

New Jersey Court of Errors and Appeals

Notice of Application to Amend Bill of Complaint and to fix Decree

IN CHANCERY OF NEW JERSEY.

Between	}	On Bill, etc.,
CELIA BROOKS, <i>et al.</i> ,		
Complainants,		
and		
ELIAS GOLDBERG,		
Defendant.		

*To Matthew J. Ready and Philip J. Scotland, Es-
quires, Attorneys for the Defendant, or to
whom it may concern:*

Gentlemen: Please take notice that on Thurs-
day the 7th day of October. One thousand nine
hundred and fifteen, at Chancery Chambers, Pru-
dential Building, Newark, New Jersey, at ten
o'clock in the forenoon or as soon thereafter as
Counsel can be heard thereon, I shall apply to
Vice-Chancellor Howell for an order in the above
entitled matter, amending the Bill of Complaint
heretofore filed in this cause, in the following man-
ner, to-wit:

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Notice of Application to Amend Bill of Complaint and to fix Decree

1. By inserting in the third paragraph of the said Bill of Complaint after the words, "said lands to Elias Goldberg," the following: The said Goldberg to hold the said lands so conveyed
10 for and as security for the said sum of \$1,800 so advanced by the said Goldberg.

2. By striking out the fourteenth paragraph of said Bill and in place thereof substituting the following: Your oratrix charges that she was the actual owner of all the lands and premises aforesaid and that every deed of conveyance that has been made of any portion of the said lands and premises to a bona fide purchaser was made
20 for the benefit of your oratrix and that every mortgage taken by the said Goldberg was taken for the benefit of your oratrix and that the said Goldberg holds the said real estate, mortgages and personal property as security only and holds the proceeds of the sales of the lands as security only, and holds the title now to any of the remaining lands as security only, and that he refuses to convey the same to her and refuses to pay over to her the proceeds of the sales and refuses to deliver to her any of the mortgages aforesaid.

3. By striking out all that part of the prayer of the said Bill, following the words "and he particularly interrogated thereunto paragraph by paragraph" to the end of the said paragraph, and insert in lieu thereof the following: And your oratrix prays that your oratrix may be decreed to be entitled to redeem the said real estate, mort-
40 gages and personal property as the said defend-

Notice of Application to Amend Bill of Complaint and to fix Decree

ant, Elias Goldberg derived from the sales of the said real estate (your oratrix hereby tenders herself ready and willing to pay at any time when permitted so to do, whatever sum of money this Honorable Court shall adjudge to be the sum which she should pay, to pay, satisfy and discharge the said loan); that the said defendant may be decreed to be liable to account for and pay to your oratrix, by deducting the same from the amount equitably due upon said loan, the rents and profits and the value of the use of said premises since the day the said premises were conveyed to said defendant and that the said defendant may be decreed, upon payment or tender to him by your oratrix of the amount of whatever moneys were advanced by him over and above the amount in which he has reimbursed himself, and also full and exclusive possession of all and every part of the said premises so deeded to the said defendant as security, and that an account may be taken under the direction of this Honorable Court of what is equitably due and owing to your oratrix on said loan and also what is due from and chargeable against the said defendant in respect to rents, and profits, use and occupation of the said real estate so given to the said defendant as such security.

I shall also make application at same time and place to settle the form of Final Decree.

WILLIAM L. BRUNYATE,
Solicitor for the Complainant.

IN CHANCERY OF NEW JERSEY

Application for this purpose having been made and due notice thereof having been served upon Mathew J. Ready and Philip J. Schotland, Esquires, Attorneys for the defendant, and the matter coming on regularly to be heard and after having heard Frank E. Bradner and William L. Brunyate on behalf of the complainants and Philip J. Schotland on behalf of the defendant, it is on this seventh day of October, One thousand nine hundred and fifteen,

30 (1) By inserting in the third paragraph of the said Bill of Complaint after the words, "said lands to Elias Goldberg," the following: The said Goldberg to hold the said lands so conveyed for and as security for the said sum of \$1800 so advanced by the said Goldberg.

(2) By striking out the fourteenth paragraph of said Bill and in place thereof substituting the following: Your oratrix charges that she was the
40 actual owner of all the lands and premises afore-

Order to Amend Bill of Complaint

said and that every deed of conveyance that has been made of any portion of the said lands and premises to a bona fide purchaser was made for the benefit of your oratrix and that every mortgage taken by the said Goldberg was taken for the benefit of your oratrix and that the said Goldberg holds the said real estate, mortgages and personal property as security only and holds the proceeds of the sales of the lands as security only, and holds the title now to any of the remaining lands as security only, and that he refuses to convey the same to her and refuses to pay over to her the proceeds of the sales and refuses to deliver to her any of the mortgages aforesaid. 10

(3) By striking out all that part of the prayer of the said Bill, following the words "and he particularly interrogated thereunto paragraph by paragraph" to the end of the said paragraph, and insert in lieu thereof the following: And your oratrix prays that your oratrix may be decreed to be entitled to redeem the said real estate, mortgages and personal property as the said defendant, Elias Goldberg derived from the sales of the said real estate (your oratrix hereby tenders herself ready and willing to pay at any time when permitted so to do, whatever sum of money this Honorable Court shall adjudge to be the sum which she should pay, to pay, satisfy and discharge the said loan); that the said defendant may be decreed to be liable to account for and pay to your oratrix, by deducting the same from the amount equitably due upon said loan, the rents and profits and the value of the use of said premises since the day the said prem- 20 30 40

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ises were conveyed to the said defendant, and that the said defendant may be decreed, upon payment or tender to him by your oratrix of the amount of whatever moneys were advanced by him over and above the amount in which he has
 10 reimbursed himself, and also full and exclusive possession of all and every part of the said premises so deeded to the said defendant as security, and that an account may be taken under the direction of this Honorable Court of what is equitably due and owing to your oratrix on said loan and also what is due from and chargeable against the said defendant in respect to rents, and profits, use and occupation of the said real estate so given to the said defendant as such security.

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Respectfully advised,

JAMES E. HAMELL,
 Vice-Chancellor.

Amended Bill for Relief

To his Honor, Edwin Robert Walker, Chancellor
 or the State of New Jersey:
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Humbly complaining shows unto your Honor your oratrix Celia Brooks and Marks Brooks, her husband, of the City of Newark, in the County of Essex and State of New Jersey.

(1) That in the month of January 1912, your oratrix was desirous of procuring a loan on certain property situated on the West side of Brooklyn Avenue, distance about 144 feet South from
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South Orange Avenue, and applied to one Elias Goldberg, who was an intimate friend. At that time, the said Goldberg stated that he was willing to make the loan, but said that he would require security, and that the title to the Brookdale Avenue property should be given to him, and that your oratrix should commence the erection of buildings on the premises, and that all contracts with builders and others that might be necessary, should be taken in Goldberg's name, and the buildings should be sold and the mortgages taken in his name; all for the purpose of securing the payment of the loan that Goldberg would make; and that Goldberg should receive the amount of the loan from the proceeds of sale, and that when the loan had been paid, the remaining mortgages and the title to the property not sold, should be conveyed to your oratrix; and that Goldberg should receive a bonus of Two hundred dollars. 10 20

(2) That in accordance with the foregoing, it was mutually agreed between your oratrix and the said Goldberg that he should advance the sum of \$2000.00, and that building operations should be commenced on said land, and that the contracts should be taken in the name of Goldberg and mortgages also in his name, and that out of the proceeds of sale, he should receive repayment of the loan together with a bonus of \$200 00 and that in the meantime, all the moneys including the \$2000.00 aforesaid, and any other moneys that might be raised by mortgage on the properties, or resulting as the proceeds of sale, should be deposited in the hands of Mr. William Greenfield, an attorney at law of the City of Newark, to be paid out by him from time 30 40

Amended Bill for Relief

to time, to the different builders, contractors and material men, and that he should hold all the moneys for the purposes aforesaid, to be finally accounted for by the said Greenfield; and that the title to the property should be put in the name of the said Goldberg.

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(3) That on the twenty-second day of March, in the year 1912, your oratrix and her husband delivered to Mr. Greenfield a deed of conveyance of the premises aforesaid executed by Joseph Levy and Rose Levy, his wife, which deed of conveyance conveyed the title in said lands to Elias Goldberg, the said Goldberg to hold the said lands so conveyed for and as security for the said sum of \$1800 so advanced by the said Goldberg; and the said Goldberg deposited with Mr. Greenfield the sum of \$1800.00 and retained the sum of \$200.00 as a bonus; and that said deed of conveyance was afterwards on the twenty-fifth day of March, 1912, recorded in the Essex County Register's Office in Book 50 of Deeds on pages 111, etc.

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(4) That there not being on hand sufficient funds to commence building operations, your oratrix gave to said Greenfield as the attorney of said Goldberg, the sum of \$1000.00 so that the fund in the hands of said Greenfield was the sum of \$2800.00, and the work of constructing and erecting buildings was begun. Four six-family houses were erected on lots Numbers 15, 17 (19, 21) 23 Brookdale Avenue, and several contracts were entered into as follows:

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Between Elias Goldberg and Abraham Sabine
40 and Samuel Bornstein, for all the carpenter

Amended Bill for Relief

work; a contract between Elias Goldberg and Frank J. Hill Co. for lumber; and also a contract between Elias Goldberg and Morris Rosenkrans and Samuel Levin for all plumbing work; also a contract between Elias Goldberg and Harry Rothberg and David Leib for all the mason work and material; also a contract between said Goldberg and Philip Shill to supply all the frames, sashes and doors; also a contract between said Goldberg and Harry Friedman for all the painting. Also a contract between the said Goldberg and Herman Mass for title work; all of which said contracts are in writing and are duly recorded in the Clerk's Office of the County of Essex and will be produced if necessary. 10

(5) That during the course of the construction 20 and erection of the building aforesaid, the said Marks Brooks, acting as the agent of your oratrix, procured various loans of money on the buildings, and mortgages were duly made and executed by said Elias Goldberg and his wife, and that the said mortgages are as follows:

A mortgage to the Avon Building & Loan Association to secure the sum of \$6000.00, which is recorded in Book M-29 of Mortgages in the Register's Office of Essex County on p. 178. 30

A mortgage to the Home Building & Loan Association to secure the sum of \$6000.00; and also a mortgage to the Aetna Building & Loan Association to secure the sum of \$6000.00, which said mortgages are matters of record, and certified copies of the same will be produced, if necessary.

That the money received from the various Building and Loan Associations was paid by the solicitors of the said Associations to the said 40

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10 William Greenfield, and was disbursed from time to time by him. That the moneys, as your oratrix is informed, were paid out by the Associations in the form of checks to the order of Greenfield, which were endorsed over to Goldberg, and that disbursements were made by Greenfield in the form of checks to the order of Goldberg and endorsed over by him to various persons.

(6) That some of the premises have been sold, and that your oratrix has ascertained that the following deeds of conveyance have been made by the said Goldberg:

On March 20, 1912, a deed of conveyance to Andrew Vigiano and Roseno Vignao, recorded in Book O-50 of Deeds on p. 522 in Essex County Register's Office; on March 27, 1912, a deed of conveyance was made to Abraham Sabine and Samuel Bornstein, recorded in Book S-40 of Deeds on p. 404 in the same office.

On March 27, 1912, a deed of conveyance was made by said Goldberg to Philip Shill, recorded in Book 50 of Deeds on p. 17 in the same office.

On June 15, 1912, a deed of conveyance was made by Goldberg to George Dellon and Louis Leviton, recorded in Book B-51 of Deeds on p. 377 in the same office. On September 10, 1912, a deed of conveyance was made by said Goldberg to Samuel C. Samuels and recorded in Book W-51 of Deeds on p. 64 in the same office; on October 25, 1912, a deed of conveyance was made by said Goldberg to Andrew Vigiano and Roseno Vigiano recorded in Book W-51 of Deeds on p. 353 in the same office. And on January 21, 1913, a deed of conveyance was made by the said Goldberg to Nathan T. Levy and recorded in Book C-52 of Deeds on p. 537 in the same office.

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And your oratrix charges that all the said deeds of conveyance conveyed portions of the premises aforesaid, which in fact belong to your oratrix.

(7) That in making sales of the buildings and lands, the said Goldberg from time to time took back from the purchasers purchase money mortgages, which appear from the records as follows: 10

A mortgage made by Abraham Sabine and Samuel Bornstein for \$6000.00 registered in Book X-28 of Mortgages on p. 503 in the same office; a mortgage made by Nathan T. Levy to said Goldberg for the sum of \$690.00 registered in Book O-20 of Mortgages on p. 394 in the same office. A mortgage made by Andrew Vigiano and Roseno Vigiano to said Goldberg for \$1690.00 recorded in Book F-30 of Mortgages on p. 519 in the same of- 20
fice, and which said last mentioned mortgage has been assigned to Morris Lovejoy, and the deed of assignments is recorded in Book 109 of Assignments of Mortgages on p. 339 in the same office; also a mortgage made by the Delvit Construction Company to said Goldberg for the sum of \$1000.00, which mortgage is registered in Book E-30 of Mortgage on p. 475 in the same office, and which said last mentioned mortgage has been assigned to Morris Lovejoy by deed of assignment 30
recorded in Book 109 of Assignments of Mortgages on p. 341.

And your oratrix charges that the said several mortgages were taken by the said Elias Goldberg to hold in trust for your oratrix; and your oratrix is informed and charges it to be true that the two assignments of mortgages made by the said Elias Goldberg, are absolute assignments, and she says that the said assignments were not made with her consent.

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(8) That there was a lien by way of mortgage on the said premises in the sum of \$4775.00, which has been cancelled of record, and that a second mortgage of \$1525.00 was assigned by the holder thereof to the said Elias Goldberg on November 1, 1912, by deed of assignment recorded in Book 107 of Assignments of Mortgages on p. 536 in the same office; and that the said Elias Goldberg holds the said last mentioned mortgage in trust for your oratrix.

(9) That shortly prior to the month of November 1912, your oratrix was the owner of some fifteen lots and parcels of land situated on the West-
erly side of North Sixth Street in the City of New-
ark, in the County of Essex and State of New
Jersey, and that she also caused the title to said
lots and parcels of land to be conveyed to the said
Elias Goldberg to be held by him in trust for her,
and that the said Goldberg subsequently executed
a mortgage covering said land in the sum of
\$2600.00 to Leah J. Abeles, which mortgage was
subsequently assigned to one David Goldsmith,
and that on or about the fifteenth day of Novem-
ber in the year 1912, the said Goldberg conveyed
the said last mentioned lots and parcels of land
and premises to Will C. Headley, and took back
a purchase money mortgage in the sum of
\$1727.63, which mortgage is recorded in Book B-30
of Mortgages on p. 593 in the same County, and
that the said last mentioned mortgage was sub-
sequently assigned to David Goldsmith by deed
recorded in Book 108 of Assignments of Mort-
gages on p. 259 in the same office as collateral se-
curity for the performance of certain conditions
and covenants mentioned in the above stated mort-

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gage of \$2600.00. That as a part of the consideration for the conveyance to Will C. Headley aforesaid, the said Headley and his wife conveyed to the said Elias Goldberg certain lands and premises situate in the City of East Orange on the westerly side of North Clinton Street, and the deed of conveyance is recorded in Book R-51 of Deeds on p. 590 in the same office. And your oratrix charges that the said Goldberg holds the said last mentioned deed of conveyance and the title to said land on North Clinton Street in trust for your oratrix, and that she has been receiving the rents, issues and profits since November 8, 1912, of said lands, and that the said Goldberg refuses to convey the title of said lands to her. 10

(10) That in addition to the said sum of \$2800.00 invested in the construction and erection of buildings aforesaid, your oratrix delivered to the said Goldberg lumber of the value of \$2800.00, which was used in the construction and erection of the said buildings, and that a portion of this lumber valued at \$101.15, was sold to the Delvit Construction Company by the said Goldberg. 20

(11) That your oratrix has been informed and believes it to be true, and charges that the various contractors and materialmen, have paid commissions or a bonus to the said Goldberg for awarding the contracts to them, or for purchasing materials from them, and that these commissions aggregate about the sum of \$500.00. 30

(12) That the said Elias Goldberg refuses to convey any of the land aforesaid to your oratrix, although she has demanded conveyance of the same, or such of the lands and premises that have 40

Amended Bill for Relief

not been actually sold to bona fide purchasers, and that he has refused to assign to her any of the mortgages aforesaid held by him, and has refused to convey to her as aforesaid the land on North Clinton Street aforesaid and has refused to account for the moneys aforesaid deposited in the hands of said William Greenfield, or to account for the lumber furnished by your oratrix as aforesaid, or to show what disposition has been made of the moneys, or to account for and pay over to your oratrix the proceeds of sale of the lands and premises.

(13) That your oratrix has been unable to ascertain from the different Building and Loan Associations aforesaid, any statement of the moneys advanced by them to the said Elias Goldberg, she being informed by the representatives of said Building and Loan Associations that they do not know her, and cannot give her any statements, and the said Elias Goldberg refuses to make any statements, or to account for the moneys received from the Building and Loan Associations aforesaid.

(14) Your oratrix charges that she was the actual owner of all the lands and premises aforesaid and that every deed of conveyance that has been made of any portion of the said lands and premises to a bona fide purchaser was made for the benefit of your oratrix and that every mortgage taken by the said Goldberg was taken for the benefit of your oratrix and that the said Goldberg holds the said real estate, mortgages and personal property as security only, and holds the proceeds of the sales of the lands as security only, and holds the title now to any of the remaining lands

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as security only, and that he refuses to convey the same to her and refuses to pay over to her the proceeds of the sales and refuses to deliver to her any of the mortgages aforesaid.

All which actings and doings of the said defendant, Elias Goldberg, in the premises, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your oratrix in the premises. 10

In consideration whereof and for as much as your oratrix is without adequate remedy at law; to the end therefore, that the said defendant Elias Goldberg may full, true and perfect answer and discovery make without oath, the oath of said defendant hereby expressly waived to all and singular the premises, and that as fully as though the same were herein again repeated, and be particularly interrogated thereunto paragraph by paragraph. And your oratrix prays that your oratrix may be decreed to be entitled to redeem the said real estate, mortgages and personal property as the said defendant, Elias Goldberg derived from the sales of the said real estate (your oratrix hereby tenders herself ready and willing to pay at any time when permitted so to do, whatever sum of money this Honorable Court shall adjudge to be the sum which she should pay, to pay satisfy and discharge the said loan); that the said defendant may be decreed to be liable to account for and pay to your oratrix, by deducting the same from the amount equitably due upon said loan, the rents and profits and the value of the use of said premises since the day the said premises were conveyed to the said defendant, and that the said defendant may be decreed, upon payment or tender 20 30 40

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to him by your oratrix of the amount of whatever
moneys were advanced by him over and above the
amount in which he had reimbursed himself, and
also full and exclusive possession of all and every
part of the said premises so deeded to the said de-
fendant as security, and that an account may be
10 taken under the direction of this Honorable Court
of what is equitably due and owing to your oratrix
on said loan and also what is due from and charge-
able against the said defendant in respect to rents,
and profits, use and occupation of the said real
estate so given to the said defendant as such se-
curity.

And your oratrix prays that she may have such
other and further relief in the premises as may
be agreeable to equity, and that she may recover
20 from the said defendant her costs of this suit.

May it please your Honor the premises consid-
ered, to grant unto your oratrix a writ of sub-
poena to be issued out of and under the seal of this
Honorable Court, and to be directed to the said
defendant Elias Goldberg, and commanding him
under a certain penalty therein to be expressed,
and on a certain day to be and appear before your
Honor in this Honorable Court then and there to
30 answer to all and singular the premises, and to
stand to, abide by and perform such order and de-
cree as may be agreeable to equity.

And your oratrix as in duty bound will ever
pray, etc.

WM. L. BRUNYATE.

Solicitor for and Counsel with Complainant.

New Jersey Court of Errors and Appeals

Between

CELIA BROOKS, et al.,
Complainants-Appellees,
and
ELIAS GOLDBERG,
Defendant-Appellant.

On
Bill etc.
On
Appeal.

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APPELLANT'S BRIEF.

Facts.

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In the year 1912 Complainant, Marks Brooks was the owner of some twenty-one lots on Brookdale Avenue, Newark, as well as of some fifteen lots on North Sixth Street, Newark. He also was engaged in the lumber business and had failed. In order to save the Brookdale Avenue lots from levy or seizure by creditors, he caused a deed of conveyance to be made to Joseph Levy on January 12, 1912, for said lots and had the deed recorded without Mr. Levy who is a relative even knowing that it had been done. (Case p. 130, ll. 22-35.) In the same month Marks Brooks conveyed to one Wien his brother-in-law, the North Sixth Street lots and also gave Wien a chattel mortgage covering all his (Brooks') lumber, fixtures and all the personal property he was possessed of. In this manner Marks Brooks placed out of reach of his creditors except by means of a Creditors Bill in Chancery all his real and personal property except 729 Nineteenth

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Street in which there was evidently no equity as it was taken away by foreclosure proceedings. (See case p. 119.) Marks Brooks at that time had a lot of business creditors some of whom procured judgments against him during February, March and April, 1912. (See case bottom of p. 119.) Brooks claims that these conveyances were made by him in trust for his wife Celia Brooks. She at no time owned any of the property in question or ever paid anything for any of it. Her whole claim is based on the trust created for her by her husband. In March, 1912, the Brookdale Avenue lots were conveyed by Joseph Levy and wife to this defendant and at this point the conflict as to the facts arises. Complainants claim that they caused the Levys to make the conveyance to the defendant as security for a loan of \$2,000.00 which the defendant was to make them, and then they were to build on the lots in defendant's name and when the buildings were completed mortgages raised, and the property sold, defendant was to receive \$200.00 for his loan and use of his name and turn everything over to Mrs. Brooks whose trustee he was to be. This arrangement was not made by the grantor Levy (see case p. 127) who knew nothing about it except that he says a check for \$1,800.00 was made to his order which he endorsed so as to make it look like a legal transaction. (See case pp. 129 & 130.) The defendant denies any trust or security agreement and claims that he made an absolute purchase. As to the other part of the case, the North Sixth Street lots Mr. Wien was not produced and they were conveyed to this defendant in August, 1912. The learned Vice Chancellor has decreed that *all* of the real estate was held in trust by defendant for complainant Celia Brooks and that she has a right to redeem and he directs an accounting in accordance with his findings. From this decree the defendant appeals.

POINTS.**I.**

It is apparent from the record that the complainant conveyed away the property in question for the purpose of hindering, delaying and defrauding his creditors, and therefore, neither he nor anybody claiming through him can make any claim as against said conveyance. 10

The complainant Mrs. Brooks testified on pages 37 and 38 of the State of the case, that she had no business, no bank account, and no money of her own during the five years last preceding the final hearing in this cause; that her husband Marks Brooks owned all the lots in question, and that it was her husband who was in the lumber business and that the Mr. Wien to whom her husband conveyed his interest in the North Sixth Street property, and to whom her husband gave a chattel mortgage on his lumber business on South Nineteenth Street, which chattel mortgage included all of the personal property her husband possessed was her brother-in-law; and further on, on page 39, Mrs. Brooks testified that the J. Levy to whom the Brookdale Avenue lots were transferred, which is the other property in question, was the husband of her cousin. 20 30

The agreement under which and by which the transfers were made to the defendant in this cause is testified to by the complainant Mrs. Brooks (on page 43, lines 27 to 35 of the State of the case, as follows):

"Q. Now, tell us the entire agreement that you made at that time? A. That Mr. Goldberg can invest \$2,000, and I shall give him for that \$200; he didn't know anything, we had to go up and ask the lawyer how we shall do it." 40

"BY THE COURT:

"Q. Was that all the agreement there was?

A. That is all it was, yes, that was in the office.

"Q. That is all the agreement that you made with Mr. Goldberg? A. Yes, sir."

Mrs. Brooks follows that up with her evidence on page 44, that they couldn't build in her husband's name, because he lost his money.

10 At the bottom of page 44, she testifies as follows:

"Q. And you did not pay anything yourself for those lots? A. No, I did not."

Top of page 45:

"Q. And your husband did not pay all your (meaning his) creditors at that time, did he? A. *This is the thing that he put away the lots.*"

20 Mr. Brooks testified regarding the transfer of his respective holdings as follows on page 118, beginning with line 18:

"Q. Now, why did you transfer those lots to Mr. Levy? A. I do owe him some money, Mr. Levy, and I give him them lots, I told him when I want them back again, those lots, when I try to sell them lots and pay my little debts up which I owe, that he should transfer this to my wife Celia Brooks; he says, 'All right.'

30 "Q. You made the deed to Levy in January, 1912? A. Yes.

"Q. And during the same month you gave a chattel mortgage to Wien covering all of your personal property, your lumber and office fixtures, and all that, didn't you? A. No, I owed him \$2,000.

"Q. I am not asking you whether you owed him; I am asking you whether you did not give him a chattel mortgage? A. Yes, sir.

40 "Q. That covered all the personal property you had? A. Yes, some lumber, that is all I had.

"Q. But it covered everything you had? A. That is all I had.

"Q. Just say yes or no.

"THE COURT: Did it cover everything you had or not?

"A. Yes, sir; it covered everything I had.

"Q. And in that same month you also deeded over your interest in the North Sixth St. lots to Mr. Wien? A. Yes, sir.

"Q. So that you did not own anything at all in your name after January, 1912? A. I 10 did.

"Q. What is that? A. I did.

"Q. What? A. I had property in Nineteenth street?

"Q. In Nineteenth street? A. Yes, 729, in my name.

"Q. That was the property that was foreclosed, wasn't it? A. That was later on it was foreclosed.

"Q. But that was the property that was foreclosed? A. Yes.

"Q. Now, didn't you have a lot of business 20 creditors at that time? A. Yes, *I had some.*

"Q. And during February, March and April these business creditors procured judgments against you, didn't they? A. Some of them, yes; I paid as high as twenty and twenty-five per cent—

"MR. SCHOTLAND: I ask that that be stricken out as not responsive to any question.

"THE COURT: Yes.

"Q. Didn't you then make these transfers of everything you had for the purpose of taking it out of the power of your business 30 creditors to take any part of it? A. No, sir.

"Q. You did not? A. No, sir.

"Q. Did you get any written agreement from Mr. Levy when you gave him the deed? A. Written agreement? No, sir.

"Q. Now, did Mr. Levy make any agreement in your presence with Mr. Goldberg when he delivered the deed to Goldberg? A. You heard the conversation what we talked about here.

"Q. What conversation was that? A. He 40

says he wish us luck, he says, 'Try to make it as much as you can; I think Mr. Goldberg is doing the right thing with you,' he said, 'He lend you money,' he says 'You will be on the safe side, Mr. Greenfield is attending for me to it.'

"Q. Will you tell us just exactly what the whole agreement was? A. My wife came one day home and told me.

10 "Q. No; I want to know what the whole agreement was that was made in Mr. Greenfield's office, not what your wife told you, or anything else. A. We was over there before we took from Levy the lots, we was over to Greenfield's, myself and my wife and Goldberg was over there, and we was, we made it up that he should give us \$2,000, we shall give him all the lots and security in his name for \$2,000, and he wants \$200 for, and Greenfield told us, me and my wife and Goldberg, he said, 'I am going to keep all the money and keep the books, I will take all the money in and pay out all the money until the end when the building should be done and the rest of the lots shall be sold, and I will take a deed in trust to Mrs. Brooks and keep it in my own safe for you,' he says, 'You paid me a bill,' it was before we start to build, 'you be straight with me and I will have everything straight with you.'"

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30 Mr. Levy, who was the grantee of the Complainant Brooks, and the grantor of the Defendant, flatly contradicts the testimony of Brooks on this point on page 130 of the State of the Case, beginning with line 23, where he testifies as follows:

"Q. Mr. Levy, did you have this property deeded to you as a result of any agreement between you and Mr. Brooks? A. No, sir; no agreement whatsoever.

"Q. You did not even know that it was done? A. Not until it was done.

40 "Q. Not until after it had been done? A. Yes.

"Q. And how long after it had been done did you find out that it had been done? A. I can't say, perhaps some weeks or days, I can't say, as I was not interested.

"Q. You had no interest in this property at all? A. No, sir.

"Q. You had no money coming? A. No, sir.

"Q. You are sure about that? A. Positive.

"Q. Mr. Brooks did not give you that deed to secure you for what he owed you? A. No, sir. 10

And on page 132, Mr. Levy testifies that there was nothing said about any arrangement with Mr. Goldberg in his presence.

On page 134, line 12, Mr. Levy testified as follows:

"Q. Do you know why you became the owner of those lots? A. No, sir.

"Q. Mr. Brooks ever explain it to you? A. Afterwards, yes. 20

"Q. What reason did he give you? A. *He said he was losing his money and he had to protect himself and he had some lots he was afraid he might lose and he assigned them to me, that was his reason.*"

On direct examination, Mr. Levy, who testified that there was a check for \$1,800 made to his order as an apparent consideration for his conveying the lots to Goldberg said that check was so made and endorsed back by him, because it was understood that this would mean that money passed between them, and to have a check to prove that it was a legal transaction. 30

Page 130, lines 15 to 21.

The legal situation which defendant insists complainants have placed themselves in by the evidence in this case, as above quoted, as well as the other testimony, which Counsel did not desire to take up the space in this brief to quote in full, is the same as the parties in the case of 40

Hildebrand et al. v. Willig et al., 64 N. J. Eq., 249, 53 Atl., 1035.

where Vice Chancellor Grey held:

"It is within the operation of the Statute of Frauds, and *this Court will not give its aid to those who stand in the place of the wrong doer*, to be relieved from the legal effect of such a conveyance."

The Bill in that case was dismissed on that
10 ground.

In the case of

Geroso v. DeMaio, 75 N. J. Eq., 410, 72 Atl., 432,

the same principle was reiterated and the conveyance fraudulent as to creditors was held good as between the parties, and the Bill ordered dismissed by Vice Chancellor Leaming.

The latter case is on all fours with the case
20 at bar, if the testimony of the complainants is to be believed, except that the case at bar is not as strong in favor of the complainants as the case of *Geroso vs. DeMaio*, because in the case at bar, the complainants do not claim to have sought to protect the creditors of the complainant Marks Brooks; but on the contrary, their evidence shows clearly that all the complainants intended to do was to cheat the creditors and get the benefit in Mrs. Brook's name, so that the creditors of Marks
30 Brooks could at no future time derive any benefit from even a successful venture.

Appellant desires to particularly call the attention of the Court to the fact that the evidence in the DeMaio case above referred to, showed that the complainants conveyed their real estate to the wife of DeMaio upon his (DeMaio's) assurance that he could, and would adjust and settle the business troubles of the complainants, and nevertheless the Court held that it was a fraudulent
40 conveyance and that, even though neither

that, nor the Statute of Frauds were pleaded, the Court should of its own motion, dismiss the suit.

Vice Chancellor Howell in

Hall v. Hall, 74 Atl., 651,

cites the case of *Geroso vs. DeMaio*, and quotes Vice Chancellor Leaming with approval and dismisses the Bill on the same ground. These cases apply with equal force to the complainant Celia Brooks as to the complainant Marks Brooks. 10

Professor Reeves in his work on Real Property, Volume 1, page 565, says:

"The immediate parties to transactions which are fraudulent against creditors cannot have them set aside, *nor have any trusts founded upon them*, because they cannot take advantage of their own wrong".

To the same effect is the case of

Lokerson v. Stillwell, 13 Eq., p. 358

and

20

Evans v. Herring, 27 N. J. L., 243.

II.

It is no ground for relief that although a complainant intends to cheat creditors if occasion should require, the expected occasion did not happen, and the preparation to defraud creditors was therefore unnecessary. 30

In the case at bar, the learned Vice Chancellor says in his opinion, beginning with the bottom of page 241, the following:

"And, further, while it appears that at the time the conveyance was made Brooks did owe persons who still stood to him in the relation of creditors, it likewise appears that he had settled all or nearly all the claims against him which if true would purge the transaction of its original fraudulent character. Payment of the grantor's debts to 40

the full value of the property purges the fraud."

Appellant respectfully submits, that the law relied upon by the learned Vice Chancellor applies only to a case where a purchaser buys property with full knowledge that his vendor intends to hinder, delay and defraud creditors, and in such case, if his title is attacked by creditors, the purchaser is protected by way of a lien or
 10 other equitable protection to the extent that the consideration which he paid over to his fraudulent grantor was actually applied to the payment of honest debts; following the case of

Smith Company v. O'Brien, 57 N. J. Eq., 365, 41 Atl., 492,

but that it does not apply to a case like the one at bar, where it is the parties themselves who are trying to recover the property in a Court of Equity
 20 In the case at bar the language of Vice Chancellor Grey in the case of

Hildebrand v. Willig, 63 N. J. Eq., 249, 53 Atl., 1035,

and contained in the very last paragraph of his opinion, is the law that applies.

Furthermore, the finding of the learned Vice Chancellor that Brooks had settled all or nearly all of the claims against him, is not supported by any
 30 evidence in the case whatsoever. The only evidence on that point, in addition to the testimony of Marks Brooks, which has already been quoted, is the half sentence appearing on the top of page 120 of the State of the Case, and which was stricken out by the Court, which is as follows:

"I paid as high as twenty and twenty-five per cent."

Even if that part of the answer had remained
 40 in the case and even if Brooks had settled with all

his creditors on the basis of twenty to twenty-five per cent. of their claims, could be, in a Court of equity, say,

"I transferred my property so that my creditors would see that they could not collect, and having thereby succeeded in getting them to compromise their claims with me by accepting from twenty to twenty-five per cent. of the amounts I owed them in full settlement of my indebtedness, I have purged myself of the fraud, and, therefore, I am now entitled to recover back the property, or its proceeds which I conveyed away, and have same turned over to my wife for her benefit"?

Appellant respectfully submits that in the face of the authorities above quoted, the Complainant's claim would have to be denied and he would have to be dismissed from equity as not coming in with clean hands, even though the denial should result as Vice Chancellor Leaming in the case of *Geroso v. DeMaio*, Supra, says:

"It is manifest that under these facts this Court cannot grant relief to Complainants, notwithstanding the fact that the effect of the decree will be, in effect, to enable defendants to steal complainant's property."

The learned Vice Chancellor in the case at bar rests his conclusion that the oral defense, that the conveyances by Brooks were in fraud of creditors, and, therefore, Brooks could not recover has failed, on his finding that Brooks had purged the transaction of its original fraudulent character, by settling with his creditors; but this finding, as pointed out above, is not supported by any evidence in the case nor by any decision, and therefore the decree based on the existence of a fact which does not exist must fail and the bill be dismissed.

III.

The fraudulent nature of the transaction and the real purpose of the conveyance could be shown though not pleaded in the answer.

Vice Chancellor Leaming in the case of *Geroso v. Demaio*, Supra, says:

10 "It was said by the counsel of the complainant that this objection, not having been set up in the answer, cannot be taken. The nature of the transaction did not appear on the face of the bill, and the defendants in their answer deny entirely the making of any agreement with the complainant for the redemption of the property by him. But it is not necessary that the objection should have been taken in the answer to enable the Court, as the representative of the public, to refuse to grant relief upon an illegal contract. So
20 strict are the courts in adhering to the principle of not aiding in the enforcement of an illegal agreement, that if the agreement, as stated in the pleadings, does not appear to be illegal, but circumstances come out in the evidence that show that it is in fact tainted with illegality, the Court will, on its own motion, direct an inquiry into the matter."

The pleadings in the case at bar are exactly in the same situation as in the case before Vice Chancellor Leaming, and the Court below therefore
30 erred in excluding on page 39 of the State of the case, the question:

"Q. Did Mr. Wien pay you anything for those lots?"

and also on the top of page 40, the question as to the financial condition of Marks Brooks at the time of the conveyance; also on page 45, in overruling an attempt to get into the details of the transaction, so as to show the real nature of it.

40 However, enough testimony was brought out, as shown and quoted under Point I., to sustain what the learned Vice Chancellor calls, in this case, the oral defense.

IV.

The weight of the evidence clearly shows that there was an out and out sale of the property by Brooks from his fraudulent grantees to this defendant for a valuable consideration paid in each case at the time of the transfer. The alleged agreement of a loan and security is testified to by the complainants alone. They are not corroborated by any of their fraudulent grantees, nor even by their own daughter. While the fact that the lands conveyed were sold outright to the defendant, is testified to not only by the defendant, but by Mr. Greenfield, who was the attorney who managed the transaction, and whose testimony is corroborated both by his book of accounts referred to in Mr. Greenfield's evidence, on pages 141-142, and by the statements offered in evidence by the complainant, which are copies from the pages referred to in Mr. Greenfield's book, and are printed in full on page 194, and on page 206 of the State of the Case. Mr. Greenfield's testimony appears on pages 55 to 100, and 136 to 142, and has been characterized by the learned Vice Chancellor, in his opinion, as equivocal, evasive, uncertain and unsatisfactory.

Appellant respectfully submits that a careful reading of Mr. Greenfield's entire testimony will show that it was full, frank and honest, and that any uncertainties appearing prove rather that Mr. Greenfield testified as fully, and frankly, and honestly, as a busy lawyer could testify to from recollection of a transaction several years old, and that the characterization placed upon his testimony is not supported by the actual fact, and does Mr. Greenfield a grave injustice. The evidence apparently relied upon by the Vice Chancellor, as he says in his opinion, is that of Levy, and his wife; but Levy, as has been pointed out under Point I, testified that he knew of no arrangement. He flat-

ly contradicted the Complainant Brooks as pointed out under Point I, that he even knew that a conveyance had been made to him until sometime after the deed had been recorded and Brooks told him about it. He further flatly contradicted Brooks as to the reason for his conveyance; Brooks having testified, as referred to under Point I, that he owed Levy money, and Levy, as pointed out, absolutely denies that, and says that the only
 10 reason given to him by Brooks for the conveyance to him was "he said he was losing his money and he had to protect himself, *and he had some lots he was afraid he might lose, and he assigned them to me, that was his reason*" (page 134, ll. 15-20).

Mrs. Levy also testified to absolutely no arrangement with this defendant. She says she saw a check, doesn't know what was on it, knows that Mr. Levy signed his name, endorsed it, and gave it to Mr. Greenfield, but she heard no conversation about the check, and not a word of any agreement as to the terms of the conveyance. She, therefore, doesn't, in any particular, corroborate the complainants' case. She was recalled and examined by the Court, giving her testimony on the
 20 bottom of pages 148, and top of page 149, evidently for the purpose of seeing whether she would corroborate her husband as to a first deed, or a previous deed having been destroyed, and she failed to corroborate her husband.

30 There is no evidence, even if the learned Court below chose to believe the testimony of the complainants that they caused the Brookdale Avenue lots to be conveyed to the defendant as security for a loan to be made by him; that they made the conveyance of the North Sixth Street lots, which, as appears from the deed itself, to have been made on the Twenty-seventh of April, 1912, and acknowledged on the seventh of May, and recorded
 40 on August 21, 1912, for the same purpose; and

yet the learned Vice Chancellor's Decree includes this property as well as the Brookdale Avenue lots in the trust agreement, and directs this defendant to account for same. The absurdity of the complainants' story appears when one considers what was actually done in this case by the defendant, namely, the building of houses, the executing of his personal bonds to secure mortgages, and the making of contracts, and in general, operating a business of a real estate operator, for which, when everything is wound up, regardless of how long it took, and of how much work there was involved, the defendant, if the complainants impossible story is believed, was to receive the munificent sum of \$200, without a word regarding interest, on his \$2,000 investment. 10

Appellant submits that even if he squeezed some of the contractors for a little allowance when paying them off, under one subterfuge or another, that did not and does not establish that he entered into an agreement to obligate himself and become personally responsible on all the bonds and mortgages, and on the warranties contained in all deeds of conveyances for the benefit of others, without any agreement for proper compensation to himself, and, therefore respectfully submits that a consideration of all of the testimony shows the clear weight in favor of the defendant. 20

V.

30

The complainants' case must fail because they seek to establish a trust by parol in the Amended Bill of Complaint, as well as in the original Bill of Complaint, and such a trust cannot be enforced in that manner.

Arnwine v. Carroll, 8 N. J. Eq., 620, where property was conveyed on the express understanding that on the death of the grantor, grantee would pay A \$2,000 and Chancellor Halsted says: 40

"Would the grantee hold the land in trust, if he promised, on receiving the deed, to pay a 3rd person a stipulated sum at a future certain or uncertain time? Would such promise create a charge upon the land? But if it would create a trust, *it would be an express trust, and writing would be necessary.*"

In *Owens v. Owens*, 23 N. J. Eq., p. 62, Chancellor Zabriskie says:

10 "If the instrument executed by James had been a mere contract to reconvey the property, *or the bill had been filed to establish a trust either as a resulting trust, or on a parol agreement, the defence would be a bar to the relief.*"

In *Jamison et al v. Miller*, 27 N. J. Eq., 586, Judge Dixon speaking for the Court of Errors and Appeals at page 591 quotes with approval from Sugd. on Vend. & Pur. * * * 911 as follows:

20 "An express trust although by parol only, will prevent the resulting trust; because resulting trusts are left by the Statute of frauds and perjuries as they were before; and previously to the act, *a bare declaration by parol would prevent any resulting trust,*" and proceeds at bottom of page 591.

30 "Now here the intention of Charles was, not that he himself should have the estate, but that Mrs. Jamison should have it. There was an express trust in her favor, and that prevented any resulting trust inconsistent with that express trust." At p. 592 it appears the express trust was proven by writings sufficient to satisfy the statute of frauds.

For the reasons above stated, appellant respectfully submits that the decree of the Court of Chancery should be reversed, and a decree directed, dismissing the Bill of Complaint.

Respectfully submitted,

PHILIP J. SCHOTLAND,

Solicitor and Counsel for Defendant-Appellant.

New Jersey Court of Errors and Appeals

Between

CELIA BROOKS, *et al.*,
Complainants-Respondents,

and

ELIAS GOLDBERG,
Defendant-Appellant.

On Appeal.

*Brief of
Complainants
Respondents.*

Brief for Complainants-Respondents.

Facts.

(1) The amended Bill prays for a redemption of an equitable mortgage. The facts briefly stated are as follows: Marks Brooks was the owner of lands in Essex County which he conveyed; some to Joseph Levy, of Brooklyn, N. Y., and some to one Joseph Wein, of Brooklyn, N. Y. Elias Goldberg, the defendant, offered to loan Mrs. Brooks \$2,000 less a bonus of \$200 for the purposes of building upon the lands in question, and Goldberg insisted on a deed from Levy and Wein to himself as security for the advance. No consideration was paid by Levy and Wein for the property and no consideration was paid by Goldberg to Wein and Levy for the property. It was agreed that Goldberg and Brooks would build on the lots, sell lots, and the resulting profits be turned over to Mrs. Brooks. All the moneys and the accounts were to pass through the hands of William Greenfield, a counsellor-at-law, to be by him accounted for. The building operations resulted successfully and the defendant Goldberg now claims an absolute conveyance and refuses to

account. The complainant seeks an accounting and decree allowing her to redeem. The only defense set up in the answer is that the transaction between Wein, Levy and Goldberg was an absolute sale. However, at the hearing the whole energy of the defense was directed towards showing that the original conveyance from Brooks to Levy and Wein was a fraudulent conveyance in respect to creditors, and that, therefore, the complainant can not recover. Likewise, the defendant's brief rests almost solely on the same defense and practically not at all on the pleaded defense of absolute sale. It might well be said that the defendant abandons the only defense pleaded and sets up the oral defense of fraudulent conveyance as his sole defense.

(2) There is no doubt that the learned Vice-Chancellor came to a correct conclusion on the facts when he held that the conveyances to Goldberg were by way of security and not an absolute conveyance for value. The weight of the evidence is to this effect. (See testimony of complainant, page 24, line 20. Same witness, cross examination, page 52, lines 10 to 20, page 54, lines 8 to 14, lines 20 to 30. See testimony, William Greenfield, page 63, lines 12 to 30, from which it appears that Goldberg who claims to have bought the property outright, received commissions for the sale of completed houses, a fact entirely inconsistent with Goldberg's assertions of absolute ownership. These commissions appear from an accounting made by William Greenfield. See also testimony of same witness, page 66, same accounting, lines 1 to 22 in which charges are made against Brooks, which is also inconsistent with ownership in Goldberg. See page 69, same witness, lines 18 to 33, same accounting, in which Brooks and not Goldberg is charged. See also

testimony, same witness, page 70, lines 10 to 20, page 71, lines 15 to 30, page 72, lines 23 to 33, all showing moneys in the accounting received from Brooks, facts inconsistent with ownership in Goldberg. See testimony same witness, re-direct, page 102, lines 20 to 40, showing that Greenfield, Goldberg's attorney, made no search of the property, a fact inconsistent with a direct purchase by Goldberg. See testimony of Samuel Brooks, page 104, lines 21 to 30, from which it appears the defendant, Goldberg, admitted that he was not the owner of the property. See testimony of Marks Brooks, page 107, line 38 and page 109, lines 20 to 40, confirming the loan agreement. See testimony of Peter Steinsitz, page 114, lines 1 to 20, showing that the parties attempted to come to an agreement and that a release was actually drawn running from Goldberg to Mrs. Brooks. See testimony of Marks Brooks, page 115, lines 32 to 40 and page 117, lines 18 to 30, and page 120, lines 30 to 40, page 121, lines 1 to 20, reiterating the loan agreement. See testimony of Joseph S. Levy, lines 32 to 40, and page 130, lines 1 to 20, showing that there was no actual consideration paid by Goldberg to Levy. Testimony of same witness, page 134, lines 30 to 33, in which Levy confirms the loan agreement. See also testimony of Etta Brooks, page 52, lines 10 to 22, and testimony of same witness, page 54, lines 5 to 30). The only testimony opposed on the question of an equitable mortgage is that of Greenfield and Goldberg. A casual reading of Greenfield's testimony will show that the learned Vice-Chancellor was entirely justified in holding as he did.

"The evidence on the part of the defendant on this point was principally given by Greenfield, the lawyer. It was equivocal, evasive, uncertain and unsatisfactory in the highest

degree, and as compared with the evidence of the complainants failed to impress me."

Further facts confirming the loan and equitable mortgage beyond question are, first, the fact that Greenfield's accounting showed that commissions were paid to the defendant, Goldberg, for the sales of property. See testimony of Greenfield, page 63, lines 10 to 30, and second, the testimony of the material men who had contracts with Goldberg to construct various parts of the buildings, from which it appears that Goldberg repeatedly held up the builders until the builders paid him, Goldberg, a commission, he, Goldberg stating to the contractors, "I am not the owner, Mr. Brooks is the owner. I just lend him the money." See testimony of Harry Rothberg, a contractor, page 186, lines 10 to 20, page 187, lines 18 to 40, page 188, lines 1 to 40. See testimony of Samuel Levine, a contractor, page 191, line 4 to 10, lines 30 to 40. Third, the accounting to Greenfield showing charges to Brooks and moneys received from Brooks and showing commissions paid to Goldberg. The testimony of the builders showing commissions paid to Goldberg with admissions from Goldberg to the builders that he was not the owner of the property, but simply loaned the money are conclusive in fixing the agreement as a loan and not an absolute sale.

(3) The defendant has seen fit to make a point of the apparent fact that it would seem unreasonable that the defendant would enter into the contract imputed to him for a mere sum of \$200. The short answer to that position is that the defendant did not receive \$200, only. The evidence heretofore quoted shows plainly that he got large commissions on the sale of each piece of property and on every contract for building on the several tracts. His profit was a large one.

(4) All through the hearing the defendant attempted to show that the original conveyance from Brooks to Wein and Levy was in fraud to creditors.

It is submitted that the evidence does not bear out the contention even if material. There is nothing whatever in the case to show any agreement on the part of Wein or Levy or Brooks to defraud creditors nor is there any direct evidence to show that Brooks was being hard pressed by his creditors. Indeed, Levy did not know that the conveyance was made from Brooks to him until some weeks after it was done. See testimony of Joseph Levy, page 130, lines 20 to 33. The complainants deny the charge of fraudulent conveyance. See testimony of Celia Brooks, page 43, line 38, as follows:

“Q That he should loan you or Mr. Brooks?

A To me, because Mr. Brooks, he couldn't give Mr. Brooks—

The Court. Never mind the “because.”

Q Because Mr. Brooks' name was no good at that time? A Because he lost his money.

Q Was that the case? A No, that was not the case.

Q His name was not good at that time, was it? A Sure, they could not build on his name.”

Same witness, page 45, line 8.

“Q He put away the lots so the creditors would not take them away?

Mr. Bradner. I object.

A No, sir.”

Testimony of same witness, page 49, lines 30 to 40, from which it appears Brooks was paying his creditors, turning over lots to them.

It is to be observed that in the defendant's brief in quoting cross examination of Marks Brooks, page 118, he leaves out the very pertinent question regarding creditors, as follows:

"Q You had a lot of creditors at that time, didn't you? A No, sir.

Q No, sir?

Mr. Bradner. I object to this going any further.

The Court. Yes; I don't think it makes any difference."

Brooks' further testimony, page 120.

"Q Didn't you then make these transfers of everything you had for the purpose of taking out of the power of your business creditors to take any part of it? A No, sir.

Q You did not? A No, sir."

It will be observed further that the only other testimony attempting to show fraudulent conveyance was the testimony attempted to be adduced from Marks Brooks on re-cross, page 183-184, in which the defendant's attorney attempted to show that Marks Brooks had testified otherwise in supplementary proceedings. A record of the proceedings was not produced, page 185. The record is as follows:

"*Mr. Schotland.* I ask leave to put in the record of that supplementary proceeding examination regarding which this witness has just been asked.

Mr. Bradner. I object to that; I think that ought to be proved by the officer who took it.

The Court. I wouldn't object to opening the proofs to let that in, because if this man has made another statement about the ownership of this property, a statement that neither he nor his wife has any interest in it, or anything to do with it, it might become an important

statement for the purposes of this case. Of course, it depends on what he said. If he said he didn't have anything to do with it, that is one thing; if he said his wife didn't have anything to do with it, that is another matter entirely. I think I will let it in, Mr. Bradner."

It will be observed that although granted permission to put in the testimony, it never was put in evidence; the strong inference being that the supplementary proceeding testimony was not advantageous to the defendant's case. It is submitted that on the testimony in the case, there is nothing to make out the strong case required to show a conveyance in fraud of creditors.

Law.

(1) Even if there had been such a case made out, the case at bar is not such a one as would warrant the application of the rule that property conveyed by a fraudulent grantor to a grantee cannot be recovered by the grantor. The cases quoted at length by the defendant's attorney in his brief are all cases in which the grantor, in a fraudulent conveyance as against creditors, seeks to recover the property from the grantee or one in privity with him. We do not deny that rule. The case at bar, however, is not one in which a fraudulent grantor seeks to recover the property from a fraudulent grantee or his privity. The fraudulent transaction, if such there was (which we deny) was entirely consummated. No creditor objected and none can object; but in the case at bar, the defendant, Goldberg, an absolute third party, having nothing whatever to do with the original transaction, has obtained property as security for a loan and now he refuses to account. The original transaction has nothing whatever to do with the case, and the rule

that a fraudulent grantor can never recover the property from a fraudulent grantee does not apply.

The question at issue in the case at bar has been squarely raised and decided by Chief Justice Beasley in the Court of Errors and Appeals. See *Stillwell vs. Stillwell*, 2 Dickinson, page 275. The husband of the appellant in that case conveyed to her, as a cover against his creditors the lands in dispute. Subsequently the husband incited a creditor to procure a judgment, and the creditor obtained one against him and filed a bill to set aside the conveyance to the wife on the ground of the fraudulent purpose to defraud creditors, and obtained a decree and sale of the premises. By connivance of the husband, no process in this Chancery suit was served on the appellant, the wife. At the sale under the Chancery suit the husband became the purchaser and obtained a Sheriff's deed. The husband died and his heirs claimed the land. The wife filed a bill for relief against the title thus derived from the husband. The opinion proceeds:

"But this ground of decision seems to be not congruous with the substantial issue. Whether the appellant's title was fraudulent or not, was of no consequence in the present case. Admitting, as has been admitted, that the appellant's title, as derived from her husband, was void at the instance of creditors, that fact did not prevent her from setting up in a court of equity, that either her husband or some one else had, by fraud, got the title from her. To hold otherwise would be to lay down the doctrine, that the holder of one of these surreptitious titles was, with respect to it, put out of the protection of the law. There is no such principle of law or equity."

Stillwell vs. Stillwell absolutely governs the case at bar. Other jurisdictions have come to the same conclusion. In *Bigelow on Fraudulent Conveyances* (Knowlton's Revised Ed.) p. 513, it is said:

"The question of the rights of third parties frequently arises in cases where the fraudulent grantee brings an action against one who has converted the property or committed some other tort in connection with it. The tortfeasor cannot plead in defence the fraudulent character of the conveyance under which the plaintiff claims."

In *Bond vs. Endicott*, 149 Mass. 282, 21 N. E. 361. Plaintiff sues defendant for conversion of a horse. Plaintiff bought horse from one Norris. Defendant offered to show sale by Norris to plaintiff was fraudulent as against creditors. It was held:

"The defendant does not stand in the place of a creditor of the estate of Norris, and is not entitled to avoid sales made by him in fraud of his creditors."

In *Saunders vs. Lee*, 7 S. W. R. (N. C.), 590. One W. H. L. conveyed to M. H. E. M. H. E. conveyed to Saunders. Saunders' heirs bring action to recover the land from trespassers. The defendants set up the defense that the deed from W. H. L. to M. H. E. was fraudulent as to creditors. It was held:

"But a more effectual answer is found in the fact that while the first deed is assailed for fraud in its execution, the second is not attacked in any way in the answer, and is vindicated in the replication, and any notice of fraud is expressly denied. There is, therefore, error in the instruction to the jury that the plaintiff was not entitled to recover."

(2) The defense of a fraudulent conveyance can only be raised by a creditor, and none other. The

defendant not being a creditor cannot avail himself of this defense.

See *Evans vs. Herring*, 27 N. J. L., 243.

Garretson vs. Kane, 27 N. J. L., 208.

Stillwell vs. Stillwell, 47 N. J. L., 275.

The law elsewhere is the same.

“Under the Statute 13th Elizabeth and Statutes based there on, a conveyance in fraud of creditors can be assailed only by creditors, and is valid as to all other parties.”

20 C. Y. C., 419.

“Since the Statute 13th Elizabeth and Statutes based thereon avoid conveyances made to hinder, delay or defraud creditors only as against those intended to be hindered, delayed or defrauded, and no others are within its protection. A conveyance made in fraud of creditors is valid as to all other parties and can be attacked and impeached only by creditors or those who hold the rights of creditors.”

See *Moore on Fraudulent Conveyances*, Vol. 1, p. 176, and cases there cited.

“It is not one of the consequences of the fraud upon creditors that third persons can avail themselves of the fact.”

Bigelow, Fraudulent Conveyances (Knowlton's Revised Ed.), p. 513.

See also *Wait, Fraudulent Conveyances*, 3rd Ed., p. 733, Section 402.

(3) The equitable doctrine invoked by the defendant that he who comes into equity must come with clean hands, while broad in its application still has its limitations, and its limitations have been repeatedly recognized. Pomeroy, in his “Equity Jurisprudence,” Section 399, says:

“Broad as the principle is in its operation, it must still be taken with reasonable limita-

tions; it does not apply to every unconscionable act or inequitable conduct on the part of a plaintiff. The maxim, considered as a general rule controlling the administration of equitable relief in particular controversies, is confined to misconduct in regard to, or at all events connected with, the matter in litigation, so that it has in some measure affected the equitable relations subsisting between the two parties, and arising out of the transaction; it does not extend to any misconduct, however, gross, which is unconnected with the matter in litigation, and with which the opposite party has no concern. When a court of equity is appealed to for relief it will not go outside of the subject matter of the controversy, and make its interference to depend upon the character and conduct of the moving party in no way affecting the equitable right which he asserts against the defendant, or the relief which he demands."

See *Woodward vs. Woodward*, 14 Stewart, 224.

Vulcan Detinning Co. vs. American Can Co.,
2 Buch., 287.

The learned Vice-Chancellor, with strong conviction repeatedly ruled on these points.

Q "Did Mr. Wein pay you anything for those lots?

Mr. Bradner. I object.

The Court. What difference does that make? What is the difference what he did?

Mr. Schotland. The complainant here has filed a bill of complaint claiming to have been the owner and to have caused a conveyance to be made to the defendant in trust for her benefit, and I think that I

have a right to go into all the details connected with the alleged ownership of that property.

The Court. It don't make any difference; we cannot try title to that property in this case; somebody had the title, no matter whether it was fraudulent title, good title, or what; somebody had the title, and we start there. Who had the title, Mr. Wein or Mr. Brooks or somebody. That is the place to begin. How he got title I don't care.

Q And your husband did not have any other property left then, did he? A No.

Mr. Bradner. I object.

The Court. Mr. Schotland, it don't make any difference how this title ran. This is not a creditor's bill.

Mr. Schotland. I think it makes all the difference in the world.

The Court. I don't think it makes a bit.

Mr. Schotland. A complainant cannot come into equity except with clean hands.

The Court. That rule don't apply to a case like this. I overrule it."

Page 45.

"Q He put away the lots so the creditors would not take them away?

Mr. Bradner. I object.

A. No, sir.

Mr. Schotland. There is no jury here. I will admit I am not quite prepared on the law in this case because I was called in it suddenly without having time, but I have a very distinct recollection of a decision in this State in the Court of Chancery holding the principle as I have stated it before, and will your Honor permit the

testimony of the witness on the question, and if I do not show your Honor authority for it you certainly will not consider it. There is no jury; I don't see any harm; it might be better to do that than recall the witness.

The Court. I have such a strong feeling about it I don't see how you can succeed in convincing me to the contrary. If property is conveyed by a fraudulent grantor to a grantee the fraudulent grantor can never recover the property from the fraudulent grantee. I think I ought to overrule all that testimony, and I will do so."

It is submitted that the learned Vice-Chancellor was entirely correct. Even if the original transaction were a conveyance in fraud of creditors (which we deny), that transaction was entirely consummated. The grantees, Levy and Wein, had not denied that they held the property for Mrs. Brooks; they had consummated the transaction by deeding it to Goldberg as directed by Mrs. Brooks.

At this stage of the proceeding a new fraud is perpetrated by Goldberg's refusal to account for the proceeds of the property he obtained as security. That is a new and distinct wrong, and the rights of creditors or the right of the original fraudulent grantor, if any, is not concerned. Moreover it does not lie in the mouth of one not a creditor to assail the original transaction.

It is submitted that the learned Vice-Chancellor is entirely correct in holding that the oral defense attempted to be set up is not applicable to the case at bar, even were the oral defense made out, which his Honor, the Vice-Chancellor, found to the contrary.

(4) The oral defense sought to be raised by the defendant to protect him from his own wrong will only be recognized by a Court of Equity in a case clearly within its terms.

In the case of *Pitney vs. Bolton*, 18 Stewart, 639, at page 643, Vice-Chancellor Pitney makes the following remarks concerning the rule:

“As this is, in effect, a charge of positive and actual fraud against Martin, it must be proven, and is not to be lightly inferred. If the transaction be equally capable of two constructions—one innocent and the other unlawful—the familiar rule is that the innocent one will be adopted, especially as against a person who stands on his own confession, without the least merit, and who seeks to make gain by a fraudulent transaction in which he knowingly participated.

“While the rule upon which this defendant basis this part of his defense is a wholesome one, and will be observed in all cases clearly within its terms, yet our courts do not appear to have manifested any disposition to extend it by construction, or to apply it to cases not clearly brought within its reach.

“Perhaps this indisposition is accounted for by the fact that our innate sense of justice is always gratified when we find the rules of equity, as applied to any particular case, squaring themselves with what is honorable and just between man and man.” •

In *Beckett vs. Heston*, 4 Dickinson, 510, Vice-Chancellor Green quoted the same statement at length and came to the conclusion that of two constructions, one lawful and the other unlawful, he would adopt the former.

In *Buttlar vs. Buttlar*, 4 Robbins, 136, Vice-Chancellor Pitney again quotes his opinion in *Pitney vs. Bolton* and holds as follows: THIRD HEAD NOTE—

“The fact that property once held by parties jointly was voluntarily conveyed by one to the other for the purpose of hindering and delaying the grantor’s creditors, and after those creditors were all satisfied was by proper conveyance restored to its original status, does not injuriously affect the right of the original fraudulent grantor to a partition of premises.”

It will be noted also that that the decision of *Pitney vs. Bolton* was affirmed in the Court of Errors and Appeals, 46 N. J. Eq., 610.

It is abundantly clear from the whole testimony in the case that the defendant has entirely failed to make out his pleaded defense of an absolute sale. It is abundantly clear that the transaction was an equitable mortgage and that the defendant seeks to avail himself of the profits of his own wrong by orally pleading a fraudulent conveyance. Beyond question, if the oral defense fails, the defendant should be decreed to account.

It is submitted, therefore, that in the case at bar the court should make every intendment in favor of the complainant and against allowing the defendant on questionable evidence, at most, to invoke the rule against fraudulent conveyances to protect him in his own wrong doing.

Respectfully submitted,

FRANK E. BRADNER AND
WILLIAM L. BRUNYATE,
of Counsel with Complainants-Respondents.



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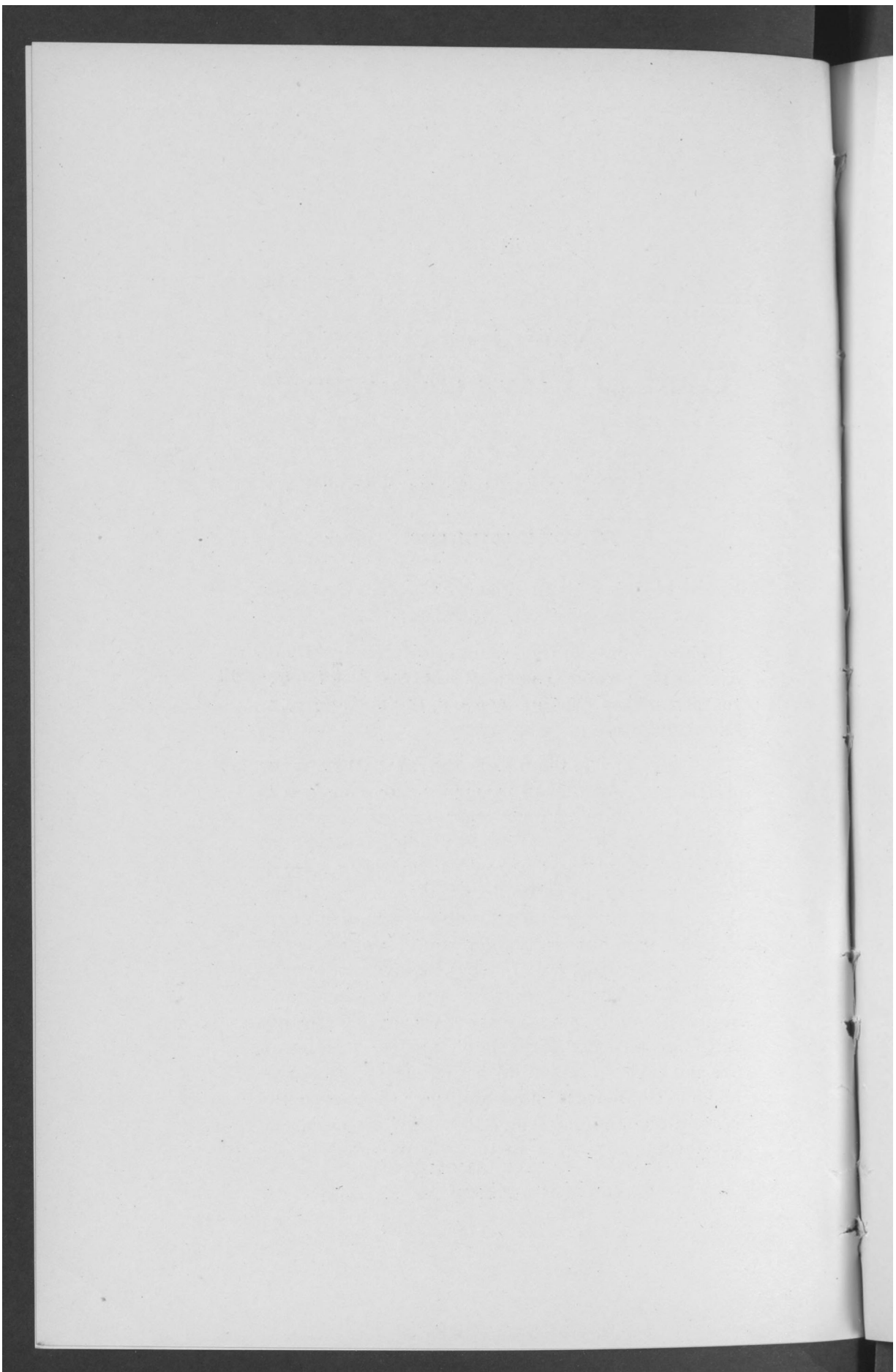
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New Jersey Court of Errors and Appeals

STATE OF NEW JERSEY IN CHANCERY

Bill of Complaint

TO HIS HONOR, EDWIN ROBERT WALKER, CHANCELLOR OF THE STATE OF NEW JERSEY:

Humbly complaining shows unto your Honor your oratrix Celia Brooks and Marks Brooks, her husband of the City of Newark, in the County of Essex and State of New Jersey. 20

1. That in the month of January, 1912, your oratrix was desirous of procuring a loan on certain property situated on the west side of Brookdale Avenue, distant about 144 feet south from South Orange Avenue, and applied to one Elias Goldberg, who was an intimate friend. At that time the said Goldberg stated that he was willing to make the loan but said that he would require security, and that the title to the Brookdale Avenue property should be given to him, and that your oratrix should commence the erection of buildings on the premises, and that all contracts with builders and others that might be necessary, should be taken in Goldberg's name, and the buildings should be sold and the mortgages taken in his name, all for the purpose of securing the payment of the 30 40

Bill of Complaint

loan that Goldberg would make; and that Goldberg should receive the amount of the loan from the proceeds of sale, and that when the loan had been paid, the remaining mortgages and the title to the property not sold, should be conveyed to your oratrix; and that Goldberg should receive a bonus of Two
10 Hundred Dollars.

2. That in accordance with the foregoing, it was mutually agreed between your oratrix and the said Goldberg that he should advance the sum of \$2,000.00, and that building operations should be commenced on said land, and that the contracts should be taken in the name of Goldberg and mortgages also in his name, and that out of the proceeds of sale, he should receive repayment of the loan together with a bonus of \$200.00, and that in the
20 meantime, all the moneys, including the \$2,000.00 aforesaid, and any other moneys that might be raised by mortgage on the properties, or resulting as the proceeds of sale, should be deposited in the hands of William Greenfield, an attorney at law, of the City of Newark, to be paid out by him from time to time, to the different builders, contractors and material men, and that he should hold all the moneys for the purposes aforesaid, to be finally
30 accounted for by the said Greenfield; and that the title to the property should be put in the name of the said Goldberg.

3. That on the twenty-second day of March, in the year 1912, your oratrix and her husband delivered to Mr. Greenfield a deed of conveyance of the premises aforesaid executed by Joseph Levy and Rose Levy, his wife, which deed of conveyance
40 conveyed the title in said lands to Elias Goldberg,

Bill of Complaint

and the said Goldberg deposited with Mr. Greenfield the sum of \$1,800.00, and retained the sum of \$200.00 as a bonus; and that said deed of conveyance was afterwards on the 25th day of March, 1912, recorded in the Essex County Register's office in Book 50 of Deeds on pages 111, etc.

10

4. That there are not being on hand sufficient funds to commence building operations, your oratrix gave to said Greenfield as the attorney of said Goldberg, the sum of \$1,000.00 so that the funds in the hands of said Greenfield was the sum of \$2,800.00, and the work of construction and erecting buildings was begun. Four six-family houses were erected on lots, Numbers 15-17 (19-21) 23 Brookdale Avenue, and several contracts were entered into as follows:

20

Between Elias Goldberg and Abraham Sabine and Samuel Bornstein, for all the carpenter work; a contract between Elias Goldberg and Frank J. Hill Co., for lumber; and also a contract between Elias Goldberg and Morris Rosenkranz and Samuel Levin for all plumbing work; also a contract between Elias Goldberg and Harry Rothberg and David Leib for all the mason work and material; also a contract between said Goldberg and Philip Shill to supply all the frames, sashes and doors; also a contract between said Goldberg and Harry Friedman for all the painting. Also a contract between the said Goldberg and Herman Mass for tile work; all of which said contracts are in writing and are duly recorded in the Clerk's office of the County of Essex and will be produced if necessary.

30

5. That during the course of the construction and erection of the buildings aforesaid, the said 40

Bill of Complaint

Marks Brooks, acting as the agent of your oratrix, procured various loans of money on the buildings, and mortgages were duly made and executed by said Elias Goldberg and his wife, and that the said mortgages are as follows:

- 10 A mortgage to the Avon Building & Loan Association to secure the sum of \$6,000.00, which is recorded in Book M 29 of Mortgages in the Register's office of Essex County on p. 178.

A mortgage to the Home Building & Loan Association to secure the sum of \$6,000.00; and also a mortgage to the Aetna Building & Loan Association to secure the sum of \$6,000.00. Which said mortgages are matters of record, and certified copies of the same will be produced, if necessary.

- 20 That the money received from the various Building and Loan Associations was paid by the solicitors of the said associations to the said William Greenfield, and was disbursed from time to time by him. That the moneys, as your oratrix is informed, were paid out by the associations in the form of checks to the order of Greenfield, which were endorsed over to Goldberg, and that disbursements were made by Greenfield in the form of checks to the order of Goldberg and endorsed
30 over by him to various persons.

6. That some of the premises have been sold, and that your oratrix has ascertained that the following deeds of conveyance have been made by the said Goldberg:

- On March 20, 1912, a deed of conveyance to Andrew Vigiano and Roseno Vigiano, recorded in Book O 50 of Deeds on p. 522 in Essex County
40 Register's office; on March 27, 1912, a deed of con-

Bill of Complaint

veyance was made to Abraham Sabine and Samuel Bornstein, recorded in Book S 40 of Deeds on p. 404 in the same office.

On March 27, 1912, a deed of conveyance was made by said Goldberg to Philip Shill, recorded in Book 50 of Deeds on p. 17 in the same office. 10

On June 15, 1912, a deed of conveyance was made by Goldberg to George Dellon and Louis Leviton, recorded in Book B 51 of Deeds on p. 377 in the same office. On September 10, 1912, a deed of conveyance was made by said Goldberg to Samuel C. Samuels and recorded in Book W 51 of Deeds on p. 64 in the same office; on October 25, 1912, a deed of conveyance was made by said Goldberg to Andrew Vigiano and Roseno Vigiano recorded in Book W 51 of Deeds on p. 353 in the same office. And on January 21, 1913, a deed of conveyance was made by the said Goldberg to Nathan T. Levy and recorded in Book C 52 of Deeds on p. 537 in the same office. 20

And your oratrix charges that all the said deeds of conveyance conveyed portions of the premises aforesaid, which in fact belong to your oratrix.

7. That in making sales of the buildings and and lands, the said Goldberg from time to time took back from the purchasers purchase money 30 mortgages, which appear from the records as follows:

A Mortgage was made by Abraham Sabine and Samuel Bornstein for \$6,000.00 registered in Book X 28 of Mortgages on p. 503 in the same office; a mortgage made by Nathan T. Levy to said Goldberg for the sum of \$690.00 registered in Book O 20 of Mortgages on p. 394 in the same office. A 40

Bill of Complaint

10 mortgage made by Andrew Vigiano and Roseno Vigiano to said Goldberg for \$1,690.00 recorded in Book F 30 of Mortgages on p. 519 in the same office, and which said last mentioned mortgage has been assigned to Morris Lovejoy, and the deed of assignments is recorded in Book 109 of Assignments of Mortgages on p. 339 in the same office; also a mortgage made by the Delvit Construction Company to said Goldberg for the sum of \$1,000.00, which mortgage is registered in Book E 30 of Mortgages on p. 475 in the same office, and which said last mentioned mortgage has been assigned to Morris Lovejoy by deed of assignment recorded in Book 109 of Assignments of Mortgages on p. 341.

20 And your oratrix charges that the said several mortgages were taken by the said Elias Goldberg to hold in trust for your oratrix; and your oratrix is informed and charges it to be true that the two assignments of mortgages made by the said Elias Goldberg, are absolute assignments, and she says that the said assignments were not made with her consent.

8. That there was a lien by way of mortgage on the said premises in the sum of \$4,775.00, which has been cancelled of record, and that a second 30 mortgage of \$1,525.00 was assigned by the holder, thereof, to the said Elias Goldberg on November 1, 1912, by deed of assignment recorded in Book 107 of Assignments of Mortgages on p. 556 in the same office; and that the said Elias Goldberg holds the said last mentioned mortgage in trust for your oratrix.

9. That shortly prior to the month of November, 1912, your oratrix was the owner of some fif- 40

Bill of Complaint

teen lots and parcels of land situated on the westerly side of North Sixth Street in the City of Newark, in the County of Essex and State of New Jersey, and that she also caused the title to said lots and parcels of land to be conveyed to the said Elias Goldberg to be held by him in trust for her, 10
and that the said Goldberg subsequently executed a mortgage covering said land in the sum of \$2,600.00 to Leah J. Abeles, which mortgage was subsequently assigned to one David Goldsmith, and that on or about the fifteenth day of November in the year, 1912, the said Goldberg conveyed the said last mentioned lots and parcels of land and premises to Will C. Headley, and took back a purchase money mortgage in the sum of \$1,727.63, which mortgage is recorded in Book B 30 of Mortgages on p. 595 in the same county, and that the said last mentioned mortgage was subsequently assigned to David Goldsmith by deed recorded in Book 108 of Assignments of Mortgages on p. 259 in the same office as collateral security for the performance of certain conditions and covenants mentioned in the above stated mortgage of \$2,600. That as a part of the consideration for the conveyance to Will C. Headley aforesaid, the said Headley and his wife 20
conveyed to the said Elias Goldberg certain lands and premises situate in the City of East Orange on the westerly side of North Clinton Street, and the deed of conveyance is recorded in Book R 51 of Deeds on p. 590 in the same office. And your oratrix charges that the said Goldberg holds the said last mentioned deed of conveyance and the title to said land on North Clinton Street in trust for your oratrix, and that she has been receiving the rents, 40
30

Bill of Complaint

issues and profits since November 8, 1912, of said lands, and that the said Goldberg refuses to convey the title of said lands to her.

10. That in addition to the said sum of \$2,800.00 invested in the construction and erection of buildings aforesaid, your oratrix delivered to the said Goldberg lumber of the value of \$2,800.00, which was used in the construction and erection of the said buildings, and that a portion of this lumber valued at \$101.15, was sold to the Delvit Construction Company by the said Goldberg.

11. That your oratrix has been informed and believes it to be true, and charges that the various contractors and materialmen, have paid commissions or a bonus to the said Goldberg for awarding the contracts to them, or for purchasing material from them, and that these commissions aggregate about the sum of \$500.00.

12. That the said Elias Goldberg refuses to convey any of the land aforesaid to your oratrix, although she has demanded conveyance of the same, or such of the lands and premises that have not been actually sold to bona fide purchasers, and that he has refused to assign to her any of the mortgages aforesaid held by him, and has refused to convey to her as aforesaid the land on North Clinton Street aforesaid and has refused to account for the moneys aforesaid deposited in the hands of said William Greenfield, or to account for the lumber furnished by your oratrix aforesaid, or to show what disposition has been made of the moneys, or to account for and pay over to your oratrix the proceeds of sale of the lands and premises.

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13. That your oratrix has been unable to ascertain from the different Building and Loan Associations aforesaid, any statement of the moneys advanced by them to the said Elias Goldberg, she being informed by the representatives of said Building and Loan Associations that they do not know her, and cannot give her any statements, and the said Elias Goldberg refuses to make any statements, or to account for the moneys received from the Building and Loan Associations aforesaid. 10

14. Your oratrix charges that she was the actual owner of all the lands and premises aforesaid, and that every deed of conveyance that has been made of any portion of the said lands and premises to a bona fide purchaser, was made for the benefit of your oratrix, and every mortgage taken by the said Goldberg was taken for the benefit of your oratrix, and that the said Goldberg holds the said mortgages in trust for your oratrix, and holds the proceeds of the sales of the lands in trust for your oratrix, and holds the title now to any of the remaining lands in trust for your oratrix, and that he refuses to convey the same to her, and refuses to pay over to her the proceeds of sale, and refuses to deliver to her any of the mortgages aforesaid. 20

All which actings and doings of the said defendant, Elias Goldberg, in the premises, are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your oratrix in the premises. 30

In consideration whereof and for as much as your oratrix is without adequate remedy at law; to the end therefore, that the said defendant Elias Goldberg may full, true and perfect answer and 40

Bill of Complaint

discovery make without oath, the oath of said defendant being hereby expressly waived to all and singular the premises, and that as fully as though the same were herein again repeated, and he particularly interrogated thereunto paragraph by paragraph. And your oratrix prays that an account may be taken of all sums of money received by or come to the hands of the said defendant Elias Goldberg as such agent of your oratrix as aforesaid for or on account, or for the use of your oratrix and of the application thereof; and of all dealings and transactions of the said defendant as the agent of your oratrix, and that the said defendant may be decreed to pay to your oratrix what on taking such accounts shall be found due from the defendant to your oratrix; and to deliver up to your oratrix all documents in the possession or power of said defendant belonging to your oratrix; and to assign to your oratrix all mortgages held by him as aforesaid; and to convey to your oratrix the title to any of the remaining lands and premises as aforesaid.

And your oratrix prays that she may have such other and further relief in the premises as may be agreeable to equity, and that she may recover from the said defendant her costs of this suit.

May it please your Honor the premises considered, to grant unto your oratrix a writ of subpoena to be issued out of and under the seal of this Honorable Court, and to be directed to the said defendant Elias Goldberg, and commanding him under a certain penalty therein to be expressed, and on a certain day to be and appear before your Honor in this Honorable Court then and there to

Answer

answer all and singular the premises, and to stand to, abide by and perform such order and decree as may be agreeable to equity.

And your oratrix as in duty bound will ever pray, etc.

WILLIAM L. BRUNYATE, 10
PETER STEINSITZ,
Solicitor for Complainant.

FRANK E. BRADNEN,
Of Counsel with Complainant.

Answer

IN CHANCERY OF NEW JERSEY 20.

Between	}	On Bill for Relief, &c.
CELIA BROOKS, <i>et al.</i> ,		
Complainants,		
And		
ELIAS GOLDBERG,	Defendant.	

The Answer of Elias Goldberg, defendant, to 30
the Bill of Complaint of Celia Brooks and Marks
Brooks, her husband, Complainants, respectfully
shows:

1. That defendant denies that in the month of
January, 1912, or at any time prior thereto, or at
any time prior thereafter, the said Celia Brooks
was the owner of any land located on Brookdale 40

Answer

Avenue, about one hundred and forty-four feet South from South Orange Avenue, in the City of Newark, in the County of Essex and State of New Jersey, or that the said Celia Brooks applied to this defendant for a loan or that this defendant offered to grant any loan to the said Celia Brooks for any bonus or otherwise, or asked for any security as set forth in Paragraph 1 of the Bill of Complaint, but on the contrary, this defendant avers and in fact says that the said Marks Brooks one of the Complainants herein, obtained title to the said tract of land from the Roosevelt Realty Company, a corporation, on or about December 6, 1911, and that the said Marks Brooks, joined by the said Celia Brooks his wife, did on or about December 12, 1911, for a valuable consideration, convey the said tract of land to one, Joseph Levy, but the said Celia Brooks was at no time the owner of the said tract of land as mentioned and specified in Paragraph 1 of the Bill of Complaint. This defendant further denies the allegation that this defendant offered to grant a loan to the said Complainant, Celia Brooks, or that the title to the said tract of land was to be put in this defendant's name in trust or for the purpose of securing the payment of any loan, or as security for the payment of any sum of money, or that the defendant was to receive or did receive any bonus as alleged in Paragraph 1 of the Bill of Complaint, but on the contrary, this defendant avers and in fact says that he purchased the said tract of land from Joseph Levy and Rose Levy, his wife, for a valuable consideration, which tract of land was conveyed to this defendant by deed of

Answer

conveyance from the said Joseph Levy and Rose Levy, his wife, bearing date March 1, 1912, which said deed was Recorded in the Register's Office of Essex County in Book V 50 of Deeds for said County, on pages 111 etc., and for more certainty, this defendant will produce certified copies of the foregoing deeds of conveyances, if this Honorable Court shall deem it necessary so to do. 10

2. This defendant denies that he had mutually agreed or in any other way manner or form agreed with the said Celia Brooks to advance the sum of Two Thousand Dollars for the building operation to be commenced on said tract of land, or that the contracts were to be taken in this defendant's name for the use and benefit of the said Celia Brooks, and that out of the proceeds of the sale of the said land and premises this defendant should receive payment of the alleged loan together with the bonus of Two Hundred Dollars, as set forth in Paragraph 2 of the Bill of Complaint, but on the contrary this defendant avers and in fact says, that he has made no arrangements with the said Celia Brooks, whatsoever, but that this defendant purchased the said tract of land from the said Joseph Levy and wife for a bona fide and valuable consideration, and commenced operation on the buildings on the said tract of land and obtained the loans from the different Building and Loan Associations for his own use and benefit; that this defendant did sign and execute the contracts for the operation of the said buildings as mentioned and specified in the Bill of Complaint, but this defendant avers and in fact says, that this was all done for the sole benefit and profit of this 40 30

Answer

defendant and under no arrangements of any kind made with the said Celia Brooks or with Marks Brooks as her agent; that this defendant did engage the said Marks Brooks, husband of the said Celia Brooks, in the capacity of supervisor for this defendant in the erection and construction of the said buildings, for which the said Marks Brooks was to receive and did receive full compensation. That this defendant had no business transactions whatsoever with the said Celia Brooks, and if the said Celia Brooks and Marks Brooks, the Complainants herein, conveyed the said tract of land to the said Joseph Levy with any secret arrangements, which was to be held in trust by the said Joseph Levy for the said Celia Brooks or Marks Brooks, her husband, it was done without the knowledge of this defendant. But the said deed of conveyance from Marks Brooks and Celia Brooks, his wife, to the said Joseph Levy as appears of record, is an absolute deed and in fee simple; that at the time this defendant purchased the property from the said Joseph Levy and Rose Levy, his wife, as aforesaid, this defendant had no reason to suspect that any such secret arrangements existed between the said Celia Brooks and Marks Brooks, her husband, and Joseph Levy.

3. This defendant denies the allegation set forth in Paragraph 3 of the Bill of Complaint, that the said Celia Brooks or Marks Brooks had delivered to Mr. Greenfield a deed of conveyance of the premises aforesaid, executed by the said Joseph Levy and Rose Levy, his wife, on or about March 27, 1912, and the property to be held in trust for the said Celia Brooks, but on the con-

Answer

trary this defendant avers and in fact says, that he has received the deed from the said Joseph Levy and wife which deed of conveyance was executed in Mr. Greenfield's office and was signed in the presence of this defendant and the acknowledgment duly taken by the said William Greenfield, A Master in Chancery of the State of New Jersey, and for which this defendant paid a bona fide and valuable consideration to the said Joseph Levy. And this defendant denies that he was to hold the said property in trust for the said Celia Brooks or that he made any such arrangements with the said Celia Brooks or Marks Brooks; that this defendant had no knowledge of any secret arrangements made between the said Celia Brooks and Marks Brooks, her husband, and the said Joseph Levy.

4. This defendant denies the allegation set forth in Paragraph 4 of the Bill of Complaint wherein it sets forth that the sum of Twenty-eight Hundred Dollars was deposited with Mr. Greenfield for the benefit or in trust for the said Celia Brooks, but on the contrary this defendant avers and in fact says, that he did deposit divers sums of money with Mr. Greenfield for the purpose of paying this defendant's contractors and materialmen, all of which was done for the absolute benefit of this defendant, and that the said William Greenfield has strictly accounted to this defendant for all the moneys received and expended by him. This defendant admits that four six-family houses were erected on lots Nos. 15, 17, 19, 21 and 23 Brookdale Avenue, Newark, New Jersey and that several contracts were entered into

Answer

by this defendant as mentioned and specified in the Bill of Complaint, but this defendant avers and says, that all of the contracts were entered into by this defendant for his own use and benefit, and that the said Marks Brooks was only employed by this defendant as an employee in the erection and construction of the said buildings, and received full compensation therefor.

5. This defendant denies the allegation set forth in Paragraph 5 of the Bill of Complaint that the said Marks Brooks acted as agent for Celia Brooks or for this defendant, in procuring the loans on the said buildings from the different Building and Loan Associations, but on the contrary this defendant avers and in fact says that this defendant procured the loans from the Avon Building and Loan Association for \$6000 the Home Building and Loan Association for \$6000 and from the Aetna Building and Loan Association for \$6000, this defendant having signed and executed all the bonds and mortgages to the said Associations, as this defendant was the sole and absolute owner of the said land and premises, having paid the full value for the same and obtained a deed of conveyance for a valuable consideration, from the said Joseph Levy and Rose Levy, his wife; and that this defendant paid the liens and assessments which were on the said tract of land at the time it was conveyed to this defendant by the said Joseph Levy, which this defendant was obliged to pay before he could obtain the loans from the different Building and Loan Associations as aforesaid.

This defendant denies that the moneys received from the various Building and Loan Associations

Answer

were paid by the Solicitors to William Greenfield and was disbursed from time to time by him, but on the contrary this defendant avers and in fact says that he received the checks from the solicitors from the different Associations and endorsed them and turned them over to the said William Greenfield, which was done for the use and benefit of this defendant, and for no other person or persons. 10

6. This defendant denies that the premises which were conveyed by this defendant to Andrew Vigiano and Rosina Vigiano, his wife, to Abraham Sobine and Samuel Bornstein, to Phillip Schill, to George Dellon and Louis Leviton and to Samuel C. Samuels, as set forth in Paragraph 6 of the Bill of Complaint, were the land and premises of the said Celia Brooks or held in trust for her; that this defendant did take the various mortgages alleged in Paragraph 6 of the Bill of Complaint, to secure part of the consideration in the sale of the respective premises, all of which property was the sole property of this defendant by virtue of the deed of conveyance made and executed by the said Joseph Levy and Rose Levy, his wife, for a valuable consideration, but this defendant denies that it was done for the interest, benefit or in trust for the said Celia Brooks, the Complainant herein. 20 30

7. This defendant admits the taking of the mortgages from Andrew Vigiano and wife, from Nathan T. Levy and from the Delvit Construction Company, as mentioned and specified in Paragraph 7 of the Bill of Complaint, and that the said mortgages given to this defendant by Andrew 40

Answer

Vigiano and the Delvit Construction Company were duly assigned to one, Morris Lovejoy, in accordance with the direction and request of the said Marks Brooks, and this defendant was informed by the said Marks Brooks that the said Morris Lovejoy was to hold the said mortgages in trust for the use and benefit of the said Marks Brooks, which said two mortgages were accepted by the said Marks Brooks as compensation for his services rendered for this defendant as supervisor in the erection and construction of the said buildings, and in payment of some lumber purchased by this defendant from the said Marks Brooks, but this defendant had no business arrangements or transactions of any kind, with the said Celia Brooks or with Marks Brooks, as agent of the said Celia Brooks.

8. This defendant admits that there was a lien by way of mortgage on the said premises located on Brookdale Avenue, Newark, New Jersey, in the sum of \$4775 which has been cancelled of record, and a second mortgage of \$1525 which had been assigned by the holder thereof to this defendant as set forth in Paragraph 8 of the Bill of Complaint, all of which this defendant assumed and agreed to pay when he had taken the title to the said premises from the said Joseph Levy and Rose Levy, his wife, which said first mortgage of \$4775 this defendant paid and the same was therefore cancelled of record, and the second mortgage was assigned to this defendant for his own use and benefit, but not in trust for the said Celia Brooks, as mentioned and specified in Paragraph 8 of the Bill of Complaint.

Answer

9. This defendant denies the allegation set forth in Paragraph 9 of this Complaint, that the said Celia Brooks was the owner of some fifteen lots or parcels of land, situate on the Westerly side of North Sixth Street, Newark, New Jersey, and that the conveyance of the same to this defendant was made in trust for the said Celia Brooks, but on the contrary this defendant avers and in fact says that he has purchased the said tract of land for a valuable consideration from Joseph Wien and Bessie Wien, his wife; that at no time did this defendant have any knowledge or reason to believe or suspect that the said tract of land was held by the said Joseph Wien in trust or for the use, benefit and advantage of the said Celia Brooks, wife of the said Marks Brooks as will more fully and at large appear by the records, and this defendant is ready to produce certified copies of the deeds of conveyances from the said Marks Brooks to the said Joseph Wien and from the said Joseph Wien and wife to this defendant.

10. This defendant denies that the said Celia Brooks or Marks Brooks, as her agent, delivered to this defendant, lumber to the value of Twenty-eight Hundred Dollars or for any other value whatsoever, but on the contrary this defendant avers and in fact says that he purchased some lumber from the said Marks Brooks who was then in possession of said lumber, and this defendant paid a valuable consideration therefore to the said Marks Brooks but this defendant has made no arrangements or had any business dealings with the said Celia Brooks whatsoever.

Answer

11. This defendant denies each and every allegation set forth in Paragraph 11 of this Complaint, that this defendant received or caused to be received any bonus or commissions from the said contractors; but on the contrary this defendant avers and in fact says, that he did receive rebates for moneys advanced to the said contractors before their payments became due under their contracts and this defendant denies that he is obliged to give an account of the moneys paid to the said contractors to the said Celia Brooks or to any other person or persons, in the erection of the said buildings, or in the sale of the said land and premises aforesaid, as this was the sole property of this defendant and was not held in trust for the said Celia Brooks or Marks Brooks, her husband.

12. This defendant denies that the said property on North Clinton Street, East Orange, New Jersey, is held by this defendant in trust for the said Celia Brooks, but on the contrary this defendant avers and in fact says that he obtained title to the said property from Will C. Headley and wife, as part consideration for a conveyance of fifteen lots located on North Sixth Street, Newark, New Jersey, which this defendant purchased for a valuable consideration from Joseph Wien and Bessie Wien, his wife; that this defendant has permitted and allowed the said Marks Brooks to collect the rents of the said premises for which he was to account to this defendant, but which he has neglected to do, and since the First Day of October, 1913, this defendant has collected the rents, issues and profits thereof, himself.

Answer

13. This defendant does not deny nor admit the allegation set forth in Paragraph 13 of the Bill of Complaint, that the said Celia Brooks has been unable to ascertain from the different Building and Loan Associations as aforesaid, any statement of the moneys advanced on the said loans, but this defendant avers that the loans were obtained by this defendant for his own use and benefit, and denies that he is obliged to account to the said Celia Brooks or to any other person or persons for the moneys received by him as aforesaid. 10

14. This defendant denies the allegation set forth in Paragraph 14 of the Bill of Complaint, that the said Celia Brooks was the owner of the premises or that the same was held in trust for her use and benefit, as the deeds on record are absolute deeds and do not mention any trust whatsoever, and this defendant is ready to produce certified copies thereof, if this Court shall deem it necessary so to do and if there were any secret arrangements had between the said Celia Brooks and Marks Brooks and the said Joseph Levy and Joseph Wien, this defendant had no knowledge thereof; that this defendant paid a valuable consideration for the said land and premises and purchased the same for his own use, benefit and advantage. 20 30

Wherefore this defendant prays that the aforesaid Bill of Complaint be dismissed with costs and counsel fees to be taxed against the said Complainants.

MATHEW J. READY,
Solicitor of Defendant. 40

Testimony

IN CHANCERY OF NEW JERSEY

January 20, 1915.

10	Between CELIA BROOKS, <i>et al</i> , Complainants, and ELIAS GOLDBERG, Defendant.
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20 Transcript of shorthand notes of testimony
 taken in the above entitled cause on January 20,
 1915, at Chancery Chambers, Newark, New Jer-
 sey, before Hon. James E. Howell, Vice Chancel-
 lor.

Appearances:

Mr. Peter Steinsitz, Mr. W. L. Brunyate and
 Mr. Frank E. Bradner for the complain-
 ants.

Mr. Mathew J. Ready and Mr. Philip J. Schot-
 land for the defendant.

30 CELIA BROOKS, sworn:

Direct-examination by Mr. Brunyate:

Q. Mrs. Brooks, you are the complainant in this
 case? A. Yes, sir.

Q. Do you know Mr. Elias Goldberg, the de-
 fendant? A. Yes, sir.

40 Q. How long have you known him? A. Well,
 I know him for the last eight years, I think.

Celia Brooks—Direct

Q. What is Mr. Goldberg's business? A. He is a broker, an agent, I don't know what you call it, he is an agent, you know, for houses, he sells houses.

Q. A real estate broker and agent? A. Yes, he used to sell for us lots of property, too. 10

Q. And what was the business of yourself and husband? A. Mr. Brooks was in the real estate, and then he had a big lumber mill.

Q. In the real estate business and lumber business? A. And lumber business, yes.

Q. When did you first meet Mr. Goldberg in the transactions in which this case grows out of? A. I did not met him at all; it was on Friday about three years ago, well, I can't exactly you know say the year, and I will just say it plain. So Mr. 20 Brooks lost all his money, and he was giving up the office, and I was sitting in the office, so Mr. Goldberg came in.

Q. Can you fix that time any more definitely than three years ago? A. Well, that was, I think, after Christmas.

Q. After Christmas, 1912? A. Yes, about three years.

Q. In January? A. Well, it was, yes, in that month; I cannot exactly tell you the months, you 30 know; so Mr. Goldberg came in the office, and we was all packed up in the office to give up because Mr. Brooks lost all his money; so he says to me—

Q. Mr. Goldberg says to you? A. Yes; he came in the office, he says, "Mrs. Brooks, where is Mr. Brooks"? I says, "He ain't here yet"; he said, "What are you going to do now"? I said, "I don't know," I say, "You know he lost all his 40

Celia Brooks—Direct

money," he knows all about it, so I says, "He has no money and I don't know what he is going to do; I think he feels like going away from here because he lost all his courage and he don't know what to do"; he says, "Mrs. Brooks"—

10 Q. Mr. Goldberg said to you? A. Mr. Goldberg said, "Mrs. Brooks, why Mr. Brooks have to go away from here"? He says, "He has some land and he has some lumber, why he don't go and build on it"? I says, "The land don't belong to him, the land belongs, he put it away for a man for me"; I said, "In Brooklyn"; and so he says, "Why he don't go to build"? I said, "I don't know, he has no money"; so he says, "Mrs. Brooks"—

20 Q. Mr. Goldberg said to you? A. Yes; "I will invest two thousand dollars"; he says; "And Mr. Brooks shall come and start to build"; and he says to me, "You be yourself in it, you go yourself to the building, and God will help you, might you come up in the world, today is Friday, remember, Mrs. Brooks, do it." I said, "I don't know; I will try to talk to my husband if he wants to do it"; so we was talking, and my daughter was there yet, too, and he said, "I bor-

30 rowed to Mr. Brooks a couple of times money, and I will borrow you the money, and you will come up in the world; try and do it."

40 Mr. Schotland: I would like to inquire if the complainants expect to follow this oral testimony up with a written agreement and make the claim that this was simply preliminary. If it is not I want to object to it.

Celia Brooks—Direct

The Court: I suppose the object is to show either a resulting trust or a constructive trust, depending not upon a written agreement, but upon oral statements.

Mr. Bradner: And actual relations.

The Court: Amounting to a fraud. 10

Mr. Bradner: That is it exactly; that is what I gather from the bill; oral testimony is admissible for that purpose.

Mr. Schotland: As I understand the bill, there is no resulting trust or constructive trust; it is simply an actual agreement that is alleged, a positive agreement that a conveyance was made to the defendant in trust, and the bill asks him to account for that trust. My point is that if that is 20 the case, under the statute of frauds it would have to be in writing.

The Court: The statute of frauds has not been pleaded.

Mr. Schotland: I am very well aware of that fact—I got into the case last night; but I submit, your Honor, please, that the statute of frauds need not necessarily be pleaded in the answer any more than it need be in the bill of complaint, or in a 30 declaration at law, because the statute of frauds is a matter of evidence.

The Court: Well, whether this be a matter of resulting trust or constructive trust, or a matter of accounting, it seems to me that it does not depend upon a written agreement; under the statute of frauds it is entirely distinguishable from the ordi- 40

Celia Brooks—Direct

nary trusts that are provided for in the statute of frauds. Your objection is on the record.

Q. Was that all of the conversation you had with Mr. Goldberg at that time? A. With Mr. Goldberg, and you know he feel so sorry for us—
10 The Court: No, no. You have answered the question.

Q. Was that all the conversation you had with Mr. Goldberg at that time? A. With Mr. Goldberg in the office, yes; that was all, we were talking about the money, to give money that Mr. Brooks should go and build.

Q. Did you have any subsequent conversation with Mr. Goldberg? A. What do you mean?

20 Q. Any conversation after that? A. Oh, my, all the time, yes, all the time.

Q. How long after that? A. Well, when Mr. Brooks build and everything he went over to Mr. Greenfield and made all the proposition.

Q. Did you have any conversation with Mr. Goldberg after the conversation you have just given? A. Yes, sir.

Q. When? A. Well, that was in a couple of days after, when I told Mr. Brooks, you know—

30 The Court: You have answered the question, "A couple of days after." Confine yourself to answering questions and do not volunteer a whole lot of stuff that may not be of any importance whatever.

Q. Where was that conversation had? A. In the office, all in the office.

Q. What was that conversation about? A.
40 About the building.

Celia Brooks—Direct

Q. What did he say? A. He shall give two thousand dollars and Mr. Brooks should go and build, and then that is all he said, he didn't say anything else.

Q. He said that he would loan \$2,000? A. \$2,000.

10

Mr. Schotland: I object.

The Court: Don't lead the witness.

A. He shall get \$2,000 for it.

The Court: Strike out that question. I don't object to leading questions so long as they are merely introductory, or do not pertain to the point of the case, but when you come to the point of the case witnesses must not be led; and I can say further to you, that on important points in the case 20 where witnesses are led I give very little attention to the testimony of the witness, because you never can tell with that kind of evidence whether it is correct or not.

Q. Did you have any other conversation with Mr. Goldberg? A. He was talking, he was going to give \$2,000, and I shall tell my husband, and he wants \$200, and I said, "All right, I am going to tell my husband"; so when I came home I told my husband. 30

Q. Is that all the conversation you had at that time? A. At that time.

Q. Did you have any other conversations with Mr. Goldberg later? A. Later, oh, sure.

Q. How much later? A. Well, we started in—when I told Mr. Brooks, then Mr. Goldberg met my husband in the street and he told—

By Mr. Schotland: Q. Were you there? A. No 40 I was not.

Celia Brooks—Direct

The Court: You only tell conversations you heard from Mr. Goldberg yourself.

Q. I am asking whether or not you had a third conversation with Mr. Goldberg?

The Court: You personally.

10 A. That is what we were talking, about the property, and he will borrow \$2,000.

The Court: Why can't you answer the question.

Q. Did you have a third conversation with Mr. Goldberg?

The Court: Yes or no.

A. I only talked, what I was talking, we was talking about \$2,000 he shall give, that is all.

Q. When did you next meet Mr. Goldberg? A.

20 Well, in a couple of days after.

Q. Where did you meet him then? A. In the street we met him.

Q. Did you talk about this transaction then? A. All the time, yes.

Q. What was said about this transaction at that time? A. It was said we were going to go up to Mr. Greenfield's, he was our lawyer and would put away the money, and you know Mr. Goldberg he wants a thousand dollars that we shall put it in, because he shall take on his name the property and take the lease and everything, that he shall get lumber and all the materials and everything like that.

Q. Did he say that at that conversation? A. What?

By the Court: Q. What you are just telling?

A. No, Mr. Greenfield said.

40 By Mr. Schotland: Q. Were you there when

Celia Brooks—Direct

Mr. Greenfield said it? A. No, when they went up to the office.

The Court: This witness ought to be instructed as to her duties; she don't understand.

Q. Now, you met Mr. Goldberg on the street 10
the third time, you say? A. Yes, sir.

Q. Now, when you met him on the street did you have some conversation with him? A. We was talking.

Q. Just answer the question yes or no. A. Yes, we were talking.

Q. Was there anybody else present besides you and Mr. Goldberg? A. Mr. Brooks was and I and Mr. Goldberg, that is all.

Q. What did Mr. Goldberg say? A. That he 20
advances \$2,000, that we shall give him \$200 for it, and I got the land and the lumber there, we have some lumber left.

Q. Just tell what Mr. Goldberg said? A. That is what he said, he would give us the \$2,000, that is all he said.

Q. When was the next time you saw Mr. Goldberg, if at all? A. I saw him, we saw him nearly every day, we used to see him every day.

Q. When you saw him thereafter was there 30
any conversation about this transaction between you and Mr. Goldberg? A. All the time.

Q. When was the next time, do you recall? A. It was in a couple of days, in a week, like that.

Q. Do you recall what Mr. Goldberg said? A. Yes.

Q. Was there anyone else present? A. No, there was nobody, it was just in the street. 40

Celia Brooks—Direct

Q. Just you and Mr. Goldberg? A. Yes, sir.

Q. What was said at that time? A. Well, it was said, we always used to talk about the buildings, and that is all we were talking; we didn't talk no other way, only about buildings and contracts and what we going to do, and that is all we said, no other thing.

The Court: Answer the question and stop; don't run on this way.

Q. Did you go down to Mr. Greenfield's office? A. Many times, yes.

Q. When was the first time? A. First time Mr. Brooks went down.

Q. When was the first time that you went down to Mr. Greenfield's office in relation to this matter? A. Well, I went down in about a week, I think, after.

Q. A week after what? A. After that thing was—in the same month.

Q. You went to Mr. Greenfield's office a week after what? A. After this happened, that same month.

Q. After your first conversation with Mr. Goldberg? A. Yes, sure.

Q. Who did you see at Mr. Greenfield's office? A. Mr. Greenfield, he was our lawyer, he was our lawyer for four years.

Q. Was there anybody else at Mr. Greenfield's office? A. No; once I went up with Mr. Brooks, I didn't went down myself.

Q. You went with Mr. Brooks? A. Yes.

Q. Was Mr. Goldberg there? A. No, not when I went up; once Mr. Brooks went up himself and asked him about it, and then I went.

Celia Brooks—Direct

Q. Now, what was said at the meeting between Mr. Brooks, yourself and Mr. Greenfield in relation to this matter?

Mr. Schotland: I object. She has already testified Mr. Goldberg was not there.

Question withdrawn.

Q. Did you ever see Mr. Goldberg at Mr. Greenfield's office? A. Oh, yes, lots of times; yes, all the time. 10

Q. When was the first time you saw Mr. Goldberg at Mr. Greenfield's office? A. Goldberg in Mr. Greenfield's office?

Q. Yes. A. I think that was a month after that.

Q. A month after you first went to Mr. Greenfield's office? A. Yes. 20

Q. Who else was at Mr. Greenfield's office at that time with Mr. Goldberg? A. With Mr. Goldberg?

Q. Yes. A. Well, it was Mr. Greenfield and Mr. Goldberg and Mr. Brooks, we all went.

Q. And yourself? A. And myself, sure.

Q. What took place at that meeting? A. Well, we was talking how we shall arrange the money, you know; so Mr. Goldberg wants we shall put away a thousand dollars, and Mr. Brooks didn't 30 have no money, and Mr. Greenfield wants that really we shall get along in the world; he said, "Listen, Mr. Brooks, if you be such a nice man," he says, "If you don't have no money and you won't pay me my money what you owed me then I am going to try for you the best I can do this way; you shall take the \$2,000 from Goldberg and I keep the books for you and I will take an account 40

Celia Brooks—Direct

for you and all for the lots I will take out a deed in Mrs. Brooks' name." so I said to him, "Mr. Greenfield, you my lawyer, I don't like," you know that was before, I said, "You know I don't trust so much to Mr. Goldberg as I trust to you because when I was sick I went"—

10 The Court: Never mind that.

A. (Continuing.) "I went to you and trust you all my lots."

Q. Never mind that. All we want to know is what transpired at that time. A. So I said, "Mr. Greenfield," he said to me, he said, "I am going to take care of all the money to that transaction that will be made and I will pay my own checks to the people, and I take the loan; everything shall go in Goldberg's name and I will take a deed in trust for Mrs. Goldberg and Mr. Goldberg for you and leave it to me; Mr. Brooks and Mrs. Brooks I will do everything what is right; don't be frightened then." That is what Mr. Greenfield himself said.

Q. Did Mr. Goldberg say anything at that meeting? A. He was satisfied.

By the Court: Q. What did he say? A. He was satisfied.

30 By the Court: Q. Did he say anything? A. No he didn't say anything; he said, "I am satisfied, everything shall be by Greenfield, everything shall be by Mr. Greenfield"; he says, that is what Mr. Goldberg said.

Q. Don't answer so much. Just confine yourself to one question. Were you ever at Mr. Greenfield's office after that? A. Lots of times.

40 Q. When was the next time after that? A. It

Celia Brooks—Direct

was in two weeks or three weeks; that transaction took about five or six months; I didn't went so often.

Q. Was Mr. Goldberg present in Mr. Greenfield's office the second time you went there? A. No, I don't think so, he was—really I can't remember, it is three years; I can't remember; I used to go to Greenfield all the time. 10

Q. Were you ever in Mr. Greenfield's office after the first time when Mr. Goldberg was there?

A. Yes, sure, lots of times, yes.

Q. When was the second time you were at Mr. Greenfield's office with Mr. Goldberg? A. Well, might it was in week after; I used to go all the time to Mr. Greenfield's.

Q. Where was the location of the property? 20
A. In Brookdale Avenue.

Q. Can you locate it any more definitely than that? Were there any houses built on the property? A. No; it was only lots.

Q. Then after these several conferences were there any houses built on the properties? A. On the lots?

Q. Yes. A. This what Mr. Brooks built, Mr. Brooks made the contract, and Mr. Brooks had some lumber what he invest there, everything 30
Mr. Brooks.

Q. No. Were there any houses built on these properties? After this arrangement was made were there any buildings erected on these properties? A. Goldberg?

Q. Yes, or anybody else? A. No, we built, Mr. Brooks builded, but Mr. Goldberg put up the money.

Celia Brooks—Direct

Q. After the money was put up by Mr. Goldberg? A. Sure it was built.

Q. Who did the work? A. Mr. Brooks.

Q. How many houses were built? A. Four.

10 Q. Was there anybody looking after your interests in those houses? A. What?

Q. Was there anyone looking after your interests in those houses? A. Mr. Brooks.

Q. Mr. Brooks was? A. Yes, sir.

Q. Were there any other properties other than this Brookdale property? A. Yes, there were thirty lots, I think, he had with the apartment.

Q. Where were they? A. They were on Sixth Street, I think.

Q. Newark? A. Sixth Street, Newark, yes.

20 Mr. Schotland: I didn't catch what the witness said.

A. He had it before and then he put it in trust for me.

Q. How many lots were there? A. There was about thirty lots with the apartment.

30 Q. What became of those lots? A. Those lots he had with the apartment, Mr. Brooks, and his partner owed some money, so they paid off the money, and Mr. Greenfield he separates them from the lots, Mr. Greenfield himself; so the mortgagee called in the mortgages, Goldstein, he called in the mortgage.

By Mr. Schotland: Q. Who told you all these things? A. Nobody, myself; nobody tells me anything; I know everything; Mr. Greenfield could tell you that; I know it, and it was all for me.

40 Q. Do you know what became of those lots? A. Yes; so they paid off the mortgage—

Celia Brooks—Direct

The Court: You say yes, and you have answered the question.

Q. What became of those lots? A. That is what I say.

Q. What was done with the lots? A. That is what it was done, put away for me in trust. 10

Q. How were they put away, where? A. By Mr. Wien, in Brooklyn.

Q. They were transferred to Mr. Wien in Brooklyn? A. Yes, put away in trust.

Q. Where are the lots now? What has become of them? A. So they called in the mortgage.

By the Court: Q. Who owns the lots now? A. The lots now is made exchange or trade by—what is his name?

Q. Mr. Headley? A. Yes, Headley; the lots 20 are now by Headley; he made exchange.

Q. What did you exchange for? A. For a house in Orange.

By Mr. Schotland: Q. Were you present when any of those arrangements were made? A. No, I was not there.

Q. What was the number of the house in Orange? A. I don't know the number.

Q. Do you know what street it is on? A. I don't know the street, I don't know the number. 30

Q. Who took the rents out of that house? A. I took the rents until last October.

Q. What happened then? A. Last October, so before they sent in bill in the Court we sued them to Mr. Greenfield and Mr. Goldberg sent up for us to settle, so we went down to settle and they offered so much.

Mr. Schotland: I object.

Celia Brooks—Cross

The Court: Yes; this is not important.

A. So we went—

Q. Never mind. You stopped collecting the rents? A. Yes, I stopped collecting the rents.

Q. Now, who is collecting the rent? A. So we
10 didn't want to—

Q. Will you answer the question? A. Yes, I collect the rent.

Q. And then you stopped? A. Yes.

Q. Who is collecting them now, do you know?
A. Mr. Goldberg.

Q. Mrs. Brooks, what became of the Sixth Street properties? A. The lots we made exchange, that is the Orange property we changed for.

20 Q. Did you trade all of them for the Orange property? A. Yes, all the lots, I give second mortgage for it and a little house in exchange.

CROSS-EXAMINATION by Mr. Schotland:

Q. Were you ever in business yourself? A. Me?

Q. Yes. A. Well, I wasn't much in business.

Q. Yes or no. A. Yes, I was in business, sure I was in business.

30 Q. You conducted a business in your own name yourself? A. Sure, yes.

Q. What business? A. I was in the furniture business.

Q. How long ago? A. It is about twelve years ago.

Q. Wasn't that in your husband's name? A. Well, it was my business and it was my husband's
40 business.

Celia Brooks—Cross

Q. Wasn't that your husband's business? A. Well, it was in my name.

Q. Wasn't that your husband's business? A. It was my business.

Q. The furniture business? A. Yes, sir.

Q. The last years, five years ago were you in 10 business? A. No.

Q. Did you have any bank account? A. What?

Q. Did you have any bank account? A. Me? Sometimes I have.

Q. The last five years? A. What?

Q. The last five years? A. No, I wasn't, no, sir.

Q. Did you have a bank account the last five years? A. No, sir.

Q. Did you have any money of your own the 20 last five years? A. No, sir.

Q. Now, did you ever own any of these lots or any of these properties yourself? A. No, sir.

Q. Did you ever own the lumber business? A. No, sir.

Q. Did you ever own any of the lumber? A. No, sir.

Q. Who did own all these lots? A. The lots? Mr. Brooks owned those lots.

Q. He owned those lots? A. Yes, sir. 30

Q. Who was in the lumber business? A. Mr. Brooks.

Q. He owned the lumber? A. Yes.

Q. He even had the mortgage, didn't he? A. Yes.

Q. Mortgage to Mr. Wien? A. Yes.

Q. Is Mr. Wien a relation of yours? A. Yes.

Q. What relation? A. He is brother-in-law. 40

Celia Brooks—Cross

Q. Your brother-in-law? A. Brother-in-law his wife is my sister.

Q. Mrs. Wien is your sister? A. Yes.

Q. And you knew then that your husband gave Mr. Wien a chattel mortgage on his lumber business on South Nineteenth Street? A. Yes.

10 Q. On the office furniture and on everything connected with that business? A. Yes, sir.

Q. Do you know when he gave that mortgage? A. Who?

Q. Do you know when your husband gave your brother-in-law that mortgage? A. I don't know when, I can't remember when.

Q. That was just about the same time that your husband gave up the lumber business, wasn't it? A. I don't know, I suppose so.

20 Q. In January, 1912, wasn't it? A. Yes.

Q. Just about three years ago? A. Yes, sir.

Q. That is right, isn't it? A. Yes.

Q. And at the same time he transferred some of his property to your brother-in-law, Mr. Wien, didn't he? A. Yes.

Q. Your husband did? A. Yes, sir.

Q. Have you got that deed here? A. I don't know. Have you got the deed? The deed is by 30 Mr. Greenfield.

Q. The deed from your husband to Mr. Wien? A. Yes, we had all by Mr. Greenfield because he was our lawyer.

Q. Didn't Simon L. Fisch make out that deed, draw that deed? A. Yes.

Q. That was Mr. Fisch, wasn't it? A. Yes.

Q. Where is that deed? A. We give it to Mr. Greenfield because he want it, when we signed it 40 over to Mr. Goldberg he wants the deed.

Celia Brooks—Cross

Q. Did Mr. Wien pay you anything for those lots?

Mr. Bradner: I object.

The Court: What difference does that make?

A. What is the difference what he did? 10

Mr. Schotland: The complainant here has filed a bill of complaint claiming to have been the owner and to have caused a conveyance to be made to the defendant in trust for her benefit, and I think that I have a right to go into all the details connected with the alleged ownership of that property.

The Court: It don't make any difference; we cannot try title to that property 20 in this case; somebody had the title, no matter whether it was fraudulent title, good title, or what; somebody had the title, and we start there. Who had the title, Mr. Wien or Mr. Brooks or somebody. That is the place to begin. How he got title I don't care.

Q. Now, Mrs. Brooks, at the time when your husband gave your brother-in-law this chattel mortgage and gave your brother-in-law the deed 30 for some of the lots he also gave a deed for the Brookdale Avenue property, didn't he? A. Yes.

Q. To whom did he sell that? A. To J. Levy.

Q. Is J. Levy related to you? A. He is cousin.

Q. He is cousin of yours? A. She is a cousin to me.

Q. And your husband did not have any other property left then, did he? A. No.

Mr. Bradner: I object. 40

Celia Brooks—Cross

The Court: Mr. Schotland, it don't make any difference how this title ran. This is not a creditor's bill.

Mr. Schotland: I think it makes all the difference in the world.

10 The Court: I don't think it makes a bit.

Mr. Schotland: A complainant cannot come into equity except with clean hands.

The Court: That rule don't apply to a case like this. I overrule it.

Q. Did you personally turn anything over to Mr. Goldberg, did you yourself give Mr. Goldberg anything? Yes or no. A. No, I didn't give.

Q. You didn't have anything to give him, did you? A. We don't make any writing, only say.

20 Q. Did you give him anything? A. No.

Q. You didn't own anything, did you? A. No, I didn't then.

Q. Now, then, when you began your testimony you started out by saying, "I didn't meet Goldberg at all"? A. I didn't meet him; he came to my office.

Q. That is what you meant, he met you, you didn't meet him? A. Yes; he came to my office.

30 Q. Did you yourself make any agreement with Mr. Goldberg? A. Yes.

Q. When did you make your agreement with Mr. Goldberg? A. When we was in the office he told me—

Q. In what office? A. In my office.

Q. Who was there? A. Mr. Goldberg and I and my daughter, but I don't know if she remembers anything.

Q. What daughter? A. My daughter.

40 Q. What is her name? A. Ettie Brooks.

Celia Brooks—Cross

Q. How old is she? A. She is now about twenty years, but she was about seventeen years.

Q. She was seventeen years old and she was present at the time? A. Yes, present at the time.

Q. Is she here? A. No.

Q. Now, what agreement did you and Mr. Goldberg make at that time in Mr. Brooks' office in the presence of your daughter? A. He said he was going to invest me \$2,000; he had very much pity because we lost our money, that is what he said, he said, "Mrs. Brooks, I am very sorry for you, God will help you; you have got some lots and you have got some lumber, and I will give you \$2,000"; he says, "and try to tell Mr. Brooks he shall come up in the world and pay what you owe"; and like this he talked to me all the time, and he felt so sorry for me. 10 20

Q. Is that the agreement that he made with you, that he felt sorry for you? A. No, he only was talking in the office.

Q. Will you please pay attention to the question. I asked you if you yourself ever made any agreement with Mr. Goldberg, you said yes? A. Mr. Brooks used to do for me the business.

Q. I asked you if you yourself ever made any agreement with Mr. Goldberg? A. No, that is the agreement, I promised him for the \$2,000 \$200, that is all; we went up to Greenfield. 30

Q. Did you yourself, you personally? A. Yes.

Q. Ever make an agreement with Mr. Elias Goldberg? A. Yes.

Q. When? A. That was after we made agreement with Goldberg how to do it and we went up to our lawyer. 40

Celia Brooks—Cross

Q. When did you personally make the agreement with Mr. Goldberg? "When" calls for a date, a time. A. Well, I don't remember the date; I can't remember the date.

Q. Where was it? A. What?

10 Q. Where was it that you personally made an agreement with Mr. Goldberg? A. We went up to his house lots of times; we met him in the street; we went up to Greenfield's.

Q. Where did you make an agreement with Mr. Goldberg, if you ever made any? A. In the office, everything what I talked that is all in my office, that was the beginning, because Mr. Brooks did not like to go to Goldberg for money because he said—

20 The Court: No, no.

Q. Did you ever make an agreement with Mr. Goldberg, you yourself? A. What kind of agreement shall I make? There was no agreement in writing, always in talking, that he give him the \$2,000.

Q. Did you ever make any agreement with Mr. Goldberg, you yourself?

The Court: Verbal agreement, by word or mouth.

30 A. By word, that he shall give the money, Mr. Brooks shall build the buildings.

The Court: He wants to know just exactly what that was.

Q. I first want to know whether she claims to have made any personally. Did you make any agreement, you yourself? A. Sure.

40 Q. You yourself—I don't mean your husband for you? A. I myself talked to Goldberg.

Celia Brooks—Cross

Q. When did you talk to him? A. I can't remember, in a week or couple of days, he was talking all the time.

Q. What do you mean, a week or couple of days, from when? A. Three years, in the same month it was.

Q. Three years ago in January? A. Yes. 10

Q. Where did you make the agreement with Mr. Goldberg, where was it? A. What I was talking to him?

By the Court: Q. Where were you and he when you made this agreement, were you in the church or in the house or in the office, or Court House, or where? A. I was in the office.

Q. In your office? A. Yes, in my office.

Q. Who was there? A. I told you there was 20 my daughter and I and Mr. Goldberg; Mr. Brooks was not there.

Q. Mr. Brooks was not there? A. No, he was not.

Q. And that is the time you made the agreement with Mr. Goldberg? A. Yes.

Q. Now, tell us the entire agreement that you made at that time? A. That Mr. Goldberg can invest \$2,000, and I shall give him for that \$200; he did not know anything, we had to go up and 30 ask the lawyer how we shall do it.

By the Court: Q. Was that all the agreement there was? A. That is all it was, yes, that was in the office.

Q. That is all the agreement that you made with Mr. Goldberg? A. Yes, sir.

Q. That he should loan you or Mr. Brooks? A. To me, because Mr. Brooks he couldn't give Mr. Brooks—

Celia Brooks—Cross

The Court: Never mind the "because."

Q. Because Mr. Brooks' name was no good at that time? A. Because he lost his money.

Q. Was that the case? A. No, that was not the case.

10 Q. His name was not good at that time, was it?
A. Sure, they could not build on his name.

Q. So Mr. Goldberg said he would lend you \$2,000 and you should go ahead and build on the lot? A. On the lots, and the lumber.

Q. That is all there was to it? A. That is all. I was talking, after we was talking of lots of things.

Q. But that was all there was as to this particular business? A. And he said I should be
20 myself by the building; I said, "You know I am a sick woman, I can't go all the time," but I used to go there; I said, "Mr. Brooks will have to do for me the business"; that is what I told him.

Q. Mr. Brooks would have to do for you the business? A. For me the business.

Q. You had no business at that time, you had nothing? A. The lots I had.

Q. Did you have the lots? A. Yes, they were given away from me in trust.

30 Q. Where does it show that it was in trust for you? A. It was not in writing, it was only said that any time—

Q. Wait a minute. Was that put into the deed? A. No, sir.

Q. You know it was not put in the deed? A. Yes, I know it.

Q. And you did not pay anything yourself for
40 those lots? A. No, I did not.

Celia Brooks—Cross

Q. And your husband did not pay all your creditors at that time, did he? A. This is the thing that he put away the lots.

Q. He put away the lots so the creditors would not take them away?

Mr. Bradner: I object.

10

A. No, sir.

Mr. Schotland: There is no jury here. I will admit I am not quite prepared on the law in this case because I was called in it suddenly without having time, but I have a very distinct recollection of a decision in this State in the Court of Chancery holding the principle as I have stated it before, and will your Honor permit the testimony of the witness on that question, 20 and if I do not show your Honor authority for it you certainly will not consider it. There is no jury; I don't see any harm; it might be better to do that than recall the witness.

The Court: I have such a strong feeling about it I don't see how you can succeed in convincing me to the contrary. If property is conveyed by a fraudulent grantor to a grantee the fraudulent grantor can 30 never recover the property from the fraudulent grantee. I think I ought to overrule all that testimony, and I will do so.

Q. Do you know how Mr. Goldberg knew that Mr. Brooks had lots and that Mr. Brooks had lumber? A. Mr. Goldberg knew that.

Q. How did he know that? A. Because he was 40

Celia Brooks—Cross

agent, he was broker, he used to sell lots of property for us and he knows that Mr. Brooks lost his money by the lumber.

Q. Now, so he knew that and told you that?

A. No, sir, don't tell me nothing, I know that myself.

10 Q. When Mr. Goldberg told you that you have lots or that Mr. Brooks has lots and that Mr. Brooks has lumber, why doesn't he go ahead and build, what did you answer? A. I told him, I says, "You know Mr. Brooks lost all the money, that we haven't got no money, and these lots are put away in trust for me"; he said, "Mrs. Brooks, you go down to the building yourself and try, God will help us, and God will help you, you
20 will come up in the world"; of course, I took very much interest in it, I thanked him very much for it; and so I told my husband that.

Q. Now, did you go down to the lawyer's office?

A. Not the first time, no, sir, Mr. Brooks went down.

Q. Were you present when any deed was given to Mr. Goldberg? A. When I was present?

Q. Were you present when an ydeed was given to Mr. Goldberg? A. I was not, no, sir.

30 Q. Then you don't know anything about any arrangements that were made at the same time that the deed was delivered to Mr. Goldberg, do you? A. What?

Q. (Question read.) A. We saw Mr. Greenfield before this was made, I saw him, Mr. Greenfield myself.

Q. Well, you were not present at any time when any deed was given to Mr. Goldberg, were
40 you? A. No, I was not.

Celia Brooks—Cross

Q. And you say that when this property was put away for you it was not put in the papers that it is in trust for you, was it? A. No, sir, it was not.

Q. Do you know why it was not put in the papers it was in trust for you? A. Because I know 10 it is good and any time we want to have it we shall go and get it and sell it and try to pay off what we owe; that was given away to me, and that is what we try to do all the time even when the buildings was building we paid up people.

Q. Now, did you ask Mr. Levy to give Goldberg a deed? A. Sure, we went down and told him.

Q. When did you go down and ask Levy to give Goldberg a deed? A. I think deed was given on 20 Friday, I think, and we went down there on Thursday, Mr. Brooks and I.

Q. Don't you know that Levy was paid when he gave a deed? A. Paid?

Q. Yes. A. I know all about it.

Q. You did know all about it? A. Yes.

By the Court: Q. What do you mean by that, was Levy paid? A. No, sir, Mr. Greenfield's check.

Q. Didn't Mr. Greenfield give Mr. Levy a thou- 30 sand dollars? A. Yes.

Q. At the same time that Mr. Levy gave Mr. Goldberg the deed? A. Yes; I wasn't there.

Q. Do you know that? A. I know that, yes.

Mr. Bradner: I object to that hearsay.

Q. And do you know what mortgages were on those lots? A. What lots?

Q. That Mr. Levy sold to Mr. Goldberg? A. I can't tell much about it; Mr. Brooks done for 40

Celia Brooks—Cross

me all the business; I know there was some, but I can't tell you.

Q. What do you mean by Mr. Brooks done for you all the business? A. He done for me all the business.

10 Q. You had no business, did you? A. I mean all the transaction he done it, Mr. Brooks; I told Mr. Greenfield that Mr. Brooks, he shall do for me the business, I can not do it myself.

Mr. Schotland: I ask that that testimony "I told Mr. Greenfield he should do the business" be stricken out; that is not responsive.

The Court: That is responsive. Let it stand.

20 Q. You were not engaged in any business? A. No, sir.

Q. And when you say that you had Mr. Brooks attend to this business you mean attend to giving you the benefit of these lots and the lumber, that is what you mean? A. Not to me; I want to pay—

Q. Just answer my question. Is that what you mean, yes or no. A. Well, for my benefit.

30 Q. Yes or no; is that what you mean? A. For my benefit, yes.

Q. You did not even know, then, what mortgages Mr. Goldberg would have to pay off on the lots? A. There was lots of mortgages, Mr. Goldberg told me all the time, because we used to go every night.

Q. Answer my question. Did you know? A. Yes.

40 Q. How is it you don't know now? A. I know it but I can't remember; you see, real estate don't go so much in my head.

Celia Brooks—Cross

Q. Did you ask your brother-in-law Mr. Wien to make out a deed for the North Sixth Street property to Mr. Goldberg? A. Yes.

Q. When did you ask him? A. When I asked him? It was all in this same time; I can't remember exactly the day; it was I think in six months or in five months; it was about four months around, it was something, it was after the lots. 10

Q. Will you tell me six months, around five months, or four months? A. It was just in the same transaction, about five months it took the buildings, I can't count the dates and months.

Q. Was it at the same time that you asked Levy to turn over the property to Mr. Goldberg? A. No, that was much later, that was about three or four months, I don't know, something like that. 20

Q. What did you want the other property turned over to Mr. Goldberg for? A. Because the mortgagee called in the mortgage and Mr. Brooks and Mr. Baum, a partner of his, owed some money on those lots, so they went and paid for those lots, so Mr. Greenfield said—

Q. Just pardon me a minute. Who paid for those things that they owed? A. What?

Q. Who paid it off? A. Who paid it off?

Q. Yes. A. The lots, with the lots they paid off some lots. 30

Q. Who paid it off? A. Mr. Brooks and another partner.

Q. Where did they get the money from? A. They didn't pay any money; they paid with the lots.

Q. With what lots? A. With the lots from Sixth Street; they give him some lots, it was \$700, I think it was, so they give him some lots for it. 40

Celia Brooks—Cross

Q. Give who? A. To creditors, to Ogden.

Q. Will you answer my question, why you asked Mr. Wien to transfer those lots to Mr. Goldberg? A. Well, you know that Mr. Greenfield said all the time. "Mr. and Mrs. Brooks what are you going to do with lots? They will only foreclose; the best thing would be," he says, "that you should take those lots," because you know they transfer those lots, they pay for what was left, transfer the lots to Goldberg and try in the meantime, it was in the meantime did not take any loan, so they made exchange with a lawyer, I always forget his name, with Headley.

Q. Now, as I understand you then, the mortgagee was threatening to foreclose on these lots?

20 A. Yes.

Q. So you got them transferred to Mr. Goldberg, he should protect them from foreclosure? A. Yes, Mr. Greenfield, I didn't much with Mr. Goldberg, all with Mr. Greenfield.

Q. Did you have those lots transferred to Mr. Greenfield? A. No, to Mr. Goldberg; that is what Mr. Greenfield told me I should do.

Q. Mr. Goldberg was to take care of the mortgage, it should not be foreclosed, is that it? A. No, he should only sell it so we get away, the brokers to sell those lots; it didn't take any longer, take a week or something, and sell it, so we made exchange to Headley.

Q. Were you present when any of those agreements were made, when the exchange was made?

A. I always saw Mr. Greenfield before, and he said it was not necessary for me to come, he will do the business for me.

40 Q. And you were not present at any of those

Etta Brooks—Direct

transactions as to the transfer of the lots from Wien to Goldberg? A. Sure.

Q. Were you present when that was made? A. In Brooklyn we transferred.

The Court: She don't know what she is talking about because she answers before she hears the whole of your question. 10

RE-DIRECT-EXAMINATION by Mr. Brunyate:

Q. Do you know whether or not the thousand dollars paid by Mr. Greenfield to Mr. Levy was cash or check? A. A check, Mr. Greenfield give his check and Mr. Levy signed it and give it back again to Mr. Greenfield.

By Mr. Schotland: Q. Were you present? A. No, sir, Mr. Levy told me himself. 20

A. Mr. Schotland: I ask that that be stricken out.

The Court: Yes.

ETTA BROOKS, sworn:

Direct-examination by Mr. Bradner:

Q. Are you a daughter of Mrs. Brooks? A. Yes, sir. 30

Q. And where do you live? A. 225 Littleton Avenue, Newark New Jersey.

Q. Live with your father and mother? A. Yes.

Q. Marks Brooks is your father? A. Yes, sir.

Q. Do you know Mr. Goldberg? A. Yes, sir.

Q. Do you see the gentleman sitting here in the room? A. Yes. 40

Etta Brooks—Direct

Q. Did you ever see him in your mother's office? A. Yes, sir.

Q. On more than one occasion? A. Yes.

Q. Do you remember the first time that you saw him there? A. Yes.

10 Q. What do you remember about that? A. It was about nearly three years ago, he came in the office one day, and I was with my mother, and we were giving up our office and had everything packed up, and he asked us what we were going to do, and my mother said we lost practically everything and she wanted to move from town and try her luck elsewhere, so he said, "Why do you want to move?" He said, "You have some lots and you have some lumber, and I will loan you \$1800 if
20 you will give me \$200 of that \$1800," so my mother said she would let him know; and that is about all I heard.

Q. That is all you remember about it? A. That is all I remember.

Q. Did you see him there again after that? A. Well, we gave our office up a little while after that I guess, then he came around quite frequently.

Q. Did you ever go down to Mr. Greenfield's office with your mother or father? A. Yes.

30 Q. And have you seen Mr. Goldberg there? A. Yes, sir.

Q. Do you know whether on these lots that were mentioned any houses were put up afterwards?

A. On those lots?

Q. Yes. A. Yes, sir.

Q. How do you know that? A. Well, from going around the office and hearing and seeing.

Q. Seeing the houses going up? A. Yes.

Q. Who was there doing the work on the
40 houses? A. Who was doing the work?

Etta Brooks—Cross

Q. Yes; who did you see there doing the work on these houses? A. Contractors.

Q. Was there anybody you knew there? A. My father was around there.

Q. Did you ever see Mr. Goldberg there? A. Yes, I seen him.

Q. When you went down to Mr. Greenfield's office did you see Mr. Goldberg there? A. Yes. 10

Q. And your father? A. Yes.

Q. And your mother? A. Yes.

Q. Did you ever hear any of the talk down there? A. No, I never listened; they were always talking in another room.

Q. How many times do you recall that you have been to Mr. Greenfield's office? A. I don't know how many times, but several times. 20

CROSS-EXAMINATION by Mr. Schotland:

Q. When was that that Mr. Goldberg came to the office? A. Our office, do you mean?

Q. Yes. A. It is nearly three years ago.

Q. Whose office was that? A. My father's office.

Q. What was the first thing that Mr. Goldberg said when he came in? A. He asked us what we were going to do.

Q. Where were you? A. I was in the room with my mother. 30

Q. Right close to them? A. Yes; there was only one room there.

Q. That was the only room there? A. Yes.

Q. And you were close enough to hear everything that was said? A. Yes, sir.

Q. Now, what did you hear? A. Why, he asked us what we were going to do, and we had all our furniture in the office packed up. 40

Etta Brooks—Cross

Q. Did you hear that you had your furniture in the office packed up? A. I saw it.

Q. I am asking you to tell me everything you heard, not what you saw, just what you heard.

A. My mother said she was going out of town to try her luck elsewhere; he said, "What is the use of going out of town?" He said, "You have lots of lumber," and he said, "I will loan you \$1800 if you give me \$200 for that."

Q. Is that all he said? A. That was about all he said.

Q. What did your mother say? A. She said she would let him know.

Q. Did he say what he would lend her the \$1800 for? A. For \$200.

Q. Did he say to your mother what to use that \$1800 for? A. For the building.

Q. Did he say that? A. Yes.

Q. What is that? A. Yes.

Q. Why didn't you tell us that? A. I said he loaned \$1800 for building purposes provided he would give him \$200 for the loaning.

Q. Did he say for how long he would lend that \$1800? A. No, he didn't say any definite time.

Q. Did he say what interest he was to get on the money? A. \$200.

Q. Didn't say for how long? A. No.

Q. Did he say what security he was to get? A. That I don't know; he didn't speak everything; all he said was \$1800.

Q. And what did you mother say to him in reply? A. She would let him know.

Q. Did your mother tell him that your father did not own the lots or the lumber any more? A. She didn't say anything there.

William Greenfield—Direct

Q. Did you mother tell him that the lots and the lumber had been transferred to Mr. Levy in trust for her? A. She didn't say anything there at that time.

10

WILLIAM GREENFIELD, sworn:

Direct-examination by Mr. Bradner:

Q. Mr. Greenfield, you are a member of the bar of the State of New Jersey? A. Yes.

Q. I show you what purports to be statement of moneys received by William Greenfield, and disbursements, consisting of seven sheets; do you recognize the paper? A. I don't think this was made in my office. 20.

By the Court: Q. What is the answer? A. I don't think this paper was made in my office.

By the Court: Q. The question is whether you recognize it? A. Yes, part of it; I don't know whether all of it or not, I don't know; part of it came from my office, yes, the last sheet at least. and this here (indicating) I think this is my writing.

Q. Well, there is on this one sheet, there is a credit December 14 "By check to E. Goldberg, on National Newark, \$100;" that is in your writing? A. That is in my writing. 30

Q. And on the next sheet, on December 19, 1912, "By check to M. Brooks, \$100;" that is in your writing? A. Yes.

Q. December 19, 1912, "By check to B. and L. Association, \$60"?" A. That is my writing, but not on this side here (indicating.) 40

William Greenfield—Direct

Q. The total figures \$23,096.67 is in your writing? A. Yes.

Q. Did you direct your typewriter to make a copy of an account and give it to Mr. Steinsitz? A. No, sir, gave it to Mr. Goldberg; I had nothing to do with Mr. Steinsitz.

10 Mr. Bradner: I move to strike out the latter part of the answer as not responsive.

The Court: Yes.

Q. When did you make those entries on the paper that you have recognized as your writing?

A. On the dates as dated; at least I assume so, I can not say positive.

Q. Do you recall that this typewritten paper was brought to you and you put on those additional items in ink in your own handwriting? A. I have,—whether it was brought to me—why, no, that was in my office; there is a lot of notations on there; I don't know what it is.

Q. You know Mr. and Mrs. Brooks, do you? A. Oh, yes.

Q. And Mr. Goldberg? A. Yes.

Q. Did they come to your office together at any time to see you in relation to some property on Brookdale Avenue? A. Not Mrs. Brooks.

30 Q. Mr. Brooks and Goldberg? A. Mr. Goldberg came to me; I don't recall, it is a long time. that Mr. Brooks came to me about the Brookdale Avenue property at all; Mr. Goldberg came to me and spoke to me about it, but Mrs. Brooks I haven't seen in my office, only, I think, I wouldn't swear positively, when I foreclosed a mortgage for Livstitz, I think it is, against Brooks, either on South Eighteenth or South Nineteenth Street
40 property, now, I can't say exactly where.

William Greenfield—Direct

Q. Have you got your books here showing your account of moneys received on account of this Brookdale property and other properties, and your disbursements? A. Yes, the account of Elias Goldberg.

Mr. Bradner: I move to strike that out. 10
The Court: Yes.

A. Yes, I have it.

Q. You did receive certain moneys, did you not?

A. Yes.

Q. You received a check from Nathan Kussy on September 1, 1911, for \$1000, did you not? A. Yes, whatever my book shows; I am not going to swear to a positive fact. This is a long account.

Q. You remember the first amount you received was a thousand dollars, wasn't it? A. Sometime 20
in 1911 I think it was.

Q. And did you turn that check over to anybody? A. To Mr. Goldberg.

Q. The same check? A. No.

Q. On the same date or shortly after that time you gave your own check, did you, on the Union National Bank? A. Yes.

Q. For \$1000? A. Well, yes and no; this can be answered both ways; I gave a check at one time for a thousand dollars; then Mr. Goldberg came back for some reason and I have cancelled that 30
check and gave two other checks; whether it was both the same day or not I can not recall, but, anyway, I gave a thousand dollars.

Q. Have you in your possession your check dated September 29, 1911, on the Union National Bank for \$1000? A. No, I have not, because, as I have said, that check was cancelled before it was paid out. 40

William Greenfield—Direct

Q. You have claimed a credit for it here in your disbursements? A. I am telling you that \$1000 check was cancelled and other checks in its place as you will find it as I have it, but it was the thousand dollars, it may have been a day or so later, different, I don't remember which.

10 Q. Was that thousand dollars paid to Mr. Levy?

A. Oh, no, this was in 1911, and the thousand dollars was given to Mr. Goldberg in payment back, in payment, if you want to know, of a loan that Mr. Goldberg granted on the South Nineteenth Street property.

Q. Money collected by Marks Brooks? A. Yes.

Q. In 1911? A. In 1911, that is the way, it was this way, if you want explanation.

20 Q. Never mind about that. That was before the Brookdale property came up at all, was it? A. Yes.

Q. Now, when the Brookdale matter came into your office there was some arrangement made for the erection of building on that property, was there not? A. All I know the arrangement was made with the contractors for Mr. Goldberg.

Q. That is all you know about it? A. That is all I had to do with it.

30 Q. And the title to the property was taken in Mr. Goldberg's name? A. He purchased it, as far as I understood.

Mr. Schotland: I object and move to strike that out.

The Court: Purchased it as far as he understood.

Q. The title was taken in his name, you know that.

40 Mr. Schotland. I object. Mr. Bradner

William Greenfield—Direct

is assuming to lead the witness all the way through; this is his witness.

The Court: I think the examination is proceeding properly.

Q. (Question read.) A. The property was taken by Mr. Goldberg, yes, by deed of conveyance. 10

Q. From Mr. Levy and somebody else in New York? A. Well, I will have to look at the deeds, you see there are other conveyances; I think it was taken—it is either from Wien or Levy, I don't know which.

Q. I show you a deed, the warranty deed dated the 22d day of March, 1912, from Joseph Levy and Rose Levy to Elias Goldberg; that is the deed to the Brookdale Avenue property, is it not? A. Yes, that is Brookdale Avenue property. 20

Q. And that was drawn up in your office, was it not? A. Yes, it must have been, because it says here compared by my clerk.

Q. You were the subscribing witness and took the acknowledgment? A. Yes.

Q. Did you know those people at all? A. No, the first time that I had ever seen them.

Q. Did you know that they were related to Mr. and Mrs. Brooks? A. No, I never had any dealings with them at all before.

Q. The deed recites, "\$1 and other good and valuable considerations;" did you see any money paid? A. I paid it. 30

Q. A thousand dollars? A. Yes.

Q. Was it paid back to you? A. No, sir.

Q. Did the check come back? A. No, sir.

Q. Have you got the check you paid out? A. No, sir. 40

William Greenfield—Direct

Q. Did you pay out a thousand dollar check to those grantors? A. It was not check.

Q. What was it? A. Cash. If you want I will explain how it was done.

Q. Did you get a receipt for it? A. No, I had
10 a deed.

Q. Did you pay the money yourself? A. Yes.

Q. You got the money from Mr. Goldberg? A.
Yes.

Q. Does that appear in that account? A. I don't know; sometimes it might appear or might not, because it was a from hand to hand transaction.

Q. Did that thousand dollars ever come back to you? A. No, sir.

Q. Do you know whether it was ever paid back to Mr. Goldberg? A. Not in my presence.
20

Q. I didn't ask you that. Do you know it? A. No, sir.

Q. Did Mr. Goldberg tell you it had been paid back to him? A. No, sir.

Q. Did Mr. Levy tell you? A. I haven't seen him since that day.

Q. You never have seen him since? A. No, sir.

Q. Now, that deed was dated March 22? A.
Yes.

Q. On your account of these moneys received
30 by William Greenfield you have under date of March 15, "By New York check to the order of M Brooks, \$100;" do you know what that was? A. Yes, I have received a check from somebody; I will give you my best recollection of that check and I have given my check for it, it was a New York check, and I believe some relative of Brooks, and that check came back protested, so I was out
40 of money, and Brooks—I spoke to Brooks about

William Greenfield—Direct

it—Brooks happened to come in; if you want to know the exact language, I said, “That is a deuce of a way of giving me a check,” I think it was for more than that, I think it was a hundred and some odd dollars, “That was a deuce of a way of giving me a check, I paid my check and this check came back protested.” 10

Q. What did you give your check for? A. I don't recall that.

Q. What did that have to do with the moneys that you were accounting to Goldberg for? A. Put all in that account, I don't know why.

Q. What did Brooks have to do with the Goldberg account? A. It was Brooks' relative, I think it was, I am not going to say positive, Mr. Bradner; in those three years I can't keep in mind all those things; I put it down as I got it and paid it as I put it on. 20

Q. You haven't anything on this typewritten account to show that it was an account with Goldberg or with Brooks, have you? A. Well, as I said, whether this front sheet is mine or not I don't know, but this is taken from my book; if that is the exact situation of my book, as I said, I have my account which shows with Elias Goldberg; I have also account with Brooks. 30

Q. You have a separate account with Brooks for the 1903 property where the city granted him a loan. Your account with Goldberg relates to the Brookdale Avenue property, and anything else, any other properties? A. I have had a whole lot of dealings, I am counsel for Goldberg now the last fifteen years.

Q. I mean any properties in which Brooks claims now to have had any interest, for instance, 40

William Greenfield—Direct

the property that was conveyed to Mr. Headley, did you have anything to do with that?

Mr. Schotland: Why don't you let him use his account, if you want to get the facts?

He has it here in Court?

10 A. I can't say I have done a thousand dollars worth of business for Goldberg.

Q. This Brookdale Avenue property the title was in Mr. Goldberg? A. Sure.

Q. He appeared to be the owner of the property? A. Yes.

Q. And you were keeping an account of moneys relating to that property, were you not? A. Not only relating to the property; I kept an account of all moneys that I have received from Goldberg and paid out for Goldberg on his orders; I might
20 have made checks to somebody else, maybe, on his order.

Q. What moneys did you receive for Goldberg on the Brookdale Avenue property? A. I can't say.

Q. And for what sums, can you say? A. Well, I have received whatever my books show, I can't say offhand, I can't give you from memory.

Q. You received money from building and loan associations, didn't you? A. Yes.
30

Q. You paid money out to contractors? A. I did.

Q. Did you pay any money to Mr. Brooks in relation to the Brookdale Avenue property? A. I think I paid something for the lumber which he got; you will find checks of three or four hundred dollars each there; you will find forty dollars, all kinds; I have the checks here if you want to look
40 at them.

William Greenfield—Direct

Q. We will see if we can find some items here. For instance, here is check to M. Brooks on National Newark, \$21.95, May 14, 1912. A. Yes; you will find here more than that.

Q. You did pay other checks to Brooks then? A. Yes, on the orders of Mr. Goldberg.

Q. Now, I find next to the last page of this document, in your own handwriting, check to E. Goldberg, \$100; do you know what that was for, December 14? A. I couldn't tell you. 10

Q. On the next page, "Paid to Elias Goldberg for commission on the sale of property to Vigiano, 15 Brookdale Avenue, \$100." What is that for? A. I suppose what it says there, I don't know.

Q. Why should you pay a commission to Goldberg for selling his own property? A. I couldn't tell you; there was some exchange, I believe, or something of that sort, I can't recall; Goldberg had all kinds of deals; Goldberg got a loan of Vigiano in one of my building and loans, or elsewhere, I don't know how it was, that might be the commission. 20

Q. The next item, "Paid to Elias Goldberg for commission on sale of lots to Dellon, \$150;" do you recall that? A. I think these were New Yorkers—Oh, wait a minute, there was Abe Goldberg in the deal, the son, he acted as broker in a good many deals; he would come in sometimes, Abraham, the son, and ask for money; I would say to him, "You get an order from Mr. Goldberg and I will pay you, otherwise I won't pay it;" Then sometimes the father would come in and ask for a check, he would come in with some lot of figures on it—he doesn't know how to write or read—and 30 40

William Greenfield—Direct

10 he would say he wants so much money; it was his money, I gave it to him; I would say, "Now, do you want me to put down what it was for?" And he said, "Yes, for commission." Now, his son would get money, and his son acted as broker in the Vigiano deal and his son acted as broker in the Headley deal; they had a lot of deals where the son always acted; sometimes I would take the commission and divide up, give each one their share; sometimes I would give it to Goldberg and he would cash the check and pay it out.

Q. You put it down on your books, "Paid to Elias Goldberg for commission on sale of property to Vigiano," or whatever it was? A. Yes, whatever it was.

20 Q. Absolutely nothing on your record to show that it was paid to anybody else but Elias Goldberg? A. I will look at it.

Q. Have you got the checks? A. Not got checks, of course, not.

Q. Have you got the orders? A. He did come in there and give me order; he would come in there with a lot of figures and I would just hand out a check.

30 Q. Did you ever give a statement of the account to Mr. Brooks? A. No, sir.

Q. Or Mrs. Brooks? A. No, sir.

Q. Or to anyone representing them? A. No, sir.

Q. Were you ever asked to? A. Was I ever asked? Yes.

40 Q. Who asked you? A. There was his son Sam, there was Sol; I believe Sol Brooks was in there, Sol and Sam, and Pete Steinsitz—I beg pardon—Mr. Steinsitz was up to see me about this suit; I

William Greenfield—Direct

don't know, there were several of them, I couldn't say.

Q. On the last page of this document you have a bill, "Elias Goldberg to William Greenfield, debtor." A. Where is that?

Q. At the head of it, isn't it? A. That is not the last page, is it? 10

Q. That is the last page.

The Court: What is the question? A. It is on that page; whether it comes from my office or not I would not swear to it.

Q. Try and identify the items—take the first item, "To services in the suit of Litwin vs. Sol C. Brooks and another, on attachment, and agreement, assumed by Elias Goldberg, \$75; do you remember that? A. Yes, I remember I had that case. 20

Q. What did Mr. Brooks have to do with that? A. There was an attachment, there was some attachment pending in the Circuit Court, Mr. Samuel Litwin had an attachment against Sol. C. Brooks, Mr. Brooks' son, and attached some property which was in the name of Sol C. Brooks, and I believe in going—just about the same time when Mr. Brooks, Mr. Sol. C. Brooks conveyed it, transferred it to somebody, but the attachment was about the same time, and the result was that somebody refused to pass title on it, and the old gentleman Mr. Brooks and Sol. C. Brooks, his son, came in to defend that, and I says, "I want a fee for it;" I wouldn't file any appearance, I told them I explained; they wanted me to go ahead and charge; I said "No, you have to file my appearance, I will have to go on with the case when I file it whether I get fee or not." 30 40

William Greenfield—Direct

Q. What did Goldberg say to that? A. They didn't have the money; Goldberg came in and said, "Charge it to my account," and I charged it to his account and deducted it.

10 Q. Second item, "Defending suit in the Second District Court Penn vs. Brooks, and other cases in First District Court," is that the same way? Goldberg told you to go ahead and attend to these cases for Brooks and charge it to Goldberg? A. Yes.

20 Q. You have combined in the second item, which I will read to you, "To services in paying out mechanics, obtaining releases, drawing contracts with mechanics and material men in the erection and construction of buildings on Brookdale Avenue; defending suit in second district court Penn vs. Brooks, and other cases in the First District Court, \$300." Now, why do you combine them all in that one charge? A. I just made up my statement.

30 Q. Then there was no distinction between what Goldberg told you to do for Brooks and what you were doing for Goldberg? A. Now, listen. There is a distinction. Possibly Mr. Goldberg would come in—Brooks would come in with summons, and Goldberg would come in with him, and he said, "Charge it to me," now, I may not have charged it to him the very same day, or possibly a month after. I kept the books myself at that time, and when I came to make up the statement I took up the cases and charged it to him; that is the way.

40 Q. Now, I call your attention to another item on your bill, "Disbursements and services in foreclosure suit Joseph Wien vs. Brooks, and assumed

William Greenfield—Direct

by Goldberg, \$200;" is that the same situation?

A. That is the same situation, either Eighteenth Street or South Nineteenth; Mrs. Lipstitz came to my office I think that is the way it was, with Brooks, and wanted me to file a foreclosure to foreclose a mortgage at that time against Brooks: 10
it was a second mortgage; now, the amount I don't know, I would have to look at the bill; and Mrs. Lipstitz wanted to know when Wien—does it say Wien?—whoever it was, I don't remember, came in and wanted to know what my flat figure would be for foreclosing the mortgage, and I pay out all the disbursements; I told her it will be \$250, I will pay all the expense, including sheriff's fees, recording deed, everything complete; so I wanted not knowing Mrs. Wien or Wr. Wien, I don't know 20
who it was, I can't say, I wanted a fee; I told them I have got to lay out some money to the sheriff and so on, I wanted a fee; so they didn't have any money, what arrangements they had I don't know—Mr. Brooks should go—after they had some talk, Mr. Goldberg and Mr. Brooks, Goldberg at first—it was in my office—at first refused to assume liability, and the matter was delayed, didn't hear from it in a couple of days, had quite an argument there, and Brooks wanted to know whether he is afraid of him, and Goldberg 30
said, "No, I am not going to assume any responsibility;" and a couple of days after they came in and Goldberg agreed to assume the responsibility for the bill and told me to charge it to him in the account. I said "That is all right, if that is your way, it don't make any difference to me who pays me as long as I get my fees," so I charged this in the account; upon rendering the statement I just included that, that is all. 40

William Greenfield—Direct

Q. Have you got your books here? A. Yes, I have; It isn't in expert accountant style, I can assure you.

10 Q. Turn to date November 11, 1912. A. I don't believe I can give you that way; it is a general running account, you know; it starts right here on page ninety-six, 1911, September 29. The first check I got, as you see, on the National Newark, N. Kussy, to the order of M. Brooks, endorsed to W. G., to me, \$1000, on September 29; I suppose Goldberg in asking me for money on the Union National Bank in payment of claim collected of M. Brooks, see.

Q. That is your answer, in payment of claim collected of M. Brooks? A. Yes.

20 Q. What claim did he have? A. Just as I said, on the South Nineteenth Street property, my impression is, I don't know, I am almost certain it is. I will tell you how it was. Kussy's building and loan granted a loan on that property. While they were constructing it when the committee went up there for the last payment, something of that sort, they found that other material was substituted than the plans called for and when the committee refused to pay any more money
30 Brooks came in and asked whether I could help him out in that loan. Goldberg then had a second mortgage, I am almost sure now, that is my impression, I told him I didn't know what I could do, I would try and help him out; at that time I believe my building and loan just happened to have received a mortgage, received the money in payment of a mortgage, and they paid for a special meeting, we had a special meeting of the
40 board of directors in my office, and a loan was

William Greenfield—Direct

granted, and you will find here, if you want to see it, Brooks' special account, search South Eighteenth Street, search on South Nineteenth Street lot purchased from Gummerman, or something like that; there is his account. Now, you will find on page ninety-eight there is the mon- 10
 eys I paid out by check of the City Hall B. & L. Association, \$2600, by check City Hall B. & L. Association \$937.35; there you will find I gave check South Nineteenth Street by check on the Union National Bank to the order of building and loan association \$1515.23; that was their statement, so I paid that out.

Q. You got this money from Kussy September 11, 1911. Here is November 6 you paid check to Goldberg for \$257.86? A. Yes. 20

Mr. Schotland: I do not quite understand this inquiry, long prior to any transactions at issue in this case; this is other property, other moneys, and in the previous year.

The Court: It seems to be all in the same account. Mr. Bradner is attempting to show that the account instead of being an account with Mr. Goldberg is an account with Mr. Brooks. 30

Q. I wanted you to turn to November 11, 1912, in your Goldberg account on page 214 of your book, you have entry, "By check National Newark Banking Company for note, C. Brooks" and endorsed by M. Brooks, \$102? A. Yes.

Q. Can you explain that entry? A. Well, the only way I can explain is this: Mr. Goldberg endorsed some notes for Brooks on the Broad and Market Bank, I think it is now, I am not go- 40

William Greenfield—Direct

ing to say positively—and he had notes in that bank, and he would come in, Mr. Goldberg would come in with the figure and say, “I want a check for this so and so” I would ask him, “Is it for mechanics, or what is it for?” so he would tell me occasionally, so I would give him check and mark it just what that was; I think it was on a note endorsed by Goldberg.

Q. Mr. Greenfield, I show you a paper dated December 2, 1911, purporting to be made out on your bill heads, a bill to Marks Brooks; was that made by you? A. Yes, it must be made by me if it is on my stationery, at least, I think so.

Q. Is it a receipted bill? A. Yes, sir.

Q. Will you look at that bill and see if it includes the South Nineteenth Street matter? A. What matter did you say?

Q. The South Nineteenth matter which you say is the matter from which you received the thousand dollars from Mr. Kussy in September, 1911; here is your bill, statement from Mr. Brooks, December 2, 1911; does that include that Kussy item? A. What do you mean does that include the Kussy item?

Q. Now, let us go back over that again. On this first account, which I perhaps had better mark for identification, now marked 1 for identification, and I will have this marked 2; now, on Exhibit 1 for identification the first item is, “September 1, 1911, by check Nathan Kussy \$1000”? A. Yes.

Q. That I understand you to say is money that was a part of a loan made to Brooks on property on South Nineteenth Street? A. Yes; bear in mind I am giving you my best recollection.

William Greenfield—Direct

Q. Exhibit 2 for identification is a bill made by you on December 2, 1911, to Marks Brooks, that is correct, is it not? A. Yes.

Q. And that includes your entire account up to that date, does it not? A. I presume so.

Q. That naturally then would have that thousand dollar item in it, wouldn't it? A. No. 10

Q. Why not? A. Because I have not used the City Hall Building and Loan money to pay that thousand dollars and therefore haven't anything to do with it.

Q. But it was Marks Brooks' money when it came in, wasn't it, that \$1000? A. Well, I don't know how you would use it, because this money came in, Mr. Bradner, the thousand dollars, before we granted the loan, therefore I had nothing to do with it at all; the money, the check was brought to me by Kussy or somebody brought it to me; when I got it it was made to the order of Brooks, and I had Brooks, or somebody came and Brooks endorsed it; Goldberg brought the check to me; that time we had nothing to do with that South Nineteenth Street property, as far as I was concerned, or no accounting of South Nineteenth Street property; the accounting as you have there, Exhibit D 2, is the accounting of the money that I have received from the building and loan association, City Hall Building and Loan Association, to show what I have done with his money. 20 30

Q. The South Nineteenth Street property belonged to Brooks? A. Yes.

Q. And Brooks got a loan? A. He had two loans on it, first made from the Bigelow; Mr. Kussy had a loan on it; so then the first payment 40

William Greenfield—Direct

10 you notice he paid out about \$1500, Kussy paid out, on which a thousand dollars was to Goldberg, first loan on the South Nineteenth Street property; then afterwards when he wanted the balance of the money the building and loan found out he had substituted other material than what they claimed, and that is what Mr. Brooks told me that he substituted cheaper material and they turned him down, so he could not go on and finish his work; the building was stopped there, and he came to me and asked me whether or not—he is one of the directors in the loan association—whether we could not put through a loan for Brooks. I said, “I will try,” and a committee was appointed by the president and the
20 committee looked it over, and Mr. Brooks paid for the special meeting, ten dollars; I believe you will find it on the statement there, if I am not mistaken.

Q. I cannot find anything on this bill of yours of December 2 which has anything about that thousand dollars? A. Because I have nothing to do with this loan; this money I have received from my building and loan association; why should I mix that up? This is only to show what
30 I have done with Brooks’ money on that loan.

Q. But you took some of Brooks’ money on November 6 and gave it to Goldberg, “Paid to E. Goldberg, \$257.68,” and you charged that up to Brooks? A. Surely because I was told to pay it.

Q. Brooks told you to pay it to Goldberg? A. Otherwise I wouldn’t have paid it; that is on the City Hall Building and Loan Mortgage, don’t
40 you see? I think it was a forty-five hundred dol-

William Greenfield—Direct

lar loan, yes; you see it shows how I got the money; I got a check from Lawyer Erlich \$200; I got a check from the "City Hall" on November 6, "City Hall," you will find here the check, Nathan Erlich, I believe there was a judgment against Tannenburg.

Q. There were some houses put up on Brookdale Avenue, were there not? A. Yes. 10

Q. And you drew the contracts for the different contractors? A. Yes.

Q. And handled the money? A. I paid out, yes; whether I handled it all I can't say.

Q. Well, do you know whether any lumber was used in those houses that came from either Mr. or Mrs. Brooks? A. Only on information.

Q. You don't know it? A. Personally, no, I had nothing to do with that; on information I understand it was paid for, some of those checks paid for it. 20

Q. Do you know whether Mr. Brooks had anything to do with the actual construction of those houses? A. Except as supervisor, as I understand, informed by both parties.

Q. He was up there superintending the work? A. How often he was there I can't say; I wasn't up there.

Q. He was there in that capacity, whether he was there often or not? A. Well, I presume so, yes, supervisor. 30

Q. He was superintending the work of the construction of those houses? A. Yes.

Q. Were you present when any agreement was made between Mr. Brooks and Mr. Goldberg in reference to his duties to supervise the construction of the houses? A. No. 40

William Greenfield—Direct

Q. Don't know anything about that? A. No, only as I said, Mr. Bradner, what I have been informed by both parties.

Q. At separate times; they have not been in your office together, you mean? A. They were sometimes both together.

10 Q. When they have been in your office both together? A. Oh, yes.

Q. Were you present at any time when any bargain was made between Mr. Goldberg and Mr. Brooks and Mrs. Brooks relating to the Brookdale Avenue property? A. No.

Q. Never heard of any bargain made? A. No, sir; all I know is I drew the deeds.

20 Q. Mr. Brooks was your client? A. Well, he was and he wasn't; he was Lowy's client.

Q. Well, you had an account with him and charged him for your services, didn't you? A. As I said, as I granted the loan there I have some money coming yet.

Q. You had done work for him professionally before this Brookdale Avenue matter came up? A. Had South Nineteenth Street loan granted.

30 Q. And that was all you had? A. Well, now, I can't recall; my impression is that the South Eighteenth Street and Nineteenth Street, now, I think, as far as I can recall, but during this construction of the Brookdale Avenue property I have taken care of quite some of his litigation, quite a number of suits was against him, he had trouble with his partner, Mr. Baum during that period, and I also took care of whatever little suits he had there against him, that is about all; now, whether I had it before or not, I would have

40 to refer to my book.

William Greenfield—Direct

Q. Mr. Goldberg was a client of yours, too?

A. About fifteen years.

Q. He was an old client? A. From the very first day that I began to practice law.

Q. What is his business? A. When I first knew him he was in the liquor business and occasionally was, as they say, tried to intermeddle in the real estate business. 10

Q. In what capacity, as buyer or agent? A. Both ways.

Q. Did he deal in real estate? A. Oh, yes, he did.

Q. Did you know of his building any houses?

A. I know of some alterations; now, whether he built—the only houses I know he built was Brookdale; he done considerable alterations in Sixteenth Avenue, I think. 20

Q. Do you know within the last fifteen years of his building any houses besides those in Brookdale Avenue? A. I can't recall that.

Q. All that time you were his counsel? A. Yes.

Q. Now, do you know why Mr. Brooks was selected to supervise the construction of these houses? A. Well—

Q. I asked you whether you know? A. To a certain extent I do. 30

Q. Do you know from any statement made by Mr. Brooks? A. Yes.

Q. And by Mr. Goldberg? A. Yes.

Q. Made in your presence when they were both there? A. Yes.

Q. You did not hear any bargain made between them? A. In what respect?

Q. As to his supervising the construction of 40

William Greenfield—Direct

the houses? A. All I heard was when Mr. Brooks didn't do anything and he agreed to retain him as supervisor and pay him, what payments I don't know.

10 Q. But you gave Mr. Brooks some check on Mr. Goldberg's order to pay money to him? A. Yes.

Q. You don't know what they were for? A. Oh, yes, some I do.

Q. Some were for his services? A. Some for services, some for lumber.

Q. Mr. Greenfield, at the time of the purchase from Levy and the execution of the deed was there any deed executed to Mr. Goldberg? A. No, sir.

20 Q. Any paper executed by him? A. No, sir, not that I know of, not to my knowledge; to my best knowledge, no.

Q. No writing executed by him at all? A. Not that I can recall it, sir; I have all the papers as far as I know, all over there.

Q. Did you tell Mr. and Mrs. Brooks that there had been a paper executed by Mr. Goldberg and that you would keep it in your safe? A. No, sir, I haven't had any business with Mrs. Brooks.

30 Q. Mr. Goldberg was a man of some means at that time? A. Well, I have never counted his money and I don't know; all I know is that I got some money, and these transactions from the building and loans, and other transactions, and I put it on the books, that is all I know about it.

Q. Did you get any money from Mr. or Mrs. Brooks? A. No, sir; that is all the money that I have got, is right here in this book.

40 Q. And if Exhibit D-1 is correct it is a copy of your account? A. I presume so.

William Greenfield—Direct

Q. Have you got the original check that you gave to pay to Levy for the property? A. No, sir; there was no check given.

Q. There wasn't any check given? A. No; it was cash given. If you want I will explain to you how it was done.

Q. Did you draw that cash out of the bank? A. 10
No, sir.

Q. Where did the cash come from? A. I had it.

Q. In your office? A. Yes; I can show you much more than that today in my safe laying.

Q. Do you mean that you took the cash out of your safe and handed it over to Mr. Levy? A. No, Mr. Goldberg handed me some money. I will explain, if you want me, all the details.

Q. Did Mr. Goldberg hand you a thousand dol- 20
lars in cash at that time? A. Whether he handed me the whole thousand dollars on that day or not I can't say; I was about to deposit the money in the bank and I told my girl to draw a check for the thousand dollars, when Levy said, "I prefer to have the cash if you are going to deposit it in the bank; if not I would want it certified, the check, and I would prefer to have it in cash if you have the cash here." I said, "All right, it 30
don't make any difference to me," so the girl did not draw any check—that is, to my best recollection, that no check was drawn.

Q. Have you got your check book here? A. Yes.

Q. Will you turn to that, please? A. You mean the stub?

Q. Yes. A. I don't know whether it was brought here or not; if not, I will bring it here this afternoon, if it is not here. 40

William Greenfield—Direct

Q. Who was there in the room on that occasion? A. Mr. Goldberg, Mr. and Mrs. Levy, that is, the parties that I was introduced to by Mr. Brooks, and they asked me to draw the deed, and I drew the deed; there only were there Mr. and Mrs. Levy, Mr. Goldberg and Mr. Brooks.

10 Q. Was Mrs. Brooks there? A. No, sir.

Q. Do you know how much that property was worth? A. Well, I can't say that I do know, no.

Q. Do you know of anything more than of a thousand dollars being paid? A. Why, yes, there was some loans against the property.

Q. Do you know how much they were? A. No, I can't say.

Q. Did you hear any discussion between Mr. Levy and Mr. Goldberg and Mr. Brooks as to the value of the property? A. Well, I didn't hear it, any value mentioned, but there was some discussion in the ante-room before I took them in my private office.

20 Q. Between those three? A. Yes.

Q. Will you tell us what Mr. Brooks had to do with that transaction? A. Well, I don't know whether he had anything to do at all as far as I was concerned.

30 Q. He was there though, wasn't he? A. He was there.

Q. And introduced Levy to you? A. Yes, because—I will tell you why.

Q. Was there a preliminary agreement drawn for the conveyance of this property? A. Not in my office as far as I can recall it, not in my office.

Q. Well, you knew that the parties were coming there to execute the deed that day, didn't you? A. No.

40

William Greenfield—Direct

Q. Did they just walk in? A. Yes.

Q. And wanted a deed drawn? A. Yes.

Q. And that was all there was to it? A. Well, I can't say that was all there was to it; they were in there quite a while before that, because I found out that they were relatives, because I asked whether there was any commission to be paid out of it and Brooks said, "Oh, well, never mind, I don't care for any commission," to his relatives, that is the way it was—because I always asked if there was a broker in it; I thought Brooks was the broker in this transaction. 10

Q. The deed recites that the property had been conveyed by Brooks to Levy? A. Yes, well, still he could be the broker.

Q. You knew about that, too, didn't you? A. Only from the deed, sir. 20

Q. You did not have anything to do with that transaction? A. No, sir, never met the gentleman before.

Q. And you don't know what bargain was really made between Levy and Goldberg and Brooks in relation to this property? A. Except what they have mentioned, casually mentioned in my office about the liens.

Q. Since that time? A. Oh, no, no, at that time, I wanted to know to get the figures. 30

Q. You did not know at the time the deed, was executed what interest Brooks had in the property, if any? A. No, I looked at the deed, at the record, that is all I looked at.

Q. And so far as you could observe he came there and entered into the transaction with these people in the ante-room for a considerable length of time? A. No, I won't say considerable length of time, the short time they were there. 40

William Greenfield—Direct

The Court: You interrupted the question, you did not hear the whole of his question.

Q. You were there with the other two for some time? A. Yes.

Q. And had you already been introduced to Levy? A. What do you mean already?

10 Q. Before they had any conference in the ante-room? A. No.

Q. Was Mrs. Levy there then? A. Yes, sure, otherwise I would not have taken the acknowledgment.

Q. Levy and his wife were never in your office but the once? A. To the best of my knowledge.

Q. Levy was never there but once? A. To the best of my knowledge, I don't recall ever seeing them.

20 Q. On that occasion Mr. Brooks was there? A. Yes, Brooks was quite often there.

Q. And Mr. Brooks was in the ante-room with them and Mr. Goldberg for some time talking together? A. Yes.

Q. And then they came in your private room and Mr. Brooks introduced Mr. and Mrs. Levy? A. Yes.

30 Q. And requested you to prepare this deed to Goldberg? A. Yes.

Q. Mr. Brooks requested you to do that? A. No, sir.

Q. Who requested you? A. Mr. Levy.

Q. Who paid you for it? A. I don't remember that.

Q. You charged it to Mr. Goldberg? A. Perhaps I do and perhaps I don't, I don't know; 40 when is that dated?

William Greenfield—Direct

Q. 22d of March, 1912? A. I have no charge here.

Q. You haven't charged it to Goldberg? A. I haven't charged it to Goldberg and I don't believe I charged it to anybody else.

Q. See if you have it charged to Levy? A. 10
No, I haven't any account with Levy; it might have been they gave me the cash and I put it in the miscellaneous account.

Q. Well, did you record the deed? A. I guess so.

Q. And paid for that? A. Yes, otherwise it would not have been recorded.

Q. Look at Mr. Brooks' account and see if you have got anything charged to him? A. No, sir.

Q. That is 1911; go to 1912; have you cash ac- 20
count in that book? A. That is everything.

Q. Have you got cash account under date of March 22, 1912? A. What do you mean miscellaneous account?

Q. Yes. A. I don't know; I would have to fish for that.

Q. Have you got it indexed? A. I have it in sort of a quick way.

Q. Nobody can find it but yourself? A. That is it; I have a different system now. When was 30
that dated?

Q. March 22. A. No, maybe I forgot to charge it; they may owe me some money yet; no, I have no account here.

Q. And you have no charge for this deed? A. No.

Q. And you have no entry in your books showing that you received anything for the preparation of it? A. Maybe I forgot to put down, that is about the only way, I got paid. 40

William Greenfield—Direct

Q. And you have no charge for paying for the recording of it? A. My boy keeps that separate account showing the deeds were recorded, when it is recorded, and the amount; I don't keep that.

10 Q. There was another property afterwards transferred to Mr. Goldberg, was there not, from Wein, Mr. and Mrs. Wein? A. North Sixth Street.

Q. Yes; and they were relatives of Mr. and Mrs. Brooks, also? A. Well, I don't know.

Q. Have you got the deed? A. I don't think I have got the original deed, I can't find the original, but I have got a certified copy of it, I think; whether it went through my office or not I don't recall, Mr. Bradner.

20 Q. Certified copy that you produce purports to be a deed made from Joseph Wein and wife to Elias Goldberg, dated April 27th, 1912? A. Yes. Who took acknowledgment there?

Q. Acknowledged in New York. You don't know anything about that transfer, then? A. To the best of my recollection, Goldberg or somebody might have brought in the deed to me and I recorded it, but my impression is that Goldberg did bring in the deed to me and I put it on record.

30 On those lots, Mr. Bradner, there was considerable trouble; those lots were formerly owned by Baum and Marks Brooks and Marks Brooks got into some litigation, or Brooks got into some litigation, and there were judgments entered against them, and that tied up the property; Baum could not convey it, I think that is the way it was, there were assessments, oh, considerable assessments there, and there was the

40 mortgage of Mr. Goldsmith, the interest had not

William Greenfield—Direct

been paid, and Lowy-Lowenstein & Leber at that time, I think, it was the firm of Lowy, Lowenstein & Leber, began, I believe, or did file a bill, whether they did or not I don't know, anyway they were on the verge, if they hadn't already filed a bill, they were on the verge of filing a bill of foreclosure. 10

Q. Then the property was in rather a precarious condition, wasn't it, about to be sold out?

A. Oh, yes, very much so.

Q. Well, Mr. Goldberg was your client; can you tell us how he became interested in that property? A. Yes; after considerable trouble I went to Somerville on three or four different occasions to see Baum and try to straighten out the thing; they were both stubborn, Baum wouldn't give in and Brooks wouldn't give in. 20

Q. Who did you go for, who did you act for then? A. I think I acted for Mr. Brooks; at that time the property was in Mr. Brooks' name when I went to Somerville.

Q. Now, I ask you how did Goldberg get in it?

A. Just as I said, that led up to it.

Q. Well, how? A. By trying to adjust the matter with him.

Q. What did he have to do with adjusting it? 30

A. He was a sort of a friend to Mr. Brooks.

Q. Did he put up any money then? A. No, not at that time.

Q. And you got it adjusted without any money, didn't you? A. Well, we got it adjusted so far as the partnership is concerned.

Q. Between Baum & Brooks? A. Yes.

Q. And you got it adjusted with the holder of the mortgage too, didn't you? A. We got it ad- 40

William Greenfield—Direct

justed with the holder of the mortgage by Goldberg paying off some liens on the property, by Goldberg giving a collateral security and his going personally on the bond, by paying, I believe it was paid to Lowy, Lowenstein & Leber, and
10 Goldberg assigned a certain mortgage for the interest that Brooks had, assigned a certain mortgage to another relative, Davis Lovejoy, I think it is.

Q. What mortgage was that? A. A mortgage on Brookdale Avenue property, I think it was, I think so.

Q. You finally got that property cleared up and made a trade with Headley, didn't you? A. Yes.

20 Q. And for some property in East Orange?
A. Yes.

Q. And the title to that was taken in Goldberg's name? A. The lots in North Sixth Street was Goldberg's because he paid for it at that time by giving the mortgage for it and giving the lien.

Q. Did he take the title to North Sixth Street, too? A. Surely.

30 Q. And he executed that deed to Brooks and Baum? A. No, Wien.

Q. Wein had that, too, did he? A. Wein had that, yes, Goldberg paid just as I have explained. I am trying to give you the best histories I possibly can, and through the records; the records will bear me out.

Q. Do you know how much Goldberg put into that Sixth Street property? A. The dollars and cents I can't say.

40 Q. About? A. I can't, Mr. Bradner.

William Greenfield—Direct

Q. Do you know why he went into it at all? When I ask you that I mean do you know from being present when any bargain was made between him and Brooks about it? A. I don't think the bargain was made with Brooks at all; that bargain was made with me because as I said at that time they were to foreclose the mortgage, and the assessments, I think the assessments were advertised for sale, on the assessments. 10

Q. Who had the title to the property when you went down to Somerville? A. I don't know, I don't remember that.

Q. Brooks wasn't it? A. Wait a minute; I would have to look at the records; I am not going to swear to a positive fact.

Q. That property was finally traded with Headley for the property in East Orange? A. Yes. 20

Q. And when the property in East Orange was acquired Mrs. Brooks was allowed to collect the rents? A. No, sir, not Mrs. Brooks at all.

Q. Did she collect the rents? A. No, sir; I say no, as far as my knowledge goes; I wasn't there when the rents were collected.

Q. Did Mr. Brooks collect the rent? A. I was so informed, yes, for a short time. 30

Q. You don't know whether he did or not? A. Personally, on information, that he collected a couple of months.

Q. After suit had been brought in the Court of Chancery Mr. Goldberg took some proceedings to prevent Mr. and Mrs. Brooks from collecting those rents, didn't he? A. Before the proceedings?

Q. Before this suit was brought? A. Yes. 40

William Greenfield—Direct

Q. When was it done? A. I know it was before.

Q. Mrs. Brooks said it was last October? A. Oh, no.

10 Q. What was done? A. Well, I wasn't there, I didn't go there; I had nothing to do with it.

Q. You had nothing to do with that? A. Me? No. All I did have to do was this, that the property was sold for non-payment of taxes and a party named Bergdoff bought it in and served notice on the tenant of this fact and wanted to collect the rent; Goldberg collected the rent then, and Goldberg was sued for it and had to pay it back and had to pay the assessments in addition to it.

20 Q. Who sued Goldberg for the rent? A. Bergdoff, under the Martin Act title, the moment they put purchase certificate on record they are entitled to the rent.

By Mr. Schotland: Q. Can you give the date of that? A. No; I would have to look at that; there was a lawsuit in the District Court, you know; Goldberg had to pay back rent, had to pay assessments and then back rent in addition to it.

30 Q. This trouble with the Sixth Street property came up about when, can you say? A. No.

Q. How long before the deed was made from Wien to Goldberg? A. Well, the trouble was then pending, there was threats of a foreclosure, and the lien, and all that, so Goldberg cleared that off.

Q. Will you produce your check book to show that? A. The stub book?

40 Q. Yes, if you please, that thousand dollar transaction. A. Which thousand dollars?

William Greenfield—Direct

Q. September 29, 1911. A. To Levy, you mean?

Mr. Schotland: To show that no check was made out?

A. Yes, surely; that was in March, wasn't it, Mr. Bradner?

Mr. Bradner: Whatever the date was. 10

Recess.

Q. Mr. Greenfield, you now produce your check book? A. Yes, stub book.

Q. Under date of March 22, 1912, there is a stub which reads, "No. 5472, March 22, 1912, Joseph Levy, in Goldberg matter, \$21.65/100?"

A. But whether this means \$21.65—

The Court: What is the question? 20

Q. Is that the entry? A. Yes; there is two entries here.

Q. Well, what are they? A. There is one, I don't know what this is, whether it means \$210, I can't say, there is something written over it, then on the side is, \$21.65, but that check didn't go through, because it isn't checked off, you see.

Q. On the stub itself directly opposite the dollar mark is 21? A. 21.

Q. Figures right down the line? A. That is right. 30

Q. Then on the right of that, half way up, 65? A. Whether it is—I don't know what that may mean—whether it meant 210.05 or—

Q. Anywhere in your check book do you carry out your check on the column? A. Not at that time I didn't, I checked it myself.

Q. The check that you made out then was either \$21.65, or \$210, or 2165? A. If a check of that kind was made out, yes. 40

William Greenfield—Cross

Q. You don't know what it was for? A. No.

Q. Who was Joseph Levy? A. I really don't know, I can't tell.

CROSS-EXAMINATION by Mr. Schotland:

10 Q. Mr. Greenfield, in your book you testified that you got the entry as having receiving a check from Nathan Kussy in September, 1911?
A. Yes.

Q. For a thousand dollars? A. Yes.

Q. What was that check for? A. That was a check in payment of the money that was due to Mr. Goldberg on a mortgage given on property on South—I have a memorandum there, record—on South Eighteenth Street or South Nineteenth Street.
20

Q. Where is your memorandum? A. Pardon me, I will get it; on a mortgage bearing date July 28, 1911, for \$2250.

By The Court: Q. What memorandum are you referring to? A. I am referring to a memorandum taken from the Register's office of Essex County, which is my own memorandum to refresh my memory. On that mortgage there was only—Mr. Goldberg only advanced \$1000; it was a construction loan, to construct that property.
30

Q. What is the date of that mortgage? A. July 28, 1911; and when I got the money the mortgage was surrendered for cancellation and it was cancelled on September 27, 1911, and that is how I got this check, a thousand dollars, in payment of that particular mortgage, which had nothing to do with the account with the others.

Q. Now, Mr. Greenfield, Mr. Kussy gave you
40 that check? A. Well, now, I won't say whether

William Greenfield—Cross

Mr. Kussy handed me the check or whether Mr. Goldberg brought the check to me.

Q. It was Kussy's check? A. Yes, it was Kussy's check.

Q. Do you know from what funds that check came from? A. Yes, from the Bigelow Building and Loan Association. 10

Q. And that association loaned money on a mortgage on whose property? A. Mr. Brooks, Marks Brooks.

Q. Then Mr. Kussy represented the Bigelow Building and Loan Association? A. Yes.

Q. And he paid you that or he turned over that thousand dollar check to procure a cancellation of the Goldberg mortgage? A. Yes, and I got Mr. Goldberg to endorse it, or whether I endorsed it for cancellation, I don't know which, and I turned over the mortgage for cancellation, the mortgage given to secure \$2250 for six months. 20

Q. But only a thousand dollars had been advanced? A. Only a thousand dollars had been advanced on that.

Q. That was September, 1911? A. Yes.

Q. How does the entry in your book read of that thousand dollars? A. I have here September 1st, that is, "Credit by check on National Newark of N. Kussy to the order of M. Brooks, endorsed to W. G., \$1000." On September 29— 30

Q. Pardon me. What else have you got? A. Debits.

Q. I mean in reference to that. A. Debits; on the 29th day of September I drew a check on the Union National Bank in payment to the order of Mr. Goldberg, in payment of claim collected from M. Brooks, a thousand dollars. 40

William Greenfield—Cross

Q. Whom did you represent in this thousand dollar transaction? A. Mr. Goldberg.

Q. Then as attorney for him you had charge of that six months mortgage, \$2250? A. Yes, I prepared the mortgage, too, I acknowledged it.

10 Q. And collected on September 1st by a check of Nathan Kussy in that sum.

The Court: He has stated all that.

Q. Now, in what account did you enter that thousand dollar transaction? A. Why, Goldberg's account.

Q. Is that the same account in which all the entries are made referring to the Brookdale and North Sixth Street property? A. Everything that is a general running account of Mr. Goldberg's.

20 Q. Have you an account with Mr. Brooks on your books? A. Yes.

Q. Have you an account with Mrs. Brooks? A. Mrs. Brooks? No, sir. Before I will answer it positive I will look it up. No, sir, no account, never had any business dealing with her.

Q. Was Mrs. Brooks ever at your office with or without Mr. Brooks in the presence or not in the presence of Mr. Goldberg, with reference to any of the transactions between Levy and Goldberg or Wien and Goldberg as to the Brookdale property or the Sixth Street property? A. No, sir.

30 Q. Did Mrs. Brooks ever talk to you about any of those transactions? A. No, sir.

Q. Was there at any time any arrangement made with you by Mr. Brooks and Mr. Goldberg, or either of them, making you the custodian of any common funds in connection with the

40 Brookdale lots? A. No, sir.

William Greenfield—Cross

Q. Or any other property formerly owned by Brooks and afterwards purchased by Goldberg?

A. No, sir.

Q. Was there ever any agreement made in your presence between Mr. Goldberg and Mr. Brooks providing for Mr. Goldberg holding the Brookdale lots or the Sixth Street lots, or any other property in his name, in trust for Mrs. Brooks and as security for a loan of \$2000? A. Decidedly not. 10

Q. Was there ever any arrangement made in your presence between Mr. Brooks and Mr. Goldberg providing for Mr. Goldberg's holding any property in trust for either Mr. or Mrs. Brooks?

A. No, sir.

Q. Did you search either the Brookdale lots or the Sixth Street lots for Mr. Goldberg? A. The Sixth Street lots I run down for a short period, possibly for a few days only, and the reason was because— 20

The Court: You are not asked the reason yet.

Q. Did you make a search on them? A. Only for a day or two days, day or two, that's all.

Q. At whose request? A. At Mr. Goldberg's request.

Q. Did you receive a search up to the time that you started to run it down? A. Yes. 30

Q. From whom? A. Lowy, Lowenstein & Leber.

Q. Did you pass title from Joseph Levy and Rose Levy, his wife, to Elias Goldberg for the Brookdale lots? A. Just as I said before, drew the deed and passed over the title, yes.

Q. Whom did you represent in that transaction? A. I only knew Mr. Goldberg. 40

William Greenfield—Cross

Q. I show you deed dated March 22, 1912, which has been used on your direct examination, which deed was recorded March 25, 1912, in Book V 50 of deeds for Essex County, on pages 111 to 114, made by Joseph Levy and Rose Levy, his wife, to Elias Goldberg; is that the deed drawn
10 by you which conveyed the Brookdale lots to Mr. Goldberg? A. Yes, sir.

Mr. Schotland: That deed has been referred to so much I think it might as well be marked in evidence, don't you?

Mr. Bradner: Yes.

Marked Exhibit C 3.

Q. Was there any consideration paid simultaneously with the passing and delivery of this deed C 3? A. Yes.
20

Q. What consideration? A. \$1000.

Q. Was that \$1000 to be a part of or an addition to the encumbrances recited in the deed as upon the property? A. In addition to the encumbrances; Mr. Goldberg took subject to that encumbrance, which he paid off.

Q. Do you know how many lots this deed represents? A. Well, I don't remember that, I really do not; I can't recall that; I would have to read the deed.
30

Q. I notice the deed calls for 535 feet and 17/100 of a foot. Was this tract, this Brookdale tract ever spoken of as being a tract of so many lots in your presence? A. They mentioned some lots, yes, they mentioned a number of lots.

Q. Was 21 the number? A. Well, I wouldn't swear to it.

Q. You know there was a number mentioned? A. They mentioned a number of lots; it is so long
40 ago, it isn't the only thing I have in my office.

William Greenfield—Cross

Q. I notice this deed C 3 provides that the conveyance is made expressly subject to an encumbrance of \$4775, and to a further encumbrance of \$1525, making a total of \$6300. Do you know whether or not this \$6300 of encumbrances was paid? A. Certainly it was paid.

Q. Who paid it? A. I paid the biggest part of it, I paid it myself, and some was paid by the building and loan. 10

Q. With whose funds were those encumbrances paid A. Mr. Goldberg's funds; I had no other.

Q. At the time of the delivery of that deed C 3 who paid over the thousand dollars to the grantor? A. I did.

Q. Whose money did you pay over? A. Mr. Goldberg's, not mine.

Q. Now, did you make that payment in cash or by check? A. Just as I explained on the direct. I was about to draw a check, but he wanted the cash, and I paid it over in cash. 20

Q. Was there any mention made at that time by Mr. Brooks or anybody representing Mrs. Brooks that Mr. Levy held that property in trust for Mrs. Brooks? A. I never heard of it; the only time I heard was when the bill was filed.

Q. Was that the first time you ever heard mention made of an allegation that Levy held that property in trust for Mrs. Brooks? 30

The Court: He said so.

A. No, sir.

Mr. Bradner: He has stated he did not know of any agreement between them.

A. No, that is right.

Q. Was there anything said at the time of the delivery of that deed, C 3, by Mr. Brooks or by 40

William Greenfield—Cross

Mr. Levy providing for Mr. Goldberg holding the property conveyed by that deed in any other way than the title that that deed gave him? A. No, sir.

10 Q. After that deed was delivered who took charge of it A. I did.

Q. You had it recorded? A. Yes, my office, that is my office recorded it; physically I did not take it up, my clerk did.

Q. You caused it to be recorded? A. Yes, one of my clerks.

Q. And it has been in your office ever since, has it? A. Yes, with the papers, Goldberg papers.

20 Q. Do you know who took charge of all the financial and business matters connected with the development and sale of the land described in that deed, C 3? A. I did. Do you want to know do I know who? Yes.

Q. Well, who did? A. I did.

Q. For whom? A. For Mr. Goldberg.

Q. Did you act in any way for Mr. or Mrs. Brooks in that connection? A. No, sir.

30 Q. Now, I show you the certified copy of the deed from Joseph Wien and wife and Michael Baum and Fanny Baum, his wife, to Elias Goldberg, which deed is dated the 27th day of April, 1912, and by the certificate of the register appears to have been recorded August 21, 1912, in Book R 51 of Deeds, pages 96 to 100.

Deed offered in evidence and marked Exhibit C 4.

40 Q. (Continuing.) Did you ever see the original of this deed which has been marked Exhibit C 4? A. My impression is that I have; my impres-

William Greenfield—Cross

sion is that it was—this deed to Elias Goldberg, while I am not going to swear to a positive fact, but I am almost sure that any deed that was given to Mr. Goldberg was passed over to me to look after, and from that assumption, from that circumstance I assume that I must have had that deed originally. 10

Q. Is that the deed that conveyed to Mr. Goldberg the North Sixth Street property? A. Yes.

The Court: It shows for itself, I suppose.

Q. Now, Mr. Greenfie'd, do you know what consideration, if any, Mr. Goldberg paid or gave for the conveyance of the North Sixth Street property to him by this deed, C 4? A. Yes.

Q. What was the consideration? A. To the best of my recollection is this: Mr. Goldberg assumed the assessments and the lien against the property, which ran up into the hundreds of dollars, street paving, curbing and flagging there, and paving also I think was there; there was quite a lot of assessments and the mortgage to Goldsmith, that mortgage was about to be foreclosed, or they had the bill ready, or filed it, I don't remember, and I negotiated with Lowy, Lowenstein & Leber about this matter for Mr. Goldberg to take it up. 20 30

Q. Who did Lowy, Lowenstein & Leber represent? A. Goldsmith, the mortgage.

Q. On the North Sixth Street property? A. On the North Sixth Street property. Then Goldsmith wouldn't do anything and insisted on having his money I had arranged to give him, unless he said he had additional security, as he considered, as he told me, as he considered the liens 40

William Greenfield—Cross

10 against the property in excess of its value; and I had then arranged that Mr. Goldberg should give a mortgage as a collateral security, I think a thousand dollars, I don't remember which, as collateral security, and he personally assuming that or giving a collateral bond, I don't remember; it was in negotiation. Then the matter was taken up with Wien; that is, as far as I know, and Wien came over and received—in addition to that there was a mortgage, I think Vigiano's mortgage from Brookdale Avenue was to be assigned to Wien as the balance of the consideration. They came to the office, and I believe, as I was about preparing an assignment, I think I prepared it, we were talking about, for that
20 Vigiano mortgage, but Wien requested that a mortgage to be assigned to a man by the name of Lovejoy, another relative of Brooks; it was all right, it didn't make any difference to us; that mortgage was then assigned to Lovejoy, I think, which is part of the consideration for the North Sixth Street property. I think that is the way it worked out. Now, that is the best of my memory at this time. I think that is the way it worked out.

30 Q. And you are the one that had charge of it for Mr. Goldberg? A. Yes, sir.

Q. Can you tell whether the title to this North Sixth Street property passed to Goldberg the date the deed is dated or the date it is recorded? There seems to be a lapse of time between April and August? A. Well, now, that I can't say, how that is. Well, yes; the reason it was held up was the trouble with the mortgage, Goldsmith mortgage;
40 gage; Goldsmith insisted upon all his money to

William Greenfield—Cross

be paid off, I think it amounted to several thousand dollars; quite a large amount; it amounted to quite a large amount, and we were not in a position, Mr. Goldberg was not in a position to pay it and to pay off the lien, as the city, I believe, was advertising for the sale for nonpayment of the assessment, and in that way it kept on dickering, negotiating with Mr. Goldsmith, Lowy & Lowenstein, to adjust the matter, and eventually, after a long delay, we had adjusted the matter. 10

Q. Do you know whether or not Mr. Goldberg bought any lumber from Mr. Brooks to be used in the erection of the four buildings that were erected on the Brookdale lots A. Oh, yes, he bought some lumber, that is what I was informed by Mr. Goldberg and Brooks, that he bought some lumber there, how much I can't say. 20

Q. Have you in your account with Goldberg any record of having paid any money to Brooks for any lumber? A. It may not say in so many words, it would not say for lumber, I have given check to Brooks, made payments.

Q. Do you know what those payments were for when you made them? A. He would tell me that it was for lumber.

Q. Who would tell you? A. Mr. Goldberg and Mr. Brooks, that is, Mr. Goldberg would say so, that he bought so much lumber, and Brooks was there and got a check. 30

Q. Now, do you know from any information imparted to you by either Mr. Brooks or Mr. Goldberg as to why Mr. Brooks was selected as supervisor for the erection of these buildings? Just answer that yes or no, without giving any information. A. Well, to a certain extent, yes. 40

William Greenfield—Cross

Q. And from whom did you know that, that is, by whom was the information imparted to you?

A. From Mr. Goldberg, they were both there; Mr. Brooks did not discuss the matter with me about that, but just casually said it, spoke about it.

10 Q. While they were both there you say? A. Yes.

Q. What was said in your presence which gave the reason for Mr. Brooks being the supervisor?

A. Just merely because Mr. Brooks has lost everything, and he had nothing to do, and he made some arrangements, instead of having an architect, and Brooks was an old builder, knew about the building and construction, a good deal of it, and that is why, that is the only reason why, he spoke about it casually.

20 Q. Was the amount of compensation to Mr. Brooks mentioned in your presence? A. No, not in my presence.

Q. Do you know from any of the things that you personally did whether or not Brooks was paid for that work? A. As far as the best of my knowledge goes he was.

Q. What do you gather your knowledge from?

30 A. Merely from the conversations in the office, talk about it, they had some dispute about it, they did have a dispute in my office.

Q. Where did they have that dispute? A. In my office.

Q. In your presence? A. Yes; Brooks claimed that Mr. Goldberg owed him more money for some of the lumber and for some wages or for whatever it was for; they had some dispute about it and I tried to adjust it between them.

40

William Greenfield—Cross

Q. Did you adjust it? A. Well, I haven't, evidently I haven't succeeded. I have tried to adjust it.

Q. Did you for the time being? A. For that time being, well, I can't say that I have; I can't say that I have.

Q. Does your account with Mr. Goldberg show any payments to Mr. Brooks which you know were made for wages? A. Well, the checks that I gave him was— 10

The Court: Yes or no? A. I can't say in so many words specifically that this particular check was given for wages.

Q. That is not my question.

The Court: Answer the question yes or no.

Q. (Question read.) A. Well, that is a difficult question for me to answer, whether you mean that a specific payment is made for wages. 20

The Court: No, that is not the question at all. The question is what your books show. A. My books does not show wages.

Q. They show payments? A. They show payments only.

Q. Do you know whether or not, without identifying any specific payment, any of the payments which appear on your book as having been made to Mr. Brooks out of the Goldberg funds were made for wages? A. Yes. 30

Q. Do you know why Brooks was present at the time of the sale by Levy to Goldberg of the Brookdale lots? A. Well, the only reason I know is that Mr. Levy was never before in my office; Brooks brought him over there; that is the only reason that I know. 40

William Greenfield—Re-direct

RE-DIRECT-EXAMINATION by Mr. Bradner:

Q. You produced here your check book, on what bank is that? A. Union and National. Do you want to look at the National?

10 Q. The National, you did not produce that, did you? A. Yes, I have it here.

By the Court: Q. What do you mean by the National? A. National Newark Banking Company.

Q. Is there anything in that March 22? A. I looked for that and I couldn't find it; this is June, I think, that is.

Q. You do not find anything in your check book of the National Newark Banking Company on March 22? A. No; I looked for that.

20 Q. To show a payment to Levy? A. No.

Q. Now, have you got your account book there—just one question about that—turn to the Goldberg account, first payment; the item September 1, 1911, is credit of \$1000 from Kussy? A. Yes.

Q. And on September 29, 1911, is payment of \$1000? A. Yes.

Q. The next item on the credit side is March 15, 1912, is it not? A. That I received—yes, that is a credit account, yes.

30 Q. Received on March 15, 1912, a check to the order of M. Brooks? A. New York.

Q. New York check for \$100? A. That is right.

Q. What is that? A. I explained that before; I gave my check, I got their check and gave my check somehow, and their check was protested.

Q. Whose check? A. The New York check, and
40 Brooks went to New York and got it for me, but

William Greenfield—Re-direct

he took it to his order, and he brought it back to me and he endorsed it over to me.

Q. Why do you credit that to Goldberg's account? A. It was in Goldberg's money—wait a minute, I think that I am not mistaken; my impression is that it was the mantle man, I think, or something like that. 10

Q. The mantle man for what? A. For mantle pieces.

Q. For what? A. For the buildings.

Q. For Brookdale Avenue? A. I wont say for what property.

Q. Just look? A. It doesn't say anything there; that check is March 15 and Goldberg did not get the title until March 22, and I don't know what it was for, whether he got mantles for the Sixth Street property, for his own property, or 20
somewheres; it was some mantle man, if I remember right, and it was a relative of Mr. Brooks. I can't recall how that thing worked out.

Q. When this property was transferred from Levy to Goldberg did you make a search for Goldberg? A. I think I did, I wouldn't say positive; I think I did.

Q. I understand you to say that you did not know there was going to be any transfer until they came in and wanted the deed drawn? A. I have started that tract before, my impression is, I don't recall, I won't swear to it, Mr. Bradner whether I did or not, whether I made that search on that tract once before, I don't remember, but at the time when Goldberg took the deed—I don't think so, now, I won't say. 30

Q. Now, I will help you out on that. You had 40

William Greenfield—Re-direct

made a search for Brooks, hadn't you, and charged him for it? A. On that property is that?

Q. Search on Brookdale Avenue, \$35? A. Possibly so, as I said—

10 Q. November, 1911? A. It may possibly be, that is what I said, that is the reason I may not have searched it at that time.

Q. You knew it was Brook's property, didn't you? A. I knew it was once upon a time Brook's property, sure.

Q. Did you know he had transferred it to Levy? A. No, sir.

Q. Didn't know anything about that? A. No, sir, did not.

20 Q. And you did not know whether Levy was good, bad or indifferent, did you? A. Well, no, I can't say that I did know anything about it.

Q. You didn't make any search for judgments against Levy? A. I can't say that I did.

30 Q. Didn't make any search for mortgages against Levy? A. Wait a minute—possibly I ran down there while they were transferring it, I possibly had my clerk run down the judgments and attachments, and I was informed, I had taken Mr. Brooks' and Mr. Goldberg's word for it that they were New York or Brooklyn people, they were not residents of this state, and I assumed from that they hadn't lived in this state and ordinary suit could not be brought and possibly I run down for attachments.

Q. Wasn't that very unusual to let your client pay out a thousand dollars and not even have a Supreme Court search? A. That was their request.

40 Q. You took Mr. Brook's word for it, did you,

William Greenfield—Re-direct

that Levy was all right? A. Mr. Goldberg said so too; I don't know.

Q. Where did he know? A. I don't know where he knew, I don't know whether he ever knew him or not, I can't tell you that.

Q. Didn't you in drawing that deed take the description right out of the former deed from Brooks to Levy and subject to the same mortgages and the same tax? A. I possibly did that, yes. 10

Q. Tax of 1911? A. I possibly did that; I might have followed that up; I might have inquired about whether these things were paid, and they possibly said no, and I followed it right along, just as I say I have to have some description. 20

Q. Now, Brooks and Goldberg had been in your office and had some difficulties and disputes? A. When?

Q. You stated? A. Yes, they had some disputes.

Q. And you tried to make a settlement between them? A. I tried to patch up things.

Q. Did you actually draw up releases to be executed by Brooks and his wife? A. Not to my recollection.

Q. Never did? A. I might have dictated a general release; I might have dictated a general release, I think I did. 30

Q. Did you draw up a release to be executed by Brooks and his wife in consideration of the payment of \$3100? A. Never sir. I don't have any such recollection, sir.

Q. For any amount of money? A. I don't recall it. 40

Samuel Brooks—Cross

Q. Didn't you ask them to come there and sign releases and receive \$3100? A. No sir, I don't recall any such requests made. \$3100?

Q. Well, \$2100? A. No.

10

SAMUEL BROOKS, sworn:

Direct-Examination by Mr. Bradner:

Q. Are you a son of Celia Brooks and Marks Brooks? A. Yes, sir.

Q. Do you know Mr. Goldberg? A. Yes, sir.

Q. Did you see him on Monday night last? A. Yes.

20 Q. To serve a subpoenae upon him to come here? A. Yes.

Q. Did you have any conversation with him?
A. I got talking to him and told him that the trial was coming up on Wednesday, and he says to me he didn't care; I saw him on Monday night and was talking to him about the trial, that it was coming up on Wednesday; he said it did not interest him, that all the money was held by Mr. Greenfield and he was to turn it over to my
30 mother.

CROSS-EXAMINATION by Mr. Schotland:

Q. Where was it that you saw him Monday night? A. On Sixteenth Avenue.

Q. On the street? A. Yes.

Q. You tried to serve him with a subpoenae?
A. Yes.

Q. He refused to accept service, didn't he?

A. He refused it, but I put the fifty cents in his
40 pocket.

Samuel Brooks—Cross

Q. And he threw it out on the street didn't he?

A. Yes, and two boys picked it up, and he run after them and got the money back again.

Q. At what stage of those proceedings did he enter into that conversation with you and tell you that Mr. Greenfield had all the money to give back to your mother? A. That was before I served him. 10

Q. Before you served him? A. Yes.

Q. Did he tell you how much money Mr. Greenfield had, what to give back to your mother? A. How much? No.

Q. What had you said to him before he made that statement? A. Why, we were talking about the trial and he said he had no money, that all the money was held by Mr. Greenfield. 20

Q. What did you say to him about the trial?

A. I told him the trial was coming up on Wednesday.

Q. Is that all you said? A. That is all.

Q. And in response to that simple statement he said— A. He said it didn't interest him because the money was being held by Greenfield and he expected my mother to get it from him.

Q. He was perfectly friendly then? A. Sure.

Q. Did you ask him why he did not ask Mr. Greenfield to pay it over to your mother then, instead of standing suit? A. No; I just simply served him with subpoena and walked off. 30

Q. Didn't it interest you either? A. Why, I spoke to him several times about it in that three or four weeks when I met him on Orange car.

Q. I am talking about this particular occasion?

A. What was that again?

Q. Monday night? A. Yes, 40

Samuel Brooks—Cross

Q. I am asking you if it did not interest you either to find out why he did not order the money paid over, if that was the situation as he explained it to you? A. Why, I was in this thing when Mr. Greenfield drew up some releases to settle this matter, and knew all about it.

10 Q. Will you please just answer my question. I am referring only to Monday night, your conversation with Mr. Goldberg at that time, as you say. Did you ask him any question at that time as to why he did not order the money turned over, if that was all he cared about? A. No, I didn't ask him.

Q. Why not? A. Because I know it was not up to him.

20 Q. You knew it was not up to him? A. Yes.

Q. How did you know that? A. Because I tried to effect a settlement several times with Mr. Greenfield?

Q. So you knew it was up to Greenfield? A. Yes.

Q. And immediately after that conversation you served him with a subpoena? A. Yes.

Q. And that is when he refused to be served? A. Yes.

30 Q. Up to that time he was perfectly friendly with you? A. Always.

Q. Do you know how long this suit has been pending? A. About a year, to my recollection.

Q. And during all of the time the suit was pending he was perfectly friendly with you? A. Yes.

40 Q. The only time he acted unfriendly was when you tried to serve him with subpoena for him to appear in court in his own case? A. Yes.

Marks Brooks—Direct

MARKS BROOKS, sworn:

Direct-Examination by Mr. Bradner:

Q. Mrs. Celia Brooks is your wife? A. Yes, sir.

Mr. Bradner: I think I ought to state to the Court that Mr. Brooks has been very ill, he is very feeble now, and will have to have consideration for him. 10

Q. I show you a paper, can you see what that is? A. Yes, I see.

Q. What is it? A. That is statement from Mr. Greenfield to me?

Q. Did he give it to you? A. Yes.

Paper marked C 2 for identification offered in evidence and marked Exhibit C 2. 20

Q. Mr. Brooks, you know Mr. Goldberg? A. Yes, sir.

Q. You had some property on Brookdale Avenue, did you not, at one time? A. Yes, sir.

Q. And you transferred it to Mr. Levy? A. Levy, yes.

Q. And it was afterwards transferred to Mr. Goldberg? A. Yes, sir.

Q. Now, did you have anything to do with the transfer to Mr. Goldberg? A. Did I have anything to do with it? 30

Q. Did you have anything to do with that? A. No, sir.

Q. Did you have any arrangement with Mr. Goldberg about it? A. Yes.

Q. And what was your arrangement? A. He loaned me \$2000, and I should erect four buildings on the lot, and I should give him \$200 for it 40

Marks Brooks—Direct

for bonus and should make up deed at the same time for twenty one lots, there was twenty- one lots.

10 Q. Twenty-one lots where? A. Brookdale Avenue; we should make up for the deed from Goldberg and his wife to Mrs. Brooks to hold this in trust until everything should be rented up, should be builded, and sell all those lots, the rest of the lots beside the building.

Q. Where did you make that arrangement?

A. By Mr. Greenfield, in the office.

Q. In Mr. Greenfield's office? A. Yes, sir.

Q. And was that before or after Mr. Levy came over here and signed the deed? A. That was before.

20 Q. How long before? A. I should say about, I think it took say about a month or less than a month.

Q. Did you get any money and take it in to Mr. Greenfield? A. Yes.

Q. How much? A. I think between six and seven hundred dollars.

Q. When? A. That is before the transfer of the lot.

30 Q. Before the deed was made to Mr. Levy? A. Yes.

Q. There was a check for a hundred dollars from New York? A. Yes.

Q. Whose check was that? A. That was a friend of mine loaned me that.

40 Q. What was that for? A. He asked me for a thousand dollars, I should give it to him, but I didn't have a thousand dollars, so if I could get it I would give it to him between six and seven hundred dollars.

Marks Brooks—Direct

Q. Who asked you? A. Mr. Greenfield.

Q. And why did you put any money in Mr. Greenfield's hands? A. That was made up that way, Greenfield was my lawyer four or five years, and we made transaction with Goldberg to build those four buildings and to get me the \$2000; he says to me— 10

By the Court: Q. Who said this? A. Mr. Greenfield told me, he said—

By Mr Schotland: Q. Was Mr. Goldberg there when Mr. Greenfield told you that? A. Yes.

By Mr. Schotland: Q. He was there? A. Yes. He says, "I will tell you what I will do;" he says, "I will furnish \$2000 to you," and we should give him all the lots in his name, and I will take—

Mr. Schotland: I object to this as contradicting their own witness. 20

The Court: They have got a right to contradict their own witness; they can not impeach him, but can contradict him.

A. (continuing). "I will take a deed of trust in my safe for Mrs. Brooks, when everything will be built up and sell it" he says, "We will straighten everything up in my hands." Then he told me, he said, "Mr. Goldberg, I want you should furnish me money in my hands, \$2000, 30 and I am going to keep all the books with Mr. Brooks, and everything shall be straight, and whatever money will come in," he said, "will straighten up with Mrs. Brooks all right," and I should look up for the buildings, to build them, you know, and everything should be straightened up," he says, "everything in my hands."

Q. Now, do you know whether Mr. Goldberg 40

Peter Steinsitz—Direct

ever signed a deed of trust to your wife? A. He told me, yes.

Q. Who told you? A. Mr. Greenfield told me he did sign one.

Q. That he did sign one? A. Yes, that he got it.

10 Q. Did he tell you where it was? A. In his safe.

Q. Did you ever see it? A. I never saw it.

Q. Did you make any agreement with Mr. Goldberg to superintend these buildings for wages?

A. I never spoke to him about wages at all.

Q. You never talked to him about wages? A. No, sir.

20 Q. Did you get any checks from Mr. Greenfield while the work went along? A. No, very little I got.

Q. What was that for? A. Just I would borrow from him a few dollars, but not very much.

Q. Were you there when Mr. Levy signed the deed? (No answer.)

Witness temporarily withdrawn on account of illness.

30 PETER STEINSITZ, sworn:

Direct-examination by Mr. Bradner:

Q. You are an attorney at law? A. Yes.

Q. And acting on behalf of Mr. and Mrs. Brooks, did you endeavor to get from Mr. Greenfield a statement of what they claimed to be mon-
eys he is accountable for? A. I did. I asked Mr. Greenfield to prepare a statement, and several
40 days had elapsed, and late in November, I think

Peter Steinsitz—Cross

it was, one afternoon he sent his stenographer to my office and she handed me the statement here in your hands, which has been in my possession ever since.

Q. Exhibit 1 for identification? A. Yes.

Q. That came from Mr. Greenfield's stenographer? A. Yes. 10

CROSS-EXAMINATION by Mr. Schotland:

Q. Which one of Mr. Greenfield's stenographers? A. The young lady that was in this room a little while ago.

Q. Do you know what that is a statement of? A. I assume—it is purported to be a statement of the transaction where Mr. Brooks was interested in moneys in Mr. Greenfield's possession; that was my impression at the time. 20

Q. I call your attention to the last sheet of this statement, that appears to be the only one which contains the name of any party other than that of Mr. Greenfield? A. So I understand.

The Court: What is the question?

Q. And that says, "Elias Goldberg to William Greenfield, debtor."

The Court: What is the question?

Q. Is it from the information contained on that sheet that you assume that that is an account of any transactions with Brooks? A. No, sir. 30

Q. Does Mr. Brooks' name appear anywhere in this account? A. It certainly does, various times according to my recollection; I haven't looked—here is one item, "Check to the order of M. Brooks, \$100;" then I think there are various items under the heading of disbursements.

Q. Moneys paid to Brooks? A. Yes. 40

Peter Steinsitz—Re-direct

Q. Any heading on that account other than the one showing this account between Elias Goldberg and William Greenfield? A. No.

The Court: I suppose the paper shows for itself.

10 RE-DIRECT-EXAMINATION by Mr. Bradner:

Q. The young gentleman in your office tells me that there may be some error about who brought that in the office. Were you present when the paper was brought in? A. Why, certainly I was present. I might correct my statement before and say perhaps I am not absolutely certain as to whether it was this young lady or Mr. Greenfield's other stenographer; it may have been
20 brought in by the other one.

Q. But it was either one of them? A. Yes.

Q. You are sure it was brought there? A. Positive.

Q. Do you know anything about the efforts to make an adjustment in Mr. Greenfield's office in the preparation of release or releases, do you know? A. I do.

Q. Did you see the release? A. I did.

30 Q. Where? A. In Mr. Greenfield's office.

Q. And who had prepared it? A. I don't know.

Q. And was Mr. Greenfield there? A. Mr. Greenfield handed me those papers.

Q. And what was the consideration stated in the release?

Mr. Schotland: I object.

The Court: Where is the paper?

Mr. Bradner: Mr. Greenfield denies it.

40 The Court: Yes, that permits cross-examination about it.

Peter Steinsitz—Re-direct

Mr. Schotland: It is not cross-examination. It is a witness called by Mr. Bradner.

The Court: I don't mean cross-examination, but an examination can properly be made.

Mr. Schotland: As I understand it, if there was an attempt to compromise a difficulty between these parties, and that attempt did not succeed, why, everything that was done, what was drawn up in the attempt to compromise can not be introduced in evidence, and it seems to me that as far as the preliminary testimony has gone on that subject it shows nothing more nor less than there was an attempt to settle the dispute. 10 20

The Court: What do you say to that?

Mr. Bradner: This was brought out on Mr. Schotland's cross-examination of Mr. Greenfield, that is what opened the door to it, that is the way it was brought out; he asked about making some adjustment, then I opened it up further on re-direct-examination of Mr. Greenfield, and Mr. Greenfield said they were there trying to make an adjustment. 30

The Court: I think you may show there was an effort made to compromise, and that papers were drawn and so forth, and that they failed; but what the terms of the compromise were I think you will have to forego. I will take the testimony and consider its availability when I come to consider the case finally. You answer the question. 40

Peter Steinsitz—Re-cross

Q. You saw the releases? A. I did.

Q. What consideration was stated in the one to be signed by Mr. Brooks?

Mr. Schotland: I object.

The Court: It is objected to, and I say
10 I will take the testimony and consider it
when I come to consider the case finally.

A. The consideration stated was \$3150 and purported to be a release—

Mr. Schotland: You have answered the question.

Q. And the release in which that consideration was stated was release to be executed by whom?

Mr. Schotland: I object.

The Court: I will take the testimony.
20 A. By Mr. and Mrs. Brooks to both Mr. Goldberg and Mr. Greenfield.

By the Court: Q. Did you read the document from end to end? A. Yes, sir.

RE-CROSS-EXAMINATION by Mr. Schotland:

Q. And you did not accept it? A. My clients did not accept it, refused to take that sum.

Mr. Schotland: I ask that that part be
30 stricken out; I only wanted to get on record whether it was accepted or not, that is all.

The Court: Yes.

Q. When was that? A. It was either in the month of November or December, 1913.

Q. That is four or five months after this suit was instituted? A. Yes.

Mr. Schotland: I ask that all that testimony be stricken out.

40 The Court: I won't strike it out now.

Marks Brooks—Direct

MARKS BROOKS resumes for further direct-examination by Mr. Bradner:

Q. You were in Mr. Greenfield's office when Mr. Levy signed the deed? A. Yes.

Q. Did you see any money paid to anybody? 10
A. No, sir.

Q. Do you know whether any money was paid to Mr. Levy? A. No, sir. Mr. Greenfield made a check to Joe Levy's name for a thousand dollars, and Joe Levy signed the check and give it back to Greenfield.

Q. You mean endorsed it? A. Endorsed it, yes, and gave it back, I believe on the Newark National Bank, made the check.

Q. Why was that done, do you know? A. In 20
Greenfield's office.

Q. Why was that done? A. He says so he wants to make some kind of transaction to look like a sale.

Q. Did he say why? A. "Because some time might happen something" he says, "I want to be on the sure side."

Q. Who wanted to be on the sure side? A. He wants to be on the sure side, Mr. Greenfield.

Q. Just try to tell us just what was said at that time, tell us everything that was said as you 30
remember? A. The same time?

Q. Yes, the same time the deed was signed?
A. The deed was signed in Mr. Greenfield's office, and he took from Goldberg \$2,000 and all the money from the buildings and loan on the rest of the lots which should be sold should be returned to Mr. Greenfield's hands, everything shall be 40
winded up, Goldberg should not have any money,

Marks Brooks—Direct

he would not give him any money until the thing should be wound up; and at that time, that was in the afternoon, that is the only thing we talked of.

Q. That was after Mr. Levy left? A. Yes.

10 Q. While he was there I understood you to say that Mr. Greenfield gave a check to Mr. Levy for a thousand dollars? A. Yes.

Q. Is that right? A. Yes.

Q. Now, what did Mr. Levy do with that check? A. He endorsed in the bank and he give it back again to Greenfield.

Q. What did Mr. Greenfield say to you when he gave him the check? A. He told to everybody, myself, Mr. Levy and Mr. Goldberg, he says he wants to make a kind of transaction of a sale.

20 Q. Well, now, you had transferred that property to Mr. Levy just a little while before that? A. Yes.

Q. Who drew the deed? A. In the name of Fisch.

Q. Oh, Simon Fisch? A. Yes.

Q. Did you sell the property to Mr. Levy? A. No, sir.

Q. Eh? A. No, sir.

30 Mr. Schotland: I object to that.

Q. Who asked Mr. Levy to come over to Newark and sign the deed? A. Who asked Mr. Levy?

Q. Yes. A. Mr. Greenfield tells me and my wife the day before we should bring Mr. Levy to my office.

Q. Who took him to Mr. Greenfield's office? A. I take him myself, and Mrs. Brooks.

40 Q. When you got down there to the office did you meet Mr. Goldberg there? A. Yes.

Marks Brooks—Cross

Q. Did you introduce Mr. Goldberg to Mr. Levy? A. Yes, sir.

Q. Do you know whether he had ever met him before? A. Never, it was the first time he saw him.

CROSS-EXAMINATION by Mr. Schotland: 10

Q. With whom did you make the agreement regarding this property? A. Which property, Brookdale Avenue property?

Q. Yes; it is the only one you have spoken about. A. Made the agreement with Mr. Goldberg.

Q. With Mr. Goldberg? A. Yes, sir.

Q. Where did you make the agreement? A. Right in Mr. Greenfield's office.

Q. Who was there at the time? A. I was there, Mr. Greenfield was there, my wife was there and Goldberg was there. 20

Q. Now, what agreement did you make? A. That he should lend us \$2,000 to build for buildings.

Q. Who should lend you \$2,000? A. Mr. Goldberg should lend me \$2,000 to build for buildings and should give him lots in his name.

Q. In whose name were the lots at that time? A. In Mr. Joe Levy. 30

Q. Whose lots were they? A. It was my lots.

Q. It was your lots? A. Yes, sir; I put it in my wife's name; I put it in Mr. Joe Levy's name.

Q. These lots were never in your wife's name?

A. It was in my wife and myself all the time.

Q. What? A. There was a deed, when I bought those lots it was myself and my wife. 40

Q. Wasn't it all in your own name? A. I couldn't tell you.

Marks Brooks—Cross

Q. Don't you know? A. Whenever I took anything I understood that belongs to me and my wife.

Mr. Schotland: You admit the title is in him alone?

10 Mr. Bradner: Yes. I offer deed from the Roosevelt Realty Company to Marks Brooks, dated December 6, 1911, and recorded December 22, 1911, in Book Y-49 of Deeds for Essex County, on pages 574 to 577, and is a warranty deed conveying the Brookdale Avenue property.

Marked Exhibit C-5.

20 Q. Now, why did you transfer those lots to Mr. Levy? A. I do owe him some money, Mr. Levy, and I give him them lots, I told him when I want them back again, those lots, when I try to sell them lots and pay my little debts up what I owe, that he should transfer this to my wife Celia Brooks; he says, "All right."

Q. You had a lot of creditors at that time, didn't you? A. No, sir.

Q. No, sir.

Mr. Bradner: I object to this going any further.

30 The Court: Yes; I don't think it makes any difference.

Mr. Schotland: I submit it is proper cross-examination of this witness for the purpose of attacking his credibility.

The Court: I think it is admissible on that ground.

Mr. Bradner: Only for that purpose?

The Court: Only for that purpose.

40 Q. You made the deed to Levy in January, 1912? A. Yes.

Marks Brooks—Cross

Q. And during that same month you gave a chattel mortgage to Wien covering all of your personal property, your lumber and office fixtures, and all that, didn't you? A. No. I owed him \$2,000.

Q. I am not asking you whether you owed him; I am asking you whether you did not give him a chattel mortgage? A. Yes, sir. 10

Q. That covered all the personal property you had? A. Yes, some lumber, that is all I had.

Q. But it covered everything you had? A. That is all I had.

Q. Just say yes or no.

The Court: Did it cover everything you had or not? A. Yes, sir; it covered everything I had.

Q. And in that same month you also deed over your interest in the North Sixth Street lots to Mr. Wien? A. Yes, sir. 20

Q. So that you did not own anything at all in your name after January, 1912? A. I did.

Q. What is that? A. I did.

Q. What? A. I had property in Nineteenth Street.

Q. In Nineteenth Street? A. Yes, 729, in my name.

Q. That was the property that was foreclosed, wasn't it? A. That was later on it was foreclosed. 30

Q. But that was the property that was foreclosed? A. Yes.

Q. Now, didn't you have a lot of business creditors at that time? A. Yes, I had some.

Q. And during February, March and April these business creditors procured judgments against you, didn't they? A. Some of them yes; 40

Marks Brooks—Cross

I paid as high as twenty and twenty-five per cent—

Mr. Schotland: I ask that that be stricken out as not responsive to any question.

The Court: Yes.

10 Q. Didn't you then make these transfers of everything you had for the purpose of taking it out of the power of your business creditors to take any part of it? A. No, sir.

Q. You did not? A. No, sir.

Q. Did you get any written agreement from Mr. Levy when you gave him the deed? A. Written agreement? No, sir.

20 Q. Now, did Mr. Levy make any agreement in your presence with Mr. Goldberg when he delivered the deed to Goldberg? A. You heard the conversation what we talked about here.

Q. What conversation was that? A. He says he wish us luck, he says, "Try to make it as much as you can; I think Mr. Goldberg is doing the right thing with you," he said, "He lend you money," he says, "You will be on the safe side, Mr. Greenfield is attending for me to it."

Q. Will you tell us just exactly what the whole agreement was? A. My wife came one day home and told me.

30 Q. No; I want to know what the whole agreement was that was made in Mr. Greenfield's office, not what your wife told you, or anything else. A. We was over there before we took from Levy the lots, we was over to Greenfield's, myself and my wife and Goldberg was over there, and we was, we made it up that he should give us \$2,000, we shall give him all the lots and security in his
40 name for \$2,000, and he wants \$200 for, and

Marks Brooks—Cross

Greenfield told us, me and my wife and Goldberg, he said, "I am going to keep all the money and keep the books, I will take all the money in and pay out all the money until the end when the building should be done and the rest of the lots shall be sold, and I will take a deed in trust to Mrs. Brooks and keep it in my own safe for you," 10 he says, "You paid me a bill," it was before we start to build, "you be straight with me and I will have everything straight with you."

Q. Then your agreement was that Mr. Greenfield was to receive all the money? A. Yes.

Q. He was to pay out all the money? A. Yes, sir.

Q. And when the thing was all ended he was to pay back Mr. Goldberg his money? A. Yes, 20 sir.

Q. And turn you over the balance? A. To my wife.

Q. To you or to your wife? A. To my wife.

Q. To your wife? A. Yes, sir.

Q. Did Mr. Greenfield receive all the money? A. Yes, sir.

Q. Did he pay out everything that was paid out? A. Yes, sir, pretty near everything.

Q. And where is the balance of the money? A. 30 By Mr. Greenfield.

Q. By Mr. Greenfield? A. Yes, the balance of the money is by Mr. Greenfield.

Q. Why didn't you sue Mr. Greenfield then? A. I wanted to sue him.

Q. You did want to sue him? A. Yes, sir.

Q. Why didn't you? A. Because he tell us the Court will take him for this case itself.

Q. Now, Mr. Brooks, at the same time that Mr. 40

Marks Brooks—Cross

Levy delivered the deed to Mr. Goldberg for the Brookdale lots Mr. Goldberg gave Mr. Greenfield \$2,000? A. Yes.

Q. At that same time? A. No, I can't tell you what time he gave him \$2,000, but he came in and told he got \$2,000 from Goldberg.

10 Q. Didn't you testify on direct-examination that you saw Mr. Goldberg give Mr. Greenfield \$2000? A. No, sir.

Q. What did you say about it? Did you see him give Mr. Greenfield \$2,000? A. I did not.

Q. How do you know he gave him \$2,000? A. Mr. Greenfield told me he has got the \$2,000.

Q. When did he tell you he had the \$2,000? A. When he had the deed already signed.

20 Q. Then he told you he has got the \$2,000? A. Yes, sir.

Q. And how much did you give Mr. Greenfield? A. I think between—I couldn't tell you—between five and six or seven hundred dollars.

Q. When did you give him your money? A. I gave him before the property was—it was a few days before Joe Levy gave him the deed.

Q. A few days before Joe Levy gave the deed to Goldberg? A. Or a week, I couldn't say.

30 Q. But around the time, you are sure it was around the time that Joe Levy gave the deed to Goldberg, around that time? A. Excuse me. I gave him after this, after; I remember it now.

Q. Afterwards? A. After he got the deed from Joe Levy I gave him that money.

Q. How long after? A. I couldn't tell you exactly, right away, pretty soon, the same month.

Q. The same month? A. I think so.

40 Q. Then around the same time, either before

Marks Brooks—Cross

or after, you gave Mr. Greenfield between five and seven hundred dollars? A. Yes, sir.

Q. Where did you get that money from? A. I don't gave him in cash, I gave him some notes.

Q. Gave him notes? A. Notes, not from me, from my friend; I gave him only in cash a hundred dollars I took it from New York from a friend of mine. 10

Q. Whose note did you give? A. Isaac Sandowsky, and I give him one from Rosenberg, a New York man, I gave him \$100 in cash, and \$200 or \$150, or something also from Rosenberg, notes.

Q. Where are those notes? A. That was not my notes.

By the Court: Q. Where are they? A. By those people, they were paid, you know.

By the Court: Q. They were paid by the makers? A. Yes, paid by the makers and Greenfield collected the money. 20

Q. You are sure you gave those notes to Mr. Greenfield? A. Yes.

Q. You say those notes were given to you by friends of yours who loaned the notes? A. No, some of them they owed me.

Q. Who owed you? A. Sandowsky owed me those notes.

Q. What about Rosenberg? A. Rosenberg, I had transaction with him some time ago. 30

Q. Did Rosenberg owe you that money or did he give you the note as an accommodation? A. He did not owe me so much; he gave me some as accommodation.

Q. How much was the Rosenberg note? A. Two hundred dollars or \$150.

Q. What? A. Two hundred dollars or \$150. 40

Marks Brooks—Cross

Q. There were two notes of Rosenberg? A. Yes, sir.

Q. And how much was the accommodation? A. I couldn't tell you exactly; I have got it somewhere.

10 Q. And how much did he owe you? A. He didn't owe me very much, about \$50 or \$75 or \$60.

Q. He owed you \$50 or \$60? A. Yes, sir.

Q. And he gave you notes for \$450? A. Yes; no, it was less than that.

Q. One note for \$200 and one for \$150? A. One for \$150.

Q. That would be \$350? A. Got everything in the statement.

20 Q. And he paid the notes when they became due? A. He did pay it.

Q. He paid the notes? A. Yes, sir.

Q. Did you cash the note with anybody? A. Mr. Greenfield deposited in his bank.

By the Court: Q. He says he delivered the notes to Greenfield? A. Yes, sir.

By the Court: Q. What do you mean by cashing the notes? Did he get them discounted for his own account, do you mean? A. I did not.

30 Q. Did you get a receipt of Mr. Greenfield for that money? A. No, sir, nothing.

Q. You simply gave him that money? A. What do you say?

Q. You simply gave him the note? A. He required from me a thousand dollars, Greenfield, so I promised him I will try to do it; I came to that point I didn't have any more, so he let it go that way.

40 Q. What did you have to put up money for? A. Mr. Goldberg would not furnish no other way the \$2,000.

Marks Brooks—Cross

Q. Now, as a matter of fact, didn't you go to Mr. Goldberg and tell him that you had lost your business, lost your money, and that here was a good chance for Mr. Goldberg to make some money, that he should buy these Brookdale lots, and you would supervise the erection of the buildings on those lots, you would build six-family houses, 10 having the rooms run front and back, that you could build them for him at a cost of \$5,500 apiece, and that he would be able to get a six-thousand-dollar building and loan mortgage on each house? Is that right so far? A. I never spoke to him anything.

Q. Never spoke to him about it? A. No, sir, never.

Q. And didn't you tell him that all he would have to pay to you would be so much a week for your work? A. It was never mentioned anything at all like that at all; he know that himself, this man. 20

Q. Did you go to Goldberg and ask him to buy these lots for any purpose? A. I never spoke to him at all.

Mr. Bradner: I want to produce Joseph Levy to prove that he was holding this property for Mr. Brooks, and transferred it at Mr. Brooks' request to Mr. Goldberg without any consideration whatever; that is what we want to prove by him, and I would like to reserve the privilege of calling him. 30

Mr. Schotland: I think that proof ought to be put in before the complainant closes his case.

The Court: We will consider it in. 40

Joseph S. Levy—Direct

Mr. Bradner: Consider it in?

Mr. Schotland: Do you rest?

Mr. Bradner: Yes.

Mr. Schotland: So do we.

10

Adjourned until tomorrow.

January 21, 1915.

Continuation of examination pursuant to adjournment on January 21, 1915, in the presence of the counsel and the Court as before.

20

JOSEPH S. LEVY, sworn:

Direct-examination by Mr. Bradner:

Q. Mr. Levy, where do you reside? A. Five thousand seven hundred sixteen, Third Avenue, Brooklyn.

Q. And are you related to either Mr. Marks Brooks or to his wife, Celia? A. Mrs. Levy is related to his wife.

30

Q. Did you receive a deed of conveyance of some land in Newark from Mr. and Mrs. Brooks at one time? A. I have not received one, but Mr. Brooks told me that there was one made for me.

Q. You never had the deed? A. No, sir.

Q. It was never delivered to you? A. No, sir.

Q. After you had been told by Mr. Brooks what you say did you come to Newark and execute a deed of conveyance to somebody? A. Sometime

40 after, yes.

Joseph S. Levy—Direct

Q. Do you remember where you signed the paper? A. Yes, sir.

Q. In somebody's office? A. Yes, sir.

Q. In whose office? A. Mr. Greenfield's.

Q. Do you know to whom you made the deed?

A. Well, I believe it was made in the name of Goldberg. 10

Q. Did you know Mr. Goldberg prior to that time? A. I had been introduced by Mr. Brooks to Mr. Goldberg.

Q. Where were you introduced to him? A. At Mr. Goldberg's house.

Q. When? A. Well, on the same day that the deed was made.

Q. And at that time did you make any agreement with Mr. Goldberg? A. No, sir. 20

Q. None whatever? A. None whatever.

Q. Well, why did you make this conveyance to Mr. Goldberg?

A. Mr. Schotland: I object.

The Court: How did you come to do it? A. Mr. Brooks asked me to.

Q. What was said between you and Mr. Goldberg and Mr. Brooks at the time you went to Mr. Goldberg's house? A. Mr. Brooks introduced me to Mr. Goldberg, said that Mr. Goldberg was going to build with Mr. Brooks and he wished me to assign some lots to him, and then took me to Greenfield's office, and the deed had been made and I had done so. 30

Q. Then you went to the office and signed the deed? A. At Mr. Greenfield's office, yes, sir.

Q. And was Mrs. Levy with you? A. Yes.

Q. Did she go to Mr. Goldberg's house with you? A. No, sir. 40

Joseph S. Levy—Direct

Q. Then you came over to Newark again to go to Mr. Greenfield's office? A. At the second time one deed has been signed on the same day.

Q. You signed two deeds? A. Yes, sir.

Q. Where was the different properties? A. The same property.

10 Q. The same property? A. Yes.

Q. They were both to Mr. Goldberg? A. Yes.

Q. Now, when you went to Mr. Greenfield's office what occurred there? A. I was then introduced to Mr. Greenfield.

Q. And was Mr. Goldberg there? A. Yes.

Q. And Mr. Brooks? A. Yes.

Q. Anybody else? A. At the first time Mrs. Brooks and Mrs. Levy; the second time Mrs. Brooks was not there, only Mrs. Levy and Mr. Goldberg.

20 Q. Then the first time in the presence of Mr. Brooks and Mr. Goldberg and Mrs. Brooks what conversation was had? A. In the place I don't know of any.

Q. No talk there at all? A. No.

Q. Well, was anything said about signing a deed? A. I came there for that purpose with Mrs. Levy, and Mrs. Levy was introduced, and we were there for the purpose of signing a deed for five lots to Mr. Goldberg; the previous transaction was nothing concerning me.

30 By the Court: Q. Five lots? A. Five lots, yes.

Q. And did you go afterwards and sign another deed? A. Yes, sir, I came back sometime after by request of Mr. and Mrs. Brooks and signed deed for the entire lots, and that first deed was
40 destroyed.

Joseph S. Levy—Direct

Q. The first deed was destroyed? A. Yes, sir.

Q. Who destroyed it? A. Mr. Greenfield.

Q. And where was it destroyed, in his office?

A. In his office, yes, in my presence.

Q. Do you know whether that deed had been delivered to Mr. Goldberg? A. It was in Mr. Greenfield's office. 10

Q. It never did get out of there? A. I don't think so, I don't know; I left it in charge of Mr. Greenfield.

Q. Then you made another deed for the twenty-one lots? A. At the second time, whatever the amount was, I don't know, but whatever Mr. Greenfield asked me to sign for I signed as I did by his advice.

Q. Now, I show you a deed which is marked Exhibit C-3; see if you can identify that? A. I don't know anything about the deed; I can identify my signature, if that is what you want; yes, this is my signature. 20

Q. Can you tell whether that is the first paper you signed or the second paper? A. If it is for the entire amount it is the last one.

Q. When you signed the first deed what consideration did you receive? A. None.

Q. When you signed the second deed what did you receive? A. The same. 30

Q. Nothing? A. Nothing.

Q. Was the thousand dollars paid to you? A. No, sir.

Q. Was the check for a thousand dollars given to you? A. There was check, but for more than a thousand dollars, I believe it was \$1,800.

Q. Was that made to your order? A. Made in my name, and I endorsed it and handed it back to Mr. Greenfield. 40

Joseph Levy—Cross

Q. You did not get the money yourself? A. Not a cent, sir.

Q. What was done with the money, do you know? A. I can't say; Mr. Greenfield was to collect that money to make it a legal transaction, the next day.

10 Q. Eighteen hundred dollars? A. About \$1800, it might have been something over that; I was not interested as it was not coming to me.

Q. Will you explain why you endorsed the note and gave it back to Mr. Greenfield? A. Yes: it was understood that this would mean that there was money passed between us, and as I was no party to the money part I endorsed it and handed it back to Mr. Greenfield, and he was supposed to get the money, to have a check to prove that that was a legal transaction.

CROSS-EXAMINATION by Mr. Schotland:

Q. Mr. Levy, did you have this property deeded to you as a result of any agreement between you and Mr. Brooks? A. No, sir, no agreement whatsoever.

Q. You did not even know that it was done? A. Not until it was done.

30 Q. Not until after it had been done? A. Yes.

Q. And how long after it had been done did you find out that it had been done? A. I can't say, perhaps some weeks or days, I can't say, as I was not interested.

Q. You had no interest in this property at all? A. No, sir.

Q. You had no money coming? A. No, sir.

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

Q. Mr. Brooks did not give you that deed to secure you for what he owed you? A. No sir.

40

Joseph Levy—Cross

Q. When was it that you first found out that there had been a deed to you? A. Some time before I made the first signature.

Q. Do you remember when you made the first signature? A. I couldn't say; Mr. Greenfield ought to have a record of it.

Q. Well, do you remember how long you made your first signature before your second? A. Perhaps a couple of weeks. 10

Q. Now, this deed which you have identified as being the one which you signed the second time appears to have been signed by you on the 22d of March, 1912; now; you think it was a couple of weeks before that that you signed the first deed for only five lots? A. Yes, perhaps two or three weeks prior to that.

Q. Now, how long before you signed the first deed did you find out that this property had been deeded to you? A. Not long back before that, I couldn't say the exact date. 20

Q. Well, how long before that approximately? A. I couldn't say.

Q. Well was it a week or a month? A. It must have been about a month, or maybe more.

Q. Now, how long before you signed the first deed was it that you were at Mr. Goldberg's house? A. The same day. 30

Q. What part of the day were you at Mr. Goldberg's house? A. About noon.

Q. At noon? A. Yes.

Q. I understood you to say you were up there at night, on your direct-examination? A. No, sir, I said nothing like that.

Q. You were there at noon? A. About noon.

Q. Who was there with you? A. Mr. Brooks. 40

Joseph Levy—Cross

Q. And who did you see at Mr. Goldberg's house? A. Mr. Goldberg, Mrs. Goldberg and Miss Goldberg.

Q. What took place there? A. Nothing, only introduced me to the family, and then Mr. Goldberg put his hat on and came out with us.

10 Q. Nothing was said what the business was or anything? A. No.

Q. Then where did you go? A. Mr. Greenfield's office.

Q. What was said at Mr. Greenfield's office? A. I was introduced there for the purpose of signing a deed.

Q. What was said there? A. Nothing, as I can recall, outside of that, that I was the J. S. Levy which the deed was to be signed by.

20 Q. And you signed the deed? A. Yes.

Q. Was your wife with you? A. Yes.

Q. Where was she while you were at Goldberg's house? A. In Mrs. Brooks'.

Q. Did you stop at Mrs. Brooks' after you left Goldberg's house? A. No, before.

Q. Was your wife with you when you went to Goldberg's house? A. No, at Brooks'.

Q. Where did you pick up your wife? A. At Greenfield's; Mrs. Brooks and Mrs. Levy went to Greenfield's and Mr. Goldberg and I went to Greenfield's.

30 Q. And you all met there? A. Yes, sir.

Q. Nothing was said there about any arrangements of any kind? A. Not in my presence.

Q. All you did was to sign the deed, and went away? A. Yes, Mrs. Levy and I both.

Q. And you don't know then anything about any arrangements? A. No, sir.

40

Joseph Levy—Cross

Q. The second time when you signed this deed which is in evidence, C-3, who was there? A. Mr. Brooks, Mr. Goldberg, Mr. Greenfield, Mrs. Levy and myself, and the office staff.

Q. What was said then? A. Nothing in my presence, only the deed was ordered to be made; the deed was not ready and a young man in the office had made the deed; after he had the deed made Mrs. Levy and I were called into the office, Mr. Brooks and Mr. Greenfield asked me to sign the deed, and I did, and asked me to go out of the office and asked Mrs. Levy whether she was willing to sign the deed and waive her rights and she did. 10

Q. How do you know that? A. She told me, because he asked me to go out, and I asked him what purpose he wanted her there for, and he told me. 20

Q. Then you went away? A. Mrs. Levy and I went away.

Q. Mr. Brooks go with you? A. No, sir.

Q. That is all you know about it? A. That is all.

Q. When was it that you endorsed the check back to Mr. Greenfield? A. Right after the deed was signed.

Q. Do you know whose check it was? A. Mr. Greenfield's. 30

Q. You don't recall the exact amount? A. Something around \$1800.

Q. Are you sure it was not a thousand dollars? A. Positive.

Q. You are positive it was not a thousand dollars? A. Yes.

Q. As a matter of fact, didn't Mr. Greenfield 40

Joseph Levy—Re-direct

offer to give you a check for a thousand dollars and didn't you say you wanted the check certified? A. No, sir.

Q. And didn't he give you a thousand dollars in cash? A. No, sir, there wasn't any cash in view, let alone handing it over.

10 Q. No cash in sight at all? A. No, sir.

Q. Do you know why you became the owner of those lots? A. No, sir.

Q. Mr. Brooks ever explain it to you? A. Afterwards, yes.

Q. What reason did he give you? A. He said he was losing his money and he had to protect himself and he had some lots he was afraid he might lose and he assigned them to me, that was his reason.

20

RE-DIRECT-EXAMINATION by Mr. Bradner:

Q. I perhaps did not understand you on your direct-examination. When you were at Mr. Goldberg's house was there any conversation there?

A. Nothing in regard to the business transaction.

Q. Then I misunderstood you; I thought you did say there was some conversation up there about what was to be done with these lots? A. 30 No sir.

Q. Did you hear any such conversation as that?

A. Only that Mr. Brooks said that Mr. Goldberg and he were going to build on these lots.

Q. Did he say that in Mr. Goldberg's presence? A. Yes.

By Mr. Schotland: Q. When did he say that? A. While walking with Mr. Goldberg and Mr. Brooks.

By Mr. Schotland: Q. Did not discuss on what 40 conditions? A. No.

Mrs. Augusta Levy—Direct

MRS. AUGUSTA LEVY, sworn:

Direct-examination by Mr. Bradner:

Q. You are the wife of Mr. Joseph Levy? A. Wife of Mr. Joseph Levy, yes.

Q. I show you Exhibit C-3; is that your signature? A. Yes, that is my signature. 10

Q. Do you remember going to Mr. Greenfield's office to sign the paper? A. I do.

Q. Were you there more than once? A. Twice.

Q. And what occurred the first time? A. I just signed the signature the same way as that.

Q. And the second time you signed this paper? A. Yes, sir.

Q. You don't remember what was in either one of those papers, do you? A. No, sir, I do not. 20

Q. And on either one of those occasions did you see any money pass? A. No, sir.

Q. See any money there at all? A. No, sir.

Q. Did you see any check given? A. Yes, I seen check given.

Q. Check given by whom to whom? A. Mr. Greenfield to Mr. Levy, my husband.

Q. Did you see the check? A. I did. I didn't look to see what was on it, but saw the check handed to Mr. Levy.

Q. You don't know what the amount was? A. No, sir. 30

Q. Did you hear anybody say then and there how much it was? A. No, I didn't listen very much, it did not interest me.

Q. And what was done with that check? A. It was given to Mr. Greenfield; Mr. Levy signed his name, signed his name and endorsed it and gave it to Mr. Greenfield. 40

William Greenfield—Direct

Q. That is all you know about it? A. That is all I know about it; we went home right after that.

CROSS-EXAMINATION by Mr. Schotland:

10 Q. Did you hear any talk between the people as to any arrangements regarding this transaction? A. None whatever.

Q. Do you know how much the check was for? A. No, sir.

Q. Did you hear any talk at the time the check was given? A. Only that Mr. Levy should endorse the check.

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

20 Q. Not another word was said? A. No.

Mr. Bradner: We rest.

WILLIAM GREENFIELD, re-called for the defendant:

Direct-examination by Mr. Schotland:

30 Q. How many times were Mr. and Mrs. Levy in your office? A. To my best recollection they were only there once, and that was the time when they signed that deed, Exhibit C-3.

Q. Had you drawn a deed for five lots out of the same tract described in Exhibit C-3 prior to drawing Exhibit C-3? A. Never seen one for five lots in my office.

Q. Did you destroy such a deed in the presence of Mr. Levy? A. Certainly not; I would have
40 recorded it if such a deed—

William Greenfield—Direct

Q. Just limit yourself to answering the question. Did you draw a check to Mr. Levy at the time of the delivery of Exhibit C-3 in your office and ask him to endorse it and tell him that was for the purpose of showing a consideration? A. No, sir.

Q. Did you draw any check, actually draw any check? A. No, sir, not to Mr. Levy at that time; I wanted to draw— 10

The Court: You have answered the question.

Q. What did you give Mr. Levy, if anything, at the time the deed was delivered?

Mr. Bradner: We have been all over that.

The Court: Yes, he has made his statement about it, but I suppose Mr. Schotland has a right to bring it out in his own way. 20

A. Just as I have said yesterday, a thousand dollars, whether there was a little more exactly I don't recall but there was a thousand dollars; there was a dispute first about some little money there.

The Court: Haven't you answered the question?

Q. Between whom was there a dispute? A. 30
There was some argument between Goldberg and Levy before they came into my private office and before there was any deed drawn, and after that they have come to some, as I could see, some understanding; Goldberg came in with some figures, just figures, nothing written on there, his own way, and told me they have agreed on it, agreed together, and told me to draw the deed for the tract. 40

William Greenfield—Direct

Q. Is that the only deed you ever drew from Levy to Goldberg? A. That is the only deed.

Q. I show you No. 1 for Identification. Did you send that account to Mr. Steinsitz's office?

A. No, sir.

10 Q. Were you ever asked by Mr. Steinsitz to prepare an account? A. No, sir.

Q. With Brooks? A. No, sir; I had no account with Brooks outside of the account marked on that paper.

Q. Exhibit C-2? A. Exhibit C-2, yes, sir, only account I had with Mr. Brooks, and that is when the loan was granted by the City Hall Building and Loan Association.

20 Q. On their property? A. Not entirely their property, which I afterwards foreclosed the mortgage, which I have got copy of the bill, the mortgage given by Brooks to Wien.

Q. Do you know to whom you delivered that account Exhibit C-1? A. Yes.

30 Q. To whom? A. To Mr. Goldberg, Elias Goldberg, that is, if this is the exact paper; now, I don't know whether it is a reproduction or not, but I have delivered the account, some of which is my handwriting; there is some other figures here which I don't know whose handwriting that is.

Q. I mean the typewritten account, the general account? A. If that is the same paper I have delivered it to Mr. Goldberg after I was through with the entire business, of his entire transaction, to show him what I have done with the money, the same as I would do in any other matter. None of these—

40 The Court: I think you have answered the question.

William Greenfield—Direct

Q. Did Mr. Brooks deposit between five and seven hundred dollars with you to be used in paying the cost of construction of the four buildings that were being erected on part of this tract described in Exhibit C-3? A. No, sir.

Q. Did he deposit any money with you for that purpose? A. No, sir. 10

Q. Did he deposit any notes with you, the proceeds of which were to be applied by you for that purpose? A. No; the answer is no, not for that purpose.

Q. I call your attention to the first sheet on Exhibit C-1, item under date of March 19, 1912, "Collected note of Sandowsky, \$200?" A. Yes.

Q. Who gave you that note to collect? A. To my best recollection, I can't recall it now, the note was brought in to me by Mr. Goldberg, I won't say positive, but I think it was to Brooks and Goldberg, paid some indebtedness for Brooks, of which I have papers here, lots of them. 20

Q. What papers do you refer to?

The Court: The question is who gave you that note to collect. Can you answer?

A. I don't recall it just now.

Mr. Bradner: That is an answer.

The Court: You have answered the question. 30

Q. Does the fact that that note was collected by you, and that the entry of its collection appears on the account made up by you, which you say was with Goldberg, refresh your recollection as to who gave you that note to collect? A. My impression, to the best of my recollection, is that Mr. Goldberg; otherwise I wouldn't have put it there.

Q. Now, I call your attention to an item oppo- 40

William Greenfield—Direct

site date March 28, "By note of Rosenberg for collection, \$150." And opposite June 1, "By check of Rosenberg on account of note, \$50" and also "By note Rosenberg for two months, \$200." Who gave you those notes of Rosenberg? A. I can
10 only answer the same way as I have answered in the Sandowsky; I would not have put it into Goldberg's account had it not belonged to Goldberg, to the best of my knowledge; this was in Goldberg's account.

Q. Have you any record of any moneys or notes or checks given to you by Brooks to be applied by you in paying for the cost of erection of these four buildings on part of the tract described in Exhibit C-3? A. None other than what is on the
20 book.

Q. Is there any record on the book of any note given you for that purpose? A. No, sir, it is just what appears on the book there.

Q. I show you the book you have been referring to in your testimony; what book is that? A. This is my ledger, general business book; whatever business I do I keep it that way, that is my system.

Q. Is that your book of original entry or not?

30 A. Yes, that is my book of original entry.

Q. Did you make all the entries in that book connected with either your account in that book with Goldberg or your account with Brooks, yourself? A. I would have to look at it; possibly sometimes the girl would make it; my impression is now I made all entries myself at that time. Yes, sir, they are all in my own handwriting.

Q. Did you enter in either one of those accounts
40 all the moneys received or disbursed by you on

William Greenfield—Direct

account of either Mr. Brooks or Mr. Goldberg?

A. Yes.

Q. Will you look over your account with Goldberg in its entirety and refresh your recollection as to whether you received any money from Mr. Brooks which you applied to Goldberg's account? 10

A. No, sir.

Q. What do you mean by "no, sir"? A. There is no moneys here so far as I can see which I have made note from and from whom I received and whose check it was, showing any money received from Brooks.

Mr. Schotland: I offer the account of Mr. Brooks and Mr. Goldberg, as they appear in that book, in evidence; I offer the book for that purpose. 20

Mr. Bradner: I object. I do not see how they can bind either one of these parties, accounts kept by Mr. Greenfield.

The Court: I think you opened the door for it when you examined Mr. Greenfield on the copy of the account yesterday. I think that is proper evidence; I will let it in.

Marked Exhibit D-1.

Mr. Schotland: For the purpose of being able in the future to make those accounts will you just call off which pages in this book contain the two accounts which you offer in evidence? 30

A. First I will give the Elias Goldberg account, on page 96, beginning page 96; on the lefthand side is debit and on the righthand side is credit; middle of that page on the top is Elias Goldberg, South Sixth Street, city. 40

William Greenfield—Cross

By the Court: Q. Just call off the pages. A. Page 96, page 146, page 168, page 174, page 191, 193, 201, 213, 214 and 220. Now, the other account page 198, I think this is all the other account, yes, on page 121, I guess that is all; yes, that is all.

10 Q. Did Mr. Steinsitz ever ask you for a statement of the account between Brooks and Goldberg? A. No, sir.

Q. Did you ever promise to make one up for him and send it to him? A. No, sir.

Q. Did you ever prepare a declaration of trust or a deed from Goldberg, executed by Goldberg, showing that he held the property in trust for Mrs. Brooks? A. No, sir.

20 Q. Did you ever tell Brooks that you had prepared such a deed and had it in your safe? A. No, sir.

Q. Did you ever tell him that you had prepared a declaration of trust and it was signed by Goldberg and in your safe? A. No, sir.

Q. Did he ever ask you to prepare one and get it executed? A. No, sir.

30 Q. Did you ever promise Mr. Brooks that you would take care of the money until the end and keep the deed of trust in the safe for him, and that the money would be paid by you, and that you would pay whatever was left over to him? A. No, sir. I had no account for Brooks outside of the account of the City Hall Building and Loan Association.

The Court: It didn't relate to an account.

CROSS-EXAMINATION by Mr. Bradner:

40 Q. Did you keep any account with Mr. Gold-

William Greenfield—Cross

berg or Mr. Brooks in any other book than the one which you produce? A. No, sir, that was enough trouble to keep it in this.

Q. And all your cash receipts are in that book?

A. Everything, all my personal business and everything else.

Q. You did not keep any general cash account? 10

A. No, sir.

Q. When cash came in you credited it up to the particular person from whom you received it or to whom it belonged? A. Yes.

Q. You kept an account relating to this Brookdale Avenue property and the erection of those houses entirely with Mr. Goldberg? A. Yes.

Q. I understood you to say yesterday you were not aware of any agreement between Goldberg and Brooks in relation to that property? A. Yes, that is right. 20

Q. There was no agreement made in your presence? A. No, sir.

Q. Or to your knowledge? A. No, sir.

Q. All you knew was that Levy sold the property to Goldberg? A. That is all I knew about it.

Q. And that was a straight out sale, wasn't it?

A. As far as my knowledge went.

Q. As you understood it? A. As far as my personal knowledge is concerned. 30

Q. It was a sale of one thousand dollars for the equity in the property? A. To the best of my knowledge that was all.

Q. You understood it to be a thousand dollars, didn't you? A. That is what I understood.

Q. That Mr. Levy was to receive \$1,000 in cash?

A. Yes, sir. 40

William Greenfield—Cross

Q. And you paid him the thousand dollars in cash? A. Yes.

Q. There was no reason for concealing anything concerned with that transaction, was there?

A. As far as I am concerned, as far as I was concerned?

10 Q. There was no reason why either one of the parties should, was there? A. As far as I was concerned I didn't see any reason.

Q. Then why did you put in the deed the consideration "\$1 and other valuable considerations"? A. That is the way I draw all deeds.

Q. And your explanation is because you draw all deeds that way? A. Yes.

20 Q. You never put the real consideration in when it is a *bona fide* sale for cash? A. Only where there is a trustee or executor's deed, or a sheriff's deed, they put in the true consideration, otherwise during my fifteen years experience always put in one dollar and other valuable consideration.

Q. And that is your explanation for putting that consideration in that deed? A. Yes.

30 Q. But the real consideration was \$1,000? A. As far as I was concerned, as far as my knowledge goes, and the liens against it, because if you want me to give reasons I will.

Q. I am just asking you what was the fact. A. I am telling you the fact; after we have been secured then I wouldn't have bothered with it because three of my building and loans have loans on the property.

40 The Court: Never mind about that. I want facts.

William Greenfield—Cross

Q. From whom did you get the thousand dollars that you paid to Levy? A. Goldberg.

Q. Did he hand it to you at that time? A. Well, now, I can't just recall how that thing went through, all the ceremonies there on that day; I can't recall how this thing was done.

Q. Did he bring you a check for a thousand dollars? A. I don't think I got a check of him; I got some checks of him, but I don't think I got checks of him. 10

Q. Did you get checks from him that day?

Q. What do you mean by saying you had some checks off of him? A. On different occasions, but my impression is that there was also a check on that day.

Q. If Mr. Goldberg gave you a check on that day you would have given him credit for it, wouldn't you? A. Surely. 20

Q. Well, look at March 22. A. No, I have got on March 25, two checks amounting to \$1,400; March 25, I have got one check on the Broad and Market Bank \$1,300; on the same day I have got a check by a man named Sayman on the West Side Trust Company as a deposit.

Q. You haven't anything on March 22 or prior to that, have you? A. Prior to that I only have \$50 on the 20th; I think that deed was passed on the 25th. 30

Q. From whom did you get the \$50 on the 20th? A. Vigiano, 20th, received from Vigiano as deposit on lot.

Q. Who is Vigiano? A. That is one of the parties who purchased one house, and he bought an extra lot there between his former house and the house that he bought, he bought a lot between. 40

William Greenfield—Cross

Q. Had they commenced to put up houses there before the deed of the 22d was made? A. I really couldn't say that.

Q. Have you got any papers connected with the Vigiano matter? A. I must have some, I think I must have the agreement.

10 Q. See if you can find it? A. Maybe I have it. I can't find it.

Q. I call your attention to the item of receipts on your account of March 20, 1912, "Received from Vigiano as deposit on lot." A. \$50.

Q. Perhaps no agreement had been executed then? A. That I can't say. I will look at it. You have it just the same as I have it on my book here, "Deposit on lot, \$50;" It may be Mr. Gold-
20 berg came in and brought me in \$50 and told me what it was for. No, I haven't got it here; I thought I had it.

Q. Is it your recollection that a lot on Brookdale Avenue upon which a house had been constructed was sold on March 20, 1912, to Vigiano? A. No, no, that is not it; there were two sales made to Vigiano; the first sale was a lot adjoining his old house; he has got three lots there now; I believe the first is No. 15, or 11, I don't recall
30 it, a little house there, and adjoining that to the south he bought a lot, a vacant lot, Vigiano, and he gave \$50 deposit; after that the houses were constructed and he bought the house south of that lot; in other words, he has got two houses there and a vacant lot between.

Q. Now, to whom did he pay this deposit of \$50? A. I don't know whether he paid it to me in my office or whether Mr. Goldberg brought it, I can't
40 say.

William Greenfield—Cross

Q. What did Mr. Goldberg have to do with that land on March 20, two days before he got a deed?

A. I don't know; as I say, I can't recall just at that time.

Q. Your books show, though— A. My books—

The Court: Listen to the question. I call your attention to the fact that you frequently answer before the question is finished; that is an answer that you don't know what you are answering. You ought not to answer until you hear the whole of the question. 10

Q. Your books show that you received from Vigiano a fifty-dollar deposit on a lot on March 20, two days before Exhibit C-3, which is dated March 22, was made to Goldberg? A. Whatever my books shows that I have; that is the only thing I can answer. 20

Q. Isn't it a fact that a deed of conveyance was made on March 20 by Elias Goldberg and wife to Andrew Vigiano for this lot on Brookdale Avenue? A. Whatever the records show, I can not recall it, sir. If the record shows, if you have got a record of it.

Q. We have got a record here, Mr. Greenfield, and we will get a certified copy of the deed, which shows a deed from Elias Goldberg and his wife to Andrew Vigiano and his wife, and dated March 20, 1912, and recorded March 29, 1912, beginning on the westerly line of Brookdale Avenue lots; is that one of the Brookdale Avenue lots? A. Yes; whatever it shows there must be so. 30

Q. Do you remember making out such a deed?

A. I can't recall it now.

Mr. Bradner: I would like to have your 40

Mrs. Augusta Levy—Direct

Honor's permission to get a certified copy of that deed; we will have it here as soon as we can get it.

The Court: Yes.

10 Q. Wouldn't that indicate to your mind, Mr. Greenfield, that there had been a previous conveyance made by Levy to Goldberg of some of that property, including the Vigiano lots? A. I can't say; as I said I would have to see records; it is three years, I can't carry those things in my mind.

Q. You do not want to be sure then that there had not been a previous conveyance made? A. Not to a positive certainty, but I can only give you to the best of my recollection.

20 Q. You do know that you did not tear up any deed? A. I would have certainly recorded it, Mr. Bradner; I don't do that, I know enough for that.

The Court: What is the date of the Vigiano deed?

Mr. Brunyate: March 20, 1912.

MRS. AUGUSTA LEVY, re-called:

30 Examined by the Court:

Q. Now I call your attention to what you say was the second occasion of your appearing at Mr. Greenfield's office. You said you went once to sign a deed, and you went a second time to sign a deed? A. Yes, sir.

Q. Now, I am calling your attention now to what took place the second time. Have you stated everything that you recollect as having taken
40 place on that occasion? A. Yes, sir.

Abe Goldberg—Direct

Q. Which office of Mr. Greenfields's were you in when you executed the deed? A. When I first come there we were in the small room; then we were taken into a larger room. Q. To an inner room? A. Yes, sir.

Q. And it was there that the deed was executed? 10
A. Yes, sir.

Q. Were there any other papers there except the deed that you signed? A. That I can not recollect.

Q. Do you remember what became of the first deed that you say you signed? A. No, sir, I don't remember, but I remember signing it; I remember signing the first deed for five lots.

Q. Well, on this second occasion do you remember whether that first deed was produced? A. I 20
do not.

Q. Did you see anybody destroy any papers on that day? A. That I don't remember; I didn't take notice, because I didn't think it would ever come to any trouble, and I didn't notice it.

ABE GOLDBERG, sworn:

Direct-examination by Mr. Schotland: 30

Q. Are you a son of Elias Goldberg? A. Yes.

Q. What is your business? A. Real estate, broker.

Q. Did you sell any of the lots or properties that your father had bought on Brookdale Avenue? A. Several, yes.

Q. And did you receive any commission? A. 40
Every one I sold.

Abe Goldberg—Direct

Q. Who paid you the commission? A. My father. He used—

Q. You have answered the question. A. My father used to pay me commission when I sold it for him.

10 Q. How did you receive those commissions, in what form? A. In money; he used to go up to Greenfield's and he would bring it down to me, down to my office.

Q. Did Brooks ever have anything to do with any of those commissions, Marks Brooks? A. Well, some he did, yes.

Q. In what way? A. He used to have, the time he was located with my father up there when they were building, he used to have desk room in my office at that time.

20 Q. Who had desk room in your office? A. Mr. Brooks.

Q. Which one? A. Marks Brooks.

Q. Marks Brooks? A. Yes.

Q. And in what way was he connected with any of the commissions? A. He used to bring in some buyers and I used to allow him a third; he wasn't doing anything.

30 Q. What is that? A. At present he was not doing much, and he used to bring in some deals, I used to give him a third of it.

Q. Did you give him any part of any commissions you received from your father? A. Yes, two or three.

Q. Do you remember which one? A. One was Headley's.

Q. On the Headley deal? A. Yes, there was a hundred dollars given there and I gave him \$33.

40 Q. You gave it to Marks Brooks? A. Yes.

Abe Goldberg—Cross

Q. And do you remember any other? A. Well, I think it was some matter, Dilling bought some lots and I gave him some commissions.

Q. You gave who some commissions? A. Marks Brooks.

Q. How much did you give him out of that commission? A. I think it was about \$25. 10

Q. Do you remember the exact amount? A. \$25.

Q. I show you Exhibit C-1; will you look it over and tell me whether you ever saw that before? A. Some of it is familiar to me.

Q. Where did you see it? At my office.

Q. Do you know how it got to your office? A. my father used to bring most of this stuff and I would look over it, he can't read and write, and 20 he would bring it to me.

Q. Do you know how it ever got out of your office? A. Well, I wouldn't swear to that, I don't know how it ever got out; I know my father brought it to my office, how it got out I wouldn't swear.

Q. But Marks Brooks had desk room in your office? A. Yes.

CROSS-EXAMINATION by Mr. Bradner: 30

Q. How old are you? A. Me? I am around thirty, over thirty.

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

Q. How long have you been in the real estate business? A. Oh, it must be around from eight to ten years.

Q. Are you in business on your own account?

A. Yes, business on my own account.

Q. Are you in partnership with your father? 40

Abe Goldberg—Cross

A. Certain times in real estate, yes, we have been together, and make deals together, and then wouldn't make deals together, just the same as I would with other brokers, but sometimes we would be together.

10 Q. I don't mean a single item of partnership, I mean a general business partnership? A. If he would buy he would buy for himself, and if I would I would, but in mixing in deals we would work together.

Q. Did you have offices together? A. No, we didn't have no office together.

Q. Never had no office together? A. With my father? No; he would come into my office.

Q. Where was your office in January, 1912? A.
20 In 800 Broad Street. January? I couldn't say the regular month, but I was in 800 Broad Street, room 419.

Q. With anybody else? A. At that time I was with Mr. Isaacs, we were partners, and we dissolved and I went with Mr. Lesser, firm of Goldberg and Lesser.

Q. And when was that? A. I think it was between 1912 and 1913, 1913 I think.

Q. Where were you on the 1st of March, 1912?

30 A. Where I was?

Q. Yes. A. First of March probably I was in 800 Broad Street, or maybe I wasn't, I couldn't tell you; I know it was in that year I went in 800 Broad Street; I won't convict myself on the date.

Q. Did you have any office in 1912? A. Did I have any office in 1912?

Q. Yes. A. I think I had.

Q. Where? A. Several places, I had desk
40 rooms.

Abe Goldberg—Cross

Q. Were you a real estate agent in 1912? A. Yes, much before that, too.

Q. Real Estate broker? A. Yes, sir.

Q. Did you have any license? A. License?

Q. Yes. A. Do you think you need any license?

Q. I ask you if you had any. A. If there was requirement of law having license I probably had. 10

Q. I ask you did you have one? A. Well, I don't think it was necessary.

Q. Then you didn't have any, did you? A. I don't think I had, no; if it wasn't necessary I didn't have any.

Q. Did you have an office in 1912? A. Probably I did.

Q. Where? A. It was in the year between 1912 and 1913 I had it in 800 Broad Street.

Q. Between 1912 and 1913? A. Yes, sir. 20

Q. What do you mean by that? A. The year, say between the year.

Q. What is between the two years? A. What is between the two years?

Q. Yes. A. I says between that year, not between two years.

Q. What time in 1912 did you commence to have an office? A. I wouldn't convict to the date without I look up my lease book.

Q. You have a lease book? A. I have a lease book; I can go to 800 Broad Street. 30

Q. And you had an office sometime in 800 Broad Street? A. Sometime?

Q. Yes. A. I had there for two years, so it isn't sometime.

Q. You commenced there sometime, didn't you? A. I commenced there sometime in that year, yes; I won't convict myself to that month. 40

Abe Goldberg—Cross

Q. Did you keep books of your transactions?

A. Well, in the deals you mean?

Q. Yes. A. No.

Q. Did you have a partner? A. Yes.

10 Q. And all the time that you had the office you had a partner? A. Yes, I had two partners, one was Isaacs and the other was Lesser; I was a year with Isaacs and a year with Lesser in the same office.

Q. Through 1912 you had a partner in your business? A. Yes.

Q. Were you out of Newark in the winter of 1912, the early winter? A. Was I out?

Q. Yes. A. Maybe for a short trip, yes.

Q. Were you in Florida A. In 1912?

20 Q. Yes. A. Probably was, 1912? I can't recall.

Q. Were you there in January, February and March, 1912? A. I don't think it was in 1912; I think it was 1911.

Q. You think it was 1911? A. Yes, that I was in Florida for my health two months.

30 Q. You went there in 1911, didn't you? A. I think it was 1911, I am not positive, but I was for my health two months; I had trouble with bronchitis and the doctor advised me to go away at that time for two months; I don't think it was in the time I had my office that I was in Florida.

Q. You opened an office in 800 Broad Street and you had a partner, didn't you? A. Yes.

Q. And all the time you had the office you had a partner? A. All the time I had? No, not all the time, I dissolved with the partner.

Q. When did you dissolve? A. 1913.

40 Q. Then during 1912 you had a partner? A. Yes.

Abe Goldberg—Cross

Q. And you had a partner when you made some sales of lots on Brookdale Avenue? A. Yes, sir.

Q. Who was your partner? A. Lesser.

Q. What Lesser? A. Izzy Lesser.

Q. And did you keep books in your office? A. No, we have not kept book; just as we made a deal we would share our commission, when we made a deal we would split. 10

Q. What was the first sale you made on Brookdale Avenue? A. First sale?

Q. Yes. A. Was an Italian name, I can't recall, it is such a peculiar name.

Q. Vigiano? A. Vigiano.

Q. And what did you sell to him? A. I sold, helped selling—changed the property.

Q. Change of what property? A. Six family house. 20

Q. You sold a six-family house? A. Yes.

Q. That was completed house? A. Completed, yes.

Q. That was all finished, and you made a sale to him? A. I helped make the sale, yes, I was one of the brokers.

Q. Do you remember just when that was? A. I can't recall.

Q. It was early in 1912, wasn't it? A. I wouldn't commit myself, I remember making the deal, but I can't recall what date it was. 30

Q. What was the price of the house? A. The price of the house was \$6,000, building and loan, and there was a second mortgage given; I can't recall the second mortgage, I don't recall; I know there was a six-thousand-dollar building and loan on the house.

Q. What did you get as commission on it? A. A hundred dollars. 40

Abe Goldberg—Cross

Q. On what basis did you get a commission? A. For selling the property.

Q. How much per cent, and on what? A. On that property, I got just the amount, I don't think it was any amount of cash passed at that time, as I can recall.

10 Q. Was there an agreement in writing made with the purchaser? A. Was there an agreement on the property?

Q. Yes. A. Sure, I think it was.

Q. Where was that made? A. In Greenfield's office.

Q. Were you there? A. I was broker, I was supposed to be there.

Q. Was your father there? A. Yes, it was his property.

20 Q. Was Mr. Brooks there? A. I can't recall whether he was there or not.

Q. You went down to Greenfield's office to draw the agreement to sell the property to Vigiano? A. Yes.

Q. The whole thing was put through there? A. The whole thing was put through there, yes.

Q. The deed was signed by your father and mother? A. Yes.

30 Q. You don't remember whether Mr. Brooks was there? A. I hadn't seen Brooks on that occasion.

Q. And you received a check for \$100? A. I I don't say whether I received a check; I remember my father always give it to me, I was living with him, I am not married.

Q. Did he give you \$100 on that transaction?

A. He gave me \$100, sure; whether he gave me
40 check or cash I don't know; when I came home—

Abe Goldberg—Cross

The Court: You have answered the question.

Q. Did you give some of that hundred dollars to Mr. Brooks? A. On that one?

Q. Yes. A. No, not on that, no, sir.

Q. Did not give him any of that? A. No, that one I didn't give him. 10

Q. Now, what was the next sale that you made in Brookdale Avenue? A. Brookdale Avenue made a sale on lots.

Q. Vacant lots? A. Yes.

Q. On Brookdale Avenue? A. Yes.

Q. They were up on Brookdale Avenue, vacant lots? A. Yes, five lots I sold; I sold five lots on Brookdale Avenue.

Q. Who did you sell those to? A. A fellow from New York, Dellon, five or six lots, I don't remember, there was several, I won't commit whether there was five or six. 20

Q. Where did you meet this fellow from New York? A. I met him here in Newark.

Q. Whereabouts? A. In Mr. Harris' office, Lawyer Harris.

Q. Which Lawyer Harris? A. I think he is in the Kinney Building now, he was at 810 Broad Street.

Q. How did you happen to meet Mr. Dellon there? A. How I happened to meet him on other occasions? 30

Q. How did you happen to meet him on this particular occasion? A. Because I was doing business there; Harris himself has a lot of ground for sale, and everything, I happened to come in on another deal that I made there and I met him.

Q. What was he looking for? A. Ground, to buy ground. 40

Abe Goldberg—Cross

Q. And you knew your father had this ground for sale? A. Sure, I know my father had ground and other people had ground, it made no difference who had ground, if you had it would be sold to you.

10 Q. And you made an agreement with Dellon?
A. Yes.

Q. And was there an agreement in writing drawn up? A. Yes, sure.

Q. Where? A. In Greenfield's office.

Q. And what became of that? A. The same.

Q. It was signed by Dellon? A. What do you mean?

Q. The agreement was signed by Dellon? A. Yes.

20 Q. And it was for lots on Brookdale Avenue?
A. Yes.

Q. There wasn't any house? A. No.

Q. And how much did you get for the lots? A. I don't recall what the price was.

Q. You don't know how much you sold them for? A. I don't recall the price at that time, it is a couple of years now, I made so many deals I don't recall.

30 Q. What time of the year was it? A. I don't recall that.

Q. It was in the winter, wasn't it? A. Probably it was, I wouldn't commit myself, I don't recall.

Q. Just about the same time you made the sale to Vigiano, wasn't it? A. No.

Q. No? A. No, I think it was—no, I don't think so.

Q. You are not sure about that? A. No.

40 Q. You don't know how much the lots sold for?

Abe Goldberg—Cross

A. I can't recall, it has been so long that I can't recall.

Q. Did you make two sales to Dellon? A. No, I only made one sale to Dellon.

Q. And how much did you get for that? A. I think I got \$75 for that.

Q. And who paid you the \$75? A. My father. 10

Q. Did you give any part of that to Mr. Brooks? A. No, not that deal, no. There is other deals I have, there was two deals.

Q. Did you make another sale after that? A. Made a sale of some lots, Sobine and Vexler.

Q. What did you sell to them? A. Five lots.

Q. A house on it? A. No.

Q. Did you get a commission on that? A. Yes, that is the commission I gave some to Brooks.

Q. And how much did you get? A. I got \$75; 20 there is where Brooks helped me sell those lots, he brought people down there and that is how I worked the deal through.

Q. How much did you give to him? A. \$25.

Q. Did you make any more sales? A. Yes, Headley.

Q. What did you sell to Headley? A. Headley, we made a deal, swap, it wasn't me alone, but other brokers in it; Brooks brung the deal into me with another broker, then I made a hundred 30 dollars on my father's side and gave him \$33.

Q. That was an out sale, wasn't it? A. That was a swap.

Q. What did you get for it? A. One-family house in East Orange, small one.

Q. Did you get anything from the other side on that? A. No, there was another broker connected with that on the Headley side. 40

Abe Goldberg—Cross

Q. But you got a hundred dollars from your father and gave \$33 to Brooks? A. Yes, because Brooks has brung the deal in to my hands.

10 Q. He brought the purchaser, he brought the whole thing to you and you gave him a third of the commission? A. He brought the other broker to me and that is how I worked it.

Q. And your father always paid you in cash, didn't he? A. Yes.

Q. Never turned over to you any of Mr. Greenfield's checks? A. No.

Q. You were, of course, aware these houses were being built up on Brookdale Avenue, you knew what was going on there, didn't you? A. No, I didn't take any interest in it.

20 Q. Didn't take any interest in it at all? A. No.

Q. You didn't know what kind of houses were going up? A. I knew what my father told me, he was building six-family houses.

Q. You never went up to look at them? A. Probably, when they were finished.

Q. Were you interested as a real estate man to see what kind of houses they were? A. Six-family, after they were finished I went up.

30 Q. Did you ever take any one to look at the houses? A. After they were finished, yes.

Q. Who did you take? A. Different people, I can't recall, people that would come in my office to try and make a deal.

Q. Did you make a sale of the house with anyone? A. I made it with the Italian woman I told you.

Q. You sold a house to Vigiano? A. Yes.

Q. And that was a finished house? A. Yes.

40 Q. And that sale was made? A. Yes.

Abe Goldberg—Cross

Q. And the deed was made? A. The deed was made? The deed was made if the sale was made, you can't sell a cat in a bag.

Q. Do you know anything about two transactions of the Vigiano matter? A. No.

Q. The sale you made was a finished house, wasn't it? A. Finished house. 10

Q. Now, can you tell us when you made that sale? A. I don't recall the date, I have made so many sales since, I don't keep little things like that.

Q. Did you see Vigiano? A. Did I see Vigiano?

Q. Yes. A. Why, sure.

Q. Where did you see him? A. The house she lives there, she lives in, 13 or 11 Brookdale Avenue, a little house she lives in. 20

Q. Did you see Vigiano at the time the sale was made? A. Did I see her?

Q. Yes. A. Sure I seen her.

Q. I am talking about him, not her? A. Him?

Q. Yes, Andrew Vigiano, did you ever see him?

A. I seen him in the house, sure.

Q. In the house where he is living? A. Yes.

Q. When did you see him there? A. At the time I was associating with the deal; she is mostly the boss.

Q. Why did you go there to the house? A. Why did I go there? 30

Q. Yes. A. To make a deal.

Q. They were moving in then, weren't they? A. In the six-family house?

Q. Yes. A. We are talking about where she is in the house, one-family; you are asking me a question; why don't you ask me what house; she has got a one-family house there, she is living 40

Abe Goldberg—Cross

there before she bought that house, now, whether she lives in the six-family I don't know, maybe she does.

Q. You went to see her in the one-family? A. Yes, that is it.

10 Q. Then you got her to buy the six-family house? A. I answered that, yes.

Q. You talked up that sale yourself? A. Probably my father helped me on the deal.

Q. Your father helped you out? A. Probably, he was around there all the time, but I finished the deal, probably my father went in and out.

Q. You saw Vigiano there, didn't you? A. Where?

Q. At his house? A. In his house?

20 Q. Yes. A. Sure.

Q. What kind of looking man is he? A. He is a fellow about almost as tall as you are; he is—what should I describe him? Looks like an Italian fellow.

Q. Has he got a beard? A. No.

Q. Got a mustache? A. Probably he has got a mustache.

Q. Don't say "probably." A. As I recall I think he has a mustache, it is sometime ago, I think he has mustache.

30 Q. He is quite tall? A. No, he ain't so tall, he is a medium man.

Q. He is stout? A. No, he ain't very stout.

Q. How many times did you see him? A. Maybe once; I spoke to her most of the time.

Q. And how many times did you see her? A. Several times.

40 Q. What do you mean by several, two or three or five? A. Maybe a half a dozen, maybe four or

Elias Goldberg—Direct

five times, four times, I have been up there and would go inside, she lived next door.

Q. She lived next door to what? A. Where my father was building.

Q. Right next door to the six-family house? A. Yes.

Q. She was right there on the ground, could see it going up and knew all about it? A. I suppose she did. 10

Q. What did you have to say to her to get her to buy it? A. I would say, the way I would make a deal, say anything, I am not making a deal here; do you want me to explain how I make a deal?

Q. Your father helped you to make this deal? A. I suppose maybe he has.

Q. Did he help you to make the Dellon deal, too? A. If he was around he would always help me, if he wasn't he didn't help me. 20

Q. Then he gave you commission? A. He wouldn't give me if I wasn't entitled, if I wasn't entitled to sale he wouldn't give it to me; nobody gives anything for nothing.

ELIAS GOLDBERG, sworn:

30

Direct-examination by Mr. Schotland:

Q. You are the defendant in this suit? A. Yes, sir.

Q. Do you know Marks Brooks? A. Yes, sir.

Q. Do you know his wife? A. Yes.

Q. Did you go to the office of Marks Brooks and see Mrs. Brooks and her daughter there at any time? A. No, sir. 40

Elias Goldberg—Direct

Q. Did you tell Mrs. Brooks that you would lend her \$2000? A. No, sir.

10 Q. Did you ever make any arrangements with either Marks Brooks or Mrs. Brooks that you were to hold title to the property that Mr. Brooks would have signed over to you for the benefit of Mrs. Brooks? A. No.

Q. And also as security for money that you would lend them? A. No.

Q. Did you make any arrangements to lend Mr. Brooks or Mrs. Brooks \$2000 and charge \$200 bonus? A. Never, no.

Q. You bought the twenty-one lots on Brookdale Avenue, didn't you? A. Yes, sir.

20 Q. How did you come to buy them? A. Mr. Brooks he come down to me before couple of days and he told me, "Mr. Goldberg, buy them lots and you can make money, for \$5500 you can put up a house, and then you get \$6000, you get a loan on it, you make \$500, and I help you to put up that; I know what I can buy the lumber and I know what I can buy the material, and everything, and then you can make \$500 of each house, you put up four houses, you got now \$2000 profit, and you help me out, the lots are being foreclosed," two
30 years he owes for taxes and interest, "and you buy the lots, will make money." I told him I will consider it, he was around here a couple of days, and I considered it; then he bring around the day before Mr. Levy in my house, and he told Mr. Levy, Mr. Levy told me just the same, "Mr. Goldberg, buy the lots, not the lots to be foreclosed;" I told him, "I considered," and he talked me so much in, and I bought the lots, and I show him I
40 got judgments to pay.

Elias Goldberg—Direct

Q. How much did you buy the lots for? A. I told him I give him thousand dollars for everything, I couldn't remember at that time how much was the debt, I know he got \$300, his mortgage, first and second mortgage was \$300 for each lot, and I told him I could not do it, those lots are sold for \$275 apiece, Mr. Sandowsky bought it, and I ain't sure; he told me I make money, you didn't care for that, what I owe, what the lots got debts, you buy the lots, and so I give Mr. Levy a thousand dollars. 10

Q. Who did you give the thousand dollars to? A. I got money at Mr. Greenfield's and Mr. Greenfield pay Mr. Levy when I bought the lots, when I make arrangements.

Q. Did you see him pay him? A. Yes, sir. 20

Q. Was it by cash or check? A. Cash; he don't want to take no check.

Q. What arrangements did you make with Brooks about those houses? A. Nothing, he being supervisor I give him \$20 a week.

Q. How did you pay him the \$20 a week? A. Well, I go up there by Mr. Greenfield and I took check and give Mr. Brooks.

Q. Did you buy the North Sixth Street property? A. North Sixth Street property I did not buy, did not want to buy it, and he come around and Mr. Baum. 30

Q. Did you buy the North Sixth Street property? A. I changed it, not buy it.

Q. What did you change it for? A. I give him mortgages for it, one for \$2700, I owed him that time a little lumber I took, and I gave him \$2700 and sign him over the mortgages.

Q. Now, did you ever promise to advance \$2000 40

Elias Goldberg—Cross

for the purpose of putting up four six-family houses on the Brookdale lots? A. No.

Q. Did you promise to sign all the bonds and mortgages yourself, did you promise Mr. Brooks that you would? A. No.

10 Q. And promise to make all contracts with the building contractors yourself, did you promise Mr. Brooks that you would make the building contracts there in your name for those houses? A. No.

Q. Did you promise Mr. Brooks that after the houses were built and sold you would take back your money and turn the balance over to him? A. No, sir.

20 Q. Did you ever make any kind of an agreement with Mr. Brooks that he or Mrs. Brooks were to have anything to do with the property after you bought it? A. No, sir.

Q. Is that the only business you had with Brooks, that he was to supervise the buildings? A. That is all what I got with him.

CROSS-EXAMINATION by Mr. Bradner:

Q. How long have you known Mr. Brooks? A. I know him about seven or eight years.

30 Q. Have you seen very much of him? A. All the time.

Q. Had a good deal of business with him? A. Yes, sir.

Q. Sold a good deal of property for him? A. Yes, sir.

Q. He had a great deal to sell, didn't he? A. Who?

Q. Mr. Brooks? A. Not much, not before, not 40 lately.

Elias Goldberg—Cross

Q. Not lately? A. No.

Q. When did you sell property for him? A. I sell him about seven or eight year, when he build, Philip Lowy.

Q. And he built a great many houses, didn't he? A. He built it.

Q. Did you sell houses for him? A. I sold 10
them and exchanged it.

Q. For Mr. Brooks? A. Yes, sir.

Q. How many houses do you think you sold for him? A. I can't remember.

Q. A dozen? A. I couldn't remember.

Q. And when you made those sales where did the deals go through, in whose office? A. What sales?

Q. Any sales that you made for Mr. Brooks? 20
A. I don't know what lawyer he got, what lawyer he got, I can't tell you, I can't tell you what place, but the party got a lawyer, I go around and see that lawyer, I got the condition paper, that is all I get.

Q. Do you live anywhere near Mr. Brooks? A. No, sir; I live in Sixth Street.

Q. Did you ever go visit his house? A. No, sir.

Q. Do you know his family? A. I know his 30
family, yes.

Q. Did he have an office in his house? A. I don't know.

Q. You never went to his house? A. Never—I think once I was in there in South Orange Avenue, only once, when he moved in, a couple of years ago, a year or two years, I can't remember that thing.

Elias Goldberg—Cross

Q. Did you hear that Mr. Brooks was in some trouble? A. Some trouble.

Q. Yes. A. I hear it, yes.

Q. You heard that he was losing money and had some debts? A. I don't know that things, he didn't tell me that things.

10 Q. I ask you if you heard it? A. I heard it; he didn't tell me he is in debt or not, I didn't see his record, he didn't tell me his record.

Q. Where were you when you had your first talk with him about the Brookdale Avenue lots?

A. He come in my house.

Q. When was that? A. I couldn't remember when that is.

Q. Was it in the winter time? A. Pretty near that way.

20 Q. Did he tell you that he owned the lots up there in Brookdale Avenue? A. He didn't tell me; he didn't tell me he owned the lots, he get man from New York, he want to sell the lots.

Q. He told you he had a man from New York, he wanted to sell the lots? A. Yes.

Q. Did you go to see the lots? A. Yes, sir.

Q. When? A. I can't remember when.

Q. Well, how soon after you had your talk with Mr. Brooks? A. I don't know, I couldn't tell you; I know the lots before he knows.

30 Q. Did you go to see them after you had your talk with Mr. Brooks, to see the lots? A. I know the lots before Mr. Brooks know.

Q. You knew the lots? A. Yes, sir.

Q. You knew where he got them from? A. Yes.

Q. Who did he buy them from? A. From Mr. Sandowsky and Isaacs.

40 Q. He bought them from the Roosevelt Realty

Elias Goldberg—Cross

Company, didn't he? A. His name is Isaacs; I don't know the Roosevelt Realty Company; I know the man named Isaacs.

Q. And Mr. Sandowsky was the president of that company? A. I can't tell you whether Sandowsky was president or not, I don't know that thing. 10

Q. What did you know about the lots? A. I don't know about the lots, he make an exchange for the lots, that is all.

Q. Did you know that Brooks got them from Sandowsky? A. Yes.

Q. And made an exchange? A. Yes, sir.

Q. Now, how much mortgage was on the lots? A. Six thousand dollars was the first and second mortgage. 20

Q. How much was the first mortgage? A. Forty-five, I couldn't tell you, forty-five hundred, second mortgage was \$1575, was Sandowsky's second mortgage.

Q. Who held the first mortgage? A. The bank.

Q. What bank? A. This bank here in this building.

Q. The Fidelity Trust Company? A. Yes, sir.

Q. Held the first mortgage? A. Yes, sir.

Q. And who held the second mortgage? A. Sandowsky was the second mortgagee. 30

Q. Did you go see Mr. Sandowsky? A. For what?

Q. Did you go to see him? A. For what, for what purpose?

Q. I don't say for what. Did you go to see him at all? A. I didn't see him that time, I don't know what purpose.

Q. Did you go down to the Fidelity Trust Company? A. Yes. 40

Elias Goldberg—Cross

Q. To see about the mortgage? A. When I pay \$300.

Q. I am not asking about when you paid something; I mean before you bought the lots? A. No.

10 Q. You did not go to find out about them? A. No.

Q. Did you go to see the holder of the second mortgage before you bought the lots? A. I know him, I see him every day.

Q. Who was the holder? A. Mr. Sandowsky.

Q. You are sure he held the second mortgage? A. He hold it, he got it before.

Q. Do you know Bertha Kahn? A. Yes.

20 Q. Who is she? A. She is mother of Mr. Sandowsky.

Q. Sandowsky's mother? A. Yes.

Q. Did you see her? A. I see Mr. Sandowsky and I see Mr. Isaacs, that is enough, I need not see her, and he told me everything is all right.

Q. When did you see him? A. I see him every day, when I see him today I see him every minute when I set around here, 800 Broad Street.

Q. He is down here all the time? A. All the time.

30 Q. Did you go to see him before you bought this lot? A. I see him I say when I bought the lots, I buy the lots and not be foreclosed.

Q. Did you go to see him before you bought the lots? A. Yes, sir.

Q. What did you say to him? A. I say, "When I take over the lots everything be all right." "Mr. Goldberg, everything be all right."

40 Q. Where did you see him? A. 800 Broad Street.

Elias Goldberg—Cross

Q. You just happened to meet him? A. I meet him, when you set around there you see him twenty times in ten minutes, he is a broker, too.

Q. What else was there against that property besides the mortgages? A. Nothing.

Q. No taxes? A. Taxes, yes, two years.

Q. Two years taxes? A. Yes, sir.

10

Q. Was there anything else against the property? A. Interest.

Q. Anything else? A. That is all, I think.

Q. You didn't know anything about anything else on that property when you bought it? A. That is all, I think.

Q. And you bought it simply because Mr. Brooks told you it would be a good chance to make some money? A. Yes.

Q. And you paid \$1000? A. Mr. Greenfield paid \$1000 in my presence.

20

Q. Where did that money come from? A. Mr. Greenfield gave it to him.

Q. Where did he get it? A. I got money by Mr. Greenfield all the time; he laid it out for me; I gave him a couple of days. I told him I give him a thousand dollars "in a couple of days I give you the money."

Q. Mr. Greenfield had a thousand dollars then belonging to you on that day? A. No, I don't know whether it belonged to me, the whole thousand dollars; when I need any money Mr. Greenfield laid it out all the time when I am short, and gave it couple of days back again.

30

Q. Did you take \$1000 to Mr. Greenfield to be paid to Mr. Levy? A. I don't know how much money by Mr. Greenfield I got; I told him "Mr. Greenfield pay him that thousand dollars and

40

Elias Goldberg—Cross

what I am short I give you back in couple of days.”

Q. How much money did you have with Mr Greenfield at that time? A. I couldn’t tell you I got all the time money, when he give me a statement, I don’t know how much.

10 Q. You don’t know how much you had? A. I can’t tell you, I don’t know.

Q. Did you have a hundred dollars? A. I couldn’t tell you how much.

Q. Did you have a hundred dollars? A. I got all the time money by him and all the time I got my money by him.

Q. You don’t know how much money you had at that time? A. I can’t tell you how much.

20 Q. You simply told Mr. Greenfield to give Mr. Levy a thousand dollars? A. Yes, sir.

Q. Did you see the thousand dollars? A. I see him and he give him cash.

Q. What kind of bills were they? A. I couldn’t tell you, I can’t remember that things.

Q. Couldn’t you see whether they were hundred dollar bills? A. I couldn’t remember that thing, when I see the money, when another man count I didn’t mix in.

30 Q. Did you see Mr. Levy count it? A. Mr. Levy count it.

Q. Was Mrs. Levy there? A. Mrs. Levy was there, too, I guess.

Q. She was sitting there, too, when Mr. Levy counted it, and Mrs. Brooks was there, too? A. Mr. Brooks was there, too.

Q. He was there, too, and saw him count it? A. I don’t know he saw him count it, I speak that
40 time, I couldn’t tell you, I was in the same room.

Elias Goldberg—Cross

Q. Will you tell me what Mr. Brooks was doing there that day, what business did he have there?

A. He bring down here Mr. Levy that time to me.

Q. Brought Mr. Levy there? A. Yes, sir.

Q. And what business did he have in the office?

A. Well, when he get commission, from that lot he get commission, Mr. Brooks get commission for that lot. 10

Q. He got a commission from you? A. He got commission from me, yes.

Q. You paid Mr. Brooks a commission for bringing Mr. Levy to you? A. Yes.

Q. How much? A. I don't know, about it was \$300, I think, I couldn't remember that things, for Mr. Brooks.

Q. You gave him \$300? A. I gave him a lot, I gave him that, he owed some money, and he make the bargain with me, "Mr. Goldberg, when Mr. Levy turn over the lots you get Mr. Schill one lot, Mr. Schill, and that is for the commission," and he paid the debt for Mr. Schill, and I signed it over, and he bought of me another lot, Mr. Schill, two lots, and I gave him one lot for Mr. Schill. 20

Q. You did have some bargain with Mr. Brooks, didn't you? A. I gave him the commission, that is the commission he gets. 30

Q. Then Mr. Brooks said to you; "Mr. Goldberg, you buy those twenty-one lots from Mr. Levy and give him a thousand dollars and give me a lot for a commission? A. When I paid the debts, yes.

Q. That was the bargain? A. That was the bargain, subject to the mortgage.

Q. Now, what did you say to Mr. Levy when you met him? A. I didn't say anything to Mr. Levy. 40

Elias Goldberg—Cross

Q. How many times did you see Mr. Levy? A. Twice, twice or three times, I couldn't tell you; he was before by me in the house one night, and he bring Mr. Levy, and tomorrow morning he come over when I go to the lawyer, when I told him he come over in the morning and "I go over to see the lawyer, I will go over there with you;" he come over to the house and I go there with him, the night before he come over to me.

Q. Mr. Levy came to your house, did he? A. Yes, sir.

Q. Mr. Brooks was with him? A. Yes, sir.

Q. And that same time, that same day he came to your house did you go to Mr. Greenfield's office? A. No.

Q. The next day? A. The next day.

Q. And Mrs. Levy signed the paper then? A. Mrs. Levy signed the paper, yes.

Q. You both signed the papers? A. Yes, sir.

Q. And did they come over to Newark again after that? A. He was the night before by me, and tomorrow he come over to Newark and make arrangement and I say yes or no, I couldn't tell him before, and he bring him over, Mr. Levy, to Newark.

Q. You saw Mr. Levy twice? A. That is all.

Q. I thought a little while ago you saw him three times? A. No, twice, but he was the day before when I bought the lots.

Q. Where did you make your bargain with Mr. Levy? A. I made the bargain with Mr. Levy in my house.

Q. And who was there? A. I, Mr. Brooks, and Mr. Levy, he was the broker.

Q. Mr. Who? A. Mr. Brooks was the broker.

Elias Goldberg—Cross

Q. What bargain did you make with Mr. Levy?

A. I give him a thousand dollars, subject to the assessments and subject to the mortgages, and that is all, and he got for brokerage one lot, I paid his debts.

Q. That was all talked over by Mr. Levy and Mr. Brooks right there? A. Yes, sir. 10

Q. Was there anybody else there? A. No, sir.

Q. And did you put that agreement in writing? A. What agreement?

Q. That you made then? A. No, I couldn't write.

Q. And the next day Mr. Levy came down to Mr. Greenfield's office? A. Yes.

Q. When did you tell Mr. Greenfield that you wanted the deed drawn up? A. When I come over together, I can't tell you what time, it was about middle of the day, I couldn't tell you what time, and next day was that things. 20

Q. Did Mr. Levy tell you that he never had any deed to the property? A. Never.

Q. Didn't tell you that? A. No, I don't know that at all.

Q. How many papers did Mr. Levy sign? A. One paper.

Q. That is all you saw him sign? A. That is all what I saw him. 30

Q. Did you see any paper torn up? A. No, sir.

Q. Who paid for drawing the deed? A. I; when he charged me down here he charged it to my account.

Q. Did you get a bill for it? A. When he get statement he put in everything what he get.

Q. Did you have a search made on this property? A. I couldn't tell you what he make, I leave everything to counsel. 40

Elias Goldberg—Cross

Q. Well, then, after you got the title you commenced to put up some houses? A. Yes, commenced to build, commenced to dig, yes.

Q. And you made a contract with Sobine and Bernstein? A. I couldn't tell, I couldn't remember that thing.

10 Q. Did you make a contract for the carpenter work? A. Yes, sir.

Q. With whom? A. With Sobine?

Q. Sobine and anybody else? A. And Bernstein, I don't know.

Q. Do you know Sobine? A. I know him.

Q. Had you ever built a house before? A. No.

Q. Never in your life? A. Never in my life.

20 Q. Did you have an architect in this work? A. No, sir; on account I took Mr. Brooks, and he is the architect.

Q. Mr. Brooks looked after all that? A. Yes, sir.

Q. Mr. Brooks made the contract, didn't he? A. No, sir.

Q. Mr. Brooks figured for the carpenter work, didn't he? A. He figured before to me, before I bought the lots he gave me the figure.

30 Q. Did Mr. Brooks make out the plans and specifications for the property, for the houses? A. I pay for the plan.

Q. Who made that? A. Rosensohn.

Q. How much money did you pay for the carpenter work? A. I couldn't tell you, I give him \$600 a house.

Q. For four houses? A. For four houses, yes.

Q. Did you pay the full \$2400? A. Yes, I got receipts for it.

40 Q. Did you get any discount? A. No, sir, when

Elias Goldberg—Cross

I get discount I might give him before some money, I give him all the time.

Q. Did you get a discount from Mr. Lieb on the mason work? A. No, sir.

Q. Did you say to Mr. Lieb that you wanted him to throw something off because this was Brooks' property and that was the only way you could make any money out of it? A. No, sir. 10

Q. Mr. Goldberg, Mr. Lieb did the mason work? A. Yes, sir.

Q. Did you go to Mr. Lieb while he was doing the mason work on those houses? A. Yes.

Q. And say to him that you wanted commission because the houses belonged to Brooks, and that was the only way you could make any money? A. No, sir.

Q. Did you go to Mr. Levine, who was doing the plumbing work? A. I never know Mr. Levine. 20

Q. While he was working on the houses, and tell him you wanted a commission on his contract because Mr. Brooks owned the houses and that was the only way you could make any money? A. No, sir.

The Court: Let me caution you against answering these questions before the question is finished. Do you understand what I mean? You break in, whenever he starts a question you break in with your answer; you don't know what you are answering. 30

Q. Did you say to Mr. Rothberg, who also had contracts for the mason work, while the work was going on that you wanted a commission because Brooks owned the houses and that was the only way you could make any money out of it? A. No, sir. 40

Anna Rosenfeld—Cross

Q. Did Mr. Lieb make you a present of a stoop?

A. Yes, that was in the bargain, in the contract.

Q. On your own house somewhere else? A. Yes, that was in the bargain, the contract.

Q. I understand you to say that you gave Mr. Brooks \$20 a week? A. Yes.

10 Q. Was he paid every week? A. Paid every week; I got the checks for it.

Q. Who paid him? A. I was up there, and Mr. Greenfield paid him.

Q. Every week \$20? A. Every week or every two weeks, I couldn't tell you what it is.

20 ANNA ROSENFELD, sworn:

Direct-examination by Mr. Schotland:

Q. I show you Exhibit C 1; did you ever take that over to Mr. Steinsitz' office? A. No, sir; I did not.

Q. Where are you employed? A. Mr. Greenfield's.

Q. In what capacity? A. Stenographer.

Q. How long have you been employed there?

30 A. Four and a half years.

CROSS-EXAMINATION by Mr. Bradner:

Q. Is that your typewriting? A. Why, I couldn't tell you that; we have two girls, and I can't tell you whether I did that or not.

Q. You don't both work on the same machine?

A. At that time I believe we both did have the same machine, we haven't now.

Q. You don't recognize this paper at all, do you?

40 A. I do not, I don't remember whether I did it.

Marks Brooks—Direct

By Mr. Schotland: Q. Where is the other girl?
A. The other young lady is ill now, she is home.
A. Mr. Schotland: We rest.

MARKS BROOKS, re-called in rebuttal:

10

Direct-examination by Mr. Bradner:

Q. Mr. Brooks, do you remember taking Mr. Levy to Mr. Goldberg's office? A. Yes, sir.

Q. What time in the day was that? A. It was in the morning.

Q. And while you were there—

Mr. Schotland: I object to this as not being rebuttal; Mr. Brooks has testified to every— 20

The Court: This is denial of statements made—

Mr. Schotland: He testified yesterday he introduced Mr. Levy to Mr. Goldberg at Mr. Greenfield's office.

The Court: He said nothing about the bargain that was made there.

Mr. Schotland: Said that was the first time Goldberg met Mr. Levy. 30

The Court: I think this is rebuttal.

Q. At Mr. Goldberg's house was there anything said about paying Mr. Levy a thousand dollars?

A. There was never spoken about money at all.

Q. Did Mr. Goldberg say that he would give you a commission? A. Never said.

Q. Did he pay you a commission? A. I never seen it, he never spoke of it.

By the Court: Yes or no. A. No. 40

Marks Brooks—Direct

Q. Did he give any lots to Schill? A. Give two lots to Schill.

Q. And was that after Mr. Levy made the deed to Goldberg? A. After, yes.

Q. And why were those lots given to Schill?

10 A. We bought some trim, bought some windows, and everything, and I owed him a bill, some money, and I told him "I will give you the contract and I will settle whatever I owe you," and I owed him some money, and I give him the contract of the trim, providing he should take from me two lots, would straighten up the whole business; he said he was willing.

Q. Now, as I understand that, see if I have it right, you owed Schill some money? A. Yes.

20 Q. You then made the contract with him for the trim on these four new houses? A. Yes.

Q. And he was to do that work and cancel your debt and take a deed for two vacant lots? A. Yes.

Q. Is that right? A. Yes, in Mr. Greenfield's office.

Q. And Mr. Goldberg agreed to that and the deal was made? A. Yes, in Mr. Greenfield's office.

30 Q. That was not then to pay you any commission? A. No, sir; the man lives here, bring him to the stand, he will tell you the same as I tell you.

Q. Were you down at Mr. Greenfield's office with Mr. Levy more than once? A. Yes, I was twice, I remember now.

Q. What was done the first time? A. The first time—yesterday I could not explain the right
40 thing—

Marks Brooks—Cross

Mr. Schotland: If this is going to be an attempt to change his testimony I do not think it ought to be.

The Court: No; he ought not to change his testimony.

CROSS-EXAMINATION by Mr. Schotland: 10

Q. Wasn't that arrangement with Mr. Schill that one lot was being sold to him and one lot he was given to cancel the money that you owed him?

A. I never spoke at all about one lot at all.

Q. Wasn't that the way the deal was made for two lots? A. No, sir.

Q. It was not? A. No, sir.

Q. How much were those lots sold to him for?

A. I think \$625 or \$650 each. 20

Q. Each? A. Yes, sir.

Q. And did he pay for them? A. Yes, sir.

Q. How? A. I take from him a contract.

Q. Who signed the contract? A. Mr. Schill himself.

Q. And who else signed it? A. Mr. Goldberg; I gave him \$25 rebate for giving me the contract.

Mr. Schotland: I ask that that be stricken out, that last part.

The Court: Yes.

Q. Just answer my question, please, Mr. Brooks? 30

A. Yes.

Q. Then Mr. Schill got two lots? A. Yes.

Q. And he paid for those two lots by supplying some trim? A. Yes, sir.

Q. And cancelling the debt that you owed him?

A. Yes.

Q. Did Mrs. Brooks know anything about this?

A. Yes, she know I owed him some money. 40

Marks Brooks—Cross

Q. Did she know anything about this arrangement? A. Yes.

Q. When did she learn about this arrangement? A. She didn't learn it at all, she know Mr. Schill was in my house to ask for the contract.

10 Q. That arrangement was made in her presence? A. Yes, in my own house, talking that way, then come over to Greenfield's office and closed up the bargain and contract about the two lots.

Q. You testified just now that you were up to Mr. Goldberg's house with Mr. Levy? A. Yes.

Q. Do you remember testifying yesterday that Mr. Goldberg did not know Mr. Levy at all, had never met him, that the first time he met him was when you introduced Mr. Levy to him at Mr. Greenfield's office? A. I will tell you how it was.

20 Q. Do you remember testifying to that yesterday? A. I can't tell you, I know the thing was just exactly—today I know exactly how the thing was.

Q. You know it better today than you did yesterday? A. No, I did not know it better today than yesterday, all the time the same thing.

Q. But you testified yesterday that Mr. Levy never met Mr. Goldberg until you introduced him at Mr. Greenfield's office.

30 Mr. Bradner: I don't think he said that, I don't think he said at Mr. Greenfield's office.

Q. At Mr. Greenfield's office, on the occasion of the signing of that deed Exhibit C 3. My question is whether this witness did not yesterday testify differently than he has just now?

Mr. Bradner: That is a matter of record.
40 The Court: I will determine that question.

Marks Brooks—Re-cross

RE-DIRECT-EXAMINATION by Mr. Bradley:

Q. I forgot something. Mr. Goldberg's son testified here this morning that he paid you two commissions, is that so? A. Never.

Q. Did he ever pay you any money at all? A. 10
No, sir never anything at all.

RE-CROSS-EXAMINATION by Mr. Scotland:

Q. You were examined in supplementary proceedings before Jacob L. Newman as a Master in Chancery, weren't you? Weren't you examined in supplementary proceedings on a judgment against you? A. I couldn't remember it.

Q. What? A. What do you mean by that? 20

By the Court: Q. Do you remember going into some lawyer's office and making a statement about your business? A. I was once with Mr. Greenfield himself.

Q. With Mr. Greenfield himself? A. Yes.

Q. And where was it you went with him? That was in Mr. Newman's office, wasn't it? A. I couldn't tell you.

Q. And that was after Mr. Goldberg had this deed, wasn't it? A. What do you say? 30

Q. That was after Mr. Goldberg had the deed for the Brookdale Avenue lots, wasn't it? A. No, sir.

Q. Wasn't it? A. I couldn't tell you exactly?

Q. Don't you remember that you testified regarding the ownership of these lots? A. No, sir, I don't say anything at all about that.

Q. Weren't you asked whether you had any interest in this property on Brookdale Avenue? 40

Marks Brooks—Re-cross

Mr. Bradner: I object; he doesn't claim any.

10 The Court: I will let Mr. Schotland go into it far enough to determine whether there was any distinction made in that examination between his property and his wife's property; he may have talked about it as his property, he may have talked about it as his wife's property.

Q. Don't you remember testifying about who owned the Brookdale Avenue property? A. No, I was with Mr. Greenfield at some lawyer's.

Q. Answer my question.

The Court: What did you go there for? A. He called me himself, Mr. Greenfield.

20 By the Court: Q. What did you go to the other lawyer's office for? A. He says he wants to make a statement.

By the Court: Q. Were you sworn to tell the truth before the other lawyer? A. I think so.

By the Court: Q. You were sworn, weren't you? A. I think so.

By the Court: Q. Did some lawyer ask you about these Brookdale Avenue lots? A. I don't remember, I couldn't tell you exactly; they asked 30 more Mr. Greenfield than they did myself.

By the Court: Q. He asked more of Mr. Greenfield than he did of you? A. Yes, sir.

Q. Don't you remember testifying that Mr. Goldberg was the absolute owner of the Brookdale Avenue property, and that you had nothing to do with it, that you were only working for him? A. I never said that at all.

Q. You never said that over there at all? A. 40 No.

Harry Rotberg—Direct

Mr. Schotland: I ask leave to put in the record of that supplementary proceeding examination regarding which this witness has just been asked.

Mr. Bradner: I object to that; I think that ought to be proved by the officer who took it. 10

The Court: I wouldn't object to opening the proofs to let that in, because if this man has made another statement about the ownership of this property, a statement that neither he nor his wife has any interest in it, or anything to do with it, it might become an important statement for the purposes of this case. Of course, it depends on what he said. If he said he didn't have anything to do with it, that is one thing; if he said his wife didn't have anything to do with it, that is another matter entirely. I think I will let it in, Mr. Bradner. 20

HARRY ROTBERG, sworn:

Direct-examination by Mr. Bradner:

Q. Mr. Rotberg, did you have a contract to do mason work on Brookdale Avenue houses? A. Yes, sir. 30

Q. You made that contract with Mr. Goldberg? A. I made one contract before and I leave the contract with Mr. Greenfield a few days, and after a few days I make the bargain with Mr. Brooks and I come to Mr. Greenfield and sign a contract and Mr. Brooks signed a contract and I leave the contract with Mr. Greenfield. 40

Harry Rotberg—Cross

Q. Did you know Mr. Goldberg at all? A. Before, no.

Q. When did you first meet Mr. Goldberg? A. One time when Mr. Brooks make appointment with me I shall go to Mr. Greenfield to sign the contract and I come down to Mr. Greenfield and I see Mr. Goldberg there, and Mr. Brooks told me that was Mr. Goldberg; I did not know at all Mr. Goldberg.

Q. While you were doing the work did Mr. Goldberg ask you to give him a commission? A. Yes.

Q. Did he tell you that Mr. Brooks owned the property and that that was the only way he could make any money out of it? A. Yes.

20 CROSS-EXAMINATION by Mr. Schotland:

Q. When did he tell you that? A. That time that I come to sign the contract Mr. Goldberg tell me he will sign the contract, he will pay me the money for the contract, I shall make him a stoop by Sixth Street, and after come to sign the general release for the last money Mr. Goldberg took off \$75.

Q. What did he say when he took off \$75? A. He wants that commission.

30 Q. What else did he say? Is that all he said? A. I was come around to Mr. Greenfield's office to sign general release, and Mr. Goldberg and Mr. Brooks was that time there, and Mr. Goldberg told me Mr. Greenfield is not here, and after he called me in his office, third floor.

Q. Who? A. Mr. Goldberg, and he give me the paper, I shall sign it, I shall sign the papers, and

40

Harry Rotberg—Re-direct

he give me the check, I shall sign it and take off the check, and he give me his check, he take off \$75.

Q. What did he say when he took it off? A. He wants that commission.

Q. Is that all he said? A. Yes.

Q. Have you told me everything that Mr. Goldberg ever said to you about this property? A. Yes. 10

Q. The first thing, then, that he said to you was at the time when he signed the contract he said he wants you to make a stoop for him for his house on Sixth Street without charging him anything for it? A. Yes.

Q. That was before this contract? A. Yes, sir.

Q. The next thing was when you signed a general release and got your last payment, when he gave you the check he took off \$75 and said he wants that for his commission? A. Yes. 20

Q. That is all he ever said to you? A. Commission for the protection of money.

Q. That is all he ever said to you? A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Bradner:

Q. Did he say why he wanted commission? A. He told me one time I come around to Mr. Goldberg, he shall give me the money for first payment, he told me I should go to Mr. Brooks and take signature of Mr. Brooks, I am entitled to that money, and Mr. Brooks every time give me his signature for the money, and Goldberg told me one time, "I am not the owner, Mr. Brooks is the owner, I just lend him that money." 30 40

Harry Rotberg—Re-cross

RE-CROSS-EXAMINATION by Mr. Schotland:

Q. When was it that he told you that? A. At the same time that I made contract, and every time I come for the money he told me that.

10 Q. He told you that at the same time you made the contract? A. Yes, sir.

Q. That was the time when Mr. Brooks was there and Mr. Greenfield was there? A. Everybody was there, Mr. Greenfield was in the office, Mr. Brooks was in the office.

Q. Everybody was there, and Mr. Goldberg said, "I am not the owner"? A. When I signed the contract with Mr. Brooks and I leave the contract with Mr. Greenfield in his office, and Mr. Brooks told me I should come on two days afterwards to take the contract, and I come on after two days, and Mr. Goldberg was there, and Mr. Brooks told me, "Here is Mr. Goldberg and you sign the contract."

The Court: You have said all that. What we want you to say, what did Mr. Goldberg say to you about his ownership of the lot, what did he say about that? A. I think the same night.

By the Court: Q. What was it he said? A. The same night when I signed the contract and I was there in the office I make the bargain for \$1800 with Mr. Brooks, and he gave to me the contract, and Mr. Brooks took off \$50, and we had there in the office an argument for the \$50, and Mr. Goldberg call me in the other room and he told me I should not leave the \$50 because he wants for commission \$50.

Q. Did you give him commission of \$50? A. 40 Yes, \$75 he take off.

Harry Rotberg—Re-direct

Q. Did you give him commission of \$50? A. \$75 he took off, I didn't give it, because Mr. Brooks take off \$50.

Q. So you let Mr. Brooks take off \$50 and then you let Mr. Goldberg take off \$75 besides. A. Yes.

Q. And you made a stoop for Mr. Goldberg besides? A. Yes. 10

Q. Who told you to say that Goldberg said he did not own this property? A. Goldberg said this.

Q. Who told you to say that? A. Nobody.

Q. Did you ever tell Mr. Brooks that Goldberg told you that? A. No.

Q. Did you ever tell him that he told you that? A. No.

Q. Did you ever tell it to Mr. Bradner? A. 20 Just now.

Q. I mean before you took the witness stand? A. No, sir.

Q. Did you tell it to Mr. Brunyate, this gentleman here? A. Yes, this morning I was here and Mr. Steinsitz asked me and I told him he take off \$75.

Q. That is all you told him, that he took off \$75? A. Yes.

Q. You didn't tell him anything else? A. No. 30

Q. Do you know how you came to be subpoenaed? A. Mr. Brunyate subpoenaed me.

Q. Did you ever tell Mr. Brooks that Goldberg told you this? A. No.

Further RE-DIRECT-EXAMINATION by Mr. Bradner:

Q. You wanted \$1800 for your contract?

Mr. Schotland: I don't think that is material testimony at this time. 40

David Lieb—Direct

The Court: Merely contradicting a statement of Mr. Goldberg on one point, that is all any of this evidence is good for, I think, and it looks to me, Mr. Bradner, as if you have got it all out of him.

10 Q. When you made your contract how much did you make it for?

Mr. Schotland: I object to that as not being rebuttal.

The Court: Let us see.

A. I was making the bargain for \$1800.

Q. And you made it finally for how much, \$1750?

A. When I come to sign the contract he take off \$50.

Q. And you signed the contract for \$1750? A.
20 Yes.

DAVID LIEB, sworn:

Direct-examination by Mr. Bradner:

Q. Are you a partner of Mr. Rotberg? A. Yes, sir.

Q. Had the mason work on these Brookdale houses? A. Yes, sir.

30 Q. Your contract was \$1750? A. Yes, sir.

Q. Did Mr. Goldberg ask you to give him a commission? A. He didn't ask me nothing.

Q. He didn't ask you anything? A. No, but I didn't was there that time when the contract was signed.

Q. After, when you settled up? A. After, when we settled it, Mr. Goldberg take off \$75
40 there.

Samuel Levine—Direct

Q. Did he say to you then that he wanted that \$75 as commission because that was the only way he could make any money out of it? A. He didn't say nothing, but when it came last payment he take off \$75; he didn't say nothing; he said he wants it for commission, that is all.

Q. What else did he say, anything? A. Nothing. 10

Q. Not to you? A. No.

CROSS-EXAMINATION by Mr. Schotland:

Q. You are Rotberg's partner, are you? A. Yes.

Q. The man that was on the stand just before? A. Yes.

Q. And you were present when that \$75 was taken off? A. Yes. 20

Q. He didn't say anything, only took it off? A. He didn't say to me anything.

SAMUEL LEVINE, sworn:

Direct-examination by Mr. Bradner:

Q. Did you have the contract for doing the plumbing on the four houses on Brookdale Avenue? A. Yes, sir. 30

Q. \$3700? A. Yes, sir.

Q. Did Mr. Goldberg ask you for a commission? A. Yes, sir, took \$50.

Q. Did he say that Mr. Brooks owned the houses and that was the only way he could make any money out of it? A. Yes. 40

Samuel Levine—Cross

CROSS-EXAMINATION by Mr. Schotland:

Q. When did he say that? A. What do you mean, when he say that? When he took the \$50 he said, "I want \$50, I will protect your money, I want \$50."

10 Q. When was that? A. Before we signed the contract.

Q. Were you there when the contract was signed? A. Yes, sir.

Q. Did you sign the contract? A. Yes, sir.

Q. You are sure about that? A. Yes, sir.

Q. Are you a licensed plumber? A. Yes, sir.

Q. And you were at that time? A. At that time I was in partnership with Rosenkohn & Levine.

Q. Wasn't it Rosenkohn that was the licensed
20 plumber? A. Yes, he had the license.

Q. You didn't have it at that time? A. What is the difference?

The Court: You answer the question.

Q. Did you? A. I don't have no license, I had the same authority.

Q. Who signed the contract, you or Rosenkohn? A. It was all the same.

Q. Who did it in this particular case? A. It was all together.

30 Q. Who else was there? A. Mr. Brooks and Mr. Goldberg and Mr. Greenfield's office.

Q. And who was there when Mr. Goldberg told you that he wants \$50 as commission for protecting your money? A. Mr. Goldberg himself told me; my partner was there at that time.

Q. Who else was there? A. I guess nobody else.

Q. You say that was at the time when you signed the contract? A. Yes, before, before we sign-
40

Samuel Levine—Cross

ed contract he says he wants \$50 for protecting the money, that is all.

Q. How long before? A. I don't know how long it was, couple of days.

Q. Couple of days before? A. My partner come in to me, he says, "What do you think I should do?" 10

The Court: Never mind that.

Q. Did you sign the contract? A. I take the last money.

Q. Did you sign the contract? A. I don't remember did I sign it; I won't tell no and won't tell yes; it is on the contract Rosenkohn & Levine.

Q. Did you sign it? A. I don't remember if I did.

Q. Who signed that, Rosenhohn & Levine? A. No, this is Mr. Rosenkohn, Rosenkohn & Levine. 20

Q. Who signed that, Rosnkohn & Levine? A. My partner.

By the Court: Q. Signed by the firm name, I suppose, isn't it? A. Yes.

Mr. Bradner: I offer in evidence certified copy of deed from Elias Goldberg and wife to Andrea Vigiano and wife dated March 20, 1912, acknowledged March 26, 1912, and recorded March 29, 1912. 30

Marked Exhibit C-6.

Adjourned for argument to Monday February 15, 1915.

Complainants' Exhibit 1**MONEYS RECEIVED BY WILLIAM GREEN-
FIELD**

10	1912		
	Sept. 1st,	By check of Nathan Kussy, \$	1000.00
	1912		
	Mar. 15,	By N. Y. check to the order of H. Brooks,	100.00
	Mar. 19,	Collected note of Sandusky, .	200.00
	Mar. 20,	Received from Vigiano as de- posit on lot,	50.00
20	Mar. 25,	By check on Broad & Market National Bank,	1300.00
		By check of Sherman on West side Trust Co.,	100.00
	Mar. 28,	By check of H. Rothberg,	40.00
		By note of Rosenberg for col- lection,	150.00
	Apr. 5,	By check of J. Robinowitz, ..	287.50
	May 1,	By settlement of property with Vigiano,	650.00
30	May 8,	By check of Alias and others, deposit on lots,	100.00
	May 15,	By check of City Hall B. & L.,	500.00
	June 1,	By check of Rosenberg on ac- count of note,	50.00
		By note of Rosenberg for two months,	200.00
	June 18,	By check of Philip Lowy,	1500.00
40	June 27,	By check of Levition on ac- count of deposit on sale of	

Complainants' Exhibit 1

	lots,	125.00	
July 8,	By check of Philip Lowy,	1000.00	
July 12,	By check of Philip Lowy,	1200.00	
	By check of City Hall B. & L.,	400.00	
July 19,	By check of Philip Lowy,	1000.00	
July 26,	By check of Philip Lowy, ..	1000.00	10
Aug. 6,	By check of Philip Lowy,	2000.00	
Aug. 27,	By check of Philip Lowy,	1000.00	
Sept. 6,	By check of Philip Lowy,	1600.00	
Sept. 18,	By check of Philip Lowy, ..	1000.00	
Sept. 6,	By check of Sewer dept.,	25.00	
Oct. 2,	By check of Frederick Jay, ..	3974.00	
	By check of E. Goldberg,	78.00	
Oct. 3,	By check of Frederick Jay, ..	500.00	
Oct. 7,	By check of Frederick Jay, ..	75.00	
Oct. 26,	Balance from B. & L. Associa-		20
	tions,	314.86	
Oct. 29,	By check of Vigiano,	11.84	
	By cash of Dr. B. H. Green-		
	field in sale of Samuel		
	Mortgage,	1100.00	
	By note of Samuels,	300.00	
Dec. 27,	By check of Philip Lowy,	937.00	
	Received from Board of		
	Works,	5.73	
			30
		\$23883.93	

DISBURSEMENTS

1911

Sept. 29 By check on Union National
Bank in payment of claim
collected of Marks Brooks \$1000.00 40

Complainants' Exhibit 1

1912		
	Mar. 11 By check on National Newark as cash loan	50.00
	" 12 Paid to City Hall B. & L.	5.00
	" 13 By check on National Newark as cash loan	81.00
10	" 15 By check to the order of M. Brooks for Goldberg	19.00
	" 21 By check on Union National Bank	100.00
	" " By check on Union National Bank	12.00
	" 27 By check on Union National Bank	27.00
	" 27 By check on Union National Bank	32.10
20	" 27 By check on Union National Bank	40.00
	" 27 By check on Union National Bank	50.90
	Apr. 4 By check to Elias Goldberg in repayment of moneys paid to S. Ressler, attorney, for two judgments	140.00
30	Apr. 4 By check to E. Goldberg in re- payment for sewer and water permits	54.00
	Apr. 5 By check to Goldberg and Les- ser	25.00
	Apr. 5 By check on Union to Brooks	15.00
	Apr. 5 By check on Union to Gold- berg	15.00
	Apr. 13 By check to Rothberg and Lieb	100.00
40	Apr. 17 By check on Union to Roth- berg & Lieb	100.00

Complainants' Exhibit 1

Apr. 17	By check on Union to E. Goldberg	190.85	
Apr. 27	By check on National Newark to Sobine & Bornstein	125.00	
May 2	By check to Philip Shill on Union	75.00	10
May 4	By check to Wm. Ballard (digger)	150.00	
May 4	By check to Rosenkranz & Levin	246.00	
May 4	By check to Sobine & Bornstein	125.00	
May 4	By check to Rothberg & Lieb	100.00	
May 4	By check to E. Goldberg	50.00	
May 9	By check to E. Goldberg	240.00	
May 11	By check on Union to Sobine & Brownstein	125.00	20
May 14	By check to M. Brooks on National Newark	21.95	
May 23	By check on Union to Philip Shill	75.00	
May 25	By check on Union to Rothberg & Lieb	100.00	
May 25	By check on Union to Sobine & Bornstein	150.00	
May 25	By check to Max Menduck ..	60.00	30
May 31	By check on Union to M. Brooks	66.15	
June 1	By check on National Newark to Max Menduck	50.00	
1912			
June 1	By check on National Newark to Sobine & Bornstein	100.00	
June 1	Note of Rosenberg protested	150.00	40

Complainants' Exhibit 1

	June 1	Protest fee	1.56
	June 4	By check to A. Sobine	50.00
		By check on National Newark to Levin & Rosenkranz	220.00
	June 7	By check on National Newark to Rothberg and Lieb	200.00
10		By check to Sobine and Wax- ler on National Newark ...	150.00
		By check on National Newark to Max Menduck	50.00
	June 14	Survey on Brookdale Avenue	24.00
	June 15	By check on National Newark to Levin & Rosenkranz ...	260.00
		By check to Rothberg & Lieb	125.00
		By check to Max Menduck ...	40.00
20	June 18	By check on National Newark to Philip Shill	150.00
		By check to Charles Wolf ...	500.00
		By check to E. Goldberg	165.00
	June 22	By check on National Newark to Max Menduck	20.00
		By check to Rothberg & Lieb	250.00
		By check to M. Brooks on Union	37.00
		By check to Levin & Rosen- kranz on Union	300.00
30	June 25	By check on National Newark Sobine & Waxler	125.00
	July 3	By check to Clark & Co.	68.84
	July 6	By check on Union to Sobine & Waxler	150.00
		By check on Union to Roth- berg & Lieb	100.00
		By check to Marks Brooks ..	20.00
40	July 8	By check to Charles Wolf for mason material	500.00

Complainants' Exhibit 1

July 9	By check on National Newark to E. Goldberg	43.00	
July 11	By check to E. Goldberg for Sandusky (interest on mortgage)	40.00	
	By check to E. Goldberg for note	53.00	10
	By check to E. Goldberg for lumber	26.40	
	By check to E. Goldberg for iron	55.00	
July 13	By check to Harry Friedman	165.00	
	By check to Philip Shill	200.00	
	By check to S. Massie	25.00	
	By check to Sobine & Waxler	125.00	
July 15	By check to E. Goldberg	33.00	20
July 19	By check to Charles Wolf on National Newark	500.00	
	By check on National Newark to H. K. Koehler, Attorney, for releasing lot	300.00	
	By check to E. Goldberg for Brooks	25.00	
July 22	M. Brooks	15.15	
July 20	By check on Union to Humbert Medico	100.00	30
	By check to Rosenkranz & Le- vin	100.00	
	By check to Sobine & Waxler	50.00	
	By check to Sobine & Waxler	50.00	
	By check to Sobine & Waxler in Union	100.00	
	By check to E. Goldberg for wiring	14.00	
	By check to Rothberg & Lieb	50.00	40

Complainants' Exhibit 1

	July 26	By check on National Newark to Silver Roofing Company	250.00
	July 27	By check to Abe Dumchick on National Newark	65.00
10	1912		
	July 27	By check on National Newark to Rothberg & Lieb	100.00
		By check on National Newark to Rosenkranz & Levin	150.00
		By check on National Newark to H. Stern for electric wir- ing	25.00
		By check to Elias Goldberg for Brooks	22.00
20	Aug. 1	By check to E. Goldberg for Brooks	25.00
	Aug. 2	By check on National Newark to Levin & Rosenkranz	75.00
		Note of Levin & Rosenkranz, endorsed, paid out Sept. 18, 1912	300.00
	Aug. 6	By check to Charles Wolf	500.00
	Aug. 7	By check on National Newark to E. Goldberg	300.00
30		By check on National Newark to E. Goldberg	105.00
	Aug. 9	By check to M. Brooks for Jen- kins	35.21
	Aug. 10	By check on Union to Sobine & Waxler	150.00
		By check on National Newark to Levin & Rosenkranz	200.00
40		By check on Union to H. Med- ico	34.70

Complainants' Exhibit 1

	By check on Union to Roth-		
	berg & Lieb	50.00	
	By check to Sobine & Waxler	10.00	
	By check on Union to Harry		
	Friedman	100.00	
Aug. 14	By check on National Newark		10
	to Levin & Rosenkranz ..	200.00	
Aug. 19	By check on Union to H.		
	Friedman	100.00	
	By check to Abe Dumchick		
	(on Sobine's account for		
	work on stairs)	70.00	
	By check to S. Massie (on		
	Lieb & Rothberg's account)	30.00	
	By check to Goldsmith	15.00	
Aug. 24	By check on National Newark		20
	to E. Goldberg	32.00	
Aug. 26	By check to H. Friedman ..	35.00	
Aug. 28	By check on Union to Levin		
	& Rosenkranz	300.00	
Aug. 31	By check on National Newark		
	to Max Menduck	53.70	
	By check on National Newark		
	to B. Wiener	24.50	
Sept. 5	By check on Union to Fidelity		
	Trust Co. for interest	81.38	30
	By check on Union to E. Gold-		
	berg	5.00	
	By check on Union to E. Gold-		
	berg	189.60	
Sept. 6	By check to Philip Rubin	3.00	
	By check on Union to H.		
	Friedman	100.00	
Sept. 7	By check on Union to S. Mas-		
	sie	61.00	40

Complainants' Exhibit 1

		By check on Union to Sobine & Waxler	100.00
		By check on Union to Charles Wolf	500.00
10		By check on Union to J. M. Neuschler	56.00
	Sept. 16	By check on National Newark to H. Epstein (electrician)	50.00
	Sept. 18	By check on National Newark to Levin & Rosenkranz	300.00
		By check to Rothberg & Lieb	309.00
	Sept. 19	By check to E. Goldberg, dated Sept. 23, 1912 on Union for painter	100.00
		By check to M. Brooks	33.00
20	1912		
	Sept. 27	By check on Union to Philip Shill	42.75
	Sept. 28	By check on Union to H. Ep- stein	30.00
		By check on Union to H. Friedman	50.00
		By check on National Newark to New Jersey Chandelier Co.	200.00
30		By check to M. Brooks	30.00
		By check to E. Goldberg	25.00
	Sept. 30	By check to N. J. Sash & Door Co.	155.00
	Oct. 1	By check to Essex Land Co. for release	300.00
		By check to N. J. Paint & Sup- ply Co.	144.15
40	Oct. 3	By check to E. Goldberg for Levin & Rosenkranz note ..	300.00

Complainants' Exhibit 1

	By check to E. Goldberg for Philip Shill note	400.00	
	By check to E. Goldberg for Vigiano	50.00	
	By check on National Newark to Charles Wolf	800.00	10
	By check on National Newark to Levin and Rosenkranz ..	400.00	
	By check on National Newark to Levin and Rosenkranz ..	50.00	
Oct. 5	By check to H. Mass	15.00	
Oct. 11	By check to E. Goldberg for Rosensohn	75.00	
	By check to E Goldberg for payment of commission in sale of 23 Brookdale Avenue	125.00	20
	By check to E. Goldberg for expense	30.00	
Oct. 15	By check on Union to M. Brooks	40.00	
	By check to J. H. Weinglass for window shades	39.50	
Oct. 23	By check to H. Friedman	86.00	
Oct. 29	By check on Union to Charles Wolf	422.00	30
	By check on National Newark to E. Goldberg	140.00	
Oct. 5	By check to Nathan H. Berger, Att'y	89.00	
Oct. 2	By check to D. Lieb	25.00	
Nov. 2	By check on Union National Bank to Bertha Kahn for assignment of mtge.	1455.00	40

Complainants' Exhibit 1

	Nov. 11	By check on National Newark for note of C. Brooks and endorsed by M. Brooks ..	102.00
	Nov. 16	By check on National to So- bine and Waxler	40.00
10		By check on Union to E. Gold- berg	6.60
		By check on Union	135.00
	Nov. 19	By check on Union to Avon B. & L.	60.00
		By check on Union to Home B. & L.	60.00
	Nov. 23	By check on Union to Wm. Bal- lard	75.00
	Nov. 27	By check to Lowy, Lowenstein & Leber	202.70
20		By check to David Goldsmith	145.50
		By check on National to N. J. Chandelier Co.	25.00
		By check to H. Friedman	20.00
	Dec. 10	By two checks to E. Goldberg	400.00
			\$21677.69
	Dec. 14	By check to E. Goldberg on National Bank	100.00
30			\$21777.69
		Disbursements and services as per annexed statements	760.00
			\$22537.69
40		Paid to Elias Goldberg for commission in sale of prop- erty to Vigiano	100.00

Complainants' Exhibit 1

Paid to Elias Goldberg as commission in sale of lots to Dellon	150.00	
Note of M. Brooks,	65.00	
Paid for water permit,	20.00	
Paid for water,	14.00	10
	\$22936.69	

1912

Dec. 19 By check to M. Brooks	100.00	
Dec. 19 By check to B. & L. Ass'n	60.00	
	\$23096.69	

ELIAS GOLDBERG

To WILLIAM GREENFIELD, DR.

20

To services in the suit of Litwin vs. Sol C. Brooks <i>et al.</i> , on attachment and agreement, assumed by Elias Goldberg, \$	75.00	
To services in paying out mechanics, ob- taining releases; drawing contracts with mechanics and materialmen in the erection and construction of buildings on Brookdale Avenue; defending suit in Second District Court of Penn vs. Brooks and other cases in the First Dis- trict Court,	300.00	30
To services in Continuation Search on the Assignment of Mortgage from Samuels to B. H. Greenfield,	50.00	
To services in continuing County Search on Newark Street property, which was accepted in exchange,	35.00	40

Complainants' Exhibit 2

	To services in County search on Bergen County lots agreed to be conveyed by Aaron Keldell, attending in Algernon T. Sweeney's office in drawing agreement and deed for said lots,	50.00
10	Disbursements and services in the foreclosure suit of Joseph Wein vs. Brooks and assumed by Goldberg,	250.00
	Total	\$760.00
	Search on property in Orange in settlement with Headley,	50.00
		\$810.00

20

Complainants' Exhibit 2

WILLIAM GREENFIELD
 Counselor at Law
 800 Broad Street Newark, N. J.
 Globe Building, Suite 611-612
 L. D. Telephone 4926 Market

30

Dec. 2, 1911.

MARKS BROOKS, Esq.,
 Essex Building,
 City.

To WILLIAM GREENFIELD, Dr.

1911

40 Aug. 2, As per statement rendered \$ 187.70

Complainants' Exhibit 2

	To services in the suit against Tannenberg	10.00	
Aug. 17,	Drawing agreements	10.00	
Aug. 31,	1 copy of agreement	3.50	
Sept. 1,	To services in the First District Court in suit of Baum vs. Brooks	5.00	10
	To services in the East Orange District Court ...	10.00	
Sept. 8,	To services in the First District Court of Newark	5.00	
Sept. 29,	By check as cash loan	200.00	
Nov. 6,	Paid to E. Goldberg	257.86	
Nov. 6,	By check to the order of McArthur, plumber	400.00	
Nov. 6,	By check to the order of Marks Brooks	150.00	20
	Continued County Search on loan of City Hall B. & L. Association	30.00	
	Tax search continued	1.00	
	Supreme Court Search	2.67	
	Drawing Bond and Mort- gage to City Hall B. & L. Association	6.00	
	Drawing Postponement of liens of contractors	10.00	30
	Recording Mortgage to City Hall B. & L.	2.80	
	Cancellation of Bigelow Building and Loan Mort- gage	.20	
Nov. 9,	By check on Union National Bank	400.00	40

Complainants' Exhibit 2

	By check on the Union National Bank to the order of Bigelow B. & L. Association in payment of mortgage	1,515.23
10	Nov. 10, Check on National Newark Banking Co.	125.00
	Nov. 16, By check to the order of McArthur, plumber	400.00
	Nov. 16, By check to the order of Marks Brooks	397.35
	To services in the First District Court in suit of Gorfsky vs. Brooks, et. al.	10.00
20	To drawing agreement with Sternario et. als., and Brooks and Baum for the sale of lots, and trip to Somerville	10.00
	Committee fee for loan by City Hall B. & L. Association	6.00
	Search on Brookdale Avenue	35.00
	Requisition for and Tax and Water Searches	4.00
	Supreme Court Search	3.47
30	Drawing agreements and postponement of Sandosky matter	10.00
	Mar. 3, As per bill rendered to the Newark Building Company as per order of Marks Brooks	63.47
	June 30, To services in attending matter in Selig Mindes office	5.00
40	Total	\$4,276.25

Complainants' Exhibit 2

CREDITS

Aug. 7,	By check of Nathan Erlich, Attorney for Tannenberg in payment of judgment	\$ 200.00	10
Nov. 6,	By check of the City Hall B. & L. Association	2,600.00	
Nov. 16,	By check of the City Hall B. & L. Association	997.35	
Total amount received		\$ 3,797.35	

Total amount of disbursements	\$4,276.25
Total amount received	\$3,797.35
Balance due	\$ 478.90

Rec'd payment

WM. GREENFIELD.

Aug. 2, 1911.

30

MARKS BROOKS, Esq.,
Essex Building, City.

To WILLIAM GREENFIELD, DR.

1911

Feb. 28,	County search on tract in So. 18th St. purchased of Voss	\$ 35.00	40
----------	--	----------	----

Complainants' Exhibit 2

	Supreme Court search	7.88
	Requisition for and Tax and Water search	4.00
	Drawing Bond and Mort- gage	6.00
10	Recording Deed	2.00
	Registering Mortgage	1.26
	Drawing Agreement and one copy	3.00
	Passing Title	5.00
	July 27, County search on prop- erty purchased from Mich- ael Gummerman	35.00
	Requisition for and Tax and Water Search	4.00
20	Supreme Court search	4.79
	Certified copy of Bill in Chancery	6.87
	Agreement	3.03
	Recording Deed	2.00
	Passing Title	5.00
	To services in Chancery suit of Michael Baum vs. Marks Brooks, <i>et als.</i> ,	50.00
	July 28, Drawing Bond and Mort- gage to Elias Goldberg and Continuation Search	10.00
30	Recording Mortgage	2.90
Total		\$187.70
Rec'd payment.		

Complainants' Exhibit 3

THIS INDENTURE, Made the Twenty-second day of March, in the year of Our Lord One Thousand Nine Hundred and Twelve

BETWEEN JOSEPH LEVY and ROSE LEVY his wife of the Borough of Brooklyn in the County of Kings and State of New York of the First Part; 10

AND ELIAS GOLDBERG of the City of Newark in the County of Essex and State of New Jersey of the Second Part;

WITNESSETH, that the said party of the first part, for and in consideration of ONE DOLLAR and other good and valuable considerations, lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, ALL that certain lot, tract or parcel of land and premises, herein-after particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey 20 30

BEGINNING at a point on the West side of Brookdale Avenue (formerly Clinton Street) distant one hundred and forty-four feet and forty-seven hundredths of a foot South from the South side of South Orange Avenue, said point being also the Southeast corner of lot No. 5 as laid down on 40

Complainants' Exhibit 3

“Map of Property of Philip N. Jackson situated in Vailsburgh (now Newark) Essex County, N. J. surveyed by Van Duyne & Young May 1888; thence South along the West side of Brookdale Avenue five hundred and thirty-five feet and seventeen hundredths of a foot to the South line of the whole tract; thence North seventy-three degrees twenty minutes West along said South line of the whole tract one hundred feet and sixty-seven hundredths of a foot to rear line of lots fronting on Norwood Street; thence North along said rear line of said lots five hundred and forty-six feet and eighty-seven hundredths of a foot to the Southwest corner of lot number Five aforesaid; thence East along said lot number Five one hundred feet to the point or place of BEGINNING. Being Lots Numbers Six to Twenty-six, both inclusive, as laid down of the aforesaid Map.

The above conveyance is made subject to the following restrictions:

“The said party of the second part, for himself, his heirs, and assigns, hereby covenants and agrees to and with the said party of the first part, its successors, that he, the said party of the second part, his heirs and assigns will not use or even permit said above described premises to be used for the purpose of a saloon or place for the sale, manufacture, storage or distribution of any kind of wine, beer or liquor, nor will he, his heirs, executors or assigns ever transfer or convey said premises to any one for the purpose above mentioned, and this deed is given and accepted with this express understanding.”

“And it is also expressly understood and agreed by the said party of the second part that

Complainants' Exhibit 3

the above clause of restrictions and limitations as to the absolute prohibition of the use of said premises for the purposes of a saloon or as a place for the sale, manufacture, storage or distribution of any kind of wines, beer or liquor, shall be inserted and included in any deed or conveyance which the said party of the second part shall or may, or which his heirs or executors or assigns shall or may ever give for the above described premises." 10

Being the same premises conveyed to the said Joseph Levy by deed of Marks Brooks and wife bearing date the Twelfth day of January, Nineteen Hundred and Twelve and Recorded in the Register's Office of Essex County in Book L. 50 of Deeds for said County, on pages 454-456. 20

This conveyance is made expressly subject to one certain mortgage encumbrance in the sum of Four Thousand Seven Hundred and Seventy-five Dollars, held by the Essex Land Company and one certain further mortgage encumbrance in the sum of One Thousand Five Hundred and Twenty-five Dollars held by Bertha Kahn, both covering the premises in question and also subject to accrued mortgage interest, taxes for the year Nineteen Hundred and Eleven. 30

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining:

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above 40

Complainants' Exhibit 3

described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever:

10 AND the said JOSEPH LEVY and ROSE LEVY his wife do this for themselves, their heirs, executors and administrators covenant and grant to and with the said party of the second part, his heirs and assigns, that he the said Joseph Levy is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said
20 land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered, or defeated in any way whatsoever, except as aforesaid

AND ALSO, that the said party of the first part now have good right, full power and lawful authority, to grant, bargain, sell and convey the said
30 land and premises in manner aforesaid:

AND ALSO, that they the said parties of the first part will Warrant, secure and forever defend the said land and premises unto the said Elias Goldberg, his heirs and assigns, forever against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance
40 whatsoever, except as aforesaid

Complainants' Exhibit 3

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

JOSEPH LEVY (Seal)

ROSE LEVY (Seal)

Signed, sealed and delivered
in the presence of
Wm. Greenfield.

10

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

Be it Remembered, that on this Twenty-second day of March in the year of Our Lord One Thousand Nine Hundred and Twelve before me, the subscriber, A Master in Chancery of the State of New Jersey personally appeared JOSEPH LEVY and ROSE LEVY his wife who, I am satisfied, are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said ROSE LEVY wife as aforesaid being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

20

30

WM. GREENFIELD,
A Master in Chancery of the State
Of New Jersey.

(Copy)

Complainants' Exhibit 4

DEED

JOSEPH LEVY and ROSE LEVY
his wife,

To

10 ELIAS GOLDBERG.

Dated, March 22d, 1912.

Received in the Registers Office of the County of Essex N. J. on the 25th day of March A. D., 1912, at 9:56 o'clock, in the forenoon and recorded in Book V 50 of DEEDS for said County, on pages 111-114.

THOMAS T. ALWORTH,
Register.

20

Complainants' Exhibit 4

JOSEPH WIEN UX & AL.

To

ELIAS GOLDBERG.

30 This Indenture, made the twenty-seventh day of April, in the year of Our Lord One Thousand Nine Hundred and Twelve, Between Joseph Wein and Bessie Wein his wife, of the Borough of Brooklyn City of New York in the County of Kings, and State of New York, and Michael Baum and Fannie Baum, his wife, of the Borough of Somerville in the County of Somerset and State of New Jersey of the first part; And Elias Gold-
40 berg of the City of Newark in the County of Es-

Complainants' Exhibit 4

sex and State of New Jersey of the second part, Witnesseth, That the said party of the first part for and in consideration of One Dollar, and other good and valuable considerations lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part therewith fully satisfied contented and paid, have given, granted, bargained, sold, aliened, released enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns forever, All those certain tracts or parcels of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey. 10 20

FIRST TRACT: Beginning at a point in the Westerly line of North Sixth Street distant therein Southerly one hundred feet from the corner formed by the intersection of the said Westerly line of North Sixth Street and the Southerly line of Delevan Avenue; thence running Southerly along the said line of North Sixth Street one hundred and twenty-five feet; thence Westerly at right angles to the said line of North Sixth Street one hundred feet to the centre line of the block; thence Northerly along the said centre line fifty feet; thence Westerly along the Northerly line of lot No. 15 one hundred feet to the Easterly line of North Seventh Street; thence Northerly along the said line of North Seventh Street fifty feet to the Southerly line of Lot No. 9; thence Easterly 30 40

Complainants' Exhibit 4

along the said line of Lot No 9 one hundred feet to the centre line of the Block; thence Northerly along the said centre line twenty-five feet to the Southerly line of lot No. 8 thence running one hundred feet to the Westerly line of North Sixth Street and the point or place of beginning, Being known as lots No. 10-11-12-13-14-16-18 as shown on Block C of a Map of Silver Lake Park.

10
20 SECOND TRACT: Beginning at a point in the Westerly line of North Sixth Street distant therein Southerly two hundred and fifty feet from the Southerly line of Delevan Avenue; thence running Southerly along the said westerly line of North Sixth Street one hundred and fifty feet; thence Westerly at right angles with the said line of North Sixth Street one hundred feet to the centre line of the Block; thence Northerly along the said centre line one hundred and fifty feet to the Southerly line of Lot No. 20: thence easterly along the said line of Lot No. 20 one hundred feet to the said Westerly line of North Sixth Street and the point or place of Beginning. Being known as lots Nos. 22-24-26-28-30-32 as shown on Block C on a map of Silver Lake Park.

30 THIRD TRACT: Beginning at a point in the Westerly line of North Sixth Street distant therein Southerly four hundred and twenty-five feet from the Southerly line of Delevan Avenue, thence running Southerly along the said Westerly line of North Sixth Street fifty feet to the Northerly line of Lot No. 40; thence Westerly at right angles with the said line of North Sixth Street one hundred feet to the centre line of the block; thence Northerly along the said center line fifty feet to
40 the Southerly line of lot No. 34; thence easterly

Complainants' Exhibit 4

along the said line of Lot No. 34: one hundred feet to the said Westerly line of North Sixth Street and the point or place of Beginning. Being Known as lots Nos. 36-38 as shown on Block C. on Map of Silver Lake Park.

FOURTH TRACT: Beginning at the corner formed by the Westerly line of North Sixth Street and the Southerly line of Elwood Avenue; thence running Southerly along the said Westerly line of North Sixth Street two hundred and twenty-eight feet and forty-seven one-hundredths of a foot to the Northerly line of lot No. 20. 10

Thence Westerly along the said line of Lot No. 20 one hundred feet to the centre line of the block; thence Northerly along the said centre line two hundred and twenty-eight feet and forty-seven one hundredths of a foot to the Southerly line of Elwood Avenue thence Easterly along the same one hundred feet to the Westerly line of North Sixth Street and the point or place of Beginning. Being known as lots Nos. 5-6-7-8-10-12-14-16-18 as shown on Block H on Map of Silver Lake Park. 20

FIFTH TRACT: Beginning at a corner formed by the intersection of the easterly line of North Sixth Street and the northerly line of Ellwood Avenue; thence running Northerly along the said line of North Sixth Street one hundred and fifty feet; thence Easterly at right angles to the said line of North Sixth Street one hundred feet to the center line of the Block: thence Southerly along the said center line one hundred and fifty feet to the said Northerly line of Elwood Avenue; thence Westerly along the said Northerly line of Elwood Avenue one hundred feet to the said 30 40

Complainants' Exhibit 4

Easterly line of North Sixth Street and the point or place of beginning. Being known as lots Nos. 1-2-3-4-17-18 as shown on Block K on Map of Silver Lake Park. Being the same land and premises conveyed to Marks Brooks and Michael Baum, by Nellie F. Hedden, widow by deed dated 10 May 11, 1911 and recorded in Book H 49 of Deeds for Essex County, page 44 &c. and the same premises described in Deed from Marks Brooks and Celia Brooks, his wife to Joseph Wein, dated January 12, 1912 and Recorded in the Register's office for said County, in Book L 50 of Deeds, pages 456 &c. This conveyance is made expressly subject to a certain encumbrance not covering inter alia the entire premises in the sum of Seven 20 Thousand Dollars, held by David Goldsmith and recorded in Book X 47 of Mortgages for Essex County, page 198 and subject to accrued mortgage interest and to taxes for 1911 and assessments.

Together with all and singular the houses, buildings trees ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining: Also, all the estate right, title interest, property, 30 claim and demand whatsoever, of the said party of the first part, of in and to the same, and of, in and to every part and parcel thereof, To Have and To Hold, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever: And the said Joseph 40 Wein and Michael Baum do for themselves, their

Complainants' Exhibit 4

heirs, executors, and administrators covenant and grant to and with the said party of the second part, his heirs and assigns, that they the said Joseph Wein and Michael Baum, are the true lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, Judgment, or limitation or by any encumbrances whatsoever, by which the title of the said party of the second part, hereby made or intended to be made for the above described land and premises can or may be changed, charged, altered, or defeated in any way whatsoever. And also, that the said party of the first part now has good right full power and lawful authority, to grant, bargain, sell, and convey the said land and premises in manner aforesaid: And also, that the said Joseph Wein and Michael Baum will warrant secure, and forever defend the said land and premises unto the said Elias Goldberg, his heirs and assigns forever, against the lawful claims and demands of all and every person or persons, freely and clearly fed and discharged of and from all manner of encumbrance whatsoever, except as aforesaid.

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

JOSEPH WIEN (Seal)

MRS. BESSIE WIEN (Seal)

MICHAEL BAUM (Seal)

FANNY BAUM (Seal)

Complainants' Exhibit 4

Signed, Sealed and Delivered
 in the presence of
 "And" added in 19th line and
and thence Easterly along same
 added in the 20th line before execution.

10 Wm. R. Stutphen, as to Michael Baum and
 Fanny Baum.

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

Be it Remembered, That on this Seventh day
 of May in the year of our Lord One Thousand
 Nine Hundred and Twelve, before me the sub-
 scriber, Commissioner of Deeds of the State of
 New Jersey personally appeared Michael Baum
 20 and Fanny Baum, his wife who I am satisfied,
 are the grantors mentioned in the within Inden-
 ture, and to whom I first made known the con-
 tents thereof, and thereupon they acknowledged
 that they signed, sealed and delivered the same as
 their voluntary act and deed, for the uses and pur-
 poses therein expressed: And the said Fanny
 Baum, wife as aforesaid, being by me privately
 examined, separate and apart from her said hus-
 band, acknowledged that she signed, sealed and
 30 delivered the same as her voluntary act and deed,
 freely, without any fear, threats or compulsion of
 her said husband.

WM. R. SUTPHEN,
 A Commissioner of Deeds of the
 State of New Jersey.

Complainants' Exhibit 4

State of New York,
 City of New York, } ss:
 County of New York. }

Be it Remembered, That on this Twenty Third day of May in the year of Our Lord One Thousand Nine Hundred and Twelve, before me, the sub- 10
 scriber, a Commissioner of Deeds for the City of New York personally appeared Joseph Wien and Bessie Wien, his wife who, I am satisfied, are the grantors mentioned in the within Indenture and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said Bessie Wien, wife as aforesaid, being by me privately 20
 examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, freely, without any fear, threats or compulsion of her said husband.

ERROL E. HART,
 Commissioner of Deeds,
 City of New York.

State of New York, } ss: 30
 County of Kings. }

Charles S. Devoy, Clerk of the County of Kings, and also Clerk of the Supreme Court for said County (said Court being a Court of Record) Do hereby Certify that Mr. Errol E. Hart the Commissioner of Deeds before whom the within acknowledgment was made, was at the time of taking the same authorized by the laws of the State 40

Complainants' Exhibit 4

of New York, to take the acknowledgments and proofs of Deeds or conveyances for lands, tenements and hereditaments situate lying and being in said State of New York, and further that I am well acquainted with the handwriting of such
 10 Commissioner and verily believe that the signature to the said certificate of proof or acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said County and Court, this 23 day of May 1912.

Chas. S. Devoy,
 Clerk.

Received in the office August 21, A. D. 1912 at 10:01 a. m.

20 (Endorsement)

Compared
 by Clerk

CERTIFIED COPY OF
 Deed

JOSEPH WIEN *ux & al.*,
 To
 30 ELIAS GOLDBERG.

The original Deed, of which this is a copy, was received in the Register's Office of the County of Essex, State of New Jersey, on the 21st day of August A. D., 1912 at 10:01 o'clock in the forenoon and recorded in Book R 51 of Deeds for said County on pages 96-100.

THOMAS P. ALWORTH,
 Register.

Complainants' Exhibit 5

THIS INDENTURE, made the sixth day of December, in the year of our Lord One Thousand Nine Hundred and Eleven

BETWEEN ROOSEVELT REALTY Co. a Corporation of the State of New Jersey, party of the first part; 10
AND MARKS BROOKS of the City of Newark in the County of Essex and State of New Jersey party of the second part:

WITNESSETH, that the said party of the first part, for and in consideration of ONE DOLLAR and other good and valuable consideration lawful money of the United States of America, to the Corporation aforesaid well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt 20
whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, remised, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, remise, release, enfeoff, convey and confirm to the said party of the second part, and to his heirs and assigns, forever,

ALL that certain lot, tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey. 30

BEGINNING at a point on the West side of Brookdale Avenue (formerly Clinton Street) distant One Hundred and Forty-four feet and Forty-seven hundredths of a foot South from the South side of South Orange Avenue, said point being also the Southeast corner of lot number five as 40

Complainants' Exhibit 5

laid down on "Map of property of Philip N. Jackson, situated in Vailsburgh (now Newark) Essex County, New Jersey surveyed by Van Duyne & Young May 1888;" thence South along the West side of Brookdale Avenue Five Hundred and
10 Thirty-five feet and seventeen hundredths of a foot to the South line of the whole tract; thence North Seventy-three degrees Twenty minutes West along said South line of the whole tract One Hundred feet and Sixty-seven hundredths of a foot to rear line of lots fronting on Norwood Street; thence North along said rear line of said lots Five Hundred and Forty-six feet and Eighty-seven hundredths of a foot to the Southwest corner of lot number five aforesaid; thence East
20 along said lot number five One Hundred feet to the point or place of Beginning.

Being lots numbers six to twenty-six, both inclusive, as laid down on the aforesaid Map.

The above conveyance is made subject to the following restrictions.

"The said party of the second part, for himself, his heirs and assigns, hereby covenants and agrees to and with the said party of the first part, its successors, that he, the said party of the second
30 part, his heirs and assigns will not use or even permit said above described premises to be used for the purpose of a saloon or place for the sale, manufacture, storage or distribution of any kind of wine, beer or liquor, nor will he, his heirs, executors or assigns ever transfer or convey said premises to anyone for the purpose above mentioned, and this deed is given and accepted with this express understanding."

"And it is also expressly understood and
40 agreed by said party of the second part that the

Complainants' Exhibit 5

above clause of restrictions and limitations as to the absolute prohibition of the use of said premises for the purposes of a saloon or as a place for the sale, manufacture, storage or distribution of any kind of wine, beer or liquor, shall be inserted and included in any deed or conveyance which the said party of the second part shall or may, or which his heirs or executors or assigns shall or may ever give for the above described premises." 10

This conveyance is made subject also to two mortgages one in the principal sum of Forty-seven Hundred and Seventy-five Dollars given to Essex Land Company, and another in the principal sum of Fifteen Hundred and Twenty-five Dollars given to Bertha Kahn, now liens on said premises, together with accrued interest on both of said mortgages to date, and subject also to taxes for Nineteen Hundred and Eleven. 20

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

AND ALSO, all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the above described premises, and every part and parcel thereof, with the appurtenances. 30

TO HAVE AND TO HOLD all and singular, the above mentioned and described premises, together with the appurtenances, unto the said party of the second part, his heirs and assigns, to their own proper use, benefit and behoof forever.

AND the said ROOSEVELT REALTY Co. for itself, 40

Complainants' Exhibit 5

its successors in office or assigns does covenant, grant and agree, to and with the said party of the second part, his heirs and assigns, that the said at the time of the sealing and delivery of these presents, was lawful seized in its own right of
10 a good, absolute, and indefeasible estate of inheritance in fee simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances and has good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid.

AND that the said party of the second part, his heirs and assigns, shall and may at all times hereafter, peaceably and quietly have, hold, use, occupy, possess and enjoy the above granted premises, and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said party
20 of the first part, its successors in office or assigns, or of any other person or persons lawfully claiming or to claim the same.

AND that the same now are free, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of
30 what nature and kind soever.

AND ALSO, that the said party of the first part, and its successors in office or assigns, and all and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest, of, in or to the hereinbefore granted premises, by, from, under or in trust for it or them, shall and will at any time or times hereafter,
40 upon the reasonable request, and at the proper

Complainants' Exhibit 5

costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do and execute, or cause or procure to be made, done or executed, all and every such further and other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, his heirs and assigns forever, as by the said party of the second part, his heirs or assigns, or counsel learned in the law, shall be reasonably advised or required. 10

AND the said ROOSEVELT REALTY Co. its successors in office or assigns, the above described and hereby granted and released premises, and every part and parcel thereof, with the appurtenances, unto the said part of the second part, his heirs and assigns, against the said party of the first part, and its successors in office or assigns, and against all and every person or persons whomsoever, lawfully claiming or to claim the same, SHALL AND WILL WARRANT and by these presents FOREVER DEFEND. 20

IN WITNESS WHEREOF, the said party of the first part hath caused its Corporate Seal to be hereto affixed and attested by its Secretary, and these presents to be signed by its President, the day and year first above written. 30

ROOSEVELT REALTY CO.,
ISAAC SANDUSKY,
President.

(Seal)
Attest:
Saul Litwack,
Secretary.

Complainants' Exhibit 5

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

Be it Remembered, That on this Seventh day of December, in the year of our Lord One Thousand Nine Hundred and Eleven, before me, the sub-
10 scriber, an Attorney at Law of New Jersey personally appeared SAUL LITWACK who being by me duly sworn doth depose and make proof to my satisfaction that he is the Secretary of, and well knows the Corporate Seal of ROOSEVELT REALTY Co., the Grantor named in the foregoing Deed, that the seal thereto affixed is the proper Corporate Seal of the said Corporation, and that the
20 same was so affixed thereto, and the said Deed signed and delivered by ISAAC SANDUSKY who was at the date and execution thereof, President of said Corporation, in the presence of said Deponent, as the voluntary act and deed of the said Corporation, and that the said Deponent thereupon signed the same as subscribing witness.

SAUL LITWACK.

(Seal)

Sworn and subscribed to before me this
Seventh day of December, 1911.

30 Nathan H. Berger,
An Attorney at Law of New Jersey.

Complainants' Exhibit 6

Compared by
Davis

DEED

ROOSEVELT REALTY Co.,
To
MARKS BROOKS.

10

Dated, December, 1911.

Received in the Registers office of the County of Essex, N. J., on the 22d day of December A. D., 1911, at 1:48 o'clock in the afternoon, and Recorded in Book Y 49 of DEEDS for said County on pages 574-577.

THOMAS P. ALSWORTH,
Register.

20

Complainants' Exhibit 6

THIS INDENTURE, Made the Twentieth day of March, in the year of Our Lord One Thousand Nine Hundred and Twelve

BETWEEN Elias Goldberg and Chippie, his wife
of the City of Newark in the County of Essex
and State of New Jersey of the First Part;

30

AND Andrea Vigiano and Rosina, his wife of
the City of Newark in the County of Essex and
State of New Jersey of the Second Part;

WITNESSETH, that the said party of the first
part, for and in consideration of One Dollar and
other good and valuable consideration, money of

40

Complainants' Exhibit 6

the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, there-
10 with fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to their heirs and assigns forever, 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
20 Jersey.

BEGINNING in the Northwesterly line of Brookdale Avenue (formerly Clinton Street, Vailsburg) at a point therein distant one hundred and forty-four and forty-seven hundredths feet Southwesterly from the intersection of the said line of Brookdale Avenue (formerly Clinton Street, Vailsburg) with the Southerly line of South Orange Avenue; thence running along the said Northwesterly side of Brookdale Avenue (formerly Clinton Street, Vailsburg) in a Southerly direction thirty feet; thence running Westerly at
30 right angles to the first mentioned course one hundred feet; thence running Northerly and parallel to the first mentioned course thirty feet; thence running Easterly one hundred feet to the point or place of BEGINNING.

This conveyance is made expressly subject to the restrictions mentioned and set forth in a certain deed made by the Roosevelt Realty Co., a
40

Complainants' Exhibit 6

corporation to Marks Brooks, by deed dated December 6, 1911 and recorded in O 49-191 etc.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining:

Also, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof. 10

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever:

AND the said parties of the first part do for themselves, their heirs, executors and administrators covenant and grant to and with the said party of the second part, their heirs and assigns, that they, the said parties of the first part, are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered, or defeated in any way whatsoever except as aforesaid. 20 30 40

Complainants' Exhibit 6

AND ALSO, that the said parties of the first part now have good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid:

10 AND ALSO, that the said parties of the first part will WARRANT, secure, and forever defend the said land and premises unto the said parties of the second part, their heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever except as aforesaid.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seal the day and year first above written.

20 ELIAS GOLDBERG (L. S.)
her

CHIPPIE X GOLDBERG (L. S.)
mark

Signed, sealed and delivered
in the presence of Wm. Greenfield.

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

30 BE IT REMEMBERED, That on this Twenty-sixth day of March in the year of Our Lord One Thousand Nine Hundred and Twelve before me, the subscriber a Master in Chancery of New Jersey personally appeared Elias Goldberg and Chippie Goldberg, his wife who, I am satisfied, are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they
40 signed, sealed and delivered the same as their

Complainants' Exhibit 6

voluntary act and deed, for the uses and purposes therein expressed: And the said Chippie Goldberg, wife as aforesaid being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband. 10

WM. GREENFIELD,
A Master in Chancery of
New Jersey.

(Copy)

DEED

20

Between,
ELIAS GOLDBERG and CHIPPIE, his
wife
To
ANDREA VIGIANO and ROSINA, his
wife.

Dated, March 20th, 1912.

30

RECEIVED in the Register's Office of the County of Essex on the 29th day of March A. D., 1912, at o'clock, in the noon and recorded in BOOK O 50 of DEEDS for said County, on pages 522 etc.

THIS INDENTURE, made the Twenty-fifth day of October, in the year of Our Lord One Thousand Nine Hundred and Twelve,

40

Complainants' Exhibit 6

BETWEEN ELIAS GOLDBERG and CHIPPI GOLDBERG, his wife, of the City of Newark, in the County of Essex and State of New Jersey, of the First Part;

AND ANDREW VIGIANO and ROSINA VIGIANO, his wife, of the City of Newark, in the County of Essex and State of New Jersey, of the Second Part;

10 WITNESSETH, That the said party of the first part, for and in consideration of ONE DOLLAR and other good and valuable considerations money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part, there-
20 with fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, release, enfeoff, convey and confirm to the said party of the second part, and to their heirs and assigns forever, 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.

BEGINNING in the Westerly line of Brookdale
30 Avenue at a point therein distant Southerly one hundred and seventy-four and forty-seven hundredths feet from the Southwesterly corner of the same and South Orange Avenue; thence running along Brookdale Avenue South twenty-three degrees nineteen minutes West Twenty-eight and fifty-one hundredth feet; thence North sixty-six degrees forty-one minutes West one hundred feet; thence North twenty-three degrees Nineteen Minutes East twenty-eight and fifty-one hundredths
40 feet; thence South sixty-six degrees forty-one

Complainants' Exhibit 6

minutes East one hundred feet to the Westerly line of Brookdale Avenue and the place of BEGINNING.

According to a survey made by Harrison Van Duyne & Son, May, 1912.

Being part of the same premises conveyed to Elias Goldberg, by Joseph Levy and wife, by deed dated March 22d, 1912, and recorded in Book V. 50 of Deeds for said County on page 111 &c. 10

The foregoing conveyance is made subject to a mortgage held by the Aetna Building and Loan Association, originally given to secure the payment of the sum of Six Thousand Dollars.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining: 20

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, their heirs and assigns, to the only proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever: 30

AND the said Parties of the first part, do for themselves, their heirs, executors and administrators covenant and grant to and with the said party of the second part, their heirs and assigns, that they, the said parties of the first part, are the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and 40

Complainants' Exhibit 6

premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered, or defeated in any way whatsoever, except as aforesaid.

AND ALSO, that the said party of the first part now have good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid:

AND ALSO, that they, the said parties of the first part, will WARRANT, secure, and forever defend the said land and premises unto the said parties of the second part, their heirs and assigns, forever, against the lawful claims and demands of all and every person or persons freely and clearly freed and discharged of and from all manner of encumbrance whatsoever, except as aforesaid.

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

ELIAS GOLDBERG (L. S.)

her

CHIPPI (X) GOLDBERG (L. S.)

mark

Signed, sealed and delivered
in the presence of
Wm. Greenfield.

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

Be it Remembered, That on this twenty-fifth day
of October, in the year of Our Lord One Thou-

Complainants' Exhibit 6

sand Nine Hundred and Twelve, before me, the subscriber,

A MASTER IN CHANCERY OF NEW JERSEY, personally appeared ELIAS GOLDBERG and CHIPPI GOLDBERG, his wife, who, I am satisfied, are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said CHIPPI GOLDBERG, wife as aforesaid, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

WM. GREENFIELD, 20

A Master in Chancery of New Jersey.

(Copy)

DEED

From
ELIAS GOLDBERG and wife,
To
ANDREW VIGIANO and wife.

30

Dated, October 25th, 1912.

RECEIVED in the Register's Office of the County of Essex on the 8th day of November A. D., 1912, at o'clock, in the noon and recorded in Book V. 51 of DEEDS for said County, on pages 353 etc.

Law Offices of
William Greenfield
800 Broad Street
Newark, N. J.

40

Memorandum

IN CHANCERY OF NEW JERSEY

Between
CELIA BROOKS, *et al*,
Complainants,
and
ELIAS GOLDBERG,
Defendant.

Mr. Peter Steinsitz, Mr. William L. Brunyate
and Mr. Frank E. Bradner for the complain-
ants.

Mr. M. J. Ready and Mr. Philip J. Schotland
20 for the defendant.

HOWELL, V. C.

The Bill in this case is framed upon the theory that the defendant holds certain real estate and personal property in trust for the complainant Celia Brooks.

30 The facts are these. Marks Brooks was the owner of lands in Essex County which he caused to be conveyed to one Joseph Levy, of Brooklyn, as trustee for his wife Celia. The bill alleges that the defendant Goldberg offered to loan Mrs. Brooks or her husband \$2,000, less a bonus of \$200, for the purpose of starting building operations upon one of the tracts, and that Goldberg insisted that as security to him for this advance of cash he should have the title conveyed to him, and that the whole transaction should be carried out in his name as if he were the true owner.

Memorandum

The evidence shows that in the course of time Levy came to Newark on two occasions, on the last of which he and his wife made a conveyance to Goldberg of the premises in question at the office of Greenfield, a lawyer, at which time there passed, according to some of the witnesses, the sum of \$1,000 in cash, and according to other witnesses a check for \$1,800 or thereabouts, to make it appear as if there was a consideration for the conveyance. The building operations were carried on apparently with a considerable degree of financial success, and the complainants now bring this suit for the purpose of having a declaration by the decree of this court that Goldberg holds the premises in question and certain personal property derived from the sale of portions of the realty as trustee for Mrs. Brooks and to have the trust determined and the property transferred to her. The answer denies the right of the complainant and asserts that Goldberg purchased the lands in question from Mrs. Brooks and paid her by means of money furnished by Greenfield in cash the sum of \$1,000 for her equity in the premises.

At the hearing the additional defense was set up, *viz.* that at the time that Brooks conveyed the property to Levy in trust for Mrs. Brooks he was indebted to various creditors, and that the conveyance was made in fraud of the creditors, and, being so, the title could not be recovered from Goldberg. This defense does not appear in the answer, and indeed it would be, if it were there, entirely inconsistent with the defense that was interposed by that pleading. And, further, while it appears that at the time the conveyance was

Memorandum

made Brooks did owe persons who still stood to him in the relation of creditors, it likewise appears that he had settled all or nearly all the claims against him which if true would purge the transaction of its original fraudulent character.

- 10 Payment of the grantor's debts to the full value of the property purges the fraud. *Oriental Bank vs. Haskins*, 3, Met 332; *Crowninshield vs. Kitt-ridge*, 7 Met., 720. Besides the defendant by his answer attempts to purge himself of any fraud alleged in the transaction by stating that he was a holder for value and without notice of any circumstances which would charge him as *particeps criminis*. In my opinion, therefore, this oral defense has failed; and it must be determined from
- 20 the evidence whether a meritorious cause of action has been presented by the bill and sustained by the proofs. I think it very doubtful whether in the face of the statute of frauds a trust can be declared because there was no note or writing to toll the statute. Neither does it appear that there is any trust *ex malificio* or a trust that results from the act and operation of law. The evidence, however, in my opinion will support a bill to redeem upon the theory that Goldberg loaned Mrs.
- 30 Brooks \$2,000 (less the bonus of \$200) and took title to the property in question the same to be held as collateral security for the payment of the debt.

- The transaction was either a loan of money with the real estate as security, as is alleged by the complainants, or it was an out and out sale by Brooks and wife to Goldberg, as is claimed by the defendant. I incline to the belief that the truth
- 40 lies with the complainant. The evidence on the

Memorandum

part of the defendant on this point was principally given by Greenfield, the lawyer. It was equivocal, evasive, uncertain and unsatisfactory in the highest degree, and as compared with the evidence of the complainants failed to impress one. I was much impressed with the evidence of Levy and his wife, who are wholly disinterested witnesses. They testified to the facts concerning the conveyance to Goldberg, but the evidence of the contractors for some of the work on the buildings which were erected in Goldberg's name clinch the matter, so that in my opinion it is beyond question. Two at least of these contractors testified that Goldberg said to them in effect that he wanted a commission out of their contract monies, for the reason that the property belonged to the Brook's and that such commission was the only thing that he could get out of it. 10 20

My conclusion, therefore, on the facts as proved is that the real estate in question, and such personal property as Goldberg derived from the sale of the real estate should be made subject to redemption by Mrs. Brooks upon payment to Goldberg of whatever monies were advanced by him over and above the amount in which he has reimbursed himself. This will require an accounting, and the matter will be referred to a Master to ascertain the state of the account between the parties. 30

This view of the case renders it necessary that at least the prayer of the bill should be amended to make it conform to what I conceive the true position of the complainants is, and it may be that the same amendment will have to be made to the stating part of the bill. I will hear counsel on this point at the time of settling the decree. 40

Interlocutory Decree

IN CHANCERY OF NEW JERSEY

Between
10 CELIA BROOKS, *et al*,
Complainants,
and
ELIAS GOLDBERG,
Defendant.

} On Bill, &c.

20 This cause coming on to be heard in the presence of Frank E. Bradner, William L. Brunyate, Peter Steinsitz, of counsel with Complainant and Mathew J. Ready and Philip J. Schotland, of counsel with the defendant, and the pleadings and proofs having been read and evidence having been taken and the arguments of the respective counsel having been heard and considered, and it appearing to the court that the complainant is entitled to the relief sought and prayed for by her in her Bill of Complaint.

IT IS, on this 14th day of October, One thousand nine hundred and fifteen, by EDWIN ROBERT WALKER, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor, by virtue of the power and authority of this Court doth hereby order, adjudge and decree that the real estate in question and such personal property as the defendant Elias Goldberg derived from the sale of the real estate, be and the same hereby is made subject to redemption by the Complainant, Celia Brooks upon payment to the said defendant, Elias Goldberg of whatever moneys

Interlocutory Decree

were advanced by him, the said defendant over and above the amount in which he has reimbursed himself.

And it is further ORDERED, ADJUDGED and DECREED that it be referred to Jehiel G. Shipman, one of the masters of this Court, to take an account and report to this Court the amount due to the said defendant on the principles of this decree for principal and interest upon said loan; and the said master is to take an account of the rents and profits of the said real estate, mortgages and other personal property derived from the sale of said real estate; and the said master is to take an account of whatever moneys were advanced by the said defendant, Elias Goldberg over and above the amount in which he has reimbursed himself; and what shall be coming on the said account of whatever moneys were advanced by the said defendant over and above the amount in which he has reimbursed himself is to be deducted out of what shall be found due to the said complainant for rents and profits of the said real estate, mortgages and other personal property derived from the sale of the said real estate; and the said master is to take an account of whatever bonds the defendant, Elias Goldberg may have executed and incurred liability upon by reason of his having mortgaged any of the said real estate and whatever warranty deeds he may have executed, and report to this Court the amount of the defendant's Elias Goldberg's present liability thereon.

All further equity is reserved until the coming in of the said master's report.

J. E. Howell

Respectfully advised.

Notice of Appeal

IN CHANCERY OF NEW JERSEY

Between
10 CELIA BROOKS, *et al*,
Complainants,
and
ELIAS GOLDBERG,
Defendant.

On Bill, etc.

The defendant, Elias Goldberg, hereby appeals from the decree ordering a reference to a Special Master to take an account, and from the whole and every part thereof, made in this Court in the above entitled matter, as declares the Complainant entitled to the relief prayed for in the Bill of Complainant, and adjudges and decrees that the Complainant is entitled to redeem the real estate from the defendant, to the Court of Errors and Appeals in the last resort in all causes.

Dated, October 19, 1915.

PHILIP J. SCHOTLAND,
Solicitor for and of Counsel with Defendant.

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

PHILIP J. SCHOTLAND,
Solicitor for and of Counsel with Defendant.

Petition of Appeal

IN CHANCERY OF NEW JERSEY

Between

CELIA BROOKS, *et al*,

Complainants,

and

ELIAS GOLDBERG,

Defendant.

On Bill, etc.

10

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

The petition of Elias Goldberg, the appellant in the above stated cause, respectfully shows, that 20
your Petitioner finds himself aggrieved by a decree made in the Court of Chancery by his Honor Edwin R. Walker, Chancellor of the State of New Jersey, bearing date the Fourteenth day of October, 1915, and filed in the said Court of Chancery on the said last mentioned date, in a cause wherein the said Celia Brooks and Marks Brooks, her husband, were Complainants, and Elias Goldberg was defendant, in this respect, to wit: that the said decree orders, adjudges and decrees, that the 30
Complainants are entitled to redeem the real estate mentioned and set forth in the Bill of Complaint from the Defendant.

Your petitioner humbly appeals from those parts of the decree of the Chancellor which decree as aforesaid upon the ground that the same is erroneous in that it adjudges the Complainants entitled to the relief prayed for in the bill of complaint and dismissed the bill.

40

Answer

10 Your petitioner therefore prays that the said decree of the said Chancellor may be in the particulars aforesaid reversed and set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

PHILIP J. SCHOTLAND,
Solicitor for and of Counsel with Appellant.

Answer

NEW JERSEY COURT OF ERRORS AND
APPEALS

20

Between

CELIA BROOKS, <i>et al</i> ,	} On Bill, etc.
Complainants-Respondents,	
and	
ELIAS GOLDBERG,	
Defendant-Appellant.	

30

The answer of the above-named respondent to the petition of appeal of the above-named appellant.

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the fourteenth day of October, last past made and
40 entered in the Court of Chancery, in the cause for

Answer

that purpose mentioned in said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and prays that the same may be affirmed with costs to be adjudged to this respondent. 10

WILLIAM H. BRUNYATE,
Solicitor for and of Counsel with the Complain-
ants-Respondents.