable and disinterested witness who will swear to any part of it. It was a secret agreement between the father and son. The father at all times retained title to the property and also to the money when these properties were sold. The attempted explanation of why title was taken in the father's name of property which he says belonged to his son is ridiculous, that is that the seller required the father to be on the purchase money bond for the property. On cross-examination no reason was disclosed why the property was not thereafter conveyed to Harry Bender nor the proceeds of its sale delivered to him, in any sale made by the father, or deed of trust which would insure to the son any right in that property. Considering that the facts in an action of this kind must invariably been drawn from hostile witnesses and from documents carefully prepared in advance to effect fraud, and in this case with the assistance of an attorney, a most remarkably complete and convincing picture is produced. The Vice Chancellor in this suit was impressed with the plan by which Davis Bender, commencing with the fall of the Florida market in 1925 and the maturing of the complainant's note, carefully proceeded to convey to his son every piece of tangible property which he possessed and to secrete beyond the knowledge of the Court the proceeds of sales of real estate approximating One hundred thousand ($100,000) dollars leaving himself wholly immune to execution upon the plaintiff's judgment.

Appellate Courts, aside from a showing of bias and prejudice in the Trial Court, invariably

sustain findings of fact by a Trial Court which have support in the record for the reasons often expressed that a Trial Court had the opportunity to see and hear the individual witnesses and to form a better opinion as to their truthfulness. A few of the leading opinions in this jurisdiction are taken from the following cases:

Riddle vs. Clabby, 59 N. J. Eq. 573.
Cartan vs. Phelps, 91 N. J. Eq. 312.
Smith vs. Cruse, 101 N. J. L. 82.
Golioto vs. Erie R. R., 8 N. J. Mis. 41.
Penn vs. Radio, 8 N. J. Mis. 89.

POINT II.

Numerous badges of fraud are apparent in this testimony and on the facts the Vice Chancellor was right in his decree.

A. The conveyance of April 22nd, 1926, Exhibit C5, page 490, is a bargain and sale deed from Davis Bender to his son, Harry Bender, of every piece of real estate which the father then owned except the garage which he was then under contract to convey to Roemer Brothers and which he did actually convey and receive cash therefor a few days later. The family home at 92 Goldsmith Avenue, free and clear, was included in this conveyance, although the father continued to occupy that home with his family even to the date of trial in the Chancery Court. An assignment of the Four thousand ($4,000) dollar mortgage on the same date (admitted by pleadings) to the son completed the stripping of the father (see bill of complaint, p. 27, and answer thereto, pp. 15, 46, 57).

B. This conveyance was made about two months before the complainant's note came due and at a time when the father was certain by reason of the collapse of the Florida real estate market, that he would have to face the payment of that note out of his personal assets.

C. The record is plain that the father by these means prevented the collection of plaintiff's note because whatever cash he had in the banks was speedily transferred to places and persons which will probably never be known because of the destruction and disappearance of Davis Bender's check books and cancelled checks. An attempt is made in the record to show that Davis Bender still possessed tangible property to meet Williamson's note. These possessions consisted of a voided real estate contract for Florida property which Bender never consummated because he did not think it worth while and shares in another Florida enterprise called the Gotham Realty Co. long since defunct and without value (p. 233).

D. Appellant's brief criticizes the admission of evidence regarding the chattel mortgage by Davis Bender of his household furniture and automobile on June 11th, 1926, to the Sivad Realty Corporation wholly owned and controlled by his son, Harry (Exhibit C3, p. 549), for a pretended loan of Two thousand ($2,000) dollars, which thereafter was sold at auction and bought by Harry Bender and which is still in the possession and use of the entire Bender family at 92 Goldsmith Avenue (p. 263). In actions of fraud a wide latitude of inquiry is permitted where it is necessary that a fraudulent and wrongful intent be shown.

27 Corpus Juris 807, Section 739.

> "Evidence that the party or parties charged with making a fraudulent disposition of property were engaged at or about the same time in other similar fraudulent transactions, is admissible to show fraudulent intent in making the transfer in controversy."

It was part of the complainant's case to show that the fraudulent transfers left the judgment-debtor wholly insolvent and the evidence was also competent on this point. Under the bill of complaint in Paragraphs 33, 35, 36, 37 and 38 this evidence would be competent.

E. 92 Goldsmith Avenue was the home of the Bender family in 1924 and has been ever since. Although ostensibly owned by Profit Realty Company, the Bender family always lived there without evidence of paying rent and under the guise of pretended improvements received back from the Profit Company the entire income paid by two other tenants in the building. Samuel Kaplan was not entirely trusted because a purchase money mortgage was taken by Harry Bender for fifteen thousand ($15,000) dollars, which both he and his father testified was substantially the value of the property (pp. 221-274). The household furniture and automobile still continued to be used by the family of the real owner, Davis Bender (p. 263).

> "Retention of possession by the grantor of property transferred is a badge of fraud."
>
> *Reinbach vs. Crockett,* 83 N. J. Eq. 158.
> 27 C. J. 494, Sections 149-150.

F. An outstanding evidence of the fraudulent intent is shown by the secreting by Davis Bender of over Seventy thousand ($70,000) dollars in cash from his bank account, which account never could be traced and which was never accounted for by him.

G. His story of the loss and disappearance of his checks, check books and accounts, is wholly unbelievable and was so considered by the Vice Chancellor. Likewise, his story of the use of this money in high and expensive mode of living is belied by the record. Undoubtedly some of this money has found its way to investment through the bank accounts of Mollie Bender and the Sivad Company.

27 C. J. 494, Section 148.

> "Where the circumstances under which a transfer of property by a debtor is made, are suspicious, the failure of the parties to * * * produce available explanation or rebuttable evidence is a badge of fraud."

H. The formation of the Profit Realty Company and the Bender Construction Company by Louis J. Feit, Bender's attorney and their subsequent relations with Bender's property stamp the organizations as part of the fraudulent scheme. No meetings of directors were ever had nor of stockholders (pp. 186, 187), nor have dividends ever been paid. No corporate records are produced. The only assets of either, came originally from Davis Bender. Every person interested in the corporations is a member of his immediate family (p. 187) or of his lifelong friend, Samuel Kaplan, who said, "He did not think Bender would get away with it"

(p. 323). The conveyance by Harry Bender of 92 Goldsmith Avenue through the Profit Realty Company was an additional safeguard to protect that unincumbered and valuable property from the execution on plaintiff's judgment. The purchase money mortgage of Fifteen thousand ($15,000) dollars to Harry Bender, spoken of above, makes this certain.

> *Bourgeois vs. Risley R. E. Co.,* 8 N. J. Eq. 211.
>
> "Conveyance of property of an insolvent debtor to a corporation formed by him for the sole purpose of taking over the property, the consideration of which is the issuance of all of the capital stock of the company, is void as against creditors."

I. The only witnesses to substantiate the good faith and pretended explanation of the transfers were members of Davis Bender's immediate family and Samuel Kaplan, his lifelong friend. The other witnesses produced by defendant corroborated the documentary evidence and did not show anything from which a Court could find good faith in the defendant's transactions. In fact, one witness, David Huston, at page 326, speaking in reference to the Vanderpoole Street property which was claimed equitably belonging to Harry Bender, testified as follows:

> "Q. Who did you have your negotiations with Mr. Huston when you made this contract for the purchase of this property? A. With Mr. Davis Bender.
>
> "Q. Did you talk with anybody else beside Mr. Davis Bender in these negotiations? A. I do not remember so, no."

The opportunity to plan a defense such as appears in this suit, after a suit is brought to set aside such conveyances, is apparent as likewise the ability and willingness of the Bender family and Kaplan to participate with their attorney in an underhanded scheme. On the other hand, the documentary record produced by the complainant is consonant only with the guilt of the defendants. The deeds, bonds, mortgages, assignments, corporate organizations and most especially the bank records, point directly to an inference of fraud and guilt.

J. The flimsy defense, consisting of an oral trust in real estate, gives greater weight to the complainant's cause and is a badge of fraud often recognized by Chancery Courts.

K. It is to be noted that in all instances the cash realized from the sale of property which was supposed to belong to the son was actually taken by the father, judgment-debtor, in his own, single, individual name and subject only to disposition by him. This would completely negative the pretended debt and trust agreement relied upon by the defendants.

In re Duggan, 182 Fed. 252.

> "The term 'fraud,' as used in the law of fraudulent conveyances, means facts tending to throw suspicion on a transaction calling for an explanation, an act made to hinder and defraud creditors."

L. Louis J. Feit, the attorney for Bender and Kaplan, throughout this proceeding appears to have drawn all of the conveyances, corporate organizations and in his office the transfers were made. Also the chattel mortgage to the

Sivad Company. He appeared for Bender in the early stages of the Williamson litigation, had acted as Bender's attorney for years, knew all about the Williamson note and was evidently the prime mover in the fraudulent scheme unfolded in this inglorious record. His testimony was insincere, evasive and contradictory. His statement that he did not know of Williamson's claim obviously is false as is his statement that Bender directed him, without advice or consultation, to prepare the various documents necessary to consummate the fraud. Vice Chancellor Church had an opportunity to observe this witness during his several appearances on the witness stand and was able to correctly appraise the worth of his testimony and to understand his important connection with every phase of the scheme which by reason of its detail could not be the product of any but an intelligent legal scholar prostituting his talent to the base needs of a dishonest client.

POINT III.

Pleadings and proof were sufficient to sustain the decree under general equitable principles to set aside fraudulent conveyances and under the New Jersey uniform fraudulent conveyance act (L. 1919, C. 213, p. 500).

Williamson became a creditor of Davis Bender on June 16th, 1925, when the note in question was made and delivered. Any conveyance thereafter by Davis Bender except for a valuable and fair consideration, which left Bender without adequate means of paying Williamson's debt was

presumably fraudulent. Such was the Common Law and is repeated in the statute (Sections 2, 4, 5 and 6).

Pomeroy's Equity Jurisprudence, Fourth Edition, Section 971:

> "In the second place, where a conveyance is voluntary, and is alleged to be fraudulent as against existing creditors, while an express actual intent to defraud may be present, it is not necessary. The fraudulent intent which will avoid the conveyance as against existing creditors may be inferred from circumstances connected with the transaction, such as the grantor's insolvency, great indebtedness compared with the amount of his property, and the like; complete insolvency, however, is clearly not a requisite. In this case of a voluntary deed and existing creditors, the decisions show unmistakably that the intent is more easily inferred than in any other."

Section 972:

> "A voluntary conveyance, gift, or transfer, without any valuable consideration creates a *prima facie* presumption of an intent to defraud existing creditors unless statutes have declared that no such presumption ever arises and that the intent is always a conclusion of fact. * * * On the other hand since the *prima facie* presumption arises in such case it is never necessary to show by affirmative evidence and actual express intent to defraud in order to render a voluntary conveyance fraudulent and void as against existing creditors. The intent will be inferred when the grantor was or is left insolvent, or if the conveyance deprives him of the means of paying his debts, or if he was

so largely indebted that it would be reasonable to suppose that he contemplated his inability to pay his debts, or, as many cases hold, if he was so largely indebted that the conveyance would materially interfere with his ability to meet his obligations."

Doughty vs. King, 10 N. J. Eq. 396.

Section 968:

"Conveyances in Fraud of Creditors. Dealings by a person with his property with intent to defraud his creditors were voidable at the common law; but the existing rules on the subject both in England and in this country are founded upon statute. The operative statute in England, which is also the basis of all legislation and judicial decision in the United States, is the celebrated act 13 Eliz., c. 5. It enacts that all conveyances, etc., of any lands, goods or chattels, had or made of purpose to delay or defraud creditors and others of their actions or debts, shall be taken only as against such persons and their representatives as shall or might be so delayed or defrauded, to be utterly void; provided that the act shall not extend to any conveyance or assurance made on good consideration and bona fide to a person not having notice of such fraud. I purpose merely to state, as far as possible, the general and fundamental principles and doctrines which have been established in the judicial construction of this legislation, and the most important classes of cases to which it is applied."

Horton vs. Bamford, 79 N. J. Eq. 356 at page 378.

The provisions of the New Jersey Uniform Fraudulent Conveyance Act in the main is a

codification of the principles at common law and extends the remedies of a creditor beyond those recognized by the common law (see Sec. 11). The definition of the terms, creditor, conveyance and debt, are the same. The remedy of a creditor is made more immediate by obviating the need of a prior judgment at law and return of execution unsatisfied. In this case that was done. There was no necessity for the bill of complaint to actually designate the sections of the law under which relief was sought. It was the province entirely of the Chancery Court upon the evidence to decide whether at common law or under the statute or by virtue of both, the complainant was entitled to the relief which he sought

The bill of complaint (pp. 7-20) sets forth all the essential allegations for the relief sought under the statute as well as at common law.

> *Horton vs. Bamford, supra,* pages 378, *seq.*
>
> "Jurisdiction concerning fraudulent conveyances is exercised by Courts of Equity in this state upon the theory of inherent equitable powers, irrespective of any statute."

POINT IV.

Dismissal of counterclaim based on alleged rescission for fraud was proper on the facts and law.

a. *Res adjudicata.*

If the defendant, Davis Bender, had any defense based on alleged misrepresentation of the

location of the Florida property which he purchased from Williamson that was a proper defense in the Essex County Circuit Court action at law upon the note, which was given as a part of the purchase price of the same property. He is precluded by the complainant's judgment in the law court (page 568) from raising that question in this suit. The decisions sustain the proposition that the judgment on the note was a complete adjudication of all questions which could have been raised in that controversy.

> *McMichael vs. Horay,* 100 A. 205; 90 N. J. L. 142.
> *Rosenstein vs. Burr,* 83 A. 785; 80 N. J. Eq. 424.

The defendant is barred from setting up his counterclaim claiming fraud in the procurement of the notes which are the basis of the judgment of the Essex County Circuit Court, in aid of which this suit has been instituted, for he could have pleaded his counterclaim as a defense to the suit at law, for fraud is a defense to an attempt to collect on a promissory note.

> "The doctrine of *res adjudicata* applies alike to the decrees of the Courts exercising equity jurisdiction and the judgments of Courts of law and a final determination in either Court may be invoked as a bar or estoppel in the other" (*Hoboken vs. City of Hoboken,* 76 N. J. L. 122; *Sarson vs. Maccia,* 90 N. J. E. 433).

The doctrine of *res adjudicata* applies to any admissible matter *which might have been offered to defeat complainant's claim in the law court* (*Mayor & Alderman of Paterson vs. Bakeo,* 51 N. J. E. 49, citing Chief Justice Shaw in *Sawyer vs. Woodbury,* 7 Gray 499, 502, and Mr. Justice

Field in *Bissell vs. Spring Valley,* 124 U. S. 225 and *Cromwell vs. Sac Co.,* 94 U. S. 351; 24 L. ed. 195; *McMichael vs. Horay,* 90 N. J. L. 142; *McEligot vs. Nutley,* 92 N. J. L. 120, aff. 92 N. J. L. 636; 15 R. C. L. 975; *Cashin vs. Alamac,* 98 N. J. E. 432).

The appellant's learned counsel first admits that Bender's counterclaim could not be sustained as a defense to the note in law because Bender's dealings were wholly with complainant's agents. The writer then naively suggests that a Court of Equity will mysteriously sustain the imperfect evidence and override the gap that exists in the proof.

True it is that rescission for fraud of a contract in equity does not involve scienter as the action at law for fraud and deceit does. But in both actions there must be a fraud perpetrated by the other party to the transaction.

"Equity follows the law." The measure of evidence, its weight and value is the same in both.

Equally original and unfounded is the argument made that a judgment at law is not conclusive in a Court of Equity and vice versa, but that it is only a decree in equity which may be a bar in another equitable action. Such a result would be chaotic and impose upon litigants of winning every lawsuit at least twice, one at law and one in equity. That such is not the law and never was, is amply shown by the following cases:

Perth Amboy Company vs. Crawford, 35 A. 897.
Hoboken Mfrs. R. Company vs. City of Hoboken, 68 A. 1098; 76 N. J. L. 122.
Putnam vs. Clark, 34 N. J. Eq. 532.

Appellant's brief finally argues that this is a case where the defense is purely equitable and therefore the judgment at law is not a bar. The defense presented is fraud and misrepresentation in the procurement of the note. The cases and text writers are unanimous in stating that fraud charged in the obligation itself is merged in a judgment upon the obligation and that the fraud which equity will guard against is extrinsic to the cause of action and occurs in the procurement of the judgment. There is no fraud charged in this case in the procurement of the judgment and the defense stated is merged in the judgment at law.

Savage vs. Edgar, 86 N. J. Eq. 205; 98 A. 407.

Ruling Case Law, Vol. 15, Sec. 329:

> "329. As Ground for Attack by Parties or Privies; In General—It is the general rule that a judgment cannot be impeached for fraud by a party or privy to it, unless the fraud affects the jurisdiction of the Court or appears on the face of the judgment roll itself. The exception as to fraud affecting the jurisdiction of the Court is more apparent than real, since an attack on a judgment on the ground of fraud in its procurement constitutes a direct attack. It is sometimes said that it is a maxim of law that fraud vitiates everything into which it enters, but this maxim must be taken, like other general maxims, to apply to cases where proof of fraud is admissible. Where the same matter has been either actually tried, or so in issue that it might have been tried, it is not again admissible; and the party is estopped to set up such fraud, because the judgment is the highest evidence and can-

not be controverted. The parties to a judgment therefore cannot impeach it collaterally by showing that no bona fide debt existed on which it was rendered, or that the debt was in fact created by fraud. Hence a judgment cannot be attacked collaterally by a party to it in a subsequent action to recover money collected by regular process issued upon it, or when such judgment is offered in evidence against him in support of a title which was in issue in the case in which it was recovered. It has also been held that a judgment cannot be impeached collaterally, in a subsequent action for damages, by proof that the plaintiff in it, while suit was pending, practiced deceit upon the defendant, whereby the latter was led to forbear interposing a defense fraudulently concealed from him. According to some decisions even an infant who is a party to a judgment cannot attack it collaterally for fraud, but there are also authorities to the effect that an infant defendant may impeach a decree against him on the ground of fraud or collusion between the plaintiff and his guardian."

Cyclopedia of Law and Procedure, Vol. 23, Judgments, page 1097:

"4. Fraud, Collusion, and Perjury—A. In General. Where the fraud alleged was inherent in the cause of action, or in the character or procurement of the instrument sued on, it is conceded that it does not furnish a legitimate ground for impeaching the judgment in a collateral proceeding; and there are many decisions stating the broad general rule that it is not permissible for a party or privy to attack a judgment in a collateral proceeding on account of fraud. It is quite generally held, however, that fraud prac-

> tised in the very act of obtaining or procuring the judgment is so far destructive of its validity that it may be made the basis for a collateral attack upon the judgment, although there are decisions on the contrary."

Page 1294:

> "E. Judgment Conclusive of Fraud or Validity of Contract. A decision adjudging a conveyance, contract, or other instrument to be fraudulent or invalid is conclusive of that fact in all further litigation between the same parties; and on the other hand, a judgment giving effect to a deed, mortgage, judgment or contract is conclusive evidence that it is free from fraud, or illegality, even though that issue was not raised in the action, since in that case the judgment necessarily implies a finding that the cause of action was valid and enforceable, except where the party objecting was ignorant of the fraud or illegality before the judgment, or was prevented from pleading it."
>
> *Vaughn vs. Johnson,* 8 N. J. Eq. 173.

b. Laches and Election.

If there was any misrepresentation it was known to Davis Bender in September, 1926, when by his own testimony he called on Williamson at Yonkers to complain of his misrepresentations (p. 575). It was known to his attorneys on January 30th, 1928, when Exhibit C7 at page 660 (Vol. III, State of Case) was drawn and served as a notice in the lawsuit in the Essex County Circuit Court prior to the trial therein. The extravagant pretense of offering a deed of this property to Williamson after it had been foreclosed in Florida and while the present

lawsuit was pending, was solely to buttress a lost hope. *Vigilantibus non dormientibus aequitas subvenit.* A court of equity which is never active in relief against conscience or public convenience has always refused its aid to stale demands where the party has slept upon his rights and acquiesced for a great length of time. Nothing can call forth this court into activity but conscience, good faith and reasonable diligence.

Smith vs. Clay, 3 Brown Ch. 638.
Barnes vs. Taylor, 27 N. J. Eq. 259.

In the case of *Luff vs. Nevins,* 106 N. J. Equity 386, the Court will find a similar situation as in this case on appeal.

In the *Luff* case, at page 387, Vice Chancellor Church said:

> "There is another question that should be considered; the delay of complainants in attempting to rescind. They had a survey of the property in December, 1925, which showed the condition of which they now complain. Yet they paid interest on the mortgage in April, 1926, and did not tender a reconveyance until October, 1927. In the case of *McKirgan vs. Curtis,* 144 Atl. Rep. 454, I said, quoting from *Ginsberg vs. Wolters,* 94 N. J. Eq. 532:
>
> " 'From the facts recited, and others not mentioned from this lengthy record, there is ample proof, not only of defendants' delay in electing to rescind promptly after learning of the alleged fraud, but we have in addition conclusive proof of what

the Courts call conduct evidence of defendant's election to abide by this bargain and to enjoy the benefits of it. The first undisputed offer to rescind is made by the answer filed in March, 1921, eight months after the transaction, five months after they discovered the fraud in October, two months after defendants state they know completely to what extent they had been defrauded, over a month after they had used the rents from the property, and this offer was made only after they had been restrained from collecting further rents.' "

" 'Applying to this situation the rule of the cases in this court and in the Court of Errors and Appeals (*Dennis vs. Jones,* 44 N. J. Eq. 513; 14 Atl. Rep. 913; 6 Am. St. Rep. 899; *Clampitt vs. Doyle,* 73 N. J. Eq. 678; 70 Atl. Rep. 129; *Faulkner vs. Wassmer,* 77 N. J. Eq. 537; 77 Atl. Rep. 341; 30 L. R. A. [N. S.] 872, and *Reed vs. Soap Co.,* 81 N. J. Eq. 182; 86 Atl. Rep. 263), it must be held that defendants did not promptly elect to rescind and that their failure to rescind within a reasonable time is plenary evidence of their election not to do so, and therefore the attempted rescission made by the answer was made too late, as it was made after the defendants, by their conduct, had elected, with complete knowledge of the alleged fraud, to ratify and to keep the benefits of the transaction.' "

"See, also, *Faulkner vs. Wassmer, supra,* in which the Court of Errors and Appeals said:

" 'We agree with the learned Vice Chancellor that Mrs. Faulkner purchased the lot in question upon an untrue representation of such a nature that, upon the discovery of its untruth, she was entitled to elect to rescind the sale. We do not,

> however, agree that such election was still open to her four months later when the present bill of complaint was filed declaring for the first time her election to rescind. At this time—her right to elect, which arose on or about—no longer existed, not upon the doctrine of laches, discussed in the conclusions filed in the court below, but upon the ground that the lapse of such a length of time under the circumstances afforded plenary proof of an election by her not to rescind to which conclusive effect should have been given.' "

In the *Luff* case the complainants procured a survey in December, 1925, showing the condition of the property, and on October 7th, 1927, a reconveyance was offered to Nevins, and sometime thereafter, the bill was filed.

In this case on appeal, the defendant, Davis Bender, complained of the alleged misrepresentations in September, 1926 (p. 575); he thought of interposing it as a defense in the Essex County Circuit Court (Exhibit C7 on page 660) January 30th, 1928, a year and four months thereafter, but he did not do anything to assert his alleged grievances until after the complainant sought to set aside his fraudulent conveyances by the filing of his counterclaim on June 20th, 1928, nearly two years after the time when Bender said he called on Williamson at Yonkers, to complain of the alleged misrepresentations.

c. Facts.

The record discloses a joint deed by Williamson and Henry Glickman, his tenant in common of two lots on 9th Street and two more on 10th

Street, Miami, to Davis Bender and his partner, Harry Lack. Bender and Lack exchanged deeds and Bender obtained the property on 10th Street. Between Williamson and Glickman, a division of the cash and mortgages was made. There was no fraud or misrepresentation by any person at any time. Davis Bender, indeed, does not claim that Williamson made any representations, but that a real estate broker in Florida did so and does not connect the author of such statements with Williamson in any manner (p. 382). Williamson's reply is a general denial which he was not called upon to supplement until there was evidence in the case that he directly made such false statement or that an authorized agent did so on his behalf.

The defense was so little relied upon by Bender that he did not think it worth while to even ask for an adjournment in the law court in order to bring it properly before that tribunal and in the present suit is interposed for the purpose of beclouding the issues and seeking sympathy for a scheming defendant whose fraudulent practices have been exposed. There is no substance to this defense either in fact or law and it was properly dismissed.

This case on appeal is similar to the case of *Luff vs. Nevins,* 106 N. J. Equity, 386, wherein Vice Chancellor Church cites the case of *Waldron vs. Cutley,* 144 Atl. Rep. 447, which latter case was affirmed by the Court of Errors & Appeals in 105 N. J. Equity 586.

Vice Chancellor Church held in the *Luff* case as follows:

> "The testimony, however, merely shows that defendant employed Dale as a real estate agent for the purpose of selling the property. The fraudulent representations of a real estate agent do not bind the defendant when he had no knowledge of them.
>
> "Complainants admit that they have been unable to show that Dale's fraudulent representations, if there were any, were either known to or authorized by the defendant. Therefore, the defendant is not bound by any that may have been made. I so decided in the case of *Waldron vs. Cutley,* 144 Atl. Rep. 447, in which I said:
>
> " 'Even if they were, they had no right to bind him by misrepresenting facts, when he had no knowledge of the misrepresentations. It is a well known principal of law that a real estate agent is not a general agent, and therefore the real estate agent's acts are not binding, unless within the scope of his authority.' "

This case was affirmed by the Court of Errors & Appeals in 105 N. J. Equity 586.

It also appears that Dale was not only broker for the defendant but became co-principal with the complainants without defendant's knowledge. This would cast upon him the duty of exercising good faith toward complaints as a co-principal but not as defendant's agent. However, this point is unimportant in the decision of the case because, as I have already said, "Defendant cannot be held for any misrepresentations made Dale."

POINT V.

Appellant's grounds of appeal answered.

1. Appellant complains that witnesses were examined before trial although the order of discovery was not personally served on Davis Bender. The record shows that the order was served upon his solicitors after he filed his answer and that Davis Bender was in court on each and every hearing represented by learned counsel who in turn examined the same witnesses before trial (pp. 121, 213, 286). There was nothing done in secret and the reason Davis Bender was not served is that he purposely absented himself from the jurisdiction until immediately prior to the time of trial. No objection was made at any time, either to the examination of the witnesses nor of the subsequent tender of such examination into evidence before the Court of Chancery.

See offer and acceptance of testimony on page 316 with statement of defendants' counsel that he had no objection thereto. Also Court order page 74 and admission of service by defendants' solicitor (p. 77, lines 19, 20).

2. The Court properly admitted testimony as to the acts and transactions of appellant, Davis Bender, prior and subsequent to the conveyances attacked, on the theory that a fraudulent intent could be shown by a succession of similar conveyances suspiciously made to immediate relatives without consideration.

Jones on Evidence, Second Edition:

> "Sec. 142. Same-Knowledge-Intent-The largest class of cases in which facts ap-

parently collateral to the issue are admitted is that in which it becomes material to prove knowledge or intent. When it becomes material to show the motive or intent which inspired an act, or the knowledge under which one has acted, it is relevant for such purpose, under certain limitations, to prove other similar acts which explain such motive or bring home to the party the knowledge sought to be proved. * * * It frequently happens that such motive or intent can be shown in no other way, while a single act might leave the secret motives of the party in doubt. Such act, in connection with others of the same character, may afford decisive proof and remove all uncertainty. It has often been held in civil cases that, on the question of intent to defraud, other similar acts or representations at about the same time as the one in question are relevant. Thus where it is claimed that purchases were fraudulently made by one knowing himself to be insolvent and with the preconceived intent not to pay, it is relevant to show other purchases on credit at or about the same time. In an action to set aside a sale of land on the ground that the vendee has falsely represented himself to be a man of property, it is relevant to show similar representations to others at about the same time to show a general scheme to amass property by fraud. So on the issue of fraudulent intent, it is relevant to show other voluntary conveyances, conveyances to relatives or similar transactions with others tending to show a common fraudulent scheme. * * * From the necessity of the case, where evidence is circumstantial in its nature and offered to prove motive or intent, considerable latitude must often be allowed, since the force and effect of circumstantial facts

> usually and almost necessarily depend upon their connection with each other."

The deep wound inflicted on the defendant's case by the introduction of the chattel mortgage transactions with the Sivad Company, is clearly admitted by the heroic argument under this point that such evidence was irrelevant. This evidence was important and competent to show fraudulent intent, transfer of property to relatives without consideration and insolvency of the judgment-debtor and his immunity to execution on plaintiff's judgment.

Cory vs. Somerset, 47 N. J. Law 181.
27 *Corpus Juris* 804, §735.
Rioux vs. Cronin, 222 Mass. 131.

Appellant's learned counsel criticizes the Vice Chancellor for permitting testimony as to what money Davis Bender gave his wife in the year 1927. The purpose of this was to discover assets of Davis Bender if possible and to show that he had transferred such assets to his wife in an effort to defraud the plaintiff and under paragraphs 34, 35 and 36 of the bill of complaint the evidence was undoubtedly relevant. It is likewise difficult to follow the reasoning of the appellant's brief which would preclude the complainant from showing fraudulent intent both through the transfers of his property, chattel mortgage of his furniture and also through the depletion and mysterious disappearance of his bank accounts. There is a misstatement as to the commencement of bank accounts in appellant's brief, to wit; that all commenced after April 22nd, 1926. The fact is that the bank account of Davis Bender in the record commenced in 1924, and the argument

is made by the respondent that the bank accounts of the remainder of the family only began after April, 1926, when Davis Bender put in operation his fraudulent scheme.

3. There was ample proof that the conveyances were actually fraudulent and participated in, with guilty knowledge by each and every one of the defendants. A detailed restatement of the facts to support this presumption would be mere repetition at this time. The Court is respectfully referred to Points I, II and III in this brief.

Vice Chancellor Church found "that the conveyances were made for the express purpose of defrauding creditors particularly the $10,000 note" and that "they were made to avoid the payment of this judgment" (see opinion, pp. 85, 86).

Appellant's brief proceeds with the theory that the Court was required to believe the defendants. It is quite evident from his opinion that he properly chose to disbelieve each and every one of them. They were all interested, their story was false and their actions and conduct on the witness stand was complete proof.

4. According to the statement of appellant, Harry Bender attained his majority May 16th, 1921. For services rendered prior thereto there could be no legal obligation by his father. Between that date and October 11th, 1924, a period of three and one-half years, Davis Bender admits the services of his son were worth Ten Thousand ($10,000) Dollars to him in addition to his board and keep. Harry Bender never received more than Twenty ($20) Dol-

lars per week at any time. His ability to earn over Three Thousand ($3,000) Dollars per year working for his father was disbelieved by the Vice Chancellor. Their secret oral agreement whereby the father agreed to pay the son for such services was likewise disbelieved. Contradiction of their evidence was not necessary as they were highly interested witnesses and their testimony open to suspicion. The Court below properly stated the law that such services are not good consideration for a wholesale transfer by a parent who thereby leaves himself insolvent as against the claim of an existing creditor.

Dodson vs. Severs, 54 N. J. Eq. 305.
Updike vs. Titus, 2 Beas. 151.
Prickett vs. Prickett, 5 C. E. Gr. 478.
Disbrow vs. Durand, 25 Br. 343.

Mason vs. Somers, 59 N. J. Eq. 451; 45 A. 602, Gray, VC.:

> "The defendant had plenty of opportunity to foresee the unprecedented danger and his conveyance to his son of all the lands which he had that were of any value, for a nominal consideration without any bargaining as to value leaving his own large claim against the son to stand uncollectable indicates that the father was forefending the wrath to come and seeking to retain the property in the control which would favor him so that if the worse came to the worst he could not be obliged to make good the assurance which he gave to the complainant which induced him to indorse the note. Judgment for plaintiff."

Perrine vs. Perrine, 50 A. 694.

5. The appellant's learned counsel has evidently not completely digested the leading case of *Horton vs. Bamford,* 79 N. J. Eq. 354; 81 A. 761, which is a complete and sound statement of the law on voluntary conveyances nor yet the case of

Demerst vs. Terhune, 18 N. J. Eq. 352.
Reed vs. Livingston, 3 Johs. Ch. 481.
Hancock vs. Elmer, 63 N. J. Eq. 802; 52 A. 1131.
Kinmouth vs. White, 47 A. 1.

The sections of the Uniform Fraudulent Conveyance Act, Sections 2, 8 and 9 most certainly negative this statement of law made by the appellant.

6. Williamson was an existing creditor on April 22nd, 1926. Appellant fails to distinguish between an existing creditor and one whose obligation has matured. In a suit to set aside a fraudulent conveyance there is no distinction.

Uniform Fraudulent Conveyance Act, Section 9.

The reason why there is no distinction of "existing creditor" in the Uniform Fraudulent Conveyance Act, is that there has never been any doubt as to this question. Once a debt exists there is an existing creditor. Williamson became such on June 16th, 1925. It would be idle to follow appellant's reasoning to the conclusion that a creditor could only question transfers made after maturity of his debt. He would be like the trackwalker who woke up after the train passed over him.

7. Davis Bender was insolvent when the ques-

tioned conveyances were made. His only assets was the void contract for Florida land, shares of stock in a defunct Gotham Realty Company and the lots bought from Williamson which had been foreclosed. Does appellant's counsel sincerely argue that these assets were sufficient to meet Williamson's Ten Thousand ($10,000) Dollar note? The Uniform Fraudulent Conveyance Act does not curtail any of the powers of equity but enlarges the remedy. The fact that Davis Bender at the time of making the conveyances had money in the bank accentuates his fraudulent purpose in making the transfers to his son because the record shows Davis Bender thereafter secreted every dollar of his bank assets. The Court is dealing here with a series of fraudulent acts, a plan which took time to consummate. Its purpose is evident. The fact Bender first transferred his real estate and then hid his cash will not make either transfer honest and valid. In *Conway vs. Raphel,* 141 A. 804, the Court was dealing with a single isolated transfer and it was correctly held that insolvency was necessary where actual fraudulent intent was not shown. In the present case actual fraudulent intent by circumstantial evidence was conclusively proven. In the present case we are concerned with a series of acts concerning many and varied assets all transferred with a single fraudulent intent to defraud this plaintiff. The fact that the fraudulent scheme took two months to consummate and many individual deeds, assignments and checks is no protection. The Court is not restricted by the size of the fraud, the extent or number or varieties of the subtleties used, nor the fact that two months were consumed in the actual

plan. The insolvency and fraud is amply sustained by the fact that between April 22nd and June 24th, Davis Bender divested himself of his entire real estate to his son, Harry, without consideration and with knowledge by Harry of the fraud and checked out over $62,000.00 in cash to persons and places he refuses to disclose, leaving himself a little over $7,000.00 to meet Williamson's note of over $10,000 and by further depleting this to a nominal amount when Williamson's lawsuit came to trial.

8. The proof showed that the questioned conveyances were not bona fide and were not made for a valuable consideration. Appellant's argument on this point is mainly repetition of the same matter stated in the brief under Point III and is fully answered by the opinion of Vice Chancellor Church and the material under Point I in this respondent's brief. The facts underlying appellant's argument were completely disbelieved by the Vice Chancellor and gain no additional weight by repetition in the brief. What the father said to Harry and what Harry said to the father is rehashed under this point and is completely answered by the decision and decree of the Vice Chancellor. The computations of the equities in the property made by counsel in his brief was not made by either the father or the son at the time of the conveyances and only prove again that the defense in this action was manufactured to meet the complainant's case and the figures carefully computed to show some semblance of proportion.

Counsel questions the reason that Davis Bender and Harry Bender joined in the conveyance of Vanderpool Street. Perhaps their income

statement to the Federal Government for that year might furnish the answer, to wit; that the profit was so great that it was necessary for each of them to report a part of it with corresponding decrease in the income tax due to the possible exemptions claimed by father and son.

Counsel's argument that the conveyance of April 22nd, 1926, can be upheld on the valuable consideration that Harry indorsed the checks received on Vanderpool Street to his father stretches the imagination.

> "By merely endorsing the checks and signing the deed a good and valuable consideration moved to the father from the son even if the Court will entirely disbelieve all the testimony as to the property and proceeds thereof belonging to Harry Bender."

The argument entirely overlooks the full and fair consideration required in actions to set aside conveyances for fraud where the defense is a bona fida consideration.

Regarding the conveyance of Goldsmith Avenue, appellant misconceives the purpose of the record which shows that although the property was only worth Sixteen Thousand ($16,000) Dollars that the Profit Realty Company ostensibly gave Twenty-two Thousand ($22,000) Dollars for it which in itself was an exaggerated price and only made so that a purchase money mortgage of $15,000, which is the true value of that property, might be delivered to Harry Bender in case anything happened to the Profit Realty Co., Benders could not lose.

9. This point has been entirely covered in point IV above.

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10. A counsel fee of $1600 was awarded which included $600 of stenographer's fees to the Master. The nature of the work involved a complexity of facts and law. The length of the hearings are all attested by the record before this court, which consists of 657 pages besides numerous exhibits approximating 60 in number. The amount involved was substantial. All of these matters were properly considered by the Vice Chancellor in making the award, which if anything was inadequate to compensate the complainant and his counsel for the tremendous work involved in this case. The award should properly have been $3,000.

11. The court's findings of fact are amply sustained by the great weight of the evidence. The slight discrepancies in dates in the Vice Chancellor's opinion could have been easily remedied if appellant's counsel had been fair enough to ask for a reargument before him and point out to him the slight error involved. The date in question is immaterial. The opinion of the Vice Chancellor was strongly supported by the record as is pointed out by Point I of this brief.

The final argument of appellant that even though the court of equity could not consider the counterclaim for rescission by the defendant, that nevertheless it could consider defendant's claim in that regard as a moral defense to the plaintiff's complaint, hardly needs an answer. There is considerable hardihood in the suggestion however, coming from counsel whose clients, the defendants, have been conclusively proven to have perpetrated gross fraudulent practices in order to avoid the payment of plaintiff's

just debt and in an effort to escape from the just condemnation which equity visits upon such piratical acts, have attempted to foist upon the Court of Chancery a vain and hollow tissue of lies, a web of perjury and a mass of manufactured evidence.

Summary.

This appeal presents the final move in the campaign by the defendant Davis Bender to avoid the payment of his promissory note to the complainant Jacob Williamson. An appeal was taken by him from the judgment in the law court upon that note and on appeal to the Supreme Court the judgment was unanimously affirmed with an opinion which overruled every ground of appeal raised by Davis Bender. The sweeping decision of Vice Chancellor Church has exposed a nauseating scheme of trickery and fraud and his decree has avoided and annulled each and every of the fraudulent devices used by Davis Bender and the other defendants here. On the present appeal it is submitted that the respondent has answered every argument advanced by the appellant for a reversal and in addition has shown that both on the facts and the law the plaintiff was entitled to the relief granted by the Court of Chancery below. Every argument advanced by the appellant in this action was presented to and considered by Vice Chancellor Church before his opinion and decree. No substantial error of which the defendants could justly complain is shown by the record, and the cases cited by appellant's learned counsel in his brief were all decided upon a state of facts which is not before this

court in this case. Since 1926 the complainant has sought diligently to collect his debt, and the defendant by artificent fraud has so far made this impossible and by repeated appeals from adverse court decisions has postponed the day of reckoning. The complainant from the mouths and records of the defendants has convinced the Court of Chancery that a fraud was perpetrated upon him by the various conveyances and transfers set up in the record. The decree of the learned Vice Chancellor has rectified this injustice and has given to the complainant a clear path whereby the complainant may satisfy his judgment. There is no intimation in the record or in the brief of the appellant that the Vice Chancellor was actuated by bias or prejudice or that he has done other than what he felt in duty-bound to do in the administration of his high judicial office.

The complainant Jacob Williamson respectfully submits that the decree in this suit should be affirmed in all respects and the final barrier to plaintiff's recovery of a just debt, removed by this court.

Respectfully submitted,

ALBERT C. JORDAN,
Solicitor for Respondent.

SAMUEL DANIELS, Esq.,
Of Counsel with Respondent.

25 OCT.T.1930

New Jersey Court of Errors and Appeals

NO. 25, OCTOBER 1930 TERM.

JACOB WILLIAMSON, Complainant-Respondent, vs. DAVIS BENDER, *et als.*, Defendants-Appellants.	On Appeal from the Court of Chancery.

REPLY BRIEF OF APPELLANTS.

As to the Facts.

Respondent's brief contains so many statements, as "Facts", which do not appear in the record or which appear entirely different in the record, that it is difficult to believe these misstatements were accidentally made. Appellants will point out the more important mis-quotations set out in respondent's brief.

Page 4, top, he says the title on the resale of the Vanderpool St. property "was closed June *17th*". In fact the title was closed June *15th,* 1925. The agreement of sale calls for closing on June 15th (Case, p. 545, l. 15). The affidavit of title by Harry Bender at the closing was made on June 15, 1925 (Case, p. 611, l. 27). The deed to the bank at the closing bears date June 15, 1925 (Case, p. 613, l. 25), was acknowledged the same day (Case, p. 618, l. 22) and was recorded June 16, 1925 (Case,

p. 619, l. 9). The checks at the closing are dated June 15, 1925 (Case, p. 620, l. 5, l. 30; p. 621, l. 5, l. 15, l. 28; p. 622, l. 4, l. 12, l. 22). This date is important because on June 16, 1925 the note was made on which the judgment was rendered.

Respondent then states the check for $31,323.50 was made to Davis, Harry and Mollie Bender "for reasons of income tax". There is not a word in the testimony to substantiate this. The proofs showed that Harry Bender was the real owner of the Vanderpool St. property, that he was a party to the agreement of resale and to the deed given to the bank; hence the bank's check on closing was made payable to him as well as his father and mother, since the title of record was in Davis Bender's name (Case, pp. 326, 334, 346, 365, 367, 368, 370, 371, 415, 417). Harry Bender testified he reported the profit he made in the transaction in his income tax report for the year 1925 (Case, p. 255).

Page 4, middle, respondent asks the Court to take judicial notice of the collapse of the Florida boom during 1925 and 1926. The Court cannot judicially notice such circumstance, without proof; and even if Florida real estate generally did drop in value, this is no proof that the property in question was then worth more or less than theretofore. The record disclosed that on March 16, 1926 (nine months after Davis Bender and Harry A. Lack purchased the 9th—10th St. Miami, Florida, lots from respondent whereby the $10,000 note arose, and about a month before Davis Bender made the conveyance to Harry Bender here attacked) Davis Bender bought out Lack's interest in the Florida lots and paid the latter a profit of $6,500 on his investment of $6,000 in these very lots.

Page 4, bottom, respondent states that on April 22, 1926 Davis Bender conveyed to Harry Bender "everything he owned in the way of real estate".

On that day Davis Bender still owned a garage on Essex Street, Newark, N. J., which he conveyed to Roemer on May 20, 1926 and received about $65,000 (Case, p. 342); also the 9th—10th Street, Miami, Florida lots of the then value of $25,000 and lots on 28th Ave., Miami, of the then value of $18,000 (pp. 22 and 23 of our prior brief).

Page 5, middle, respondent says the chattel mortgage of June 11, 1926 was "to secure a fictitious loan of $2000." The chattel mortgage (Case, pp. 549 to 552) evidences a loan, and the affidavit thereto affirms the bona fides of the transaction. The record shows that Davis Bender received the money from the mortgage, that the mortgagee paid him the money and was in the money-lending business. The loan was not repaid and the mortgage was foreclosed on November 25, 1927 (Case, p. 261, l. 34). There is no proof that the loan or the mortgage was "fictitious". When we consider that at that time Davis Bender was operating in Florida real estate, that he had taken his son's $40,000 arising from the purchase and sale of the Vanderpool St., Newark, property, to provide capital for the father's Florida venture, that the father was making Florida his home, it is easily seen that he wished to convert into money whatever he had up north, and, not being able to sell his personalty, he mortgaged it to procure more funds to take to Florida (Case, p. 129, l. 4).

Then respondent affirms that Sivad Realty Co. was "entirely controlled by Harry Bender". The testimony was, that out of the 12 shares of the company, Harry Bender owned 4 or 5, the rest being owned by Samuel Kaplan and Harry Hoffman (Case, p. 262, ll. 20 to 26).

Harry Bender did not "swear he gave the Sivad money to his father in their home in secret". He

testified he guessed he gave the money to his father and it may have been in the house (Case, p. 273, ll. 14 to 17). Nor did Davis Bender "swear he doesn't know who gave him the money." He said he did not remember who gave it to him (Case, p. 128, ll. 2 to 20).

Respondent then quibbles about the $2000 having been given in "cash" or by "check", and quotes Feit as having said "it was a check". Feit testified he had no absolute recollection of the transaction but *believed* it was a check (Case, p. 354, l. 14 to p. 355, l. 3).

Page 5, bottom, respondent asserts that the furniture remained in Davis Bender's home on Goldsmith Ave. and is still used by him, and that he used the automobile continuously in Florida. The references to the State of Case which follow this statement (?) disclose no such testimony. Davis Bender was living in Florida (Case, p. 127, l. 20). When the father visits his son in Newark he uses the furniture as any other visitor would do. There is nothing in the record to show that the automobile included in the chattel mortgage was taken out of this State.

Page 6, middle, respondent claims that Davis Bender was left "judgment proof" upon sale of the Roemer garage in May 20, 1926. He had then $69,626.80 on deposit in the Newark bank, besides real estate (listed on p. 23 of our prior brief) of the value of $120,000—quite substantial assets for a "judgment-proof" person.

Respondent next calls attention to some of the money withdrawals from the bank account of Davis Bender, and that "none of these checks are available". After the bank statements were introduced (Case, p. 453) Davis Bender was not questioned, nor was he subpoened or noticed to produce these checks, nor do the pleadings contain any

reference thereto. If respondent was interested in seeing these checks, and was surprised at their non-production at the trial, he should have asked for an adjournment, for Davis Bender testified he "left a lot of junk" in Florida (Case, p. 139, l. 35) and perhaps these checks were amongst them.

Respondent's next proposition that Davis Bender "does not remember what a single item was for" is ridiculous. He was questioned only on three of these seven checks (Case, p. 406, ll. 8 to 40) and said he took the $40,000 to Florida, did not recall to whom he gave the $12,000 or what he did with the $5,000 check.

As to the records of the Florida accounts being "mysteriously lost", the references given by respondent show that the check-books may be in Florida (Case, p. 138, l. 21) and Bender left some of his records in Florida and other worthless ones he threw away (Case, p. 139, ll. 30 to 40). He was not asked to bring these records, whether by subpoena duces tecum or notice to produce or by allegations in the pleadings.

Page 8, middle, respondent dares to say, concerning a telegram in the Florida foreclosure, that "Davis Bender swears he never sent it" and "Louis Feit swears he never sent it." The pages referred to show that Davis Bender does not remember sending it (Case, p. 216, l. 25), and that Louis Feit does not recall sending it (Case, p. 349, l. 35). Respondent next is so careless with imputations of perjury as to declare that "either one is deliberately lying".

And the same holds true of respondent's next declaration, about the answer in the foreclosure action, that "Feit swears he never prepared it" and "Bender says he knows nothing about it". Feit testified he had no recollection of preparing the

answer (Case, p. 350, l. 11) and Bender does not remember the incident (Case, p. 219, l. 6).

Page 9, top, respondent would have it that because of the telegram and answer in the foreclosure action, Feit knew of the Williamson note before 1927. It will be noticed that the bill of complaint in that action (Case, pp. 504 to 509), while referring to the $10,000 mortgage given to respondent, makes no mention of a note accompanying it. Feit asked the Clerk of the Florida Court for a copy of this bill of complaint, but evidently did not receive it. Feit does not recall drawing an answer, but even if he had done so, the answer went to the complaint, in which there was no allegation of a $10,000 note made to respondent by Davis Bender.

Page, 9, middle, respondent again avers that by the deed of April 22, 1926 Davis Bener conveyed all his property to his son. We again refer to pages 22 to 24 of our prior brief, wherein Davis Bender's remaining assets of $122,997.64 are itemized. Next respondent asserts that Gotham Realty Co. failed in 1925 and refers to page 233 of the Case; neither on that page nor elsewhere in the record is there any such evidence—Davis Bender, as respondent's witness, testified he did not know if this company had become bankrupt (Case, p. 233, l. 22).

Page 10, middle, respondent affirms that Harry Bender contradicts Davis Bender's testimony that the latter gave his wife no money in 1927, 1928 or 1929. What Harry Bender did testify to (Case, p. 264, l. 20) was that he believed his mother got money from his father which she loaned to her son (and which he in turn loaned to Sivad Realty Co.), but he does not say whether or not the payment from husband to wife was made within the period of 1927 to 1929; he also testified he repaid

the loans in full to his mother (Case, p. 285, ll. 21 to 24). The account of Sivad Realty Co. (Case, p. 634) shows the large deposits to have been made in 1926.

Page 10, bottom, respondent says that the Goldsmith Ave. property was valued by the Benders at $16,000 and sold to Kaplan and Profit Realty Co. for $22,000. He forgot to mention that the $16,000 valuation was made on April 22, 1926 and the $22,000 sale was made on April 11, 1927.

Page 11, top, respondent makes an unexcusable misstatement that there was no contract for the sale of the Goldsmith Ave. property; he refers to page 100 as his authority, wherein Samuel Kaplan swore there was a contract (ll. 8 to 40), the contract being Exhibit D-4 and being spread out on pp. 653 to 656 of the Case.

Page 12, top, respondent seeks to testify, per his brief, that the moneys paid by Profit Realty Co. to Harry Bender were not for interest; he refers to page 114 of the Case where Samuel Kaplan, respondent's witness, testifies to the contrary, and there is no contradictory evidence in the record.

Page 13, top, the testimony of Donald Strope, the deputy sheriff is set out, but Abram Kaplan (admittedly a dummy in Profit Realty Co.) says he told Strope that he had nothing to do with Profit Realty Co. (Case, p. 460), and Samuel Kaplan says he was not served by Strope and said nothing to him (Case, p. 469). This seems to make out a case of mistaken identity by Strope between the Kaplan brothers.

Page 13, bottom, respondent seeks to draw a common interest between Profit Realty Co. and Sivad Realty Co., but the reference he gives (Case, p. 191) sets out the testimony of Samuel Kaplan to

the effect he was merely a dummy incorporator of Sivad Realty Co.

Page 15, top, respondent disputes that Davis Bender spent the $70,000 he received in May 1926 on the Roemer sale. Bender testified he lost between $20,000 and $25,000 in a theatre venture (Case, pp. 236 to 237), that his wife was ill in a sanatorium, that he was in ill health, and that he sometimes spent more than $500 a week for living expenses, doctors bills, etc. (Case, p. 238, l. 22). At that rate the money could easily have been spent in the period from May 1926 to the trial in April 1929.

Page 16, top, respondent asserts that "there is not a slip of paper to substantiate the defense nor a single reliable and disinterested witness who will swear to any part of it"—referring to the purchase by the father for the son of the Vanderpool St. property and its subsequent resale in which some $39,000 was realized. As to papers, we have the agreement of April 17, 1925 for the resale (Case, pp. 544 to 548) signed by Harry Bender, the deed of June 15, 1925 to the bank (Case, pp. 613 to 619) also signed by him, the affidavit of title of June 15, 1925 to the title company (Case, pp. 609 to 611) sworn to by him, and the checks of June 15, 1925 made by the bank (Case, pp. 620 to 621) in which he is named as payee. As to reliable and disinterested witnesses, we have Louis J. Feit, an attorney (Case, p. 346), David Houston, the purchaser (Case, p. 326), James J. McCarthy of the Fidelity Union Title Company (Case, p. 334), all of whom testify that they knew Harry Bender had an interest in the Vanderpool St. property prior to or at the closing on June 15, 1925; Daniel Straver, who is not a party to this suit, testified to correspondence passing between father and son in the latter part of 1925 which corroborated the debt due to the son

by the father and their agreement for conveyance of the Newark properties in satisfaction of the debt (Case, pp. 450 to 451).

As to references to testimony made in respondents' brief on and following page 17, we assume these to be only for argument purposes, and hence do not point out where in the testimony at the hearing contradicts or fails to substantiate them.

As to the Law.

The Court reviews findings of fact made by the Court of Chancery, and, if contrary to the weight of the evidence, will reverse the decree. This review is not at all limited to cases where bias or prejudice is shown; appellants contend that the findings of the Vice-Chancellor here are not consistent with the evidence produced at the hearing.

> "The rule giving great weight in the appellate court to the Vice-Chancellor's finding on a question of fact imposes no restraint on the power of the former to ascertain, by full investigation and analysis of the evidence, what the facts are, and whether the general finding is consistent therewith."
>
> Cartain v. Phelps (E. & A. Ct. 1920) 91 N. J. Eq. 312.

In the instant case practically all the testimony was undisputed and uncontradicted. The only theory on which the Court could have found the conveyances to have been fraudulent, was to disbelieve all the witnesses, and assume that, had they been truthful, they would have testified to facts to fit the findings.

Respondent's citation (p. 19) from 27 C. J. 807,

as to the admissibility of evidence of similar fraudulent transactions, is inapplicable. It is only where the other transaction action was similar and at or about the same time as the one attacked, that the evidence may possibly be admitted. Here the conveyance attacked was a deed and an assignment of mortgage made from father to son, whereas the other transaction was a chattel mortgage made by the father to a corporation. The one was made on April 22, 1926 and the other on June 11, 1926. There was neither the element of similarity nor of time. At any rate, this citation does not appear to be in accord with the cases of Stillman v. Stillman, 21 N. J. Eq. 126, and Cheveling v. Fritts, 34 N. J. Eq. 135, cited on page 11 of our prior brief.

As to the admission of testimony concerning the chattel mortgage, bank statements, etc., in order to discover assets of Davis Bender, that had no place at this trial where the issue was the bona fides of the conveyance by father to son of April 22, 1926.

On pages 34 to 36 of our prior brief we showed that equitable fraud may consist of an innocent mistake. Mistake for which equity affords relief, can also be called equitable fraud, for the element of cheating or deceit may be entirely absent.

In the instant case respondent innocently believed the lots were on Ninth Street, and he so testified at the law trial (Case, p. 587, l. 21); he wrote Davis Bender that the mortgage accompanying the $10,000 note embraced land on Ninth Street (Case, p. 598). Glickman, respondent's coowner, told Bender the lots were on Ninth Street (Case, p. 382), and so did respondent's lawyer (Case, p. 384). Bender believed he was buying lots on Ninth Street. The fact is undisputed that the lots were on Tenth Street. Assuredly,

then, the minds of the parties had not met, for the subject matter was not what both parties thought it was; as well might the property which was transferred have been a volcano in Italy. The grantors did not intend to convey Tenth Street lots nor the grantees purchase Tenth Street lots. If the grantors owned the intended lots on Ninth Street, the deed and mortgage could be reformed to embrace the correct lands, but they do not and did not own the corresponding Ninth Street lots. The only way to right the error is by rescission or cancellation and restoration of the parties as nearly as can be to their former position.

> "To correct or cancel deed on the ground of mistake, when the mistake is clearly shown, is one of the familiar duties of a court of equity. Where parties have apparently entered into a contract evidenced by a writing, but owing to a mistake their minds did not meet as to all the essential elements of the transaction, so that no real contract was made by them, then a court of equity will interpose to rescind and cancel the apparent contract as written, and to restore the parties to their former positions. Equity will grant relief on the ground of mistake, not only when the mistake is expressly proved, but also when it is implied from the nature of the transaction. And it is not essential that either party should have been guilty of fraud. As was said in a well considered decision, when one contracting party is led into a losing position by a mutual mistake of himself and the other party, the result is as harmful as if he was wronged by the active fraud of the person with whom he deals. It has also been held that relief may be granted, although the apparent obligations of the parties have been fully performed."
>
> 9 C. J. 1166, sec. 17.

The case of Luff v. Nevins, 106 N. J. Eq. 386, cited in respondent's brief (pp. 32 to 34), does not cover the circumstance where the defendant always was and still is a non-resident. Surely this Court will not compel a party who is entitled to rescission to go beyond the boundaries of this State to sue the party against whom he desires relief, and on failure to do so bar relief. Williamson, the complainant-respondent here, was and still is a non-resident and did not subject himself to our jurisdiction until he brought the present action. Our Statute of Limitations has not yet commenced to run against this rescission action.

Respectfully submitted,

CORN & SILVERMAN,
Counsel of Appellants.

E. W. Stillman, Pompton Plains, N. J., Tel. Pompton Lakes 500

25 OCT.1.1933

New Jersey Court of Errors and Appeals

Between JACOB WILLIAMSON, Complainant-Respondent, and DAVIS BENDER, HARRY BENDER, MOLLIE BENDER, PROFIT REALTY CO., and BENDER CONSTRUCTION CO., Defendants-Appellants.	On Appeal from Court of Chancery.

BRIEF OF DEFENDANTS-APPELLANTS.

Facts.

Respondent brought this action for discovery in aid of a law judgment and to set aside conveyances alleged to have been fraudulently made.

The testimony in this case is free from contradiction, inasmuch as respondent introduced no proof other than the examination of appellants and their witnesses.

Chronologically, the pertinent incidents occurred thus:

1921, May 16

Harry Bender, the only son of Davis Bender, became of age. He was then and continued as manager of his father's real estate and building business.

1924, Oct. 11

Davis Bender made agreement to purchase from Michael J. Tansey, premises on Vanderpool St., Newark, N. J., for $20,000; $1000 deposit, $5000 on delivery of deed and $14,-

000 by purchase-money bond and mortgage. This property was purchased by Davis Bender for Harry Bender, the vendor was so notified, and the $6,000 cash paid in the sale was in partial discharge of a debt due from Davis Bender to Harry Bender for services rendered to the former by the latter.

Nov. 14

Michael J. Tansey conveyed the Vanderpool St. premises to Davis Bender and received the $5000 balance and the $14,000 purchase-money bond and mortgage.

1925, Apr. 17

Davis Bender and Harry Bender made agreement to convey to David Houston the Vanderpool St. premises for $56,000, and received a deposit of $5,000 which was turned over to Davis Bender. Harry Bender joined in the agreement because he and his father considered the property was Harry Bender's and the purchaser was so notified.

June 15

Davis Bender and Harry Bender conveyed the Vanderpool St. premises to Fidelity Union Trust Co. (to whom David Houston had assigned the agreement), and received the balance of $37,023.50 cash, less $2,800 for commissions. The deed was signed by and the bank's checks were made to Davis Bender and wife and Harry Bender; these checks were endorsed to and deposited to Davis Bender's account. At the closing Harry Bender, at the grantee's request, executed an affidavit of title. The deed was acknowledged June 15, 1925 and was recorded June 16, 1925.

June 16

Davis Bender (with Harry A. Lack) took title from complainant Jacob Williamson and one Glickman to Lots 1 and 2, Block 44, Ocean Beach, Miami, Dade County, Florida,

subject to mortgages of $15,500, paid $12,000 cash and executed to complainant a purchase-money mortgage and note for $10,000 due in one year with interest payable semi-annually. Davis Bender was told by Glickman and by complainant's attorney that these lots were on Ninth Street.

Dec. 16

Interest fell due on the $10,000 note and mortgage, and was paid.

1926, March 2

Davis Bender made agreement to convey to Roemer a garage on Essex St., Newark, N. J. for $77,750, and received a deposit of $5,000.

March 16

Harry A. Lack conveyed his interest in the Florida lots (purchased from complainant) to Davis Bender; deed recorded same day.

April 22

Davis Bender conveyed to Harry Bender properties in Newark: on Goldsmith Ave., Broad St., King St., and Wright St.; deed recorded same day. Davis Bender also assigned to Harry Bender a $4,000 bond and mortgage. The consideration for this conveyance and assignment was the $5,000 deposit and $34,123.50 balance on closing received on sale of the Vanderpool St. property, which Harry Bender and Davis Bender considered as belonging to Harry Bender and which Harry Bender had given to Davis Bender.

May 20

Davis Bender conveyed the garage property on Essex Street, Newark, to Roemer and received about $65,000 in cash.

June 22

The holder of a prior mortgage on the

Florida lots instituted foreclosure in the 13th Judicial Circuit Florida Court.

1927, Feb. 11

Harry Bender made agreement to convey to Samuel Kaplan the Goldsmith Ave., Newark, premises for $22,000.

Feb. 19

Complainant Jacob Williamson brought suit against Davis Bender in the U. S. District Court, New Jersey District, on the $10,000 note.

Mar. 26

Profit Realty Co. was incorporated.

Mar. 28

Complainant Jacob Williamson brought suit against Davis Bender in the Essex County Circuit Court on the $10,000 note.

Apr. 6

Harry Bender conveyed the Broad St. and King St., Newark, premises to Bender Construction Co. in exchange for stock; deed recorded May 17, 1927.

Apr. 11

Harry Bender conveyed the Goldsmith Ave. premises to Profit Realty Co. (to whom Samuel Kaplan had assigned the agreement), receiving the balance of $7000 cash and a $15,000 purchase-money bond and mortgage; deed and mortgage recorded April 12, 1927.

1928, Jan. 31

Davis Bender discovered that the Florida lots conveyed to him by Jacob Williamson were on Tenth Street and not on Ninth Street.

Feb. 3

Jacob Williamson recovered judgment against Davis Bender for $11,575, principal and interest on the $10,000 note.

Feb. 9

Davis Bender tendered to Jacob Williamson a deed for the Florida lots and demanded rescission and return of the moneys paid by him for the lots.

Feb. 20

Complainant filed his bill to set aside the conveyances and assignment of mortgage from Davis Bender to Harry Bender, and the conveyances from Harry Bender to Profit Realty Co. and to Bender Construction Co.

Complainant's bill is filed (a) for discovery in aid of a law judgment, under the Statute, and (b) to set aside the conveyances. The theory of the bill is not the presumption of fraud expressed in our Uniform Fraudulent Conveyance Act: there is no allegation that when the conveyances were made the grantor was insolvent, or that the grantor left himself with insufficient capital to carry on his business. The bill is founded on allegations of actual fraud, purposely perpetrated by the grantors and the the grantees, acting in collusion and conspiracy. The answers deny fraud, collusion and conspiracy, and set out that the conveyances were bona fide and for a valuable consideration.

Davis Bender counterclaims in rescission for return of the moneys paid complainant for the Florida lots, on the ground of equitable fraud in representing the lots to be on Ninth Street whereas in fact they were on Tenth Street. Complainant's answer denies fraudulent representation, but admits the lots are on Tenth Street; his defenses are that (a) the law judgment is a bar, (b) laches, and (c) this claim was not set off in the law action.

Davis Bender was not personally served with any discovery order, yet the Court, despite his ob-

jection, permitted witnesses to be examined before a Master in discovery.

At final hearing, over objection, the Court permitted complainant to examine as to a chattel mortgage orally (but not in the bill of complaint) alleged by complainant to be fraudulent, made by Davis Bender on June 11, 1926 to Sivad Realty Co., that company not being a defendant, nor does the bill ask or the final decree adjudge that that chattel mortgages be set aside.

The final decree, besides setting aside the conveyances, allowed complainant taxed costs and $1600 as counsel fee, to include disbursements, against the answering defendants as well as defendant Mollie Bender who did not appear or answer nor was a decree pro confesso taken against her.

The grounds of appeal may be grouped:

1. Witnesses were examined by respondent without an order for discovery having been first served on appellant Davis Bender.
2. The Court admitted testimony as to acts and transactions of appellant Davis Bender subsequent to the conveyances attacked.
3. There was no proof that the questioned conveyances were fraudulent.
4. The Court held that a grant by a parent to a child, based on services rendered, is invalid as to creditors.
5. The Court held that a voluntary conveyance by one indebted raises an irrebutable presumption of fraud.
6. Respondent was not an existing creditor when the questioned conveyances were made.
7. Davis Bender was solvent when the questioned conveyances were made.

8. The proofs showed the questioned conveyances were bona fide and made for a valuable consideration.

9. The counterclaim for rescission was dismissed, although Davis Bender proved his case and respondent sustained none of his defenses.

10. The counsel fee awarded respondent was excessive.

11. The Court's findings were contrary to the great weight of the evidence.

POINT I.

Witnesses were examined by respondent without an order for discovery having been first served on appellant Davis Bender.

On February 20, 1928 the Court ordered Davis Bender to appear and make discovery (State of Case, pp. 34 to 37). As Davis Bender was not served with that order, the Court on March 6, 1928 made another order for him to appear and make discovery (pp. 38 to 39). Davis Bender was not served with the latter order, and, on October 18, 1928, after his solicitors answered the bill, the Court made an order requiring him to appear and make discovery, and that the order be served on him personally or by leaving a copy with his solicitors (pp. 74 to 75). This order was not served on Davis Bender but was left with his solicitors, and respondent thereupon proceeded to examine witnesses under the discovery order. On petition (pp. 76 to 78) an order to show cause was made (pp. 78 to 79) why such proceedings should not be stayed. On November 13, 1928 the Court dismissed the show-cause order (pp. 79 to 80), hold-

ing that service on the solicitors was "a sufficient compliance with the statute and sufficient personal service to the defendant Davis Bender." The testimony taken thereon was practically the entire case of respondent; for at final hearing his counsel made an opening statement, introduced that testimony and rested, except for a short witness tending to show that Samuel Kaplan was a dummy in Profit Realty Co. (pp. 286 to 324). If then this testimony was improperly taken, respondent's case falls for lack of proof of the allegations in his bill.

Discovery proceedings, in aid of unsatisfied law judgments, are statutory:

> "It shall be lawful for the chancellor, in term time or vacation, forthwith to make an order requiring the judgment debtor to appear, and make discovery on oath concerning his property and things in action, before a master of said court, to be designated in such order at a time and place in said order to be specified."
>
> 1902 Chancery Act, sec. 72 (1 C. S. 437).

These proceedings are almost identical with supplementary proceedings in law courts.

As the statute prescribes no mode of service of the order for discovery, it must be served personally; otherwise all action taken thereunder is void.

> "An order for discovery in aid of execution * * * was made * * *. It directed the defendant to appear and make discovery * * *. The defendant was not then at home * * * * nor was he in any way apprised of the purport of the order before the time set therein for his appearance. At the time so specified, the plaintiffs in execution produced witnesses who were examined * * * . The defendant was

> entitled to notice of the examination of witnesses, and, no other mode of notifying him being provided by statute, personal notice was requisite. For want of this, the proceedings were irregular, and must be set aside."
>
> Shannon v. McMurthie (Sup. Ct. 1886) 48 N. J. Law 427.

Service on solicitors can not be sufficient. A solicitor is a special agent of his client, but he is not the client himself. The purpose of an order of discovery is to compel the appearance and examination of the person against whom it is directed. A lawyer is not his client's keeper, nor is the client bound by any papers served on his lawyer which are by statute required to be served on the client.

There appears nothing of record showing the need for departure from the requirement of personal service (if the Court has the power to substitute any other mode of service). Complainant produced no proof that he was unable to serve Davis Bender personally. The order of October 18, 1928 (pp. 74 to 75) does not recite that Davis Bender could not be served; what does appear in the order is that he could not be served "before the 25th day of February, 1928" with the first order and that proper service on him was not made "by inadvertance" with the second order.

POINT II.

The Court admitted testimony as to acts and transactions of appellant Davis Bender subsequent to the conveyances attacked.

Despite defendants' objection, the Court permitted the introduction of a chattel mortgage made by Davis Bender to Sivad Realty Co. on June 11, 1926 (p. 352, l. 36 to p. 353, l. 28) and examination as to the affairs of Sivad Realty Co. and the consideration for the chattel mortgage (p. 353, l. 29 to p. 355, l. 3). Objection by defendants was overruled to a question to Harry Bender "You know that prior to the time of June, 1926, that this company (Sivad Realty Co.) only had a nominal bank account of about $125 or $150, don't you?" (p. 435, l. 19).

The questioned conveyance and assignment from father to son, were made on April 22, 1926. If these be held unassailable, it becomes immaterial to consider the conveyances by the son to Bender Construction Co. and to Profit Realty Co. The evident purpose of bringing in the Sivad Realty Co. chattel mortgage was to attempt to show that Davis Bender, on June 11, 1926, made this mortgage mala fides. The Court took this mortgage into serious consideration and evidently considered the chattel mortgage to be fraudulent and therefore the April 22, 1926 conveyances to be likewise fraudulent; in his conclusions much stress is laid on the chattel mortgage and on Sivad Realty Co. (p. 83, l. 36 to p. 84, l. 13; p. 84, l. 39 to p. 85, l. 15; p. 85, ll. 33 to 36). Sivad Realty Co. was not a party to the action, nor does the bill make

any reference to this company or to the chattel mortgage.

Davis Bender, over objection, had to answer the question "How much money did you give her (his wife) in the year 1927?" (p. 407, l. 28). The bank accounts of Molly Bender, Sivad Realty Co. and Bender Construction Co. were admitted over objection (p. 453, l. 12 to p. 454, l. 5).

The only issue before the Court was whether the conveyances of April 22, 1926 were or were not fraudulent. Questions as to payments by Davis Bender to his wife thereafter, or bank statements of the wife or Bender Construction Co. or Sivad Realty Co., were improper; they could serve no useful proper purpose, and only beclouded the issue.

The law is clearly established that, to upset a conveyance as fraudulent, complainant must prove fraud at or before the time of the conveyance; that subsequent fraudulent acts or transactions cannot impair a previous bona fide conveyance.

> "A subsequent or even contemporaneous attempt to convey or encumber property so as to delay creditors, cannot affect a mortgage fairly given to secure a bona fide creditor."
>
> Stillman v. Stillman (Chanc. Ct. 1870) 21 N. J. Eq. 126.

> "A sale must stand or fall by what existed at the time it was made. If it is shown to have been fair, honest and just when made, that no unlawful act was then done, and no fraudulent intent then existed, it cannot be overthrown by subsequent fraudulent acts or intents."
>
> Creveling v. Fritts (Chanc. Ct. 1881) 34 N. J. Eq. 135, at p. 145.

No reasonable person would buy any property if the law could set aside such sale because the grantor later made a fraudulent conveyance.

The conveyance to Harry Bender, and by him to Bender Construction Co. and Profit Realty Co. cannot be in the least affected by anything Davis Bender did or omitted to do after April 22, 1926, whether in relation to Sivad Realty Co. or Mrs. Davis Bender or any other corporation or person.

As to the bank statements, they all commence after April 22, 1926; that of Molly Bender (p. 633) begins on August 5, 1927, that of Sivad Realty Co. (p. 634) on June 14, 1926, and that of Bender Construction Co. (p. 642) on August 13, 1926.

The Court, in his conclusions, refers to the bank account of Davis Bender since June 16, 1926 and itemizes seven checks drawn between May 24, 1926 and June 26, 1926 (p. 85, l. 21 to l. 34), but this is entirely beyond the issue. The April 22, 1926 conveyance must stand or fall on its then bona fides, regardless of what occurred thereafter to Davis Bender's money or what checks he drew.

The discovery proceedings were for the purpose of discovering. When complainant closed the tesmony before the master, the discovery was over. All that remained was the consideration of the validity of the conveyance as regards complainant's judgment; any other matters were irrelevant at final hearing before the Vice-Chancellor.

POINT III.

There was no proof that the questioned conveyances were fraudulent.

The first action instituted by Jacob Williamson against Davis Bender on the $10,000 note was on February 19, 1927 in the United States District Court, District of New Jersey (p. 130, l. 25). This was almost a year after Davis Bender had made the conveyance and assignment to his son. That action was dismissed for lack of jurisdiction (p. 145, l. 22).

The contract for the sale of the Florida lots was made twenty days or a month before the closing of title to these lots on June 16, 1925 (p. 395, l. 15).

Harry Bender testified that he did not hear about the $10,000 note made by his father to Jacob Williamson until the latter commenced suit (p. 258, l. 40; p. 259, l. 25; p. 260, l. 6)

Louis J. Feit, attorney for Davis Bender and Harry Bender, testified that when he drew the deed of April 22, 1926 he did not know that Davis Bender was in fear of a suit by Jacob Williamson on the $10,000 note (p. 153, l. 4) or that until the Federal action of February 1927 did he know that Jacob Williamson claimed $10,000 of Davis Bender (p. 153, l. 35; p. 349, ll. 3 to 16).

So here we have the grantee, and the attorney who drew the deed, both without knowledge of the indebtedness of the grantor to Williamson until long after the conveyance was made. Respondent has not introduced any proof whatsoever, or any evidence from which the inference could possibly be drawn, that Harry Bender or Louis J. Feit

knew of the Williamson debt before or on April 22, 1926.

> "But even if it be assumed that there was proof sufficient to warrant an inference that the debtor's design, at the time he conveyed his property to the appellant, was to fraudulently defeat the respondent from collecting its claim, the proofs fall short of establishing that the appellant participated in such alleged fraudulent design, or that at the time of such sale the appellant had brought to his notice facts and circumstances from which the fraudulent intent of the debtor was a legal and natural inference."
>
> National Bank v. Massopust (E. & A. Ct. 1916) 85 N. J. Eq. 564.

> Conveyance could not be set aside as fraudulent as to grantor's creditor, in the absence of a showing that the grantee knew of grantor's alleged unlawful motives when grantee accepted the conveyance.
>
> Gaeto v. Gaeto (Chanc. Ct. 1928)—not yet officially reported—6 A. R. 1085, 142 Atl. 45.

There is no proof of any facts showing or tending to show that Davis Bender had the Williamson debt in mind when the conveyance to his son was made. On April 22, 1926 the Williamson property was in good standing, interest on the note and mortgage were not due until June 16, 1926, and Davis Bender had cash and property of a net worth of over $100,000 (as shown hereafter under Point 7). Surely Davis Bender did not, on April 22, 1926, have any thought of avoiding payment of the Williamson mortgage and note, for on March 16, 1926 Bender purchased from Harry A. Lack (his co-owner of the lots purchased from Wil-

liamson and embraced in the mortgage securing the $10,000 note) the half interest of Lack and paid him $12,500 (p. 390, l. 33) and received a deed for that half interest (pp. 629 to 632). Bender must have considered the value of these lots to have increased by at least $13,000 by paying Lack a profit of $6,500 on his investment of $6,000 on June 16, 1925 when they bought the lots and paid in together $12,000 cash (p. 383, l. 3). It is inconceivable that Davis Bender had any fraudulent intent in making the conveyances to his son.

> "Where the conveyance is not voluntary, but is upon a consideration, then the rule is, that, in order to overthrow it, a fraudulent intent must be made to appear."
>
> Haston v. Castner (E. & A. Ct. 1879) 31 N. J. Eq. 697, at p. 705.

POINT IV.

The Court held that a grant by a parent to a child on services rendered, is invalid as to creditors.

To support this doctrine, the Court cites Dodson v. Severs (Chanc. Ct. 1896) 54 N. J. Eq. 305. There the facts disclosed:

> "Not only is there nothing to show any emancipation or change of relation, but there is nothing to show any contract or understanding that the grantee was working for wages, or with the expectation of compensation of any kind."

Here the situation is entirely different.

Harry Bender arrived at majority on May 16, 1921. He was Davis Bender's only son. He had

worked for his father as manager since the former was seventeen years old (p. 358, l. 23) until the Essex St. garage was sold (p. 369, l. 10) on May 20, 1926 (p. 341, l. 23). The son asked for a salary and the father promised to pay him for his work (p. 134, l. 30). In 1923 the father paid the son $1000 on account of wages earned (p. 252, l. 10; p. 415, l. 13). Davis Bender agreed to pay Harry Bender in one sum, to put him in business, to put him on his feet, when the son needed it for investment (p. 362, ll. 2 to 19; p. 253, ll. 4 to 20; p. 414, ll. 35 to 41); the son was to be paid for his services (p. 444, ll. 32 to 38). In 1924 Harry Bender was in the fur business and received $20 a week (p. 254, ll. 15 to 30). His two sisters worked since they were sixteen or seventeen and kept what they earned (p. 444, ll. 15 to 31).

In Dodson v. Severs, supra, it was held that recovery can be had for services where it is shown "either that an express contract for the remuneration existed, or that the circumstances under which the services were rendered were such as exhibit a reasonable and proper expectation that there would be compensation."

From the uncontradicted evidence in this case it is apparent that the son was entitled to payment for his services. The testimony further shows that in October 1924 Harry Bender discovered the Vanderpool St. property for sale (p. 367, l. 9), considered it a good investment (p. 415, ll. 16 to 20) and his father thereupon invested in its purchase $6,000 of the moneys due from him to the son for services (p. 365, ll. 2 to 25; p. 252, ll. 25 to 41).

It was this $6,000, which added to the profit of about $36,000 made on resale of the Vanderpool Street property, that constitutes the consideration paid by the son to the father for the questioned

conveyances. Harry Bender turned over to Davis Bender all moneys received on the resale.

The deed and assignment of the $4,000 mortgage by Davis Bender to Harry Bender was recorded the same day it was made. He remained in continuous possession of the properties until he conveyed one to Profit Realty Co. and the others to Bender Construction Co. He received $7000 on the sale to Profit Realty Co. and interest on the $15,000 purchase money mortgage made by it to him. He received principal and interest installments on the $4000 mortgage. The two companies have been in continuous possession of the properties conveyed. Davis Bender was solvent on April 22, 1926 and Harry Bender was and still is solvent.

> "Conveyances by a solvent father to his two sons, in consideration of services rendered by them for many years, made openly, the deeds being recorded soon afterwards, and the sons remaining in continuous possession thereafter, are good against creditors.
>
> Haston v. Castner (Chanc. Ct. 1878) 29 N. J. Eq. 536; affirmed (E. & A. Ct. 1879) 31 N. J. Eq. 697.

POINT V.

The Court held that a voluntary conveyance by one indebted raises an irrebutable presumption of fraud.

This doctrine was uniformly adhered to in this State until the passage of the Uniform Fraudulent Conveyance Act by our Legislature in 1919.

> "As the law stood prior to 1919, there was an absolute presumption that a voluntary conveyance was fraudulent as against existing creditors. Severs v. Dodson, 53 N. J. Eq. 633. That has been changed by the Uniform Fraudulent Conveyance Act of 1919 (C. S. C. S. 647). Under section 4 of the act there is no longer an irrefutable presumption that a gift by a debtor is fraudulent, unless thereby he is rendered insolvent. The Court of Appeals, in Conway v. Raphel, 141 A. 804, has so interpreted the section which reads: "Every conveyance made and every obligation incurred by a person who is or will be thereby rendered insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration." This section modifies the rule of evidence of an irrefutable presumption of fraud, which prevailed under the Statute of Frauds (2 C. S. 2617, 2618), and limits the presumption to instances where the voluntary conveyance creates a condition of insolvency, defined by the act to be "when the present fair saleable value of his (debtor's) assets is less than the amount that will be required to pay his probable liability on his existing debts as they become absolute and matured." (C. S. C. S. 647, 44-143). This modification of the rigor of the common-

> law rule obviously was to protect from remote attack bona fide gifts made during affluence."
>
> Kearny Plumbing Supply Co. v. Gland (Chanc. Ct. 1930) 104 N. J. Eq. 723.

At present there is no longer an irrebutable presumption, or in fact any presumption, of fraud arising by reason of a voluntary conveyance by one indebted, unless the grantor's insolvency at the time of the conveyance is proved.

Complainant here does not allege, and therefore is not entitled to nor did he produce evidence that Davis Bender was rendered insolvent on April 22, 1926 by the conveyances to his son.

POINT VI.

Respondent was not an existing creditor when the questioned conveyances were made.

On April 22, 1926 the Williamson note had not yet matured. It fell due on July 16, 1926,

It still appears to be an open question whether or not the holder of an unmatured obligation when a conveyance is made, is to be deemed "an existing creditor."

> "The inquiry is open to this further consideration: Whether or not the rule that a voluntary transfer of property, unattended by fraud, is invalid with respect to existing debts, is applicable unless such debts be past due at the time of the impeached transaction."
>
> Severs v. Dodson (E. & A. Ct. 1895) 53 N. J. Eq. 633.

In Vail v. Dimond (Chanc. Ct. 1927) 100 N. J. Eq. 393, Vice-Chancellor Backes repeated the intimation of Chief Justice Beasley that the doctrine of irrebutable presumption of fraud from a voluntary conveyance was confined to existing debts and "may not be applicable unless the debt he past due."

Although under our Uniform Fraudulent Conveyance Act "creditor" and "debt" include unmatured claims, it does not define an "existing creditor" or an "existing debt." It also includes a contingent liability as a "debt" and the holder of such claim as a "creditor", but our Courts have always held that there is no irrebutable presumption of fraud where a voluntary conveyance is made before a contingent liability becomes fixed (Vail v. Dimond, supra).

We humans rarely cross a bridge till we come to it, or make provision for an obligation much before it matures. It would seem illogical to presume a fraudulent intent in a grantor as to a creditor who cannot yet ask for his money. Such creditor should be required to prove fraud, rather than the grantor be branded as a fraud by a doctrine of law which permits no proof to overcome the presumption.

POINT VII.

Davis Bender was solvent when the questioned conveyances were made.

As the law now stands, since the enactment of the Uniform Fraudulent Conveyance Act in 1919, the insolvency of the grantor at the time of the conveyance must be proved before the Court can set the conveyance aside.

> "An irrefutable presumption of fraud may be raised at the trial under a charge that the conveyance was made with intent to cheat by showing that it produced insolvency. In pleading the impeachment of a voluntary deed as fraudulent, without charging intentional fraud, resulting insolvency must be alleged."
>
> Kearny Plumbing Supply Co. v. Gland, 104 N. J. Eq. 723, supra.

The burden of proving the grantor's insolvency is on complainant.

> "When the indorsement was made December 1, 1919, and the conveyance made on January 27, 1920, it must be shown by the complainant that it rendered the indorser insolvent under the statute. The burden of proof was on the complainant to show that fact. This the complainant failed to do. The complainant argues the trust company was an existing creditor at the time of the voluntary conveyance on January 27, 1920, and the conveyance was indisputably fraudulent and void as to it. No further evidence of fraud was necessary. This is unsound, as it ignores the plain wording of the statute "By a person who is or will be thereby ren-

dered insolvent." It is such a conveyance that by statute is fraudulent as to creditors."

Conway v. Raphel (E. & A. Ct. 1928)—not yet officially reported—6 A. R. 812, 141 Atl. 804.

In the instant case complainant did not prove that Davis Bender was insolvent on April 22, 1926. In fact complainant's counsel, on opening to the Court, admitted Davis Bender's solvency before, at and after the questioned conveyance:

"We have shown that Davis Bender, the defendant in this action, in 1925 was a reputable businessman here in Newark, had been in the building business for over twenty years, and his property at that time, would be conservative at $150,000." (p. 286, ll. 32 to 36).

"We find here in April 22, 1926, a man (Davis Bender) that was represented by the financial agencies as being conservatively worth $150,000." (p. 291, ll. 30 to 32).

"A report of R. G. Dunn & Co., under date of June 29, 1926, in which the information is given, and from their information, Davis Bender was of a reputed worth of $160,000." (p. 317, ll. 22 to 26).

That Davis Bender was entirely solvent on April 22, 1926, appears from his examination, and there was no evidence to the contrary. At that date he possessed:

(a) Lots on 10th (9th) St., Miami, Florida, which he and Harry A. Lack had purchased on June 16, 1925 for $37,500 from complainant, had paid in $12,000 cash (p. 383, l. 40), the mortgages then being $15,500 previ-

ously made and $10,000 made to complainant (p. 383, ll. 3 to 10); and as to which property on March 16, 1926 Davis Bender purchased Lack's half interest (pp. 629 to 632) for $12,500 (p. 390, l. 33). This shows that this property had increased in value by about $13,000, thus making its net value above the mortgages, at $25,000.00

(b) Lots on 28th Ave., Miami, Florida, which he had contracted to purchase for $26,000 and on which there was a balance due of about $5,000, he having paid in between $18,000 and $21,000 on the purchase price (p. 233, ll. 28 to 40; p. 389, l. 30 to p. 390, l. 16); there is no testimony as to whether it had increased or decreased in value between the date of purchase and April 22, 1926, so we must assume its value had not changed. Bender's cash investment, then, taking his lower figure, was 18,000.00

(c) Stock in Gotham Realty Co., which owned Florida acreage and for which stock he paid $12,000 to $14,000 (p. 233, ll. 9 to 26; p. 391, l. 30 to p. 392, l. 20), and it does not appear that the value of this stock had changed on April 22, 1926. His investment, at the lower figure, was 12,000.00

(d) Garage on Essex St., Newark, N. J., which he had contracted to sell to Roemer on March 2, 1926 for $77,750 (pp. 538 to 544) and which he conveyed on May 20, 1926 (p. 341, l. 22), Bender receiving in cash approximately (p. 342, l. 2) 65,000.00

(e)	Balance to his credit in Broad & Market National Bank (p. 638, bottom)	2,997.64
	Total	$122,997.64

This, of course, does not take into consideration the value of the properties and mortgage conveyed on April 22, 1926 by Davis Bender to Harry Bender. It clearly demonstrates that Davis Bender was comfortably solvent at and following the questioned conveyances.

The only obligation due from Davis Bender, as shown by the testimony, was the $10,000 note due complainant, but if this be considered a liability the net cash value of the 10th Street lot should be increased in the same amount, so that the resulting net worth would remain the same at $122,997.64.

The solvency of Davis Bender on April 22, 1926 disproves any idea that the conveyance of that date was fraudulent. No man in his right senses will attempt to convey away property to defeat collection of a debt, and at the same time retain property worth many times the amount of the debt. His later inability to pay the judgment is unfortunate, but does not reflect back to the time of the conveyance. A person in affluent financial condition may give away as much of his valuables as he desires, provided he retains sufficient to pay all his just debts. The test is the financial condition of the grantor on the day the questioned conveyance was made.

POINT VIII.

The proofs showed the questioned conveyances were bona fide and made for a valuable consideration.

If it be shown that the conveyance and assignment made by Davis Bender to Harry Bender on April 22, 1926 were bona fide and for a valuable consideration, it matters not whether the conveyances made by Harry Bender to Profit Realty Co. and Bender Construction Co. were or were not bona fide.

The testimony, as stated under Point IV, showed that Harry Bender had managed his father's business since the son was seventeen until he was twenty-one (on May 16, 1921) and for some five years thereafter; that father and son had an agreement whereby the son was to be paid for his services, on account of which Davis Bender paid Harry Bender $1000 in 1923.

The contract for the sale by complainant to Davis Bender of the Florida lots was made twenty days or a month before the closing of title thereto on June 16, 1925 (p. 395, l. 15).

In 1924 Harry Bender saw an opportunity to buy the Tansey property on Vanderpool St., Newark, N. J., cheap, told his father about it, $6000 being required (p. 415, ll. 15 to 20; p. 367, l. 9). At that time the son believed there was $10,000 due him for services (p. 415, l. 22) and the father considered the amount to be less but that there was due at least $6,000 (p. 365, l. 30). The father put in $6,000 for the son in the purchase of the property (p. 415, l. 20), under the arrangement that title was to be taken in the name of the father

because of the seller's requirement for the father to appear on the bond of the $14,000 purchase-money mortgage (p. 417, ll. 20 to 30; p. 367, l. 35). The sale agreement was made on October 11, 1924 (pp. 623 to 628) the purchase price being $20,000 and the seller was notified then that the property was really Harry Bender's (p. 368, l. 17). At that time father and son agreed that the property belonged to the son and that the son was entitled to the proceeds to be derived from its resale (p. 417, l. 33 to p. 418, l. 3). The $6,000 cash paid in was on account of moneys due from the father to the son for services rendered (p. 365, ll. 2 to 31; p. 252, l. 33 to p. 253, l. 13).

On April 17, 1925 the Vanderpool St. property was sold to David Houston for $65,000, thus realizing a profit of $36,000. The agreement of sale (pp. 544 to 548) evidences a $5,000 deposit, was drawn in the name of Davis Bender and Harry Bender, as owners, calls for a warranty deed from them, and is signed and acknowledged by father and son. Davis Bender says Harry bender signed this agreement because the son "was the practical owner of it; but I had it in my name, that is all; and I told the man (Houston, the purchaser) that he was the owner of it; and he demanded he should sign it" (p. 370, l. 39 to p. 371, l. 13). David Houston says that Davis Bender told him that Harry Bender had an interest in the property and therefore father and son were named in the contract (p. 326, ll. 25 to 38). Louis J. Feit, an attorney, testified that he represented the Benders at the drawing of the agreement and was told by Davis Bender "that his son had an interest in it (the Vanderpool St. property), that he was indebted to him" (p. 346, ll. 1 to 24).

On June 15, 1925 Fidelity Union Trust Co. took title to the property, Houston having assigned to

it the sale agreement (p. 326, l. 8). The deed (pp. 613 to 619) recites that "Davis Bender and Mollie Bender, his wife, and Harry Bender, single, are the true, lawful and right owners of the premises" (p. 617, l. 17), the warranty is by Davis Bender and Harry Bender (p. 617, l. 36), and the deed is also signed and acknowledged by Harry Bender (p. 618). James J. McCarthy, of the Fidelity Union Title & Mortgage Guarantee Co. which guaranteed the title to the grantee, required and took an affidavit of title signed and sworn to by Harry Bender (pp. 609 to 611) on June 15, 1925, because "we had notice that he had some interest in the property—from what they told me at the closing" (p. 334, ll. 10 to 21). Harry Bender says he signed the deed because the property was his (p. 256, ll. 12 to 17). On this closing $37,023.50 was paid by the grantee to the grantors (p. 330, l. 17). Of this $2,800 was for Mr. Houston's commission (p. 326, l. 15 and p. 327, l. 33). The adjustments of interest, insurance, taxes and revenue stamps due to and from the grantors practically balanced (p. 612).

Davis Bender and Harry Bender hence received from the resale:

Cash paid on signing sale contract	$ 5,000.00
Cash paid on signing deed	37,023.50
Total	$42,023.50
Less commissions paid	2,800.00
Balance	$39,123.50

The checks made by the grantee in payment, introduced in evidence, were one for $31,323.50 to Davis, Mollie and Harry Bender (p. 620) by them endorsed and deposited to Davis Bender's account,

and the other for $2,800 to Louis J. Feit, attorney for Davis, Mollie and Harry Bender (p. 621).

The approximately $39,000 received from the sale went finally to Davis Bender (p. 372, ll. 9 to 33), under an agreement that the father would keep it and in exchange therefor the father would convey to the son the Newark properties (p. 372, l. 37 to p. 373, l. 17). According to the agreement between father and son this $39,000 belonged to the son (p. 376, l. 37 to p. 377, l. 17). This was the consideration for the conveyances of April 22, 1926 as brought out under complainant's direct-examination of Davis Bender (p. 244, ll. 20 to 29; p. 245, l. 38) and of Harry Bender (p. 280, l. 14 to p. 281, l. 1).

On complainant's direct-examination Harry Bender testified he reported the profit he had made on the Vanderpool St. property in his income tax report for 1925 (p. 255, ll. 26 to 31). It is well known that such report must be filed by March 15th of the following year.

The value of the Newark properties conveyed, as appears from the testimony, computed between father and son, were:

Location	Value	Encumbrances	(State of Case)
92 Goldsmith Av.	$16,000	none	(p. 22 top, p. 424, middle)
1240-6 Board St.	22,000	$9,600	(p. 424 bottom)
King St.	6,000	2,200	(p. 424 bottom)
Av. C. & Wright St. (½)	1,250	none	(p. 425 top)
Brunswick St. mtge (face)	4,000	——	(p. 425 middle)
	$49,250	$11,800	
Encumbrances	11,800		
Net value	$37,450		

There does not appear to have been any note given by father to son between the dates the father received the moneys on the resale of the Vanderpool St. property and April 22, 1926, but complainant admits "I can well imagine that if a father owed a son $40,000 that the son would not exact a note, a legal instrument from him: I can well understand it" (p. 292, ll. 13 to 17).

The son let his father have this money on his father's promise to convey to the son the Newark properties (p. 418, ll. 13 to 29; p. 443, ll. 1 to 29). Davis Bender, from June 1925 to April 1926 was in Florida and corresponded with his son through Daniel Strever, as the father could not write (p. 445, ll. 15 to 30) and reads but very little English (p. 448, l. 17). Harry Bender wrote to his father asking for a deed to the Newark properties (p. 450, ll. 20 to 40) and his father replied that he would deliver the deed on the father's return to Newark (p. 451, ll. 15 to 22).

The conveyances of April 22, 1926 were drawn by Louis J. Feit, who testified that at that time Davis Bender told him he was indebted to his son (p. 347, ll. 24 to 33).

Here then we have the picture.

The evidence stands uncontradicted that on October 11, 1924, when the Vanderpool St. property was purchased, Davis Bender told Michael Tansey, the seller, that he was buying the property for his son. Could it be possibly imagined that on April 17, 1925 when the Vanderpool St. property was agreed to be conveyed to Houston, Davis Bender was in fear of complainant? He did not have any business with complainant until a month thereafter and did not sign the $10,000 note for some two months thereafter. What reason could Davis and Harry Bender have had in joining in the agreement of sale other than the one they both

swear to—that the father had record title and the son was the real owner? David Houston and Louis J. Feit corroborate this. There is no suggestion that Davis Bender was involved in any difficulties, had any debts or had any cause to attempt to conceal his assets. The son trusted the father to retain title to the premises, and his confidence is well placed for the father voluntarily informs the purchaser that the property belongs to the son, and the sale agreement is made in accordance with such information. On June 15, 1925, the day preceding the signing of the $10,000 note, the Vanderpool St. property was conveyed to the bank, the son signed the deed and executed a title affidavit and the son's name appeared on the bank's checks in payment; it cannot be seriously suspicioned that Davis Bender was attempting to make himself judgment-proof or was actuated by any fraudulent motives. An arrangement and transaction, such as is depicted here between Davis Bender and Harry Bender, may well occur between any father and son under similar conditions.

A fair consideration passed from Harry Bender to Davis Bender for the conveyance.

> "Fair consideration is given for property, or obligation, (a) when in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied."
>
> Uniform Fraudulent Conveyance Act, sec. 3 (1 C. S. C. S. 647).

Complainant had an opportunity, from the filing of the answer until the final hearing, to introduce proof that the properties conveyed were not the fair equivalent of $39,000, and his failure to do so indicates he is satisfied as to the fairness.

It is immaterial that Davis Bender contributed

the $6,000 with which the property was purchased and resold at a large profit, or whether this $6000 was a gift to the son or in payment for services.

> "It matters not that Mr. Shaw had originally laid the foundation for or contributed to the fortune which she (his daughter) had, if he in fact subsequently borrowed from her. The fact that he borrowed $35,000 from his daughter is not only declared against him by his books, but is fully established by the testimony of the witnesses familiar with the transaction. It follows that, owing her this money, it was his privilege, under the law of this state, to prefer her as a creditor, however much he may have been involved in his financial matters; even though he was at the time insolvent it was his privilege to pay to his daughter a debt which he honestly owed her, if he saw fit to do so, and in that manner constitute her a preferred creditor."
>
> Hepburn v. United Water, Gas & Electric Co. (E. & A. Ct. 1917) 87 N. J. Eq. 697.

The consideration for the conveyance of April 22, 1926 was not the services rendered by the son to the father, but the moneys received from the Vanderpool St. premises. Harry Bender could well have refused to endorse the checks, received on the resale, to his father. He could have refused to join in the deed to the Bank, in which case the Bank would not have paid the money because of notice of the son's interest in the property. By merely endorsing the checks and signing the deed, a good and valuable consideration moved to the father from the son, even if the court will entirely disbelieve all the testimony as to the property and proceeds thereof belonging to Harry Bender.

"This was a bill filed by a judgment credit-

> or to vacate a conveyance of real estate made by a father, the defendant in the judgment, to his two children. The ground for relief was that such transfer was void under the statute, its purpose having been to hinder and defraud creditors. It was in this light that the affair was viewed by the vice-chancellor, and the property was accordingly subjected to the judgment. In this construction of the evidence we cannot concur. We think it plain that there was a debt justly due from the father to these children to an amount exceeding the value of the property conveyed to them. They had for a long time looked to this property, and when they found the respondent pressing his suit against their father, they had a right, as creditors, to secure a preference. This is what was done, and the act was not illegal or unjust."
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> Low v. Wartman (E. & A. St. 1888) 44 N. J. Eq. 193.

Payment for the services rendered by Harry Bender to Davis Bender is the reason for the purchase of the Vanderpool St. property by the father for the son and the advancing of the $6,000. The father thus discharged a debt, whether legal or moral or both. If the son had kept the $39,000 arising from the resale, could he have been compelled to return it to the father under the circumstances disclosed by the evidence? Assuredly not. Considered as an executed gift of the $6,000 or of the Vanderpool St. property, it was irrevocable. Considered as payment of a moral obligation, it cannot be recovered. We feel sure that had the son, in October 1924, brought suit against the father for $6,000 for services rendered, and he and his father had given the same testimony as in this case, there would have been a verdict directed for

the son. Had the conveyance of April 22, 1926 been made for services rendered, a possible question of emancipation and agreement for payment might have arisen. But that conveyance was in consideration of $39,000 received from the sale of a property belonging to the son, and is to be governed by the same principle as if the son had received the Vanderpool St. property from a stranger, for services rendered, or as a gift or devise, or had received $6000 from a stranger with which he purchased that property.

As to the conveyance of the Goldsmith Ave. premises from Harry Bender to Profit Realty Co., the proofs all show this to have been bona fide. Samuel Kaplan, the practical owner of this corporation (p. 204, l. 4), made an agreement to purchase it for $22,000 and paid the deposit of $200 thereunder on February 11, 1927 (pp. 653 to 656), then organized the company and paid into its treasury $7000 (p. 202, l. 14; p. 548, bottom), out of which the company gave Harry Bender $6700 on April 11, 1927 (p. 109, l. 21; p. 485, top) and on that day received a deed for said premises and gave back a purchase-money bond and mortgage for $15,000 (pp. 555 to 561). Since then the company collected the rents (p. 106, l. 2) made repairs (p. 657; p. 658) and paid interest on the mortgage and taxes (p. 211, l. 15; p. 549). Complainant introduced no evidence to show that the price was inadequate; the only testimony introduced was to the effect that the property was worth about $16,000 in April 1922 (p. 221, l. 39); in fact complainant admits the price paid by Profit Realty Co. was more rather than less than its true value (p. 295, l. 40). There is no proof indicating that Davis Bender or Harry Bender have any connection with this company.

The consideration for the conveyance by Harry Bender to Bender Construction Co. was stock of that company (p. 267, l. 4). Complainant has not shown that Davis Bender has or had any interest in this company.

POINT IX.

The counterclaim for rescission was dismissed, although Davis Bender proved his case and respondent sustained none of his defenses.

The lots, Nos. 1 and 2 Block 44, are undoubtedly on Tenth Street (map following p. 628). The corresponding lots on Ninth Street would be in Block 45.

Glickman, complainant's co-owner of these lots, proposed to Davis Bender the purchase of their property, directed Appleton to show Davis Bender "the Ninth Street lot", which was done (p. 382, ll. 3 to 18). At the closing, Glickman, in the presence of complainant's lawyer, told Davis Bender that the lots were on Ninth Street (p. 384, l. 2 to p. 385, l. 32). The Tenth Street lots conveyed to Bender were worth $8,000 to $10,000 less than the Ninth Street lots bargained for (p. 410, ll. 32 to 38).

That Davis Bender was told that the lots in question were on Ninth Street, is borne out by complainant's testimony at the law trial (p. 587, l. 19), also from his letter to Davis Bender of June 4, 1926 (p. 598) wherein complainant refers to the $10,000 mortgage as being on property on Ninth Street.

Complainant did not testify in this action. In the Circuit Court action he testified (p. 588, ll. 24

to 35) that in October 1926 he did not know that the prior mortgage on the Florida lots were being foreclosed, and had no knowledge of the foreclosure; whereas in fact, on July 26, 1926 he had appeared by attorney in the foreclosure proceedings and had entered an appearance (p. 513, bottom).

Here then we have all the elements of actionable fraud in equity—a false, material representation which resulted in damage.

> "In order to set aside a contract founded in fraud, it is only necessary in equity to prove that the representation upon which the action is founded is false, that it is material, and that the damage has ensued; while at common law the proof must go to the extent of satisfying the jury that the defendant knew the statement relied upon was false."
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> Schoenfeld v. Winter (Chanc. Ct. 1909) 76 N. J. Eq. 511.

Whereas at law no recovery can be had without proof of scienter, in equity such proof is unnecessary. Hence when a man is defrauded and cannot show guilty knowledge, his only remedy is for rescission in equity; whereas if he can prove guilty knowledge he can sue at law for damages or for rescission.

> "Equity remains inactive only in that class of fraud that is recognized and remediable at law. A misrepresentation without intent to deceive will not sustain an action at law for deceit, while in equity an untruthful representation of a material fact, though there be no moral delinquency, is deemed to be fraudulent. The law courts not having as yet taken upon themselves to relieve against wrongs resulting from misrepresentations

> fraudulent in conscience only, courts of equity continue to perform that function."
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> Commercial Cas. Ins. Co. v. Southern Surety Co. (Chanc. Ct. 1926) 100 N. J. Eq. 92; affirmed (E. & A. Ct. 1927) 101 N. J. Eq. 738.

In the instant case it seems clear that Davis Bender could not succeed against Jacob Williamson at law; for while a person is bound by the acts of his lawyer and co-tenant, the misrepresentation of his lawyer or co-tenant is not sufficient to charge him with guilty knowledge without proof of authority to make such representation or of actual knowledge of the making of such representation had by the person sought to be charged.

Here Davis Bender could not show such knowlelge by complainant, nor could he hope to prove that complainant intended to deceive him. His only remedy was in equity for rescission. He could not prove a conscious misstatement made by complainant's lawyer or co-tenant, for they may have honestly believed the lots were on Ninth Street.

> "It makes no difference in that event whether the defendant consciously misstated the fact, or whether it was an innocent mistake. That, of course, is the classical distinction between fraud against which a court of law will relieve and that which is cognizable in a court of equity."
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> Grant Inventions Co. v. Grant Oil Burner Corp. (Chanc. Ct. 1929)—not yet officially reported—7 A. R. 595, 145 Atl. 721.

Davis Bender is not guilty of laches. Complainant was not and is not a resident of this State, and

until he brought this present action Davis Bender could not confront him with the claim for rescission. Laches is similar to the bar by our Statute of Limitation, section 8 of which (3 C. S. 3166) provides that the Statute does not run during the non-residence of the person against whom the cause of action is claimed. Bender's rescission action, being based on equitable fraud, could not have been a proper subject-matter for counterclaim in the law action. In January 1929 Davis Bender discovered the fraud, promptly served notice of rescission (pp. 608 to 609) and offered to complainant a deed for the lots (pp. 604 to 608). Complainant has not shown that the delay, if any, caused him to change his position.

> "The plea of laches, to be successful, must disclose one or the other of two things: First, that the delay has lasted over the period fixed by the statute of limitations; or, second, it must be shown to have changed the position of the one who advanced it, so that, unless it operates as a bar, an injustice will be rendered."
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> Grant Invention Co. v. Grant Oil Burner Corp. supra.

Failure to set-off this action to the law action on the note, is no bar to this counterclaim. As shown, the rescission claim is sustainable only in equity and not at law, and a law court cannot determine an equitable cause of action. Assuming that scienter could be shown, Davis Bender still could not set off his claim in the suit on the note; for such rescission, while the loss might be recoverable indebitatus assumsit, is still unliquidated and the cross-action sounds in tort.

> Edwards v. Davis (Sup. Ct. 1797) 6 N. J. Law 394.

A defendant to a law action is not required to counterclaim or set-off his cross-action. Section 3 of the 1915 Practice Act provides that he "*may*" do so, and section 2 of that act states that "may" is not mandatory.

It will be noticed that Davis Bender's claim in rescission could not be raised by answer, but had to be, if at all, raised by an original action or by a counterclaim.

> "The defendant stands on the conveyance, and claims damages, not on any covenant against incumbrances therein contained, but because of alleged misrepresentation preceding and inducing the purchase. Such a claim may not be asserted, by way of answer, but may be asserted by cross-bill, or, under our present practice, by counterclaim."
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> Mortgage & Investment Co. v. Romel Realty Co. (E. & A. Ct. 1930) 106 N. J. Eq. 185.

As he did not heretofore bring such cross action, or original action or counterclaim, the matters contained in his present counterclaim are not at all res adjudicata. Davis Bender has not had his day in court on his rescission action for complainant's equitable fraud in inducing the purchase of the lots.

The proceedings in the law action on the note are in evidence here (pp. 562 to 598). There is no defense or counterclaim in fraud, nor did the evidence touch on that subject. The case proceeded entirely on the issue of whether or not Williamson had agreed to surrender the note in consideration of an alleged promise by Bender not to bid at a foreclosure sale. Bender could not be required to interpose the defense of damage because of the misrepresentation, for the jury would have been

directed to bring a verdict against him for failure to prove fraudulent intent on the part of the plaintiff. While the law has adopted some equitable principles, as for instance estoppel, it has not yet permitted recovery for fraud without proof of scienter.

> "The rule is that, where the party has equitable rights not cognizable in a court of law, which would in a court of equity have prevented such an adjudication as was made in the court of law, the judgment will interpose no obstacle to redress in equity, since the court of law had no proper jurisdiction of the subject-matter forming the basis of redress in equity.
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> Headley v. Leavitt, 65 N. J. Eq. 748.

> "Where defendant in an action at law offers to prove an estoppel in pais against the plaintiff, and the offer is overruled by the trial court, he is not estopped from filing a bill in equity, setting up the same facts, to enjoin the enforcement of a judgment obtained against him in the said action."
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> Borcherling v. Ruckelshaus, 49 N. J. Eq. 340.

> "If a party's defense to an action at law was not within the cognizance of a court of law, being purely equitable in its nature, he is of course not chargeable with negligence in failing to make it effectual at law; and he may have relief in equity against the judgment if it is unjust and inequitable, on the grounds constituting such defense."
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> 34 C. J. 436, sec. 713.

The evidence introduced at this hearing would not have changed the result of the law trial. Had Bender set up an answer or counterclaim at law under these facts, it would have been struck out as

not setting forth a good defense or cause of action.

> If the evidence offered in the second suit is sufficient to authorize a recovery, but could not have produced a different result in the first suit, the failure of the plaintiff in the first suit is no bar to his recovery in the other suit although it is for the same cause of action.
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> Meirick v. Wittemann Lewis Aircraft Co. (E. & A. Ct. 1923) 98 N. J. Law 531.

The issue here was not raised at law. The record of the law action is conclusive, for the defense of res adjudicata can be sustained only by proof of the record of the former action.

> A plea of res adjudicata must show that the same point at issue on the present bill was at issue on the former bill, and that the title to relief is the same in the second bill as in the first.
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> Schneider v. Schmidt (Chanc. Ct. 1914) 84 N. J. Eq. 18; affirmed (E. & A. Ct. 1915) 85 N. J. Eq. 207.

> The first judgment must be directly upon the point in issue, and not collaterally incidental to the issue.
>
> Jamouneau Co. Wetherill (Sup. Ct. 1922) 98 N. J. Law 80.

> The record of the former judgment only works an estoppel as to those matters capable of being controverted between the parties at the time of the proceedings in the action. The record must show that the issue was taken on the same allegations which are the foundation of the present action.
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> Mershon v. Williams (Sup. Ct. 1899) 63 N. J. Law 401.

POINT X.

The counsel fee awarded respondent was excessive.

The final decree orders defendants to pay costs of suit including a counsel fee of $1600 "said allowance to include all disbursement, which is hereby allowed to the complainant to reimburse him for the expenses incurred by him in connection with the examinations in these proceedings conducted before Roger E. Salmon, Esq., one of the masters of this Court and under his direction." (p. 93, ll. 15 to 29).

Court costs are creatures of the statute.

> "Costs are only recoverable by force of a statute, and the allowance of them, in any case, will depend on the terms of the statute."
>
> Apperson v. Mutual Benefit Life Ins. Co. (Sup. Ct. 1876) 38 N. J. Law 388.

Allowance of counsel fee finds sanction only in the statutes.

> "Allowance of counsel fee rests solely on the statutes, except where trust funds in the control of the Court are being administered."
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> Ex parte Welsh (Chanc. Ct. 1922) 93 N. J. Eq. 620.

The existing statutes on counsel fees are:

> "In any cause, matter or proceeding in the Court of Chancery the Chancellor may make such allowances by way of counsel fee to the party or parties obtaining the order or de-

cree as shall seem to him to be reasonable and proper."

1902 Chancery Act, sec. 91 (1 C. S. 445).

"The Court, upon making any order or decree, may charge the successful party with costs, or a reasonable counsel fee, or both, in any case in which the court shall deem it just to do so."

1915 Chancery Act, sec. 6 (1 C. S. C. S. 271)

Neither the final decree nor anything else in the case indicates what part of the "counsel fee" allowed is actually counsel fee and what part is for reimbursement of expenses paid by complainant.

Our law allows a counsel fee, but not reimbursement for expenses. For if such reimbursement may be made, a successful party may, under the cloak of counsel fee, have allowance for loss of time in attending court, payment of experts, etc., etc. The legislature has fixed a list of charges which may be taxed as costs; it has also permitted a counsel fee; the Court cannot go further by charging the loser with other expenses.

"Costs are given by statute, and are not to be increased or diminished at the discretion of the court, or the taxing officer. It is true, there are many services, incidentally arising in the progress of a cause, and in some species of action more frequently than in others, that are not specifically provided for in the fee bill, and for which there ought to be a reasonable compensation; but we are not at liberty to fix that compensation, or to extend the provisions of the statute to reach such causes. The statute must be our guide."

Ananymous (Sup. Ct. 1843) 20 N. J. Law 112.

If the expenses included in the counsel fee was taxable as costs, they should have been so taxed. If not taxable as costs, they cannot be recovered.

The amount of the allowance, $1600, is excessive under the circumstances. The actual trial in Court occupied two days; the discovery proceedings took three days. An allowance of $500 for counsel fee would have been ample.

POINT XI.

The Court's findings were contrary to the great weight of the evidence.

The evidence has been examined and abstracted, above, and appears to show clearly that the questioned conveyances were made without fraudulent intent, were made bona fide, and for a valuable consideration and while Davis Bender was solvent.

The Courts findings vary materially from the facts as developed at the trial. The Vanderpool Street property was conveyed on June 15, 1925 and not on June 17, 1925 as stated by the Vice-Chancellor; this is material because the Williamson note was signed on June 16, 1925, a day after and not a day before the money was received from sale of the Newark properties. The Court calls attention to checks drawn by Davis Bender between May 24th and June 26th, 1926 and states that the bank accounts of Sivad Realty Co. and Harry Bender increased very largely at the same time; the bank statements do not show any deposits in the Sivad Co. or to Harry Bender of the same or similar amounts to those withdrawn by Davis Bender. Little of the balance of the findings can be traced

to the evidence, but they are quite immaterial except for the court's conclusion that the conveyances were made for the express purpose of defrauding creditors and to avoid the payment of complainant's judgment. We respectfully submit that the great weight of the evidence shows no such purpose.

Whether the law action was or was not dispositive of Davis Bender's fraud action, the proofs are clear and uncontradicted that Davis Bender was cheated on the purchase of the lots through the instrumentality of complainant. A court of conscience should not assist complainant in the enforcement of his judgment.

> "The court may, in a proper case, look behind a judgment at law, in order to do justice to the parties to it, as in a case in 1 Chan. Cases 202, where the complainant, when the defendant was drunk, got a bond from him for £90, and had recovered judgment at law for the bond. His bill, filed to subject certain property held in trust for defendant's wife to the payment of the judgment, was dismissed on the ground of the inequity of his conduct in obtaining the bond."
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> Conover v. Jeffrey (Chanc. Ct. 1875) 26 N. J. Eq. 36.

> "Courts of equity do not always assist judgment creditors to enforce collection of their judgments. The complainant must come into a Court of Equity with a cause essentially equitable. It is not enough that his cause is unquestionably legal."
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> Minzesheimer v. Doolittle (E. & A. Ct. 1900) 60 N. J. Eq. 394

"It is not alone fraud or illegality which will prevent a suitor from entering a court of equity; any really unconscientious conduct, connected with the controversy to which he is a party, will repel him from the forum whose very foundation is good conscience."

Pendleton v. Gondolf (Chanc. Ct. 1915) 85 N. J. Eq. 308;

Gluck v. Rynda Dev. Co. (Chanc. Ct. 1926) 99 N. J. Eq. 788; affirmed (E. & A. Ct. 1927) 100 N. J. Eq 554.

The decree herein entered should be reversed, and Davis Bender's counterclaim allowed.

Respectfully submitted,

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