INDEX

TESTIMONY

For Complainant

For Defendants

EXHIBITS

For Complainant

For Defendants

In Chancery of New Jersey

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

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The complainant, Pincus Rosenblatt, residing in the City of New York, County of New York and State of New York respectfully shows:—

1. That on February 18, 1925 Jacob Horn and Bertha Horn, his wife being indebted to the complainant in the sum of $10,000.00 executed to him a Bond of that date to secure that sum, payable on August 18, 1925 with interest at the rate of 6% per annum payable half yearly from the date of the Bond.

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2. To secure the payment of the Bond said Jacob Horn and Bertha Horn, his wife executed to said Pincus Rosenblatt a Mortgage of even date with the Bond; and thereby conveyed to him, in fee the Land hereinafter described on the express condition that such conveyance should be void if payment should be made according to the terms of the Bond. Which Mortgage having been first duly acknowledged and the certificate of acknowledgment being duly indorsed thereon was registered in Book 53 of Mortgages, page 536.

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3. The mortgaged premises are described as follows: Being in the Town of Irvington, County of Essex and State of New Jersey.

BEGINNING at the corner formed by the intersection of the Westerly line of Elmwood Terrace with the Northerly line of Springfield Avenue and running; thence (1) along said line of Springfield

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feet to a point in range with the Westerly wall of the brick building standing on said premises; thence (2) along said wall and in continuation thereof North 1 degree 27 minutes West 100 feet; thence (3) North 88 degrees 33 minutes East 58.17 feet to the said line of Elmwood Terrace; thence (4) along the same South 1 degrees 27 minutes East 100 feet to the point or place of BEGINNING.

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

5. On January 4, 1926 Jacob Horn and Bertha Horn, his wife conveyed said land by Deed of that date to Sander Roth and Pearl Roth, his wife, which Deed was on January 6, 1926 recorded in the Register's Office of Essex County in Book U73 of Deeds for said County, page 128.

Any interest which said Jacob Horn and Bertha Horn, his wife have in said land is subject to the lien of complainant's Mortgage.

6. On February 18, 1929 one-half year's interest fell due on complainant's Bond and Mortgage and remained unpaid for more than thirty days thereafter, and no part thereof has yet been paid. Complainant has elected that the whole principal sum with all unpaid interest shall be now due.

7. Said Sander Roth and Pearl Roth, his wife have always been in possession of the mortgaged premises.

8. The whole amount of principal with interest thereon from August 18, 1928 is due upon complainant's Bond and Mortgage.

Complainant is without adequate remedy in the Courts of Law and, therefore, prays:

1. That Jacob Horn and Bertha Horn, his wife and Sander Roth and Pearl Roth, his wife, who are the defendants in this suit may answer this Bill of Complaint without oath and each statement therein contained:

2. That an account may be taken of the amount due on complainant's Mortgage.

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

4. That a Decree may be made for the sale of the mortgaged premises to raise and pay to the complainant the amount so found due on his Mortgage with interest and costs:

5. That a Writ of Subpoena may issue commanding said defendants to answer this Bill of Complaint and to abide by such Decree as this Court may make in the premises.

ANTHONY A. CALANDRA,
Solicitor for Complainant.

JAMES J. FARLEY,
Of Counsel with Solicitor for Complaint.

Petition for Security.

Filed: June 25, 1929.

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	On Bill Etc. Petition for Security for Costs from Non Resident Complainant.

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To the Honorable, EDWIN ROBERT WALKER, Chancellor of the State of New Jersey.

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The Petition of Sander Roth and Pearl Roth, of the City of Newark, County of Essex and State of New Jersey, respectfully shows that:

1. Your Petitioners are the Defendants in the above entitled cause.

2. Process of subpoena in the above entitled cause has been served on Sander Roth and Pearl Roth, as Defendants.

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3. The said Complainant, Pincus Rosenblatt resides out of the State of New Jersey, to wit, in the State of New York, and has not filed with the clerk of this court a bond to Sander Roth and Pearl Roth as Defendants for costs in said cause, pursuant to the statute in such case made and provided.

Your Petitioners therefore pray that this suit may be stayed until such bond is filed.

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WILLIAM N. BECKER,
Solicitor for Sander Roth and Pearl Roth, Defendants.

Petition for Security.

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

SANDER ROTH and PEARL ROTH of full age, being duly sworn on their oath, depose and say:

That we are Defendants in an action instituted in the Court of Chancery by Pincus Rosenblatt to foreclose a mortgage, that we have read the foregoing Petition, and the matters and things therein contained are true.

SANDER ROTH
PEARL ROTH

Sworn and subscribed to before me this 21st day of June, 1929.

LOUIS LEVIN,
An Attorney of Law of New Jersey.
Filed: June 25, 1929.

IN CHANCERY OF NEW JERSEY.

Order Staying Suit.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	On Bill Etc. Order Staying Suit for Failure of Non Resident Complainant to File Bond.

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A Petition having been filed herein by the Defendants Sander Roth and Pearl Roth, whereby it appears that Pincus Rosenblatt, the Complainant in the above entitled cause, resides out of the State of New Jersey, to wit, in the State of New York, and has not filed with the clerk of this Court security for costs as prescribed by Law.

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And it appearing that due notice of this application has been given to said Complainant Pincus Rosenblatt; and the court being satisfied that the said Complainant, Pincus Rosenblatt is not a resident of the State of New Jersey, and has not filed with the clerk of this court security for Sander Roth and Pearl Roth, as Defendants, as required by law;

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It is, on this 25th day of June 1929, ORDERED that the said Complainant Pincus Rosenblatt, on or before the Ninth day of July 1929, give security for costs in this case, as prescribed by law.

It is further ordered that all further proceedings in this suit be stayed until the giving of the aforesaid security for costs by said Complainant.

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Order Staying Suit.

And it is further ordered that a true but uncertified copy of this order be served upon the said Complainant within two days after the date hereof.

Respectfully advised,

E. R. WALKER, 10

C.

MAYA LEON BERRY,

V. C.

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Bond for Costs.

IN CHANCERY OF NEW JERSEY

Filed: July 2, 1929.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN, BERTHA HORN, SANDER ROTH and PEARL ROTH, *Defendants.*	On Bill, Etc. Bond for Costs

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20 KNOW ALL MEN BY THESE PRESENTS, that we, Pincus Rosenblatt, of the City and County of New York, State of New York and Commercial Casualty Insurance Company, are held and firmly bound unto Jacob Horn, Bertha Horn, Sander Roth and Pearl Roth, all of the County of Essex and State of New Jersey, in the penal sum of Two Hundred ($200.00) Dollars, lawful money of the United States of America, to be paid to the said Jacob Horn, Bertha Horn, Sander Roth and Pearl
30 Roth, or to their certain attorneys, executors, administrators or assigns; to which payment well and truly to be made, we bind ourselves and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the day of June, nineteen hundred and twenty-nine.

WHEREAS, by an Order of the Court of Chancery of the State of New Jersey, bearing date the 25th day of June, 1929, made in a suit depend-
40 ing in said Court, wherein the above-named Pincus Rosenblatt is complainant, and the above-named

Bond for Costs.

Jacob Horn, Bertha Horn, Sander Roth and Pearl Roth are defendants, it was ordered that the said Pincus Rosenblatt should give security for costs in the said cause according to law, as by such order will more fully appear. Now, the condition of this obligation is such, that if the said Pincus Rosenblatt shall prosecute the said suit with effect, and pay costs to the said Jacob Horn, Bertha Horn, Sander Roth and Pearl Roth, if they shall be entitled thereto in the above-mentioned suit, then this obligation to be void, otherwise to be and remain in full force and virtue.

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Sealed and deliver in the presence of

(L. S.)
(L. S.)

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Answer.

Filed: July 2, 1929.

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	On Bill, Etc. Answer

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The defendants, Jacob Horn and Bertha Horn, his wife, answering the bill of complaint in this cause, say that:

1. They admit the allegations contained in paragraph one (1) of the complaint herein filed.

2. They admit the allegations contained in paragraph two (2) of the complaint herein filed.

.3 They admit the allegations contained in paragraph three (3) of the complaint herein filed.

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4. They admit the allegations contained in paragraph four (4) of the complaint herein filed.

5. They admit the allegations contained in paragraph five (5) of the complaint here in filed.

6. These defendants deny the allegations contained in paragraph six (6) of the complaint herein filed, and expressly state that there is nothing due to complainant on said bond and mortgage, but that the entire amount of said bond and mortgage has been paid.

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Answer.

7. These defendants have no information or knowledge sufficient to form a belief as to the allegations contained in paragraph seven (7) of the complaint herein filed and leave the complainant to his proof of the same.

8. As to paragraph eight (8) of the complaint herein filed, these defendants deny the allegations contained in said paragraph and say that there is nothing due to complainant on the aforementioned bond and mortgage. 10

9. These defendants expressly allege that they paid the entire amount of said bond and mortgage after the same became due, that is, shortly after August 18th, 1925, and that a discharge of said mortgage was executed by the complainant and was duly recorded and now appears of record in the Essex County Register's Office in Book U of Discharges for Essex County, page 386. 20

FIRST SEPARATE DEFENSE

1. These defendants allege that complainant's attorney, Abraham Henig, for and in behalf of the complainant, received payment in acordance with the terms of the aforementioned bond and mortgage, and that upon the receipt of said payment, complainant executed a discharge of the aforementioned mortgage, which discharge was duly recorded in the Register's Office of Essex County in Book U of Discharges for said County, page 386. 30

SECOND SEPARATE DEFENSE

1. That there was never any such sum as $10,000.00 due to complainant in this cause, in that the complainant asked for and received a usurious rate of interest on the aforesaid sum of $10,000 40

in that he demanded as a bonus and received as a bonus from these defendants, certain sums of money, to wit, over the sum of Three Hundred Dollars ($300), and these defendants expressly plead the Usury Act of the State of New Jersey in defense to any claim which the said complainant may have against these defendants.

ZUCKER & GOLDBERG,
Solicitors for Defendants.

6/29/29

Answer of Defendants.

Filed: July 5, 1929.

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	On Bill, Etc. Answer of Defendants, Sander Roth and Pearl Roth.

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The Defendants, Sander Roth and Pearl Roth, his wife, answering the Bill of Complaint, say that:

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1. These Defendants have no knowledge or information sufficient to form a belief as to the statements contained in Paragraphs 1, 2, 3, and 4 of the Complaint.

2. These Defendants admit the conveyance of the premises sought to be foreclosed, from Jacob Horn and Bertha Horn his wife to the defendants, on the 4th day of January 1926, and deny all other matter contained in the 5th paragraph of the Complaint.

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3. Paragraphs 6 and 8 of the Complaint are denied.

4. These Defendants admit that they are the owners and in possession of the premises sought to be foreclosed, but deny that the said premises are encumbered by the lien of the mortgage mentioned in the 1st paragraph of the Complaint.

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FIRST DEFENSE

5. These Defendants have not and never had any knowledge that the premises described in the Complaint and which were conveyed by the Defendants, Jacob Horn and Bertha Horn his wife, to the Defendants Sander Roth and Pearl Roth, his wife as stated in the Bill of Complaint, were subject to the lien of the Complainant's mortgage, as the premises were conveyed free and clear of the Complainant's mortgage, which mortgage was discharged of record as paid and satisfied, by a Discharge of Mortgage made by Pincus Rosenblatt to Jacob Horn and Bertha Horn his wife, dated the 29th day of December 1925, acknowledged the 29th day of December 1925 and recorded in the Office of the Register of Deeds and Mortgages for Essex County, New Jersey, in Book "U" of Discharge of Mortgages for said county, on page 386, on the 31st day of December 1925 at 3:05 P. M. Number 4, which Discharge of Mortgage was recorded before the passing of title to said premises.

SECOND DEFENSE.

6. The mortgage which is sought to be foreclosed by the Complainant, Pincus Rosenblatt, was knowingly received by him from the Defendants, Jacob Horn and Bertha Horn, his wife in pursuance of an agreement for the securing of a usurious loan of money of Ten Thousand Dollars ($10,000.00) to the Defendants Jacob Horn and Bertha Horn his wife, and that from the 18th day of February 1925 to the 18th day of August 1928, the Complainant Pincus Rosenblatt has received a bonus at the rate of 9% per annum, being the sum of Three Thousand, one hundred fifty Dollars

($3,150.00) for the granting and extending the time of payment of the principal of the mortgage loan, and interest at the rate of 6% per annum, being the sum of Two thousand, one hundred Dollars ($2,100.00) being a total sum of Five thousand, two hundred fifty Dollars ($5,250.00) received on, and to apply on the principal due on the mortgage, in violation of an act against usury, for the loan of any money above the value of Six Dollars for the forebearance of One hundred Dollars for a year, which sum of money these Defendants are entitled to be credited for, as part payment on the principal and to be deducted from the amount that may be due on said mortgage; and these Defendants expressly plead the Usury Act of the State of New Jersey, and these Defendants tender themselves ready and willing to pay such amount as the court shall find to be due.

THIRD DEFENSE.

7. These Defendants, being desirous of purchasing the property described in the Bill of Complaint, entered into negotiations with Jacob Horn and Bertha Horn his wife, with the result that they entered into an agreement in writing with the said Defendants Jacob Horn and Bertha Horn his wife, whereby they agreed to sell to these Defendants the premises in question, for the sum of One hundred forty thousand Dollars ($140,000.00). Said agreement further provided that the deed for said premises should be delivered to these Defendants on January 2nd 1926, subject to the encumbrance of a first mortgage in the sum of Eighty five thousand Dollars ($85,000.00) reduced to Seventy nine thousand, nine hundred Dollars ($79,900.00) and held by the Colonial Life In-

surance Company, and subject to a second mortgage in the sum of Twenty five thousand Dollars ($25,000.00) reduced to Twenty two thousand Dollars $(22,000.00) and held by Samuel Werbel and the Washington Trust Company, and after all apportionments and adjustments being made, the balance of the purchase money of Thirty six thousand, six hundred eighty three Dollars and thirty seven cents ($36,683.37) was to be paid by these Defendants to Jacob Horn and Bertha Horn, his wife.

8. On January 4th 1926, these Defendants attended at the office of the attorney for the said Jacob Horn and Bertha Horn, his wife, pursuant to said agreement, at which time a deed, duly executed by the said Jacob Horn and Bertha Horn, his wife, was delivered to them, and they paid to the said Jacob Horn and Bertha Horn, his wife, the sum of Thirty six thousand six hundred eighty three Dollars and thirty seven cents ($36,683.37) in cash and in property, as set forth in the aforesaid agreement and said deed was duly recorded by these Defendants in the manner and form in the said Bill of Complaint set forth.

9. The sum of Thirty six thousand, six hundred eighty three Dollars and thirty seven cents ($36,683.37) paid by these Defendants for the premises as aforesaid to the Defendants Jacob Horn and Bertha Horn his wife, was the full value of said premises at the time of sale of said premises; and these Defendants are bona fide purchasers for a valuable consideration, without notice of the lien of the Complainant's alleged mortgage, and are therefore entitled to the favorable consideration of this court.

Answer of Defendants.

FOURTH DEFENSE.

10. These Defendants have never paid to the Complainant any money for interest allegd to have become due on the mortgage, which is sought to be foreclosed, from the 4th day of January 1926, the date when these Defendants received a Warranty Deed to said premises from the Defendants Jacob Horn and Bertha Horn his wife, to date; which deed was duly executed and acknowledged and was recorded in the Register's Office of the County of Essex, New Jersey on the 6th day of January 1926, in Book U-73 of Deeds for said County, on pages 128-129, and that the Complainant had notice of the registration and contents of the instrument, and of all legal and equitable rights and titles created thereby, and are in good faith and conscience, guilty of laches and should be stopped from setting up their alleged mortgage, as a lien or encumbrance upon the premises sought to be foreclosed, by accepting usurious bonus payments of money for the continuous extention of the time of payment of the principal of the mortgage loan and interest from the Complainant's attorney, Abraham Henig, after the conveyance of the aforesaid premises from the Defendants, Jacob Horn and Bertha Horn, his wife, to these Defendants, Sander Roth and Pearl Roth.

WILLIAM N. BECKER,
Solicitor for Defendants, Sander Roth and Pearl Roth.

Replication to Answer of Jacob and Bertha Horn.

Filed: July 8th, 1929.

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	On Bill, Etc. Replication to Answer of Jacob Horn and Bertha Horn

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20 The complainant, Pincus Rosenblatt replying to the Answer filed by the defendants, Jacob Horn and Bertha Horn, says that:—

1. He denies the allegations contained in paragraph 6 of the Answer.

2. He denies the allegations contained in paragraph 7 of the Answer.

3. He denies the allegations contained in paragraph 8 of the Answer.

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4. He denies the allegations contained in paragraph 9 of the Answer.

5. Complainant denies the allegations contained in the First Separte Defense of the Answer.

6. Complainant denies the allegations contained in the Second Separate Defense of the Answer.

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Replication to Answer of Jacob and Bertha Horn.

7. Complainant says that if there be a discharge of mortgage on record, that said discharge of mortgage was not executed and acknowledged by the complainant, and that the same is a forgery.

8. Complainant says that if there is a discharge of mortgage, the same was not executed by the complainant, and no consideration whatever was paid complainant. 10

9. That the complainant received only the legal rate of interest on the aforesaid mortgage, and that there is now due complainant the principal sum on said mortgage, to wit, $10,000.00 together with interest as alleged in the Bill of Complaint filed in this cause.

10. Complaint joins issue on the Answer filed by these defendants. 20

ANTHONY A. CALANDRA,
Solicitor for Complainant.

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Replication to Answer of Sander and Pearl Roth.

Filed: July 10, 1929.

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	On Bill, Etc. Replication to Answer of Defendants, Sander Roth and Pearl Roth.

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The complainant, Pincus Rosenblatt, replying to the Answer filed by the defendants, Sander Roth and Pearl Roth says that:—

1. He denies the allegations contained in the first defense of the Answer, enumerated in said Answer as paragraph 5.

2. He denies the allegations contained in the second defense to the Answer and particularly enumerated as paragraph 6 in said Answer, and says he has only received the legal rate of interest on said mortgage.

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3. He denies the allegations contained in the third defense of the Answer, which is particularly enumerated as paragraph 7 of the Answer.

4. He denies the allegations contained in the third defense of the Answer and particularly enumerated as paragraph 8 in said Answer.

5. He denies the allegations contained in the third defense of the Answer and particularly enumerated as paragraph 9 in said Answer.

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Replication to Answer of Sander and Pearl Roth.

6. He denies the allegations contained in the fourth defense of the Answer, which is particularly enumerated as paragraph 10 in said Answer.

7. Complainant says that he received only the legal rate of interest on the principal sum of his mortgage, which is particularly set forth in the Bill of Complaint filed by him, and that complainant had no notice whatever of a purported discharge of record, and if there be a discharge on record, the same was not acknowledged or executed by the complainant and is a forgery.

8. That if there be a discharge of mortgage on record the same was not executed or acknowledged by the complainant, is a forgery and no consideration therefore was paid to the complainant.

9. That there is now due upon said mortgage to the complainant the principal sum of $10,000.00, besides interest as prayed for in the Bill of Complaint.

ANTHONY A. CALANDRA,
Solicitor for Complainant.

Rejoinder to Replication.

Filed: July 11, 1929.

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	On Bill, Etc. Rejoinder to Replication.

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The Defendants Sander Roth and Pearl Roth, replying to the Replication filed by the Complainant, Pincus Rosenblatt, says that:

These Defendants deny each and every allegation of new matter set forth in the Replication filed by the Complainant and joins issue with the Complainant herewith.

WILLIAM N. BECKER,
Solicitor of Defendants, Sander Roth and Pearl Roth.

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Order of Reference and Consent.

Filed: July 22, 1929

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	74-42 On Bill, Etc. Order of Reference and Consent.

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This matter being opened to the Court by Anthony A. Calandra, Esquire, Solicitor for the Complainant in the presence of Zucker & Goldberg, Esquires, Solicitors for the defendants, Jacob Horn and Bertha Horn and in the presence of William N. Becker, Esquire, Solicitor for the defendants, Sander Roth and Pearl Roth, and their consents hereto appearing:

It is therefore, on this 22nd day of July, 1929 ORDERED, that the above stated cause be referred to the Honorable Alonzo Church, one of the Vice-Chancellors of this Court to hear the same for the Chancellor and to report thereon to him and advise what Order or Decree should be made therein.

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E. R. WALKER,
C.

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Order of Reference and Consent.

We consent to the making and entry of the above Order.

ANTHONY A. CALANDRA,
Solicitor for Complainant.

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ZUCKER & GOLDBERG,
Solicitors for Defendants, Jacob Horn and Bertha Horn.

WILLIAM N. BECKER,
Solicitor for Defendants, Sander Roth and Pearl Roth.

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Counter Claim Against Co-Defendants.

Filed: July 26, 1929.

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	On Bill, Etc. Counter Claim Against Co-Defendants.

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The Counter-Claim of the Defendants Sander Roth and Pearl Roth against the Defendants, Jacob Horn and Bertha Horn his wife.

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By way of Counter-Claim against the Defendants Jacob Horn and Bertha Horn his wife, the Defendants Sander Roth and Pearl Roth, say that:

1. These Defendants on the 4th day of January, 1926 purchased the property described in the Bill of complaint from the Defendants Jacob Horn and Bertha Horn his wife, in consideration of the sum of One hundred forty thousand ($140,000.00) Dollars, subject to the encumbrance of a first mortgage in the sum of Eighty five thousand ($85,000.-00) Dollars reduced to Seventy nine thousand, three hundred ($79,300.00) Dollars and held by the Colonial Life Insurance Company, and subject to a second mortgage in the sum of Twenty five thousand ($25,000.00) Dollars reduced to Twenty two thousand Dollars ($22,000.00) and held by Samuel Werbel and the Washington Trust Company, and after all apportionments and adjustments being made, the balance of the purchase

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price of Thirty six thousand, six hundred eighty three Dollars and thirty seven cents ($36,683.37) was paid by these Defendants to Jacob Horn and Bertha Horn his wife, in cash and by Deed for certain property known and designated as 89-89½ Somerset Street, in the City of Newark, County of Essex and State of New Jersey, subject to a first mortgage held by the Franklin Savings Institution in the original sum of Fifteen thousand Dollars ($15,000.00), which consideration was paid according to the true tenor and effect, true intent and meaning of the said Deed, and received from the Defendants Jacob Horn and Bertha Horn his wife, a Warranty Deed to said premises, which deed was duly executed and acknowledged and was recorded in the Register's Office of the County of Essex, New Jersey, on the 6th day of January, 1926, in Book U 73 of Deeds for said county, on pages 128-129.

2. Said Warranty Deed contained a clause, that the said lands 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 liens or by any encumbrance whatsoever, by which the title of the said Sander Roth and Pearl Roth, hereby made or intended to be made, for the lands and premises, can or may be changed, charged, altered or defeated in any way whatsoever.

3. Said Warranty Deed contained a further clause that the said Defendants Jacob Horn and Bertha Horn his wife, will warrant, secure and forever defend the said premises unto the said Sander Roth and Pearl Roth, their heirs and assigns forever, against the lawful claims and demands of all and every peron or persons, freely and

clearly freed and discharged of and from all manner of encumbrance whatsoever.

4. Said Warranty Deed contained a further clause, that the Defendants Jacob Horn and Bertha Horn his wife, their heirs and assigns, shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said Defendants, Sander Roth and Pearl Roth, their heirs and assigns, make, do and execute, or cause or procure to be made, done and executed, all and every such further or other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting the premises hereby intended to be granted to the said Defendants Sander Roth and Pearl Roth, their heirs and assigns forever, as shall be reasonably required.

5. Defendants, Jacob Horn and Bertha Horn his wife, did not keep, fulfill and perform the things on their part to be kept, fulfilled and performed.

6. That at the time the said Defendants Jacob Horn and Bertha Horn his wife made the aforesaid covenant, promise and agreement to and with the Defendants, Sander Roth and Pearl Roth, a certain mortgage made by the Defendants Jacob Horn and Bertha Horn his wife, to Pincus Rosenblatt, bearing date the 18th day of February 1925, given to secure the sum of Ten thousand ($10,000.00) Dollars and recorded in Book B 53 of mortgages for Essex County, on pages 536 etc. is alleged by the Complainant in a replication filed in this cause on a bill to foreclose the aforesaid mortgage, to have been fraudulently discharged, without consideration therefore being paid to the

Complainant; which discharge was made by Pincus Rosenblatt to Jacob Horn and Bertha Horn his wife, dated the 29th day of December 1925, acknowledged the 29th day of December 1925 and recorded in the office of the Register of Deeds for Essex County, New Jersey, in Book U of Discharges of mortgages for said county, on page 386, on the 31st day of December 1925 at 3:05 P. M., Number Four, and further alleged that the said mortgage made by Jacob Horn and Bertha Horn his wife to Pincus Rosenblatt the Complainant, remains and encumbrance as against the said premises, contrary to the true tenor and effect, true intent and meaning of the Defendants' convenant in said Deed.

7. Said Defendants, Sander Roth and Pearl Roth his wife, state that the said Complainant Pincus Rosenblatt demands payment of the said mortgage from them, and the said Defendants Sander Roth and Pearl Roth his wife are compelled to defend the suit in this court to foreclose the said mortgage and to prosecute this Counter-Claim, and are compelled to pay and will be compelled to pay, a large sum of money, to wit: The sum of Seven hundred fifty Dollars ($750.00), the expense of defending the said suit to foreclose said mortgage and to prosecute this Counter-Claim.

8. Defendants Jacob Horn and Bertha Horn his wife, for themselves, did covenant, promise and agree to and with the said Defendants Sander Roth and Pearl Roth his wife, their heirs and assigns, among other things, that the premises were free from, clear, discharged and unencumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and encumbrances of what kind and nature soever.

Counter Claim Against Co-Defendants.

9. Said Defendants Sander Roth and Pearl Roth his wife, have always from the time of making the said Deed, truly kept, performed, fulfilled and kept all things in said Deed on their part and behalf to be performed, fulfilled and kept, and in consequence and by reason of the action of Pincus Rosenblatt, the said Defendants Sander Roth and Pearl Roth his wife will be disturbed in and evicted from possession and enjoyment of the said land and appurtenances described and conveyed in and by the said deed, all of which the said Defendants Jacob Horn and Bertha Horn his wife, afterward had notice.

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These Defendants therefore pray:

1. That said Defendants Jacob Horn and Bertha Horn his wife, may answer this Counter-Claim and each statement herein made.

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2. That the said Defendants Jacob Horn and Bertha Horn his wife may be decreed to pay to these Defendants, Sander Roth and Pearl Roth, the amount that will be found and decreed to be due to the Complainant Pincus Rosenblatt, on his mortgage, with interest, attorney's fee and costs to be taxed and to abide by such decree as this Court may make in the premises.

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WILLIAM N. BECKER,
Solicitor for Defendants, Sander Roth and Pearl Roth.

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Answer to Counter-Claim.

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	On Bill, &c. Answer to Counter-Claim

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The defendants, Jacob Horn and Bertha Horn, his wife, answering the counter-claim of the defendants, Sander Roth and Pearl Roth, his wife, say that:

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1. They admit the allegations contained in paragraph one (1) of the counter-claim.

2. They have no knowledge or information sufficient to form a belief as to the allegations contained in paragraph two (2) of the counter-claim, and leave the defendants to their proof of the same.

3. They have no knowledge or information sufficient to form a belief as to the allegations contained in paragraph three (3) of the counter-claim, and leave the defendants to their proof of the same.

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4. They have no knowledge or information sufficient to form a belief as to the allegations contained in paragraph four (4) of the counter-claim, and leave the defendants to their proof of the same.

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5. They deny the allegations contained in paragraph five (5) of the counter-claim.

Answer To Counter-Claim.

6. As to the allegations contained in paragraph six (6) of the counter-claim, these defendants deny the allegation therein contained that there is a $10,000 mortgage open of record due to Pincus Rosenblatt, but expressly charge that they paid this mortgage off and that a discharge of said mortgage in consideration of their payment of the same was recorded in the Register's Office of Essex County as in said paragrah alleged, and they deny that said mortgage was fraudulently discharged.

7. They have no knowledge or information sufficient to form a belief as to the allegations contained in paragraph seven (7) of the counter-claim, and leave the defendants to their proof of the same.

8. They have no knowledge or information sufficient to form a belief as to the allegations contained in paragraph eight (8) of the counter-claim, and leave the defendants to their proof of the same.

9. They have no information or knowledge sufficient to form a belief as to the allegations contained in paragraph nine (9) of the counter-claim, and leave the defendants to their proof of the same.

To: Sander Roth and Pearl Roth, his wife:

Take Notice, that the defendants, Jacob Horn and Bertha Horn, his wife, at or before the trial of this issue, will move to have the counter-claim filed in this cause dismissed on the ground that the defendants have an adequate remedy at law if a breach of warranty exists in this cause as recited in said counter-claim, and that the Court of

Answer To Counter-Claim.

Chancery has no jurisdiction to render a judgment on said counter-claim for breach of warranty by the defendants, Jacob Horn and Bertha Horn, his wife, if a breach of warranty exists.

ZUCKER & GOLDBERG,
Solicitors for Defendants,
Jacob Horn and Bertha Horn.

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7/25/29

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Order of Designation and Consent.

Filed: September 10, 1929.

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	74-42 On Bill, Etc., Order of Designation and Consent.

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This matter being opened to the Court by Anthony A. Calandra, Esquire, Solicitor for the complainant, and it appearing that the above entitled cause has been referred to me for final hearing:

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It is, therefore, on the 10th day of September, 1929 ORDERED, that the above case be tried before me the 15th day of October, 1929 at 11 o'clock in the forenoon, or as soon thereafter as counsel may be heard.

ALONZO CHURCH,
Vice Chancellor.

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We consent to the making and entry of the foregoing Order.

ANTHONY A. CALANDRA,
Solicitor for Complainant.

ZUCKER and GOLDBERG,
Solicitors for Defendants, Jacob Horn and Bertha Horn.

WILLIAM N. BECKER,
Solicitors for Defendants, Sander Roth and Pearl Roth.

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Testimony.

IN CHANCERY OF NEW JERSEY

December 3, 1929.

Between

10 PINCUS ROSENBLATT,
Complainant,

—*and*—

JACOB HORN, BERTHA HORN, SANDOR ROTH and PEARL ROTH,
Defendant.

20 Transcript of shorthand notes of testimony taken in the above entitled cause before his Honor, Alonzo Church, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Anthony Calandra, for complainant; Maurice J. Zucker for Mr. and Mrs. Horn; William N. Becker for Mr. and Mrs. Roth.

PINCUS ROSENBLATT, sworn for complainant.

30 *DIRECT EXAMINATION* by Mr. Calandra:

MR. CALANDRA: Does your Honor desire an opening?

THE COURT: Yes. I would like to know what it is about.

MR. CALANDRA: May it please your Honor, this is the final hearing of this bill to foreclose the mortgage made by the defendants Horn in this case, to Pincus
40 Rosenblatt, and there are additional de-

fendants in this case, Sandor Roth and Pearl Roth, who now own this property.

This mortgage was executed by the Horns in 1925 and became a lien on the property then owned by the Horns. Mr. Rosenblatt continued to receive interest and amortization payments on the mortgage, although the mortgage did not set forth any amorization until February, 1928.

Since then, he has not received any interest nor the payment of the balance on the principal sum.

THE COURT: What is the defense?

MR. ZUCKER: I represent Mr. and Mrs. Horn. As counsel stated, this loan was made on February 18, 1925, for $10,000 for six months at a bonus of nine percent, and was paid off in August of 1925, and we never, since that time, have paid him or our people who purchased from us a dime for interest, and we never knew this mortgage was still in existence until this bill of foreclosure was filed. No notice was ever given that any such mortgage was still open of record. The first thing we heard was a bill of foreclosure and it took us some time before we knew it. There was a discharge of mortgage on file in the Essex County Register's office in this matter.

MR. BECKER: If your Honor please, representing the present owner the purchasers of the property, we bought this property free and clear of this mortgage, had no notice of it; the search revealed a discharge of that mortgage prior to the

confirmation of this title; title was taken January the 4th and discharge was recorded December 31, one of 1925 and the other of 1926, and we are the innocent purchasers without notice about any mortgage.

10 MR. CALANDRA: May it please your Honor, if there is a discharge of record, that discharge is a forgery.

Mr. Rosenblatt, the complainant in this case who has already been sworn, did not execute that discharge. He had no knowledge of any discharge ever having been executed. There may appear on record a discharge of the mortgage and a jurat taken by a member of the Bar of this State, but Mr. Rosenblatt did not execute that

20 discharge, and, if it was discharged, it was discharged in fraud of Mr. Rosenblatt.

THE COURT: That is a very serious charge to make.

MR. CALANDRA: It is. That is why we are trying to get to the bottom to see whether it is true or it is not true.

THE COURT: Let us find out about this. Where is the discharge?

30 MR. BECKER: I have a copy of the discharge.

THE COURT: Where is the original discharge?

MR. BECKER: The original we haven't got it.

THE COURT: Have you subpoenaed the clerk or whatever—

MR. BECKER: The discharge is not filed, your Honor; it is recorded and returned to the party recording it. I have a

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certified copy of the discharge. As to where the original discharge is I don't know. The only man that would know is this attorney who handled the matter.

THE COURT: Who is the attorney?

MR. ZUCKER: Mr. Henig, and he is here in Court to testify. 10

THE COURT: All right. Go on.

MR. CALANDRA: Now, if your Honor please, the defendant Horn admits the execution of the bond and mortgage; admitted the indebtedness; they also admitted the ownership of the property at the time, they admitted the conveyance to the present defendant Roth.

The defendant Roth admits ownership by warranty deed from the defendant Horn to them, so that it leaves me to prove the question of the mortgage. 20

MR. BECKER: If your Honor please, I want to qualify that. We admit the purchase of the property, but free and clear of any knowledge of this mortgage. Counsel did not so state.

MR. CALANDRA: I did not intend to make a misstatement to the Court. 30

Q Mr. Rosenblatt—

A Yes?

Q —where do you live?

A 450 Audubon avenue, New York.

Q You are the complainant in this case?

A Yes, sir.

Q I show you a bond and mortgage, the mortgage and bond being dated on February 18th, 1925.

THE COURT: Well, that is all admitted. 40

MR. ZUCKER: I would like to see it. I have not seen that.

(Paper handed by Mr. Calandra to Mr. Zucker.)

MR. CALANDRA: I offer the bond and mortgage in evidence.

10 (Bond and mortgage marked Exhibit C-1 and C-2.)

Q Mr. Rosenblatt, when was the last time you received interest on this mortgage?

MR. ZUCKER: There is no proof yet in the case, your Honor, that there is any money due to this man. All he has done is to prove the mortgage.

THE COURT: Yes.

MR. ZUCKER: I object to that at this

20 time.

MR. CALANDRA: Just a minute.

Q Is there anything due you on that bond and mortgage?

MR. ZUCKER: I object to that. That is not the best proof.

THE COURT: Well, it is the only proof he can offer up to the present.

MR. ZUCKER: He can show checks, showing the payment of this money.

30 THE COURT: Well, all right; perhaps he will. He is entitled to say that he thinks there is a thousand dollars due, or whatever it is.

Q How much is there due on that bond and mortgage, Mr. Rosenblatt?

A The mortgage shows ten thousand dollars.

MR. ZUCKER: I object to that.

THE COURT: Yes. You are asked how much is due on that mortgage.

40 Q How much is due on the mortgage?

A On that mortgage is due— I used to receive from him $450—

MR. ZUCKER: I—

WITNESS: (Continuing.) —every six months, he was paying me about three years, I don't know exactly, $450 every six months. 10

MR. ZUCKER: Who?

Q Every six months?

THE COURT: Whom?

Q And from whom did you receive that money?

A From Abraham Henig.

Q Abraham Henig?

A Yes.

Q Did you also receive interest payments?

A Yes.

Q So that now approximately how much is there due you on this bond and mortgage by your deduction? 20

A I receive for about three years, I don't remember just exactly, but it is about three years, I received nine, eighteen, about twenty-two hundred fifty, around that was paid off.

Q About twenty two hundred fifty?

A Yes, around that.

Q And the difference between that and the principal sum of the mortgage, ten thousand dollars, is the amount due you now? 30

A Yes.

Q When was the last time you received any payment as to the principal sum due on the mortgage and interest?

A March the 28th—March, 1928.

Q In March, 1928.

A Yes.

Q Have you received any other moneys on account of that mortgage since March, 1928?

A Not a cent. 40

Q Has that bond and mortgage been in your possession, Mr. Rosenblatt, since its return from the Register's office?

A That was never leaved my house since I give it over to my attorney for the trial, for the trial.

10

Q You mean until you gave it over to me?

A Yes, the last time here it not be paid.

Q Has there been any tender made to you of the balance due on this mortgage by any of the defendants in this case?

A No, sir.

MR. CALANDRA: Cross examine.

CROSS EXAMINATION by Mr. Zucker:

20

Q Did you pay Jacob Horn any money on this mortgage?

A I— when— one day— why, I didn't—

Q Yes. Will you answer that question Yes or No?

A No. I gave that check to Abraham Henig.

Q Did you ever meet Jacob Horn?

A Yes.

Q Where?

A Up in his house.

30

Q Was that before or after you made this loan?

A Before.

Q How did you pay this money?

A In a check.

Q Have you got that check here?

A Certainly.

Q May I see it?

A Yes, sir.

(Mr. Calandra hands check to Mr. Zucker.)

40

Q I have been handed a check dated February 18th, 1925, on the State Bank of New York, by

your counsel, in response to my question. Is that the check you gave to Jacob Horn?

A I gave this to Abraham Henig.

Q Where did you give it to him?

A I sent it to him by mail.

Q On February 18th?

A Yes, sir.

Q You are sure of that?

A I am positive.

THE COURT: To whom was it drawn?

MR. ZUCKER: Drawn to the order of Abraham Henig, attorney.

Q And you sent this by mail?

A Yes, sir.

Q When had you made up your mind that you were going to give Mr. Horn a mortgage?

A When I make up my mind?

Q Yes.

A When I— one day I receive a telephone, in 1925, I receive a telephone from Abraham Henig that he wants to see me. I come over to him and he says to me, "Rosenblatt, I got a client of mine, Mr. Horn, he wants to have a mortgage on a corner, brand new house." I says to him, "I haven't got any money to lend on hand." He says to me, "Well, I tell you—" he was talking to me, he says, "I tell you, my machine is downstairs, I will take you over to his house, a little ride, and speak to Mr. Horn." He took me over and I spoke to Mr. Horn and he says, "I need very badly money, very badly," why, I could do him a favor and lend him ten thousand dollars, because he needs it very bad. Well, and he says to me, "Mr. Rosenblatt, if you lend it to me, I am willing to give you a nice present."

Q Go ahead.

A Then I says, "Well, I will decide it and I

will let know Mr. Henig." Well, in— then, in about a day I says, "All right, I will take that mortgage", and I went and I sent Henig the ten thousand dollars.

Q This day, February 18, is the day you determined to send it to him?

10

A That is the date I sent him the check.

Q When was it, morning or afternoon, do you remember?

A I don't remember what hour it was.

Q Well, did you personally write the letter enclosing the check?

A I did.

Q Where did you send it, from your place of business or your home?

A I sent it from home, I don't remember exactly from where I sent it, but I sent it to him.

20

Q Can you remember now whether it was morning or afternoon?

A I don't remember whether it was morning or afternoon.

Q Where do you live, in the Bronx of New York?

A I am living in the Heights.

Q In the Heights, that is about one hundred and what street?

30

A 187th street.

THE COURT: Well, did you send the ten thousand dollars?

WITNESS: I sent him a check of ten thousand to make for me the mortgage of Mr. Horn.

THE COURT: Where is the check?

WITNESS: It is here.

MR. ZUCKER: I have it here.

Q That is the check?

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A That is the check.

MR. CALANDRA: Show him the check.

MR. ZUCKER: Just a moment.

Q And you were not present at the time that this money was paid to Mr. Horn, were you?

A I was not present.

MR. CALANDRA: Now, if your Honor please, the defendant Horn has admitted the indebtedness in this case and all this examination is superflous. The answer admits the indebtedness. 10

THE COURT: Well, I think that is right. What he wants to find out is whether it is paid off. That is the whole thing.

MR. ZUCKER: We have another defense here. We claim we have paid this and we want to show by this witness that we had a right to pay it the way we did. I am trying to prove in this case estoppel. If this is a foregery, as they claim it was, we had a right to deal with the man that we dealt with and pay him the money. There is no question that we paid it, but they claim that they never got it. 20

MR. CALANDRA: Of course, if your Honor pleases, that is a matter of defense and it is not proper cross examination. 30

THE COURT: No.

MR. CALANDRA: I object to it on that ground.

MR. ZUCKER: Well, it is proper for this reason: If we admitted it, the other co-defendant has not admitted it.

THE COURT: Well, it is not cross examination; it is a matter of defense.

MR. ZUCKER: I don't know whether 40

I should continue or Mr. Becker should. It is a matter, your Honor, of proving the amount due. That is what I am going at now, is ehe ten thousand dollars due on this mortgage.

10 THE COURT: Well, you can cross examine on that; that is all right.

MR. ZUCKER: My proof now is going to trace, showing how much he advanced and going to prove how much he advanced. I am going to prove how much is due on it. I am going to prove how much is due on it, that is my reason for taking this course.

MR. CALANDRA: If your Honor
20 pleases, in their answer they state that this mortgage was discharged of record on a certain date, that they made no payment excepting the payment of ten thousand dollars as they allege in their answer. These payments of money that were made subsequent to the alleged discharge are matters of defense and are totally improper as cross examination.

THE COURT: You can cross examine
30 him on how much is due and that is all.

MR. ZUCKER: That is what I am going to do.

Do you want to offer this check in evidence? It is your check. Any objection?

MR. CALANDRA: Do you want to make him your witness?

MR. ZUCKER: No, I do not.

Q I show you the check—(interrupted)

THE COURT: Well, I don't exactly

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understand this method of procedure.

MR. ZUCKER: I am—

THE COURT: The other side has not offered the check and you are cross examining.

MR. ZUCKER: Well, I don't offer it. 10

THE COURT: Well, then, you cannot cross examine him on it.

MR. ZUCKER: I will offer it for identification.

(Check marked D-1 for identification.)

Q You say you were not present at all at the time this money was paid over to Mr. Horn?

A I was not there present, no. I sent a check to Mr. Henig to give to Mr. Horn.

Q And I show you the check that has been referred to. That is fourteen thousand dollars, is it not? 20

A Yes, this is fourteen thousand dollars.

Q Is that the check that you sent to Mr. Horn?

A That is the check I sent to Mr. Henig.

Q Is that the amount of money that you loaned to Mr. Henig—agreed to loan to him?

A No, only ten thousand dollars.

Q Turn to the other side of the checks.

A Yes. 30

Q When was it cashed?

A When was it cashed?

Q Yes. When did Mr. Henig cash it?

MR. CALANDRA: I think this is improper. The check is not in evidence, he is using another method of referring to that check by having it marked for identification.

MR. ZUCKER: All right. I will agree with you on that. 40

Q Did you receive any payments from Mr. Horn at any time on this mortgage?

A I never did, no.

Q Ever receive any interest payments from Mr. Horn?

10 A I never did.

Q Did you ever have any insurance policies on this mortgage?

A I asked for the policy, yes.

Q Never got them?

A Henig says that only ten thousand on a house that is worth ninety thousand or ninety-five thousand, he told me I didn't need to ask for a policy.

Q What happened when your mortgage became due in August 18, 1925?

20 A Mr. Henig called me up and he said that Mr. Horn wanted to renew the mortgage for another six months.

Q At what price was it renewed, if it was renewed?

A At six percent.

Q How much?

A At six percent.

Q Six percent?

A Yes, sir.

30 Q You mean, by six percent, interest?

A Six percent interest, yes, sir.

Q What did you get from Mr. Henig when it was renewed?

A Seven hundred fifty dollars. He paid off—four hundred fifty dollars was paid up on the amount.

Q On the principal?

A On the principal.

Q What check did you get from Mr. Henig

40 when you loaned this money, this ten thousand

dollars, what check did you get then from Mr. Henig, how much?

Q $750.

Q You got that from him at that time and that was what?

A That was— when did you— pardon me?

Q When you gave this check of February 18, 1925, to Mr. Henig—

A Yes.

Q —what moneys did he give you back, if any?

A 450.

Q What was that for?

A That was— Horn says he is going to give me a present because he needed the money very badly and that was Henig sent me the check. I asked him, "What is that check for?" He says, "That is the present what Mr. Horn promised to give you."

Q And every six months did you continue to get presents for $450?

A No, sir.

Q They were payments on account of principal?

A Yes, sir.

Q And you got that right along up until August 18, 1928; is that right?

A Yes, sir. I received the last check March, 1928 (witness refers to paper).

Q March, 1928?

A Yes.

Q So that your statement in your bill of complaint that—(interrupted)

THE COURT: No, that is a matter of argument.

Q You state in your bill of complaint that the whole amount of the principal and interest is due on the mortgage; is that true?

A I didn't— I only— the amount what he was paying me back, the $450 every six months, what was paid off on the principal.

Q Did you instruct your attorney when he foreclosed this mortgage to claim that the full amount of the principal and interest was due on the mortgage?

A I just told my attorney about everything what I told right here, how much I got from them and what the face of the mortgage is, ten thousand dollars.

Q Is that what you told your attorney?

A Yes, sir.

Q Do you know how much is due on that mortgage now?

A I don't know exactly. About, if I figure it over,—I never know, I got to figure it over.

Q Figure it over.

A Well, I figure it over that is— it is from March, I haven't got the figures. It could be figured over there.

(Counsel hands witness paper.)

WITNESS: (Continuing.) I am very bad on figures, I am very bad on figures. I will tell you what the amounts are. The first was in— the mortgage was in February, the 18th, 1925, and the last check what I received was in March 1928.

THE COURT: Well, now we want you to tell us how much money is due on this mortgage in specific amounts.

WITNESS: I was receiving every six months—

THE COURT: Well, don't tell me that any more. Tell me how much money in cash is still owing you.

WITNESS: March is nine— three time four hundred and fifty—nine hundred.

THE COURT: Can't you answer the question?

MR. CALANDRA: He stated before, in his answer, your Honor please, that he is very, very poor in figures; I think that shows on the record; and he is just stating the amount now. 10

THE COURT: There is no reason why he should not tell the Court and counsel how much is due on this mortgage, and if he doesn't know how much is due, that is his misfortune.

WITNESS: I should figure it is paid off about twenty-two hundred and fifty. 20

THE COURT: I want to know how much is still due.

WITNESS: About twenty two fifty is due— seven thousand and fifty.

THE COURT: He says there is seven thousand and fifty due.

MR. ZUCKER: I think I am entitled to the same proof here as I am before a Master, when a person is proving a mortgage. 30

THE COURT: You can keep on cross examining. Ask him how he arrived at that conclusion, and so forth.

Q How much is the principal amount of your mortgage?

A Principal, ten thousand dollars.

Q How much in dollars and cents have you received on account of the principal? 40

A It is coming to me—

Q How much have you received?

A About twenty-two hundred fifty dollars, I think.

Q There is a balance, then, due you, you say, of seven seven hundred fifty dollars?

10 A Well, as much as the figures comes out. I tell you I am very poor in figuring. I am not— I cannot figure so good.

Q Well, do you know whether this seven thousand seven hundred fifty dollars is the correct amount due you?

A I don't know.

Q Well, do you know whether seven thousand is due you?

A It is due me more than seven thousand dol-

20 lars.

Q Is it seven thousand one hundred dollars?

A That is about seven thousand— I figure it is about seventy— about seventy-two fifty.

Q Well, are you sure that that is the figure, seven thousand two hundred fifty?

A I think so. I am more than sure.

Q You don't know for sure?

A I am very— if I could figure it over for me, somebody, then that is the amount.

30 Q How long has this money been due you?

A How long? From March— what, they didn't pay?

Q Yes. How much has this balance of the money been due to you— how long, the balance?

A From March— from March the 28th.

Q Did you go to an attorney to foreclose this mortgage?

A Did I go?

Q Did you go to an attorney to foreclose this

40 mortgage?

A Since after March?
Q Yes.
A I asked for my money.
Q How much did you ask for?
A The balance what is coming to me.
Q And did you get it?
A No, I did not. 10
Q What did you do then, when you did not get your money what did you do?
A What I— let me understand the question. What are you asking me?
Q You asked for the balance of your money, you said, and you didn't get it.
A I asked Henig, when the time was due, I asked him why I didn't receive my mortgage. He says I will get it the day, or next day, tomorrow, till I find out that I didn't get anything. 20
Q When did you get this mortgage that you have in evidence?
A Which mortgage?
Q The mortgage that you have in evidence, when did you get it?
A I got it February the 18th, 1925.
Q That is when you got it?
A Yes.
Q And what did you do with it after you got it? 30
A I keep it in my house.
Q You have kept it in your house ever since that time?
A Yes.
Q Did you have the bond also?
A Yes, sir.
Q Did Mr. Henig ever have this after the making of this mortgage in his possession?
A He never did.
Q Immediately after Horn signed it you took it away? 40

A I received it by mail from Mr. Henig.

Q And do you remember the date that you asked Mr. Henig for the money?

A That I asked Mr. Henig for the money?

Q Yes.

A I— after six months I expect to get from
10 him back some money.

Q And you didn't get it?

A I did not.

Q What did you do?

A What did I do? I asked him and he kept on promising that he would speak to Mr. Horn, and Mr. Horn didn't show up and Mr. Horn is tied up just now and I will receive it in a day.

Q So that was in August of 1925 when the mortgage came due?

20 A No, I did not.

Q What happened when the mortgage came due in August, 1925?

A Oh, I called up Mr. Henig and he says that Mr. Horn wants to have that mortgage renewed for another six months.

Q And did you see Mr. Horn about renewing the mortgage?

A I did not.

Q Who did you see?

30 A I see Mr. Henig.

Q When?

A When I— when I spoke to him about the mortgage.

Q What did you tell him about renewing the mortgage?

A I said— I told him, "Why did they want to renew it?" He told me, "Short of money. Mr. Horn short of money."

Q What did you say to Mr. Henig?

40 A I said, "All right. If he can't, what can

I do?" I was satisfied to renew it for him.

Q For how long?

A For another six months.

Q What did Mr. Henig give you for renewing it?

A For renewing it?

Q Yes. 10

A He don't give me anything.

Q Pay off any of the principal?

A Five—four hundred fifty dollars.

Q Who asked to pay that off?

A He himself.

Q Oh, he willingly did it?

A What?

Q He willingly did it?

A Yes, he told me Mr. Henig pays—that Mr. Horn pays back four hundred fifty dollars on the 20 mortgage.

Q So that was in August, 1925?

A That was six months after—

Q After February?

A —after February, 1925, yes.

Q Did you enter into an extension agreement to extend that mortgage for six months?

A I did not. I asked Mr. Henig and he says so long as I got the mortgage and the bond you don't need any new papers. 30

Q So that is the first four hundred fifty dollars you say you got on account of the mortgage?

A Yes, I got four hundred fifty dollars. Before which he told me that this is a present, for he promised to give me—(interrupted)

Q I see. Was that a present or was that on account of your mortgage?

A The first four hundred fifty?

Q August, 1925, six months after the mortgage— 40

A This was a payment off.
Q On account of principal?
A Yes.
Q And how much more money did you get?
A Every six months—the next six months.
Q What else did you get besides four hundred
10 and fifty dollars?
A Six percent interest.
Q How much is that, do you know?
A Three hundred dollars.
Q Three hundred dollars. That was interest.
A Yes.
Q That was in August of 1925. The mortgage then became due in February, 1926, is that right?
A Yes.
Q What happened then?
20 A Then I— the same thing, Henig comes over and gives me another four hundred and fifty dollars and he says that I should do him a favor and wait another six months. I asked him again—(interrupted)
Q Wait a minute. Do who a favor?
A That I should do him a favor, himself—I mean that they haven't got any money and I—
Q Oh.
A —should wait another six months.
30 Q What did you first say, do Mr. Henig a favor?
A He begged me that I should go and wait Mr. Horn another six months.
Q Did you go to see whether Mr. Horn—
A I never—
Q —was paying any interest or not?
A I never saw Mr. Horn since first when I make the first—when I lent him the money the first time.
40 Q You didn't need this money, did you?

A I didn't need that money?

Q Yes, at that time.

A When I lent him the money?

Q No, when it became due.

A Not— well, I need it, not say— I don't know whether I need it or not need it, when they can't pay me or not—(interrupted) 10

Q Did you go after Mr. Henig for your money when it came due?

A I asked for it, yes.

Q So that in February of 1926, one year after the mortgage was made, did you go to Mr. Henig or did Mr. Henig go to you?

A Well, he called me over; I go to him, he was coming to me; I don't know exactly. I can't remember how that was.

Q And your mortgage was not paid, was it? 20

A My mortgage was not paid.

Q Did you ask why?

A Because he said Mr. Horn was short the money.

Q What happened then? Did you get any money?

A He gives me the four hundred fifty, he pays me off four hundred fifty and renewed it for another six months.

Q And how much more money besides the four hundred and fifty did you get? 30

A I got my interest.

Q How much?

A Three hundred dollars.

Q Three hundred dollars. Did you get it promptly in February, 1926?

A I— you mean, the date when the mortgages was due?

Q Yes.

A Well, when I— sometimes I didn't get it 40

so promptly and I asked Mr. Henig why and he said that Mr. Horn got thirty days extra time to pay his mortgage or his interest.

Q So that in February, 1925, all you got was another payment of four hundred fifty dollars on account of principal and interest for the last six months of three hundred dollars?

A Yes, sir.

Q Right. Did you extend the mortgage for six months again?

A Yes, sir. And I asked for an extension. He said so long as I got the mortgage and bond I don't need any extension, if the money would be paid back to me, he would ask for the bond and mortgage.

Q What happened in August of 1925?

A The same thing— in 1925?

Q Yes.

A What do you mean, what was happened?

Q What happened in August, 1925, when the mortgage became due again? That is a year and a half after the date of the mortgage.

A He renewed it again for six months.

Q Who?

A Henig. Henig, I was always speaking with Henig since that mortgage was due.

Q Did you need the money at that time?

A Well, did I need it?

Q Yes.

A I don't think I was needing it so badly. I don't remember whether I need it or not.

Q You didn't get your money in August, 1925, did you?

A Which money are you referring to?

Q The ten thousand dollars.

A No, sir.

Q What did you get?

A I didn't—

Q What did you get?

A I got seven hundred fifty dollars.

Q And what was that?

A Four hundred fifty was for paying off and three hundred dollars is for the six percent.

10

THE COURT: Now, this is the third time you have asked him this question.

MR. ZUCKER: Oh, no, your Honor. I am asking—

THE COURT: Go on.

MR. ZUCKER: Understand what I am doing. I am trying to determine how much he says is due on this mortgage.

20

THE COURT: All right. Go on.

Q In August, 1925, you renewed the mortgage for six months again?

A Yes, sir.

Q And what happened in February of 1926 when that became due?

A The same thing. I received four—

Q You got four hundred and fifty dollars on account of principal?

A Four hundred fifty.

Q And three hundred dollars your interest?

30

A Yes, sir.

Q As that time did you mak any inquiry from Mr. Henig when you were finally going to get your ten thousand dollars?

A He told me the next six months that surely I am going to get the money.

Q So you expected your money, then, in August of 1926?

A Eh?

Q In August of 1926 you expected your money?

40

A Yes.

Q Did you get it?

A I did not.

Q What did you get?

A I got four hundred and fifty dollars.

10 Q How did you come to get this four hundred and fifty dollar payment? Was there any agreement as to that?

A There was no agreement made.

Q Well, where did this sum come from?

A Henig said that is all that they could pay me back on the principal.

Q That is all he could pay you back. Did you ask him for more?

A I ask him for all.

20 Q And all he said to you was, "I can't give you more than four hundred and fifty"?

A He said that Mr. Horn can't give me more than four hundred fifty dollars on the principal.

Q Now, Mr. Rosenblatt, who were you really dealing with, Mr. Horn or Mr. Henig?

A Well, he was his lawyer.

Q Who was your lawyer?

A Who was mine lawyer?

Q Yes.

A Nobody.

30 Q Is this the only transaction you ever had with Mr. Henig?

A Oh, I got more transactions.

Q How many?

A I should say about fifty thousand dollars.

Q And you had no lawyer representing you at any time but Mr. Henig?

A Here—

MR. CALANDRA: He didn't say that, if your Honor please.

40

THE COURT: He said he had no lawyer.

Q Who made the examinations of title in these cases?

A Henig.

MR. CALANDRA: I object, if your Honor pleases, as being totally immaterial and not cross examination. 10

MR. ZUCKER: Your Honor, my defense —(interrupted)

THE COURT: Wait a minute, wait a minute. I will allow it.

Q Who made the examinations of title for you?

A The examinations of title?

Q Yes, on these mortgages.

MR. CALANDRA: Now, I object to that again, your Honor pleases, on the ground that there is no foundation for this particular testimony. He has testified that Henig did not represent him. 20

THE COURT: I will allow it. (To witness:) Who made the examination?

WITNESS: On— what—

Q The fifty thousand dollars of money that you placed on mortgages through Mr. Henig's office, who made the examinations of title? 30

A The— all Mr. Henig, around about fifty thousand dollars.

Q Every one was made by Mr. Henig?

A Yes.

Q Never— How many deals?

A I don't know exactly. It must be about five, six.

Q Do you know who the parties were that you were dealing with? 40

A Eh?

Q Who were the parties you were dealing with?

A I don't know—(interrupted)

THE COURT: We will have to stop now until after lunch.

10 (Noon recess.)

MR. ZUCKER: What was the last question?

(Last three or four questions and answers read.)

Q Were the checks which you gave in any of these other deals besides the Horn deal made direct to the parties who gave you mortgages, or were they made to Mr. Henig?

MR. CALANDRA: I object, if your

20 Honor pleases on the ground that it is not cross examination.

THE COURT: I will allow it.

A (Witness pauses.)

Q I am waiting. I am waiting for an answer.

A I got to answer it?

THE COURT: Let him thing of it.

MR. CALANDRA: My interruption must have confused him, your Honor.

MR. ZUCKER: Read that question.

30 (Question read as follows: "Were the checks which you gave in any of these other deals besides the Horn deal made direct to the parties who gave you mortgages, or were they made to Mr. Henig?")

A All of them was made to Mr. Henig.

Q Were these mortgages that you obtained on these deals for larger periods than six months, any of them?

A Certainly.

40

Q What was the time of the longest?
A About three—
Q (Continuing.) Mortgage any time.
A Three years.
Q Three years?
A Two years.
Q Now, when the interest came due on these mortgages, whose check did you get? 10
A Henig's.
Q Always Mr. Henig's?
A Yes.
Q Mr. Henig was your agent here, wasn't he?
A No.

MR. CALANDRA: I object, if your Honor pleases, as calling for a conclusion.

THE COURT: Yes. I will sustain the objection. 20

Q Did you ever make any objections to any of these mortgagors making all payments to Mr. Henig?
A I did not.
Q Were you satisfied with that?
A As long as I was getting paid I was satisfied.
Q Well, who told your mortgagors to make payments to Mr. Henig?
A I don't know who told them. 30
Q Did you know they were doing this?
A I got the check from Mr. Henig.
Q Whose check did you get?
A Mr. Henig's.
Q Did you at any time know when these parties whom you had loaned money to were making payments and what amounts they were making?
A I don't know anything. I was expecting what was coming to me.
Q How did you expect to keep any record of 40

the different amounts that these people were paying off on their mortgages?

A They wasn't paying more than six percent.

Q How did you know how much they were paying?

10 A How I know what? How I know it?

Q Yes.

A I was getting that six percent.

Q From whom?

A From Henig.

Q Well, how did you know that they were paying it to Mr. Henig.

MR. CALANDRA: Now, I object, if your Honor pleases. He doesn't know. He got the money.

20 THE COURT: Well, let him say if he doesn't know, which it is perfectly apparent he didn't know.

WITNESS: I was satisfied, as I told you before, to get the money.

THE COURT: All he can tell you is that he got the money from Henig. Of course he doesn't know how Henig got the money.

Q Did you leave the collection of interest to Mr. Henig?

30 A I didn't—

Q To whom did you leave it?

A I say when I got the mortgage, when the time come due and I got the money and he was writing, "This is your money for this and this mortgage" and sent his check and I was satisfied.

Q From whom did you get such a letter?

A From—Henig was writing me he received a check, sometimes, not always, that he received a check from this party.

40 Q Now, you testified that when the mortgage

came due in August of 1925, you got in touch with Mr. Henig, is that right?

A If I didn't get the money I got in touch with Mr. Henig, yes.

Q You expected to be paid in August, 1925, your ten thousand dollars? 10

A After the six months?

Q The first six months when the mortgage—(interrupted)

MR. CALANDRA: May it please your Honor, we have been all over this for over a half an hour.

THE COURT: I think it is easier to let him go on, frankly.

A Yes.

Q And did you get in touch with Mr. Henig and tell him you wanted the money? 20

A I told him my mortgage is due.

Q When did you do that?

A After the six months.

THE COURT: You see, it is not before a jury.

Q I show you here a letter with a signature on the bottom, "P. Rosenblatt", is that your letter?

A I didn't write it.

Q You did not write it?

A I cannot write. 30

THE COURT: Did you sign it?

WITNESS: It is not my signature.

Q Did you send this letter?

A When was that?

Q Did you send this letter?

A I don't know what it is, I don't know when.

Q It is on the stationery of "P. Rosenblatt, 137 West 25th street, New York"; is that your place of business? 40

A What?
Q 137 West 25th street.
A I was there three years ago, yes.
Q Now, Mr. Rosenblatt—
A Yes.
Q —you know whether you sent this or did not.
A I don't know.
Q Well, look at it.
A I cannot read. Let somebody read it. Then I will know it.

THE COURT: I think—(interrupted)

Q Do you know whose handwrinting it is?
A I—I don't know whose handwriting it is.

The COURT: Now, I will tell you, Mr. Rosenblatt, the best thing for you to do is to tell the truth.

WITNESS: No, I cannot——

THE COURT: You are very evasive in answering——

WITNESS: I couldn't——(interrupted)

THE COURT: The best thing for you to do in this case is to tell the truth. Now, I am not going to say anything more. Answer the questions fairly and squarely if you can, but do not be so evasive.

MR. CALANDRA: May it please your Honor——(interrupted)

MR. ZUCKER: Now, please, I would rather the counsel would not interrupt at this time.

THE COURT: No. That is all I am going to say.

MR. CALANDRA: Go ahead. Do you know whose handwriting that is in?

WITNESS: I didn't.

Q In what business were you in in 1925?

A I was selling yarn.
Q Wholesale or retail?
A Retail.
Q Wholesale also?
A Eh?
Q Wholesale also? 10
A No.
Q How long have you been in business?
A A couple of years.
Q How long prior to 1925?
A About five, six years.
Q Successful business?
A Yes.
Q Made your money in that business?
A Made money.
Q That gave you funds to put out on mortgages; is that right? 20
A Right.
Q Have a check account?
A Yes, sir.
Q Write your own checks?
A No, sir.
Q Is that your signature on that check (showing witness paper)?
A Yes.
Q You don't know how to write?
A No. I write my name. I could write my name. 30

THE COURT: Now, where is the letter? Is that signed?

MR. ZUCKER: Yes, that is signed.

THE COURT: Well, ask him if he signed the letter.

Q Now, look at the two signatures on this check and on the letter and see if they are any different. 40

THE COURT: No. Did you sign the letter?

WITNESS: I did not.

THE COURT: You cannot write, you say?

10 WITNESS: My name I write.

THE COURT: Yes. Well, now let me see. (Court looks at papers.)

All right. Go on.

Q You say you did not sign this letter?

A (Witness nods no.)

Q Do you know now whether you authorized anybody to write that letter for you?

A I—sometimes my sons write for me letters if I need it.

20 THE COURT: Well, are you sure you did not sign that letter?

WITNESS: I made—no—I am sure I did not sign that letter.

THE COURT: Let that go on the record.

MR. ZUCKER: I would like to have this letter marked for identification.

(Letter marked D-2 for iden.)

Q Have you brought to court with you today any of the checks that you gave to Mr. Henig besides the check that has been presented in

30 evidence?

A Yes, sir.

Q Will you produce them?

MR. ZUCKER: I think I am entitled to those checks without counsel looking at them.

MR. CALANDRA: I am not looking at them. The witness handed them to me.

THE COURT: You asked him to produce and his counsel has a right to look at them.

40

MR. CALANDRA: Now, may I ask for the purpose of the production?

THE COURT: No.

MR. ZUCKER: I will state that—

MR. CALANDRA: And may I ask what checks M. Zucker has reference to that he wants? 10

THE COURT: Mr. Zucker wanted to know if he had signed any other checks.

MR. ZUCKER: I want to compare the signatures. I am entitled to do that.

THE COURT: You certainly are.

MR. CALANDRA: Very well, we will give you all the checks we have.

Q Who writes letters for you in your business, or, who wrote letters for you in August, 1925? 20

A My wife writes for me and my son writes for me. I can't write.

Q You have a daughter that writes, too?

A I got a daughter that writes, too.

Q Do you recognize this handwriting as the handwriting of any one of those parties?

A I can't judge writing. I won't say it is not mine, but I don't know how to judge the difference in writing. I didn't deny this letter is not mine. I don't know.

THE COURT: Well, now, you say you don't know whether this letter is yours or not. Is that it? 30

WITNESS: I says I don't know who wrote that letter, my son or—he asked me anybody—

THE COURT: Well, did your son write it?

WITNESS: I don't know his writing.

THE COURT: Well, did your daughter write it. 40

WITNESS: Maybe they did, I don't know.

THE COURT: Well, did your wife write it?

WITNESS: If I would know what there is in there, I could know who—(interrupted)

10

THE COURT: Well who signed it?

WITNESS: But the signature is not mine.

THE COURT: All right.

WITNESS: I don't know. I didn't know it is not my signature—I didn't say it is not my signature.

THE COURT: Now, you read him the letter. He says that if you read him the letter he can tell who wrote it.

20

MR. ZUCKER: "August 4, 1925. Dear Henig: The mortgage of $10,000 and the interest of the other comes due this month. If the party of the mortgage wishes to renew it and you thing that it is all right they may do so, but if they don't say anything that I get paid, in other words that they don't drag over. Respectively yours, P. Rcsenblatt." Do you remember sending any such letter.

30

WITNESS: Yes.

THE COURT: Well, who write it?

WITNESS: My wife or my son. I think it is my wife.

THE COURT: Then your son—

WITNESS: I think the one who wrote it must be my wife.

THE COURT: Very well, but you sent it, did you?

40

WITNESS: It is sent from me.

THE COURT:And did your wife sign your name to it?

WITNESS: My name?

THE COURT: Yes.

WITNESS: That is my—my wife must sign my name, that is not my signature.

THE COURT: Yes, but your wife signed your name to it.

WITNESS: Yes.

THE COURT: And you authorized its sending, did you?

WITNESS: Yes, sir.

THE COURT: Well—

Q Now, what do you mean in this letter to Mr. Henig, "If he wishes to renew it"?

A I mean maybe by that time I didn't got some money. I asked Henig if he don't want to pay me and wants to renew it, he could renew it for another six months because Henig asked me he could renew it, because sometime before times he always used to ask me and I have wrote him if he wants to renew it, he could renew it.

Q Did you expect another present in case he renewed it?

A I—

THE COURT: No. Strike that out.

Q In August, 1926—

MR. ZUCKER: I am going back now, your Honor, to the calculation—,interrupted)

THE COURT: You can ask him if he demanded another present. You cannot ask him what he expected.

Q Did you demand another present for the renewal of this mortgage?

A I did not.

Q The only present you ever got then was the

first four hundred and fifty dollars when you gave out the ten thousand?

A Yes.

Q And all other payments of four hundred and fifty dollars were payments on account of principal?

10

A Yes, sir.

Q No presents?

A No presents.

Q Now, in August of 1926, you testified you got four hundred and fifty dollars on account of principal interest three hundred dollars?

A Yes.

Q That is interest at six percent?

A Yes, sir.

Q Now, what happened in February of 1927 when the mortgage came due then. What did you do then?

20

A When it come due?

Q Yes, in February, 1927, your mortgage came due, what did you do?

A They sent me a check of seven hundred fifty dollars.

Q Who sent you a check?

A Henig.

Q Why?

30

A It was the four hundred fifty dollars was on the principal and the three hundred dollars the interest.

Q Did you ask Mr. Henig to send you four hundred fifty dollars on account of principal?

A I did not.

Q Well, how did he come to send it to you?

A Because he sent it, he said he can't pay—he can only pay off that much.

THE COURT: Now, you have been all over this.

40

MR. ZUCKER: No, your Honor, I have not.

THE COURT: All right. Go on.

MR. ZUCKER: I will explain to you what I am doing.

THE COURT: All right.

MR. ZUCKER: I am getting the amounts that have been paid off. We haven't got those yet. I am verifying that myself.

MR. CALANDRA: It is a matter of defense, if your Honor please. This man says here, "I have received so much;" he has admitted that twice or three times.

THE COURT: Perhaps it will be easier to let him go on.

MR. ZUCKER: Whether it come in my defense or not, it doesn't make any difference. The thing is to get it in.

Q And you say Mr. Henig just sent you the four hundred and fifty dollars in February without anybody asking for it?

A He sent me seven hundred fifty dollars, but three hundred dollars was the interest and four hundred fifty was on the principal amount—paid it off.

Q Didn't you ask that the mortgage be paid at that time?

A I did ask.

Q What did he say?

A He said that Mr. Horn can't pay it now.

Q Now, he has been telling you that every six months hasn't he?

A Every six months he told me the same thing.

Q Did you go up to see Mr. Horn?

A I never went—I went up the first time and Horn says that Henig is his lawyer and he leaves everything to Henig.

Q When was the first time?
A When I was up in 1925.
Q Before you gave him the money?
A Before I gave him the money.
Q Now the mortgage again became due in August of 1927. What did you do then?
10 A It came due?
Q In August, 1927.
A Suppose he again sent me four hundred fifty dollars.
Q Did you demand payment then?
A I was demanding all the time.
Q From whom?
A From Henig to get some money from Mr. Horn.
Q Did you loan this money to Henig?
20 A Because it was done there—Henig took me over.
Q Did you lend the money to Henig?
A I did not.
Q Then why did you demand it from him?
A Because all transactions went from Horn to Henig.
Q Did you write to Horn at all?
A I did not.
Q Did you ever get in touch with Horn after
30 the first time?
A I did not.
Q Still you knew that this mortgage and this debt was Mr. Horn's debt?
A Yes, sir.
Q And you knew where Mr. Horn lived?
A I was up in his house.
Q In his home?
A I don't know whether it was his home. I was in the building, on the building what I am
40

lending the money; I don't know whether it was his home.

Q But he lives there—didn't he?

A I don't know.

Q And so in Febraury, 1927, you got four hundred fifty principal again and three hundred dollars interest? 10

A Yes.

Q What happened when it became due again in August of 1927?

THE COURT: He just said that.

MR. ZUCKER: No, it is February he just finished.

Q In August of 1927 what happened? Did you still get four hundred and fifty dollars principal? 20

A Yes, sir.

Q And three hundred dollars interest?

A Yes, sir.

Q How did you come to get that money?

A I don't know.

Q Henig just sent it to you as a matter of course?

A Henig sent me a check and he said that is the four hundred fifty dollars that Mr. Horn—he is always writing me he is tied up, or spoke to me, I don't know, three or four—this I can't remember 30 how it was; he says, "Mr. Horn is very tied up," I should wait; he told me it is a big house and all that; and I understand very little in real estate, very little; in fact, I never was a mortgagee before; and he says—he says he can't pay and I should—and he begged him that he should let me know because he could get for me more—maybe he could get it and I should wait another six months and all the same time the same story over again. 40

Q What did you mean just a moment ago when you said that Mr. Henig told you he could get more than you could get?

A Because Henig is a friend of mine, he said if maybe he will tell me and he knows all the transactions to Henig and he says—Henig says that he should speak to me, I shall wait another six months. Horn told him that.

Q What do you mean by "get more"—more what?

A I will do it more, you understand, because if he will beg me to do that for Horn.

Q Who mentioned Horn begged to do it?

A Henig.

Q To whom did he say that?

A To me.

Q What do you mean, by getting more than four hundred and fifty dollars paid off?

A No, no, no. Don't try it. He told me maybe Horn would ask me that I should renew him the mortgage, I wouldn't do it and if he would beg me as a friend I would do it for him.

Q And so that passed August and you renewed it again? You renewed it for six months again?

A That money was never loaned for more than six months.

Q So it came due again in February, 1928, and what happened in February, 1928?

A The last payment?

Q February of 1928 the mortgage came due again. What did you do again?

A Then I received again four hundred fifty—I mean, seven hundred fifty dollars.

Q From whom?

A From Henig.

Q When was this mortgage supposed to be paid off?

A Every six months.

Q And you, without any question at all, without being paid off you simply took a check from Mr. Henig for seven hundred and fifty dollars. Is that what you want us to believe?

A Yes; three hundred dollars was interest and four hundred and fifty dollars was paying off the principal amount. 10

Q Did you have any agreement with Mr. Henig as to when this ten thousand dollars would be paid?

A There was no agreement when—there was an agreement every six months, but, if he can't do it, I didn't try to hold him to foreclose him, if he promises to pay me six months or not latter.

Q And you left this mortgage stand every six months without demanding enforcing the payment of principal? 20

A Yes, I was getting four hundred fifty dollars.

Q And that is what you got in February, 1928?

A Yes.

Q Now, Mr. Rosenblatt—

A March, 1928 (witness looks at paper) that was the last payment I received.

Q February, 1928, was the last payment you received? 30

A March, because that was the last check.

Q Did you get any money in August of 1928?

A In August?

Q Yes.

A On this mortgage, no.

Q Nothing at all?

A Maybe it was due on the other mortgages. I got more mortgages than this from him.

Q Well, how did you know when you were getting these checks of seven hundred and fifty dollars what you were getting it on? 40

A I was loaning—that in August, that I got to get my interest from Horn.

Q Well, how did you know, when Mr. Henig was sending you checks, on account of what he was sending it to you?

A He was—he was let me know.

10 Q How?

A Write me a letter.

Q Have you got any of those letters?

A I didn't keep them. What for?

Q Do you keep any records of your payments anywhere?

A Yes, I keep a record of my payments.

Q Where?

A I got it home, all my mortgages marked in.

Q And you didn't bring that with you?

20 A No reason why—I didn't—my mortgage shows you when I was getting and my last checks what I received.

Q Your mortgage or bonds are marked as to the payments you got?

A What?

Q Is that bond marked showing what payments you got on account of your mortgage?

THE COURT: The bond speaks for itself.

30 Q Is it marked?

MR. CALANDRA: The bond is in evidence.

Q Well, look at it. What makes you positive that February, 1928, was the last payment you got?

A Yes.

Q What makes you sure of that?

THE COURT: March.

40 WITNESS: March, 1928, I received payment.

Q When the mortgage came due in August of 1928—

A Yes.

Q —again, what happened?

A When the time was due I usually don't ask them on August—I mean on February because Henig told me that Mr. Horn had a right to keep it thirty days longer—(interrupted) 10

Q So that instead of asking him in August for money, in 1928, you asked him in September, 1928?

A In March.

Q Mr. Rosenblatt, you just testified that the last payment which you received—

A Was March.

Q —was in March, 1928.

A Yes, the last payment.

Q And that was seven hundred fifty dollars, is that right? 20

A Yes.

A And you extended the mortgage, then, for six months.

A What?

Q Did you extend the mortgage then for six months again?

A Yes, sir.

Q You did?

A Yes. 30

Q And the mortgage became due when?

A Six months, around, later.

Q That was in March, or in August of 1928.

THE COURT: In June Three months from March is June.

MR. ZUCKER: No, the mortgage came due, the testimony is, in February, 1928, the interest payment was made a month late.

THE COURT: Yes. 40

MR. ZUCKER: An extension of six months would make it August.

THE COURT: Oh, six months. I thought he said three.

10 MR. ZUCKER: Yes, six months. Every one of these extensions was six months.

WITNESS: I was—the money should be paid on six months from March, but he got a right to hold a month longer if he wants to.

Q So the mortgage became due then in August or September, 1928.

A Yes.

Q What happened then?

A I didn't receive any money.

20 Q What?

A All of a sudden I didn't receive any money.

Q What did you do?

A Once—I was writing to him and telephoning and he promised I was going to get it.

Q Fix the date of that, Mr. Rosenblatt.

A What date? You can't—what date, date of what?

Q The telephoning and writing.

A All in the month of August it should be and 30 from March—I mean, from Febraury six months later comes out—

Q August?

A August, the month of August then a month he got time was December, the whole month of December.

Q September.

A September I was asking him, telephoning him, I don't remember if it was in the morning or what day, and this month I was asking for 40 my money.

Q Did you get any money?
A No.
Q What did you do?
A One day—
Q Fix the day.
A Saturday, it was on a Saturday. 10
Q What month?
A And in September.
Q Yes.
A Or, if I am not mistaken if this is the right month, after six months, because I am not such an expert in English, I should make a mistake in them things—I received a telephone from Henig's office that I should come over Sunday—that was Saturday—that I should come over Sunday| They wanted to see me there, with my nephew, Sunday at ten o'clock. Ten o'clock I come over with my 20 nephew to Henig's office in Newark.
Q September of 1928—
A Yes.
Q —is that right?
A I come over, and I come over to his office and I said, "Where is Mr. Henig?" That was Sunday I come specially here; the reason why I come I don't know.
Q That is over a year ago! is that right?
A I don't know, but it is at the time when the 30 mortgage was due around this month.
Q Well, this is December, 1929. How long ago was that?
A About—

MR. CALANDRA: 1928.

WITNESS: I don't remember.

Q I mean, December. How long ago was that?
A I should say maybe it is—I couldn't—I could make a mistake in a month because I don't 40

know how long he was dragging to extend the payment, I couldn't know exactly what it was.

Q Well, did he "drag" you one month, two months or three months?

A No, never three months.

10 Q Two months.

A Not more than a month.

Q Not more than a month. So the latest it could have been was the latter part of September or the early part of October of 1928.

A Yes, sir.

Q Over a year ago?

A Around that.

Q Now, what happened?

A I come over with my nephew and I come over to Henig, I says, "Where is Mr. Henig? What 20 I was sent for?" Well, they told me I should go up on the 10th floor—Henig was on the 5th floor—that I should go up on the 10th floor that Mr.—that they want to see me up there on the 10th floor. When I come on the 10th floor I find up there Mr. Schotland, that is a lawyer, and his brother-in-law, Mr. Klein, and a brother of his—

Q Well—

MR. CALANDRA: Just a moment. I think we are entitled to this answer, if your 30 Honor pleases. He has opened the door.

THE COURT: Yes. Let him finish it.

Q Go ahead.

A And a brother of his—I says—(interrupted)

Q Was Mr. Henig there?

A No.

MR. ZUCKER: I object to it.

THE COURT: I will allow it.

MR. ZUCKER: (Continuing.) If Mr.

40

Henig was not there—

THE COURT: I will allow it.

WITNESS: I says, "Where is Henig?" They says, "Henig is sick."

Q Sick?

A "Henig is sick." "He is supposed to be here but he is sick, he can't be here." "Well," I says, "what do you send for me?" He says to me, "Well, I got to tell you a very sad story, a very, very sad story." I says, "What is the very sad story you have got to send for me? What did you send for me—I haven't got the slightest idea."

MR. BECKER: I object in behalf of the defendant Sandor Roth that it is not on the property against whom it is being foreclosed—immateral as to that.

MR. CALANDRA: That particular defendant has set up the defense of these payments.

THE COURT: I told you gentlemen I was going to allow it. I will strike it from the record if it is immaterial.

WITNESS: He says to me, "Well, Henig forged your name and collects money and he never returned you anything and we want to settle that case."

THE COURT: Strike it out.

Q That was in the month of September?

THE COURT: No, do not pursue that.

MR. ZUCKER: I am not pursuing that.

Q When did you see Mr. Henig, if ever, after that?

A After that?

Q After that did you see him?

A Yes, sir.

Q What month?

A I don't know what month but Henig was—(interrupted)

Q What month?

A It was in the summer time, I don't know when he was not—(interrupted)

10

Q Just a minute. My question has been answered. Did you see Mr. Horn?

A I did not.

Q Did you ever go to Mr. Horn.

A I did not.

Q Never made any demand upon him for this money?

A I got nothing to do because he leaves everything to Henig.

THE COURT: You have asked him that at least seven time. Now, drop it.

20

MR. ZUCKER: Well, I will have to cut it short, that is all.

CROSS EXAMINATION by Mr. Becker:

Q Mr. Rosenblatt—you say—(interrupted)

THE COURT: Aren't your interests the same?

MR. BECKER: No.

30

MR. ZUCKER: No.

MR. BECKER: Mr. Zucker is representing Mr. Horn, the maker of the mortgage, while I am representing the present owners against whom the property is being foreclosed.

THE COURT: Well, you both contend that the mortgage has been paid?

MR. BECKER: I contend that the mortgage has been paid.

40

THE COURT: Don't you?

MR. ZUCKER: Sure.

THE COURT: Your interest is the same. I will only hear one counsel.

MR. ZUCKER: Your Honor should understand this: Jacob Horn is on the bond of this mortgage.

10

THE COURT: I will only allow one counsel to cross examine. Your interests are identical; you are both trying to establish the fact that the mortgage has been paid, and I see no reason why there should be two cross examinations.

MR. ZUCKER: Your Honor, I think that is not the position we are in. As far as Mr. Horn is concerned, Mr. Horn sold this property to the Roths in January, 1926.

20

THE COURT: Yes.

MR. ZUCKER: By warranty deed—

THE COURT: I understand that.

MR. ZUCKER: Free and clear of all encumbrances, and, as far as they are concerned, there is no mortgage on record at all. There is a discharge.

THE COURT: That is a matter of—(interrupted)

30

MR. ZUCKER—I am only interested in being relieved from the bond; I have no interest whether there is a mortgage on that property or not.

Now, what they are attempting to do is to show there is a valid mortgage on the property. I am not interested in that. I don't care whether it was a mortgage on it or not; I just want to show that our obligation, the bond, is off.

40

They are trying to show that certain encumbrances appear of record.

THE COURT: How do you mean? If the mortgage is not off, the bond is not off.

I will only allow one counsel to examine.

10 MR. ZUCKER: Well, I will say this, then we have proceeded in the wrong theory and I am not prepared—I ask the Court's indulgence— I prepared a different kind of a case than Mr. Becker did. He has a list of checks here showing payments that I am not familiar with. I will ask—(interrupted)

THE COURT: He can cross examine. You don't have to keep on.

MR. ZUCKER: Let him continue to cross

20 examine then.

MR. BECKER: I desire to cross examine in behalf of the other defendants.

THE COURT: I can't see that. However, I will allow you to do it. That is the shortest way out of it.

Q Mr. Rosenblatt, do you remember how many payments on principal you received from Mr. Henig?

A I should say—(interrupted)

30 MR. CALANDRA: If your Honor pleases, we have been all through this same story.

MR. BECKER: I have to lay a foundation for my next question.

THE COURT: All right. I am going to let you go the limit— I am tired—(interrupted)

Q How many payments of principal did you receive?

A Six payments.

40 Q Each in the sum of $450?

A Yes, sir.

Q How many payments of interest did you receive?

A I received—when I received the checks I always was receiving it with interest.

Q How many payments of interest? 10

A Six.

Q Each in the sum of $300?

A Yes.

Q Can you explain to the Court why each payment of interest contiued to be three hundred dollars without giving the—Mr. Horn credit for the payment of principal?

A What?

Q Can you explain to the Court why you continued to receive three hundred dollars interest, without giving Mr. Horn credit on the 20 payment of principal that you were receiving every six months?

A Why, I didn't give him credit for the six percent.

Q Why was he not, paying you less than three hundred dollars every six months, receiving credit on the four hundred fifty dollars principal that he was paying you?

A I was ask Henig that question and Henig says, "Well, what do you care, Mr. Rosenblatt, so 30 long as he pay it to you? All right, what do you care?"

Q And you are positive that you have not received any payment after March 20th, 1928?

A No.

Q And that you state from your memory without having kept any record.

A No. This is a record, I just took this out from mine pocket, before I came here I want to know when the lsat payment was. 40

Q Why didn't you bring your book here?

A You got it right here from the beginning and I tell you the end. It says, "March—February the 19th" mine book says like this—(interrupted)

THE COURT: Oh, no.

10

MR. BECKER: Never mind that.

THE COURT: No, you must bring the book itself.

Q Mr. Rosenblatt, on September 29, 1928, didn't you receive a check for seven hundred fifty dollars?

A When?

Q September 29th, 1928?

A December the 29th, no.

Q You are positive of that?

20

A Positive. I receive check—

Q Did you understand me to say September and not December?

A And 1929—

Q September the 29th, 1928.

A 1928 I receive March after—till March, till March.

THE COURT: Till March, 1928?

WITNESS: Yes, that was the last payment.

30

Q We have already settled those between yourself and I.

A Yes.

Q Now, on September 29th, six months after, of the same year, 1928, did you get another payment of seven hundred fifty dollars?

A No.

Q Positive of that?

A Positive.

40

Q This fourteen thousand dollar check that you

sent to Mr. Henig, do you know whether or not that took care of a four thousand dollar mortgage on South Orange avenue?

A Yes.

Q A man by the name of Sosour?

A Yes. 10

Q You know that.

A Yes.

Q And you were receiving a number of checks from Mr. Henig in the sum of $870, weren't you?

MR. CALANDRA: Now, if your Honor pleases, I think we are going a little bit too far in this cross.

MR. BECKER: Your honor please, we have to identify these checks. I am going to lay a foundation to identify them because they are not in one sum. 20

THE COURT: I have allowed you to cross examine this man all kinds of ways on matters which have not been presented on direct and I think I will have to stop now.

MR. BECKER: May I just ask him to identify all of these checks and mark them for identification?

THE COURT: All right. The trouble with you is you are putting your case in on cross. 30

MR. BECKER: I want him to identify his signature and then we can prove it in our defense.

MR. CALANDRA: I think I will object to that at this time on the ground it is a matter of affirmative proof and a matter of defense. 40

THE COURT: I will sustain the objection.

MR. BECKER: That is all.

MR. CALANDRA: Complainant rests.

THE COURT: Now, you can call him back as your own witness and ask him whether—(interrupted)

MR. BECKER: I will make him my own witness.

PINCUS ROSENBLATT, Recalled

DIRECT EXAMINATION BY MR. BECKER:

Q I show you—I better count them so we will have them right—I show you a series of thirty-eight checks made by Abraham Henig to P. Rosenblatt on various dates and ask you whether the endorsement thereon are your signatures, and, if so, if you used these checks and deposited them to your account. You can answer Yes or No to the lot of them after you have thoroughly examined them all.

THE COURT: How many are there?

MR. BECKER: Thirty-eight.

THE COURT: I will take a recess for about five minutes.

A Well, I could answer more—what answer do you want to have?

Q See if you used those checks.

A I guess they are the checks.

Q All right.

A Yes.

Q Now, which checks did you receive?

A Those checks I received, on the back my signature.

Q Yes.

A This checks is made out also to me, but not my signature. Maybe I received the money; I

wouldn't say I don't. And this check is not made out to me at all.

Q You do bank in the State National Bank?

A Yes.

Q On thirty-three checks you admit you received them? 10

A I see my signature.

Q And on two checks you are doubtful, but they are made to your order.

A Which ones?

Q To your order and they are deposited in the State National Bank, New York.

A This maybe is mine which I can't remember now.

Q You cannot distinguish who signed your name there? 20

A No.

THE COURT: Are they deposited to his account?

WITNESS: I wouldn't say it is not mine.

MR. BECKER: Yes.

I offer these thirty-three.

THE COURT: Do you say you got the money?

WITNESS. I say maybe I got it, but it is not my signature in the back.

THE COURT: No, but it was deposited 30 in your account, wasn't it?

WITNESS: Yes.

THE COURT: All right.

MR. BECKER: I offer those.

CROSS EXAMINATION BY MR. CALANDRA:

Q Mr. Rosenblatt, did you ever pay Mr. Henig any fees?

MR. BECKER: I object, immaterial.

THE COURT: I will allow it. 40

Q Did you ever pay Mr. Henig any fees for any of these mortgages that he procured for you?

A I never did.

Q Did Mr. Henig ever give you a search on the titles? Did he ever give you a title search on this Horn mortgage?

10

A No.

MR. CALANDRA: That is all.

REDIRECT EXAMINATION BY MR. BECKER:

Q Those fees are usually paid by the—(interrupted)

THE COURT: No.

Q Do you know who paid those fees for those mortgages?

20

A I don't know. I didn't pay it.

RECROSS EXAMINATION BY MR. CALANDRA

Q And in one of these transactions that you mentioned, when Mr. Zucker was examining you about these fifty thousand dollars, do you recall the mortgage—

MR. BECKER: If your Honor please—(interrupted)

30

Q —on the porperty?

MR. BECKER.—that is not redirect.

MR. CALANDRA: I am just trying to straighten this out. All right. That is all. The complainant rests.

MR. BECKER: That is all. Mr. Henig.

40

ABRAHAM HENIG

Sworn for defendant.

DIRECT EXAMINATION BY MR. ZUCKER:

THE COURT: Is this your only witness?

MR. ZUCKER: Oh, no. There are the defendants. 10

THE COURT: Why don't you take a—you cannot finish it this afternoon, can you?

MR. ZUCKER: I would like to get Mr. Henig's testimony in. It won't be very long.

THE COURT: Very well.

Q Mr. Henig, you are a counsellor-at-law of the State of New Jersey?

A I am.

Q And have been for how long? 20

A Since 1909.

Q And do you know Mr. Pincus Rosenblatt?

A I do.

Q How long.

A Oh, since 1903 or 1904.

Q And during which time have you represented him legally in your capacity as a lawyer?

A I have.

Q In what sort of matters?

A Well, legal matters in making loans on mortgages. 30

Q Outside of loans on mortgages have you represented him?

A Yes.

Q In personal matters?

A Yes, sir.

Q What was the nature of those services to him?

A Well, I represented him in some bankruptcy proceedings where he had a claim, I think 40

it was against the United States Pearl Button Company.

Q Did you get a fee for that?

A I certainly did.

Q Mr. Henig, I direct your attention to the Horn mortgage which is Marked C-1 and C-2 (handing witness paper). Are you the Mr. Henig who took the acknowledgements thereon?

10

A I am.

Q And whom were you representing at that time, Mr. Henig?

A Well, at that time I was representing both of the parties.

Q That is Hr. Horn and Mr. Rosenblatt?

A Yes.

Q You were the intermediate that brought together this loan?

20

A I was.

Q Did you take Mr. Rosenblatt to Mr. Horn's residence?

A I did.

Q Did they meet each other?

(Witness nods yes.)

Q Where?

A In the living room or dining room of Mr. Horn's residence, 1300 Springfield avenue.

30

Q Eventually this loan was granted?

A This loan was granted.

Q Under what terms, financial terms, was it granted?

A Under the terms that they were—(interrupted)

MR. CALANDRA: I object on this ground: The witness has testified that he represented both Mr. Horn and Mr. Rosenblatt; if he is attempting to testify as to any statement made by Mr. Rosenblatt I

40

want to object to it in behalf of the complainant, Rosenblatt, on the ground that it is a privileged communication and I base my objection on the testimony, not of Rosenblatt in the direct case, but upon this witness, Henig. 10

MR. ZUCKER: Your Honor please, there is a denial on the part of the complainant here that he has received any bonus or usury.

MR. CALANDRA: That word "bonus" was not used, your Honor please.

THE COURT: I will allow it.

MR. CALANDRA: Or any intimation of it. 20

THE COURT: I will allow it.

Q What were the terms?

MR. CALANDRA: I object, if your Honor pleases, on the further ground that the mortgage speaks for itself. It was offered in evidence without objection.

MR. ZUCKER: There is no other way of showing but by the testimony of the parties, the witnesses. 30

THE COURT: What are you trying to prove, the terms of the mortgage?

MR. ZUCKER: No, the terms of the loan.

THE COURT: Well, the mortgage—(interrupted)

MR. ZUCKER: That the mortgage is based upon—

40

THE COURT: No. I will sustain the objection on that ground, the mortgage speaks for itself.

Q How much money was paid to Mr. Horn by Mr. Rosenblatt?

A At the rate of fifteen percent per year.

10 Q What was that for?

A That was for principal—for interest on the loan, the ten thousand dollars.

Q How much money did Mr. Rosenblatt pay to Mr. Horn that day?

A Nothing that day.

Q On the day of the confirmation of the mortgage.

A The check was made out for fourteen thousand dollars, ten thousand dollars of which

20 was for Mr. Horn.

Q And did Mr. Rosenblatt receive any money in return that day?

A Immediately thereafter I sent Mr. Rosenblatt a check, I believe for $1050.

Q Was that to cover the interest?

A That was to cover—

THE COURT: No, what was that?

Q What was that to cover?

A That was to cover the bonuses on the two

30 loans, both the ten thousand dollar loan and the four thousand dollar loan. The one was four hundred fifty and the other was six hundred fifty.

Q And at the expiration date of that mortgage, which was August 18th, 1926, was that mortgage paid?

A No, it was not.

Q When was it paid?

A Well, I believe around the latter part of the year, around December.

40 Q By whom?

A By Mr. Horn.
Q To whom?
A To me.
Q Did you pay that money to Mr. Rosenblatt?
A No.
Q Did you have an arrangement whereby you were not to pay it to him or were to pay it to him? 10

MR. CALANDRA: I object to that, if your Honor pleases, as leading.

THE COURT: Yes, I will sustain the objection.

Q Why wasn't the money paid to Mr. Rosenblatt?
A Because Mr. Rosenblatt permittted me to use the money for my own purposes.
Q Was any instrument signed in receipt of that money? 20
A Nothing at all, except that he signed the discharge of the mortgage.
Q Was there a discharge of mortgage signed by Mr. Rosenblatt?
A Yes, sir.
Q And was that subsequently recorded?
A It was.
Q In the Essex County Register's office?
A It was. 30

MR. CALANDRA: I object to all this as leading. This man is an attorney.

THE COURT: I know, but we all know that some discharge of mortgage was recorded.

Q Do you know where the original discharge of mortgage is?
A I don't know. I have searched in every paper of my files to find it and I have not been 40

able to. During the time I was sick very many people had access to my papers and I found a lot of papers missing.

MR. CALANDRA: If your Honor pleases, this explanation by this attorney is unnecessary.

10

MR. ZUCKER: Your Honor please, it answers the questions where the paper is, in explanation to the Court why it is not here.

THE COURT: He says he has made diligent search and cannot find it. That is enough.

Q Who took the acknowledgement of that?

A I did.

Q I show you a certified copy of the discharge of mortgage and ask you if you recollect whether or not that is the true copy of the original?

20

A That seems to be the original copy of the discharge.

MR. ZUCKER: I offer that.

MR. CALANDRA: I object on the ground the best evidence is the discharge itself.

THE COURT: No.

MR. CALANDRA: The fact this attorney cannot find it is no excuse for not producing it.

30

THE COURT: A certified copy is perfectly proper evidence. I will admit it.

(Paper marked Exhibit D-4.)

MR. CALANDRA: I would like to make another objection to it. If that is a certified copy of the record, is it intended that it shall be a certified copy of the signatures that were affixed, if any were affixed to the original?

40

THE COURT: No. it is a certified copy of whatever appears on it.

Q Mr. Henig, I now hand you sheets of paper and ask if those are written in your handwriting.

A They are.

Q And since February 18th, 1925, to date, will you tell me—tell the Court how much principal and interest was paid to Mr. Rosenblatt on the Horn mortgage? 10

MR. CALANDRA: I object to the use of the memorandum unless I am permitted to examine under it, if your Honor pleases.

THE COURT: I will allow it.

Q Will you answer the question, please?

A Well, the only amounts that were paid on the mortgage were the first two payments, but the rest was paid by me personally. The total amount that was paid altogether was $6700. 20

Q Fifty-seven?

A Sixty-seven.

Q Sixty-seven hundred?

A Yes, sir.

Q Can I see your papers there, please?

A (Witness hands counsel papers.)

Q Were there other amounts paid to Mr. Rosenblatt on other mortgages?

A There were.

Q And as shown in these checks marked for identification? 30

A Yes.

Q Now, I hand you these checks, Mr. Henig and ask you to pick out checks paid to Mr. Rosenblatt on the Horn mortgage.

A Won't you let me have that memorandum? I can pick it out from there. It is all right.

Q I think you got your memorandum there.

A It will take me a little while to do that, because they are all mixed up, you see. These are the 40

only ones I could find among those. I may have some other checks in the office which I have not here.

Q I now show you five checks to the order of P. Rosenblatt—I will put them in one lot—and ask you if these checks are payments to P. Rosenblatt to apply upon the Horn mortgage by way of principal?

10

A Yes, the $750.

Q For interest?

A I am on all these checks and those that are more than $750, to the extent of seven hundred fifty are to apply on the Horn mortgage.

MR. ZUCKER: And I offer them in evidence.

20

MR. CALANDRA: May I ask counsel if these are the same ones that were—

MR. ZUCKER: Yes—

MR. CALANDRA:—identified by Mr. Rosenblatt there.

MR. ZUCKER: Yes.

(Five checks marked Exhibit D-5.)

Q I now show you thirty checks to the order of Pincus Rosenblatt.

A No, this one is not to the order of Pincus Rosenblatt (indicating).

30

Q Twenty-nine.

A Twenty-nine checks.

Q Twenty-nine checks and will you tell the Court what they were in payment of?

A They were in payment of various interests and bonuses of other mortgages that I had—(interrupted)

MR. CALANDRA: I ask that those remarks be stricken, if your Honor pleases,

40

on the ground they are immaterial to this issue.

THE COURT: I think they may be material. I will allow it.

MR. CALANDRA: He said "other mortgages." 10

THE COURT: Yes, I know, but what Mr. Zucker is trying to prove is that this man was Mr. Rosenblatt's agent. I will allow it.

MR. ZUCKER: I offer those in evidence.

MR. CALANDRA: I object on the ground that they are not properly proven.

THE COURT: All right.

MR. CALANDRA: They are not properly 20 connected with this particular case.

THE COURT: All right, Put it on record. I will allow it.

(Checks marked Exhibit D-6.)

Q In reference to this discharge of mortgage now of record and recorded in Book B-53—no, discharge of mortgages, page 386, where was that signed?

A In my office.

Q By whom? 30

A By Mr. Rosenblatt.

Q Did you inform him the nature and the contents of that paper?

A Absolutely.

Q What did he say to you and what did you say to him?

A Well, I told him what it was and he said—he signed it and he acknowledged that he signed it.

Q What took place in reference to the sum of $10,000 and accrued interest? 40

A At that time I told him that I was getting the money and I had use for it personally, that I was making some investments in real estate, and that I would pay him the same amount of interest that Mr. Horn was paying, and asked him whether I could use the money and he said I could.

10

Q And these payments—was that a payment for the continuation of the mortgage or a payment of repayment of your loan?

A Payment of my fifteen percent interest.

Q And did he know that the mortgage was discharged?

A Certainly, he signed the discharge of mortgage.

Q Did he at any time know that the property had been conveyed by Mr. Horn to the Roths?

20

A I don't know. No, I don't think so. There was no necessity for me to tell him that at that time, I don't think.

Q You were attorney for Mr. Horn in the conveyance to the Roths, weren't you?

A I was.

Q And I show you a deed from Jacob Horn and Bertha Horn to Sandor Roth and Pearl Roth, with acknowledgment of Abraham Henig, and ask you if that was your—is that your signature and acknowledgment?

30

A That is.

Q Do you remember the consideration paid for the property?

A Not off hand, no. I would have to see the contract before I would be able to refresh my memory.

Q Well, I show you the contract with the name of Abraham Henig as witness and Abraham Henig as—to an acknowledgment of a contract between Jacob Horn and Bertha Horn and Sandor Roth and Pearl Roth.

40

A Yes.

Q Is that the contract for the conveyance of that property?

A That is.

Q What was the consideration price?

A $140,000

Q Subject to what mortgages, if any?

A Subject to the first mortgage of $85,000 and to a second mortgage of $25,000.

Q Any mention made of that mortgage held by Pincus Rosenblatt?

A No mention made of it.

Q I call your attention to the deed and ask you if conveyance was made subject to the mortgages.

MR. CALANDRA: The deed speaks for itself.

THE COURT: Yes, it does.

WITNESS: No mention made of it.

MR. ZUCKER: I offer the deed and contract.

MR. CALANDRA: I object to the deed on the ground it is immaterial to this issue. It is not a question of what they paid for the property or how they paid it.

MR. ZUCKER: It goes to the issue whether we are taking it subject to that mortgage.

(Discussion.)

THE COURT: I will allow it.

(The papers marked Exhibit D-7 and 8.)

MR. ZUCKER: That is all.

THE COURT: You cannot finish your cross examination in five minutes?

MR. CALANDRA: I am quite sure I cannot.

THE COURT: Very well, we will adjourn to a day which Mr. Salmon shall fix.

MR. CALANDRA: Now, may it please your Honor, will your Honor instruct Mr. Henig to be here at the next time?

10

MR. HENIG: It is not necessary to be instructed. I will be here.

THE COURT: Mr. Henig will be here.

MR. HENIG: There is no reason for making that statement, either.

(Adjourned to December 6th, 1929.)

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30

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IN CHANCERY OF NEW JERSEY.

December 6, 1929.

Between
PINCUS ROSENBLATT,
Complainant,
—and—
JACOB HORN, BERTHA HORN, SANDOR ROTH *and* PEARL ROTH,
Defendants.

10

Transcript of shorthand notes of testimony taken in the above entitled cause in the presence of Court and counsel as before. 20

ABRAHAM HENIG, Continued.

DIRECT EXAMINATION BY MR. BECKER:

Q Have you in your hand—

MR. CALANDRA: If your Honor pleases, I think Mr. Henig was turned over to me for cross examination.

THE COURT: Yes.

MR. BECKER: Your Honor please, I spoke to Mr. Calandra yesterday and I told him I had a few questions of the defendant's cross and he consented. 30

MR. CALANDRA: All right.

Q Mr. Henig, you have in your hand a list of the moneys paid to Mr. Pincus Rosenblatt on the Horn mortgage.

A Yes.

Q If my memory serves me correct, you said there had been paid to him $6700. 40

A I did testify to that yesterday.

Q And will you tell us now what the correct amount was?

A I—(interrupted)

MR. CALANDRA: If your Honor pleases, I would like to examine Mr. Henig upon that list.

THE COURT: You can cross examine him on it.

MR. CALANDRA: Before he refers to it.

THE COURT: No. I will allow it.

WITNESS: I made an error in calculation of a thousand dollars. The amount was fifty-seven hundred dollars and not sixty-seven hundred.

Q Will you give us for the purpose of the record the dates of the payment?

A I will. On February the 24th—(interrupted)

MR. CALANDRA: Are these all in reference to the Horn mortgage?

MR. BECKER: Only Horn.

WITNESS: Yes. I am only giving in reference Horn. On February 24, 1925, $450; on August 20th, 1925, $750; on February 18th, 1926, $750; on August 28th, 1926, $750; on February 26th, 1927, $750; on September 1st, 1927, $750; on March 20th, 1928, $750; and on September 29th, 1928, $750.

Q Totalling $5700?

A Yes.

THE COURT: The mortgage was $10,000 wasn't it?

MR. CALANDRA: Yes, if your Honor please.

THE COURT: Well, what became of the rest of it? How was the rest of it satisfied?

MR. BECKER: That comes in, your Honor please, as a loan.

MR. CALANDRA: Now—(interrupted)

10

THE COURT: Just a minute . I don't—you are now proving that fifty-seven hundred dollars was paid on this ten thousand dollar mortgage. Now, I want to know what became of the balance.

MR. BECKER: It is not paid on the mortgage, your Honor please. This is money paid to Mr. Rosenblatt under an arrangement of a loan between Rosenblatt and Henig.

20

MR. CALANDRA: I object to the evidence and ask it to be stricken out on the ground it is not proper investigation as to anything which Henig may have paid Rosenblatt after an alleged discharge of mortgage, back in December, 1925, if your Honor pleases.

I move now respectfully that the testimony as given by Mr. Henig be stricken out.

THE COURT: No, I won't strike it out, but it does not seem to me that that proves any payment.

30

WITNESS: It is not intended for that purpose.

MR. BECKER: We will connect that up, your Honor please.

THE COURT: All right. Go on. I will allow it. I will allow the testimony for what it is worth.

Q As to the discharge of the mortgage, Mr.

40

Henig, do you remember when it was signed and by whom?

MR. CALANDRA: I object to that, an attempted, an alleged discharge of mortgage certified copy of it was in evidence, that speaks for itself. We have been over that in his direct testimony.

MR. BECKER: I just wanted to clear that up in the Court's mind.

THE COURT: No. Wait a minute. You see, you have practically alleged that this document that they introduced in evidence is a forgery. Well, now, he is entitled to examine him as to whether or not it is a bona fide instrument.

MR. CALANDRA: Yes, but there is nothing in the direct case yet; it was just from argument in opening and where the defendant in answering our bill sets up payment, and then I immediately counter claimed with a replication in our opening argument to your Honor, that if there is a discharge that it is a forgery, and if there was payment, it was not payment to us or in our behalf.

THE COURT: I will allow the testimony.

Q I show you a discharge of record, marked Exhibit D-4 and ask you to examine that and tell the Court when Mr. Rosenblatt signed that and who took the acknowledgement and the date of acknowledgment and the date of recording.

A That was signed on December the 29th by Mr. Rosenblatt in my office and I took the acknowledgement and recorded it.

Q And did you tell him that the mortgage was paid or not?

A I did.

Q Did you explain the instrument to him?

A I did.

Q Did you have any arrangement with him subsequently in reference to the ten thousand dollars? 10

A I did.

Q What was that arrangement?

A I told him at that time that I was making some investment in several real estate matters and I could use the money and I would pay him the same amount of bonus and interest that was paid by Mr. Horn for it, if he would let me have the money, I would take care of it. I took care of it every six months until I got sick and could not take care of it. 20

Q Were those the payments you just read off, part of the first payment of $450?

A That is right.

Q When did you become ill, Mr. Henig?

A February 4, 1929.

Q And when did you make the last payment to Mr. Rosenblatt?

A September 29, 1928.

Q Did you have a conversation with Mr. Rosenblatt at the institution at Overbrook, New Jersey? 30

A Well, not at the institution; he visited me at the institution and then I went with him on a—in an automobile and spoke to him in the automobile.

Q What was the conversation in reference to, this Horn mortgage?

A It was in reference to this Horn mortgage and other matters.

Q What did he say? 40

A He wanted me to—

Q What did he say to you and what did you say to him?

A He wanted me to testify in his behalf in the suit he had started against Mr. Horn and I refused to do it.

10

Q Did he offer you any inducement?

A No; simply that he thought that I should be in his favor with reference to the matters, that he was my client and not Mr. Horn and that I should favor him more that I should favor Mr. Horn.

Q Mr. Henig, I show you this letter and envelope and ask you if you received that from Mr. Rosenblatt.

A I did.

20

MR. BECKER: I offer it in evidence.

MR. CALANDRA: May I see it.

MR. BECKER: Yes.

(Discussion.)

(Letter marked Exhibit D-7.)

MR. CALANDRA: Will your Honor bear with me for a moment, please?

MR. BECKER: There is a counter claim filed in this case, wherein the defendant Roth counter claimed against the defendant Horn.

30

MR. CALANDRA: That is not the fact.

MR. BECKER: We are not identical in this case.

MR. CALANDRA: There is no counter claim, if your Honor pleases. There are matters of separate and special defenses as they are set up. There is not counter claim.

40

MR. BECKER: Counsel is speaking of something he has no knowledge of. There is a counter claim.

THE COURT: Where are the papers?

MR. BECKER: Mr. Calandra, it is your duty to bring the papers here. 10

MR. CALANDRA: The papers were here on Tuesday if your Honor please.

THE COURT: Maybe they are here now.

MR. ZUCKER: Here is a copy of the counter claim served on me.

MR. CALANDRA: I was not served in anything.

MR. BECKER: This is a counter claim as between defendants.

THE COURT: Are the papers in this case here? 20

MR. BECKER: That being a question to decide a little later—(interrupted)

MR. CALANDRA: I object to the offer of this exhibit on the ground it is improperly proved. There is not attempt to identify this handwriting, nor the signature as being that of Pincus Rosenblatt. It is just signed "Pincus," we don't know who "Pincus" is. 30

Q I call your attention to the envelope and ask you to read from whom it is addressed from.

A "P. Rosenblatt, 514 W. 187th street, New York City."

Q And do you recognize the name "Pincus?"

A I certainly do.

Q As being whom?

A Being Pincus Rosenblatt, the complainant in this suit.

Q Do you recognize the contents of the letter 40

as referring to any matters you had with him?

A I certainly do.

MR. BECKER: I now offer the letter and envelope in evidence.

10 MR. CALANDRA: I further object to it on the ground that it has no material bearing in this case. It is not connected up in this case.

THE COURT: I will admit it.

(Envelope and letter marked Exhibit D-7.)

THE COURT: The papers were sent back to Trenton yesterday.

MR. BECKER: We can furnish copies

20 of them.

May I read this letter to your Honor?

THE COURT: Yes.

MR. BECKER: Under date of July 20, 1926. "Dear Henig: Enclosed is check for $9020 I figure it out and that is what the check should be. You lawyers get me a second mortgage for that interest. Please take good care. Your friend, Pincus."

Q Will you tell the Court what that referred

30 to, what mortgages?

A There were three—(interrupted)

MR. CALANDRA: I object as being improper in this case and improper as a defense in this case. It is not in litigation of the Horn mortgage and the amount due on it.

MR. BECKER: Your Honor please, the purpose of this is to discredit that witness that he has never received any bonus as he told this Court.

40

THE COURT: I will allow it.

Q You can continue, Mr. Henig.

A That referred to three mortgages, two in the sum of twenty-five hundred dollars each, and one in the sum of six thousand. The six thousand dollar mortgage covering premises 68-70 Livingston street. 10

MR. BECKER: 68-70 Waverly avenue.

WITNESS: Waverly avenue, I meant. And the twenty-five hundred dollar mortgage is covering property on Livingston street, the numbers of which I do not recall just now.

Q 70-79 Livingston?

A That is probably the number.

Q What percentage of premium bonus was paid? 20

MR. CALANDRA: I object to the use of the word "bonus" if your Honor please, and the word "premium."

Q What percent of usury above the usual six percent?

MR. CALANDRA: I further object to that as calling for a conclusion, if your Honor please.

WITNESS: Nine percent above the six percent. 30

Q And according to your caculation, nine percent of eleven thousand dollars is $1080?

A $1090, I think.

Q 80, I will correct you.

A One thousand and what?

Q One thousand eighty dollars.

A On eleven thousand dollars—

Q Was the amount of the mortgage.

A Yes, it is ten hundred.

Q The amount of the premium is— 40

A $1090, not $1080.

Q And that was deducted as indicated by the letter?

A Yes—no, it is not.

Q Mr. Henig, did you at any time forge the signature of Pincus Rosenblatt—

10

MR. CALANDRA: I object.

Q —to a discharge.

MR. CALANDRA: I object, if your Honor please, as being a leading question and an improper question for direct examination. He is anticipating any rebuttal to his testimony.

MR. BECKER: It is absolutely proper to put the question direct where the complainant has said it was a forged instrument by Mr. Henig.

20

MR. CALANDRA: There is no such testimony in the direct case, if your Honor please.

THE COURT: I will allow it.

Q Mr. Henig, did you forge the signature of Pincus Rosenblatt to the discharge recorded in the Essex County Register's office in Book U of Discharge of Mortgages for Essex County page 386?

30

A I did not.

Q A certified copy of which I show you and which is marked Exhibit D-4?

A I did not.

Q Mr. Henig, Mr. Rosenblatt testified that you never represented him legally in any matters, is that true?

A That is not true.

Q Mr. Henig, did you represent Mr. Rosenblatt in a matter of the United States Pearl Button Manufacturing Company?

40

A I did.

MR. CALANDRA: That has been testified to by this witness. He said it was a bankruptcy matter.

WITNESS: That is right.

10

MR. CALANDRA: And he represented—

WITNESS: That is right. I testified to that yesterday.

MR. CALANDRA: Just wasting a lot of time going over something we have been over before.

Q And is this some of the matter—is this the letter received from Mr. Rosenblatt and his note in that particular matter?

20

MR. CALANDRA: If your Honor please, witness attempts to confer with counsel while he is on the stand.

WITNESS: What of it?

Q You can answer the question.

THE COURT: Answer.

WITNESS: What is the question?

(Question read as follows: "And is this some of the matter—is this the letter received from Mr. Rosenblatt and his note in that particular matter?")

30

A It is.

Q And did you represent him in that matter?

A I did. And I represented him in other matters, too.

MR. BECKER: I offer these in evidence

(Papers marked Exhibit D-8.)

Q You also represented him in that Alvin Baker matter?

40

A I did. He consulted me in reference to that matter.

Q And is this a letter you received from him in reference to that matter?

A It is, yes, it is.

10 MR. BECKER: I offer it.

(Letter marked Exhibit D-9.)

Q Mr. Henig, can you explain why Mr. Pincus Rosenblatt was receiving three hundred dollars interest every six months without a reduction of the principal paid on the mortgage, as he claimed?

A Because I paid him for the interest on ten thousand dollars every six months.

Q And there was no reduction of any principal?

A No reduction. The bonus was $450, nine
20 percent additional, which I also paid every six months.

Q And then at the time that you became ill, your payments were paid to him?

A Up to the time I became ill every payment was made to him.

Q And this action was taken after your illness?

A During the time of my illness.

Q Mr. Henig, will you explain why the bond
30 and mortgage was not obtained from Mr. Rosenblatt when the mortgage was paid by Mr. Horn and your arrangement entered into with Mr. Rosenblatt?

MR. HENIG: I object to that as anticipating something, if your Honor pleases, and, furthermore, calling for a conclusion. He has testified to what he did.

MR. BECKER: It does not call for a conclusion.

40

MR. CALANDRA: It is putting words into this witness' mouth.

MR. BECKER: It calls for why the bond and mortgage remained in this man's hands.

THE COURT: I will allow it. 10

MR. BECKER: And why it was surrendered.

WITNESS: When Mr. Rosenblatt was in my office he did not have the bond and mortgage with him and I asked him to execute a discharge of mortgage.

Q Did you ever ask him for the return of the bond and mortgage?

A I did not.

Q Has he any other bond and mortgages in reference to any of these deals that you had with him, which have been paid off or cancelled? 20

A I think he has.

MR. BECKER: Take the witness.

CROSS EXAMINATION by Mr. Calandra:

Q You think that he has, Mr. Henig?

A Yes, I do think he has.

Q You know that he has, don't you?

A I—

Q I say, you know that he has, don't you? 30

A What do you mean by that—know that he has?

Q Now, Mr. Henig, at the time that this Horn mortgage was given through your office, there was also another mortgage given, wasn't there, in the sum of $4,000?

A Yes, sir.

Q To a party by the name of Tsonas.

A Yes.

Q Your client. 40

A Yes, sir.
Q And Horn was your client.
A Yes, sir.
Q How long had Horn been your client?
A Several years.
Q I beg your pardon?
10 A Several years.
Q And what kind of business was Mr. Horn in?
A Real estate.
Q Real estate. Buying and selling of property?
A Building.
Q Did you negotiate mortgages for Horn?
A Sometimes.
Q During that period that you represented him?
20 A I did.
Q Now, with referenec to that Tsonas mortgage that was given at or about the same time that the Horn mortgage was given, do you know whether or not that mortgage was discharged of record?
A It was.
Q By whom?
A By me as— upon the discharge of the mortgage executed by Mr. Rosenblatt.
30 Q Do you know whether or not that particular mortgage is being foreclosed in this Court?
A I do.

MR. BECKER: I object, if your Honor please.

MR. CALANDRA: He opened the door.

THE COURT: I will allow it.

Q You do?
A I do.
40 Q And do you know the defense in that suit

of Mrs. Tsonas is that she never received the money from you?

A I do.

Q And is that a fact?

A It is.

Q Where is that money? 10

A I have it and I had it all the time and Mr. Rosenblatt—(interrupted)

Q Did you borrow it from Mrs. Tsonas?

A No, I borrowed it from Mr. Rosenblatt.

Q You borrowed it from Mr. Rosenblatt?

A Yes, sir.

Q After Mrs. Tsonas had signed a bond and mortgage.

A After Mrs. Tsonas had signed a bond and mortgage, yes. 20

Q I see. And Mr. Rosenblatt knew that?

A Mr. Rosenblatt knew that, yes.

Q And what did you tell him about it?

A I told him that that property was sufficient security for a $4,000 mortgage, and at that time I also used that money for my own purpose and I told him I wanted it for my own purposes.

Q Did you tell that, too, to Mrs. Tsonas?

A Mrs. Tsonas got the mortgage for $3,000 from me at the same time, on that property; that is the reason she signed both bonds and 30 mortgages, and both bonds and mortgage were recorded at the time before the money was ever passed over by either party.

Q Did you ever demand a bond and mortgage from Mr. Rosenblatt?

A No.

Q You did not?

A No.

Q Isn't it a fact that you embezzled those moneys, Mr. Henig? 40

A It is not a fact.

Q I am talking about the Tsonas money.

A I am talking about the Tsonas money. It is not a fact.

Q All right. You also represented some people by the name of Lanes, didn't you, Mr. Henig?

10

A I did.

Q Bertha Lanes and Maurice Lanes?

A I did, yes.

Q And they owned a property up in Clinton Hill section.

A 671 Pomona avenue.

MR. ZUCKER: I object to this line of questioning. I don't care—(interrupted)

MR. CALANDRA: I am attacking his credibility, if your Honor pleases.

20

MR. ZUCKER: I don't care what Mr. Calandra thinks this witness did in other cases. The question before the Court is: Is there a ten thousand dollar mortgage due in this property?

Now, he says that we opened the door. We opened the door for one purpose, to explain the bonus question and to attack the veracity of Mr. Rosenblatt. Now he is going into a lot of other questions and throwing a cloud on the Court's idea of this case. I can't see any reason for it. This man may have handled a thousand transactions. If we are going into every one of them we will never get through.

30

MR. CALANDRA: If your Honor pleases, I intend to show deception in this matter. I want to bring the true light of the situation before the Court. There is

40

a very vital testimony in this case concerning certain acts of Mr. Henig, insofar as Mr. Henig is concerned I think I have a right to attack his credibility.

THE COURT: I think so, too.

MR. ZUCKER: But at our expense, your Honor? 10

MR. CALANDRA: They opened the door for me.

THE COURT: Why can't he attack the witness' credibility? I don't see any reason why he cannot.

MR. ZUCKER: As to these statements made, yes. As to the statements in this case, absolutely, which is one of the rights in cross examination, if he confines himself to that. 20

THE COURT: I will allow it.

MR. ZUCKER: But he has not testified— you say "attacking the credibility", he has not testified to these questions that the attorney is now asking him, so what is he attacking? He is bringing up a letter. There is no credibility concerned there at all.

THE COURT: I will allow the question. 30

Q Now, you represented Bertha Lanes and Maurice R. Lanes, didn't you, Mr. Henig?

A No, I didn't exact—actually represent them in any other matter except this particular mortgage transaction.

Q I see. Did Mr. Rosenblatt ever meet Maurice Lanes and Bertha Lanes?

A No.

Q He never did?

A No. 40

Q You communicated with Mr. Rosenblatt, did you not, and asked him if— told him that you had a good second mortgage for five thousand dollars on their property?

A I did not tell him it was a good second mortgage. I told him it was a good third mortgage.

10

Q You told him what?

A It was a good third mortgage.

Q Good third mortgage?

A Yes.

Q And that mortgage was executed by Lanes?

A Yes, sir.

Q Recorded?

A Yes, sir.

Q There was a mortgage on that property held by the Peace Building & Loan wasn't there?

20

A There was.

Q And they foreclosed, did they not, Mr. Henig?

A Afterwards, not at that time.

Q But they foreclosed, did they not?

A During the time I was sick, yes, or afterwards; not at the time that the mortgage was made. You want to try to show that it was foreclosed before the mortgage was made, and it was not.

30

Q Please answer my question, Mr. Henig.

A That is the answer to that question.

Q Subsequent to the execution of this bond and mortgage and its recording—

A That is better, yes.

Q —there was a foreclosure.

A Yes.

Q Did you ever notify Mr. Rosenblatt about that foreclosure?

A Certainly.

40

Q By what means?

A I spoke to him, called him up on the telephone and told him about it.

Q Talked to him on the telephone?

A Yes.

Q Where did you call him?

A At his office where I always called him. 10

Q At his office?

A Yes.

Q And what did you say to him?

A I told him that the property was being foreclosed and I told him that I would take care of him after the foreclosure.

Q I see. You told him that you would take care of him?

A Yes.

Q And there was a sale, wasn't there, Mr. Henig? 20

A There was a sale.

Q And you bid the property in?

A I did, yes.

Q And you then formed the company— or had a company formed.

A Yes.

Q By the name of Aban Realty Company?

A Yes, Aban Realty Company.

Q And you assigned your bid to the Aban Realty Company. 30

A I did.

Q And after you assigned your bid to the Aban Realty Company, this company executed a new mortgage to the Peace Building & Loan for $12,500, didn't they?

A Yes, yes.

MR. ZUCKER: I object to this line of questions. I believe your Honor should be satisfied now that all this testimony is ir- 40

relevant in this case. I cannot see anything to it.

THE COURT: It may be, but the simplest way is to let it in. If you gentlemen will proceed with your questions and not make so many objections, we will get through much quicker. There is no jury in this case. If the testimony is irrelevant I won't pay any attention to it.

10

Q Your company executed a new mortgage?

A Yes, for $12,500.

Q Beg your pardon?

A For $12,500, the same as before on the first mortgage.

Q And you were president of the company?

20

A I was.

Q Your brother was secretary.

A Yes, sir.

Q And did your company execute another mortgage to Mr. Rosenblatt—

A I offered it to him a dozen times and he says he wants money.

Q Didn't you execute for that company a mortgage to Julius Winter for $3,000?

A Certainly I did. I borrowed that money for the purpose of buying the property in. That is exactly what I did.

30

Q Did you give any security to Mr. Rosenblatt?

A I offered him the five thousand dollar mortgage on that property, and I still offer it to him now.

Q Mr. Henig, isn't it a fact that that mortgage which was executed by the Lanes with Mr. Rosenblatt, was a four thousand dollar mortgage?

A It is not a fact, it was a third mortgage, as far as I know.

40

Q You drew the bond and mortgage yourself?

A I drew the bond and mortgage myself— I did not draw it myself on the typewriter.

Q Now, don't you know as a matter of fact that that mortgage recites that the Rosenblatt mortgage is second and subsequent in priority to the lien of the Peace Building & Loan mortgage of $12,500? 10

A I know that as a matter of fact that it does recite that, but that was an error.

Q And you know that as a matter of record?

A That is a matter of record, but still it was an error.

Q And you know now that that mortgage is being foreclosed in this Court, don't you?

A Certainly it is being foreclosed.

Q All right. When did you become ill, Mr. Henig? 20

A February 4th.

Q Of this year?

A 1929.

Q Yes?

A Yes.

Q And between September of last year and February 4th of this year, you did not talk with Mr. Rosenblatt at all, did you?

A Between when? 30

Q September of last year, 1928.

A Yes, I did. I talked with Mr. Rosenblatt a few times since that time.

Q Where?

A Where? At Mr. Rosenblatt's office, I mean, Mr. Herman Rosenblatt's office.

Q In New York?

A In New York, yes, sir.

Q Did you ever tell Mr. Herman Rosenblatt about having taken the Tsonas money and the Horn moneys? 40

A I never told Mr. Herman Rosenblatt anything about it.

Q Did he know anything about it?

A He didn't know anything about it.

Q As a matter of fact, you handled all the matters for Pincus Rosenblatt through his nephew, Herman Rosenblatt, didn't you?

10

A I beg your pardon. I did not. No matter that was handled for Mr. Pincus Ronsenblatt was handled through his nephew, because everything that was handled was after he handed the matters to me.

Q Is that your answer?

A That is my answer.

Q Exhibit D-8, referring to the United States Pearl Button Manufacturing Company matter, wasn't this matter referred to you by Mr. Herman Rosenblatt?

20

A Yes, it was referred to me, but it was not handled through him.

Q And did you pay him a part of the fees which you got in this case?

A I probably did.

Q You did?

A Yes, sir.

Q Do you remember having a conversation, Mr. Henig, with your brother-in-law, Mr. Klein and Mr. Schoenfeld—Mr. Schotland, a prominent member of the Bar of this county, in January or February of this year?

30

A Well, I may have had conversations with them, or either of them, I don't remember ever having a conversation with both of them together.

Q And don't you remember admitting to both of them that you took the Rosenblatt money and that you forged Mr. Rosenblatt's name?

40

A You ought to be ashamed to insult— to ask me that. I don't remember it at all and you know I never said that.

Q How did you come to notify Mr. Rosenblatt to be in your office?

A I did not notify Mr. Rosenblatt to be in my office. I was sick at the time and I didn't know anything about it. 10

Q Wait until I finish my question, Mr. Henig.

A And you know I didn't inform him.

Q I didn't finish my question.

A Oh, I beg your pardon. You asked—

Q In 1925, in the month of December, what was the occasion of your notifying Mr. Rosenblatt to be in your office?

A Oh, there were two mortgages foreclosed on the Livingston street property— 20

Q In 1925?

A Oh, in 1925. I beg your pardon. What do you mean?

Q In 1925 what was the occasion of Mr. Rosenblatt being summoned to your office, or his coming to your office?

A For the purpose of making these various loans.

Q I beg pardon?

A For the purpose of making these various loans. 30

Q And that was in December?

A I don't recall just exactly.

Q 1925?

A I don't recall the date. The matters will show the dates as far as the records are concerned.

Q Now, in December, 1925, Mr. Henig, what was the visitations that Mr. Rosenblatt made to you? 40

A How do you expect me to remember that? I don't remember.

MR. BECKER: Your Honor please, I object.

10 THE COURT: I don't understand all this, frankly. I do not see how this witness can be expected to remember every time Mr. Rosenblatt came to see him in 1925.

MR. CALANDRA: In December, if your Honor pleases, that is a very important month in the issue in this case.

WITNESS: Yes.

MR. BECKER: If counsel will tell him a particular case in connection with the

20 date, he can probably remember.

MR. CALANDRA: He is intelligent.

THE COURT: I do not think that is a proper question. See if you can direct his attention to some particular day on some particular matter, but to ask him—(interrupted)

Q Did Mr. Rosenblatt call to see you—

MR. CALANDRA: Is your Honor

30 through? I am sorry.

THE COURT: Yes.

Q Did Mr. Rosenblatt call to see you with reference to any particular mortgage matter in December, 1925?

A Well, he must have come to see me because he signed that paper.

Q Who notified him?

A I did.

Q For what purpose?

40

A For the purpose of coming there to— with reference to this matter, to discuss the matter with him.

Q Discuss what matter with him?

A The matter of my getting the money from him.

Q Your getting the money from whom? 10

A From him, that this mortgage was being paid off and I was—(interrupted)

Q You notified him of that fact?

A Certainly.

Q And what was prepared?

A Nothing was prepared.

Q Nothing at all?

A No, nothing.

Q Did you give him any document in writing? 20

A At that time when he —after he came there it was drawn and he signed it when he came there.

Q Signed what?

A The discharge of mortgage.

Q He signed it in your presence?

A Yes.

Q Who else was present?

A Nobody else was present.

Q Nobody else was present?

A There were people in the office, but there was nobody present when he signed the mortgage. 30

Q I see. And did you explain to him the contents of that mortgage?

A Yes, sir; he knew what he was signing at the same time.

Q And he permitted you to keep the money—

A Yes, sir.

Q —without any security for it?

A Well, he never did. He trusted me with all his money. He said he always would trust me — with all due respect to you — with everything he had. 40

Q And he let you have ten thousand dollars without any writing did he?

A He let me have fifty thousand dollars without any writing.

Q All at one time?

10 A No, at different times.

Q Had you any other mortgage relations with Mr. Rosenblatt prior to the Horn mortgage?

A Certainly.

Q Which one was that?

A Well, if you will show me my papers I will be able to tell you.

MR. BECKER: We have three of those here. I don't know which one you want.

20 WITNESS: Let me have— there it is, those papers.

MR. BECKER: You mean his search?

WITNESS: Yes. Those are the papers. There was a mortgage for three thousand dollars, which was March 28, 1924, which was paid off.

Q To whom was that mortgage?

A Benjamin Negat, to Rosenblatt from Benjamin Negat. That was paid off.

30 Q When was that paid?

A I can't— I haven't got the record of it here just now, but it was paid; he got the money; and I don't think even his mortgage was discharged of record, but he got the money.

Q The mortgage is still open of record?

A When I looked up the record last it seemed to be open of record.

Q Where did you get the money to pay off that mortgage? That mortgage is still open of record

40 and there is no discharge.

A I got the money from people and gave it to Mr. Rosenblatt. He got the money and he doesn't deny it.

Q How did you get the money without getting Mr. Rosenblatt's cancellation on the mortgage?

A I did get it, but I didn't record it. I did get the cancellation, but I did not record it. 10

Q That is just exactly what the situation is.

A That is also lost among my papers I was looking for. I only noticed it the other day, because I looked up the record to see what it was.

Q For the purpose of testifying in this case?

A All right, for the purpose of testifying in this case— I didn't know this case was going on— for the purpose of answering the charges made against me in the Bar Association. 20

Q Which he made, yes.

A Yes, that was the purpose.

Q Involving those matters.

A Which are absolutely false and untruc.

MR. CALANDRA: I ask that be stricken from the record.

THE COURT: No. You are attacking this man and charging him with a very serious crime and he is entitled to defend himself to the best of his ability. 30

MR. CALANDRA: I appreciate that if your Honor pleases.

THE COURT: I want to hear everything he has to say about it.

Q I show you check dated November 16, 1925, payable to the order of P. Rosenblatt for $575.

A Yes.

Q Signed by you as attorney.

A Yes. 40

THE COURT: All right.

Q And ask you what that was for and what it represents.

A That was with reference to a chattel mortgage that he had with the Essex Ring Manufacturing Company.

10 Q Then it was not in connection with the Horn mortgage.

A I didn't say it was. I never said it was. It is not used in connection with the Horn mortgage.

MR. BECKER: If your Honor please, that was taken from one of the 1929—(interrupted)

WITNESS: Certainly it is ridiculous.

20 THE COURT: Yes.

Q Now, Mr. Henig, to whom was the check made payable by Horn?

A To me.

Q And what was the amount of that check?

A Ten thousand dollars.

Q Ten thousand dollars?

A Yes.

Q Wasn't there interest due?

A There may have been. I don't remember 30 offhand, but it was for ten thousand dollars as far as the principal is concerned.

Q And what was the interest.

A I don't recall. I didn't even think of looking that up.

Q Wasn't that check $10,300?

A I don't think so.

Q Did you ever tell that to Rosenblatt?

A What do you mean? I told him that I got the money, yes.

40 Q You told him that you got the money?

A I didn't tell him the exact amount that I got because it was not necessary. I think the check was only for ten thousand dollars. If you want to know definitely I think that is what the check was.

THE COURT: Is Mr. Horn in court? 10

MR. BECKER: Mr. Horn is in court.

Q Mr. Henig, you have been practicing law for a number of years, have you not?

A Certainly.

Q And you have confined your practice a great deal to real estate matters — didn't you?

A I have not.

Q You have had a lot of real estate negotiations, praticularly with reference to bonds and mortgages, haven't you? 20

A I have had real estate transactions as well as other transactions; not a lot of them, no. The ordinary number that any lawyer has in his office.

Q Well, over a period of years about how many of these matters do you suppose you have had?

A I don't know. I wouldn't venture to guess.

THE COURT: Well, what has that to do with it?

MR. CALANDRA: I will bring it out on the next question, if your Honor please. 30

WITNESS: I don't know.

Q You know as an attorney, don't you, that a bond is a very important document to any client?

A Not when the money is paid, no. I know as an attorney—

MR. BECKER: I object.

A (Continuing.) I know as an attorney it is not important at all when the money is paid.

MR. BECKER: I object.

THE COURT: Don't answer, please. I 40

will sustain the objection. I will have to stop this somewhere or it will go on forever.

Q You did not get any written document from Mr. Rosenblatt permitting you to keep that money, did you?

10

A I didn't think it was necessary and I didn't get it.

Q You didn't think it was necessary?

A No, I did not; and he didn't think it was necessary, either.

Q And don't you know as a lawyer that all acts between an attorney and a client are looked upon with suspicion?

MR. BECKER: I object.

20

WITNESS: I don't know anything of the kind.

THE COURT: I will sustain the objection. Do not answer, Mr. Henig.

WITNESS: All right.

THE COURT: Do not answer until the objection is ruled on.

Q Now, with reference to the time that you were at the institution, you sent for Mr. Rosenblatt, didn't you?

30

A I did not.

Q You did not send for Mr. Rosenblatt?

A No, I did not.

MR. CALANDRA: Pardon me a moment.

Q Do you know Barny Shapiro?

A Yes, I know him.

Q What does he do?

A I don't know.

40

Q Does he drive; is he an expressman?

A Maybe, I don't know.

Q Didn't you tell Barny Shapiro at any time—

A I spoke to Barny—(interrupted)

Q —if he saw Pincus Rosenblatt, to send him up to you?

A I spoke to Barny Shapiro with reference to Pincus Rosenblatt several times, and I told him if Pincus Rosenblatt wants to see me he can come up to see me any time. 10

Q And Mr. Rosenblatt came to see you.

A He did.

Q And that was after he had started these foreclosure matters?

A I presume so. I don't know that.

Q And you asked Mr. Rosenblatt to take a walk with you, didn't you?

A I did not. I asked him to take a ride with me. 20

Q Beg pardon?

A He took a ride; didn't take no walk.

Q Well, did he come there by automobile?

A I presume so. I don't know how he came.

Q Mr. Rosenblatt came there by automobile.

A I said I don't know

Q You said on your direct examination that you took an automoible ride.

A I did. 30

Q Whose automobile was it?

A Either Barny Shapiro's or David C. Winkus.

Q Was Barny Shapiro there?

A Yes.

Q And was he present at the time this conversation took place?

A Yes.

Q About Mr. Rosenblatt telling you to testify in his behalf?

A Yes, he was present. 40

Q Is Barny Shapiro here in court?

A I didn't know that this was going to come up. He is not here in court.

Q All right.

A But I can get him in court if you want him in court.

10

Q Just a moment. Didn't you say outside, "Mr. Rosenblatt, I understand that you are foreclosing on some mortgages"?

A I don't remember the exact language I used. I do not think I ever said anything of that kind.

Q "And I don't want you to make any trouble for me."

A I didn't say that at all.

Q "When I come out of here I will try to raise the money to make good." Didn't you say that to Mr. Rosenblatt?

20

A I said that, yes. I said, "When I come out I will try to make good to you whatever I owe you." That is exactly what I told him.

Q And didn't Mr. Rosenblatt say to you, "Well, Henig, Mr. Calandra is my lawyer and you will have to see him."

A He didn't say anything of the kind. He never mentioned your name even.

Q Did you call Mr. Rosenblatt on the telephone?

30

A I did. That was the first call I made from my new office.

Q How long ago?

A When I started my office, around September first.

Q What did you tell him?

A I wanted to talk to him and he started to give me an argument and I said, "If that is the way you are going to act I won't talk to you," and I hung up the receiver.

40

(Short recess requested by Mr. Zucker for Court and counsel to confer in private.)

Q And Mr. Henig, you testified that in the month of February, 1925, I believe, that you sent Mr. Rosenblatt a check for $1050.

10

A That is right.

Q Where is that check?

A I haven't got it. It is February 24, 1925. I have the stub in my check book, but the voucher is not obtainable—

Q And in all of these checks which have been offered in evidence—(interrupted)

A —but my bank account will show the payment of that check, and his bank account will show the receipt of that check.

20

Q Now, in all these thirty-four checks, will you please examine them; I am referring now to Exhibit D-5 and 6, D-5 comprising five checks—

A Yes.

Q —and D-6 comprising—

A Twenty-nine.

Q —twenty-nine checks. Will you please tell us if there is any notation on there as to what those checks apply to?

THE COURT: Well, now—

30

A The checks speak for themselves. What is the use of asking me that question?

Q I note none of these checks contain any statement as to what they are about.

THE COURT: All right. That is perfectly apparent in the checks. Now, is that all?

MR. CALANDRA: That is all.

40

JACOB HORN, sworn for defendant.

DIRECT EXAMINATION by Mr. Zucker:

Q Mr. Horn, do you know Pincus Ronsenblatt?
A Yes, sir.
10 Q When did you see him for the first time?
A Before I got the mortgage from Mr. Henig.
Q And that was prior to February, 1925?
A Yes.
Q And where did you see him?
A At my house.
Q Who did he come up there with?
A With Mr. Henig.
Q Did you have conversations with him at that time?
A Yes, sir.
20 Q What was the conversation?
A The conversation was about the bonus. He wanted five hundred dollars, see? I wanted ten thousand dollars for six months, and he said to me, "Well, I could give it to you even for a year." I said, "No, I don't need it for more than six months." That was the time I started this building in Irvington and we agreed for $450.
Q Did you ever see him again after that?
A No, sir.
30 Q Did you execute a mortgage of ten thousand dollars?
A Yes, sir.
Q That property was where?
A At Ellenwood terrace in Springfield avenue, Irvington.
Q And did you get a check for ten thousand dollars?
A Yes, sir.
Q From whom?
40 A From Henig.

Q Full ten?
A Full ten.
Q And did you give Mr. Henig a check back?
A Four hundred fifty dollars.
Q And did you pay this money off?
A Yes, sir. 10
Q Have you made a search for the checks with which you paid this money off?
A What do you mean by that?
Q Did you make a search of your checks to find this check?
A Yes, sir, I did.
Q Were you able to find it?
A I couldn't find it. That was the check. It is the fourth year I moved away from Irvington, the same place, I moved down to Harrison place 20 and then I moved all my papers at that time. From that time, see, I couldn't find them any more. I only got— I could show you checks from 1927.
Q And since you paid off that mortgage, have you ever seen or heard from Pincus Rosenblatt about this money?
A No.
Q Have you ever paid to anyone any money on this mortgage outside of the amount that you paid off?
A No. 30
Q Did you ever receive any demands in the form of personal visits, letters or telephone calls from anyone demanding this money after you had paid the mortgage off?
A No, sir.
Q What is the first you ever heard from anyone about this mortgage after you paid it off?
A I came home on a Saturday afternoon and my wife hands me a subpoena. I looked at the subpoena and I see it is something about— it said 40

there "Jacob Horn, Bertha Horn, Sandor Roth and Pearl Roth," something, " a matter of $10,000", so I said to Mrs. Horn, "I can't understand that."

Q Don't tell us what you said.

A (Continuing.) I though it was some accident. That is the first time—

10

Q You heard of it since then.

A —I heard of it since then.

MR. ZUCKER: That is all. Cross examine.

CROSS EXAMINATION by Mr. Calandra:

Q Now, Mr. Horn, you knew that Rosenblatt was your mortgagee.

A Eh?

20

Q I say, you knew that Rosenblatt was your mortgagee.

A Yes, sir.

Q And the only time you saw Mr. Rosenblatt was the time that he called at your home with Mr. Henig, is that right?

A Right.

Q And after that you didn't see him any more?

A No, sir.

Q You did not?

A No.

30

Q Now, you kept a book with reference to your payments, did you not?

A Why, certainly, I keep records.

Q All right. And how much did you— to whom did you make that check payable with reference to this mortgage?

A I got the check from Lawyer Henig and I paid back to Henig.

Q You got the check from Henig and paid it to Henig?

40

A Right.

Q Although you knew that Rosenblatt was the mortgagee.

A Why, certainly.

Q Is that right?

A Why, certainly. If Rosenblatt was up there, see?

10

Q How was the check made payable, Mr. Horn?

A What do you mean?

Q To whom did you make your check payable?

A To Lawyer Henig.

Q Yes, Abraham Henig.

A Yes.

Q That is all. For how much?

A $10,300.

Q $10,300?

A Yes. It was ten thousand on principal and three hundred interest.

20

Q When you paid that check to Abraham Henig—

A Yes.

Q —did you ask Mr. Henig to give you a bond and mortgage?

A No.

Q Why not?

A I never asked him anything. I dealt with Lawyer Henig and I think I had plenty of confidence in Lawyer Henig that I could trust him anything he says.

30

Q I see.

A And so I done with all my lawyers.

Q And you never asked him for the bond and mortgage?

A No.

Q Did you negotiate another mortgage at that time?

A Yes, I had another mortgage on it.

40

Q And with whom did you negotiate the mortgage?

A With Werbel.

Q Beg pardon?

A Werbel.

10 Q Verbal?

MR. BECKER: Werbel, W-e-r-b-e-l.

WITNESS: Yes.

MR. BECKER: Samuel Werbel.

WITNESS: Samuel Werbel, right.

Q Now, when did you execute that mortgage to Werbel?

A I can't remember exactly the date, but I knew it was after that time.

20 Q It was after that time?

A Yes.

Q And how much was that mortgage for?

A I think it must have been twenty-five thousand dollars if I am not mistaken.

Q And who represented you in that transaction?

A Lawyer Henig.

Q For how many years had Mr. Henig represented you?

30 A I think for about six or seven years.

Q About six or seven years. And during that period what business were you doing?

A I am a builder by trade.

Q Beg pardon?

A I am a builder by trade.

Q And in that business you have to negotiate bonds and mortgages?

A Yes, sir.

Q And it was explained to you as to the

40 importance of a bond?

MR. BECKER: I object.

Q (Continuing.) Accompanying a mortgage?

MR. BECKER: I object, immaterial.

THE COURT: I will sustain the objection.

10

A I got confidence in lawyers; anything they tell me to sign, I sign.

THE COURT: Hush!

MR. ZUCKER: I want to make this objection to your Honor. I believe anyone listening to this case would have an idea that this mortgage he is referring to is on this particular piece of property.

MR. CALANDRA: It is. It was.

20

MR. ZUCKER: The Werbel mortgage?

MR. CALANDRA: It was.

MR. BECKER: It was.

MR. ZUCKER: That ought to be cleared up.

THE COURT: Well, it was.

MR. BECKER: It is admitted it was.

WITNESS: Right, right.

Q And was that mortgage paid off?

A Well, when I sold the property I sold it to Mr. Roth. If Mr. Roth paid off or not, I don't know.

30

Q You don't know.

THE COURT: Is that all?

MR. CALANDRA: That is all.

MR. BECKER: At this time there is a counter claim filed by Roth against Horn—

THE COURT: Wait a minute. I want to ask this man something.

MR. BECKER: All right.

40

THE COURT: On what bank did you draw this ten thousand dollars?

WITNESS: Savings Investment of East Orange, that is my bank, I belong there for years.

10 THE COURT: Is there a bank record which will show a withdrawal of ten thousand dollars on or about that time?

MR. BECKER: Oh, yes, no question.

WITNESS: I suppose so.

THE COURT: Then that ought to be introduced in evidence.

MR. ZUCKER: I can get that.

THE COURT: You show it to Mr. Calandra; then we will mark it in evidence. What will it be a bank book or what?

20 MR. ZUCKER: I think it will be—I will ask Mr. Horn; do they send monthly statements?

WITNESS: Monthly statements.

MR. ZUCKER: Then it will be a ledger sheet of that month showing it.

WITNESS: That will be the East Orange Savings & Investment, because that is a branch from the Savings Investment.

THE COURT: All right.

30 MR. CALANDRA: And the fact is the check was made to Abraham Henig.

WITNESS: Yes.

MR. CALANDRA: That is all.

WITNESS: That is the way—(interrupted)

Q And under whose instructions did you draw that check that way?

A What do you mean?

Q Under whose instructions did you draw

40 that check that way?

A What do you mean?

Q Under whose instructions did you draw that check that way?

A I can't—(interrupted)

MR. ZUCKER: Did you draw the check?

WITNESS: No. I came down to Henig's office and he made out the check and I signed it.

Q And you saw it was drawn to the order of Abraham Henig?

A I suppose so.

Q That is right, isn't it?

A I suppose so.

Q And at the time you drew this check or you signed this check, it was in Henig's office?

A Henig's office.

Q Was Rosenblatt there?

A No.

Q Did you ask Henig to notify Rosenblatt?

A Why, certainly— I didn't ask anything Henig; I take from Henig the mortgage and I paid back Henig— I didn't ask anything; I take from Henig the mortgage and I paid back to Henig. I never saw Rosenblatt except the first time.

MR. CALANDRA: That is all.

(Argument.)

PEARL ROTH, sworn for defendant.

DIRECT EXAMINATION by Mr. Becker:

Q Mrs. Roth, you are one of the defendants in this action.

A I am.

Q And you are the Pearl Roth who jointly with Samuel Roth— is that your husband?

A Yes.

Q —purchased this property from Jacob Horn and Bertha Horn?

A I did.

Q Is this the deed you received marked Exhibit D-7? (Showing witness paper.)

10 A Yes, sir.

Q Do you remember the terms of that purchase?

A Well, we paid for the house, the purchase price was $140,000, subject to two mortgages, a first mortgage of $80,000, paid down to seventy some odd thousand dollars, and a second—(interrupted)

Q Held by whom?

A Held by the Colonial Insurance Company, and a second mortgage of $25,000, paid down to
20 $22,000, held by Samuel Werbel, and the balance in cash, which amounted to some thirty odd thousand dollars. I can't tell the exact figures.

Q Was it actual cash or was there an exchange of property?

A No, there was a property turned in with the cash to make up the balance of the purchase price.

Q And have you got the check that you paid Mr. Horn?

A I haven't got the check, but I have—

30 Q (Handing witness paper.)

A I think this here.

Q Is that a memorandum from your bank?

A Yes.

Q And what was the amount you paid to Mr. Horn in closing?

A In cash?

Q Yes.

A $11,337.35.

Q And you also gave a deed to what property?

40 A To 89 Monmouth street.

Q To Mr. Horn?

A Horn.

Q And that was part of the consideration of the purchase of this Horn property?

A It was.

MR. BECKER: I offer this memorandum in evidence. 10

(Memorandum marked Exhibit D-11.)

Q And is this the contract for purchase which you received from Jacob Horn and Bertha Horn, marked Exhibit D-8?

A Yes.

MR. BECKER: That is already in evidence.

Q Did you have any knowledge or information about a ten thousand dollar mortgage held by Pincus Rosenblatt? 20

A I did not.

Q Did you know Pincus Rosenblatt?

A Never heard of him then.

Q At any time? When was the first you heard of Pincus Rosenblatt?

A During this summer, Mr. Horn called me up.

MR. CALANDRA: I object.

THE COURT: Yes.

Q (Continuing.) And wanted to know— 30

THE COURT: No, no. Just say "this summer".

WITNESS: This summer was the first— in fact— Can I say— I called you up, Mr. Calandra, if you remember.

MR. CALANDRA: You did.

WITNESS: And asked you what it was about. I didn't know a thing about it.

MR. CALANDRA: That is right, and I told you. 40

WITNESS: Didn't know and you told me.

MR. CALANDRA: And I told you what it was.

Q Mr. Calandra informed you what the nature of that paper you had received was about?

10

A Yes.

Q And that was the first you knew of any foreclosure.

A That was the first I knew anything.

Q And the first you knew of a man named Pincus Rosenblatt in connection with your property.

A I never heard that name before.

THE COURT: That is all.

20

MR. BECKER: Mr. Roth's testimony will substantiate Mrs. Roth's.

THE COURT: I don't think that is necessary.

MR. CALANDRA: All right.

THE COURT: But, if you feel that you want to, you may put him on.

MR. BECKER: It will be the same story.

MR. CALANDRA: Do you gentlemen rest? I have a little bit in rebuttal, your Honor please. Mr. Herman P. Rosenblatt.

30

HERMAN P. ROSENBLATT, sworn in rebuttal.

DIRECT EXAMINATION by Mr. Calandra:

Q Mr. Rosenblatt, are you a member of the Bar of the State of New York?

A I am.

Q And for how many years have you been?

A Since 1904.

Q Do you know Abraham Henig?

40

A 1905, excuse me. Yes, I do.

Q How long have you known Mr. Henig?
A Since my law school days.
Q Went to law school together?
A Yes, sir.
Q You are a nephew of the complainant—
A I am.
Q —Pincus Rosenblatt. Now, did you in September or October of 1928 have any conversation with Mr. Henig—

MR. ZUCKER: I object.

Q —regarding the Horn mortgage?

MR. ZUCKER: That does not bind the defendants in this case, any conversation had between him and Mr. Henig, who is not a party to this suit. Mr. Henig is not a party to this suit.

MR. CALANDRA: I laid the foundation, if your Honor pleases, for this witness, by asking Mr. Henig on the stand as to whether or not he had any conferences with Mr. Rosenblatt and with the— for the purpose of impeaching the credibility of Mr. Henig.

MR. ZUCKER: That is a proper question if this action was brought against Mr. Henig for money. It is not a proper question in asking us to be bound by statements that we were never present at.

THE COURT: I—

MR. ZUCKER: They may be damaging to us.

THE COURT: I will sustain the objection.

Q Who represented Pincus Rosenblatt?
A I did.

Q Do you know of your own knowledge whether Mr. Henig represented Pincus Rosenblatt as attorney?

A Only in matters I sent him, where I represented Pincus Rosenblatt, I sent four to him and got a share of the fees.

10

Q Did Mr. Henig telephone you?

A Telephone me—

Q Did Mr. Henig telephone you from Overbrook?

A He did.

Q What did he say to you?

MR. ZUCKER: I object, again, on the same ground.

THE COURT: I wil sustain the objection.

20

MR. CALANDRA: I will withdraw Mr. Rosenblatt.

MR. ZUCKER: Just a moment. I want to cross examine.

MR. CALANDRA: You may.

CROSS EXAMINATION by Mr. Zucker:

Q I show you a letter dated August the 6th, 1926. Was that letter sent by you? Just answer the question Yes or No.

30

A Yes, that is my signature.

Q You sent that letter?

A Yes.

Q Did you forward all these letters in regard to these mortgages that Mr. Rosenblatt took through Mr. Henig's office to Mr. Henig?

A Yes, sometimes he wrote Pincus and it was referred to me and I told Pincus whether or not to take it, and these three were mortgages that I objected to, that I told Pincus at that time that

40

they were no good, that it was a fraud and I think I so wrote.

Q You knew about these mortgages before Mr.—(interrupted)

A The first time I knew them when I got the bond and mortgages and I noted Mr. Henig's name on some of those as secretary of the company and I told Pincus not to take them, that the mortgages were no good. I believe he returned the mortgages and then Henig wrote him a letter and told him not to pay any attention to what I say, that he knew more about Newark real estate than I did, and I believe Mr. Henig would have a copy of that letter.

Q That was the purpose of writing this letter of August 6th, 1926?

A I think, as a matter of fact, that letter will show that I asked him to give me my shares of the profits. It is written very distinctly in my memorandum "Send me my shares of the profits on this mortgage". It shows you that Pincus was my client, not Henig's.

Q You objected to these mortgages?

A Yes, sir.

Q And that is why you wrote this letter?

A Yep.

Q And that is why you put down on mortgages you objected to "I want my shares of the profits"?

A That was written on at a subsequent date, when that letter came back. See? That letter came back with the bonds and mortgages, becuase Pincus went to Newark to return to Henig the bonds and mortgages and that is when—(interrupted)

MR. BECKER: I object, your Honor please, to his testifying of what he knows of Pincus' doings.

THE COURT: Yes, strike it out.

MR. ZUCKER: Now, I will read the letter to you: in reference to the three mortgages purchased by Pincus, he submitted these bonds to me today and I will ask you to please be kind enough to send me the following information of the three parcels: First, the location of each one of the premises; secondly ,the size of the plot and the nature of the improvement on them; third, the prior liens and how they are reduced; and, fourth, the appraised value of each of these parcels.

Am I correct in understanding that these are all second purchase money mortgages?

WITNESS: (Nods yes.)

MR. ZUCKER: "Please give me the full information by return mail, if possible. I would also like to know the income of each one of these parcels", and signed by you in your handwriting, I believe, "P.S. Don't forget my share", the word "share" underlined—"of profits".

WITNESS: Right.

Q And you say that was put on this letter subsequently?

A Yes, sir; after I got those figures. After I got the figures— I am going to repeat again that the bond and the mortgage were sent back to Henig.

Q And Henig mailed you back the letter that you had sent to him; is that right?

A Pink brought that back and then it was sent back afterwards, there was another letter was sent along with that, a second letter, in which I

told him that I did not care for those bonds and mortgages.

Q Are these letters important in this matter?

A They might be.

MR. CALANDRA: I object.

THE COURT: I will sustain the objection. I don't see that that is proper. 10

Q Well, have you the letters that passed between you and Mr. Henig or—

A I doubt it. I even doubt if I might have it in the office, but I recollect this particular transaction very well, because I remember those were the mortgages in which Mr. Henig appeared for the secretary of the company making the loans.

Q And notwithstanding the fact that you objected to your uncle taking these mortgages, you still put on there that you wanted your share of the profits? 20

A Certainly. After that—

Q So that—(interrupted)

A Please let me answer that question.

THE COURT: Wait a minute now.

Q At that time the transaction had been completed, the mortgages recorded and money passed?

A Right.

Q So there was no sense at that time of your objecting, was there? 30

A Oh, yes, there was. I told Pink to get his money back.

THE COURT: Wait a minute. This is an improper question. It is for the Court to decide whether it was sensible or not.

Q In what manner did you represent Pincus Rosenblatt?

A Every bit of legal business that he had I represented him. He is my uncle. 40

Q After Mr. Henig got through with giving him mortgages, then he came to you, isn't that so?

A No; he told me about it beforehand, but I told him I couldn't tell him anything until I saw the bonds and mortgages and knew the figures on which they were founded.

10

Q So that you could not give your client any advice until after he had done what you wanted to give him advice upon; is that it?

A Right.

Q And is that the way every one of these transactions were handled?

A I am pretty sure they are handled this way: that he would write me what mortgages and ask Pink to send him the money, and, when the money was sent, then the bond and the mortgage would be sent, and that is one of those few where I saw the bond and mortgage and see his name as secretary of the company; then I objected to it and arranged to find out—(interrupted)

20

Q In every case where you represented your uncle you represented him after he had performed a certain act and passed his money out?

A No; he had passed the money before he had received the bond.

Q And you did not represent him.

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A Certainly.

Q You did not represent him in these matters until after the bond came back, he brought them in to you?

A No. I represented him beforehand, because he asked me if he should invest and I told him if the bonds and mortgages were good, to go ahead and take them, but I wanted to look into that.

Q What did you mean by "share of the profits"?

40

A Share of Henig's profits on the bond— on the purchase of the mortgages, he would get these from his client, and I as attorney of the purchaser would be entitled to part of those fees.

Q Did you get them?

A Sometimes. Sometimes. I still think he owes me plenty. 10

Q Did you have anything to do with the making out of the checks to Mr. Henig?

A Some checks were made by me.

Q All made to Mr. Henig?

A As attorney, as attorney, particularly the one on this Horn mortgage.

Q Have you got that check?

A Yes, right there in my handwriting.

Q And in your opinion—

THE COURT: No. I don't care for his opinion. 20

Q And that is as far as you went by making the checks payable to Abraham Henig, attorney?

A All of the mortgages that were satisfactory to me, excepting these three mortgages and because Henig was secretary of the company I insisted on him getting more information to make sure Pincus knew what he was buying.

Q And that is why you made the checks payable to Abraham Henig, attorney? 30

A As attorney, because he was acting as somebody's attorney and I wanted to make sure of that.

Q Mr. Rosenblatt, you testified just a few moments ago that checks were given to Hr. Henig, and after the checks were given to Mr. Henig, you got the bonds and mortgages. How did you know he was secretary or that he was connected with the company?

A I was talking about the other one. I said the money was sent, and I only found it out, see, 40

when I saw the bonds and mortgages. That is the time I objected to it when I see his name on as secretary of the company; that is why I wanted to know all this information.

Q And that is why you had the name made Abraham Henig, attorney?

10

A Every time that I ever give to an attorney—

THE COURT: Just calm down and talk slowly.

WITNESS: Every check I ever give to an attorney that I mark for a particular purpose, that I make out all lawyers marked "attorney", unless it is for his own personal use, then I make it to his name.

Q But you stated that the reason why you made the check payable that way is because you found that Mr. Henig was the secretary or some officer of the company?

20

A I said nothing of the kind.

MR. ZUCKER: That is all.

THE COURT: That is all.

REDIRECT EXAMINATION by Mr. Calandra:

Q Mr. Rosenblatt, this is the check you had reference to.

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A Yes.

Q Marked Exhibit D-1 for identification.

A That is right. It reads "Abraham Henig, attorney".

MR. CALANDRA: That is all. Mr. Pincus Rosenblatt in rebuttal.

PINCUS ROSENBLATT, recalled in rebuttal.

DIRECT EXAMINATION by Mr. Calandra:

MR. ZUCKER: Your Honor, I think

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this letter of Mr. Rosenblatt's should have been marked in evidence.

(Letter marked Exhibit D-12.)

THE COURT: Do you want to mark the check?

(Check formerly marked D-1 for identification now marked Exhibit D-1.) 10

THE COURT: Go on, now.

Q Mr. Rosenblatt, on December 29th, 1925, did you go to the office of Mr. Henig and sign a discharge of the bond and mortgage in the Horn matter?

A I never did.

Q Did you sign any papers for Mr. Henig in his office on December 29, 1925?

A I never did. 20

Q Did you take an acknowledgment, I mean by that, did Mr. Henig ask you to raise you hand and acknowledge before him that you knew—(To Court:) I must go into this, if your Honor pleases—

MR. ZUCKER: I know, but you don't raise your hand when you take an acknowledgment.

THE COURT: And, in the second place, if he did not sign he certainly did not acknowledge. 30

MR. CALANDRA: I want to complete the entire—(interrupted)

THE COURT: He says he never executed any such paper. There cannot be anything plainer than that.

Q Did you, Mr. Rosenblatt, make any arrangement with Mr. Henig that he was to borrow this $10,300 on the Horn mortgage for his own purposes?

A I did not. 40

Q Did Mr. Henig tell you in December, 1925, or at any other time, that the Horn mortgage was being paid off and that he wanted to borrow the money for you for the purpose of aiding his real estate investment?

10 A He did not.

Q Did you go to see Mr. Henig at Overbrook this summer?

A I did.

Q At whose request?

A We got a— my son is in business and he got an expressman what does the deliveries— (interrupted)

MR. ZUCKER: I object, your Honor please.

Q At whose request?

20 A Mr. Henig's request.

Q Mr. Henig's request?

A Yes.

Q And did Barny Shapiro tell you that?

MR. ZUCKER: I object to that.

THE COURT: I will sustain the objection.

Q Well, you went to see Mr. Henig anyway, didn't you, at Overbrook?

A Yes.

30 Q Where did you meet Mr. Henig?

A On the front of the sanitorium or of what it is, I don't know.

Q And what did he say to you and what did you say to him?

A He said to me, "Rosenblatt, I heard that you started an action against me over the thing, you give it over to a lawyer," and he begged me that I should not do it and when he will come out from the sanitorium, he will try to make up

40 everything.

Q Did he tell you anything about the Horn money?

A Yes.

Q What did he tell you about the Horn money?

A He told me that everything what he owes, the Horn money, he will pay me, if he will come out and if I didn't try to sue him. 10

Q Did you tell him while he was in Overbrook that he should testify for you in these cases?

A I never did say anything.

Q Did you refer him to me?

A I—

MR. ZUCKER: I object to that, leading.

Q Did you say anything about that? 20

THE COURT: I will sustain the objection. That is a very leading question.

Q What did you tell him to do, Mr. Rosenblatt?

A I tell him when he is— I says to him, "Well, it is not in my hands any more and I give it over to my lawyer and you speak to my lawyer and I got nothing to do with it any more."

Q Mr. Rosenblatt, was it your understanding—

MR. ZUCKER: I object.

THE COURT: I will sustain the objection. 30

Q Did Mr. Henig represent you as your attorney at this Horn matter?

A As attorney?

Q As your lawyer in this Horn matter?

A He was— no.

MR. CALANDRA: Cross examine.

CROSS EXAMINATION by Mr. Zucker:

Q When did you first discuss that there was 40

a Horn mortgage open of record that you had that had been discharged?

A I did not discuss it at all.

Q When did you first know—(interrupted)

A When I was called over to Abraham Henig's office.

10

Q When was that?

A I tell you I don't know, I am not very good in the month.

Q Do you know the month?

A The month I don't know. I only know that I was called over to —(interrupted)

Q Was it this year, during 1929?

A No, it was not 1929.

Q Was it 1928?

A I think it was in 1928, I think.

20

Q Was it the summer or winter of 1928?

A It was in the summer.

Q July?

A I don't know. I wouldn't say the months.

Q Well, either, June, July was the month, if it was in the summer.

A It was in the summer but I don't remember the month.

THE COURT: What has this to do with it anyway? It doesn't make any difference when he first found it out. He found it out and proceeded with the foreclosure.

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MR. ZUCKER: Oh, he did not foreclose until the following year.

THE COURT: Well, that doesn't make any difference. Are you claiming estoppel?

MR. ZUCKER: Yes, sir.

THE COURT: (Continuing.) Laches, or something?

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MR. BECKER: No. Your Honor, we want to show by this line of testimony that when he learned Mr. Henig was incapacitated and probably would be found to be insane, that then, having the bond in his possession he would use that to collect the money.

MR. CALANDRA: You see what I— (interrupted)

THE COURT: Go on. I want to get through with this some time.

Q Did you get in touch with Mr. Horn?

A I did not.

Q When you discovered—

A I did not.

MR. CALANDRA: I object as not proper cross examination.

Q Where was Mr. Henig at that time?

A At what time? When I— He was home.

Q Do you know when Mr. Henig was taken to Overbrook?

A After— I— After when I was called to— when I was called over to his office, I asked where Mr. Henig was and they told me he was in his house.

Q Do you know when he went to Overbrook?

A I don't know.

Q When did you go up to Overbrook to see him?

A When he called me.

Q When?

A I dont' remember what month.

Q Was it in the winter?

A I don't think so. I don't think it was in the winter.

Q Spring?

A I don't think it was in the spring. I don't remember.

Q Summer?

A In the summer. I think it was in the summer. Yes, I am sure it was the summer.

10 Q Of 1929?

A 1928, I think, or maybe it is 1929. I am very poor in that things.

Q Well, don't you know if it was four or five months ago or a year ago or a year and a half ago?

A Well, I think it was— it must be about a year ago.

Q Is your memory on these things in any way affected?

20 A Well, I am very poor in months.

Q Isn't it possible if you are so poor in remembering, that you do not remember going to Mr. Henig's office?

A I remember when I was there, but I am poor on the months.

Q You are positive when you were there in Mr. Henig's office— or that you were in Mr. Henig's office, but you are not positive as to when you went up to the Overbrook Asylum.

A It was this summer.

30 Q Of what year?

A I think it was 1928. I am poor in the months— in the months of the year.

Q What did you go up there for?

A He sent for me.

Q Did you know at that time when he sent for you that a forgery of your name had taken place?

A If I know— Yes.

Q You did know then?

40 A Yes.

Q Did Abe Henig owe you any money?
A Abe Henig owes me any money?
Q Yes.
A Yes.
Q What month did he owe you?
A He owes me two thousand dollars. 10
Q Did you go up about the two thousand dollars?
A It is not due yet.
Q What securities did you have for the two thousand dollars?
A He give me a note.
Q So you did loan money to Mr. Henig without taking a mortgage as security?
A This was not a mortgage. This is a different thing. 20
THE COURT: It is perfectly apparent. You don't have to ask him if it was so.
Q Any other money due you from Mr. Henig?
A No.
Q Is that why you went to Overbrook, to see him about that two thousand dollars?
A Did not.
Q What did you go up there to see him about?
A I told you that he sent for me, he wanted—he begged me I should come over, he wanted to speak to me. 30
Q At that time you knew of the alleged forgery?
A I did.
Q And that Horn's mortgage and another mortgage had already been marked "Paid" on the record in the Court House?
A Yes.
Q And the only person you went to see about that mortgage that was due you was Mr. Henig?
A I didn't went to see him; he sent for me. 40

THE COURT: Well, you must have gone.

WITNESS: I was going, yes.

Q What was your purpose of going up there?

MR. CALANDRA: He has answered that, your Honor. He said Mr. Henig sent for him.

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MR. ZUCKER: I think that requires a different—

MR. CALANDRA: And he went.

THE COURT: You have asked that three or four times.

MR. ZUCKER: Your Honor, this is what I am driving at— see if it is material —hundreds of people can send for me and if I have no business dealings with them I don't go to them.

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THE COURT: That is a matter of argument. You have asked this man three times why he went to see Mr. Henig and he says because he sent for him. There is no use asking any more.

Q After your conversation with Mr. Henig, in which you say he said certain statements, did you then take any further steps to get your money?

A I did.

30

Q What steps did you take?

A If I see that I can't collect the money that he— (interrupted)

Q See you can't collect any money from whom?

A That— when I was called to the— up to his office, I got a telephone from Henig that I should come over to his office and he told me that he forged my name.

Q Just a minute. That is not responsive and I want an answer to this question: After you

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were in the office, after you were up to Over-

brook, did you take any steps after those two visits to collect your money?

A I didn't see what I could do and I gave it over to my lawyer to collect for me.

Q Immediately after that—

MR. CALANDRA: Your Honor pleases, the bill was filed in this case. That is a matter of record. 10

THE COURT: Yes.

MR. CALANDRA: It is in evidence. It speaks for itself.

THE COURT: It is all in.

MR. ZUCKER: That is all, I think. I don't think of any other questions.

THE COURT: That is all.

REDIRECT EXAMINATION by Mr. Calandra: 20

Q When were you sent to—(interrupted)

MR. ZUCKER: I object.

MR. CALANDRA: He brought it out on cross.

THE COURT: You finished with him. That is all, sir.

Now, how long do you want for your briefs? 30

MR. CALANDRA: We need the testimony.

THE COURT: Well, so many days after the testimony— ten days?

MR. ZUCKER: I think ten days ought to be enough.

THE COURT: Will you exchange briefs?

MR. ZUCKER: I will ask your Honor that I have ten days after receiving the brief of complainant to answer and that 40

time is the limit and that he have, if necessary, five more days in which to answer my brief, if he thinks it is necessary.

THE COURT: I think the sensible thing for you to do is to exchange briefs and the original briefs to be in ten days after the testimony, then you can each have five further days to answer the other fellow's brief. That is the fair way to do it and a little more expeditious.

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Memorandum.

Filed: July 28, 1930

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	Memorandum (Not for print)

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THIS MEMORANDUM IS NOT TO BE PUBLISHED IN THE OFFICIAL OR UNOFFICIAL REPORTS.

Mr. Anthony A. Calandra, for complainant.

Mr. Maurice J. Zucker, for Jacob and Bertha Horn.

Mr. William N. Becker, for Sander Roth and Pearl Roth.

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CHURCH, V. C.

This is a bill to foreclose a mortgage. It appears that on February 18, 1925, Jacob Horn and Bertha Horn, his wife, executed a bond and mortgage to the complainant for the sum of $10,000. The principal was payable within six months. The Horns subsequently, on January 4, 1926, sold the property to the defendants, Sander Roth and Pearl Roth, his wife. The search of the title, made before the purchase, disclosed a discharge of the

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$10,000 mortgage on file in the Register's office of Essex County. Under these circumstances, it appears to me that the Roths are innocent purchasers for value.

The replication filed claims that the discharge was a forgery. This cannot be set up as against the Roths. The bill is a simple one for foreclosure upon property owned by the Roths. There seems to be in the papers no counterclaim by Roth against Horn. Therefore, the bill should be dismissed, and the question raised as to payment, agency and forgery cannot be considered under these pleadings.

I will advise a decree dismissing the bill.

Decree.

Filed: September 16, 1929.

IN CHANCERY OF NEW JERSEY
74/42

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	Decree.

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This cause coming on to be heard in the presence of Anthony A. Calandra, Solicitor of the Complainant, Pincus Rosenblatt; William N. Becker, Solicitor of the Defendants, Sander Roth and Pearl Roth, and Maurice J. Zucker, Solicitor of the Defendants, Jacob Horn and Bertha Horn. and the court having examined the pleading and having taken testimony orally and in open court, and having heard and considered the argument of counsel and being satisfied that the Bill of Complaint filed herein should be dismissed; and being satisfied that the counter claim of the Defendants, Sander Roth and Pearl Roth filed in this cause against the Defendants Jacob Horn and Bertha Horn should also be dismissed, without prejudice,

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It is on this 16th day of September, 1930, Ordered, Adjudged and Decreed that the Bill of Complaint filed in this cause be dismissed, and it

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is further Ordered, Adjudged and Decreed that the counter claim of the Defendants, Sander Roth and Pearl Roth filed in this cause against the Defendants, Jacob Horn and Bertha Horn also be dismissed, without prejudice.

10 And it is further Ordered, Adjudged and Decreed that the Complainant, Pincus Rosenblatt pay to the Defendants Sander Roth and Pearl Roth the costs of this suit to be taxed, including a counsel fee of One Hundred Fifty ($150.00) Dollars, which is hereby allowed to said Defendants, Sander Roth and Pearl Roth; and to pay to the Defendants, Jacob Horn and Bertha Horn, the costs of suit to be taxed, including a counsel fee of One Hundred and Fifty ($150.00) Dollars, which is
20 hereby allowed to said Defendants, Jacob Horn and Bertha Horn, within twenty days after the service upon him of a true but uncertified copy of this decree and of said taxed costs; and that, in default of such payments, execution issue therefor, according to practice of this court, against the goods and chattels, lands, tenements, hereditaments and real estate of the said Complainant, Pincus Rosenblatt.

And it is further Ordered, Adjudged and Decreed, that the lands and real estate described in
30 the notice of pendency of this suit filed in the Office of the Register of the County of Essex in Book B 53 of Mortgages for said county, at page 536 etc., which said lands and real estate are in said notice described as follows:

Being in the Town of Irvington, County of Essex and State of New Jersey.

BEGINNING at the corner formed by the intersection of the westerly line of Elmwood Terrace with the northerly line of Springfield Avenue and
40 running; thence (1) along said line of Springfield

Decree.

Avenue, south 88 degrees, 33 minutes west 58.17 feet to a point in range with the westerly wall of the brick building standing on said premises; thence (2) along said wall and in continuation thereof north 1 degree 27 minutes west 100 feet; thence (3) north 88 degrees, 33 minutes east 58.17 feet to the said line of Elmwood Terrace; thence (4) along the same south 1 degree 27 minutes East 100 feet to the point or place of beginning. be and thes ame are hereby discharged from the claim for the payment of the monies sought by the Bill of Complaint filed herein to be enforced against said lands and real estate.

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Respectfully advised,

E. R. WALKER,
C.

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ALONZO CHURCH,
V. C.

A TRUE COPY

WILLIAM N. BECKER

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Order.

Filed: October 23, 1929

IN CHANCERY OF NEW JERSEY.

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN and BERTHA HORN, his wife and SANDER ROTH and PEARL ROTH, his wife, *Defendants.*	Order.

10

Application having been made by William N. Becker, Solicitor for Sander Roth and Pearl Roth his wife, defendants, for the insertion of the cost of the stenographic transcript of the proceedings at the trial of the above entitled cause, paid to Roger E. Salmon by the Defendants amounting to the sum of Seventy six Dollars ($76.00), in addition to the cost of suit to be taxed, including the counsel fee as set forth in the Decree dated September 16th, 1930, heretofore filed in this cause:

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It is, on this 23rd day of October, 1930 ORDERED, that the Complainant Pincus Rosenblatt, pay to the Defendants Sander Roth and Pearl Roth his wife, the bill of Roger E. Salmon paid by the Defendants for the stenographic transcript of the proceedings, amounting to the sum of Seventy six Dollars ($76.00), in addition to the cost of suit to be taxed, including the counsel fee heretofore ordered to be paid by the Complainant.

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Respectfully advised,

E. R. WALKER,
C.

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ALONZO CHURCH,
V. C.

Notice of Appeal.

Filed: October 26, 1930.

IN CHANCERY OF NEW JERSEY ....

Between PINCUS ROSENBLATT, *Complainant,* and JACOB HORN, BERTHA HORN, SANDER ROTH and PEARL ROTH, *Defendants.*	On Bill, &c. Notice of Appeal.

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The complainant appeals from the whole and every part of the final decree made in this court in the above stated cause.

ANTHONY A. CALANDRA,
Solicitor for Complainant.

Dated: October 20, 1930.

I conveive there is good cause for appeal in the above stated cause.

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THOMAS F. GUTHRIE,
Of Counsel with Solicitor for Complainant.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between 10 PINCUS ROSENBLATT, *Complainant-Appellant,* and JACOB HORN, BERTHA HORN, SANDER ROTH and PEARL ROTH, *Defendants-Appellees.*	On Appeal From Court of Chancery. Petition of Appeal

20 TO THE HONORABLE JUSTICES AND JUDGES OF THE COURT OF ERRORS AND APPEALS IN THE LAST RESORT IN ALL CAUSES:

The petition of Pincus Rosenblatt, the complainant-appellant in the above entitled cause, respectfully shows that:

Pincus Rosenblatt finds himself aggrieved by a Final Decree made in the Court of Chancery by 30 His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, filed September 16, 1930, wherein Pincus Rosenblatt was complainant and Jacob Horn, Bertha Horn, Sander Roth and Pearl Roth defendants, in these respects, to wit:

1. That said Final Decree dismisses the foreclosure suit of the complainant-appellant against the defendant-appellees.

2. That the Court erred in advising said final decree in that the defendant-appellees had not 40 proven that they had paid the principal sum due

on complainant-appellant's bond and mortgage, to complainant-appellant.

3. That the Court erred in accepting as proof of payment of complainant-appellant's mortgage a certified copy of a Discharge of Mortgage purporting to be the instrument signed by the complainant-appellant. 10

4. That the Court erred as a matter of law in the dismissing of complainant-appellant's Bill of Complaint and suit.

5. That the alleged Discharge of Mortgage (purporting to cancel and Discharge complainant-appellant's mortgage) is a forgery and was proven to be such and proof thereof disregarded by the dismissal of the Bill of Complaint. 20

6. That the Court erred in dismissing the complainant-appellant's bill of Complaint in that the testimony clearly showed that the complainant-appellants mortgage was not paid in accordance with law.

The petitoner therefore prays that said Final Decree of the said Chancellor may be, in particulars aforesaid reversed, set aside and on nothing holden, and that said Final Decree be set aside for the reasons he reinabove set forth; and that the petitioner may have such other relief in the premises as to this Court shall deem proper. 30

ANTHONY A. CALANDRA,
Solicitor of Complainant-Appellant.

THOMAS F. GUNTHRIE,
Of Counsel with Complainant-Appellant.

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Filed: May 29, 1929.

Exhibit C-1.

BOND

JACOB HORN to PINCUS ROSENBLATT

10 Dated, February 8th, 1925

KNOW ALL MEN BY THESE PRESENTS

That I Jacob Horn, the Town of Irvington in the County of Essex and State of New Jersey am held and firmly bound unto Pincus Rosenblatt the City of New York in the County of New York and State of New York in the penal sum of Twenty Thousand Dollars ($20,000.00) lawful money of the United States of America, to be paid to the said Pincus Rosenblatt, his legal representatives 20 or assigns, for which payment well and truly to be made I bind myself, my legal representatives or assigns firmly by these presents. Sealed with the Obligor seal and dated the 18th day of February One Thousand, Nine Hundred and Twenty-five.

The Condition of the Above Obligation is such, that if the above bounden Jacob Horn, his legal representatives or assigns, shall well and truly pay, or cause to be paid unto the above named Pincus Rosenblatt his legal representatives or as- 30 signs, the just and full sum of Ten Thousand Dollars ($10,000.00) six months from the date on the 18th day of August which will be in the year One Thousand, Nine Hundred anw Twenty-five, and the interest thereon, to be computed from the date hereof at and after the rate of six per cent. per annum, and to be paid semi-annually without any fraud of other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

40

Exhibit C-1.

And it is hereby expressly agreed that should any default be made in the performance of any of the terms, covenants and conditions contained in the mortgage accompanying this bond (the said terms, covenants and conditions, and all matters and things contained in said mortgage being hereby made a part hereof as though particularly incorporated herein), or should any of the events or contingencies occur by reason of which the time for the payment of the said mortgage matures as set forth therein, or should any default be made in the payment of the said interest of any part thereof, on any day whereon the same is made payable as above expressed, or should any tax, assesement, water rent of other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable, and should the said interest, remain unpaid and in arrear for the space of sixty days, or said tax, assessment, water rent of other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of thirty days, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of money, or so much thereof as may then remain unpaid, with all arrearage of interest thereon, shall, at the option of the said obligee, or the legar representatives of the said obligee, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

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Exhibit C-1.

The principal secured by this bond, or any part thereof not less than Five Hundred Dollars, may be paid at any time before maturity, on any interest day herein reserved, upon thirty days' written notice to the holder of the mortgage accompanying this bond.

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And it is further expressly agreed that the said obligor shall not be entitled to and will not claim any credit on the interest payable on the mortgage securing this bond for taxes which may be levied upon the mortgaged premises, or for any part of said taxes.

JACOB HORN

Signed, Sealed and Delivered
in the presence of

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ABRAHAM HENIG

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Exhibit C-2.

This Mortgage, made the 18th day of February, One Thousand Nine Hundred and twenty-five. Between Jacob Horn and Bertha Horn, his wife, the Town of Irvington in the County of Essex and State of New Jersey of the First Part, hereinafter known as the Mortgagor, and Pincus Rosenblatt the City of New York in the County of New York and State of New York of the Second Part, hereinafter known as the Mortgagee, Witnesseth, that the said mortgagor, for and in consideration of the sum of Ten Thousand ($10,000.00) Dollars, lawful money of the United States of America, to them in hand well and truly paid by the mortgagee at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said mortgagor therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien, enfeoff and confirm to the said mortgagee and to their legal representatives and assigns, All that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Irvington in the County of Essex and State of New Jersey.

Beginning at the corner formed by the intersection of the Westerly line of Elmwood Terrace with the Northerly line of Springfield Avenue and running thence (1) along said line of Springfield Avenue, South eighty-eight degrees thirty-three miuutes West fifty-eight feet and seventeen hundredths of a foot to a point in range with the westerly wall of the brick building standing on said premises; thence (2) along said wall and in continuation thereof West one degree twenty-seven minutes West one hundred feet, thence (3) North

Exhibit C-2.

eighty-eight degrees thirty-three minutes East fifty-eight feet and seventeen one hundredths of a foot to the said line of Elmwood Terrace, and thence (4) along the same South one degree twenty-seven feet East one hundred feet to the point or place of BEGINNING. Bg. same as C-69-13.

Being part of the same premises heretofore conveyed to the party of the first part by Deed recorded in the Essex County Register's Office in Book C-59 of Deeds for said county on page 13.

Together with all and singular the 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 mortgagor of, in and to the same, and of, in and to every part and parcel thereof,

To have and to hold all and singular the above described tract or lot of land and premises, with the appurtenances, unto the said mortgagee, his legal representatives and assigns, to the only proper use, benefit and behoof of the said mortgagee, his legal representatives and assigns forever. Provided always and it is agreed by and between the parties to these presents, that if the said mortgagor, their legar representatives and assigns do and shall well and truly pay, or cause to be paid, to the said mortgagee, his legal representatives and assigns, the sum of Ten Thousand Dollars ($10,000.00) as follows: six months from the date hereof, which is on the 18th day of August, 1925, with lawful interest for the same, at the rate of six per cent. per annum, payable semi-annually, according to the conditions of a certain bond, bearing even date herewith, in the

Exhibit C-2.

penal sum of Twenty Thousand ($20,000.00) Dollars, made by said Jacob Horn without any deduction or defalcation for taxes, assessments, or any other imposition whatsoever, thence and from thenceforth these presents and said obligation shall cease and be void, anything herein and therein contained to the contrary in anywise notwithstanding.

And the said Mortgagors, for themselves, their legal representatives and assigns do covenant and grant to and with the said mortgagee, his legal representatives and assigns that they shall not nor will claim or demand or be entitled to receive any credit or credits on the interest payable hereon, or on the moneys to secure payment of which this mortgage is made, for so much of the taxes assessed against said lands as is equal to the tax rate applied to the amount due on this mortgage or any part thereof.

And the Mortgagor hereby warrants and defends the title to the said lands and premises.

It is Agreed that in the event of the enactment of any law by the State of New Jersey affecting the convenants contained in this mortgage, the principal sum shall immediately became due and payable.

The mortgagor shall and will keep the buildings erected and to be erected upon the lands above conveyed insured against loss or damage by fire by insurers, through such broker or brokers selected and in an amount approved by the mortgagee, his legal representatives and assigns, and assign the policy or policies and certificate or certificates thereof to the mortgagee, his legal representatives and assigns, as collateral security for the payment

Exhibit C-2.

of the principal and interest aforesaid; and it is agreed that if the mortgagor, their legal representatives and assigns, shall neglect to pay all or any tax, assessment or other municipal or governmental rate, charge, imposition, or any installment or installments of monthly Building Loan dues and interest, or any sums payable under any lien superior hereto, or any premium for insurance, as aforesaid, on any day whereon the same shall become due and payable, after the period of default aforesaid, then it shall be lawful for the mortgagee, his legal representatives and assigns to pay such charges, and the sum or sums so paid shall be a lien on the said mortgaged premises added to the amount secured hereby, with interest at six per cent, per annum, and, in the event of such payment, at the option of the mortgagee his legal representatives or assigns, the principal sum secured hereunder shall become due and payable, and agrees that if default be made in the payment of any installment of principal or of the said interest, or any part thereof, on any day whereon the same is made payable as hereinbefore expressed, and should the same remain unpaid and in arrears for the space of sixty days, or if default be made in the payment of any of said taxes, water rents or other municipal or governmental rate, charge, imposition or any money payable under the terms of any mortgage lien paramount hereto, on any day whereon the same shall become due and payable, and should the same remain unpaid and in arrears for the space of thirty days, or in the event that any building shall be demolished or removed from the mortgaged premises (or if the removal or demolition thereof is threatened(without the consent in writing of the mortgagee or holder of this mortgage, or in the event that the

Exhibit C-2.

owner of the mortgaged premises shall fail, within ten days after written request therefor, to furnish a statement of the amount due and owing for principal and interest hereunder, or evidence of the payment of taxes, water rents, interest and principal of prior mortgages or any carrying charges, or in the event that default shall be made in any of the terms, covenants and conditions herein contained, or contained in any mortgage constituting a lien upon the mortgaged premises prior and superior to the lien hereof, or should any action be commenced to foreclose any such prior mortgage, or should the owner of the mortgaged premises fail, for a period of thirty days, to begin compliance with any requirements, recommendation or recommendations of any of the Departments or authority of the State of New Jersey, or the municipality where such mortgaged premises are situate, such municipality or State Department or authority having jurisdiction over the mortgaged premises, or in the event of the adjudication in bankruptcy or insolvency of the mortgagor or the owner of the mortgaged premises, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of money, with all arrearages of interest thereon, and any other charges paid by the holder of this mortgage, shall, at the option of the mortgagee, and assigns, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

And agrees that the said mortgagee, his legal representatives or assigns shall and may, from

Exhibit C-2.

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

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

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

JACOB HORN
BERTHA HORN

Signed, sealed and delivered
in the presence of
ABRAHAM HENIG

Exhibit C-2.

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

Be it Remembered that on this 18th day of February One Thousand Nine Hundred twenty-five before me A Subscriber personally appeared Jacob Horn and Bertha Horn, his wife who, I am satisfied, are the mortgagors mentioned in the within Mortgage, 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 Bertha Horn 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 said husband.

ABRAHAM HENIG,
A Master in Chancery of New Jersey.

MORTGAGE

Jacob Horn and Bertha Horn, his wife to Pincus Rosenblatt.

Dated, February 18th, 1925.

Received in the Register's Office of the County of Essex, N. J., on the 20th day of February A. D., 1925 at 12:02 o'clock in the afternoon, and Recorded in Book B 53 of Mortgages for said County, on pages 536-538.

HOWARD S. DODD, Register

Compared by 42 and 21.

Exhibit D-1.

THE STATE BANK

New York 2-18-1925 No.....

Pay to the

Order of ABRAHAM HENIG Atty $14000/00

10 Fourteen thousand 00/100.....Dollars

(Signed) Pincus Rosenblatt

For Deposit

(Endorsement) Abraham Henig Atty.

Pay to the order of any Bank, Banker or Trust Co.
all prior endorsements guaranteed
Feb. 18, 1925.
The Broad and Market National Bank, 55-22 Newark, N. J. 55-22

H. C. Gardner, cashier.

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PAID

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Exhibit D-4.

PINCUS ROSENBLATT
TO
JACOB HORN, ET UX

KNOW ALL MEN BY THESE PRESENTS, That I, Pincus Rosenblatt, Do Hereby Certify, That a certain mortgage bearing date the 18th day of February in the year of Our Lord One Thousand Nine Hundred and Twenty-Five, made and executed by Jacob Horn and Bertha Horn, his wife, and recorded in the office of the Register of the County of Essex in Book B-53 of Mortgages, page 536 on the 26th day of February, 1925 at.....o'clock..—M., is paid and satisfied; and I do hereby consent that the same may be discharged of Record.

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WITNESS hand and seal this 29th day of December 1925.

Pincus Rosenblatt (Seal)

Witness:
Abraham Henig

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Exhibit D-4.

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

BE IT REMEMBERED, That on this 29th day of December in the year of our Lord One Thousand Nine Hundred and Twenty-Five, before me, A Master in Chancery of New Jersey, personally appeared Pincus Rosenblatt, who, I am satisfied is the person mentioned in the foregoing Discharge of Mortgage, to whom I first made known the contents thereof and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

Abraham Henig, A Master in Chancery of New Jersey.

Received in the Office December 31st, A. D., 1925 at 3:05 P. M.

No. 4.

Exhibit D-4.

Office of

REGISTER OF DEEDS AND MORTGAGES

Essex County, New Jersey

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

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I, HOWARD S. DODD, Register of Deeds and Mortgages of the County of Essex, State of New Jersey, do hereby certify that the foregoing is a true and correct copy of the record of a certain Discharge of Mortgage made by Pincus Rosenblatt to Jacob Horn, et ux and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book U. of Discharges of Mortgages for said County on page 386.

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In Testimony Whereof, I have hereunto set my hand and official seal this 8th day of June A. D. 1929.

(SEAL)

HOWARD S. DODD,
Register of Deeds and Mortgages.

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Exhibit D-4.

Office of

REGISTER OF DEEDS AND MORTGAGES
Essex County, New Jersey

CERTIFIED COPY of Discharge of mortgage Pincus Rosenblatt to Jacob Horn, et ux.

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Recorded December 31st, 1925 in Book U. of Discharges of Mortgages, page 386.
Compared by 65 & 57.

(Extract of Exhibits D-5 and D-6)

CHECKS OF ABRAHAM HENIG TO PINCUS ROSENBLATT

August 20, 1925, No. 2961 Broad & Market Natl. Bank, $870.00.

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Nov. 16, 1925, No. 3230, Broad & Market Natl. Bank, $575.00.

Feb. 18, 1926, No. 3540, Broad & Market Natl. Bank, $870.00.

Apr. 17, 1926, No. 3755, Broad & Market Natl. Bank, $160.00.

Aug. 17, 1926, No. 4166, Broad & Market Natl. Bank, $600.00.

Aug. 28, 1926, No. 4205, Broad & Market Natl. Bank, $870.00.

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Sept. 29, 1926, No. 4305, Broad & Market Natl. Bank, $30.00.

Nov. 15, 1926, No. 4515, Broad & Market Natl. Bank, $500.00.

Dec. 15, 1926, No. 4594, Broad & Market Natl. Bank, $500.00.

Jan. 15, 1927, No. 4722, Broad & Market Natl. Bank, $850.00.

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(Extract of Exhibits D-5 and D-6)

Feb. 15, 1927, No. 4790, Broad & Market Natl. Bank, $680.00.

Feb. 26, 1927, No. 4830, Broad & Market Natl. Bank, $750.00.

Mar. 3, 1927, No. 4845, Broad & Market Natl. Bank, $480.00.

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Mar. 8, 1927, No. 3614, Broad & Market Natl. Bank, $500.00.

Mar. 9, 1927, No. 4912, Broad & Market Natl. Bank, $500.00.

Mar. 25, 1927, No. 4957, Broad & Market Natl. Bank, $450.00.

Apr. 16, 1927, No. 5012, Broad & Market Natl. Bank, $1,530.00.

May 5, 1927, No. 5083, Broad & Market Natl. Bank, $150.00.

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May 18, 1927, No. 5120, Broad & Market Natl. Bank, $500.00

June 21, 1927, No. 5223, Broad & Market Natl. Bank, $500.00.

July 20, 1927, No. 5306, Broad & Market Natl. Bank, $500.00.

Aug. 25, 1927, No. 5390, Broad & Market Natl. Bank, $120.00.

Sept. 6, 1927, No. 5443, Broad & Market Natl. Bank, $1,250.00.

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Oct. 1, 1927, No. 5525, Broad & Market Natl. Bank, $150.00.

Nov. 5, 1927, No. 5602, Broad & Market Natl. Bank, $612.50.

April 28, 1928, No. 6053, Broad & Market Natl. Bank, $375.00.

May 5, 1928, No. 6069, Broad & Market Natl. Bank, $343.75.

June 9, 1928, No. 6152, Broad & Market Natl. Bank, $240.00.

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(Extract of Exhibits D-5 and D-6)

Sept. 17, 1928, No. 6396, Broad & Market Natl. Bank, $480.00.

Sept. 20, 1928, No. 6416, Broad & Market Natl. Bank, $120.00.

Nov. 5, 1928, No. 6548, Broad & Market Natl. Bank. $325.00.

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Exhibit D-7.

THIS INDENTURE, made the 4th day of January, in the year of Our Lord One Thousand Nine Hundred and Twenty-Six BETWEEN Jacob Horn and Bertha Horn, his wife, of the City of Newark, in the County of Essex and State of New Jersey, party of the first part; AND Sander Roth and Pearl Roth, his wife, of the City of Newark, 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 them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, grant, bargain, sell, alien release, enfeoff, convey and confirm unto the said party of the second part, and to their heirs and assigns, forever, ALL that tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the Town of Irvington, in the County of Essex and State of New Jersey.

BEGINNING at the corner formed by the intersection of the westerly line of Elmwood Terrace with the northerly line of Springfield Avenue and running thence (1) along said line of Springfield Avenue South eighty-eight degrees thirty-three minutes West fifty-eight and seventeen hundredths feet to a point in range with the westerly wall of the brick building standing on said premises;

Exhibit D-7.

thence (2) along said wall and in continuation thereof North one degree twenty-seven minutes west one hundred feet; thence (3) North eighty-eight degrees thirty-three minutes East fifty-eight and seventeen hundredths feet to the said line of Elmwood Terrace; and thence (4) along the same South one degree twenty-seven minutes East one hundred feet to the point or place of BEGINNING.

Being part of the same premises heretofore conveyed to Jacob Horn, one of the parties of the first part hereto, by deed recorded in the office of the Register of the County of Essex, in book C-69 of Deeds page 13 etc. Said premises are conveyed subject to a mortgage in the principal sum of $85,000.00, which has been reduced by payment to the principal sum of $79,900.00, and to a mortgage in the principal sum of $25,000.00 which has been reduced by payment tot he sum of $22,000.00 both of which mortgages the said parties of the second part hereto hereby assume and agree to pay.

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, and the reversion and reversions, remainder and remainders, rents, issues and the profits thereof, and of every part and parcel thereof;

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,

Exhibit D-7.

their heirs and assigns, to the proper use, benefit and behoof of the said party of the second part, their heirs and assigns forever:

And the said Jacob Horn, does for himself, his heirs, executors and administrators covenant and agrees to and with the said party of the second part, their heirs and assigns, that the said Jacob Horn is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

And also, that the said party of the first part 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 Jacob Horn, will Warrant secure, and forever defend the said land and premises unto the said Sander Roth and Pearl Roth, 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.

And the said party of the first part, their heirs and assigns shall and will at any time or times hereafter, upon the reasonable request, and at the

Exhibit D-7.

proper costs and charges in the law, of the said party of the second part their heirs and assigns, make, do, and execute, or cause or procure to be made, done and executed, all and every such further or other lawful and reasonable acts, conveyances and assurances in the law for the better and more effectually vesting the premises hereby intended to be granted to the party of the second part their heirs and assigns forever, as shall be reasonably required.

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

Signed, Sealed and Delivered
in the presence of

JACOB HORN (L. S.)
BERTHA HORN (L. S.)

ABRAHAM HENIG
($25.00 in Stamps)

Exhibit D-7.

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

Be it remembered, That on this 4th day of January, in the year of our Lord One Thousand Nine Hundred and Twenty-Six, before me, the subscriber, A Master in Chancery of N. J., personally appeared Jacob Horn and Bertha Horn, his wife, who, I am satisfied are the grantors mentioned in the within Instrument to whom I first made 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 Bertha Horn, being by me privately examined, separate and apart from her said husband, further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

ABRAHAM HENIG,
A Master in Chancery of New Jersey.

Exhibit D-8.

DEED.

JACOB HORN AND BERTHA HORN, his wife,
to
SANDER ROTH AND PEARL ROTH, his wife,

10 Compared by 43 & 19-31
Dated January 4, 1926.

Received in the Register's Office of the County of Essex, N. J. on the 6th day of January A. D., 1926, at 9:13 o'clock, in the forenoon, and Recorded in Book U 73 of Deeds for said County, on page 128-129.

HOWARD S. DODD,
Register.

Wm. N. Becker Counsellor at Law
20 185 Market St., Newark, N. J.

ARTICLES OF AGREEMENT made the Twenty-Sixth day of October in the year One Thousand Nine Hundred and Twenty-Five between Jacob Horn and Bertha Horn, his wife, parties of the first part, and Sander Roth and Pearl Roth, his wife parties of the second part:

Witnesseth as follows: The parties of the first part, in consideration of One Dollar, paid by the
30 parties of the second part, the receipt of which by the parties of the first part is hereby acknowledged, and also in consideration of the conveyance by the parties of the second part of the real property hereinafter mentioned, hereby agree to grant and convey to the parties of the second part, at a valuation for the purpose of this contract of One Hundred Forty ($140,000.00) Thousand Dollars,

All that certain tract or parcel of land and
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Exhibit D-8.

premises, hereinafter particularly described, situate, lying and being in the Town of Irvington, County of Essex and State of New Jersey.

BEGINNING at the corner formed by the intersection of the Westerly line of Elmwood Terrace and the northerly line of Springfield Avenue, and running thence (1) Along said line of Elmwood Terrace, South 88 degrees, 33 minutes West and 58 feet and 17 hundredths of a foot to a point in range with the westerly wall of the brick building standing on said premises; thence (2) Along said wall and in continuation thereof North 1 degrees, 27 minutes west 100 feet, and thence (3) North 88 degrees, 33 minutes East 58.17 feet to the said line of Elmwood Terrace, and thence (4) Along the same South 1 degree, 27 minutes East 100 feet to the point and place of BEGINNING.

And the parties of the second part, in consideration of One Dollar paid by the parties of the first part, the receipt of which the parties of the second part is hereby acknowledged, and also in consideration of the conveyance by the parties of the first part of the real property hereinbefore mentioned, agrees to grant and convey to the parties of the first part, at a valuation for the purposes of this contract of Forty ($40,000.00) Thousand Dollars,

All that tract or parcel of lands and premises, hereinafter particularly described, situate and lying and being in the City of Newark, County of Essex and State of New Jersey.

BEGINNING in the westerly line of Monmouth Street at a point therein distant two hundred ninety two feet ten inches northerly from the northwesterly corner of the same and Waverly

Exhibit D-8.

Place as laid out on map of Henry Corey made by J. M. Grummon; thence running northerly along the westerly line of Monmouth Street thirty five feet; thence westerly at right angles to Monmouth Street running through the party wall dividing the houses standing upon the premises hereby described from the one adjoining on the north ninety five feet; thence southerly parallel with Monmouth Street thirty five feet; thence easterly at right angles to Monmouth Street running through the party wall dividing the house standing upon the premises hereby described from the one adjoining on the south ninety five feet to the westerly line of Monmouth Street and place of BEGINNING.

Being the same premises conveyed to Selma Goerke by Ralph B. Schmidt, Sheriff, by deed dated December 30th 1916 and recorded in Book P-58 of Essex County Deeds on page 56 etc.

This conveyance is expressly subject to: Party wall rights, if any, of owners of adjoining premises in the walls mentioned in the above description.

Said premises which are to be conveyed by the parties of the first part are to be conveyed subject to the following incumbrances:

First mortgage held by the Colonial Life Ins. Co. in the nominal sum of $85,000.00, which mortgage is for a period of 5 yrs. from the date thereof with the payment clauses of $637.50 every three months, with interest at 6% payable quarterly.

Subject to a second mortgage in the nominal sum of $25,000.00 held by Samuel Werbel, which mortgage is for a period of three years from the date thereof and has about two more years to run.

Exhibit D-8.

Twenty Three apartments having leases thereon expiring Oct. 1st 1926.

Corner drug store—5 years lease expiring April 1st 1929.

Delicatessen store—2 years lease and 3 yrs. privilege, dated April 1st, 1925 and expiring April 1st 1927. 10

Barber—1 year verbal lease and shoemaker—1 year verbal lease and represents that the present monthly rental amounts to $1515.00.

Said premises which are to be conveyed by the parties of the second part are to be conveyed subject to the following incumbrances:

Subject to a first mortgage held by the Franklin Savings Institution of Newark, N. J., in the nominal sum of $15,000.00 payable one year from the date thereof and payable $250.00 semi-annually with interest at 6% payable semi-annually. 20

One year verbal lease held by shoemaker, and represents that the monthly rental amounts to $527.00, that all other tenants are monthly tenants.

The difference between the values of the respective premises, over and above incumbrances shall be deemed for the purposes of this contract to be Five Thousand ($5,000.00) Dollars in favor of the parties of the first part, and the said parties of the second part agree to pay the same as follows: 30

Five Thousand ($5,000.00) Dollars in cash at closing of title together with all payments made on the mortgages.

The said party of the first part agrees to sell to the parties of the second part all the coal now 40

Exhibit D-8.

in the premises at the purchase price, and is not to take away any portion thereof.

The said party of the first part is to complete in all details the painting contract entered into with Weiss Brothers for the painting of certain work in and upon the premises 1300-1302 Springfield Avenue, Irvington, N. J., which contract is verbal.

Each of the parties to these presents hereby agrees to convey the property above described, as sold by that party, free from all incumbrances, except as above specified, and to execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered to the other party, or to the assigns of the other party(the deed to be drawn in each case at the cost of the vendor), a proper warranty deed containing full covenants, duly executed and acknowledged to convey and assure to the grantees an absolute fee of said premises.

Said deeds shall be delivered and exchanged on the 2nd day of January 1926 at 10 o'clock A. M. at the office of Abraham Henig, 9 Clinton St. in the City of Newark.

Each of the parties hereto assumes the risk of loss or damages by fire prior to the completion of this contract on the premises owned by them respectively. The rents of the said premises, and the securities, insurance premiums and interest and princapal on mortgage, if any, shall be adjusted, apportioned and allowed up to the day of taking title.

If there be water meters on the premises, the respective sellers shall furnish readings to dates not more than thirty days prior to the time herein

Exhibit D-8.

set for closing title and the unfixed meter charges for the intervening time shall be apportioned on the basis of such last readings.

All personal property appurtenant to or used in the operation of said premises is represented to be owned by the respective sellers and is included in this exchange.

This contract covers all right, title and interest of the respective sellers, of, in and to any lands lying in the bed of any street, road or avenue, opened or proposed, in front of or adjoining the premises to be conveyed to the centre line thereof, or all right, title, and interest of the respective sellers in and to any awards made or to be made in lien thereof, and the sellers will execute and deliver to the purchasers, on closing of title or thereafter, on demand, all proper instruments for the conveyance of such title and the assignment and collection of such awards.

Par. 1—The rents of said premises, insurance premiums, water, rents, taxes and interest on Mortgage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said Deed.

Par. 2—Gas and electric fixtures and chandeliers, carpets, linoleums, screens, windows, awnings, mats and matting in halls, ash cans and heating apparatus, if any, are included in this sale.

Par. 3.—The risk of loss or damage to said premises by fire or otherwise, until the delivery of said Deed, is assumed by said party to his property.

Par. 4.—In case the premises shall suffer injury beyond the ordinary wear and tear, the party as to his property shall repair the damage before the

Exhibit D-8.

date for the delivery of said Deed, or make an appropriate deduction from the purchase price herein stated.

Par. 5—It is understood and agreed that the buildings upon said premises are all within the boundary lines of the property as described in the Deed therefor, and that there are no encroachments thereon, and that the buildings comply with municipal ordinances and regulations and the regulations of the New Jersey State Board of Tenement House Supervision, to be shown by the report of the secretary where such ordinances and regulations apply.

Par. 6—It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any Martin Act proceedings, or any Act for the Sale of Land for non-payment of the municipal taxes or assessments.

Par. 7—If at the time of delivery of the deed the premises, or any part thereof, shall be or shall have been affected by an assessment or assessments which are or may become payable in annual installments, of which the first installment is then due or has been paid, then for the purposes of this contract all the unpaid installments of any such assessment, including those which are to become due and payable after the delivery of the Deed, shall be deemed to be due and payable, and to be liens upon the premises affected thereby, and shall be paid and discharged by the seller thereof upon the delivery of the Deed.

Par. 8—Party of the first part acknowledges as the authorized broker in this sale, and agrees to pay.

Exhibit D-8.

And it is understood that the stipulations aforesaid are to apply to and bind the heirs, executors, administrators and assigns of the respective parties.

In Witness Whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written. 10

JACOB HORN (Seal)
BERTHA HORN (Seal)

Witness
ABRAHAM HENIG

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Exhibit D-8.

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

Be it Remembered, That on this 28th day of October in the year of our Lord One Thousand Nine Hundred and Twenty Five, before me, the subscriber, an Attorney at Law of New Jersey personally appeared Jacob Horn and Bertha Horn, his wife who, I am satisfied are the grantors mentioned in the within Instrument to whom I first made known the contents thereof, and thereupon they acknowledged that, they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said Bertha Horn, wife as aforesaid being by me privately examined, separate and apart from their said husband, further acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, FREELY, without any fear, threats or compulsion of their said husband.

ABRAHAM HENIG,
An Attorney at Law of New Jersey.

Exhibit D-8.

JACOB HORN and BERTHA HORN,
his wife
with
SANDER ROTH and PEARL ROTH,
his wife

CONTRACT OF EXCHANGE 10

Exhibit D-8.

Protest $400. 00/100
U. S. Pearl Button Mfg. Co. Inc.
for
First National Bank of Guttenberg
Guttenberg, N. J., Dec. 10, 1923
Frank J. Adelberg, Notary Public

Fees - -	$2.00	20
Notice - -	$ 50	
Postage - -	$ 10	
	$2.60	

United States of America
State of New Jersey ss.

Be it known, that on the Tenth day of December in the year of our Lord one thousand nine hundred and Twenty Three at request of the First National Bank at Town of Guttenberg, Hudson County, New Jersey, I, Frank J. Adelberg, a Notary Public, in and for the State of New Jersey, by lawful authority duly commissioned and sworn dwelling in.....did present the original Check hereto affixed, to First National Bank, at its counter and demanded payment of same which was refused. 30

Thereupon, I, the said Notary, at the request aforesaid, did Protest, and by these presents do 40

Exhibit D-8.

publicly and solemnly protest, as well against the Maker and Endorser of said Check as against all others whom it doth and may concern, for exchange, re-exchange, and all costs, damages and interest already incurred, and to be hereafter incurred, for want of payment of same.

10

Thus done and protested in the Town of Guttenberg aforesaid.

In Testimonium Veritatis

Fee - -	$2.00
Notices -	$ .50
Postage -	$ .10
	$2.60

FRANK J. ADELBERG,
Notary Public.
(SEAL)

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Exhibit D-8.

$400.00 Newark, N. J., August 21, 1923

Five month after date..... promise to pay to the order of .....Pincus Rosenblatt.....
Four Hundred .....Dollars
Payable at 411-13 24th Street, New York, N. Y.
Value received 10
No.....Due 1/21/24.

United States Pearl Button Mfg. Co.
Nathan Drachman, *Pres.*
John Emc, *Treas.*

THE FIRST NATIONAL BANK
of
No. 1997 Guttenberg, N. J., Oct 18, 1923.
Pay to the
order of Pincus Rosenblatt.....$500.00 20
Five Hundred 00/100.....Dollars

Nathan Drachman, *Pres.*
John Emc, *Secy.*

U. S. Pearl Button Mfg. Co.
Incorporated

411-413 24th St., Guttenberg, N. J.

$400.00 August 21, 1923.

Four Months after date..... promise to pay to the 30
order of .....Pincus Rosenblatt.....
Four Hundred .....Dollars

Payable at 411-13 24th Street, New York, N. Y.
Value received

No.....Due 12/21/23.

United States Pearl Button Mfg. Co.

Nathan Drachman, *Pres.*
John Emc, *Treas.* 40

Exhibit D-8.

$400.00 Newark, N. J., August 21, 1923

Six months after date..... promise to pay to the order of .....Pincus Rosenblatt.....
Four Hundred .....Dollars
Payable at 411-13 24th Street, New York, N. Y.
10 Value received
No.....Due 2/21 24.

United States Pearl Button Mfg. Co.
Nathan Drachman, *Pres.*
John Emc, *Treas.*

THE FIRST NATIONAL BANK
of
No. 1525 Guttenberg, N. J., Nov. 23, 1923.

Pay to the
20 order of Pincus Rosenblatt.....$400.00
Four Hundred 00/100.....Dollars
U. S. Pearl Button Mfg. Co.
Incorporated

411-413 24th St., Guttenberg, N. J.
(Endorsement) Pincus Rosenblatt
Returned by First National Bank, Guttenberg, N. J., for reasons stated below:

INSUFFICIENT FUNDS.

30 $350.00 Newark, N. J., August 21, 1923.

Seven months after date..... promise to pay to the order of .....Pincus Rosenblatt.....
Three Hundred Fifty.....Dollars
Payable at 411-13 24th Street, New York, N. Y.
Value received

No.....Due 3/21/24.

Nathan Drachman, *Pres.*
40 John Emc, *Treas.*

Exhibit D-9.

Telephone Watkins 9501

P. ROSENBLATT
Jobber in
Woll and Worsted Yards
137 West 25th Street

New York, Dec. 28th, 1923. 10

Mr. Abraham Henig,
9 Clinton St.,
Newark, N. J.

Dear Mr. Henig:

I am enclosing herewith all my checks in the matter of the United States Pearl Button Mfg. Co.

There is one check for $500.00 dated Oct. 18th on this check they gave me a different check for $250.00 which was paid leaving a balance due me of $250.00. The other check for $400.00 tendered in payment for one of the notes was protested. When this check came back I re-deposited same, and it was again protested making protest charges for $5.20 for protesting twice. 20

The four notes represent the $1550.00 due me on the mortgage. Mr. Emmer was here, and he told me in looking over his books that the $250.00 still due me on the $500.00 was placed on their mortgage account on their books. 30

I am giving you this information so that you may guide yourself accordingly.

P/S

Yours, truly,

P. Rosenblatt.

Owes on Mortgage	1950.00—4 notes & 1 check	
Balance on check	250.00—1 check $500	
	$2200.00	paid $250
		$250

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Exhibit D-10.

Aug. 30, 1925

Dear Henig—

Received the check and thanks very much—
I called you up yesterday and just missed you—
It was regarding Alvin Baker I wanted to speak
10 to you—

He's working for years and getting a good salary so I asked Herman to try and collect 10% of his salary and when Herman spoke to him, he said that in about (2) weeks he'll make a settlement with me, since then a few weeks passed, and not a word, so Herman told him he'll not wait longer, and try and collect that 10%—so Alvin Baker said if Herman is going to trouble him he's going to tell you to put him through bankruptcy,
20 now what I want is, as a friend of mine, don't do that, but try, and get me some money first—

Trusting you will do that for me I am

Sincerely yours,

Pincus Rosenblatt.

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Exhibit D-11.

MERCHANTS & MANUFACTURERS
NATIONAL BANK

NOTICE

Please present this form properly receipted at the bank in exchange for the certified item described hereon.

.....192 10

We have this day Certified and charged your account for the following

Note
Draft
Check√

Dated Jan. 5, 1926.....Number.....
To order of Jacob Horn.....Amount $11,727.35
Presented by Holder.....Time 12.25
Received the above described Certified Item on..... 20

Sander & Pearl Roth,
Maker

PAID—1-5-26

No. 2289

JACOB HORN
Carpenter & Builder
1300 Springfield Ave.
Irvington, N. J., Aug. 31st 1925

Pay to the
Order of Abraham Henig Atty.....$10,300.00
Ten Thousand three hundred and no/100....Dollars
The East Orange Bank
East Orange, N. J.
(Signature) JACOB HORN
55-160 Member Federal Reserve System

(Perferation) PAID 9-3-25

(Endorsement) Abraham Henig Atty.
Pay to the order of any Bank, Banker or Trust Co.
All prior endorsements guaranteed Sept. 1, 1925
The Broad and Market Nat'l Bank
55-22 Newark, N. J. 55-22
H. C. Gardner, Cashier
Prior endorsements guaranteed Sept. 2, 1925
Federal Reserve Bank of New York. 1-120

Stipulation.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between PINCUS ROSENBLATT, *Complainant-Appellant,* *—and—* JACOB HORN, BERTHA HORN, et als, *Defendants-Appellees.*	On Appeal, &c. STIPULATION.

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In the trial and hearing of the above entitled cause there was offered in evidence among other exhibits:

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"D5." Five checks; made by Abraham Henig to Pincus Rosenblatt.

"D6." Twenty-nine checks made by Abraham Henig to Pincus Rosenblatt.

"D7." A letter and envelope dated July 20, 1926 from Pincus Rosenblatt to Abraham Henig, which letter was read into the record.

"D9." A letter from Pincus Rosenblatt to Abraham Henig which was read into the record;

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And it appearing that the foregoing exhibits were inadvertantly mislaid and consequently cannot be printed into the State of Case; it is, therefore stipulated and agreed by and between Anthony A. Calandra, Esq. solicitor for complainant-appellant by Thomas Guthrie, of counsel, and William N. Becker, solicitor for the defendants, Sander Roth and Pearl Roth, and Zucker and Goldberg, solicitor for the defendants, Jacob Horn and Bertha

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Horn, that the foregoing identification of the exhibits offered in evidence at the trial, be included in the State of Case in lieu of the original exhibits.

ANTHONY A. CALANDRA,
Solicitor for Complainant-Appellant.

10

THOMAS F. GUTHRIE,
Of Counsel with Complainant-Appellant.

WILLIAM N. BECKER,
Solicitor for Sander Roth and Pearl Roth.

ZUCKER and GOLDBERG,
Solicitors for Jacob Horn and Bertha Horn.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between PINCUS ROSENBLATT, *Complainant-Appellant,* *—and—* JACOB HORN, BERTHA HORN, SANDOR ROTH *and* PEARL ROTH, *Defendants-Appellees.*	On Appeal from Court of Chancery. BRIEF OF COMPLAINANT-APPELLANT.

INFORMATIVE STATEMENT.

The complainant-appellant, PINCUS ROSENBLATT, filed a Bill to foreclose a certain bond and mortgage, made, executed and delivered on February 18, 1925 to the complainant-appellant by the defendants-appellees, Jacob Horn and Bertha Horn, they being indebted to the complainant in the sum of Ten Thousand ($10,000.00) Dollars, and executed to the complainant said bond and mortgage to secure said principal sum, payable on August 18, 1925, together with interest at the rate of six per cent per annum, payable half yearly from the date thereof.

At the time of the execution of the said bond and mortgage the defendants-appellees, Jacob Horn and Bertha Horn, were the owners of premises in the Town of Irvington, New Jersey, which premises are particularly described in the Bill of Complaint.

The defendants-appellees, Sander Roth and Pearl Roth, are the present owners of said premises and purchased the same from the defendants, Jacob Horn and Bertha Horn, on or about January 4, 1926, and are still the owners of the said premises.

ISSUES.

The pleadings filed in this cause by the complainant-appellant and each of the defendants-appellees set up the following issues:

The complainant-appellant alleges that he is the holder of the bond and mortgage hereinabove referred to and that he has not been paid the principal sum due thereon and that the said payment was in default. The defendants-appellees, Jacob Horn and Bertha Horn, acknowledge the indebtedness to the complainant-appellant, and allege payment of the principal sum due on said bond and mortgage and further set up that said mortgage was discharged of record, and that payment was made to one Abraham Henig of the principal sum due on said mortgage, and that the complainant-appellant received usurious interest on said moneys in violation of the Usury Act of New Jersey. The defendants-appellees, Sander Roth and Pearl Roth, admit that they are the present owners of the premises and set up in defense of the Bill no knowledge of complainant-appellant's mortgage, discharge of the same, usury, that they are bona fide purchasers, that the complainant-appellant is guilty of laches.

The complainant-appellant filed a replication to the allegations contained in the answers of the respective defendants-appellees, denying the discharge of the said mortgage, denying the payment of the principal sum of said mortgage to complainant-appellant, denying the agency between Abraham Henig and himself, and denying that the present owners were bona fide purchasers. The complainant-appellant further alleges in the replications filed by him that the discharge of mortgage is a *forgery* and that it was *not executed* by the *complainant-appellant*.

The complainant-appellant urges six grounds of appeal in the Petition of Appeal filed by him herein (State of Case, pages 172-173. GROUNDS OF APPEAL 1, 2, 3 and 6 RESOLVE THEMSELVES UPON THE PROOF OFFERED IN THIS CASE BY THE COMPLAINANT-APPELLANT AND THE DEFENDANTS-APPELLEES AND WILL CONSTRUE ARGUMENT ONE OF THIS BRIEF. ARGUMENT TWO WILL CONSIST OF GROUNDS OF APPEAL 1, 4 and 5.

Analysis of Testimony.

The complainant-appellant, Pincus Rosenblatt, in his direct case, testified that he loaned unto the defendants-appellees Jacob Horn and Bertha Horn, the sum of Ten Thousand Dollars, secured by a bond and mortgage on premises owned by said defendants-appellees, in the Town of Irvington, New Jersey. The bond and mortgage executed by the defendants-appellees, Jacob Horn and Bertha Horn, were offered in evidence and marked C-1 and C-2. (State of case page 174-183) There was no objection to the offer of the bond and mortgage. The complainant-appellant testified that there was due him the principal sum of Ten Thousand ($10,000.00) Dollars and interest, less certain payments which were made to him since the execution of the mortgage and up to the month of August or September, 1928, when he no longer received any payments of interest. The complainant-appellant was cross-examined extensively upon payments received by him and upon actual deduction from his entire testimony there is now due him the sum of Seven Thousand, Three Hundred ($7,300) Dollars, besides interest from August 18, 1928. The complainant-appellant testified that several days later, after he had sent a check to Abraham Henig to make this loan, he received a check of Four Hundred and Fifty

($450) Dollars from Mr. Henig and upon inquiry of Mr. Henig (who negotiated the transaction and who drew, witnessed, took jurat and recorded the mortgage) as to what it was for, was informed by the said Mr. Henig that that it was the present which he had been promised for having made the loan. Horn was in need of money and there was no stipulated chattel mentioned as to what the present would consist of. The complainant-appellant further testified that he has had possession of the bond and mortgage since February, 1925, having received the instrument shortly after the recording of the mortgage, and still has possession of the same.

The complainant-appellant further testified that every six months or thereabouts he received from Abraham Henig the sum of Seven Hundred and Fifty ($750) Dollars, Four Hundred and Fifty ($450) Dollars of which was to be applied on account of the principal sum due on the mortgage and Three Hundred ($300) Dollars representing the interest. When asked by the solicitors for the defendants-appellees Roth as to why each payment of interest continued to be Three Hundred ($300) Dollars, without giving Horn credit for the payment on account of the principal, complainant-appellant testified that he asked Mr. Henig about it and Mr. Henig replied: "Well, what do you care, Mr. Rosenblatt, so long as he pays it to you? "All right, what do you care?" (See page 85 of State of Case, lines 27-29).

The complainant-appellant further testified that he never paid Mr. Henig any fees with reference to the mortgage Mr. Henig had secured for him. (See page 90, State of Case, lines 1-2).

Abraham Henig was called as a witness for the defendant-appellees and he testified that he was a counsellor at law of the State of New Jersey for

a number of years. At the time that the bond and mortgage were executed (See Exhibits C-1 and C-2, State of Case, page 174-177) he represented both the complainant-appellant and the defendants Horn. (See State of Cace, page 92, lines 12-13). He testified that he received from Mr. Rosenblatt a check for Fourteen Thousand ($14,000) Dollars, which was for the purpose of making two loans, Ten Thousand ($10,000) Dollars of which was for the defendant-appellees Horn. Mr. Henig testified that he had sent Mr. Rosenblatt a check for One Thousand Fifty ($1,050) Dollars to cover bonuses on two mortgages; that complainant-appellant's mortgage was paid off in the latter part of December, 1925, and that it was paid to him by the defendants-appellees Horn, and that Rosenblatt, the complainant-appellant, permitted him to use the money for his own purposes. (See State of Case, page 95, lines 18-20). Mr. Henig testified that Mr. Rosenblatt had signed a Discharge of Mortgage, which was recorded in the Essex County Register's Office; (See State of Case, page 95, lines 24,30) that the original Discharge of Mortgage is lost and a certified copy of the Discharge of Mortgage was produced in evidence, which showed a condition which was on record relative to the Discharge. Mr. Henig further testified that he had paid to Mr. Rosenblatt the sum of Six Thousand, Seven Hundred Dollars, which was later changed to Fifty-seven Hundred ($5,700) Dollars, all purporting to be moneys paid on account of this motrgage, and there were a number of checks offered in evidence to show the payments. Mr. Henig further testified that he represented Mr. Rosenblatt in private matters and also that he represented the Horns in the sale of the mortgaged premises to the defendants, Sander Roth and Pearl Roth.

Mr. Henig further testified that at the time that the mortgage was paid off by Horn that he arranged to borrow the Ten Thousand ($10,000) Dollars from Mr. Rosenblatt, and that he would pay him bonus and interest the same as Horn until the money was paid up. (See State of Case, page 100, lines 1-10).

Several of the matters which the witness Henig had handled for the complainant-appellant were inquired into and the witness Henig admitted, on cross-examination, that in another mortgage made with a Mrs. Tsonas, that said mortgage was under foreclosure and that Mrs. Tsonas had not received the money from him (Henig) and that likewise he had borrowed this money from Mr. Rosenblatt after Mrs. Tsonas had signed a bond and mortgage; and he further admitted that that property (Tsonas's) was sufficient security for the Four Thousand Dollars ($4,000) mortgage and that at that time, he, Henig, also used that money for his own purpose and that he told Rosenblatt that he wanted it for his own purposes. (See State of Case, page 117, lines1-38). Henig further admitted that he did not demand this bond and mortgage from Mr. Rosenblatt. (See State of Case, page 117, lines 35-36). Henig testified, on cross examination, on another mortgage matter with reference to premises owned by Bertha Lanes and Maurice Lanes, wherein Henig testified that he (Rosenblatt) had given a third mortgage on premises to the Lanes for Five Thousand Dollars and he (Henig) denied that the mortgage he (Henig) delivered to Rosenblatt, which was executed by the Lanes, recited that it was a second mortgage and not as Henig testified. (See State of Case, page 119, lines 31-40, page 120, 121). He further stated, on cross-examination, that this Lanes' property was being foreclosed by a first mortgagee and that he had notified the complain-

ant herein to that effect by telephone, and that he would take care of him (Rosenblatt) after the foreclosure. Henig admitted that he bid in this property (Lanes') in his own name at foreclosure, assigned the bid to a company, Aban Realty Company, of which he was president, executed a new mortgage to a Building and Loan Association, and a second mortgage to another named Julius Winter. (See State of Case, pages 122-123). He denied that the mortgage he purported to negotiate for the complainant-appellant was supposed to have been a second mortgage. He was queried as to what visitations were made by Mr. Rosenblatt to his office in 1925 (See State of Case, page 125, lines 25-40, page 126, 127) and his answer was that he did not remember. The purpose of this testimony was to attack the witness's credibility as to his statement that the Discharge of Mortgage was signed in his office by the complainant-appellant. An objection was made to this testimony, which was sustained. With referenec to the borrowing of the Ten Thousand Dollars, Henig stated that he received it from Horn in payment of the complainant's appellees mortgage. He testified that he did not give complainant-appellees any security therefor and the complainant-appellant had trusted him. The witness Henig volunteered testimony to the effect that the complainant had made a complaint agains him before the Bar Association with reference to the matters about which he had testified to on cross-examination.

The defendant-appellee, Jacob Horn, testified in his own defense that he owned the property in question at the time the mortgage was executed by his wife and himself, and that he had agreed to pay Rosenblatt the sum of Four Hundred and Fifty Dollars as bonus for the loan of Ten Thousand Dollars for a period of six months. He ad-

mitted the execution of the bond and mortgage and the receipt of the moneys from Mr. Henig, and that he gave back to Mr. Henig a check of Four Hundred and Fifty ($450.00) Dollars that he paid this mortgage back, but that he could not find the check showing the payment of the mortgage.

Upon cross-examination, the witness, Horn, admitted that Mr. Henig was his attorney and that when he paid the moneys on the mortgage to Henig he had known that Mr. Rosenblatt was the mortgagee, and that the amount of the sum of Ten Thousand, Three Hundred ($10,300.00) Dollars, which included interest. He did not ask Mr. Henig to return to him the bond and mortgage and said that he never asked Mr. Henig anything because he had confidence in him, and that through the said Mr. Henig he had negotiated another loan on the same property of Twenty-five Thousand ($25,000) Dollars, and the court asked the witness if there was a bank record to show the withdrawal of Ten Thousand Dollars at the time of the payment of the complainant's mortgage to Henig, but this was not produced at the time. The witness Horn further testified that under the instructions of Henig (See State of Case, page 142, lines 31-33) he drew the check and that Mr. Henig had prepared the check himself. This check was not produced in evidence nor was the stub of the check book of Mr. Horn produced in evidence at the trial. However, after the trial of this case had been concluded on December 6, 1929, by the trial Court, a check made by the defendant-appellee, Jacob Horn, to the order of Abraham Henig, Attorney, dated August 31, 1925 (See State of Case page 211) was given to the trial Court on July 18, 1930, as an exhibit, by the solicitor for the defendants-appellees, Sander and Pearl Roth.

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It is to be noted that this check makes no reference as to what it was intended for and further that it was paid by the bank of the maker, Jacob Horn, defendant-appellee on September 3, 1925. It is contended by the defendant-appellees that this check was in payment of complainant-appellant's mortgage. It is likewise to be noted that the Discharge of Mortgage purportedly executed and delivered by complainant-appellant is dated December 29, 1925 and the acknowledgement thereon taken the same day by Abraham Henig, Master in Chancery of New Jersey. Further, the defendant-appellees Sander and Pearl Roth did not take title to the premises until January 4, 1926.

Abraham Henig testified that Rosenblatt came to his office in December, 1925, to execute the Discharge of Mortgage which was incidentally recorded in the Register's Office of Essex County on December 31, 1925 (See State of Case, page 186.) And this is done almost five months after the Ten Thousand Three Hundred ($10,300.) Dollar check given to Henig by Horn. The defendants thereupon called as the next witness, Pearl Roth, one of the owners of the premises, and she testified in substance that she purchased the premise subject to a mortgage held by the Colonial Insurance Company and a second mortgage held by one Samuel Werbel, in the sum of Twenty-one Thousand Dollars, and that she paid the balance of the purchase price in cash. She testified that she had no knowledge or information about the Ten Thousand ($10,000) Dollar mortgage held by the complainant and stated that she never heard or knew of him.

The complainant produced in rebuttal, a witness, Herman P. Rosenblatt, a member of the bar of the State of New York, who testified that

he knew Mr. Henig and that he had referred the complainant, Pincus Rosenblatt to Mr. Henig for various matters, and that Henig had represented Herman P. Rosenblatt and not the complainant. The complainant, Pincus Rosenblatt, was called in rebuttal and he was asked as to whether or not he had signed a Discharge of Mortgage on December 29, 1925 in the office of Mr. Henig and he testified that he never did. (See State of Case, page 155, lines 12-35). He further testified that he never loaned to Mr. Henig the sum of Ten Thousand, Three Hundred ($10,300) Dollars, (See State of Case, page 155, lines 35-40), and that he did not know, nor was he informed by Mr. Henig, that his mortgage was being paid off, (See State of Case, page 156, lines 1-9). He further testified, on cross-examination, in this rebuttal, that the only amount due him from Henig on loans, is Two Thousand ($2,000) Dollars, for which he received as a security a promissory note, and that there is no other money due him from Mr. Henig, and the witness, Pincus Rosenblatt, on rebuttal, further testified, in answer to a question on cross-examination, that he was called up to the office of Mr. Henig, and that he, Henig, had told him (Rosenblatt) that he (Henig) had forged Rosenblatt's name (See State of Case, page 162, lines 34-37) *which testimony was not denied or rebutted by the defendant-appellees.*

Argument One.

THE FINAL DECREE DISMISSES THE FORECLOSURE SUIT OF THE COMPLAINANT-APPELLANT AGAINST THE DEFENDANT-APPELLEES.

THE COURT ERRED IN ADVISING SAID FINAL DECREE IN THAT THE DEFENDANT-

APPELLEES HAD NOT PROVEN THAT THEY HAD PAID THE PRINCIPAL SUM DUE ON COMPLAINANT-APPELLANT'S BOND AND MORTGAGE TO COMPLAINANT-APPELLANT.

THAT THE COURT ERRED IN ACCEPTING AS PROOF OF PAYMENT OF COMPLAINANT-APPELLANT'S MORTGAGE A CERTIFIED COPY OF A DISCHARGE OF MORTGAGE PURPORTING TO BE THE INSTRUMENT SIGNED BY THE COMPLAINANT-APPELLANT.

THAT THE COURT ERRED IN DISMISSING THE COMPLAINANT-APPELLANT'S BILL OF COMPLAINT IN THAT THE TESTIMONY CLEARLY SHOWED THAT THE COMPLAINANT-APPELLANTS MORTGAGE WAS NOT PAID IN ACCORDANCE WITH LAW.

Was the Complainant paid the amount due him on his mortgage?

Did the complainant execute a Discharge of Mortgage?

The analysis of the entire testimony given by Pincus Rosenblatt, both in his direct case and in his rebuttal, clearly shows that he was *not* paid the moneys which the defendants-appellees contend and contended they had paid to the complainant through Abraham Henig, Attorney. It is necessary, at this time, in order to properly argue the merits of the contentions in this case, to carefully analyze all of the testimony as given by the witness, Abraham Henig. His position and testimony is pivotal. He testifies to a Discharge of Mortgage executed by the complainant and a borrowing of the money collected thereon by him. If that was the only testimony in the case there would not be much room for argument. We, therefore, must consider certain bits of testimony which are very, very illuminating. The *bond* and *mortgage*, which

are the subjects of this suit, *were* and *are, admittedly*, always in the possession of the complaint-appellant. *No* demand for the same was made by the mortgagors (Horn) at the time that they paid the amount due on the mortgage, which he (Horn) testified to was Ten Thousand, Three Hundred ($10,300) Dollars, (See State of Case, page 139, lines 10-26), and the witness, Henig, testified was Ten Thousand ($10,000) Dollars (See State of Case page 130, lines 21-40, page 131, lines 1-9); and no *bona fide* effort made by Mr. Henig to procure the same for his client, which it was his duty to do. Your Honors know that it is the common practice upon the payment of the principal sum due on a mortgage that the mortgagee is required to deliver up possession of the bond and mortgage and that the mortgage is usually receipted for cancellation by the mortgagee. Furthermore, where payment is made by check, the check is always drawn to the order of the mortgagee unless a *request is made by the mortgagee* that said payment shall be made otherwise, Nowhere in the testimony is it shown that Rosenblatt had been present when the mortgage was allegedly paid off. Is not this peculiar and most unusual? Is it not peculiar that the original Discharge of Mortgage is not produced? A meager explanation is attempted by Henig in stating he could not find it. If the transaction was as Mr. Henig would want your Honors to believe, why did he not produce letters showing the request for Mr. Rosenblatt to deliver the bond and mortgage to him? Why did he not produce letters affirming any alleged loan.

Why does Horn give Abraham Henig, Attorney, a check for Ten Thousand ($10,300) Three Hundred Dollars on August 31, 1925 (See State of Case, page 211, bottom), and no discharge of the same executed on that day, if Rosenblatt, com-

plainant-appellant knew his mortgage was being paid off? And why wasn't this check made payable to complainant-appellant? The almost immediate and necessary inference that must be drawn is that Rosenblatt knew nothing about the discharge of his mortgage, or that it was being paid off. Nowhere in the testimony of either Horn, defendant-appellee and Henig, is there anything to who that this check was given at the date thereof. In fact, Henig testified that he notified the complainant-appellant in December, to discuss the matter of paying off the present mortgage (See State of Case, page 126, lines 32-40; page 127, lines 1-21) If Henig's testimony is to be regarded as true, then why would he discuss the payment of complainant-appellant's mortgage in December, 1929, when he had already received a check on August 31, 1925 from the defendant-appellee, Horn?

Certainly there is no consistency or truth in his testimony and indicates a concealment of what actually occurred; and strongly, therefore, corroborates complainant-appellant that he did not execute any discharge of his mortgage. Furthermore, no corroboration of the alleged "loan" between Henig and Rosenblatt of this Ten Thousand ($10,000) Dollars in attempted. If Mr. Rosenblatt was attempting, as the defense may want your Honors to belive, to collect his moneys from the defendants because Henig may not have anything or be unable to pay, then why would the complainant Rosenblatt, make a complaint before the Ethics Committee of the Essex County Bar Association? (See State of Case, pages 129, lines 16-20). Is it possible that any reasonable person, in these days of progress and advancement in financial circles, and a man with the business experience of Mr. Rosenblatt would "loan" to any person the sum of Ten Thousand Dollars without *any* security, *without a check as evidence of indebtedness or even without a*

receipt from Mr. Henig? Furthermore, how can Mr. Henig expect your Honors to believe him when he admitted, on cross-examination, that he dept the moneys on another mortgage of Mrs. Tsonas, after this woman had signed the bond and mortgage, and that he had used the money for his own purposes, (See State of Case, page 116, line 40, page 117, lines 1-38). Furthermore the witness Henig testified as to a mortgage which was drawn by him in the sum of Five Thousand Dollars in favor of Rosenblatt on a property which was owned by the Lanes, and they executed a mortgage to the complainant-appellant (Rosenblatt) in said sum, which mortgage recited that it was a *second* mortgage, and in his testimony testified that it was a third mortgage, and that *that* particular mortgage was in the process of foreclosure in this court.

The whole defense in this case rests entirely upon the testimony of Abraham Henig.

Complainant-appellant further testified that he first learned of the forgery of his name when he was summoned to Mr. Henig's office and was notified by him of that fact (See State of Case, page 162, lines 34-37). *This was not denied.* It cannot be expected that Mr. Henig would admit any defalcation while testifying, but it is most suspicious, in view of the general trend of his entire testimony, that *he does not produce the original Discharge of Mortgage and that he does not make any request for the return of the bond and mortgage, which were always in the possession of Mr. Rosenblatt;* and that he does not deny his *admission of forgery,* made to *Rosenblatt,* the complainant-appellant, by Henig.

In the case of Leithoff vs. Dennis, 86 N. J. Equity, page 316, Vice Chancellor Howell, speaking for the Court of Chancery, in an analogous case, held, "An owner of mortgages does not lose title

to them by forged assignment." We urge the analogous proposition that an owner of a mortgage does not lose title to it by a forged discharge.

In the case of Leithoff vs. Dennis, 86 N. J. Equity, page 469, Vice Chancellor Griffith, speaking for the Court of Chancery, held as follows:

> "In a suit to obtain a decree that an assignment purporting to assign certain bonds and mortgages in a forgery, and to compel the defendant to restore them to the complainant, evidence Held to show (1) that the complainant's signature to the assignment is a forgery, and (2) that the complainant, not being chargeable with negligence, should not be estopped from asserting that the assignment is a forgery, and that the defendant would be decreed to restore the bonds and mortgages to the complainant.
>
> The attorney-at-law who committed the forgery, and who was the witness to the signature of the assignment and signed the certificate of acknowledgement, was not the agent of the complainant with power to execute the assignment of mortgages in question, whatever agency existed applying to the collecting of interest;"

and Vice Chancellor Griffin further stated as follows:

> "Cancellation of a mortgage on the record is only prima facie evidence of its discharge, and it is left to the owner making the allegation to prove the cancelling to have been done by fraud, accident or mistake. Such proof being made, the mortgage will be established, even against such subsequent purchasers or mortgagees without

notice. Trenton Banking Co. v. Woodruff, 2 N. J. Eq. 117; Harrison v. New Jersey Railroad Co., 19 N. J. Eq. 488.

Between a mortgagee, whose mortgage has been discharged of record, solely through the unauthorized act of another party, and a purchaser who buys the title in the belief, induced by such cancellation, that the mortgage is satisfied and discharged, the equities are balanced, and the rights, in the order of time, must prevail. The lien of the mortgage must remain, despite the apparant discharge."

Argument Two.

THE FINAL DECREE DISMISSES THE FORECLOSURE SUIT OF THE COMPLAINANT-APPELLANT AGAINST THE DEFENDANT-APPELLEES.

THAT THE COURT ERRED AS A MATTER OF LAW IN THE DISMISSING OF COMPLAINANT-APPELLANT'S BILL OF COMPLAINT AND SUIT.

THAT THE ALLEGED DISCHARGE OF MORTGAGE (PURPORTING TO CANCEL AND DISCHARGE COMPLAINANT-APPELLANT'S MORTGAGE) IS A FORGERY AND WAS PROVEN TO BE SUCH AND PROOF THEREOF DISREGARDED BY THE DISMISSAL OF THE BILL OF COMPLAINT.

Was Abraham Henig the Agent of Complainant-Appellant and if so, was he authorized to accept payment of principal?

It was the contention of the defendants-appellees and each of them, at the trial of this cause, that Henig was the agent of the complainant-appellant,

Pincus Rosenblatt, and they offered the testimony of Abraham Henig to show that he, Henig, had handled various transactions for the complainant-appellant, and in this way attempted to link up the complainant-appellant as being the principal of Abraham Henig. Assuming, for the sake of argument, that it be true that Henig was receiving interest payments from the mortgagee and paying the same to the complainant-appellant, if *that* be the case, then, in accordance with the testimony of the defendants-appellants, Horn and Roth, the only interest which they paid to Henig for Rosenblatt was a payment in August, 1925 and nothing more. If Horn acknowledged Henig as the agent of Rosenblatt at the time that he paid the mortgage off, as he testified, he was not paying Rosenblatt by the theory of principal and agent because in the case of Haines vs. Pohlmann and others, 25 N. J. Equity, page 179, the Chancellor, speaking for the Court of Chancery, stated as follows:

> "It is well settled that a debtor is authorized to infer that an attorney or agent who has been employed to make a loan, is empowered to receive both principal and interest, from his having possession of the bond and mortgage given for the loan, or of the bond only. But the inference in such cases is founded on the custody of the securities and it ceases whenever they are withdrawn by the creditor; and it is incumbent on the debtor who makes payment to the attorney or agent, relying upon such inference, to show that the securities were in his possession on each occasion when the payments were made."

Horn, in his defense, did not show, or even attempted to show that Henig was in possession of the bond and mortgage or of the bond at the

time that he allegedly paid off the mortgage to Henig. Horn said he trusted Henig; that Henig was lawyer for years. The law is clear that even if interest payments are made to an attorney that he has no right to accept the principal sum due for his client. Furthermore, in this connection on the question of credibility of witnesses, Henig testified that he received only Ten Thousand Dollars from Horn and he repeated this several times in his testimony and Horn testified that he paid Henig Ten Thousand Three Hundred ($10,300) Dollars. This discrepancy in the testimony is also indicative as to what happened in this case. Horn stated that he actually paid the sum of Four Hundred and Fifty ($450) Dollars as bonus and Henig testified that he paid a considerable amount of money to Rosenblatt and now all of the defendants desire to claim credit for any payments that Henig made arising out of his defalcations. They therefore acknowledged Henig as their agent. *Defendants-appellees do not even show an authorization to Henig to accept moneys for Rosenblatt.*

Is the Complainant-Appellant's mortgage still a valid lien and enforcible in equity?

The defendants-appellees in this case attempt to make out a defense of usury and attempted to show usury by testimony of Abraham Henig. If their contention be true that a usurious rate of interest was extracted by the complainant-appellant, then the only amount of usurious interest paid by the defendant-appellants was the sum of Four Hundred and Fifty Dollars, which Horn testified was paid to Mr. Rosenblatt as a bonus in February 1925, shortly after the execution of the bond and mortgage in question. The defendants-appellees have attempted to make out a case of agency between the complainant-appellant and Henig and then immediately turned around and

claimed credit for payments which they themselves did not make but were made by Mr. Henig to the mortgagee, complainant-appellant. It appears that the defendants-appellees in this case were in a quandary, not knowing what to do with reference to the issue. They deny that Henig is their agent in face of the fact that they made payments to Henig, had made payments to Henig, and that they were clients of Henig. The inconsistencies of the defense are surely militant against them, and the only thing that they can show to help themselves is a "Certificate of the County Register of Discharge of Mortgage," which was recorded, and which the complainant-appellant denies executing. After all, the credibility of the witnesses, their demeanor on the stand, are all within your Honors' approval or disapproval. Has Rosenblatt shown anything by which he could be disbelieved? No,—but the defendants-appellees, have by means of a witness, (Henig), who attempts to explain the non-production of original documents; that he could not find them; by their failure and by the failure of their own witness, Henig, to turn over the Discharge of Mortgage to Horn, who was entitled to the same, in view of the fact that he did not receive the bond and mortgage which he thought he was buying. The fact that Henig did not deliver the alleged Discharge of Mortgage to Horn, but retained it in his possession, as he states, from the time he received the same from the Register's Office, but could not find it when it became necessary in the case, further shows and agency existing between Henig and Horn.

The Court of Errors and Appeals, in an opinion rendered by Justice Knapp, reported in the case of Heyder v. Excelsior Building Loan Association, 42 New Jersey Equity, page 403.

> "Between a mortgagee, whose mortgage has been discharged of record, solely through

the unauthorized act of another party, and a purchaser who buys the title in the belief, induced by such cancellation, that the mortgage is satisfied and discharged, the equities are balanced, and the rights, in the order of time, must prevail. The lien of the mortgage must remain, despite the apparent discharge."

"Where one give to another the power to practice a fraud upon innocent parties, the court will not interfere in his protection at the expense of those who have been deceived and misled by such fraud. What circumstances shall be sufficient to establish negligence, such as shall preclude a mortgagee from a decree establishing his cancelled paper, must be determined as a question of fact in each particular case, tested by those rules of conduct which men of common prudence usually observe in the care and management of such securities." "The minute of discharge of this mortgage, made upon the record by the Register, expressed in general from the fact of cancellation. The entry was made upon evidence presented to the register, such as the statute has declared to be his sufficient authority for so doing. The mortgage was produced by the mortgagor, cancelled and there is no doubt that upon the faith of this cancellation, the purchaser took title to the property and paid the consideration. But it clearly appears that the mortgage was unpaid and its discharge was fraudulent and without the knowledge or assent of the mortgagee. If this were all of the case, and no default appeared on the part of the mortgagee, notwithstanding the forcible language of the act which declares such

> minute to be a full and absolute bar to and dischage of the said entry, registry and mortgage, the right of the respondent to the lien of its security should be maintained, and it is solely upon the grounds that the respondent is chargeable with negligence which tended to and actually did produce the inquiry, that I think the decree should be reversed. The mortgage was in the possession and under the control of the mortgagor at the time when it was produced for cancellation on the record. How long he had such custody does not positively appear but the strong inference from the testimony is that it was during the whole time between the registry of the mortgage and its cancellation."

In the case of Heyder vs. Excelsior Building Loan Association, supra, the mortgagee permitted the mortgagor to have custody of the bond and mortgage and it was cancelled by the mortgagor without the knowledge or information of the mortgagee. The mortgagee thereupon attempted to re-establish his lien upon the premises and the Special Master who had heard the case advised a decree in favor of the mortgagee. The case was appealed to the Court of Errors and was reversed upon the proposition that the mortgagee was negligent in permitting the mortgagor to retain possession of the bond and mortgage and that an innocent purchaser should not suffer. I cite this case for the purpose of showing to your Honors the forcible language used by the Court of Errors and Appeals, wherein they make a distinction between negligence of mortgagee and *the default of a third party.* In the case at bar, the complainant, Rosenblatt, was not negligent. He was indeed vigilant for he retained possession of the bond and mortgage and, not having any knowledge of the

Discharge of Mortgage, was made to believe by Henig that he was receiving interest payments and amortization payments from the mortgagors, and not until he learned of the defalcation and the alleged Discharge on record, did the complainant institute proceedings, and this case is the result of his vigilance.

Vice Chancellor Backes, in the case of Meyer vs. Rittel, 82 N. J. Equity, page 201, there was a conveyance of certain property without the knowledge or ratification of the complainant, and the testimony showed otherwise, and an attempt was made to recover the property from a purchaser and to void the deed of said purchaser, held as follows:

> "There is no principle of equity better settled nor more uniformly enforced than "whenever one of two innocent persons must suffer a loss by the acts of a third, he who has enabled such third person to occasion the loss must sustain it.' "

In a more recent case, with reference to the payment of interest to an alleged agent, the Court of Errors and Appeals held in the case of Steadman v. Foster, 83 N. J. Equity, page 641, as follows:

> "2. The habitual payment of interest on a mortgage to a person other than the mortgagee, who in turn paid it to the mortgagee, will not authorize the payment of principle of such mortgage to such other person."

In the case of Harris vs. Cook, supra, the Court held "the unauthorized cancellation of record of mortgage by the Clerk or Register without the knowledge or consent of the mortgagee will not affect the rights of the latter under the mortgage even as against the bona fide purchaser of the

minute to be a full and absolute bar to and dischage of the said entry, registry and mortgage, the right of the respondent to the lien of its security should be maintained, and it is solely upon the grounds that the respondent is chargeable with negligence which tended to and actually did produce the inquiry, that I think the decree should be reversed. The mortgage was in the possession and under the control of the mortgagor at the time when it was produced for cancellation on the record. How long he had such custody does not positively appear but the strong inference from the testimony is that it was during the whole time between the registry of the mortgage and its cancellation."

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mortgaged premises with notice of the mortgage, though he has no notice that the cancellation was unauthorized, and presumed, from the certificate of cancellation, that the lien of the mortgage was extinguished." In the opinion the Court further stated, on page 347 (28 N. J. Equity).

> "The action of the clerk in cancelling the mortgage off record was without warrant or authority and was therefore of no effect. His false certificate, while it misled those who examined the record in respect to the property, did not satisfy nor extinguish the mortgage, nor in anywise effect its validity, and it could not affect the rights of the lawful owners of the mortgage, and cites the case of Trenton Banking Company vs. Woodruff (Supra).

and further states:

> "Those who take title to property on which a mortgage has been given, and of which they have notice may effectually guard themselves against being misled by such certificate, if false, by requiring proof that the mortgage has in fact been satisfied or extinguished."

In Pomeroy's Equity Jurisprudence, 4th Edition, Book 2 Section 918, is stated as follows:

> "Where an owner has been apparently deprived of his title by a fraudulent conveyance or assignment, which is void, as where it was procured to execute it by the fraudulent representation and under the conviction that it was an entirely different instrument, or where it was fraudulently executed in his name without any authority, express or implied, or where, after being executed by him for one purpose it was

fraudulently altered without his knowledge or authority, so as to include the property, *or where it was a forgery,* and he had done no collateral act with reference to it which might amount to an equitable estopped by conduct, and the property, by means of such transfer, comes into the hands of a purchaser for value and without notice, the original defrauded owner is not barred of his remedy. Equity will relieve by cancelling the fraudulent apparent transfer, and by compelling a reconveyance or reassignment, even as against the holder who is innocent of wrong; the doctrines of equitable estoppel and of bona fide purchase do not apply under these circumstances. Such is the doctrine announced by decisions of the highest authority."

In the case of Matilda Horvath vs. National Mortgage Company, et al, 56 A. L. R. 578, holds:

"A forged deed will be set aside, at the suit of the one whose name has been forged, as against the purported grantee, his mortgagee or grantee, and on account awarded for rents received by the latter.

This case also cites in its dictum:

"And those who subsequently innocently acquired interests under the forged instrument are in no better position as to title than if they had purchased with notice."

Crawford vs. Hoeft, 58 Mich. 1, 23 N. W. 27 24 N. W. 645, 25 N. W. 567. 26 N. W. 870.

Further:

"There can be no such thing as a bona fide holder under a forgery, whose good faith gives him any right against the party whose name has been forged on his heirs."

Austin vs. Dean, 40 Mich. 386; Lee vs. Kellog, 108 Mich. 535; 66 N. W. 380.

Argument Three.

An examination of the testimony of the principal witness, of the defendants-appellees clearly indicates that it could not be possible that the complainant-appellant executed the Discharge of Mortgage which was recorded. The proof that the complainant-appellant did not execute the Discharge of Mortgage in question is clear and convincing because the original Discharge of Mortgage is not offered or produced. The other transactions to which the witness Henig testified on his cross-examination, as with reference to the Tsonas mortgage, has been referred to, and the Lanes mortgage, and the further fact that when the complainant-appellant's mortgage was allegedly paid off, it was not paid off directly to the complainant-appellant, clearly affect his credibility. No correspondence between Henig and Rosenblatt is offered in evidence to show that the instant bond and mortgage were to be paid; and furthermore, the bond and mortgage sue *upon* always remained in the possession of the mortgagee.

This admitted conduct by Henig and also the fact that he (Henig) received a check for $10,300 from Horn (defendant-appellee) on August 31, 1925 and called Rosenblatt (complainant- appellant) with reference to the mortgage "to be paid off" in December, 1925, certainly no one could possibly be impressed with such testimony. Does not this physical fact clearly prove complainant-appellant's contention and proof that he knew nothing of his mortgage being paid off or that he signed a discharge for this mortgage? We respectfully submit that it does.

Is it not logical that *if* the complainant-appellant was advised that his mortgage was to be paid off that he would have delivered the same to the office of the attorney Henig? Furthermore, why was there no demand made upon the complainant-appellant to produce the bond at the time the mortgage was "paid off?"

There must of necessity be deducted from these glaring facts, that the complainant-appellant did not execute the Discharge of Mortgage referred to. The complainant-appellant established by more than a preponderance of the evidence and physical facts that he did not execute the Discharge of Mortgage, and that he had no knowledge of the same until several years later.

It will be most likely contended by the defendants-appellees, Roth, that they are innocent purchasers for value and that they purchased the aforesaid premises without notice as to complainant-appelles bond and mortgage. Conveyances of real estate are made under the laws of assignability, and it has long since been established that an assignee contains no better title than his assignor has or had. There, the defendant-appellees Roth stand in the same shoes of the defendant-appellees Horn, and that this defense of innocent purchaser for value, cannot therefore avail them.

Conclusion.

It is, therefore, respectfully submitted unto your Honors, that the final decree entered by the Court of Chancery should be reversed and that the complainant-appellant be given the relief prayed for, in his Bill of Complaint.

Respectfully submitted,

ANTHONY A. CALANDRA,
Solicitor for Complainant-Appellant.

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

New Jersey Court of Errors and Appeals

Between

PINCUS ROSENBLATT,
Complainant-Appellant,

and

JACOB HORN, BERTHA HORN, SANDER ROTH AND PEARL ROTH,
Defendants-Appellees.

On Appeal from Court of Chancery.

BRIEF OF DEFENDANTS-APPELLEES, SANDER ROTH and PEARL ROTH.

Facts.

1. A few days prior to February 18th, 1925, Abraham Henig, a Counsellor-at-Law of the State of New Jersey, submitted a proposition to Pincus Rosenblatt, complainant-appellant, a resident of the State of New York, for the granting of a mortgage accompanied by a bond, to Jacob Horn and Bertha Horn, defendants-appellees, covering premises known and designated as 1300-1302 Springfield avenue, in the Town of Irvington, County of Essex and State of New Jersey, which mortgage was to be for the sum of ten thousand dollars ($10,000.00) for a period of six months with interest at the rate of six per cent. per annum, payable semi-annually.

2. In pursuance with the aforesaid proposition, Pincus Rosenblatt, complainant-appellant, mailed a check (see State of Case, p. 184, Exhibit D. 1.) to the order of Abraham Henig, dated February 18th, 1925, in the sum of four-

teen thousand dollars ($14,000.00), ten thousand dollars ($10,000.00) of which was to be applied and in payment of the Horn mortgage, covering the property, 1300-1302 Springfield avenue, Irvington, New Jersey.

3. On the 18th day of February, 1925, the defendants-appellees, Jacob Horn and Bertha Horn his wife, gave a bond and mortgage (see State of Case, pp. 174-177, Exhibit C. 1 and Exhibit C. 2) to Pincus Rosenblatt, complainant-appellant, in the sum of ten thousand dollars ($10,000.00), which mortgage was duly acknowledged according to law and recorded on the 20th day of February, 1925, in the Register's Office of Essex County in Book B-53 of Mortgages for said County, p. 536, due on August 18th, 1925, at six per cent. interest, payable semi-annually.

4. On the 31st day of August, 1925, Jacob Horn, defendant-appellee, gave his check (see State of Case, bottom of p. 211) made payable to the order of Abraham Henig, payable on the East Orange Bank, East Orange, New Jersey, in the sum of ten thousand, three hundred dollars ($10,300.00) in payment of principal of ten thousand dollars ($10,000.00) and interest of three hundred dollars ($300.00) from the 18th day of February, 1925, which was paid at said bank on September 3rd, 1925, as per perforation thereon, in payment of the mortgage and bond held by the complainant-appellant, Pincus Rosenblatt.

5. On the 26th day of October, 1925, Jacob Horn and Bertha Horn, his wife, defendants-appellees, entered into a contract for exchange of properties (see State of Case, p. 196, l. 21) (Exhibit D. 8) with Sander Roth and Pearl Roth, his wife, defendants-appellees, in consider-

ation of the sum of one hundred forty thousand dollars ($140,000.00) and agreed to convey the aforementioned premises known and designated as 1300-1302 Springfield avenue, Irvington, New Jersey, subject to a first mortgage held by Colonial Life Insurance Company in the nominal sum of eighty-five thousand dollars ($85,000.00) and subject to a second mortgage held by Samuel Werbel in the nominal sum of twenty-five thousand dollars ($25,000.00), balance of equity to be paid in cash and property by the said Sander Roth and Pearl Roth, his wife, defendants-appellees to Jacob Horn and Bertha Horn, his wife, defendants-appellees.

6. On the 31st day of December, 1925, there was recorded in the Office of the Register of Deeds and Mortgages for Essex County, New Jersey, in Book U of Discharges of Mortgages for said County on page 386 (see State of Case, p. 185, Exhibit D. 4), a Discharge of Mortgage signed and executed by Pincus Rosenblatt, complainant-appellant to Jacob Horn and Bertha Horn, his wife, defendants-appellees, discharging the mortgage recorded in Book B-53 of Mortgages for Essex County, page 536, dated the 18th day of February, 1925, as fully paid and satisfied, thereby consenting that the same may be discharged of record, after due acknowledgment before Abraham Henig, a Master in Chancery of New Jersey; the said Discharge of Mortgage was received in the office of the Register of Essex County on the 31st day of December, A. D. 1925 at 3:05 P. M. #4.

7. By Warranty Deed, (see State of Case, pp. 191-196 to l. 20, Exhibit D. 7) dated January 4th, 1926, and recorded on January 6th, 1926, in Book V-73 of Deeds for Essex County, pages

128 and 129, Jacob Horn and Bertha Horn, his wife, defendants-appellees, conveyed to Sander Roth and Pearl Roth, his wife, defendants-appellees, the aforementioned premises, free and clear of all encumbrances, expressly subject to a mortgage in the sum of eighty-five thousand dollars ($85,000.00) reduced by payment to the principal sum of seventy-nine thousand, nine hundred dollars ($79,900.00) held by the Colonial Life Insurance Company and subject to a mortgage in the principal sum of twenty-five thousand dollars, ($25,000.00) which has been reduced by payment to the sum of twenty-two thousand dollars ($22,000.00), held by Samuel Werbel; and the Horns received a deed from the Roths to premises on Monmouth street described in said contract, subject to a mortgage held by the Franklin Savings Institution of Newark, N. J., in the nominal sum of fifteen thousand dollars ($15,000.00), and a check in the sum of eleven thousand, seven hundred twenty-seven dollars and thirty-five cents ($11,727.35), (see State of Case, p. 211), the amount found due to the Horns after apportionments made and adjusted between the parties.

8. That from the aforesaid date of the deed, January 4th, 1926, until the 29th day of May, 1929, this last date is the date of service of subpoena to answer in Chancery in the herein suit to foreclose mortgage alleged to be held by Pincus Rosenblatt, complainant-appellant, the defendants-appellees, Jacob Horn and Bertha Horn, his wife, and Sander Roth and Pearl Roth, his wife, had no knowledge of the existence of the mortgage as a lien, alleged to be held by the complainant-appellant, Pincus Rosenblatt, on the property in said bill of complaint described, and during the aforesaid period, the complainant-

appellant, Pincus Rosenblatt, did not at any time make demands of either of the aforesaid defendants-appellees for payment of principal or interest alleged to be due on his mortgage, nor was any paid to him.

Issues.

1. The complainant-appellant, Pincus Rosenblatt, in the Bill of Complaint filed herein, (see State of Case, p. 1) paragraph eight (8) stated that the whole amount of the principal of ten thousand dollars ($10,000.00) with interest thereon from August 18th, 1928, is due on complainant-appellant's bond and mortgage; the defendants-appellees, Sander Roth and Pearl Roth, his wife, answering the said Bill of Complaint, in the First Defense, stated that they have not and never had any knowledge that the premises described in the complaint, which was conveyed by the defendants-appellees, Jacob Horn and Bertha Horn, his wife, to the defendants-appellees, Sander Roth and Pearl Roth, his wife, were ever subject to the lien of complainant-appellant's mortgage, as the premises were conveyed free and clear of the complainant-appellant's mortgage, which mortgage was discharged of record as paid and satisfied as hereinbefore stated. And further stated in the Second Defense, that the mortgage sought to be foreclosed by the complainant-appellant, was knowingly received by him from the defendants-appellees, Jacob Horn and Bertha Horn, his wife, in pursuance of an agreement for the securing of a usurious loan of money of ten thousand dollars ($10,000.00), and that from the 18th day of February 1928 to the 18th day of August, 1928, the complainant-appellant had received a bonus at the rate of nine per cent., with accrued interest

at the rate of six per cent. per annum, being the total sum of fifty-seven hundred dollars ($5700.00), received on, and to apply on the principal due on the mortgage in violation of an act against usury, for the loan of any money above the value of six dollars for the forebearance of one hundred dollars for a year, which sum of money these defendants-appellees are entitled to be credited for, as part payment of the principal and to be deducted from the amount that may be due on the said mortgage; and expressly pleaded the Usury Act of the State of New Jersey, etc. etc.

2. And further in the Third Defense, the defendants-appellees, Sander Roth and Pearl Roth, his wife, set up the consideration for the purchase of the aforementioned premises, that the same was purchased for a full value of said premises at the time of the sale of said premises; and that they were bona fide purchasers for a valuable consideration, without notice of the lien of the complainant-appellant's alleged mortgage, and are therefore entitled to the favorable consideration of this court.

3. And further in the Fourth Defense, the defendants-appellees, Sander Roth and Pearl Roth, his wife, set up, that the complainant-appellant had notice of the registration and contents of the Discharge and of all legal and equitable rights and titles created thereby, and is guilty of laches and should be estopped from setting up his alleged mortgage, as a lien or encumbrance sought to be foreclosed, etc. etc.

4. The complainant-appellant, Pincus Rosenblatt, filed a replication to the answer of the defendants-appellees, Sander Roth and Pearl Roth, his wife, and in paragraph two (2), denied

the receipt of any bonus or usurious payments, denied the receipt of any payments of principal on said mortgage, and said that he had only received a legal rate of interest on the principal sum of his mortgage, which is particularly set forth in the Bill of Complaint filed by him; and in paragraph seven (7), denied having any notice whatsoever of the discharge of record, and that if there was a discharge of record, the same was not acknowledged or executed by the complainant-appellant, and is a forgery; and in the ninth (9) paragraph, stated that there is now due upon said mortgage to the complainant-appellant, the principal sum of ten thousand dollars ($10,000.00) besides interest as prayed for in the Bill of Complaint.

5. The answer of the defendants-appellees, Jacob Horn and Bertha Horn, his wife, in sum and substance, admitted the making of the Bond and Mortgage covering the property to be foreclosed, and expressly stated that there is nothing due to the complainant-appellant on the Bond and Mortgage, and that the entire amount due on said Bond and Mortgage has been paid, and in paragraph nine (9), expressly alleged that they paid the entire amount of the said Bond and Mortgage as the same became due, that is, shortly after August 18th, 1925, and that a discharge of said mortgage was executed by the complainant-appellant and was duly recorded as now appears of record in the Essex County Register's Office in Book U of Discharges of Essex County, page 386; and further, in the First Separate Defense, alleged that the complainant-appellant's attorney, Abraham Henig, for and in behalf of the complainant-appellant, received payment in accordance with the terms

of the aforesaid bond and mortgage, and further, in the Second Separate Defense, set up the usurious rate of interest and pleaded the Usury Act of the State of New Jersey in defense to any claim the said complainant may have against these defendants.

Analysis of Testimony.

The complainant-appellant, Pincus Rosenblatt, testified that he became interested in the mortgage which he seeks to foreclose, by being informed of the same by Abraham Henig, a Counsellor-at-Law of New Jersey, a few days prior to February 18th 1925, and that he accompanied Mr. Henig to the home of Jacob Horn and Bertha Horn, his wife, defendants-appellants, where the terms, conditions, amount of the mortgage were agreed upon and the inspection of the property took place, and that at that time he agreed to grant the mortgage of ten thousand dollars ($10,000.00) to the Horns. A few days thereafter he mailed a check to the order of Abraham Henig, in the sum of fourteen thousand dollars ($14,000.00) (see State of Case, page 184, Exhibit D. 1 and State of Case, page 45, lines 19-20). Ten thousand dollars ($10,000.00) of said amount to apply upon the Jacob Horn and Bertha Horn mortgage covering the premises designated as 1300-1302 Springfield avenue, in the Town of Irvington, New Jersey, and four thousand dollars ($4,000.00) to apply upon another mortgage that Pincus Rosenblatt, complainant-appellant, had considered and approved. The aforesaid check bears the same date as the mortgage sought to be foreclosed.

He further testified that Abraham Henig was authorized and employed by him to invest this

money for him in the bond and mortgage now in dispute, and that Abraham Henig had been authorized by Pincus Rosenblatt, complainant-appellant to examine and make a search of the title, prepare the necessary bond and mortgage, and other instruments incidental thereto and record the same; and collect for Pincus Rosenblatt, complainant-appellant, a bonus of four hundred fifty dollars ($450.00), (see State of Case, page 47, line 20) which Pincus Rosenblatt, complainant-appellant classified and designated as a present, relying upon Abraham Henig to pay the same to him, and accepted this bonus or present of Jacob Horn *et al,* by Abraham Henig's personal check. The mortgage was for a period of six months and became due on August 18th, 1925. Pincus Rosenblatt, complainant-appellant, testified upon cross examination (see State of Case, page 52) that he asked Abraham Henig about the money that was due him from Mr. Horn, and that Mr. Henig promised that he would speak to Mr. Horn and that Mr. Horn didn't show up, and that Mr. Horn is tied up just now and that it would be received in a day. He later testified: (See State of Case, p. 52, l. 25) "I called up Mr. Henig and he says that Mr. Horn wants to have that mortgage renewed for another six months." Q "And did you see Mr. Horn about renewing the mortgage?" A "I did not." Q "Who did you see?" A "I see Mr. Henig." Q "What did you tell him about renewing the mortgage?" A I said, "All right. If he can't, what can I do?" "I was satisfied to renew it for him, for another six months."

Thereupon, Pincus Rosenblatt, complainant-appellant, received a personal check from Abraham Henig, dated August 20th, 1925, No. 2961 on the Broad and Market National Bank for the

sum of eight hundred seventy dollars ($870.00), (see State of Case, p. 188, Exhibits D. 5 and D. 6) which was in payment of four hundred and fifty dollars ($450.00) bonus as testified to by Abraham Henig or payment on account of principal as testified to by Pincus Rosenblatt, complainant-appellant, and six months' interest of three hundred dollars ($300.00) on the Horn mortgage, and six months' interest on the four thousand dollar ($4,000.00) mortgage hereinbefore mentioned, being a total of eight hundred seventy dollars ($870.00). In this connection as to what transpired at the renewal date of August 18th, 1925, Abraham Henig testified: (See State of Case, p. 95, l. 15.) Q "Why wasn't the money paid to Mr. Rosenblatt?" A "Because Mr. Rosenblatt permitted me to use the money for my own purposes," and further testified (See State of Case, p. 99, l. 38) Q "What took place in reference to the sum of ten thousand dollars and accrued interest?" A "At that time I told him I was getting the money and I had use for it personally, that I was making some investments in real estate, and that I would pay him the same amount of interest that Mr. Horn was paying, and asked him whether I could use the money and he said I could." Q "And these payments—was that a payment for the continuation of the mortgage or a payment of repayment of your loan?" A "Payment of my fifteen per cent. interest." And testified that during the continuation of his obligation to Pincus Rosenblatt, complainant-appellant (See State of Case, p. 104, l. 28) that he had paid to September 29th, 1928, a total of fifty-seven hundred dollars ($5700.00) interest and bonus, being a bonus of nine per cent. and an interest of six per cent. per annum, payable semi-annually. Abraham Henig further testified: (See State of Case, p.

107, l. 10) Q "Did you have any arrangement with him subsequently in reference to the ten thousand dollars ($10,000.00)?" A "I did." Q "What was that arrangement?" A "I told him at that time that I was making some investment in several real estate matters and I could use the money and I would pay him the same amount of bonus and interest that was paid by Mr. Horn for it, if he would let me have the money, I would take care of it. I took care of it every six months until I got sick and could not take care of it." Mr. Henig further testified that he became ill on February 4th, 1929, and that he was at the Essex County institution at Overbrook, New Jersey, and that his last payment of bonus and interest was made to Pincus Rosenblatt, complainant-appellant, on September 29th, 1928.

The testimony of Abraham Henig throughout is clear and convincing as compared with the untruthful, uncertain, evasive and hesitating manner that the complainant-appellant testified to, requiring a rebuke from the court. (See State of Case, p. 64, l. 18.) The Court, "Now, I will tell you, Mr. Rosenblatt, the best thing for you to do is to tell the truth. You are very evasive in answering—the best thing for you to do is to tell the truth. Now, I am not going to say anything more. Answer the questions fairly and squarely if you can, but do not be so evasive." The testimony of Abraham Henig is to the effect that he, Abraham Henig, had an arrangement and understanding with Pincus Rosenblatt, complainant-appellant, that he would borrow the ten thousand dollars ($10,000.00) from Pincus Rosenblatt, complainant-appellant, as he could use the money and would pay him the same amount of bonus and interest that was paid by Mr. Horn for it. Pincus Rosenblatt,

complainant-appellant, agreed and consented to it, and that these payments were continued to be made until Abraham Henig became ill and could not take care of it; as shown by the voluminous amounts of payments made by Abraham Henig to Pincus Rosenblatt, complainant-appellant (see State of Case, pp. 188-190 incl.), which is substantiated by the testimony of Pincus Rosenblatt, complainant-appellant, on cross examination. (See State of Case, p. 54, l. 20.) Q "What happened then?" A "Then I—the same thing, Henig comes over and gives me another four hundred and fifty dollars and he says that I should do him a favor and wait another six months. I asked him again—(interrupted) Q "Wait a minute. Do who a favor?" A "That I should do him a favor, himself—I mean that they haven't got any money and I—should wait another six months."

It clearly shows an agreement and understanding between these men and when Pincus Rosenblatt, complainant-appellant, was questioned concerning this agreement, he would substantiate the testimony of Abraham Henig until he realized that he was doing so, hesitated and changed his story that he was granting the favor to Mr. Horn and not to Abraham Henig. Abraham Henig testified, as hereinabove stated, that he had made these payments promptly until September of 1928 and that he became ill in February of 1929. And within the realm of probabilities, Pincus Rosenblatt, complainant-appellant, learning that Abraham Henig was confined to the institution for the insane at Overbrook, New Jersey, and with the possibilities of a failure to recover his health, realizing that he had only signed a Discharge of the mortgage; realizing that he still was in possession of

the original bond and mortgage; realizing that the possibility of recovering the sum of ten thousand dollars ($10,000.00) from Abraham Henig personally was uncertain and remote, and trusting that the Horns and the Roths, defendants-appellees, would be unable to set up a proper defense. To the charge of forgery to be made regarding the discharge of mortgage, and not anticipating the speedy recovery of the health of Abraham Henig, decided that he would seek a means to recover the amount of ten thousand dollars ($10,000.00) by the institution of a suit to foreclose the mortgage against the defendants-appellees, and subsequently sought to influence and solicit the aid of Abraham Henig to testify untruthfully and falsely in his own behalf, which is borne out by the testimony of Abraham Henig. (See State of Case, p. 108, l. 8.) A "He wanted me to testify in his behalf in the suit he had started against Mr. Horn, and I refused to do it." Q "Did he offer you any inducement?" A "No; simply that he thought that I should be in his favor with reference to the matters, that he was my client and not Mr. Horn and I should favor him more than I should favor Mr. Horn." This testimony remains uncontradicted.

The facts are, that Abraham Henig had been employed by Pincus Rosenblatt, complainant-appellant to invest money for him, and that he was employed by Pincus Rosenblatt, complainant-appellant to invest the money in the Jacob Horn, *et al.* bond and mortgage now in dispute, that Abraham Henig had been authorized by Pincus Rosenblatt, complainant-appellant to receive from Jacob Horn, *et al.* the bonus or present, and that it was in turn paid by him to Mr. Rosenblatt to whom it belonged, and was received by him

as a valid payment, that on the fact that such authorization was conferred on Abraham Henig being communicated to Jacob Horn, *et als.*, he Jacob Horn had a legal right to pay the principal and interest to Abraham Henig, as the agent of Pincus Rosenblatt, complainant-appellant, as evidenced by check of August 31st, 1925, in the sum of ten thousand three hundred dollars ($10,-300.00). (See State of Case, p. 211.)

To bear out that an agency existed between Pincus Rosenblatt, complainant-appellant as principal and Abraham Henig, as agent, Pincus Rosenblatt, complainant-appellant testified, that he had received payments of principal from Abraham Henig (a difference of opinion being whether the payments were bonus or principal) not to apply on any alleged loan between Pincus Rosenblatt, complainant-appellant and Abraham Henig, but to apply on the principal of the mortgage, which clearly shows that if the story of Pincus Rosenblatt, complainant-appellant is correct, that he did not loan to Abraham Henig the money, that he consented and permitted Abraham Henig to accept payments of principal in his behalf, that such an agency existed. The question being, when did the agency commence? It commenced the day that Pincus Rosenblatt, complainant-appellant mailed his check to Abraham Henig for disbursements, from which the defendants-appellees, Jacob Horn and Bertha Horn, his wife, received a check from Abraham Henig personally, thereby justifying the defendants-appellees, Jacob Horn and Bertha Horn, his wife, to repay the mortgage in the manner and through the channels that he had received it. The question of agency is well settled and established by the facts in this case, that Pincus Rosenblatt, complainant-appellant indicated at all times he

was perfectly satisfied that Abraham Henig collect for him both principal and interest, not only on the Horn mortgage but on the six or seven other mortgages, aggregating the sum of fifty thousand dollars ($50,000.00) that he had authorized Abraham Henig to invest for him to mortgagors and upon properties as security unknown to him.

Has there been any default attributable to the holder of the lien? What circumstances shall be sufficient to establish negligence, such as shall preclude a mortgagee from a decree establishing his cancelled paper, must be determined as a question of fact, in each particular case, tested by those rules of conduct which men of common prudence usually observe in the care and management of such securities.

Was not the complainant-appellant, residing at all times in the City of New York, and State of New York, and by necessity compelled to employ Abraham Henig as his agent, negligent in putting the check in the hands of Abraham Henig, the one person with whom, the financial transactions between the complainant-appellant and these defendants-appellees were carried on, and also whether the course of conduct pursued or acquiesced in by the complainant-appellant in permitting Abraham Henig to so act was not a holding out of him as the financial agent of the complainant-appellant with whom the defendants-appellees might safely deal.

Will not the court refuse to interfere in his protection at the expense of those who have been deceived and mislead by such fraud. If through his negligence, the record is permitted to give notice to the world that his claim is satisfied and in the face of his own carelessness, have his

mortgage enforced against said bona fide purchaser taking his title on the faith that the registry is discharged. We must assume that Pincus Rosenblatt, complainant-appellant, was a man of business capacity and skill. The transaction was in line of his ordinary duties. It was culpable negligence on the part of Pincus Rosenblatt, complainant-appellant, in permitting himself to be thus imposed upon. The fact that he was so well acquainted with Abraham Henig would not justify so implicit a trust in him in the matter of loans to strangers.

From 1925 to 1929, for a period of close to five years Pincus Rosenblatt blindly indicated that he placed his faith in Abraham Henig without seeing the mortgagors, examining the property or in any wise making an investigation of his securities to ascertain the soundness of his securities, surely these circumstances are sufficient to establish negligence, such as shall preclude a mortgagee from a decree establishing his alleged cancelled paper. Has the complainant-appellant conducted himself in a manner which men of common prudence usually observe in the care and management of such securities? For the sake of this discussion, has not Pincus Rosenblatt, been guilty of such negligence and carelessness, in giving to another the power to practice a fraud upon innocent parties that will cause the court not to interfere in his protection at the expense of those who have been deceived and misled by such fraud, and if through his negligence the record is permitted to give notice to the world that his claim is satisfied, he cannot, in the face of his own carelessness, have his mortgage enforced against a bona fide purchaser, taking his title on the faith that the registry is discharged.

If the story of Rosenblatt is to be believed, that he did not loan to Henig the money, that Henig forged his signature to the discharge of mortgage, then one of two innocent parties must suffer, the mortgagee or the purchasers of the property, without notice then if this court should find from the above facts that one was negligent, the loss must be sustained by the one whose conduct has made the fraud possible.

Pincus Rosenblatt, complainant-appellant testified that he did not loan the ten thouasnd dollars ($10,000.00) to Abraham Henig, but admitted on cross examination, (see State of Case, p. 161, l. 1) that at the time of the trial Abraham Henig owed to him two thousand dollars ($2,000.00) for which a note was given and received.

There was no evidence whatever in the case to show that the payment by Jacob Horn and Bertha Horn, his wife to Abraham Henig was not bona fide, or that the conveyance by Jacob Horn and Bertha Horn, his wife, defendants-appellees, to Sander Roth and Pearl Roth, his wife, defendants-appellees, was not bona fide. The complainant-appellant having failed entirely to substantiate the charge made in the bill to foreclose, that such payments were not made, and that the discharge of the mortgage recorded was a forgery. The burden of proof in this case, that Pincus Rosenblatt, complainant-appellant, did not sign the discharge and that the same is a forgery, is upon him and cannot be supported by probabilities or suspicions, however strong. If allowed to prevail, it must be sustained by such preponderance of evidence as establishes the truth of the allegations on which it depends beyond a reasonable doubt.

This Honorable Court's attention is called to the fact that the pleadings of Pincus Rosenblatt, complainant-appellant, sets forth, that the full amount of ten thousand dollars ($10,000.00) was due, and in his replication denied any payment of principal on account or receipt of bonus. Counsel for the complainant-appellant in his opening address to the court, stated that Pincus Rosenblatt, complainant-appellant, continued to receive interest and amortization payments on the mortgage, although the mortgage does not call for any amortization payments; and failed to satisfactorily explain why he continued to receive payments of interest of three hundred dollars ($300.00) notwithstanding he had admitted the receipt of six payments of principal, each in the sum of four hundred fifty dollars ($450.00) (see State of Case, p. 84, l. 37) Q "How many payments of principal did you receive?" A "Six payments." Q "Each in the sum of $450.00?" A "Yes." Q "How many payments of interest did you receive?" A "I received—when I received the checks I always was receiving it was interest." Q "How many payments of interest?" A "Six." Q "Each in the sum of $300.00?" A "Yes." Q "Can you explain to the Court why each payment of interest continued to be three hundred dollars without giving Mr. Horn credit for the payment of principal?" A "What?" Q "Can you explain to the Court why you continued to receive three hundred dollars in interest, without giving Mr. Horn credit on the payment of principal that you were receiving every six months?" A "Why, I didn't give him credit for the six per cent." Q "Why was he not paying you less than three hundred dollars every six months, receiving credit on the four hundred fifty dollars principal that he was paying you?" A "I was

ask Henig that question and Henig says, 'Well, what do you care, Mr. Rosenblatt, so long as he pay it to you?' All right, what do you care?'' This clearly, convincingly and without a doubt indicates, that a loan from Pincus Rosenblatt, complainant-appellant to Abraham Henig was made on the basis of fifteen per cent., that's why there was no reduction of the interest payments on the principal.

Jacob Horn is an experienced business man, well acquainted in mortgage matters and would not have been willing to have paid the full interest without securing a credit for interest on the principal alleged to have been paid by him on the mortgage. In reading the testimony, one can gather that the court found that the testimony of Pincus Rosenblatt, complainant-appellant, was untruthful in numerous particulars and that the court disregarded his testimony as being untrue, applying the maxim of *''falsus in uno, falsus in ominus.''*

LAW.

Mortgages, 3 Compiled Statutes, Page 3416.

Paragraph 23 . ENTRY OF PAYMENT AND DISCHARGE ON RECORD AND EFFECT THEREOF.—That when any mortgage, registered as aforesaid, shall be be redeemed, paid and discharged, it shall be the duty of the said clerk, on application to him, made by the mortgagor or person redeeming, paying and discharging the said mortgage, and producing to him the said mortgage cancelled, or a receipt thereon, signed by the mortgagee or his executors, administrators or assigns, to enter in a margin to be left for that purpose, opposite of the said abstract, a minute of the said redemption, payment

and discharge; which minute shall be a full and absolute bar to and discharge of the said entry, registry and mortgage. (Rev. 1877, p. 707.)

Paragraph 25. DISCHARGE ON CERTIFICATE OF MORTGAGE.—That any mortgage which has been recorded or registered, shall be discharged upon the record thereof by the officer in whose custody it shall be, whenever there shall be presented to him a certificate signed by the mortgagee, his heirs, executors, administrators or assigns, acknowledged or proved and certified in the manner prescribed by the act entitled "An act respecting conveyances," specifying that such mortgage has been paid, or otherwise satisfied and discharged. (Rev. 1877, p. 707.)

In *Re Garwood* v. *Eldridge,* 2 Equity, 145.

A cancellation of record is an absolute bar and discharge of mortgage, unless effected through fraud, accident or mistake.

In *Re Heyder* v. *Excelsior Building & Loan Association* #2, 42 Equity 403-8 Atl. 310.

Cancellation of a mortgage on the record is only prima facie evidence of its discharge, and it is left to the owner making the allegation to prove the cancelling to have been done by fraud, accident or mistake. *Trenton Banking Co.* v. *Woodruff,* 2 N. J. Equity, 117; *Harrison* v. *New Jersey Railroad Company,* 19 N. J. Equity, 488.

If through his negligence the record is permitted to give notice to the world that his claim is satisfied, he cannot, in the face of his own carelessness, have his mortgage enforced against a bona fide purchaser taking his title on the faith that the registry is discharged. Where one gives to another the power to practice a fraud upon innocent parties, the court will not interfere in

his protection at the expense of those who have been deceived and misled by such fraud. What circumstances shall be sufficient to establish negligence, such as shall preclude a mortgagee from a decree establishing his cancelled paper, must be determined as a question of fact in each particular case, tested by those rules of conduct which men of common prudence usually observe in the care and management of such securities. * * * I do not think that any circumstance presented in this cause made it the appellant's duty, in order to avail himself of the rights of a bona fide purchaser, to institute personal inquiry of the mortgagee. Any rule placing him under this exaction would embrace every case of a purchase of lands that had ever been subject to mortgage which the record showed to be cancelled. Such a rule, it is needless to say, would render this provision of the registry act entirely nugatory. A purchaser could then only buy with safety when the registry had been discharged, and an admission of payment obtained from the mortgagee. Doubtless circumstances may, and frequently do, arise to put the purchaser upon inquiry, and charge him with notice. It seems to me that nothing appears in this transaction which should have put this purchaser upon further inquiry. He was permitted to rely upon the record. He did so, purchasing upon the belief that it spoke the fact truly. It was false, but the deception was directly traceable to the culpable negligence of the mortgage owner, and the loss should fall upon the party chargeable with the fault.

Jones on Mortgages.

Paragraph 967. If the mortgagee is in any way responsible for the mortgage being released of record or if the release of record is procured

through the neglect, in—caution, credulity or misplaced confidence of the mortgagee, the mortgagee is estopped in equity from asserting the priority of his mortgage.

Corpus Juris, page 448, paragraph 46, AGENCY.

AGENT ~~OR~~ of LENDER. If a money lender employs the intermediary to negotiate loans, to examine the title to property offered as security, to see that the property is discharged from prior encumberances, to prepare the papers and see to the execution thereof, to pay over the money to the borrower, or to perform other services in regard to the loan, these facts, taken collectively or in various lesser combinations, justify an inference that the intermediary is the agent of the lender. If the lender pays the intermediary's commission, it tends to establish an agency in the lender's behalf, and if the service is performed at the request and by the direction of the lender, presumptively the agent is his agent, even though the borrower is required to pay for the service. Citing, where a banking company prepared all the papers when a mortgage loan was made, sent the money to be disbursed, collected all interest for the lender, sent the coupons to the borrower when they were paid, and required all the money to be paid to it, and all communications to be addressed to it, also made other loans for the lender, it was the lender's agent.

Re Wittenbrock v. *Parker*, 102 Cal. 93.

AN ATTORNEY EMPLOYED BY A PERSON TO EXAMINE THE title to real estate upon which he contemplates loaning money is his agent, although he is paid by the person seeking the loan.

Re Mateson v. *Blackner*, 46 Mich. 393, 9 N. W. 445.

EXTORTION OF A BONUS FROM THE BORROWER of money is too common a procedure on the part of the lender's agent to be very significant for the purpose of showing that he was the borrower's agent rather than the lender's.

10 *Ruling Case Law*, page 694, Sction 22.

The doctrine of equitable estoppel is frequently applied to transactions in which it is found, that it would be unconscionable to permit a person to maintain a position inconsistent with one in which he has acquiesced, or of which he has accepted any benefit.

Chase's Stephen's Digest of the Law of Evidence. Second edition.

Page 237. Whoever desires any court to give judgment as to any legal right or liability dependent on the existence or non-existence of facts which he asserts or denies to exist, must prove that those facts do or do not exist.

Page 238. The burden of proving that any person has been guilty of a crime or wrongful act is on the person who asserts it, whether the commission of such act is or is not directly in issue in the action.

Page 240. There are some issues in civil actions or proceedings which require more than a mere preponderance of evidence to maintain them. The rule, as variously stated, declares that the evidence must be "clear, unequivocal and convincing," "clear, precise and indubitable," "full, clear and satisfactory," "clear and

conclusive.'' Such an amount or weight of evidence is required to set aside a written instrument for fraud or mistake. *U. S.* v. *Budd,* 144 U. S. 154, *Cummins* v. *Hurlbutt,* 92 Pa. 165, to impeach the certificate of acknowledgment in a deed. (*Albany Co. Sav. Bk.* v. *McCarty,* 149 N. Y. 71.)

Greenlief on Evidence, Fifteenth Edition, page 113.

That the obligation of proving any fact, lies upon the party who substantially asserts the affirmative of the issue.

The burden of proof in this case, that Pincus Rosenblatt, complainant-appellant, did not sign the discharge and that the same is a forgery is upon him, who makes the assertion, and cannot be supported by probabilities or suspicions, however strong. If allowed to prevail, it must be sustained by such preponderance of evidence as establishes the truth of the allegations on which it depends beyond a reasonable doubt.

Defendants-appellees, Sander Roth and Pearl Roth respectfully submit, that the decree in the above matter be affirmed, for the reason stated, together with taxed costs and counsel fee.

WILLIAM N. BECKER,
Solicitor for Defendants-Appellees,
Sander Roth and Pearl Roth.