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BILL OF COMPLAINT.

Filed March 23, 1928.

In Chancery of New Jersey

*To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey.* 10

The complainant, Milton M. Unger, Trustee in Bankruptcy of Harry Mayer, respectfully shows and alleges:

1. That complainant is the duly qualified and acting trustee of Harry Mayer, bankrupt, and that he files this bill for the benefit of himself as such trustee, and any other creditor of said bankrupt, who may come in and contribute to the expense of these proceedings. 20

2. That said Harry Mayer, bankrupt, was duly adjudicated as a bankrupt in the United States District Court for the District of New Jersey on December 12, 1927; that examinations of said bankrupt were thereafter conducted; and that said examinations disclosed the facts hereinafter set out.

3. That on November 1, 1927, said Harry Mayer, bankrupt, was the owner of certain real estate consisting of a frame dwelling known as 53 Seventh avenue, Newark, New Jersey, which property is more particularly described as follows: 30

Property in the City of Newark, County of Essex and State of New Jersey:

BEGINNING at a point distant 58 feet from the corner of Summer Avenue (formerly Brown Street) and Seventh Avenue (formerly 40

Bill of Complaint.

10 Mill Street) in the line of the north side of Seventh Avenue; thence north 8 degrees 43 minutes east parallel to Summer Avenue 100 feet; thence south 81 degrees 30 minutes east 31.90 feet to the westerly side of land conveyed by Matthias Kull and wife to Guiseppe A. Basso and Josephine Basso, his wife, by deed recorded in E-59 page 405; thence south 8 degrees 43 minutes west 100 feet along the said westerly side of lands conveyed to the said Guiseppe A. Basso and wife and pallel with Summer Avenue to the northerly side of Seventh Avenue; thence along the said northerly side of Seventh Avenue 31.90 feet to the place of Beginning. Being lot No. 75 and a portion of lot No. 74 on map of the Mill and Mount Pleasant property dated 1835 subject to easement and mortgages of record.

20 4. That by deed dated November 1, 1927, which deed is recorded in the office of the Register of Essex County in Book K-77, page 183, said Harry Mayer, bankrupt, did convey the premises aforesaid to Morris Magenheim, a brother-in-law of said Harry Mayer.

30 5. Said property was sold and conveyed to Morris Magenheim at a price of \$19,500.00, although shortly before said sale said Harry Mayer, in a financial statement, valued said property at \$24,000.00. At the time of said conveyance your complainant alleges that the said Harry Mayer was insolvent, which fact the said Morris Magenheim well knew.

40 6. Complainant further shows that on July 13, 1927, a mortgage in the sum of \$6,000.00, recorded in the office of the Register of the County

Bill of Complaint.

of Essex in Book N-61 on page 452, was given by the said Harry Mayer to Marcus Mayer, his father, which mortgage was alleged to be given as security for moneys advanced by Marcus Mayer to Harry Mayer one year or thereabouts prior to the making of said mortgage for which advancement, if made, the said Marcus Mayer had at the time of the alleged advancement taken no security. Your complainant alleges that at the time of the making of this mortgage Harry Mayer was insolvent, which fact Marcus Mayer well knew. Your complainant further alleges that the sum of \$6,000.00 was not legally due and owing to the said Marcus Mayer at the time of the making of the mortgage aforesaid. 10

7. Your complainant alleges that the transfer of said property and the mortgaging of said property was made by said Harry Mayer, bankrupt, without fair and legal considerations, for the purpose of hindering, delaying and defrauding complainant and creditors of said bankrupt; and that said Morris Magenheim and Marcus Mayer, respectively, hold said property and mortgage thereon respectively, in trust for bankrupt; that said Morris Magenheim has entered into possession of said properties and collected rents, issues, and profits therefrom, which amounts complainant alleges he holds in trust for said bankrupt; that Marcus Mayer has collected interest on said mortgage, which amount, in addition to the principal sum of said mortgage complainant alleges that the said Marcus Mayer holds in trust for said bankrupt. 20 30

8. That there are creditors of said bankrupt with present unpaid claims, which claims were in existence at the time of the transfer and mortgaging of said bankrupt's property as aforesaid. 40

Bill of Complaint.

9. That said bankrupt had, at the time of said transfer and mortgaging and still has in his trust as aforesaid, a substantial equity in said property; and that in order to realize funds with which to pay the claims of creditors of said bankrupt it is necessary that said property be conveyed to complainant free of Marcus Mayer's mortgage aforesaid so that it may be sold and the proceeds thereof distributed among the respective parties entitled thereto.

10. That said Harry Mayer is a married man and his wife's name is Gussie Mayer; that by reason thereof she may claim to have some interest in or lien upon said property. Complainant therefore alleges that whatever interest or lien upon said property the said wife has acquired is inferior and subordinate to the claim of the complainant and the creditors represented by complainant.

11. Claims of creditors have been filed and allowed in the bankruptcy proceedings and are now unpaid. There are not sufficient assets in complainant's possession to make payment of the claims which have been filed and allowed and which may hereafter be filed and allowed.

12. Complainant further shows that by virtue of the provisions of the Acts of Congress relating to bankruptcy, your complainant herein as trustee of the estate in bankruptcy of the said Harry Mayer, became vested with all the property of the said Harry Mayer of whatever kind, character, nature and description whatsoever as of the date that the said Harry Mayer was adjudged a bankrupt, and also to all rights of action which the said creditors of the said Harry Mayer had at the time of the said adjudication,

Bill of Complaint.

to avoid all conveyances and transfers by him made and to recover property so conveyed or transferred or its value, and to recover property conveyed or transferred by him in fraud of his creditors and to recover all property or its value conveyed or transferred by the said Harry Mayer within four months prior to the date of the filing of the petition by him, or after the filing of the petition and before adjudication, if such conveyance or transfer was made with the intent to hinder, delay or defraud his creditors. 10

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

(a) That the defendants, Harry Mayer, Gussie Mayer, Morris Magenheim and Marcus Mayer may answer this bill of complaint and every allegation therein made. 20

(b) That this Court may decree that said transfer to said Morris Magenheim is null, void and inoperative and that it may decree that Morris Magenheim forthwith reconvey same to complainant herein.

(c) That said Morris Magenheim may be required by decree of this Court to account to complainant for the rents, issues and profits of said property and to pay to complainant any sum or sums of money that may be found to be due on said accounting. 30

(d) That this Court may decree that the said mortgage to Marcus Mayer is null, void and inoperative, and that it may decree that said Marcus Mayer forthwith cancel said mortgage.

(e) That said Marcus Mayer may be required by decree of this Court to account to complain- 40

Bill of Complaint.

ant for any sums of interest paid by Harry Mayer, bankrupt to him; and to pay to complainant any sum or sums of money that may be found to be due on said accounting.

10 (f) 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.

(g) That complainant may have such other and further relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

FREDERICK J. ISRAEL,
Solicitor for and of Counsel with Complainant.

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AMENDMENT TO BILL OF COMPLAINT.

Filed March 23, 1927.

IN CHANCERY OF NEW JERSEY.

*To his Honor, Edwin Robert Walker, Chancellor
of the State of New Jersey:* 10

The complainant, Milton M. Unger, trustee in bankruptcy of Harry Mayer by amendment to his original bill of complaint respectfully shows that:

1. Said bill of complaint was duly filed on March 23, 1928, and subpoena thereunder has not as yet been issued.

2. Said Morris Magenheim, named as a defendant in said bill of complaint is married, and his wife's name is Fannie Magenheim. By reason of the fact of her marriage to Morris Magenheim said Fannie Magenheim may claim to have some interest in the property mentioned in said bill of complaint although this complainant claims that the conveyance whereunder the said Fannie Magenheim might claim interest is null, void and inoperative. 20

Your complainant is without adequate remedy in the courts of law and therefore prays: 30

(a) That the defendant, Fannie Magenheim, may answer this bill of complaint and every allegation therein made.

(b) That this Court may decree that said transfer to Morris Magenheim is null, void and inoperative, and therefore that said defendant, Fannie Magenheim, has no interest in said property. 40

Amendment to Bill of Complaint.

(c) That a writ of subpoena may issue commanding that the said defendant, Fannie Magenheim, answer said bill of complaint and to abide by such decree as the Court may make in the premises.

10 (d) That complainant may have such other and further relief in the premises against the said Fannie Magenheim as the nature of the case may require and as shall be agreeable to equity and good conscience.

FREDERICK J. ISRAEL,
Solicitor for and of Counsel
with Complainant.

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ANSWER.

IN CHANCERY OF NEW JERSEY.

Between

MILTON M. UNGER, Trustee,
Complainant,

and

HARRY MAYER, *et als.*,
Defendants.

On Bill, &c.

10

Answer.

Defendants, answering the bill of complaint filed herein, say that:

1. They admit the first paragraph.
 2. They admit the second paragraph.
 3. They admit the third paragraph.
 4. They admit the fourth paragraph.
 5. They deny the fifth paragraph.
 6. They deny the sixth paragraph, excepting that the allegations concerning the giving of the mortgage are admitted.
 7. They deny the seventh paragraph.
 8. They deny the eighth paragraph.
 9. They deny the ninth paragraph.
 10. They deny the tenth paragraph, excepting that it is admitted that Gussie Mayer is the wife of Harry Mayer.
 11. They admit the eleventh paragraph.
 12. They admit the twelfth paragraph.
- They deny the second paragraph of the amended bill, excepting that it is admitted that Fannie Magenheim is the wife of Morris Magenheim.

DAVID BOBKER,
Attorney for Defendants.

40

CONCLUSIONS OF VICE-CHANCELLOR.

1. A trustee in bankruptcy may institute suit to avoid illegal transactions such as any creditor might do, as he represents all the creditors.

2. A mortgage given to secure antecedent debts is not given "for value" within the meaning of the Federal Bankruptcy act or for "a valuable consideration" within the meaning of the New Jersey Corporation act. 10

3. As to a voluntary conveyance made by one indebted, there is an irrebuttable presumption of fraud.

4. Circumstances that would put a reasonable person on inquiry as to the financial condition of one transferring property will charge him with such facts as he could have learned had he investigated—if he neglects to investigate he does so at his peril. 20

Mr. Frederick J. Israel, for the complainant.

Mr. David Bobker, for the defendants.

CHURCH, *V.-C.*

This is a bill brought by a trustee in bankruptcy to set aside a conveyance and a mortgage as in fraud of creditors. 30

There is no question as to right of complainant to maintain this action.

In the case of *Crane v. Brewer et al.*, 73 N. J. Eq. 558, Vice-Chancellor Howell held (syllabus 4):

"Under the express terms of the Bankruptcy act of July 1st, 1898 (30 Stat. 565 ch. 541 § 70e; U. S. Comp. Stat. 1901 p. 3451), a trustee in bankruptcy represents all the creditors of the 40

Conclusions of Vice-Chancellor.

bankrupt, and takes all his property and rights, and may institute such proceedings to avoid illegal transactions as any of them might."

The facts in this case are as follows:

10 On November 1st, 1927, and prior thereto, Harry Mayer was the owner of certain property in the city of Newark, known as 53 Seventh avenue, which property, on November 1st, 1927, had a value of \$24,000. On July 13th, 1927, the said Harry Mayer gave a mortgage on the said property to his father, Marcus Mayer, in the sum of \$6,000. On November 1st, 1927, he conveyed the said property to his brother-in-law, Morris Magenheim, for the sum of \$19,500, the above mortgage being part of the purchase price. Harry Mayer was adjudicated a bankrupt on December 20 12th, 1927, and there are not sufficient assets in the hands of the trustee to pay creditors in full, the trustee testifying that he received \$1,000 for the bankrupt's assets, and that the total balance in his hands at the present time is \$830, and that the claims filed in the bankruptcy court, which were introduced in evidence in this proceeding, disclose that among said claims there are creditors of said bankrupt with present unpaid claims, which claims were in existence at the time of the 30 transfer and mortgaging of said bankrupt's property, to wit, on July 13th and November 1st, 1927, as follows:

Old Dutch Mills, claim filed for \$77.76.

Adolph Teitelbaum, claim filed for \$135.50.

Roma Provision Company, claim filed for \$29.

M. Augenblick and Brother, claim filed for \$604.20 and other claims, the total of all claims filed being \$21,214.89. The schedules of the bankrupt were also introduced in evidence. They 40

Conclusions of Vice-Chancellor.

show that on the date of the bankruptcy, December 12th, 1927, the bankrupt swore that he had assets totaling \$2,000 and liabilities totaling \$60,626.90, leaving a deficit of \$58,626.90.

It seems to me, therefore, that the only question to be determined in this case is one of fact, namely, did Marcus Mayer and Morris Magen- 10
heim, at the time of the execution of the mortgage and the deed, have reasonable cause to believe that Harry Mayer was at that time insolvent?

There were no books of account of the bankrupt. He says he kept his accounts on paper bags which he threw away from time to time. This, if true, is certainly an extraordinary method of keeping books, but perhaps a good way to conceal assets. His creditors, he admits, had 20
been pressing him for at least two years. He also says that merchandise which actually cost him \$15,000 was "ate up by rats." He allowed this rat plague to continue during the two years his creditors were pressing him. He estimates that the rodents consumed \$10,000 worth of goods. He had fixtures which cost him \$3,200, but when he filed his bankruptcy petition, he said: "I looked around and saw all the fixtures are really 30
broken up [whether by the rats is not stated] and I figured if anybody wants to move them out I don't think they can get a \$50 bill."

On March 25th, 1927, he filed a bank statement, showing a net worth of \$42,027.67.

On December 12th, 1927, at the time of the bankruptcy, the bankrupt had instead of net assets of \$42,000 a deficit of \$58,626.80. The only consideration for the mortgage was an alleged debt due the father, Marcus Mayer, which 40
debt became due in 1926. There was no present consideration.

Conclusions of Vice-Chancellor.

In the case of *Empire State Trust Co. v. Trustees of William F. Fisher & Co.*, 67 N. J. Eq. 602, the court of errors and appeals held (syllabus 3): "A mortgage given merely to secure antecedent debts is not given 'for value,' within the meaning of clause e in section 70 of the Federal Bankrupt act, or for 'a valuable consideration,' within the meaning of Section 64 of the New Jersey Corporation act."

Vice-Chancellor Garrison said, in the case of *Horton v. Bamford*, 79 N. J. Eq. 356 (syllabus 10): "As to a voluntary conveyance made by one who is indebted, there is an irrebuttable presumption of fraud."

It follows from what I have said that the mortgage should be set aside.

20 As to the conveyance to Magenheim, the conditions are somewhat different. Magenheim paid \$19,500 for the property. Its real value, according to the bankrupt's own statement, was \$24,000. Magenheim was the bankrupt's brother-in-law. Simon Englander was the attorney for both parties in the transfer. He says he discussed Mayer's financial condition with Mayer and advised him that in the event of bankruptcy he might get into trouble. He says that this advice
30 might have been given in Magenheim's presence. In any event, as attorney for Magenheim, he searched the title. It is reasonable to suppose that as any reputable member of the bar would do, he informed his client of Mayer's statements as to his insolvency.

Magenheim, himself, admits that Mayer told him he was short of money. He had to sell the house in order to get money. Knowing this, Magenheim bought the property at less than its market value. Considering the testimony as a
40

Conclusions of Vice-Chancellor.

whole, I am convinced that both the father, the mortgagee, and the brother-in-law, the grantee of the deed, knew when these instruments were executed that Mayer was insolvent. I find this to be the fact. The testimony shows that the bankrupt lost very large sums in Florida within a month after he gave the bank statement above referred to, namely, about \$46,000, and it is only reasonable to suppose he so informed his father and brother-in-law. 10

Vice-Chancellor Garrison says, to quote again from *Horton v. Bamford, supra* (syllabus 6): "Circumstances such as would put a reasonable person upon inquiry with respect to the financial condition of a transferrer will charge creditors or others dealing with a failing debtor with such facts as they would have learned had they properly investigated." 20

The father and brother-in-law say they did not know the bankrupt's financial condition. I have found, as a fact, that they did know. But, admitting for the sake of argument that they did not, the circumstances in the case put upon them the duty to investigate, which duty they neglected, and did so at their peril.

The deed should be declared a mortgage for the amount actually paid by Magenheim. 30

I will advise a decree accordingly.

FINAL DECREE.

IN CHANCERY OF NEW JERSEY.

*Between*10 MILTON M. UNGER, Trustee in
Bankruptcy of Harry
Mayer,*Complainant,**and*HARRY MAYER, GUSSIE MAYER,
MORRIS MAGENHEIM and
MARCUS MAYER,*Defendants.*

*On Bill, &c.**Final Decree.*

20

This cause coming on to be heard in the presence of Frederick J. Israel, Esq., of counsel for the complainant, and David Bobker, Esq., of counsel for the defendants, and the Court having read and considered the pleadings, and having taken testimony orally and in open court, and having heard and considered the arguments of counsel thereon, and being satisfied that a certain bond and mortgage dated July 13, 1927,

30 made by Harry Mayer and wife to Marcus Mayer in the sum of \$6,000, and recorded in the Register's Office of Essex County in Book N 61, of mortgages, page 452, appears to be a subsisting lien upon the premises in the bill of complaint particularly described and hereinafter described, and that said mortgage was not given for a valuable consideration, within the meaning of the Federal Bankruptcy Act, and that the same is not a lien as against the complainant

40 herein, or as against the premises hereinbefore

Final Decree.

referred to, and that the complainant is entitled to the relief prayed for by him in his complaint, and that the complainant is entitled to have said mortgage declared null, void and inoperative,

It is thereupon, on this 6th day of November, 1929, ORDERED, ADJUDGED and DECREED, that the defendant Marcus Mayer surrender the said bond and mortgage, properly endorsed for cancellation, to the complainant, within ten days after the service upon the said Marcus Mayer of a true but uncertified copy of this decree; And 10

It is further ORDERED, ADJUDGED and DECREED, that the said bond and mortgage hereinabove referred to be cancelled of record and be no longer a lien upon the said lands and premises hereinafter described, against the said complainant or any person or persons claiming by, from or under him. And that the defendant Marcus Mayer and all persons claiming by, from or under him be debarred and perpetually enjoined from collecting any money upon the said bond and mortgage, and from setting up the same against the premises therein described. And 20

It further appearing to the Court that on November 1, 1927, the defendant Harry Mayer and his wife conveyed the premises hereinafter described, to the defendant Morris Magenheim, but that said conveyance was not made upon a full or fair consideration, and was made upon the payment of certain sums of money then paid in cash by the said Morris Magenheim to the said Harry Mayer, and that the said Morris Magenheim is entitled only to a lien and encumbrance upon the premises for the amount of monies actually paid by him to the said Harry Mayer. 30

It is further ORDERED, ADJUDGED and DECREED, that the said conveyance conveying the lands and 40

Final Decree.

premises described as follows: All that tract or parcel of land and premises, situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey.

10 BEGINNING at a point distant fifty-eight feet from the corner of Summer Ave. (formerly Brown St.) and Seventh Ave. (formerly Mill St.) in the line of the north side of Seventh Avenue., thenth north 8 degrees and 43 minutes east parallel to Summer Ave. 100 feet; thence south 81 degrees 30 minutes east 31.90 feet to the westerly side of lands conveyed by Mathias Kull and wife to Guiseppe A. Basso and Josephine Basso, his wife, by deed recorded in the Essex County Register's Office in Book E 59 of deeds for said county on page 405; thence south 8 degrees 43 minutes West 100 feet along the said westerly side of lands conveyed to the said Guiseppe A. Basso and wife and parallel with Summer Avenue to the northerly side of Seventh Avenue and thence along the said northerly side of Seventh Avenue thirty-one feet and ninety hundredths of a foot to the place of BEGINNING.

20

30 Being lot No. 75 and a portion of lot No. 74 on map of the Mill or Mt. Pleasant property dated 1835. This conveyance is also made subject to an easement in favor of the adjoining property on the east made by Matthias Kull and Mary Kull, his wife, to Guiseppe A. Basso and Josephine Basso, his wife. Said easement is recorded in Book E 59 of deeds for Essex County, on page 405. Being the same premises conveyed to Harry Mayer by Salvatore Onofrietto and Francesca Onofrietto, his wife, by deed dated

40 April 10, 1923, and recorded in the Essex

Final Decree.

County Register's Office in Book Z 67 of deeds, page 368-369.

be, and the same is hereby declared to be null, void and of no effect, but that the said Morris Magenheim shall be entitled to and it is hereby ORDERED, ADJUDGED and DECREED, that he has a lien upon the said premises for the amount of the monies advanced by him to the said Harry Mayer upon the making of said conveyance. And 10

It is further ORDERED, ADJUDGED and DECREED, that it shall be referred to John P. Manning one of the Special Masters of this Court to ascertain and report the amount of monies actually advanced by the said Morris Magenheim to the said Harry Mayer as aforesaid, and also to take an account of all the rents, issues and profits of said lands and premises, collected by the said Morris Magenheim, and of the sums lawfully expended by him for interest, taxes, repairs, and other fixed charges, and that the said Master make report to this Court with all convenient speed, and all further equities are reserved until the coming in of said Master's Report, And 20

It is further ORDERED and DECREED that the defendants pay to the complainant the costs of this suit to be taxed, including a counsel fee of \$300 which is hereby allowed to the solicitor of the complainant, and that in default of the payment thereof execution may issue therefor according to the practice of this Court. 30

EDWIN R. WALKER,
C.

Respectfully advised,

ALONZO CHURCH,
V.-C.

NOTICE OF APPEAL.

IN CHANCERY OF NEW JERSEY.

Between

10 MILTON M. UNGER, Trustee in
Bankruptcy of Harry
Mayer,

*Complainant,**and*

HARRY MAYER, GUSSIE MAYER,
MORRIS MAGENHEIM and
MARCUS MAYER,

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

20

To Milton M. Unger, Trustee in Bankruptcy of
Harry Mayer, complainant, and Frederick J.
Israel, Esquire, his solicitor:

The defendants, Harry Mayer, Gussie Mayer,
Morris Magenheim and Marcus Mayer, hereby
appeal from the final decree made in the above-
entitled cause on the 6th day of November, 1929,
and from the whole and every part thereof, to
the Court of Errors and Appeals in the last re-
sort in all causes.

30

Said decree was made by the Chancellor on the
advice of Vice-Chancellor Church.

Dated November 14, 1929.

DAVID BOBKER,

Solicitor for Defendants.

GEORGE H. ROSENSTEIN,

Of Counsel with Defendants.

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Notice of Appeal.

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

GEORGE H. ROSENSTEIN,
Of Counsel with Defendants.

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AFFIDAVIT OF SERVICE.

IN CHANCERY OF NEW JERSEY.

Between

10 MILTON M. UNGER, Trustee in
Bankruptcy of Harry
Mayer,

*Complainant,**and*

HARRY MAYER, GUSSIE MAYER,
MORRIS MAGENHEIM and
MARCUS MAYER,

*Defendants.**On Bill, &c.**Affidavit
of Service.*

20

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

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

I reside in the City of Newark, County of Essex and State of New Jersey.

30 That I am a clerk in the office of Geo. H. Rosenstein, of counsel with the defendants herein. That on the 15th day of November, 1929, I served a copy of the notice of appeal upon Frederick J. Israel, solicitor for complainant, at his office 164 Market street, Newark, New Jersey, by delivering to and leaving same with Dorothy Chenin, Secretary to Frederick J. Israel.

LOUIS GELLER.

Sworn and subscribed to before
me this 15th day of November,
1929.

40 LOUIS H. FRANKEL,
An Attorney at Law of New Jersey.

PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

Between

MILTON M. UNGER, Trustee in
Bankruptcy of Harry
Mayer,
Complainant-Respondent,

and

HARRY MAYER, GUSSIE MAYER,
MORRIS MAGENHEIM and
MARCUS MAYER,
Defendants-Appellants.

10

*On Appeal
from the
Court of
Chancery.*

*Petition
of Appeal.*

20

*To the Honorable the Court of Errors and Ap-
peals in the last resort in all causes:*

The petition of Harry Mayer, Gussie Mayer,
Morris Magenheim and Marcus Mayer, the appel-
lants in the above-entitled cause, respectfully
shows that:

1. Petitioners, jointly and severally, find
themselves aggrieved by a final decree made in
the Court of Chancery by his Honor Edwin
Robert Walker, Chancellor of the State of New
Jersey, bearing date the 6th day of November,
1929, in a certain cause in said Court of Chan-
cery wherein Milton M. Unger, Trustee in Bank-
ruptcy of Harry Mayer, was complainant, and
Harry Mayer, Gussie Mayer, Morris Magenheim
and Marcus Mayer, were defendants, in this
respect, to wit: That the bond and mortgage
dated July 13, 1927, made by Harry Mayer and

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Petition of Appeal.

wife to Marcus Mayer in the sum of \$6,000.00 and recorded in the Register's Office of Essex County in Book N 61 of mortgages, page 452, was not given for a valuable consideration within the meaning of the Federal Bankruptcy Act and that the same is not a lien as against the

10 complainant or as against the premises therein referred to, and that complainant is entitled to have said mortgage declared null, void and inoperative; that the defendant, Marcus Mayer, surrender the said bond and mortgage, properly endorsed for cancellation to the complainant; that the said bond and mortgage above referred to be cancelled of record and be no longer a lien upon the lands described in said mortgage against

20 complainant or anyone claiming by, from or under him and debarring and perpetually enjoining defendant, Marcus Mayer, from collecting any money upon the said bond and mortgage, and from setting up the same against the premises therein described; and that the defendant, Harry Mayer, and his wife, conveyed the premises mentioned and described as aforesaid, on November 1, 1927, but that said conveyance was not made upon a full and fair consideration and was made upon the payment of certain sums of

30 money then paid in cash by Morris Magenheim to said Harry Mayer, and that said Morris Magenheim is entitled only to a lien and encumbrance upon the premises for the amount of moneys actually paid by him to the said Harry Mayer and that the conveyance aforesaid be declared to be null, void and of no effect, but that said Morris Magenheim shall be entitled to a lien upon the premises in question for the amount of money advanced by him to the said Harry Mayer upon the making of said convey-

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Petition of Appeal.

ance; and that a reference was ordered to a Special Master of this Court to ascertain and report the amount of moneys actually advanced by the said Morris Magenheim to said Harry Mayer and to take an account of all the rents, issues and profits of said lands and premises, collected by the said Morris Magenheim, and of the sums lawfully expended by him for interest, taxes, repairs and other fixed charges, and reserving all further equities until the filing of said Master's report, and further adjudges that defendants pay to the complainant the costs of this suit to be taxed, including a counsel fee of \$300—which was allowed to solicitor of complainant, and in default of payment thereof, execution may issue therefor. 10

2. Petitioners appeal from the decree of the Chancellor which decrees as aforesaid upon the ground that same is erroneous in that: (a) It adjudges the complainant is entitled to the relief prayed for when it should have denied the relief prayed for in the bill of complaint and dismissed the bill; (b) that the bond and mortgage dated July 13, 1927, should not have been decreed to have been given for a consideration not valuable within the meaning of the Federal Bankruptcy Act, but on the contrary should have decreed that said bond and mortgage was given for a valuable consideration within the meaning of the Federal Bankruptcy Act, for the reasons that (1) said bond and mortgage was executed by Harry Mayer more than four months prior to the adjudication in bankruptcy of said Harry Mayer; (2) that said bond and mortgage was given for a good consideration (3) that said bond and mortgage was given for a fair consideration in accordance with the Statute of New Jersey 20 30 40

Petition of Appeal.

in such case made and provided (4) that the indebtedness for which this bond and mortgage were given was bona fide (5) that the indebtedness had matured and the bond and mortgage given as aforesaid was based upon an extension of the date of maturity of said indebtedness (6)

10 that the complainant did not stand in the position of a judgment creditor and the Court of Chancery, therefore, was without power to grant the relief sought therein by complainant (7) that the New Jersey Statute in such case made and provided requires, as a condition precedent to jurisdiction by the Court of Chancery that complainant be or stand in the position of a judgment creditor inasmuch as complainant has elected to submit the controversy in question to

20 a forum of the State of New Jersey (8) that under the laws of the State of New Jersey and the Common law, the complainant had no other or better or greater right to attack the bond and mortgage than any creditor had or could have thereunder (9) that no fraud by the defendants or any one of them was shown whatever but on the contrary, the evidence clearly indicating that the transaction aforesaid was bona fide and regular in all respects. (c) That the conveyance by defendant, Harry Mayer, and his wife,

30 to defendant, Morris Magenheim, was decreed not to have been made upon a full and fair consideration when it should have been decreed that the consideration paid for said conveyance was a full and fair one; (d) that the consideration of \$19,500.00 paid for the property in question was fair and adequate; (e) that complainant failed to establish by adequate testimony a higher valuation of the premises in question; (f) that the evidence clearly established that the consid-

Petition of Appeal.

eration paid for the conveyance in question was in all respects a fair and adequate one; (g) that both the execution of the bond and mortgage in question to defendant, Marcus Mayer, and the conveyance in question to Morris Magenheim are determinable, controllable and governable only by the laws of the State of New Jersey by reason of complainant's election to submit the controversy to Courts of the State of New Jersey; (h) that pursuant to the Statute of New Jersey in such case made and provided, the execution of the bond and mortgage aforesaid and the conveyance aforesaid, were wholly bona fide, valid and binding; (i) that no counsel fee should have been allowed, and the one allowed is excessive. 10

Petitioners therefore pray that said decree of said Chancellor may be wholly reversed and set aside and for nothing holden and that the petitioner may have such relief in the premises as to this Court may seem just and proper. 20

DAVID BOBKER,
Solicitor of Appellants.

GEORGE H. ROSENSTEIN,
Of Counsel with Appellants.

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ANSWER TO PETITION OF APPEAL.

NEW JERSEY COURT OF ERRORS
AND APPEALS.

- | | | |
|----|---|--|
| 10 | MILTON M. UNGER, Trustee in
Bankruptcy of Harry Mayer,
<i>Complainant-Respondent,</i>

<i>vs.</i>

HARRY MAYER, GUSSIE MAYER,
MORRIS MAGENHEIM and MAR-
CUS MAYER,
<i>Defendants-Appellants.</i> | } <i>On Appeal
 from Court of
 Chancery.</i>

} <i>Answer to
 Petition
 of Appeal.</i> |
|----|---|--|

- 20 The answer of Milton M. Unger, Trustee in Bankruptcy of Harry Mayer, complainant-respondent, to the petition of appeal of Harry Mayer, Gussie Mayer, Morris Magenheim and Marcus Mayer, defendants-appellants.

This respondent, not admitting the truth of all or any of the matters in said petition of appeal contained, for answer thereto nevertheless says that a final decree was, on November 6, 1929, made and entered in the Court of Chancery of

- 30 New Jersey, in the above-entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said final decree this respondent begs leave to refer thereto when the same shall be produced.

This respondent is advised and believes that said final decree is agreeable to equity; and he

Answer to Petition of Appeal.

prays that the same may be affirmed with costs to be taxed in favor of this respondent.

FREDERICK J. ISRAEL,
Solicitor for and of Counsel with
Milton M. Unger, Trustee in
Bankruptcy of Harry Mayer,
Complainant-Respondent. 10

Service of a copy of the within answer to petition of appeal is hereby acknowledged this 12th day of December, 1929.

GEORGE H. ROSENSTEIN,
Solicitor of Defendants-Appellants.

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Opening.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

December 5, 1928.

10

Between

MILTON M. UNGER, Trustee in
Bankruptcy of Harry
Mayer,

Complainant,

and

HARRY MAYER, GUSSIE MAYER,
MORRIS MAGENHEIM and
MARCUS MAYER,

20

Defendants.

Transcript of shorthand notes of testimony taken in the above-entitled cause before his Honor, Alonzo Church, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, in the presence of Frederick J. Israel for complainant; David Bobker for defendant.

30

Mr. Israel: The bill is filed on behalf of Milton M. Unger, the trustee in bankruptcy, under an order of Referee I mean Referee Porter, the referee in charge of this matter. The allegation in the bill is that the bankrupt was adjudicated a bankrupt on December 12, 1928, which is admitted in the answer; that on November 1st the bankrupt was the owner of a certain piece of real estate on 53 Seventh avenue, Newark, New Jersey. That is also admitted. It is alleged that by deed of November 1, 1927, the property was con-

40

Opening.

veyed to the bankrupt's brother-in-law, Morris Magenheim and which is also admitted. The trustee alleges that this conveyance was not for an adequate consideration, which is denied by the defendant. The trustee further alleges that on July the 13th, 1927, a mortgage in the sum of six thousand dollars was given to the bankrupt's father by the bankrupt. We allege that mortgage is fraudulent and was given for the intention of hindering and delaying the creditors of the bankrupt. We further allege that there were creditors of the bankrupt with present unpaid claims at the time of both conveyances and that the mortgages—of course, we further allege the bankrupt is a married man and his wife had some interest in the property. We further allege that there were insufficient assets to make payment of the claims. That is admitted. The purpose of our bill is to set aside both these conveyances on the ground it was fraud on the creditors and trustees.

The Court: I suppose your answer is a denial?

Mr. Bobker: We, in our answer, claim that we bought the property and paid consideration for the property and as far as the six thousand dollar mortgage, we have checks in evidence to prove that the transaction was legitimate and that there was good and valid consideration for giving that mortgage and that the entire transaction was regular and was not a fraud upon the creditors or anybody else.

Mr. Israel: I will call Mr. Unger, the trustee.

Milton M. Unger, direct.

MILTON M. UNGER, sworn for complainant.

Direct examination by Mr. Israel.

Q Mr. Unger, you are the trustee in the matter of Harry Mayer, bankrupt? A Yes.

10 Q You were also the receiver? A Yes.

Q As receiver did you receive an offer from one Morris Magenheim of \$1,000 for the bankrupt assets? A I did.

Q And an order of the Court was made confirming that offer? A That is right.

Q Besides that thousand dollars that you received from Magenheim, what other receipts did you have as trustee? A Not over fifteen dollars.

20 Q Not over fifteen dollars. And what is the total balance on hand at the present time? A Eight hundred thirty odd dollars.

Q When you were appointed receiver, did you attempt to get possession of any books that the bankrupt had? A Yes.

Q Did he have any books? A We found none.

Q Except—did you find any books at all of any kind? A A few unpaid bills, no regular books at all.

30 Q Check books you found? A A check book and some unpaid bills. No bookkeeping books.

Q He kept no regular set of books to show his financial condition? A We were unable to find any at all.

Mr. Israel: That is all.

Mr. Bobker: No questions.

Mr. Israel: May I at this time offer the deed, certified copy of the deed?

40 Mr. Bobker: No objection.

Ann E. Margulius, direct.

The Court: Let it be marked.

(Copy of deed (certified) marked Ex.
C. 1.)

ANN E. MARGULIUS, sworn for complainant. 10

Direct examination by Mr. Israel.

Q Miss Margulius, you are the Court stenographer of Referee Porter? A Yes, sir.

Q And did you take the testimony in the matter of Harry Mayer, bankrupt? A I did.

Q Have you in your possession the various papers and documents and claims filed in that matter? A I have.

Q May I ask you to kindly let me have the schedules filed in that case and all the claims—
A (Witness produces papers.) 20

Mr. Israel: And the testimony. I would like to offer the schedules in evidence. Of course, I will get Mr. Mayer to identify the signature.

Mr. Bobker: No objection.

The Court: Let it be marked.

Mr. Bobker: Is this the original? 30

Mr. Israel: Yes.

The Court: Let it be marked, but I think you better return it to the referee's court.

(Paper marked Exhibit C. 2.)

Mr. Israel: I offer claims as filed.

(Two bundles of papers marked Exhibit
C. 3.)

Mr. Israel: It is admitted the total amount of claims filed \$21,214.89. 40

Alvin W. Case, Jr., direct.

The Court: All right.

Mr. Israel: I also offer the testimony taken in this matter in evidence.

The Court: Any objection?

10 Mr. Bobker: Yes. I object to the offer of testimony as a whole.

Mr. Israel: Suppose I keep Miss Margulius here in case the question arises I will have to offer it.

Mr. Bobker: That testimony covers a hearing that extended over possibly a week or maybe ten days and those issues are not relevant to the present case. Now, if counsel will—(interrupted).

20 The Court: Can't we segregate the testimony that refers to this transaction and offer the testimony insofar as it concerns this transaction?

Mr. Bobker: I will say this, that I will consent to have your Honor consider as part of this case the testimony that may be relevant to the issue, and which testimony either Mr. Israel and I can agree upon, and I don't think we will have any difficulty on the score.

30 The Court: All right. Let that be offered, and no objection, it will go as such.

(Seven books of testimony marked Exhibit C. 4.)

ALVIN W. CASE, JR., sworn for complainant.

Direct examination by Mr. Israel.

40 Q Mr. Case, by whom are you employed? A
North Ward National Bank.

Alvin W. Case, Jr., direct.

Q What office do you hold? A Assistant cashier.

Q Have you in your possession a certified statement signed by Harry Mayer, given to your bank on March the 25th, 1927? A Yes, I have.

Q May I have it? A (Witness produces statement.) 10

Mr. Israel: Mr. Bobker, will you admit this is Harry Mayer's signature?

Mr. Bobker: We admit that is signed by Harry Mayer.

Mr. Israel: I offer this statement in evidence.

Mr. Bobker: We object. That is, I admit that signature is that of Harry Mayer, but at this time I object to the statement going in upon the ground that the statement purports to contain the assets and liabilities of Harry Mayer and this is an action brought by the trustee for Harry Mayer against a third party to set aside a conveyance of real estate. I don't believe that statement is relevant or binding on the defendant in this particular suit. For that reason I object to the statement being offered. I will admit that the statement is signed by Mayer. 20 30

The Court: I will admit it, and it is a matter of argument whether it should be considered in the determination of the case.

(Statement marked Exhibit C. 6.)

Mr. Israel: That is all.

The Court: Is that an original?

Mr. Israel: That is an original and this gentleman has a copy he could leave, if it is satisfactory to the Court. 40

Harry Mayer, direct.

The Court: All right; let us have a copy.

HARRY MAYER, sworn for complainant.

10 *Direct examination by Mr. Israel.*

Q Mr. Mayer, you are familiar with the statement that you gave to the North Ward National Bank, aren't you? Suppose I give you this copy. I have an extra copy. That statement that you gave to the North Ward National Bank on March 25, 1927, was that statement true at that time? A I don't recall this here, figures here.

Q I didn't hear your answer. A I don't recall this here figures on this here statement.

20 Q Was the statement true when you gave it?

A Yes, sir.

Q Referring to the first item, cash on hand, \$763.42, how much of that cash did you have on hand on July 13, 1927?

30 Mr. Bobker: I object, if your Honor please. Not material; absolutely irrelevant. Counsel—the witness admitted that the statement is true and I don't understand whether counsel is endeavoring to impeach his witness or just what his object is.

The Court: He is entitled to cross examine him on items in the account, I suppose—to examine him, rather.

Mr. Bobker: This man is his witness.

The Court: I understand that.

40 Mr. Bobker: And this action involves the setting aside of a fraudulent conveyance of real estate. It has nothing to do with cash or personal property or—(interrupted).

Harry Mayer, direct.

The Court: I will allow it.

Mr. Bobker: I ask for an exception.

Q Answer the question, please. A What was that question, please?

(Question read as follows: "Referring to the first item, cash on hand, \$763.42, how much of that cash did you have on hand on July 13, 1927?") 10

The Witness: I haven't got any record—I didn't have any record.

Q Will you please speak louder, Mr. Mayer?
A I don't recall.

Q Do you know if it was less or more? A I couldn't tell you. I don't know. 20

Q The second item, accounts receivable, \$2,978.45, what did those accounts receivable consist of, do you remember? A Accounts receivable, money outstanding.

Q I see. You kept no books, did you? A No.

Q You have no record of what these people owe you, do you? A No. I had record on paper bags.

Q I see. What became of the paper bags? A As I collected the money I destroyed the bags. 30

Q Do you know how much of those accounts receivable you had on hand on July 13th? A Well, I didn't figure them.

Q But were you collecting your accounts all along as you went along? A Yes.

Q Referring to the third item, "Notes Receivable," whose note was that? A One of my brothers.

Q Which one? A Leo. 4)

Harry Mayer, direct.

Q What does he do for a living? A He works for me. He used to work for me.

Q He worked for you? A Yes.

Q Did he own any real estate? A No.

Q Have any property of any kind that you know of? A No.

10 Q What was that note given for? A That was given for interest and property in Florida.

Q In Florida. How did you come to get that property at Florida? A I bought property in Florida and he said that he wanted to have a little interest. I gave him an interest of two thousand dollars.

Q And that was represented by that note? A Yes.

20 Q But your brother had no financial responsibility? A What?

Q Your brother had no financial responsibility? He owned no property or anything? A No.

Q And when did you buy that land in Florida? A I believe in 1925, if I am not mistaken.

Q 1925. When did you determine that that property in Florida had no value? A I lost it in 1927.

Q About what time in 1927? A I don't recall just the date.

30 Q The early part of 1927? A No, I believe it was the late part.

Q About April? A No; around September, if I am not mistaken.

Q September? A I don't know exactly, but around that time.

Q What happened in September in regard to the property? A People took it back, the mortgagees took it back.

40 Q On a foreclosure proceeding? A No; I returned it to them in good faith.

Harry Mayer, direct.

Q Didn't they start foreclosure proceedings?

A They did.

Q When did they start the proceedings? A About a month before.

Q In August? A Around that time.

Q How far were you in default in your mortgages on that property? A How far was I 10 what?

Q In default on the mortgages on that Florida property? A I don't know what you mean, counsellor.

Q Well, you had the mortgages on it, didn't you? A Yes.

Q And the mortgagee took back the property, didn't he? A Yes.

Q And—

The Court: How much did you owe on 20 it?

The Witness: About \$54,000.

Q And how long had you been in arrears on payment of the mortgage or interest? A A few months.

Q A few months. And that brings it back to about when, February? A No, later part.

Q Latter part of what? A April, I believe.

Q April? A On April.

Q So on April you had been in arrears and they instituted foreclosure proceedings on the property in Florida; is that so? A Not in April. I believe they started a suit in August.

Q Around August, how far had you been back in payment? A I don't recall.

Q When did the Florida boom burst, to your knowledge? A After I purchased my property.

Q What is that? A After I purchased my property.

Harry Mayer, direct.

Q How soon after? A I haven't got no idea.

Q Well, was it a year or month? A Well, I found that about a year, probably a year and a half later.

10 Q I see. So, in 1925 you purchased the property and in 1926 the boom burst and the property was not worth very much? A No, in 1927.

Q When in 1927? A Around 1927. I really don't know the date.

Q Early part? A Around April, I believe.

Q Around April. The next item is "Merchandise \$18,000." How much of that merchandise— What is that, cost price or selling price?

A That was selling price.

20 Q What was the cost price of that merchandise? A I believe, about ten or fifteen per cent. less.

Q You believe about ten or fifteen per cent. less? A Yes.

Q The cost price? A Yes.

Q You are sure it was not fifteen thousand dollars? A No, I don't think so.

Q Do you recall testifying in your bankruptcy proceedings that that property cost fifteen thousand dollars? A No, I do not.

30 Q How much of that merchandise had been eaten up by rats, by July 13, 1927? A I haven't got the least idea. I know I had a lot of damage.

Q How much? A I don't know.

Q Do you recollect testifying in the bankruptcy proceedings that you had lost ten thousand dollars' worth of merchandise by rats eating it up by the time you filed your petition in bankruptcy? A I don't recollect.

40 Q The next item I call your attention to is "Machinery and fixtures, \$3,200." What was the cost of these fixtures, Mr. Mayer? A \$3,200.

Harry Mayer, direct.

Q And they were bought how long ago? A About six years ago.

Q About six years ago? A (Witness nods yes.)

Q I believe they are the same fixtures that you stated in your schedules were worth three hundred dollars, weren't they? A Yes. 10

Q That was on December the 12th, 1927? A Yes, sir.

Q What was the value of these fixtures on July 13, 1927? A Well, at the time I was doing business, the value to me was as much as they cost me.

Q I see. So your statement is that they were worth thirty-two hundred dollars on July 13, 1927? A To me.

Q But on December 12, 1927, when you filed your petition in bankruptcy they were only worth three hundred dollars; is that so? A Yes, sir. 20

Q What was the cause of the big drop in the value? A Well, as I said before, the time I conducted business they were worth to me—I don't believe they were worth to somebody else—but they were worth to me thirty-two hundred dollars.

Q They were worth what they cost you, six thousand? A Yes, sir. 30

Q Were they worth that to anyone else? A Well, for a man that wants to start in the same business all over again.

Q Well, in respect to the answers you gave as of July 13, 1927, is there any change that you can think of between that date and November 1, 1927, regarding these various items that you testified about? A I don't believe there is any changes. 40

Pellegrino Pellecchia, direct.

Q They wouldn't be worth any more, would they, the value? A What?

Q These various assets that you have set forth in your statement? A No.

10 Q It is possible they may be less, isn't that so? A I don't believe they will be worth any less.

Q You don't think so? A I don't think so.

Q This item of \$22,000, land in Florida, that was the land that was foreclosed, you say, in April? A Yes, sir.

Q A month after this statement was given? A Yes, sir.

Cross examination by Mr. Bobker.

20 Q How much money did you lose as a result of your Florida speculations? A Between forty-five and forty-six thousand dollars.

Mr. Bobker: That is all.

The Court: That is all, sir.

Mr. Israel: That is all.

30 PELLEGRINO PELLECCCHIA, sworn for complainant.

Direct examination by Mr. Israel.

Q Mr. Pellecchia, what is your business? A Builder.

Q Building? A Builder.

40 Q Builder. I see. About how long have you been engaged in that business? A About twenty-eight years.

Pellegrino Pellecchia, direct.

Q You are also president of the Columbus Trust Company of Newark? A Yes, sir.

Q Do you own any real estate in the vicinity of 53 7th avenue, Newark, New Jersey? A Yes, in a block or so.

Q How many different parcels do you own in that particular neighborhood? A Four. 10

Q How long have you owned them? A About twenty-four years.

Q And where is your bank located in respect to 53 7th avenue? A It is about a block and a half above.

Q And are you also an officer of any building and loan? A Well, yes.

Q Which one? A President of the McKinley Building & Loan.

Q What office do you hold there? A President and director of Warranty and several connections financial in real estate connections. 20

Q In the course of your duty as president of the bank and these various building and loans, do you ever have occasion to pass on loans of property in that immediate vicinity? A Yes.

Q Do you know the value of property around that neighborhood? A I am familiar with it.

Q And have you investigated this building, 53 7th avenue, Newark, New Jersey? A I did. 30

Q After the inspection can you tell us what was the value of this building as of November 1, 1927?

Mr. Bobker: Now, wait a minute. I object on the ground that this witness is not qualified to testify as an expert as to the value of property in 7th avenue. As a matter of fact, he is a builder and builds, he is connected with B. & L. associations. That does not qualify him as an expert. 40

Pellegrino Pellecchia, direct.

10 The Court: I don't know why not. He is both president of the building and loan and officer of a bank. He is competent to call upon to pass on loans, and, of course, if he passes on loans, he must have studied the value of the real estate he loans money on. I think he is qualified and I will permit his testimony.

Mr. Bobker: I ask for an exception.

Mr. Israel: Will you please ask the question.

(Question read as follows: "After the inspection can you tell us what was the value of this building as of November 1, 1927?")

20 A In November 1, 1927, I—because that real estate in that section has depreciated a lot in a few years, and a couple of years ago I figured the real estate in that section worth about twenty per cent. more for several reasons.

The Court: What was it worth on November 1st?

30 Q What was it worth on November 1st? A On November 1, 1927, I figured that building would cost about twenty-three to twenty-four thousand dollars.

Q And what was the value of it? What was the value of it at that time? A Well, that is the way I figured the value altogether, land and buildings; there was two buildings.

The Court: You think the whole thing was worth about twenty-four thousand?

40 The Witness: About twenty-four thousand.

Pellegrino Pellecchia, cross.

Mr. Israel: All right; that is all.

Cross examination by Mr. Bobker.

Q Did you go through the inside of the building? A I went to the store and looked at the building in the rear and I couldn't go upstairs, the four rooms. 10

Q Well, then, in making an inspection for appraisal purposes for a committee for a building and loan association don't you go through the entire building and ascertain the condition of the building? A I had all the information and for the reason that there was in one family, one flat upstairs you can never make any more mistake than five hundred more or less and I had a boy to tell me all about that, a young fellow was employed in that store, he told me what it was upstairs. I more or less sized the building to the four rooms, but not upstairs and I went in the hall and I thought I would not make any more mistake than that on the question of improvements. 20

Q What improvements were on that building? A He told me there was a bath and four rooms upstairs.

Q Who told you that? A A young fellow there on the place, on the premises and he told me that he was familiar and he was working. I also investigated the building in the rear which was a vacant— (interrupted) 30

Q Who went with you at the time you made this inspection? A I went with Mr. Rong from the Belleville bank.

Q Did Mr. Rong tell you what valuation Mr. Mayer had placed on this property in one of the statements he made either to his bank or the North Ward Bank? A He didn't tell. He 40

Pellegrino Pellecchia, cross.

asked me to appraise that building for him and he didn't tell me any valuation whatever.

Q How many feet of ground there? A How many what?

Q How many feet of ground? A Thirty feet.

10 Q Thirty feet? A I was told thirty feet, but I didn't measure it.

Q There is no steam heat in this building, is there? A I can't say, because I went in the store and that gentleman there came out and started to talk over things and I didn't look over if it is steam heat or not.

Q How much rent does that building bring, do you know that? A I could tell more or less what it would bring, but I don't know what it will bring. It will bring, the store and flat up-
20 stairs can bring about one hundred fifty dollars a month, about one hundred for the store and fifty for upstairs, and for the building in the rear because it is dilapidated it would bring maybe fifty.

Q How much building and loan mortgage would you pass as president of the building and loan association on this property with an income of two hundred dollars a month? A I would average about fifteen thousand building
30 and loan.

Q You wouldn't give any more than fifteen thousand, would you? A Well, not at the present. Maybe I would two or three years ago.

Q November, 1927, there was an income of two hundred dollars and no improvements on this property. Would you give more than fifteen thousand dollars loan? A I would because the piece of land is worth the money.

Q Where is your bank located, that is, the
40 Columbus Bank? What number 7th avenue? A

Pellegrino Pellecchia, cross.

121 7th avenue, the corner of 7th avenue and Cutler street, where there is a block and a half—well, it is two blocks above that.

Q And how many feet are on 7th avenue on which the bank building is? A It is 22 feet.

Q And when was that land bought by either you or the bank? 10

Mr. Israel: I object.

A I bought that land myself in 1924. I paid \$25,000 cash. I sold in 1925 a little piece in the rear on Cutler street which is about twenty feet, short piece, short lot, for ten thousand.

Q How many buildings? A There was a little—there was a one-story building on it.

Q How many feet? A Twenty. 20

Q You sold twenty feet on 7th avenue with a building on it for ten thousand?

The Court: No, he sold on Cutler street.

The Witness: I sold on Cutler street.

Q Yes. A And it left the bank 22 by 82 feet. That was a little larger in the back. It was about 26—by going in Cutler street—I sold the rest to the bank for fifteen thousand. 30

Q That takes in the corner? A Takes in the twenty-five—yes, the corner, but I gave to the bank and nobody else. Otherwise—I have the twenty-five myself.

Q Are you familiar with the property located at 35 7th avenue? Do you know where that is, property owned by the Plaza? A Thirty-five—well, I am familiar with the whole block but not certainly that number, because I can't recollect the properties around there. 40

Harry Mayer, recalled, direct.

Q 35 7th avenue consists of a lot 30 by 100 and buildings comprising a store, five rooms and four garages with all improvements and steam heat. Are you familiar with that property, Mr. Pellecchia? A No, I don't.

10 Q You don't know that property? You said this property, 53 7th avenue, at cost was worth \$24,000. A It was worth about twenty-four thousand, yes, a couple of years ago. I wouldn't say that today for several reasons.

Q You mean, it would cost to put up a new building and buy the lot for twenty-four thousand? A No; I figure this way. That lot is worth always ten thousand dollars. The building on front if it wasn't worth anything even now, the only thing if the real estate came down, 20 material cheaper, it is worth about twelve thousand and two thousand dollars the rear building.

Mr. Bobker: That is all.

The Court: That is all.

The Witness: Yes.

30 Mr. Israel: May I call Harry Mayer again, your Honor please? I want to ask him some questions on the mortgages I forgot to ask him about.

The Court: All right.

HARRY MAYER, recalled.

Examined by Mr. Israel.

40 Q Mr. Mayer, you gave a mortgage to your father, Marcus Mayer, on November the 13th, 1927, didn't you? A November the 13th?

Harry Mayer, recalled, direct.

Q I beg your pardon. July 13th. A Yes.

Q July 13, 1927. What was the consideration of that mortgage? How much money did your father give you on that day? A At that day he didn't give me anything.

Q What was the consideration of the mortgage? A It was coming to him six thousand dollars. 10

Q Will you tell us just how that—(interrupted) A I needed money and I asked my father to help me out and he didn't have it; he went out and got a mortgage on his property and lend me six thousand dollars.

Q When was that? A About a year ago.

Q About a year ago? A (Witness nods yes.)

Q And how did he give you that money, by check or cash? A By check. 20

Q By check. Have you got the check? A My father has it.

Q Your father has the check?

Mr. Bobker: Here it is, if you want it.

Mr. Israel: Do you want to put him on?

Mr. Bobker: No. I will give it to you now, if you want it. 30

Q Were these the checks, Mr. Mayer? A Yes, sir.

Q What date are they dated? A April 9, 1926.

Q How much?

The Court: 1926?

The Witness: 1926. That was a loan for five thousand dollars; that was the first time he took the mortgage on his house, that was 40

Harry Mayer, recalled, direct.

10 for one year and when this here mortgage was due I was not able to pay it and he went out and he got a mortgage for six thousand dollars to pay for this here five-thousand-dollar mortgage and he paid bonus with interest and whatever was left from the six thousand dollars I received.

Q What was left? A About one hundred fourteen some—I believe a hundred and fourteen dollars.

Q That is the second mortgage, the second time? A That was the second time that he got a mortgage on his property.

20 Q I see. How much did you receive the first time? A Five thousand, but it was five hundred bonus and I received forty-five.

Q So the first time in 1926 you got forty-five hundred dollars? A Yes.

Q And then later on when a second mortgage was put on your father's property you got one hundred and forty-five dollars? A Yes.

Q That makes forty-six forty-five? A Yes; the rest was expenses.

30 Q And that is all you got, though, cash? A That is all I got.

Q That was a year before your father got the mortgage from you? A About a year.

40 Q How did you come to give your father a mortgage? A Well, my father had a note in his possession for six thousand dollars, and a few weeks later he asked me if I wouldn't be good enough to give him a mortgage on his property instead of the note, and I said, "All right," and I gave him a mortgage and took the note back.

Harry Mayer, recalled, direct.

Q A few weeks later? A Well, it was a few—I don't recall how long length of time. I believe it was a few months later.

Q I just want to get these facts straight. A Yes.

Q Wasn't the last mortgage given to your father in 1926? A What mortgage was that? 10

Q The six-thousand-dollar mortgage. A 1927.

Q 1927? Who was that given to? A Which mortgage are you referring to?

Q Who was that mortgage given to that you just spoke about in 1927? A My father.

Q No. I mean the mortgage that your father raised on his property, I am speaking about. A Yes.

Q Who was the mortgagee? A I couldn't tell you who was the mortgagee. 20

Q Was it Simon Traurig? A I don't know.

Q What day did you say your father got the mortgage on? A I don't know exactly the date, but I know it was the year after the first mortgage that he took for me.

Q Oh, your father got your mortgage a year after he took the first mortgage; is that right?

A First in 1926 my father got a mortgage for five thousand dollars on his property which he turned over the money to me for one year. Before the year was up my father asked me will I be able to meet the mortgage and I told him I couldn't do it, so he went out and he looked for another mortgage which he got six thousand dollars to pay off the five with expenses—was left one hundred and fourteen dollars which he turned it over to me. 30

Q You are sure he did not take the six-thousand-dollar mortgage first, aren't you? A No, sir. 40

Harry Mayer, recalled, cross.

Q What conversation did you have with your father before you gave him your mortgage? A I had no conversation at all.

Q Didn't you discuss the matter with him? A What matter?

Q About giving a mortgage? A Well, he
10 approached me to give him a mortgage.

Q I see. What did he say? A I asked him why. He said that he spoke it over with my mother and they thought they want to be on the safety first, they want to get a mortgage and accepting note so I gave them the mortgage and I took the note back.

Q He wanted to be protected, didn't he? A Yes, sir.

Q At the time you gave this mortgage to
20 your father, what was your financial condition? Was it improving or was it getting worse than it had been after you had lost that money in Florida? A Well, it was about the same.

Mr. Israel: About the same; that is all.

Cross examination by Mr. Bobker.

Q Mr. Mayer, at the time your father loaned
30 you five thousand dollars which is—

Mr. Bobker: Did you offer these checks?

Mr. Israel: No. I didn't offer them.

Q —which is represented by these two checks, he owned property in Newark, did he not? A Yes.

Q Where was that property? A 36 Peshine
avenue.

Q Now, I show you two checks dated April
40 9, 1926, and totaling five thousand dollars, signed

Harry Mayer, recalled, cross.

“Marcus Mayer,” and I ask you whether those are checks that represent the loan that you received from your father? A Yes, sir.

Q And did you deposit these checks in your bank? A Yes, sir.

Q And what did you do with the money? A I paid bills. 10

Mr. Bobker: I offer these two checks in evidence.

(Two checks marked Exhibits D. 1 and D. 2.)

Q Now, did I understand you to testify that in order to secure this money which your father owed you, he and your mother placed a second mortgage on the house that your father owned? A (Witness nods yes.) 20

Q Is that right? A Yes, sir.

Q For five thousand dollars? A Yes, sir.

Q And with the money they received from the mortgagee he made you this loan; is that correct? A Yes.

Q Now, that second mortgage that was given by your father and mother on their property became due about a year after that? A Yes.

Q And then your father was called upon to pay off the second mortgage? A Yes, sir. 30

Q Did he ask you for the money? A Yes, sir.

Q What did you tell him? A I told him I didn't had it.

Q And then he arranged for another second mortgage to pay off the first mortgage, the mortgage that was given for five thousand dollars; is that correct? A Yes, sir.

Q And this new mortgage was for six thousand dollars? A Yes, sir. 40

Harry Mayer, recalled re-direct.

Q And with the proceeds of that six thousand dollar mortgage, the five thousand dollar mortgage was paid off; is that correct? A Yes, sir.

10 Q And did you agree to pay whatever bonus and charges and search fees amounted to on both of these mortgages? A Yes.

Q So that at the time the six thousand dollar second mortgage was put on your father's property, you gave your father a note for six thousand dollars; is that correct? A Yes.

Q And then after that this mortgage was given? A Yes.

20 Q I show you mortgage from Harry Mayer and Gussie Mayer, your wife, to Marcus Mayer, and a bond, six thousand dollars, and I ask you whether this is the bond and mortgage you gave your father as security for the six thousand dollars you loaned him, or, you owed him? A Yes, sir.

Mr. Bobker: I offer these in evidence.

(Bond and mortgage marked Exhibits D. 3 and 4.)

Mr. Bobker: That is all.

30 *Re-direct examination by Mr. Israel.*

Q Mr. Mayer, you have a copy of the statement there to the North Ward? A Yes, sir.

40 Q Will you tell us if you owed this money to your father on April the 9th, 1926, why didn't you put it in your statement under notes payable to others when you gave that statement to the bank in March, 1927? A I didn't thought it will be necessary, because I owe money to my father, I didn't thought it was necessary to put it in the statement.

Simon Englander, direct.

Q Did your father expect to get it back? A Surely he expected—I expected to pay him back.

Q You did? A Yes, sir.

Mr. Israel: That is all.

The Court: That is all, sir.

Mr. Bobker: That is all.

10

SIMON ENGLANDER, sworn for complainant.

Direct examination by Mr. Israel.

Q Mr. Englander, you are a counsellor-at-law and admitted to the Bar of this State? A I am.

Q Were you present at the closing of the title of Mayer and Magenheim on November 1, 1927?

20

A I was.

Q And who was present there? A I think Mr. and Mrs. Mayer and Mr. Magenheim.

Q I see. And at that time did you have a conversation with the bankrupt and those present regarding Mr. Mayer's financial troubles? A I remember having had a talk, during the time that this deal was pending, with Mr. Mayer, concerning his financial troubles, but I don't recall whether all parties were present at the time that this conversation took place.

30

Q What was the conversation with Mr. Mayer? A Well, Mr. Mayer had been consulting me for a period of a couple of years and I knew about his Florida transactions and knew he was involved and my recollection is that I called to his attention at that time that in the event of a transfer of any of his real estate, why, he laid himself open to attacks on the possibility of a suit such as this being instituted,

40

Simon Englander, cross.

in the event of a bankruptcy coming at any time.

Q But wasn't that statement made at that time in the presence of all these people? A I don't recall. It might have been.

10 Mr. Israel: That is all.

Cross examination by Mr. Bobker.

Q Now, was there a contract of sale prepared, Mr. Englander? A There was.

Q Have you that contract? A Yes.

(Produced and given to counsel.)

20 Mr. Bobker: I offer that contract in evidence.

Mr. Israel: No objection.

(Contract marked Exhibit D. 5.)

Q Did you cause a search to be made? A I did.

Q Of the title? A I did.

Q And have you the search notes covering that matter? A Yes.

30 The Court: You mean, the original notes, or typewritten search?

The Witness: I have them both, I mean.

Q The original notes you got from your representative or—(interrupted).

The Court: What is the object of this, Mr. Bobker?

40 Mr. Bobker: Well, just to show that he handled this transaction in the usual way,

Simon Englander, re-direct.

an agreement was drawn and he made a search, the consideration was paid and title passed in the usual way.

The Court: That is all right. You can ask him if he made the search.

Mr. Bobker: All right.

10

Q You had a search made? A Yes.

Q And at the closing a statement of closing was prepared? A Yes.

Q And a copy of the statement was sent to Mr. Magenheim, the purchaser? A Yes, sir.

Q Was the consideration due from Magenheim to Mayer paid over at your office at the time the deed was delivered? A It was.

Mr. Bobker: That is all.

20

Re-direct examination by Mr. Israel.

Q Mr. Englander, who did you make that search for? Who were you representing? A Well, I represented both parties, and I had been representing both parties for a number of years.

Q Well, who did you make the search for? A Mr.—for the purchaser. I was representing both of them in the transaction.

30

Mr. Israel: That is all.

The Court: Is that all?

Mr. Israel: Yes, sir.

The Court: That is all, sir.

Mr. Israel: If the Court please, in this matter I want to call your attention to the fact that the deed I introduced in evidence shows a dollar consideration, and we rest.

40

Simon Englander, recalled.

The Court: How about this dollar consideration?

(Discussion.)

10 SIMON ENGLANDER, recalled.

The Court: Now, the contract calls for a consideration of \$19,500, doesn't it?

Mr. Bobker: Yes.

The Court: Was that money passed in your office?

The Witness: Not the entire amount. After adjustments were made for the balance due on the various mortgages, interest and taxes, there was a balance of twenty-
20 three hundred and some odd dollars which passed.

The Court: Well, you actually paid the twenty-three hundred, did you?

The Witness: Why, no; there was a check drawn from Mr. Magenheim to Mr. Mayer.

The Court: Yes, but you say it—

The Witness: Oh, yes, sir, delivered in
30 my office.

Examined by Mr. Bobker.

Q I show you a check. Is that the check that was delivered in your office? A Yes, sir, and made out in my writing.

Q And I show you—

Mr. Bobker: I offer the check in evidence.

40 (Check marked Exhibit D. 6.)

Simon Englander, recalled.

Q I show you a statement of closing, indicating what the balance was due at the time that was prepared by you and given to Magenheim?

A I will compare it and let you know, yes.

Mr. Bobker: I offer this statement in evidence.

10

(Statement marked Exhibit D. 7.)

The Court: All right.

Mr. Bobker: That is all.

The Court: I guess that is all, Mr. Englander. You don't want him any more, do you? Can he go now?

Mr. Bobker: Yes. I am through with him.

The Court: All right.

20

Mr. Bobker: You rest, Mr. Israel?

Mr. Israel: Yes.

Mr. Bobker: Now, if the trustee rests, I, at this time, move for a dismissal of the bill of complaint on the following grounds—

The Court: Well, now, Mr. Bobker, before you make your motion, you understand that the practice in these equity suits is, if you make the motion and it is argued and I decide against you, you are precluded from offering any testimony.

30

Mr. Bobker: Well, if that is the practice, then I will offer testimony.

The Court: If you want to rest on what is already in, why, then, you can make your motion.

Mr. Bobker: No. I will go ahead and offer testimony.

The Court: All right.

40

Morris Magenheim, direct.

MORRIS MAGENHEIM, sworn for defendant.

Direct examination by Mr. Bobker.

10 Q Mr. Magenheim, are you the defendant who bought the property at 53 7th avenue from Mayer? A Yes, sir.

Q And how much did you pay for this property? A Nineteen five.

Q Nineteen thousand five hundred dollars? A Yes, sir.

Q And after you received a deed for the property did you continue in possession of the property? A Yes, sir.

Q Who has been paying the building and loan dues right along? A I did.

20 Q Who has been paying the taxes and all carrying charges? A I did.

Q Now, I show you—

Mr. Bobker: You offered a certified copy of the deed, didn't you?

Mr. Israel: Yes. Do you want to see it?

30 Q I show you a batch of checks. They represent checks that you yourself drew in payment of building and loan dues, taxes, insurance premiums, water charges and other carrying charges of this property? A Yes. Most of them I drew myself.

Mr. Bobker: I offer these in evidence.

(Batch of checks marked Exhibit D. 8.)

40 Mr. Bobker: I think we can mark them as one exhibit, checks representing carrying charges.

Morris Magenheim, cross.

Q Now, Mr. Magenheim, at the closing, or after the closing, you received from Englander a statement showing that the balance due was \$2,313.87? A Yes, sir.

Q And that was paid to you by this check marked Exhibit D. 6? A Yes, sir.

Q For twenty-three hundred thirteen dollars 10
eighty-seven cents; is that correct? A Yes,
sir.

Mr. Bobker: That is all.

The Court: Any cross?

Mr. Israel: Yes, sir.

Cross examination by Mr. Israel.

Q Mr. Magenheim, when this property was 20
bought, you retained Mr. Englander to represent you to make a search, didn't you? A What do you mean by "retained"? I asked him, yes.

Q He made the search for you? A Yes,
sir.

Q At the time of the closing wasn't there conversation—didn't Mr. Englander tell you about Mayer's financial condition? A No, sir.

Q You are a brother-in-law of Harry Mayer, aren't you? A Yes, sir.

Q And you are in the same line of business 30
at Ferry street, Newark? A Yes, sir.

Q You had occasion to meet Mr. Mayer quite often in the course of your business? A Once or twice a week.

Q Yes. And did you both discuss business in a general way, when you were having these meetings? A No, no, not about business.

Q You would not discuss his business or your business at all? A No, sir.

Morris Magenheim, cross.

Q Did you have exchanges of property between you, he would loan you some of the merchandise and you would loan him some of it? A Yes, sir.

Q And you kept mutual accounts? A Well, weekly accounts.

10 Q Yes. And you never discussed each other's business? A Well, once I came up to him, he told me he is short of money and he would sell the house, so I told him, "Why do you want to sell the house?" "Well," he says, "I need money and I got to sell it." I said, "How about you sell it to me?" He said, "All right." I asked him how much he wants. He wants twenty thousand dollars, so I offered him nineteen. I say, "I will give you nineteen thousand and whatever is coming to you the difference I will pay you. I will take the house." He said, "No, it isn't enough." And finally we came to a conclusion nineteen five.

20 Q And he told you— A (Continuing.) And the next morning I took him down to Mr. Englander and we made a contract.

Q And Mayer told you he needed money? A Yes.

30 Q And you knew about his Florida venture, didn't you? A About what?

Q His investment down in Florida? A I knew he had some interest in Florida, but— (interrupted).

Q As a matter of fact, you were partners down there, weren't you? A No, sir.

Q Didn't some of your money go into the Florida venture? A (Witness nods no.)

Q Sure? A Positive.

40 Q If you so testified in the bankruptcy proceedings— A I never did.

Harry Mayer, recalled for Defendants, direct.

Q —were you mistaken? A Yes.

Mr. Israel: That is all.

The Court: That is all.

Mr. Bobker: Mr. Mayer.

10

HARRY MAYER, recalled.

Direct examination by Mr. Bobker.

Q Mr. Mayer, on November 1, 1927, you received from Magenheim a check for \$2,313.87, representing the balance of the purchase price for the property 53 7th avenue; what did you do with this money? A I deposited it.

Q And did you check the money out to your creditors? A I paid bills.

20

Q Now, when did you buy the property 53 7th avenue? A I believe it was in 1922.

Q About five years before you sold it? A Yes, sir.

Q And who did you buy it from? A Salvatore Onofretty.

Q Salvatore what? A Onofretty.

Q Onofretty? A Yes.

30

Q And how much did you pay him for the property? A Fourteen thousand dollars.

Q Before you sold this property to Magenheim did you try and get some other buyers? A Yes.

Q Did you see this man Onofretty who sold you the house? A Yes.

Q And what offer did he give you? A He has got, he has had another big parcel on the

40

Harry Mayer, recalled for Defendants, cross.

corner and he wants to give me eighteen thousand dollars on a swap.

Q For an exchange? A Yes.

Q After that you told Magenheim that you wanted to sell the property? A Yes.

10 Q After the sale to Magenheim, who has been paying the building in loan dues and water and taxes and all carrying charges?

The Court: How does he know that? Ask him if he has been paying them.

Q Have you been paying any of the carrying charges since the conveyance to Magenheim? A No; I paid rent only.

20 Mr. Bobker: That is all.

Cross examination by Mr. Israel.

Q Mr. Mayer, what are you doing now? What is your business now? A I am working for Magenheim.

Q Working for Magenheim? A Yes.

Q The same store? A Yes.

Q Is Magenheim up there, too? A No, sir.

30 Q You are in charge of the store yourself?
A Yes, sir.

Q Magenheim bought that store in at the bankruptcy sale, didn't he? A Yes, sir.

Q And you went right back into the place; isn't that so? A No; I didn't go right back; I went to work for him a few weeks after he opened the store.

Q A few weeks after, after the sale was confirmed? A Yes, sir.

40 Q Weren't your creditors pressing you the last few months right before you filed your peti-

Marcus Mayer, direct.

tion in bankruptcy? A Well, they—I wouldn't say that they pressed me a few months, but as far as being pressed, I have been pressed for the last two years before I filed my petition.

Q I see. Creditors have been pressing you for the last two years or so? A Yes. Since I lost money in Florida.

10

Mr. Israel: That is all.

The Court: That is all, sir.

MARCUS MAYER, sworn through interpreter, Nathan Mayer, also sworn. Interpreter agreed to by all concerned.

Direct examination by Mr. Bobker.

20

Q Where do you live, Mr. Mayer? A Peshine avenue, 366 Peshine avenue.

Q Are you married? A Yes, sir.

Q What is your wife's name? A Zlotta Mayer.

Q Do you own the house where you live? A Yes, sir.

Q How long have you owned that house? A Close to seven years.

30

Q Now, on April 9, 1926, you gave your son, Harry Mayer, two checks totalling five thousand dollars, represented by Exhibits D. 1 and D. 2 and I ask you whether you signed those checks? A Yes, I did.

Q Now, Mr. Mayer, tell the Court where you got the money from that is represented by these two checks? A About three years ago I took three—five thousand dollars as a second mortgage from a party.

40

Marcus Mayer, direct.

Q That second mortgage covered your house?

A Yes, sir.

Q Was that man from whom you got the second mortgage Joseph J. Gotsmann? A I don't remember.

10 Q Who was the lawyer who handled that transaction? A I don't remember.

Q Well, who took care of the matter for you?
A My son, Nathan Mayer.

The Interpreter: That means me.

Q He refers to you?

The Interpreter: Yes.

20 Q When this five thousand dollar mortgage became due did you pay it off? A After I took this here five thousand dollars then almost the year was up, I asked my son Harry, for the money. He told me he wouldn't be able to pay me at present, so I was looking another mortgagee and to have six thousand and which was paid the five thousand and interest bonus at seven hundred and there was left a balance of a hundred thirteen eighty-five which I gave to my son Harry.

30 Q Now, in relation to the six thousand dollar second mortgage that you and your wife gave on the property, I show you one check dated March 30, 1928, for one hundred eighty dollars, payable to Fidelity Union Trust Company and ask you whether you signed that check and what that is for? A This check was given, signed by him as interest on the six thousand dollar mortgage.

Mr. Bobker: I offer this check.

40 (Check marked Exhibit D. 9.)

Marcus Mayer, direct.

Q I show you a check dated October 1, 1928, for one hundred eighty dollars payable to Iron-bound Trust Company, containing a notation on the back, "For interest on second mortgage 366 Peshine avenue" and I ask you whether you signed that check? A Yes; this is also for interest for six thousand dollars. 10

Q Also signed that? A Yes, also signed that.

Mr. Bobker: I offer this check in evidence.

(Check marked Exhibit D. 10.)

Q Tell us how you came to get a mortgage for six thousand dollars? A Why, he took this mortgage for six thousand dollars; he paid off—it was paid off five thousand dollars to the first mortgagee; then was—I even— 20

The Interpreter: I have to figure something just correctly.

Q Well, does your son know all about this transaction?

The Interpreter: Yes, I transcribed all the bills and checks and I make out for him. 30

Mr. Bobker: All right. Then he will take the stand.

The Court: Do you want to question him?

Mr. Israel: No.

Nathan Mayer, direct.

NATHAN MAYER, sworn for defendant.

Direct examination by Mr. Bobker.

Q Did you handle the matter involving the loan made by your company to your brother?

10 A Yes, sir.

Q And according to Exhibits D. 1 and D. 2 your father gave Harry Mayer two checks aggregating five thousand dollars. Where did your father get this money from? A He got a mortgage for five thousand dollars on his own house where he paid five hundred dollars bonus, he received \$4,500 for which he returned by his check to my brother Harry Mayer.

20 Q And your father and mother gave a second mortgage on their house? A Yes, sir.

Q For five thousand dollars? A Yes, for one year.

Q Now, according to the records there was a mortgage of five thousand dollars given to Joseph J. Gotsmann, is that the mortgage? A That is right.

30 Q And that mortgage is dated March 26, 1926, and recorded March 29, 1926, in Book Q-57 of Mortgages, page 4; is that the mortgage that you— A Yes, sir.

Q —are referring to? A Yes, sir.

40 Q Now, what happened when that mortgage for five thousand dollars given to Gotsmann became due and payable? A Now, when this here mortgage was nearly due my father asked my brother, Harry Mayer, for the money. Well, he told him that he don't think he will be able to pay him just at the time when the mortgage is due so my father—so I really looked for another mortgagee to get the loan to cover this here mortgage, and naturally, if you take a mortgage you

Nathan Mayer, cross.

have got to pay some bonus, so we took a mortgage of six thousand dollars which was seven hundred bonus, five thousand paid to Mr. Gotsmann and \$154.17 interest and of the \$5,000 a \$32 lawyer's fee and a check for \$113.83 my father received, to make a total of \$6,000.

Q According to the records that six thousand dollar mortgage given by your father and your mother to Simon Traurig and Isadore Lewitter—is that right? A That is right. 10

Q That mortgage was assigned to the Ironbound Trust Company on March 29, 1927. Was that why the interest payments were being made by your father to the bank? A Yes, sir.

Q That mortgage was dated March 25, 1927, recorded March 26, 1927. Is that the mortgage that you are talking about? A Yes, sir. 20

Q Now, do you personally know anything about the fact relating to the giving of the six thousand dollar mortgage by your brother to your father? A Yes, sir.

Q Well, why was this mortgage given, if you know? A Yes, sir, because he gave him the money.

Q Well, who asked for this mortgage? A My father did.

Q That is after the second mortgage of six thousand dollars went on, he asked for this mortgage as security? A Yes, sir. 30

Mr. Bobker: That is all.

The Court: Any cross examination?

Cross examination by Mr. Israel.

Q Were you present at the various conversations had between your father and your brother Harry? A Why, asking for the money? 40

Nathan Mayer, cross.

Q Were you present when your father and your brother had conversations regarding this transaction? A Yes, sir.

Q And how did your father come to ask for the mortgage? A How did he ask him for a mortgage? My brother Harry?

10

Mr. Israel: Strike that out.

Q What was the conversation, if any, between your father and your brother— A Well—

Q —at the time he gave him a mortgage? A Well, after when the first mortgage—first, five thousand dollar second mortgage nearly was due, I was present when my father asked my brother Harry that the mortgage is nearly due and he should be prepared to give him the money for it, which he answered him that he didn't think he will be able to give him at present, so my father instead, went and looked for another mortgagee for six thousand dollars, because he had to cover the mortgage of five thousand dollars and interest and bonus, that makes almost a total of six thousand dollars.

20

Q I don't think you understood my question. My question was, were you present when your father and brother Harry spoke about giving them the mortgage that is on Harry's property now? Were you present at that time? A On Harry's property now?

30

Q That is the property Harry owned on 7th avenue? A Oh, yes, I see.

Q Were you present then? A Yes. He asked him to give him a mortgage on his house as a security for the money he owes him.

Q And didn't he say he wanted that so he would be protected in case something happened?

40

Morris Klausner, direct.

A Well, I don't recall that, but I know he asked him for it and he gave it to him.

Q You are sure he didn't say that? A I really couldn't recall it, probably he did.

Q Were you present when the title was closed in Mr. Englander's office between Magenheim and your brother Harry? A No, sir. 10

MORRIS KLAUSNER, sworn for defendant.

Direct examination by Mr. Bobker.

Q Mr. Klausner, you reside at 35 7th avenue, Newark? A What is that?

Q You live at 35 7th avenue, Newark? A Yes, sir. 20

Q And how far from—is that on the same street—on the same side of the street where this Mayer property is? A Yes, sir.

Q You own that property? A Yes, sir.

Q When did you buy that property? A On January, 1927.

Q And what is the size of the lot? A 30 by 100.

Q What does the building consist of? What is in there? A A store and five rooms above; brick garage. 30

Q That is your property 35 7th avenue? A Yes, sir.

Q Store, five rooms on top, steam heat in the front of the building and in the rear. I got a garage for four cars, brick garage.

Q How much did you pay for the property? A Eighteen thousand.

Mr. Bobker: Cross examine. 40

*Colloquy.**Cross examination by Mr. Israel.*

Mr. Israel: Are you talking about his property?

Mr. Bobker: Number 35, the property he owns.

10 The Court: 35, that is not the property in question? That is just a piece of property very near there which this gentleman bought for eighteen thousand; is that it?

The Witness: Yes.

Mr. Bobker: That is the same side of the lot, practically the same building and more improvements.

20 The Court: Do you want to cross examine?

Mr. Israel: No cross examination.

Mr. Bobker: That is all. That is our case.

The Court: All right. Do you want to submit memorandums?

Mr. Unger: I think it would be well to summarize the evidence.

The Court: All right. Do you want the testimony written out?

30 Mr. Bobker: If your Honor wants to dispose of it now?

The Court: No. I think perhaps it would be wiser, as Mr. Unger says, to have memoranda. Now, as I understand it, you are trying to set aside this mortgage from the son to the father?

Mr. Unger: We are trying to set aside the conveyance, having been made for an inadequate consideration in fraud of creditors.

40

Colloquy.

The Court: What, the conveyance to the brother-in-law?

Mr. Unger: Yes. And the mortgage to the father. First, the conveyance to the brother-in-law upon the theory the consideration is inadequate, the amount being established here as \$19,500. You say it is worth \$24,000 and under the rule at law if he paid nineteen five, he would have a lien on the land for what he has paid, nineteen five, that he could not hold the title. 10

(Discussion.)

The Court: If I am to consider the facts of the testimony, I must have the testimony.

Mr. Unger: Perhaps that would be a better way, your Honor. It may be some time before we get it to you, and perhaps you better have the evidence before you. 20

The Court: Yes. I have tried this business of not having testimony before and one counsel says the testimony is so and so and the other says it is so and so and then I don't know which is right.

30

40

*Exhibit C. 1.***Exhibit C. 1.**

HARRY MAYER, *et ux*, THIS INDENTURE, Made
 To the 1st day of Novem-
 MORRIS MAGENHEIM ber in the year of Our
 Lord One Thousand Nine Hundred and twenty-
 10 seven BETWEEN Harry Mayer and Gussie Mayer,
 his wife, of the City of Newark in the County
 of Essex and State of New Jersey party of the
 first part; AND Morris Magenheim of the City
 of Newark in the County of Essex and State of
 New Jersey party of the second part: WIT-
 NESSETH, 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
 20 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 acknowledgd, and the said party of the
 first part being therewith fully satisfied, con-
 tented 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,
 30 and to his heirs and assigns forever, ALL that
 tract or parcel of land and premises, hereinafter
 particularly described, situate, lying and being
 in the City of Newark, in the County of Essex
 and State of New Jersey.

BEGINNING at a point distant fifty eight
 feet from the corner of Summer Ave. (formerly
 Brown St.) and Seventh Ave. (formerly Mill
 St.) in the line of the north side of Seventh
 Ave., thenth north eight degrees and forty three
 minutes east parallel to Summer Ave. one hun-
 40 dred feet; thence south eighty one degrees thirty

Exhibit C. 1.

minutes east thirty one and ninety hundredths feet to the westerly side of lands conveyed by Mathias Kull and wife to Guiseppe A. Basso and Josephine Basso, his wife, by deed recorded in the Essex County Register's Office in Book E 59 of deeds for said county on page 405; thence south eight degrees forty three minutes west one hundred feet along the said westerly side of lands conveyed to the said Guiseppe A. Basso and wife and parallel with Summer Ave. to the northerly side of Seventh Ave. and thence along the said northerly side of Seventh Ave. thirty one feet and ninety hundredths of a foot to the place of BEGINNING. Being lot No. 75 and a portion of lot No. 74 on map of the Mill or Mt. Pleasant property dated 1835. This conveyance is also made subject to an easement in favor of the adjoining property on the east made by Matthias Kull and Mary Kull, his wife, to Guiseppe A. Basso and Josephine Basso, his wife. Said easement is recorded in Book E 59 of deeds for Essex County on page 405. Being the same premises conveyed to Harry Mayer by Salvatore Onofrietto and Francesca Onofrietto, his wife, by deed dated April 10, 1923 and recorded in the Essex County Register's Office in Book Z 67 of deeds page 368-369. Also subject to a first mortgage held by the Workingmen's B. & L. *Mortgage* in the sum of \$9800. Also subject to a second mortgage in the sum of \$3800.00 held by Matthias Kull and Mary Kull. Also subject to a third mortgage in the sum of \$6,000 held by Marcus Mayer.

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

Exhibit C. 1.

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,
10 in and to every part and parcel thereof, TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the proper use, benefit and behoof of the said party of the second part, his heirs and assigns forever. AND the said Harry Mayer and Gussie Mayer do for themselves, their heirs, executors and administrators covenant and agree to and with the said
20 party of the second part, his heirs and assigns, that they the said first parties the true, lawful and right owners of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by
30 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 have good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid; AND ALSO, that they will WARRANT, secure and forever defend the said land and premises unto the said Morris Magenheim-heirs and assigns, forever, against the law-
40

Exhibit C. 1.

ful 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 proper costs and charges in the law, of the said party of the second part, his heirs and assigns, make, do and execute, or cause or procure to be made, done 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 his heirs and assigns forever, as shall be reasonably required.

10

20

IN WITNESS WHEREOF, the said party of the first part have hereunto set their hands and seals the day and year first above written.

Harry Mayer (SEAL)
Gussie Mayer (SEAL)

Signed, Sealed and Delivered in
the Presence of Simon Englander.

30

STATE OF NEW JERSEY, ss.
COUNTY OF ESSEX

BE IT REMEMBERED, that on this first day of November in the year of our Lord One Thousand Nine Hundred and twenty-seven, before me, the subscriber, A Master in Chancery of New Jersey, personally appeared Harry Mayer and Gussie Mayer, *hs* wife, who, I am satisfied, are the Grantors mentioned in the within instrument, to whom I first made known the contents

40

Exhibit C. 1.

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 Gussie Mayer, being by me privately examined, separate and apart from her said husband, further
 10 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.

Simon Englander, Master in Chancery of New Jersey.

Received in the Office November 2nd, A. D. 1927 at 9:23 A. M. No. 14.

20 Office of
 REGISTER OF DEEDS AND MORTGAGES
 Essex County, New Jersey

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

I, HOWARD S. DODD, Register of Deeds and Mortgages of the County of Essex, State of New Jersey, do hereby certify that the foregoing
 30 is a true and correct copy of the record of a certain deed made by Harry Mayer et ux to Morris Magenheim and also of the certificate of acknowledgment thereto annexed, as the same may be found recorded in my office in book K 77 of deeds for said County on pages 183-184

IN TESTIMONY WHEREOF, I have hereunto set my hand and official
 (SEAL) seal this 20th day of November A. D. 1928.

40 HOWARD S. DODD,
 Register of Deeds and Mortgages.

Exhibit C. 1.

Compared
By
65 & 50

OFFICE OF
REGISTER of DEEDS and MORTGAGES
Essex County, New Jersey

10

Certified Copy of
Deed

Harry Mayer et ux
To
Morris Magenheim

Recorded November 2nd A. D. 1927
In Book K 77 of
Deeds Pages 183-184

20

30

40

Exhibit C. 2.

Exhibit C. 2.

SCHEDULE B (2).

	Stock of goods, wares and merchandise, groceries	\$1500.00
10	1 Ford delivery truck on which there is a balance due of maturing notes of about \$157.00. Value about \$150. No equity.	
	Fixtures consisting of shelving, counters, etc.	300.00
	Total	<u>\$1800.00</u>

SCHEDULE (B) 4.

	Accounts Receivable	\$ 200.00
20	Schedules show assets of \$2000.00 and liabilities of \$60,626.90.	

It is stipulated and agreed that the foregoing extract of the schedules in bankruptcy in the bankruptcy proceedings pending in the United States District Court for the District of New Jersey wherein Harry Mayer is the bankrupt, is the only portion of such schedules which the complainant intended to offer in evidence.

30 FREDERICK J. ISRAEL,
 Of Counsel with and Sol'r of
 Complainant-Respondent.

 DAVID BOBKER,
 Solicitor of Defendants.

 GEORGE H. ROSENSTEIN,
 Of Counsel with Defendants-Appellants.

Exhibit C. 3.

Exhibit C. 3.

Four proofs of debt taken from two bundles of paper marked "Exhibit C 3" (page 6 of testimony); said four proofs of debt being as follows:

Old Dutch Mills, claim filed for	\$77.76	
Adolph Teitelbaum, claim filed for	135.50	10
Roma Provision Co., claim filed for	29.00	
M. Augenblick & Bro., claim filed for ...	604.20	

It is agreed that the four proofs of debt aforesaid be considered as Exhibit C 3. It is conceded that the assets which came into the possession of the trustee are insufficient to discharge in full the claims of creditors in the aforementioned bankruptcy proceedings. That the claims aforesaid were in existence at the time of the transfer and mortgaging of the premises in question.

FREDERICK J. ISRAEL,
Of Counsel with and Sol'r of
Complainant-Respondent.

DAVID BOBKER,
Solicitor of Defendants.

GEORGE H. ROSENSTEIN,
Of Counsel with Defendants-Appellants.

30

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*Exhibit C. 4.***Exhibit C. 4.**

It is stipulated and agreed that the following is the testimony complainant intended to offer in evidence in respect to Exhibit C 4 consisting of seven books of testimony taken in the bankruptcy proceedings entitled Harry Mayer, bankrupt, said
 10 proceedings pending in the United States District Court for the District of New Jersey.

Examination held on December 16, 1927.

Testimony of Harry Mayer.

Page 10:

Q How did you come to give your father a mortgage? He had a note, didn't he?

20 A My father wanted to be protected.

Q Why did he want to be protected four months ago and he didn't want any protection a year ago?

A Things were going better a year ago than four months ago.

Page 11:

Q Business was bad four months ago?

A For six months.

Q Your father knew your financial condition?

30 A I didn't know but I thought I'd play safety first.

Q He knew how things were?

A No.

Q Didn't you discuss the situation with your father at all?

A I never do.

Q What made him ask for a mortgage?

A He wanted to be protected.

Exhibit C. 4.

Examination 21-a held January 10, 1928.

Testimony of Harry Mayer.

Page 14:

Q Who else was interested besides you?

A Two brothers of mine.

10

Q What are their names?

A Philip Mayer, Leo Mayer and Magenheim.

Q That is your brother-in-law?

A Yes, sir.

Page 50.

Q Where did he get the \$3,000. to give you to put in the Florida property?

A I didn't receive \$3000. I only received from him \$1000. and \$50.00.

Q When you testified your brother Leo gave you either \$3000. or \$2500. and your brother-in-law, Magenheim, gave you \$2500. and some other brother \$2500. is that right?

20

A That's right.

page 51:

Q And your brother-in-law Magenheim's \$2500. was that also cash?

A Yes, sir.

Examination 21-a held March 13, 1928.

30

Testimony of Morris Magenheim.

page 39:

Q Who did you buy that place for?

A I thought to put back Harry Mayer in business.

Q As soon as he would get his discharge you would put him back there?

A Yes, sir.

40

Exhibit C. 4.

page 45:

Q Didn't he tell you he was in trouble and needed money?

A He told me he needs money and would sell the building and I told him I will buy it better than strangers should get it.

10 Q You knew he needed money?

A Yes, sir.

Q And he was trying to get some loans from you?

A Many times I helped him along.

Q You figured this was a good buy?

A Yes.

Q The building was worth more than \$19,500?

A Yes, sir.

Q It was worth more than \$19,500?

20 A Yes.

Hearing on Order to Show Cause on Turnover Proceedings against Harry Mayer held July 19, 1928.

Harry Mayer testifying.

Page 21:

30 Q You set forth in your statement an item of notes receivable \$2100. Did you ever collect these notes?

A I did not.

Q What became of those notes?

Q When I lost the property I returned the note to the party.

Q Who was that?

A Leo Mayer.

Q Your brother?

A Yes.

40 Q In taking up the item of merchandise, \$18,000. you set forth in your statement that the

Exhibit C. 4.

merchandise was based on market value. Was that statement correct?

A Yes.

Q It was based at market value?

A What I mean, market value, at selling price, at retail market.

Page 21 and 22:

10

Q Can you tell us at this time what this item listed at \$18000. actually cost you, taking into consideration the fact that you had been in business for seven years and had on the shelves, merchandise during that time, and that it was still there when you made the statement?

A It was figured—all the merchandise was in my possession from the date I opened my place of business, which was about seven years ago to the day when I filed my statement.

20

Q How much did all that merchandise actually cost you?

A It actually cost me about \$15,000.

page 29:

Q Did you have merchandise on hand that was not salable?

page 30:

A Yes.

Q Why?

30

A It was merchandise that I had in the place of business for seven years.

Q For what other reason wasn't the merchandise salable?

A It was stale; it was swollen cans.

Q Any merchandise been destroyed?

A Merchandise ate up by rats.

Q How long have you had trouble with this rat situation there?

A I had trouble about two years. * * *

40

Exhibit C. 4.

Q Can you estimate how much you lost as a result of this trouble you were having with rats?

Page 31:

10 A That is a very hard question to answer because the experience I had there during my time of business I lost so much with rats during the nine months, could make more damage than the average business man could make in five years to come.

Q Did you have to get rid of merchandise?

A The only way to get rid of it is to throw it in the ash can.

Q Did you have to get rid of merchandise?

A Yes, *plent* of it. * * *

20 Q About how much merchandise did you lose as a result of this trouble with rats?

A I could have lost between \$5000. and \$10,000.

page 47:

Q You testified that the value of the fixtures as shown in the statement was \$3200. yet at the time of the bankruptcy they were only worth \$300. is that so?

A Yes.

30 Q How do you account for that big drop in only nine months in the value of the fixtures?

A Because I figured what the fixtures actually cost me seven years back. They really cost me \$3200. by my date of filing my petition I looked around and saw all the fixtures are really broken

Exhibit C. 4.

up and I figured if anybody wants to move them out I don't think they can get a \$50. bill.

FREDERICK J. ISRAEL,
Of Counsel with and Sol'r of
Complainant-Respondent.

DAVID BOBKER, 10
Solicitor of Defendants.

GEORGE H. ROSENSTEIN,
Of Counsel with Defendants-Appellants.

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THE UNIVERSITY OF CHICAGO

PHYSICS DEPARTMENT

PHYSICS 309

DAVID BOGNER

PHYSICS 309

PHYSICS DEPARTMENT

COPY → of Ex C-6
 Cr. 1 50M 4-28

Statement Form Suggested by
 Federal Reserve Bank of New York
 INDIVIDUAL
 Merchant, Manufacturer, Etc.

Statement of Harry Mayer
 Business Wholesale & Retail Grocer Address 53 - 7th Ave., Newark, N. J.
 To North Ward National Bank of Newark, N. J.

I make the following statement of all my assets and liabilities at the close of business on the 25th day of March 1927.
 and give other material information for the purpose of obtaining advances on notes and bills bearing my signature or endorsement, and
 for obtaining credit generally upon present and future applications.
 (PLEASE ANSWER ALL QUESTIONS AND FILL IN ALL BLANKS)

ASSETS		LIABILITIES	
Cash on Hand and in Bank	\$ 763 42	Accounts Payable	\$ 6 574 20
Accounts Receivable	2 978 45	Notes Payable to Bank	21 800
Notes Receivable	2 100	Notes Payable to Others	
Merchandise	18 000	Other Current Liabilities (Itemize)	
Other Quick Assets (Itemize) <u>Jewelry</u>			
<u>Bldg Loans (Personal)</u>	8 360		
Quick Assets	32 201 87	Current Liabilities	28 374 20
Land and buildings (see Schedule on back)	24 000	Mortgages	11 000
Machinery and Fixtures	3 200	Other Liabilities (Itemize)	
Other Assets (Itemize) <u>Land</u>	22 000		
TOTAL	\$ 81 401 87	Net Worth	42 027 67
		TOTAL	\$ 81 401 87

Merchandise. On what basis valued, cost or market? market
 Finished \$ _____ Unfinished \$ _____
 Raw \$ _____ If any goods on consignment, state
 amount and circumstances _____

Do you take advantage of all trade discounts yes
 Sales and Profit Last Fiscal Year. Net Sales \$ _____
 Net Profit \$ _____ or Net Loss \$ _____
 Other Income \$ _____ Withdrawals \$ _____

Accounts and Notes Receivable. State amounts and circumstances
 (a) If any are past due or doubtful none
 (b) If any are pledged none
 (c) If any are due from employees, relatives or similar sources none

Bonds and Stocks. State general character and if readily salable at
 values stated _____

Insurance. Fire, on Buildings \$ 13,000
 Merchandise \$ 9,000 Life \$ 15,000
 Who is Beneficiary Wife

Contingent Liability. As indorser \$ _____
 As guarantor \$ _____ No accounts or notes receivable
 have been sold, discounted or assigned with my endorsement or
 guarantee except as follows: _____

Accounts and Notes Payable. If any are past due state amount
 and circumstances _____

Current Liabilities. During last fiscal year, current liabilities were
 at a maximum (\$ _____) on _____ and
 at a minimum (\$ _____) on _____

Mortgages and Other Liens. State due dates of Mortgages and on
 what assets a lien 1st mortgage \$7,200 payable
weekly - 2nd mortgage \$3,800 payable in 3 yrs

Are mortgages a lien on any current assets? _____
 If any other liens on assets, state amounts and circumstances _____

Age. My age is 30 Date started present business 1921

Audits. Are books audited by a certified public accountant? no
 Give date of last audit _____

I hereby certify that the foregoing figures are taken from my books and that they and the statements contained on both sides of this
 sheet are true and give a correct showing of my financial condition, as of the above date.

Signed this 25th day of March 1927. Name Harry Mayer Proprietor.

CONTINUE ON OTHER SIDE

(OVER)

EXHIBIT C 1

MARCUS MAYER
200 WEST 10TH AVENUE

MARCUS MAYER
366 PESHINE AVENUE

THE **NORTH WARD NATIONAL BANK**

55-10

NEWARK, N. J.

April 9 1926

No. 949

PAY TO THE ORDER OF

Harry Mayer

Twenty Two Hundred Fifty ⁰⁰/₁₀₀ DOLLARS

\$2250 ⁰⁰/₁₀₀

Marcus Mayer

PAY TO THE ORDER OF
NORTH WARD NATIONAL BANK
Newark, N. J.
HARRY MAYER



EXHIBIT D. 2.

MARCUS MAYER
366 PESHINE AVENUE

THE **NORTH WARD NATIONAL BANK**

55-10

NEWARK, N. J.

April 9 1926

No. 950

PAY TO THE ORDER OF

Harry Mayer

Twenty Two Hundred Fifty and ⁰⁰/₁₀₀ DOLLARS

\$2250 ⁰⁰/₁₀₀

Marcus Mayer

PAY TO THE ORDER OF
FIRST NATIONAL BANK
BELLEVILLE, N. J.
HARRY MAYER

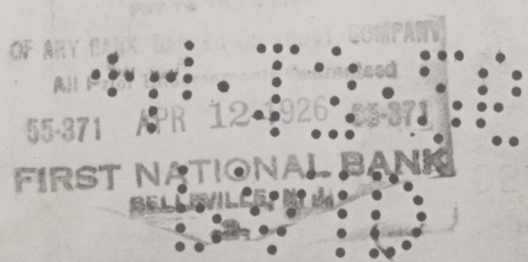


EXHIBIT D. 1.

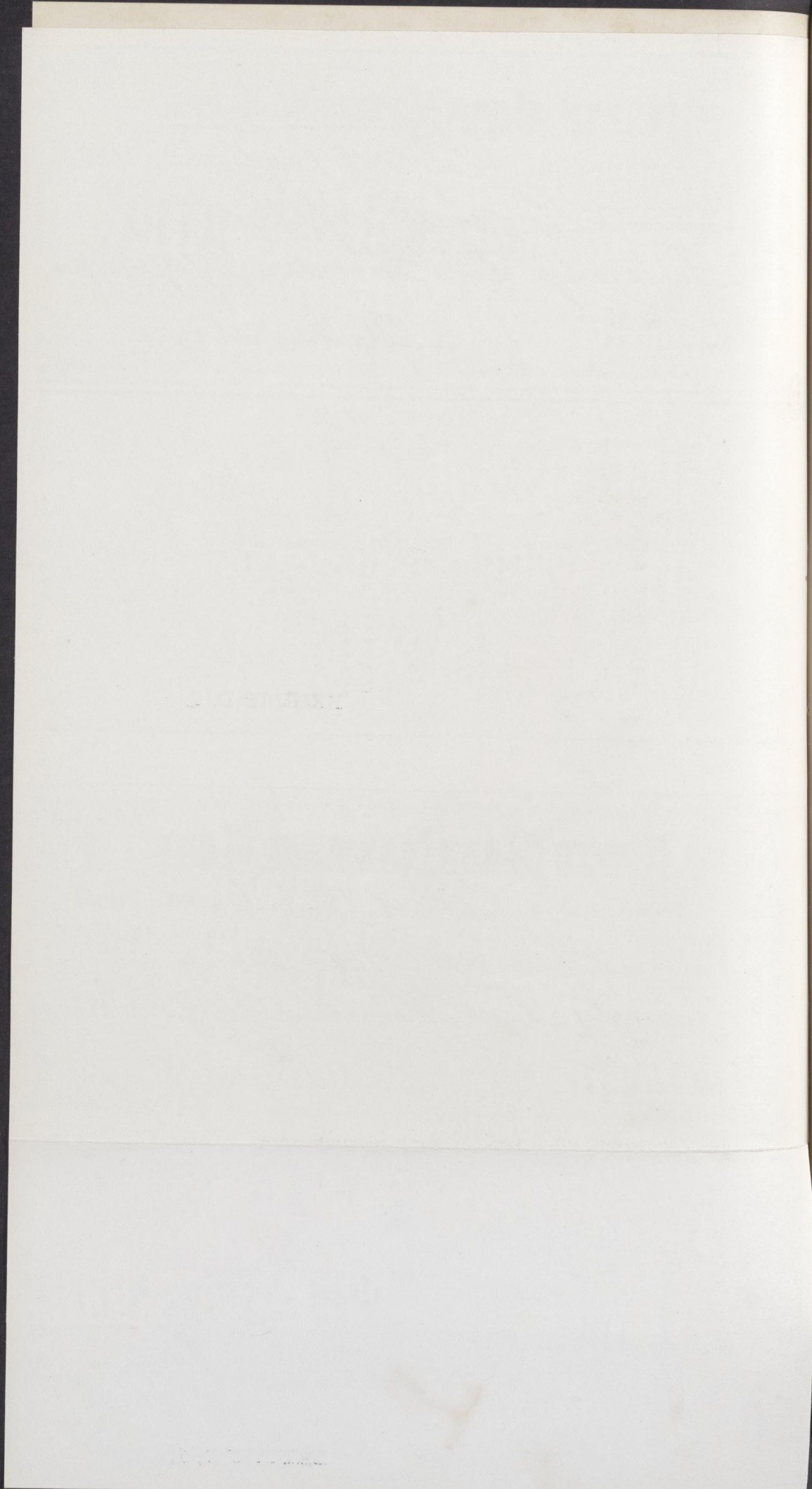


Exhibit D. 3.

Exhibit D. 3.

KNOW ALL MEN BY THESE PRESENTS, that I, Harry Mayer, of the City of Newark, County of Essex and State of New Jersey, held and firmly bound unto Marcus Mayer, of the City of Newark, County of Essex and State of New Jersey, in the sum Twelve Thousand (\$12,000.00) Dollars, lawful money of the United States of America to be paid to the said Marcus Mayer, his executors, administrators or assigns: To which payment well and truly to be made, I bind myself, my heirs, executors and administrators, and assigns, firmly by these presents. Sealed with my Seal and Dated the Thirteenth day of July One Thousand Nine Hundred and Twenty Seven,

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, That if the above bounden Harry Mayer, his heirs, executors or administrators, shall well and truly pay, or cause to be paid, unto the above named Marcus Mayer, his executors, administrators or assigns, the just and full sum of Six Thousand (\$6,000.00) Dollars, the Thirteenth day of July which will be in the year One Thousand Nine Hundred and Thirty Two, and the interest thereon, to be computed from July thirteenth Nineteen Hundred and Twenty Seven, at the rate of six per cent. per annum, and to be paid semi-annually. without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

AND IT IS HEREBY EXPRESSLY AGREED, That should any default be made in the payment of the said interest or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate,

Exhibit D. 3.

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 thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Six Thousand (\$6,000.00) Dollars, with all arrearage of interest thereon, shall, at the option of the said Marcus Mayer or his legal representatives, become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

HARRY MAYER (L. S.)

Signed, Sealed and Delivered
in the presence of

JACOB LEVY
Notary Public of N. J.

BOND

Harry Mayer—
to
Marcus Mayer,

Dated July 13th 1927

Exhibit D. 4.

Exhibit D. 4.

THIS INDENTURE, made the Thirteenth day of July in the year of Our Lord One Thousand Nine Hundred and twenty seven

BETWEEN Harry Mayer and Gussie Mayer, his wife, of the City of Newark in the County of Essex and State of New Jersey of the First Part: 10

AND Marcus Mayer of the City of Newark in the County of Essex and State of New Jersey of the Second Part:

WHEREAS, the said Harry Mayer and Gussie Mayer, his wife are justly indebted to the said party of the second part, in the sum of Six Thousand (\$6,000.00) Dollars, lawful money of the United States of America, secured to be paid by our certain bond or obligation, bearing even date with these presents, in the penal sum of Twelve Thousand (\$12,000.00) Dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of Six Thousand (\$6,000.00) Dollars, lawful money as aforesaid, to the said party of the second part his executors, administrators, or assigns, on the Thirteenth day of July which will be in the year One Thousand Nine Hundred and Thirty Two and interest thereon, to be computed from the Thirteenth day of July One Thousand Nine Hundred and twenty seven at and after the rate of six per cent. per annum, and to be paid semi-annually 20 30

AND IT IS THEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said interest or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed 40

Exhibit D. 4.

or acquired upon the premises described in this mortgage, and become due and payable, and should the said interest remain unpaid and in arrear for the space of thirty days, or said tax, assessment, water rent or other municipal or governmental rate, charge, imposition or lien, or any or either of them remain unpaid and in arrear for the space of sixty days then and from thenceforth that is to say, after the lapse or expiration of either of the said periods as the case may be, the aforesaid principal sum of Six Thousand (\$6,000.00) Dollars, with all arrearage of interest thereon, shall, at the option of the said party of the second part, or his legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything therein before contained to the contrary thereof in anywise notwithstanding; as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now, THIS INDENTURE WITNESSETH. That the said party of the first part for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation with interest thereon according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to *ys* in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, aliened, released conveyed and confirmed, and by these presents do grant, bargain, sell, alien, release, convey and confirm unto the said party of the second part, and to his heirs and assigns forever,

Exhibit D. 4.

ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying, and being in the City of Newark in the County of Essex and State of New Jersey.

BEGINNING at a point distant fifty eight feet from the corner of Summer Avenue (formerly Brown Street) and Seventh Avenue (formerly Mill Street) in the line of the north side of Seventh Avenue; thence north eight degrees and forty three minutes east parallel to Summer Avenue one hundred feet; thence south eighty one degrees thirty minutes east thirty one and ninety hundredths feet to the westerly side of lands conveyed by Mathias Kull and Wife to Giuseppe A. Basso and Josephine Basso, his wife, by deed recorded in the Essex County Register's Office in Book E 59 of deeds for said County on page 405; thence south eight degrees forty three minutes west one hundred feet along the said westerly side of lands conveyed to the said Giuseppe A. Basso and Wife and parallel with Summer Avenue to the northerly side of Seventh Avenue; and thence along the said northerly side of Seventh Avenue thirty one feet and ninety hundredths of a foot to the place of BEGINNING. Being lot Number 75 and a portion of lot Number 74 on map of the Mill or Mount Pleasant property dated 1835.

Being the same premises conveyed to the said Harry Mayer by deed bearing date April 10th 1923, and recorded in the Register's Office of the County of Essex, on April 12th 1923, in Book Z-67 of Deeds for said County, on pages 368-369.

This mortgage is third and subsequent to a first mortgage in nominal sum of Ninety Eight Hundred Dollars held by the Workingmen's

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Exhibit D. 4.

Building and Loan Association of Newark, New Jersey, and a second mortgage in the sum of Thirty Eight Hundred Dollars held by Matthias Kull and Mary Kull, his wife.

10 This mortgage is also made subject to an easement in favor of the adjoining property on the east made by Matthias Kull and Mary Kull, his wife, to Giuseppe A. Basso and Josephine Basso, his Wife, said easement is recorded in deed E 59 of deeds for Essex County on page 405.

20 TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and the reversions, remainder and remainders, rents, issues, and profits thereof: AND ALSO all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same and every part and parcel thereof, with the appurtenances. To HAVE AND TO HOLD, the above granted and described premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to his and their own proper use benefit and behoof forever.

30 PROVIDED ALWAYS, and these presents are upon this express condition, that if the said party of the first part, their heirs, executors, or administrators shall well and truly pay unto the said party of the second part, his executors, administrators or assigns, the said sum of money mentioned in the condition of the said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the

40

Exhibit D. 4.

estate hereby granted, shall cease, determine and be void. AND THE SAID Harry Mayer and Gussie Mayer, his Wife, for themselves, their heirs, executors and administrators, do covenant and agree to pay unto the said party of the second part his executors, administrators or assigns, the said sum of money and interest, as mentioned above and expressed in the conditions of the said bond. 10

AND IT IS ALSO AGREED, by and between the parties to these presents, that the said party of the first part shall and will keep the buildings erected, and to be erected, upon the lands above conveyed, insured against loss or damage by fire, by insurers, and in an amount approved by the said party of the second part his executors, administrators or assigns, and assign the policy and certificates thereof to the said party of the second part; and in default thereof, it shall be lawful for the said party of the second part to effect such insurance, and the premium and premiums paid for effecting the same shall be a lien, on the said mortgaged premises, added to the amount of the said bond or obligation, and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such premium or premiums. 20 30

AND the said party of the first part, for themselves, their heirs, executors and administrators, do covenant and grant to and with the said party of the second part, his heirs and assigns, that the said party of the first part, heirs and assigns, 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 40

Exhibit D. 4.

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.

IN WITNESS WHEREOF, the said party of the first part have hereto set our hands and seals the day and year first above written.

10

HARRY MAYER (L. S.)
GUSSIE MAYER (L. S.)

Signed, Sealed and Delivered
in the presence of

JACOB LEVY

20

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

30

BE IT REMEMBERED, That on this Thirteenth day of July in the year of our Lord One Thousand Nine Hundred and twenty seven, before me, the Subscriber, A Notary Public of New Jersey, personally appeared Harry Mayer and Gussie Mayer, his wife, who I am satisfied are the grantors mentioned in the within Indenture, and to whom I first made known the contents thereof, and thereupon they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed: And the said Gussie Mayer, Wife as aforesaid, being by me privately examined, separate and apart from her husband, acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband

40

JACOB LEVY
Notary Public of New Jersey.

Exhibit D. 5.

MORTGAGE.

Harry Mayer and
Gussie Mayer, his Wife,
To

Marcus Mayer
366 Peshine Ave
Newark N. J.

10

Compared by 48 & 33

Dated July 13th 1927.

RECEIVED in the Register's Office of the County of Essex, N. J. on the 14th day of July A. D., 1927, at 10:47 o'clock, in the forenoon, and Recorded in Book N 61 of Mortgages for said County, on pages 452-453

20

HOWARD S. DODD
Register

Exhibit D. 5.

THIS AGREEMENT made the 29th day of September, in the year of our Lord One Thousand Nine Hundred and twenty-seven

30

BETWEEN Harry Mayer and Gussie Mayer, his wife of the City of Newark in the County of Essex and State of New Jersey party of the first part;

AND Morris Magenheim of the City of Newark in the County of Essex and State of New Jersey party of second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of Nineteen thousand Five Hundred Dollars (\$19,500.) to be paid and satisfied as hereinafter men-

40

Exhibit D. 5.

tioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that they the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns by Deed of Warranty free of all encumbrances except as hereinafter mentioned on or before the 1st day of November next ensuing the date hereof, ALL that lot, tract, or parcel, of land and premises, hereinafter particularly described situate, lying and being in the City of Newark in the County of Essex and State of New Jersey

BEGINNING at a point distant fifty-eight feet from the corner of Summer Ave. (formerly Brown St) and Seventh Ave. (formerly Mill St.) in the line of the north side of Seventh Ave; thence north eight degrees and forty three minutes east parallel to Summer Ave. one hundred feet; thence south eighty one degrees thirty minutes east thirty one and ninety hundredths feet to the westerly side of lands conveyed by Mathias Kull and wife to Guiseppe A. Basso and Josephine Basso his wife, by deed recorded in the Essex County Register's office in Book E. 59 of Deeds for said county on page 405; thence south eight degrees forty three minutes west one hundred feet along the said westerly side of lands conveyed to the said Guiseppe A. Basso and wife and parallel with Summer Ave to the northerly side of Seventh Ave; and thence along the said northerly side of Seventh Ave; thirty one feet and ninety hundredths of a foot to the place of BEGINNING. Being lot No. 75 and a portion of lot No. 74 on map of the Mill or Mt. Pleasant property dated 1835.

Exhibit D. 5.

This conveyance is also made subject to an easement in favor of the adjoining property on the east made by Matthias Kull and Mary Kull, his wife to Guiseppe A. Basso and Josephine Basso his wife. Said easement is recorded in Deed E 59 of deeds for Essex County on page 405.

10

Being the same premises conveyed to Harry Mayer by Salvatore Onofrietto and Francesca Onofrietto, his wife by Deed, dated April 10, 1923 and recorded in the Essex County Register's office in Book Z-67 of Deeds page 368-369.

AND the said Morris Magenheim for himself, his heirs, executors and administrators, doth covenant, promise and agree to and with the said party of the first part, their heirs, executors, administrators and assigns, that he the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the said sum of Nineteen thousand five hundred dollars as and for the purchase money of the foregoing described land and premises, in the following manner, that is to say:

20

On Execution of this agreement for which this is also a receipt.....	\$500.00	
On delivery of deed, cash	Balance	
By assuming the mortgage at present a lien on the premises, and paying the same according to the terms thereof		30
First mortgage Workingmen's B. & L. Assn.	9800.00	
Second mortgage	3800.00	
Third mortgage	6,000.00	
	<hr/>	

On Bond and Mortgage, same containing usual interest, tax, assessment, insurance and install-

40

Exhibit D. 5.

ment default clauses, and an agreement not to claim credit on the interest payable on bond and mortgage, by reason of any tax assessed, or to be assessed against the premises, with interest at % payable for years.

10 Second party also agrees to pay in cash at the time of closing title the back shares of the build- and loan association.

This Contract is entered into upon the knowl- edge of the parties as to the value of the land and whatever buildings are upon the same, and not on any representations made as to char- acter or quality.

20 And the said party of the part hereby agrees to pay to the licensed and authorized agent a commission of % on the purchase price afore- said,

AND IT IS FURTHER AGREED, by the parties to these presents, that the said part of the second part, his heirs and assigns, may enter into and upon the said land and premises on the 1st day of November next ensuing the date hereof, and from thence take the rents, issues and profits to and their use.

30 AND IT IS FURTHER AGREED, by the parties hereto, that the said deed shall be delivered and re- ceived at office of Simon Englander 700 Broad St. Newark, N J between the hours of 10 o'clock in the forenoon and 4 o'clock in the afternoon on the said day of next ensuing the date hereof.

The rents of said premises, insurance pre- miums, water rents, taxes, and interest on Mort- gage, if any, shall be adjusted, apportioned and allowed as of the day of delivery of said deed.

40 Gas and electric fixtures, gas stoves, hot water heaters and chandeliers, carpets, linoleum, mats

Exhibit D. 5.

and matting in halls, screens, shades, awnings, ash cans, heating apparatus, if any, and all other personal property appurtenant to or used in the operation of said premises is represented to be owned by seller and is included in this sale.

The risk of loss or damage to said premises by fire or otherwise until the delivery of said deed is assumed by the party of the first part. 10

In case the premises shall suffer injury beyond the ordinary wear and tear the party of the first part, shall repair the damage before the date set for delivery of said deed or make an appropriate deduction from the purchase price herein stated.

It is understood and agreed that the buildings upon said premises are all within the boundary lines of the property as described in the deed therefor, and that there are no encroachments thereon and that the buildings comply with municipal ordinances and regulations and the provisions of the New Jersey State Tenement House Act as enforced by the State Board of Tenement House Supervision, to be shown by the report of the department or board enforcing the same where such ordinances, regulations and said act apply. 20

It is expressly understood and agreed that the title to the land and premises hereby agreed to be conveyed is not derived from any proceedings or any Act for the Sale of Land for non-payment of the municipal taxes or assessments, or by adverse possession. 30

The premises above described are sold subject to restrictions appearing of record, and zoning ordinances, if any.

If at any time before the delivery of the deed the premises or any part thereof shall be or 40

Exhibit D. 5.

shall have been affected by any 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
 10 which are to become due and payable after the delivery of the deed, shall be deemed to be due and payable and to be liens upon the premises affected thereby and shall be paid and discharged by the seller thereof, upon the delivery of the deed.

AND it is hereby agreed by and between the parties hereto that in case any street improvements are made, or have been made, upon which the property mentioned herein is located, up to
 20 the time of the delivery of deed, but not assessed, such assessment shall be borne by the party of the first part heirs, executors, administrators and assigns.

AND for the performance of all and singular the covenants and agreements aforesaid, the said parties do bind themselves and their respective heirs, executors and administrators; and they hereby agree to pay, upon failure to perform the same, the sum of _____ which they hereby fix
 30 and settle as liquidated damages therefor.

IN WITNESS WHEREOF, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

HARRY MAYER (L. S.)
 GUSSIE MAYER (L. S.)
 MORRIS MAGENHEIM (L. S.)

Signed, Sealed and Delivered
 in the presence of
 40 SIMON ENGLANDER

Exhibit D. 5.

In consideration of mutual promises and agreements herein stated, we hereby agree to extend the date for the delivery of deed and execution of this contract to at same hour and place

WITNESS hand and seal this day of
A. D. 19

10

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

BE IN REMEMBERED that on this 4th day of October in the year of our Lord One Thousand Nine Hundred and twenty-seven, before me the subscriber, A Master in Chancery of New Jersey personally appeared Harry Mayer and Gussie Mayer, 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 *they* voluntary act and deed, for the uses and purposes therein expressed.

20

And the said Gussie Mayer 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 of compulsion of her said husband.

30

SIMON ENGLANDER.
A Master in Chancery of N. J.

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Exhibit D. 5.

CONTRACT

For Sale of Property

Harry Mayer and Gussie Mayer his
wife

10

To

Morris Magenheim.

Dated September 29, 1927.

20

30

40

PEOPLES NATIONAL BANK & TRUST COMPANY ⁵⁵⁻⁵²⁵/₂

10696

BELLEVILLE, N.J.

Nov. 1 1927

PAY TO THE ORDER OF

Harry Meyer

\$2313⁸⁷/₁₀₀

Twenty Three Hundred Thirteen

DOLLARS

No. *304*

M. Meyerheim

NAT. LITHO. CO. WASH. D.C.

PAY TO THE ORDER OF
NORTH WARD NATIONAL BANK
Newark, N. J.

HARRY MAYER

Pay Any Bank, Banker or Trust
Company or order

All Prior Endorsements Nullified

55-10 NOV 7 1927 55-10

NORTH WARD NATIONAL BANK

Newark, N. J.

55-10

EXHIBIT D. 6.

CHAPTER II

STATEMENT OF THE CASE

The first part of the case is the statement of the facts as they appear from the evidence. This is done in a clear and concise manner, and is the foundation upon which the law is applied.

The second part of the case is the statement of the law which applies to the facts. This is done in a clear and concise manner, and is the foundation upon which the conclusion is reached.

The third part of the case is the conclusion which is reached from the facts and the law. This is done in a clear and concise manner, and is the foundation upon which the final decision is reached.

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*Exhibit D. 7.***Exhibit D. 7.**

STATEMENT OF CLOSING TITLE
53-7th Ave. Newark, N. J.
Harry & Gussie Mayer to Morris Magenheim
November 1, 1927

	Purchase price		\$19,500.
	Rebate on insurance:		
10	Royal Ins. Co. \$10,000		
	Exp. 4/11/29 \$283.10		
	11/1/27 to 4/11/29.....	136.29	
	Back shares.....	\$3,025.75	
	Profit on 89 shares.....	370.96	3,396.71
	Total debit		\$23,033.00
	Paid on signing contract.....	\$500.	
	Mortgage held by Workingmens B & L....	9800.	
	2nd Mtge held by Matthias Kull.....	3800.	
	Int. at 6% from 4/10 to 11/1.....	126.	
	3rd Mtge Macrus Mayer.....	6000.	
	Int. at 6% 7/13/ to 11/1/27.....	107.	
20	Due B. & L. for int.....	\$11.31	
	fines	5.88	
	Ins.	283.10	
	Int. on ins.....	22.74	323.03
	Taxes 7/1/27 to 11/1/27.....	62.10	
	Water rents—4 weeks.....	1.00	20,719.13
	Balance due		\$ 2,313.87

30

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Exhibit D. 8.

Exhibit D. 8.

It is hereby stipulated and agreed that the batch of checks referred to on page 41 of the transcript be omitted from the state of the case. It is conceded by complainant that said checks were drawn by defendant, Morris Magenheim, in payment of building and loan dues, taxes, insurance premiums, water charges and other carrying charges of this property. 10

FREDERICK J. ISRAEL
Of Counsel with and Sol'r of
Complainant-Respondent.

DAVID BOBKER
Solicitor of Defendants.

GEORGE H. ROSENSTEIN 20
Of Counsel with Defendants-Appellants.

30

40

W. W. H. D. 3

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1. Introduction
2. Description of the project
3. Methodology

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5. Discussion

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7. References
8. Appendix

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55-10

THE NORTH WARD NATIONAL BANK

NEWARK, N. J.

March 30th 1928 No. 1462

MARCUS MAYER
366 PESHINE AVENUE

PAY TO THE ORDER OF Fidelity Union Trust Co. (Ironbound Branch)

One Hundred Eighty and 00/100 ~~DISCOUNT~~ DOLLARS

\$180.00

Marcus Mayer

0149
100 00

RECEIVED PAYMENT
THROUGH THE
NEWARK CLEARING HOUSE

APR 3 1928
PRIOR ENDORSEMENTS GUARANTEED
FIDELITY UNION TRUST CO.
No. 5
IRONBOUND TRUST BRANCH

1

EXHIBIT D. 9.



Exhibit D. 10.

Exhibit D. 10.

It is stipulated and agreed that Exhibit D. 10 referred to on page 48 of the testimony consists of a check dated October 1st, 1928, drawn by Marcus Mayer, defendant, to the order of the Ironbound Trust Co. in the sum of \$180.00, said check bearing a notation on the back thereof: "For interest on second mortgage, 366 Peshine Ave.". The original exhibit having been inadvertently lost, this stipulation is entered into in respect to the contents thereof. 10

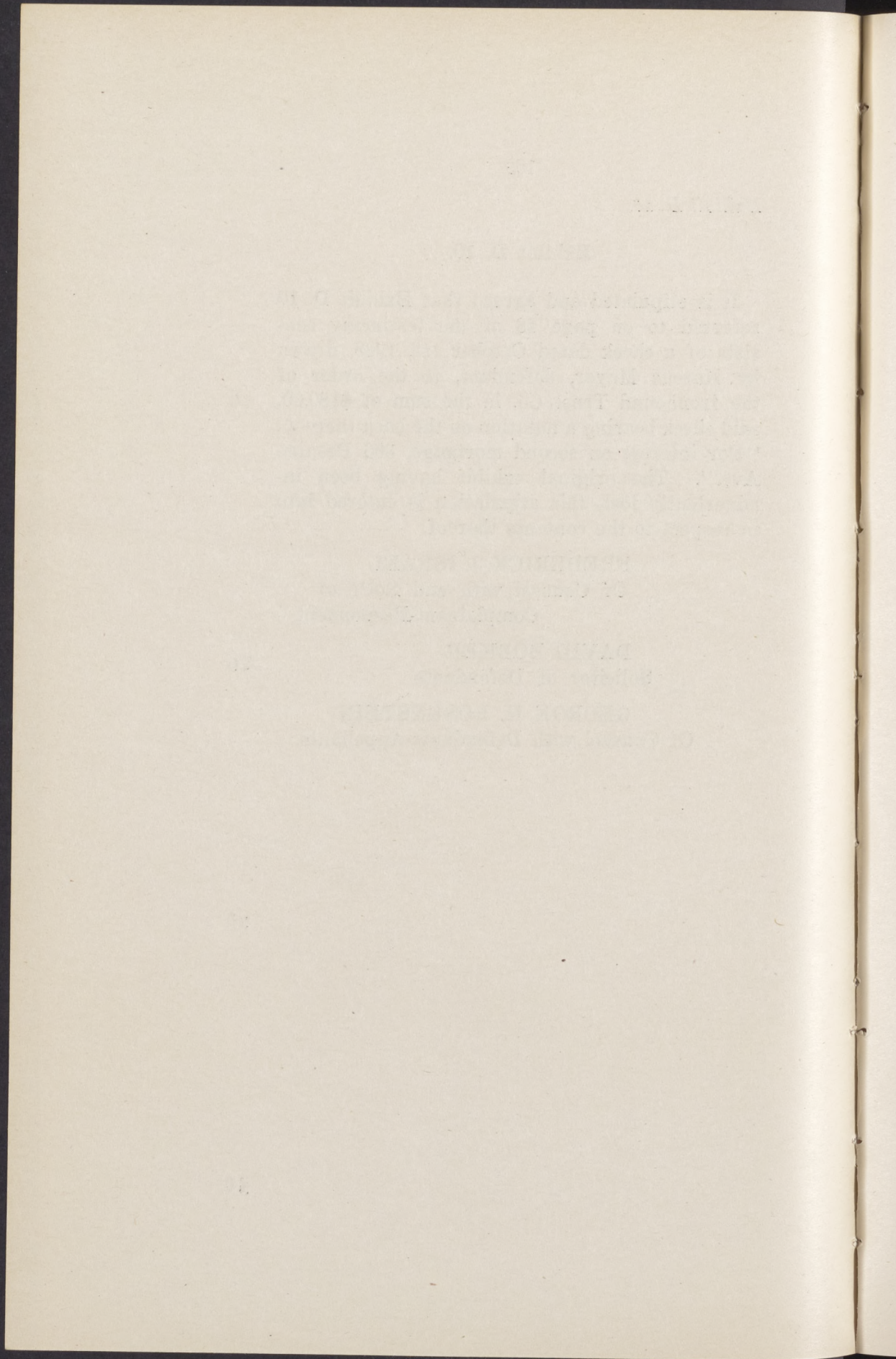
FREDERICK J. ISRAEL
Of Counsel with and Sol'r of
Complainant-Respondent

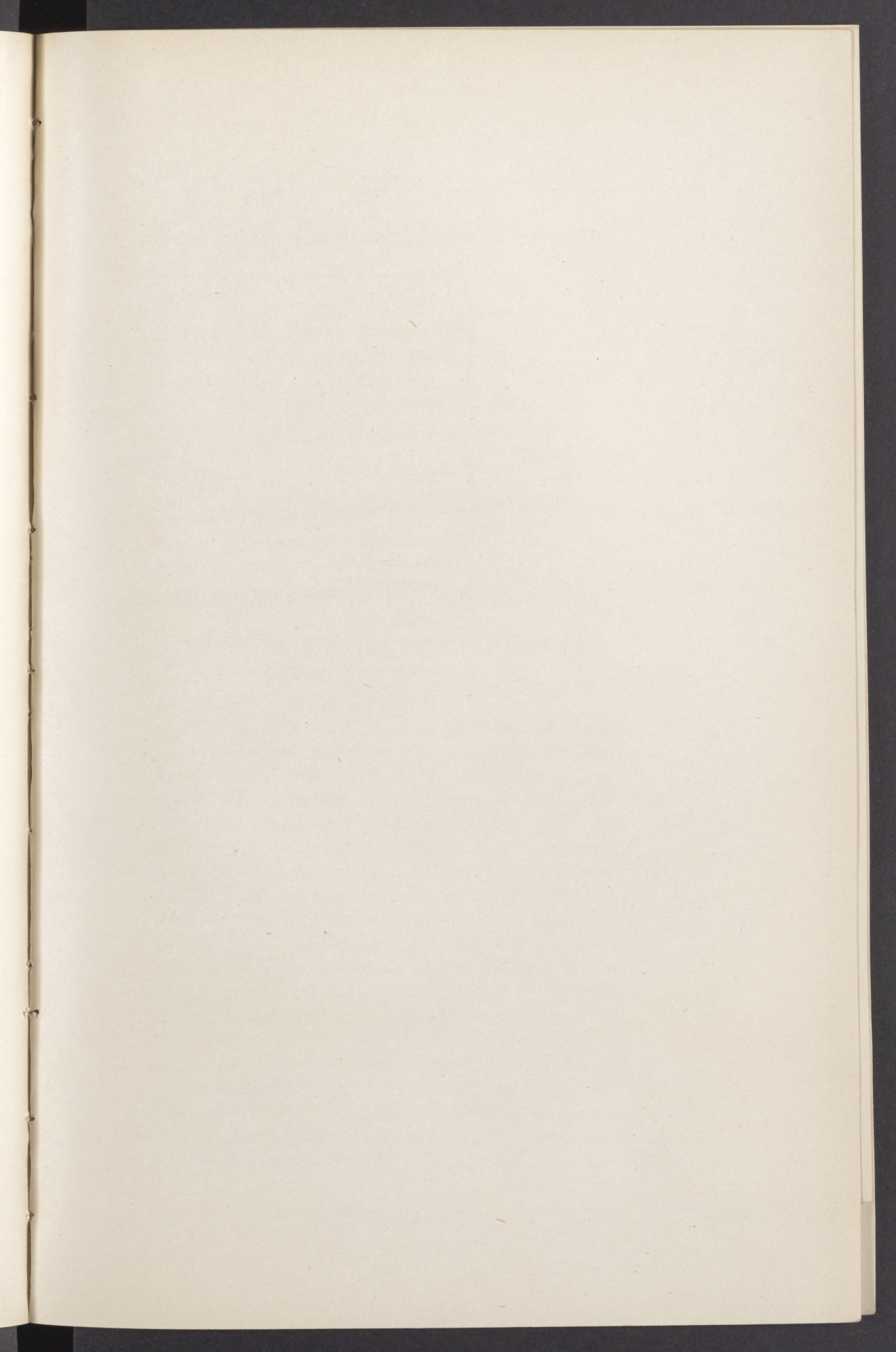
DAVID BOBKER
Solicitor of Defendants 20

GEORGE H. ROSENSTEIN
Of Counsel with Defendants-Appellants.

30

40





6

New Jersey Court of Errors and Appeals

Between

MILTON M. UNGER, Trustee in
Bankruptcy of Harry
Mayer,

Complainant-Respondent,

and

HARRY MAYER, GUSSIE MAYER,
MORRIS MAGENHEIM and
MARCUS MAYER,

Defendants-Appellants.

On Bill, etc.

*On Appeal
from the
Court of
Chancery.*

(Italics ours except where otherwise noted.)

BRIEF ON BEHALF OF APPELLANTS.

Statement.

This is an appeal from a final decree made and entered in the Court of Chancery of New Jersey on November 6, 1929. The decree appealed from, among other things, decrees that a certain bond and mortgage, dated July 13, 1927, made by defendant, Harry Mayer, and his wife, to defendant, Marcus Mayer, in the sum of \$6,000.00 on premises known as 53 Seventh avenue, Newark, New Jersey, is null and void in that it was not given for a valuable consideration within the meaning of the Federal Bankruptcy Act; and directs the defendant, Marcus Mayer, to surrender said bond and mortgage for cancellation to the complainant. And the decree appealed from also decrees that a certain conveyance dated November 1, 1927, made by defendant, Harry Mayer, and his wife, to defendant, Morris Magenheim, while made upon the payment of certain sums of money in cash, was

not made upon a full and fair consideration; and that said conveyance is null and void; and that defendant, Morris Magenheim, is entitled only to a lien and encumbrance upon the premises aforesaid, to the extent of the sums of money paid by him.

Facts.

On July 13, 1927, one Harry Mayer executed and delivered to Marcus Mayer a mortgage in the sum of \$6,000.00 on property situated at 53 Seventh avenue, Newark, New Jersey. The circumstances preceding and leading up to the aforesaid \$6,000.00 mortgage were these: In 1926 Harry Mayer requested his father, Marcus Mayer, to lend him \$5,000.00 which he needed in his business (S. C. 53). The father, Marcus Mayer, not having such a sum available for a loan to his son, Harry Mayer, went out and mortgaged his home situated at 366 Peshine avenue, Newark, New Jersey, in the sum of \$5,000.00. After deducting the expenses incidental to the obtainment of this loan and the payment of the customary bonus usually associated with transactions of that kind, received as net proceeds the sum of \$4,500.00, which sum he thereupon turned over to his son, Harry Mayer, as and for a loan (S. C. 53). (Exs. D. 1 and 2, p. 88). As the date of maturity of the mortgage loan thus made by the father, Marcus Mayer, approached, the father advised his son, Harry Mayer, to be prepared to give him the money for it (S. C. 70). This the son was unable to do.* He thereupon executed and delivered to the father, Marcus Mayer, a mortgage in the sum of \$6,000.00 on property situated at 53 Seventh avenue, Newark, New Jersey, which premises form the subject-matter of this con-

* The father thereupon, in order to pay off the \$5000. mortgage, procured a new \$6000. mortgage to cover the former mortgage plus incidental finance charges, subsequently asking his son to secure him for the latter advance.

troversy. ~~The proceeds of this mortgage for \$6,000.00 was used to pay off the original \$5,000.00 mortgage made and executed as hereinabove stated, the entire \$6,000.00 being consumed by the payments of the principal sum of \$5,000.00, interest and lawyer's fees (S. C. 68-69).~~

It is of paramount importance to note the fact that the \$6,000.00 mortgage aforesaid is dated July 13, 1927, in view of the fact that the date when Harry Mayer was adjudicated a bankrupt is December 12, 1927, a period of five months intervening between these two dates.

As to the sale of premises, 53 Seventh avenue, Newark, New Jersey, by Harry Mayer to Morris Magenheim, the property was conveyed on November 1, 1927, and the consideration paid therefor was \$19,500.00. The testimony clearly discloses the fact that this price was an eminently fair valuation of the property, and the attempted proof offered by the complainant to establish the contrary, not only failed of its purpose, but confirms this valuation. The expert Pellecchia, produced and relied upon by the complainant, reveals so careless and untrustworthy an inspection of the premises in question, *that he did not even take the trouble to go upstairs in the building. He contented himself with merely going in the hall and depended for his information as to the improvements and other details by what "a young fellow there on the place" told him (S. C. 45). He made no examination as to whether there was steam heat or not, nor did he inquire as to the rentals; and based upon this superficial inspection, proceeded to place a valuation upon the premises in the sum of \$24,000.00, and yet in the same breath testified (S. C. 46) that no building and loan that he was connected with would give more than*

\$15,000.00 as and for a loan on said premises. As against this palpably reckless appraisal the record discloses (S. C. 71) that a Mr. Klausner who lives at 35 Seventh avenue, Newark, which is on the same street and on the same side thereof, bought a similar parcel in *January, 1927*, at the price of \$18,000.00. It is significant to note that when Mr. Klausner concluded his testimony, (S. C. 72) counsel for the complainant deemed it inadvisable to cross examine him and rested his case.

In this connection it is also important to note that Harry Mayer had paid but \$14,000.00 for the property when he purchased same from one Salvatore Onofretty; and the testimony shows (S. C. 63, 64) that before making the sale to Magenheim, Harry Mayer offered to sell the property to the aforesaid Onofretty who offered no more than \$18,000 "*on a swap*" (S. C. 64). It was thereafter that Harry Mayer offered to sell the property to Magenheim; and after bargaining (S. C. 62), and first asking \$20,000.00, received Magenheim's offer of \$19,000.00. They split the difference, made the price \$19,500.00, and the sale was consummated.

The testimony then shows that a contract was drawn, (S. C. 56) (Ex. D. 5, p. 97) that a date was set for closing, a search made, (S. C. 57) (Ex. D. 7, p. 106) and all of the preliminaries incidental to the usual sale of real estate were had. All of the transactions between the parties were amply and fully supported by undisputed documentary proof and checks, (S. C. pp. 58, 60, 66, 67) (Ex. D. 6, p. 105, D. 8, p. 107, D. 9, p. 108, D. 10, p. 109), all of which were placed in evidence, fully and fairly supporting all of these facts.

The whole thesis of the complainant's case rests upon the fallacy that all transactions between people related to each other are *ipso facto* and irretrievably fraudulent, unretarded by the settled law that *fraud is never presumed*. Complainant says, that transactions between relatives should be viewed with suspicion. Defendants concede that that proposition is supported by authority. But, asks the defendant, by what process of alchemy can that be transmuted to mean that every such transaction is *per se* dishonest?

Complainant in effect contends: this is a transaction between people related to each other. It ought to be viewed with suspicion. Viewing it with suspicion, it becomes fraudulent! *Sed non sequitor*.

POINT I.

Section 70-E of the Bankruptcy Act not only defines, but limits the rights of a trustee in seeking to avoid a transfer of property.

“The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value. For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.”

The attention of this Court is respectfully drawn to the latter portion of the section above quoted, particularly the following words:

“and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.”

thus giving the Trustee only those rights which might have existed if bankruptcy had not intervened. It is in this role and subject to the aforesaid limitation, that the Trustee has entered the forum of the State Court in the present action to avoid the mortgage and conveyance in question.

The law is clear that in a transfer *made prior to the four months' period*, the Trustee has only those rights, when suing to set same aside, which the creditors had under the Common Law or Statute Law and that it has been so held, appears from the case of *Seales v. Holje*, ^{TITLE} Vol. II, U. S. C. A. Sec. 110, note 822, page 559 (183, p. 308) the Court declaring:

*“When * * * the trustee seeks to avoid a fraudulent or any avoidable transfer by the bankrupt antedating the four months, he does so, not in the right conferred as a concomitant to the due operation of the system, but exclusively in the creditor's common-law right. He is, with relation to these anterior transfers, so to speak, subrogated to that right. Such of these anterior transfers as any creditor might have avoided he may avoid. Such as no creditor could have avoided he cannot avoid.”*

In the same volume and on the same page the foregoing principle is reaffirmed in *Trice v. American Trust, etc. Bank*, wherein the Court said that the effect of this section

“is merely to vest the trustee with the same rights possessed by the creditors; it does not clothe him with any new or additional right

in the premises over those possessed by the creditor, and he is subject to the same limitations and disabilities which would have beset the creditor in the prosecution of the action on his own behalf; and the rights of the parties are to be determined, not by any provisions of this title, *but by the applicable principles of the common law or the laws of the state in which the right of action may arise.*"

And on the following page of the same volume (p. 560) it is said in reference to the case of *Underleak v. Scott*, 134 N. W. 731, *to give the Trustee title to property transferred by the bankrupt, and a right to recover such property, the conveyance must be fraudulent as to creditors under the Common Law or Statute Law. There must be fraud in fact, as distinguished from the constructive fraud that is sufficient where it is so provided in this title.*

POINT II.

Conveyance and alienation of land is controlled by the rules of the State where the land is situated.

The Uniform Fraudulent Conveyance Act adopted by the State of New Jersey (L. 1919, C. 213, p. 501) Cum. Sup. Comp. Stat. page 647, Sec. 44-144, provides as follows:

"Fair consideration is given for property or obligation,

(a) when in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied, or

(b) when such property, or obligation is received in good faith to secure a present advance or antecedent debt in amount not disproportionately small as compared

with the value of the property, or obligation obtained."

Thus the foregoing provision establishes with compelling clarity as to what constitutes a "fair consideration" within the meaning and contemplation of the law of the State of New Jersey in whose forum complainant has submitted this controversy for determination.

By force of the Statute aforesaid, the proof adduced at the hearing in respect to the mortgage transaction between Harry Mayer and Marcus Mayer it is conclusively established that it is based upon "fair consideration" within the meaning of sub-division (a); and the purchase of the property by Magenheim from Harry Mayer subsequently, *certainly was not for a consideration disproportionately small as compared with the value of the property* thereby bringing the latter transaction within the scope of sub-division (b) aforesaid, so that this transaction likewise, was based upon a fair consideration wholly within the meaning and intent of the provision of the Statute.

The law of the State of New Jersey in respect to the Uniform Fraudulent Conveyance Act has been construed by the Court of Errors and Appeals, in the case of *Gross v. Pennsylvania Mtge. & Loan Co. et al.*, where, in a unanimous decision dated *May 20th, 1929*, reported in 7 A. R. 710, 146 Atl. 328, 329, the Court speaking through Judge Hetfield, held that

"The Court of Chancery is the only tribunal vested with power to set aside a conveyance made in fraud of creditors, but it has no jurisdiction to determine actions for debt and for damages arising out of a breach of contract. Without a judgment at law or the establishment of a lien, equity has no jurisdiction to entertain the bill of a credi-

tor, filed to set aside a fraudulent conveyance of the debtor's land, or to enable the creditor to reach the more equitable estate of the debtor. The establishment of the debt by the law court is the necessary foundation of the equitable jurisdiction.

We conclude, therefore, that the 1919 statute is unconstitutional, to the extent that it attempts to give the Court of Chancery authority to hear and determine actions for debt and for damages arising out of a breach of contract, which power is solely within the jurisdiction of the law courts."

The Trustee in a suit to set aside a conveyance is the alter ego of creditors and has no better or greater right than any creditor or creditors had or would have than that under the Common or Statute Law. This Court of last resort declared with finality that the Chancery Court is without power to determine an issue of the kind herein involved without the creditor or creditors obtaining a judgment at law or the establishment of a lien. The Trustee is without power to prosecute this action inasmuch as the rights vested in him do not, by one iota, exceed those possessed by creditors. *The evidence does not disclose any judgment creditor.*

*The Trustee has chosen to have this controversy determined in the forum of the State Courts and he is bound by the rules of law which govern the State Courts; and this doctrine has been accepted in *Klinger v. Hyman* (C. C. A.) 223 Federal 257, 265. That Court among other things stated:*

"In the *Schreyer v. Scott* (134 U. S. 405, 409) the Court had occasion to pass upon the validity of a conveyance made by a husband to his wife, and it said:

'In determining the rules applicable to such transactions, reference should be had, not only to the decisions of this

Court, but also to those of the Courts of New York, where the parties lived and the transactions took place.'

And in the case of *McGoon v. Scales*, 76 U. S. 23, 27, 19 L. Ed. 545, the Supreme Court declared that,

'It is a principle too firmly established to admit of dispute at this day that to the law of the State in which the land is situated must we look for the rules which govern its descent, alienation and transfer and for the effect and construction of conveyances.' "

Proceeding further, in *Klinger v. Hyman case*, *supra*, (p 265), the Court goes on to say:

"If there is a legal proposition which is supported by a long and unbroken line of authorities, which no one assumes to question anywhere, it is that the *lex loci rei sitas* must determine effect to be given to a conveyance of lands. And a transfer of personal property, valid by the domicile of the debtor or of the place where it is made, is a valid transfer of the property wherever situated, unless it is made in conflict with the settled policy of the law of the place where the property is situated. *Green v. Van Buskirk* (and other cases cited).

In the case at bar, both the real and personal property transferred were situated in the State of New York, and the domicile of the debtors were likewise in that State, and there it was that the transfers were executed. The validity of the transfer must be determined, therefore, by the law of New York."

By the same token and by a parity of reasoning, it follows inexorably that *the law of the State of New Jersey controls and governs in respect to the conveyance involved in the case at bar*. The doctrine above enunciated was reaffirmed and followed in *Marcus v. Kane, et ux*, 18 Federal (Second Series) 722, and in *Castel-*

lano v. Osborne, et al., 16 Federal (Second Series) 187-188 (Sec's 2-3). In the comparatively late case (March 1926) of *Wilder, Trustee, etc. v. Colorado Motor Finance Co.*, 7 A. B. R. (N. S.) 692, 244 P. 596, one Clifton H. Wilder, Trustee in Bankruptcy, sought to set aside a conveyance in an action brought in the Supreme Court of the State of Colorado. The Court in its opinion in said case proceeds to say (7 A. B. R. (N. S.) 695):

"The doctrine applicable to this case is well stated in 4 Remington on Bankruptcy (3d Ed.), 1707, as follows:

'If, under state law, the prior security was void as against general creditors, it was void when the exchange was made, and the new mortgage, consequently, was given on a pre-existing indebtedness, within the four months' zone, and hence was preferential; *whilst, if, under state law, the prior security was good as against general creditors and only void as to creditors where the creditors had levied, then the securities were of equal validity when the exchange was made, and the new mortgage consequently could not be properly held to have been given for a pre-existing debt but for an even exchange.*'"

And on page 697, the Court proceeding further, says:

"Where, as in this case, the mortgage is recorded before the bankruptcy proceedings are commenced, *the trustee in bankruptcy cannot attack it as preferential unless he represents some creditor who has fastened a lien upon the property prior to the recording of the mortgage or taking possession by the mortgagee.* This complainant does not allege that such a lien was acquired by any creditor of the bankrupt at any time. The trustee in bankruptcy has no more right to or claim upon this mort-

gaged property than the bankrupt himself had. The Court in the Martin Case, *supra*, referring to the previous case of *Carey v. Donohue*, 240 U. S. 430, 36 Am. B. R. 704, 36 S. Ct. 386, 60 L. Ed. 726, L. R. A. 1917-A, 295, after summarizing its doctrine says:

‘And we think it properly follows that before a trustee may avoid a transfer, * * * (an alleged preferential transfer), he must in fact represent or be entitled to take the place of *some creditor whose claim actually stood in a superior position* to the challenged transfer while unrecorded and within the specified period.’”

And this reasoning is clearly in harmony and consistent with that of *Gross v. Pennsylvania Mtge. & Loan Co., et al., supra*.

POINT III.

Conveyances made upon a valuable consideration are not presumed to be fraudulent against existing creditors and the extent of the grantor's indebtedness is wholly immaterial. A further consideration of the law and the facts.

Prof. Pomeroy in his work on Equity Jurisprudence, Vol. 2 (Fourth Edition) Sec. 972, states that:

“*Conveyances made upon a valuable consideration are not presumed to be fraudulent against existing creditors, and the extent of the grantor's indebtedness is wholly immaterial.* Conveyances upon a valuable and even full consideration are void against existing and subsequent creditors, if made with an actual express intent to hinder, delay, or defraud them; *but the intent cannot be inferred by presumptions, and must be proved by evidence legitimately tending to show its existence* * * *”

With this statement of the law, the contention of the complainant is in direct conflict, for he failed wholly to establish, by the slightest scintilla of evidence, anything which legitimately tends to show any fraud; *but attempts however, to infer such an intent by presumptions in contra-distinction to the settled law to the contrary.*

The learned Vice-Chancellor, in his opinion (S. C. 11) cited the case *Horton v. Banford, et als.*, 79 N. J. E. 356, as authority for the statement that: "as to a voluntary conveyance made by one who is indebted, there is an irrebuttable presumption of fraud."

But in this same case, Vice-Chancellor Garrison, in the course of his opinion, referring to the purchaser (81 Atl. 770, par. 9, 79 N. J. Eq. 356, Syl. 9), states:

"* * * he must either pay approximately the value of the property that he takes of the debtor, or take the risk of being held responsible for any inadequacy if it is of such an amount as to show that the sale to him was not a fair and proper one under the circumstances * * *"

The evidence adduced at the hearing in respect to the valuation of the property *wholly fails to sustain any charge of inadequacy* in the purchase price paid for the property, but, on the contrary, unqualifiedly shows that the price paid by Magenheim to Harry Mayer *was fair and adequate*. Assuming even for the sake of argument that conflicting testimony was offered in respect to such valuation, the clear language of the Supreme Judicial Court of Maine in the case of *Maggett v. Jones*, 89 Atl. 140, 141, bearing on the question of conflicting testimony in

a case likewise involving a charge of fraudulent conveyance, among other things held:

“The evidence as to the value of the property was conflicting, and, if it were an established fact that the husband did actually owe his wife the sum named in the deed, and made the conveyance in payment thereof, we should hesitate to disturb it on the ground that the consideration was inadequate *in the absence of any actual intent to defraud.*”

And Prof. Pomeroy’s statement of the law, *definitely precludes the inference of any such intent by presumptions. On the contrary it must be proved by evidence legitimately tending to show its existence.*

Directly in point on the question of inadequacy of consideration, is the case of *Rosenheimer v. Kronn*, 126 Wis. 617, 5 L. R. A. (N. S.) 395. The headnote reads:

“A sale for \$13,000 on property reasonably worth \$16,200 does not show such a discrepancy between price and value as to bring it within the rule which charges the purchaser, in some instances, as trustee for creditors, as to the difference between price and value * * * especially where the sale must be made in haste and upon a restricted market.”

Quoting from the opinion itself, 5 L. R. A. (N. S.) 401, the Court said:

“But, apart from all other reasons, we deem it plain that there was no such extreme discrepancy between price and value as would render the doctrine applicable even according to the authorities which support it. True, the court has found that the property conveyed for \$13,000 was reasonably worth \$16,200, an ostensible inadequacy of about one-fifth * * * *far less than that which in any of the cases cited has been held sufficient to arouse this supervisory*

power of the court. But 'reasonable worth' is an elastic term * * * It ordinarily means what may be obtained by one under no pressure or compulsion to sell until he can seek and find a customer desiring to purchase. Market value varies with the market * * *"

The learned Court below, in its opinion refers to the case of *Empire State Trust Co. v. Wm. F. Fisher & Co.* for the general proposition that a mortgage given to secure antecedent debts is not given "for value" within the meaning of Section 70-E of the Bankruptcy Act, "or for a 'valuable consideration', within the meaning of Section 64 of the New Jersey Corporation Act." * Vice-Chancellor Pitney in his opinion in that very case, on page 507, 57 Atl., 67 N. J. Eq. 88, 99, proceeds to state:

"...To make mere suspicion a ground of nullity in such a case would render the business transactions of the community altogether too insecure. It was never the intention of the framers of the act to establish any such rule. A man may have many grounds of suspicion that his debtor is in failing circumstances, and yet have no cause for a well-grounded belief of the fact. He may be unwilling to trust him further, he may feel anxious about his claim, and have a strong desire to secure it, and yet such belief as the act requires may be wanting. *Obtaining additional security, or receiving payment of a debt, under such circumstances, is not prohibited by the law.*" Further on he speaks of the policy of the law in this connection. On this topic we have the headnote of the case of *Tiffany v. Lucas*, 15 Wall. 410, 21 L. Ed. 198, which, in the following language, indicates the scope of the opinion: "*A sale by a person in fact insolvent, and made within six months of a bankruptcy subsequently decreed, is not necessarily, and without re-*

* In this case the lower court decision (67 N. J. Eq. 88) was reversed by the Court of Errors and Appeals (67 N. J. Eq. 602) on the ground that the mortgagor corporation, while insolvent, executed a mortgage for a past due indebtedness, contrary to Sec. 64 of the Corporation Act. That question is not presented in the case at bar, because none of the parties to this cause are corporations. It is submitted, therefore, that the law, as above stated by Pitney, V.-C., is correct in its application to mortgage transactions consummated between individuals more than four months prior to bankruptcy.

gard to its character, void, under the thirty-fifth section of the Bankrupt Act (Act March 2, 1867, c. 176, 14 Stat. 5341).''

And it is also respectfully submitted that the learned Court below erred in bringing the question under discussion within the range or scope of the New Jersey Corporation Act, even by analogy, for none of the parties to this cause is a corporate entity.

And furthermore, it is respectfully urged that the learned Court below erred in the broad view it has taken respecting Section 70-E of the Bankruptcy Act in stating: "A mortgage given merely to secure antecedent debts is not given 'for value' within the meaning" of Section 70-E of the Bankruptcy Act *in view of the express limitation therein contained¹ to transfers made within four months.* Gilbert's Collier on Bankruptcy, (1927 Ed.) page 1172, expressly states that:

"A creditor has the right to take a security for an existing indebtedness if actuated by the bona fide motive of securing his indebtedness, even though the debtor may have an ulterior motive, and the validity of such security is subjected only to the contingency that the debtor might be adjudicated a bankrupt within four months."

And the United States District Court for the District of New Jersey in *Manning v. Evans*, 156 Federal 106, 19 A. B. R. 217, 223, wherein also a trustee in bankruptcy sought to set aside certain conveyances, it was held:

" * * * It is a well settled principle of law in New Jersey that an insolvent debtor may prefer any of his creditors, either by giving a mortgage upon his property to secure an antecedent indebtedness, or by conveying property to his creditor in satisfaction of such indebtedness, provided it

1. 60 B, Bankruptcy Act.

be done in good faith and for an adequate consideration. See *Garr v. Hill*, 9 N. J. Eq. 210; *Livermore v. McNair*, 34 N. J. Eq. 478; *Law v. Wortman*, 44 N. J. Eq. 193, 7 Atl. 654, 14 Atl. 586.

I am unable to discover any theory upon which I can sustain the bill of complaint and there must be a decree dismissing it, with costs."

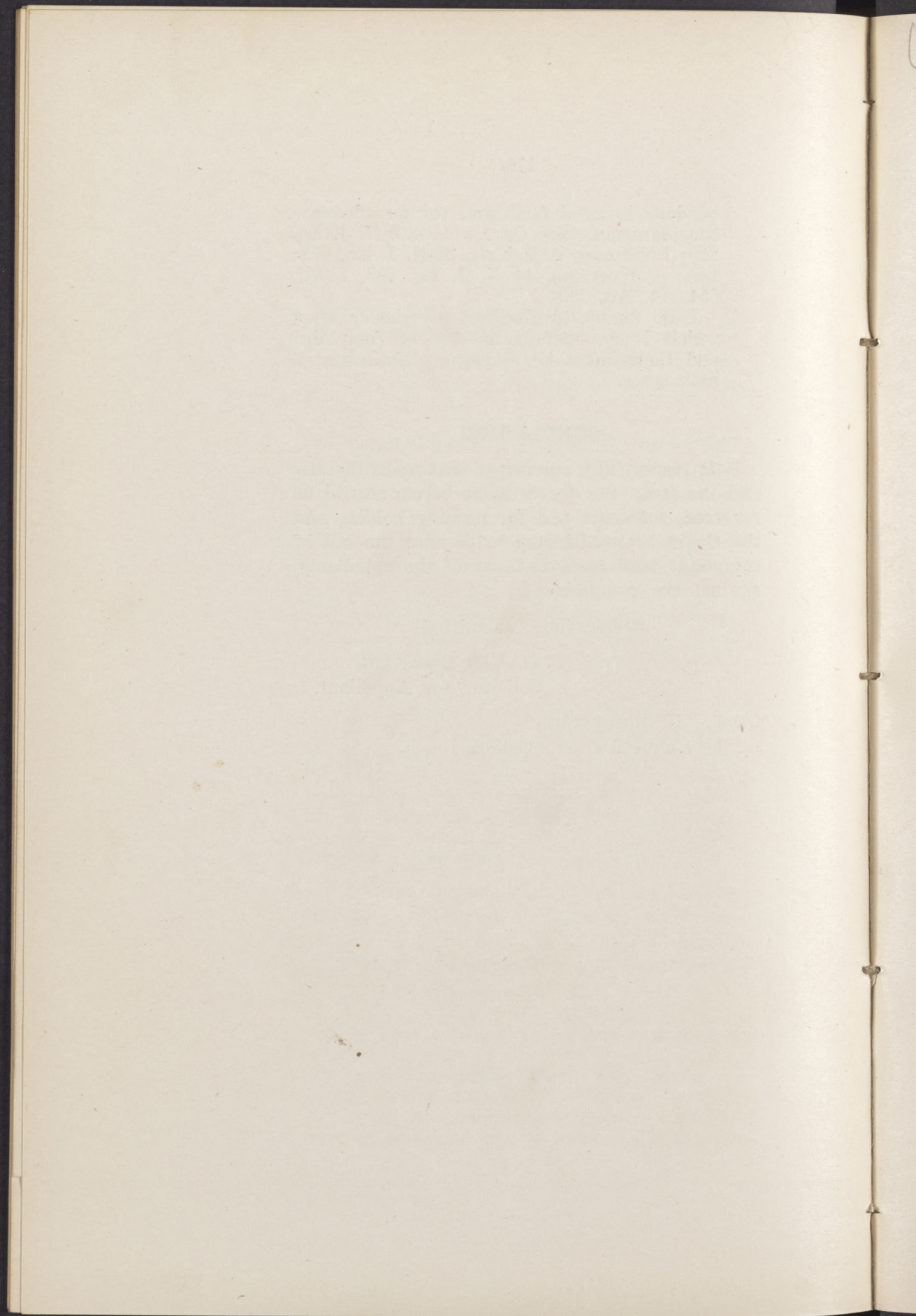
CONCLUSION.

It is respectfully submitted that upon the law and the facts, the decree made herein should be reversed, set aside and for nothing holden, and the Court below directed to dismiss the bill of complaint with costs in favor of the appellants, against the complainant.

Respectfully submitted,

DAVID BOBKER,
Solicitor for Appellant.

GEORGE H. ROSENSTEIN,
Of Counsel with Appellant.



68
Feb 1930

New Jersey Court of Errors and Appeals

Between

MILTON M. UNGER, Trustee in
Bankruptcy of Harry Mayer,
er,

Complainant-Respondent,

and

HARRY MAYER, GUSSIE MAYER,
MORRIS M A G E N H E I M and
MARCUS MAYER,

Defendants-Appellants.

On Bill, &c.

*On Appeal
From the
Court of
Chancery.*

(Italics ours except where otherwise noted.)

BRIEF ON BEHALF OF RESPONDENT.

Facts.

It is alleged in the bill of complaint and admitted in the answer filed herein that on November 1, 1927, and prior thereto, Harry Mayer was the owner of certain property in the City of Newark known as 53 Seventh avenue, which property, on November 1, 1927, had a value of \$24,000.00 (S. C. 44, Exhibit C. 6). That on July 13, 1927, the said Harry Mayer gave a mortgage on the said property to his father, Marcus Mayer, in the sum of \$6,000.00. That on that date, July 13, 1927, he received no money from his father as consideration for the said mortgage (S. C. 49). On November 1, 1927, the bankrupt conveyed the said property to his brother-in-law, Morris Magenheim, for the sum of \$19,500.00, the above mentioned mortgage being part of the purchase price. Harry Mayer was adjudicated a bankrupt on December 12, 1927, and it is stipu-

lated between the parties hereto (Exhibit C. 3) that there are not sufficient assets in the hands of trustee to pay creditors in full, and that among the claims filed by creditors of said bankrupt, which claims were in existence at the time of the transfer and mortgaging of the premises in question are the following:

Old Dutch Mill claim filed for \$77.66.

Adolph Teitelbaum claim filed for \$135.50.

Roma Provision Co. claim filed for \$29.00.

M. Augenblick & Bro. claim filed for \$604.20.

The trustee testified that he received \$1,000.00 for the bankrupt's assets and the total balance in his hands at the present time is \$830.00 (S. C. 32). It is admitted that the total of all claims filed is \$21,214.89 (S. C. 33). The schedules filed by the bankrupt herein show that on the day of the bankruptcy, December 12, 1927, the bankrupt swore that he had assets totaling \$2,000.00 and liabilities totaling \$60,626.90 (Exhibit C. 2). This leaves a deficit of \$58,626.90.

Argument on Facts.

The first question that presents itself is whether or not the said Marcus Mayer and or Morris Magenheim at the time of the giving of the mortgage and the deed, respectively, had reasonable cause to believe that the said Harry Mayer was at those respective times insolvent, and that consequently said conveyance was a fraud upon the bankrupt's creditors.

The trustee offered in evidence the testimony taken before the Referee in Bankruptcy and by stipulation of counsel the parts of said testimony that were deemed relevant to the issues involved herein are included in Exhibit C. 4.

It is to be kept in mind that in a case of this nature, no direct proof on the question can be brought forward by the complainant; he must rely upon the inferences to be drawn from the proofs produced. A short resume of such facts as the trustee believes will give rise to such inferences as may be proper will not be amiss at this time.

The trustee, testifying in his own behalf, stated that he was unable to find any books of account of the bankrupt (S. C. 32). In fact, the bankrupt stated on his sworn examination that he kept his accounts on paper bags, which he destroyed from time to time (S. C. 37). However, he knew, as any man must know, of his financial condition at all times. His creditors had been pressing him for two years (S. C. 65).

By reason of the fact that the bankrupt kept no books it was necessary for the trustee to offer in evidence the statement given by the bankrupt to the North Ward National Bank on March 25, 1927 (Exhibit C. 6). This statement shows a net worth of \$42,027.67 as of that date and lists the property at 53 Seventh avenue at a value of \$24,000.00. This statement was introduced first as an admission by the bankrupt of the value of the property as of that date, and secondly as the only written evidence that is available to show what the bankrupt's condition was prior to the date of the making of the conveyances herein set forth.

The bankrupt was examined by the trustee on this statement not for the purpose of impeaching his testimony, as counsel for defendants stated in his objections, but for the purpose of trying to ascertain what became of the assets as listed in the statement and for the further purpose of

showing his insolvency at the time of the making of the conveyances. His testimony, both in this proceeding and in the bankruptcy proceedings, shows that these assets listed in this statement practically melted away until at the time the petition in bankruptcy was filed that instead of a net worth of \$42,000.00 the bankrupt had a net deficit of \$58,626.90 according to his own sworn schedules. He further testified (S. C. 42) that as a result of his Florida speculation he lost between \$45,000.00 and \$46,000.00 in the month of April, 1927, a month after the statement was given. This loss, alone, without considering in detail the various items on the statement, and without burdening the Court with a detailed analysis of the figures involved, show his insolvency, or in fact bankruptcy, at the time of the making of the conveyances, he having testified that his condition did not improve during that period (S. C. 41) (S. C. 52).

As to the mortgage transaction, it is admitted that no present consideration was given at the time the mortgage was made. The only consideration alleged for the mortgage was a debt due to Marcus Mayer from his son, the bankrupt, of \$5,000.00 advanced in April, 1926, for which the bankrupt gave his father a note (S. C. 50). Marcus Mayer raised money on a mortgage on his home for \$5,000.00, which he loaned to the bankrupt (S. C. 53) although all the money the bankrupt actually received from his father after taking off interest charges and other charges was the sum of \$4,645.00 (S. C. 50). When the \$5,000.00 mortgage became due a year later on the father's house, Marcus Mayer asked the bankrupt for the money he had loaned him and was told that he was not able to pay him. Marcus Mayer then negotiated a new loan for

\$6,000.00 with one Simon Traurig (S. C. 69). This \$6,000.00 mortgage was dated March 25, 1927 and recorded March 26, 1927 (S. C. 69). Nothing further was done regarding this loan of Marcus Mayer to the bankrupt until July 13, 1927, when Marcus Mayer asked his son to give him a mortgage on his (Harry's) property so that he might be protected (S. C. 52, also Exhibit C. 4), entire page (82 S. C.) and further so that he might have some security for the money the bankrupt owed him (S. C. 70). The testimony above set forth is uncontroverted and there is not any dispute as to its accuracy. The mortgage was a voluntary conveyance.

There is no distinction as to the giving of a collateral and a conveyance of the property and if the bankrupt had conveyed the property to his father in consideration of this debt there would be no question but that it must be set aside as in fraud of the creditors.

As to the conveyance of the property to Magenheim, the conditions are somewhat different. Magenheim paid \$19,500.00 for the property and he can only be held accountable for the residue of the value above \$19,500.00 or if the \$6,000.00 mortgage hereinabove referred to is avoided then the excess value above \$13,500.00. There is no question as to Mayer's financial condition on November 1, 1927, and reference is made to the testimony set forth above on this point.

At the outset, let us notice that Magenheim and Harry Mayer are near relatives. Magenheim is a brother-in-law of the bankrupt (S. C. 61). He is in the same line of business (S. C. 61). He called upon the bankrupt at his place of business once or twice a week (S. C. 61). He kept mutual accounts with the bankrupt (S. C. 62) and he was

engaged with the bankrupt as a partner in the Florida venture (Exhibit C. 4, page 83), although he denied this under oath at the hearing before the Court of Chancery (S. C. 62). Magenheim also bought the bankrupt's assets at the bankruptcy sale for the purpose of putting the bankrupt back into business (Exhibit C. 4, page 83).

Simon Englander, attorney for all parties to this conveyance, testified that he had discussed the bankrupt's financial difficulties with him while this deal was pending; and advised him that in the event of bankruptcy he laid himself open to attack on the possibility of a suit such as this proceeding being instituted (S. C. 55). He further states that this advice might have been given in the presence of Magenheim (S. C. 56).

It is a reasonable inference for the Court to raise that Mr. Englander, who represented the bankrupt and who later represented Magenheim in making a search on the property and in closing title did acquaint Magenheim, his then client, with the facts as regards Mayer's statements as to his insolvency. Any such competent attorney would do so. It is his duty so to do, and it is reasonable for this Court to presume that Mr. Englander acquainted his client with all the facts that would effect his title to this property.

Furthermore, let us look at Magenheim's own testimony; Mayer told him he was short of money. He had to get money and would sell the house. They then bargained as to the price and finally agreed at \$19,500.00. There is no question but that Magenheim knew Mayer, the bankrupt, was in financial straits; he admits that Mayer told him he needed money (S. C. 62) and it was his duty to investigate actual conditions. Magenheim could not shut his eyes to avoid the re-

sponsibility occasioned by what he would otherwise see, and in dealing with a failing debtor he is chargeable with knowledge of such facts as a proper investigation would disclose, he having such knowledge of Mayer's condition as would lead a reasonable man to investigate. This point has been so well settled in this State as to require no extended discussion but see *Moore v. Williamson*, 44 New Jersey Equity, 496.

As to the value of the premises 53 Seventh avenue, Newark, New Jersey, the bankrupt's financial statement given to the North Ward National Bank shows value of land and buildings, \$24,000.00. This is an admission on his part that the property was worth \$24,000.00. Pellecchia testified that he went to the store and looked at the building in the rear but that he couldn't go upstairs and see the four rooms. He further testified he had all the information that was necessary in order to make an appraisal and that even if he didn't see the flat upstairs his figures would not be more than \$500.00 more or less either way (S. C. 45). He testified that at the present time he would not pass on a loan as president of the Building and Loan Association for more than \$15,000.00 but that in November, 1927, he would pass on a loan for more than \$15,000.00 because of the value of the land at that time (S. C. 46). Mr. Klausner, witness for the defendant testified that he sold a piece of property at 35 Seventh avenue for \$18,000.00 in January, 1927. Klausner was not cross examined by the trustee's counsel for the reason that his testimony was deemed of no significance as to the value of property at 53 Seventh avenue on November 1, 1927. He did not qualify as an expert witness on real estate values and he merely stated that he sold a piece of property somewhere in the

neighborhood for \$18,000. Magenheim himself testified he figured it was a good buy and the building was worth more than \$19,500.00 (Exhibit C. 4, S. C. 84).

Magenheim is therefore chargeable with the excess of the value of the property over the actual bona fide consideration paid or the difference between \$24,000.00 and \$13,500.00 or if the mortgage to Marcus Mayer is upheld, the difference between \$24,000.00 and \$19,500.00.

POINT I.

The right of the complainant to maintain this action is well settled and cannot be questioned and his rights are defined in Section 70E of the Bankruptcy Act, 30 Statutes, 565 (United States Compiled Statutes 1901, page 3451.) (Amended Feb. 5, 1903 C. 487 16, 32 Stat. 800;)

“The trustee may avoid any transfer by the bankrupt of his property which *any creditor* of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder *for value* prior to the date of the adjudication. Such property may be recovered or its value collected from whoever may have received it, except a bona fide holder *for value*. For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any State Court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.”

In the case of *Crane v. Brewer, et al.*, 73 N. J. Equity 558, Vice-Chancellor Howell held (Syllabus 4):

“under the express terms of the Bankruptcy Act of July 1, 1898 (30 Stat. 565 ch.

541, paragraph 70e; U. S. Compiled Statutes 1901 page 3451) a trustee in bankruptcy represents all the creditors of the bankrupt and takes all his property and rights and he may institute such proceedings to avoid illegal transactions as any of them might."

See also *Levy v. Levy*, 57 Atl. Rep. 1011 not reported in State Reports.

POINT II.

That the complainant trustee stands in the position of a judgment creditor holding an execution duly returned unsatisfied and that the Court of Chancery had power to grant the relief sought therein by complainant.

Section 47A of the Bankruptcy Act of 1898 (July 1, 1898, C. 541, Sec. 47, 30 Stat. 557; Feb. 5, 1903, C. 487, Sec. 10, 32 Stat. 799; June 25, 1910, C. 415, Sec. 8, 36 Stat. 840) provides as follows:

"Trustee shall respectively

(1) * * *

(2) * * * and such trustees, as to all property in the custody or coming into the custody of the Bankruptcy Court, shall be deemed vested with all the rights, remedies and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also as to all property not in the custody of the Bankruptcy Court, shall be deemed vested with all the rights, remedies and powers of a judgment creditor holding an execution duly returned unsatisfied."

The part of the act hereinabove quoted is the amendment of 1910 and was construed by the United States Supreme Court in the case of *J. F. Bailey, trustee in bankruptcy of Grant Brothers v. Baker Ice Machine Company*, 35 Am. Bank'cy R. 814, 239 U. S. 268, 60 L. ed. 275), wherein the

Court held that the trustee shall be regarded as having acquired the status of a creditor holding a lien by legal or equitable proceedings, as of the time when the petition in bankruptcy was filed.

The amendment of 1910 to Section 47A of the Bankruptcy Act specifically vests a trustee with such a lien as is sufficient to enable a creditor to attack a fraudulent conveyance in a Court of Equity in most, if not all the States. *Baldwin v. Kingston*, 48⁴ A. B. R. 641, 247 Fed. 163, decided by Judge Haight of the United States District Court for the District of New Jersey, December, 1917.

Attention of the Court is directed to the fact that cases cited prior to 24 A. B. R. were mostly decided before 1910 and should be read with caution as to the text statement about a trustee standing in the shoes of the bankrupt. This is not so under the amendment of 1910. The trustee stands in a much stronger position than he did before the amendment.

This goes to the remedy. At the time this bill was filed the trustee stood in the shoes of a judgment creditor with a levy returned unsatisfied.

On page 1058, Collier, 13th Edition, states, that this amendment must be construed with Section 70, and that although under Section 70, trustee takes title of the bankrupt, not as an innocent purchaser, but subject to all valid claims, liens and equities, this amendment broadens the rights of a trustee and he can no longer be said to have the limited title of the bankrupt.

In re Hammond, 26 Am. B. R. 336, 188 Federal 1020, *Davis v. Harlow*, 39 Am. B. R. 300, 108 Atlantic, 1028; *in the matter of Reynolds*, 40 Am.

B. R. 141-243, Federal, 268-272; *Riggs v. Price*, 43 Am. B. R. 413, 210 S. W. 420; *Security Warehousing Company v. Hand*, 200 U. S. 415, 19 Am. B. R. 291; *In re Standard Telephone and Electric Company*, 216 U. S. 544, 24 Am. B. R. 761.

Section 70A provides:

“The trustee of the estate of a bankrupt, upon his appointment and qualification * * * shall in turn be vested by operation of law with the *title of the bankrupt* as of the date he was adjudged a bankrupt, except insofar as it is to property which is exempt to all * * * (4) *property transferred by him in fraud of his creditors.*”

Collier says in Gilbert's Collier in Bankruptcy, 1927 edition, page 1079:

“By sub-division (4) property transferred by the bankrupt in fraud of his creditors passes to his trustee. This is the converse of the doctrine that trustees take title subject to equities; they also take title to property which the bankrupt has fraudulently transferred, and in which, therefore, the creditors have equities. The trustee's interest in such property is stronger than was that of the creditors in whose stead he stands, for he has a title. The trustee is vested not only with the title of the property, but also with the creditors' rights of action with respect to property of the bankrupt fraudulently transferred or incumbered by him, and he may assail in their behalf all of such transfers and incumbrances to the same extent as though the debtor had not been declared a bankrupt.”

POINT III.

Where there is a voluntary conveyance made by one who is indebted, there is an irrebuttable presumption of fraud.

Horton v. Bamford, et als., 79 N. J. Equity 356; *Haston v. Castner*, 31 N. J. Equity, 697. These cases, together with the numerous other decisions on the point are, it is submitted, dispositive of the issue of the validity of the mortgage, irrespective of the question of knowledge on the part of Marcus Mayer of his son's financial condition.

As was said in *Baldwin v. Kingston*, by Judge Haight, 40 A. B. R. at page 646:

“It is unquestionably the law of New Jersey that a voluntary conveyance—one without consideration—is deemed fraudulent in law as to, and voidable at the instance of, a creditor whose debt existed at the date of the conveyance, irrespective of the actual intention of the grantor or grantee, and of the former's solvency or insolvency at the time of the conveyance. *Haston v. Castner* (Ct. of E. & A.), 31 N. J. Eq. 697; *Savers v. Dodson* (Ct. of E. & A.), 53 N. J. Eq. 633; *Washington National Bank v. Beatty* (Ct. of E. & A.), 77 N. J. Eq. 252; *Horton v. Bamford* (Ct. Chan.), 79 N. J. Eq. 356, 378; *Lougheed v. Armstrong* (Ct. Chan.), 84 N. J. Eq. 49.”

POINT IV.

Dealings between near relatives one of whom is largely indebted and the other of whom obtains his property, are viewed with suspicion.

Gnichtel v. Jewell, 59 N. J. Eq. 651, affirming 41 Atl. 227.

And as was said by V.-C. Garrison to quote again from *Horton v. Bamford, supra* (Syllabus 6):

“Circumstances such as would put a reasonable person upon inquiry with respect to the financial condition of a transferrer will charge creditors or others dealing with a failing debtor with such facts as they would have learned had they properly investigated.”

POINT V.

A mortgage given merely to secure antecedent debts is not given “for value”, within the meaning of clause “E” in Section 70 of the Federal Bankruptcy Act of July 1, 1898.

This section has been quoted verbatim under Point 1 of this brief.

Counsel in his brief refers to the case of *Empire State Trust Co. v. Wm. F. Fisher & Co.* and quotes from the opinion of Vice-Chancellor Pitney as reported in 67 N. J. Eq. 88, 57 Atl. page 507, which decision was reversed by this court in 60 N. J. Eq. 602.

Attention is directed to the fact that the learned Vice-Chancellor was referring to the Bankruptcy Act of 1867. This has been repealed. We are now concerned with the Bankruptcy Act of 1898 as amended.

The question involved in the Fisher case was whether the creditors of Fisher Co. might have avoided the mortgage and this court held that the trust company was not a “purchaser for a valuable consideration” or a “holder for value” within the true meaning of the Corporation Act or Section 70E of the Bankruptcy Act.

The Court speaking through Justice Dixon states the reason on page 941, 60 Atlantic Reporter, reported in 67 N. J. Eq. 602 as follows:

“I do not think the bona fides of the trust company has been successfully impugned, but the company does not hold the mortgage for ‘a valuable consideration.’ The general rule is that one who acquires property (outside of commercial paper) as mere security for antecedent debts is not a holder for value. See note to *Basset v. Nosworthy*, 2 White & T. Lead. Cas. Eq. 32. This rule prevails in New Jersey. *Knowles Loomworks v. Vacher*, 57 N. J. Law, 490, 31 Atl. 306, 33 L. R. A. 305, affirmed 59 N. J. Law 586, 39 Atl. 1114; *Protection B. & L. Ass’n. v. Knowles*, 54 N. J. Eq. 519, 528, 34 Atl. 1083, affirmed 55 N. J. Eq. 822, 41 Atl. 1116. The same doctrine is maintained in the United States tribunals. In *Morse v. Godfrey*, 3 Story, 364 Fed. Cas. No. 9,856.

Vice-Chancellor Garrison says, to quote again from *Horton v. Bamford*, *supra* (Syllabus 12):

“Jurisdiction concerning fraudulent conveyances is exercised by courts of equity in this State upon the theory of inherent equitable powers irrespective of any statute.”

While it is contended by the trustee that the provisions of the fraudulent conveyances act do not apply to a situation where a bill is filed by a trustee in bankruptcy, we maintain that irrespective of the fraudulent conveyance act, the law as above cited would control and the Court may under the inherent equitable powers set aside these conveyances.

It might be noted in passing that the Fisher case was decided in 1905 and that today, under the amendment of 1910 to Section 47A of the Bankruptcy Act, the trustee stands in even a stronger position than the trustee did at the time of that decision.

An examination of a number of the cases cited by counsel for the appellant discloses the fact that the actions were instituted to set aside "voidable preferences." This clearly appears from the text of the citations set forth by counsel in his brief. In fact, counsel states in his brief, page 16:

"that the learned Court below erred in the broad view it has taken respecting Section 70E of the Bankruptcy Act in stating: 'A mortgage given merely to secure antecedent debts is not given "for value" within the meaning' of Section 70E of the Bankruptcy Act *in view of the express limitation therein contained to transfers made within four months.*'"

There is nothing in Section 70E about a four-month limitation. It is true under Section 60B of the Bankruptcy Act a conveyance given to a creditor within four months is regarded as a preference, but we do not allege a preference in this matter.

The bill in this case was not filed to set aside the conveyance as a preference under Section 60B of the Bankruptcy Act and the question whether or not these conveyances are voidable preferences is not presented, and it is most respectfully urged that for this reason most of the authorities cited by counsel are not in point.

While the trustee believes that the proof offered before the Court below shows that both of these conveyances are fraudulent in fact, it is contended by the trustee and sustained by the authorities cited herein that under Section 70E the trustee is not obliged to prove that these conveyances are in fact fraudulent.

The bill was filed by the trustee to set aside the mortgage given by the bankrupt to Marcus Mayer, his father, because it was not given "for

value" within the meaning of Clause "E," Section 70, of the Bankruptcy Act.

Let me quote further from *Baldwin v. Kingston, supra*, wherein Judge Haight of this district spoke as follows (40 A. B. R. at pp. 645 and 646):

"However this may be, unless the plain terms of Section 70E are to be disregarded, which of course is not permissible, it seems entirely clear that the trustee may avoid any transfer by the bankrupt which any creditor of the bankrupt might have avoided, under the laws of the State, had not bankruptcy intervened, irrespective of the time when the transfer was made and of the financial condition of the bankrupt at that time, provided only that conveyances to *bona fide* holders *for value* are protected. Such has been the uniform course of judicial decision, without dissent so far as I am aware. In the following cases the right of a trustee in bankruptcy to set aside a conveyance made by the bankrupt *more* than four months before the filing of the petition in bankruptcy against him, and which could have been avoided under the laws of the State by creditors, is discussed and recognized. (Citing many cases.)

* * * * *

It is a necessary conclusion, of course, that if the four months limitation does not apply in a case brought under Section 70E, neither is the question of the insolvency of the bankrupt at the time of the conveyance of any materiality, except it be made so by the State law, because one is as an essential element of Section 67E as the other. It is also the right of a trustee to avoid a transfer, under Section 70E, although there are no creditors who, because they had no liens or judgments, would have been in a position, at the time of the filing of the petition in bankruptcy, to attack the transfer. *Fourth Street National Bank v. Millbourne, Mills*

Companies, trustee, supra, Mueller v. Bruss, supra; Thomas v. Roddy, supra; in re Standard Telephone & Electric Co., supra. Not only is the language of Section 70E sufficiently comprehensive to alone justify this latter rule, as the above-cited cases point out, but, since all of them were decided, the amendment of 1910 to section 47A specifically vests the trustee with such a lien as is sufficient to enable a creditor to attack a fraudulent conveyance in the Court of Equity in most if not all States. Hence it follows that the plaintiff may attack the conveyance in question, irrespective of the solvency or insolvency of the bankrupt at the time the conveyance was made, provided that it could have been attacked by any creditor *in the Courts of New Jersey, had not bankruptcy intervened.*"

As to the conveyance by the bankrupt to Magenheim even if Section 70 does not apply surely it is invalid under Section 67E of the Bankruptcy Act of 1898. (July 1, 1898, c. 541, §67, 30 Stat. 564; Feb. 5, 1903, c. 487, §16, 32 Stat. 800; June 25, 1910, c. 412, § 12, 36 Stat. 482) which provides as follows:

"That all conveyances, transfers, assignments, or incumbrances of his property, or any part thereof, made or given by a person adjudged a bankrupt under the provisions of this act subsequent to the passage of this act and within four months prior to the filing of the petition, with the intent and purpose on his part to hinder, delay, or defraud his creditors, or any of them, shall be null and void as against the creditors of such debtor, except as to purchasers in good faith and for a present fair consideration; and all property of the debtor conveyed, transferred, assigned, or encumbered as aforesaid shall, if he be adjudged a bankrupt, and the same is not exempt from execution and liability for debts by the law of his domicile be and remain a part of the

assets and estate of the bankrupt and shall pass to his said trustee, whose duty it shall be to recover and reclaim the same by legal proceedings or otherwise for the benefit of the creditors. And all conveyances, transfers, or incumbrances of his property made by a debtor at any time within four months prior to the filing of the petition against him, and while insolvent, which are held null and void as against the creditors of such debtor by the laws of the state, territory, or district in which such property is situate, shall be deemed null and void under this act against the creditors of such debtor if he be adjudged a bankrupt, and such property shall pass to the assignee and be by him reclaimed and recovered for the benefit of the creditors of the bankrupt. For the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any State court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction."

CONCLUSION.

It is respectfully submitted that upon the law and the facts the decree herein should be affirmed with costs in favor of the respondent against the appellants.

Respectfully submitted,

FREDERICK J. ISRAEL,
Solicitor for and of Counsel with Appellee.

