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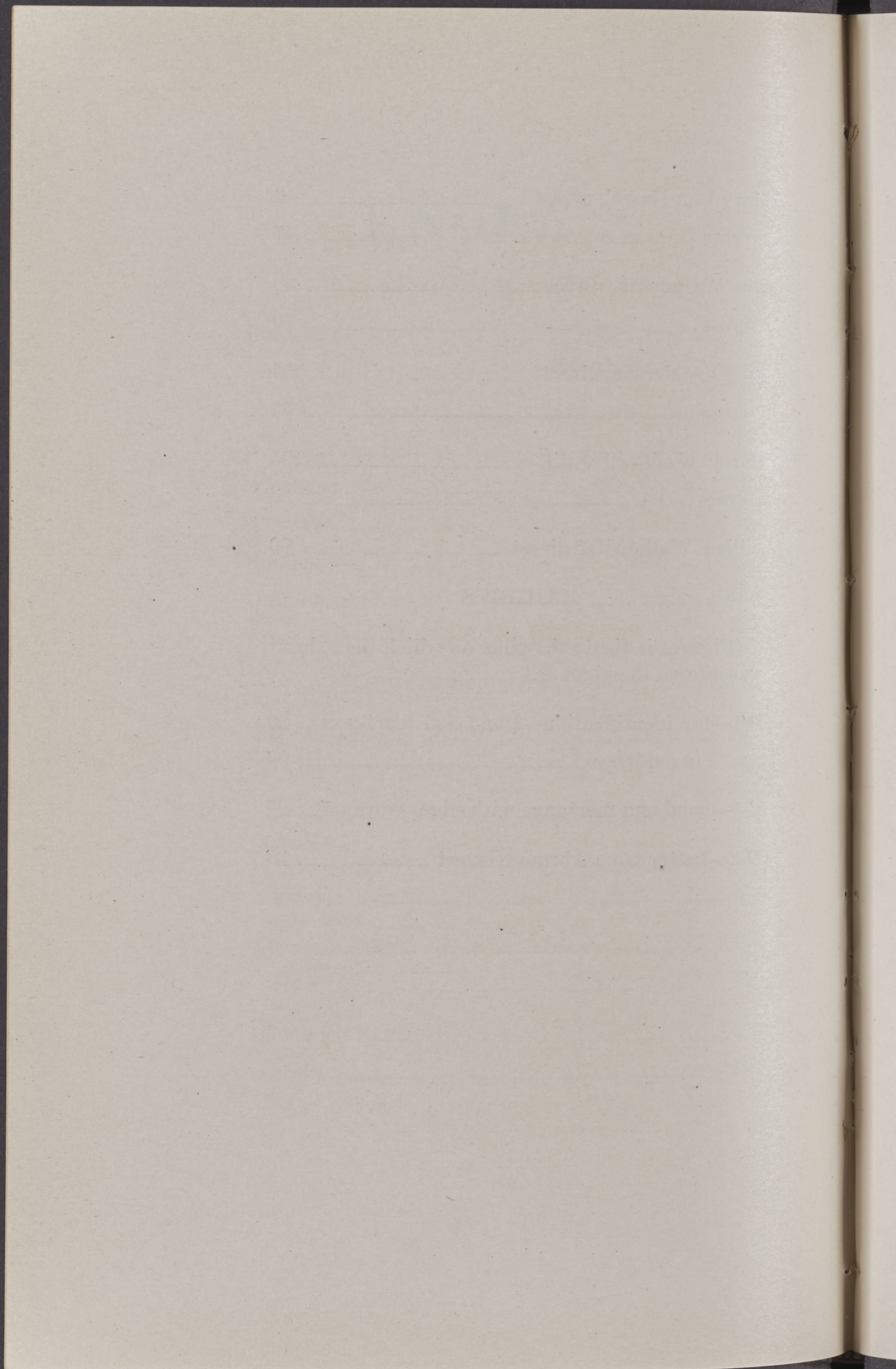
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(Filed January 30, 1923)

## New Jersey Court of Errors and Appeals

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Leon Walkowitz and Rosa  
Walkowitz,  
Complainants-Appellants,

vs.

Harry Walkowitz,  
Defendant-Respondent.

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On Bill.

10

### PETITION OF APPEAL

To the Honorable the Court of Errors and Appeals  
of New Jersey:

The petition of Leon Walkowitz and Rosa Walkowitz, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by the final decree made in the court of Chancery by his Honor Edwin Robert Walker, Chancellor of New Jersey, bearing date the 18th day of December, 1922, wherein the said Leon Walkowitz and Rosa Walkowitz, were complainants, and the said Harry Walkowitz was defendant, in this respect, to wit: that the decree adjudged (ordered) that the bill in this cause be dismissed; that Filbert L. Rosenstein, solicitor of the defendant be and is allowed a counsel fee of \$150.00 and the costs incident to services rendered by the receiver theretofore appointed in this cause. to be taxed against the complainants; and the order or direction, to pay the sum of \$92.11, to the defendant Harry Walkowitz.

20

30

**Petition of Appeal**

And your petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous, for that, the decree should have been made adjudging the complainants entitled to the relief prayed for in their bill, and the deed alleged to have been made by the complainants to the defendant, declared to be null and void. The Hon-  
10 orable Vivian M. Lewis, vice chancellor who heard the cause for the Chancellor, erred in advising a decree in favor of the defendant, and should have advised a decree in favor of the complainants, in accordance with the principles and jurisprudence of equity. The said decree was not sustained by the facts, presented to the court by the evidence, derivable from the testimony introduced in the cause at the final hearing.

20 The decree was made, without having the terms thereof settled by the Vice Chancellor; and the allowing of fees should have been upon an application, of which complainant should have notice. Nor does the evidence produced at the final hearing, sustain the decree.

Your petitioners therefore pray that the said decree (order) of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and  
30 for nothing holden. And that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

William Everett,

Solicitor and Counsel of  
and with Appellants.

**Answer to Petition of Appeal**

(Filed Feb. 19, 1923)

**NEW JERSEY COURT OF ERRORS  
AND APPEALS**

Leon Walkowitz and Rosa  
Walkowitz,  
Complainants-Appellants,

vs.

Harry Walkowitz,  
Defendant-Respondent.

10

**ANSWER TO PETITION OF APPEAL**

The answer of the above-named defendant-respondent to the petition of appeal of the above-named complainants-appellants.

20

This defendant-respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the Eighteenth day of December last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this defendant-respondent prays to refer thereto when the same shall be produced. And this defendant-respondent is advised and believes, that the said decree is agreeable to equity, and prays that the same be affirmed, with costs to be adjudged to this defendant-respondent.

30

Filbert L. Rosenstein,  
Solicitor for and of counsel  
with defendant-respondent.

**Notice of Appeal**

(Filed Jan. 19, 1923)

## IN CHANCERY OF NEW JERSEY

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 Leon Walkowitz and Rosa  
 Walkowitz,

vs.

 Harry Walkowitz,  
 Defendant-respondent.
 

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**NOTICE OF APPEAL**

To Filbert L. Rosenstein, Esq.,  
 Solicitor of the defendant.

Sir:

You will please take notice that the complainants appeal to the Court of Errors and Appeals, from the whole and every part of the final decree, made in the above stated cause, and dated December 18th, 1922.

20

Respectfully,

 William Everett,  
 Solicitor of Complainants.

Dated January 9th, 1923.

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

 William Everett,  
 Counsel.

30

Affidavit of service on Filbert L. Rosenstein, solicitor of defendant, Jan. 9, 1923, endorsed on notice.

## BILL

(Filed October 27, 1921)

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

The complainants, Leon Walkowitz and Rosa Walkowitz, his wife, of Paterson, New Jersey, respectfully show that:

1. On April 8, 1920, the complainants, by purchase, became seized in fee simple to that certain tract of land in Paterson, New Jersey, and described as follows, viz: 10

Being on the westerly side of Belmont Avenue (formerly Rip Van Winkle Avenue) where a right angle line from North Seventh Street four hundred and seventy-five feet from Oxford Street would intersect the same, and running thence (1) Northeasterly, along Belmont Avenue, six feet and eighty-nine hundredths of a foot to a bend; thence (2) still along Belmont Avenue, sixty feet and sixty-four hundredths of a foot; thence (3) northwesterly, at right angles to Belmont Avenue, forty-six feet and fifty one hundredths of a foot; thence (4) southeasterly, at right angles to the last mentioned line about twenty-five feet to the right angled line from North Seventh Street, and thence (5) southeasterly, along said line sixty-five feet and fifty hundredths of a foot to Belmont Avenue at the place of beginning. 20

2. On January 22, 1921, Harry Walkowitz, the defendant who had previously thereto, by misrepresentation, fraudulently and deceitfully obtained the possession of the complainants' title deed, did procure some person or persons, who are unknown to complainants, to execute a deed of complainants' said property, and thereby conveyed the said 30

**Bill**

property to the defendant in fee for the consideration one dollar in fee simple.

3. The said deed as recorded in the Passaic County Register of Deeds and Mortgages are signed by names purporting to be the names of the complainants, but signed either by the defendant, or some one procured by him to personate the complainants.

10 4. On the said day the said fraudulent deed was acknowledged before Abram Klenert, a Master in Chancery of New Jersey, and subsequently, on April 13th, 1921, recorded in the office of the register of deeds and mortgages of Passaic county.

20 5. The said deed of conveyance made by the defendant's procurement and fraud, conveying the said property to himself, without consideration to or knowledge of the complainants, or either of them, nor in any manner authorized.

30 6. The defendant has been ever since the time of the pretended conveyance, exercising ownership over the said property, and collecting the rents, insisting on the right to do so by reason of the deed which he has; the complainants being unfamiliar with the laws and customs prevailing in such transactions, were ignorant of their legal rights to said property, until through a friend he was advised to see a lawyer about the matter and be made acquainted with his right.

7. The said defendant has been collecting all the rents from the tenants occupying apartments in said premises, and appropriating them to his own use.

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

1. That Harry Walkowitz, the defendant in this

**Bill**

suit, may answer this bill of complaint and each statement therein made.

2. That an account may be taken of the amount of rents collected and received by the defendant of and from the tenants of the said property, and that he be decreed to pay the amount so ascertained to the complainants.

3. That a receiver be appointed to take charge of the said property, collect the rents and income derived therefrom and care for and keep the property in repair and tenantable condition until the determination of this suit. 10

4. That the defendant by the decree of this court be adjudged and decreed to deliver up for cancellation the deed of conveyance of the property mentioned in this bill of complaint, and execute and deliver to the complainants his or her heirs or assigns, a perfect and sufficient deed of conveyance of the said property.

5. That the defendant by the decree of this court be enjoined from collecting the rent from the complainant, for the part of said premises occupied by them, or any of the other tenants during the pendency of this suit. 20

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

William Everett,  
Solicitor and Counsel  
with Complainants.

**Amended Prayer to Bill****AMENDED PRAYER TO BILL**

(Filed Dec. 13, 1921)

Paragraph 4, of the prayer of the bill of complaint is amended so as to read as follows:

10 4. That the defendant by the decree of this court be adjudged and ordered to execute and deliver to the complainants, a good and sufficient deed of the premises set forth in the bill of complaint, conveying said property to the complainants, their heirs or assigns, in fee simple, and the said deed mentioned in said bill, purporting to have been executed by the complainants to the defendant be canceled as of the day of its pretended execution.

William Everett,  
Solicitor of Complainants.

20 I consent to the filing of the above amendment to complainants' prayer to the bill of complaint.

Filbert L. Rosenstein,  
Solicitor of Defendant.

**Answer**

(Filed Nov. 19, 1921)

IN CHANCERY OF NEW JERSEY

<p>Leon Walkowitz and Rosa Walkowitz,  Complainants,  vs.  Harry Walkowitz,  Defendant.</p>	}	10
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**ANSWER**

The defendant answering the complaint, in the above-entitled suit, respectfully says that:

1. He admits the truth of the statements made in the first paragraph of said complaint. 20

2. He denies the facts set forth in the second paragraph of the complaint, but says that the complainants did, on January 22nd, 1921, sign, seal and deliver a deed of the said property, and thereby they conveyed the said property to the defendant in fee for the consideration of One Thousand Dollars (\$1,000), in cash, and a purchase money mortgage of Fourteen Hundred Dollars (\$1,400.00), which mortgage was dated January 22, 1921, acknowledged the same date, and is recorded in the Register's Office of Passaic County, in Book X-11 of Mortgages for said County at page 512. 30

3. The defendant denies the facts stated in the third paragraph of the complaint, and says that the said deed was signed by the said complainants.

## Answer

4. Defendant admits the facts stated in the fourth paragraph of the complaint, except that he denies that said deed was fraudulent.

5. He denies the facts stated in the fifth paragraph of the bill of complaint, and says that the said conveyance was made by the complainants voluntarily to the defendant, for the consideration stated in paragraph 2 of this answer.

10 6. Defendant admits that he has been, ever since the time of said conveyance, exercising ownership over the said property, and collecting the rents from complainants, insisting, and here he insists on the right to do so by reason of the deed which he has; and as to the remainder of the said paragraph, defendant says the same is immaterial to the issue and wrongfully pleaded.

20 7. He admits the facts stated in the seventh paragraph of the complaint.

This defendant prays to be hence dismissed, with his reasonable costs and charges in this behalf most wrongfully sustained.

Filbert L. Rosenstein,  
Solicitor of Defendant.

11  
**Replication**

(Filed Dec. 13, 1921)

IN CHANCERY OF NEW JERSEY

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Leon Walkowitz and Rosa  
Walkowitz, his wife,  
Complainants,

vs.

Harry Walkowitz,  
Defendant.

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10

**REPLICATION**

The complainants join issue on the answer of  
the Defendant.

William Everett,  
Solicitor of Complainants.

I consent to the filing of the replication as of  
time.

20

Filbert L. Rosenstein,  
Solicitor of Defendant.

30

**Final Decree**

(Filed Dec. 20, 1922)

## IN CHANCERY OF NEW JERSEY

	Leon Walkowitz and Rosa	}
	Walkowitz,	
	Complainants,	}
	vs.	
10	Harry Walkowitz,	
	Defendant.	}

**FINAL DECREE**

20 This cause coming on to be heard at the Chancery Chambers, in Paterson, in the presence of William Everett, solicitor of the complainants, and Filbert L. Rosenstein, solicitor of the defendant, and the proofs having been taken in open court, and the Court having duly considered the pleadings, proofs, and argument of counsel for the respective parties.

It is, on this Eighteenth day of December, 1922, ordered that said bill be, and it is hereby dismissed, with costs.

30 And it is further ordered that Filbert L. Rosenstein, solicitor of the defendant, be and he is hereby allowed a counsel fee of One Hundred and Fifty (\$150.00) Dollars; and Clifford L. Newman, Esq., heretofore appointed Receiver in this cause be and he is allowed the sum of Fifty Dollars, as and for his fees and compensation for his services as such Receiver; both of the said fees together, with the sum of Five (\$5.00) Dollars, the price of the said Receiver's surety bond, to be taxed in the costs by defendant:

**Final Decree**

And it is further ordered that the order of this court, bearing date June 27, 1922, and appointing said Clifford L. Newman, Receiver in this cause, to take charge of the premises, No. 69 Belmont Avenue, Paterson, New Jersey, be and the same is hereby vacated, and the said Clifford L. Newman is hereby discharged as such Receiver, and the said Clifford L. Newman, Receiver, is directed to pay the sum of Ninety-two dollars and eleven cents, being the balance in his hands so collected as rents from the aforesaid premises, unto the said defendant, Harry Walkowitz. 10

E. R. Walker,  
C.

Respectfully advised,  
Vivian M. Lewis.

20

30

## Testimony

## IN CHANCERY OF NEW JERSEY

	Leon Walkowitz and Rosa	}	On Bill
	Walkowitz,		
	Complainants,		
	vs.		
10	Harry Walkowitz,	}	
	Defendant.		

## TESTIMONY

Final hearing December 12th, 1922, before Hon. Vivian M. Lewis, Vice Chancellor: At Paterson Chambers.

20 Appearances:

William Everett, for Complainants.  
 Filbert L. Rosenstein, for Defendant.

30

Mr. Everett—This is a suit brought to set aside a deed presumed to have been made between the complainants and the defendant. The complainants and his wife are the owners of a piece of property up on Belmont Avenue. The complainant and the defendant are brothers, Harry Walkowitz and Leon Walkowitz, and there seems to have been a peculiar condition existing between them—that is, the complainant did a great many things in protecting the defendant from suits, and certain property had been conveyed before that—I mean to prove that as a fact, and of course that caused a feeling of coldness between the

## Testimony

two. Now, it seems that sometime in 1921 a certain conveyance was recorded in the Register's Office conveying this property from the complainants to the defendant and we claim that that deed was not executed by us to the defendant, and we ask that that conveyance be set aside, together with an accounting between the defendant and the complainants for the rents received since the defendant has had possession of the property. The answer is rather a specific denial. We will prove that the complainants were not there and did not execute the deed. 10

The Court—Not what?

Mr. Everett—Were not there when the deed was acknowledged and alleged to have been executed. Judge Klenert must have been imposed upon.

The Court—Who took it? 20

Mr. Everett—Abram Klenert.

The Court—Do you mean to say that he took an acknowledgment when the parties were not present?

Mr. Everett—Well, the parties will swear that they were not present.

The Court—Well, I want to tell you that this is a very serious thing. It will have to be gone into very carefully. It will have to go to the Chancellor. Do you mean to say that Judge Klenert would take an acknowledgment without the parties being present? 30

Mr. Everett—I am prepared to prove it.

The Court—Prove it. That is the first thing.

**Rosa Walkowitz—direct**

Mr. Everett—Our case rests upon the execution of this deed.

Mr. Rosenstein—Of course, we insist that they were.

The Court—Why, it is certainly most extraordinary—a man take an acknowledgment without the parties being there, a man of experience at the bar and a special master of this court.

10

ROSA WALKOWITZ, one of the complainants, produced as a witness in her own behalf, being duly sworn according to law, testifies as follows:

(Examination conducted through Interpreter Bernstein.)

By the Court:

20 Q. Where do you live? A. 69 Belmont Avenue.

Q. Are you one of the complainants? A. Yes.

By Mr. Everett:

Q. Did you sign that paper (showing witness paper)? A. No; I sign Jewish.

By the Court:

30 Q. Did you sign that paper? Is that signature yours? A. No; I sign in Jewish.

Q. Did you sign that? A. I don't know. I was no place.

**Rosa Walkowitz—direct**

By Mr. Everett:

Q. Is that your signature—is that your name?

A. No.

By the Court:

Q. Did you sign that? A. No.

Q. Do you know Abram Klenert? A. No.

Q. Don't you know Abram Klenert? A. No.

Q. Were you ever in his office? A. I never  
was no place. 10

Q. Were you ever in Mr. Klenert's office? A.  
No, sir; never was no place.

Q. Were you ever in Mr. Klenert's office? A.  
I don't know—I don't know where he lives. I am  
not in Paterson.

By Mr. Everett:

Q. Did you and your husband ever go to his  
office on the corner of Ellison Street and Washing-  
ton Street? A. No, sir; I don't know no streets. 20

Q. How do you sign your name when you do  
sign it? A. I sign in Jewish. I put the paper in  
Jewish and I sign.

Q. Do you remember the time when you bought  
this property? A. Yes.

Q. And you bought it from whom? A. Mr.  
Friedman.

Q. And there was a mortgage then upon the  
property, wasn't there? A. Yes, sir. 30

Q. \$2200.00—And you gave another mortgage  
of \$200 to Friedman? A. Yes, sir.

Q. And did you sign that one? A. Yes, I  
wrote it in Jewish.

Mr. Everett—I ask Mr. Rosenstein to pro-

**Rosa Walkowitz—direct**

duce all papers which Leon gave him before he assumed to have gotten possession of the property. He got all the deeds and all the papers.

Mr. Rosenstein—Which papers do you want?

10 Mr. Everett—I want the mortgage given by Walkowitz to Friedman to show the signature.

Mr. Rosenstein—I would like to call your Honor's attention to the fact that these papers are coming out of our custody now.

The Court—Exactly, they are in evidence and will be marked by Mr. O'Byrne.

By the Court:

20 Q. You never saw Judge Klenert? A. I didn't see him.

Q. You never saw him? A. No.

Q. You don't know him? A. No, never saw him. I don't know him.

Mr. Everett—I desire to go into the whole case, but if—

30 The Court—You know this is a serious charge to make. You stated in the opening that you rested on that proposition. I want to find out now.

Mr. Everett—Well, then, I would like to call Mr.—

The Court—Oh, no, Mr. Rosenstein would like to ask some questions.

Cross Examination by Mr. Rosenstein:

Q. Mrs. Walkowitz, you are living now at 69

**Rosa Walkowitz—cross**

Belmont Avenue, are you not? A. 69 Belmont Avenue.

Q. I will ask you to recall January of last year, January of 1921. A. About what should I recall?

Q. Do you remember on one Saturday morning that you and your husband and your husband's brother and his wife—all of you in Judge Klenert's office? A. I no swear—I was not in any place. Not one time, I would swear a hundred times I was in no place. 10

Q. Do you remember that on that morning Judge Klenert asked you to sign— A. I don't know Judge Klenert.

Mr. Everett—I object. She has already stated that she doesn't know Judge Klenert.

Q. (Showing witness) Mrs. Walkowitz, I show you a bond and mortgage dated January 22nd, 1921, made out by your brother-in-law, Harry Walkowitz to your husband and yourself, and I ask you if you ever saw this before? A. No, sir. 20

Q. Can you explain how this bond and mortgage for \$1400 on the property at 69 Belmont Avenue, made out by Harry Walkowitz to you, happened to be in your lawyer's possession? A. I will explain that. My brother-in-law's wife, or my sister-in-law, rather, brought it to my house. The envelope was open. Sold the property. I don't know nothing. She told me that I would have to pay the rent. 30

Q. Did you ever pay rent to your brother-in-law?

Mr. Everett—I object to that.

**Rosa Walkowitz—cross**

The Court—Allow it.

A. He came there with his papers, with an open envelope, and he said he bought the property on Belmont Avenue, and we will have to pay \$22.00 a month rent.

10 Mr. Everett—I understood the Court to say that we were not going into anything except to make inquiry as to—

Mr. Rosenstein—I want to show conduct on their part inconsistent with their declaration.

A. Yes, I did pay rent, because they wanted to eject me from the premises.

Q. When did you pay rent?

20 Mr. Everett—That is objected to anyway.

A. I paid the rent the same month when the papers were brought to me.

Q. Was it this year? A. No, sir.

Q. You paid rent—do you remember when you started this case? A. I don't know anything only that they brought me the papers. They didn't tell me nothing.

Q. You are one of the parties in this case, aren't you? A. Yes, sir.

30 Q. Didn't you begin this case a year ago last October?

Mr. Everett—I object to that. That is a matter of record. The papers show when the suit was commenced.

**Rosa Walkowitz—cross**

The Court—It is objectionable. The record speaks for itself.

Q. How many months did you pay rent? A. In the same time, the same months when the papers were brought to me.

Q. Didn't you pay your brother Harry rent until this court appointed a receiver? A. Yes, sir.

Q. Why did you pay rent to your brother-in-law if you didn't sign this deed? A. Because my husband trusted his brother with the papers therefore he took away the house. 10

Q. Don't you remember being in Judge Klenert's office and he signed the deed and you said, "I can sign only in Jewish"? A. I never was by Judge Klenert.

Q. And Judge Klenert then said: "It is hard to copy Jewish in the Court House. You better make your cross."

Mr. Everett—I object to that. 20

A. I didn't speak to Judge Klenert.

Q. (Showing witness) I show you this paper and ask you if you know who wrote that? A. (No answer.)

Q. It takes you a— A. I loaned \$100. The business was slow. I loaned \$100. That is not my receipt. I want to see my receipt.

Q. Do you know who wrote that? A. This is a mortgage. I loaned \$100. My husband was not home and I gave receipt in my own name. 30

Q. Who wrote this paper? A. That is my paper. That is my name.

Q. You wrote your name there? A. Yes, I signed my name—not the cross.

**Leon Walkowitz—direct**

(Paper marked Exhibit D-1 for identification.)

Mr. Everett—Now, inasmuch as Mr. Rosenstein has gone somewhat into the case—

10 The Court—Mr. Rosenstein did not go into the case except to cross examine. The question has been raised by you, and the question is whether Judge Klenert took this acknowledgment when they signed it.

Mr. Everett—Well, I am proving that they were not there.

The Court—I am going to submit it to the Chancellor in case there is any doubt in my own mind.

20 LEON WALKOWITZ, one of the complainants, produced as a witness in his own behalf, being duly sworn according to law, testifies as follows:

Direct Examination by Mr. Everett:

(Through Interpreter Bernstein.)

Q. You are Leon Walkowitz, one of the complainants? A. Yes, sir.

30 Q. And Harry Walkowitz is your brother? A. Yes, sir.

Q. And you have had some property dealings with him outside of this 69 Belmont Avenue, have you not? A. Yes, sir.

Q. And you had some conversation with him about this 69 Belmont Avenue property, did you not? A. He told me—he called me out to sell the property, but I should not tell his wife about the deal.

**Leon Walkowitz—direct**

Q. Did you give to your brother the deeds to the property that you had received?

Mr. Rosenstein—Here is the deed. We agree on that phase of it.

The Court—What I want to know is about this. It purports to be a regularly executed deed, signed by Judge Klenert and everything else. If he didn't do it, why, of course, it goes to the Chancellor—so serious a charge.

Q. Do you know Abram Klenert? A. Yes.

Q. And you have been to Abram Klenert's office quite frequently? A. Two times.

Q. Before this deed was alleged to have been executed had you been to his office about this 69 Belmont Avenue property? A. No.

Q. Now, tell us how your brother got possession of those deeds of that property? A. He called me out and told me he heard I wanted to sell the property. He gave me all the papers and I told him I cannot read and he told me that I shall give him all the papers, which I did.

Q. What did you do? A. I gave him all the papers and he went away and then he came back again and told me I shall go to Judge Klenert's office, and I went to Judge Klenert's office and he wasn't there, and I went back again the following morning and he wasn't there, and my wife asked me where I was because customers were coming into the store looking for me, and I informed my wife that I wanted to dispose of my property. My wife objected. She was not satisfied to sell the property. She wanted to keep the property for a home. I went back and I followed Harry up to

## Leon Walkowitz—direct

Grand Street and told him to give me back the papers. He said: "Why are you hollering? I will give you back the papers when I come tomorrow." He told me the papers were in Washington, and I asked him who signed the papers. He told me then that I signed the papers and I denied it. I said I didn't sign—

By the Court:

10 Q. Wait a minute. Mr. Walkowitz, did you make that cross there? Did you ever see that deed before? A. No.

Q. Just look at it. Look it over. This is a very serious matter. That is the deed of your property to your brother, Harry Walkowitz. Did you ever put your pen there and make that cross? A. No.

20 Q. Were you in Judge Klenert's office on the twenty-second day of January, 1921? A. No, sir.

Q. Did you see Judge Klenert on the twenty-second day of January, 1921? A. No.

By Mr. Everett:

30 Q. I show you this bond and mortgage from your brother Harry Walkowitz to you and your wife, and I ask you how that came into your possession—how did you get that? A. Well, that was within about three months later, the sister-in-law she bring me, and I press by the machine and she throw that way the papers: "You hold the papers" and I started hollering, "I didn't sell the property, I didn't sign," and so I took it back to Judge Klenert's office the papers.

Q. When you received that bond and mortgage

**Leon Walkowitz—direct**

was it in the same condition with the exception of the edges being worn off—had it been opened? A. Just like it is.

Q. What? A. Open like this.

Q. And these ends were all worn off? A. Yes.

Q. And that was addressed to you, "Leon Walkowitz, 172 Water Street, Paterson," and enclosed in an envelope with a name—the law office of Abram Klenert, 121 Ellison Street, Paterson, N. J., upon it, and that was dated May 9th, 1922? A. Yes. 10

(Papers marked Exhibit P-1.)

Q. And you have never accepted any of the payment on that mortgage, have you? A. No, sir.

Q. Did he ever offer you any payment on that mortgage? A. My brother came to me and told me I shall give him all the money what I collected for the rent. 20

By the Court:

Q. Why did you pay any rent? A. When the papers were brought to me he told me he would throw me out from the doors if I would not pay him \$22 a month. I was only six months here and had small children. Where could I go?

Q. How long did you pay rent to your brother after the twenty-second day of January, 1921? A. I pay this time when she bring me the papers. 30

Q. And when did you pay it afterwards—when did you stop paying rent? A. I don't remember when I stopped paying rent.

## Leon Walkowitz—cross

Q. Are you paying it still? A. Always pay rent.

Q. To whom? A. Some collector.

Mr. Everett—The Receiver. I might say it was under my advice that he paid the rent, rather than have it reviewed before the other court.

10

Cross Examination by Mr. Rosenstein:

Q. You paid rent to your brother for a year, didn't you? A. Yes. I didn't want to pay it.

Mr. Rosenstein—I ask that that be stricken out.

The Court—Ask him again.

20

Q. Since January of last year, 1921, you paid rent to your brother for about a year, didn't you? A. Yes. I didn't want to pay it because he wanted to eject me.

Mr. Rosenstein—I ask that that be stricken out. I asked him yes or no.

The Court—That is right. You are entitled to the answer.

30

Q. How long are you in the United States? A. I am seven or eight years in America.

Q. When your brother came to you and asked you to pay the rent, why did you pay it to him?

A. Because he show me papers that I sell the property, and he wanted to throw me out of the house.

Q. Why didn't you go to a lawyer about it?

## Leon Walkowitz—cross

A. I did not know—I didn't know where was a lawyer. I went to a lawyer—Jewish lawyer, Isadore Rabinowitz. He held the case for about three months. "I don't know what kind of a case I got here. What's the matter?" And he told me I should come see Judge Klenert. "All right," I say, "we go to Judge Klenert," and Judge Klenert give me a chair, and he said: "Do you know this fellow?" He said: "I don't know." "You know this fellow?" "I don't know," and after, the Jewish fellow he take me to the office girl, say: "You know this fellow?" She says just the same: "I don't know." After going back to Judge Klenert's office he said: "Judge Klenert, look at his face, maybe he was some time here, Judge Klenert." Judge Klenert say: "I don't know—maybe I was busy." He was like dead one—he sits in chair. He was like dead one. 10

Q. Why did you pay the rent to your brother?

A. That is the same way. I paid the rent when she brought the papers that I sold the property. I was compelled to. I didn't know the law, and I got to pay the rent. The sister-in-law middle of the week bring me the papers and on Sunday he say: "If you don't pay me \$22 rent you have to stay in the street." 20

Q. You had no lawyer? A. He told me Judge Klenert like honest person. I don't need no lawyer.

Q. Did you ever take any money on the second mortgage? A. No. 33

Q. Was any money ever mailed to you? A. No.

Q. I ask you to look at this paper marked D-1. Did you ever see that paper before? A. No. I

## Leon Walkowitz—cross

say I cannot read any writing and I don't know who makes that.

Q. Didn't you see your wife write that paper?

A. No. It was just that time when she took \$100. She told me when she came down town.

Q. Who took \$100? A. My wife. It was her business and I know nothing about it, and she said brother loaned \$100 and she gave him a receipt. I didn't know.

10 Q. Didn't you go over to your brother's house on June first to collect \$100 on the second mortgage? A. No.

Q. And didn't you give this paper as a receipt? A. No.

Q. And wasn't this paper prepared for you by your wife? A. No.

Mr. Rosenstein—I call upon the plaintiff to produce paper dated August 29, 1921.

20 Mr. Everett—He must prove that we have it.

The Court—You say it isn't in your possession?

Mr. Everett—He has to prove that it is in our possession.

The Court—No, he doesn't have to prove that. He can call for it.

Q. Did you get a letter from Judge Klenert on August 29th, 1921? A. No.

30 Q. Did you get any paper from him with a check for \$100? A. No.

Q. How long did you buy this property before January 29th, 1921—when did you buy it? A. I got it first maybe for a year.

## Leon Walkowitz—cross

Q. You bought it from a woman named Friedman? A. Named Friedman.

Q. How much did you pay her? A. I paid, \$3,900.

Q. And the property was in bad condition, wasn't it? A. No, sir.

Q. Wasn't in bad condition? A. No.

Q. Didn't you go around telling people you would have to sell it because it was in bad condition and you could not keep it?

10

Mr. Everett—I object.

The Court—I will allow it. It is material.

Q. Did you go around telling people that your property was in bad condition and you would have to sell it? A. No.

Q. Do you know Mr. Bauer? A. Yes.

Q. Mr. Bauer used to be a tenant at 69 Belmont Avenue? A. Yes.

20

Q. And was a tenant of yours? A. Yes.

Q. Used to pay you rent? A. Yes.

Q. Mr. Bauer stopped paying rent in the spring of last year, didn't he? A. Yes.

Q. Why did he stop paying rent to you? A. I was paid there by the tenants until he—

Q. Why did he stop paying rent? A. The brother was going upstairs and telling the tenants: "I buy from my brother the house," and the tenants they told me: "He give me a receipt and I give him the money."

30

Q. Didn't you go around in February of last year—didn't you go around to the property with your sister-in-law, Eva Walkowitz, and introduce her to Mr. Bauer, and say: "This is the new

## Leon Walkowitz—cross

landlady; pay her the rent''? A. No, no. Excuse me Judge—

By the Court:

Q. Answer yes or no. A. No.

By Mr. Rosenstein:

10 Q. Do you know Mrs. Van Hassel? A. Yes.

Q. She used to be a tenant at 69? A. Yes.

Q. Used to pay rent to you, too, didn't she? A. Yes.

Q. Did you go around with your sister-in-law in January and February of last year to Mrs. Van Hassel and tell her to pay the rent to her, that she owned the property?

20 Mr. Everett—I object to going into the facts of the case except as to that single point.

Mr. Rosenstein—It is the very point that I want to make, Mr. Everett, as to whether this party called on her and when, and this would indicate that they had conveyed the property away.

30 The Court—I will allow it. You can note an objection to it, because it is a serious matter. These two parties come on the witness stand and testify to the effect that they didn't sign this instrument taken by the Master in solemn form—regular form. It is very serious and I am going to have it investigated.

Mr. Everett—All right. Note my exception.

## Leon Walkowitz—cross

Q. Mr. Walkowitz, have you an account at the Hamilton Trust Company? A. No.

Q. Did you ever have an account at the Hamilton Trust Company?

Mr. Everett—I don't see what materiality that has.

The Court—I will allow it.

A. Yes, sir. 19

Q. When did you have that account in the Hamilton Trust Company? A. About two years ago.

Q. In January, 1921, you opened that account, didn't you? A. I don't know, Judge, but I did have money.

Q. You mean the Hamilton Trust Company up on Market Street, don't you? A. Yes.

Q. How much did you have two years ago in that bank? A. \$700. 20

Q. You got \$600 of that from your brother Harry, didn't you? A. No, no.

Q. Didn't your brother Harry take you to the Hamilton Trust Company and have an account of \$1,000 in his name transferred to you? A. No.

Q. And didn't you take \$400 of it out in cash right away and leave \$600 on a new book you opened in your name? A. No.

By the Court: 23

Q. Where did you get that money? A. I got an accident in Chicago and I bring the money here.

By Mr. Everett:

Q. Now Mr. Rosenstein made some inquiry

## Leon Walkowitz—cross

about your relationship with your brother and the Hamilton Trust Company. Did that recall to your mind an incident which happened between you and him in regard to your property at that time—regarding his property, 172 Water Street—

Mr. Rosenstein—I object to any reference to the property on Water Street.

The Court—I will allow it.

10

Q. I will have to go back a little further. You and your brother were living in the same place in Poland? A. Yes.

Q. Did he leave his wife behind him? A. She was by me—my father and mother.

Q. Did anyone know where Harry had gone to when he left? A. No.

Q. And how long did his wife continue to live with your father and mother? A. About ten years.

20

Q. And what then happened? A. My mother wrote me a letter that my father died and I shall find out about my brother.

Q. You came from Poland to Baltimore and from Baltimore went to Chicago and from Chicago came to Paterson? A. Yes.

Q. Now, when you came from Poland you didn't know where your brother was living? A. No, only the brother is living here with another woman five years.

30

Mr. Rosenstein—I object to that.

Q. Now, Harry was in business in Paterson—in the clothing business—pressing business, like that? A. Yes.

## Leon Walkowitz—cross

Q. Did he have any one in business with him at that time? A. No.

Q. No, No—who was with him in business?

A. He lived with a woman.

Mr. Rosenstein—I object to that.

Mr. Everett—You opened this up.

Q. Your brother got in Chancery—with the court? A. In court—she wanted half of the business. 10

Q. She wanted half of the business? A. It was about twelve or one o'clock at night a knock in the door and my wife told me "Go—maybe want to steal," and I was going outside. The brother—I told my wife: "The brother is here," and my brother he came in like crying. I said: "What is the matter?" He said: "She is living with me. She wants half of the business and half of the house, and I cannot do anything. Just coming to sleep here this night and I am going to call by Judge Klenert in the morning, and I am going to put the property in your name with the business." 20

Q. Were there any papers drawn up in Judge Klenert's office—when was it day or night? A. Right in the morning. That was eight o'clock.

Q. In the morning you and your brother Harry went to Judge Klenert's office, did you? A. Yes.

Q. Now, were there any papers drawn up there then? A. Two papers we make up. 30

Q. What were they? A. Two papers we make of the property. We made a deed of the property and a deed—and the bill of sale of the store.

Q. Who gave them to you? A. Judge Klenert gave me.

## Leon Walkowitz—cross

Q. And was your brother there at the time? A. Yes.

Mr. Rosenstein—What time are you speaking of?

Mr. Everett—This was a Friday—when did you say it was?

The Witness—I don't remember.

10

Q. You took the papers? A. Yes.

Q. And you had the papers in your possession?

A. Yes.

Q. And what happened to them? A. After I was in the middle steps Judge Klenert—I don't know what the brother is called—Judge Klenert called me back on the middle step. He said: "May be a fire in your house. You better put the papers in my safe," and I gave him back the papers.

20

Q. You gave Judge Klenert these papers? A. Yes.

Mr. Rosenstein—May I ask the Court if I cannot pin him down to the time?

The Court—He said he was there in January, 1921.

30 By the Court:

Q. Were you there in Judge Klenert's office, or did you see Judge Klenert after January 22nd, 1921? A. No.

Mr. Everett—If the decree is made, we also ask for an accounting. That is one of our prayers.

Complainants Rest.

## Abram Klenert—direct

## Defendant's Case

ABRAM KLENERT, produced as a witness on behalf of the defendant, being duly sworn according to law, testifies as follows:

Direct Examination by Mr. Rosenstein:

Q. Judge Klenert, you are a practicing attorney in this city, are you not? A. I am. 10

Q. And you have your offices corner of Washington and Ellison streets in this city? A. I have.

Q. Are you acquainted with the complainant, Leon Walkowitz—have you ever seen him before? A. Yes, I have.

Q. Have you ever seen his wife, Rosa Walkowitz, before? A. I have.

Q. And the defendant, Harry, and his wife, Eva Walkowitz? A. I have. 20

Q. Now I show you a deed, Mr. Klenert, in which your name appears as subscribing witness and also as having taken the acknowledgment, and ask you if you know who prepared that deed? A. It was prepared in my office.

Q. The deed has the words of the name "Leon Walkowitz" and the words "His mark" and then a cross—who wrote the words there? A. I wrote the words.

Q. Who put the cross there? A. Leon Walkowitz. 30

Q. And below that the words "Rosa Walkowitz"? A. That is my writing.

Q. Whose cross? A. Her cross.

## Abram Klenert—direct

By the Court:

Q. Where was that done? A. In my private office.

By Mr. Rosenstein:

Q. Under whose direction did you prepare the deed, Judge Klenert? A. Well, Mr. Leon Walkowitz.

10 Q. Did he come to your office? A. He came to my office with Harry Walkowitz.

Q. Before the date of the deed? A. Yes.

Q. And then were the instructions given to you? A. Instructions given to me and I prepared the papers.

Q. What papers? A. A deed and bond and mortgage.

Q. How much was the bond and mortgage for?

A. You better let me see it.

20 Q. (Showing witness) A. \$1400.

Q. And do you recall what day of the week January 22nd, 1921, was? A. It was on a Saturday.

Q. And what part of the day did they come in?

A. Came in in the morning.

Q. Who came in? A. Four of them. Harry Walkowitz and his wife and Leon Walkowitz and his wife.

30 Q. What was done in your office? A. Why, at that time I had the papers prepared and the men and women got into an argument in the office, and they talked so fast that I let them go on talking, and after they got through—I knew what the argument was about because I could understand Jewish—after they got through talking, why, they told me that there was no interest to

## Abram Klenert—direct

be paid on the mortgage, and then I got angry at them and told them that I would have to rewrite the bond and mortgage over again, so we did so, and then at the time re-wrote the bond and mortgage and struck out that pertaining to the interest on the bond and mortgage.

Q. Did they explain to you why the bond and mortgage was to carry no interest?

Mr. Everett—I object to anything of that kind. I think the instrument reads for itself. 19

The Court—I will allow it. You may note an exception.

A. They argued pro and con, and at last they said they agreed that they would take a lesser rent from him—that is, as a tenant they would take less rent from him and wanted no interest on the mortgage. 20

Q. When you say that they would take a lesser rent, how do you mean? A. Well, I got the names—Leon—or Harry Walkowitz would take less rent from Leon and there would be no interest paid on the mortgage.

Q. Leon, the old owner, was to continue as tenant in the place? A. Yes.

Q. And was to get a reduced rent? A. Yes.

Q. And in consideration of that, the mortgage was to bear no interest? A. That's it. 30

Q. In whose possession were the papers left after they were executed? A. In my possession.

Q. What for? A. I was to record them.

Q. Why—will you explain why they were recorded so much later? A. Well, Harry Walkowitz paid \$12 on that day. I told him that it would

**Abram Klenert—direct**

cost him \$25. He said he only had \$12, and they argued there about the cost, who was to pay it, and I said: "I will take this \$12, but I will not record these papers until the balance of the fee is paid." I was to pay for the recording fees and pay the stamps on the bond. Well, the papers remained in my safe for some time, and I think that at last I wrote him or sent him a bill, and he came down and paid the \$13 balance, and the next morning the papers were sent to the court house for recording.

Q. Judge, I show you a carbon copy of a letter and ask you if you can recognize that. A. Yes, that was sent from my office.

Q. Did you send the original of that letter out?  
A. I did.

Mr. Everett—I object to that letter. They have to prove that we got it. They have to show—

The Court—Under the rules, when they call for an instrument of that kind and you say you haven't it, they have a right to use whatever evidence of it they have. I will allow it. You may note an exception.

Q. How was that original letter sent? A. The original of this letter together with my check in the amount of \$100 was sent to this address.

Mr. Rosenstein—I offer the letter in evidence.

(Letter marked Exhibit D-2.)

By Mr. Everett:

Q. Who sent it—who mailed it? A. It went out of my office—

**Abram Klenert—direct**

Q. You don't know whether it was mailed at all, do you? A. (Continuing) in the ordinary course of business.

Q. I mean you don't know—you are swearing to things you don't know anything about? A. No; I don't know—

Q. Is that the way you swear? Maybe that is the way you took that acknowledgment?

Mr. Rosenstein—I object.

10

The Court—Mr. Everett, you will have to control yourself. If you repeat that talk you will be in contempt of court. That is not the way to cross examine. That is not the way to act with a witness upon the stand.

Mr. Everett—He is the same as any other witness.

The Court—Certainly he is, and you will not insist—you will not talk in that manner again.

20

Q. Will you explain, Judge, what happened after that? A. Mr. Leon Walkowitz came in there one day with Addison Rosencrans and Isadore Rabinowitz, and just as they got in the room, why, Rabinowitz says: "Do you know this man?" I says: "I don't know whether I know him or not." He sat down and he says: "Well, I want to know about this Walkowitz case." I says: "Surely I know him. That is Walkowitz. I made a deed for him," and he denied it. "Why," I says: "Walkowitz, you deny that," I says, "You are the biggest liar that I have ever heard in all my life. Didn't you sit right in that seat—pointing to the seat that he sat in at the time they were all there to sign the deed—to sign the deed," and I said,

31

## Abram Klenert—cross

“Didn’t your wife sit in that chair”—pointing to the chair that she sat in. “Now,” I says, “You know you are a liar”, I says, “how can you come into my office and tell me you were never here before,” and with that the three of them bundled out.

10 Cross Examination by Mr. Everett:

Q. Recalling to your mind the incident of these parties being in your office and the execution of that paper, will you just tell what happened there?

A. You mean the—

Q. These are the papers I mean. The day the mortgage and— A. The day the papers were signed or a few days previous?

Q. The day you said they were signed? A. Yes.

20 Q. What happened that time? A. They came in, the four of them, Harry Walkowitz and his wife and Leon Walkowitz and his wife, and Leon Walkowitz walked into the private office. His wife sat at the edge of the door in the reception room where she could see and hear everything that was going on. I said: “I have got the papers here ready for you.” Then they got into an argument about the interest—

30 Q. You said that before. A. Well, you are asking me.

Q. No—but what was done with the papers—how did the name get on the papers? A. You mean the name as—

Q. Grantors?

The Court—The lawyer put that on.

Q. How did that name get on the papers—Leon

**Abram Klenert—cross**

and Rosa? A. They made their mark on the papers.

Q. How did they make the mark? A. By putting their hands on the pen.

Q. Where was the pen? A. In my hands.

Q. And will you do just the way that it was done? A. They touched it and made the marks.

Q. Is that the way you call making a mark?

A. That is the way I have always done it. I don't know how you do it.

10

Q. What became of the papers after that was done? A. After that was done I got the papers to record them.

Q. Did you have them recorded? A. Yes.

Q. After the mortgage was recorded you had it sent to Leon Walkowitz at 172 Water Street, did you not? A. Have you it here—I will say whether I did or not. Yes, there is the envelope it went in.

Q. It was under your instructions that letter was sent out? A. This envelope was sent out, yes.

20

Q. I mean the papers. That contained the—  
A. Bond and mortgage. Yes, I imagine so, because on the bond you see in my handwriting is the address where Mr. Leon Walkowitz told me to send it. There it is, right in my own handwriting (indicating) here.

Q. Do you know whether Leon Walkowitz was living there at that time? A. Positively he was there at that time.

30

Q. He was living there was he, down at 172?  
A. I don't know just the address he gave me. I wrote it—there it is in pencil, where he wanted the bond and mortgage sent when it was returned from the Register's office. That address hasn't been put on since, you can see that. The papers have been

**Abram Klenert—cross**

in your office. "172 Water Street" where he told me to send the papers to.

By the Court:

Q. Who paid you when you drew this deed?

10 A. Harry Walkowitz paid me the whole \$25. They talked it over in Jewish to see who paid. I says: "I don't care. I want \$25, and I won't record the papers before it is paid," because they were strangers to me.

By Mr. Everett:

Q. Well, you had done business for Harry before? A. I don't think I ever did business for any of these people before. They have been in our office and I know them by sight. Their business had been done with Isadore. They never had been clients of mine.

20 Q. (Showing witness letter) What about this check for \$100. Do you recall anything about that? A. Every month when I have my account balanced, that \$100 check is out.

Q. Where is that \$100 check now? A. It was mailed to Leon Walkowitz, 169 Belmont Avenue.

Q. Have you any knowledge it was received? A. No; I have not.

Q. Have you any knowledge of the check being paid? A. I have knowledge that it has not been paid, because it is still out.

30 Q. When Addison Rosencrans and Mr. Rabinowitz came to your office was Mr. and Mrs. Walkowitz with them? A. No, I think he was alone.

Q. And they came to you to see something about some deed or papers which had been executed in your office? A. They came over there

**Lawrence Bauer—direct**

to ask me about the case, and when I told them that there wasn't the least doubt in my mind whatever, about Leon Walkowitz and his wife signing that deed and they were there in my office and that they were deliberate liars when they said that they weren't, both of them threw up the case. Said they had enough of it.

By Mr. Rosenstein:

Q. Do you remember on this morning, January 22, 1921, when the deed was to be signed, that statement made by Mrs. Walkowitz that she could only write Jewish? A. No, I don't. 10

By Mr. Everett:

Q. Did she want to write her name in Jewish? A. No, I don't recall. They only made marks

LAWRENCE BAUER, a witness produced on behalf of the defendant, being duly sworn according to law, testifies as follows: 20

Direct Examination by Mr. Rosenstein:

Q. Where do you live now, Mr. Bauer? A. 18 North 4th Street.

Q. Were you ever a tenant at 69 Belmont Avenue? A. Yes, sir.

Q. When did you move out of there? A. I moved out on the first of July. 30

Q. Which year? A. 1922.

Q. And how long were you a tenant there altogether? A. Three years.

Q. When did you move in—about the first of July, 1919? A. 1919.

## Lawrence Bauer—direct.

Q. Who was your landlord when you moved in? A. Mrs. Friedman.

Q. And after Mrs. Friedman who was your landlord? A. Leon Walkowitz.

Q. (Indicating complainant) This man here? A. Yes.

Q. And you paid your rent to him? A. Yes.

10 Q. Did you have a landlord after Leon Walkowitz? A. Yes, sir.

Q. Who was that? A. Harry Walkowitz.

Q. Did you pay rent to Harry Walkowitz? A. Yes.

Q. How long did you pay rent to Harry Walkowitz? A. Fourteen or fifteen months—I don't remember.

20 Q. How did you come to change from paying rent to Harry Walkowitz? A. Leon Walkowitz he came up with Harry Walkowitz's wife and he said: "The property is sold and this is your landlady."

Q. When was that? A. 1921, about February or March.

Q. Now, after that conversation, did Harry Walkowitz ever have a talk with you in which he told you about how he come to sell? A. We were talking together one time.

30 Q. What did he say? A. I asked him once—

Mr. Everett—I object to that. I don't see where the relevancy is.

The Court—Question allowed.

A. Well, we were talking once outside on the sidewalk and I asked him: "What for you sell the property?" He says he got too much expense on that house; he cannot fix it up. "Well," I says,

**Lawrence Bauer—cross**

“You got a nice rent.” Then he says: “Oh, no, I cannot do it. I give it my brother. He got plenty of money and can fix it up.”

Cross Examination by Mr. Everett:

Q. Have you had any conversation with Mrs. Walkowitz since the time when Harry Walkowitz claimed to be the owner of the property? A. Mrs. Walkowitz—oh, we were talking. We are friendly all the time. 10

Q. Did you have any talk with Mrs. Walkowitz? A. With which one—this one?

Q. Mrs. Walkowitz? A. Mrs. Walkowitz — which one you mean?

Q. (Indicating complainant) This one here? A. Sure, we were talking together.

Q. Now, you had been a tenant there a long while, were you not? A. Three years.

Q. Do you recall having a conversation with Mr. Leon Walkowitz—do you remember being in Mr. Walkowitz’ store and speaking to him about what Harry Walkowitz had told you about what he would do for you if you would come and testify for him? A. No; I don’t remember that. 20

Q. Do you remember telling Mr. Leon Walkowitz that Harry Walkowitz promised you one or two months rent free if you would come and testify for him? A. No, sir; I don’t know anything about it. No, sir; I never heard anything like it.

Q. Will you say you didn’t say so? A. No, he say nothing. He say nothing to me, no. I never was talking something like that. 30

MRS. MARY VAN HASSEL, produced as a witness on behalf of the defendant, being duly

**Mrs. Mary Van Hassel—direct**

sworn according to law, on her oath testifies as follows:

Direct Examination by Mr. Rosenstein:

Q. Mrs. Van Hassel, where do you live now?  
A. 18 Belmont Avenue.

Q. Were you ever a tenant at the property 69 Belmont Avenue? A. Yes, sir.

10 Q. When did you move out? A. A year ago.  
Q. Remember what month? A. In October.

Q. In October, 1921? A. Yes, sir.

Q. How long did you live there? A. Two years.

Q. Who was your landlord when you went there? A. Mrs. Friedman.

Q. Who was your landlord after that? A. Leon Walkowitz.

Q. Did you pay Leon your rent? A. Yes, sir.

20 Q. After Leon was your landlord did you have any other landlord? A. Yes, sir. He sold it to his brother.

Q. His brother Harry Walkowitz? A. Yes, sir.

Q. Did you stop paying the rent to Leon and begin paying it to Harry? A. Yes, sir; he came up and introduced the sister-in-law — that we should pay rent to her.

Q. When you say "he came up," do you mean— A. Leon.

30 Q. Came up and brought his sister-in-law? A. Yes, sir.

Q. Who do you mean by his sister-in-law? A. Mrs. Eva.

Q. What did he say when he introduced her to you? A. That we should pay rent to her—that that was the new landlady.

**Mrs. Mary Van Hassel—direct**

Q. Did he say that he had sold the property to her? A. Yes.

Q. About when was this? A. I live away from there now a year. It must have been about nine months I lived there.

Q. About nine months before you moved out? A. Yes, sir.

Q. Did you pay the rent to Harry? A. Yes, sir.

Q. For how long did you pay it? A. Well, 10  
about six months.

Q. Until you moved out? A. Until I moved out, yes, sir.

Q. Did you ever have any conversation with Leon after the time when he told you he sold the house in which he expressed how he felt about the same? A. Well, he told me he sold the house because he could not keep it up any more. He could not fix things he liked.

Q. When he spoke about the house, how did 20  
he call it? A. A shanty.

Q. He called it a shanty? A. Yes, sir.

Q. He told you he could not keep it up? A. Yes, sir.

**Cross Examination by Mr. Everett:**

Q. How long had you been a tenant of that property you say? A. Two years.

Q. How long did you know Mr. Leon Walkowitz? A. Well, about a year. 30

Q. And how frequently would he come to you for the rent? A. He never came. I always took it down.

Q. You went down to him? A. Yes, sir.

Q. When was the last time you paid Mr. Leon

**Mrs. Mary Van Hassel—cross**

Walkowitz? A. Well, it was about a year in October—in September.

Q. Then you continued to pay it down to the time when the other brother claimed to be the owner of it? A. Yes, sir.

Q. Was there any dispute between the two at any time about who should receive the rent? A. No.

10 Q. Were you ever summoned to appear in the District Court? A. No, sir.

Q. Where was it you had the conversation with Mr. Walkowitz about the condition of the property? A. In his store.

Q. And how was that conversation introduced? A. Well, we were talking and he said he was glad that he was rid of his house.

20 Q. I mean was that the time when you went there to pay the rent? A. Well, no. I often times went in by him.

Q. Did you at any time pay any of the rent to Harry Walkowitz? A. No, sir.

Q. Have you had any talk with Mrs. Rosa Walkowitz about the property? A. No, sir.

Q. Are you positive that he told you that he had sold the property? A. Yes, sir.

30

EVA WALKOWITZ, produced as a witness on behalf of the defendant, being duly sworn according to law, testifies as follows:

Direct Examination by Mr. Rosenstein:

Q. You are the wife of Harry Walkowitz? A. Yes, sir.

Q. Do you remember being with your brother-

**Eva Walkowitz—direct**

in-law Leon when he saw this lady here who has just been on the witness stand? A. Yes.

Q. What did he take you to her for? A. He introduced me to the lady that I was his successor; that she shall pay me the rent, as I was his sister-in-law, and he had nothing to do with the property any more.

Q. Mrs. Walkowitz, do you remember the morning of Saturday, January 22nd, 1921? A. Yes, sir. 19

Q. Where were you then? A. Leon Walkowitz and his wife they all came to me. We all went up together to Abram Klenert's office. The papers were ready and they signed everything.

Q. (Showing witness) Mrs. Walkowitz, I show you a deed from Leon and Rosa, his wife, and I ask you who made these marks on that deed? A. The other one Leon made it and the other one Rosa made it. I was there when they made it. Both made the cross on Saturday. 20

Q. And did you give them any papers? A. Yes, sure.

Q. For how much? A. For \$1400.

Q. Has any part of that mortgage been paid? A. \$100.

Q. I show you this paper and ask you if you ever saw this paper before? A. Yes, I think I have. "Received from Harry Walkowitz \$100 of the second mortgage, April to June. Rosa Walkowitz." 31

Q. Now, I call your attention to a little cross—who made the cross? A. Leon.

Q. Who gave you this paper? A. I went to Mr. Leon's house and told him to come up to my house as I wanted to settle \$100 on the mortgage. My husband didn't go by him, but I went by him.

**Eva Walkowitz—direct**

Then he came back with me to my house and I gave him the \$100 and he made the cross. She signed home and he made the cross.

Q. When was that, Mrs. Walkowitz? A. The first of June was on Wednesday—I gave him four days before.

Q. How much did your husband pay for this property? A. \$4,600.

Q. How much of that \$4,600 was cash? A. 10 Thousand dollars we gave in cash.

Q. How much was the first mortgage? A. \$2200.

Q. How much was the second? A. \$1400.

Q. How was the second mortgage to be paid off?

Mr. Everett—I object to that.

Mr. Rosenstein—I would now like to offer this receipt in Evidence, D-1 for identification.

20 Q. Did you collect any rent of 69 Belmont Avenue? A. My little girl.

Cross Examination by Mr. Everett:

Q. In whose writing is this receipt? A. I sat there when she wrote the receipt, and he signed in this house. I could not get over it. It pains me—such untruth.

Q. Did you ever have any money transaction with Mrs. Rosa or Leon besides this one? A. 30 Never, nothing.

Q. Did they ever borrow a hundred dollars of you after this money was given? A. Never.

Q. Did they ever give you a hundred dollars after the mortgage was given? A. I gave them a hundred dollars on the mortgage.

**Eva Walkowitz—cross**

Q. How did you give them that? A. He came himself, Leon Walkowitz in my house. It was in my house, and I gave him a hundred dollars.

Q. Were you in the office of Judge Klenert at the time these papers were executed which transferred the property from Leon Walkowitz to your husband Harry Walkowitz? A. Sure.

Q. Where did you and your brother-in-law and husband meet that day before you went to the office of Judge Klenert? A. Leon Walkowitz came in first to my house with his wife in my apartment. They bothered me enough I should purchase the shanty. I didn't want to buy it. 10

Q. I asked the plain question where it was that you met before you went to Judge Klenert's office? A. Prior to that he came to my house on several occasions.

By the Court:

Q. Where did you meet when you went to Judge Klenert's office? A. In my house, Saturday. 20

By Mr. Everett:

Q. And then you went from your house up to Judge Klenert's office? A. Yes, sir.

Q. What time of the day was it? A. It will be eleven o'clock in the morning.

Q. And how did you go to Mr. Klenert's office from your house? A. His wife went home and Leon took my husband Harry and went to the Hamilton Trust Company first. 30

Mr. Everett—She don't seem to answer the questions.

**Eva Walkowitz—cross**

Q. How did you go? A. I walked to that office there.

Q. How did you come to Mr. Klenert's office—what streets did you come through? A. Went through Main Street and went across the way from the City Hall to Judge Klenert's office?

Q. And you went up into Judge Klenert's office? A. The four of us.

10 Q. Didn't I understand you to say that you had separated from the rest of them? A. Together we went to the office, but I left the office alone.

Q. Now, before this suit was started you went up to the house and had a talk with Mr. Bauer, had you not? A. Yes. I went over and Leon Walkowitz took me around and introduced me to all the tenants.

20 Q. Oh, no—I mean after this suit was started. A. I always used to go to collect the rent.

Mr. Everett—I am asking her if after this suit was commenced—during the time of this interlocutory proceedings, didn't she and Mr. Bauer have a conversation with respect to that property up there?

30 A. I have nothing to speak to Mr. Bauer.

Q. Don't you remember an occasion when you suggested to Mr. Bauer to drop a match down there and set the place on fire? A. Well, Mr. Bauer is here. Let him testify to it.

By the Court:

Q. Well, do you remember that? A. No.

**Eva Walkowitz—cross**

By Mr. Everett:

Q. Do you remember an occasion when you were talking to Mr. Bauer upstairs and Mr. Leon Walkowitz came up there and surprised you? A. Nothing at all.

Q. Do you remember the envelope that has the bond in it? A. Yes.

Q. Who received that letter—that envelope? A. Leon Walkowitz took it from me. I handed it to him. 10

Q. You mean you got the letter from the postman? A. What's that? I don't know what that is.

Q. Didn't you get that letter with the mortgage into it? A. Yes, sir.

Q. You knew that that was sent to Leon Walkowitz? A. Sure. I told him to come up to Judge Klenert and he didn't want to come up to Judge Klenert. 20

Q. Did you open this? A. No, sir.

Q. Did you take this up to Leon Walkowitz—did you give it to Leon or Rosa? A. They were both there when I gave it.

Q. And who opened it? A. When I gave it to them it was intact.

Q. It was sealed up? A. I didn't open it. Both were present.

The Court—Do you want to put any more on, Mr. Everett? 30

Mr. Everett—Where was she when Leon and his wife signed the deed?

Mr. Rosenstein—She was right in the office. She testified that she saw them make their marks.

**James Anderson—direct**

The Witness—I stood there by and saw it.

Q. In what way? A. I was there when Judge Klenert signed it and she made their mark.

Q. Who had the pen in their hand? A. She had the pen in her hand. That's nothing new.

By Mr. Rosenstein:

10 Q. After you bought this house of your brother-in-law, did Leon ever talk to you, telling you about selling the house? A. He says: "Take your life. Hang yourself. I sold you that shanty. I did a good thing to you. Hang yourself."

JAMES ANDERSON, produced as a witness on behalf of the defendant, being duly sworn according to law, testifies as follows:

20

Direct Examination by Mr. Rosenstein:

Q. Mr. Anderson, where are you employed? A. In the Hamilton Trust Company, saving accounts.

Q. In what capacity are you employed? A. Savings teller.

Q. And you were employed as such on January 22nd, 1921? A. I was.

Q. Have you the records of the bank here? A. I have.

30 Q. And do you remember a transaction between Harry Walkowitz and one Leon Walkowitz? A. Yes.

Q. What was that? A. Transfer of one thousand dollars to another party by the name of Leon Walkowitz, introduced to me as his brother.

James Anderson—cross  
Harry Walkowitz—direct

Q. That was when—January 22nd, 1921? A. January 22nd.

Q. And on that same day did Leon Walkowitz draw any part of that one thousand dollars? A. Four hundred dollars.

Q. And what became of the remaining six hundred dollars? A. The six hundred dollars remained in the bank, and I find that there was — from our records, that there was money transferred— 10

Mr. Everett—I object.

Cross Examination by Mr. Everett:

Q. Do you know of any time when the two brothers were making arrangements to exchange the property? A. No, sir.

Q. And you do not know for what purpose this money was drawn out? A. No, sir. 20

HARRY WALKOWITZ, the defendant, sworn as a witness on his own behalf, testifies as follows:

Direct Examination by Mr. Rosenstein:

Q. Where do you live? A. 172 Water Street.

Q. Do you know Judge Klenert? A. Yes, sir. 30

Q. (Indicating) Do you know this man down here? A. Yes, sir.

Q. What relation is he to you? A. My sister-in-law.

Q. What relation is the man? A. It is my brother.

## Harry Walkowitz—direct

Q. Did you buy any property from him on January 22nd, 1921? A. Yes, sir.

Q. What is the number of the property? A. 69 Belmont Avenue.

Q. How much did you pay for it? A. \$1,000 in cash—\$4,600.

10 Q. And who was the lawyer in the case? A. Judge Klenert.

Q. Were you present when they signed the deed? A. Sure I was up there.

Q. Did you see them make their mark on the deed? A. Sure.

Q. Who paid Judge Klenert for drawing it? A. I paid it.

20 Q. And did your brother tell you why he wanted to sell the property? A. Because he wanted the money. He came over to the house and bothered me. He would not leave me alone. He say he could not fix it up; he will sell it anyway. He bothered me so much I say: "All right, I will buy it."

Q. You are receiving the rents? A. There is a receiver.

Q. Do you pay the taxes on the property? A. Yes.

30 Q. When did you begin to pay the taxes? A. The taxes when I buy the house.

Q. That is after January? A. Yes.

Q. When did you pay the next taxes? A. I paid the next taxes.

Q. Well, have you got any tax bills? A. Yes. I got tax bill in the house.

Q. Did Leon ever pay taxes after you bought the property? A. No.

Q. Where are your tax bills or tax receipts? A. In the house.

## Harry Walkowitz—cross

Cross Examination by Mr. Everett:

Q. Have you paid this year's taxes? A. Sure.

Q. When? A. It is in my name.

Q. When did you pay? A. The receiver pays.  
It is in my name.

Q. You don't know whether they have been paid or not? A. It is paid.

Q. I mean you don't know of your own knowledge whether they have been paid or not? A. It is paid. I know the receiver paid already. 10

Q. Now, you came over to this country some time before your brother came? A. I was here before—he is a greenhorn. I am ten years here. He is five.

Q. Then he came to Paterson and you became acquainted in Paterson? A. What's that?

Q. You recognized him as a greenhorn when he was in Paterson? A. Yes.

Q. He came to Paterson? A. Yes. 20

Q. And he was a greenhorn then, was he. He didn't understand it—

The Court—He said he was a greenhorn.

Q. And you came over from Europe? A. Sure, I came over from Europe.

Q. Came some time before he did? A. Yes.

Q. And you left your wife there? A. Yes, whose business is that? 33

Q. You were in business on Grand Street for some time, were you not? A. On Grand Street.

Q. And you had a person by the name of Mrs. Gardner— A. That's got nothing to do with this.

Q. And then some time afterwards your wife

## Harry Walkowitz—cross

came over? A. (Indicating) Here is my wife. I have no womans at all.

Q. Well, I mean some years afterwards? A. I don't need two womens. I got one.

Q. And there was a disturbance took place between you and the former partner, Mrs. Gardner?

A. I don't know about any woman.

Q. Didn't Mr. Stein bring a suit against you for Mrs. Gardner, against you for a dvision of your property?

10

The Court—Partition, was it?

Mr. Rosenstein—I think it was for an accounting.

Q. You went up to your brother's—up to his house early one morning or late one night? A. No, sir. Everything is lies.

Q. Did you go down— A. No, he cannot say he didn't sign. He say everything lie.

20

Q. Do you remember an occasion when you took Leon down to Judge Klenert's office about your Water Street property and your business up on Grand Stree? A. My brother up to Judge Klenert's office.

Q. Do you remember going up there and having some papers made out. Do you remember an occasion when you transferred—deeded your property on Water Street to your brother Leon? A. (No answer.)

30

By the Court:

Q. Did you sell him a piece of property on Water Street— your brother? A. We make just a transfer for awhile, until my wife came over, yes. Just for awhile until my wife was on this side.

## Harry Walkowitz—cross

By Mr. Everett:

Q. Why did you do that? A. Because that is my wife.

Q. That was after your wife came to Paterson? A. After she was—

Q. After your wife came to Paterson you made a transfer of the property to your brother? A. My wife was in the old country when I made that.

Mr. Rosenstein—If the Court please, I have been very indulgent, but I think it is outside the question. 10

The Court—He wants to affect the credibility of the man. I will allow it.

Q. Mrs. Gardner sued you. Do you know you had been sued by some lawyer in Paterson for Mrs. Gardner? A. Yes.

Q. And you were afraid that she was going to take your property away from you? A. Because she claimed she worked by me four or five years and I got witnesses. I can prove it. 20

Q. And when you came away from the old country, you left your wife over there, did you not? A. I left her. Sure I left her. I could not take her over.

Q. And you never sent word where you were living? A. Sure she knows it. She writes me letters. That has nothing to do with my wife.

Q. Were you present at the time when you say that Leon Walkowitz and Rosa Walkowitz signed the paper? A. Sure she signed the paper. 30

Q. Where was that paper at the time it was signed? A. The deed?

Q. The deed to you—I know it was in the of-

**Lillian Walkowitz—direct**

office, but where was it in the office? A. It was in the office.

Q. I mean what part of it? A. Right in the office—Judge Klenert's.

Q. What? A. Judge Klenert—right here.

Q. Where was the deed—where was it located?  
A. In January.

10 Q. On the table? A. On the table, about ten or eleven o'clock.

Q. Now, where was the deed when it was signed? A. Sure, it was on the table.

Q. Did it remain there? A. It was made as the people came up.

Q. Was the paper on the table when you came out? A. I don't get you.

20 Q. Where was the paper when you came out—did the paper stay in Judge Klenert's office, the deed or did you get it? A. It stayed there because I had not the money to pay it.

Q. The paper stayed there? A. Sure. He didn't know me.

Q. Did you see anyone else take it? A. He kept the deed until I paid the bill.

By Mr. Rosenstein:

30 Q. Those Gardner deeds were made by Isadore Klenert, weren't they? A. Yes, Isadore Klenert.

LILLIAN WALKOWITZ, produced as a witness on behalf of the defendant, being duly sworn according to law, on her oath testifies as follows:

By the Court:

Q. You are a daughter of the last witness? A. Yes.

## Rosa Walkowitz—direct

Q. You collected rent for this property? A. Yes.

Q. Who did you collect it from? A. From my uncle.

Q. Who did you give it to, pay it to? A. To my mother.

Q. How much a month did you collect? A. I don't remember.

By Mr. Rosenstein:

Q. How long did you collect the rent? A. About half a year.

No Cross Examination.

Defendant rests.

ROSA WALKOWITZ, one of the complainants, already sworn, recalled and further testifies as follows:

By Mr. Everett:

Q. (Pointing to Mr. Klenert) Did you ever see that man before—Judge Klenert—before you saw him in court? A. No.

Q. You never was in his office and signed a paper? A. I never was.

Q. Did he ever make a mark for you? A. No.

Q. Did he ever tell you not to write in Jewish language, but to make a cross? A. Never was any place.

Complainants' counsel was informed by the Vice Chancellor, that it was unnecessary to intro-

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duce further testimony, on behalf of complainants' case; that it would be considered that the complainants denied the testimony of the defendant.

The Court—I have listened to the testimony and I think that you were justified, in view of your clients' statements, in bringing the case to court, but the evidence is overwhelmingly against them.

10 Mr. Everett—One of the main questions, perhaps, is delivery of title, passing of title—the delivery of the instrument.

The Court—I think there was a delivery in this case.

Mr. Everett—Yes, when the party is authorized to do it by the grantor. There is no evidence that this property has changed possession. There is no evidence at all that Judge Klenert passed—even if he had  
20 passed the deed from Leon and Rosa, there might have been a delivery of the deed, but the deed was not delivered out of the possession of Judge Klenert until he took it up voluntarily to place it on the record.

The Court—Judge Klenert was the agent by reason of his having taken the deed from these parties. They paid him \$25.00 for his services. Moreover, that is not the burden of your cause. Your claim is much more  
30 serious. It seems to me from the seriousness of the charge that they make—that Judge Klenert, a reputable member of the Bar, an officer of this Court, who would deliberately sign an acknowledgment to a deed, which acknowledgment he did not take, is most serious and, in view of this tes-

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timony, he really ought to, as a matter of justice, go before the Grand Jury. It is a very serious charge to make and I want to speak of it now, in view of the situation which confronted Judge Klenert when the case opened this morning. These two parties have been on the stand and deliberately swore that they never signed anything. Their principal claim is that they did not sign the instrument, although in another breath they say it was procured through fraudulent misrepresentation. Again they say that they did not sign the instrument in English or in their own language. Then they testify further that they never saw Judge Klenert. They were never in his office. Here we have a member of the Bar charged by the two parties with having affixed his name as a Master of this Court to an acknowledgment on a deed which they never saw or signed. Now, you know how serious that charge is. If true, it would involve his right to practice at the Bar and his certificate as a Master would be forfeited. I say that it was a grave charge that your clients made, and I do not find one scintilla of evidence to warrant it. In the contrary, there is abundant evidence that there was a transfer of title and that the parties were present in Judge Klenert's office and properly and duly executed the instrument.

It is further alleged that there was no exercise of ownership by Harry Walkowitz. Quite to the contrary, there is the testimony of the little girl, whom you did not attempt to cross examine, that she has been

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collecting the rents for her mother. There is also the testimony of outside witnesses that they have had conversations with Leon Walkowitz and that he told them that he had transferred the property. Here are tenants in court who occupy the property, who, previous to the transfer, paid the rent to Leon Walkowitz and his wife, but now pay the rent to Mrs. Harry Walkowitz and her husband. All these things stand uncontradicted, showing fully an exercise of the rights of ownership and dominion over the property since the transfer in 1921.

There is no evidence whatsoever, Mr. Everett, to corroborate your clients and they have deliberately made statements which indicate perjury.

There is another consideration which moves me to my view of this case. What interest would Judge Klenert have? What interest can these parties show that he would have in falsely certifying a document of this character? He has no interest whatsoever in doing so. In fact, all his interest would be against doing so. I cannot see that he would have any interest in this litigation whatsoever, except, I hope, the interest of justice. He recalls the circumstances of their coming into his office. He tells us minutely their conduct there—how they sat there and executed this instrument, and it is apparent that Judge Klenert, on receiving the deed from Leon Walkowitz and his wife, became the agent for delivery of Harry Walkowitz until he delivered the deed over. He remembered the

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recording of the deed in the Clerk's office and then the Clerk may become the agent for delivery. I must dismiss this bill, Mr. Everett.

Mr. Everett—I was going to say that I am not accusing Mr. Klenert of any—

The Court—Your clients have accused him, but I think falsely in this cause. His honesty in the transaction is unquestioned.

Mr. Everett—He stands here the same as any other witness, or any other lawyer. 10

The Court—He stands here as any other witness, but he stands here to protect his reputation. He stands here to protect his reputation as an officer of this court.

Mr. Everett—That shows interest, doesn't it?

The Court—Oh, no, not in the sense that I have used the word. Mr. Klenert is protecting his reputation. He came here immediately on being sent for and told of the charges your clients had made. He was not here when the case opened this morning. Of course, I am convinced and I am satisfied that he took the acknowledgment; that these persons were present, and that he identified the parties. As heretofore stated, I believe that these parties have not told the truth about the transaction. I may say there is further corroboration of his statement by the records of the bank produced here which show that there was a transfer of One Thousand Dollars from the account of Harry Walkowitz to the account of Leon Walkowitz at the time in question, and as a part-payment in the transaction between the 20 30 31

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parties. These records corroborate the story told by the witnesses of your opponent. As I stated at the outset, solicitors are entirely justified in bringing cases for clients when they come and tell a story of this kind. It seems to me also a part of the duty of the court to send for a solicitor, or one of its officers, whose good name is involved as a result of the testimony in the case, so that he may have an opportunity to explain at once. This course had been followed.

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## New Jersey Court of Errors and Appeals

Leon Walkowitz and Rosa  
Walkowitz,  
Appellants-Complainants,

vs.

Harry Walkowitz,  
Respondent-Defendant.

Sat Below: Walker, C., Lewis, V. C.

### Brief of Complainants

APPELLANTS

#### PRELIMINARY FACTS

The object of this suit is to set aside and have cancelled a certain deed of conveyance, purporting to have conveyed the premises, set forth in the bill of complaint, from the appellants to the respondent, on January 22, 1921, acknowledged the same date, before Abrám Klenert, a master in chancery of this state, and retained by him in his office until April 13, 1921, when he had it recorded. The said Leon Walkowitz and Harry Walkowitz, are brothers. The property which is the subject of this suit had been conveyed to the complainants, who were and are husband and wife, creating an estate by the entirety, and continued so to the present time, notwithstanding the present condition, created by the pretended deed to the respondent.

The two brothers had had some discussion between themselves concerning the sale of the said premises, which was unbeknown, to the appellant, Rosa Walkowitz.

The title deeds and some other papers concerning the estate had been delivered to the respondent by Leon Walkowitz, without the knowledge of the other appellant, who when the facts had been related to her by her husband, absolutely refused to participate in the conveyance of the property, whereupon the complainant-appellant Leon Walkowitz, went to his brother and demanded the return of the papers, which said Harry Walkowitz promised to do.

The transactions between the two brothers regarding the negotiations for the sale of the property is stated in the testimony of Leon Walkowitz, on pages 23 and 24 of the state of the case. The deed and papers referred to are the deed and papers conveying the property to Leon Walkowitz and Rosa Walkowitz, his wife, and not the deed conveying the property to the defendant. The execution and delivery of the deed from Leon and Rosa Walkowitz to Harry Walkowitz, is absolutely denied.

#### **POINT I.**

#### **WAS THE DEED EXECUTED BY THE APPELLANTS.**

It is conceded that the appellants are both illiterate persons, and are incapable of reading or writing, and have a very inadequate knowledge of

our language, denominated by his brother as a "Greenhorn" (page 57, lines 10-20 of state of the case), and therefore, it was the duty of the officer taking the acknowledgment to have read the instrument or explained the contents to them before the signing and acknowledgment. It does not appear from the testimony that the paper was read, or that it ever left the possession of Abram Klenert, from the time it was written under his instructions, until he delivered it to the Register of deeds and mortgages for record. His testimony is that the instrument laid upon his table and continued there all the time, and was not in the possession of any person other than himself, until the time of registering it. The signing was by mark, and the pen was in his hand all the time, and as he says that the parties touched the pen, but does not state where the pen was when it was touched by the parties, nor that he explained or read the instrument to them before they signed it, nor that they acknowledged it after they signed it. The certificate of the officer taking the acknowledgment is not conclusive, and it may be rebutted and shown to be untrue. *Hylar v. Little* 20 N. J. E. 443. The evidence of the appellants-complainants is an absolute denial of the signing of the instrument.

#### POINT II.

#### DID THE DEED PASS FROM THE POSSESSION OF THE APPELLANTS TO THE RESPONDENT.

Delivery of the deed, which is the essential element in transferring of title of land from the gran-

tor to the grantee, and it must be a manual act, and can not be inferred from the acts of the scrivener without positive authorization.

In this cause not one of the witnesses of the defense testified to the change of the position of the deed, from the time, when it is asserted by Abram Klenert, the master who took the acknowledgment, the paper was signed, and that only by the touching of the pen, and while it was in his possession, and does not say where the pen was at the time when it is alleged it was touched by the appellants.

Grilley v. Atkin, 78 Conn. 380; 62 Atl. 337; Condee v. Conn. Saving Bank 81 Conn. 372, 71 Atl. 551; 22 L. R. A. (N. S.) 568; Wiley v. London and Lancashire Fire Ins. Co. 89 Conn. 35; 92 Atl. 678; 18 C. J. 196-201; Seers v. Scranton Trust Co. 228 Pa. 126-141, 77 Atl. 423.

Schlicher v. Keeler 67 N.J.E. 635

Certificate of acknowledgment is only prima facie evidence and may be disproved, Well v. Wright, 12 N. J. L. 131.

### POINT III.

#### CONCLUSIONS OF THE VICE CHANCELLOR AS EXPRESSED IN THE OPINION IS NOT SUSTAINED BY THE EVIDENCE.

The vice chancellor misconceived the equitable principles involved in the issues of this cause; and misconstrued the evidence derivable from the testimony:

In referring to the testimony reference is made to the payment of \$25. for the drawing of the deed and mortgage, the opinion is inclined to indicate the payment was made by the appellant, when in fact the testimony of Abram Klenert is that Harry Walkowitz paid the whole amount, and that when it was not paid he wrote to him about it, and that it was he who paid and not Leon.

And I may say here, that none of the testimony relates to any act on the part of Rosa Walkowitz, which can be by any possibility construed into an acquiescence in the transactions between the two brothers.

See part of testimony of Abram Klenert, state of the case, page 37, lines 30, page 38, lines 1-11.

The vice chancellor's memory must have been confused with the different instruments mentioned during the hearing, when he says "The principal claim of complainant that they did not sign the instrument, although in another breath they say it was procured through fraudulent misrepresentations."

The vice chancellor had in mind the different instruments mentioned, and confused the deed and papers which Leon Walkowitz gave to his brother Harry Walkowitz, when they were discussing the sale of the property, and was the deed of the property to Leon and Rosa Walkowitz, and not the deed from Leon and Rosa Walkowitz to Harry Walkowitz; in another part of his opinion the vice chancellor says that we asserted that there was

no exercise of ownership by Harry Walkowitz, when the truth was that it was the contrary, we say in the pleading and proof that Harry Walkowitz had been exercising ownership over the property.

The evidence of the respondent and all the witnesses are under the ruling of the court in declining to hear evidence in rebuttal, considered as if the Appellants had contradicted the entire evidence of the defendant, including the transaction at the Hamilton Trust Company.

In conclusion I will say, that in a court of equity as well as in a court of law, there are no discrimination, between witnesses as to veracity, so that the appellants stand before this court as they were in the court of chancery on an equal standard for truthfulness and integrity with that of Abram Klenert. The issue in this cause is between the appellants and the respondent, and not the reputation of Abram Klenert.

And I might say here that the testimony of Mr. Klenert deserve more careful scrutiny than that of the illiterate appellants; why should not he remember things which passed in his office, especially when it is important for both himself and his client's interest to have a retentive memory; he may deny his acquaintance with the respondents, but, had I been permitted to have gone in to the rebuttal, I feel that I could have proven by competent and satisfactory testimony that Abram Klenert was not a disinterested witness, and also that the transaction at the Hamilton Trust Com-

pany was not with the Appellants, but between some other persons who are of another name, and another being.

I submit the following authorities as to the weight of evidence being determined by the number of witnesses:—State v. Karpowutz, Errors and Appeals, March 5, 1923.

Number of witnesses does not determine the weight of evidence: The fact that the witnesses for the defence outnumbered those for the plaintiff does not of itself establish the weight of evidence. 67 N. J. L. 250; Goldman v. Central R. R. Co., 79 N. J. L. 205; O'Brien v. State, 63 N. J. L. 49; 86 N. J. L. 146.

It is submitted that the equities are in favor of the appellants, and the decree of the court of chancery should be reversed and remitted to the court of chancery with instruction to enter a decree in accordance with the prayer of the bill of complaint filed in this cause.

Respectfully submitted,

William Everett,  
Counsel of Appellant.

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# New Jersey Court of Errors and Appeals

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LEON WALKOWITZ AND  
ROSA WALKOWITZ,  
*Appellants-Complainants,*  
*vs.*  
HARRY WALKOWITZ,  
*Respondent-Defendant.*

SAT BELOW: WALKER, C., LEWIS, V. C.

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## BRIEF OF RESPONDENT.

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### POINT I.

#### **The Deed Was Executed by the Appellants.**

The deed bears the certificate of acknowledgment of a Master in Chancery. This is prima facie evidence of the truth of its statements. It raises a presumption that appellants, named therein as grantors, executed the same as their voluntary act and deed.

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*Wells v. Wright*, 12 N. J. L. 131.  
*Farley v. Farlee*, 21 N. J. L. 279.  
*March v. Mitchell*, 26 N. J. Eq. 497.  
*Colonial Bldg. Assn. v. Guffin*, 85 N. J. Eq.  
455; 96 Atl. 901.

The only evidence, to overcome this presumption, and to prove that the deed was not executed by appellants, is their own denial. And against their denial, we have the evidence, direct and positive, of three witnesses, (one of them disinterested), that appellants did execute it—to wit, the respondent, his wife and Abram Klenert, the master, in whose office the transaction took place. In addition, we have testimony from four witnesses, three of them disinterested, as to acts, which indicate conduct, highly persuasive of the conclusion that appellants had parted with title to respondent. These witnesses are the respondent's child, James Anderson, Mary Van Hassel and Lawrence Bauer.

Thus, we find complainants, who had the burden of proving that the deed was not executed by them, relying solely upon their own testimony, and asking the Court to believe that they alone told the truth, and that defendant's seven witnesses, of whom four were disinterested, were perjurers.

Appellants denied that they executed the deed (p. 16, l. 24-33; p. 17, l. 1-7; p. 24, l. 10-17); Rosa Walkowitz denied that she had ever been in the office of Abram Klenert, and Leon Walkowitz denied that he was there on the day in question, (p. 17, l. 12-21; p. 17, l. 6-11; p. 21, l. 13-16; p. 23, l. 16-18), in fact, Rosa Walkowitz even denied having ever seen the said Abram Klenert before the date of the trial, December 12, 1922, (p. 18,

l. 20-24; p. 19, l. 14-15; p. 21, l. 17-21; p. 61, l. 23-30), while Leon Walkowitz denied having seen him on January 22, 1921, the date of the deed, (p. 24, l. 19-22).

Respondent testified that he bought the property from appellants for \$4,600.00, of which \$1,000.00 was cash, on January 22, 1921, while appellants admitted they had paid only \$3,900.00 for the property a year before, (p. 28, l. 32-34; p. 29, l. 1-4), that he was present and saw appellants make their mark on the deed; that his brother had told him he wanted to sell the property because he wanted the money; that he came over to the house and bothered him, and would not leave him alone; that he said he could not fix it up, (p. 56, l. 1-24).

Respondent's wife testified that, on the morning of Saturday, January 22, 1921, appellants came to her and they all went together to Abram Klenert's office, where she saw them both make their marks on the deed in question, (p. 49, l. 8-14; p. 54, l. 1-8); that the price of the house was \$4,600.00, of which \$1,000.00 was paid in cash, \$2,200.00 was represented by a first mortgage, and \$1,400.00 by a second mortgage, (p. 50, l. 7-13. This second mortgage was one made by respondent to appellants on the day in question, (p. 49, l. 21-22). On this mortgage, respondent paid appellants \$100.00, for which a receipt was given signed by Rosa Walkowitz, (p. 49, l. 24-36; p. 50, l. 1-6), the signature on which was acknowledged by her as hers, (p. 21, l. 22-35, Exhibit D-1; after the deed was given, her brother-in-law took respondent's wife to the tenants and instructed them to pay her the rent, as he had nothing more to do with the property and she was his successor, (p. 48, l. 37; p. 49, l. 1-7).

It is extremely probable that appellants sold the house because it was in need of repairs, for after the sale his sister-in-law testifies that he had said to her, "Take your life. Hang yourself. I sold you that shanty. I did a good thing to you. Hang yourself." (p. 54, l. 10-14).

Thus, we have appellants denying that they even were in Mr. Klenert's office on the day in question, and respondent and his wife insisting that they were. On this question of fact, the case turns. Their counsel himself made that statement in his opening. (p. 15, l. 15-18, l. 30-35; p. 22, l. 13-14).

Mr. Klenert testified that he knew appellants and also respondent and his wife, (p. 34, l. 14-20); that he prepared the deed in question, and wrote appellants' names thereon, but that they made their own crosses, (p. 35, l. 21-34); that, prior to January 22, 1921, the two brothers came to his office and directed him to have a deed and bond and mortgage prepared by January 22, 1921, on which day both brothers came with their wives, (p. 36, l. 6-27). Appellant, Leon Walkowitz, was to be a tenant of his brother, the vendee and was to pay a lesser rent, in consideration of which the mortgage from the vendee was to bear no interest, (p. 37, l. 8-30). This was the subject of the argument between the men and women (conducted in Jewish), (p. 36, l. 28-35; p. 37, l. 1-6). The papers were left with him for recording, (p. 37, l. 31-33). There was a discussion in Jewish between the brothers as to who should pay Mr. Klenert, and it was settled that respondent should do so. (p. 42, l. 5-10).

James Anderson, a teller in the savings department of the Hamilton Trust Company, of Paterson, New Jersey, on January 22, 1921, (p. 54, l. 22-27) testified that \$1,000.00 was transferred from Harry Walkowitz to

Leon Walkowitz on that date, and that Leon Walkowitz drew \$400.00 the same day and let the other \$600.00 remain in the bank. (p. 54, l. 28-34; p. 55, l. 1-8).

Respondent's child collected the rent for about half a year from her uncle and paid it to her mother. (p. 61, l. 1-12).

Lawrence Bauer and Mary Van Hassel were tenants in the property in question about the time of the sale. *Both stopped paying rent to the appellant, Leon, and paid it to respondent by the direction of Leon.* (p. 44, l. 18-24; p. 46, l. 20-35). To both, the appellant, Leon, explained that he had sold the house because it was too much expense and he couldn't fix it. (p. 44, l. 26-37; p. 45, l. 1-3; p. 47, l. 14-24). Although Mrs. Van Hassel paid rent to respondent for many months, appellant never had any dispute with him as to the rent. (p. 48, l. 7-10).

In addition to this testimony, we have the striking admissions by appellants that they paid rent to respondent almost immediately after the date of the transaction in question, (p. 26, l. 12-24). Appellant Rosa Walkowitz said (p. 19, l. 33; p. 20, l. 1-15).

“Q. Did you ever pay rent to your brother-in-law?”

“A. He came there with his papers, with an open envelope, and he said he bought the property on Belmont Avenue, and we will have to pay \$22.00 a month rent.

“A. Yes, I did pay rent, because they wanted to eject me from the premises.”

This paying of rent went on for many months. Why did they do this, if they had not clearly understood that they had parted with title? What other explanation can there be than that the parties had changed position, with respondent now owner of the property, and appellants his tenants? Their claim of ignorance of the laws of this country may offer a plausible excuse for the long delay in commencing suit. But it does not explain why rent was paid month after month to the brother. Men do not pay rents to others, if they are the owners of the property in which they live, and when, as in this case, they claim that they never had any transaction by which they either sold or contracted to sell their property to the claimant of the rent. The Vice-Chancellor saw the male appellant on the stand, and was able to judge from his manner of testifying and his general make-up that he was not the sort of man to pay out money where the claim was doubtful, let alone where it was entirely unfounded, as here alleged to have been.

From the foregoing, it is manifest that the weight of the evidence established that appellants had actually executed the deed.

## **POINT II.**

### **Did The Deed Pass From the Possession of The Appellants to The Respondent.**

I. The first answer to the above point is, that issue was not raised in the pleadings or in the case itself. In his very opening, counsel for appellants stated:

“Mr. Everett:—We claim that the deed was not executed by us to defendant; and we ask that that conveyance be set aside. - - - The complainants were not there when the deed was acknowledged and allege to have been executed.” (p. 15, l. 15-18).

“The Court:—Do you mean to say that Judge Klenert would take an acknowledgment without the parties being present?”

“Mr. Everett:—I am prepared to prove it.” (p. 15, l. 30-34).

“Mr. Everett:—Well, I am proving that they were not there.” (p. 22, l. 13-14).

2. The deed, duly executed and acknowledged by the grantor, appeared in the grantee's possession. This is prima facie evidence that it was delivered.

*Black v. Shreve*, 13 N. J. Eq. 455.

*Benson v. Woolverton*, 15 N. J. Eq. 158.

*Collins v. Collins*, 45 N. J. Eq. 813.

The question is, has this presumption been overthrown? The uncorroborated testimony of the grantor is not sufficient to do this. *Benson v. Woolverton*, (supra). The appellants have not testified as to non-delivery. Their testimony was far broader and more sweeping. They denied even executing the deed. On that issue, the Vice-Chancellor, considering the evidence referred to in Point I, found against them. Hence, he

found that they did execute the deed, and the presumption of delivery, raised by the presence of the certificate of acknowledgment, and the custody of the deed by the grantee is unshaken.

Appellants now claim that defendant's witnesses nowhere testified to a change of the position of the deed from the time it was signed until it was recorded by Mr. Klenert. The answer is that a manual delivery from appellants to respondent was not necessary.

*Crawford v. Bertholf*, 1 N. J. Eq. 458.  
*Ruckman v. Ruckman*, 32 N. J. Eq. 650.

They had executed the deed. There was nothing left for them to do except collect the consideration, and this they did at the Hamilton Trust Company. They, therefore, left the deed, for either respondent or Mr. Klenert to pick up and record.

Acts or declarations of the grantor and grantee, which, in connection with surrounding circumstances, indicate that the parties intended to deliver a deed, and believed they had done so, constitute a delivery.

*Hildebrand v. Willig*, 64 N. J. Eq. 249; 53 Atl. 1035.  
*Vought v. Vought*, 50 N. J. Eq. 177; 27 Atl. 489.

The collecting of the thousand dollars in cash, after executing the deed; the payment of rent by the appellants;

the acceptance by appellants of one hundred dollars on account of the second mortgage; the direction to the other tenants to pay their rent to respondent, the explanation of the sale, as being because appellants did not have the means to keep the property in repair, all show that it was the intent of the appellants to make delivery of the deed.

The case of *Schlicher v. Keeler*, 67 N. J. Eq. 635, is to be distinguished from the case at bar. In that case, the undisputed facts showed that it was the grantor's intention to have the delivery of the deed, then made, relate to the death of the grantor. Here, there was intention of present delivery, and accordingly, the \$1,000.00, the cash part of the consideration for the deed, was at once paid. Appellants paid rent to respondent and directed the other tenants to do likewise; they collected the first One Hundred Dollars due on the second mortgage, which had formed part of the consideration for the deed. All their acts showed that they regarded themselves as completely divested of title in favor of respondent.

### POINT III.

#### Conclusions of Vice-Chancellor, As Expressed in the Opinion Are Sustained By the Evidence.

It is true the \$25.00 for the services of Mr. Klenert were, by agreement with the appellants, paid by respondent, and that, when they were not paid, Mr. Klenert wrote him for it. There is nothing extraordinary about this arrangement. Sellers, anxious to drive a shrewd

bargain, and to get their selling price clear, often insist, as a term of the transaction, that the buyer shall pay all the expenses. Or, vice versa, the buyer, in his offer for the property, may insist that the seller must bear all expenses. If this is the bargain made between the parties, they must carry it out.

In making the contention that none of the testimony relates to any act of Rosa Walkowitz, the female appellant, which can be construed as acquiescence to the transaction between the two brothers, counsel has overlooked the testimony of Eva Walkowitz, to the effect that Rosa Walkowitz executed the deed, and the similar testimony of Mr. Klenert. So, he has also overlooked the admission of Mrs. Walkowitz, the appellant, that she paid rent to respondent for many months after the date of the deed, as well as her admission that it was her signature which appeared on the receipt for \$100.00 on account of the second mortgage, from respondent to appellants. He has also overlooked Mr. Klenert's testimony that the women participated in an argument in Jewish on January 22, 1921, in reference to striking out the provision regarding interest on the bond and mortgage and a lesser rent to be paid by appellants to respondent.

I strongly deny the assertion of counsel, to the effect, that appellants stand before this Court, as they were in the Court of Chancery, on an equal standard for truthfulness and integrity with that of Abram Klenert. Instead of being in this Court today, complaining of the Vice-Chancellor's rulings, they should be facing a jury in a criminal court on complaint for the perjury they committed in Chancery. (p. 63, l. 1-2).

The very idea of a comparison is preposterous.

Appellants have a deep interest in the case; Mr. Klenert, none except the twenty-five dollars he received to pay for the revenue stamps and recording fees, besides his services in drawing a deed, bond and mortgage, (the latter of which he had to redraw, because the parties changed their minds). Besides, his testimony is uncontradicted, except by them; while, theirs stands contradicted by seven witnesses, four of them disinterested. Stand on an equal footing, do they? They perjurers, (p. 64, l. 18-19), and he a reputable member of the Bar. Is it nothing, then, to be an officer of the Court, and a reputable member of the Bar of the State of New Jersey; a citizen honored by appointment to the bench of the Paterson District Court, and to the bench of Court of Common Pleas of Passaic County? Have not these weight in aiding the Court to conclude whether, for twenty-five dollars, he would participate in a swindle to defraud a man out of his house? And whether, if he was uncertain of the identity of the grantors, who executed the deed, he would, for \$25.00, positively identify appellants, and thereby, knowingly be a party to the possibility of doing innocent people out of their property? Such charges do not come well from the appellants, who wrote themselves down on the records of the Court of Chancery, as perjurers.

Appellant's counsel, in his brief, makes the preposterous assertion that the testimony of Mr. Klenert deserves more careful scrutiny than that of the illiterate appellants. Why illiteracy should excuse two witnesses, parties to the suit, directly interested in its outcome, and why the testimony of a disinterested, reputable member of the Bar, honored by holding high public office and trust, requires more careful scrutiny, I leave to counsel to explain. He asks why Mr. Klenert should not remember things that happened in his office? The answer

is that he does remember them, and that he remembers them most clearly.

Counsel says that, if he had been permitted to have gone into the rebuttal, he feels that he could have proven by competent and satisfactory testimony that Abram Klenert was not a disinterested witness, and also that the transaction at the Hamilton Trust Co. was not with the appellants, but between some other persons who are of another name, and of another being. Aside from the fact that he had his opportunity to show that Abram Klenert was not a disinterested witness, if he could show that at all, when he was cross-examining him, it is a sufficient answer to the contention to say that the competent and satisfactory testimony to which he refers was none other than that of the appellants themselves, whom he was about to put on the stand for rebuttal.

In view of the exhibition they had already made of themselves, the Vice-Chancellor placed a just and correct estimate on the appellants when he concluded that they would deny or affirm anything, whether it was true or not, whether they were under oath or not, and therefore, he would take it that they would deny everything said by the defendant's witnesses, but would disbelieve their denial.

Counsel cites cases in support of the doctrine that number of witnesses does not determine the weight of evidence, and that the fact that the witnesses for the defendant had outnumbered those of the plaintiff, does not in itself establish the weight of evidence. Conceding the truth of that doctrine, we would say that none of the cases cited by him, and, in fact, no case holds that the weight of evidence is established by not having a numerical pre-

ponderence of witnesses. In other words, number of witnesses will establish the weight of evidence, unless the story of the lesser number of witnesses is more probable than that of the greater number of witnesses, or where there is something inherently improbable in the testimony of the greater number of witnesses, or where the testimony of the greater number of witnesses is shaken by reason of bias, prejudice or interest. In other words, unless some such fact appears which makes the testimony of the greater number of witnesses discredited, they will be held entitled to have greater weight given to their testimony.

In this case, complainant has two witnesses, and defendant produces seven. Complainant's two witnesses are both interested, they are the parties to the suit. Three of defendant's witnesses are interested, but four of them are disinterested, and their testimony is unshaken by bias, motive or prejudice. They told a logical, a natural and a probable story, and the respondent's case was made out by an overwhelming preponderance of the evidence.

For these reasons, it is submitted that the decree of the Court of Chancery was proper, and the same should be affirmed.

Respectfully submitted,

FILBERT L. ROSENSTEIN,

*Counsel of Respondent.*

