

Bill of Complaint and Affidavits.

(Filed July 3, 1930.)

IN CHANCERY OF NEW JERSEY.

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

The complainants, Antoinetta Di Paola (also known as Annie Di Paola), of the Town of Bloomfield, County of Essex and State of New Jersey, and John C. Manna, of the City of Orange, in said County and State, show that:

1. In or about the month of February, 1928, while the complainant John C. Manna was Treasurer of the Titanic Realty Company, a corporation, the defendant Joseph P. Weber came to him and said that he could get the defendant The Trust Company of Orange, N. J., to loan the said Realty Company from \$5,000 to \$15,000 because of his influence with said Trust Company, if he would be made Secretary of said Realty Company, and it was eventually arranged between them that \$5,000 should be borrowed from the said Trust Company upon the note of said Realty Company to be endorsed by said complainant Manna and said defendant Weber and by one Fred E. Manuel, President of said Realty Company, and by complainant Antoinetta Di Paola, out of which sum said Weber was to use \$1,600, to be paid back when the note became due.

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2. Thereafter, on March 9, 1928, in pursuance of said arrangements, a note for \$5,000 of the Titanic

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10 Realty Company to the said The Trust Company of Orange, N. J., payable in three months, was executed and signed by said Manuel as President, by said Manna as Treasurer and by said Weber as Secretary, and was endorsed by each of them and by said Mrs. Di Paola, individually, which note was discounted by said Trust Company and the proceeds thereof, \$4,923.34, placed to the credit of the account of said Realty Company, which account had been opened the previous day by said Weber with \$1,000 furnished by one Aurelio Conforti, which amount was paid back to the said Conforti after said account was opened.

20 3. Thereupon, on March 9, 1928, said Weber drew numerous checks upon said account of the said Realty Company, signed by said Manuel as President, said Manna as Treasurer, and said Weber as Secretary, one of which was for \$1,600, payable to the order of A. Conforti who endorsed same in blank and handed it over to said Weber who deposited it to his own personal account in the Watsessing Bank and obtained the \$1,600 represented by same and converted it to his own personal use, as he said he did not want to make the check payable to his order as he did not want the said Trust Company to know that he was getting \$1,600 out of the \$5,000 which it loaned on said note. Similar checks were similarly drawn, aggregating about \$2,400, for the use of said Manuel and were used by him in his private business upon his promise to pay same back when said note became due, the balance of the \$5,000 being used by said Realty Company in its business.

40 4. When said note for \$5,000 became due neither the said Realty Company nor any of the en-

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dorsers had any money with which to pay same, and the said Weber reported later that he had arranged with Mr. Cramer, the cashier of the Trust Company, to split the note so that said Manuel would sign one note for \$2,400, the amount he had used, to be endorsed by his sister-in-law, and he, Weber, and the said Manna and Mrs. Di Paola would sign a note for the remaining \$2,600, of which he, Weber, would pay \$1,600, the amount he had taken, when said note became due, and, in addition, would pay one-third of the balance if said makers were obliged to pay same. After considerable persuasion on the part of the said Weber, the said Manna and Mrs. Di Paola signed said note for \$2,600, said Weber promising to sign same as joint maker when same was presented to said Trust Company for discount and which, complainants are informed and verily believe, he did sign but on the back thereof instead of on its face where the others signed, there being, in fact, two notes signed by said complainants because it was alleged by said Weber that a mistake had been made in the first note, which note was returned to said Manna and is now in his possession.

5. The said note for \$2,600 became due on August 22, 1928, but was not paid, and the said Weber said he would take care of same and wanted complainants to sign a renewal note, which they refused to do, whereupon he said he would pay \$1,200 on the note if complainants would pay the balance, which they also refused to do, and he then said he did not have the money with which to pay his entire share but would do so later.

6. Thereafter, on or about August 27, 1928, suit was brought by the said The Trust Company of

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10 Orange, N. J., against complainants and said Weber on said note for \$2,600, and thereafter, on October 18, 1928, judgment was entered therein against all three of them, and execution was subsequently, on June 4, 1930, issued in the name of said Trust Company but actually by the said Weber who had taken an assignment of said judgment in the name of one Helen A. McCarthy, a stenographer in the office of his attorney, Richard J. FitzMaurice, which assignment is dated April 26, 1930, and recorded April 29, 1930, in Book 9 of Assignments of Judgments for Essex County, at page 11, said assignment having been made by Guiseppe Bocchieri, to whom said judgment had previously been assigned by said Trust Company by assignment 20 dated January 10, 1930, and recorded January 11, 1930, in Book 8 of Assignments of Judgments for Essex County, at page 459, although in both of said assignments and in said execution the date of said judgment is given as September 24, 1928, instead of October 18, 1928, which is the correct date, said execution being for the full amount of the original judgment and costs, and said assignments reciting that said judgment had not been paid in whole or in part, whereas, at the time both of said assignments had been given, \$900 had been paid on account of said judgment by complainants, or in their 30 behalf, as hereinafter set forth.

7. On September 23, 1928, there had been paid on said judgment, by or on behalf of said complainants, the sum of \$900 which more than paid their share of the monies due on said judgment, and which more fully appears from the following statement, to wit:

40 Judgment October 18, 1928.

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Damages	\$2,641.23	
Costs	80.33	
Interest	142.64	
Sheriff's fees	84.41	
	<hr/>	
	\$2,948.61	10
Less amount taken by Weber	1,600.00	
	<hr/>	
Balance	\$1,348.61	
Less Weber's one-third of balance ...	449.54	
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Leaving a balance of	\$899.07	

8. Nevertheless, the said Weber, although the balance due on said judgment should have been paid by him, according to right and justice and his agreement and promises as aforesaid, and should have been satisfied of record by him, has caused an execution to be issued as aforesaid for the full amount of said judgment and has had a levy made thereunder upon the property of the complainant Di Paola and threatens to have a levy made upon any property of the complainant Manna which can be found, said judgment being a lien upon all the property which said Manna owned at the time said judgment was obtained, and said defendant Weber has caused the Sheriff of Essex County to proceed under said execution and advertise the property of complainant Di Paola for sale under said execution on July 22, 1930, said property being known as No. 248 Ampere Parkway, Bloomfield, N. J., and is worth \$30,000 and is encumbered by mortgages only to the extent of \$15,000, leaving an equity therein of \$15,000, and if said judgment is permitted to remain uncanceled of record and the Sheriff is permitted to proceed with said sale of said property under said

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execution, these complainants will be greatly damaged and irreparably injured thereby.

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

10 1. That The Trust Company of Orange, N. J., a corporation, Helen A. McCarthy and Joseph P. Weber, who are the defendants in this suit, may answer this bill of complaint and each statement therein made:

20 2. That the said The Trust Company of Orange, N. J., Helen A. McCarthy and Joseph P. Weber, their counsel, attorneys, solicitors, officers and agents, and each and every one of them, may be restrained and enjoined from proceeding further against complainants upon said judgment in said action at law, or upon any execution thereon:

30 3. That said defendants may, by the decree of this Court, be ordered and directed to satisfy, cancel and discharge said judgment of record or, in the alternative, if any amount should be found to be due thereon which should not have been paid by the said defendant Joseph P. Weber, then and in that event that he be ordered and directed by the decree of this Court to satisfy, cancel and discharge same of record upon these defendants paying to him, or to the Clerk of this Court, such amount found to be due and payable by them as aforesaid:

40 4. That a writ of subpoena may issue commanding these defendants to answer this bill of complaint and to abide by such decree as this Court may make in the premises:

Affidavit of Antoinetta Di Paola.

5. That complainants may have such other and further relief as to the Court shall seem meet.

WILLIAM A. LORD,
Solicitor for and of Counsel
with Complainants.

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State of New Jersey, }
County of Essex, } ss.:

ANTOINETTA DI PAOLA, being duly sworn according to law on her oath deposes and says:

1. I live at 248 Ampere Parkway, Bloomfield, N. J., and am one of the complainants mentioned in the foregoing bill of complaint and am familiar with the matters and things therein set forth, and the said matters and things therein set forth are true, to the best of my knowledge, information and belief.

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2. On or about March 9, 1928, I was requested by Fred E. Manuel, the complainant John C. Manna, and the defendant Joseph P. Weber to endorse a note for \$5,000 made by the Titanic Realty Company, as set forth in the bill of complaint, in order to enable them and the said Realty Company to get some money to pay for labor and materials on houses they were erecting in Conforti Park, Eagle Rock Avenue, West Orange, upon their positive assurance that I would not have to pay any part of said note when it became due.

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3. After said note became due the said defendant Joseph P. Weber called to see me at my home on two different occasions and asked me to sign a renewal note for \$2,600 and stated that he and the said John C. Manna would sign same as well and that Fred E. Manuel would sign a similar note

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Affidavit of Antoinetta Di Paola.

for \$2,400 to make up the \$5,000, which was the amount of the original note, and that when same became due he, the said Joseph P. Weber, would pay \$1,600 which he said he had gotten out of the proceeds of the original note of \$5,000, and that
10 he would also pay his one-third of the remaining \$1,000, so that all I would have to pay on said note would be \$333.33, but I declined to do as he requested, and a few days later he came to see me again with the same proposition but I again refused, and then a third time, on or about June 22, 1928, he came again, with the said John C. Manna who is the brother of my brother's wife, and he and the said Joseph P. Weber then persuaded me
20 to sign the note, after the said Manna had signed same, upon the repeated assurance of said Weber that when same became due he would pay the \$1,600 which he had taken from the original loan and also his one-third of the remaining \$1,000, and that he would sign same with me and the said John C. Manna as joint makers, and then he went away stating that he would sign the note at the time he presented same to the bank.

4. When the said note for \$2,600 became due it
30 was not paid, and thereafter I telephoned the said Joseph P. Weber and asked him why he had not taken care of this note and paid his share as agreed, to which he replied that he had no money and was therefore unable to pay any part of it.

5. Thereafter, on or about August 27, 1928, I was served with a summons in the suit brought by the said Trust Company of Orange, N. J., against me, under the name of "Anna" Di Paola, and
40 against said John C. Manna and Joseph P. Weber, upon the said note for \$2,600, and thereafter, on

Affidavit of Antoinetta Di Paola.

October 18, 1928, judgment was entered therein against the three of us in said action, and subsequently, on June 4, 1930, execution was issued upon said judgment in the name of the said Trust Company of Orange, N. J., but for the use and benefit of the said Joseph P. Weber, the real owner of said judgment, although the record shows that said judgment was assigned to one Helen A. McCarthy, a stenographer in the office of Richard J. Fitz-Maurice, attorney for said Joseph P. Weber, and she is holding same and proceeding thereon for the sole use and benefit of the said Joseph P. Weber.

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6. I never received one penny in cash or anything of value in return for signing said note for \$5,000 or said note for \$2,600, nor did I receive any part of the proceeds thereof, nor any benefit whatsoever for endorsing or signing said notes.

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7. On September 23, 1929, there had been paid on said judgment, by or on behalf of the said John C. Manna and myself, the sum of \$900 which more than paid our share of the monies due on said judgment and which more fully appears from the following statement, to wit:

Judgment Oct. 18, 1928. Damages	\$ 2,641.23	30
Costs	80.33	
Interest	142.64	
Sheriff's fees	84.41	

\$2,948.61

Less amount taken by Weber 1,600.00

Balance \$ 1,348.61

Less Weber's one-third of balance 449.54

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Leaving a balance of \$ 899.07

Affidavit of John C. Manna.

8. Nevertheless the said Joseph P. Weber, although the balance due on said judgment should have been paid by him, according to right and justice and his agreement as aforesaid, and should have been satisfied of record, caused the said execution to be issued for the full amount of said judgment, reciting therein that said judgment had not been paid in whole or in part, and had a levy made thereunder upon my property known as 248 Ampere Parkway, Bloomfield, N. J., which is worth \$30,000 and is encumbered by mortgages only to the extent of \$15,000, leaving an equity therein of \$15,000, and the Sheriff of Essex County has advertised my said property for sale to satisfy the amount alleged to be due thereon on Tuesday, July 22, 1930, and I will be greatly damaged and irreparably injured thereby and will have no adequate remedy at law, if said sale takes place as advertised.

ANTOINETTA DI PAOLA.

Sworn and subscribed before }
me this July 1st, 1930. }

MARY G. LLOYD,
Notary Public of N. J.

State of New Jersey, }
County of Essex, } ss.:

JOHN C. MANNA, being duly sworn according to law on his oath deposes and says:

1. I live at 265 Snyder Street, Orange, N. J., and am one of the complainants mentioned in the foregoing bill of complaint and am familiar with the matters and things therein set forth, and the said matters and things therein set forth are true, to the best of my knowledge, information and belief.

Affidavit of John C. Manna.

2. In or about the month of February, 1928, while I was Treasurer of the Titanic Realty Company, a corporation, the defendant Joseph P. Weber came to me and said that he could get the Trust Company of Orange, N. J., to loan the said Realty Company from \$5,000 to \$15,000 because of his influence with said Trust Company if I would allow him to be made secretary of our corporation, to which I replied that the corporation then had no need for more than \$5,000 for buildings which it was then erecting on property on Eagle Rock Avenue, West Orange, N. J., and that at that time we did not even have to use that amount of money immediately, whereupon he said that if we would borrow \$5,000 from it then he would use \$1,600 of it and pay it on the note when it became due as he was short of money and needed money in his business at that time.

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3. Thereafter, on or about March 9, 1928, said Weber, pursuant to his original proposition, got the Realty corporation to sign a note for \$5,000, payable to the Trust Company of Orange, N. J., and payable in three months from date, and which was signed by one Fred E. Manuel as President, by myself as Treasurer and by said Joseph P. Weber as Secretary, and was endorsed by each of us individually and by Mrs. Antoinetta Di Paola, who signed her name as "Annie" Di Paola, as she frequently does sign her name, as I and the said Weber assured Mrs. Di Paola that she would not have to pay any part of the note when it became due and that said Weber would pay \$1,600 on the note which he was to get, the balance to be paid by the Realty Company or others who obtained any part of the proceeds.

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Affidavit of John C. Manna.

10 4. Thereupon, on said March 9, 1928, said Joseph P. Weber took the said note to the Trust Company of Orange, N. J., and had same discounted and the proceeds thereof, amounting to \$4,923.34, placed to the credit of the account of the said Titanic Realty Company, which account had been opened the previous day by the said Joseph P. Weber with \$1,000 furnished by one Aurelio Conforti, which amount was paid back to said Conforti after said account was opened.

20 5. Thereupon, on March 9, 1928, said Joseph P. Weber drew numerous checks for said Titanic Realty Company which were signed by said Fred E. Manuel as President, by me as Treasurer, and by said Weber as Secretary, and one of which was for \$1,600, payable to the order of A. Conforti who endorsed same and handed it over to said Weber who deposited same to his own personal account in the Watsessing Bank and obtained the \$1,600 thereon for his own personal use, as he said he did not want to make the check payable to his own order because he did not want the said Trust Company to know that he was getting \$1,600 of the \$5,000 which they had loaned on said note. Similar checks were drawn aggregating about \$2,400 for the use of the said Fred E. Manuel in his private business, upon his promise that he would pay same back when the note became due, and then the balance of the \$5,000 was used by the said Titanic Realty Company in its business.

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40 6. When said note for \$5,000 became due neither the said Realty Company nor any of the said endorsers had any money with which to pay same, and the said Weber came to my house and told me that the note had become due. I said to him, "All

Affidavit of John C. Manna.

right, pay it off or at least pay the \$1,600 which you took out of that \$5,000," to which he replied, "I cannot do it now. I am still pressed for money but I will see Mr. Cramer, the cashier of the bank, and get him to renew the note." I told him I would not sign any more notes until he had paid the \$1,600 which he had taken and was ready to pay his share of the remainder, to which he replied that he would see what he could do.

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7. Later the said Weber came to me and said that he had arranged with Mr. Cramer, of the Trust Company, to split the note and would get Fred E. Manuel to sign a note for \$2,400, the amount he had used, to be endorsed by Manuel's sister-in-law, and that he and myself would sign a note for \$2,600, together with Mrs. Di Paola, if we could induce her to sign same, but I said I did not want to sign same. He urged me to do so, however, stating that the amount I would have to pay would only be \$333.33 and that Mrs. Di Paola and he would each have to pay a similar amount, and that he would also have to pay \$1,600 in addition, which amount he had taken out of the proceeds of the original note.

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8. Thereupon, after he had seen me several times, I signed the note for \$2,600 and, after considerable effort, we succeeded in getting Mrs. Di Paola to sign same upon our positive assurance to her that neither she nor I would have any more than \$333.33 to pay when the note became due, and the said Weber then stated that he would sign said note when he took same to the Trust Company and he took the note away.

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9. A day or two later the said Weber came to me and said that there was a mistake in the note

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Affidavit of John C. Manna.

10 which we had signed and wanted me to sign another one to which I objected as I told him I had already had enough trouble over notes, but he finally persuaded me to sign the new note, which had not been filled in, and then we went to the home of Mrs. Di Paola and persuaded her to sign again, and Weber then turned over to me the first note which we signed and which is now in my possession, and the new one he said he would sign and turn over to the bank.

20 10. When the said note for \$2,600 became due on August 22, 1928, it was not paid and the said Weber said he would take care of same but wanted me to sign a renewal note which I refused to do and he then said he would pay \$1,200 on the note if I or Mrs. Di Paola, or both of us, would pay the balance, but I would not do this because I told him he owed \$1,600 on the note besides his one-third share of the balance. He replied that he could not pay this at the time but would take care of it later.

30 11. Thereafter, on or about August 27, 1928, I was served with summons in a suit brought by the Trust Company of Orange, N. J., against me and Mrs. Di Paola and said Weber on the said note for \$2,600, and thereafter, on October 18, 1928, judgment was entered against the three of us, and execution was subsequently, on June 4, 1930, issued in the name of said Trust Company of Orange, N. J., but actually for the said Joseph P. Weber who had taken an assignment of said judgment in the name of one Helen A. McCarthy, a stenographer in the office of his attorney, Richard J. FitzMaurice, which assignment is dated April 26, 1930, and recorded April 29, 1930, in Book 9 of Assignments of Judgments for Essex County, at page 11, said
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Affidavit of John C. Manna.

assignment having been made by Guiseeppe Bocchieri, to whom said judgment had previously been assigned by said Trust Company of Orange, N. J., by assignment dated January 10, 1930, and recorded January 11, 1930, in Book 8 of Assignments of Judgments for Essex County, at page 459, although in both of said assignments and in said execution the date of said judgment is given as September 24, 1928, instead of October 18, 1928, which is the correct date, said execution being for the full amount of the original judgment and costs, and said assignments reciting that said judgment had not been collected, in whole or in part, whereas, at the time both of said assignments were given, \$900 had been paid on said judgment by the said Antoinetta Di Paola and myself, or in our behalf, as hereinafter set forth.

12. On September 23, 1929, there had been paid on said judgment, by or on behalf of the said Antoinetta Di Paola and myself, the sum of \$900 which more than paid our share of the monies due on said judgment and which more fully appears from the following statement, to wit:

Judgment Oct. 18, 1928.

Damages	\$2,641.23	30
Costs	80.33	
Interest	142.64	
Sheriff's fees	84.41	
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	\$2,948.61	
Less amount taken by Weber	1,600.00	
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Balance	\$1,348.61	
Less Weber's one-third of balance..	449.54	40
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Leaving a balance of	\$899.07	

Affidavit of William A. Lord.

13. Nevertheless, the said Joseph P. Weber, although the balance due on said judgment should have been paid by him, according to right and justice and his agreement and promises as aforesaid, and should have been satisfied of record by him,
 10 has caused said execution to be issued for the full amount of said judgment as aforesaid, and has had a levy made thereunder upon the property of Mrs. Di Paola and threatens to have a levy made upon any property of mine which can be found, and the said judgment is a lien upon all the property which I owned at the time said judgment was obtained, and, if allowed to remain open of record, will greatly damage and irreparably injure me and the inchoate right of dower of my wife, Elsie
 20 Manna, therein, for which we have no adequate remedy at law.

JOHN C. MANNA.

Sworn and subscribed before me }
 this July 2nd, 1930. }

MARY G. LLOYD,
 Notary Public of N. J.

30 State of New Jersey, }
 County of Essex, } ss.:

WILLIAM A. LORD, being duly sworn according to law on his oath says:

1. I am solicitor for the complainants in the foregoing bill of complaint and know that the judgment therein referred to is actually owned by the defendant Joseph P. Weber, although, according to the record in the Essex County Clerk's office, it would appear to belong to the defendant Helen
 40 A. McCarthy because Richard J. Fitz Maurice, attorney for said Joseph P. Weber, told me that the

Affidavit of William A. Lord.

said judgment had been assigned to her, a stenographer in his office, but really belonged to said Joseph P. Weber, and he wrote me a letter, dated May 12, 1930, reading as follows:

“I am enclosing herewith a copy of statement of judgment showing the sum of \$2,420.77 paid by Mr. Weber in taking the assignment of judgment against DiPaola, Manna and himself. Mr. Weber is insisting upon my proceeding immediately with the advertising and sale of the DiPaola and Manna properties. On my own responsibility I will hold the matter until Saturday, May 17th, to give your clients an opportunity to make settlement without further expense. (Signed) Richard J. FitzMaurice.”

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WILLIAM A. LORD.

Sworn and subscribed before me }
 this July 3, 1930. }

MARY G. LLOYD,
 Notary Public of N. J.

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Affidavit of Joseph P. Weber.

ered on October 18, 1928. No affirmative action has been taken by said complainants up until the time of process in this matter to correct the alleged inequities.

(c) Said complaint is sham as appears by the affidavits affixed hereto and made a part hereof. 10

(d) Complainants pray in paragraph three of prayers in said complaint that defendants be directed to satisfy a judgment duly entered of record, as appears by the said complaint, and in the alternative that defendant, Joseph P. Weber, be ordered to satisfy and discharge same of record when, as stated, said judgment was duly and lawfully recovered. 20

RICHARD J. FITZ MAURICE,
Solicitor for and of Counsel
with Defendants.

A True Copy.

State of New Jersey, }
County of Essex, } ss.:

JOSEPH P. WEBER, of full age, being duly sworn, according to law, on his oath, deposes and says: 30

1. I live at No. 19 Boyden Street, in the City of East Orange, Essex County, New Jersey, and am one of the defendants mentioned in bill of complaint and also in the attached notice of motion, and am familiar with the matters and things set forth.

2. I did not know the complainant, Antoinetta Di Paola, at the time mentioned in the second paragraph of the affidavit of the complainant, Antoinetta Di Paola, March 9, 1928. I made no statement to the said Antoinetta Di Paola that she 40

Affidavit of Joseph P. Weber.

would not have to pay any part of the note in question for \$5,000.00, made by the Titanic Realty Company.

10 3. Aurelio Conforti is a brother of the complainant, Antoinetta Di Paola. I charge that the allegations in the complaint and affidavit annexed thereto of Antoinetta Di Paola, that I figured in the transactions described therein are sham and false in that the said Aurelio Conforti and not myself was the party who made the negotiations in question.

20 4. I am not an officer of the Titanic Realty Company, as set forth in the bill of complaint. My name does not appear in the official records showing the incorporation of said company. I own no shares of stock in the said company. My name erroneously appears on checks as Secretary of the said company when in fact I have no position in said company.

30 5. I am in the electrical contracting business at No. 324 Main Street, East Orange, New Jersey. I was requested by John C. Manna, Aurelio Conforti and Fred E. Manuel to assist them financially in the completion of houses in Conforti Park, Eagle Rock Avenue, West Orange, and also a house on Main Street at North Park Drive West, West Orange. I refused to comply with said request at first on the expressed ground that the said Aurelio Conforti was indebted to me, as electrical contractor, in the sum of \$1,600.00 I was told by the three parties aforesaid that if I would endorse a \$5,000.00 note to be held by The Trust Company of Orange, I would receive the aforementioned sum of
40 \$1,600.00 as full payment of the debt owing by Aurelio Conforti to me.

Affidavit of Joseph P. Weber.

6. At the same time, the balance of the moneys, I was assured, would be all that would be required to financially complete the enterprises previously mentioned in West Orange, New Jersey.

7. Fred E. Manuel and John C. Manna and Aurelio Conforti, speaking for his sister, Antoinetta Di Paola, expressly stated that they were willing that \$1,600.00 of the aforementioned \$5,000.00 note be turned over to said Aurelio Conforti for the purpose of being turned over by him to me. The said moneys were due to the said Aurelio Conforti as the general contractor on the premises previously mentioned.

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8. I admit that the note was subsequently split in the sums of \$2,400.00 and \$2,600.00. I endorsed on both notes because I was, of course, the endorser on the original \$5,000.00 note, and the purpose of splitting the original was due to a disagreement among the stockholders of Titanic Realty Company who separated into two factions.

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9. Judgment was taken by The Trust Company of Orange upon the two notes in the sum of \$5,000.00, together with costs in total for failure to pay each of the two notes.

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10. I too, as Antoinetta Di Paola, was on or about August 27, 1928, served with a summons in the suit brought by the said The Trust Company of Orange upon the \$2,600.00 note. On October 18, 1928, judgment was entered therein against the three of us, John C. Manna being the third party. On this note I was an endorser and not the maker. The execution issued on June 4, 1930, was issued by The Trust Company of Orange for the satisfaction of the notes mentioned.

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Affidavit of Joseph P. Weber.

10 11. As to whether or not Antoinetta Di Paola received any cash or property by reason of the transaction indicated, I have no knowledge or belief other than to know that the said Aurelio Conforti was her representative throughout the entire proceedings.

12. As I have previously stated, I met the said Antoinetta Di Paola at no time up until December, 1929, and at that time I merely made her acquaintance and did not discuss any business. Consequently, I never entered into any agreement with the said Antoinetta Di Paola.

20 13. As to the statement that the solicitor for the complainants knows that the judgment of record is in the name of the defendant, Helen A. McCarthy, but that it is actually owned by myself, I refer to a copy of a letter under date of May 14, 1930, from the said solicitor to the effect that the said Antoinetta Di Paola and John C. Manna were abiding by the proceedings. The letter is as follows:

30 Law Offices
LORD & LORD
31 Clinton St. Newark,
290 Main Street, Orange,

Orange, N. J., May 14, 1930.

Mr. Richard J. Fitz Maurice,
Metropolitan Building,
Orange, N. J.

My dear Commissioner:

40 In reply to your letter of the twelfth instant in relation to the Weber judgment against Di Paola and Manna would say that I am just leaving on a week-end trip and

Affidavit of Joseph P. Weber.

hope you will hold off any proceedings at least until next Wednesday in order that I may see what my clients can do. If we paid \$100. now and \$100. each week for the next three weeks would your client hold off that long as my clients expect to have some money within that time and we might then be able to settle the whole matter?

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Yours very truly,

WILLIAM A. LORD.

14. I never made any statement, as indicated in the affidavit of John C. Manna, that I had influence with The Trust Company of Orange or that I would use such influence in order to procure a loan for the purpose of being made Secretary of the Titanic Realty Company. Until the endeavor was made to finance the transaction or enterprises is West Orange, I did not know the name or nature of the Titanic Realty Company and, of course, I made no request or demand that I be made Secretary thereof. Consequently, my only relation in any way to the parties is as a creditor of the said Aurelio Conforti and the entire arrangement was made at his suggestion, confirmed by the other parties to the suit, that I enter into the proposition for the purpose of securing money justly due and owing to me.

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15. I flatly deny the allegations of John C. Manna in his affidavit and state to the contrary that I am not identified in any sense with the Titanic Realty Company, or its enterprises, other than in the mentioned connections for the purpose

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Affidavit of Fred E. Manuel.

of securing satisfaction of the Aurelio Conforti debt.

JOSEPH P. WEBER,

10 Subscribed and sworn to, this Twelfth }
 day of July, 1930, before me, an }
 attorney at law of N. J. }

ANARD W. LITTMAN.

State of New Jersey, }
 County of Essex, } ss.:

FRED E. MANUEL, of full age, being duly sworn, according to law, on his oath, deposes and says:

- 20 1. I reside at No. 111 South Essex Avenue, in the City of Orange, Essex County, New Jersey.
2. I made no request of Antoinetta Di Paola that she endorse a note for \$5,000.00.
3. Judgment was duly recovered against me, as set forth in the complaint filed in this cause, and execution was duly issued thereon and my house at No. 111 South Essex Avenue, Orange, New Jersey, was sold in satisfaction thereof.
- 30 4. As president of the Titanic Realty Company, I know as a matter of fact that one Joseph P. Weber was never an officer of said company, and I also know that at no time did he own stock in said company, and further that he, at no time, took any participation in the conduct of the affairs of said company.
- 40 5. Any checks that were drawn upon the funds in The Trust Company of Orange, which money represented the amount originally deposited by the said The Trust Company of Orange as the loan, was drawn for the purpose of paying labor and

Affidavit of Frederick T. Cramer.

material men upon the enterprises in West Orange, New Jersey. Checks clearly indicate this to be a fact. I never at any time drew money in the sum of \$2,400.00 for my private use.

6. The only reason that Mr. Weber's signature appears on the checks of the Titanic Realty Company as secretary was for the purpose, as understood by all parties, of obviating the necessity of Mr. Weber counter-signing said checks. The Trust Company of Orange requested this so that Mr. Weber could supervise the distribution of the moneys into the proper channels.

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FRED E. MANUEL.

Subscribed and sworn to, this Twelfth }
day of July, 1930, before me, an }
attorney at law of N. J. }

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ANARD W. LITTMAN.

A True Copy.

State of New Jersey, }
County of Essex, } ss.:

FREDERICK T. CRAMER, of full age, being duly sworn, according to law, on his oath, deposes and says:

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1. I am Vice-President and Treasurer of The Trust Company of Orange, a corporation of the State of New Jersey.

2. In the early part of March, 1928, one Joseph P. Weber approached me on the proposition of the Bank's making a loan of \$5,000.00 to Antoinetta Di Paola, John C. Manna and Fred E. Manuel, with his name on whatever instrument would be necessary to effect the loan as endorser.

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Affidavit of Frederick T. Cramer.

3. The said Joseph P. Weber also consulted me as an official of the bank as to whether or not the plan of negotiating the loan so that the moneys would reach material men and laborers and also so that he could secure satisfaction in the sum of \$1,600.00 from one Aurelio Conforti was a feasible one.

4. I answered Mr. Weber in the affirmative and stated that the transaction could be conveniently arranged upon his endorsing the \$5,000.00 note. Investigation of the financial status of the said Joseph P. Weber disclosed the fact that he was a financially responsible person. Upon the completion of the investigation the loan was granted with the endorsement of the said Joseph P. Weber. Knowing that Mr. Weber was a financially responsible person, I, as an official of the Bank, was desirous that he supervise the distribution of the moneys so that they would reach the proper parties.

FREDERICK T. CRAMER.

Subscribed and sworn to, this }
Twelfth day of July, 1930, before }
me, an attorney at law of N. J. }

ANARD W. LITTMAN.

A True Copy.

Answering Affidavits.

(Filed August 25, 1930.)

IN CHANCERY OF NEW JERSEY.

ANTOINETTA DI PAOLA and JOHN C.
MANNA,
Complainants,

v.

THE TRUST COMPANY OF ORANGE,
N. J., a corporation, and others,
Defendants.

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On Bill, Etc.

State of New Jersey, }
County of Essex, } ss.:

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ANTOINETTA DI PAOLA, being duly sworn according to law on her oath says:

1. I am one of the complainants in this cause.

2. It is not true, as stated in the second paragraph of the affidavit of the defendant Joseph P. Weber that he did not know me on March 9, 1928, but, on the contrary, he did know me and told me in substance what I stated in the second paragraph of my previous affidavit, and it is not true that he did not figure in the transactions described therein, and that the allegations in the complaint and said affidavit are either sham or false, and I deny that the name of the said Joseph P. Weber erroneously appears on the checks as secretary of the Titanic Realty Company but, on the contrary, I allege that his name appears thereon for the purpose of leading the defendant, The Trust Company of Orange, to believe that he was secretary of said Realty

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Affidavit of John C. Manna.

Company in order to obtain the monies as set forth
in the bill of complaint and my previous affidavit.

ANTOINETTA DI PAOLA.

10 Sworn and subscribed before me }
this July 25th, 1930. }

MARY G. LLOYD,
Notary Public of N. J.

State of New Jersey, }
County of Essex, } ss.:

JOHN C. MANNA, being duly sworn according to
law on his oath says:

20 1. It is not true, as stated in the fifth paragraph
of the affidavit made by the defendant, Joseph P.
Weber, that I, Aurelio Conforti and Fred E. Man-
uel asked him to assist us financially in the com-
pletion of houses in Conforti Park, Eagle Rock
Avenue, West Orange, and it is not true, as stated
in said affidavit, that the said Joseph P. Weber
expressed to me, or in my presence, any intima-
tion that the said Aurelio Conforti was indebted
to him in the sum of \$1,600, and it is not true, as
30 stated in said paragraph of said affidavit, that I
told him that he would receive said sum of \$1,600,
or any part thereof, in full payment of said alleged
debt, or otherwise owing by said Conforti to any-
one out of the proceeds of a note to be discounted,
or otherwise, nor is it true, as stated in the sixth
paragraph of his affidavit, that he was assured by
me, or by said Conforti or Manuel, in my presence,
that all that would be required to financially com-
plete the enterprises in question would be the bal-
40 ance of the money to be procured on note after
the payment of said alleged debt of Conforti, nor
is it true, as stated in Paragraph 7 of his said affi-

Affidavit of John C. Manna.

davit, that I, or said Manuel or Conforti, in my presence, expressly stated that we were willing that the sum of \$1,600 of the \$5,000 note be turned over to said Aurelio Conforti for the purpose of turning same over to said defendant, Joseph P. Weber.

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2. It is not true, as stated in Paragraph 8 of said affidavit of said Weber that the execution issued on June 4, 1930, was issued by the Trust Company of Orange but, on the contrary, said execution was issued by the defendant Helen A. McCarthy, the record holder of said judgment who held same for the sole benefit and advantage and to the use of the said defendant, Joseph P. Weber, said Trust Company having been paid all the money due it on said judgment.

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3. It is not true, as intimated in the fifth paragraph of the affidavit of Fred E. Manuel that checks drawn upon the funds in the Trust Company of Orange were drawn for the purpose of paying labor and materialmen upon enterprises of the Titanic Realty Company in West Orange, N. J., for, as a matter of fact, \$2,400 of this money was used by the said Manuel in prosecuting his own enterprises in West Orange with which the Titanic Realty Company had nothing whatever to do, and it is true that, as previously stated, the said Manuel did use the said \$2,400 for his own private use, \$1,600 of the balance of said note being used as aforesaid by the said Weber for his own private use.

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4. It is not true, as stated in the sixth paragraph of said Manuel's affidavit that said Weber's signature appears on the checks of the Titanic Realty Company as secretary simply to obviate the necessity of said Weber's countersigning or endorsing

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Affidavit of Aurelio Conforti.

the same so that said Weber could supervise the distribution of the money into the proper channels and which he did not do.

10 5. It is not true, as stated in the affidavit of Frederick E. Cramer, Vice-President and Treasurer of the Trust Company of Orange, that said Weber mentioned to him, before or when the original note was negotiated, that the plan of negotiating said loan was, among other things, so that he could secure satisfaction of the sum of \$1,600 from said Aurelio Conforti, and that it was a feasible one, for the said Cramer, on divers and numerous occasions told me and the said Conforti that he did not know anything about any \$1,600 to be paid to said Weber for a debt owing to him by Conforti, but, on the contrary, when we protested to him about the use of the \$1,600 of this money by the said Weber, Mr. Cramer replied that he had nothing to do with this, knew nothing about it and that it was a matter entirely between us and the said Weber.

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JOHN C. MANNA.

Sworn and subscribed before me }
this July 25th, 1930. }

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MARY G. LLOYD,
Notary Public of New Jersey.

State of New Jersey, }
County of Essex, } ss.:

AURELIO CONFORTI, being duly sworn according to law on his oath, says:

40 1. I admit, as stated in the third paragraph of the affidavit of the said defendant, Joseph P. Weber, that I am the brother of the complainant,

Affidavit of Aurelio Conforti.

Antoinetta Di Paola, but I deny that the signature of said Weber erroneously appears as secretary on the checks of the Titanic Realty Company, as stated in the fourth paragraph of said affidavit, but, on the contrary, said Weber asked to come in to said corporation and promised to become its secretary and assumed to act as its secretary in signing checks solely for the purpose of leading the Trust Company of Orange to believe that he was secretary of said realty company in order that said note might be discounted. 10

2. It is not true, as stated in the fifth paragraph of the affidavit made by the defendant, Joseph P. Weber, that I, John Manna and Fred E. Manuel asked him to assist us financially in the completion of houses in Conforti Park, Eagle Rock Avenue, West Orange, and it is not true, as stated in said affidavit, that the said Joseph P. Weber expressed to said Manna any intimation that I was indebted to him in the sum of \$1,600, and it is not true, as stated in said paragraph of said affidavit, that the said Manna told him that he would receive said sum of \$1,600, or any part thereof, in full payment of said alleged debt, or otherwise owing by me to anyone out of the proceeds of a note to be discounted, or otherwise, nor is it true, as stated in the sixth paragraph of his affidavit, that he was assured by me, or by said Manna or Manuel, in my presence, that all that would be required to financially complete the enterprises in question would be the balance of the money to be procured on note after the payment of my said alleged debt, nor is it true, as stated in Paragraph 7 of his said affidavit, that I, or said Manna or Manuel, in my presence, expressly stated that we were willing that the sum of \$1,600 of the 20 30 40

Affidavit of Aurelio Conforti.

10 \$5,000 note be turned over to me for the purpose of turning same over to the said defendant, Joseph P. Weber. I did not at that time owe the said Joseph P. Weber any money whatever but he was indebted to me in the sum of about \$300.00 in addition to which I gave him a number of notes which I signed in blank as an accommodation to him, which notes have not been returned to me.

20 3. It is not true, as stated in Paragraph 8 of said affidavit of said Weber, that the execution issued on June 4, 1930, was issued by the Trust Company of Orange but, on the contrary, said execution was issued by the defendant Helen A. McCarthy, the record holder of said judgment who held same for the sole benefit and advantage and to the use of the said defendant Joseph P. Weber, said Trust Company having been paid all the money due it on said judgment.

30 4. It is not true, as intimated in the fifth paragraph of the affidavit of Fred E. Manuel that checks drawn upon the funds in the Trust Company of Orange were drawn for the purpose of paying labor and materialmen upon enterprises of the Titanic Realty Company in West Orange, N. J., for, as a matter of fact, \$2,400 of this money was used by the said Manuel in prosecuting his own enterprises in West Orange with which the Titanic Realty Company had nothing whatever to do, and it is true that, as previously stated, the said Manuel did use the said \$2,400 for his own private use, \$1,600 of the balance of said note being used as aforesaid by the said Weber for his own private use.

40 5. It is not true, as stated in the sixth paragraph of said Manuel's affidavit that said Weber's

Affidavit of Aurelio Conforti.

signature appears on the checks of the Titanic Realty Company as secretary simply to obviate the necessity of said Weber's countersigning or endorsing the same so that said Weber could supervise the distribution of the money into the proper channels and which he did not do.

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6. It is not true, as stated in the affidavit of Frederick E. Cramer, Vice President and Treasurer of the Trust Company of Orange, that said Weber mentioned to him, before or when the original note was negotiated, that the plan of negotiating said loan was, among other things, so that he could secure satisfaction of the sum of \$1,600 from me, and that it was a feasible one, for the said Cramer, on divers and numerous occasions told me and the said Manna that he did not know anything about any \$1,600 to be paid to said Weber for a debt owing to him by me, but, on the contrary, when we protested to him about the use of the \$1,600 of this money by the said Weber, Mr. Cramer replied that he had nothing to do with this, knew nothing about it and that it was a matter entirely between us and the said Weber.

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AURELIO CONFORTI.

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Sworn and subscribed before }
me this July 25th, 1930. }

MARY G. LLOYD,
Notary Public of N. J.

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Opinion.

(Filed November 14, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

ANTOINETTA DI PAOLA, *et al.*,
Complainants,

and

THE TRUST COMPANY OF ORANGE,
N. J., *et als.*,
Defendants.

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Memorandum
(Not for print).THIS MEMORANDUM IS NOT TO BE PUBLISHED IN THE
OFFICIAL OR UNOFFICIAL REPORTS.

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Mr. WILLIM A. LORD, for Complainants-
appellants.Mr. RICHARD J. FITZ MAURICE, for Defend-
ant-respondents.

CHURCH, V. C.:

An execution at law was issued by The Trust Company of Orange on a note for \$2,500. The defendants were, Joseph P. Weber, Antoinetta Di Paola and John C. Manna. Execution was directed against Weber, who purchased the judgment and assigned it to another, who caused the execution to be issued. Therefore, The Trust Company of Orange, it seems to me, ceases to be a party to the litigation. The assignee directed execution against Di Paola, which was obtained on October 18, 1928. On July 29, 1930, a motion was made against Weber, his assignee and The Trust Company, seeking to restrain the judgment. It seems to me that

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Opinion.

they were in laches in that they waited so many months before taking any action in the premises, and I directed the bill to be stricken out for that cause, among others. Moreover, I do not see how the Court of Chancery can intervene to stay a
10 judgment on a note which was lawfully obtained. The Court of Errors and Appeals in the case of *Brown v. White*, 29 N. J. L. 514, says:

“Where one of several defendants pays to the plaintiff a certain sum, which he agrees to accept in satisfaction of the judgment, and the defendant paying the money procures an assignment of the judgment to himself, or a third person for his benefit, the
20 payment does not operate as a satisfaction of the judgment as to any of the defendants except the one paying the money, unless it appear that the payment was intended as a satisfaction of the judgment as to them.”

See, also, *McKenna v. Corcoran*, 70 N. J. Eq. 627.

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Notice of Appeal.

(Filed August 8, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

ANTOINETTA DI PAOLO,
Complainant,

and

THE TRUST COMPANY OF ORANGE,
et al.,
Defendants.

On Bill, &c.

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The complainant hereby appeals from the decree of dismissal, entered in the above stated cause, to the New Jersey Court of Errors and Appeals, the last resort in all causes, made by the Chancellor on the advice of the Honorable Alonzo Church, Vice-Chancellor.

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WILLIAM A. LORD,
Solicitor of the Complainant.

I conceive there is good ground for appeal.

ANTHONY R. FINELLI,
Of Counsel.

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Petition of Appeal.

(Filed August 28, 1930.)

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

10

ANTOINETTA DI PAOLA (also known
as ANNIE DI PAOLA) and JOHN
C. MANNA,

Complainants-Appellants,

v.

THE TRUST COMPANY OF ORANGE,
a corporation, HELEN A. MC-
CARTHY and JOSEPH P. WEBER,

Defendants-Appellees.

On Appeal from
Court of Chan-
cery.

Petition of Appeal.

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To the Honorable, the Court of Errors and Appeals,
the Last Resort in All Causes:

The petition of Antoinetta Di Paola (also known
as Annie Di Paola) and John C. Manna, respect-
fully shows:

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1. Your petitioners find themselves aggrieved
by a final decree made in the Court of Chancery
by his Honor Edwin Robert Walker, Chancellor of
the State of New Jersey, upon the advice of Vice
Chancellor Alonzo Church, bearing date July 29,
1930, in a certain cause in said Court of Chancery
wherein the said Antoinetta Di Paola and John
C. Manna were complainants, and the said The
Trust Company of Orange, a corporation, Helen A.
McCarthy and Joseph P. Weber were defendants,
in this respect, to wit, that the said decree orders,
adjudges and decrees that the complainants' bill
of complaint be and the same was thereby dis-
missed, with costs.

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Petition of Appeal.

2. Your petitioners appeal from the decree of the Chancellor which decrees as aforesaid, on the ground that the said bill of complaint disclosed a good cause of action in equity and that complainants were, upon the allegations in their bill of complaint set forth, supported by affidavits filed in said cause, entitled to the relief prayed for in said bill of complaint, and were entitled to have said cause proceed to final hearing on the merits of the case, and that said bill of complaint should not, therefore, have been dismissed.

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Your petitioners therefore pray that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

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WILLIAM A. LORD,
Solicitor for and of Counsel
with Appellants.

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11 MAY. 1 1931

New Jersey Court of Errors and Appeals

ANTOINETTA DI PAOLA, also known
as ANNIE DI PAOLA, and JOHN
C. MANNA,

Complainants-Appellants,

v.

THE TRUST COMPANY OF ORANGE,
HELEN A. MCCARTHY and
JOSEPH P. WEBER,

Defendants-Respondents.

On Appeal from
Chancery.

BRIEF OF COMPLAINANTS-APPELLANTS.

The bill of complaint filed in this cause seeks to restrain a co-obligor on a note, the defendant Joseph P. Weber, from enforcing collection of the balance due upon a judgment obtained thereon against him and his co-obligors, the complainants, under an execution which he had issued on said judgment in the name of the Trust Company of Orange, the original holder of said judgment, after obtaining an assignment thereof to his stenographer, for his benefit, whereas his co-obligors, the complainants, the bill sets forth, had paid their just portion of the judgment and the balance due thereon was justly and properly payable by him, and the bill prays that he be decreed to cancel said judgment of record. The Vice-Chancellor advised a decree dismissing the bill for the reasons set forth in the opinion (p. 35 of the Case), and from this decree complainants appeal.

attorney's

We make the following points against the reasons urged by the defendants for dismissal of the bill as set forth in their motion to strike out same (p. 18), to wit:

I.

It was not necessary to allege fraud in the procurement of the judgment in question in order to maintain our bill of complaint for our bill was based upon the inequitable action of the defendant Joseph P. Weber in seeking to collect from the complainants, through a third party, the portion of said judgment which he was by law, right, equity and justice obligated to pay, the complainants having paid their portion thereof, and there being, of course, no allegation that the judgment itself was procured by fraud. The mere statement of this proposition refutes the contention of the defendants that the bill should have been dismissed for such a reason.

II.

The complainants are not in laches as contended by the solicitor for the defendants and as held by the learned Vice-Chancellor in his opinion because the judgment was obtained on October 18, 1928, and the bill was not filed until July 3, 1930, because during that time payments had been made by complainants on account of the judgment in question, amounting, on September 23, 1929, to \$900.00, as set forth in Paragraph 7 of the bill of complaint (p. 5), which, it is alleged, discharged their portion of the judgment and left the balance to be paid by Weber, and they had a right to rely upon Weber's paying the balance thereof which was properly his share, but he made no move in the matter until June 4, 1930, after he had, on April 28, 1930, secured an assignment of said judgment in

the name of the stenographer in his ^{attorney's} office, but for his benefit, and when (June 4, 1930, not October 18, 1928, as erroneously stated by the learned Vice-Chancellor in his opinion) he caused an execution to be issued thereon, but in the name of the Trust Company of Orange instead of in his name or the name of the assignee who was holding same for him (see p. 4) and proceeded to the enforcement of said execution against the complainants when they had already paid their share of the judgment, after which, very promptly and in less than a month, complainants filed their bill of complaint in this cause to have their rights protected. Surely, in this situation, there was no laches on the part of the complainants in bringing this action.

III.

Surely the bill of complaint cannot be considered as sham, as contended by the defendants, for the allegations of the complainants are amply supported by the affidavits attached to the bill and the affidavits submitted in opposition to the motion to strike out the bill (pp. 7-17, 27-33).

IV.

The defendants seem to contend in their last reason for moving to dismiss the bill that we cannot maintain same because the judgment was duly and lawfully recovered and seems to rely on the same case cited by the Vice-Chancellor in his opinion (p. 36) of *Brown v. White*, 29 N. J. L. 514, which is not in point. That was an action at law in which this Court very properly held that where one of several defendants pays plaintiff a certain sum which he agrees to accept in satisfaction of a judgment and procures an assignment of the judgment to himself or to a third person for his benefit his

payment does not operate as a satisfaction of the judgment as to any of the defendants except the one paying the money, which is almost the reverse of our situation where the complainants, two of the three defendants in the judgment in question, have paid their just proportion of the judgment and the third defendant, the defendant Joseph P. Weber, has paid his proportion to the original holder of the judgment but, through an assignment made by it to his stenographer, is trying to collect from these complainants the amount he paid and which was justly due and owing by him and not by them. And the Court in that very case said (p. 516): "We are not now called on to determine what the equities between Mr. White and Mr. Robeson [the co-defendants] are but simply whether what has been done amounted to a legal satisfaction of the judgment." In fact in that very case of *Brown v. White*, Judge VREDENBURGH said in the Supreme Court, 29 N. J. L. 307, 313: "Where a defendant pays off a judgment his rights, as against his co-defendants, are to collect from them, by action for money paid, their proportionate share of what he had overpaid and not to use the lien of his judgment to collect from them the unpaid balance," and with this statement of the law this Court did not dissent in reversing the judgment below.

attorneys

Of course it would be absurd for the defendants to contend that complainants can be forced by execution, or otherwise, to pay Weber's proportion of the debt to Weber (though his stenographer) and then as their only redress, be compelled to sue him in an action at law in an effort to get it back again from him.

attorneys

Likewise, the case of *McKenna v. Corcoran*, 70 N. J. L. 627, cited by the learned Vice-Chancellor, is not in point for there it was merely held that

where separate judgments are recovered against the maker and endorser of a note and the latter, who is surety, pays the judgment against himself, the payment does not operate as a satisfaction of the judgment against the principal and the surety is entitled to have the creditor assign the judgment to him on paying the costs incurred in its recovery, with which proposition of law we are in hearty accord, but it does not apply here where we are seeking to restrain the co-obligor on a note, who has not paid his proportion thereof or who has only paid his proportion thereof, from seeking to recover his proportion from the complainants who have already paid theirs.

It is well settled that where one of several co-defendants has been compelled to pay the amount of a judgment or decree founded on contract he may compel contribution from the others (19 C. J. 827 and cases cited), and it is well settled that the right of contribution may be enforced in a court of equity, especially where multiplicity of suits can be prevented, and in many respects the remedy in equity is superior to that at law. 13 C. J. 833 and cases cited.

The general rule is that it is not competent for one of the joint defendants, on paying the judgment, to take an assignment of it to himself, or to a third person for his benefit, so as to wield it against his co-defendants, and a judgment-debtor paying the judgment will generally be entitled to contribution from his co-debtors or, according to some authorities, to be subrogated to the rights of the judgment-debtor to the extent to which payment was made for the benefit or on behalf of the co-debtor, but he cannot maintain an action in the name of the original creditor against the co-defendants and is not, in the absence of statute,

entitled to issue or enforce execution on the judgment. 34 C. J. 690 and cases cited.

But here we have a case, as made out by the bill of complaint, where the complainants, two of three co-obligors, have paid their portion of the obligation, and the defendant, Joseph P. Weber, the remaining obligor, has either not paid his portion of the obligation or has paid it and is seeking to get it back from the complainants so as to thereby compel them to pay the entire obligation and free himself from bearing his part of the burden, and to restrain him from doing so the complainants have brought this action. Of course, a court of equity is the only court in which we can get relief, especially as he is proceeding in the name of another.

We cannot avoid the impression that the learned Vice-Chancellor, in the hurried presentation of the matter to him on a crowded motion day, failed to grasp the purport or object of the bill and the facts and circumstances as therein set forth, due to counsel, perhaps, and through no fault of his.

V.

The learned Vice-Chancellor alludes in his opinion to the fact that the Trust Company of Orange, it would seem to him, ceases to be a party to the litigation and this undoubtedly would be true except that the defendant, Joseph P. Weber, took it upon himself not to issue the execution in his own name or in the name of the assignee of the judgment but in the name of the Trust Company of Orange, the original holder of the judgment (p. 4, l. 9), and, therefore, it was deemed necessary to make it a party to the action in case it should still claim any rights in the judgment and execution issued thereon.

For the foregoing reasons the decree dismissing the bill of complaint should be reversed, with costs, and the cause remitted to the Court of Chancery to be proceeded upon to a final hearing.

Respectfully submitted,

WILLIAM A. LORD,
*Solicitor for and of Counsel
with Complainants.*

11 MAY. T. 1931

New Jersey Court of Errors and Appeals

ANTOINETTA DiPAOLA, also known
as ANNIE DiPAOLA, and JOHN C.
MANNA,

Complainants-Appellants,

v.

THE TRUST COMPANY OF ORANGE,
HELEN A. McCARTHY and
JOSEPH P. WEBER,

Defendants-Respondents.

On Appeal
from
Chancery.

BRIEF OF DEFENDANTS-RESPONDENTS.

(Italics Ours.)

Before taking up the individual points relied upon by complainants-appellants as sufficient to disturb the order of the court below, the defendants-respondents bring to this Court's attention a pithy fact:

In paragraph two of the prayers of the dismissed bill of complaint, relief is sought by way of restraint of proceedings at law after judgment (p. 6, line 15).

The statute provides that no injunction shall issue to stay proceedings at law in any personal action after judgment, on the application of a defendant in the said proceedings at law, unless

a sum of money equal to the amount due at the time of such deposit upon said judgment, with costs, shall be *first* deposited with the clerk of the court by the applicant for such injunction, or unless said applicant shall give such security, by bond, as the chancellor shall deem good, to the party or parties at law against whom such injunction is prayed, in double the amount then due on such judgment and costs at law with condition to abide such order or decree as the chancellor shall make in the premises; or if the bill is dismissed to pay the amount of the said judgment and costs, with the interest thereon (1 C. S. 434, sec. 64).

This provision of the Chancery Act is peremptory, and neither the Court of Chancery nor the Court of Errors and Appeals can dispense even temporarily with the conditions imposed by it, or any part of them (*Kocher & Trier on New Jersey Chancery Practice and Precedents*, p. 1138, sec. 1585, and cases cited).

No such deposit of security has been made (State of Case).

I.

Without reference to authority or facts, the complainants-appellants in Point I of their brief "hold" that Joseph P. Weber's action was inequitable and that he was by law, right, equity and justice obligated to pay the judgment in question.

This statement of opinion is hardly sufficient to require a denial. If, as conceded, there was no fraud in procuring the judgment, where is the unfairness in executing it? The complainants apparently contend that the right of contribution among joint judgment obligors is extinguished by this procedure.

Such is not true. In equity, where a decree is against three defendants equally bound to pay, and

an execution is directed against two of them only, they cannot complain because it is issued against them alone, for, if entitled to indemnity, they may have relief against their co-defendant for any amount they may be obliged to pay (*Ruckman v. Decker*, 28 N. J. Eq. 5).

In law, it has been held that one of several partners owing a debt may buy it up, have it assigned to a friend and collect it in his name. Using the language of Baron Parke, "If the debt be kept alive at the time, it cannot be satisfied by the very act which keeps it alive. To construe that as a payment which is meant to be an assignment is a contradiction in terms." (*McIntire v. Miller*, 13 Meeson & Welsby 728, cited in *Brown v. White*, 29 N. J. L. 514.)

If, in both law and equity, the practice is permissible, we respectfully contend that our adversary's argument falls short of conviction without citation of authority.

II.

If the complainants intended to hold Joseph P. Weber as jointly responsible in the payment of the judgment in question, why did they make payments to The Trust Company of Orange without some such specific understanding?

While we are not relying on laches alone to sustain the order dismissing the bill, we dispute the statement that complainants took action in "less than a month" to protect their interests. The Sheriff's sales alone were carried along for a long period of time on the constant request and representation that the balance due on the judgment would be paid by complainants here (see p. 22, lines 40, *et seq.*).

It is remarked here that the court below had a right to order a dismissal of the bill on its own

initiative by reason of its adjectival defects (Chancery Rule 53). It is fourteen pages in length with its supporting affidavits. The task of meeting multifarious allegations with denials is difficult, obviously, and would have resulted in cumbersome pleading. To our mind it contains nearly each of the defects: Unnecessary repetition, prolixity, impertinence, obscurity and uncertainty.

While the rule cited (P. L. 1915, p. 193, Rule 140), suggests amendments of the defects, we state that "an order that would be just" in the circumstances would be a dismissal, as fairness to the contrary pleader, were it not that other grounds exist for the dismissal.

The six printed pages of the bill of complaint, exclusive of the supporting affidavits, were required to state a simple, if not legitimate, cause of action.

III.

Examination of the affidavits of Frederick T. Cramer (p. 25), a disinterested officer of The Trust Company of Orange, and Fred E. Manuel (p. 24), president of the Titanic Realty Company, who was a judgment-debtor, together with that of Joseph P. Weber, is adequate to support the allegation that the bill of complaint is sham.

IV.

It will be seen by cursory examination of the affidavits that there are many disputes of facts involved in the entire transaction. As an instance, Weber claims he was brought into the arrangement to accommodate the complainants, who planned to use the same means to pay him off for work, services and materials he had given as an

electrical contractor. See paragraphs five, six and seven of Weber's affidavit (p. 20, lines 26, *et seq.*).

What is "absurd" about complainants' seeking relief against their co-defendant Weber for any amount they may be obliged to pay, if, in the same action, a cross-action can be maintained to settle the points in dispute?

Why should equity intervene, the action being solely one of law and the remedy adequate?

(*See Stratton v. Allen*, 16 Eq. 229.)

V.

In paragraph six of the bill (p. 3, line 40), the assignments by The Trust Company of Orange through Bocchieri to Helen A. McCarthy are set up. If the same was assigned twice, we wonder why "it was deemed necessary to make it (Trust Company) a party to the action in case it should still claim any rights in the judgment and execution thereon." It ceases to be a party to the litigation, as the Vice-Chancellor pointed out, on the assignment. If the Trust Company had any rights, it would have to look to the party assignee or assignees for redress.

An assignment is a transfer or setting over of property, or of some right or interest therein, from one person to another, and unless in some way qualified, *it is properly the transfer of one's whole interest in an estate or chattel or other thing.* The word is limited in its ordinary application to the transfer of those things which are commonly designated choses in action, and to rights in or connected with property as distinguished from the particular item of property itself (*Ballentine's Law Dictionary*).

CONCLUSION.

Because the complainants have failed to file security for the amount due on the judgment obtained at law and because they have failed to set up a cause of action, the order dismissing the bill should be sustained, with costs.

Respectfully submitted,

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with Complainants.*

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On the Brief.

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