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BILL OF COMPLAINT.

Filed May 28 1931.

In Chancery of New Jersey

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

10

The complainants, Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin, all of the City of Newark, County of Essex and State of New Jersey, respectfully show:

1. On July 1st, 1927 Harry Kruvant being indebted to the complainants Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin, in the sum of Ninety Thousand Dollars (\$90,000.) executed to them a bond of that date to secure that sum payable on July 1st, 1930 with interest thereon at the rate of 6% per annum to be computed from July 1st, 1927 and to be payable one half yearly from the date of said bond.

20

2. To secure payment of the bond said Harry Kruvant executed to said complainants Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin a purchase money mortgage of even date with said bond and thereby conveyed to them, in fee, the lands hereinafter described, on the express condition that such conveyance should be void if payment should be made according to the terms of the bond. Which mortgage, having been first duly acknowledged, and the certificate of the acknowledgment duly endorsed thereon, was recorded in the Register's office of Essex County, New Jersey on July 1st,

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Bill of Complaint.

1927 in Book P. 61 of Mortgages for said county pages 250-252.

3. The mortgaged premises are described as follows:

10 ALL THAT CERTAIN 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,

20 BEGINNING at the corner formed by the intersection of the southerly side of Academy street with the westerly side of Plane street and running thence (1) along the westerly side of Plane street south thirty-one degrees fifty-one minutes west one hundred and ten feet and sixty hundredths of a foot to a point, which point is distant sixty-four feet and sixty-one one-hundredths of a foot from the northerly side of Bank street; thence (2) north fifty-eight degrees fifty-two minutes west seventy-eight feet and eight one-hundredths of a foot to a point; thence (3) north twenty-nine degrees ten minutes east twenty-two feet and twelve one-hundredths of a foot to a point; thence (4) north fifty-eight degrees fifty-two minutes west twenty-five feet and fifty-seven one-hundredths of a foot to a point; thence (5) north thirty-one degrees four minutes east eighty-eight feet and forty-nine one-hundredths of a foot to a point in the southerly side of Academy street aforesaid; thence (6) along the southerly side of Academy street south fifty-eight degrees fifty-two minutes east one hundred and five feet and ninety-seven one hun-

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Bill of Complaint.

dredths of a foot to the point or place of
BEGINNING.

Being the premises located on the southwest corner of Plane and Academy streets, Newark, New Jersey, and is better described and subject to such facts as are set forth and described in a certain survey made by Lehl-
bach Bros. dated October 23rd., 1920, and
known as their number 46371. This conveyance is to include the entire tract shown on said survey, with the exception of that
part of the tract which is set out on said survey and is marked "6.61 over line," which is in the left or southerly side of the rear of said tract, and which excepted part of said tract was formerly owned by one Vliet.

4. Said bond and mortgage provided that if any tax, assessment, water rent or other municipal or governmental rate, charge, imposition or any money payable under the terms of any mortgage loan paramount thereto on any day whereon the same shall become due and payable and should the same remain unpaid and in arrears for the space of sixty days, then the whole principal with all unpaid interest should at the option of the mortgagees, their legal representatives or assigns, become immediately due and payable.

5. Both bond and mortgage also contained a provision that if any default should be made on principal or interest or should any tax, assessment or governmental charges imposed or acquired on the premises described in said mortgage remain unpaid and in default, then it shall be lawful for the said mortgagees to enter upon the said mortgaged premises and to rent the same and to receive the rents, issues and profits of

Bill of Complaint.

the said mortgaged premises and to apply the same after payment of all necessary charges and expenses, on account of the amount hereby secured and the said rents and profits in the event of any such default as aforesaid are assigned to the said mortgagees and that the said mortgagees shall also be at liberty immediately after such default upon proceedings being commenced for the foreclosure of this mortgage to apply for the appointment of a receiver of the rents and profits of the said premises, and to be entitled to the appointment of such receiver as a matter of right as security for the amount due the mortgagees without consideration of the value of the mortgaged premises or solvency of any person or persons liable for the payment of such amounts.

6. By deed dated July 15th, 1927 the said Harry Kruvant and Anna Kruvant, his wife conveyed the mortgaged premises to Kruvant-Mayzel Company, a corporation of the State of New Jersey which deed was on July 18th, 1927 recorded in the Register's office of Essex County in Book W. 76 of Deeds for said county on page 113. Any interest which the said Kruvant-Mayzel Company, a corporation of New Jersey may have in the mortgaged premises is subject to the lien of complainants' mortgage.

7. That in the conveyance made by the said Harry Kruvant and Anna Kruvant, his wife as set forth in paragraph six, the description of the premises in said deed is the same description as the lands and premises described in the mortgage held by the complainants as set forth in paragraphs two and three of this complaint excepting that the second course of the description

Bill of Complaint.

reads "north 58 degrees 51 minutes west 78.08 feet to a point, and also excepting that the fifth course reads north 51 degrees 4 minutes east 88.49 feet to a point in the southerly side of Academy street aforesaid. Any interest which the said Harry Kruvant has in the said land or any claim or interest that the said Anna Kruvant, his wife may have by way of inchoate right of dower, or otherwise, is subject to the lien of complainants' mortgage. 10

8. The mortgaged premises is vacant land and is used for the parking of automobiles and the tenant of said lands conducting said parking station for automobiles is the W. W. Smith, Inc. a corporation of New Jersey and is also known as W. W. Smith Garage Management. Any interest which the said W. W. Smith, Inc. a corporation of New Jersey and the W. W. Smith Garage Management may have in the mortgaged premises as tenant or otherwise is subject to the lien of complainants' mortgage. 20

9. On June 1st, 1929 and on December 1st, 1929 default was made in payment of taxes due on said dates and also on June 1st, 1930 and on December 1st, 1930 default was made in the payment of taxes due on said dates and such defaults have continued for more than sixty days thereafter and no part thereof has as yet been paid. 30

10. The defendant Kruvant-Mayzel Company, a corporation of New Jersey has been collecting the rents of the mortgaged premises and has refused and still refuses to pay the same or any part thereof, or to permit the complainants to collect the same, or any part thereof, for the 40

Bill of Complaint.

purpose of applying whatever amount the complainants might receive to the payment of their said mortgage debt, interest and costs.

10 11. That on July 1st, 1930 the full amount of principal together with interest fell due on complainants' bond and mortgage at which time the complainants did extend the due date of said bond and mortgage until February 1st, 1931.

12. That on February 1st, 1931 the full amount of principal together with interest on complainants' bond and mortgage became due and payable and no part thereof has as yet been paid.

20 13. Complainants have elected that the whole principal sum with all unpaid interest shall now be due.

14. Said Harry Kruvant and Anna Kruvant, his wife, and Kruvant-Mayzel Company, a corporation of New Jersey, or one of them, have always been in possession of the mortgaged premises.

30 15. There is due to the complainants on said bond and mortgage the sum of Ninety Thousand Dollars (\$90,000.) with interest at the rate of 6% thereon from January 1st, 1931.

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

40 1. That Harry Kruvant, Anna Kruvant, Kruvant-Mayzel Company, a corporation of New Jersey and W. W. Smith, Inc. a corporation of New Jersey and is also known as W. W. Smith Garage Management who are the defendants to this suit may answer this bill of complaint and each statement therein made.

Bill of Complaint.

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

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

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to complainants Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin the amount so found due on their mortgage with interest and costs.

5. That a receiver may be appointed to collect the rents of said mortgaged premises with power to make all necessary repairs, to pay taxes, water rents, complainants' mortgage debt, interest and costs and all other powers that may be proper or necessary for the purpose of renting and maintaining the said mortgaged premises and that the said defendant Kruvant-Mayzel Company a corporation of New Jersey, its servants, agents and all persons acting in its behalf be enjoined from collecting any of the rents, issues and profits of the said mortgaged premises until the further order of this court.

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

THEODORE SILVER,
Sol'r of Complainants.

THOMAS B. HEALEY,
Of Counsel with Complainants. 40

AMENDMENT TO BILL.

Filed June 5, 1931.

IN CHANCERY OF NEW JERSEY.

84-500.

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Between

HARRY S. KATZIN, HERMAN Z.
BAUM, MORITZ L. COHEN
and SAMUEL KATZIN,
Complainants,

and

20 KRUVANT-MAYZEL COMPANY, a
corporation of New Jersey,
et als.,
Defendants.

On Bill, &c.
Amendment
to Bill.

The complainants in the above cause hereby amends the bill of complaint in the manner following, by amending paragraph one of the prayer for relief to read as follows:

30 That Harry Kruvant, Anna Kruvant, Kruvant-Mayzel Company (Kruvant-Mayzel Co.) a corporation of New Jersey and W. W. Smith, Inc., a corporation of New Jersey also known as W. W. Smith Garage Management who are the defendants to this suit may answer this bill of complaint and each statement therein made.

THEODORE SILVER,
Solicitor of Complainants.

THOMAS B. HEALEY,
Of Counsel with Complainants.

40

Answer and Counter-claim.

10 did extend the due date of the said bond and mortgage'' is admitted. The allegation contained in paragraph 11 of the bill of complaint that such extension of the due date was until February 1st, 1931, is denied and in amplification of said denial these defendants refer to the allegations of paragraphs 6, 7 and 8 hereof.

4. The allegations of paragraph 14 are denied. Said Harry Kruvant was in possession of the mortgaged premises up to July 1st, 1927; the defendant, Kruvant-Mayzel Company, has been in possession of said mortgaged premises since July 1st, 1927.

20 5. The allegations of paragraph 15 of the bill of complaint are denied and in amplification of said denial these defendants refer to the allegations of paragraphs 6, 7 and 8 hereof.

6. Subsequent to July 1st, 1930, and prior to the institution of this suit, and on or about July 10th, 1930, these defendants and the complainants entered into an oral contract of the following terms:

(a) The said defendants agreed to pay to said complainants the sum of \$2,000.00.

30 (b) The said complainants agreed to waive all defaults that had theretofore occurred and that might thereafter occur in the terms and conditions as written in the bond and mortgage held by them, mentioned in the bill of complaint.

(c) Said complainants agreed to extend the time for the payment of the principal and interest due and to grow due on the aforesaid bond and mortgage (excepting the interest which was to grow due on February 1st, 1931), until four months after a certain public improvement, com-
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Answer and Counter-claim.

monly known as the City Railway, which was then being constructed, or about to be constructed, in the City of Newark, should have been completed, provided if the defendant, Kruvant-Mayzel Company, should sell the mortgaged premises, then the bond and mortgage should become due at the option of the complainants four months after such sale. 10

(d) In the event that the United States Savings Bank, the holder of a first mortgage in the principal sum of \$20,000.00, embracing the premises described in the bill of complaint, should elect to enforce payment of its mortgage (or the bond accompanying the same), or bring any foreclosure proceedings for the collection of its said mortgage, then the complainants would pay to the said United States Savings Bank the amount due or to grow due on the bond and mortgage held by it, would procure an assignment of the said United States Savings Bank bond and mortgage to them (the complainants), and would then hold such instruments until four months after a certain public improvement, commonly known as the City Railway, which was then being constructed, or about to be constructed, in the City of Newark, should have been completed, provided if the defendant, Kruvant-Mayzel Company, should sell the mortgaged premises, then the bond and mortgage should become due at the option of the complainants four months after such sale. 20 30

7. These defendants, on or about July 16th, 1930, performed all the terms of the contract, set forth in paragraph 6 hereof, on their part to be performed.

Answer and Counter-claim.

8. The time for the payment of the bond and mortgage, as extended by the agreement between the complainants and these defendants, has not yet arrived. The aforesaid City Railway has not yet been completed. The mortgaged premises have not been sold by the Kruvant-Mayzel Com-
 10 pany.

BY WAY OF COUNTER-CLAIM AGAINST THE COMPLAINANTS, these defendants allege:

1. The allegations of paragraphs 6, 7 and 8 of the answer are hereby repeated.

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

20 A. That the complainants may answer all the allegations of the counter-claim.

B. That the complainants be enjoined from transferring, assigning, mortgaging, pledging, or in any other manner encumbering the mortgage held by them, or the bond accompanying the same, referred to in their bill of complaint and in this counter-claim.

30 C. That the complainants be decreed specifically to perform the contract made by them with these defendants.

D. That these defendants may have such further and other relief as may be just and equitable.

KANTER & KANTER,
 Solicitors for and of Counsel with
 Defendants, Harry Kruvant and
 Kruvant-Mayzel Company.

**REPLICATION AND ANSWER TO
COUNTER-CLAIM.**

Filed July 30, 1931.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>HARRY S. KATZIN, HERMAN Z. BAUM, MORITZ L. COHEN and SAMUEL KATZIN, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>KRUVANT-MAYZEL COMPANY, a corporation of New Jersey, <i>et als.,</i></p> <p style="text-align: right;"><i>Defendants.</i></p>	}	<p><i>On Bill, &c.</i></p> <p><i>Replication and Answer to Counter- claim.</i></p>
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The complainants join issue on the answer of the defendants Harry Kruvant and Kruvant-Mayzel Company.

As to the counter-claim contained in the said answer complainants say that:

1. They deny the allegations of paragraph one of the counter-claim and pray that the counter-claim be dismissed. 30

SPECIAL NOTICE.

The complainants reserve the right to move to strike out the answer and counter-claim at or before the hearing of the said cause upon the ground that the same do not present a defense or state a cause of action cognizable in equity.

THEODORE SILVER,
Solicitor of Complainants. 40

NOTE OF KRUVANT-MAYZEL COMPANY
AND HARRY KRUVANT.

Filed August 1, 1931.

IN CHANCERY OF NEW JERSEY.

10

84-500.

Between

HARRY S. KATZIN, HERMAN Z.
BAUM, MORITZ L. COHEN
and SAMUEL KATZIN,
Complainants,

and

20

KRUVANT-MAYZEL COMPANY, a
corporation of New Jersey,
et als.,

Defendants.

*On Bill, &c.
Note of
Kruvant-
Mayzel
Company
and Harry
Kruvant.*

The defendants, Kruvant-Mayzel Company, a corporation, and Harry Kruvant, two of the defendants in the above-entitled action, join issue to the answer of the complainants to the counterclaim of these defendants.

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KANTER & KANTER,
Solicitors for and of Counsel with
the Defendants, Kruvant-Mayzel
Company and Harry Kruvant.

40

Order of Designation.

We hereby consent to the entering of the above order.

8/10/31

KANTER & KANTER,
Solicitors of Defendants, Harry
Kruvant and Kruvant-Mayzel
Company, a corporation of
N. J.

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NOTICE OF HEARING.

Filed September 1, 1931.

IN CHANCERY OF NEW JERSEY.

10 *Between*HARRY S. KATZIN, HERMAN Z.
BAUM, SAMUEL KATZIN and
MORITZ L. COHEN,*Complainants,**and*KRUVANT-MAYZEL COMPANY, a
corporation of New Jersey,
et als.,

20

*Defendants.**On Bill, &c.
Notice.*

To Messrs. Kanter & Kanter, solicitors of defendants Kruvant-Mayzel Company, a corporation of New Jersey and Harry Kruvant:

30 TAKE NOTICE of the hearing in this cause before the Honorable Maja Leon Berry, the Vice-Chancellor of this court, to whom the said cause has been referred, on the 14th day of December, 1931, at the hour of 10 o'clock in the forenoon, at the Chancery Chambers, 1060 Broad street, in the City of Newark, the time and place designated by the order of the said Vice-Chancellor made on the 12th day of August, 1931.

THEODORE SILVER,
Solicitor of Complainants.

40

Herman Z. Baum, for Complainants, Direct.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between

HARRY S. KATZIN, HERMAN Z.
BAUM, MORITZ L. COHEN
and SAMUEL KATZIN,
Complainants,

and

KRUVANT-MAYZEL, Co., a cor-
poration of New Jersey,
Defendant.

On Bill, &c.

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Transcript of proceedings in the above entitled
cause before Hon. Maja Leon Berry, Vice-Chan-
cellor, at the Chancery Chambers, Newark, New
Jersey, on Monday, December 14, 1931.

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Appearances:

Theodore Silver, Esq., for complainants.

Messrs. Kanter & Kanter, by Elias A. Kanter,
Esq., for defendant.

HERMAN Z. BAUM, sworn for complainants.

30

Direct examination by Mr. Silver.

Q You are one of the complainants in this
case? A I am.

Q You are one of the holders of the bond
and mortgage which is the subject of this fore-
closure suit? A I am.

Q I show you the bond and mortgage and I
ask you if this is the bond and mortgage which

40

Herman Z. Baum, for Complainants, Direct.

you received from the defendant Harry Kruvant?

A That is it.

10 Mr. Silver: Since both instruments are admitted in the answer filed, I offer the bond and mortgage in evidence, both being dated July 1, 1927, executed by the defendant Harry Kruvant, and in favor of all of the complainants, in the sum of \$90,000, to become due on July 1, 1930; six per cent. interest-bearing mortgage, interest payable semi-annually.

(Marked Exhibits C. 1 and C. 2.)

Cross examination by Mr. Kanter.

20 Q There is a notation in this bond, which commences with the words, "We hereby extend"; that was not in the bond at the time it was delivered, was it? A I didn't deliver the bond.

Q At the time the bond was given to you, that notation was not in the bond? A At the time it was given to me, that was not in the bond?

Q I ask you that again; was it or wasn't it?

A I don't remember.

30

Further direct examination by Mr. Silver.

Q You understand Mr. Kanter's question? At the time that Mr. Kruvant originally executed this bond and mortgage, did this notation appear in here? A Oh, no; that was not there; no, that was not there.

40 Q In accordance with the terms of the bond and mortgage, when did the mortgage become due?

Herman Z. Baum, for Complainants, Direct.

Mr. Kanter: I object; the bond is self-explanatory.

The Court: The bond and mortgage speak for themselves.

Q You say they were due on the first of July, 1930. On July 1, 1930, was the mortgage paid? 10

A No.

Q How much became due on that date? A \$90,000 and interest on same.

Q Was any part of the principal paid? A No.

Q Did you have any understanding—

The Court: Was any part of the interest paid?

Mr. Silver: I will correct my question. 20

Q On July 1, 1930, no part of the principal was paid? A No, and the sum of \$90,000 became due.

The Court: Let me have an answer to my question. Was any interest paid on the mortgage?

The Witness: Interest was paid. 30

Q The interest was paid up to date, up to the first of July, 1930? A Yes.

Q Then the default which you allege at that time was the payment of the principal? A Of the principal.

Q On July 1, 1930, did you and the rest of the complainants in this case, have any understanding with either Mr. Kruvant or Mr. Mayzel in regard to the payment of this mortgage? A Mr. Kruvant and Mr. Mayzel came to my house 40

Herman Z. Baum, for Complainants, Direct.

about it, and I told them that the mortgage was due and we wanted the money—myself and my partners wanted the money paid.

Q Where do you live? A 834 South 13th street, Newark.

10 Q Who was present at that time? A Myself, Mr. Kruvant and Mr. Mayzel.

Q Were the complainants in this case present? A No, not at that time.

Q Did you have any definite understanding then, as to the payment of that mortgage? A I asked them for the money.

Q What did they say? A They didn't have it.

20 Q Did you have any understanding about the month of July, 1930, with Mr. Kruvant and Mr. Mayzel in regard to the payment of the mortgage? A At that time, the first time they came, they said they didn't have the money. They made a suggestion they would be willing to pay to have this mortgage extended.

Q Was the mortgage extended? A It was.

Q Who was present when they agreed upon the extension of this mortgage? A All the complainants.

30 Q And who else? Were both Mr. Kruvant and Mr. Mayzel present? A Yes.

Q What was the agreement at that time? A The agreement at that time was that we were to extend the mortgage for seven months, from July 1, 1930, to February 1, 1931, for the amount of \$2,000.

Q And were both Mr. Kruvant and Mr. Mayzel agreeable to that; were they both agreeable to that? A They were the ones that suggested that.

40 Q You all agreed upon that? A Yes.

Herman Z. Baum, for Complainants, Direct.

Q And at that time was there any discussion about any taxes? A Yes, sir.

Q What happened to the taxes? A It was agreed to do that only on the stipulation that they promised to pay the taxes.

Q At that time do you know what taxes were in arrears? A I think there was about two years' taxes due. 10

Q At that time did Mr. Kruvant and Mr. Mayzel have any other discussion about an extension of this mortgage? A No.

Q And was \$2,000 paid then? A Not then, no.

Q You were not present when the \$2,000 was paid? A No.

Q And on February 1, 1931, was the mortgage paid? A No, sir. 20

Q Any part of the principal paid? A No, sir.

Q How much became due on that day? A On February 1?

Q Yes. A \$90,000 and interest.

Q From when? A From July 1, 1930.

Q At what rate? A Six per cent. 30

Mr. Silver: I offer in evidence the search dated May 21, 1931, of the City of Newark, showing taxes in arrear for the entire year 1929, and for the entire year 1930, amounting to approximately \$6,600.

(Marked Exhibit C. 3.)

I also offer in evidence the abstract of search, together with certificate and affidavit.

(Marked Exhibit C. 4.) 40

Herman Z. Baum, for Complainants, Cross.

Cross examination by Mr. Kanter.

Q Do you say that interest which became due on January 1, 1931, was not paid? A That has been paid.

10 Q You told counsel that the interest which became due on January 1, 1931, was not paid. A If I did, I was mistaken.

The Court: He said February 1, 1931, but I understood, and I think you said, that interest which fell due on February 1, 1931, was the interest from July 1, 1930, to—

The Witness: I have said that I was mistaken; there is one month's interest, however, due, and not seven.

20

Q Then the interest was paid to you up to the period of January 1, 1931? A Correct.

Q And the interest that is due you on this mortgage is due you from the date—from January 1, 1931? A That is right.

Q And your previous testimony was an error? A I made an error.

30 Q You say that you had an agreement with these gentlemen, with Mr. Kruvant and Mr. Mayzel, around July 1, 1930? A Yes, sir.

Q Was the agreement reached prior or after July 1, 1930? A After.

Q Was a discussion concerning the agreement for extension entered into before or after July 1, 1930? A After.

Q Then all this discussion was subsequent to July 1, 1930, is that right? A After July 1, 1930.

40 Q And when was the agreement for extension as finally entered into by you made? A I think

Herman Z. Baum, for Complainants, Cross.

it was made about, probably around August 1, 1930.

Q August 1, 1930? A I think so.

Q When did you receive the \$2,000? A I haven't received it.

Q Did your associate complainants inform you that they had received the money? A Yes, sir. 10

Q Did you receive part of the money? A I did.

Q And you received it in cash? A I did.

Q When did you receive it? A I think sometime in August.

Q You are quite sure it was in August? A I am not quite sure, but I think so.

Q For how long a period did this discussion between you and Mr. Mayzel and Mr. Kruvant extend? A They were there about two or three times. 20

Q On one, two or three occasions? A Yes.

Q Covering a period of how long a time? A It was between July 1 and about August 25, I think.

Q Then during the period of that month they were to see you on two or three occasions? A Yes.

Q You finally reached an agreement with them about August first, you say? A Yes. 30

Q You yourself personally reached the agreement with these men? A No, I took it under advisement with my partners; I told Mr. Kruvant and Mr. Mayzel I would have to talk the matter over with my partners.

Q You discussed it with your associates? A Yes.

Q After having discussed it, you reported back to Kurvant and Mayzel that the agreement 40

Herman Z. Baum, for Complainants, Cross.

was satisfactory, that that would be the arrangement? A It was Mr. Kurvant's suggestion.

Q I don't care from whom the suggestion came. A That is correct.

Q And then did you tell them to whom they were to pay the \$2,000? A I didn't tell them that. To whom to pay it?

Q Yes. A He asked me who had the bond and mortgage, and I didn't have it. I told him that Mr. Harry S. Katzin or Samuel Katzin has the bond and mortgage.

Q Whom did you tell? A I told him to see either Mr. Harry S. Katzin or Mr. Samuel Katzin, because I didn't have the bond and mortgage.

Q When the agreement was made with you, the oral understanding for extension, part of that agreement was that you were to receive \$2,000? A Yes.

Q Did either Mr. Mayzel or Mr. Kruvant ask you whom the money was to be given to? A They asked me who had the bond and mortgage.

Q I asked you whether they asked you whom they should give the money to. A They didn't ask me to whom to give the money to.

Q You made no suggestion as to whom the money was to be paid? A I told Mr. Kruvant that I didn't have the bond and mortgage; that either Mr. Samuel Katzin or Harry S. Katzin has the bond and mortgage, and he should give it to either one of these two men.

Q You say that was about August first? A I think it was.

Q Is it not a fact, Mr. Baum, that prior to July 1, 1930, and subsequent to July 1, 1930, and not later than July 10, 1930, these men had come to you on frequent occasions, possibly half a dozen to a dozen times, and had told you that

Herman Z. Baum, for Complainants, Cross.

they were unable to pay the taxes; that they were unable to pay the principal of the mortgage, and that they wanted to know what arrangement could be made in reference to those items?

A That is not so.

Q Then they never told you that they were unable to pay the taxes? A No, they did not. 10

Q And they never told you that they were unable to pay the principal of the mortgage? A They did say that they were unable to pay the principal.

Q So the only thing they told you is, that they are unable to pay you the principal which becomes due July 1, 1930? A That is right.

Q You knew that July 1, 1930, didn't you? A It wasn't due; I didn't ask for it then.

Q They came to you before July 1, 1930? A Not before, after July first; they didn't come before July first. 20

Q When did you get your interest for that period? A After July first; it must have been after July first.

Q Are you certain? A I think it was about the second or third of July.

Q Then, within two or three days after July first, you got the interest? A By mail, yes.

Q Hadn't they told you that they were unable to pay the principal? A Not at that time. 30

Q Where does Harry S. Katzin live? A 54 Baldwin avenue, Newark.

Q Was there ever a conference in the home of Harry S. Katzin at which the four of you gentlemen, meaning Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin, were present together with Mr. Mayzel and Mr. Kruvant, at which the agreement was reached for the extension of this mortgage, and terms relat- 40

Herman Z. Baum, for Complainants, Cross.

ing thereto? A I don't think so. In my house, but not in 50 Baldwin avenue.

Q You say the final arrangement was made in your home on Thirteenth street, Newark, and not at the home of Mr. Katzin? A Not at the home of Mr. Katzin.

10

Q Do you know at whose home the money was paid? A Mr. Katzin's home.

Q Which one? A Harry S. Katzin.

Q Is it not a fact that when the oral agreement was made, regardless of when it was made, a suggestion was made that this oral agreement be reduced to writing? A No, sir.

20

Q Is it not a fact that when the oral agreement was made, regardless of when the oral agreement was made, that it was suggested by one of you men, that there was a possibility of this payment of \$2,000 being considered illegal? A No, sir.

Q And wasn't the possible illegality connected with the payment of \$2,000 suggested by one of you men? A No, sir.

Mr. Kanter: I want to withdraw my question.

30

Q Wasn't the possible illegality of the payment of this \$2,000 suggested as the reason why you didn't want a written agreement? A No, sir.

Mr. Silver: I object to this line of testimony.

40

The Court: Yes. There is no written agreement. The payment was not an illegal payment, and I cannot see why there was

Herman Z. Baum, for Complainants, Cross.

any discussion about its being an illegal payment—if that is material at all.

Mr. Kanter: The question as to why it wasn't reduced to writing is a very important factor.

The Court: If you think it has any bearing on it, go ahead, but don't waste time on useless questions. 10

Q Isn't it a fact that Mr. Mayzel and Mr. Kruvant—one of you men showed Mr. Mayzel that no written agreement was necessary, because you men were well known to him and Harry Kruvant? A No, sir.

Q On the occasion when you reached this oral understanding, didn't you discuss non-payment of the 1929 and 1930 taxes? A It was distinctly understood. 20

Q Did you discuss it? A Yes, sir; we did.

Q Didn't you discuss the fact that there was a \$20,000 first mortgage on the property? A No, sir.

Q Didn't you discuss the fact—wasn't it urged by Messrs. Mayzel and Kruvant as a reason why you should extend liberal terms, that you had sold this property at a profit of some sixty or ninety or a hundred thousand dollars? A No, sir. 30

Q And wasn't the amount of the bonus \$2,000—

Mr. Silver: Objected to.

The Court: Objection sustained.

Q Wasn't the amount of the payment of \$2,000 fixed with relation to the fact that—or 40

Herman Z. Baum, for Complainants, Cross.

based upon the consideration or upon the argument that you men had made enough money and should not ask for the payment of a larger sum of money for the extension? A No, sir.

10 Q Wasn't the \$2,000 payment the subject of considerable bargaining between you and these people?

The Court: What difference does it make whether it was or wasn't, Mr. Kanter? You are not getting anywhere with this line of examination. All I want to know is, what the agreement was. Now, he has told me. You will probably put your witnesses on the stand and they will tell an entirely different story, and then I will choose between them. You might just as well go ahead and do it first as last.

20

Mr. Kanter: You will have to decide on the probabilities, outside of what the witnesses will tell you.

The Court: I will appraise the witnesses when they come on the stand, and will decide which story to believe.

30 Q You do say that you were not present at the time the \$2,000 was actually paid? A I was not.

COMPLAINANTS REST.

Joseph H. Mayzel, for Defendants, Direct.

JOSEPH H. MAYZEL, sworn for defendants.

Direct examination by Mr. Kanter.

Q You are the secretary of Kruvant-Mayzel Company? A Yes, sir.

Q I show you check dated July 10, 1930, and I ask you whether that refreshes your memory as to when you cashed that check? A I cashed that check. 10

Q When? A On July 10, 1930.

Q Prior to July 1, 1930, did you and Mr. Kruvant interview these men, Mr. Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin, with reference to the principal that was to become due July 1, 1930?

The Court: What relation has this check to the transaction? 20

Mr. Kanter: Well, that is the \$2,000.

The Court: You might as well have it marked now as any other time.

(\$2,000 check marked Exhibit D. 1.)

Q Did you see them prior to July 1, 1930? A I saw them many times before we paid.

Q What did you tell them? A I told them that we are in default of the mortgage and the taxes, and in view that we pay them so much money for the property, what are they going to do for us. 30

Q And that was before July 1, 1930? A Yes, sir.

Q What did these men say to you? A We had quite an argument; many times we asked them for an extension of time, and at the end they didn't want to give an extension of time. 40

Joseph H. Mayzel, for Defendants, Direct.

After we agreed that we should pay them the interest of the \$2,700, we shall pay them a bonus of \$2,000, and for that they will forgive us all the default, if we will pay the interest, and they will wait until the city railway case finishes, four months after the city railway case finishes.
10 However, if we sell the property before that, then we have to make settlement before that, as soon as the deal goes through.

Q Had you been discussing the improvement known as the city railway, then being done? A They were contemplating and started to go ahead and doing it.

Q How about the first mortgage? A In case the first mortgage foreclose, in regard to the taxes, they are going to take care of them; they
20 will buy it or pay them up and take care of it.

Q Was that the agreement you reached with these four men ultimately? A Sometimes four men and sometimes three; it must have been the four men were there.

Q Eventually you reached a definite understanding, which you have told us? A Then we want to give them a check; they refused to take the check; they said they want cash.

Q You offered to pay \$2,000 in— A I paid
30 it later, paid Mrs. Katzin, and paid \$2,000.

Q You offered to pay the \$2,000 in check? A Yes.

The Court: The date of the check is not controlling; it may have been cashed on that date, or at any time thereafter.

Mr. Kanter: The stamp does not help us.

Q Mr. Mayzel, when you reached this agreement to pay the \$2,000, did you offer to pay the
40 \$2,000 then and there? A Yes, sir; I did.

Joseph H. Mayzel, for Defendants, Direct.

Q What was the reason—what was said about that? A They refused to take a check; they want cash.

Q This check appears to be dated July 10. Neither the Vice-Chancellor nor I can make out the date when it was cashed. You cashed this check personally? A Yes. 10

Q Can you tell us when you cashed the check? A The thing was going around for so many days, I might have cashed it the same day or later or something; there might be a difference of a few days; I was going back and forth.

Q It may have been cashed within a few days after July tenth? A After, yes, that might have been.

Q This agreement that you reached, was reached when; before the date of the check or after? A It was reached before the date of the check. 20

Q You drew this check in order to get \$2,000 to pay? A Yes.

Q When did you actually pay the money? A I cannot say that. It might have been a difference of some three or four or five days.

Q A difference of not over a week, in any event? A It might have been—there was a lot of argument, and I saw them many, many times. 30

Q But you paid the money within a week after July 10? A It might have been; I don't remember that.

Q I want you to tell me; I don't know when it was paid. A I know that once I had cashed the check and carried the money around in my pocket and couldn't make an agreement; then I re-deposit the money; and after that we were talking again and then I drew the money again. 40

Joseph H. Mayzel, for Defendants, Direct.

If I drew the money the same day or later, I don't remember that.

Q After you drew the money, within how many days after you drew the money, did you pay? A That must have been within a day or two; the second time I cashed the check, I didn't
10 carry the money in my pocket a long while.

Q To whom did you pay the money? A Mrs. Katzin, I think is her name, that lady (indicating)

Mr. Kanter: What is your name, Madam?

Mr. Silver: Bessie B. Katzin.

The Witness: That lady I give the money to.

20 Q Why did you give the money to her, rather than the four men? A All the men were there, and said, "Give the money to the lady; she is the one who takes the money"; but the men were there.

Q You gave it to her in cash? A Yes.

Q Did you suggest the drawing of a written agreement concerning this extension? A Yes; I said we should go to a lawyer and draw an agreement, and they said "We always treated
30 you right, and we didn't foreclose on the taxes; we could have foreclosed long before, and you ought to take our word for it."

Q And so no written agreement was drawn? A No, there was not.

Q You paid the interest that came due January 1, 1931? A I think we did.

Mr. Kanter: I offer this check in evidence, for \$2,000.

40 (Marked Exhibit D. 1.)

Joseph H. Mayzel, for Defendants, Cross.

The Court: The check has been referred to; it may be marked. I don't think it is of much use, because it does not appear that this was the check, the proceeds of which were paid to Mrs. Katzin, or whether it was the later check that was cashed.

10

Mr. Kanter: You might ask him this question.

The Court: He told the story once, and his re-stating it now, after my suggestion, won't help me. What he did was cash a check, carry the money around a while, then re-deposit the money, and then drew another check and cashed that, and he doesn't know just what the date was.

Cross examination by Mr. Silver.

20

Q Mr. Mayzel, I will refer you to the sixth paragraph of your answer, subdivision "c", which reads as follows: "Said complainants agreed to extend the time for the payment of the principal and interest due and to grow due on the aforesaid bond and mortgage, excepting the interest which was to grow due on February 1, 1931." Is that correct?

30

Mr. Kanter: Referring to what answer?

Mr. Silver: Referring to your answer.

Mr. Kanter: What does it really mean?

Mr. Silver: I think it is a fair question.

Mr. Kanter: He is asking this witness if it is correct.

The Court: He has a perfect right to; it is his answer.

40

Joseph H. Mayzel, for Defendants, Cross.

Q (Question repeated.) A Yes, that is correct.

Q Now, you told Mr. Kanter that you paid the interest until January 1, 1931; is that correct?

A I paid all the accrued interest.

10 The Court: Your man testified to that. The fact is your client testified that he paid interest up to January 1, and there was one month's interest due.

Mr. Silver: He said he didn't.

The Court: According to this testimony, the mortgage was not to become due until after the four months after a certain event happened. Your claim is that it came due on February 1.

20 Q Mr. Mayzel, what is your occupation? A Lumber business.

Q You have been in the real estate business a good many years, haven't you? A I was before that; I was in the real estate business.

Q How many years have you been in the real estate business?

30 The Court: Just a moment. You gentlemen have said all along that there was no written agreement extending this mortgage. Why isn't that a written agreement? You had your man on the stand. I asked you if there was a written agreement, and you said there wasn't. There is the written agreement, right there, signed by the three.

Mr. Silver: I thought you referred to the first time they had discussion.

40 Q For the payment of \$2,000 you expected all these people to lay out the sum of \$20,000

Joseph H. Mayzel, for Defendants, Cross.

on a first mortgage? A That is what they promised me.

Q And the taxes here are over \$3,000 a year?

A Yes.

Q And in July, 1930, you were in arrears for a year and half's worth of taxes? A Yes.

10

Q Amounting to over \$5,000. A Yes.

Q You also expected these people to waive all interest payments; is that correct? A Interest payments. We were supposed to pay interest.

Q Your interest on \$90,000 is \$5,400 a year?

A Yes, but we were supposed to pay, and we paid the interest.

Q Until when? A Whenever interest was due we paid them. We paid a couple of days later, but we always paid interest.

20

Q In your answer you say: "Complainants agreed to waive all defaults that theretofore occurred, and that might thereafter occur in the terms and conditions as written in the bond and mortgage held by them." A We might not pay just to the minute, but we assumed to pay interest.

Q What did you mean by that particular answer, what the said complainants did? A Not to pay promptly.

30

Q When you say "The said complainants agreed to waive all defaults that had theretofore occurred and that might thereafter occur in the terms and conditions as written in the bond and mortgage held by them," what did you mean by that? A Not to pay interest as prompt, if we are short, and within the week, but we got to pay the interest; that was understood.

Q At the time you claim you made this agreement, was there the city railway under construc-

40

Joseph H. Mayzel, for Defendants, Cross.

tion? A They were contemplating it, I think; I wasn't present when they started.

Q Was it under construction at the time you made this agreement? A I don't know, but everybody was talking about it, and contemplated.

10 Q Don't you know whether they started the city railway at that time? A I am positive it was passed and everybody in the city was talking about it; it was passed at that time. Maybe it was started; I don't know.

Q It hasn't been finished as yet, has it? A No, it is quite progressed.

Q Do you know when it will be finished? A They are going ahead full force.

Q Do you know when it will be finished?

20

Mr. Kanter: We don't know; it is not finished.

Q Do you know Mr. Moritz Cohen, the complainant in this case? A Yes.

Q Do you know what his business is? A Yes.

Q What is it? A Butter and egg business.

30 Q What is the name of his company? A Columbia Cheese Company.

Q Do you know where it is located? A Yes.

Q Where? A Miller street, I think.

Q After February 1, 1931, did you go to Mr. Cohen's place of business? A Mr. Cohen called me up, I should come over to see him, and I was over there many times.

Q Then what happened?

40 Mr. Kanter: I object. That is not cross examination, and it is an attempt to get from

Joseph H. Mayzel, for Defendants, Cross.

this witness the story in advance of Mr. Cohen's story. I don't think it is cross examination.

The Court: I don't know what the purpose is. If you will tell me your purpose—

Mr. Silver: We contend that after February 1, 1931, when we claim the mortgage became due, this man, both he and Mr. Kruvant, several times went down to see Mr. Cohen, one of the complainants, and asked him not to foreclose this mortgage—withhold foreclosing it, that they expected any day momentarily to sell that property to the City of Newark, and they will get the money. 10

The Court: All right.

Mr. Kanter: He may make him his own witness on that. 20

The Court: Objection is overruled.

Q Then what happened? A Mr. Cohen told me that he needs the money badly, and if it is possible I shall pay his interest; he was willing to sell his interest at a low price; he said he needs the money.

Q Did you go there alone? A Most of the time I was alone; one time I was with Mr. Kruvant. 30

Q How many times did you go to Mr. Cohen's place? A Many times.

Q Why did you go on these occasions? A We had given at that time an option to the City of Newark for \$225,000. The City of Newark were contemplating to remove the DeBevoise building on that corner, and we were all waiting to see what is going to happen; if the City is going to take that building, naturally, they would get the 40

Joseph H. Mayzel, for Defendants, Cross.

money at once, and he wanted to know what is contemplating and when the meeting will take place. One time he told me that he has got some parties, maybe, if we are willing to spend some money, to help the City to buy it; all that kind of talk.

10 Q You told Mr. Cohen the City of Newark had an option to buy? A We gave the City of Newark an option at that time.

Q You claim the mortgage wasn't due on February 1, 1931? A We didn't talk about paying off the mortgage.

Q Did you make promises to have the mortgage paid off? A I never made any promise.

Q Why were you so interested in going to see Mr. Cohen so many times? A Each time
20 he called me up; I felt it was my duty to go and see him, when he calls me up.

Q You are in business? A Yes.

Q And still you at that time had to go down to his place on several occasions? A We owed the man a lot of money; he was entitled to it.

Q This property has been sold for non-payment of taxes?

Mr. Kanter: I object.

30

A So I understand.

The Court: I don't think it is material, anyway. The tax search is in. If there is a default, that shows it.

Q As a matter of fact, Mr. Mayzel, when you went to see Mr. Cohen at his place of business, he insisted that the mortgage be paid; isn't that so? A He did not.

40

Joseph H. Mayzel, for Defendants, Cross.

Q As a matter of fact, Mr. Cohen also insisted that the taxes in arrears be paid; isn't that so?

A He never said it.

Q As a matter of fact, didn't you tell Mr. Cohen, "Never mind taxes; I will collect rents from other properties and pay my taxes"? A I never mentioned it. 10

Q But you told Mr. Cohen that you expected to sell the property to the City of Newark, and that he should not foreclose; didn't you tell that to him? A I told him we expect to sell it; and he will get all his money.

Q Why in your answer do you extend the time of the interest that was to become due on February 1, 1931? Why did you pick out that particular month? A I didn't pick it out. It wasn't that agreement at all. 20

Q That wasn't the agreement? A The agreement was they got to wait until the city railway will be finished, and four months after that.

Q Didn't you make an exception in your answer as to the interest which was to become due February 1, 1931?

The Court: You will get along faster, if you confine yourself to the material issues here. Don't go off into the woods and try to bring in too much by inference. The issue is plain. 30

Q Did you insist on a written contract for this extension?

The Court: Why ask him that question? Mr. Kanter asked him that question. Why 40

Harry Kruvant, for Defendants, Direct.

do you want to emphasize the testimony that is already in?

Mr. Kanter: If Mr. Silver will stipulate and say that Mr. Kruvant will testify substantially to the same effect—

10 The Court: Let him tell the story about what the agreement was. That is all I am interested in.

HARRY KRUVANT, sworn for defendants.

Direct examination by Mr. Kanter.

20 Q Mr. Kruvant, on July 1, 1930, the Kruvant-Mayzel Company, the then owner of the property, was not able to pay the principal of the mortgage? A That is right.

Q You were on the bond? A Yes.

Q You were not able to pay the principal of that bond? A I was not.

Q Did you go to these people before July 1 and after July 1, with reference to having that situation adjusted? A I did.

30 Q Without going into the preliminaries, what was the final agreement that you and these four gentlemen arranged? A That they are willing to wait until the city railway is completed, and then they said, "How long after?" We said, four months, if we pay them \$2,000 and they will not press anything about taxes and any defaults, as long as we pay the interest on their mortgage; and in case the first mortgage is foreclosed on account of taxes, that they would buy the mortgage and hold it under the same terms.

40

Harry Kruvant, for Defendants, Direct.

Q Were you present when the \$2,000 was paid? A I was.

Q How was it paid? A It was paid in cash.

Q At whose direction? A The four gentlemen were there, and Mrs. Katzin; they directed it be given to Mrs. Katzin.

10

Q In cash? A In cash.

Q What was said about a written agreement embodying your oral understanding? A We wanted a written agreement. They said they couldn't give any written agreement, their word was good enough; we should take their word for it.

Q Do you recall when the \$2,000 was paid? A About July 11 or 12.

Q And do you remember at whose home it was paid? A At Mr. Katzin's, 50 Baldwin avenue.

20

Q There are two Katzin's. A Harry S. Katzin.

The Court: When the money was paid, was this agreement signed, extending the mortgage?

The Witness: Yes, sir.

The Court: Did you ever see that before?

30

The Witness: No.

Q Was the bond and mortgage there when the money was paid? A We didn't see it.

Q Did you ever see that endorsement on this bond and mortgage? A Yes, I saw it.

Q "We hereby extend the due date of the mortgage from July 1 to February 1, 1931." Signed "Harry S. Katzin, Herman Z. Baum,"

40

Harry Kruvant, for Defendants, Cross.

and "Samuel Katzin"; you say you never saw that? A I never saw it.

Cross examination by Mr. Silver.

Q Do you know Moritz Cohen? A I do.

10 Q And do you know what his business is?

A Yes.

Q You know where his business is located?

A Somewhere near the market.

Q Do you know the name of his company? A Columbia Cheese Company.

Q What is your occupation? A A builder and real estate.

Q How many years have you been in that business? A Twenty years.

20 Q Did you go down to Mr. Cohen's place after February 1, 1931? A I was there with Mr. Mayzel, I think, on one occasion.

Q You went down with him? A Yes.

Q You are the president of the Kruvant-Mayzel Company? A Yes.

Q And both of you went down there? A Yes.

30 Q Why did you go down there? A Mr. Mayzel told me Mr. Cohen told him Mr. Cohen had quite a few transactions with Newark and the Government in selling property.

Q I didn't ask you that. You went down—

Mr. Kanter: I think counsel asked a question. The witness should be permitted to give the explanation.

(Last three questions and answers read to the witness.)

40 The Court: Because your partner told you to?

Harry Kruvant, for Defendants, Cross.

The Witness: Yes.

Q Did you have a discussion with Mr. Cohen about this mortgage being due? A No, sir.

Q Did you ever meet Mr. Baum, the man who was on the stand today, during the month of February, 1931? A I don't remember. 10

Q Are you positive you didn't meet him? A I am not positive.

The Court: He says he doesn't remember.

Q Do you recall meeting him in the City Hall in Newark, in February, 1931? A I don't recollect.

Q Do you recall meeting him on Mulberry street in February, 1931? A I cannot recall meeting him. On the street? 20

Q Yes. A I don't remember.

Q Did you ever have any discussion with Mr. Baum since February 1, 1931? A In regard to what?

Q In regard to this mortgage? A This morning we talked about it.

Q Not today; between February 1, up until this morning, did you ever have any conversation with Mr. Baum? A I cannot recall; I don't recall. I don't remember having any conversation with him in regard to this mortgage. 30

Q Did you ever have any conversation with regard to this mortgage with Dr. Kraemer? A No, sir.

Q Did you ever ask Dr. Kraemer to call up Mr. Baum and tell him not to foreclose this mortgage? A I did not.

Q You are positive? A I am positive. 40

Harry Kruvant, for Defendants, Cross.

Q You were negotiating with Newark to sell the property? A I was.

10 Q As a matter of fact, you met Mr. Baum and Mr. Cohen several times and told them that you expected to sell the property any day, and not to foreclose? Isn't that so? A I told him I expected to sell the property, but I never talked about foreclosure.

Q Why did you tell him that? A So they would get the money.

Q You were anxious to see them get the money? A Yes; we were talking about it.

Q The only reason you went to Mr. Cohen's place was to discuss this particular mortgage only? A No, sir.

20 Q Did you have any other business dealings? A Yes.

Q At that time? A Yes.

Q Did you ever have any business dealings with Mr. Baum prior to this particular occasion? A No, sir.

Q Mr. Kruvant, you were the party that signed the contract to buy this property? A I was.

30 Q And you signed a contract back in September, 1925? Is that so?

Mr. Kanter: Objected to.

The Court: Objection sustained. Confine yourself to the issue.

Q For the sum of \$2,000 you expected these people to also pay the sum of \$20,000, is that right, on the first mortgage? A Yes.

40 Q And the interest on the \$90,000 mortgage amounted to \$5,400 a year? A Yes.

Herman Z. Baum, in rebuttal, Direct.

Q The taxes were over \$3,000 a year? A About \$2,800.

Q And all this you wanted done for \$2,000?

A That was agreed upon.

Q At the time you made this supposed agreement, did they commence the construction of the city railway at that time? A The plans were drawn at that time. 10

Q In your answer you mentioned the city railway, which was then being constructed, or about to be constructed. Do you know whether it was started or not at that time? A I don't recall.

Q Has it been finished as yet?

Mr. Kanter: It is on the record that it has not been finished. 20

Q It is a year and a half since you made that agreement? A Yes.

Mr. Kanter: We rest.

HERMAN Z. BAUM, recalled in rebuttal for complainants.

30

Direct examination by Mr. Silver.

Q At the time that all these people congregated at your home, 834 South 13th street, Newark, for the purpose of extending this mortgage, was there anything mentioned whatsoever about the city railway? A No.

The Court: Why go into that? He has answered that; he said it wasn't.

40

Herman Z. Baum, in rebuttal, Direct.

Examination by the Court.

Q Mr. Baum, this is the bond, Exhibit C. 1. I show you an endorsement here signed by you; when was that signed? A That was signed after I received the money.

10 Q I know, but when? I want to know when? A I don't know just the exact date; some date in July—probably the twenty-fifth or somewhere around that.

Q Where was it signed? A In Mr. Katzin's house. Mr. Katzin had possession of this bond.

Q Was it signed when the money was paid? A No, after.

Q Was either Mr. Kruvant or Mr. Mayzel there when it was signed? A No, not while I signed it.

20 Q Had Mr. Harry S. Katzin signed it when you— A He had signed already.

Q Who wrote the endorsement? A Mr. Katzin.

Q You don't know when that was written? A No.

Cross examination by Mr. Kanter.

30 Q You told the Vice-Chancellor that you signed it about July 25th? A I think so.

The Court: Mr. Silver had not finished when I interrupted.

Further direct examination by Mr. Silver.

Q Was anything mentioned about first mortgage?

40 Mr. Kanter: I object; it has already been gone over by the witness.

Herman Z. Baum, in rebuttal, Direct.

The Court: You may answer it.

A No, nothing was said about the first mortgage.

Q Was there anything said that you would waive any defaults that had occurred prior thereto, and that may occur in the future? 10

Mr. Kanter: I object; it has been gone over before.

The Court: I will overrule the objection, and let it stand.

A No, sir.

Q Was there any discussion that the mortgage would become due within four months after Krivant-Mayzel Company would sell the property? A No, sir. 20

Mr. Kanter: I object to the question.

The Court: Same ruling. I am not sure, but I think you covered this already in your direct case, and if you did, you are simply wasting time by going over it.

Q Mr. Baum, did you meet Mr. Krivant during the month of February, 1931? A I did. 30

Q Where did you meet him? A On the City Hall steps, in Newark.

Q Any place else? A I met him on Mulberry street, about a week later.

Q During the month of February, 1931? A Yes.

Q Will you tell us what that discussion was?

Mr. Kanter: I object; it is immaterial; we haven't testified to any contrary conver- 40

Herman Z. Baum, in rebuttal, Direct.

sation with this witness? He said he had no conversation and didn't meet him.

The Court: Objection is overruled.

Mr. Kanter: He said he didn't recall having met him.

10 The Court: One and the same thing.

A Yes, I met Mr. Kruvant once on the City Hall steps coming out of the City Hall, and I asked him when he is going to pay that mortgage and all that is accrued on it; he said he expected to sell and make a deal with Newark for the sale of the property any day, and he will pay the mortgage. And also a week later, about a week later, I met him on Mulberry street, Newark, and he told me again that he is still negotiating and expects to pay it any day.

20

Q Did you insist on the mortgage being paid?

A I did.

The Court: You are leading the witness.

Q Was there any discussion? A No.

Q Did Mr. Kruvant say when the mortgage was due?

30 Mr. Kanter: I object to that.

The Court: Objection sustained.

Q Did you ever meet Mr. Mayzel after that?

A I did.

Q When did you meet him? A I met Mr. Mayzel about two weeks after I saw Mr. Kruvant; I met him on Walnut street, Newark.

Q What did you ask him, and what did he say to you? A I asked him when the mortgage will

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Herman Z. Baum, in rebuttal, Cross.

be paid, and he told me the same as Mr. Kruvant, they are still negotiating with the City of Newark for the sale of the property, to move the DeBevoise building across the street, and he would pay the moment it is purchased by the City.

Q Was there anything else said? A I told him to at least pay the interest that was due, that accrued on it. I told him at least to pay that, and he said he will try and pay that. 10

Q Did you say anything about taxes?

Mr. Kanter: I object as leading.

The Court: Yes; please don't lead him.

Q Did you people insist that \$2,000 in cash be paid? A No, sir.

Q Was there any discussion whatsoever about any written agreement? 20

Mr. Kanter: Objected to. We have gone all over that.

Cross examination by Mr. Kanter.

Q Who wrote the body of the memorandum, from the words "We hereby extend" through the words "Nineteen Hundred and Thirty- one"? A Harry S. Katzin. 30

Q And the signatures are in the order—Harry S. Katzin, Herman Z. Baum and Samuel Katzin? A Yes.

Q You say when you placed your signature on that paper, Harry S. Katzin's signature was on there? A Yes.

Q And the signature of Samuel Katzin was not there yet? A I don't remember his signature being there. 40

Herman Z. Baum, in rebuttal, Cross.

Q You didn't try to squeeze in your signature between Harry S. Katzin and Samuel Katzin? A I don't remember whether that was there or not.

Q You don't recollect whether Samuel Katzin's signature was there or not at the time?

10 A No.

The Court: I think it is fair to assume that it wasn't.

Q You say you saw Kruvant and Mayzel in June and July, 1931, and these conversations occurred between you, to which you have testified? A Yes.

Q In what part of June, 1931? A About
20 the twentieth of June.

Q And what part of July? A I didn't meet him in July.

Q You met Mayzel in July? A Yes.

Q What part of July? A Perhaps the middle of July.

Q The middle of July, 1931? A Yes.

Q You are quite sure it wasn't earlier in June, 1931, that these conversations happened?
A It wasn't.

30 Q You are sure about that? A That it wasn't when?

Q Earlier than June 20? A It may have been a few days earlier.

Q You had already started foreclosure on June 9, 1931, hadn't you?

Mr. Silver: I can answer that.

A I don't know; I gave the orders to start foreclosure; I don't know what date it was started.
40

Herman Z. Baum, in rebuttal, Cross.

Q When you spoke to Kruvant, you knew you had instructed your lawyer to start foreclosure; is that right? A I think I met Mr. Kruvant before I started foreclosure.

Q You told us you met him on June 20, and not July, 1931. A I don't know the dates, but I know that I asked for the payment before we started foreclosure. 10

Q You told us that you met Mr. Kruvant June 20; is that correct? A I told you that, but I don't know the exact date.

Q When I asked you whether it was the exact date, you said it might have been a few days prior to June 20. A It was before we ordered the foreclosure; I don't know the date; I cannot say the date.

Q You didn't order the foreclosure until the latter part of June, 1931? A I met him before the foreclosure was started. 20

Q You met him in May, 1931? A It probably was.

Q You want to change your testimony as to when this conversation with Kruvant occurred? A If that is wrong, I want to change it. I met him on the City Hall steps once, and on Mulberry street, another time.

Q You want to change the date in accordance with what the undisputed fact may be as far as the record is concerned? A I want to change the date if it is wrong. I met him twice; once on the City Hall steps, and once in Mulberry street. 30

Q You are changing your testimony because I called your attention to the fact that the foreclosure was started on June 9, 1931? A That is not the reason.

Q The whole burden of your conversation with Mr. Kruvant and Mayzel on either of those 40

Herman Z. Baum, in rebuttal, Cross.

occasions was, "We expect to sell"—Kruvant or Mayzel telling you, "We expect to sell the building to the City any day, and you will have your money?" A That is right.

Q And you asked only for your interest? A No, I didn't ask for interest; I asked for principal and interest. He said he will pay any day and I told him they should at least pay the interest and taxes.

Q And he said, "We are selling the building to the City any day?" A Yes. I told him, "Please pay the interest, at least."

Q The interest was paid January 1, 1931? A Yes. It hasn't been paid since.

Q You expected the interest every six months, didn't you? A There was a month's interest due from January 1, 1931, from January to February.

Q That month's interest is what you insisted on? A I think that is what it was.

Q So when you met Mr. Kruvant in May, you asked him for that month's interest?

The Court: The interest was due up to whatever time he met him.

Q Did you ask for any specific period, or for the month? A No specific period.

Q You met Mr. Kruvant in May, 1931? A I don't know the date.

Q It was prior to June, 1931, wasn't it? A It must have been.

Samuel Katzin, in rebuttal, Direct.

SAMUEL KATZIN, sworn for complainants, in rebuttal.

Direct examination by Mr. Silver.

Q You are one of the complainants in this case? A Yes. 10

Q Were you present in Mr. Baum's home, in the month of July, 1930, when the discussion was had about the extension of this mortgage? A Yes.

Q Who was present? A Mr. Kruvant, Mr. Mayzel, Mr. Harry Katzin, Mr. Baum, Mr. Cohen and myself.

Q Do you remember what took place at that time? A The general discussion as to the mortgage being due sometime before that, the first of July, 1930, and discussion as to postponement of the due date. After some talk we agreed to postpone finally to February 1, 1931, a period of seven months later. 20

The Court: You were asked to tell what took place in Mr. Baum's home on the occasion when you four men who held this mortgage, and Mr. Kruvant and Mr. Mayzel were there. You haven't told us anything about it. 30

The Witness: Well, there was a discussion—originally the Kruvant Company asked for a longer period, and we wanted to give them only six months of time, and the period of seven months was arrived at after some discussion, then the matter rested.

Samuel Katzin, in rebuttal, By the Court.

Examination by the Court.

Q When the agreement for extension was made, was it made on that day when you were all present, or was it made sometime previous to that? A It wasn't made previous to that, nor was it finally made at that time.

10 Q Then what was the discussion; just about the extension? A The extension of the mortgage to the date I mentioned, to February 1, 1931.

Q You say the agreement was not made on that day; when was it made? A I believe we met twice; the second time, I wasn't there, but I was told later—

Mr. Kanter: I object.

20 The Court: Objection sustained.

Q On the occasion when you were present, the agreement was not made; is that correct? A Tentatively it was made that particular day.

Q What was the tentative agreement? A February 1 being the date settled upon.

Q What was not settled; why do you say it was tentatively settled. What was arrived upon? A To the best of my recollection, it was really settled, only it was open; no money had been paid at the time. A figure has been arrived at just how much would be paid, and since the money has not been paid, it was, at least in my mind, not final that it will be paid.

Q It was all arranged except the payment of the money? A That is right, substantially.

Q Do you know when the money was paid? A About two weeks later. When I got the money, I got my share.

40

Samuel Katzin, in rebuttal, By the Court.

Q You mean you got your share about two weeks later? A Yes.

Q Were you present when the money was paid? A No, sir.

Q I show you Exhibit C. 1, which is a bond, and call your attention to that endorsement of the extension; when did you sign that? A 10
Probably around the beginning of August, 1931.

Q Why did you do that? A That is my recollection of the date.

Q Where were you when you signed it? A I remember signing it in my own store downtown, but I wouldn't swear to it.

Q Who asked you to sign it? Somebody must have brought you the bond and asked you to sign it; who did it? A I had the bond in my safe, and I brought the bond to the house of 20
Mr. Harry S. Katzin, and sometime later he gave it back to me, with these two signatures on there. It is likely I took it downtown before I signed it, or I signed it on the spot; I don't recall.

Q When did you take the bond to Harry Katzin? A Around that time, for the purpose of having him put that writing on there, which was understood orally, that we would extend the mortgage to February 1.

Q Why didn't you write it on? A I cannot 30
answer that.

Q You took the bond and gave it to your brother? I suppose he is your brother? A No, sir; he is not; he is related.

Q You took the bond and gave it to Harry S. Katzin? A Yes.

Q Sometime later he brought it to you with this endorsement on? A Yes.

Q And it had already been signed by Harry Katzin and Mr. Baum? A Yes. 40

Samuel Katzin, in rebuttal, Cross.

Q Then you signed it? A Yes.

Q That is all you know about it? A Yes, that is about it.

Mr. Silver: That was the entire discussion and nothing else at Mr. Baum's home?
10 There was no other agreement?

The Witness: No.

Cross examination by Mr. Kanter.

Q You can write English? A Yes.

Q You could write the words that were written here, if you felt like doing so? You had sufficient literary ability to do so?

The Witness: Do I understand the question right?
20

The Court: Can you write and read English?

The Witness: Yes, sir.

The Court: That answers the question.

Q You say you got the money about when?
A The latter part of July, 1930.

Q How long prior to the time that you signed this memorandum on the bond? A Probably a week or so.
30

Q You say that you signed this memorandum about August 1st? A About that time.

Q And that would place when you got your share of the \$2,000, about July 23 or thereabouts?

A It wouldn't signify that at all.

Q It doesn't follow? A No.

Q Who brought you the money? A I received the money in the house of Mrs. Bessie
40 Katzin.

Samuel Katzin, in rebuttal, Cross.

Q You came up to your brother's house? A
Not my brother.

Q Isn't Harry S. Katzin your brother? A
No.

Q How is he related to you? A Cousin.

Q And Bessie Katzin is his wife? A Yes.

Q You came up to Harry Katzin's house to
get the money? A Yes. 10

Q You got the money about a week before
you signed the memorandum? A Probably a
week; I cannot say for sure.

Q Then after receiving the money, you sub-
sequently delivered this bond to your cousin
Harry; is that right? A I cannot say that it
was subsequently or not. I might have brought
the bond a day before I got the money; maybe
later. 20

Q Your recollection of what you did with
the bond and the time of the signing of the bond
is uncertain, and from whom you got the money
is uncertain; is that right? A No, it is not.

Q You are certain? A I am certain I got
the money.

Q From whom? A From Mrs. Bessie Kat-
zin.

Q Was it before or after you signed this
memorandum on the bond? A Of that, I am
not certain, whether the same day, or day be-
fore, or later. 30

Q You are not certain whether you brought
the bond to Harry Katzin before you got the
money or after? A That is right.

Q You were not present on the occasion to
which Mr. Baum has referred, when the final
agreement was made as to what was to be paid,
and what the terms of the extension were to
be; you were not present in Mr. Baum's house
40

Samuel Katzin, in rebuttal, Cross.

the day he testified? A I was present at Mr. Baum's house once.

Q You were not present in the latter part of July or early part of August, when he testified—the occasion to which he testified as the date upon which the final agreement was made? Can't
10 you answer that question? A No, I cannot answer that. The question seems to be based upon Mr. Baum's testimony as to certain days when some people met and I was not there.

Q Were you there or were you not? A No, I was not.

Q The agreement that was entered into was only when you were present; is that right? A Yes.

Q Who else was present beside yourself? A
20 Mr. Baum, Mr. Harry S. Katzin, Mr. Cohen and myself, and Mr. Kruvant and Mr. Mayzel.

Q Then you four gentlemen and the other two gentlemen on the other side? A Yes.

Q And when was that? A About the middle of July.

Q You told us about two weeks intervened between the time of your discussion and the time that you received your money; is that correct? A That is probably correct.

Q And you told us that you received your
30 money about the twenty-third of July; is that correct? A It is probably correct.

Q Then your discussion with Kruvant and Mayzel took place about the tenth of July; is that correct? A Between the tenth and fifteenth.

Q And that discussion took place at the home of Harry S. Katzin, you say? A No, sir.

Q At whose home did it take place? A Mr.
40 Baum's home.

Samuel Katzin, in rebuttal, Cross.

Q And on that occasion, did you finally agree upon all your terms, regardless of what the terms were? A I didn't get the question.

Q Whatever the terms were, was the final arrangement made on that occasion, as to how much was to be paid and how much the extension was to be, and for how long, and the various terms connected therewith; was that finally arranged? A I couldn't call it final; tentatively it was final; my understanding was we were to get a certain amount of money for the extension of the mortgage for seven months of time. That is what you mean? I am not sure about your question. 10

Q You mean when you say "tentative," you had not given your assent to the proposition then reached? A Yes, I was satisfied. 20

Q Were the other gentlemen satisfied? A I know they were.

Q Was Krivant and Mayzel satisfied? A They seemed to be.

Q Everybody was satisfied upon the terms then reached? A May I qualify my answer?

Q If you want to explain it. A Until any money was passed, I did not think it was final, and that was the only reason why I say it wasn't final. 30

Q Then with the exception of the performance on their part, paying \$2,000, everything had been settled and agreed upon? A Yes.

Q That was between July 10 and 15, you believe? A Yes.

Q Then the suggestion was made that this agreement ought to be in writing; was it not? A No.

Q Nobody made that suggestion? A Nobody. 40

Dr. Charles F. Kraemer, in rebuttal, Direct.

Q And the suggestion was made that this money be paid in cash; wasn't it? A No, it was not.

Q Nobody made that suggestion? A No. What difference would that make?

Q Nobody made that suggestion? A No.

10 Q Isn't it a fact that a check was offered then and there for the \$2,000? A No.

Q Isn't it a fact that one of you men suggested that because of the possible illegality, this agreement should not be reduced to writing, and the payment should be made by cash? A No.

Q That was not suggested in any way, shape or form? A No.

20 Q You were not present when the money was actually handed to one of you four men, who actually received it? A No.

Q \$2,000 was not given to you, was it? A No.

DR. CHARLES F. KRAEMER, sworn in rebuttal, for complainants.

30 *Direct examination by Mr. Silver.*

Q You are affiliated with the City of Newark, are you not? A Yes.

Q In what capacity? A Industrial representative and real estate manager.

Q Were you negotiating with the defendants, Mr. Mayzel and Mr. Kruvant, for the purchase of this property for the City of Newark? A I had it under advisement during the last year.

40 Q When did these negotiations start, doctor?
A The early part of 1930, about the time that

Dr. Charles F. Kraemer, in rebuttal, Direct.

we had purchased the DeBevoise building; I think that was the latter part of 1930.

Q Until when did those negotiations last?

A Up to the early part of 1931.

Q Did you ever have any discussion with Mr. Kruvant about a mortgage held by these people on this particular property? A I am frank to confess I had so many discussions with these gentlemen that I don't recall them specifically. 10

Q Did you ever make a telephone call, and call Mr. Baum on the telephone, in the early part of this year, or subsequent to February, 1931? A I made a good many telephone calls to Mr. Baum.

Q Do you recall whether you called Mr. Baum subsequent to February, 1931, of this year, on the telephone? A You will have to refer to something specific; I spoke to him a number of times. 20

Q In regard to any mortgage held by Mr. Baum and the rest of the complainants on this property. A Yes, I called up Mr. Baum and requested him, if possible, not to pursue his foreclosure proceedings, inasmuch as I was negotiating with Mr. Kruvant and Mayzel for the purchase of that corner, and I hoped that he wouldn't embarrass me by doing that just at that time. 30

Q Do you know at whose request you made that call? A I wouldn't want to say.

Q How did you happen to know that Mr. Baum had a mortgage on it? A To be frank with you, these conversations went on in my office between all these gentlemen interested, and I no doubt knew all the facts about the mortgages, but whether Mr. Kruvant or Mayzel 40

Moritz L. Cohen, in rebuttal, Direct.

requested me to do it, or just why I did it, I cannot tell at this time.

Q However, you asked Mr. Baum not to pursue the foreclosure proceedings? A I certainly did, and I remember that well.

10 Q Will you repeat again what you told Mr. Baum? A I think I told Mr. Baum not to press the foreclosure proceedings against Mr. Kruvant and Mayzel.

No cross examination.

MORITZ L. COHEN, sworn in rebuttal for complainants.

20 *Direct examination by Mr. Silver.*

Q You are one of the complainants in this case? A I am.

Q And were you present with the rest of the complainants at Mr. Baum's home in the month of July, 1930, when you had a discussion about the extension of this mortgage? A I was.

30 Q Will you tell the Vice-Chancellor what took place in Mr. Baum's home? A We had two meetings: one, in the first week of July, discussing an extension of that mortgage, and we couldn't arrive at any agreement; then we had a second and final agreement, the second week in July; we agreed to extend it up to February 1, for the sum of \$2,000.

The Court: Who was present then?

40 The Witness: We all were present.

Moritz L. Cohen, in rebuttal, Direct.

Q Mr. Kruvant and Mr. Mayzel, they were present, too? A Yes.

Q And they agreed to that extension? A Yes.

Q Was the money paid at that time? A No.

Q Was there any discussion about money being paid in check or cash? A No. 10

Q Was there any discussion that the agreement for extension until February 1, 1931, be in writing? A No.

Q Was there any suggestion made by Mr. Kruvant or Mr. Mayzel, that any agreement in writing be entered into? A No.

Q Mr. Cohen, what is your occupation? A Treasurer of the Columbia Cheese Company.

Q Where are they located? A 158 Miller street, Newark. 20

The Court: Mr. Kruvant and Mr. Mayzel both testified that the agreement for an extension of this mortgage was for a period extending it four months after the completion of the city railway. Is that true or is it not?

The Witness: It is not.

The Court: They also say that you agreed to waive all defaults—to forgive all defaults, and if the first mortgagee should foreclose its mortgage of \$20,000, that you would buy the mortgage and hold that also until the expiration of four months after the completion of the city railway; is that true or is it not? 30

The Witness: It is not; nothing was mentioned except an extension; the whole discussion was about an extension, and 40

Moritz L. Cohen, in rebuttal, Direct.

nothing else. Nothing was mentioned about the mortgage or about the city railway.

The Court: Are you positive that the agreement was to extend to February first?

The Witness: Up to February first.

10 Q Mr. Cohen, you are treasurer of the Columbia Cheese Company, Newark? A Yes.

Q During February, 1930, did you call Mr. Kruvant and Mr. Mayzel on the telephone? A Yes.

Q And did you speak to them? A Not on the phone. They used to call at my office.

Q Subsequent to that telephone call, did Mr. Mayzel come to your place of business, at the Columbia Cheese Company, 158 Miller street, Newark? A He did.

20 Q And what did you say to him, and what did he say to you? A I told him that the principal, taxes and interest were due, and I told him that my associates gave me instructions to send them a registered letter, and to start foreclosure proceedings, which I did. On the twenty-sixth of February I sent them a registered letter telling them about it.

Q What did Mr. Mayzel then say? A He came down to me and they told me—

30 Q What did Mr. Mayzel then say? A He said that he is negotiating with the City.

Q What else? A And on a second call, he told me—

Q He said "I am negotiating with the City"; is that all? A To take over the property, of course.

Q Did he say anything about your mortgage?

40 Mr. Kanter: I object; this witness is intelligent; he was asked what was said.

Moritz L. Cohen, in rebuttal, Direct.

The Court: Well, don't get excited about it.

Mr. Kanter: I object to refreshing the witness' memory.

The Court: You said you sent a registered letter on the twenty-sixth of February? 10

The Witness: Yes.

The Court: Was this conference which you had with Mr. Mayzel after the twenty-sixth of February, after you sent him the letter?

The Witness: After.

The Court: Then he had had notice at that time of the fact that you were claiming that this mortgage was due? 20

The Witness: Yes.

The Court: When he came to see you, was it in response to that letter, or was it in response to a subsequent telephone call?

The Witness: A telephone call.

The Court: You hadn't heard from him in response to the letter?

The Witness: I don't know if he had the letter in his possession or not. I remember talking to Mr. Mayzel on the twenty-eighth of February, in my place of business, and the letter was sent out on the twenty-sixth, a registered letter, written by me, and kept a copy for evidence. 30

The Court: Was anything said about the letter at that time?

The Witness: I told him that I sent him a registered letter to that effect. 40

Moritz L. Cohen, in rebuttal, Direct.

The Court: Did you tell him anything about what was in the letter?

The Witness: Absolutely.

10 The Court: You say he told you that the negotiations were under way with the City, or that the City was going to buy the property?

The Witness: Yes.

Q Did you make your demand for the payment of this mortgage? A I did.

20 Q I show you some carbon copies of letters dated February 26, 1930, addressed to Mr. Harry Kruvant, 279 Fourth avenue, East Orange, New Jersey, and one to Mr. Joseph Mayzel, 70 Hedden Terrace, Newark, New Jersey; did you request these letters to be sent to these men? A I did.

Q Did you request that they be sent registered mail or special delivery? A Yes.

Q Are these the return cards you got? A Yes, sir.

Mr. Silver: I offer them in evidence.

30 Mr. Kanter: I object on the ground that no request was made for the production of the originals. This is the first time I knew about them. There is no evidence of the fact that these were received by Harry Kruvant and the Kruvant-Mayzel Company, and the statement of the witness is that he directed them to be sent. There is nothing to show that he sent them.

40 The Court: The objection is sustained. They are clearly inadmissible under the present state of the proof.

Moritz L. Cohen, in rebuttal, Cross.

Q Do you know who sent these letters? A My attorney.

Q Who is he? A Arthur Rosen.

Q Did Mr. Kruvant come to your place of business after February 1, 1931? A He did.

Q Did he come with Mr. Mayzel? A He did. 10

Q What discussion took place then? A About the principal and taxes and all interest.

Q What did they say? A They repeated the same thing, that the City is negotiating to buy the property, and they will pay up.

Q Did these people ever deny that the mortgage was due?

Mr. Kanter: I object.

The Court: The objection is overruled. 20

A They never did.

Q Did these people ever deny that the mortgage was due in February, 1931? A They didn't deny it.

Q You endorsed this bond? A No, I did not.

Cross examination by Mr. Kanter.

30

Q You say that there were only two occasions upon which the subject of an extension of this mortgage was discussed; is that right? A In my presence.

Q Those two occasions were when? A The first, in the first week of July, and the second, the second week in July.

Q The first, between the first and sixth, and the next one, between July 7 and July 15? A Yes.

40

Moritz L. Cohen, in rebuttal, Cross.

Q Both of those discussions were held where?

A Mr. Baum's house.

Q Not at Mr. Katzin's house? A Mr. Baum's house.

Q He lives on Thirteenth street? A Yes.

10 Q And Harry Katzin lived on Baldwin avenue? A Yes.

Q And both of these discussions were in Baum's house? A Yes.

Q In the daytime or evening? A Evening.

Q On both of these occasions, all the men were present, and you four men were present? A Yes.

Q And the only thing said on the first occasion was what? A They wanted an extension; they wanted an extension, and we wanted the mortgage and interest and taxes should be paid, and they said they couldn't pay, but they had in mind to sell the property, and they want an extension, and we gave it to them.

20 Q That was the first occasion? A The final occasion—

Q The first occasion, you said was, they asked for an extension, and you gave it to them? A No, not on the first.

30 Q What happened on the first occasion? A We couldn't make up our mind; we couldn't come to any agreement.

Q The first occasion was, then, they asked for an extension and you refused to grant it? A Yes.

Q That was the only subject that was discussed, is that right? A The mortgage was due—

40 Q Was that the only subject that was discussed on the first occasion? A That was the main, principal thing.

Moritz L. Cohen, in rebuttal, Cross.

Q And nothing else? A I don't remember.

Q Anything said about the 1930 taxes? A
It certainly was.

Q Or about the 1929 taxes? A The question
was the 1929 taxes; not 1930.

Q You knew the 1929 taxes were in default?
A Yes. 10

Q Nothing was said about the 1930 taxes?
A 1930 taxes?

Q Was anything said about it? A The dis-
cussion was—

Q Was anything said about it? A I don't
think the 1930 taxes was due.

Q Was anything said about it? A I don't
remember.

Q Was anything said about the first mort-
gage? A No, sir. 20

Q The only discussion was as to the extension
of the mortgage and the 1929 taxes? A Yes.

Q How long did this conference take? A
About an hour.

Q And you and Mr. Krivant and Mayzel
reached no agreement? A The rest of the mem-
bers were there, too.

Q You four men and the two men reached
no agreement? A Not on the first meeting.

Q You had a second meeting? A Yes. 30

Q And then was anything said about the
city railway? A No, sir.

Q You didn't discuss it in any way, shape
or form, or any of the improvements the City
was making? A No, sir.

Q And they didn't ask for leniency because
of the price at which you had sold the property?
A No, sir.

Q And they didn't ask you for more time
than you were willing to extend? A They were 40

Moritz L. Cohen, in rebuttal, Cross.

asking for a year, and we extended it seven months.

Q And they offered you \$2,000, and that was the price that you accepted? A Yes.

Q There was no dickering between you, your set of men on one side, and them on the other,
10 as to what was to be the consideration in money, was there? A The consideration was \$2,000.

Q There was no dickering or negotiation about it? A The dickering about the time when we extended it, seven months, and no more.

Q (Last question repeated.) A No.

Q They offered you that amount of money, and you were willing to accept it? A Yes.

Q The only dickering was about the length of time? A That is right.

20 Q And then were you present when the money was delivered? A No, sir.

Q When did you get your share of the money? A I got my share by mail.

Q When? A I cannot specify any date.

Q The understanding was when you left, on the second occasion, that the \$2,000 was to be delivered to Harry Katzin? A It wasn't specified to whom—to Harry or Baum or to me or anybody.

30 Q They were to deliver the \$2,000? A Yes.

Q You remember that it was February 28 that these people came to your place of business? A Yes.

Q Do you remember what day of the week that was? A No, I don't remember; a day after sending the registered letter.

Q Do you know what day of the week that was? A No.

Q Was it Monday, Tuesday, Wednesday—
A No, I cannot remember.

40

Bessie Katzin, in rebuttal, Direct.

Q Haven't the slightest recollection about the day? A No, sir.

Q And they told you—they came down and said what? A They intend to sell the property to the City, and they will pay.

Q That is all that was said? A Yes. 10

Q That is all you asked about? A That is all I was interested in.

Q When they were going to sell the property? A I was interested to get my money.

Q Didn't you suggest that you had some friends in the City Commission of Newark who might be instrumental in hurrying this thing along? A I don't remember saying that.

Q You never stated that at any time? A I don't remember it.

Q Do you deny stating that fact? A I don't remember. 20

Q Do you deny it? A Remembering and denying is two different things.

Q You wouldn't deny it, then? A I cannot answer that question, because I am not in a position to answer it.

Mr. Silver: Do you recall how many times Mr. Mayzel came to your place?

The Witness: Three or four times. 30

BESSIE KATZIN, sworn in rebuttal for complainants.

Direct examination by Mr. Silver.

Q You are the wife of Harry S. Katzin, one of the complainants in this case? A Yes. 40

Bessie Katzin, in rebuttal, By the Court.

Q You were present at Mr. Baum's home at the time this extension was given to February 1, 1931? A I was.

Q Who was present at that time? A All the gentlemen.

10 Q All the complainants and Mr. Kruvant and Mr. Mayzel? A Yes.

Q And was there any discussion whatsoever about any city railway? A No, sir.

Mr. Kanter: I object as leading.

The Court: Ask what took place.

Q What took place at Mr. Baum's home? A I was at Mr. Baum's home; I usually drive a car, and I went down.

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Mr. Silver: I am referring to the discussion at Mr. Baum's, when they were all there.

Examination by the Court.

Q Were you there on that occasion? A Yes.

30 Q Tell what occurred. A They were discussing about the money—all the gentlemen, and the Katzins, and Baum and Mr. Cohen—that the mortgage was due, and they wanted it, and also taxes being in arrear so long, they wondered what they would do about it, and the gentlemen said to be patient, they were just negotiating, and they had several offers, and several things; they were certain they would make the sale, and to extend it for a while. They wanted it for a longer term, but we wanted to know just how things were going to come out, so we finally—

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that is, I thought it, but the second time—I went

Bessie Katzin, in rebuttal, By the Court.

again, right along with them—they came to the conclusion of the extension for seven months.

Q On the first occasion they discussed the extension, but came to no agreement? A No, sir.

Q When was the second occasion? A I cannot tell you the date, but it was a short time after. 10

Q Who were there then? A The same people.

Q And what happened then? A They finally agreed upon seven months. Then Mr. Kruvant and Mr. Mayzel said they would bring the money around, it wasn't said where, and they came to our house; I was present. I took the money. 20

Q Do you remember when the money was brought around? A No, sir, I don't; I could never tell the time; I didn't think it was of any importance, things were settled in a very short time.

Q Who was there when they brought the money around? A Mr. Katzin and I.

Q Your husband, Harry S. Katzin? A Yes.

Q Anybody else? A No; Mr. Mayzel and Mr. Kruvant came that day. 30

Q What happened then? A Nothing at all. It was understood they were supposed to bring the two thousand; they did, and we have taken it, as it was agreed between all of us previously.

Q Did you give them any receipt? A They didn't want no receipt.

Q I asked you if you gave them one. A No. 40

Bessie Katzin, in rebuttal, Further Direct.

Further direct examination by Mr. Silver.

Q Anything said about the bond and mortgage at that time? A Yes, they said they would mark receipt on the bond, the receipt of the money—the extension of the time.

10 Q Who said that? A Mr. Katzin said he would mark it on the bond.

Q Whom did he say that to? A To Mr. Kruvant and Mr. Mayzel, when they were in the house.

Q Tell us what he said to Mr. Kruvant and Mr. Mayzel. A He said, "I will mark it on the bond," but he didn't have the bond at the time; it was down in Sam Katzin's place.

20 Q Do you recall whether or not he said what he would mark on the bond? A There was nothing to be marked, only the agreement, and that was marked on.

Q What was the agreement? A Seven months' extension.

Q You were there when that was made? A Yes.

Q Was any discussion had about any first mortgage being paid off? A Nothing; not a
30 word.

Q Was there any discussion about a city railway? A No.

Q Or about waiver of defaults that occurred prior thereto? A No.

Q Was there any such discussion? A No, sir.

Q Was there any discussion that they would waive any defaults in the future? A No.

Q Or any discussion that the mortgage would become due four months after the property would
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Bessie Katzin, in rebuttal, Cross.

be sold? A No; how could we tell when it would be due?

Cross examination by Mr. Kanter.

Q Did you say Mr. Katzin promised to mark the receipt of the money on the bond? A He did. 10

Q He marked the receipt of the \$2,000 on the mortgage? A The extension.

Q You said Mr. Katzin promised to mark the receipt of the money on the bond? A Don't scare me, please.

Q You said that Mr. Harry S. Katzin promised to mark the receipt on the bond? A Pardon me if I said it. He said he would mark the extension on the bond. 20

Q That was a slip of the tongue, on your part? A If you say so.

Q It was an error; you didn't mean that? A I meant to say that he would mark the extension on the bond.

Q You say there was no discussion about taxes at all? A No, that was the main discussion; they were in arrears on taxes, mortgage and interest. 30

Q Was there and discussion about the 1930 taxes? A Not when Mr. Kruvant paid the money.

Q There were two occasions when this agreement was discussed? A Yes.

Q And on neither occasion—I am not referring to the occasion when the money was paid—I refer to the time when there was a discussion about extension. A Yes.

Q And things relating thereto. A Yes. 40

Bessie Katzin, in rebuttal, Cross.

Q On any of those occasions was there any discussion concerning taxes? A Why, yes, we kept saying the taxes are due, and all is due.

Q Who said that? A All of us.

Q And the 1929 taxes? A All the taxes.

10 Q And the 1930 taxes? And didn't Mayzel say they wanted that question of taxes forgiven? A No.

Q They didn't ask for forgiveness about those taxes? A No. The taxes were due; they said they will pay as soon as they sold the property.

Q They didn't ask that the defaults be forgiven? A Absolutely not.

Q When you got the money, the \$2,000, of course, there was no discussion? A No, it was all arranged.

20 Q And the final discussion was in Mr. Baum's home? A Yes.

Q The fact is not in accordance with what Mr. Baum said, that he reached the final agreement and reported it back to you? That is not correct? A I cannot say, because it was so long ago; I really don't remember.

Q Then your recollection of the facts is a little uncertain? A I said this is certain, and won't say what is not.

30 Q The facts you testified to in response to your counsel's questions, are certain, you say? A Yes.

Q And other facts you don't remember? A What I don't know I won't say.

Q How soon after you got the money did Mr. Samuel Katzin bring this bond up to your home? A I cannot say.

40 Q Was it a day, two days, a week, or what? A I haven't the slightest recollection about that fact, not to be honest about it, and say the time.

Harry S. Katzin, in rebuttal, Direct.

Q You haven't any recollection whether it was a month or two? A No, it wasn't that long.

Q What is your best recollection? A Within the time being, I don't know just how soon.

Q What do you mean by that? A About the time. 10

Q Within what time? A Ten days, five days, but it wasn't months.

HARRY S. KATZIN, sworn in rebuttal for complainants.

Direct examination by Mr. Silver.

Q You are one of the complainants in this case? A Yes. 20

Q And one of the holders of the bond and mortgage? A Yes.

Q You were present when this extension agreement was made at Mr. Baum's home? A Yes.

Q Will you please tell the Court what took place at Mr. Baum's home? A We simply agreed to extend it for seven months for the two thousand dollars that they agreed to pay for it; that was all. 30

Q Was there any discussion about the city railway?

Mr. Kanter: I object as leading.

The Court: It is in denial of specific questions asked your client by you.

A None at all.

Harry S. Katzin, in rebuttal, Direct.

Q Was there any discussion that you would waive any default that occurred prior thereto, or that may occur in the future? A No, sir.

10 Q Was there any discussion that the mortgage would become due within four months after the property was sold by Krivant-Mayzel Company? A No, sir.

Q Was anything mentioned about the city railway? A Not at all.

Q Was anything mentioned about a first mortgage for \$20,000? A No, sir.

Q What was the final agreement at Mr. Baum's home? A The final agreement was that they offered us \$2,000 and we accepted it.

Q For what? A For seven months.

20 Q Were you present when Mr. Mayzel and Mr. Krivant brought the \$2,000 to your home? A Yes.

Q It wasn't delivered at the time you had this meeting at Mr. Baum's home? A No.

Q Did they hand you the \$2,000? A He handed it to Mrs. Katzin.

Q What did Mr. Krivant or Mr. Mayzel say when they gave you the \$2,000?

30 Mr. Kanter: I object to the question. This witness has said that they didn't give it to him; they handed it to Mrs. Katzin.

Q Were you present when the \$2,000 was handed to Mrs. Katzin, your wife? A Yes.

Q What did Mr. Mayzel and Mr. Krivant say then? A Nothing to amount to anything.

Q Say anything about the bond and mortgage?

40 Mr. Kanter: I object.

Harry S. Katzin, in rebuttal, Cross.

The Court: He said "nothing to amount to anything." Tell us what was said.

A To my recollection, there wasn't anything said.

Q Is this your signature on the bond, Mr. Katzin, for the extension? A Yes. 10

Q Is this extension memorandum in your handwriting? A Yes.

Q And these signatures are Herman Z. Baum, Samuel Katzin, the complainants in this case? A Yes.

Q Why did you write this down on the bond?

Mr. Kanter: I object.

The Court: Objection is overruled. 20

A The agreement was that the four of us should write on here, and they, Mr. Kruvant and Mr. Mayzel, will come and sign their names, but they never did. I think that was a trick; they never did come to sign it.

Cross examination by Mr. Kanter.

Q None of the other men have mentioned the fact that there was an agreement that they were to sign this bond. 30

Mr. Silver: I object.

Q You didn't hear any of the other gentlemen say that was the understanding on the part of these men that they, Kruvant and Mayzel, were to sign that memorandum on the bond?

Mr. Silver: I object to this. 40

Harry S. Katzin, in rebuttal, Cross.

The Court: It is not necessary for the question to be put on the record. The Court must be given credit for a little intelligence. I know that nobody else testified to that fact.

Mr. Kanter: I withdraw the question.

10 Q When was this conversation held? A Which one?

Q With Kruvant and Mayzel? A In Mr. Baum's house.

Q When? A I don't recollect.

Q Do you recollect the year? A That is a foolish question.

Q Do you recollect the year? A I suppose it was this year.

Q 1931? A Yes.

20 Q What month? A Probably July.

Q Might it not have been in August? A I cannot say.

Q Your recollection of the facts is as good as your recollection of the year, isn't it? A It is as good or as poor.

Q You say this was in July or August of this year? A Yes.

Q 1931. Do you remember what time in July it was? A What time of the day?

30 Q What day of the month? A No.

Q Or what day of the week? A I don't remember.

Q When was the \$2,000 given to your wife? A I don't remember that date either.

Q About how long after your conversation? A A few weeks.

Q What is your best recollection of the fact? Did you tell the men to hand the money to your wife? A It just happened that he handed it
40 to her.

Harry S. Katzin, in rebuttal, Cross.

Q It just happened to be a coincidence? A Yes.

Q Have you discussed this matter with your lawyer? A No.

Q Haven't you discussed this matter with your associate complainants? A The matter of what? 10

Q This trial and what you were going to testify to, and what happened. A I am telling you the truth; I didn't have to do it.

Q Haven't you discussed that with your associates? A Naturally.

Q And with your lawyer, haven't you discussed it? A I did.

Q You discussed it with your associate complainants? A Yes.

Q You agreed upon the important facts to be brought out at this trial? 20

Mr. Silver: I object to that.

The Court: Objection is overruled.

A Yes.

Q And when did this conversation with Krivant take place? A I told you before that I don't remember it.

Q You don't remember the year even, do you? 30

A I told you the year, before.

Q That was 1931? A Yes.

Q That was when this discussion happened, is that right? A I think that is right.

The Court: Do you know when this foreclosure proceeding was begun?

The Witness: I really don't remember when it was begun. Mr. Baum gave the order to Mr. Silver. 40

Harry S. Katzin, in rebuttal, Cross.

The Court: You know this is December, 1931?

The Witness: Yes.

The Court: What date is it?

The Witness: Fourteenth.

10 The Court: Of what?

The Witness: December. Do you think I am that ignorant?

The Court: I am trying to find out whether you are or not. What day is this?

The Witness: I refuse to say that.

The Court: Then get off the stand.

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Exhibit C. 1.

EXHIBIT C. 1.

KNOW ALL MEN BY THESE PRESENTS:
 That I, HARRY KRUVANT of the City of Newark in the County of Essex and State of New Jersey am held and firmly bound unto
 HARRY S. KATZIN, HERMAN Z. BAUM, MORITZ L. COHEN and SAMUEL KATZIN,
 of the City of Newark in the County of Essex and State of New Jersey, in the penal sum of One Hundred and Eighty Thousand (\$180,000.00) Dollars lawful money of the United States of America, to be paid to the said Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin, their heirs, executors or assigns, for which payment well and truly to be made I bind myself, my heirs, executors or assigns firmly by these presents. Sealed with the Obligor seal and dated the First day of July One Thousand, Nine Hundred and Twenty-seven.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that if the above bounden Harry Kruvant, his heirs, executors, administrators or assigns, shall well and truly pay, or cause to be paid unto the above named Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin, their heirs, executors, administrators or assigns, the just and full sum of Ninety Thousand (\$90,000.00) Dollars Dollars, on the First day of July which will be in the year One Thousand, Nine Hundred and Thirty, and the interest thereon, to be computed from the date hereof at and after the rate of six per cent. per annum, and to be paid semi-annually without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

Exhibit C. 1.

AND IT IS HEREBY EXPRESSLY AGREED that should any default be made in the performance of any of the terms, covenants and conditions contained in the Mortgage accompanying this Bond (the said terms, covenants and conditions, and all matters and things contained in said
10 Mortgage being hereby made a part hereof as though particularly incorporated herein), or should any of the events or contingencies occur by reason of which the time for the payment of the said Mortgage matures as set forth therein, or should any default be made in the payment of the said interest or any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assess-
20 ment, water rent or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the Mortgage accompanying this Bond, and become due and payable, and should the said interest, or principal remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days, then
30 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 money, or so much thereof as may then remain unpaid, with all arrearage of interest thereon, shall, at the option of the said obligee, or the legal representative of the said obligee, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have ex-

Exhibit C. 1.

pired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

Principal secured by this Bond, may be paid at any time before maturity, on any interest day herein reserved, upon thirty days' written notice to the holder of the Mortgage accompanying this Bond, with interest to date of such payment. 10

AND IT IS FURTHER EXPRESSLY AGREED that the said obligor shall not be entitled to and will not claim any credit on the interest payable on the Mortgage securing this Bond for taxes which may be levied upon the mortgaged premises, or for any part of said taxes.

HARRY KRUVANT (L.S.)

Signed, Sealed and Delivered 20
in the presence of

JACOB L. NEWMAN

We hereby extend the due date of the mortgage from July 1st. till February 1st. 1931.

HARRY S. KATZIN
HERMAN Z. BAUM
SAMUEL KATZIN 30

Exhibit C. 2.

BOND

HARRY KRUVANT

*to*HARRY S. KATZIN, *et. als.*

10

DATED July 1st, 1927

Amount \$90,000.

Date July 1st, 1927

Due July 1st, 1930

Interest payable semi-annually.

Benjamin M. Weinberg
 Counsellor At Law
 738 Broad Street
 Newark, N. J.

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EXHIBIT C. 2.

THIS INDENTURE,

Made the First day of July in the year of Our
 Lord One Thousand Nine Hundred and Twenty-
 seven.

30

BETWEEN HARRY KRUVANT of the City of
 Newark in the County of Essex and State of
 New Jersey party of the first part, hereinafter
 known as the Mortgagor,

AND HARRY S. KATZIN, HERMAN Z.
 BAUM, MORITZ L. COHEN and SAMUEL
 KATZIN, of the City of Newark in the County
 of Essex and State of New Jersey party of the
 second part, hereinafter known as the Mortgagee,

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Exhibit C. 2.

WITNESSETH, that the said mortgagor, for and in consideration of the sum of NINETY THOUSAND (\$90,000) Dollars, lawful money of the United States of America, to him in hand well and truly paid by the mortgagee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said mortgagor therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, enfeoff, convey and confirm to the said mortgagee and to their heirs and assigns, 10

ALL that certain 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, 20

BEGINNING at the corner formed by the intersection of the Southerly side of Academy Street with the Westerly side of Plane Street and running thence (1) along the Westerly side of Plane Street South thirty-one degrees fifty-one minutes West one hundred and ten feet and sixty hundredths of a foot to a point, which point is distant sixty-four feet and sixty-one one-hundredths of a foot from the Northerly side of Bank Street; thence (2) North fifty-eight degrees fifty-two minutes West seventy-eight feet and eight one-hundredths of a foot to a point; thence (3) North twenty-nine degrees ten minutes East twenty-two feet and twelve one-hundredths of a foot to a point; thence (4) North fifty-eight degrees fifty-two minutes West twenty-five feet and fifty-seven one-hundredths of a foot to a point; thence (5) North thirty-one degrees four minutes East eighty-eight feet 30 40

Exhibit C. 2.

and forty-nine one-hundredths of a foot to a point in the Southerly side of Academy Street aforesaid; thence (6) along the Southerly side of Academy Street South fifty-eight degrees fifty-two minutes East one hundred and five feet and ninety-seven one-hundredths of a foot to the point or place of BEGINNING.

10 Being the premises located on the Southwest corner of Plane and Academy Streets, Newark, New Jersey, and is better described and subject to such facts as are set forth and described in a certain survey made by Lehlbach Bros., dated October 23rd, 1920, and known as their number 46371. This conveyance is to include the entire tract shown on said survey, with the exception of that part of the tract which is set out on said survey and is marked "6.61 over line," which is in the left or southerly side of the rear of said tract, and which excepted part of said tract was formerly owned by one Vliet.

20 Being the same premises conveyed to the party of the first part by the parties of the second part and their respective wives, by deed bearing even date herewith and not yet recorded.

30 This mortgage is considered as a part of the purchase price of said mentioned premises and is subsequent to a prior mortgage in the sum of \$20,000.00, held by the United States Savings Bank.

The party of the second part hereby authorizes and permits the party of the first part to demolish the buildings on the above described lands at any time during the term of the within mortgage without incurring any penalty thereby.

40 TOGETHER with all and singular the profits, privileges and advantages, with the appurte-

Exhibit C. 2.

nances to the same belonging or in anywise appertaining. Also all the estate, right, title, interest, property, claim and demand whatsoever of the mortgagor 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 tract or lot of land and premises with the appurtenances, unto the said mortgagees, their heirs, executors and assigns, to the only proper use, benefit and behoof of the said mortgagee, their heirs, executors, administrators and assigns forever. Provided always, and it is agreed by and between the parties to these presents that if the said mortgagor, his heirs, executors, administrators and assigns do and shall well and truly pay, or cause to be paid, to the said mortgagees, their heirs, executors and assigns, the sum of Ninety Thousand (\$90,000.00) Dollars on the First day of July, Nineteen Hundred and Thirty, with lawful interest for the same from First day of July 1927, at the rate of six per cent. per annum, payable semi-annually according to the conditions of a certain bond bearing even date herewith, in the penal sum of One Hundred and Eighty Thousand (\$180,000) Dollars, made by said Harry Krivant without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever, thence and from thenceforth these presents and said obligation shall cease and be void, anything herein and therein contained to the contrary in anywise notwithstanding.

The principal may be paid at any time before maturity, on any interest day herein reserved, upon thirty days' written notice to the holder of the Mortgage, with interest to date of such payment.

Exhibit C. 2.

AND THE SAID MORTGAGOR, for himself, his heirs, executors, administrators and assigns does covenant and grant to and with the said mortgagee, their heirs, executors and assigns, that he shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon, or on the moneys to secure payment of which this mortgage is made, for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof.

AND THE MORTGAGOR, hereby warrant and defend the title to the said lands and premises.

The mortgagor, his heirs, executors, administrators or 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, through such broker or brokers selected and in an amount approved by the mortgagees, their heirs, executors and assigns, and assign the policy or policies and certificate or certificates thereof to the mortgagees, their heirs, executors, administrators and assigns, as collateral security for the payment of the principal and interest aforesaid; and it is agreed that if the mortgagor, his heirs, executors, administrators and assigns, shall neglect to pay all or any tax, assessment or other municipal or governmental rate, charge, imposition, or any installment or installments of monthly Building Loan dues and interest, or any sums payable under any lien superior hereto, or any premium for insurance, as aforesaid, on any day whereon the same shall become due and payable, after the period of default then it shall be lawful for the mortgagees, their heirs, executors, administrators and assigns, to

Exhibit C. 2.

pay such charges, and the sum or sums so paid shall be a lien on the said mortgaged premises added to the amount secured hereby, with interest at six per cent. per annum, and, in the event of such payment, at the option of the of the mortgagees, their heirs, executors or assigns, the principal sum secured hereunder shall become due and payable, and agrees that if default be made in the payment of the said interest, or any part thereof, on any day whereon the same is made payable as hereinbefore expressed, and should the same remain unpaid and in arrears for the space of thirty days, or if default be made in the payment of any of said taxes, water rents or other municipal or governmental rate, charge, imposition or any money payable under the terms of any mortgage lien paramount hereto, on any day whereon the same shall become due and payable, and should the same remain unpaid and in arrears for the space of sixty days, or in the event that the owner of the mortgaged premises shall fail, within ten days after written request therefor, to furnish a statement of the amount due and owing for principal and interest hereunder, or evidence of the payment of taxes, water rents, interest and principal of prior mortgages or any carrying charges, or in the event that default shall be made in any of the terms, covenants and conditions herein contained, or contained in any mortgage constituting a lien upon the mortgaged premises prior and superior to the lien hereof, or should any action be commenced to foreclose any such prior mortgage, or should the owner of the mortgaged premises fail, for a period of thirty days, to begin compliance with any requirements, recom-

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Exhibit C. 2.

mendation or recommendations of any of the
 Departments or authority of the State of New
 Jersey, or the municipality where such mort-
 gaged premises are situate, such municipality
 or State Department or authority having juris-
 10 diction over the mortgaged premises, or in the
 event of the adjudication in bankruptcy or in-
 solvency of the mortgagor or the owner of the
 mortgaged premises, 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 money, with all
 arrearages of interest thereon, and any other
 charges paid by the holder of this mortgage,
 become and be due and payable immediately
 20 thereafter, although the period first above limited
 for the payment thereof may not then have ex-
 pired, anything hereinbefore contained to the
 contrary hereof in anywise notwithstanding.

AND agrees that the said mortgagees, their
 heirs, executors, administrators or assigns shall
 and may, from time to time, and at all times
 after default shall be made in the performance
 of the proviso or condition herein contained,
 peaceably and quietly enter into, have, hold, use,
 30 occupy, possess and enjoy all and singular the
 above granted and bargained premises, with
 the appurtenances, without the let, suit, trouble
 hindrance or denial of the said mortgagor,
 his heirs, executors, administrators or assigns,
 or of any other person or persons whatsoever.

AND agrees that if default shall be made, as
 aforesaid, the mortgagees, their heirs, executors,
 administrators and assigns, shall have the right
 forthwith, after any such default, to enter upon

Exhibit C. 2.

and take possession of the said mortgaged premises, and to let the said premises, and receive the rents, issues and profits thereof, and to apply the same, after payment of all necessary charges and expenses, on account of the amount hereby secured, and said rents and profits are, in the event of any such default, hereby assigned to the mortgagees, their heirs, executors and assigns, and the mortgagees, their heirs, executors and assigns shall also be at liberty immediately after any such default, upon proceedings being commenced for the foreclosure of this mortgage to apply for the appointment of a receiver of the rents and profits of the said premises, and be entitled to the appointment of such receiver as a matter of right, as security for the amounts due the mortgagees, their heirs, executors and assigns without consideration of the value of the mortgaged premises or solvency of any person or persons liable for the payment of such amounts.

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 KRUVANT (L.S.)

Signed, Sealed and Delivered
in the presence of

JACOB L. NEWMAN

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Exhibit C. 2.

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

10 BE IT REMEMBERED, That on this first day of
 July 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 KRUVANT who,
 I am satisfied, is the mortgagor mentioned in
 the within instrument, to whom I first made
 known the contents thereof, and thereupon he
 acknowledged that he signed, sealed and deliv-
 ered the same as his voluntary act and deed,
 for the uses and purposes therein expressed.

JACOB L. NEWMAN,
 A Master in Chancery of New Jersey.

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Exhibit C. 2.

MORTGAGE.

HARRY KRUVANT

compared by
50 & 58

TO

10

HARRY S. KATZIN, *et als.*

Dated July 1st, 1927

RECEIVED in the Register's office of the County of Essex, N. J. N. J., on the 1st. day of July A. D., 1927, at 3:26 o'clock, in the afternoon, and Recorded in Book P-61 of MORTGAGES for said County, on page 250-252

20

HOWARD S. DODD

Register

Ret. to

Fidelity Union Title & Mortgage
Guaranty Co.

Received

Registers Office

July 1 1927 3:26 P.M.

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ESSEX COUNTY

NEWARK, N. J.

Upon return by Recording Office to Fidelity Union Title And Mortgage Guaranty Company Please send to

Benjamin M. Weinberg

738 Broad St.

C.

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Exhibit D. 1.

EXHIBIT D. 1.

UNITED STATES TRUST COMPANY 55-663
OF NEWARK

PAID

10 No..... Newark, N. J. ...July 10..1930
UNITED STATES TRUST COMPANY OF NEWARK,
NEW JERSEY

No. 1 U. S. T. Jul 9 30

Pay to the Order of...Cash.....\$2000.00/100
Two thousand and 00/100.....Dollars

JOSEPH H. MAYZEL

(On back) JOSEPH H. MAYZEL

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OPINION.

Filed February 17, 1932.

IN CHANCERY OF NEW JERSEY.

<p><i>Between</i></p> <p>HARRY S. KATZIN, HERMAN Z. BAUM, MORITZ L. COHEN and SAMUEL KATZIN, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>KRUVANT-MAYZEL COMPANY, a corporation of New Jersey, <i>Defendants.</i></p>	}	<p>10</p> <p><i>On Bill, &c.</i></p> <p><i>On Final Hearing.</i></p> <p><i>Opinion.</i></p> <p>20</p>
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Not for print in any report.

Mr. Theodore Silver for complainants.

Kanter & Kanter (Mr. Elias A. Kanter) for defendant.

BERRY, *V.-C.*

This is a suit to foreclose a purchase money mortgage for \$90,000, dated July 1, 1927 and due by its terms on July 1, 1930. By agreement the due date was extended to February 1, 1931. Interest on the mortgage was paid to to January 1, 1931. Neither principal nor interest was paid on the extended due date, hence this suit. The defense is that the due date of the mortgage was extended by oral agreement to four months after the completion of the city railway, a project not then begun and not yet completed, and that therefore the mortgage is not yet due. There is an endorsement on the bond and mort-

Opinion.

gage as follows: "We hereby extend the due date of the mortgage from July 1 to February 1, 1931," and signed by three of the mortgagees. The defendants disclaim any knowledge of this endorsement. At the conclusion of the final hearing I announced that I would advise a
10 decree for the complainants, which was accordingly done. An appeal having been taken from that decree this memorandum is written for the purpose of that appeal. The issues raised by the pleadings and tried by the Court were of fact only. It is unnecessary to review the evidence in detail; suffice it to say that I believe the testimony of the complainants to the effect that the extension of the due date was to February 1, 1931 is true and that the testimony of
20 the defendants that the agreement was to extend to a date four months after the completion of the city railway was false. If I gave equal credence to the testimony of the complainants and that of the defendants the weight of the evidence would be in favor of the complainants. But my appraisal of these witnesses convinces me that the complainants are entitled to the greater credence and I reach this conclusion without difficulty.

30 February 11, 1932.

FINAL DECREE.

Filed December 22, 1931.

IN CHANCERY OF NEW JERSEY.

<i>Between</i>		
HARRY S. KATZIN, HERMAN Z. BAUM, MORITZ L. COHEN and SAMUEL KATZIN, <div style="text-align: right;"><i>Complainants,</i></div>		10
<i>and</i>		
KRUVANT-MAYZEL COMPANY, a corporation of New Jersey, <i>et als.,</i> <div style="text-align: right;"><i>Defendants.</i></div>		20

On Bill, &c.
Final Decree.

This cause coming on to be heard in the presence of Theodore Silver, solicitor of the complainants, Harry S. Katzin, Samuel Katzin, Herman Z. Baum and Moritz L. Cohen, and Elias A. Kanter, Esq., of the firm of Kanter & Kanter, solicitors for the defendants Kruvant-Mayzel Company (Kruvant-Mayzel Co.) and Harry Kruvant, and the Court having examined the pleadings and taken proofs orally and in open court, and having heard and considered the arguments of counsel, and being satisfied that the complainants, Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin are entitled to the relief prayed for in their bill of complaint and amendment to the said bill, and being satisfied that the defendants Kruvant-Mayzel Company (Kruvant-Mayzel Co.) and Harry Kruvant are not entitled to the relief prayed for in the coun-

Final Decree.

ter-claim filed by them, and the Court being satisfied that the purchase money mortgage held by the said complainants bearing date July 1st, 1927 made by the defendant Harry Kruvant to the said complainants in the principal sum of Ninety Thousand Dollars (\$90,000) and recorded
10 in the Register's Office of Essex County in book P. 61 of mortgages for said County on pages 250-252 as described in the bill of complaint, became due on February 1st, 1931 and the Court being satisfied that there is due to the said complainants on their said purchase money mortgage for principal the sum of Ninety Thousand Dollars (\$90,000) with lawful interest for the same from the 1st day of January, 1931 at the rate of 6% per annum making a total sum of Ninety-five
20 Thousand Three Hundred Forty Dollars (\$95,340) to the date of this decree.

And it further appearing that on the 4th day of August, 1931 a decree *pro confesso* was duly made and filed in this cause, directing that the bill of complaint and amendment to said bill be taken as confessed against the defendants Anna Kruvant and W. W. Smith Inc. a corporation of New Jersey also known as W. W. Smith Garage Management. It is thereupon, on this
30 22nd day of December, 1931 ORDERED, ADJUDGED and DECREED that the said mortgage above mentioned, became due and payable on February 1st, 1931 and that there is due and owing to complainants on their said mortgage, for principal the sum of Ninety Thousand Dollars (\$90,000) with lawful interest for the same from the 1st day of January, 1931 at the rate of 6% per annum making a total sum calculated down to the date hereof of Ninety-five Thousand Three
40 Hundred Forty Dollars (\$95,340), and that the

Final Decree.

mortgaged premises described in the bill of complaint in this cause, be sold, to raise and satisfy unto the complainants Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin the money so due to them, that is to say, the sum of Ninety-five Thousand Three Hundred Forty Dollars (\$95,340) together with lawful interest thereon to be computed from the date of this decree, together with complainants' costs to be taxed, including a counsel fee of \$2,500 and which costs shall also include the search fees of \$46.14 as set forth in the abstract and certificate of search filed herein all of which are hereby allowed to the said complainants, and that a writ of fieri facias issue for that purpose out of this court directed to the Sheriff of Essex County, commanding him to make sale, according to law, of the mortgaged premises described in the bill of complaint in this cause and that out of the money arising from said sale he pay to the complainants Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin or their solicitor, their said debt, interest and costs, and that in case more money shall be raised by said sale than shall be sufficient to answer such several payments, that such surplus be brought into this court, to abide the further order of this court, unless otherwise previously disposed of by this court, and that the Sheriff make return without delay, of his proceedings by virtue of said writ.

And it is further ORDERED, ADJUDGED and DECREED that all of the defendants and each of them stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to the

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Final Decree.

said mortgaged premises, when sold as aforesaid by virtue of this decree.

E. R. WALKER,
C.

Respectfully advised,

10 MAJA LEON BERRY,
V.-C.

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NOTICE OF APPEAL.

December 23, 1931.

IN CHANCERY OF NEW JERSEY.

84-500

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Between

HARRY S. KATZIN, HERMAN Z.
BAUM, MORITZ L. COHEN
and SAMUEL KATZIN,
Complainants,

and

KRUVANT-MAYZEL COMPANY, a
corporation of New Jersey,
et als.,
Defendants.

*On Bill, &c.**Notice of
Appeal.*

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The defendants, Kruvant-Mayzel Company, a corporation of New Jersey, and Harry Kruvant, hereby appeal from the whole and every part of the final decree, made by the Chancellor, on the advice of Vice-Chancellor Maja Leon Berry, in the above entitled cause, on December 22, 1931, to the Court of Errors and Appeals in the last resort and all causes.

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KANTER & KANTER,
Solicitors for and of Counsel with
Defendants, Kruvant-Mayzel
Company, a corporation, and
Harry Kruvant.

Newark, N. J.,
December 22, 1931.

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Notice of Appeal.

Service of the within Notice of Appeal is hereby acknowledged this 22nd day of December A. D. 1931.

THEODORE SILVER,
Solicitor of Complainants.

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PETITION OF APPEAL.

Filed January 15, 1932.

**NEW JERSEY COURT OF ERRORS
AND APPEALS.**

HARRY S. KATZIN, HERMAN Z.
BAUM, MORITZ L. COHEN and
SAMUEL KATZIN,
Complainants-Appellees,

vs.

KRUVANT-MAYZEL COMPANY, a
corporation of New Jersey,
and HARRY KRUVANT,
Defendants-Appellants.

*On Appeal
from the
Court of
Chancery.*

*Petition of
Appeal.*

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

The petition of Kruvant-Mayzel Company, a corporation of the State of New Jersey, and Harry Kruvant, the appellants in the above entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by a decree, made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date December 22, 1931, made on the advice of Vice-Chancellor Maja Leon Berry, in a certain cause in said Court of Chancery, wherein the said Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin were the complainants, and the said Kruvant-Mayzel Company, a corporation of New Jersey, and Harry Kruvant, and others, were the defendants, in these respects, to wit, that the said

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Petition of Appeal.

10 decree ordered, adjudged and decreed that the mortgage bearing date July 1, 1927, made by Harry Kruvant to the said complainants in the principal sum of \$90,000.00, recorded in the office of the Register of Essex County in Book P 61 of Mortgages for said County on pages 250-252, became due and payable on February 1, 1931, and that there was (at the time of the entry of said decree) due and owing to the complainants the sum of \$95,340.00, and that the mortgaged premises should be sold to raise and satisfy the aforesaid sum together with lawful interest from the date of the decree, together with complainants' costs, and a counsel fee of \$2,500.00 to be included in said costs, and that a writ of fieri facias issue for that purpose out of the Court of
20 Chancery directed to the Sheriff of Essex County to make sale of said mortgaged premises and to pay out of the money arising from said sale the aforesaid debt, interest and costs, and that the defendants, and each of them, stand absolutely debarred and foreclosed of and from all equity of redemption of, in and to, the said mortgaged premises, when sold as aforesaid by virtue of said decree.

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

(a) Said decree should have adjudged and decreed that the mortgage, bearing date July 1, 1927, made by Harry Kruvant to the said complainants in the principal sum of \$90,000.00, recorded in the office of the Register of Essex County in Book P 61 of Mortgages for said

Petition of Appeal.

County on pages 250-252, had not become due and payable.

(b) Said decree should have adjudged and decreed that, at the time of the entry of said decree, nothing was due and owing to the complainants on said mortgage.

(c) Said decree should not have directed the sale of the mortgaged premises.

(d) Said decree should not have awarded a counsel fee of \$2,500.00 to the complainants, to be taxed in the costs.

(e) Said decree should have adjudged and decreed that the complainants' bill of complaint should be dismissed.

(f) Said decree should have adjudged and decreed that the allegations of the counter-claim, filed in behalf of Kruvant-Mayzel Company and Harry Kruvant, were true and correct, and should have awarded relief to the said Kruvant-Mayzel Company and Harry Kruvant as prayed for in the counter-claim.

3. Petitioners therefore pray that the aforesaid decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, that the Chancellor be directed to enter and award a decree in favor of the said Kruvant-Mayzel Company and Harry Kruvant, for the relief as prayed for in their counter-claim, and that the petitioners may have such further and other relief in the premises as to this Court shall seem proper.

KANTER & KANTER,
Solicitors for and of Counsel
with Appellants.

ELIAS A. KANTER,
Of Counsel.

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Petition of Appeal.

Service of a copy of the foregoing petition of appeal is hereby acknowledged this 14th day of January A. D. 1932.

THEODORE SILVER,
Solicitor of Complainants-Appellees.

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AMENDED NOTICE OF APPEAL.

Filed January 28, 1932.

IN CHANCERY OF NEW JERSEY.

84-500.

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<p><i>Between</i></p> <p>HARRY S. KATZIN, HERMAN Z. BAUM, MORITZ L. COHEN and SAMUEL KATZIN, <i>Complainants,</i></p> <p style="text-align: center;"><i>and</i></p> <p>KRUVANT-MAYZEL COMPANY, a corporation of New Jersey, <i>et als.,</i></p> <p style="text-align: right;"><i>Defendants.</i></p>	<p><i>On Bill, &c.</i></p> <p><i>Amended Notice of Appeal.</i></p>	<p>20</p>
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The defendants, Kruvant-Mayzel Company, a corporation of New Jersey, and Harry Kruvant, hereby appeal from the whole and every part of the final decree, made by the Chancellor, on the advice of Vice-Chancellor Maja Leon Berry, in the above entitled cause, on December 22, 1931, to the Court of Errors and Appeals in the last resort in all causes.

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KANTER & KANTER,
Solicitors for and of Counsel with
Defendants, Kruvant-Mayzel
Company, a corporation, and
Harry Kruvant.

Newark, N. J., December 22nd, 1931.

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Amended Notice of Appeal.

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

ELIAS A. KANTER,
Of Counsel with Defendants,
Kruvant-Mayzel Company, a
corporation, and Harry Kru-
vant.

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Service of the within Amended Notice of Appeal is hereby acknowledged this 27th day of January A. D. 1932.

THEODORE SILVER,
Solicitor of Complainants.

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

New Jersey Court of Errors and Appeals

Between

HARRY S. KATZIN, HERMAN Z.
BAUM, and SAMUEL KATZIN,
Complainants-Respondents,

and

KRUVANT-MAYZEL COMPANY, a
Corporation of New Jersey
and HARRY KRUVANT,
Defendants-Appellants.

*On Appeal
from
Court of
Chancery.*

BRIEF OF COMPLAINANTS-RESPONDENTS.

Statement of Facts.

The respondents filed a bill to foreclose a purchase money mortgage in the sum of \$90,000.00. The mortgage by its terms became due on July 1, 1930. The due date was extended thereafter until February 1, 1931. On the extended due date the mortgage was not paid. Interest and taxes were unpaid at that time. The bill to foreclose was filed on May 28, 1931.

The appellants defended in the court below, and sought affirmative relief, upon the claim that the extension was for a period which had not expired when the bill was filed. It was alleged that the respondents agreed to extend the due date until four months after the city railway (a municipal project of the City of Newark) should be completed. The controversy resolved itself into an issue of fact upon this matter of extension of the mortgage. The only question upon this appeal is whether or not there is evidence in the record which supports the findings

upon which a decree was entered in favor of the respondents.

The latter will make but one point upon this appeal:

The decree of the Court of Chancery was warranted and required by the proofs.

The testimony produced by each party in the court below was quite opposed to that presented by the other. The respondents' testimony was competent and admissible to establish the facts set forth in the bill. It was of a quality which warranted the Court of Chancery to accord the relief which was sought. That it was contradicted and denied by the appellants does not indicate that it was unreliable.

The learned Vice-Chancellor who heard the case stated in his opinion (S. C. p. 100):

“The issues raised by the pleadings and tried by the court were of fact only.”

This being so, the most important of his observations, set forth in the opinion, is the following (S. C. p. 100):

“If I gave equal credence to the testimony of the complainants and that of the defendants the weight of the evidence would be in favor of the complainants. But my appraisal of these witnesses convinces me that the complainants are entitled to the greater credence and I reach this conclusion without difficulty.”

This statement indicates that the observations and impressions gathered by the Vice-Chancellor, and which do not appear on the printed record, had much effect in shaping his conclusions. A decree based upon findings of fact thus produced should not be disturbed, and it is the settled policy of this Court not to do so.

It is contended by the appellants that the testimony of the respondents was untruthful, inaccurate and inconsistent, among other things. In an endeavor to establish these claims, some of the testimony is referred to on pages 5, 6 and 7 of the appellants' brief. In parallel columns an attempt is made to indicate inconsistent and contradictory testimony. Whether or not the testimony may be thus characterized cannot be determined from a consideration of isolated excerpts, without reference to the context. An examination of the *entire* record demonstrates the complete consistency of all parts of the testimony produced by the respondents. While it is true that erroneous statements were corrected by answers to subsequent questions, the record indicates that these errors were the result of either a misunderstanding or lack of recollection which was subsequently refreshed. The determination of whether such testimony is ingenuous is peculiarly a function of the magistrate who is in a position to regard the witness as he testifies, and to draw inferences from the testimony according to the circumstances and attributes attending it.

But beyond this, the parallel columns of alleged self-contradictions set forth versions of the testimony which, to put the matter temperately, are inaccurate. For example, the left-hand column at the top of page 5 recites:

“Testimony on Direct.

On July 1st, 1930, all the complainants being present, agreed with Kruvant and Mayzel that the mortgage should be extended to February 1st, 1931.

State of Case, p. 22, lines 18-40.”

An examination of the testimony referred to discloses that the witness did *not* say that on

July 1, 1930, all the complainants being present, it was agreed that the mortgage should be extended to February 1, 1931. The testimony referred to indicates a totally different situation. It reads (S. C. p. 22):

“Q Did you have any understanding about the month of July, 1930, with Mr. Krivant and Mr. Mayzel in regard to the payment of the mortgage? A At that time, the first time they came, they said they didn't have the money. They made a suggestion they would be willing to pay to have this mortgage extended.

Q Was the mortgage extended? A It was.

Q Who was present when they agreed upon the extension of this mortgage? A All the complainants.

Q And who else? Were both Mr. Krivant and Mr. Mayzel present? A Yes.

Q What was the agreement at that time? A The agreement at that time was that we were to extend the mortgage for seven months, from July 1, 1930 to February 1, 1931 for the amount of \$2,000.

Q And were both Mr. Krivant and Mr. Mayzel agreeable to that; were they both agreeable to that? A They were the ones that suggested that.

Q You all agreed upon that? A Yes.”

No statement that the agreement was made *on* July 1, 1931 appears in this testimony. It must be regarded in the light of the witness' prior testimony which indicates that more than one discussion took place with respect to the extension. He said (S. C. p. 21):

“Q On July 1, 1930, did you and the rest of the complainants in this case have any understanding with either Mr. Krivant or Mr. Mayzel in regard to the payment of this mortgage? A Mr. Krivant and Mr. Mayzel came to my house about it, and I told them that the mortgage was due, and

we wanted the money—myself and my partners wanted the money paid.

Q Where do you live? A 834 So. 13th Street, Newark, N. J.

Q Who was present at that time? A Myself, Mr. Krivant and Mr. Mayzel.

Q Were the complainants in this case present? A No, not at that time.”

The witness made it clear that all the complainants were not present when the negotiations for the extension were first *opened*.

The importance of pointing out these two inaccuracies in the summarized version of the testimony appears when we look to the right-hand column at the top of p. 5, where among other things, the following summaries of the same witness' cross examination are set forth:

“The agreement for extension was not made on July 1st, 1930, but was made about August 1, 1930.

State of Case, p. 24, lines 30-40.

I, personally did not reach the agreement (for extension) with these men (meaning Krivant and Mayzel).

State of Case, p. 25, lines 32-36.”

There is nothing inconsistent between the direct testimony and that referred to in the first of these summaries. The witness never said that the agreement for extension was **made** on July 1, 1930. With respect to the second of the summaries, it is to be noted that the witness did not state what the paraphrase of the testimony connotes. The testimony referred to reads:

“Q You yourself personally reached the agreement with these men? A No, I took it under advisement with my partners; I told Mr. Krivant and Mr. Mayzel I would have to talk the matter over with my partners.”

There is no contradiction. The witness simply said that he did not act alone in consummating the agreement. He did not deny in this last answer that he did personally negotiate with the appellants. It is therefore improper to say, as the latter have said, that this witness testified "I, personally did not reach the agreement (for extension) * * *"

It will serve no good purpose to go minutely into all of these matters set up in the appellants' brief. It is sufficient to point out that they are not a reliable index of the quality of the respondents' evidence.

Another reason which supports the action of the court below is the utter absurdity of the agreement alleged to have been made according to the testimony of the appellants. As stated in their brief (p. 10), the undertaking of the respondents was to wait for four months after the city railway should be completed. The city railway project, as indicated by the learned Vice-Chancellor, had not then been started and it was not completed when his opinion was filed. Furthermore, the respondents were supposed to have agreed to take no steps if the taxes assessed against the property should not be paid, and in the event that the first mortgage should be foreclosed, that the respondents would buy it and hold it under the same terms. All of this was supposed to have been agreed upon by parol. The first mortgage is referred to in the answer of the appellants as being in the sum of \$20,000.00.

The making of such an agreement denotes the existence of a degree of unsophistication not attributable to the respondents by the record.

It follows from the foregoing matters that the Court was certainly right in denying relief upon the counter-claim.

The appellants contend in their brief that the allowance to the respondents of a counsel fee in the sum of \$2,500.00 was excessive and should be reduced. Since the matter of awarding counsel fees in contested cases is discretionary, the Court is being asked to review an act residing in discretion. All that is urged on behalf of the appellants is that the final hearing did not take up very much time. The institution of the cause, its prosecution to the point of final hearing, its preparation for trial and the various steps taken in the cause as indicated by the State of the Case, all indicate that the controversy was an intensely litigious one. It cannot be said that the court below is chargeable with an abuse of discretion in allowing the counsel fee it did.

It is respectfully submitted that the decree should in all respects be affirmed.

THEODORE SILVER,
Solicitor for Complainants-Respondents.

MILTON M. UNGER,
Of Counsel with Complainants-Respondents.

New Jersey Court of Errors and Appeals

Between

HARRY S. KATZIN, HERMAN Z.
BAUM, MORITZ L. COHEN
and SAMUEL KATZIN,
Complainants-Appellees,

and

KRUVANT-MAYZEL COMPANY, a
corporation of New Jersey,
and HARRY KRUVANT,
Defendants-Appellants.

On Appeal.

Kanter & Kanter, of counsel of appellants.
Elias A. Kanter, of counsel.

BRIEF OF APPELLANTS.

Introductory Statement of the Facts.

This action was for the foreclosure of a mortgage made by the defendant, Harry Kruvant; the defendant, Kruvant-Mayzel Company, a corporation, was made a party defendant because it had become the owner of the property, subsequent to the recording of the mortgage, and was such owner at the time that the bill was filed. The decree was in favor of the complainants on their bill, and a dismissal of the counter-claim of the defendants-appellants.

The mortgage in question, *by its terms*, became due on July 1st, 1930 (Exhibit C. 2, State of Case, p. 91, ll. 20-22). The bill of complaint,

which was filed on May 28, 1931, alleged, however, that

“The complainants did extend the due date of said bond and mortgage until February 1, 1931” (State of Case, p. 6, ll. 10-12).

The answer denied the allegation of the bill of complaint that the due date of the mortgage had been extended to only February 1, 1931. The answer further alleged that, subsequent to July 1, 1930, in consideration of \$2,000.00 paid by the defendants-appellants, the complainants agreed to waive the defaults that had theretofore occurred and would thereafter occur, and extend the due date until the City Railway, then under construction, in the City of Newark, should have been completed, or until an earlier date, prior thereto, if the Kruvant-Mayzel Company should, on such earlier date, have sold the property (State of Case, pp. 10, 11). There were other provisions accompanying this agreement, which was oral, but which, for the moment, it will be unnecessary to notice. Based upon the allegations of the answer, there was also a counterclaim entitling the defendants to affirmative relief against the complaints.

We stress the fact that the complainants, on the one hand, claimed that the due date of the mortgage, as extended by oral agreement, was February 1st, 1931, while the defendants, on the other hand, claimed a due date not yet arrived at the time of the institution of the foreclosure suit. It, therefore, became incumbent upon the complainants to establish that the mortgage had become due on February 1st, 1931, in accordance with the oral agreement which they contended for and had alleged in the bill of complaint. It is our contention that the complainants failed in

their proofs, that the bill of complaint should have been dismissed, and that the prayers of the counter-claim should have been granted; these matters are the questions raised by the petition of appeal, as well as the incidental question, which is quite independent of the main questions, as to the propriety of the allowance of the counsel fee to the complainants as allowed by the final decree.

The principal question in the case is: What do the proofs establish as to the oral agreement made between the complainants and the defendants relating to the extension of the mortgage? The incidental question is: Was the Chancellor justified in allowing a counsel fee of \$2,500.00 to the complainants?

POINT I.

The proofs do not justify the factual conclusion that the due date of the mortgage had been extended to February 1, 1931 only; it was, therefore, erroneous to find and decree that the mortgage had become due.

In view of the allegation in the bill of complaint, that the mortgage had been extended to February 1st, 1931, it became incumbent upon the complainants to establish, by the fair weight of the evidence, that such extension only, and not some other extension, had been agreed upon between the parties. In other words, the burden of proving that the due date had passed, at the time of the filing of the bill, was upon the complainants. The opinion of the Vice-Chancellor (State of Case, pp. 99-100) also indicates that this was the only question under consideration, that is *whether the mortgage had become due*

by reason of the expiration date of the principal, as extended by oral agreement; no other factual question was under consideration or debate, as the opinion of the Vice-Chancellor clearly shows.

The proofs in the direct case of the complainants consist only of the testimony of one of the complainants, Herman Z. Baum; from his testimony, it is quite evident that the default relied on was the *non-payment of the principal*, and not any other reason which may now be interjected in the case by way of argument. Thus, Herman Z. Baum, one of the complainants, called as the first witness in their behalf, testified:

“Q Then the default which you allege at that time was the payment of the principal?
A Of the principal” (State of Case, p. 21, ll. 33-35).

We will now demonstrate that this ground was not justified by a proper consideration of the testimony.

In our opinion, the testimony as given by the complainants is so replete with untruthfulness, inaccuracy, inconsistency and, in at least one instance, such downright impudence, that the Vice-Chancellor was not justified in accepting the version of the complainants as being the true version of the facts; we will not burden this Court with all of the testimony of the complainants, but will refer to a few parts as indicative of the entire trend of the complainants' testimony.

We will first contrast the testimony of the complainant, Herman Z. Baum, as given by him on direct examination, with the testimony as given by him on cross examination. For the sake of convenience, such testimony will be placed in parallel columns.

Testimony on Direct.

On July 1st, 1930, all the complainants being present, agreed with Kruvant and Mayzel that the mortgage should be extended to February 1st, 1931.
State of Case, p. 22, lines 18-40.

Testimony on Cross.

My previous testimony (in regard to the interest) was erroneous.

State of Case, p. 24, lines 25-26.
The agreement for extension was not made on July 1st, 1930, but was made about August 1st, 1930.

State of Case, p. 24, lines 30-40.
I, personally, did not reach the agreement (for extension) with these men (meaning Kruvant and Mayzel.)

State of Case, p. 25, lines 32-36.

We respectfully submit that testimony of this character does not justify its acceptance, particularly because Herman Z. Baum disclaims being present when the final agreement was made.

With the testimony of Herman Z. Baum, the complainants rested. After the defendants' witnesses had testified, the Vice-Chancellor permitted the complainants to again give testimony concerning the contract of extension, and then, by way of "rebuttal" so-called, complainants attempted to bolster up their contention that the due date of the mortgage was February 1st, 1931.

The testimony of the complainant, Samuel Katzin, as given on direct and on cross examination, is also worthy of comparison.

Testimony on Direct.

I was present when the discussion and agreement was reached relative to the extension of the mortgage.
State of Case, p. 55, lines 1-25.

Testimony on Cross.

I was not present when the final agreement was made.
State of Case, p. 60, line 15.

This testimony, too, was not entitled to any weight, because this witness, Samuel Katzin, exactly as Herman Z. Baum did, also disclaimed being present when the final agreement was made.

The next witness called by the complainants was Dr. Charles F. Kraemer, who testified to nothing affecting the merits of the question one way or another; Dr. Kraemer merely testified that he had called up Mr. Baum, *possibly*, "not to pursue his foreclosure proceedings" (State of Case, p. 63, l. 25). Of course, there was nothing in this testimony evidential of any controversial fact.

Moritz L. Cohen, another one of the complainants, was also called by way of "rebuttal." His testimony was contradicted by his co-complainants.

Testimony on Direct.

I was present on two occasions, and on the second occasion, the final agreement was arrived at, the second week in July, at which occasion all the parties were present.

State of Case, bottom of page 64, and top of page 65.

Testimony of Co-Complainants.

Herman Z. Baum disclaimed that he did not reach the agreement for extension.

State of Case, p. 25, lines 32-36.

Samuel Katzin testified that he was not present when the final agreement was made.

State of Case, p. 60, line 15.

Bessie Katzin (the wife of Harry S. Katzin) was then also called as a witness for complainants in "rebuttal." Her testimony, aside from the interest which she had in the fortunes of her husband, indicates clearly that she had no definite recollection of the facts.

Testimony on Direct.

I was present on the first occasion and on the second occasion when the men got together; on the first occasion there was no agreement, and on the second occasion, they came to the "conclusion of the extension for seven months."

State of Case, bottom of page 74 and top of page 75.

Testimony on Cross.

I don't remember, "because it was so long ago" whether the final agreement was reached with Mr. Baum and reported back. I AM CERTAIN ONLY OF THE FACTS TO WHICH I TESTIFIED IN RESPONSE TO MY COUNSEL'S QUESTIONS. As to other facts, I cannot say and haven't even the slightest recollection, concerning subsequent facts.

State of Case, bottom of page 78 and top of page 79.

The last witness for the complainants, also called by way of "rebuttal," was the complainant, Harry S. Katzin. After testifying as to his version of the extension agreement, he was cross examined as to whether the complainants and he had agreed upon the testimony to be given by them, and as to whether he remembered when the alleged conversation with Kruvant took place. Following, is his testimony:

"Q YOU AGREED UPON THE IMPORTANT FACTS TO BE BROUGHT OUT AT THIS TRIAL? A YES.

Q And when did this conversation with Kruvant take place? A I told you before that I don't remember it.

Q You don't remember the year even, do you? A I told you the year, before.

Q That was 1931? A Yes.

Q That was when this discussion happened, is that right? A I think that is right.

The Court: Do you know when this foreclosure proceeding was begun?

The Witness: I really don't remember when it was begun. Mr. Baum gave the order to Mr. Silver.

The Court: You know this is December, 1931?

The Witness: Yes.

The Court: What date is it?

The Witness: Fourteenth.

The Court: Of what?

The Witness: December. Do you think I am that ignorant?

The Court: I am trying to find out whether you are or not. What day is this?

The Witness: I refuse to say that.

The Court: Then get off the stand. (State of Case, bottom of p. 83 and top of p. 84).

It is quite apparent, from this testimony, that not only was the witness insolent to the Court, which ought to be taken as a fair indication as to whether or not he had any respect for the facts to which he was supposed to be testifying, but that he did not even remember the "facts," agreed upon between him and his associates, as the subject matter of their testimony; the agreement for extension, as must have been the fact, whatever that agreement was, was made in July 1930; Harry S. Katzin places the time of the making of the agreement as 1931, which would be after the filing of the bill of complaint. It is most significant that the complainants "agreed upon the important facts to be brought out at this trial," after discussion amongst them. Why was there the necessity of such an "agreement"?

From this summary of the testimony of the complainants, we respectfully submit that their version of the facts was not entitled to any credence, and particularly for the following reasons:

- A. Herman Z. Baum contradicted himself, admitted his testimony to be erroneous, and admitted that he was not present when the agreement for the extension was made.
- B. Samuel Katzin admitted that he, too, was not present when the agreement for the extension was made.

- C. Moritz L. Cohen's statement that the four men were present when the final agreement for extension was made is contradicted by the testimony of his two co-complainants, Herman Z. Baum and Samuel Katzin, that they were not present.
- D. Bessie Katzin admits that she doesn't remember because of the lapse of time, can testify only to facts concerning which her counsel questions her, and hasn't the slightest recollection of subsequent facts.
- E. Harry S. Katzin admits that he doesn't remember, shows a contemptuous attitude for the truth, and also admits that all the witnesses had had a discussion, resulting in an "agreement" as to the facts to which they were to testify.
- F. The testimony of the complainants is clearly the result of an "agreement" between them, and, in the main, was given in response to leading questions, and was not brought out excepting by way of "rebuttal," so-called.

The testimony offered in behalf of the defendants, it seems to us, and we hope it will appear to this Court, was clear, convincing and satisfactory in every respect; such testimony, in marked contrast to the testimony offered by the complainants, we shall now briefly advert to:

Joseph H. Mayzel, the first witness for the defendant, in substance, testified as follows, his testimony being paraphrased:

"I am the Secretary of the Kruvant-Mayzel Company (State of Case, p. 31, l. 8). Prior to July 1, 1930, I and Mr. Kruvant interviewed Mr. Harry S. Katzin, Herman Z. Baum, Moritz L. Cohen and Samuel Katzin, with reference to the principal that was to become due July 1, 1930. I told them that we were in default of the mortgage and taxes, and in view that we paid them so much for the property, what are they going to do for us? (State of Case, p. 31, l. 30.)

We agreed to pay them a bonus of \$2,000.00, and they agreed to forgive us all our defaults, wait until four months after the City Railway is finished; in case the first mortgage were foreclosed in regard to the taxes, they would take care of them, buy it, or pay them up and take care of it; we wanted to give them a check for the \$2,000.00, but they insisted on cash, and I later paid it in cash (State of Case, p. 32). No written agreement was drawn, because the complainants said that their word might be taken" (State of Case, p. 34, l. 30).

A very vigorous cross examination did not in any way negative the force and effect of the testimony of Joseph H. Mayzel.

The other witness for the defendant was Harry Krivant, whose testimony is also paraphrased as follows:

"They are willing to wait for four months after the City Railway is completed, if we paid them \$2,000.00, and they would not press anything about taxes and any defaults as long as interest was paid, and in case the first mortgage were foreclosed, on account of taxes, they would buy the mortgage and hold it under the same terms (State of Case, bottom of p. 43). The \$2,000.00 was paid in cash, at the direction of the four complainants, to Mrs. Katzin (State of Case, p. 43, l. 5). We wanted a written agreement, but they said that they couldn't give a written agreement, as their word was good enough" (State of Case, p. 43, l. 12).

A vigorous cross examination did not in any way negative the force and effect of the testimony of Harry Krivant.

We respectfully submit that, from a reading of the testimony on the part of the complainants, and from the testimony on the part of the defendants, it is evident that the Vice-Chancellor

erred in his conclusions of fact, and that the complainants not only failed to establish the facts entitling them to a decree, but that the defendants affirmatively proved that the contract for the extension of the mortgage (as testified to by them) had been made, that the principal of the mortgage had not become due, and, hence, that the bill of complaint should have been dismissed and the prayers of the counter-claim granted.

POINT II.

The proofs required a decree, on the counter-claim, in favor of the defendants.

The allegations of the counter-claim were largely of matters set up by way of answer. The questions of fact so raised have already been discussed in POINT I of this brief, and, hence, will not be repeated. With the facts established in favor of the defendants, as previous analysis already indicates, there should have been a decree on the counter-claim in favor of the defendants, and the contrary action of the court below was, therefore, erroneous.

POINT III.

The allowance of a \$2,500.00 counsel fee was erroneous because excessive.

As an examination of the State of the Case shows, this was a very simple foreclosure case. The entire testimony covers only about sixty-five (65) pages. This Court, we think, can take judicial notice of the fact that it did not take over about an hour to try the entire case.

The decree in favor of the complainants was for approximately \$95,000.00. The amount involved does not, in our judgment, justify an allowance to complainants' counsel of \$2,500.00, when it is considered that the case took only a short time to try, and when the questions raised were far from arduous. We think a far smaller allowance should have been made, and should now be fixed by this Court, if the decree below be sustained.

CONCLUSION.

We respectfully urge that:

- A. The decree in favor of the complainants be reversed.
- B. The Court of Chancery be instructed to enter a decree in favor of the defendants.
- C. The allowance of a \$2,500.00 counsel fee be modified, if the decree in favor of the complainants be sustained.

Respectfully submitted,

KANTER & KANTER,
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ELIAS A. KANTER,
Of Counsel.

