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BILL OF COMPLAINT.

Filed August 15, 1929.

In Chancery of New Jersey

To His Honor Edwin Robert Walker Chancellor of the State of New Jersey:

The complainant, Lillian Clawans, who resides in the City of Newark, County of Essex, and State of New Jersey, says:

1. On August 3rd, A. D., 1928, and for a long time previous thereto and after said date, complainant was in possession of premises in the City of Newark, County of Essex, and State of New Jersey, and particularly described as follows:

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

BEGINNING at a point in the easterly line of Gladstone avenue (formerly West Side avenue) at a point therein distant two hundred and fifty feet southerly from the southerly line of So. Orange avenue; thence running along the line of Gladstone avenue (formerly West Side avenue) South twenty-seven degrees, fifty-nine minutes west thirty feet; thence south sixty-two degrees, one minute East eighty-three feet and twenty-five hundredths feet; thence north sixty-two degrees, one minute West eighty-three feet and twenty-five hundredths feet to the easterly line of Gladstone avenue and the place of BEGINNING.

2. On August 3rd, A. D., 1928, the premises above described was purchased by Morris W. Shapiro through Max Goldberg with moneys furnished by complainant and said purchase made by said Max Goldberg was made for and on behalf of complainant with the express understanding and agreement that said title was to be held by said Max Goldberg in trust for complainant for the sole purpose of reconveyance to complainant immediately thereafter.

3. Morris W. Shapiro, at the times herein stated, was counsel for and represented the defendant, Ordway Building and Loan Association, as its agent and attorney in the various matters herein stated.

4. Said Max Goldberg was, at the times herein stated, employed in the office of the said Morris W. Shapiro as a clerk.

5. On or about August 3rd, A. D., 1928, the said Max Goldberg for and on behalf of executed and delivered a deed of conveyance of the above described premises to complainant and the said Morris W. Shapiro took said deed for the purpose of recording the same in the Essex County Register's Office.

6. Said Morris W. Shapiro at various times represented and stated to complainant that said deed had been recorded and complainant often requested delivery of said deed from the said Morris W. Shapiro to complainant. Contrary to said promises and representations made by the said Morris W. Shapiro to complainant, said deed of conveyance from said Max Goldberg to complainant was never recorded by the said Morris W. Shapiro.

7. Immediately after ascertaining that said deed had not been recorded by the said Morris W. Shapiro, complainant insisted on delivery of said deed to complainant and upon receipt of said deed complainant immediately recorded said deed in the Essex County Register's Office.

8. In the meantime and on or about August 3rd, A. D., 1928, the said Max Goldberg, at the request of the said Morris W. Shapiro, signed and executed a certain document, purporting to be a bond, to the Ordway Building and Loan Association, in the penal sum of $14,000 to secure the principal sum of $7,000 and also signed another paper, purporting to be a mortgage, in the sum of $7,000, securing said bond to the said Ordway Building and Loan Association and covering the premises above described, which mortgage was recorded in the Essex County Register's Office in Book F. 65 of Mortgages on page 303.

9. Said bond and mortgage referred to in paragraph 8 hereof was executed and recorded without the knowledge or consent of the said Max Goldberg and the said Max Goldberg never received any of the proceeds of said mortgage loan or any part thereof, or ever had any knowledge of said loan.

10. Said bond and mortgage referred to in paragraph 8 hereof was executed and recorded without the knowledge or consent of complainant and complainant never received any of the proceeds of said alleged mortgage loan or any part thereof, and never had any knowledge of said mortgage loan.

11. Said Max Goldberg did not read either of said purported bond and mortgage and did not know the contents thereof, but signed both of said documents relying upon the assurance of the said Morris W. Shapiro that same covered and affected some property of the Mammoth Realty Co., one of Morris W. Shapiro's company, and of which the said Max Goldberg was nominal president, or some property in which the said Morris W. Shapiro was in some way interested.

12. There was no consideration whatsoever paid by the said Ordway Building and Loan Association for said alleged bond and mortgage and there is no money due or owing on said alleged bond and mortgage referred to above.

13. Said mortgage constitutes an apparent encumbrance against the premises above described.

14. Complainant is the owner of the fee of the said premises above described free and clear of all encumbrances whatsoever and particularly of the alleged mortgage of the said defendant, Ordway Building and Loan Association, above described.

Said Complainant, Lillian Clawans, being without remedy in the courts of law and therefore prays :

1. That the said Ordway Building and Loan Association may answer this bill of complaint, without oath, and each statement herein made.

2. That a writ of subpoena may issue commanding the said Ordway Building and Loan Association to answer this bill of complaint and

to abide by such decree as this court may make in the premises.

3. That it be adjudged and decreed that the mortgage purported to be executed by the said Max Goldberg to the said defendant, Ordway Building and Loan Association, be null, void and of no effect and that it does not constitute a lien or encumbrance against the lands and premises above described.

4. That said defendant, Ordway Building and Loan Association, be directed and compelled by the decree of this court to surrender up and deliver, duly endorsed for cancellation, the aforesaid mortgage.

5. That the said defendant, Ordway Building and Loan Association, be restrained from assigning, pledging or otherwise transferring the said bond and mortgage.

6. That complainant shall have such further and other relief as may be just and equitable in the premises.

F. D. MASUCCI,
Solicitor for and of Counsel
with Complainant.

AMENDED ANSWER AND COUNTER-CLAIM.

Filed September 4, 1929.

IN CHANCERY OF NEW JERSEY.

Between LILLIAN CLAWANS, *Complainant,* *and* ORDWAY BUILDING AND LOAN ASSOCIATION, *Defendant.*	*On Bill, &c.* *Amended Answer and Counter-claim.*

Defendant, Ordway Building and Loan Association, in answer to complainant's bill of complaint says that:

1. Paragraphs 1, 2 and 3 are denied.

2. Defendant has no knowledge or information as to the allegations of paragraph 4 sufficient to form a belief and leaves complainant to her proof.

3. Paragraph 5 is denied.

4. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 6, except that defendant denies the existence of the deed mentioned in said paragraph.

5. Paragraph 7 is denied for the reason that it refers to a deed which defendant alleges was not in existence or ever executed.

6. Defendant admits the execution of the bond and mortgage from Max Goldberg to defendant,

alleged in paragraph 8 but denies the innuendo contained in said paragraph to the effect that said bond and mortgage are papers only purporting to be a bond and mortgage.

7. Paragraph 9 is denied.

8. Defendant has no knowledge or information sufficient to form a belief as to the allegations of paragraph 10.

9. Paragraphs 11, 12, 13 and 14 are denied.

10. Paragraph 3 of the bill of complaint was denied in this answer for the reason that said paragraph alleged that Morris W. Shapiro was agent and attorney of the defendant in the various matters in the bill of complaint stated. Said Morris W. Shapiro was not the agent and attorney for the defendant in the various matters stated in the bill of complaint although he was the agent of the defendant for the purpose of attending to its legal protection and disbursements of its funds in loans made by the defendant to its borrowers in the carrying out of the purpose for which it was incorporated.

11. In the various matters and things stated in the bill of complaint, the said Morris W. Shapiro was the agent and attorney of the complainant and not acting as the agent and attorney of the defendant.

12. Said Max Goldberg mentioned in the bill of complaint was not the trustee, agent or fiduciary of the complaint in the various transactions alleged in the bill of complaint but was the servant and employee of complainant's agent, Morris W. Shapiro.

13. This defendant alleges that in the due course of its business it received an application from said Max Goldberg for a loan on premises No. 22 Gladstone avenue, Newark, New Jersey, which are the premises described in the bill of complaint and that after examination of said premises by its duly authorized committee, the defendant granted a loan to the applicant on said premises in the sum of Seven Thousand Dollars ($7,000.00).

14. That pursuant to the application for the said loan and granting of same, said Morris W. Shapiro on behalf of the defendant, examined the title to said premises or purported to do the same and delivered to defendant a bond and mortgage of said Max Goldberg which bond and mortgage is a first lien on said premises and said Morris W. Shapiro disbursed the sum of Seven Thousand Dollars ($7,000.00) on account of said mortgage loan paying the same to the mortgagor.

15. Defendant had no knowledge as to the relationship of said Morris W. Shapiro to the complainant or to the said Max Goldberg.

16. Said Max Goldberg did not execute and deliver a deed of conveyance of the said premises to complainant on or about August 3, 1928 as alleged in paragarph 5 of the bill of complaint nor did complainant immediately record the deed mentioned in paragraph 7 after delivery of said deed to complainant as alleged in said paragraph 7 for the reason that no deed was made from said Max Goldberg to complainant until January 3, 1929 and a deed dated January 3, 1929 for said premises from said Max Goldberg to complainant was recorded June 7, 1929 in the

office of the Register of Essex County in Book Q 79 of Deeds, page 427 which deed was acknowledged before the said Morris W. Shapiro as an attorney-at-law.

17. Said deed was recorded by the complainant after said Morris W. Shapiro disappeared from the City of Newark which was during the month of May, 1929, after having defaulted in his trust to defendant and others, including the complainant.

18. Defendant is a bona fide mortgagee of said premises, for value, and its said mortgage is a record lien on said premises prior to the time complainant received and recorded her deed to said premises and defendant had no notice of any interest complainant might have had in said premises, if any, prior to the time of recording of her said deed.

By way of counter-claim against the complainant Lillian Clawans and third parties, J. Frank Hatch, Charles Bennett, trading as Bennett's Garage, Public Service Transportation Co., a corporation, William J. O'Connor, Howard Birch and Henry F. Burns, this defendant, Ordway Building and Loan Association says that:

1. On August 3, 1928, Max Goldberg, being indebted to the defendant Ordway Building and Loan Association in the sum of Seven Thousand Dollars ($7,000.00), executed to said defendant, a bond of that date, to secure that sum, payable in installments of Thirty-five Dollars ($35.00) per month during the continuance of said defendant as such association, or until the thirty-five (35) shares owned by the said Max Goldberg

in the said association, and asisgned as collateral security for the payment of said money, should have matured, with interest on the sum of Seven Thousand Dollars ($7,000.00), at the rate of 6% per annum, payable monthly, amounting to the sum of Thirty-five Dollars ($35.00) per month, the first payment to be made on or before August 28, 1928, and all subsequent monthly payments to be made on or before the fourth Tuesday of each and every month thereafter, and also to pay to said defendant or its successors or assigns, during the period aforesaid, all fines, forfeitures and other payments that might become due and payable from and might be charged or imposed upon the said Max Goldberg or his assigns, as the holders of such shares, pursuant to the constitution of said association, and the by-laws, rules and regulations thereof.

2. The said bond contained an agreement that should any default be made in the payment of said interest, or installment on said shares, or any part thereof, on any day wherein same was made payable, and should the same remain unpaid and in arrears for the space of three months, then the whole principal sum with all arrearages of interest thereon, should, at the option of defendant, Ordway Building and Loan Association, its successors or assigns become and be due immediately.

3. To secure payment of the aforesaid bond, and Max Goldberg executed to said defendant Ordway Building and Loan Association, a mortgage of even date with said bond which mortgage was a purchase money mortgage and thereby conveyed to it in fee the lands hereinafter described on the express condition that such con-

veyance should be void if payment should be made according to the terms of the bond, which mortgage having been first duly acknowledged and the certificate of acknowledgment duly endorsed thereon, was on August 6, 1928, recorded in the Register's Office of said County of Essex in Book E 65 of Mortgages for said County, page 303.

4. The mortgaged premises are described as follows: Premises in the City of Newark, County of Essex and State of New Jersey:

BEGINNING at a point in the easterly line of Gladstone avenue (formerly West Side avenue) at a point therein distant two hundred fifty feet southerly from the southerly line of So. Orange avenue; thence running along the line of Gladstone avenue south twenty-seven degrees, fifty-nine minutes west thirty feet; thence south sixty-two degrees, one minute east eighty-three feet and twenty-five hundredths of a foot; thence north twenty-seven degrees fifty-nine minutes east thirty feet; thence north sixty-two degrees 1 minute west eighty-three feet and twenty-five hundredths of a foot to the easterly line of Gladstone avenue and place of BEGINNING.

Being commonly known and designated as No. 22 Gladstone avenue.

5. By deed dated January 3, 1929 and recorded June 7, 1929, said Max Goldberg conveyed said premises to Lillian Clawans, said Max Goldberg being unmarried at the time of said conveyance.

6. Said Lillian Glawans is unmarried. Any interest which said Lillian Clawans may have in said premises is subject to the lien of defend-

ant, Ordway Building and Loan Association's mortgage.

7. On March 3, 1925, William J. O'Connor secured a judgment against Lillian Clawans in the sum of $1,048.60 in the New Jersey Supreme Court. Any interest said William J. O'Connor may have in said premises is subject to the lien of defendant Ordway Building and Loan Association's Mortgage.

8. On December 7, 1926, William J. O'Connor, Howard Birch and Henry F. Burns secured a judgment against Lillian Clawans in the sum of $42.10 in the New Jersey Supreme Court. Any interest said William J. O'Connor, Howard Birch and Henry F. Burns may have in said premises is subject to the lien of defendant, Ordway Building and Loan Association's mortgage.

9. On November 22, 1927, J. Frank Hatch secured a judgment against Lillian Clawans in the sum of $81.75 in the Essex County Circuit Court which judgment is recorded in the Clerk's Office of Essex County in Book 103 of Circuit Court judgments, page 479. Any interest said J. Frank Hatch may have in said premises is subject to the lien of defendant, Ordway Building and Loan Association's mortgage.

10. On January 5, 1928, Charles Bennett, trading as Bennett's Garage, recovered a judgment against Lillian Clawans in the Essex County Circuit Court in the sum of $81.30 which judgment is recorded in the Clerk's Office of Essex County in Book 104 of Circuit Court judgments, page 15. Any interest which said Charles Bennett trading as Bennett's Garage may have in said premises is subject to the lien of defendant,

Ordway Building and Loan Association's mortgage.

11. On March 26, 1929 said Max Goldberg or Lillian Clawans made default in the payment of said monthly installments and payments of interest due upon said bond and mortgage, and the same have remained unpaid and in arrears for the space of six months thereafter, and no part thereof has yet been paid. Defendant, Ordway Building and Loan Association has elected that the whole principal sum, with all unpaid interest, shall not be due.

12. There is due on account of the principal of defendant Ordway Building and Loan Association's bond and mortgage the sum of Seven Thousand Dollars ($7,000.00) with interest from February 26, 1929, on account of which complainant is entitled to a credit of Two Hundred Eighty Dollars ($280.00) for payment on account of dues paid in.

13. There is due to defendant Ordway Building and Loan Association Twenty-one Dollars ($21.00) for fines charged on account of said loan for non-payment of dues and interest.

14. The said Max Goldberg has always been in possession of the mortgaged premises until the time of conveyance of said premises to Lillian Clawans.

This defendant therefore prays:

1. That Lillian Clawans, complainant, J. Frank Hatch, Charles Bennett, trading as Bennett's Garage, Public Service Transportation Co., a corporation, William J. O'Connor, Howard

Birch and Henry F. Burns, may answer this counter-claim and each statement herein made.

2. That an account may be taken of the amount due on this defendant's mortgage.

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

4. That a decree may be made for the sale of the mortgaged premises to raise and pay to this defendant the amount so found due on its mortgage, with interest and costs.

5. That a writ of subpoena may issue, commanding said third parties, J. Frank Hatch, Charles Bennett trading as Bennett's Garage, Public Service Transportation Co., a corporation, William J. O'Connor, Howard Birch and Henry F. Burns, to answer this counter-claim and to abide by such decree as this Court may make in the premises.

JOSEPH SUSSKIND,
Solicitor of Defendant, Ordway
Building and Loan Association.

REPLICATION AND ANSWER TO COUNTER-CLAIM.

Filed October 3, 1929.

IN CHANCERY OF NEW JERSEY.

Between LILLIAN CLAWANS, *Complainant,* *and* ORDWAY BUILDING AND LOAN ASSOCIATION, *Defendant.*	*On Bill, &c.* *Replication and Answer to Counter-Claim.*

The plaintiff joins issue on the answer of the defendant.

As to the counter-claim contained in said answer complainant says:

1. Denies paragraphs 1, 3, 6, 11, 12, 13 and 14.

2. Has no knowledge sufficient to form a belief as to paragraphs 2, 9, 10 and therefore puts defendant to its proof.

3. As to paragraph 4 complainant admits that the description therein set forth is the same as that set forth in the alleged mortgage of said defendant.

4. As to paragraph 5 complainant admits the execution of the deed therein referred to but denies that said deed was executed on the date in said paragraph stated.

Replication to Answer of Complainant.

5. As to paragraph 7 complainant has no knowledge as to the record of said judgment but says that the judgment has been fully paid and satisfied.

F. D. MASUCCI,
Solicitor of Complainant.

10

REPLICATION OF ORDWAY BUILDING & LOAN ASSOCIATION TO ANSWER OF COMPLAINANT TO COUNTER-CLAIM.

Filed October 10, 1929.

IN CHANCERY OF NEW JERSEY.

20

74/477

Between

LILLIAN CLAWANS,
Complainant,

and

ORDWAY BUILDING AND LOAN ASSOCIATION,
Defendant.

30

On Bill, &c.

Replication of Ordway Building & Loan Association to Answer of Complainant to Counter-Claim.

The defendant Ordway Building & Loan Association joins issue with the complainant on the complainant's answer to said defendant's counter-claim.

JOSEPH SUSSKIND,
Solicitor of Defendant, Ordway Building & Loan Associtaion.

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ORDER OF REFERENCE.

Filed October 18, 1929.

IN CHANCERY OF NEW JERSEY.

Between	
LILLIAN CLAWANS, *Complainant,*	*On Bill, Etc.*
and	*Order of Reference.*
ORDWAY BUILDING AND LOAN ASSOCIATION, *Defendant.*	

This matter being opened to the Court by F. D. Masucci, solicitor of complainant, and Joseph Susskind, solicitor of defendant, Ordway Building and Loan Association, and Nicholas LaVecchia, solicitor of defendant, Charles Bennett, Jr., and the respective solicitors consenting hereto in writing;

It is on this 18th day of October 1929, ORDERED that the above stated cause be referred to the Honorable John J. Fallon one of the Vice-Chancellors of this Court to hear the same for the Chancellor and to report thereon to him and advise what ORDER or DECREE should be made therein.

E. R. WALKER,

C.

Order of Reference.

We consent to the entry of the foregoing ORDER.

JOSEPH SUSSKIND,
Solicitor for Defendant, Ordway
Building and Loan Association.

NICHOLAS LAVECCHIA,
Solicitor for Defendant,
Charles Bennett, Jr.

NOTICE.

Filed October 25, 1929.

IN CHANCERY OF NEW JERSEY.

Between LILLIAN CLAWANS, *Complainant,* *and* ORDWAY BUILDING AND LOAN ASSOCIATION, *Defendant.*	*On Bill, Etc.* *Notice.*

To Joseph Susskind, solicitor for defendant:

PLEASE TAKE NOTICE that the complainant will apply to the Honorable John J. Fallon, one of the Vice-Chancellors of this Court, to whom the above stated cause has been referred to at 1 Exchange Place, Jersey City, New Jersey, on Monday, October 29, 1929, at ten o'clock in the forenoon for an order setting the above stated case down for trial.

F. D. MASUCCI,
Solicitor for and of Counsel
with Complainant.

Service of a copy of the within Notice is hereby acknowledged this 24 day of October, 1929.

JOSEPH SUSSKIND,
Solicitor for and of Counsel
with Defendant.

ORDER OF DESIGNATION.

Filed November 12, 1929.

IN CHANCERY OF NEW JERSEY.

Between	
LILLIAN CLAWANS, *Complainant,*	*On Bill, &c.*
and	*Order of Designation.*
ORDWAY BUILDING AND LOAN ASSOCIATION, *Defendant.*	

This matter being open to the Court by F. D. Masucci, solicitor of complainant, and it appearing that due notice of this application has been given to Joseph Susskind, solicitor of defendant, and to Nicholas LaVecchia, solicitor of Charles Bennett, Jr.;

It is, on this 12th day of November, A. D. 1929, Ordered that the 11th day of December, A. D. 1929, at the hour of ten o'clock in the forenoon, at the Chancery Chambers, Exchange Place, Jersey City, New Jersey, be designated as the time and place for the hearing of the above-entitled cause.

JNO. J. FALLON,
V.-C.

Filed November 12, 1929.

J. J. F.,
V.-C.

Received in office November 15, 1929.

FERD GARRETSON.

MEMORANDUM OF VICE-CHANCELLOR.

Filed July 17, 1931.

IN CHANCERY OF NEW JERSEY.

Between	
LILLIAN CLAWANS, *Complainant,*	*74-477.*
and	*On Bill, Etc.*
ORDWAY BUILDING AND LOAN ASSOCIATION, *Defendant.*	*Memorandum.*

(Not for publication in the official or unofficial reports.)

Mr. F. D. Masucci, for complainant.

Mr. Joseph Susskind, for defendant.

FALLON, *V.-C.*

On July 3, 1928, a contract was entered into by Morris W. Shapiro, acting as agent for complainant herein, for the purchase of the premises described in the bill of complaint for the sum of $9,000. The sum of $1,000 was paid as a deposit on the execution of the contract. The complainant shortly thereafter turned over to Shapiro the sum of $2,000 to be applied on payment of the purchase price, and the remaining sum of $6,000 was to be paid by Shapiro from moneys owing to complainant which Shapiro had control of. The undisputed evidence in the case is that the aforesaid balance of $6,000 of the purchase price was paid by Shapiro out of the proceeds of a mortgage loan made by defendant

to one Max Goldberg, a clerk in the employ of Shapiro, who executed a bond and mortgage therefor. The $6,000 mortgage loan by defendant was arranged by Shapiro, who was the attorney of the defendant, Ordway Building & Loan Association. It is conceded by the parties in interest herein that Shapiro at the time of the aforesaid transaction was a lawyer of good repute, yet subsequent developments indicated that he was very dishonest, so much so, that he was prosecuted and convicted for the perpetration of a fraud and is now serving a long term in prison. The proofs herein establish that the sum of $3,000 of the purchase price of $9,000 was advanced by complainant to Shapiro, and that said sum of $3,000 was paid by Shapiro to the vendor named in the contract of purchase. The controversy herein relates particularly to the sum of $6,000 which was paid to the vendor at the time of the closing of the contract. The proofs herein establish that the vendor and his attorney were well aware that the complainant was the real party in interest in the contract entered into between the vendor and Shapiro. On the date of closing the contract Shapiro requested the attorney of the vendor to have the vendor make the deed of the property contracted to be conveyed, to Max Goldberg, a clerk in Shapiro's employ. The attorney for the vendor had Shapiro endorse upon the contract an assignment thereof to Max Goldberg, and thereupon the deed was made to him, although he was an entire stranger to the transaction. Goldberg was unaware that he was the grantee in said deed and was unaware that he was an applicant to the Ordway Building & Loan Association for a mortgage loan upon the property.

He was used by Shapiro as a dummy in the entire transaction. The proofs disclose that Shapiro who, as above stated, was the attorney of the Ordway Building & Loan Association, inquired of the president of said association whether he, Shapiro, might make application to the association for a mortgage loan in the name of his clerk, Max Goldberg. Such inquiry is borne out by the testimony of the president of the association who testified that Shapiro stated to him that he was about to buy a piece of property which was under foreclosure and wanted to put the transaction through in the name of his clerk. The president of the association acquiesced in Shapiro's scheme. Shapiro presented an application to the association for a mortgage loan of $8,000 on an application blank bearing the name Max Goldberg. Goldberg repudiated having made such application. I am convinced that Goldberg knew nothing whatever of the transaction, and that such transaction, as between Shapiro and the president of the Ordway Building & Loan Association, and subsequently between Shapiro and the directors of the association, was without the knowledge of Goldberg. I am of the opinion that the president, secretary and directors of the building and loan association, by enabling Shapiro to obtain a mortgage loan to his clerk, Max Goldberg, to secure which a lien was to be impressed upon the premises described in the bill of complaint, well knowing that Goldberg was merely a dummy for Shapiro, the attorney of their association in said transaction, were perfidious to their trust to the shareholders of the association whose moneys they were thus so carelessly disposing of. Good business practice should have prompted the

officers and directors of said association to obligate Shapiro who, as above stated, was then in good repute, and who was attorney for the association, by having him join in the execution of the bond evidencing the indebtedness intended to be secured by the mortgage, instead of taking the bond of Shapiro's clerk, an impecunious youth, or, in lieu thereof, to have Shapiro become a guarantor of said mortgage loan, and have him execute and deliver to the association his guaranty in writing. The perfidy of such transaction is clearly attributable to the defendant, and the perfidy of defendant's president in permitting the circumlocution resorted to by which Shapiro effected said mortgage loan, is in my judgment reprehensible. The exercise of even a slight degree of diligence by the officers of the defendant would have informed them of the fraud which Shapiro was practicing not only against the association but against the complainant herein. Furthermore, the exercise of reasonable diligence by the officers of defendant, particularly such officers as it is claimed visited the premises which would be subject to the mortgage lien, would have clearly manifested to them that the complainant herein was the equitable owner of said premises. Complainant was unaware that Shapiro had caused the deed for the premises to be made to his clerk, Max Goldberg, as grantee, until after the transaction was closed in the office of the attorney of the grantor. As stated hereinabove the proofs manifest that the attorney for the grantor was well aware that complainant was the real purchaser of the property, notwithstanding Shapiro was named in the contract as vendee, yet he permitted Shapiro to go through the form of assigning the contract

to his clerk, Goldberg, without taking the precaution of requiring notice of the transaction to be given to the complainant. The proofs established herein are overwhelming that complainant was the real owner of the property described in the bill of complaint, that is, the equitable owner thereof, after the making of the contract of purchase therefor by Shapiro in her behalf, being the property described in the aforesaid contract, and which as between Shapiro and the officers of the building and loan association, was to be subject to the $8,000 mortgage loan, application for which was made, as aforesaid, to the defendant, through Shapiro. Numerous witnesses testified that there were several very prominent signs on the property in question, to wit, No. 22 Gladstone avenue, Newark, N. J., clearly observable to passersby on the public street. A sign on a post which supported the porch balcony read "Flat to let—Inquire Within. L. Clawans owner, or call Market 9909." Another such sign was posted in a window of the ground floor of the building. A similar sign was attached to a stake driven into the earth in front of the building. The president and several directors of the defendant association testified that they visited the aforesaid property to make inspection as to whether the property warranted a mortgage loan in the amount applied for. The witnesses disagree in several respects as to the inspection made by them and the persons present at the inspection, but each of them testified that none of them entered upon the building and made inquiry of those residing in the premises as to the ownership of the premises, or as to the rights claimed therein and thereto by the respective parties in occupancy thereof. The slightest in-

quiry by either of them would have brought knowledge to them that the complainant herein resided upon the premises and was in possession thereof as owner. In a brief which the defendant's solicitor submitted to the Court it is conceded that defendant's witnesses differed as to certain parts of the testimony. Such is the fact. The fact that Shapiro asked the president and board of directors of the defendant, constituting the governing body thereof, for the aforesaid loan in the name of his clerk, whom defendant knew or might readily have ascertained was an impecunious youth, is a circumstance which should have aroused the suspicions of the officers of the association and caused them to make due inquiry into the transaction. It is clearly manifest that Shapiro perpetrated a fraud not only upon the defendant, of which he was attorney, but that he also perpetrated a fraud upon the complainant, for whom he was acting as agent in the purchase of the property mentioned. He was not acting as the agent for the complainant in the procurement of a mortgage loan from defendant. Complainant was unaware thereof. The real question to be determined herein is as to which of the persons defrauded should be obliged to bear the onus of the matter. I am of the opinion that the onus must be borne by the defendant, not by complainant. Still I appreciate that the exercise of diligence upon the part of complainant *might* have obviated the fraud perpetrated upon the complainant by Shapiro through the means of his dummy. But, as stated hereinabove, and as conceded by the respective parties hereto, Shapiro was regarded as of good repute at the time of complainant's dealings with him, and in view thereof it ap-

pears to me she was warranted in relying upon his representations as to the reason which actuated him in having the deed to the property which he purchased for her made by the vendor in the name of his clerk, Goldberg, as vendee, and was warranted also in relying upon his representation, as the reason for his failure to deliver promptly to the complainant the deed which would manifest her title, that he was recording the deed from Gross to Goldberg and the deed from Goldberg to complainant. The handwriting on the application to the defendant for the aforesaid mortgage loan, other than the purported signature of Goldberg, is that of Shapiro. This circumstance also, coupled with other circumstances brought to the attention of the officers of the defendant, should have put the defendant upon its inquiry as to the *bona fides* of the transaction. The testimony adduced in the case *sub judice* with respect to the minutes of the association relating to the so-called Goldberg mortgage loan evidences the questionable character of the entire transaction as to its *bona fides*. The minutes appear to have been mutilated and blank spaces were left therein, when written, which were thereafter filled in by the secretary with names which should have been entered when the minutes were written if the mortgage loan transaction was regarded as *bona fide*. The deed from Goldberg to the complainant (Exhibit C. 6) appears to have been typewritten throughout except as to the date of the deed and the date of acknowledgment thereof which were apparently left in blank at the time the deed was typewritten, and the date of the deed and the date of the acknowledgment (January 3, 1929) were written out in ink writing sometime

subsequent. Stress was made by the solicitor of the defendant to the clause contained in the aforesaid deed following the description of the property—"Being the same premises conveyed to the said Max Goldberg by deed dated August 3, 1928 and recorded in the Register's Office of Essex County in Book P 78 of Deeds pages 83-84." The complainant testified that the deed which Shapiro exhibited to her evidencing a conveyance to her from Max Goldberg did not contain any such clause. I believe her testimony in such respect. Retaining the deed, as he did for the purpose of recording same, after exhibiting it to complainant, Shapiro could readily have caused the above quoted recital to be inserted in the deed without complainant being aware thereof until the deed should come to her possession. The proofs disclose that the deed did not come to her possession after Shapiro exhibited same to her, as hereinabove mentioned, until after Shapiro had absconded, and she then received same through the mail and promptly recorded same. The endorsement made upon the deed by the Register of the County of Essex shows it was recorded June 7, 1929. The proofs herein evidence that complainant's arrangement with Shapiro, acting as her agent, was to pay the purchase money of $9,000 from funds which she entrusted to him. $3,000 of the purchase money was paid over to him by her several checks, the remaining sum of $6,000 was to be paid by him from the sum of $10,000 which he held for her, which latter sum came to him, as agent, from another business transaction wherein Shapiro represented complainant. The proofs disclose that Shapiro's dummy in the transaction, Goldberg, did not read the bond and mortgage

which he signed, nor was he aware of the contents thereof. He signed same merely at the request of Shapiro, relying upon his employer's assurance that the papers related to and affected property of the Mammoth Realty Company which was controlled by Shapiro, and of which Goldberg acting as a dummy for Shapiro, was nominal president. After the mortgage transaction in question was effected under circumstances hereinabove mentioned, the defendant was further derelict in exercising reasonable diligence which would have informed it of the fact that the Goldberg mortgage transaction was not *bona fide,* and if such diligence were exercised by the defendant recourse could readily have been had to Shapiro, by suit or otherwise, to circumvent him in the effectuation of the fraud which he perpetrated, and enable both the defendant and the complainant to seek restitution from him of the moneys which he fraudulently obtained from the defendant and applied (in lieu of moneys of the complainant which he should have applied) on the purchase price on the property mentioned. Approximately one year elapsed between the date when the fraud was conceived and perpetrated and the date when Shapiro absconded. Goldberg did not make payment of any of the monthly installments or other charges required to be paid on the bond and mortgage purported to have been made by him to the defendant as his personal transaction. Payment thereof was made by Shapiro. The fact that payments were being made by Shapiro, coupled with the other information which came to the knowledge of the president and treasurer of the defendant, was sufficient, and should have been regarded by said officers as sufficient if they

had been observing due diligence in the performance of their duties as officers of the defendant, to put them on their inquiry, and such inquiry would readily have manifested to them reasons which should require them to cause an investigation of said mortgage transaction and thus bring to light the fraud perpetrated by their attorney Shapiro. Notwithstanding that the application for mortgage loan was in the sum of $8,000, the mortgage to Goldberg appears to be for $7,000. Shapiro manipulated the transaction in a way whereby it would appear that some of the moneys left went to Goldberg, but such is not the fact. I am convinced that Goldberg did not receive any moneys whatever from said transaction. Paragraph 13 of the defendant's counter-claim recites that Goldberg had always had been in possession of the mortgaged premises until the time of the conveyance thereof to complainant. Such is not the fact. Goldberg was never in possession of the premises. If the defendant had made its check for the mortgage moneys in question payable to the order of Max Goldberg the fraud conceived by defendant's attorney Shapiro, and thereafter perpetrated, could readily have been discovered and circumvented. The defendant made its check dated July 26, 1928, in the sum of $6,254.75 payable to the order of "Trustee Account, Ordway B. & L. Assn." A check drawn by Shapiro for $6,000 to the order of Mendel Gross was dated August 3, 1928, and drawn on the Weequahic Trust Company, signed "Trustee Account, Ordway B./L. Assn. Morris W. Shapiro, Trustee." The case *sub judice* is replete with clear and convincing proof of complainant's occupancy of the premises No. 22 Gladstone Avenue,

Newark, N. J., and having made repairs and alterations thereto throughout the years 1928 and 1929. As stated hereinabove the solicitor of the defendant, in a brief submitted to the Court, concedes that defendant's witnesses differ as to certain facts in their respective testimony. In view thereof the Court determines the credibility of witnesses. (*Riehl* v. *Riehl*, 101 N. J. Eq. 15), and the Court in the instant case considers that the testimony of witnesses offered in behalf of complainant is to be regarded as more credible than the testimony offered by witnesses in behalf of the defendant. The defendant's solicitor himself testified as to an alleged conversation with complainant. The complainant denied such conversation. Inasmuch as both the complainant and the solicitor of the defendant are lawyers and therefore officers of the Court, I feel impelled to regard the testimony of each of them as equal in verity, as to the matters related by them, with reference to such alleged conversation, and in the absence of any corroboration of the testimony of defendant's solicitor I am constrained to disregard his testimony in such respect. Complainant testified that the deed which she received through the mail in June, 1929, and which she promptly recorded without reading same, is not the deed which was submitted to her by Shapiro on August 3, 1928, wherein Max Goldberg was named as grantor, and the complainant, Lilliam Clawans, was named as grantee. The only moneys out of the entire mortgage loan in question which are alleged by defendant to have come to the possession of Max Goldberg, is the sum of $129.75 represented by Shapiro's check No. 58 dated August 28, 1928, which appears to bear the

endorsement of Max Goldberg, but Goldberg denied the endorsed signature to be his. The check appears to have been deposited to the account of Max Goldberg's brother Samuel Goldberg, who testified that he cashed the check for Shapiro. As indicated by me hereinabove I am of the opinion that the onus of the fraudulent transaction in question whereby both the defendant and the complainant were deceived must be borne by the defendant, upon the familiar equitable principle that whenever one of two innocent persons must suffer a loss by the acts of a third, the person who enabled such third person to occasion the loss must sustain it, or, as is sometimes expressed "that as between two persons equally innocent, a loss resulting from the fraudulent acts of another shall rest upon him by whose act or omissions the fraud was made possible." Citation of authorities of such a well-known principle appears to me to be unnecessary. But the case of *Wilson* v. *Walsh*, 105 N. J. Eq. 396 is one of the latest authorities for such well-known principle. In said case Vice-Chancellor Church, in dealing with the matter then before him for consideration, says—"It would seem that reasonable precaution should have dictated * * * that the draft be drawn in the name of the mortgagor." The defendant, it seems to me, should not have entrusted to Shapiro the handling of the Shapiro-Goldberg mortgage loan which Shapiro applied for to defendant. It appears that the defendant permitted Shapiro to look after the mortgage transaction as he would a transaction between other parties and the defendant wherein he would represent the defendant in the examination of title, etc. The fact that the defendant en-

trusted the examination of title, etc. (which should also include an inquiry of those in occupancy of the premises sought to be mortgaged as to their rights therein, and particularly, as in the case *sub judice*, where painted signs were placed upon and about the property proclaiming the name of the owner thereof as complainant), to Shapiro, acting as its attorney, and at the same time known by defendant to be the real person in interest in the mortgage loan, is indicative of the culpable negligence which I regard as attributable to it in the premises, which negligence was pretty much responsible for the effectuation of the fraud conceived and perpetrated by Shapiro. The case of *Ordway Building & Loan Association* v. *Moeck*, 106 N. J. Eq. 425, cited by defendant's solicitor, is in applicable to the matter *sub judice*. In the case *sub judice* I regard the equitable title held by complainant to be the substance, and the legal title held by Goldberg to be but the form, and with respect thereto, as against the defendant which through its attorney had notice of the substance, and which through its committee appointed by its president to inspect the property for the mortgage loan might, if reasonable diligence were exercised readily have ascertained the equitable interest of complainant in the premises, this Court will regard the equitable title as the substance, regardless of the form. In a case such as *sub judice* where the Court in looking at the contract and the relation of all parties claiming interests therein and all parties who were in anywise concerned therewith, and all the surrounding circumstances in connection therewith, finds an atmosphere of suspicion surrounding and permeating the transaction, it will scrutinize

cautiously the activities of the parties who are alleged to have conceived and/or perpetrated a fraud, and who had it in their power to do so, and as well the activities of the parties who had it in their power to frustrate such fraud upon the exercise of due diligence with respect to the transaction. Whatever puts a party on inquiry amounts to judgment of law to notice, provided the inquiry becomes a duty, and would lead to a knowledge of the facts by the exercise of ordinary intelligence and understanding. *Ogden* v. *Delaware River & Atlantic R. R. Co.*, 80 N. J. Eq. 191; *Commercial Credit Corp.* v. *Coover*, 101 N. J. Law 530; *Kutschinski* v. *Thompson*, 101 N. J. Eq. 649. In *LaCombe* v. *Headley*, 91 N. J. Eq. 63, the Court of Errors and Appeals held it to be the duty of an intending purchaser of land which is in the possession of a person other than the proposed grantor to inquire of the occupant and ascertain the rights under which he holds, and if he does not make such inquiry, he is chargeable with notice of such facts as the inquiry would have revealed. I regard the same rule of law to be applicable to the making of a mortgage loan in a case such as herein wherein an intending mortgagor is not in possession of the property which he offers for mortgage lien, and where one is in possession of such property claiming equitable title thereto. Where as in the case *sub judice* the defendant through negligence enabled its attorney, Shapiro, to conceive the perpetration of a fraud upon an innocent party, the complainant herein, and by its failure to exercise reasonable diligence by making inquiry of a person in possession of the lands sought to be mortgaged to it by one claiming title thereto who was not in possession

thereof, and particularly, as in the case *sub judice,* through the medium of a dummy transaction in which such attorney's impecunious clerk was with knowledge of defendant's officers enabled to perpetrate the conceived fraud upon such innocent party, the complainant herein, a court of equity will not afford relief to the defendant from the predicament in which it has thus negligently placed itself, when the relief sought will operate to the detriment of the party against whom such fraud was perpetrated. As stated in *Parkview B. & L. Ass'n of Newark* v. *Rose*, 90 N. J. Law 614—"Where one through negligence gives another power to practice a fraud upon innocent parties, the Court will not interfere in his protection at the expense of one who has been deceived." As otherwise stated in *Heyder* v. *Excelsior Building Loan Association*, 42 N. J. Eq. 403, at page 408—"Where one gives to another the power to practice a fraud upon innocent parties, the Court will not interfere in his protection at the expense of those who have been deceived and misled by such fraud." I am of the opinion that the facts and rules of law hereinabove stated are operative against the defendant and not against the complainant.

I am of the opinion that the complainant is entitled to the relief prayed by the third, fourth and fifth clauses of the prayer of her bill of compliant herein, as amended, and that the defendant is not entitled to the relief sought by its amended (answer and) counter-claim filed herein. I will advise a decree accordingly.

DECREE.

Filed October 26, 1931.

IN CHANCERY OF NEW JERSEY.

Between LILLIAN CLAWANS, *Complainant,* *and* ORDWAY BUILDING AND LOAN ASSOCIATION, *Defendant.*	*On Bill, &c.* *Decree.*

This cause coming on to be heard in the presence of F. D. Masucci, solicitor of complainant and Joseph Susskind, solicitor of defendant and the Court, having examined the pleadings and having taken proofs, orally, in open court and having heard and considered the arguments of counsel and being satisfied that a certain mortgage, made and executed by one, Max Goldberg, to the defendant, Ordway Building and Loan Association, mentioned and set forth in the bill of complaint, filed herein, dated August 3rd, A. D., 1928, and recorded in the Register's office of the County of Essex, in Book F-65 of Mortgages for said County, on pages 303 etc., to secure the sum of $7,000.00, payable in monthly installments of principal, with interest, still appears to be a subsisting lien upon the premises in the said bill of complaint particularly described and hereinafter described; that no consideration was ever paid by the said defendant, Ordway Building and Loan Association, to said complainant, for said mortgage; that said mort-

gage was made and executed and impressed as an apparent lien against the premises, described in the bill of complaint, without the knowledge or consent of said complainant and without any consideration enuring to her benefit; that, at the time said mortgage was executed, the said defendant, Ordway Building and Loan Association, through its officers, directors, agents and representatives, knew that Max Goldberg, the person who executed said mortgage, was not the true and rightful owner of the premises, described therein, and said defendant, Ordway Building and Loan Association, through its officers, directors, agents and representatives and by reason of the open and notorious possession of said premises, by complainant, had knowledge of complainant's ownership and title to the premises, mentioned and described in said mortgage; that said mortgage was executed through the fraud of Morris W. Shapiro, attorney of the said defendant, Ordway Building and Loan Association, and that said defendant Building and Loan Association, through its negligence in failing to make inquiry of complainant in possession of said lands and premises and in entrusting the search of the title to said premises and other legal matters in connection with the granting of said loan to the said Morris W. Shapiro, known to said defendant Building and Loan Association to be the actual purchaser of said lands and premises, through the intermediary of said Max Goldberg, an impecunious clerk in his employ and known so to be by defendant's officers and directors, was thereby culpably negligent in placing the said Morris W. Shapiro in a position to perpetrate fraud upon complainant; that said mortgage has never been cancelled of record;

that the said Ordway Building and Loan Association is demanding from said complainant the payment of said mortgage, together with interest on the same and that the complainant is entitled to the relief prayed for by her in her said bill of complaint and that the defendant, Ordway Building and Loan Association, is not entitled to the relief prayed for in its counter-claim, filed in said cause of action;

It is, thereupon, on this 26th day of October, A. D., 1931, ORDERED, ADJUDGED and DECREED, that the said defendant, Ordway Building and Loan Association, surrender the said mortgage, properly endorsed for cancellation, to the said complainant, Lillian Clawans, within thirty days after the service upon said defendant of a true copy of this decree, certified as such by the Clerk of this Court.

It is further ORDERED, ADJUDGED and DECREED that the said mortgage, herein referred to, be cancelled of record and be discharged as a lien upon the lands and premises in said bill of complaint described and being in the City of Newark, County of Essex and State of New Jersey and particularly described as follows:

BEGINNING at a point in the Easterly line of Gladstone Avenue (formerly West Side Avenue) at a point therein distant two hundred and fifty feet Southerly from the Southerly line of South Orange Avenue; thence running along the line of Gladstone Avenue (formerly West Side Avenue) South twenty-seven degrees, fifty-nine minutes West thirty feet; thence South sixty-two degrees, one minute East eighty-three feet and twenty-five hundredths feet; thence

Decree.

North sixty-two degrees, one minute West eighty-three feet and twenty-five hundredths feet to the Easterly line of Gladstone Avenue and place of BEGINNING.

and that the said defendant and all persons claiming by, from or under it be debarred and perpetually enjoined from collecting any money upon said mortgage either for principal or interest and from setting up the same as a lien against the premises therein described.

It is further ORDERED and DECREED that the defendant pay to complainant the costs of this suit to be taxed, including therein a counsel fee of $500.00, which is hereby allowed to said complainant and that in default of the payment thereof, within thirty days after the service upon the defendant of a true copy of said taxed costs and of this Decree, certified as such by the Clerk of the Court, execution issue against the goods and chattels, moneys and effects, lands, tenements, hereditaments and real estate of said defendant, to make said taxed costs, according to the practice of this Court.

E. R. WALKER,
C.

Resectfully advised,

JNO. J. FALLON,
V.-C.

O. K. as to form.
J. S.

A true copy.

FERD GARRETSON,
Clerk.

NOTICE OF APPEAL.

Filed January 22, 1932.

IN CHANCERY OF NEW JERSEY.

Between	
LILLIAN CLAWANS, *Complainant,*	*On Bill, &c.*
and	*Notice of Appeal.*
ORDWAY BUILDING AND LOAN ASSOCIATION, a corporation, *Defendant.*	

The defendant Ordway Building & Loan Association, a corporation of the State of New Jersey, hereby appeals from the final decree made in the above entitled cause on the 26th day of October, 1931, and from the whole and every part thereof, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated: December 8th, 1931.

JOSEPH SUSSKIND,
Solicitor for and of Counsel with Defendant,
Ordway Building & Loan Association.

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

JOSEPH SUSSKIND,
Of Counsel with Defendant, Ordway
Building & Loan Association.

Notice of Appeal.

Service of a copy of the within Notice is hereby acknowledged this 8th day of December, 1931.

F. D. MASUCCI,
Per J. M.,
Sol'r for Complainant.

PETITION OF APPEAL.

Filed February 5, 1932.

NEW JERSEY COURT OF ERRORS AND APPEALS.

LILLIAN CLAWANS, *Complainant-Appellee,* *vs.* ORDWAY BUILDING AND LOAN ASSOCIATION, a corporation, *Defendant-Appellant.*	*On Appeal from the Court of Chancery.* *Petition of Appeal.*

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

The petition of Ordway Building & Loan Association, a corporation, the appellant in the above entitled cause, respectfully shows that:

1. Petitioner finds itself aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, bearing date October 26th, 1931, in a certain cause in said Court of Chancery wherein the said Lillian Clawans was complainant and the said Ordway Building & Loan Association, a corporation, was defendant, in this respect, to wit, that the said decree is based on a finding by the Chancellor that no consideration was ever paid by the said defendant, Ordway Building & Loan Association, for its mortgage, which is decreed to be cancelled, when in fact said defendant did pay a valuable, good and sufficient consideration for the same; and is

further erroneous in that the Court adjudged that the complainant was in open and notorious possession of the mortgaged premises and that the defendant, Ordway Building & Loan Association, had knowledge of complainant's ownership and title to said premises. Said decree is further erroneous in that the Court adjudged that the defendant Ordway Building & Loan Association failed to make inquiry of complainant as to her alleged possession of the mortgaged premises; and the Court was further in error in deciding that the defendant Ordway Building & Loan Association was negligent in entrusting the search of the title to said premises and other legal matters in connection with the granting of its mortgage loan on said premises to Morris W. Shapiro, its attorney. The Court was further in error in adjudging that the defendant Ordway Building & Loan was negligent in placing Morris W. Shapiro in a position to perpetrate fraud upon complainant, when in fact the complainant placed said Morris W. Shapiro in a position to perpetrate fraud upon both the defendant Ordway Building & Loan Association and the complainant.

2. And petitioner appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous in that it adjudges that the mortgage of the defendant Ordway Building & Loan Association, a lien on complainant's premises, is to be cancelled, for the reason that the proof submitted at the hearing in the above cause was sufficient to prove that the mortgage held by the said defendant Ordway Building & Loan Association is a good, valid and subsisting lien on the premises de-

scribed therein; and that said Ordway Building & Loan Association did pay a good and valuable consideration therefor; and that said mortgage was executed to the said defendant Ordway Building & Loan Association pursuant to a proper transaction without fraud on the part of the said defendant Ordway Building & Loan Association; and that if any fraud was perpetrated, it was the fraud of Morris W. Shapiro who, at the time of the perpetration of said fraud, was acting, not as the agent of the defendant Ordway Building & Loan Association, but as the agent of the complainant Lillian Clawans; and further that the said complainant Lillian Clawans did place said Morris W. Shapiro in a position to commit a fraud in the execution and delivery of said mortgage, which fraud was perpetrated on both the said defendant Ordway Building & Loan Association and the complainant Lillian Clawans.

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

JOSEPH SUSSKIND,
Solicitor for and of Counsel
with Appellant.

TESTIMONY.

IN CHANCERY OF NEW JERSEY.

Between	
LILLIAN CLAWANS, *Complainant,*	74-477.
and	*On Bill, Etc.*
ORDWAY BUILDING AND LOAN ASSOCIATION, *Defendant.*	*Testimony.*

Final hearing before Hon. John J. Fallon, Vice-Chancellor.

Chancery Chambers, Jersey City,

December 11, 1929.

Appearances:

F. D. Masucci, Esq., for Complainant.

Joseph Susskind, Esq., for Defendant (Mr. Thomas J. Brogan, of counsel).

Louis F. Beachner, official stenographer in Chancery of New Jersey, 51 Newark street, Hoboken, N. J.

COMPLAINANT'S CASE.

Mr. Masucci: I would like to amend the complaint by reciting in paragraph 3 on the second line after the words *purchased by* "Morris W. Shapiro through Max Goldberg."

The Court: Paragraph 3?

Mr. Masucci: "On August 3, 1928, the premises above described were purchased by," and there I would like to add "Morris W. Shapiro

through Max Goldberg." The following line "purchased by the said Morris W. Shapiro through Max Goldberg as aforesaid."

The Court: Any objection to that?

Mr. Brogan: No, sir.

Mr. Masucci: Paragraph 5, second page of the bill of complaint—"On or about August 3, 1928 the said Max Goldberg for and on behalf of said Morris W. Shapiro."

The Court: All right, proceed.

LILLIAN CLAWANS, a witness being sworn on behalf of complainant.

Direct examination by Mr. Masucci.

Q Where do you live Miss Clawans? A 352 Belmont avenue, Newark.

Q Where did you live in July and August of 1928? A 22 Gladstone avenue, Newark.

Q How long had you been living there? A Since February, 1927.

Q And until what time did you live there? A I lived there until October, 1928.

Q Continuously? A Continuously. Then I came back again in March, 1929, up until the middle of May, 1929.

Q What floor did you occupy? A From February, 1927, to July 31, 1927, I occupied the lower floor.

Q And after July, 1927, what floor did you occupy? A The second floor.

Q And you occupied that floor until October, 1928? A That's right, and then again from March until the middle of May, 1929.

Q Now in the month of July, 1928, were you approached to purchase property at 22 Gladstone avenue, Newark? A In June of 1928.

Q And did you agree to purchase this property in question? A Yes.

Q Through whom? A Through Mendel Gross.

Q From Mendel Gross? A Yes, through Morris W. Shapiro.

Q Who approached you on the purchase of the property? A David Boeninger.

Q What was his business in 1928? A A real estate broker and insurance man, I believe.

Q And was the price agreed upon? A Yes.

Q And did you get somebody to buy it for you? A Yes.

Q Who was the person you engaged to purchase it for you? A Morris W. Shapiro.

Q Can you state when you engaged Morris W. Shapiro to take the contract for you instead of taking it in your own name? A Yes, because Mendel Gross was threatening and he carries a razor.

Mr. Brogan: I object.

The Court: I will sustain the objection.

By Mr. Masucci.

Q Was the contract drawn for the sale of the property by Mendel Gross to Morris W. Shapiro?

Mr. Brogan: I object to it.

The Court: I will receive it.

By Mr. Masucci.

Q Was the contract drawn up? A Yes.

Mr. Masucci: I want to offer the contract in evidence.

Mr. Brogan: No objection.

Mr. Masucci: I offer the contract in evidence—a contract dated July 3, 1928, between Mendel Gross and Jeanette Gross and Morris W. Shapiro, consideration $9,000; the conveyance to be made by warranty deed on or before August 3rd of premises in the City of Newark, New Jersey, and known and designated as 22 Gladstone avenue and described by metes and bounds, and signed by Mendel Gross, Jeanette Gross and Morris W. Shapiro, and witnessed by Simon L. Fisch. Certificate of acknowledgment dated July 3, 1928, in the presence of Simon L. Fisch, as Master in Chancery of New Jersey, acknowledged by Mendel Gross and Jeanette Gross. Endorsed on the contract is an assignment of the contract dated August 3, 1928—

The Court: That's the same date of the instrument?

Mr. Masucci: No, the date of closing. The instrument is July 3rd. "In consideration of One Dollar and other good and valuable consideration, I hereby transfer, set over and assign all my right, title and interest in the within contract to Max Goldberg." Signed Morris W. Shapiro. The contract provides for the payment of $1,000, the

receipt of which is acknowledged, and $8,000 in cash on delivery of deed.

(Contract marked Exhibit C. 1 in evidence.)

By Mr. Masucci.

Q I show you Exhibit C. 1 and call your attention to the fact that the contract acknowledges the receipt of $1,000. Can you state who paid that $1,000 deposit? A That thousand dollars Morris W. Shapiro on behalf of myself.

Mr. Brogan: I ask that be stricken out. It is a conclusion.

The Court: I don't know it is a conclusion. I can't tell that yet.

Mr. Brogan: I think that is so. It is a conclusion unless it is coupled up.

The Court: Yes.

By Mr. Masucci.

Q Did you pay Morris W. Shapiro the thousand dollars?

The Court: Why not tell the circumstances attending the transaction.

Mr. Masucci: I will introduce the check in evidence.

Q I show you a check dated July 10, 1928, made by Adding & Calculating Co., proprietor Lillian Clawans, for $1,000. Did you give that to Mr. Shapiro? A Yes.

Q Went through the bank and cashed? A Yes.

Q What was that check given for? A For the payment of the property at 22 Gladstone avenue.

Q What payment? A For the property.

Q Did you give it as a deposit?

Mr. Brogan: This witness is an intelligent witness and a member of the Bar.

By Mr. Masucci.

Q Was that the first payment on the purchase of the property? A The thousand dollars was the first payment absolutely.

The Court: I will strike that out. I want to know what it went for.

By Mr. Masucci.

Q How did you come to give Mr. Shapiro a check of $1,000 and for what purpose? A For the payment on the purchase of the property 22 Gladstone avenue.

Q Was that payment made before or after title was taken?

By the Court.

Q What had it to do with the purchase of that property by Shapiro? There is the opportunity afforded you of telling your story. A I purchased this property through Morris W. Shapiro with my money.

Q You say you did. Tell us what the facts were leading up to the transaction. A On June 22, 1928, I stated to Mr. Shapiro that I wanted my money on mortgage that had expired on 325 Osborne Terrace that was long

past due; that I wanted this money to take over 22 Gladstone avenue. He stated that he would have the money for me to take over this property. He then stated to me that he would go over to Simon L. Fisch's office where the negotiations were going on and would see that I—would see that it was paid, the $9,000 for the purchase of this property.

Q Who arranged for the purchase of the property for $9,000? A I did.

Q With whom? A With Morris— Oh, for the purchase for $9,000? Through the broker on behalf of Mendel Gross. He said he was going to pay $6,000 of that money on Osborne Terrace on a mortgage which was long past due in part payment of the purchase price for me and on my behalf on 22 Gladstone avenue. I gave him $1,000 and before closing I gave him $2,000 additional making the total sum of the purchase price $9,000 which was the agreed price June 22, 1928.

By Mr. Masucci.

Q When did you give him the $2,000 used as part of the purchase price on 22 Gladstone avenue? A August 1, 1928.

By the Court.

Q By cash or check? A By check.

By Mr. Masucci.

Q I show you a check for $2,000 and ask you if this is the check you gave him? A Yes.

Q And this is the other check of $1,000 which you gave him before? A Yes.

Mr. Masucci: I offer those in evidence.

($1,000 check marked Exhibit C. 2 in evidence. $2,000 check marked Exhibit C. 3 in evidence.)

Q After the contract for the sale of the property 22 Gladstone avenue was executed and signed did you ask Mr. Shapiro for the contract? A Yes.

Q Did you get it? A No.

Q Did you get a memorandum from him of any kind with reference to that contract? A Yes.

Q I show you this writing and ask you if it is not the memorandum you got from him? A Yes.

Mr. Brogan: I would like to object because it doesn't appear that the memorandum applies to the defendant.

The Court: Who is the defendant?

Mr. Brogan: The Ordway Building & Loan Association.

The Court: I suppose they are going to connect it up in some way.

Mr. Brogan: I don't think it is possible.

The Court: Paragraph 3 says Shapiro represented the Ordway Building & Loan Association.

Mr. Brogan: But this lady tells us this man with Mr. Shapiro was her agent.

The Court: I will receive it subject to your objection.

By Mr. Masucci.

Q Is this the memorandum you got from Mr. Shapiro? A Yes.

Q Is this his handwriting? A Yes.

Mr. Masucci: I offer it in evidence.

Mr. Brogan: I certainly can't acquiesce in that going in. I object to it.

The Court: In a charge of fraud I suppose it is pretty hard to bring out everything at one time. It has to be pieced together.

Mr. Brogan: I might state my form of objection.

The Court: What is the purpose of it, because of his handwriting on the paper?

Mr. Masucci: That memorandum refers to the contract in question.

The Court: It says "I couldn't find contract. Will look for same when I return." Is it for the purpose of connecting up Shapiro with it?

Mr. Masucci: Yes, between Shapiro and Miss Clawans.

Mr. Brogan: My objection is fundamental; it has nothing to do with the defendant.

The Court: Unless it is connected up.

Mr. Masucci: We are going to show Shapiro was the agent for the Ordway Building & Loan.

Mr. Brogan: There is no question about that. The only thing he was not only counsel for the Ordway but one or two others.

The Court: He says he is going to connect it up with the Ordway.

Mr. Brogan: Any pencil memorandum this man might have written to any client

is not competent proof in this case because he happened to be the attorney for the building and loan.

The Court: It may be. I will receive it subject to your objection.

(Memorandum marked Exhibit C. 4 in evidence.)

The Court: Throughout the complaint it says that Shapiro was connected with the Ordway and he acted in this witness' behalf in making the contract and Shapiro represented to her the contract was made and something about a deed being delivered and recorded, and she requested the delivery of the deed from him. Those matters I see confronting me in the bill of complaint thus far.

Mr. Brogan: I also say to your honor that his relations as attorney to the defendant Ordway Building & Loan is admitted in the pleadings.

The Court: Let me see whether you admit that. This case as I understand it based on this complaint is to set aside a mortgage made on the witness' property—that is, what she claims to be her property but which for a time was in the name of somebody else who made a mortgage, and that mortgage was made at a time when she claims she was the equitable owner of this property. You don't want to admit that Shapiro was an agent for your company for all purposes?

Mr. Brogan: It is admitted that Mr. Shapiro was the attorney of the building and loan—the legal attorney of the building

and loan. That is all is charged in that paragraph referred to.

The Court: They may claim with knowledge to the Ordway which makes the Ordway responsible for something which she claims.

Mr. Brogan: Be that as it may, that's the fact this man was not the agent but the lawyer who prepared papers for the Ordway.

The Court: And at the same time was acting for her in the making of the contract.

Mr. Brogan: We know nothing about that. My admission goes to the fact he was the attorney—the lawyer for the building and loan, that's all.

The Court: Notice to an attorney is imputed to his principal in some respect. Your admission may bind you more than you think. Suppose we wait until we hear the whole case.

Mr. Brogan: If I might ask one question. Do I understand that the Court has admitted this memorandum or a part of it?

The Court: I have admitted the paper on the representation of counsel that he intends to connect up the writing at the bottom of it which reads "I couldn't find contract. Will look for same when I return." That and with the transaction that he is depending upon here on which he bases his action for fraud.

Mr. Brogan: All right.

By Mr. Masucci.

Q When did you get that memorandum Exhibit C. 4? A On or about the 25th or 24th of July, 1928.

Q Had you asked Mr. Shapiro anything about the contract that that was in reply to? A Yes.

Q With reference to what contract had you asked him about?

Mr. Brogan: If the Court please, one question and she can tell the whole story.

The Court: I think the witness should be required to tell her whole story with these parties leading up to the fraud practiced upon her. She is a lawyer and can tell her story.

Mr. Masucci: She is excited and may have forgotten some facts.

The Court: I will let you bring them out.

A On or about July 24th or 25th of 1928, I asked Mr. Shapiro for the contract and he came down and I wasn't there and he left this note. I know it is in his handwriting, and that was on that also—this part of it (indicating).

By the Court.

Q What talk did you have with Shapiro with reference to his entering into a contract in your behalf and who was present at this talk other than yourself, and when did it take place? A That took place June the 21st, 1928. Mr. David Boeninger called at my office and he said "Miss Clawans, have you arranged? Mendel Gross told me you are taking over the property but there is some dispute as to the amount." I

said "I have not arranged anything yet. Mr. Mendel Gross has agreed if it is in cash to accept $9,000." Mr. Shapiro about that time came into the office.

Q Whose office? A Into my office. That's on June 21, 1928, and there was a general discussion about—

Q With who? A The three of us, about the—I don't know whether I am permitted to say about the actions or conduct of Mendel Gross.

Q I want to know how you came to deal with Shapiro. A He came in and Shapiro said "He will get this property." I asked him for the money. That's the reason he came into my office. I called him up and asked him for the money on 335 Osborne Terrace because the mortgage had expired, and he said he would give me the money.

Q You wanted that money to use in this transaction? A That's right.

Q You told him so? A Yes, sir.

Q Tell us what he said. A He said he would have the money for me within a few days. Then he came down again on or about the 25th and he said he is arranging to go over and sign in Simon Fisch's office to enter into a contract on my behalf for the purchase of the property 22 Gladstone avenue.

Q Had you up to that time authorized him to do that? A Yes, I authorized him to buy it.

Q What talk did you have about it? A I told him to go over to Simon L. Fisch's office and purchase this property for me in his name. Thereafter he went over.

Q He told you he was going over to Mr. Fisch's office to sign the contract? A That's right. And thereafter he went over and—

Q You didn't go with him. You don't know whether he was there or not? A I do know.

Q How do you know? A Because I called up Simon L. Fisch and he said yes. He said he received a letter from Mr. Shapiro and he also told me a contract was already entered into. That was about the fifth or sixth of July, 1928.

Q What's the rest of your story about the contract? A Then he told me the contract was entered into and then I said to him "How much was paid?" and he said "One thousand," and I then asked him when is title to close and he said on or before August 3, 1928, at the agreed price of nine thousand. Then I saw Mr. Shapiro. Mr. Shapiro said he had six thousand of that money to apply; that he needed three thousand more, and I gave him a check on July 10th for one thousand.

Q Exhibit C. 2 is it? A Yes, sir, that marked Exhibit C. 2. Then on August 1st I gave him another check of two thousand marked Exhibit C. 3.

Q What's the next you know about the matter? A Then on August 3rd he came down and he said to me—

Q Who? A Mr. Shapiro. He had a deed in his hand made from Max Goldberg to myself. I questioned him why the deed was in the name of Max Goldberg. He said he was having trouble with his wife and he is only a dummy clerk, and he took the instrument to record. That was the last time I had seen the deed up until the morning of—

Q What instrument? There are two instruments. There is a deed to Goldberg and also a deed from Goldberg to yourself. A Yes. He came down with a deed unrecorded from Max Goldberg to Lillian Clawans.

Q What about the deed from somebody else to Max Goldberg? Did you see that one? A It was unrecorded—these two instruments. I was only interested in myself.

Q Weren't you concerned to know from whom you were going to get title to the property? A Yes.

Q How did you expect to get title from Max Goldberg? A He came down with both deeds —I am sure of it. But they were unrecorded.

By Mr. Masucci.

Q I show you a deed from Mendel Gross and Jeanette Gross to Max Goldberg, and ask you if that is the deed he showed you on or about August 3, 1928? A That's right.

Q Affecting the Gladstone avenue property? A Yes.

Mr. Masucci: I offer the deed in evidence.

Mr. Brogan: No objection.

(Deed marked Exhibit C. 5 in evidence.)

By Mr. Masucci.

Q I show you another deed from Max Goldberg to Lillian Clawans, and ask you if that is the deed you referred to as being shown to you by Morris A. Shapiro on or about August 3, 1928? A That's right.

Mr. Masucci: I offer this deed in evidence.

Mr. Brogan: Before this goes in the record if your Honor please, I ask permission to cross examine this lady for just a minute. There are certain internal evidences

in the deed and unless she can explain them leads us to the above conclusion—

The Court: I don't think I ought to permit you to examine her now.

Mr. Brogan: Then I object to it going in on her mere say-so.

The Court: She said two deeds were submitted to her by Shapiro, one to Goldberg and from Goldberg to her and both unrecorded, and Shapiro took them both away to be recorded.

Mr. Brogan: She saw one that has been just marked Exhibit C. 5, and this is the other one. Now if this is to go in evidence and is to be treated as a piece of legal evidence it hasn't been properly proved in order to be offered.

The Court: State wherein it has not been.

Mr. Brogan: I object to it on the ground it has not been proven.

The Court: What is your objection? You mean if the subscribing witness has not been called? The Act of 1917 provides that the subscribing witness need not be produced. Is that what your objection is?

Mr. Brogan: No. I think the Court is entitled to know. Of course this goes to the fundamentals of the paper itself. This witness has testified that there was presented to her two unrecorded instruments, and yet in the second paper it says "Being the same premises conveyed to said Max Goldberg by deed dated August 3, 1928, recorded in the Register's Office of Essex County in Book P. 78 of Deeds, pages 83-84."

The Court: That might have something to do as to the credibility of her testimony.

Mr. Brogan: It is an express contradiction.

The Court: What is the date of recording of the deed?

Mr. Brogan: This deed which was recorded on such and such a date in Book P. 78 of Deeds on page so and so could not have been recorded because it was unrecorded by her own testimony.

The Court: That ought to help your case instead of harming you. It is a matter of evidence.

Mr. Brogan: Yes, I understand, if the Court wants to receive that kind of evidence.

The Court: I can't say whether it is proper until it is admitted in evidence. If you have any legal objections other than what you are arguing I would be glad to hear them. Not having heard any it is marked in evidence.

(Deed marked Exhibit C. 6 in evidence.)

Mr. Masucci: Exhibit C. 5 is a deed dated August 3, 1928 between Mendel Gross and Jeanette Gross, his wife, of Newark, New Jersey, and Max Goldberg, consideration one dollar, conveying premises in the City of Newark, County of Essex and State of New Jersey, being the premises on the easterly line of Gladstone avenue, signed by Mendel Gross and Jeanette Gross in the presence of Simon L. Fisch, certificate of acknowledgment dated August 3, 1928 of Mendel Gross and Jeanette Gross, signed by Simon L. Fisch, Master in Chancery of New

Jersey, and recorded August 6, 1928 at 9:56 o'clock in the forenoon in Book P. 78 of Deeds for Essex County on pages 83 and 84. Exhibit C. 6 is a deed dated January 3, 1929 between Max Goldberg, unmarried, of the City of Newark, and Lillian Clawans, consideration one dollar etc., conveying premises in the City of Newark, New Jersey, being on the easterly line of Gladstone avenue, the same premises as described in Exhibit C. 5, signed by Max Goldberg in the presence of Morris W. Shapiro. Certificate of acknowledgment dated January 3, 1929. Acknowledgment of Max Goldberg in the presence of Morris W. Shapiro, as Attorney at Law of the State of New Jersey, and recorded June 7, 1929 at 9:24 o'clock in the forenoon in Book Q 79 of Deeds for Essex County on pages 427 and 428.

The Court: June 1929? Mr. Brogan what reason had you to suggest to the Court that that was the particular deed that was shown to her? This witness said Shapiro took both of the deeds away to be recorded. I can't tell what happened to them after he took them away. I suppose it will come out.

By Mr. Masucci.

Q I ask you whether Exhibit C. 5 was one of the deeds shown to you by Mr. Shapiro on or about August 3, 1928? A I think so.

Q And I ask you whether Exhibit C. 6 is the other deed which you referred to as being shown to you on or about August 3, 1928 by Mr. Shapiro? A No, that is not the deed.

Q That is not the deed? A No.

Q Was there another deed shown to you accompanying Exhibit C. 5? A Yes.

By the Court.

Q How do you know that is not the deed? A Because when I looked at the deed there was nothing in there about recording. I know that is not the deed because it had a deeper print.

Mr. Brogan: Do you mind if I cross examine the witness?

The Court: I don't think you are entitled to cross examine her yet. You will have a good opportunity to cross examine her to your heart's content.

By Mr. Masucci.

Q Did you notice what date the other deed was? A Yes, August 3, 1928.

Q The same date as Exhibit C. 5? A Yes.

The Court: What is the date of Exhibit C. 6?

Mr. Masucci: The third of January, 1929 in ink. On the endorsement it is in blank.

Q What did you do with the deed marked Exhibit C. 5 and with the other deed that you claim was shown to you by Morris W. Shapiro? A The deed that was shown to me on August third?

By the Court.

Q Was it deed or deeds? A Two deeds. One read Mendel Gross and Jeanette Gross, his wife, to Max Goldberg, and marked Exhibit C. 5,

and another one the same dark typewriting read from Max Goldberg to Lillian Clawans and dated on the face August 3, 1928.

By Mr. Masucci.

Q What property did it affect if you noticed the description? A It affected 22 Gladstone avenue.

Q What did you do with both of those deeds? A Mr. Shapiro took both of them to record them.

Q Did you ever get them back? A No.

By the Court.

Q Never? A This one I got back, and the deed he showed me on August 3, 1928 I never got back, but on the morning of June 4th that deed came through the mail.

Q What deed?

By Mr. Masucci.

Q Exhibit C. 6 you are referring to? A Yes.

Q And at the time you received Exhibit C. 6 through the mail was it recorded? A No, it was unrecorded.

Q Then what did you do with Exhibit C. 6? A I took it down to you and then after I had a conference with you I had it immediately recorded.

Q Did you look up the record to see whether the other deed which accompanied Exhibit C. 5 was recorded? A No.

Q What do you mean that it wasn't recorded? A It wasn't recorded.

By the Court.

Q What was not recorded? A The other deed.

Q C. 5 was recorded in August.

Mr. Masucci: No, the deed that accompanied C. 5.

By Mr. Masucci.

Q Now on or about August 6, 1928, did you have an accounting with Mr. Shapiro relative to the consideration payments on this property 22 Gladstone avenue? A Yes.

Q Was it a written accounting? A Part written and part typewriting.

Q I show you a statement and ask you if this is the statement that Mr. Shapiro showed you on or about August 6th affecting the premises 22 Gladstone avenue? A Yes.

Q I turn the back around and ask you if these were the figures put on there at the time he showed you the statement? A Yes.

Q In whose handwriting are those figures? A Morris W. Shapiro's.

By the Court.

Q You mean on the back? A Yes, and on the front.

Q There is some typewriting on there. A I don't know about that, but that's his handwriting and these are his figures.

Q What do you mean?

Mr. Masucci: A closing statement.

The Court: That which she is identifying she says this and that.

A I mean the part saying "Insurance $139.38 and Supreme Court search $3.64."

By the Court.

Q There is a total on there? A Yes, in his handwriting—figures $5,894.69.

Mr. Masucci: I offer it.

Mr. Brogan: I object to it. It is not binding upon the defendant. It was a matter concerning a transaction with her own agent and attorney.

The Court: I will admit it.

(Statement marked Exhibit C. 7 in evidence.)

By Mr. Masucci.

Q Now I call your attention to pencil figures on the back of C. 7 and ask you to explain what figures they are and what they mean. A The 10,000 in his handwriting. The whole back of it, the pencil figures, are all in the handwriting of Mr. Shapiro. Ten thousand he owed me on the mortgage.

Mr. Brogan: If the Court please the paper is admitted in evidence and speaks for itself.

The Court: No, it doesn't. There are only figures on it. It doesn't show what the figures relate to.

Mr. Brogan: The figures are all different.

By Mr. Masucci.

Q Will you explain the figures on the back of Exhibit C. 7? A The 10,000 figures in his

handwriting regarding the ten thousand he owed me on property covering 331 to 339 Osborne Terrace, Newark.

By the Court.

Q Is that from the mortgage you mentioned before which you said was past due? A Yes, sir. $150.00 for the interest until July 4, 1928. The $100.00 is what he owed me and—

Q Owed you for what? A He had borrowed from me at different times.

Q You are after telling us he owed you $10,000 on a mortgage. A In addition to that he owed me $200.00 and $100.00.

Q For what? A He had borrowed some money from me and part of that $200.00 is interest due on another mortgage making a total sum of $10,450. Now the $5,894.69 was the amount due on the Gladstone avenue property.

Q What do you mean by that? The purchase was $9,000, wasn't it? A Yes.

Q What do you mean by $5,894.69? A $5,894.69 was deducted from the $10,450 leaving a balance that he still owed me of $4,555.31.

Q Then the typewritten figures on the other side of that paper—that one part about a total of five thousand and some odd dollars, you say is in Mr. Shapiro's handwriting? A Yes.

Q And that was carried over from the other side? A That's right.

By Mr. Masucci.

Q And leaving a balance due to you of how much? A $4,555.31.

By the Court.

Q What is the word following that? A Due.

By Mr. Masucci.

Q Have the other figures any relation to the Gladstone property—the lower figures? A No, that affects another property.

By the Court.

Q But the upper figures do they relate to the Gladstone property? A Yes, sir.

By Mr. Masucci.

Q I call your attention to a deposit of $1,000 in the statement on closing marked Exhibit C. 7. Did you pay Mr. Shapiro that $1,000? A Yes.

Q And is that evidenced by the check marked Exhibit C. 2? A Yes.

Q I call your attention to Exhibit C. 7, the check from Clawans closing $2,000. Was that paid by you to Mr. Shapiro? A Yes.

The Court: It doesn't say *closing*?

Mr. Masucci: Yes. Check from Clawans $2,000.

Q Is that evidenced by Exhibit C. 3—a check? A Yes.

Q And this balance at the bottom $5,894.69, does that indicate the balance due on the purchase of that property paid by Mr. Shapiro? A That's right.

Q And that balance is the figure that has been deducted from the amount owing to you by Mr. Shapiro on the $10,000 mortgage, the in-

terest, and the two sums of money you claimed you loaned him? A Yes.

Q Leaving a balance of $4,555.31 due to you? A That is right.

Q Now this mortgage of $10,000 which you say was due and owing to you. Did you ever receipt that for cancellation? A Yes.

Q Was it before or after August 3rd? A Before August 3rd.

Q Did you give him any money for that $10,000 mortgage? A Yes.

Q In cash or by check? A I gave him a check for $9,500.

Q I show you a check dated November 1, 1927, and ask you if that is the check which covered the consideration for the $10,000 mortgage you referred to? A Yes.

Mr. Masucci: I offer it in evidence.

Mr. Brogan: I don't think it makes any difference.

The Court: It is verifying her testimony about the issue of a bond and mortgage she is referring to and which she claims she had and which she says he was to credit her with the moneys on. In other words she shows by that check that there was actually due from him a mortgage which he thereafter undertook to pay off to her. I don't know all the particulars yet. I will admit it subject to what objection you wish to urge.

Mr. Brogan: It is immaterial.

The Court: I will admit it subject to your objection.

(Check marked Exhibit C. 8 in evidence.)

By Mr. Masucci.

Q You say the mortgage was for $10,000? A Yes.

Q The check was for $9,500.00? A Yes.

Q What about the difference of $10,000 and the $9,500.00 check? A He gave me a bonus of $500.00.

Q Did you authorize Morris W. Shapiro or Max Goldberg to execute any bond or mortgage or to borrow any money secured by bond and mortgage on the property 22 Gladstone avenue, Newark? A No.

Q Did you at any time know that either—

Mr. Brogan: I am going to object to the form of the question before it is finished.

The Court: It isn't fair to object before it is finished.

By Mr. Masucci.

Q Did you at any time know that either Max Goldberg or Morris W. Shapiro had executed to Ordway Building & Loan Association a mortgage of $7,000 affecting premises 22 Gladstone avenue, Newark? A I never knew a thing about it until August, 1929.

Q August, 1929? A This year.

By the Court.

Q How did it come to your notice? A How? Mr. Susskind who introduced himself as being the new counsel for the building and loan called up on the phone and said he had been over to 22 Gladstone avenue and was going to take possession of it. He called up my office Market 9909 and I said to him "Take possession! What do

you mean by that?'' He said ''Why, our building and loan has a mortgage on the property for seven thousand.'' I said ''You are crazy. You don't know what you are talking about.'' He then said ''Why, I wrote a letter to Max Goldberg and Max Goldberg lived at 22 Gladstone avenue and the letter came back.''

Q He told you the letter came back? A Yes, addressed to Max Goldberg at 22 Gladstone avenue.

Q Did Max Goldberg live at 22 Gladstone avenue? A Never.

Q Never with you at the time you owned the property you mean? A Yes. I know he never never lived in that property.

By Mr. Masucci.

Q Did you make any payments either on account of principal or interest of this mortgage to the Ordway Building & Loan Association covering premises 22 Gladstone avenue, Newark, New Jersey? A No.

Q Did you know of Mr. Shapiro or Max Goldberg making payments on account of this mortgage of the Ordway Building & Loan Association? A No.

Q When you were advised by Mr. Susskind that the Ordway Building & Loan Association had a mortgage on 22 Gladstone avenue did you look up the records to check up? A Yes, I did.

Q And you found there was a mortgage of record? A Yes.

Q And you instituted this suit? A Yes.

By the Court.

Q Did you finish the talk you had with Mr. Susskind? You said you told him he was crazy.

Did that end the argument? A Yes, of course. At that time he said "I saw a sign on the front of the door inquire for rooms to rent," or words equivalent to that, and on it it said "Kovsky—call Market 9909." I said "Mr. Kovsky is a clerk in my office; he has charge now of renting the place. I know nothing about what you are talking about—you are crazy."

By Mr. Masucci.

Q Did that end the conversation with him? A Yes.

By the Court.

Q Was there a sign on the premises? A Yes.

Q What did the sign say? A Then that sign said "Inquire for rooms to let. I. Kovsky —Call Market 9909." That is my telephone number.

Q When is this you are talking about? A On or about the latter part of July or the early part of August, 1929.

Q Is that the only sign that was on the property? A No, it had other signs.

Q Just describe this property. Is it out facing on the street or set back from the street? A It is a house facing. It is very conspicuous. It is the only stucco house in this neighborhood. It is a white stucco house and it sets out very prominently on the sidewalk.

Q How many stories? A Two and a half family house.

Q How many stories? A Two stories—first floor and second floor and two attic rooms. I had a sign out there from July 1928 up until the time Mr. Shapiro swindled me.

Q I will strike that out about swindling you. He may have swindled you but we will find that out later. A I had a very prominent sign "Flat to let—Inquire within. L. Clawans, Owner or call Market 9909." That sign was on there from July, 1928, up until the middle of June, 1929.

Q You say that sign on the building said "Flat to let"? A "Flat to let."

Q What's the rest of it? A "Inquire within —L. Clawans owner, or call Market 9909."

Q "L. Clawans, Owner," and what's the rest of it? A "Or call Market 9909."

Q That sign you say was on there from July 1928, until 1929? A Yes.

Q How big a sign was it? A About this size (indicating).

The Court: Can you gentlemen agree on the dimensions of the sign?

Mr. Brogan: I am surprised she hasn't the sign here.

The Court: Why would you be surprised?

A I should judge it was about a foot and a half by a foot and a half—18 inches.

Q Was it painted? A Painted in black "Flat to let."

Q What sort of backing on it or groundwork to the sign? A White background and painted in black.

By Mr. Masucci.

Q Did you say after your name were the words "Inquire within"? A Yes, sir.

By the Court.

Q "Inquire within, or call Market 9909." A "Inquire within—L. Clawans, Owner, or call Market 9909."

Q Where was that sign? Was it against the house or sunk in the earth, or where was it? A There were two signs. This sign was right on the post as you go up the stoop, a very conspicuous sign right on the first post facing Gladstone avenue.

Q You are talking about another sign. A There was also a sign as you go up the rooms —when you go up in the lower floor indicating the floor to let was the lower floor.

Q What did the sign say on the window? A The same thing.

Q What did it say? A It stated "Flat to let—Inquire within. L. Clawans, Owner, or call Market 9909."

Q Counsel for the defendant has suggested he was surprised you didn't bring it into court. What happened to the sign? A I never knew this thing was going to happen.

Q What happened to it, do you know? Have you got the sign yet? A No, but I instructed Mr. Kovsky who went up and put up the other sign. I was so upset.

Q Don't tell us how upset you were. A I didn't bring the sign here.

Q Did Mr. Kovsky take the sign down? A I believe he did.

Q Do you know? A I am not sure, but I think he did. I wouldn't say exactly he did.

By Mr. Masucci.

Q Was that sign there during the month of September, 1928? A Yes.

Q August, 1928? A Yes.

Q Did you have any repairs made to that building during July and August? A Yes.

Q By whom? A Joe Crowley.

By the Court.

Q What business was he in? A He was a builder.

By Mr. Masucci.

Q When did you engage Joe Crowley to make repairs to that building? A On or about the middle of July, 1928.

Q When did he start repairs, do you know? A Yes, I do know. He started on or about the last week of July, 1928.

Q And how long did he remain on the job repairing the building? A He remained to my knowledge—

The Court: It is your knowledge we are concerned with.

(Witness Continuing.) During the month of August. The last week of July, during the month of August and during the month of September, and I believe in October. I went to San Francisco. I left money to pay him.

By the Court.

Q He was there the last week in July and August and September? A Then again in November of 1928 and February of 1929.

Q What did he do all these times? Did he reconstruct the house or make minor repairs? A

He didn't reconstruct the house but he renovated the entire place because it was in very bad shape.

By Mr. Masucci.

Q What did he do to the interior? A The interior he painted all the rooms, shellaced the floors. He papered the dining rooms. He fixed the entire house—the exterior of stucco, a lot of work.

Q What did he do to the exterior of the building? A He had to fix the roof and had to paint the entire exterior of the house and fix the stucco because the stucco was coming down, and the carpentry. He had to fix the stairs and the cellar and the yard—a great deal of work to be done.

Q Did he have men working for him? A Yes.

Q Do you know whether he was there with his men daily or whether he came there intermittently? A No, he was there daily.

By the Court.

Q Were you there daily? A No.

Q How do you know he was there daily? A I paid him by the week.

By Mr. Masucci.

Q You lived there, didn't you? A Oh, I was.

Q And saw him in the morning when you left? A Certainly.

Q In the nighttime when you got home? A No, not when I got home.

Q This house had door-bells on the front door? A Yes.

Q In August, 1928, what floor did you live in? A Second floor.

Q Was there a door-bell in the front signalling to the second floor? A Yes.

Q Was there anything underneath the door-bell as to the occupancy of that floor? A Yes.

Q What name? A Clawans.

Q No first name? A No, just the sign Clawans. I mean just a small paper and the name Clawans.

By the Court.

Q Did any tax bills come to you while you were living in that house to pay? A Yes.

Q In whose name did it come? A Mary Scholder, the former owner. It never came in Max Goldberg's or Shapiro's.

Q You never said anything about Scholder. Was the property previously owned by a party named Scholder? A Yes, Mary Scholder.

Q So the tax bills came in the name of Mary Scholder. Did you know her? A Yes, I knew her ever since I was big.

Q What did you do with the tax bills that came in the name of Mary Scholder? A They were turned over to me.

Q Did you pay any taxes or bills in the name Mary Scholder? A I never paid any taxes at all. I paid water bills.

Q In whose handwriting is this *3* in January 3, 1929 on Exhibit C. 6 if you can tell me? A That is in the handwriting of Morris W. Shapiro absolutely.

Q In whose handwriting is the *3* in January, 1929, written in the acknowledgment in ink? A That is written in the handwriting of Morris W. Shapiro.

By Mr. Masucci.

Q How much did you pay Joe Crowley for the repair work and the decoration and painting on the property 22 Gladstone avenue, Newark? A A total sum of about $1,695.00.

Q Did you have anyone else doing repair work there about that time? A No, not at that time—after.

Q How long after? A I had a man there in March of 1929. I had a man there in the latter part of June, 1929.

By the Court.

Q What was the man doing in March, 1929? A He had to take care of the second floor and the hallway.

Q How about June, 1929? A In June, 1929, all the windows were broken in the cellar. Not all the windows, but two windows were broken in the cellar and the water was still leading through it.

Q How much did you pay altogether for the improvements whatever they were? A I spent altogether about $3,100.00.

By Mr. Masucci.

Q When did you spend the balance of $3,100.00 after paying Crowley the sixteen or seventeen hundred? Within what period of time? A From March up until the present time. I still owe some money.

Mr. Masucci: That's all.

Cross examination by Mr. Brogan.

Q How long have you lived in these premises Miss Clawans? A Since February, 1927.

Q Who else lived in the place? A A lady by name of Mary Scholder—an elderly woman.

Q Did you occupy a whole apartment? A Yes.

Q What floor was that? A I mean from February, 1927 up until I sailed for Europe July 31, 1927 I occupied the lower floor.

Q Did anybody else occupy it with you—any other member of your family? A Within that period?

Q Yes. A No, not at that time.

Q How many rooms were there? A Four rooms and an alcove.

Q Where did Mrs. Scholder live? A 22 Gladstone avenue.

Q Whereabouts in the house, Miss Clawans? A On the lower floor.

Q In other words you lived with her? A That's right.

Q How did Mendel Gross get that title? By a deed from Mrs. Scholder? A No, at a foreclosure sale.

Q Who represented Mrs. Scholder at the sale? A I did.

Q It was bought by who? A The mortgagee.

Q Who was the mortgagee? A Mendel Gross.

Q Did you negotiate with the mortgagee during the proceedings that went down to the sale? A Not at that time to purchase.

Q What negotiations did you have with Mendel Gross during the pendency of the mort-

gage foreclosure proceedings? A You mean with respect to the time I represented Mary Scholder?

Q Yes. A I didn't want him to go ahead and foreclose.

Q And after permitting him to foreclose what other negotiations if any did you have during the pendency of those proceedings with Mendel Gross? A I didn't want him to go ahead. I gave $660.00 to Simon L. Fisch out of my own money to apply to the payment of interest.

By the Court.

Q Before the foreclosure? A Yes.

By Mr. Brogan.

Q When was that? A Before I sailed for Europe.

By the Court.

Q She sailed for Europe on July 31, 1927. When was it before that you gave the money? A Between June and July, 1927. I know it was before I sailed for Europe.

By Mr. Brogan.

Q The point I want is this. During the time of Mrs. Scholder's ownership and before the sale under the final decree did you not negotiate with Mendel Gross for taking over this property yourself? A Did I negotiate?

Q Yes. A I wasn't really thinking seriously at that time.

Lillian Clawans, for Complainant, Cross.

By the Court.

Q Did you have any talk with him about buying the property? A I told him if it came to the point I would take it over because I was interested in the purchase.

By Mr. Brogan.

Q Why did you keep that knowledge from Mrs. Scholder? A I never did.

Q Did you tell her? A Certainly.

Q Is she here today? A No, but she will be here.

Q Is that the reason why you wanted Mr. Shapiro to take it over in his name and not yours? A *Absolutely not!*

Mr. Brogan: I have excellent hearing.

The Court: Mr. Brogan, I have had her as a witness before and she raises her voice to a high pitch.

By Mr. Brogan.

Q Why did you want Mr. Shapiro to take the property in his name? A He just came in at the time when Mr. Boeninger came in and they were talking about the threats of Mendel Gross that he was carrying a razor. I felt that inasmuch as men bigger than myself were afraid of him I also should be on my guard.

Q That is the reason you asked Shapiro to take the title? A That's the idea.

Q Any other reason? A No.

By the Court.

Q Did the fact that Shapiro owed you $10,000 influence you in any way to have him take it over in his name? A Absolutely not.

By Mr. Brogan.

Q Where does Mrs. Scholder live at the present time, do you know? A Yes, sure. 134 —On Dewey street.

By the Court.

Q Have you subpoeaned her to be here? Will she be here? A Yes, I subpoeaned her.

By Mr. Brogan.

Q Between what streets is it? A Between Wainwright street.

By the Court.

Q Between Wainwright and what other street? A I know the house when I see it. She is only living there about a week.

By Mr. Brogan.

Q Is it 134? A No, it isn't 134. I was thinking of something else. She does not live near 134 or nothing near it.

By the Court.

Q Does your sister know where she lives? I see her in court? A No.

By Mr. Brogan.

Q Did you visit the lady at this house? A She is living there a week.

Q Did you visit her there? A No, but I had her on the phone. I will give you her phone number.

Q Where did Mrs. Scholder live? A She formerly lived at 22 Gladstone avenue.

Q I mean in the interval? A She lived at 136 South Orange avenue.

Q 136 South Orange avenue was the place from which she moved from 22 Gladstone avenue? A She stayed a while with relatives and then she moved to 326.

Q And during that interval, Miss Clawans, between the time of the acquiring of this title by Mendel Gross and the time that Mr. Shapiro's clerk took the title you continued to live in the premises? A That's right.

Q At what time did Mrs. Scholder quit then? A I think—

Q I don't wan't you to think. A I am not so sure when she went.

Q At whose instance was a writ of assistance gotten in order to clear up the possession feature of ownership? A That was away in June, 1928.

The Court: Read the question.

(Last question read by stenographer.)

A Why certainly! I suppose the person who purchased the property—Mendel Gross.

The Court: If you don't know say so.

The Witness: I didn't see it done I might say.

By Mr. Brogan.

Q About what time, Miss Clawans? A I don't know. I think around June, 1928. I am not sure.

By the Court.

Q You say you lived there from February, 1927 to October 1928, that is, excepting your departure to Europe? A I lived there from February up until July 3, 1927, and I came back in October of 1928.

Q 1928? A No, I came back in October, 1927.

Q Then you continued to live there until what year? A Then I continued to live there from October, 1927, up until the middle of May, 1929, with intervals. I mean by that I lived there from October, 1927, up until I went to San Francisco October, 1928.

Q We are not concerned with that. When was the last time you lived there? A The last time I lived on May 15, 1929 at 22 Gladstone avenue.

By Mr. Brogan.

Q I asked you and I guess you lost sight of it, about what time was this writ of assistance obtained?

The Court: She has been guessing and supposing and then she was obliged to say she knew nothing about the writ of assistance.

By the Court.

Q Did you know anything about the writ of assistance? A I only knew about the demand for possession.

Q How did you know about the demand for possession? A I was there in the morning.

Q Where? A 22 Gladstone.

Lillian Clawans, for Complainant, Cross.

Q Who came there with a demand for possession? A Mendel Gross and Ralph Solodar.

Q Was that after you bought the property from Shapiro or before? A Before I bought the property.

By Mr. Brogan.

Q Let us have the exact situation. When you were at 22 Gladstone avenue did you board with Mrs. Scholder? A No, I never boarded. I never boarded with any body. I had control of the situation.

By the Court.

Q What do you mean by that? A I stayed there and gave her money.

Q What do you mean by having control of the situation? A I paid the gas and electricity bills for her and the current expenses and I gave her money to live on.

Q Were you a companion of Mrs. Scholder for a time? A No, I was a tenant.

Q Mr. Brogan asked you if you were a tenant and you said you had control of the situation. A I was a tenant.

Q If you were a tenant how much rent did you pay? A I paid from about sixty-five to seventy I gave Mrs. Scholder a month.

Q Was there any agreement of tenancy between you and Mrs. Scholder? A Yes, I gave her money.

Q Was there an agreement of tenancy? A Not written, but I gave her the money. What I did was this. I paid her as a tenant would pay. I think sixty-five to seventy-five was a lot of money.

By Mr. Brogan.

Q At exactly fifteen minutes after three I asked you did you board there? A No, I didn't board.

Q Who provided the meals? A I didn't eat any meals.

By the Court.

Q You mean in that house? A Yes.

By Mr. Brogan.

Q Did you breakfast? A Just a cup of tea I got myself.

Q And Mrs. Scholder provided her own food, is that right? A Yes.

Q And did her own cooking? A Yes.

Q Will you tell me in your own language what you were if not a companion? Did you keep this house jointly or were you a boarder? A I treated myself as a tenant.

Q And did you have then an undivided use of the entire four rooms and alcove and bath? A Yes.

Q And Mrs. Scholder likewise? A Yes.

Q So it was a kind of a common idea? A I was accommodating her.

Q I asked you what you did. I don't care about your motive. A I had full control of the second floor.

Q Did you live on the first or second? A I told you I lived on the first floor. That was from February, 1927 until July, 1927 until I returned from Europe. When I returned from Europe Mrs. Scholder was not living there then. Then I took the second floor.

Lillian Clawans, for Complainant, Cross.

By the Court.

Q Did you live there without Mrs. Scholder living there with you up to June, 1929? When did you leave there? A I set myself permanently there in July, 1928.

Q And lived there up to what time? A I lived there until on or about the middle of May, 1929 with intervals.

Q What do you mean by that? A I went to the coast during that period on a business trip.

Q How long were you at the coast? A I was away about three weeks.

Q What time of the year did you go to the coast? A I went to the coast on or about October, 1928.

Q I ask you were you there for any particular time or were you just migrating there from week to week? A I had all my goods and chattels there.

By Mr. Brogan.

Q When you went upstairs, Miss Clawans, did you buy furniture for the upstairs apartment? A I never slept in anybody's bed.

The Court: Why don't you answer the questions?

The Witness (Continuing): Yes.

By Mr. Brogan.

Q You fixed up the second floor? A I did the kitchen. The parlor suit belonged to me.

Q In other words Mrs. Scholder continued to occupy jointly with you? A Not all during the time I was there.

Q When you came back from your trip and moved upstairs to the upper part of the house did Mrs. Scholder continue to occupy that second floor apartment jointly with you until sometime after June 15, 1928 when she was evicted from those premises? A From the time I returned until June?

By the Court.

Q In other words did she live upstairs or downstairs? A She lived upstairs and downstairs.

Q You testified when you went on this trip you and she lived downstairs and when you came back you solely and exclusively took possession of upstairs? A That's right.

Q If that is so then what do you say now isn't so? What is the fact? A The fact is both floors were vacant. Mrs. Scholder had some of her things downstairs, see, and she would run from downstairs upstairs. The rooms weren't occupied. I had control of the second floor.

Q You are asked now did she live with you on the second floor up to the time she left the place. A She left the house.

Q Was she evicted from there or did she leave of her own accord? A She never was evicted.

By Mr. Brogan.

Q What caused her to terminate her occupancy? A She stayed there after that.

By the Court.

Q After what? A After I purchased the property.

Lillian Clawans, for Complainant, Cross.

By Mr. Brogan.

Q When do you say you purchased the property? A I purchased this property—I say that the contract was made July 3, 1928.

By the Court.

Q That's the time you claim you purchased the property is it? A Yes.

By Mr. Brogan.

Q I noticed that that check you gave to Mr. Shapiro is dated July 10, 1928? A That's right.

Q How do you account for the difference? A The thousand was to be deducted from the ten thousand.

Q I understand Mr. Shapiro paid some one—the owner of the property, one thousand on July 3rd, is that right? A That's right. It was my money though.

Q I understand. Why then if that was so and you had a credit with him in the amount of ten thousand, why did you on July 10th reimburse him for the amount he laid out? A I didn't reimburse him at all. The idea was that three thousand of the money was to be applied—six thousand out of ten was to be applied towards the Gladstone avenue property. Three thousand was to be applied making a total of nine thousand for the purchase of the Gladstone avenue property.

By the Court.

Q What about the balance of four thousand? A That was for a mortgage on 91 Clinton avenue.

Q Did he give you a mortgage? A Yes.

By Mr. Brogan.

Q He gave you a good mortgage for the other four thousand? A No, another bum mortgage.

By the Court.

Q You mean a mortgage upon which you have not realized yet? A That's right.

By Mr. Brogan.

Q How long had he been representing you or doing business for you in matters of this kind, Miss Clawans? A He never represented me. He merely was to effect the thing.

By the Court.

Q You dealt with him? A That's right.

By Mr. Brogan.

Q You retained him to purchase this very property? A Yes.

Q Had you prior deals of like manner with him? A Not for the purchase of property—second mortgages.

By the Court.

Q Did you buy mortgages with him? A Yes.

Q How many? A Quite a few.

Q Previous to this occasion? A Quite a few since 1923.

Q Were they always in the purchase of mortgages or any other business transaction? A No, only for the purchase of mortgages, and this thing.

Q I am speaking about previous to this occurrence? A Only for the purchase of mortgages.

By Mr. Brogan.

Q Did you have a telephone in your home at 22 Gladstone avenue? A No.

Q Can you tell us why you had two signs on the house? A I wanted to indicate the lower floor was vacant—not the second floor. Do you see?

Q No, I don't see. I understand 9909 Market was on one sign? A No, not at one time.

By the Court.

Q You had two signs up at one time. One was on the window and one on the post of the stoop, and you said the sign on the post said "Flat to let—Inquire within. L. Clawans, Owner, or call Market 9909"? A That's right.

Q You said the same sign was on the window of the first floor? A Yes.

By Mr. Brogan.

Q Except it was in the name of Mr. Kovsky? A No, Mr. Kovsky—

By the Court.

Q Was that sign in the window in your name or some one else's name? A When have you reference to?

Q At the time you said you had a sign in the window when you also had a sign on the post of the stoop. It said "Inquire within." Did it give any name? I am speaking about the one in the window. A One on the post and one

on the window dated from July 1928 until June 15, 1929.

Q What name was on the one on the window? A "Inquire within—L. Clawans, Owner. Call Market 9909."

Q That was in the window? A Yes, and the same on the post.

Q Counsel has said something about Kovsky's name on a sign. Was there any such name on the sign on the first floor window? A No, that sign was there until the middle of June, 1929, until—I believe it is still in the window. That says "I. Kovsky. Rooms to let. I. Kovsky. Call Market 9909."

Q Kovsky is not at 9909? A Yes, sir.

Q Is he a clerk of yours? A Yes.

Q A male or female clerk? A Male.

By Mr. Brogan.

Q Why was that change made Miss Clawans? A I was very upset over what Shapiro had done to me and I wanted to rent that place, and Mr. Kovsky who just started to serve a clerkship in my office and said he would rent it for me, so everything had to be done through my office.

Q When did it first occur to you to try to blame the Ordway Building & Loan for your loss and not Mr. Shapiro as an individual? A I don't quite understand you. He was their lawyer. I couldn't see how anything could be placed on the property without anybody coming up and seeing me.

Q Suppose I happened to be the mortgagee and Mr. Shapiro was my lawyer. Would you blame me?

Mr. Masucci: I object to that.

The Court: I will sustain the objection. I don't want to get into the realm of conjecture yet.

By Mr. Brogan.

Q Do you remember Mr. Susskind having a conversation with you over the telephone? A Yes, at the time when he called me up to say he was going up to take possession.

Q Do you remember his having this conversation with you when he asked you why you had not put your name on it and he explained that 9909 was your distinguished self, and you said you used Kovsky's name because you didn't want Mrs. Scholder to know you had been negotiating for her property? Is that true or not? A That is not true.

Q These two deeds which you admitted in evidence, you swore unequivocally and with certainty that these deeds C. 5 and C. 6 were the same deeds which in an unrecorded condition were shown to you as of a certain date whatever it was?

Mr. Masucci: I object to that.

The Court: Counsel is mistaken about that.

By Mr. Brogan.

Q I am talking about your first testimony. Did you not say that two deeds were shown to you on about August 3rd, one from Mendel Gross and his wife to Shapiro? A No, to Max Goldberg.

Q That's right. Here it is. Mendel Gross and his wife to Max Goldberg, and another

deed was unrecorded from Max Goldberg to Lillian Clawans? A Yes.

Q Didn't you say these were the two deeds? A No, I said he came down with both deeds.

The Court: She explained that by saying that print on the so-called Clawans deed was somewhat different from that. She was referring to the endorsement.

By Mr. Brogan.

Q In other words it looked very like Exhibit C. 5? A Yes.

Q Was the other deed Goldberg to Clawans typed in the same type as this? Is that what you mean to say? A Yes.

By the Court.

Q What do you mean? A It had dark type. I couldn't say exactly this type, and it had here—

Q What does that mean?

Mr. Brogan: She is speaking about Exhibit C. 6.

By the Court.

Q You said it was dated August 3rd when you saw it? A Yes. There is no date on this.

Q The deed you say had the date August 3, 1928, the same as on the deed from whatever the name of the party is—Goldberg? A That's right.

By M. Brogan.

Q Therefore you say that this C. 6 is not the deed—the unrecorded instrument that you

saw the same day you saw this one Exhibit C. 5? A That's right.

Q And the reason for that is that the other deed which C. 6 is used now as a substitution for was written in this same kind of black heavy type? A I know it was dated August 3rd dark.

Q Miss Clawans, didn't you testify that these two exhibits C. 5 and 6, were in identical condition but were unrecorded at the time they were shown to you? A I didn't say they were.

The Court: My recollection is the first time she may have said what you say, but on further questioning she postively said differently.

Mr. Brogan: For the reason I pointed out the contradiction in the papers themselves.

Q This Exhibit C. 5 came from the office of Simon L. Fisch? A Yes.

The Court: And you read from that deed?

Mr. Brogan: I read from C. 6.

Q The Gross deed is from Simon Fisch's office? A Yes.

By the Court.

Q Do you know whose office that deed is from? A Yes, this deed is from the office of Simon L. Fisch.

Q How do you know that? A Only from what it says here.

By Mr. Brogan.

Q You knew that Simon Fisch represented Gross in the purchase? A Yes.

By the Court.

Q And you also testified Simon L. Fisch and Mr. Shapiro were there. Did he say anything about the deed? A He said everything was all right. That was in July, your honor. The deeds weren't executed until August 3, 1928.

By Mr. Brogan.

Q In other words you want me to understand that prior to the date of this deed C. 5, which is August 3, and sometime in July, Mr. Simon Fisch gave out this unrecorded instrument which was taken to you for your inspection on August 3rd. Is that right? A That isn't what I said.

Q What did you say? A I said to you that after the contract was executed I called him up and he said everything is all right. I didn't say anything in my testimony that the deed was executed in July, 1928.

By the Court.

Q When did you first see Exhibit C. 5? A On or about August 7, 1928.

Q Where did you see it? A Mr. Shapiro came to my office with two deeds and they were both dated August 3, 1928.

By Mr. Brogan.

Q Do you know whose writing is on Exhibit C. 6? A Yes, Morris W. Shapiro's.

The Court: Is Shapiro to be a witness in this case?

Mr. Brogan: Not from our side.

Q Did you complain against Shapiro? A Yes, surely, to Mr. Simon L. Fisch.

Q When did you make complaint to the Prosecutor's office against Mr. Shapiro?

Mr. Masucci: I don't think it is material and I will object to it.

The Court: I will sustain the objection. She hasn't said she complained to the Prosecutor's office.

By Mr. Brogan.

Q You say you got Exhibit C. 6 by mail, Miss Clawans? A That's right.

Q When did you get Exhibit C. 6 by mail? A I am sorry I didn't bring the envelope. I got it either on the morning of August 4th or 5th, so I immediately took it down to Mr. Masucci. That was the very first day after he disappeared.

Q The day after Shapiro disappeared? A That's right.

Mr. Brogan: That's all.

Re-direct examination by Mr. Masucci.

Q Was there any ill feeling between you and Mendel Gross previous to June, 1928?

Mr. Brogan: Objected to. It is immaterial.

The Court: I will sustain the objection.

Mr. Masucci: That's all.

SIMON L. FISCH, a witness being sworn on behalf of complainant.

Direct examination by Mr. Masucci.

Q Mr. Fisch, you are the First Assistant Prosecutor of the Pleas of Essex County? A Yes, I am.

Q And you have been representing Mendel Gross on July 3, 1928 in the drawing of a contract for sale of premises 22 Gladstone avenue, marked Exhibit C. 1? A Yes, I represented him at that time and for sometime prior to that time.

Q You also represented him in a foreclosure of that same property? A I did.

Q Did you draw up that contract Exhibit C. 1? A I did, yes.

Q Mr. Shapiro was in your office at the time you prepared it? A He was.

Q Did you receive a letter from Mr. Shapiro after the execution of that contract relative to the Gladstone street property? Before or after? A Is that the letter you asked me to produce?

Q Yes. A Yes, I received a letter dated the 22nd of June, 1928.

Q Do you know whether it is Mr. Shapiro's letter? A Well, I know it purports to be his letter.

Q Did you speak to him afterwards about the letter? A I don't know whether it is his letter or not.

By the Court.

Q Did you speak to him about that letter? A No, I did not.

By Mr. Masucci.

Q Did you receive this letter in reply to any demand or request from him affecting the premises 22 Gladstone avenue? A No.

By the Court.

Q Did you receive it through the regular course of mail? A I did, your Honor.

By Mr. Masucci.

Q Did this letter mean anything to you when you received it? A It did.

Mr. Masucci: I offer it in evidence.

Mr. Brogan: I have no objection to it. I don't think it is pertinent.

(Letter marked Exhibit C. 9 in evidence.)

Mr. Masucci: Shall I read it into the record?

The Court: Yes.

Mr. Masucci: "Morris W. Shapiro, 196 Clinton avenue (at Hayes Circle) Newark, N. J., June 22, 1928. Mr. Simon L. Fisch, Essex Bldg., Newark, N. J. Dear Sir: Miss Lillian Clawans has spoken to me in reference to calling one of her mortgages which she has placed with me. I will not be able to get her the money for a few days. Hoping this will be satisfactory, I am—Very truly yours, Morris W. Shapiro." On the side the initials MWS:R. L.

Q Do you know what the remarks in that letter had reference to? A I do.

Q What? A My answer is going to be pretty lengthy. I had had several talks with

Miss Clawans by reason of the fact that I had instituted a foreclosure suit on a mortgage which had been executed by Mary Scholder to the executor of the estate of one Gross who was the brother of Mendel Gross, my client. As a result of a settlement of the estate of the deceased Gross my client accepted an assignment of the mortgage from the executor of his brother's estate, this mortgage being on the property 22 Gladstone avenue then owned and occupied by Mary Scholder.

The Court: I will have to strike that out about being owned and occupied. It is clearly a conclusion.

Mr. Brogan: The search shows it.

The Court: Even the search wouldn't prove it.

(Witness continuing.) After my client had come into possession of the mortgage I had seen Mrs. Scholder. She called at my office and spoke to me with reference to arrearages of interest and there seemed to be some dispute between her and the representative of the estate as to just how much interest was owing at the time that my client took the mortgage as his share of the estate. The interest was due and Mrs. Scholder begged for further time within which to pay it. Finally in June of 1927, I believe it was, I addressed a letted to Mrs. Scholder and in reply I got a letter in reply from Miss Clawans, which letter I have in my files.

The Court: Suppose you refer to it if it is evidential.

(Witness continuing.) I received a letter from her under date of June 25, 1927, in which she stated—if I may refer to it.

By Mr. Masucci.

Q Is it all previous to this? A It is a year before.

The Court: How can that be helpful to us?

Mr. Masucci: I don't want it in.

Mr. Brogan: The only thing counsel has called Mr. Fisch.

The Court: He called his attention to it.

The Witness: I received a communication from Miss Clawans in June, 1927, in response to a letter which I had written to Mrs. Scholder.

By Mr. Masucci.

Q Did you start your foreclosure? A In June, 1927.

Q Did you go through with the foreclosure? A I am trying to answer your question.

Q You gave me more than I want. A I did.

Q And by June, 1928, you had gone through to a sale, isn't that right? A I think it was June, 1928, we were through to a sale.

Q By June, 1928, you had gone through to a sale? A Yes.

Q And the deed of record appeared in who? A We got a deed from the sheriff to Mendel Gross.

By the Court.

Q Have you the deed here? A Yes, your honor.

Mr. Masucci: I offer it in evidence.

(Deed marked Exhibit C. 10 in evidence.)

Mr. Masucci: Exhibit C. 10 is a deed from Conrad Deutschler, Sheriff of the County of Essex, to Mendel Gross, consideration $5,000, affecting premises in the City of Newark, County of Essex and State of New Jersey, and being known as 22 Gladstone avenue.

The Court: Is it conceded it is the Gladstone avenue property?

Mr. Brogan: I think it is.

Mr. Masucci: It is dated the 28th day of May, 1928, and acknowledged by Conrad Deutschler. The certificate of acknowledgement is dated the 14th day of June, 1928, in the presence of Thomas D. Healey, Master in Chancery of New Jersey, the sale dated the 15th day of May, 1928, and was recorded June 15, 1928 at 2:04 P. M. Date of decree February 4, 1928, the date given in the deed.

Q After Mendel Gross acquired title to the property were you negotiating for the sale of this property? A No, sir.

Q Was any one negotiating for the sale of the property and reporting to you? A No! No!

By the Court.

Q Did anybody make inquiry of you as to the purchase of the property after it was sold by the sheriff to your client? A Yes.

By Mr. Masucci.

Q Who was that person? A Miss Clawans.

Q Did she state anything to you with reference to the consideration for the purchase of that property? A Yes.

Q Did she state where she was going to get the consideration for this property? A Yes.

Q Who was she to get the consideration from? A If you want me to tell what I know I would be glad to. She had been negotiating with me with reference to this property from the time I first—

The Court: That is not what you are asked.

(Witness continuing.) She told me she was endeavoring to save the property for Mrs. Scholder and if necessary she would advance her own funds in order to help her out because Mrs. Scholder was a charity client of her's and she was going to get the money.

Mr. Brogan: I object to the question. How is it binding on the Ordway Building & Loan?

The Court: I don't know whether it is or not.

The Witness: She told me she expected to get a mortgage thereon.

By Mr. Masucci.

Q From whom, if she told you? A She said she was making applications to various building and loan associations and in addition to that she was expecting to get some money from Morris Shapiro—that Morris Shapiro owed her, and I told her I wanted some verification of that from Shapiro and I told her to get Shapiro to write me a letter, and as a result of that I got the letter Exhibi C. 9 of June 22, 1928.

Mr. Masucci: That's all.

Cross examination by Mr. Brogan.

Q Have you got a closing statement Mr. Fisch on the purchase of this property from your client Mr. Gross? A Yes, a pencil memorandum made by me at the closing.

Mr. Masucci: I understand you are making Mr. Fisch your own witness.

Mr. Brogan: Yes.

The Witness: This is the so-called closing statement.

By Mr. Brogan.

Q In other words as I understand this—

Mr. Masucci: Are you offering it in evidence?

Mr. Brogan: I think so.

Mr. Masucci: No objection.

(Closing statement marked Exhibit D. 1 in evidence.)

By Mr. Brogan.

Q Will you please read into the records just what those words and figures indicate? A Yes, I will. Mr. Shapiro was in my office and Mr. Gross was there in pursuance to the closing of title with reference to this agreement Exhibit C. 1. The purchase price—P. Price means purchase price $9,000. My client had received a thousand dollar deposit and the agreement provided for the apportionment—for an allowance of one-half of the 1927 taxes, the deed to be subject to 1927 and 8 taxes, and the 1927 tax was $209.40, and one-half of the apportioned 1928 tax up to the date of closing was $56.67, so I think those figures on taxes—allowed taxes to the deposit cash money a total of $1162.37 to be deducted from the purchase price of $9,000 which left a balance owing to my client to be paid at the closing of $7837.63. I received at the closing a check made to the order of Mendel Gross my client of the Ordway Building & Loan Association—

The Court: You are only asked to tell what this statement shows.

A (Witness continuing.) There was received on the closing a check of the Ordway Building & Loan Association in the sum of $6,000. There was received at the closing a check of Morris W. Shapiro for $1800.00 and a check of Morris W. Shapiro for $37.63, making a total of checks of $7837.63, being the balance I think in cash on the closing. The figures in the margin are my own notations in arriving at the computations as to apportionment of the taxes.

By Mr. Brogan.

Q May I show you a check dated August 3, 1928 No. 54 on the trustee account of the Ordway Building & Loan Association, and ask you —in the amount of $6,000, and ask you if you ever saw this check before? A Yes, I did.

Q In what connection? A That was the check which was received by my client in my office on August 3, 1928 at the closing of title as shown by Exhibit D. 1—the statement.

Mr. Brogan: I offer the check.

The Court: Have it marked and read the particulars of the check in the record.

(Check marked Exhibit D. 2 in evidence.)

Mr. Brogan: I will read the check in full. "No. 54. Trustee account. Ordway Building & Loan Ass. Newark, N. J., Aug. 3, 1928. Pay to the order of Mendel Gross Six Thousand dollars ($6,000). Trustee Account Ordway B-L Assn. Morris W. Shapiro, Trustee." In the lower left hand corner "Weequahic Trust Company." On the back of it the following endorsement—"Mendel-Gross—Simon L. Fisch—Mendel Gross," and underneath that again "Pay to the order of National Newark & Essex Bank, Newark, N. J. Aug. 4, 1928, Howard Savings Institution, Frank E. Quinby, Treas." Then there is a received payment stamp.

The Court: The perforation should show it.

Mr. Brogan: "8/13/28."

Q How do you know that is the check Mr. Fisch that was presented at the title? A For

two reasons. Because my acknowledgment was on it and my client would not accept it without my endorsement.

Q What representation if any was made by Shapiro at the time he was taking that title in regard to it being placed in the name of Max Goldberg? A He simply came in and at the time of the closing and told me that the contract had been assigned to Max Goldberg and that the deed be made to Max Goldberg.

By Mr. Masucci.

Q Did he show you the assignment? A I then asked that the contract be assigned and he wrote that out in my office as I recall on the contract Exhibit C. 1 in my office.

By Mr. Brogan.

Q Did he at any time communicate with you that he was taking this title for Miss Clawans or for her account? A No.

Q Was her name mentioned at all? A No, her name was as I recall it not mentioned during the course of the closing of that title.

By the Court.

Q What do you say as to that letter you received previous to that in which he said to you—"Miss Lillian Clawans has spoken to me with reference to calling one of the mortgages that was placed with me"? A That was prior to the drawing of the contract.

Q You said it meant something to you? A Yes, it did your Honor, because Miss Clawans had told me she was going to buy this property if necessary for Mrs. Scholder to protect this

old lady whom she had represented during all the time of the foreclosure proceedings, and she told me she was going to get a mortgage loan and I wanted to know from her where she was going to get the balance of the money. She said Shapiro owed her some money and she was calling it.

Re-direct examination by Mr. Masucci.

Q You knew that Mr. Shapiro was taking the property for Miss Clawans, didn't you? A No, I can't say that I did. I believed that the transaction was a transaction for the benefit of Mrs. Mary Scholder who had been in my office and cried on my shoulder time and time again.

By the Court.

Q Did you know it was not Shapiro's money —it was somebody else's money? A I didn't know. I wasn't concerned.

Q What did you mean by that statement you just made? If that is true you must have known it wasn't Shapiro's money? A I knew it was a check of Shapiro's. I knew it was one of the building and loan associations of Shapiro's. I did not know what arrangement had been made with reference to this transaction by Miss Clawans, but it was my understanding Miss Clawans had made some arrangement with Mr. Shapiro with reference to keeping the property for Mrs. Scholder and buying it back from my client at a loss to my client.

Q Then you did know that Shapiro wasn't taking it for himself or this man Goldberg? A I didn't know that.

Q You knew Shapiro owed her money on a mortgage? A Yes, she told me she had a couple of investments with Shapiro, and Shapiro was very friendly with her and was going to help her out.

Q He could help her out by paying the mortgage? A She told me previously she had went to the Admiral Sampson Building & Loan Association, also to the Lincoln Building & Loan Association for a mortgage, and she also told me Shapiro was getting the mortgage loan for her from one of the building and loan associations.

Q You realized that Shapiro was not raising any headache on account of Mrs. Scholder? A I thought that was done by way of Miss Clawans.

Q So you knew that Miss Clawans was a party in interest? A I had in my mind she had something to do with it some way or other.

By Mr. Masucci.

Q Did you give Miss Clawans a piece of paper of the purchase price of this property shortly after the closing of the title? A I don't recall that.

Q Did Miss Clawans call at your office and speak to you and advise you she was purchasing the property? A Yes.

Q After the contract was signed and before the closing of the title? A After the contract was signed I never saw or heard of her again.

By the Court.

Q You heard her so testify? A I did, but I did not have any telephone conversation with

her or any other conversation after that contract was signed.

By Mr. Masucci.

Q Do you recall meeting Miss Clawans at the Prosecutor's Office and she speaking to you about it or you spoke to her about it? A No, I do not recall that she spoke to me about it or I spoke to her about it.

Q After that time? A After that time.

Q You referred to several applications for loans on the property. Have you any knowledge of those applications? A She wrote me letters which I have in my file which refer to these applications.

Q And those applications were away in June of 1927 at the time the foreclosure was still pending? A I don't recall the date. November 18, 1927 I received a letter—that is Mr. Solodar who was in my office received a letter from Miss Clawans with reference to the Admiral Sampson Building & Loan Association to raise a mortgage for a greater amount than the one held by my client. The letter says Miss Clawans' client Mrs. Scholder was then negotiating—

The Court: Read the letter.

(Witness reads.) "November 18, 1927. Mr. Ralph Solodar, 31 Clinton Street, Newark, New Jersey. My dear Mr. Solodar: In reply to your letter of the 17th, my client Mrs. Scholder is now negotiating with the Admiral Sampson Building & Loan Association to raise a mortgage for a greater amount than the one held by your client and now we will be in a position to pay

off the amount due on your mortgage with the interest. There will be a final report on November 29, 1927. In the meantime I would be greatly favored if you would wait until the aforesaid date of the report. Thanking you. Very truly yours—Lillian Clawans."

By Mr. Brogan.

Q You answered that letter, didn't you? A Yes, I replied to that letter on November 21st.

By Mr. Masucci.

Q Were there any letters after January of 1928 with reference to procuring a loan on that property and paying off your mortgage? A Well, now, I don't find them readily. This is rather a bulky file, but in addition to letters there were numerous conversations had with Miss Clawans. She came to my office.

By the Court.

Q Can you fix the time? A Yes. There was a letter of April 18, 1928 written by Miss Clawans to Mr. Ralph Solodar, in care of Simon L. Fisch, 31 Clinton Street, Newark, New Jersey. "My dear Mr. Solodar: Will you kindly hold off on the sale of the Scholder property 22 Gladstone Avenue for three weeks? Mrs. Scholder has definitely signed up with the Lincoln Mortgage & Title Company for a loan on her property. I have been told by the Lincoln Mortgage & Title Company that it takes about three weeks to complete the search on the property. I certainly appreciate your kindnesses and an early reply will be greatly appreciated. Thanking you

so kindly, I remain, Yours very truly—Lillian Clawans."

Q You don't understand the shorthand notes on there? A These are evidently some notes made by my stenographer as a result of some dictation by me to her in the matter either to file it or otherwise.

Q Did you suspend the proceedings as a result of these letters or delay them in any way? A I believe I did.

Q After the letter of April, 1928? A My recollection is that after the letter of April, 1928, I told Miss Clawans or wrote to her that I was going to proceed to let the thing run on but that if she was successful in getting this mortgage loan and was successful in getting the money to us that at any time that she would pay the amount due to us we would discontinue proceedings, as we wanted nothing more than the amount that was due.

Q The sale was on May 15, 1928 according to the sheriff's deed? A Yes, and two days after the sale I wrote Miss Clawans a letter about it. At least there was a letter written from my office about it.

By Mr. Masucci.

Q Did you ever call up to find out whether a loan was procured? A After the sale was had she applied to the Court of Chancery for the purpose of having the decree set aside as having been obtained fraudulently.

By the Court.

Q How do you know that? A Because I was served with papers.

Q In the suit of Miss Clawans? A On behalf of her client Mrs. Scholder. She obtained a rule to show cause and that was served on me and heard before Vice-Chancellor Church and the rule discharged.

By Mr. Masucci.

Q That was before the sale? A I don't remember whether it was before or after.

Q The closing of title in your office affecting the 22 Gladstone Avenue property was it through a loan obtained from the Lincoln Mortgage & Title Company? A I don't think so. Miss Clawans told me Mrs. Scholder was without any income or wasn't living with her husband and had no income from the property except for the fact Mrs. Scholder lived in the property herself, and begged me to hold off so Miss Clawans could help her out.

Q Don't you think you have gone far beyond answering my question?

The Court: I will strike out all after "I don't think so."

Re-cross examination by Mr. Brogan.

Q Do you know whether Miss Clawans was actually in possession of that property, Mr. Fisch? A I was never in the property.

Q Did you cause an inspection to be made before filing the papers? A Yes.

Q Who made the inspection? A Mr. Solodar of my office, and I received affidavits which I filed in the Court of Chancery before I instituted proceedings to sustain demand for possession.

The Court: Assuming that the mortgagee in foreclosure made a proper inquiry how can it help the Ordway Building & Loan? The duty was cast upon them under the law.

Mr. Brogan: It was done. No further questions.

DANIEL J. SCROCCO, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q What's your business, Mr. Scrocco? A Architect.

Q Were you an architect in July and August of 1928? A Yes, sir.

Q Did you appear in the premises 22 Gladstone avenue, Newark? A Yes, sir.

Q Was it in the month of July? A Around the latter part of July.

Q Who did you see there? A Miss Clawans.

Q What part of the premises? A On the second floor.

Q Did you go there to look for Miss Clawans? A I had an appointment together with a gentleman by name of Delia, a contractor, for the building contract for the repairs of a certain two-family frame house that Miss Clawans owned at 13th street and New street.

Q And you went there with respect to that? A To have the contract signed.

By Mr. Brogan.

Q This is another piece of property? A Yes.

By Mr. Masucci.

Q What floor did you go on? A On the second floor.

Q And did you ring the bell to the second floor? A Yes, I did.

Q What name was on the doorbell? A Miss Clawans.

Q In front of this building there is a porch? A Yes.

Q With columns? A Yes.

Q Did you notice any sign on the columns? A I noticed a sign on the front column.

Q Did you notice what the sign read? A It was a white sign with black letters. I know the words "Flat to let" and Miss Clawans' name was on it.

Q Did you notice anything under Miss Clawans name—the telephone number? A Yes.

Q Did it state the character of Miss Clawans? A I didn't read the whole sign. Just Miss Clawans name and "Flat to let", and a telephone number.

Q When you went upstairs was Miss Clawans there? A Yes.

Q Did you speak to her? A Yes.

Q How long were you there? A About twenty minutes.

Cross examination by Mr. Brogan.

Q What was the date you were in these premises? A Why, I couldn't give you the date. The latter part of July, 1928.

Q The latter part? A Yes.

Q And were you alone or was Mr. Delia with you? A Mr. Delia.

Q Had you been there before? A No, sir.

Q Had you ever done any business with Miss Clawans before? A No, sir. I knew her office, but it was the first time I had ever been to 22 Gladstone avenue.

Q How did you know she owned this other piece of property in question? A She told me she bought it at a sheriff's sale.

Q She bought what at a sheriff's sale? A A two-family house unoccupied at the corner of 13th and New street.

Q When was that she told you that? A In July, 1928.

Q Had you met her previous? A Yes.

Q Where? A I knew her for quite a few years.

Q In what connection did you know her for so many years? A In what connection?

Q Yes. A Well, as a lawyer. Miss Clawans was a lawyer.

Q Were you a client? A No, sir.

Q Did you ever do any business for her? What transactions did you meet her in? A In transactions of different business.

Q What was one of them? A I was an expert witness in some of the building cases in which Miss Clawans was connected.

Q What were they? A I know one case Mr. Crowley was involved in and Miss Clawans was representing Mr. Crowley.

Q Are you talking about the contempt case? A No, this was a case that was referred to a referee.

Q Just suppose you answer my question. Was Miss Clawans the counsel in the case in which you appeared? A Yes, for Mr. Crowley.

Q Who? Mr. Crowley you mean? A Yes.

Q Is he in court? A I think he is.

Q Where does he live? A I don't know.

Q Where was the property and what were you doing in the case? A The property that I had the building contracts?

The Court: No, this Crowley matter.

(Witness continuing.) Let's see! The Crowley matter was a case referred to Van Blarcom in Newark.

By Mr. Brogan.

Q What kind of a case? A A building on the corner of Bergenline avenue and Fifth street, and all those kind of cases was referred to Referee Van Blarcom and I was one of the witnesses for a man by name of Rosamanna. Miss Clawans was representing Mr. Crowley in that case.

Q She was Mr. Crowley's lawyer? A Yes.

Q Did Miss Clawans appear alone and handle this case for Crowley herself? A I met her there five months—

Q I asked you did she handle the case alone. A There were about ten counsel in the case.

Q She was Crowley's counsel in the case? A Yes.

Q That's what I am trying to get at. How long have you been an architect? A About fourteen years.

Q Where? A In Newark.

Q How long have you known Miss Clawans? A About seven years.

Q Where is your office? A Military Park Building.

Q Where is her office? A Prudential Building.

Q Where is that? A About a half a block away.

Q And you have never done any work under Miss Clawans until the Crowley case? A I was trying to tell you one.

Mr. Masucci: Is that material?

Mr. Brogan: I don't think he is telling the truth.

The Court: I will strike that out.

The Witness: Do you want to know what other business?

The Court: Yes.

The Witness: Well, really we didn't have any business.

The Court: You started to say something about some other case.

The Witness: About some other transactions.

By Mr. Brogan.

Q What were they? A I remember in my office when I used to have an office at 185 Market street—

Q How long ago was that since you had an office there? A About seven or eight years ago. There was a firm of Gold & Applebaum established there and Miss Clawans used to know these people.

Q Who introduced you to this lady? A Mr. Gold.

Q So that when you were at 185 Market street that's the time you met this lady? A That's the idea.

Q You said you were Miss Clawan's witness? A No, sir, Rosamanna's witness.

Q What is your name? A Daniel J. Scrocco.

Q Now you visited this house 22 Gladstone Place in order to confer with Miss Clawans about the finishing of an unfinished house which she had bought, is that right? A Let me tell you the whole story. Miss Clawans—

Q I don't want the whole story. Just answer the question. I don't want your story. A Have another one.

Q You are a pretty fly boy, no mistake.

Mr Masucci: I object.

By Mr. Brogan.

Q You went to 22 Gladstone avenue to talk to Miss Clawans? A By appointment.

Q About the finishing of this two family house which she had purchased and was in an unfinished condition, is that right? A That's right.

Q Who made the appointment? A Miss Clawans.

Q When? A She had been to my office three or four times. I was the architect for that uncompleted building.

Q Who owned the uncompleted building? A The uncompleted building was built by Mr. Crowley. I made plans for Daniel J. Crowley and they started to build. I had no supervision of the building—just furnishing the plans. Then the building was completed. I suppose it went under foreclosure and Miss Clawans bought it at the sheriff's sale. After she bought it she called at my office and asked me how much it would cost to complete the building. I gave her four or five sets of plans and then she went to different contractors to procure estimates. I

procured some estimates also. The estimate from Delia was the lowest which amounted to I believe about eighty-two or eighty-four hundred.

By the Court.

Q Then you went with Delia to her house by appointment? A Yes, by appointement. I prepared the contracts. They were supposed to be signed on a Saturday morning at 22 Gladstone avenue. She says to come to my office 22 Gladstone avenue, Newark, and bring Mr. Delia there with the contracts and we will sign them.

By Mr. Brogan.

Q When was that appointment made? A The exact date I don't recall.

Q What time of the day was that made for? A Eight o'clock in the morning.

Q Who made the appointment? You or Miss Calawans? A Miss Clawans made the appointment with me.

Q Did you suggest eight o'clock in the morning at her house? A No, she told me the time. The time was fixed by Miss Clawans.

Q Where did you live at that time? A 440 Central avenue, Orange.

Q How far away is that from Gladstone avenue? A About three and a half miles.

Q Isn't it the fact that Mr. Crowley the builder is the man who renovated Miss Clawans' house at 22 Gladstone avenue? A I am not talking about that.

Q I am asking you? A That I don't know.

Q Did you and Delia finally furnish the unfinished building for Miss Clawans? A No, the contract wasn't signed.

Q Is it still unfinished? A Yes.

Q How long ago was it since you were there? A Since July, 1928.

Q You have never seen her since? A Yes.

Q When? A Previous to this case.

Q And those were the only two occasions in the eight years you met her, is that right? A I met her on different occasions at different places.

The Court: We will now continue this hearing until tomorrow at 2 o'clock.

SECOND DAY.

Continuation of final hearing before Hon. John J. Fallon, Vice-Chancellor, Chancery Chambers, Jersey City, December 12, 1929.

Appearances:

F. D. Masucci, Esq., for complainant.

Joseph Susskind, Esq., for defendant (Mr. Thomas J. Brogan of counsel).

RALPH N. SOLODAR, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Mr. Solodar, you are a member of the Bar of New Jersey? A I am.

Q With offices in the City of Newark? A Yes.

Q Do you know Miss Lillian Clawans? A I do.

Q Have you had occasion to visit her at 22 Gladstone avenue? A I have. I saw her at that address.

Q When? A It was on June the 20th, 1928.

Q 1928? A Yes.

Q What part of the house did you go to? A The second floor.

Q Did you notice any name on the doorbell? A No, I did not.

Q Where did you find Miss Clawans? A I went to the house. I was in Mr. Fisch's office, the gentleman who testified yesterday. I went there for the purpose of serving an order in a foreclosure matter in a writ of assistance made, and I went into the kitchen on the second floor. Mrs. Scholder was there and I served her with the order and Miss Clawans came in there and I served her with an order.

Q You saw Miss Clawans there? A Yes, that morning.

Q Was she dressed as though she belonged in there or was ready to go out? How was she dressed? A She had clothes on. She didn't have no hat or coat on.

Mr. Masucci: That's all.

Cross examination by Mr. Brogan.

Q What was the purpose of your visit Mr. Solodar? A I went there to serve an order directing that a writ of assistance issue. The order was signed on the 19th of June and I served it on the 20th, and it directed a writ of assistance issue on the 26th.

By the Court.

Q Against Mrs. Scholder? A Yes.

By Mr. Brogan.

Q Who was present besides Miss Clawans? A Miss Scholder.

By the Court.

Q That is that lady standing there (indicating)? A Yes.

By Mr. Brogan.

Q You made no inquiry had you as to Miss Clawans status in that house? A No, I wasn't interested in who owned the house. We were not interested in the owner.

By the Court.

Q You were not interested in who owned it; you were interested in serving the writ on Mrs. Scholder? A Yes, our proceeding was against her.

Mr. Brogan: She was the owner.

The Court: I will have to determine that.

Q She was the one that you were proceeding against as the mortgagor and the one in occupancy as you thought? A Yes.

Mr. Brogan: Miss Clawans said on the stand that Mrs. Scholder was—

The Court: I don't want any one to say who the owner was. There is no dispute as

I understand up to the time of the mortgage foreclosure proceedings divesting her of title.

By Mr. Brogan.

Q Did you notice any sign on either of the posts? A No.

By the Court.

Q Did you look for one? A No, I didn't It was a very tender case.

Q Tender in which you knew it was a sad case for a woman to be put out of her own house? A Yes.

Mr. Brogan: That's all.

CHARLES C. GIFFONIELLO, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Mr. Giffoniello, you are a member of the Bar of New Jersey? A I am.

Q And are you acquainted with Miss Lillian Clawans? A I know her.

Q Were you acquainted with Miss Lillian Clawans in the year 1928 during the months of June, July and August? A Yes.

Q Did you have occasion to call at Miss Lillian Clawans' house at 22 Gladstone avenue? A I called at her home the morning I think she left for Europe in 1927.

By the Court.

Q Do you remember the month? A I think the latter part of July, 1927.

By Mr. Masucci.

Q Where was her home then? A 22 Gladstone avenue.

Q Did you go into the house? A Yes, I did.

Q Did you ring the front door bell? A Yes, I did.

Q Did you observe any name on the door bell? A No, I didn't.

Q Do you know what floor she was on? A She lived on the first floor at that time.

By the Court.

Q How did you know what floor she lived in? A When she sailed for Europe I went there with my car and accompanied her to the docks.

Q Did she let you into the room? What I am concerned about did you know what floor she was actually living on? A I think she was living with Mrs. Scholder and I might have rung Mrs. Scholder's door bell, and that's how I gained entrance.

By Mr. Masucci.

Q Did you have occasion to go to 22 Gladstone avenue after that? A No.

Q Did you stop to pick up Miss Clawans? A I live at 66 Monticello avenue in the Upper Vailsburg section of Newark. I went down to South Orange very often to business. I think on one or two occasions last year—on one occasion particularly, I recall while her father was

in Europe, I saw her at the corner either on Gladstone avenue or a block below and I gave her a ride down. On this occasion I asked her when her father was coming back and she said in a month or so.

Q Do you remember what month that was in? A I think the month of July last year.

Q 1928? A 1928.

Mr. Masucci: That's all.

Mr. Brogan: No questions.

FLOYD W. BORDERS, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Did you live on Gladstone avenue in 1928? A Yes.

Q During the months of June, July and August? A Yes.

Q What number Gladstone avenue? A No. 20.

Q Do you know Miss Lillian Clawans? A Yes, sir, I know her by sight. I never met her at that time.

Q And 22 Gladstone avenue is immediately next to where you live? A Next door to me.

Q Did you observe any signs that you read—signs on the building 22 Gladstone avenue? A Yes, sir.

Q Do you remember the words on the signs? A It had "Flat to let—Inquire Owner, Lillian Clawans." The big sign—the wooden sign painted.

Q Was there any interest which called your attention to this large sign? A Yes, sir, I wanted to rent the place at one time.

Q And did you make application to rent the place? A Yes, sir, I went into the place and I saw the painter and I found out from him whom to call, and I went down and called up around the 18th of September.

By the Court.

Q What year? A 1928. I made the call and was informed Miss Lillian Clawans was out and to call another time. I called Miss Clawans later and still I got another answer she was out. They wanted to know whether I would leave a message and I said "No", so I went back and had another talk with the painter. They wanted fifty for the flat and I only wanted to give forty-five. In the meantime I took a flat and I told the painter I rented a place and I wasn't interested any longer to rent.

Q Did you ever see Miss Clawans around there? A Yes, I did, but I never knew her. I knew her by sight.

Q Did you see her going in and out? A Yes, going in and out, and she would be going in when I would be going out. I was in the fire department and would meet her in the morning going out.

Q For how long a period did you see her? A I saw her in 1927 and 8. I was not interested and do not know the dates or times.

Cross examination by Mr. Brogan.

Q Why didn't you talk to her, Mr. Borders? A Because I like to have an introduction to a person before I speak to them on the street.

Q And you wanted to rent the flat? A I never met her; I only called her up.

Q And the painter told you to call? A And I forgot the telephone number and I went back and got the number off the sign—one sign.

By the Court.

Q The telephone number off the sign? A Yes.

Q Why do you say one sign? Was there another sign? A There was another sign on the post. It said "Flat to let" like a sign you buy in the store.

Mr. Brogan: That's all.

WILLIAM CUNNINGHAM, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Mr. Cunningham, you are employed by the Newark Evening News? A I am.

Q Were you employed by the Newark Evening News in September, 1928? A No, sir.

Q Did you have charge of the paper advertisements? A I have not.

By the Court.

Q Did you? A No.

By Mr. Masucci.

Q Have you been directed to produce certain advertisements of flats to let? A I was told to produce the file here pertaining to a

notice I got here. I don't know anything only from the notice I got to bring the file here.

By the Court.

Q But in response to the notice you do produce them here? A Yes, the file.

By Mr. Masucci.

Q You produce certain files? A Yes.

Q Which indicates advertisement for a flat mentioned in the subpoena? A Yes.

Q Will you turn to the advertisement for apartments on the date of September 26, 1928? A I can't do that because I am only an employee of the News and I was just told to deliver the file here.

By the Court.

Q But you have the file before you if you are familiar with it? A No, I am not familiar with it.

Q We might make you familiar with it. Now just turn to that book and page—

Mr. Brogan: If the Court please just a moment.

The Court: Newspaper men don't want to get mixed up in—

Mr. Brogan: If the advertisement reads September 26, 1928 as counsel says it does, what possible influence could that have to our mortgage which is August 3rd?

Mr. Masucci: Continued occupancy.

The Court: I will let it be coupled up.

Mr. Brogan: It is self serving.

The Court: It is a matter indicating to the public generally that that person who is advertising is the agent or whatever they are of that property. Let us see what it reads.

By Mr. Masucci.

Q I call your attention to the ad on the—

The Court: This witness said he does not know anything about it. Why not show it to Mr. Brogan and he may concede that is a record taken from the files of the News. Do you want to offer it?

Mr. Mauscci: That ad.

The Court: You are offering this book which indicates—

Mr. Masucci: Containing an issue of a—

Mr. Brogan: Suppose we say the following ad appeared in the Newark News of September 26, 1928?

Mr. Masucci: September 26th, 27th, 28th, 29th. Four days consecutively.

Mr. Brogan: Whatever it is.

Mr. Masucci: Under the heading of "Apartments to Let" as follows: "Five and seven rooms. 2½ family house. Latest improvements. Newly decorated. 22 Gladstone Street or Phone Market 9909."

JOSEPH CROWLEY, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

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

Q Were you a builder in 1928? A Yes, sir.

Q Were you called to make any repairs on the premises 22 Gladstone street, Newark, New Jersey? A Yes, sir.

Q What month were you called? A About July 10, 1928.

Q By whom? A By Miss Clawans.

Q And did you call at the premises 22 Gladstone avenue? A Yes, sir.

Q And did you see Miss Clawans there? A Why, at first I went down to her office. It was in the afternoon and she wasn't there at the time so the next morning why— No, that evening I called up the office and Miss Clawans told me to come up to her house and meet her there at eight o'clock the next following morning.

Q Did you go there the following morning? A Yes, I went there the following morning.

Q Did you meet Miss Clawans? A Yes. I went around to the back door and that was locked. I went around to the front and there were two doorbells there. There was "L. Clawans" on the doorbell.

Q Which doorbell? A The top doorbell. That's how I came to know she lived there.

Q Did you go upstairs? A Yes.

Q Did you find Miss Clawans there? A Yes, sir.

Q Before going upstairs did you observe any notices on the front of the building? A Why,

there was a "Flat to let" sign on the first column on the right-hand side of the porch. Then there was another "Flat to let" sign in the middle bay window on the first floor right on the window frame.

Q Did you observe or do you recall the contents of the "Flat to let" signs? A Not at that time, but after a while when I was working there the one on the column was glued on the column like paste. That had on "Flat to let—Inquire within. L. Clawans, 1260 Broad Street, Owner." The other one was the same in the window and another little ticket on the doorbell.

Q Did you get the work to make the repair? A Yes, sir.

Q Did you make the repairs on that building? A Yes, sir, I went through the whole thing.

Q When did you start to make repairs there? A That was July 10th I met Miss Clawans. Just how I come to know it, I was working down at the shore after July 4, 1928. When I came back I went right to Miss Clawans' office, so I believe I started a couple of days after—that is, to work on Miss Clawans' house.

Q What repairs did you make on the property? A The first thing I done on the property was to brace up the front porch. If it ever fell down it would kill somebody. It was rotten from the water and leaves on top. Then I went to the first floor. At that time Miss Clawans was living on the second floor. I went in the first floor and tore out all the wood work in the dining room and parlor and started to tear all the paper off and everything. I had to take the paper off and have the bedroom

fixed up. I had that pretty near finished and then I went up to the second floor.

Q You decorated the first floor and painted it? A Yes.

Q Did you do the same to the second floor? A Yes. I fixed the porch and the stucco. There was a gable roof in the front of the house and a roof in the back. The plaster and everything was falling down.

Q How long did it take you to do all of this work? A I worked there about the last week or two weeks of July, the full month of August and September, and I put a couple of men on in September. Then I believe I worked there a little while in November about a week and I went away to do another job.

By the Court.

Q How about October? A October, too. Then I went away to another job.

By Mr. Masucci.

Q When did you start to work on the exterior? A Around September 5th.

Q This "To Let" sign which was on one of the posts, did that remain on there while you were working? A Yes, the "To Let" sign was on there. I took a penknife to scrape it off so I could paint the pole.

By the Court.

Q Is that 1928 or 1927? A 1928.

By Mr. Masucci.

Q When did you take off the "To Let" sign? A When I was painting the house.

New Jersey State Library

Q When did you start to paint it? A About September 5th. I put three coats of stucco on the outside.

Q Who paid you for your work? A Miss Clawans.

Q How were you paid? In periodical payments? A Why, Miss Clawans paid me. I had to meet the payroll. She paid me in cash on Saturday and most of my material work. Sometimes she gave me cash and at other times checks.

Q While you were working on the building did you see Miss Clawans there? A Why, Miss Clawans was there— Let's see! I think she was there about a couple of weeks. She would come down in the morning and look around and run in and run out. One day there she came rushing down the stairs and said "I have to go to California." Then I didn't see her for about a month. So I went down to her office and she was back in her office.

Q And after that did you see her on the premises? A Why, after that; yes, sir. She would come around about every week to see how the work was going on.

Q What time did you get on the job? A Before eight o'clock.

Q Did you see her in the mornings on the job? A That was before she left to go to California.

Q You say she left to go to California in September? A I really couldn't say what month it was she went to California, to tell you the truth. I know she rushed down to me and said "I have to go to California," and she rushed out.

Q And after a month she came back? A About that time.

Q Then did you see her in the flat—in the building? A Well, I tell you there was furniture up there in the second floor and we moved it to redecorate the second floor, and later on she came back.

Q Was she there until you finished working, do you know? A Yes, she was there.

Mr. Masucci: That's all.

Cross examination by Mr. Brogan.

Q How long have you known Miss Clawans? A I have known Miss Clawans since—let's see! Since 1923.

Q And had you done work from 1923 on for her? A No. Miss Clawans—

The Court: You said *no.*

By Mr. Brogan.

Q What other work did you do for her, if any? A Well, the job on 13th street she wanted me to figure on that, but I didn't get a chance to figure on it.

Q You didn't get a chance to figure on it? A No.

Q Therefore I take it this is the only job you did for Miss Clawans? A Yes.

Q Where did you meet her? A Where did I meet Miss Clawans?

Q Yes. A You mean when I first became acquainted with her? In the Prudential Building in Newark.

Q Under what circumstances? A I met Miss Clawans through my brother. I just started in the building business in Newark. He

was in the building business and I went in business with him. Miss Clawans was doing his law work and that's how I come to get acquainted with her.

Q Do you know Mr. Shapiro? A No, I never met him. The only time I met him was in court about two weeks ago when I was here.

Q Did you tell any one at anytime that you were doing the work on Gladstone avenue for Mr. Shapiro? A No, sir.

Q Were you in fact doing it for Mr. Shapiro? A No, sir; I was doing it for Miss Clawans.

Q Who paid you during the month Miss Clawans was in California? A Why, I used my own money until Miss Clawans came back.

Q How much money did she pay you in cash or check? A Miss Clawans paid me about I think between three or four hundred in checks and three was in cash. There is difficulty on that job yet.

Q I am not interested in that. A I got about five hundred in cash and between three or four hundred in checks. Then the balance of the money I agreed to wait about a year or two years to guarantee the outside of the house so the roof wouldn't leak or the stucco wouldn't leak. There was bad leaks in the stucco and the water was going in the house and the roofs were leaking.

Q What was the amount of her total obligations to you? A Close on to seventeen hundred.

Q Are you sure about that? A I am absolutely sure.

Q And that is the only work you did for her? A Yes, sir.

Q And you are positive her total obligation to you for this work was $1,700.00, did you say? A Yes, close on to it.

Q Did anybody do any repair work or were you the boss of the job? A I was the boss of the job.

Q And sixteen hundred or seventeen hundred was the total amount of the cost of the repairs to that job, is that right? A Yes, sir, that was inside and outside complete. The house was in pretty bad shape. I didn't get no contract for it. I told her the only men what can do that job is the men on it.

Q And when you left that job it was complete, was it? A Let's see! The only thing that wasn't completed on there—let's see! Was —I completed it, and the boiler down in the cellar there was in the winter time froze up and all the water came up in the house when they started the furnace and threw all the water over the floors and put them on the bum. I think she had to have them done over again.

Q When was that? A I don't know when that was. That's the first I spoke to her since last February.

Q And of the sixteen or seventeen hundred which was the amount of your bill how much is still due you? A I think there is about $728.00 —something like that.

Q Have you got any note or anything to show that indebtedness? A No, no. I always took Miss Clawans at her word.

By the Court.

Q Did you ever submit bills to her for what she owed you—a statement of account? A No,

I told her what she owed me. Because I handled this job without a contract.

Q Did you keep a record in any books of account of the work you did there? A Yes, I did, but I moved since that time. I had a lot of old bills.

Q Did you look for them before you came into court? A I looked for them but couldn't find them. I live in Belmar now.

By Mr. Brogan.

Q Where was your office when you did that work? A My home.

Q What kind of a book did you keep, Mr. Crowley? A Oh, a small note book.

Q Don't you keep any books of account showing what is due you? A I am telling you I had a whole lot of bills and everything and some books and I was pretty big in the racket—in the building business in 1926. I had big business and I went into the hands of receivers so I threw all the old documents away.

Q I am talking about this job in July, August, September and October, 1928? A Yes. I am telling you that I moved down to Belmar and can't locate them since I moved.

Q Did you move them to Monmouth County or Essex County? A No, I must have thrown them out or burnt them when I moved.

Q You don't know what you did with them? A No.

Q They are not here? A No.

Q Where did you finally see Miss Clawans with regard to making this arrangement about doing the repair work? A Where did I see her? I saw her up at 22 Gladstone avenue on the second floor.

Q And you tried to see her three times and you finally saw her there? A Yes, I was up to her office in the evening. I went up there that evening and she told me to meet her in her home.

Q How did you know this work was to be done? A I was working in the shore and Miss Clawans met my brother and my brother came down to Belmar and said "Miss Clawans wants to see you."

Q Haven't you a telephone in Belmar? A No.

Q And he came down there just to tell you that? A No, my folks were living down there. I was pretty near finished up with a small alteration job. That was around July 4th.

Q Your brother is a builder, isn't he? A Yes.

Q Why didn't he interest himself in the job? A He was interested in bigger jobs. That wasn't in his line of work.

Q Did he suggest you have this job? A Yes.

Q How do you know that? A How do I know it?

Q Yes. A Well, I have no witnesses to that effect. He came down and that is how I came up there and done the work on that house.

Q The point I am trying to find out, Mr. Crowley, did Miss Clawans ask for you particularly or did your brother suggest you for the job? A I couldn't say. There was no suggestion; only he told me to go to see her.

Q What was the amount again you got in checks? A The amount in checks was between three and four hundred.

Q And the amount in cash? A Close on to five hundred. And I think there was a balance due of about $728.00 or something like that.

Q Are you sure you reinforced and mended that front porch? A Yes.

Q Now most of this work you did was after this suit was started? A What suit?

Q This suit that we are here about? A I started that job there around July—between July 10th and the 15th. That's when I started to rip out and tear out.

By the Court.

Q What year? A 1928.

Q Do you know anything about when this suit was started? A No, sir. I was just subpoeaned the other night. I was subpoeaned in Belmar and I jumped on a train to come up here.

By Mr. Brogan.

Q You said on your direct testimony Miss Clawans used to come around every Saturday to pay you? A Yes.

Q Does that mean you didn't see her the rest of the week? A Well, I used to go down there at night and tell her what work was done and what was needed. She had an adding and calculating school she couldn't leave much. She has a school down there.

Q How many men did you have on the job? A When I first started there was another man and myself. We were doing most of the inside work. When I came to the porch and the outside and roof I had four to five men working.

Q For how long? A Oh, about—I guess about a month.

Q You had five men for a month? A About that.

Q What were they—carpenters? A No. Yes, one carpenter, one painter and two fellows and myself were putting on the stucco.

Q The highest number of men you had was five, is that right? A Yes.

Q Did Miss Clawans live in the premises while the work was going on? A She lived there until she went to California.

Q When was that? A That was I believe around—let's see! I believe that was around August or September. I was working on the first floor. I know we had to move the furniture to get up to the second floor.

Q Did you do the second floor while she was away? A Yes.

Q Was the second floor finished when she came back? A No, the weather was damp and we wanted to go on the outside. The second floor I just ripped out. The carpenter work and the porches and the different things, and I wanted to get on the outside before I done anything on the inside to keep the water from coming into the inside and destroy the plaster.

Q Did you put a new roof on or just patch it? A I put a new roof on the front roof of the porch and the back roof I dubbed that all over.

Q With what? A With cement. There was places there that had holes.

Q What kind of a roof did you put on the front porch? A Black tar-paper.

Q Was it asphalt or tar-paper? A It was tar-paper.

Q What make roof? A I couldn't tell you what make roof but it comes in a roll—black tar-paper.

Q What did you put over that? A Roof cement. I still got the can home.

Mr. Brogan: That's all.

Re-direct examination by Mr. Masucci.

Q Did you have any dispute with Miss Clawans with reference to the bill for your work? A Well, I wouldn't say that.

Q Is there any litigation or any court action between you and Miss Clawans with reference to your bill? A Any litigation?

Q Yes. A Any matter between her and myself?

Q Yes. A Well, the only thing she said she didn't like the work much and was going to have me arrested if I didn't go back and do it right. I think I done pretty fair on the job.

Q And you haven't seen her since then until you came here this morning? A No, I haven't seen her since February.

Re-cross examination by Mr. Brogan.

Q How much did you pay the painter a day? A Ten a day.

Q How much did you pay yourself or did you receive any wages? A Oh, well, I was getting about fifty or fifty-five a week.

Q Don't you know what you were getting? Was it fifty or fifty-five?

The Court: Would he pay himself on his own job?

Mr. Brogan: He said he paid himself fifty or fifty-five.

The Court: He said so in response to your question.

The Witness: Lots of time there if I had cash in my pocket I would spend it for odds and ends on the job. That was a general complete overhauling job.

By Mr. Brogan.

Q Did you work five or six days? A Six days. I worked Sundays sometimes.

Q What did you pay the other three men on the job per day? A The carpenter, I paid him twelve, and the other two fellows twelve to cement stucco. There is three coats on that job.

Q So your pay roll for a week for those five men three at twelve and one at ten and yourself at fifty-five per week amounts to $331.00? A Close to it, but I didn't have them working all the time, you know.

Q How much of a time did you have them working? Why didn't you have them working all the time? A Why? Because there wasn't enough work for them.

Q You had them for a month? A Yes.

Q So that for that one month your payroll was something over $1,324.00? A No, it wasn't $1,324.00, because within that time it took us about a week to put the first coat on and swing on the scaffold, and the painting and the front porch was going on the same time, and that cement stucco had to dry thoroughly. We had to let it lay about a week before we put on the other coat.

Q You told me you had five men on the job and you said you worked for about a month. A I did, but I didn't say a month working steady.

Q A month is a month? A Yes, but that was started about September 5th and it ended up about a month before we had the outside finished, but they weren't working steady. There were some rainy days and there were some days we had to wait for the cement stucco to dry.

Q But for that month's event, whether it happened within the space of thirty days or forty-five days, your payroll was over $1,300.00? A No, it wasn't.

The Court: You say so.

Mr. Brogan: I am only estimating on the days' wages he paid the men.

The Court: You are stating something which is not the fact.

By Mr. Brogan.

Q Did you have these men working for a month? A I had them working for a month off and on.

Q Do you mean by that you had them working for thirty days stretched over a period of forty-five or sixty days? A No, thirty within that time off and on.

Q In other words you had them on the job for a month but they didn't work for a month. Is that what you mean? A No, I didn't say I had them on the job for a month. When we put that cement stucco on the house before we could apply the second coat that had to take a couple of days to dry out and some days it was raining.

By the Court.

Q When you swing the scaffold you don't have all the men there? How many men were

used in swinging the scaffold? A We used two 40-foot ladders.

Q You mean you really built a scaffold? A Yes. I had to buy two ladders because that house is 45 feet high from the bottom of the foundation.

Q I am asking you how many men were engaged in swinging the scaffold? A Three men.

Q How long did that take? A About a half an hour.

Q I understood you to say about a week you were swinging the scaffold? A That is to build a scaffold.

By Mr. Brogan.

Q What was the payroll for this entire job? A What was the payroll for the outside job?

Q Yes. A I couldn't say.

Q What was the payroll for the inside work? A For the inside work we had a painter and paperhanger working off and on.

Q What was the payroll for that? A Sometimes the painter would get a full week's wages —say fifty dollars.

By the Court.

Q Did he work for a full week? A No, not all the time. You know how those fellows work. Sometimes they won't come around.

By Mr. Brogan.

Q No man got fifty. From what you said they either got sixty or seventy-two? A How is that?

Q Twelve a day. A The two masons was getting twelve and the carpenter and the painter ten.

Q Isn't that sixty? A Yes, for masons.

Q What was the painter getting? A Ten a day for five days a week. That is all the painter is allowed to work.

Mr. Brogan: That's all.

MARGARET WEBER, a witness sworn in behalf of the complainant.

Direct examination by Mr. Masucci.

Q Mrs. Weber, do you know Miss Lillian Clawans? A I do.

Q Did you know her in the month of July, 1928? A I did.

Q Were you socially acquainted with her? A I was.

Q Go out to parties with her and theatres et cetera? A Yes.

Q Did you have a car? A I have.

Q Did you pick her up in your car? A I did.

Q Where would you go for her? A Well, we would leave certain social functions that we attended and I would take Miss Clawans to her home on Gladstone avenue.

Q When was that? A That was during the year of 1928 in the summer months.

Q Do you recall which months? A Well, it was in the summer—the real summer. Not in the spring but the summer.

Q Did you take her home frequently? A Yes.

Q Where was it you took her home? A In the Vailsburg section. In fact, I spoke to her

several times about living so far out and she said "I own this property and I live here."

Q Was it Gladstone avenue you mean you took her home? A Yes.

Q You took her to the same place as far as you can recall? A Yes.

Mr. Masucci: That's all.

Cross examination by Mr. Brogan.

Q Where do you live? A I live on Gruman avenue, Newark.

Q Did you ever go inside of Miss Clawans' house? A I believe I did on one or two occasions, but it was late.

Q How late? A Oh, it was after twelve.

Q With whom did she live there, Mrs. Weber? A That I couldn't say. I know it was Miss Clawans' home.

Q You know however she occupied the premises at sometime? A Yes, I know she owned the property.

Mr. Brogan: I ask that be stricken out.

The Court: I will strike that part out.

Mr. Brogan: That's all.

MARY SCHOLDER, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Mrs. Scholder, do you know Lillian Clawans? A I do.

Q Did you know Lillian Clawans in 1928? A Yes.

Q When did you first become acquainted with her? A Since she was born.

Q And did you own the property at 22 Gladstone avenue? A I did.

Q And were you living at 22 Gladstone avenue in 1928? A I did.

Q And where was Miss Clawans living in 1928? A In my house.

Q In what floor? A First she lived on the first floor; then she went to California.

Q Where was your house? A 22 Gladstone avenue.

Q You occupied the first floor of that house? A Beginning on the first floor.

Q Was Miss Clawans living there? A She was.

Q Was she paying any rent? A Yes.

Q How much rent? A Fifty.

Q Was she paying you anything else besides the rent? A She paid me for her cleaning—the house work.

Q Was Miss Clawans living at 22 Gladstone avenue in the months of July and August of 1928? A Yes.

Q Occupying what floor in the month of July, 1928—first or second floor? A When she went to Europe was the first floor and when she came back she occupied the second floor.

Q Did this house have any door-bells? A They have.

Q Was there any name on the door-bells you know? A Yes, Lillian Clawans.

Q Do you know that there was a foreclosure suit against the house while you owned it? Do you remember that? A Yes.

Q Did Miss Clawans represent you in that foreclosure suit? A Yes, she did.

Q Did you authorize her to represent you? A I don't understand.

Q Did you ask her to represent you? A Yes.

Q And do you know or do not know that this property was sold under that foreclosure? A Yes, I do.

Q Do you know whether Miss Clawans purchased that property? A You mean she bought the property?

Q Yes. A From Mr. Gross after it was sold.

Q Do you know who bought it at the sheriff's sale? A Mr. Gross.

Q And did Miss Clawans tell you whether she was buying the property or not? A No, she told me she was buying it from Mr. Gross.

Q Did you have any objection to her buying it? A No.

Q Did you give Miss Clawans any money to buy that property with? A No, I had no money.

Q Do you know when Miss Clawans purchased the property from Mr. Gross? A A short time after it was taken away from me.

Q You don't know the date or the month? A In October I moved out. She went to Paris and we can go back again.

Q Did Miss Clawans continue to pay you rent until you moved out? A As long as it was my house she paid me.

Q And after the property had been sold at the sheriff's sale did she pay you any more rent? A Well, later on I didn't get no payments. I don't know how it was.

Q You didn't get any more rent after the property was sold at the sheriff's sale? A No, I don't know how it was.

Q Were you living in the property when the repairs were being made? A No, I did not. I was out. She told me "Go out."

Q When did you move out of the property? A Around October.

Q What year? A I forget. About two years I am out—the second year I am out.

Q How many months ago? A Well, it must be thirteen or fourteen months since October last year.

By the Court.

Q October of last year? A Yes.

By Mr. Masucci.

Q That was after the foreclosure you moved out? A Yes.

Q Do you remember whether you moved out in the summer months or winter months? A October is not summer or winter.

By the Court.

Q Did you go out of your own accord or were you put out by the sheriff? A Miss Clawans told me to go out.

Q Then you were never put out by the sheriff? A No, I don't think so.

Q You would know whether you were or not. Do you remember a man coming and serving a paper on you what he calls a writ of assistance? A When I had the house?

Q Do you remember a man coming to see you when you say the house was yours and serving a paper on you? A Mr. Gross.

Mary Scholder, for Complainant, Cross.

Q You saw this man this lawyer on the witness stand that said he served a paper on you? A Yes, he did.

Cross examination by Mr. Brogan.

Q How long did Miss Clawans live with you, Mrs. Scholder? A Around three years. Over three years—I don't remember exactly.

By the Court.

Q You mean about three years before she went to Europe? A Yes.

By Mr. Brogan.

Q You lived in this house until October of last year? A Yes.

Q Was there any repairs going on? A Oh, yes; that's why I had to move out.

Q How long before you moved did they start these repairs? A I don't know. I was coming around there and saw them.

Q I don't mean that. You lived there right along up to October of last year? A Yes.

Q Did they start the work at the time you left? A They started before, a little by little. They couldn't do all when I was there.

Q Where were the repairs, downstairs or upstairs? A When I moved I went altogether.

Q I don't mean that. At the time you left the building were you living on the second floor or the first floor? A On the second floor.

By the Court.

Q Did you live there alone? A No, Miss Clawans.

Q Was it your apartment of the house? A No, by both.

Q That was after she bought it? A Yes.

By Mr. Brogan.

Q When you moved out of there did Miss Clawans continue to live there? A She says "I am fixing up and when everything is all right we can go back."

By the Court.

Q He said when you moved out did she stay there? A No, they were repairing everything. How could she stay if I couldn't? She is just as good as I am.

Q Where did Miss Clawans go? Where did she live while the repairs were going on? A I don't know. She went away to the country and different places.

Q Where did you live then, Mrs. Scholder? A I lived on the corner of Norfolk and South Orange avenue.

Q Did Miss Clawans try to get a tenant for you while you were in the house with her? A I didn't need no tenants. It was rented. I don't know what you mean. When I had the property?

Q How long was it vacant before you left it? How long was one apartment vacant? A It is vacant yet.

Q I know, but how long was it vacant before October of last year? A I think I owned the house. It was a long while idle.

Q Was it a year? A Maybe around that.

Q Was Miss Clawans your lawyer too? A Yes, she was always my lawyer.

Q Did she try to get you a tenant for the place? A Yes, she tried to help me out.

Mary Scholder, for Complainant, Cross.

Q Did you tell her to put the sign in the window? A She had a sign.

Q Did you tell her to put a sign in the window? A No, she put it herself.

By Mr. Brogan.

Q Was anything said between you and Miss Clawans? A I don't know what was said.

Q Any talk or conversation? A No.

Q Did you and Miss Clawans talk about putting the sign in the window? Did you tell her to put it in? A No, she did it herself.

Q Did she tell you "I will put a sign in it"? A Yes, she did.

Q At that time who owned the house? A Miss Clawans.

Q When was that? A At the time she bought it from Mr. Gross. I don't know how long it was. It wasn't mine. I was not interested in it.

Q Do you know Mr. Shapiro? A No, never seen him.

Q Never met him? A No.

Q Did you know that Mr. Shapiro was employed by Miss Clawans to buy your house for her? A I don't know. I don't think so.

Q What did Miss Clawans say to you? A She didn't say anything.

Q Wait a minute! What did she say to you if she said anything? A She didn't say anything.

The Court: Just listen to the question.

The Witness: They are laughing at me. I am too excited to talk.

Mary Scholder, for Complainant, Cross.

By Mr. Brogan.

Q When did Miss Clawans talk to you about buying the house, Mrs. Scholder? A She didn't talk to me. She talked to Mr. Gross about the house. I didn't have the house.

Q Do you know when she talked to Mr. Gross about buying the house? A I don't know exactly. I know she talked to Mr. Gross.

Q How do you know she talked to Mr. Gross? A I know she bought the house from him.

Q How do you know? A When they took the house from me a short time ago.

Q Do you know she talked to him or are you guessing? A Yes, I know.

Q How do you know? A Because she bought it.

By the Court.

Q Did you see her talking to Mr. Gross? A Not exactly.

By Mr. Brogan.

Q Did she talk to Mr. Gross at any time? Do you know if Mr. Gross ever came to the house and talked to Miss Clawans there? Do you know that? A Not in my house.

Q Mr. Gross was never in the house so far as you know? A When I had the property.

By the Court.

Q Was he there? A Yes, but not later on. He had business with Miss Clawans.

By Mr. Brogan.

Q How do you know? A She bought the property.

Q Do you know she had business? A She bought it from him.

Q How do you know? A Because the sign was in her name.

Q Wasn't the sign on there before she bought the property? A No.

Q It was not? A No.

Q When did the sign go on there then? A I don't know when she put it on.

Q She bought the property in August, didn't she? A I didn't live there at that time. I can't tell exactly. She didn't tell her whole business to me.

Q You told me a few minutes ago you lived there until October of last year? A Yes.

Q Then you must have lived there in August, didn't you? A I was there.

Q And she bought the property in August, didn't she? A She must have.

By the Court.

Q Do you know? Don't be guessing. A I heard everybody say Miss Clawans bought the property.

By Mr. Brogan.

Q Who did you hear? A People on the street.

The Court: Tell him one person that told you that.

(Witness continuing): Different people; every one that knew me—"Miss Clawans bought the property. She bought it from Mr. Gross."

By Mr. Brogan.

Q In other words they asked you did she buy it? A They told me.

Q Who was the woman? A It was a man.

Q Tell me his name. A I am an old lady. I am 42 years in Newark.

Q You tell me one man or one woman that spoke to you about Miss Clawans owning this place. A Everybody. Not only one—a whole lot.

The Court: He wants you to mention one man or woman who told you that.

The Witness: I don't know the name.

By Mr. Brogan.

Q Out of all the people who told you that you don't know the name of a single one, is that right? A Yes.

Q Now Miss Clawans bought the property in August, is that right? A I don't remember exactly when she bought it. I have my own troubles.

Q I thought we were agreed that she bought it in August, and she had a sign on it after she bought it. Is that right? A Yes.

Q How is it that these witnesses have all testified there was a sign on there June and July?

Mr. Masucci: I object.

The Court: I will sustain that.

By Mr. Brogan.

Q Was there a sign there in June and July? A There was.

Mary Scholder, for Complainant, Cross.

Q Did Miss Clawans own the property in July? A I can't remember that. I only know when I moved out.

Q When was it finally taken away from you?

By the Court.

Q What name was on the sign when you owned it? A No name.

By Mr. Brogan.

Q Didn't you have a sign out of your own on that house "House for sale—Inquire within"? A When I owned the house?

Q Yes. When was that? A Before it was taken away.

Q It is only a year ago, Mrs. Scholder? A I had it a long while idle.

Q When was your sign up? A About a year before that.

By the Court.

Q What did it say on the sign? A It didn't say anything—"Flat to let."

By Mr. Brogan.

Q Did it say "House for sale"? A Well, I wanted to sell it.

By the Court.

Q Did you have a sign on the property "House for sale"? A Yes, and "To Let" too.

By Mr. Brogan.

Q Are you going to move back into that house? A Well, Miss Clawans promised me when everything is fixed up to go back.

Q When did she promise you that? A When it is complete and fixed up and everything ready.

Q When did Miss Clawans promise you you could move back? A Lately to me when everything is all right.

Q When? A Just a short time ago.

Q Last night? A No, not last night—a long while. She always takes care of me.

Q How long ago? Was it a year ago? A No, not so long.

Q Was it a week ago? A When I moved out and when everything is all right she would take me back. She cannot do the cleaning—she has to attend to the office. When I am around I made her feel better.

Mr. Brogan: The witness is looking at Miss Clawans.

The Court (to witness): Don't be looking at Miss Clawans.

Mr. Brogan: That's all.

Re-direct examination by Mr. Masucci.

Q How old are you? A I am near sixty.

By the Court.

Q Near sixty? On what side of sixty? Going towards or away from? A I don't know.

Q Do you know how old you are? A I am not over sixty yet.

Mr. Masucci: That's all.

DANIEL CROWLEY, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Mr. Crowley, do you know Miss Clawans? A I do.

Q Did you know Miss Clawans in June or July, 1928? A I did.

Q Did she request you to do any repairs to her building at 22 Gladstone avenue? A She did.

Q Did you tell her whether you could do it? A I told her I did not do repair work.

Q Did you refer her to anybody? A I told her I would get in touch with my brother Joe and have him estimate on the job.

Q Where was your brother Joe? A Down in Belmar, New Jersey.

Q And did you convey the message to your brother Joe? A Yes, I went down over the week-end—over the holiday and told him about it.

Mr. Masucci: That's all.

Mr. Brogan: No questions.

The Court: I will continue the further hearing in this matter to December 18, 1929.

IN CHANCERY OF NEW JERSEY.

Between LILLIAN CLAWANS, *Complainant,* *and* ORDWAY BUILDING AND LOAN ASSOCIATION, *Defendant.*	*On Bill, etc.* *Testimony.*

Continuation of final hearing before Hon. John J. Fallon, Vice-Chancellor, Chancery Chambers, Jersey City, December 18, 1929.

Appearances:

F. D. Masucci, Esq., for complainant.

Joseph Susskind, Esq., for defendant (Mr. Thomas J. Brogan, of counsel).

HARRY S. KATTENRING, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Mr. Kattenring, did you know Lillian Clawans in 1928? A I certainly did.

Q Did you have occasion to go to her home about July, 1928? A Yes, sir.

Q Were you secretary or some official or connected in any way with the Admiral Sampson Building & Loan Association? A I was not.

Q What was the purpose of your visit to Miss Clawans' house? A To bring up some building and loan books which I thought was to be Mr. Clawans' home.

Q Do you remember when you brought those books there? A Yes, in the latter part of July, 1928.

Q What property did you go to? A 22 Gladstone avenue, Newark.

Q Did you notice any sign on the front of the building? A Yes, I think there were a couple of "Flat to let" signs.

Q Do you remember the contents of the signs? A Well, it said "Flat to let—Lillian Clawans, Owner. Inquire within, or 'phone Market 9909."

Q Were there one or two signs? A I believe there were two.

Q Where was this sign that you noticed the words on? A One was in the window and one was on one of the posts on the porch.

Mr. Masucci: That's all.

Cross examination by Mr. Brogan.

Q How frequently had you seen Miss Clawans? A At the time I had known her for five or six years.

Q Did you know where her office was? A Yes, sir.

Q Had you occasion to talk to her on the telephone at any time in her office? A More or less on other things, as I am on the same floor in the same building.

Q How frequently would you be in conference with her? A Maybe once a month and maybe not that.

Q What is your business? A I am a consulting engineer.

Q What kind of an engineer? Is it electrical or mechanical? A Mechanical and civil.

Q Your office is in the same building with Miss Clawans? A At that time.

Q At this particular time in 1928 and prior thereto? A Yes.

Q And if you wanted to see her on any business would you stop in to see her or call her up? A I would probably stop in to see her.

Q How do you know you recall after more than a year—in fact a year and a half, this particular sign which merely advertised the place to let containing the information 9909 Market? A In the first place I was very familiar with the telephone number, and the second place we do some surveying work and are in and about the place all the time.

Q Pardon! A We do surveying work and we are in and about the place all the time.

Q And the fact you did surveying work would help you to remember a telephone number? A I knew the number perfectly. As a matter of fact her brother is a partner of mine.

Q Miss Clawans' brother is your partner? A Yes.

Q What is the name of the firm? A Clawans & Kattenring.

Q What was the purpose at that time of your visit to Miss Clawans' home? A Her brother was about to leave on his vacation or for his vacation, and the books were to be brought up to Miss Clawans so her father could get them.

Q Was Mr. Clawans with you? A Which Mr. Clawans?

Q Your partner? A No.

Q Were you alone at this particular time in July, 1928? A When I brought the books up I was.

Q What fixes the date or the month as July, 1928, in your memory? A The fact he was leaving on his vacation the first two weeks in August and he had the books and Miss Clawans was to give them to her father.

Q You are quite positive about that? This is a year and a half ago and you were going there on a specific mission that had nothing whatever to do with the property which you were visiting but had something to do with your business—connected with your business, you are quite sure you remember in detail there were two signs advertising some places to let and you saw on there 9909 Market and Miss Lillian Clawans, owner? All of this you took in at a glance as you were entering or leaving that property? A Yes, sir, that was what I naturally would look up and see that.

Q That is what you would naturally do? A That's right.

Q How naturally do you remember any other circumstance or like character applying to other property? A I knew all the time the Clawans family were interested in that house.

Mr. Brogan: I ask that be stricken out.

The Court: I will strike it out. Do you want to press the question?

Mr. Brogan: No.

Q Will you tell us something about this house, Mr. Kattenring? You are an engineer. How many rooms were in the house? A I do not know.

Q How many rooms in the apartment Miss Clawans lived in? A I do not know.

Q What time of the day was it you were there in July, 1928? A I would say about nine o'clock in the morning.

Q What was the color of the house at that time? A I don't remember.

Q Has the house a garage? A I had no occasion to go in the rear.

Q Has it a driveway on either side? A I think it has.

Q Do you know? A Yes.

Q Has it or hasn't it? A Yes.

Q Which side of the house is it? A Left-hand.

Q What side of the house is it? On the north, south, east or west? A North.

Q How many windows in the side of the house? A Which side?

Q Front side. A I believe about six.

Q You believe there are about six? A I do not remember.

Q What is the material with which the roof is made? A I don't know.

Q What is the shape of the house? A I think it is a two and a half family house.

Mr. Brogan: That's all.

Re-direct examination by Mr. Masucci.

Q Were you through all of the rooms in the house when you came to see Miss Clawans? A No, sir.

Q Were you through any other floor when you came to see Miss Clawans? A No.

Q Did you observe any door-bells on the house? A Yes.

Q How many door-bells on the house? A I think two.

Mr. Brogan: I object.

The Court: I will permit it. Possibly it was overlooked.

By Mr. Masucci.

Q How many door-bells on the house? A Two.

Q Did you notice any name underneath any one of the door-bells? A I was told it was the second floor.

Q Did you notice any name underneath the door-bells? A No.

Mr. Masucci: That's all.

ELLIE SCHOLL, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Mrs. Scholl, where did you live in July, 1928? A 61 Whitney street.

Q Do you know Miss Lillian Clawans? A Yes.

Q Where is 61 Whitney street as to 22 Gladstone avenue? A Well, our rear faces the rear of her place.

Q And did you see Miss Clawans in the month of July and August? A Yes.

Q How frequently did you see her? A Well, about three times in all. I am not quite sure.

By Mr. Brogan.

Q That means in that month? A Yes, that same month.

By Mr. Masucci.

Q Where did you see her? A In her kitchen.

Q What time of the day did you see her? A Well, twice I saw her in the morning and I think once late in the afternoon.

Mr. Masucci: That's all.

Mr. Brogan: No questions.

By the Court.

Q Why only in the month of July did you see her? How long did she live there, if you know? A That was when I saw her the morning when I was talking to Mrs. Scholder. I remember the month because my third baby was born in the month of July and I came home the third Sunday in July, and the following morning as I was putting the baby on the porch I spoke to Mrs. Sholder—or rather she spoke to me first, and she was hanging up some dresses of Miss Clawans on the line, and after asking me how myself and the baby was she asked me if I didn't think the dresses were beautiful because they belonged to the lady lawyer, and that was all.

Q You said you actually saw Miss Clawans there? A Yes.

Q Did she say something about living with Mrs. Scholder? A She was living with her.

Q She was living there, whatever the relation was? A Yes.

Q Did you see her there after July, 1928? A I think I saw her once in August. I was away most of August.

Cross examination by Mr. Brogan.

Q If I might ask a question, please. How long did you live in the place in back of Mrs. Scholder's property? A It was two years this past September.

Q You knew that 22 Gladstone avenue belonged to Mrs. Scholder, didn't you? A Why, I always thought it belonged to Mrs. Scholder until I heard some one of the neighbors say that Miss Clawans bought it. It belonged to her then.

Q When was it you heard that? A I think it was still in July or the beginning of the next month.

Q Is the neighbor who told you that in court? A No. I am not sure.

Q Who was the neighbor? A I think Mrs. Borders.

By the Court.

Q We had a witness by that time. A I think it is his wife.

By Mr. Brogan.

Q In other words, you lived in this place which is directly in back of the property we are talking about from 1927 on, is that it? A Yes.

Q And in 1927 did you ever see Miss Clawans in and about the place? A No, it wasn't until the beginning of 1928 that I first saw her.

Q In other words, you saw her in 1928 in the Scholder apartment? A Yes.

Q And at that time Mrs. Scholder owned the property? A That's what I understood.

The Court: What do you mean by that?

Mr. Brogan: That's the fact, isn't it?

The Court: I don't know.

Mr. Brogan: The other side say it and we say it.

The Court: What?

Mr. Brogan: That Mrs. Scholder owned the property.

The Court: In July, 1928?

Mr. Brogan: Yes.

The Court: I don't think that's the fact.

Mr. Susskind: July 3rd is the date of the contract from Gross to Shapiro.

Mr. Brogan: I don't make any point of the fact. I think that's all.

WILLIAM CLARK, a witness sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Mr. Clark, what is your business? A Roofing contractor.

Q What was your business in July, 1928? A Roofing contractor.

Q Did you know Miss Lillian Clawans in 1928? A No.

Q Did you have occasion to do roofing work in July, 1928, at 22 Gladstone avenue? A I

had a call at my office in July to go up and examine the roof at 22 Gladstone avenue.

Q Do you know who the call came from? A I do not. Pardon me! There was a name Clawans, and I didn't know the party.

Q Did you go to the premises? A I went to the premises.

Q When did you go? A I went that afternoon.

Q Did you observe the front of the building at 22 Gladstone avenue? A I went up there and examined the roof.

Q Did you examine anything in the front of the building? A Well, when I got there I wasn't sure whether the owner lived there or where the owner lived, and going up the steps I saw a sign on the post "Lillian Clawans, Owner—Inquire within, or call Mulberry—Market 9909." I examined the roof. No, I didn't examine the roof. I rang the bell on the second floor. There was nobody living on the first floor. Some elderly woman with a nightcap on put her head out of the window and I asked if the owner lived here—Mr. Clawans or Miss Clawans, after I saw the name on the sign I could pronounce it. She said "There is no Mr. Clawans here; there is a Miss." I said "Is she in? I am the roofer." She said "No, you will have to get here early in the morning or late at night." Well, I examined the roof and made an estimate and I called up Market 9909 and gave her an estimate for $275 to recover the roof, and I didn't hear anything in regard to the contract.

Q You didn't get the work? A I didn't get the job.

Q Did you notice any name under the doorbell when you rang? A Yes, there was a little bit of a sign under it.

Q What name was on it? A Clawans.

Mr. Masucci: That's all.

Cross examination by Mr. Brogan.

Q Now, Mr. Clark, is there any reason why you should take any special notice of a printed sign on the outside of the premises? A Positively.

Q What was that reason? A Why, because we are not sure whether the name is right when the calls come into the office. I have a girl in the office taking the calls. Sometimes they don't have the distinct name. They don't even get where the owner lives. Sometimes I get a call that the owner is in New York and the job is in Maplewood or Montclair and I have to find out where his place of business is or residence.

Q Yet in this particular job your girl seemed to function very well because you had both the name and address right there? A Positively.

Q So there wasn't any point about your remembering the details on passing a sign a year and a half ago even as to the telephone number written on it? A I have a record of it in my office.

Q Did you get the number of a Mr. Clawans? A Yes, on my call book.

Q Have you your call book with you now? A No, I have not.

Q When did you last look at the call book? A Well, I went to the book the other day when I got a subpoena to come to court.

Q What number have you got written in the call book as of July, 1928? A Well, the girl has "Mr. Clark, call and examine roof at 22 Gladstone avenue."

Q That is the girl's notice to you? A Yes.

Q What is the notation you have for further information and what were the words that you wrote in the book which were a copy of that sign? A Well, I have a call book in my pocket —a memorandum book, that I carry around. On my call book I entered from that sign "L. Clawans, Owner—Market 9909."

Q Did you have in your pocket when you visited that place the book in which the call was received? A Absolutely not.

Q So now if your recollection is good, and I don't doubt it, you have two books? A Positively.

Q One that the girl writes in in which it appears that Mr. L. Clawans called up— A It wasn't "L. Clawans"—just "Mr. Clawans."

Q And the other one in which you wrote, which is dated as of July, 1928, and in which you have copied the information that you saw on the sign? A Yes, sir.

Q The name and the telephone number? A Yes, sir.

Q Is that right? A Yes.

Q Are you still using that book? A Not that same book. I am using the cover. It is a loose-leaf book.

By the Court.

Q Have you the sheets you wrote it on? A They are in the office, yes.

By Mr. Brogan.

Q Will you let Mr. Susskind see those sheets when you and he go back to Newark this evening? A Yes, sir—positively.

Mr. Brogan: That's all.

HELEN CLAWANS, a witness sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Miss Clawans, you are a sister of Lillian Clawans? A I am.

Q Where were you living in July and August of 1928? A In July and August of 1928 I was living with my sister up at 22 Gladstone avenue.

Q And previous to that where were you living? A At home.

Q With your mother and father? A Yes.

Q Was there any reason for your going to live with your sister Lillian Clawans? A My father left for Europe and my mother went to the shore and I was home alone and I came up and lived with her.

Q What floor did your sister Lillian live on? A She occupied the second floor.

Q Did you observe or notice any signs on the front of the building? A Yes, two signs. One on the post and one on the window on the first floor.

Q Do you recall what the contents of the signs were? A Yes, it had "Flat to let—L.

Clawans, Owner—Inquire within," and the telephone of the office, Market 9909.

Q Were there bells in the front of this house? A There were two bells there.

Q One for the first floor and one for the second? A Yes.

Q Were there any names underneath the bell? A One was on the second floor—L. Clawans.

Q The first floor was empty? A Yes.

Q Did your sister live there every day? A Yes.

Q Every day? A Every day.

Q During the months of July and August, 1928? A Prior to that too.

Mr. Masucci: That's all.

Cross examination by Mr. Brogan.

Q Do you work, Miss Clawans? A Yes, I do.

Q Where? A At 1060 Broad street.

Q What do you do? What do you work at? A I am clerking now—a law clerk.

Q At that time where did you work? A In 1928 do you mean?

Q 1928. A In Miss Clawans' office—my sister's office.

Q Are you still there? A Yes.

By the Court.

Q She has a comptometer business? A Yes.

Q What were you doing in 1928? A In 1928 I was a comptometer operator.

By Mr. Brogan.

Q You lived temporarily then with your sister at Gladstone avenue during the summer of 1928? A Yes.

Q When did you take up your residence there and how did you take it? A I went up in July around the 3rd of July, or the 2nd or the 1st of July.

By the Court.

Q You said it was because of your father going to Europe? A My father didn't go there until the 23rd of June. I didn't go up until July.

By Mr. Brogan.

Q He left on the 23rd of June? A Yes.

Q When did he return? A He returned sometime in September.

Q And your own home was closed up on account of your mother visiting at the seashore? A It wasn't closed up. Nobody was home, so I went up to my sister's home.

Q How long was your mother away? A She was gone practically the entire summer.

Q Labor Day? A Past Labor Day.

Q On what date did she leave Miss Clawans? A The beginning of July.

Q Did she leave at the same time coincident with your taking up you abode with your sister? A About the same time, yes.

By the Court.

Q Did you reside in your mother's home after your mother went to the seashore? A I stayed with my sister but I went there occasionally.

Helen Clawans, for Complainant, Cross.

By Mr. Brogan.

Q You know whether you came to live with your sister before or after your mother went to the seashore? A Yes.

Q When was it? A About the same time—about the time my mother left.

Q In other words your mother left to go to the seashore and you left. When was that? After or before. It must be before or after. Give me a fair answer! A I am giving you a fair answer.

Q Did you leave for your sister's home prior to your mother going or after? A I believe it was the same day.

Q And you continued your residence until when Miss Clawans?

The Court: You mean with her sister?

Mr. Brogan: Yes.

A Up until after Labor Day.

Q And you came and went each day? A Some days I stayed down at 322 Clinton avenue.

Q Who was in the premises with your sister at Gladstone avenue? A Mrs. Scholder.

Q Who did the cooking for you? A We didn't eat any meals there. We didn't eat anything there.

By the Court.

Q Who do you mean? A Neither one of us did any cooking.

Q Who do you mean? Are you talking for Mrs. Scholder? A No, for my sister and me.

By Mr. Brogan.

Q In other words Mrs. Scholder was there and took care of the place and did the cleaning and washing and what not? A Yes.

Q And your meals you took outside? A Yes.

Q And Mrs. Scholder was in charge of the premises during your sister's absence? A She was in charge of the premises.

Q And all during your stay at 22 Gladstone avenue Mrs. Scholder was there with your sister and yourself? A Yes, that's right.

Q Did you go and come each day Miss Clawans? A I didn't say that. Some days I stayed down at 322 Clinton avenue.

Q How frequently did you stay at 22 Gladstone avenue? A One or two nights a week.

Q What was the purpose of that? It was convenient at Clinton avenue? A I might have had a girl friend in town and I might have stayed at 322 Clinton avenue.

Q Did you have a vacation that year? A No, I didn't.

Q Did your sister? A No.

Q And never went to see your mother for the summer time, is that right? A That's right. The only time I saw my mother was the Sunday prior to Labor Day. I went to Atlantic City.

Q You went to Atlantic City? A Yes, to see my mother.

Q Oh, your mother was at Atlantic City? A Yes.

Q Does this incident serve to refresh your memory? Isn't it the fact that during the summer of 1928 Miss Clawans, your sister, and yourself and Mrs. Scholder lived at 322 Clinton avenue in your home? A No, sir; that is not the fact.

Q That is not? A That is not the fact.

Mr. Brogan: That's all.

HELEN MILLER, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Miss Miller, what is your vocation? A School teacher.

Q And you was teaching in July, 1928? A Yes.

Q Did you know Helen Clawans in July or August, 1928? A Yes, sir.

Q Did you know Lillian Clawans during that same time? A Yes.

Q Did you have occasion to call at 22 Gladstone avenue to meet either Helen or Lillian Clawans? A Helen.

Q Can you recall the approximate date you did call at the place? A Yes.

Q When? A I called Helen. I had made an appointment the previous day to call upon her to meet her at the Gladstone place. I called her up at Miss Clawans' office. Whenever we made appointments I called her up because I would usually meet her there. That next day, I believe it was a Saturday—I am not sure Saturday or Sunday, I don't recall—I drove up. I have a car and I drove up to the place and Helen told me it was 22 I believe or 20. I found the place and walked up the steps. I was sure I had struck the place because I noticed the "Flat to let" sign in the first window there over on the level with the first step made down the

landing, and I knew I had struck the right place and I rang the bell.

Q Do you remember the words on that sign you saw? A Yes.

Q Will you tell the Court what it was? A It was "Flat to let—L. Clawans. Inquire within or telephone Market 9909."

Q Was there a name underneath the door-bell? A There wasn't any on the bottom bell there but there was one on top.

Q What was on the door-bell? A It said "Clawans." I rang that one.

Q You rang that bell? A Yes.

Q And was admitted upstairs? A No, I didn't go upstairs because I told Helen I didn't have time but to meet me downstairs.

Q Was that the first time you were at Gladstone avenue? A Yes.

Q Did you have occasion to go there in July or August? A No, not in July or August. I did in September.

Mr. Masucci: That's all.

Cross examination by Mr. Brogan.

Q What was the date of your call to Miss Clawans? A Somewhere between the middle of July—

Q Between the 15th and the end of July? A Yes, sir.

Q Was it nearer to the middle of the month or the late part? A I think just about the 15th.

Q What was the condition of the stucco? Was there repairs underway at that time? A The house looked rather dilapidated at that time.

I seen the house a few months later and it was fixed different.

Q Do you teach school at the present time? A Yes, sir, at that time.

Q A public school teacher? A Yes, sir.

Q How long have you known Miss Clawans? A Well, a good many years. Since I was about seventeen.

Q Well, was that about five years ago? A More than that.

Q What time of the night was it you came there? A It wasn't at night.

Q Oh, it was not? A No, it was in the afternoon.

Q How is it that you remember so distinctly the wording of the sign which happened to be there eighteen months ago when you visited there? A When I walked up the steps I noticed the sign in the window. I usually notice signs.

Q Even to the extent of remembering the entire wording of the sign? A Yes, because the name is familiar to me and naturally I would remember it. If it were a name that wasn't so familiar I would not have remembered it so well.

Q And the sign said "Flat to let—Inquire within. L. Clawans, owner"? A Yes.

Q "Inquire within"? A Yes.

Q "Or 'phone Market 9909"? A Yes, sir.

Q Right? A Yes.

Q And you have carried that in the forefront of your mind for the past eighteen months? A Well, it came back to me now that you question me about it because that name and 'phone number is very familiar to me. I have called that number so many times and I have known Miss

Clawans practically all my life. So naturally the name and the telephone number sticks.

The Court: You asked the witness whether she carried it in the forefront of her mind. I don't know how you can distinguish that.

Mr. Brogan: I can but I will not go into it. That's all Miss Miller.

SOPHIE ZITCH, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Where do you live, Mrs. Zitch? A 36 Gladstone avenue.

Q Newark? A Yes, sir.

Q Where did you live in July and August of 1928? A Gladstone avenue.

Q The same number? A Yes, sir.

Q Were you the owner of 36 Gladstone avenue? A Yes, sir.

Q Do you know Lillian Clawans? A Yes, sir.

Q Do you know where she lived in July and August of 1928? A Yes.

Q Where? A 22 Gladstone avenue.

Q And how near is that to 36 Gladstone avenue? A About five houses up from me.

Q On the same street? A Yes, the same side.

Q Did you notice any signs on 22 Gladstone avenue during the months of July and August, 1928? A Yes, sir.

Q Where were the signs? A In the middle bay window and on the pole as you go up the porch.

Q Do you recall the wording of the signs? A Yes, sir.

Q Will you tell the Court what they were? A "Flat to let—Inquire second floor. L. Clawans, owner," and the telephone number.

Q Were the wording on both signs the same if you recall? A Yes, sir.

Q How do you remember there was a sign at 22 Gladstone avenue, the purport of which you described during the months of July and August, 1928? A Because I had my own flat empty and I rented it in July. In July I saw the sign because I knew a new owner had it.

Q And that is how you fix the date? A Yes, sir.

Mr. Masucci: That's all.

Cross examination by Mr. Brogan.

Q How do you happen to remember, Mrs. Zitch, that the words were as you repeated? A Because I stood there reading them.

Q How often did you read them? A When I would go to the store and pass it. The sign was out so long you couldn't help know them.

Q How long was it out? A About a year and a half.

Q In other words it made it appearance in July, 1928, and is still there? A It isn't there now.

Q When did it terminate? A I don't know when it was taken off.

Q I thought you said it was there a year and a half? A It was. It must have been taken away in July because there is another sign there.

Q What is the sign on now? A There is a sign on it "Flat to let."

Q What else does it say? A I think a man's name by name of Kovsky is on it and the same telephone number is on it.

By the Court.

Q The same telephone number? A "9909."

By Mr. Brogan.

Q When did the sign make its appearance to you? A In July.

Q 1928? A Yes.

Q What fixes that in your mind? A I just happen to remember it. I rented my flat in June and I saw that sign on there in July and I stood there reading it. That is how I know there was a new owner.

Q And that fixes in your mind because of such and such an event at that time a sign appeared on Miss Clawans' house? A It was there, yes.

Q 22 Gladstone avenue? A 22 Gladstone avenue.

The Court: She testified before what attracted her attention was the name of the new owner. She said she read the sign "Because I noticed there was a new owner."

The Witness: Yes, because this other woman owned it before.

The Court: What other woman?

The Witness: Mrs. Scholder.

By Mr. Brogan.

Q Was Mrs. Scholder in the premises in July and August, 1928? A Yes.

Re-direct examination by Mr. Masucci.

Q Was Miss Clawans in the premises in July and August, 1928? A Yes.

Q And before and after that? A Yes, sir.

Re-cross examination by Mr. Brogan.

Q How do you know that? A I used to see her go in and out to business. I had to pass her house to go to the store and I used to see her come out and go to business in the morning.

Q How frequently would you see her? A Oh, I saw her often.

Q What time would you get out in the morning? A Around nine o'clock and perhaps ten o'clock when I happened to go to the store. I saw her leave the house.

Q And in the night also? A Not so often in the night, no.

Mr. Brogan: That's all.

WILLIAM LANDOW, a witness being sworn in behalf of complainant.

Direct examination by Mr. Masucci.

Q Mr. Landow, where do you live? A 59 Greenwood avenue, East Orange.

Q Do you know Lillian Clawans? A I do now.

Q Did you meet Lillian Clawans before? A Yes, that's the same party I met at 22 Gladstone avenue.

By the Court.

Q Did you meet that lady before today any time? A Yes.

By Mr. Masucci.

Q Did you have occasion to go to 22 Gladstone avenue in July or August of 1928? A I did.

Q What part of the month? A The latter part of July.

Q What was the occasion for you to go there? A Just to rent a flat.

Q How did you know there was a flat to let at 22 Gladstone avenue? A By the sign outside.

Q Was there one or two signs on the outside? A I don't remember whether there was one or two, but I do remember one on the pole.

Q Do you recall what the wording on the sign on the pole was at 22 Gladstone avenue? A I don't remember exactly what the wording was. It gave the information the owner lived there, but what the name was on it I couldn't tell you.

Q Could you say whether it was L. Clawans or any other name? A I think it was this lady here (indicating) because when I went in there she said she was the lady that the name reported.

Q Did you enter the premises? A I did.

By the Court.

Q By "this lady here" you mean this lady sitting there? (Indicating complainant.) A Yes.

The Court: Will counsel concede that the lady is Lillian Clawans?

Mr. Brogan: Indicating the complainant.

By Mr. Masucci.

Q You saw the owner you believe? A I did.

Q Did you have to ring the door-bell to gain admission to the premises? A Yes.

Q What door-bell did you ring? A The top bell.

Q Was there any name on that door-bell? A I didn't notice.

Q Was there any conversation between you and Miss Clawans? A Yes.

Q Was there anything done by Miss Clawans? Did she call you any names? A We had an argument, that's all.

By the Court.

Q An argument? A Yes.

By Mr. Masucci.

Q Did you offer to purchase the property? A I asked what she wanted for the place.

Mr. Brogan: I don't think this conversation is—

The Court: It indicates she was the one that was renting the apartment. I think I will admit it. If you want to object state the grounds of your objection.

Mr. Brogan: Go ahead.

By Mr. Masucci.

Q Did you offer to purchase the property? A I offered to rent it first and she wanted $50

a month and I told her I would give her $35 a month with an option to buy, and she said "What will you give for it?" and I told her $7,800, and that's when the argument started.

Q Did she call you any names? A That I was crazy and she would get $13,500 when she offered it up.

Mr. Masucci: That's all.

Mr. Brogan: No questions.

Mr. Masucci: If your Honor please, there is one more witness with reference to the sign—the man who took the sign off and replaced it. He isn't in court and I would like to reserve the right to call him.

The Court: You won't have any objection, Mr. Brogan?

Mr. Brogan: No. sir.

LILLIAN CLAWANS, a witness recalled in behalf of complainant.

Direct examination by Mr. Masucci.

Q Miss Clawans, with reference to the sign —the "To Let" sign, have you the same sign at 22 Gladstone avenue from June or July, 1928, until the present date?

The Court: I thought you went over that testimony.

Mr. Masucci: There is one feature of it. The sign was removed in 1928.

The Court: My recollection is there was testimony about a new sign put on by Mr.

Kovsky and the reason was because he was a clerk in the office.

Mr. Masucci: I recall it now. That's all. That's my case. I have one witness who will testify that he removed the old sign and replaced a new sign.

The Court: With Kovsky's name?

Mr. Masucci: Yes.

The Court: My recollection is that Kovsky was a clerk in Miss Clawan's office and for some reason mentioned she had him put up a sign with his name on it.

Mr. Brogan: He substituted a sign.

Mr. Masucci: Yes. He will corroborate it.

The Court: All right. Do you want to concede that?

Mr. Brogan: It doesn't make any difference.

The Court: The right is reserved to complainant to call Irving Kovsky as a witness to testify as to the replacement of the sign and the defendant agrees.

DEFENDANT'S CASE.

LOUIS SUSSKIND, a witness being sworn in behalf of defendant.

Direct examination by Mr. Brogan.

Q Mr. Susskind, you live in Newark, do you not? A Yes, sir.

Q And lived there all your life I suppose? A Yes, sir.

Q You are connected with the defendant the Ordway Building & Loan Association, are you not? A Yes, sir.

Q What is your connection? A President.

Q Do you remember the loan which was made to Max Goldberg on property at 22 Gladstone avenue? A Yes, sir.

Q Will you please tell us the facts and circumstances under which that loan was granted?

Mr. Masucci: If the Court please I want to object to this. It is too broad a question.

The Court: It is too broad. You had better ask questions. He might want to object to them.

By Mr. Brogan.

Q Will you tell us who made the application for that loan? A Mr. Shapiro, our attorney.

Q What was done as a result of that application? A Well, he took it in the name of his clerk Mr. Goldberg, and he made an application for $8,000. We granted him $7,000—$500 we retained for the repairs that were to be made.

Q Is it the practice in the building and loan to inspect properties on which applications are made for loans? A Yes, sir.

Q Was an inspection of these premises made?

The Court: I will overrule that question. If he can show it was made to his personal knowledge. If he sent someone out to make it—

Mr. Brogan: This man personally appointed a committee and personally inspected the premises.

The Court: Why not ask him that?

By Mr. Brogan.

Q Who made the inspection of the premises? A I inspected the premises and I appointed a committee of three men.

Q Did you inspect the premises singly or as part of the committee, Mr. Susskind? A I was up with the committee.

Q Did anything else happen in connection with the loan prior to the appointment of the committee to inspect it? A Well, nothing happened.

Q Did Mr. Shapiro see you? A He spoke to me about the application; that he was about to purchase a piece of property that is under foreclosure and he wanted to know whether he could put the application in and I told him "I don't see no reason why he can't and if we had the funds we will take the application."

Mr. Masucci: I don't want to object but I don't see how any conversation between this gentleman and Shapiro binds the complainant.

The Court: Thus far it seems to help you rather than hurt you. I don't see why you should object.

(Witness continuing.) I considered the application and appointed a committee and we went up and looked at it and I told you what happened.

By Mr. Brogan.

Q What signs if any were on the premises when you made the inspection? A There was a "To Let" sign in the window.

Q What did it say on it? A The first floor.

Q What did it say on it? A Why, "Flat to Let—Inquire second floor."

Q Any name underneath that you saw? A I think it was Scholder.

By the Court.

Q You think? A I say it was Scholder.

Q What is the fact? Will you say it was or wasn't? A I will tell you. I remember the door-bell in the vertibule had the name Scholder on it.

By Mr. Brogan.

Q When did you make the inspection, Mr. Susskind? A Why, it was the early part of July, 1928.

Q Was there information on any sign or on the premises to apprise you that Miss Clawans was the owner?

The Court: I will strike that out. Let him tell what the sign read. I will overrule that question. There might have been information on there. You are asking him whether information was on there that would apprise him.

Mr. Brogan: My thought was, if the Court please, he has told what the sign read to the best of his ability after eighteen months. He said there was a sign "To let—Inquire Second Floor." He said there was a sign in the bell with the name Scholder. That being so, to refresh his recollection I am asking the witness if there was any indication or any sign that disclosed that Miss Clawans

was the owner, and I think it is a proper question.

The Court: I will overrule it. What he has said now is indicative as to what I may regard the fact to be that he read.

By Mr. Brogan.

Q Did you know Miss Clawans at that time? A No.

Q Did you ever hear of her? A No.

Q Did you ever see her name in print on any signs connected with the property? A No, sir.

Q Did you personally examine the building? A Yes.

Q What did your examination consist of? A Well, it consisted of the building which was in a dilapidated condition.

By the Court.

Q What did you do in the way of examination? A I went around and looked at it from the sides and looked up at the house from the—from whatever I could see, and made a general inspection.

Q I will strike that out. Tell us what you did. A I went in and looked at the building. I looked at the first floor and was satisfied that the—

Q Don't tell us what you were satisfied with. Tell us what you did. A The committee and myself—

Q You are asked what you did. Never mind the committee. A I inspected the property.

By Mr. Brogan.

Q Was the committee with you during that time? A Yes.

Q Did you go inside the house? A No.

Q Why not? A Why, I didn't think it was necessary. I thought it was a good loan without going inside.

Q Did you try the door? A No.

Q Was there anybody in the premises at that time? A I wouldn't know that. I didn't make no attempt to go upstairs. It looked like a good loan and I thought my investigation was complete.

Mr. Brogan: That's all.

Cross examination by Mr. Masucci.

Q At the time that Mr. Shapiro spoke to you of the application for a loan you knew he was counsel of the Ordway Building & Loan, is that right? A Yes.

Q And he told you then, as you state, that he was purchasing the property 22 Gladstone avenue, is that right? A Yes, sir.

Q But still he wanted to make the application and he did in fact make the application in the name of Max Goldberg? A Yes.

Q Did he give you any reason why he wanted to make the application in the name of Max Goldberg? A Yes, sure.

Q And that was for the purpose of deceiving the board of directors of the building and loan? A No, sir.

By the Court.

Q Would the building and loan have made a direct loan to Shapiro if he asked it? A Yes, sir.

Q Is that permissible under the law? A Yes. I will say why he told me he wanted that under Goldberg's name. He gave me a good reason.

The Court: I will let him state what Shapiro told him.

By Mr. Masucci.

Q What did Shapiro say? A He said it was easier to sell if he didn't own it.

By the Court.

Q You keep minutes, don't you? A Yes, the secretary is here.

Q The minutes will show what you are telling us? A I haven't checked up on the minutes.

Re-direct examination by Mr. Brogan.

Q Did the board of directors know that this application was not an application of Max Goldberg's? A Yes.

By the Court.

Q Did he make known that to the board? A He came to me—

Q Did he say to the board what you are telling me? A Yes, to the board. Shapiro was getting the loan but he got it under his clerk's name. We didn't care who got the loan because we thought it was a good loan.

Q Don't you look to the nominal loan? A Yes.

Q Didn't you think Shapiro was better than his clerk? A In this case we didn't care

because the loan was such a small loan and we didn't have to consider the nominal loan.

Q If it was so small why did you reduce the application from $8,000 to $7,000? A On account of the condition of the property.

Q Why did you loan $7,000 and keep $500 back? A There is a paragraph in the building and loan if we give six thousand we give six thousand, because even if the value is there it is better to make the lowest loan as possible.

Q Isn't it better to please the members and give what the property will really bring? A No, I don't think so.

Q You say the property was a good loan, yet you lowered it from $8,000 to $7,000, and yet you kept $500 back from the $7,000 for repairs? A Yes.

Re-cross examination by Mr. Masucci.

Q I think you have answered the question. Did the board of directors know that Shapiro was the real applicant? A Yes, sir.

Q Why didn't the board of directors request Shapiro's signature on the bond or his joining on the bond? A We knew he was taking the loan and he was better than the clerk, so we might as well take him on the bond.

By the Court.

Q But you didn't do it? A I don't remember whether we did or not.

Q Counsel is asking you why you didn't have him sign the bond and attest security for the loan if you knew that Shapiro was the one in the transaction? A We knew the loan was good.

Q Speak for yourself. A I will say that.

Q Was it discussed at the board of directors' meeting? A No.

Mr. Brogan: Isn't this witness the chief executive of that board? Isn't he entitled to voice what their deliberation was?

The Court: No, I won't permit him. A building and loan association is so very different from a corporation that it could be run in a slip-shod way if the president ran the whole thing.

Mr. Brogan: That happens in most cases.

The Court: Building and loan associations are run in a slip-shod manner and the legislature should take some action to restrict their proceedings as heretofore conducted.

By the Court.

Q By the way, as I think of it, Shapiro had the funds of the building and loan association and paid them out by his check as trustee? A No, he didn't have the funds. He had the funds of a loan that was ready to be paid out. We issue a check. The loans are all turned over to him as trustee. That was with the instructions of the Department of Banking & Insurance.

Q He had thousands of dollars of funds of the building and loan association at the very time we are alluding to in his account as trustee for his association? A No, sir.

Q How much did he have in his hands of the building and loan association?

Mr. Brogan: I don't want to object.

The Court: I want you to object to it.

Mr. Brogan: This witness has already testified, as I understand it, the State Department of Banking & Insurance put in practice the very thing this witness says was done in this case, namely, to deliver the amount of the loan granted to the attorney in a trustee account for the purpose of closing it.

The Court: What the witness has said is clearly hearsay and a conclusion. It doesn't bind in anywise the Commissioner of Banking & Insurance. I will say to you further if the Commissioner of Banking & Insurance ever designated such a practice it is pretty near time we ought to know that.

Mr. Brogan: I am prepared to show written instructions to that effect.

The Court: Until you do it there is no use of my surmising what they did. His stating what the Commissioner of Banking & Insurance did is not evidential. It is in the nature of hearsay and in the nature of a conclusion.

Mr. Brogan: Your Honor, I hope you will pardon my saying so, and I know you are thinking I am trying to do the best for my side, your Honor questioned, whether consciously or unconsciously, certain payments were made from the fund, and that that situation was an irregular thing.

The Court: That is my impression.

Mr. Brogan: All right. I didn't suspect any such idea would crop into the case, but I have in the office of the attorney for the building and loan written instructions to do

this very thing from the Commissioner of Banking & Insurance and will be glad to present it to you.

The Court: And I would be glad to have you present some proof that the Commissioner of Banking & Insurance issued such instructions. I would be glad to find out what the practice of the building and loan association are in that respect. What I have in mind is the rule of law, Mr. Brogan, stated by our Court of Errors and Appeals that in cases such as I think this is likely to be from what I heard of it thus far, that parties are put upon their inquiry by what may be regarded as unusually suspicious circumstances. I don't know how far that's going to go, but thus far my present impression is that the president of the building and loan association did not make that honest inquiry that the law requires him to make to ascertain the true condition of affairs. Here are a number of witnesses who swore here that the name of the owner Clawans was on two signs. This witness says he went there with a committee of three to inspect the property, and the very fact he went there leads me to believe he must have had in mind some suspicious circumstance in connection with the transaction because it indicated he couldn't trust his committeemen.

Mr. Brogan: Why not ask him?

The Court: You had better find out why he went there personally.

Re-direct examination by Mr. Brogan.

Q Did you accompany the other members? A Yes, I look at almost every application. When I get an application I go up and look at the property.

Q Yourself? A Myself.

Q How many years have you been president of this association? A Since the organization.

Q When was that? A Eight and a half years ago.

Q Are you connected with any other building and loan? A Yes.

Q How many? A Seven.

Q Are you holding any office in any of them? A President of four associations and director in three of them. President of Peerless for eighteen years.

Mr. Brogan: If counsel don't believe it it can be brought out on cross examination.

Q What percentage of applications for loans in the building and loan do you make inspections personally? A About 90%.

By the Court.

Q Why don't you inspect 100? A I will say this if your Honor please. Ever since the building and loan went through this—

Q I am speaking about this. This was 1928? A I will answer your question.

Q Well, with that company what percentage of loans in 1928 did you examine? A 90%.

Q Why didn't you examine 100 in 1928 prior to the Shapiro transaction? A The conditions didn't warrant.

Q What conditions prior to the Shapiro transaction warranted you in making the inspection yourself? A The same condition that I look at most of the applications with my brother.

Q When the committee reports back to you their finding on a loan they sign the application blank with their names? A Yes, sir.

Q Have you signed also those blanks? A No, sir.

Q Why not? A No president does that.

Q It might have convinced me a little more as to the truthfulness of your testimony if you had.

Mr. Brogan: Oh, your Honor! I beg your pardon!

The Witness: That isn't the practice.

The Court: Now, Mr. Brogan, your action just now—

Mr. Brogan: I beg your Honor's pardon. I was taken by surprise. I am very sorry.

The Court: Aside from anything else I was going to say to you, Mr. Brogan, my opinion from the inquiry made is that I do not believe this witness' testimony in many respects. I am frank to tell you that and the case of Riehl *v.* Riehl warrants this Court in determining where the truth lies. The Court does not have to believe a particular witness or witness that comes upon the witness stand, and I had apprehensions as to the truth of this man's testimony in some respects and it was for that purpose I was interrogating the witness. I state that to show what my purpose was.

By the Court.

Q I ask you again, if you deemed it advisable as president of the building and loan association to make a personal inspection of the property you inspected why didn't you for the benefit of your fellow directors and for the benefit of the stockholders sign together with the committee who made the inspection the report recommending the loan or against the loan? A Well, I haven't done that in eighteen years. I didn't do that in this case.

Q What is the reason for not doing it? A I didn't think it was necessary.

Q What was the reason you wished to make the inspection? A To see if the loan was a good loan and look with the committee.

Q Didn't you trust them? A Yes.

Q What are the names of this committee? A Mr. Lomachinsky—they are in court—Mr. Loewenthal, and the third man was Mr. Wasserman.

Q How long had those three men been serving as a committee to inspect properties and report upon loans up to this Max Goldberg transaction? A For a number of years.

Q Did you have any reason to mistrust them? A No, sir.

Q They are all business men in the community, are they? A Yes, sir.

Q And shareholders of the association? A Yes, sir.

Q Do the by-laws of the association provide for such a committee? A Yes, sir.

Q And did it provide for three in number? A I think it did.

Q And you had appointed these men? A Three up to a certain amount. If a larger amount we appoint five.

Q You appointed these men and you had implicit faith in their judgment and integrity? A Yes.

Q And you went with them sometimes on a particular loan? A Yes.

Q You did not go with them on every loan? A Most of them.

Q And when you gave a percentage of 90% it was a rash guess? A No, it is about right.

Q Is there anything in the records of your association signed by you or in the way of a minute which would indicate you made inspection of any other property? A No, sir.

Q Why if you made this inspection with the committee did you not report to the board of directors on the return of the application that you personally had likewise inspected the property and had recommended the loan? A That ain't the practice of the building and loans.

Q I am not speaking about building and loans. I am speaking about the building and loan of yours. A I didn't think it was necessary.

Q Did you keep minutes of your transactions? A Yes.

Q If applications are made they are mentioned in the minutes? A Yes.

Q The fact that an application was made is mentioned? A Yes.

Q And the report of the committee is reported to the board of directors? A Yes, sir.

Q The board of directors are required to act upon the application whether they are favorable or unfavorable? A Yes, sir.

Q Who mentioned the deduction from $8,000 to $7,000? You or the committee. A The committee.

Q What was your judgment about the matter? A I thought they were right.

Q What did you think was right? A The condition warranted.

Q What was the condition that warranted a reduction from $8,000 to $7,000? I have in mind that you said this property was of sufficient value without Shapiro's guarantee? A When a man makes an application for $8,000 and he will take seven we do it.

Q You recommended this loan then for seven? A Yes.

Q Seven thousand? A Yes.

Q And yet you deducted $500.00? A For repairs.

Q Why did you deduct $500.00 for repairs? A Because they were needed.

Q Then you thought the loan was really worth $6,500.00, didn't you? A The loan was worth $7,000.

Q If $500.00 of the loan was deducted? A Then it was $6,500.00 without the repairs being needed.

By Mr. Brogan.

Q Did you deduct $500.00 or withold $500.00? A We withheld $500.00.

Q Mr. Susskind, were you a member of this committee? A No, sir.

By the Court.

Q You said you were *ex officio*. You were a member *ex officio?* A That is what I meant. I didn't understand the question.

Louis Susskind, for Defendant, Re-direct.

By Mr. Brogan.

Q Is this committee that examined these premises a standing committee? A No, sir.

Q What is done with regard to these applications? The same committee on each of them? A I pick the men when the application comes in. I have a list in my office and every member of the board have a chance of looking at these different applications. They each get a chance.

By the Court.

Q Are they paid fees for the examination? A Yes, sir.

By Mr. Brogan.

Q How much? A $9.00.

Q $9.00 each? A $3.00 apiece—$9.00 to an application.

Q Is the inspection made in rotation—the committees made up of directors of the board? A Yes. I would like to help the Court if I am allowed.

The Court: You had better answer questions.

By Mr. Brogan.

Q Is this the application for this loan? A Yes.

Q Does that indicate who the committee was? A Yes. Two of them are on it.

The Court: Read the names!

The Witness: Mr. Loewenthal and Mr. Wasserman.

By Mr. Brogan.

Q How many were on the committee? A Three.

Q Why were only two on? A Two is sufficient, but sometimes a member is not at the meeting and he don't sign it. When we get two signatures it is sufficient. It is the rule of the department.

Mr. Brogan: I offer it.

(Application for loan marked Exhibit D. 3 in evidence.)

The Court: For the purpose of the record will you dictate into the record Mr. Brogan the details of that application?

Mr. Brogan: Exhibit D. 3 is an application for loan—Ordway Building & Loan Association of the City of Newark, N. J., dated 7/28/28. The undersigned desires to procure a loan of $8,000 from Ordway Building & Loan Association secured by a first Mortgage of.....% interest per annum on the Bond of the owner on the following Property: Location No. 22 side of Gladstone Ave. Near corner of So. Orange Ave., City of Newark. Dimensions of Ground 30 x 83. Dimensions of Building..... Building Materials frame. Height 2½ Stories. When Built..... Stables on premises—no. How many stalls..... Store—no. No. of Rooms, 1st floor 6—2nd floor 6—3rd floor 3. 4th floor..... City water in house..... Purpose of use—2 family Dwelling. Occupied by..... Is Building in course of erection—No. Repairs in progress..... Improvements:

Heating—Yes. Range and Boiler for Hot Water—Yes. Bath and W. C.—Yes. Stationary Washtubs—Yes. Gas and fixtures—Yes. Electric Lighting..... Sewer connection..... .. .Cost of Ground $3000. Cost of Building $9000. Total $12,000. Monthly Rent $..... Insured for $.... Mortgage at present for $..... By whom held..... Is any portion of this loan to be used in improving the Property?..... If married give name of Wife or Husband .... .There is a diagram showing a city block without any marks on it, without any plotting of any particular place. Underneath it says "I hereby agree and bind myself to accept loans and pay all fees for searches and drawing papers and a premium of.....% if granted." Name—Max Goldberg. Address..... The Committee's report on the back—"Value of Ground $2500. Value of Building $8000—Total $10,500. Insurance required $..... We the undersigned hereby report $7000 favorable on within named loan." Signed—Morris Loewenthal. Samuel Wasserman. The rest of it is in blank.

By the Court.

Q Now, Mr. Susskind, I call your attention to the exhibit which has been read. It is marked Exhibit D. 3, and call your attention to the fact there is nothing indicated on it about withholding $500.00 for repairs. How do you explain that? A That is in the minutes.

Q That you say is in the minutes? A Yes, sir.

Q But you observe the committee reported for an unconditional report of theirs favorably for a loan of $7,000? A Yes.

Q Now, you have heard read off here that although the application is signed Max Goldberg that a portion of this application reads that the application for loan is being made by the owner. Now you knew that Goldberg was not the owner, did you not? A Sir!

Q Did you know that Goldberg was or was not the owner? A I knew he was supposed to have become the owner to buy the property. That is a common practice in building loans.

Q Didn't you swear here that Shapiro told you he had bought the property or was about to buy the property at a mortgage foreclosure sale, but wanted to know if you would consider an application from Max Goldberg? Did you so testify? Is that the truth? A Yes, that is the truth.

Re-cross examination by Mr. Masucci.

Q Now, when an application is taken by the building loan it is first submitted to the board of directors before they are acted upon? A Yes, sir.

Q They are submitted to you? A Yes.

Q And a committee appointed by you? A Yes.

Q And referred to the board of directors? A Yes.

Q Now, did Mr. Shapiro or some one in his behalf make one or more applications for a loan on 22 Gladstone avenue to the building and loan? A One.

Q And he only filled out one application? A One.

Q You are certain about that? A Yes.

Q Now, I call your attention to Exhibit D. 3, and ask you— The application says $8,000, is that right? A Yes.

By the Court.

Q In whose handwriting if you know is that application? A Mr. Shapiro's.

By Mr. Masucci.

Q When did the building and loan meet in the month of July? A The fourth Tuesday.

Q That was before July 28, 1928, is that right? A Yes, the fourth Tuesday.

Q And the following month they met when? A The fourth Tuesday.

Q What day of the month was that? A I can't remember.

Q When was check issued for the loan by the building and loan? A I can't say.

By the Court.

Q Will the books show it? A Yes.

By Mr. Masucci.

Q It was within one week after the application was made? A Yes. Sometimes the same night.

Q And if that was so the board of directors had not been able to act. If the check was issued within one week from July 28, 1928, the board of directors had no opportunity to act upon it, is that right? A Make it clear to me?

Louis Susskind, for Defendant, Re-cross.

By the Court.

Q In other words if an application was made after the fourth Tuesday in July, 1928, and the next meeting was to be the fourth Tuesday in August, 1928, and you actually had the check for the loan issued to Mr. Shapiro or somebody between the fourth Tuesday of July, 1928, and the fourth Tuesday of August, 1928, it was without the action of the board of directors? A That has to be passed by the board of directors.

Re-direct examination by Mr. Brogan.

Q Did you have another meeting between July and August?

The Court: Why not have the minutes produced?

Re-cross examination by Mr. Masucci.

Q You said the members of the board of directors knew this was a loan being made to Morris W. Shapiro, is that right? A Yes.

Q And you also said you had ample experience in building and loan matters? A Yes, absolutely.

Q If the board of directors knew, and you knew as president of the Ordway Building & Loan Association, that Morris W. Shapiro was the owner of this property why did you permit Morris W. Shapiro to make the search and represent the building and loan? A We did that because that is the practice of the attorneys of the building and loan.

Q You think it is proper practice for the person making the application for the loan, even

though he may be a lawyer, to make a search on his own property in behalf of the person who is granting the mortgage? A I will say that being a lawyer and an officer of the building and loan and good reputation we thought it was absolutely good. We know different now.

Q The fact is that you did have Morris Shapiro make his own search on his own property and certify to the building and loan when it was his own loan? A Yes, sir, we did.

Q You said you were one of the members that went up and observed the property 22 Gladstone avenue? A Yes, sir.

Q You examined only the exterior? A Only the exterior.

Q What was the condition of the painting on that house? A Bad.

Q What was the condition of the roof? A It appeared bad. The leaders were decayed.

Q All rotted away? A Yes.

Q What about the roof? A According to the condition of what I observed the roof was in bad condition.

Q Did you observe anything else that was not bad to you on the exterior of the building? A I observed the sagging of the front stoop.

Q It is a porch? A Yes.

Q On account of your inspection you knew that porch had to be considerably repaired, is that right? A Yes, sir.

Q From the estimate which you and the committee put on that building the main value laid in the building? A Not particularly—the land and the building.

Q The greater value in the building. You put a value of $2,500 on the land? A Yes.

Q And $8,000 on the building? A Yes, sir.

Q Why didn't you go inside and examine that building? A I didn't think it was necessary.

By the Court.

Q Why not? A At that time I thought it was sufficient. That has been the way things were going on.

Q So far as you knew you wouldn't be able to say whether the property was inhabited or not? A I thought not.

Q Did you know? A I will say it appeared to me that the first floor was vacant and the second floor was occupied.

Q What made it appear to you the second floor was occupied? A The name in the door-bell.

Q What name did you see on the door-bell? A Scholder.

Q When was that? A The early part of July.

Q The early part of July? A Yes.

Q It was the latter part of July the application was made? A We went and looked at it before. The latter part of July the loan was passed.

Q You mean to tell me you didn't inspect the property after the application was made? Did you go after? A I want to answer your question.

Q Answer it yes or no! How do you mean explain? Counsel will do it. Did you go and examine that property before the application was made or after? A I inspected the property when I appointed the committee.

Q Did you appoint the committee after the application was made? A There wasn't any

application. Shapiro made the application formally.

Q But the application formally is dated 7-28-28, which means July 28, 1928. Was it after that you went and inspected the property? A No, before that. He would call me up and say to me or would see me and say, "Will you appoint a committee?" and I would appoint a committee and go up to the property.

Q Before the application was formally made? A Yes.

Re-direct examination by Mr. Brogan.

Q In writing? A Yes, in writing.

The Court: He said before the application was formally made.

(Witness continuing.) And I would appoint a committee and go up and look at it. When the loan would be passed he would take an application and fill it out and have the committee sign it.

By the Court.

Q This report of the committee appears to be undated. Is it customary to have it undated? A Yes.

Q Never date the reports? A It hasn't been dated this time.

Q Can you tell us when you inspected the property? A I believe about July 10th.

Q Why do you believe it was round July 10th? A It was around the early part of July.

Q What fixes that in your mind? A We passed the loan at the July meeting, I believe.

Q Will you swear to it? A No, I wouldn't swear to it.

Q What I am trying to find out is why you fix July 10th rather than July 5th, 15th or 28th? A Around July 10th.

Q You say that, but your now saying so doesn't convince me. A That's the best I can do.

Q Are you making a rash guess? A It is the early part of July.

Q I am trying to find out why you say it was the early part of July. Q Because I think we looked at the property probably two weeks before the meeting.

Q You think and you probably. What is the fact? A It is the fact the early part of July I looked at the property.

Q You said July 10th? A I am placing that about that part of the month.

Q I am trying to find out from you what fact or thing you base that statement upon? A Because he would call me up before the meeting.

Q I am speaking about this loan. A About this loan he called me up and had a committee appointed and we went up and looked at the property and at the meeting the loan was passed and the application made.

Q Do you mean to say this formal application was only made at the meeting at which the loan was passed? A Yes, sir.

Q Max Goldberg was not at that meeting? A No.

Q You told me this application was in the name of Shapiro? A It was his loan and he told me—

Q You told me it was in his handwriting? A The application, yes.

Q When was it signed by Max Goldberg? At that meeting or after? A After he got the signature on it.

Q So at that meeting when you passed the loan you had no formal application before you signed by Goldberg, had you? A No.

By Mr. Masucci.

Q You are sure this application was made at the meeting of the board of directors in the month of July filled out by Morris W. Shapiro? A Yes.

Q And July 28th was your meeting night that night? A Yes, the fourth Tuesday.

Q You are sure it was July 28th? A No, I couldn't say. We met on the fourth Tuesday.

Q But you say it was filled out on that date? A Yes.

The Court: He said it was filled out at that meeting.

The Witness: Yes.

By Mr. Masucci.

Q Do you know what date the fourth Tuesday of July, 1928, was? A No.

Q Do you know it was the 24th day of July the meeting was held? A I couldn't remember.

By the Court.

Q If the fourth Tuesday in July actually was on the 24th of July, how can you explain then your testimony that this application was actually made out at that meeting, that is, the meeting on the fourth Tuesday in July, 1928,

and the application is dated 7/28/28? A I couldn't explain that.

By Mr. Masucci.

Q You say the application was made after the loan was passed, is that right? A Yes, the committee went up and looked at the property and reported at the meeting the loan was passed.

Q Was it made before it was acted upon or afterwards? Was the application filled in before or after it was passed by the board of directors? A At the same time—at that meeting night.

Q I know but before the— A That's where he got the signatures to the committee's report.

Q Will you please answer my question? Was the application filled out by Morris W. Shapiro on the night in question before or after the board of directors had acted upon it? A About the same time that night.

By the Court.

Q Tell us when? That's very important. A I don't know. I couldn't remember whether it was one an hour before or after. I couldn't conscientiously answer the question.

Q Why couldn't you tell that? A Because I don't remember what happened a year and a half ago exactly with that piece of property on that night.

Q Would you formally act upon a loan applied for without a formal application being before the board? A Yes, that was the practice.

Q And at the meeting of the board do you mean to tell me you would vote for or against

the loan without a formal application being before you? A The application would be before us at the meeting, if the application was there at the meeting. I will say this, that the secretary would take an application blank at the meeting and fill it out ready to be passed upon. If it was passed he would hand it over to the committee and get the committee to sign it.

Q If that was written out at that meeting by Shapiro can you explain why Shapiro has made the application—or at least the application was made for a loan of $8,000 when you gentlemen knew you were not going to loan $8,000? A I don't know. I couldn't explain that. The application was read that an application was made for $8,000. Then the committee reported seven. That's in there. They reported seven thousand.

Q You mean to tell me that knowing that before as you did, and he being an officer of your association, you and your committee had not already told him you wouldn't loan eight but would loan seven thousand? A We probably did, but we did not loan it. When the committee went out on an eight thousand loan seven thousand was granted.

Q As I understand the fact a formal application in writing was not made to the association at the time you and your committee went to inspect the property. Is that so? A No; absolutely.

By Mr. Masucci.

Q After a loan is passed who issues the check for it? A The secretary.

Q And is he instructed as to when he should issue the check? A He makes the check when

the attorney is ready to pay the money out. Sometimes he makes it the same night. He said "I am going to put this loan through in fifteen days," and he got the check. It went through our funds in our trustee account.

Q When you saw the exterior condition of the property was so bad didn't you think it advisable to look at the interior? A No. The property needed a little fixing up which happens very frequently. What happened here happened in every building and loan in Newark for twenty years past.

Q I am not speaking about that. A I am giving you the general practice.

The Court: I will strike out what happened to other building and loan associations.

By Mr. Masucci.

Q As you stated before it required painting badly? A Yes.

Q It required a new roof or repairs to the roof? A Yes.

Q It required repairs to the porch, is that right? A Yes.

Q It required other repairs to the building, didn't it? A Yes.

Q Involving a cost of much more than five hundred? A I didn't say that.

By the Court.

Q Do you know what it cost? A I think five hundred.

Q On what do you base your thought? A I couldn't qualify as an expert as to what repairs cost.

Q You don't know how much was spent on repairs? A No.

By Mr. Masucci.

Q You noticed that the first floor was vacant? A Yes, sir.

Q You weren't sure whether the second floor was occupied, were you? A It looked that it was.

Q You didn't make any inquiry, did you? A The curtains were up on the window.

Q Did you make any inquiry as to whether the second floor was occupied? A Make an inquiry, no.

Q Didn't you think it was important? A Certainly; I saw it was occupied. I looked up at the windows. There was curtains there. There was no "To Let" sign up there.

Q You didn't intend to grant, or have the building and loan grant a loan on a vacant property, did you? A Why not?

Q Did you? A Yes, we do. If the floors are empty we can grant a loan.

Q I am not asking you that. I am asking you whether you thought it would be advisable to grant a loan on a vacant property? A I thought it was advisable to grant that loan. There were two floors and one was rented and one was vacant.

Q You say you saw a name on the door-bell, is that right? A Yes.

Q What made you look at the name on that door-bell? A To see whether my thought was right that the second floor was occupied.

Q So you were interested to find out whether the second floor was occupied? A I was inspecting the property.

By the Court.

Q You testified you were not in the inside of the house? A Yes, sir.

Q You testified you didn't try the bell? A I didn't.

Q What do you mean then? A I looked at the property and it appeared to me that people were living there.

Q What you did was stand outside? A Yes.

Q And the committee was outside? A Yes.

Q And neither one of you went inside? A Yes.

Q Where did you see this name on the door-bell? A I was in the vestibule but not in the building.

Q What do you mean by saying you did not try the door? What door had you reference to? A To the inside door—the second floor.

By Mr. Masucci.

Q You say now there is a front door leading to the vestibule, is that right? A Yes.

Q And a door from the vestibule to the hall? A Yes.

Q And the bells are in the inside of the vestibule? A Yes.

Q You are certain about that? A No. It appeared to me.

By the Court.

Q You are sworn to tell the truth. A I am trying to, sir.

Q Your answers only bear out what I had in my mind before. A I am trying to. It is a year and a half ago and being president of a

lot of building and loan associations I am trying to.

Q Are you giving your best recollection or are you guessing? A To the best of my belief.

Q What does that mean? Is it the fact as asked you by counsel that this situation exists? Is that the fact? A Yes, I can remember the bells are in the inside of the vestibule.

Q You are sworn to tell the truth. Is it a fact or are you guessing A My recollection tells me the bells are in the vestibule.

Q What are you basing your recollection on in that respect? I have in mind you didn't try the door and did not go inside the house. A Yes, but in the vestibule.

Q Going in the vestibule means inside the door? A I didn't mean that.

Q When you say you didn't try the door— A The door leading into the house I didn't try.

Q You said there were two doors? A The second door I didn't try.

Q Was the outer door leading from the porch to the vestibule closed and did you try to open it? A I went into the vestibule.

Q Was the door leading from the vestibule to the hallway closed or locked? A I don't know. I didn't try it.

Q How many bells or letter-boxes did you see there in that vestibule? A Probably two.

Q You don't know? A I don't.

Q But you are sure you saw the name Scholder on one of them? A Yes.

Q You knew there was nobody living in the lower part of the house and according to your statement Mrs. Scholder was living in the upper part of the house? A Yes.

Q Now having in mind this application for loan says "Occupied by—," why didn't you make some inquiry to find out who it was was living in the house, whether it was the owner, tenant or lessee? A Mr. Shapiro was the owner.

Q Weren't you concerned as an inspector making an inspection if this property was under lease to somebody? A We don't make an inspection—

Q You knew if there was a lease for ten years it would come ahead of your loan? A Yes, they search the property.

Q You didn't make any inquiry? A No.

Q And for all you knew that property might have had a lease for ten years at ten dollars a month? A Yes.

Q And if it had such a lease your loan would not be such a good one? A That is up to our attorney. Our loan is supposed to be a first lien.

Q So you say it was up to your attorney to make an inquiry as to whether there was any lease on it? A To make a complete search.

Q Did your searcher make a report to you of the search as to who was the owner of the property and who was in occupancy? A No.

By Mr. Masucci.

Q You went in that vestibule for the purpose of ascertaining whether there were any names on the door-bells? A No.

Q Isn't that what you said before? A I didn't go in there for that purpose.

By the Court.

Q What did you go in there for? A I was looking at the property—looking around and over the property.

Q You mean to tell me you opened that outer door merely to see the vestibule? A To see what it looked like.

Q If you went into that vestibule why weren't you concerned about looking in the hall? A I didn't.

Q How big was that vestibule? You seem to have a loss of memory about the property. A The vestibule was about this size here (indicating). About 5x5.

Q Can you describe the make-up of that vestibule whether it was of wood or any part tiling or any part wainscoting? A No, not at that time.

Q Can you tell me whether there was any tile flooring in the vestibule? A I wouldn't say.

Q Can you tell me whether there was any tile wall? A No.

Q Was there any lamp in that vestibule hanging from the ceiling? A At that time I wouldn't testify that there was.

Q All you know there were two letter-boxes? A Yes.

Q Was the name Scholder written on a piece of paper or on a metal sign? A It was on one of these here you insert a piece of paper.

Q What do you mean? An ordinary piece of paper A Yes.

Q Was it printed or written? A I think it was written.

Q You don't know? A No.

By Mr. Masucci.

Q You did go into the vestibule, didn't you? A Yes.

Q And that's when you first saw the door-bells? A Yes.

Q Did you open the door leading from the vestibule into the hall? A No.

Q You don't know whether that is a door having a glass panel on or wooden panels? A No.

By the Court.

Q Is there one door or two doors leading from the vestibule to the hall? A I believe there was one.

Q I don't want your guesses. A I will say no.

Q You will say no or you don't know? A I don't know.

Q Was there one or two doors leading from the porch to the vestibule? A One door.

Q Was there a glass panel in that door? A Yes.

Q Sure of that? You are saying it in a way that leads me to believe you are not sure. A I want you to realize, if your Honor please, I look at a lot of property and it is hard to knuckle me down while making an inspection of a piece of property for a loan whether there's a lamp hanging or it has a glass door or a panel door.

Q That very fact that you are stating warrants me in indicating to you because of the grimace on your face when others are asking questions, and when I asked you questions, leads me to believe you are not sure of what you say. A I am trying to work with the Court.

Q Are you testifying as to facts or what you think you remember? A I am trying to answer questions intelligently. I am connected with four associations and I look at a lot of property and act in such way and have a lot of things that I am attending to, and I couldn't a year and a half later come into this court and describe to you that particular property exactly what is there, and nobody else could I don't think who is in my position.

Q What makes you say there were two door-bells there with the name Scholder on one? A I remember seeing that.

Q If you remember that why didn't the application for the loan have in it the statement as to who the persons are in occupancy especially after you made your report to the board? A The application is made by our counsel after the report comes in. If he omitted it it is not my fault.

Q You omitted to state it to the board? A One floor was occupied and one was not.

Q There was no report made to the board indicating that fact? A It was reported there was one tenant in the house and one floor vacant.

Q Do your minutes show that? A Positively not.

By Mr. Masucci.

Q You were interested in ascertaining whether a tenant was on the second floor. That was your purpose in looking at the name underneath the door-bell? A Yes.

Q Why didn't you go upstairs to make certain there was a tenant living there? A Don't ask me why I didn't.

Louis Susskind, for Defendant, Re-cross.

By the Court.

Q Wouldn't you be interested to know by inquiry of the tenant as to how much rent the tenant was paying and whether the tenant was holding under a lease? A No.

By Mr. Masucci.

Q You seem to remember the name Scholder? A Yes.

Q How is it spelled? A S c h o l d e r.

By the Court.

Q That's the way it was spelled on that doorbell, is that right? A I again must say that that's what my best recollection is as to how the name was spelled.

By Mr. Masucci.

Q Had you ever met Mrs. Scholder before? A No.

Q Never heard that name before? A Never heard that name before.

Q And you say you are occupied with your work in a lot of building and loan associations? A Yes.

Q And besides that you have your own business? A Yes.

Q How is it that you recall the name Scholder and you recall the spelling of it? A I recall it. That's my testimony.

Q You are certain about that? A Yes, sir.

Q And you recall it because you thought it was important that a tenant should be in the second floor at least? A I thought there was, and that satisfied me there was.

Louis Susskind, for Defendant, Re-direct.

By the Court.

Q The only reason why you thought there was you saw curtains on the windows? A Yes.

By Mr. Masucci.

Q You went into the vestibule to see the condition? A Yes.

Q You didn't go into the hall? A No.

Q You didn't go in from the vestibule into the hall? A No.

Q You say there was one door running from the house to the vestibule? A Yes.

Q As a matter of fact don't you know there are two doors there? A There might be.

Q Don't you know it to be the fact also that the door-bells are on the outside of the building? A No, sir.

Q You don't know that? A No.

Q You won't say they are in the vestibule, will you? A I don't know.

Re-direct examination by Mr. Brogan.

Q I don't know whether it is entirely clear or not on the record. Do I understand you that prior to the meeting date a request had been made for a loan by Mr. Shapiro on these premises? A Yes.

Q And that at the meeting it was reduced to writing? A Yes.

By the Court.

Q But you don't know when the request was made prior to that meeting, do you? A It was made around the 10th of the month.

Q You said that before and I ask you how you fix that time? A Well, it was a couple of weeks before the meeting.

Q Was it by letter or 'phone this application was made? A By 'phone.

Q 'Phone from whom? A Mr. Shapiro.

Q To you directly or to the building and loan office? A To me. We have no office. We just have a meeting place. There is nobody there.

Q Why do you say on or about July 10th? Couldn't it be on or about July 15th or 20th? A I fix the time as I remember it because of the time he called me up and the meeting. So I fix about July 10th.

Q If the meeting was on the 24th of July, which has been indicated by a statement of counsel, then there was fourteen days elapsed between the date of the call and the date of the meeting? A Yes. That's why I fix the time about two weeks.

Q Whatever date that meeting was, at that very meeting you say that a formal application, Exhibit D. 3, was written out by Shapiro? A Yes.

Q If the meeting was actually held on the 24th of July, can you explain how the date on this application reads July 28, 1928? A He probably dated that after. He left the date out and on that date he dated it.

Q That is your explanation? A Yes.

Q And your explanation positively is that that application was not at that meeting signed by Goldberg? A No.

Q That it must have been signed after? A Yes, probably on the day of the date of it.

Q And probably a year or two afterwards. You don't know? A I can't testify for Mr. Shapiro.

Re-cross examination by Mr. Masucci.

Q You are a brother of Mr. Susskind the counsel of the Ordway Building & Loan? A Yes.

Q Do you know whether Mr. Shapiro signed the bond accompanying the mortgage? A Yes, he was supposed to sign it.

Q Did he? A I don't know.

Q Did the resolution provide he should join in the execution of the bond? A I don't remember.

Q Was there a discussion as to whether he should join in the bond? A I don't remember. I think not.

By the Court.

Q My recollection is that you said you thought the property was well worth the loan? A Yes.

By Mr. Masucci.

Q And you also stated that the reason why he did not join in the bond was because the loan was made to Shapiro? A Being that he made the application for the loan and he took it in his clerk's name I think something should have been done about his going on the bond. That is positively the case, I don't remember.

By the Court.

Q You think he might? A Yes.

By Mr. Masucci.

Q And you are ready to testify Mr. Shapiro had joined in the bond? A I don't know.

Mr. Masucci: That's all.

SAMUEL WASSERMAN, a witness being sworn in behalf of defendant.

Direct examination by Mr. Brogan.

Q Mr. Wasserman, what is your business? A Stationery business.

Q In Newark? A In East Orange.

Q You are a director of the Ordway Building & Loan? A Yes, sir.

Q And have been for how many years? A About four and a half years.

Q Are you interested in any other building and loan? A Yes, sir.

Q As a director? A No, sir.

Q Do you remember the property 22 Gladstone avenue, Newark, New Jersey? A Yes, sir.

Q Do you remember making an inspection of the premises? A Yes, sir.

Q Why did you go there to make an inspection? A I was called up by a party by the name of Louis Susskind, the president of the Ordway Building & Loan.

Q The former witness? A The former witness, yes; and if I had time to go down and look the property over and make my report to him as he would like to put that loan through the same month.

Q Do you remember when that conversation between you and him took place and when the inspection was made? A Yes, sir.

Q When? A It took place on July 9th on a Monday morning.

Q July 9th? A Yes, sir.

Q On a Monday morning? A Yes, sir.

Q How do you remember that? A I usually go out on Monday, and as I was ready to go out I got that telephone call.

Q What do you mean you usually go out? A I usually go out every Monday morning.

Q On real business? A Yes.

Q Who else was on the committee besides you? A I didn't know at that time who else was on it. Mr. Susskind did not tell me who was on the committee.

By the Court.

Q When you got there what? A I found two men there.

By Mr. Brogan.

Q Who were they? A Mr. Susskind and Mr. Loewenthal.

Q And you examined the premises, did you? A Yes, sir, I examined the property.

Q Do you own any real estate? A Why, I don't own any real estate now, no, sir.

Q Have you owned real estate? A Yes, partners with my father-in-law.

Q And you appraised the property, did you? A Yes.

Q And approved the loan? A Well, I didn't approve the eight thousand loan, no.

Q What did you do in the matter of appraisal? A I personally thought it was advis-

able to hold back five hundred for repairs on the foundation of the building and porch and also the painting of the exterior.

Q How much of a loan did you recommend? A I recommended seven thousand and sixty-five to be paid and five hundred to be held back. That is, $7,000 in total.

Q Was there any other member of the committee there, Mr. Wasserman? A Yes, sir, there was one more gentleman there.

By the Court.

Q You have told us who was there when you came there. Why didn't you tell us who was there? A There was two gentlemen—Mr. Susskind and Mr. Loewenthal.

Q Those were the only two who were there? A Those were the only two I saw when I got there.

By Mr. Brogan.

Q Was there anybody else that came there? A No, sir, I went to see the property myself. I pulled up with my car. I pulled up with my car and they stood there and I looked at the property.

By the Court.

Q There were only three men of the building and loan association. They are Susskind, Loewenthal and yourself? A I don't know who was there.

Q You don't know who was there? A At the time I got there.

By Mr. Brogan.

Q Do I understand you saw there the two other men but you didn't know they were on the committee? A That's right.

Q Do they live in the neighborhood? A Yes.

Q Did you confer with them? A After I got through with the building.

Q Was there a Mr. Lomachinsky there? A Yes, the gentleman sitting right there (indicating).

Q Was he there that day? Do you recall him being there or not? A I don't remember seeing him.

Q As I understand you you made the inspection and the other people inspected it after you? A Well, I believe they inspected it after I did because they were standing there and talking about it.

Q After you made your inspection did you confer with the men? A I went over there and said "Hello." I was in a hurry with my business and don't remember what they said to me.

Q When did you put in your report? A At the meeting.

Q Which took place later in the month? A Yes, the fourth Tuesday in the month. Yes, the fourth Tuesday in July.

Q Did you examine the premises from the inside? A Well, I walked around the building. I saw the concrete was sort of sagging.

By the Court.

Q Can't you answer that question? A I was in the vestibule but I could not enter the premises of the building.

By Mr. Brogan.

Q Why? A They were closed.

Q Did you try the door? A Yes, sir.

Q Did you ring the bell? A I did.

Q Did you notice any signs on the outside of the house? A There was a sign on the first floor in the inside of the glass. It was a cardboard sign about that size (indicating).

By the Court.

Q How wide is that? A About twelve inches.

By Mr. Brogan.

Q What did it say on it if you remember? A It says "To Let."

Q Any names that you remember? A There was no names on it whatsoever.

Q Any other sign that you saw? A I haven't seen any other signs there.

Mr. Brogan: That's all.

Cross examination by Mr. Masucci.

Q You weren't looking for any signs, were you? A Well, naturally you would see the sign.

Q How many signs? You weren't looking for any signs? A I was looking at the building.

Q And you went all around the building? A Yes.

Q You were interested in the condition of the property? A Yes.

Q You observed the first floor was vacant? A Yes, sir.

Q Did you observe whether the second floor was vacant? A No, sir, it was not vacant.

By the Court.

Q How do you know? A The reason why I say that looking upstairs the shades was there and curtains was on the door. As I walked in the vestibule one bell was empty and one had a little paper on it. I tried both and didn't get any answer. I pushed the one that had the paper and nobody answered and I took it for granted they were out. There was a little curtain—

Q Are you telling me what the layout of the hallway of the property is? A I saw it.

Q You could look through the door and see what you described? A Yes.

Q What did you see? A I saw a stairway leading upstairs, and a hallway to the right of it. As you walk in there was two doors—a street vestibule. To my left was a panel glass. To my right there was a door with a curtain on it.

Q Were there two doors? A One to the left and one to the right.

Q Was the vestibule leading into the hallway one door or two doors? A One door.

Q You could see through that glass on that vestibule door into this hallway? A Yes.

Q Describe the hallway and the stairs. A There was a curtain there. I looked in and tried it and thought maybe I could see somebody coming down.

Q You saw the stairs? A There was a stairway leading up.

Q You could see it by looking through the vestibule door? A Yes.

Q Was the hallway to the left or right of the stairs? A The stairs as you walk in is right in front of the door. You can see the stairs.

Re-direct examination by Mr. Brogan.

Q Do I understand, Mr. Wasserman, in order to save time, there is one door to the vestibule and then as you go in to the left-hand side there is a door to the first floor and then there are stairs leading up to the top floor? A Yes.

By the Court.

Q What side are the bells—to the left or right side as you come in? There is a vestibule there? A Yes.

Q Are the bells which you saw to the right or left of you? A You see them directly as you walk in.

Q The bells? A The bells are right when you walk in.

Q Haven't you been telling me there is a door to one side leading into the first floor? A You walk up three steps and go into the vestibule. You enter the vestibule as you walk through the door. There are two bells between the doors.

Q What side of the street was this house—the north, east, south or west? A Going towards Irvington is the south side.

Q The south side of the street? A I will give you a better description.

Q If you were going towards Irvington in a westerly direction is the house on the south? A As you come up Gladstone avenue on the right-hand side of the street.

Q As you go into the vestibule are the bells to the left of you or the right of you as you go through the door-way? A There is a door here and a door here and the bells are in between (indicating).

By Mr. Brogan.

Q In the front of the house? A Yes, the front of it. There is an entrance here to one apartment and an entrance here and there is the bells in the center of the two doors (indicating).

Mr. Brogan: I don't know whether your Honor is familiar with this two-story house.

The Court: I would like to find out the fact. I would like to have it explained to me.

Re-cross examination by Mr. Masucci.

Q You say between the two doors in the vestibule leading into the interior there is a sort of a panel or something? A There is no panel. There are two doors with a little panel in the doors.

Q And on that panel are the door-bells, is that right? A If you will let me show a description of the building I will show you where they are.

The Court: All right. Go ahead and make a description, but put down the name of the street and where the house is situate from the corner.

(Witness draws diagram.)

By the Court.

Q Where is the street? A Right here (indicating).

Q That diagram that you have before you indicates this house appears to be situate on the south side of that street? A I couldn't tell you if it is the south.

Q There is a stoop leading up to the porch? A Yes.

Q And after you go up the porch there is an entrance— A Into a vestibule or an alcove. Then there is an entrance here and here (indicating). There are two entrances.

Q You say there is an entrance on each side of that vestibule? A Yes, one for the bottom floor and one leading upstairs.

Q One would lead to some stairway going upstairs? A Yes.

Q And the bells are right in front of your vision as you go in? A Yes, about 39 inches from the floor.

By Mr. Masucci.

Q They are not on the exterior of the building? A No.

Q And that piazza you were speaking about you say had only three steps leading to it? A Leading to what?

Q To the piazza or porch? A Yes, I think about three steps. I just can't remember three, four or five.

Q Isn't it the fact that this building is built on a high terrace? A Yes.

Q And the steps lead from the street level? A I walked up on the dirt and then I walked up the steps and there is a wooden stairs in

front of the porch. The porch was of wooden structure.

Q You say you rang the bell? A Yes.

Q Which bell did you ring? A I rang the bell which had a little paper on it.

Q Did you notice any name on it? A I surely did.

Q Do you recall the name now? A I think the name was Scholder.

Q Do you recall it? A I do. I think it was Scholder.

By the Court.

Q Did it say Mrs. Scholder or Scholder? A Just Scholder.

Q How was that name spelled? A I think S c h o l d e r. It seemed to me. The reason I looked at the name I wanted to inquire as to the party living there. I looked at the name and when I rang the bell naturally you want to say "How do you do so and so." You don't want them to think you are a burglar. I usually do that when I enter a building to find out who it is. I tried the bell and nobody answered and I tried the door and nobody came down, and I left.

By Mr. Masucci.

Q You know I suppose now as to what name was on that door-bell after hearing the testimony of Mr. Susskind? A No, sir.

Q Did you discuss this matter with Mr. Susskind or anyone else before you came into court? A No, sir.

Q No one talked to you about the case? A Not regarding the facts of the case. I was only called here to testify. I came from my business.

I was called up and asked to come here and I came here eleven-thirty.

Q Were you in court before? A Yes.

By the Court.

Q You knew the building and loan has had trouble about this case? A Yes.

Q Was it discussed at the board of directors' meetings? A We were told a certain party was suing us.

Q It was discussed between you and your fellow directors? A Regarding what?

Q The lawsuit? A That is not the only talk we had. We didn't designate this particular case.

Q You mean to say it was never discussed this particular lawsuit? A We were told a certain party was suing us about a mortgage.

Q You were not told about the particulars of the matter? A No, sir.

Q Weren't you concerned? A About what?

Q What the suit was? A I knew what the suit was.

Q Who told you? A Mr. Susskind had made a loan to Morris Shapiro and Miss so and so said she owned the property and we don't own that property.

Q Was the name mentioned ? A Probably it was.

Q Who told you all that? A Mr. Susskind, the counsellor.

Q At one of the meetings of the board? A Yes. He said so and so was suing us for a mortgage.

Q It would be strange if you were not told? A Yes, it was like other matters we go through.

Samuel Wasserman, for Defendant, Re-cross.

By Mr. Masucci.

Q And you were also told to come to court? A I was asked to come to court.

Q And the matter was discussed what you were to say to the court? A No, I was never told what to say or do.

Q You were never asked what you were to say to the court? A No, sir.

Q No one ever asked you? A No, sir.

Q You say you were informed by Mr. Susskind, president of the building and loan, to inspect the property? Do you know what number it is? A Yes, sir.

Q What number is it? A 22 Gladstone avenue.

Q Did you refresh your memory from what somebody told you? A No.

Q Did you look at any papers or documents of the building and loan? A Regarding the building, no.

Q You didn't know who the other names of the committee were? A I did.

Q At the time you were 'phoned? A No.

By the Court.

Q When did you first learn that? A At the directors' meeting.

Q Is that the fact you knew who your fellow members of the committee were? A That was the first time I knew.

By Mr. Masucci.

Q Were you told when you were there and examined the property? A I was asked if I could come down and make an inspection and notify Mr. Susskind regarding the property.

Q Wasn't you informed by Mr. Susskind they were in a hurry to grant the loan at the next meeting? A Mr. Susskind asked me to go down as soon as possible and inspect the property, that he would like to put the loan through at the next meeting. I was going down that way on that particular day and stopped there to inspect the building.

Q You stopped there at ten o'clock? A No, I did not.

By the Court.

Q Tell us what time you stopped there? A I stopped there about two o'clock in the afternoon.

Q When you got there you saw Mr. Susskind and Mr. Loewenthal, is that right? A Yes, sir.

Q You knew Mr. Susskind. Did you know Mr. Loewenthal? A I certainly did.

Q You knew they were members of the board of directors of the Ordway Building & Loan Association? A Yes.

Q You started out of your car and didn't speak to either of them? A Not before I examined the property.

Q You mean you didn't speak to them before you completed the work of your investigation of the property? A No, I did not.

By Mr. Masucci.

Q Walked right by them? A They were standing down further on the street.

Q Weren't they in the front of the building? A They was further down and I pulled in back of them?

Q You were quite close to them? A No, I wasn't.

Q You were ten or fifteen feet? A No, I would have said "Hello" to them. I was forty feet away.

By the Court.

Q You didn't say you said "Hello"? A No. I was in a hurry to get to the bank.

By Mr. Masucci.

Q What part of the building did you limit your inspection? A The entire building.

Q Did you observe the condition of the building—the exterior? A Yes.

Q Very bad condition, wasn't it? A I wouldn't say very bad.

Q It required painting badly? A Not badly, no; but it could use a coat of paint on it.

Q The roof. Did you notice that? A I couldn't get on to the roof.

Q Could you see the roof from the street? A I could.

Q Did you notice the condition of the roof from the street? A It looked fair from the street.

Q Did you notice the condition of the gutters? A Fair.

Q Weren't they corroded and rotten or broken? A No, I couldn't say they were broken.

Q Did you look? A The building in general. You don't take every piece itself.

By the Court.

Q Why did you want five hundred withheld for making repairs? What repairs? A Vice-Chancellor, I will tell you what. The bottom of the foundation there was about that much space

between the top construction and the bottom (indicating). I made a notation myself to have that reinforced.

Q That wouldn't take five hundred? A If you will let me explain, Vice-Chancellor. The foundation would be fixed.

Q In what respect? A Would be reinforced.

Q What was wrong with it? A The foundation was caving in.

Q How was it caving in? A There was a little opening in the foundation. It was like a hole there. Naturally you could see that was giving away. I thought it would be very advisable to have that reinforced. The front stoop was sort of sloping and caving in. I thought that needed reinforcing and needed a coat of paint. I figured a coat of paint would be about two hundred or two hundred and fifty, and one hundred and fifty for carpenter work and construction, and to be on the safe side to take five hundred off.

By Mr. Masucci.

Q Did you observe the porch?

The Court: He described that.

A The foundation of it was giving away.

By Mr. Masucci.

Q You tried to get inside? A I did; yes, sir.

Q When you looked at the sign "Flat to Let", you didn't stop to see if it contained anything else besides "Flat to Let"? A That's all it said—"Flat to Let—Inquire Within".

By the Court.

Q You didn't say that before. You merely said "To Let"? A It said—"Flat to Let—Inquire Within". You asked me if there was a sign there.

Q Your counsel asked you, and you said there was a cardboard sign on which were the words "To Let", and no names on it. A No person's name.

Q Now you say there was some additional wording? A "Flat to Let—Inquire Within". I thought you wanted to get an idea of what was on it.

Q "Flat to Let—Inquire Within?" A Yes, sir.

Q Are you sure that's what it said on it? A Yes.

By Mr. Masucci.

Q Didn't it say anything else? A No, sir.

Q Wasn't there any names as to who to inquire from? A No person's name.

Q You don't recall Miss Clawan's name, do you? A Do I know Miss Clawans? I don't know her personally.

By the Court.

Q You testified when you made your report it was Miss so and so. Was Miss Clawan's name mentioned? A I don't remember.

By Mr. Masucci.

Q It was a report that a suit had been started by a Miss so and so? A That's right.

Q Wasn't her name mentioned at the board of directors? A I don't remember.

Q That was only two or three months ago? A It is more than two or three months.

Q You were interested in behalf of the building and loan? A No, sir, I heard the talk and—

Q At the board of directors' meeting when the report was made that the building and loan had been sued by Miss so-and-so, you were interested on behalf of the building and loan? A No, there was a little paper like that—so-and-so (indicating).

Q Was Miss Clawans' name mentioned? A I don't remember.

Q This suit is entitled between Lillian Clawans complainant and Ordway Building & Loan defendant. Do you say that Miss so-and-so's name was mentioned, or Miss Clawans'? A I don't remember. What difference does it make? What difference who is suing? That's the way I am looking at it.

Q You didn't care about the particulars of it? A The paper was read to us.

Q And you were a director, were you? A Yes.

Q You were not concerned about the property? A Yes.

Q Was the property mentioned? A Yes.

By the Court.

Q What property? A 22 Gladstone avenue.

By Mr. Masucci.

Q The only thing you don't remember about the talkfest was Miss Clawans' name? A I wasn't interested in the name.

Q But you were interested in the name on the door-bell a year and a half ago? A The reason was because I was looking for a party to talk to.

By the Court.

Q What party? A The party with the name of Scholder.

Q Why? A I wanted to get inside the building.

Q Why didn't you inquire from the owner of the building? A As a rule, Vice-Chancellor—

Q I am speaking to you about this particular case? A There was no owner there.

Q Why didn't you inquire from some source as to who the owner of the building was so you could talk to them? A I knew who the owner was going to be. I was not interested in the old owner.

Q What do you mean by that? A We were going to make a loan to the new owner.

Q Who did you understand was to be the new owner? A I wasn't interested in the old owner; I wanted to see the building.

Q Weren't you interested in the new owner of the property? A It is a general routine when we get an application for a loan.

Q You didn't have an application, did you, at that time? A No, I got a telephone call.

Q Were you told who the owner of the property was? A No, only the number of the property and the street and what kind of a house it was.

Q I am asking you whether you weren't concerned when you went to that house whether you knew the name of the owner? A As to what?

Q As to whether they were making an application for a loan. Your idea is somebody

might make an application for a loan on property and without inquiry about it take a mortgage on the property? A If somebody told me they were the owner at that time I would speak to them about the property.

By Mr. Masucci.

Q You weren't interested about the person making the application for the loan? A Concerned about the person who was making the application? No more than my duties.

Q Were you told when Mr. Susskind phoned you? A Max Goldberg made the application.

By the Court.

Q Did Susskind tell you that? A I saw it on the papers there.

Q I am asking you to bear in mind to tell the truth. Do you swear now that Mr. Susskind told you Max Goldberg was making the application for the loan? A No, sir, he did not.

By Mr. Masucci.

Q Did he tell you who was making the application? A No.

By the Court.

Q Why did you use that name Goldberg? A At the time of the application. We have to endorse the application when we grant the loans at the meeting. At the time of the application Max Goldberg's name had to be on it before we signed it.

Q This is your name on the report of the committee I show to you? A Yes, sir.

Q And the other name is Mr. Loewenthal? A Yes.

Q This is marked Exhibit D. 3? A Yes.

Q At the meeting at which the loan was passed was this application made out by Mr. Shapiro as testified by Mr. Susskind? You know what the application is? A I have made several. Maybe you have got my name on it. I would like to see the application.

Q That is your name, isn't it? A Why, certainly.

Q Mr. Susskind has testified here—you heard him testify because you were sitting in court, that at the meeting at which this loan was passed this application was made out by Mr. Morris Shapiro in his handwriting. Is that the fact? A In whose handwriting?

Q Morris Shapiro's. Is that the fact? A Yes.

Q You heard him testify Max Goldberg's name was not on that application? A That couldn't be.

Q Will you swear now that name Max Goldberg was on it at that meeting of the board? A Yes, it had to be.

By Mr. Masucci.

Q Was Max Goldberg at that meeting? A I didn't see him.

By the Court.

Q Did you inquire from Max Goldberg as to whether he was making the application? A No, sir.

Q Did you ever talk to him about this loan? A No, sir.

Q Did you ever talk to Morris Shapiro about this loan? Did you ever talk to anybody about this loan except Mr. Susskind and Mr. Loewenthal? A It isn't necessary.

Q I will strike that out. The only ones you spoke to about this loan was Mr. Susskind and Mr. Loewenthal before the meeting? A That's right.

Q Before the meeting? A That's right.

Q But at the meeting you and Loewenthal made your report which is Exhibit D. 3? A Yes.

Q And you have sworn here you would not make a seven thousand loan but would recommend a sixty-five hundred loan and five hundred to be withheld? A Yes.

Mr. Brogan: No—seven thousand.

By the Court.

Q Seven thousand loan and sixty-five hundred to be paid and five hundred to be withheld? A Yes.

Q Why didn't you put it on that report? A We don't.

Q I am asking you why you didn't? A We put it in our minutes.

Q Is there any reason why you didn't put it on that report? A We don't do it.

Q What was the reason for not mentioning it? A Vice-Chancellor Fallon, as a rule—

Q I don't care about the rules. I want to know what reason you had? A Our president knows individually what we think about the building we have inspected. We talk about it and tell him what we think and everything is put in the minutes.

Q This report reads—"Committee Report. Value of Ground $2500. Value of Building $8000. Total $10,500. Insurance required $..... We the undersigned hereby report $7000 favorable on within named loan." It is signed by Morris Loewenthal and yourself. A That's right.

Q If you only thought the property warranted a sixty-five hundred loan why did you loan seven thousand? A It is up to us. We don't give him seven thousand. We hold back five hundred.

Q If you thought sixty-five hundred was to be loaned and five hundred for repairs why didn't you put it in your report? A We don't put it in. We put it in the minutes.

Q How do you know it is put in the minutes? A I saw our secretary write it as we talked about it.

Q Do you mean that? A Naturally; I am sitting opposite.

Q But you don't watch the secretary? A I certainly do when I see him writing it down.

By Mr. Masucci.

Q At the meeting when this application for the loan was considered was the board of directors informed that Morris W. Shapiro was making the application? A No, sir.

Q No mention was made that the application for the loan was a loan by Morris W. Shapiro in the name of Max Goldberg, a clerk in his office? A No, sir, it wasn't mentioned a clerk in his office.

By the Court.

Q You are sure about that? A Positive.

Q And you didn't know at the time you considered the application that in fact Morris W. Shapiro was making the application for the loan in the name of Max Goldberg? A No, sir.

Q Did you know who Max Goldberg was? A No, sir.

Q You knew Max Goldberg was a clerk of Shapiro's? A No, sir, I never saw him in my life and don't know him today.

The Court: Is Mr. Goldberg in court?

(A man sitting in the court room stands up.)

By the Court.

Q Did you ever seen that man before? A I saw him the other day but didn't know he was Max Goldberg.

By Mr. Masucci.

Q Weren't you interested in behalf of the Ordway Building & Loan Association as to who the applicants were? A I took it for granted that the president—

The Court: You are asked whether you were interested.

(Witness continuing.) I was interested.

By Mr. Masucci.

Q Don't you try to inquire as to the responsibility of the person making the application for

the loan? A What we were interested in was the building and the land.

Q And you were not interested in the responsibility of the person applying for the loan? A Yes, but the land and the building on it.

By the Court.

Q You did not know Goldberg. You didn't know whether he was responsible or not? A We took it for granted he was responsible.

By Mr. Masucci.

Q You didn't make any inquiry as to his responsibility, did you? A No, sir, I didn't.

Q Did you know who the other members of the committee were before you met them at the board of directors' meeting? A No, sir.

Q Did you ascertain who the other members of the committee were before you had the meeting? A When Mr. Susskind called out the names regarding the application I knew who the names were.

Q That was the first you knew? A Yes.

By the Court.

Q How was the report presented to you? A Our president, Mr. Susskind, took the application Exhibit D. 3 on 22 Gladstone avenue—specifying the street number, name of the one that is asking for the loan, and also called out the names of the committee and asked them to make a report.

Q Did he tell you who was making the application for the loan? A Yes, sir.

Q Who did he say was making the application for the loan? A Max Goldberg.

Q Are you sure about that? A Yes.

Q And that was at the time he mentioned the names of the committee? A Yes.

Q And at that time Exhibit D. 3 was in his hands and he was reading from it in the manner you say? A He held that paper.

By Mr. Masucci.

Q Were you called upon to make any report? A Yes.

Q Were you called upon first or in what order were you called upon? A No special order. I was called upon to make a report.

By the Court.

Q You testified Mr. Susskind phoned you to go and make an inspection of the property and report to him. Did you ever make a report to him? A I saw him that day on Gladstone avenue.

Q What did you report to him? A I told him I thought it would be advisable to make a loan of seven thousand and hold back five hundred for the repairs of the building.

Q So you made that report to Mr. Susskind in the presence of Mr. Loewenthal. He heard you make that report, did he? A Yes.

By Mr. Masucci.

Q Did you have a chairman of this committee to make a report to the board of directors? A As a rule they do appoint a chairman.

Q Was a chairman appointed in this case? A I was chairman.

Q And you were to report your opinion in the matter and also the opinion of the other committeemen, is that it? A That's right.

Q Did you ascertain the opinion of the other committeemen in order to make your report to the board of directors? A I reported at the meeting just exactly what was what.

By the Court.

Q Did you and Loewenthal discuss between yourselves as to what the amount of the loan would be before the meeting? A No, sir.

Q You mean to tell me you didn't know how much he was going to report on? A No, I told the president.

Q Then who wrote the seven thousand there at the time you signed it? A Those figures were down there.

Q Whose writing is that, do you know? A I couldn't say.

Q Take a look at it. You put your name on it? A I just signed it. I see the name is there.

Q You can't tell me who filled it in? A No.

Q And you did not discuss with your co-member of the committee the value of the loan you were to make at any time? You just signed that paper? A That's right.

By Mr. Masucci.

Q And you were the only one that reported to the board of directors personally? A No, there was another gentleman.

By the Court.

Q Who was the other gentleman? A Lomachinsky.

By Mr. Masucci.

Q Was Mr. Lomachinsky present? A I didn't see him.

Q You were acting as chairman of that committee? A Yes.

Q And when you made that report you were reporting as chairman of the committee? A No, I was reporting for myself.

Q Did you tell the board of directors that was your individual report and not as chairman? A No, we report as individuals.

Q You don't report as a whole? A No.

Q Did you consider it advisable to consult with the other committeemen? A We made our report to the board of directors.

Q Did you make a report to the board of directors as to what condition you found this property? A Yes.

Q Did you report to the board of directors that one floor at least was vacant? A Yes. No, we don't report.

By the Court.

Q In this particular case? A No, I didn't.

By Mr. Masucci.

Q Did you report also to the board of directors you had no opportunity to inspect and examine the interior? A No, I didn't.

Q So far as you knew they were ignorant of that fact? A Yes.

Q And they were also ignorant of the fact that one floor was vacant? A Yes.

By the Court.

Q Ignorant so far as any report from you or your fellow members of the committee? A Yes.

By Mr. Masucci.

Q Do you know when the writing on Exhibit D. 3 was put in with reference to your report—the figures and words? A I couldn't tell you.

By the Court.

Q When you saw the minutes being written up did you see those figures put on there before you signed your name to that report? A Yes, this wording was on it.

Q The wording was on it but you did not see it before you signed it? A No.

Q Who attended that meeting other than the directors? Was there a secretary there? A The secretary was there and the treasurer was there and Mr. Susskind and all the directors.

By Mr. Masucci.

Q Was counsel there—Mr. Shapiro? A Certainly.

Q And did he handle the application, Exhibit D. 3, before you affixed your signature to it? A I didn't take notice.

By the Court.

Q Are you familiar with Shapiro's handwriting? Take a look at it and tell me whether you recognize it as Shapiro's? A I couldn't tell you.

Q You had many applications to the board which Mr. Susskind said were made out by Shapiro. Are you familiar with his handwriting? A No.

Q When applications are made for a loan are they usually made by Mr. Shapiro in his handwriting? A I don't know.

By Mr. Masucci.

Q You say you inspected the property on July 9th or 10th of 1928? A Yes.

Q That is the only time you saw the property? A Yes.

Q You didn't go there since to check up on it? A No, sir.

The Court: We will now take a recess until two o'clock.

AFTERNOON SESSION.

Mr. Brogan: If your Honor please I have here a certificate of instructions addressed to the officers and directors of building and loan associations of the State of New Jersey signed fac-simile I think by Edward Maxson, Commissioner of Banking and Insurance outlining three plans that he advises building and loans to adopt—Plans, 1, 2 and 3. I say in passing that Plan 2 is the plan which the association adopted and under which it conducted its business of making loans, and I appeared before the head of the building and loan division of the Banking & Insurance Commissioner, and I am ready to prove what I told your Honor I would at two o'clock.

Mr. Masucci: No question as to the forwarding of these notices to the various building and loans, but I don't see the relevancy of it and I object.

The Court: You are not offering it?

Mr. Brogan: No, but to keep faith with the Court.

The Court: Unless I am shown it is evidential I will overrule the offer. If there is any provision in the law that will authorize the commissioner to make any particular ruling I think this is the time to offer that in evidence. It may be some commissioners have different ideas they put into effect to facilitate the business of their office. It may be warranted by law and it may not be. I can appreciate that the building and loan department must be satisfied that some of the procedure must be very loose because so much dishonesty is practiced lately.

Mr. Brogan: I contend that under the statute concerning building and loans and under the regulations of the statute the Commissioner of Banking and Insurance in charge of this branch of banking as you might call it, as well as others, have a plenary power conferred by the statute as to setting forth provisions for the conduct of this particular kind of business.

The Court: Conferred expressly by statute but within the purview of the statute.

Mr. Brogan: I don't know at this moment whether the express power is conferred upon him or he is within the general powers conferred by the statute.

The Court: Read into the record what the power is which you say he has which he conferred upon the building and loan associations.

Mr. Brogan: In order to save time I will call the particular section of this statute to your Honor's attention later.

The Court: All right.

MORRIS LOEWENTHAL, a witness being sworn in behalf of defendant.

Direct examination by Mr. Brogan.

Q Mr. Loewenthal, you live in Newark? A Yes, sir.

Q And you are a director of the Ordway Building & Loan? A Yes, sir.

Q And have been for how long? A About two years.

Q Have you been or are you since 1927? A That's right.

Q Were you a member of a committee to consider a loan in connection with 22 Gladstone avenue, Newark? A Yes.

Q Did you make the examination? A Yes.

Q Who else was on that committee with you? A Mr. Lomachinsky and Mr. Wasserman.

Q Will you tell us what your examination consisted of and when you made it? A Yes, sir. Mr. Susskind, the president of the building and loan called me up one night and said "We have an application on a two-family house. They want eight thousand." He asked me if I would go up there and visit it. It was one day after I was notified I rode up there and looked at the property and noticed that the first floor downstairs was vacant and I wanted to get some information. I rang the bell and there was no answer upstairs, so I was satisfied and looked around and noticed that the stoop was in pretty

bad condition and the stucco was in pretty bad condition. So I kept that information until I got back to the next meeting. That was the following month, and the president asked me about that particular loan and he asked me my opinion.

By the Court.

Q What particular loan? A That one for eight thousand.

Q Relating to the property you visited? A Yes, sir, 22 Gladstone avenue.

Q The president asked you what? A To report on the loan, and I gave my report that on that loan we ought to grant that party seven thousand but we got to keep back a certain amount of money for certain repairs—that is the stoop and the stucco of the house, and he asked the rest of the committee. They reported their opinion and it was decided—

The Court: Don't tell us that.

By Mr. Brogan.

Q You say you made a report the month after? What month was it? A It was the month of August.

Q August, 1928? A That's right, sir.

Q When did you make your investigation? A Well, after Mr. Susskind called me up. I don't just remember the date. But at any rate I rode up there and investigated.

Q Did you go alone or with somebody else? A I went up there alone.

Q You heard it testified that the building and loan met the last part of July? A I know we

met the fourth Tuesday of the month and naturally that would be the last week in July.

Q Was the meeting at which you reported held in July or is it your recollection it was in August? A No, the meeting that I reported was the last week in July.

Q What did you mean by saying—I understood you to say you reported in August? A No.

By the Court.

Q You said so. What did you mean by that? What is the truth—July or August? A July.

Q Why did you say August, 1928? A I don't remember.

Q Which was it—July or August? A July.

Q Why did you swear it was August. You said twice it was August, 1928? A It was July.

Q I am asking you why you said it was August, 1928? A I don't remember saying it.

Q You are sworn to tell the truth? A Yes.

Q And you not only said it was August, 1928, in the first instance but you repeated it? A It was in July.

Q You are saying now it was July but I am trying to find out what the fact is. You first said it was August. You said it twice. Now you say it was July. How do you know it was July or August? A It was in July.

Q Why are you positive? A Because that meeting was in the month of July?

Q You mean the month he spoke to you? A Yes.

Q Why do you remember it was not in August? A It was in July.

Q I am going to search your recollection. Why do you say it was July and not in August? A For the simple reason I remember I was going to get three for it and my wife went out and spent it.

Q You get three for every one you make? A It was in July.

Q If you got it in August you would spend it, too, wouldn't you? A Yes, sir.

Q Is there anything that you can point to at that time or indicate or mention that will impress upon the Court and upon us here that it was July rather than August you made that report? A The only thing I can say it was July.

Q But you have sworn it was August, 1928, and you said it twice. Subsequently you said it was July. I am trying to test your truthfulness. A I remember it was July when Mr. Susskind called me up.

Q Why did you swear, when you realize you are sworn to tell the truth, it was August, 1928, you made your report? A I can't remember.

Q What? A That I said it.

Q But you did say it. What was your purpose in saying it? A No purpose at all, sir.

By Mr. Brogan.

Q Are you just mistaken about it? A Just mistaken.

By the Court.

Q Are you not mistaken when you say it was July? A No, sir.

Q Tell me if you will why you are sure it was July? A Because the case came up there.

Q What case? A The case for that property.

By Mr. Brogan.

Q When you made your report Mr. Loewenthal about the amount that you would recommend after your appraisal of seven thousand, five hundred of which to be withheld, did you make that recommendation after conferring with the other members of the committee or as an individual? A I made it as an individual. The night of the meeting I found out who was on the committee and I asked them their opinion. I told them what was my opinion.

By the Court.

Q Before you signed the report? A Yes, sir.

Q You heard this man who testified before say he didn't confer with any members? A I spoke with the members. I asked them what their opinion was.

Q Did you talk with this man Wasserman before you signed the report? A Yes, before we went into the private meeting I expressed my opinion of the loan.

Q With Mr. Wasserman? A Yes, and others.

Q Mr. Wasserman said he didn't talk with anybody about it? A At the meeting, yes.

Q You say you did talk to him about it? A I asked him what he thought about the loan and he asked me and I told him what I thought about it.

By Mr. Brogan.

Q Did you know for whom the loan was being made? A No, sir.

Q Did you have any discussion with Mr. Shapiro about the loan? A No, sir.

Q Was this done in the regular course of business?

Mr. Masucci: I object to that.

The Court: I will sustain the objection.

By Mr. Brogan.

Q I want to find out was there anything to this loan different from any other loan? A No.

Mr. Masucci: I object.

The Court: I will strike out the answer. It is for me to determine from the proofs to be adduced.

By Mr. Brogan.

Q Did you ever meet Miss Clawans? A No.

Q Did you know that she claimed to be the owner of the property 22 Gladstone avenue? A No, sir.

Q Do you know Max Goldberg? A I know a Mr. Goldberg.

The Court: Stand up Mr. Goldberg.

By the Court.

Q Do you know that Max Goldberg? A No, sir.

By Mr. Brogan.

Q Was Mr. Shapiro present at the meeting of July at which this loan was finally passed? A Yes, sir.

Q Did he say anything to you? Did you have any discussion with him? A With him? No, sir.

Cross examination by Mr. Masucci.

Q You got a telephone message from the president apprising you there was such an application as you stated? A Yes, sir.

Q And did he ask you to report to him? A We don't have to report to him.

Q You are not asked that. Did he ask you to report to him over the telephone? A No, sir.

Q Did he give you the name of the applicant? A No, sir, just the address.

Q Give you any particulars? A Just the amount they wanted.

By the Court.

Q What did he say to you? A He said "There is an application here for 22 Gladstone avenue; they want eight thousand," that's all. He asked me if I could go up there and investigate it.

By Mr. Masucci.

Q He didn't tell you the name? Did you go to the premises? Did you enter 22 Gladstone avenue? A Just on the outside.

Q Did you make any effort to go inside? A Yes, sir.

Q Through the front or through the rear? A The front.

Q How far up in the building did you get? A I rang the bell.

Q Where did you find the bell? A I don't remember just now.

Q Do you remember whether there was one or two bells? A I don't remember.

Q Do you remember whether the bells were on the outside of the building or inside? A No, sir, I do not.

Q Do you remember the kind of building that was? A Yes, sir.

Q What kind of a building was it? A Stucco building.

Q How many families? A Two families.

Q You say you saw the stoop and the stucco? A Yes, sir.

Q Did you look at the leaders? A I didn't notice.

Q Did you look at the roof? A I don't just remember.

Q You say you don't know which bell you rang? A No, sir.

Q Did you observe that one of the floors was vacant? A Yes, sir.

Q Did you in fact report your findings to the president before the meeting at which this application was considered? A No, sir.

Q Did you see any of the committeemen before you went to the building and loan meeting? A Before?

Q Yes. A No, sir.

Q Did you see anybody or anyone of the members of the committee on the premises when you went to inspect it? A Yes, sir, I met the president and Mr. Wasserman.

Q The only persons you saw there when you made that examination? A Those two people.

By the Court.

Q When you went there those two were there already? A Yes, sir.

Q Just check yourself up on that. He has sworn before when he got there you and the president was there. You are after saying when you got there this man Wasserman and the president were there. What is the fact? A When I came there I met Mr. Susskind there and the two of us were there when Mr. Wasserman came there.

Q You don't seem to be paying much attention to what you are testifying to. You are after swearing that those two men were there when you got there. I will have the question and answer read to you.

(Question and answer read by stenographer.)

Q You have sworn twice as was re-read to you, when you got there these two men were there ahead of you—that is, Susskind and Wasserman. Is that the fact? A No, sir, Mr. Susskind and I were there.

By Mr. Masucci.

Q Had you already inspected the property when Mr. Wasserman got there? A Yes, sir.

Q Where were you when Mr. Wasserman got there? A Right near the building on the curb—on the sidewalk.

Q You weren't away from the building, were you? A It might have been the front or a little away from it.

By the Court.

Q It might have been in your home? A I couldn't tell you whether I was in front of the building now.

By Mr. Masucci.

Q Did Mr. Wasserman stop to talk to you as he got out of his car? A He probably said "Hello", yes.

The Court: I am not concerned with the probability. I want to know the facts. If you don't know say so. I will strike out about the probability.

By Mr. Masucci.

Q Did he speak to you? A I don't remember.

Q Did you observe whether he examined? I mean Mr. Wasserman? A I don't remember. After I waited there I went right home.

By the Court.

Q For your information he has testified when he finished his examination he then spoke to you and Mr. Susskind. Do you remember that? A No, sir.

By Mr. Masucci.

Q What time of the day was it when you got there? A In the afternoon sometime.

Q Late or early in the afternoon? A I don't remember, sir.

Q It may have been five or six o'clock? A No, sir.

By the Court.

Q What day of the week do you say it was? A The early part of the week—Monday. I got the call Sunday and I went up there Monday.

Q Monday afternoon? A Yes, sir.

By Mr. Masucci.

Q Have you got a telephone in your house? A Yes, sir.

Q Did you have one in July, 1928? A Yes, sir.

Q Listed under your name? A Yes, sir.

Q And you say you don't remember now whether Mr. Wasserman spoke about this application for the loan at the time you were in front of the property? A I don't just remember.

Q After you examined the property did you and Mr. Susskind talk about this loan? A Well, I can't remember the correct words. He probably might have asked me what I thought of the loan.

By the Court.

Q He told you to go there and examine the property and that an application was made for the loan. Did you report back to him? A No, sir.

By Mr. Masucci.

Q You didn't report about the loan to Mr. Susskind? A No, sir.

Q How long did you stand in front of the property after Mr. Wasserman got there? A I don't remember.

Q Was it five or ten minutes? A It was more than that.

Q Longer than that? A Yes, sir.

Q Weren't you talking about this application and this loan at the time you were standing in front of the building or near the building? A No, sir.

By the Court.

Q What were you talking to Mr. Susskind about then? What was your purpose in talking to Susskind at the property and at the time when this man Wasserman came along? A Nothing. I don't remember talking about anything particular.

Q But you were standing there talking to Susskind? A I was standing there but I don't know what I was talking about.

Q Do you mean to say you were standing there and don't remember what you were talking about to Susskind? A No.

Q What was Susskind's purpose in being there? Did he tell you? A To look at the property.

Q Did he say that to you? A Yes.

Q Tell me what he said. A When I got up there I went around and looked at the building.

Q I asked what he said to you? A He probably said—

Q I don't want your probablies. A Then I don't remember.

By Mr. Masucci.

Q Then you will state that you left Mr. Susskind without discussing this loan or reporting to him or giving him your opinion as to what you thought of it? A I don't remember.

Q And the next time you talked about the loan was at the meeting of the building and loan directors? A Yes.

Q The first time after that inspection? A Yes, sir.

Q Was Mr. Wasserman there then? A Yes.

Q Was Mr. Lomachinsky there, the other committeeman? A I think he was.

Q Do you know? A Probably—

The Court: I don't want your probablies.

(Witness continuing). I don't remember.

By Mr. Masucci.

Q The president was there? A Yes.

Q Was Mr. Max Goldberg there? A I don't know.

By the Court.

Q You don't know Goldberg? A No, sir.

By Mr. Masucci.

Q Was this application there at the building and loan meeting—Exhibit D. 3? A I don't remember if it was there at that meeting or not.

By the Court.

Q You signed that paper? A Yes.

Q When did you sign it, at that meeting? A I don't remember.

Q Take a look at that paper and tell me whether that paper was in the same condition it was then as it is now at the fourth meeting of July when you signed it. A I don't remember.

Q Before you signed your name to the report you read it, didn't you? You didn't sign this paper without seeing what it was? A I might have.

Q What is the fact? A I don't remember.

Q You are not accustomed to signing papers in blank—I mean reports of building and loans?

A I will admit I have not noticed it. I didn't read it.

By Mr. Masucci.

Q You say you did discuss this application before the meeting on the night of the meeting? A In the secretary's room—in the private room before the meeting was called.

Q Did you ascertain who the committeemen were? You found out who the committeemen were? A Yes, at the time of the meeting.

Q When you got together in the secretary's room? A Yes, with all the directors before the meeting was called.

Q Who were the members of the committee that you called together to discuss this loan? A I didn't call them together. I spoke to them individually.

Q Which one did you speak to? A To both.

Q Who? A Mr. Wasserman and Mr. Lomachinsky.

By the Court.

Q If you spoke to Mr. Lomachinsky and you knew he was on the committee why didn't he sign the report? A I don't know.

Q You said he was on the committee? A Yes.

Q You didn't ask him to sign the report? A I don't have to.

Q Did you? A No. The president asked us to sign it and we signed it.

Q You mean the president asked you to sign that in the presence of the others? A Yes.

Q And Lomachinsky was also present? A I don't remember. Mr. Lomachinsky for the last

half year or so has been accustomed to coming to the meetings.

Q This didn't happen within the last year; this happened a year and a half ago. A I spoke to Mr. Lomachinsky that night previous to the meeting. I asked his opinion and I asked Mr. Wasserman, and in fact they asked me too what I thought.

Q So you did discuss this property between the three of you before the meeting actually took place? A That's right.

Q You sat here in court and heard Wasserman what he testified to? A Yes, sir.

By Mr. Masucci.

Q Did you have the application marked Exhibit D. 3 with you when you were discussing this loan? A No, sir.

Q Did you know who the individual was who was making the application or the loan? A No, sir.

By the Court.

Q Didn't you inquire? A No, sir. It was just told me over the telephone to go up there and inspect the house.

Q From the time you got that message up to the time you signed that paper you didn't inquire as to who the party was that was getting the loan? A No.

Q Why did you mention before that the name Goldberg was mentioned to you? A I didn't say that.

By Mr. Masucci.

Q Were you present at the meeting? A Yes, sir.

Q Did you hear the name of the applicant mentioned at the meeting? A I don't remember.

Q Was there any report made by you or by any other members of the committee as to Morris W. Shapiro being the actual borrower? A No, sir.

Q No mention made of Mr. Shapiro? A I don't remember.

Q You wouldn't say there wasn't any mention made that Mr. Shapiro was the borrower? A I don't remember.

Q Where did you sign the application marked Exhibit D. 3, before or after the meeting? A It was during the meeting.

By the Court.

Q During the meeting on the fourth Tuesday of July, 1928? A I wouldn't say it was July.

Q You did say it was July and you said it was August. A That report of the investigating committee was brought in the last Tuesday in July. When the paper was signed I don't remember if it was that particular night or the following fourth Tuesday in August.

Q So you don't know when you signed your name as a committeeman? You don't know whether it was July or August? A That's right.

Q Why didn't you put a date on where it is indicated when you signed it? A I didn't think it was necessary.

Q What did you think that notation is there for—the printed words date and a blank? They are to be filled in? A I didn't think it was necessary for me to be done. It was to be done by the secretary.

Q Do you recognize that as Mr. Shapiro's handwriting? A I never saw Mr. Shapiro's handwriting.

Q The president of the board said that Mr. Shapiro is the one that customarily filled out the applications. You were at the meeting. Is that so or isn't it? A I don't remember, sir.

By Mr. Masucci.

Q You reported to the directors recommending a loan of sixty-five hundred, is that right? A That's right.

Q And seven thousand if the property was put in repair, is that right? A Yes.

Q Can you explain why your written report is contrary to that? A No, sir.

Q There isn't any note or memorandum made there that five hundred is to be retained for repairs, is there? A Not on the application.

By the Court.

Q And not on the report. The report is attached to the application? A Yes.

By Mr. Masucci.

Q You saw that when you signed the report, didn't you? A I didn't look over the application.

Q I mean the report endorsed on the application. A That is the report.

By the Court.

Q Did you write the written words and the figures above your name when you signed? A No.

Q You mean to say you don't know whether or not the figures 7000 following the words "We, the undersigned hereby report", was on the paper before you signed it? A I don't remember it.

Q Would you sign a paper in blank without the amount being in it having in mind you only intended to recommend a seven thousand loan conditional upon five hundred being used for repairs? A Well, I thought that everything was filled out and the president just said "Sign it", and I signed it.

By Mr. Masucci.

Q Wasn't this loan in fact considered in the month of August? Wasn't this loan granted by the directors at its meeting in the month of August, 1928? A No, sir.

By the Court.

Q Are you sure of that? A It was July.

Q You are sure that it wasn't the fourth Tuesday in August, 1928, that this loan was passed upon rather than July, 1928? A It was the last week of July that we brought in a report.

Q Now it has been said here that the fourth Tuesday of July, 1928, and it has not been disputed thus far, was the 24th of July, 1928. If that be so will you explain why the application is dated July 28, 1928? A That might be an error.

Q Wouldn't that indicate it was made prior to July 28th and the report was made in August? A I remember distinctly the report came in at the meeting in July.

Q If that is so tell us why you said it was August? A It was a mistake.

Q Is it a mistake about what you said about July? A I am sure of it.

By Mr. Masucci.

Q Did you report to the board of directors at this meeting in July or August of 1928 that one of the floors of the property was vacant? A Well, I might have mentioned it. I don't remember.

By the Court.

Q When you say you might have mentioned it you don't impress me one bit. Why didn't you make some inquiry as to the owner of the property, as to whether or not there was any one actually in occupancy or whether the property was under lease? A Well, that's the first investigation I had ever been on. When I got there I wanted to see the property and I rang the bell and couldn't get any answer.

Q Now Mr. Loewenthal, why didn't you go back again like a good industrious representative of your association and try again to get into it? A I don't know, sir.

Q But this one time you went there you rang the bell and you didn't go back at anytime afterwards? A No, sir.

Q And yet several weeks elapsed from the time you went there and the meeting of the board, if it was held in July? A Yes, sir.

Q You went there in the early part of July? A Yes, sir.

Q And the board didn't meet for several weeks thereafter? A The last Tuesday in July.

Q And during that period you didn't go back and try to get into the property or make any inquiry? A I thought the loan they wanted to grant was perfectly all right; that the property was worth the money.

By Mr. Masucci.

Q Did you report to the board of directors that you had not seen the inside of this building 22 Gladstone avenue? A I didn't report anything about that.

Q Did you make any effort besides this one occasion to see the interior of the building? A No, sir; I was only there once.

By the Court.

Q How did you know the property was worth eight thousand in view of the fact that you didn't see the interior of the property? A I didn't offer to give them eight thousand.

Q How did you know it was worth seven thousand if you didn't see the interior? A I thought the neighborhood was nice, and they repaired the house.

Q You mean on the outside? A Yes.

Q But you didn't know what the condition was on the inside? A No.

Q Did you hear the president say the leaders were corroded or rotten? A Yes.

Q You say you didn't see that? A No.

Q But you went there to look it over in order to make a report as to the condition of the property? A Yes, sir.

By Mr. Masucci.

Q Does the building and loan meet on the last Tuesday of the month or the fourth Tuesday

of the month? A The fourth Tuesday of the month.

Q Did it meet the last Tuesday or the fourth Tuesday? A If I had a calendar I would know.

Q Did you notice any repairs being made on the property? A No.

Q Did you try to look into the first floor from the exterior? A I don't remember.

Q Did you notice any signs on that building? A Signs?

Q Yes. A Just a "To Let" sign.

By the Court.

Q What did the sign say and where was it located? A There was one sign in the window.

Q What did it say? A "To Let—Inquire Within".

Q You are sure of that? A Yes.

By Mr. Masucci.

Q Where was the other sign? A On a pole outside.

Q What did that sign say? A The very same thing "To Let."

Q No name? A No.

Q No telephone number? A No, sir.

Q You are sure that's all it contained? A Yes, sir.

Q You are sure there were two signs? A Yes.

By the Court.

Q Where was the second sign you say? A On a pole outside.

By Mr. Masucci.

Q Was the name Scholder on that sign? A No, sir, there was nothing else on that sign—just that.

Mr. Masucci: That's all.

MAX LOMACHINSKY, a witness being sworn in behalf of defendant:

Direct examination by Mr. Brogan.

Q You are a director of the Ordway Building & Loan? A Yes, sir.

Q In Newark? A Yes, sir.

Q And you were on the committee were you not that appraised the premises 22 Gladstone avenue? A Yes, sir.

Q Who placed you on that committee? Who appointed you? A The president.

Q How did he appoint you? A He called me up on the telephone.

Q Do you remember when he called you up—whether it was Saturday, Sunday or Monday? A Sunday, I think it was.

Q What did you do when you undertook the duties of your inspection? A I went up to look at the property.

By the Court.

Q They are asking you what you did. A He explained to me he had an application for eight thousand on the property 22 Gladstone avenue, and I have to go and inspect the property. I

went out and met the president, Mr. Susskind, there, and I looked at the property.

Q You say you met the president there? A Yes.

Q Was there anybody else with him at the time? A I don't remember.

Q What time of the day was it that you were there? A I can't exactly tell—a Monday afternoon, I think it was.

Q Was Wasserman there? A I don't remember.

Q Just jog your memory. A I don't remember.

Q You were told you were one of the committee? A Yes, I have to look at the property.

Q Did they tell you who the rest of the committee were? A No, they didn't tell me.

Q When you got there you met the president there? A Yes.

Q But you didn't remember whether the other men were there? A No. I looked around the property on the outside. I told him it was well worth the seven thousand.

By Mr. Brogan.

Q Who did you make your report to? A I told the president down there at the place.

Q You recommended seven thousand? A It was well worth seven thousand—the building.

Cross examination by Mr. Masucci.

Q Did you go there with the president? A No, I went with my own self.

Q You met him there? A Yes, sir.

Q Did you go away with the president? A We went together and I left in my car. I don't know whether they followed me.

Q Did he leave when you left? A I left him there. I don't remember.

Q How long were you there? A About five minutes.

Q Did you stand in front of the property and talk to the president? A Yes, sir.

Q Were you talking to the president when Mr. Wasserman came? A I don't remember.

Q The only person you remember being there is the president? A Yes.

Q And while you were there and the president was there no one else came as far as you remember? A I don't remember.

Q Did you inspect the property with the president? A They were standing together outside.

Q Before you were asked whether you did go around with the president? A No, I looked at the front of the property and told him it was well worth seven thousand—to give him the loan.

Q You were satisfied to loan seven thousand without retaining any money for repairs? A I told him it was well worth seven thousand.

By the Court.

Q Nothing said by you about keeping five hundred? A Afterwards at the meeting of the building and loan before we went there.

By Mr. Masucci.

Q You mean you didn't go around the building to look at it? A No, sir.

Q What kind of a building was it? A Stucco.

Q How many families? A It was two. I wasn't in there. Maybe they call it a two and a half.

Q What was the condition of that building? A It was a stucco house.

Q Was it pretty fair? A No, the foundation was broken off—it needed repairs.

By the Court.

Q Tell us what was wrong with it? A Nothing wrong only the foundation was broken off in one corner.

By Mr. Masucci.

Q Was the stucco cracked? A I don't remember.

Q Was the porch sagging? A I don't remember.

Q What was the condition of the gutter and the leaders? A I didn't look at them.

Q Did you go inside the building? A No, sir.

Q Did you make any attempt to go inside the building? A No, sir.

Q Did you notice any signs on the building? A No, sir; I don't remember.

Q You attended the meeting of the board of directors when the application was considered? A I left before the meeting. I spoke to the directors as to our opinion and someone said "Maybe we take back five hundred."

By the Court.

Q Why didn't you sign the report? A Because I left before the meeting. If they gave it to me I would sign it.

By Mr. Masucci.

Q What did you say about the meeting? A I left before.

By the Court.

Q What did you leave for? A Because I had to go away.

Q You know as a member of the board of directors you should attend the meetings and approve of the loans? A Yes.

Q And you left that night before the meeting actually started? A I told to the men and I told them my opinion about it.

Q Do you mean what you said when you handed them report? A I told them in my opinion for instance the property is well worth the money. They talked it over and said they are going to hold back around five hundred for repairs.

Q Didn't you say you handed them report? A Yes.

Q What do you mean by that? You say you handed them report? A I didn't have no report to hand. I mean this your Honor. I told them it is well worth it—to grant the money.

By Mr. Masucci.

Q When you told them the loan was well worth it who was present? A The three directors.

Q The three committeemen? That is, Mr. Wasserman, Mr. Loewenthal and the president? A I suppose so. I don't remember whether the president was there.

By the Court.

Q You were present in court and heard Mr. Wasserman say he didn't confer with the other members of the committee? A In the meeting room?

Q You heard what he said. You were in the court room? A I take care of my own—

Q You heard what he said? A Yes.

Q And you heard what Mr. Loewenthal said? A Yes.

Q You say you did have a talk before the meeting—you, and Loewenthal and Wasserman? A In the meeting hall.

By Mr. Masucci.

Q Were you told by the president that this application was an application for a loan by Mr. Shapiro? A Yes, he did tell me. He said "We have an application for eight thousand on 22 Gladstone avenue." I asked him who it was and he said "The lawyer wrote for the application."

By the Court.

Q He told you that over the phone? A Yes.

Q Sure of that are you? A Yes.

By Mr. Masucci.

Q And you knew that application was an application for a loan by Mr. Shapiro? A Through him.

By the Court.

Q You are after saying this man told you that was an application for a loan by Mr. Shapiro. A He sends in an application.

Q You can say what you please. You said it a moment ago. Did you see this formal application for a loan before it was voted upon? A No, sir.

Q Did you vote upon the loan, do you remember? A Yes.

Q Did you attend the meeting and actually vote on the loan? A No, I was absent.

Q How do you know when the loan was made—at what meeting if you were not there? A I was at the investigation.

Q But you were not at the meeting when the loan was made? A Yes, the application came in through the telephone.

Q I mean after the telephone conversation you went and saw Mr. Susskind on the property. You made your investigation and had a talk with him? A Yes.

Q And on the night of the meeting you met Mr. Loewenthal and Mr. Wasserman and you talked together about the value? A That's what we always do.

Q And you went away and did not wait for the meeting? A Yes.

Q So you were not at the meeting which acted upon it formerly, were you? A No, I was not at the meeting.

By Mr. Masucci.

Q And you don't know whether this application was granted at a meeting in July or August? A In July.

Q You don't know of your own knowledge when it was granted? A I know our investigation was in July.

Q But you weren't there when it was acted upon? A No, I wasn't at the hall, and I asked them and they said they granted a loan of seven thousand.

The Court: Maybe the minutes will show it.

Mr. Brogan: I have the minutes here.

BARNEY W. PLAGER, a witness being sworn in behalf of defendant.

Direct examination by Mr. Brogan.

Q You are the secretary of the Ordway Building & Loan Association? A Yes, sir.

Q And have been for how many years? A Since the incorporation, I believe. Approximately nine years ago this month.

Q I show you a book marked "Record," and ask you if that is your minute book and is kept by you as secretary for your association? A It is.

Q Are the minutes written in that book under the date of July 24th in your handwriting and were they written by you? A Yes, written by me.

Q Did you attend that meeting personally? A Yes, sir, I did personally.

Q And this signature "Plager—Secretary," is that your signature? A It is.

Q It means you, in other words? A That's myself.

Q I call your attention to the minutes of July 24th and I ask you to read them.

The Court: Do you want to offer the book in evidence and read the minutes?

Mr. Brogan: Yes.

Mr. Masucci: No objection.

(Minute book marked Exhibit D. 4 in evidence.)

By Mr. Brogan.

Q Will you read those minutes slowly? A "July 24, 1928. Meeting of the board was called to order at 9 P. M. with Mr. Louis Susskind presiding. The minutes of the previous meeting were read and accepted as read. Reports of officers were submitted and duly approved. Counsel reported that Halpern loan was still arrears and action deferred. Whereupon board instructed him to foreclose immediately. Committee on application of Joseph Eckel, property located at 317-319 Centre Street, Elizabeth, reported loan had been approved during the month and met with the approval of the board. Premium was fixed at 3%. An application was submitted during the month on property located at Ellington street near Springdale Avenue, East Orange for $8,000 by Thomas Divino (3 family brick bldg. 25x100). The committee, comprising Mr. Lowenthal, Mr. Lomachinsky and Mr. Wasserman reported in favor of $7000—$500.00 to be withheld for repairs. whereupon motion was made, seconded and duly carried approving loan for $7000, as recommended. Premium was fixed at 3%. Another application was submitted for loan of $8000 on

property located at 22 Gladstone Avenue, City, by Max Goldberg (2 family stucco). The committee, composing Mr. Lowenthal, Mr. Lomachinsky and Mr. Wasserman reported in favor of $7000—$500.00 to be withheld for repairs. Upon motion duly made, seconded and carried, loan was approved for $7000 as recommended. Premium fixed at 3%. A third application was submitted during the month on property located at 330 No. 13th Street, City, for $13,500 by Salvatore Carrara (2 family and 2 garages 50x100). The committee, comprising Mr. Lowenthal, Mr. Lomachinsky and Mr. Wasserman reported in favor of $12,500 whereupon motion was made, seconded and duly carried approving loan for $12,500. Premium was fixed at 3%. Proper officers were authorized to borrow 18,000 on note of the association. The meeting adjourned 10:10 P. M." Signed by myself as secretary.

Q Now, Mr. Plager, I notice that in two instances here a name has been written into a blank space in ink that is apparently different from the rest of the writing. In the one instance is Thomas Divino and the other instance seems to be Max Goldberg. First I ask you were those two names in these instances written in different ink? A I will have to reply to that in this fashion.

Q Were they or weren't they? A I think they were not written there at the night of the meeting. They may have been written in the next day.

Q Who wrote that in? A Myself.

Q That is your handwriting? A Yes, this is my handwriting also.

Q Why did you write those names in the next day? A Because they did not know definitely in whose names the loan was going to be taken.

By the Court.

Q Did the president report that the 22 Gladstone loan was to be for Max Goldberg? A I couldn't say definitely whether he did.

Q You heard him testify in court he did? A I did, yes.

By Mr. Brogan.

Q No other reason, Mr. Plager? A No other reason that I know of whatsoever.

Q Are you familiar with the handwriting of Morris Shapiro? A I believe I am. I have seen it on various occasions.

Mr. Masucci: I will admit that the whole application is in the handwriting of Morris W. Shapiro.

The Court: Except the name Max Goldberg.

Mr. Masucci: Yes.

The Court: How about the writing on the back?

Mr. Masucci: The figures on Morris Shapiro's.

The Court: All except the names?

Mr. Masucci: Yes.

By Mr. Brogan.

Q Is that right, Mr. Plager? A Yes, that's my best judgment.

Q After the loan was passed, Mr. Plager, what was done about payment of the loan? A Then counsel requested a check to be issued and I drew a check to the trustee account for the amount of the loan withholding five hundred for repairs as designated in the minutes and deducting premium, dues, passbook fee. This was delivered after being signed to Mr. Shapiro for him to deposit in his trustee account to make proper disbursements.

Q I show you check signed by yourself as secretary and Louis Susskind as president of the Ordway Building & Loan and countersigned by Samuel Kurtz, treasurer, dated July 26, 1928 in the sum of $6254.75, and ask you what that check is for? A This is a check issued for a mortgage loan on property located at 22 Gladstone avenue, Newark.

By the Court.

Q Does the check have that mark on? Does it indicate it was made for that purpose? A Yes, sir, it is right on the check.

By Mr. Brogan.

Q That's the mortgage in question on 22 Gladstone avenue, Newark? A That's correct.

Q To whom was the check delivered? A That was delivered to the counsel for the association.

Q And he ran the trustee account? A Yes, sir.

By the Court.

Q What was his name? A Morris Shapiro.

Q On that same date you turned other checks over to him did you? A Not that I know of.

Q I don't find anything in the minutes about the authorizing of this check to be drawn to Mr. Shapiro. A No, there is nothing here, your Honor. It has been our custom to deliver a check from the demand of counsel when the loan is approved by the board.

Q At this same meeting of July 24th you spoke of you passed other loans? A Yes.

Q Were there checks drawn for those moneys to? A No.

Q Why not? A Because they were not requested by the attorney.

By Mr. Brogan.

Q Have they since been drawn? A Yes, I think this Divino check was drawn.

Q How soon after? A I can tell you from my records.

Mr. Brogan: Does your Honor want it?

The Court: I don't know. I have in my mind that Shapiro had a trustee account of other moneys than this.

Mr. Brogan: I never heard of it. Maybe your Honor got it from the other case.

The Court: Maybe so. I have been handling so many of these cases.

Mr. Brogan: I offer the check in evidence.

Mr. Masucci: No objection.

(Check marked Exhibit D. 5 in evidence.)

By Mr. Brogan.

Q Now, I show you a check book I guess you call it entitled "Trustee Account Ordway Build-

ing & Loan Association,'' and I direct your attention to an entry called the Divino loan. A That's it right here (indicating).

Q Is there a draft upon that trustee in favor of the party who is entitled to that Divino loan? A This is not my check book. This is the attorney's check book.

Q Does this book show a deposit of that sum of $6254.75 and a disbursement of a like sum to different persons?

Mr. Masucci: If your Honor please that is not his check book. He can't testify from it.

The Court: I can't help seeing from where I am sitting there is some writing on the back of the stub and unless it is in this witness' handwriting he can't testify to it. A person may write on the back of a stub a deposit was made and it might not be made.

Mr. Brogan: It appears if your Honor please there was $6500.00 in this account on account of this loan at that time. It also appears that the amount, according to the testimony of this witness, of dues and for the pass book of the association whatever it might be was $225.00, and that $6275.00 was paid out. It also appears that $6,000 of this sum, which check is already in evidence, was paid over to Mendel Gross who was the owner of the property, and the $6,000 check which was turned over to him bore the endorsement of Mr. Fisch who was the attorney for Gross. He was the maker of the check out of this trust ac-

count. That it is shown by the testimony of the witness Fisch and by the exhibit itself that $6,000 of this fund went into this transaction. Now the only thing I have to prove, if there is any objection to it, I will have to get it from another witness—the man who is in jail to prove the $274.75.

The Court: Counsel ought to be able to get together on that.

Mr. Masucci: I don't know what item he is referring to.

The Court: Premium deducted 3%.

Mr. Masucci: I think the secretary has already testified as to the premium. I don't know what the $275.00 was deducted for.

By Mr. Brogan.

Q You gave over to Mr. Shapiro on account of this Gladstone avenue $6254.75? A I did.

Q And $6,000 of that was paid over to Mendel Gross? A I can only testify from this particular check. Here's a check drawn to Mendel Gross.

Mr. Brogan: That is already in evidence —Exhibit D. 2.

Q Will you tell us what became of the other $254.75? A I see here check No. 57 drawn to Morris W. Shapiro for $125.00 search fee I suppose it is, and here is a check for $129.75 drawn to Max Goldberg and called premium on loan.

By the Court.

Q Who is that last check endorsed by? A It appears to have the endorsement of Max Goldberg and underneath Samuel Goldberg.

Q So that Goldberg benefitted from it somewhat if that check is correct?

Mr. Susskind: We don't allege right now it is correct. It may be a forgery. It is up to Goldberg.

By Mr. Brogan.

Q That would account for the $254.75? A That's right.

Mr. Brogan: I would like to put those two checks in to complete it.

Mr. Masucci: No objection.

(Check No. 57 marked Exhibit D. 6 in evidence. Check No. 48 marked Exhibit D. 7 in evidence.)

By Mr. Brogan.

Q Will you explain to the Court please Mr. Plager where the other $250.00 roughly went to —$246.00? A Here is the way the stub reads— Mortgage loan is $7,000. Balance payable, meaning five hundred, withheld. Premium 210 which is 3% of seven thousand. That's for one month —$35.00. Pass book fee 25c. Total deductions were $745.25 leaving a net check of $6254.75.

By the Court.

Q That is check— A No. 1205.

Q That is the same as Exhibit D. 5? A Yes, that is the stub.

By Mr. Brogan.

Q So that five hundred was withdrawn, two hundred and ten as premium— A That's for one month thirty-five and pass book fee 25 cents.

Mr. Brogan: I would like to offer that book in evidence as well as this one on account of the stub entries, then we have a complete picture of it.

The Court: All right.

(Trustee account check book marked Exhibit D. 8 in evidence. Check book of association marked Exhibit D. 9 in evidence.)

By Mr. Brogan.

Q Have you identified the applicaiton for this loan? I did ask you that—that is Exhibit D. 3.

The Court: Yes, he recognized that as being in the handwriting of Shapiro.

By Mr. Brogan.

Q Did you see it signed by anyone? A No, I didn't.

By the Court.

Q Was it before the meeting of July 24, 1928 as it now appears before you when the loan was granted? In other words is there any change in it since then? A I want to say this. I never saw the application blank—neither before or since. This is probably the first time I ever saw this application blank.

Q Did you as secretary at the meeting of July 24, 1928 see that Exhibit D. 3? A No.

Q Now, in the minute book you make note of those who attend the meeting and make reports to you? A Yes.

Q In the minute book you mentioned Mr. Lomachinsky made a report that night and Mr.

Lomachinsky has sworn he was not at the meeting. How can you explain that? Mr. Lomachinsky has sworn here positively he didn't attend that meeting and your minutes show that he and two others made a report at that meeting on this Gladstone loan. A That may have been relegated to another member at the meeting.

Q This minute is supposed to be an accurate detail of what transpired at that meeting? A I will say there is a possibility he was not there in person.

Q Is it possible you might have falsified that minute? Do you want me to understand that record is not a true record of that meeting?

By Mr. Brogan.

Q Did you falsify those minutes? A Not knowingly.

By the Court.

Q Was that man Lomachinsky at that meeting or not according to your recollection? A I will look at the minutes here.

Q I am not trying to impugn you but your records indicate he was there and he swore he was not there. Look for that meeting and see if he is checked as being in attendance there. A He may have left at the latter part of the meeting.

Q He has sworn he did not attend the meeting. A I have him mentioned as being at the meeting. Sometimes a director stays for a half an hour and makes his report and leaves. I would consider him as having attended the meeting.

Q This man swore he conferred with his two fellow committeemen in a room prior to the meeting and he left before the meeting and that he did not attend the meeting. You have him checked as attending the meeting and he and two others reported on the loan. A I would consider him as attending the meeting if he attended any part of it. It may be as I said before he may have been there.

Q I want to know whether this man is truthful. Was he at that meeting? Is there anything to warrant you in sustaining the minutes he was at the meeting? A The only thing that would warrant it is the record of the meeting.

Q This minute says that he and the other two reported at that meeting. Where is there anything in on this report that these three men reported at that meeting? I see on Exhibit D. 3 that two of them did. A The report was made verbally before the board.

Q You don't say so in your minute? A No, sir.

Q But the written report which you have before you does not bear Lomachinsky's name? A No.

Q It does bear the names of the other two men who were on the committee with him? A Yes.

Q What justifies your statement those three men were at that meeting that night? A I simply have a record of a report having been made verbally before the board.

Q It doesn't say verbally? A No, it does not. I will say this your Honor, I don't make a copy of my minutes from the application.

Q I have a report signed by two. I am concerned whether that report in writing is to be

considered or the so-called statement as to a verbal report? A Verbal. Here is a record of the minutes.

By Mr. Brogan.

Q Do the directors ever report in writing? A They never do.

By the Court.

Q They did on this Exhibit D. 3. Two of them reported in writing there. I want you to be careful with your testimony. A May I see this? They possibly submitted their report in person and on top of it signed this application blank. That is a subsequent action and not a prior action.

Q Was that application before you at that meeting—Exhibit D. 3? A I did not read the application.

Q Then you did not have before you at the meeting the report of this committee recommending a loan of seven thousand as indicated by the report itself? A Not at that time.

Q I call your attention to the fact that the application is dated July 28, 1928—four days after the meeting. A I can't explain that because I did not see the application blank.

Q Did you have Goldberg before you or any member of the board of directors in connection with that loan? A We did not so far as I know.

Q Did you make any inquiry as to whether a man named Goldberg was going to get this loan? A I believe not.

Q I want the fact. A I think our counsel—

Q I am asking you did you do it? You are the secretary. A Did I make any inquiry as

whether Mr. Goldberg was to get the money represented by that loan? I waited for instructions from our attorney. I think our attorney advised me to that effect.

Q What do you base your thought on? A I only have my records to sustain me. The fact on our records the name Max Goldberg appears as having taken the mortgage.

Q But you did not have the name of Max Goldberg in your minutes on July 24th, 1928? A That's true.

Q How long after the meeting did you put that name Max Goldberg in your minutes? A It may have been a day or two after.

Q At whose direction did you put that name in there? A At the direction of the attorney.

Q So at the meeting of July 24th, 1928 you as secretary did not know who the applicant for the loan was? A I don't think it was definitely decided in whose name it was to be taken.

Q Didn't the president report to you and his fellow directors that the application was by Shapiro but he wanted to know whether they would consider the loan being made to his clerk Max Goldberg? A I don't remember that exactly, your Honor.

Q You heard the president testify about it? A That I couldn't recall.

Q Do you recall that any reports were made at that meeting as to who this loan was going to? A Not at the meeting. It was not definitely decided upon at the meeting.

Q In the other minutes you have the names of the applicants for the loans? A Yes.

Q Didn't it indicate in your mind a suspicious circumstance when you were writing that minute that you had to leave the name of the applicant

blank? A No, because it was customary for loans to be made to other people.

Q Point to any page in your minute book where a similar thing took place other than that meeting. A There is one right here.

The Court: You cannot readily find it. You might find it hereafter. I will pass over that.

By Mr. Brogan.

Q Will you remember to look for that if there are any other instances? A Yes.

By the Court.

Q So you really don't recall what took place other than what your minutes shows? A Exactly.

Q You are relying upon your minutes then? A Yes, I am relying on the minutes.

Q Did you as secretary have Mr. Max Goldberg sign any book for shares of the association? A Sign a pass book you mean?

Q Any book. You have to have him sign a book? You get his signature? A No, we don't ask for the signature of an applicant for a mortgage loan.

Q To get a mortgage loan he must be a shareholder? A That's true.

Q Isn't there some book that shareholders must sign? A A pass book is issued in the name of each shareholder.

Q You have no paper then with the name of Max Goldberg upon it? A No, no paper at all.

Mr. Brogan: Except the mortgage.

By the Court.

Q Did you as secretary issue it to Max Goldberg—deliver it to him? A I didn't deliver it to him.

Q Did you deliver it to anyone? A I don't recall whether it was delivered in this case.

Q It is customarily issued of course? A We don't always issue it immediately. Sometimes the mortgage loan is issued and a month or two later when the applicant comes in he asks for a pass book.

Q A year and a half has elapsed. Can you tell us if you ever issued that pass book? A I cannot say definitely.

Q Who has been paying the installments on the loan? Is it recorded in the pass book? A I cannot say definitely. All I can say I inferred they were paid by Morris Shapiro.

Q You have never seen that pass book have you? A I never saw it.

Q You don't know to whom it was issued? A I don't know.

Q To whom did you issue the shares? A In the name of Max Goldberg.

Q To whom were they delivered? If they are pledged by way of a mortgage loan there is something pledged by the pledgor? A No, not customarily.

Q Stick to this. A I never delved into that particular phase of the association. That was done by the other officers.

Q Mr. Plager, do you mean to suggest when a man makes an application for subscription for shares of stock you don't issue the shares to him? A Not necessarily.

Q Tell me what you did in that particular instance. I am speaking about the Goldberg

instance. A We did not issue a certificate in Mr. Goldberg's name.

Q You did not issue a certificate in Mr. Goldberg's name? A No.

Q In whose name did you issue it, do you know? A It still remains blank I believe.

Q That is a most unusual thing, isn't it. A If you are familiar with building and loan associations.

Q I am so much familiar with it I know there is a lot of rascality to it. I ask you when this application was made in the name of a man named Goldberg was there a certificate or certificates of shares of stock of the Ordway Building & Loan Association issued? A As far as I know there was no certificate issued.

Q Where is the book containing the shares? A I can furnish it.

Q Why didn't you bring it? A I didn't think it was necessary.

Q You knew we were inquiring into a transaction with Goldberg, didn't you? A I did know that.

Q When you issue shares of stock you enter a note in your own book? A Yes.

Q Have you any receipt showing the issue to Max Goldberg? Have you in your book or papers any receipt from Goldberg acknowledging by him the receipt of shares? A No.

Q Who has been paying the installments on these shares in the name of Goldberg if they were issued? A I believe they were by Morris Shapiro to the treasurer.

Q You had nothing to do with that? A No.

Q It is not made to you as secretary? A No.

The Court: Is the treasurer here in court?

Mr. Brogan: He will be here.

By Mr. Brogan.

Q I show you a bond by Max Goldberg to Ordway Building & Loan Association and purporting to have been signed by Max Goldberg and witnessed by Morris Shapiro, and ask you if the form of assignment at the bottom of this bond which is dated August 3, 1928, is the manner in which the shares were assigned in this particular case?

The Court: This witness does not know anything about it. I will overrule the question.

The Witness: I don't handle that phase of it.

By Mr. Brogan.

Q Will you tell me from the records if you can what if anything is presently due on this mortgage? A Yes, I think I can tell you. By the way, I understand that is in the course of foreclosure and a statement was furnished as of July 23, 1929, which I have here, or do you want it up to date?

Mr. Masucci: Is is part of the counter-claim.

The Court: There is no forclosure going on?

Mr. Masucci: Not besides this action here.

Mr. Susskind: We counter-claimed for the foreclosure of the mortgage.

The Witness: Do you want it up to date?

Mr. Brogan: Yes.

By the Court.

Q Have you got it calculated in the book? A It will only take a minute to do it. There is a payment due this month of $7,091.00. That is, considering interest arrears unpaid to date.

By Mr. Brogan.

Q How much? A $7,091.00.

Q Have you deducted the amount of five hundred? Is that taken off there? A Five hundred deducted for repairs still due leaving a balance of $6,591.00.

Q If that much is due since August 3, 1928, does that mean the dues have been paid right along on the mortgage? A The last payment on the loan was made in April, 1929, of $140.00.

By the Court.

Q What are the items in that payment? A $70.00 dues and $70.00 interest, representing two months dues and interest. That was the last payment.

By Mr. Brogan.

Q That's the system, isn't it, thirty-five each month as dues and thirty-five represent interest? A That's right.

By the Court.

Q Depending upon the number of shares? A I may amplify it this way. Where a man makes a particular—

Q In this particular case how many shares were issued? A Thirty-five shares.

By Mr. Brogan.

Q Now the amount due at the present time is $6,591.00? A Yes.

Mr. Brogan: That's all.

Cross examination by Mr. Masucci.

Q As secretary of the Ordway Building & Loan Association what applications for loans are delivered over to you and kept by you? A They are not.

Q Who are they kept by? A The applications are submitted either to the president or counsel and kept by the treasurer.

By the Court.

Q You mean to say you have none of the applications for loan blanks in your possession? A I never make them out myself.

Q Have you them in your possession? A I turn them over the president or counsel.

Q After the application has gone through don't you keep the application in the files of the building and loan association for future reference if necessary? A They are kept together with the mortgage papers and filed away by the treasurer.

Q That application should be in the mortgage papers and in the possession of the treasurer? A Yes.

The Court: May I ask counsel from what source they obtained that application D. 3? From whose possession did that come from?

Mr. Susskind: Yes. The building and loan has a safe in their headquarters in which all the securities are kept. The attorney when making the examination of the title files this application with the search with the treasurer. The treasurer has charge of the safe.

The Court: Who else has charge of the safe?

Mr. Susskind: The president and the treasurer.

The Witness: And counsel.

By Mr. Masucci.

Q Are the applications read by you on the night of the meeting? A Not customarily. They are generally read by the president.

Q Do you make a notation in the minutes? A Yes, in the minutes.

Q With the other notations you make a notation also as to who the applicant is? A I do.

Q Did you make it in this case? A In this case it seems to have been a question as to whose name it was to be taken and it was held in abeyance.

Q Was there any question as to who was to make the application for the loan? A That I couldn't recall.

Q I mean at the meeting? A I don't remember what discussion took place at the meeting.

Q If a discussion had taken place, if there was any doubt as to who was making the application, you would have made a note of that discussion and put it in the minutes? A If I thought it was relevant and material I possibly would.

By the Court.

Q If it was pertaining to the loan it would be relevant and material? A I would.

Q You know when the examiner from the building and loan department comes around he looks at the minutes? A Yes.

Q Don't you think you ought to furnish him with all the information? A Yes.

By Mr. Masucci.

Q Is there any record as to whether there was a discussion as to who took that loan on 22 Gladstone avenue? A No. For that reason it was held up.

Q Do you know as a fact? A It indicates from the minutes it was held up.

Q Do you take them down originally in your book? A On a sheet of paper.

Q You have been taking them on a sheet of paper and making your entries in the book? A Yes.

Q Do you remember when you first ascertained the application was made by Max Goldberg or someone else? A I couldn't remember.

Q Was it a week afterwards or a month afterwards? A I really couldn't fix the time.

Q Can you say whether it was the next day? A I doubt it.

Q Was it two days after? A It might have been a few days.

By the Court.

Q What authority had you to put Max Goldberg's name in it after it was signed? A The name was not filled in.

Q I know it, but the minutes were signed up? A They told me to wait and see who was to take it.

Q You wrote it in after you signed the minutes, did you? A I believe that was the case—with that omission.

Q I am asking you by whose authority you inserted those two names—Goldberg and the other man? A I think Mr. Shapiro told me.

Q How good is your thought in that respect? On what are you basing that on? I am going to have Shapiro here next Tuesday.

Mr. Brogan: Will you agree that we start in and take his testimony?

The Court: I think I will inquire into this thing. He will be back here on Tuesday.

By Mr. Masucci.

Q After you take the minutes on this rough sheet do you enter it in the book? A That's right.

Q Do you recall when you entered these minutes from your rough sheet? A I can't recall. It may be a couple of days or a week later. Sometimes I do it in a few days or a week or ten days.

By the Court.

Q Whatever time it was you had not been supplied with the name of Goldberg? A No.

By Mr. Masucci.

Q And that may have been a week after? A It may have been.

Q I show you Exhibit D. 5, a check for $6,254.75. That was issued on the date it is indicated—July 26, 1928? A Yes.

Q Two days after the board of directors meeting in July? A Yes.

Q At that time did you have the name of Max Goldberg? A That I can't say definitely. I can't really answer that question. I don't know.

Q Did the board of directors know who was making this application at the meeting of July 24, 1928? Was it stated at that meeting? A I don't really think so. I am not sure whether the name was mentioned at that meeting. In fact I am inclined to think—

The Court: I want facts.

By Mr. Masucci.

Q Did the board of directors authorize you to issue a check, Exhibit D. 5, without knowing to whom this loan was going to? A They simply passed a loan on property located at 22 Gladstone avenue. The proper committee had authorized the loan and that was the thing we were interested, that the loan be made on that property.

By the Court.

Q The name of the borrower had not been made known to you up to the time you made that check? A So far as I can remember.

By Mr. Masucci.

Q According to the minutes the loan was made to the individual?

Mr. Susskind: I object to it. It is general knowledge when you borrow on a bond and mortgage—

The Court: It is a general rule from month to month. It is just like a note at the bank.

By Mr. Masucci.

Q Will you explain to the Court why page 26 was left blank before the minutes of the meeting of July 24, 1928? A I left the next page blank and always start on the right-hand sheet. That is my practice..

The Court: It is a mighty bad practice because you can insert other things on that sheet.

By Mr. Masucci.

Q When did you sign the minutes, at the time they were entered or the following meeting? A At the time they were entered.

Q Are they countersigned by the president? A No.

Q Are they read at the next meeting? A They are read at the next meeting.

Q Were the minutes, Exhibit D. 4, entered before or after the minutes of July 26, 1928?

The Court: In other words were the minutes of July 24, 1928 actually written in the book before or after the minutes in the book on page 25 relating to a record of a meeting of July 26, 1929?

A This is made in different ink. This was made after (indicating).

Barney W. Plager, for Defendant, Cross.

By Mr. Masucci.

Q Where do you enter the minutes, at your home or the office of the building and loan? A I generally enter them home.

By the Court.

Q Have you the original sheets from which you copy your minutes? A I generally destroy them after I get through.

By Mr. Masucci.

Q I call your attention to the fact that the application D. 3 is dated July 28, 1928, and the resolution was made on July 24, 1928 with reference to the loan mentioned in Exhibit D. 3. You say you were present at the meeting when this application was considered? A This was read before the board. I never saw the application.

Q The president sits at the same desk with you? A He sits sometimes at the other side of the table.

Q Now in your minutes of July 24th there were some other loans passed by the board of directors, is that right? A Yes.

Q The only check that was made out within a day or two of the loan was this one? A Yes.

Q As secretary of the building and loan and connected with building the building and loan for a number of years you knew a search of the title has to be made before the loan is granted? A Yes.

Q And you also have some knowledge that searches are not made within a day or two? A Yes.

Barney W. Plager, for Defendant, Cross.

Q So at the time when you issued this check on July 26th the search of the title had not been made? A That I did not know.

By the Court.

Q When a search is made it is submitted to you as secretary, is it not? A No, no search was ever submitted to me for consideration.

Q Who are the searches submitted to? A They are filed with the treasurer.

Q You mean no report was made by the attorney saying he had closed that particular loan we are discussing here; that he finds the title in perfect condition and everything is concluded? A No.

Q How do the officers of the building and loan know whether he is honestly performing his duty and not appropriating the money to his own purpose? A We know now but at that time we had implicit confidence in him.

Q You had been doing it for years previously? A Yes.

Q I notice you authorized $18,000 to be borrowed at that same time with which to keep the fund replete, didn't you? A Yes.

By Mr. Masucci.

Q Now subsequent to the meeting of July 24, 1928, were the board of directors appraised that this loan was in fact a loan of Morris W. Shapiro? A I don't recall any statement to that effect having been made.

By the Court.

Q You made that statement as though you had something in your mind. What have you in

your mind? A I felt perhaps there might have been some discussion.

Q You testified to some things which I have in mind. Have you anything in mind as to any discussion having taken place at that meeting with respect to that so-called loan? If you have anything in mind you ought to divulge it. A I don't remember anything at that time.

By Mr. Masucci.

Q You know Morris W. Shapiro? A Yes.

Q And you know him for a long time? A Since my association with the building and loan.

Q And you had your office with Morris W. Shapiro? A Yes, I had my name on the door of his office.

Q And you know Max Goldberg, too? A Yes.

Q And you know Max Goldberg was a law student in his office? A No, I didn't know he was a law student. I had some idea.

Q He was a clerk there? A I believe he was.

Q He was employed by Morris W. Shapiro? A Yes.

Q And when the application of Max Goldberg was considered by the building and loan you knew that in fact Max Goldberg was not the applicant, didn't you? A No one told me in as many words he was not the applicant. No one told me this is not Max Goldberg's, but I assumed that it was not because he was a clerk in Morris' office.

By the Court.

Q Why did you assume that? A Because I did not think the clerk owned the property. I thought Morris was taking it himself.

Q Did you mention your thought to your fellow directors of your association, and if you not, why? A I thought they understood that fact.

Q What was said by either one of them or what was done which led you to believe that fact? A I don't know. They were familiar with Mr. Shapiro. Some of them came to his office and spoke to him, and I thought they were familiar more so than myself because I was there very seldom.

Q How long were you in Mr. Shapiro's office having desk room? A Just when I took that office there about two years ago. In fact I never did any work in that office. I only had a mailing address.

Q During the time you were there did you see the president of the association or any of the directors there talking with Mr. Shapiro about the affairs of the building and loan association? A No, I probably run into the office and get some papers and do not see that office for a week.

Q I want you to state whether they did know or did not know that Max Goldberg was an employee of Morris W. Shapiro when they went there and conferred with Morris W. Shapiro? A I feel that some of them must have known.

Q I feel you know too and I want the fact. Tell me the ones that went there. A I think that Mr. Susskind was to Mr. Morris W. Shapiro's room. I think so.

Q What do you base your thought on? A On what I heard today.

Q I want to know what you observed about their entrance into Mr. Shapiro's office at times when you were there. Isn't it the fact that

during the two years you were there you saw some of the directors in that office talking with Mr. Shapiro about building and loan matters? A I couldn't fix any particular date.

Q Is it the fact you saw some of them there? A I probably saw Mr. Susskind there once or twice.

Q I want the fact. A Not about this case.

Q I am not talking about this case. Are you prepared to swear that during the time you were there that Mr. Susskind and the directors of this building and loan association did or did not come into Susskind's office while Goldberg was employed there as a clerk? A I wouldn't swear to it that anybody discussed it.

Q I am asking you whether they did or did not go into that office during that period of two years? A I believe they did.

Q When they came in there who would they discuss business with, you or Mr. Shapiro? A They had very little occasion to see me.

Q During the times when they did go in there Mr. Goldberg was present as clerk or whatever his position was? A I think Mr. Goldberg was present. I told you I was there very very little. I possibly saw one or two directors coming there now or then. I couldn't place any particular one in mind.

Q Mr. Plager, you owe a duty to the association to tell the entire truth. I am convinced you are not telling the truth. Can you tell me truthfully whether or not during the two years you had some sort of a relationship with Mr. Shapiro in his office by having your name on the window or desk room, or whatever it was, whether Mr. Susskind or some of the other directors entered that office of Mr. Shapiro at a time when Mr.

Goldberg was present as clerk? A I can't remember just what time.

Q Will you say they never entered that office during the two years you were there to your knowledge? A I cannot say that definitely. I couldn't honestly say. My memory does not go back in that respect.

Mr. Brogan: As I understand it this man's business is in New York and was very infrequently in this place.

The Witness: Not in New York, but I was very seldom in that office.

Re-direct examination by Mr. Brogan.

Q How many hours a week would you spend? A I don't think I spent more than an hour a week or two at the most. Sometimes I wouldn't be there for a couple of weeks at a time.

By the Court.

Q Where did you live at that time? A In Newark.

Q What was your purpose in having office accommodation there? A Simply as a mailing address.

By Mr. Brogan.

Q For what business—for building and loan business? A I am in the accounting business. I do some accounting on the side in conjunction with my building and loan work. It was more for general accounting to have a mailing address. For almost anything—accounting and building and loan work.

By the Court.

Q Let me ask you this. As an accountant didn't you think it was unusual for the building and loan to make the loan ostensibly to Shapiro, yet to make it to Goldberg, a clerk of Shapiro? A The only thing I was informed we had a good favorable property that had value there and that it had somebody in whose name it could be drawn and we would have a bona fide mortgage on a bona fide piece of property. They individually didn't count.

Q You personally got no enlightenment about this property at all except from the reports submitted by the two men or three men, if it was three? A Yes.

Q Did the president himself say he investigated this property and give any opinion of the value? A I don't remember.

Q If he did you would have put it in your minute as a secretary and as an accountant? As an accountant you would be more particular than as an ordinary secretary? A Acting from an accountant's viewpoint I would.

Re-cross examination by Mr. Masucci.

Q You state that there were arrears of building and loan dues from May, 1929, on this loan? A Yes.

Q April or May? A He made his last payment in April.

Q Did that pay him up to date in his shares? A He was still two months in arrears.

By the Court.

Q Whoever paid was two months in arrears at that time? A Yes.

Q But you can't enlighten me as to who paid the money? A I can't say definitely, but I think it was Shapiro.

Q Don't you think it is unusual for you not to be able to tell me? A I think it was Mr. Shapiro. I didn't see him actually give the check. I always felt positive he did but I would say 100%.

Q If it was paid by check then the deposit slip would indicate it was paid by check and by whose check? A It doesn't say whether it was paid by check or cash.

Q Do you mean to say when you deposit checks in a bank you don't put on the deposit slip the name and the amount? I am speaking of you as an accountant. You are a learned man and a student—disregarding your secretaryship. A It isn't customary for any building and loan to do it; very few of them that I know of. They use the ordinary run of forms.

Q Mr. Plager, if you as an accountant were going over books and were trying to connect up certain deposits made in a bank account at a particular time, where would you look for them except from the deposit slips and wouldn't you expect the deposit slips to mention the name of the one— A To indicate whether it was check or cash?

Q Yes, a check of a particular individual? A It all depends. This is a small building and loan association and the examiners know we don't use any particular form. The Department of Building and Loan has never criticized it.

By Mr. Masucci.

Q By that payment of one hundred and forty which was made in April, did that pay him up to date? A It did not.

Q How many months was he in arrears? A Two months.

By the Court.

Q When a man is in arrears he has to pay up or has to pay a fine. There is no fine with Shapiro? A Five cent a share.

Q So you fined Shapiro. There was no fine paid? Your book does not show he paid a fine? A No.

Q You generally charge a fine? A Except when they gave a good excuse. I use my discretion.

Q You use your discretion? A Sometimes a man comes in a day later we pass that up.

Q When a man comes in two months later do you pass that up? A No.

Q But in this particular case the man was four months in arrears. A It was three months. That made the fourth month.

Q He should have paid that month too, shouldn't he? A Yes.

Q He owed four months' money and you took two and you didn't charge him a fine for arrears? A No.

Q The fines were five times thirty-five? A Three-fifty.

Q So you deprived the shareholders of the association of three-fifty which this man should have paid for those three months? A Sometimes I take the accumulated fines and charge them against the account.

By Mr. Masucci.

Q They usually pay them when they pay the shares? A Very seldom we try to collect the fines that night. It is accumulated and charged to his account.

Q In this case you didn't collect it because the loan was Morris W. Shapiro's? A Yes, I thought it was his loan.

Q You waived it?

The Court: He overlooked it.

By Mr. Masucci.

Q The fine was three-fifty? A Some associations charge on the shares only and I charge on the shares and interest.

Q What is the custom? A On the shares and interest about three-fifty.

Q For three months that would be eleven or twelve, wouldn't it? A Right. Just a moment! He was two months in arrears. That would be seven.

Q How many months? A Three months. That would be ten-fifty.

Q Then he was three months in arrears at the time he made the payment. That would have been ten-fifty fine? A Yes.

Q In addition to representing the Ordway Building & Loan as secretary you represented several other building and loan associations? A That's true.

Q That Morris W. Shapiro was counsel of? A That's right.

Q And you kept all the books of the building and loan association in the office of Morris W. Shapiro? A No, I took the books home and worked at night.

Barney W. Plager, for Defendant, Re-cross.

By the Court.

Q Where did you take them? A I have a small cabinet in Passaic.

Q They were never in Morris W. Shapiro's office? A Yes, I took them home.

By Mr. Masucci.

Q And this hour or two a week that you stayed in the office you occupied in taking care of the minutes and other books of the building and loan? A I don't think I did any work there except the payments. I came there on pay night and practically did all my building and loan work home.

By the Court.

Q By that you mean you received payment? A On pay night at one window they would collect funds and at the other window I would issue checks et cetera.

Q Are you talking about the building and loan association? A It was in Shapiro's office. It was the building and loan headquarters.

Q It not only housed the building and loan but it housed you, too? A I only had a mailing address.

Q How many members were in the Ordway Building & Loan? A It was a small association. I don't think it exceeded three hundred.

Q Those three hundred wouldn't come and pay within the hour that you were there? A They were supposed to come one night a month.

Q If they all came there you would be there more than an hour? A I didn't stay there for the purpose of collecting money.

Q You say you were there one night—I mean on the night they came to pay. What did you do? A I issued checks for withdrawals when people come in, and furnished statements. I was kept very busy at the other window.

Q Withdrawals were not permitted without the authorization of the board of directors? A It is customary to pay out withdrawals on the same night the man asks for it without proof from the board. We wanted to render service. That is one of the strong points—I mean to give the man the money when he asks for it.

Q I can see where there would be a run on the building and loan association. You could pay it all out at one time? A It was signed by the president and treasurer and we always stayed within our discretion.

By Mr. Masucci.

Q Have you any other book except this minute book? A I don't think there is any other concerned with in this case.

Q June 27, 1927? A There must be an older minute book.

Q Can you produce the other minute book? A I believe I can.

By the Court.

Q Will you let counsel look at it between now and the next hearing day? A Yes.

By Mr. Masucci.

Q On July 26th you issued a check marked Exhibit D. 5, I believe it is? A Yes.

Q Were you asked to issue that check by Mr. Shapiro? A Yes.

Barney W. Plager, for Defendant, Re-cross.

Q Where were you when you were asked to issue that check? A He may have called me up at the house.

Q Do you know? A I don't know.

Q Did you mail the check to him or give it to him? A I don't know.

By the Court.

Q Did Mr. Susskind, the president, direct you to draw that check? A The check is always subject to the call of the attorney.

Q Is there a resolution drawn by the board of directors that made that requisite? A I believe that as soon as the loan was passed by the board I had the authority to issue the check to the attorney.

Q With the authorization of the board of directors? A Yes.

Q And that is the way you were conducting this building and loan association? A Yes.

By Mr. Masucci.

Q Do you know when the request was made for the issuance of this check? A I don't remember that.

Q Was it the same day you issued it? A Perhaps.

Q Could it have been the day before? A It may have been.

Q Was it on the night you were at the building and loan? A It might have been.

Q Do you know when the president and treasurer signed the check Exhibit D. 5?

The Court: Is it signed by the witness?

A I signed it as secretary.

By the Court.

Q Was it signed by you before they signed it or at the same time? A I signed it first.

Q Did they sign it at the same time? A Not necessarily.

Q Did they? A I doubt whether it was signed at the same time. It was signed after the meeting and they are in different places.

Q If you had known about the formal application for loan being dated July 28, 1928, would you have issued a check on July 26th for the amount of the loan? A I don't know whether I would have, but I probably would have mentioned it. I don't know whether I did or not. We issued the check for that particular mortgage.

Q Yes, but the board had not at that time acted upon a loan to anybody by name of Goldberg up to that date of July 28th? A I never get the application for loans. This is probably the first time I saw the application.

By Mr. Masucci.

Q Do you say now you don't know whether you delivered the check to Mr. Shapiro or whether it was mailed? A It may have been mailed.

By the Court.

Q Why was it mailed if you were all occupying the one office? Why would you mail it? A The president is not located in that office or the treasurer was not in that office. I simply had my name on that door. I did all the work at home. I drew the checks in the house in most cases so I would even mail a check to his office.

Q Let us keep to this alone. Did you sign this check in the office of the Ordway Building & Loan Association—Mr. Shapiro's office and yours, or did you sign it at home? A I don't remember.

Q You signed it before the others signed it? A Yes, I signed the check and they countersigned it.

Q When you signed that check what did you do with it? A I may have delivered it—

Q If you don't know say so. A I don't know, your Honor.

By Mr. Masucci.

Q Before you delivered or mailed this check was it signed by the president and treasurer? A I can't say definitely. I may have left it at the office.

By the Court.

Q It wouldn't be good if they didn't? A No.

Q So you wouldn't mail it to Shapiro unless they did? A I may have mailed it to Mr. Susskind and said "Here, sign this check for a mortgage loan and get the treasurer to sign it." There may have been one or several things done in connection with the signing of that check.

By Mr. Masucci.

Q Weren't you in fact asked to make this check immediately because you knew it was Mr. Shapiro's loan? A That I don't remember.

Q You wouldn't say it wasn't so? A I don't remember.

Q You had to obtain the signatures of Mr. Susskind and the treasurer? A I won't say I did or not.

Q And you won't say you did not personally deliver the check to Mr. Shapiro? A I won't say that. I may have mailed it to Mr. Shapiro.

Mr. Masucci: That's all.

Re-direct examination by Mr. Brogan.

Q I show you the minutes of August 28, 1929, and ask you if these are the minutes in your handwriting and if that is your signature? A Yes, sir.

Q And the first minute reads—"The minutes of the previous meeting were read and accepted"?

The Court: You don't mean 1929. You mean 1928.

Mr. Brogan: August 28, 1928.

Q Were the minutes of the previous meeting read? A Yes, they were.

Q Including this loan? A Yes.

Q And that was approved? A Yes.

By the Court.

Q So that every one of the members in August knew that you had subsequent to the previous meeting put the name Goldberg in there? A They knew it at that time.

By Mr. Brogan.

Q Now, Mr. Plager, when loans are passed or approved rather, does such a situation as this where there is a lack of knowledge as to who is to take the title arise from time to time?

Mr. Masucci: I object to it.

The Court: I will sustain the objection. Furthermore, Mr. Brogan, I will tell you I have in my mind what the past practices were cannot help you around 1928. The question embraces not only past but present.

Mr. Brogan: I want to offer proof that was the regular way of doing business whether it was good, bad or indifferent.

The Court: I don't think your adversary ought to object to your proving that. In other words if you want to prove carelessness on the part of other people he ought to be glad to have you prove that.

Mr. Brogan: That may be so, sir, but it wasn't my intention. It was my intention to prove in this case there was no departure from their ordinary course of business. If it was carelessness it is for your Honor to decide.

By Mr. Brogan.

Q Was there any departure in this case, Mr. Plager, from your ordinary conduct in making loans?

The Court: I will overrule that question because it calls for a conclusion. He may say there was no departure and yet he may be confronted with a number of departures.

By Mr. Brogan.

Q In this case, Mr. Plager, the committee reported orally before the loan was granted as I understand?

The Court: I will overrule that question because it misapprehends the fact. There is not a word of that in these minutes. Lomachinsky said he was not at that meeting. I don't know whether you are going to question your own minutes.

By Mr. Brogan.

Q Was there another report made other than the written report at that meeting, Mr. Plager? A Yes.

Q Approving the loan? A Approving the loan, yes, according to my minutes here.

By the Court.

Q You are reading from the minutes? A Yes.

Q And relying upon the minutes that report you are relating to is one made by Lomachinsky, Wasserman and Mr. Loewenthal. That is what you mean? A Yes.

By Mr. Brogan.

Q Do the minutes contain everything that happens at a board meeting pertaining to the business of the association—merely formal matters? A All items of importance that I deem are important and bearing upon the business directly of the association.

By the Court.

Q An application for a mortgage loan is important, isn't it? A Yes.

Q You would incorporate that in the minutes? A Yes.

By Mr. Brogan.

Q Would it show that a director had been present at the beginning of the meeting or had left if such was the case? A Not necessarily.

Q Does that happen from time to time? A It does quite often. Very often a director comes to a meeting and stays for an hour or half an hour and is marked present and excuses himself and leaves.

Q Do you make a notation of that at the meeting? A No, sir.

By the Court.

Q You had him checked up at the meeting as being present. There is nothing to indicate he left? A No.

Q You heard him testify he wasn't there? A I thought he was there.

Q And does this refresh your recollection you still adhere to the minute and your check he was there? A He was there for a few minutes, anyway. Otherwise it wouldn't be there.

By Mr. Brogan.

Q Did you know anything about Miss Clawans' interest in this title or real estate or loan at any time? A I hadn't the least idea that she was interested until Mr. Susskind told me about it. I was surprised.

The Court: I will strike out that you were surprised. You didn't know whether it was Goldberg, Shapiro, Miss Clawans or anyone else?

The Witness: Exactly.

Barney W. Plager, for Defendant, Re-cross.

By Mr. Brogan.

Q Did you have any knowledge or information that any person other than the applicant or Shapiro was interested in the loan? A No.

By the Court.

Q Did you know who the applicant was? You didn't know who the applicant was at the meeting? A No, I did not but I felt—

Q You didn't know at that meeting? A Nobody said in so many words this belongs to me.

Q I am sure you didn't know. You left the name blank in the minute book? A That's right.

Re-cross examination by Mr. Masucci.

Q Wasn't it because of the fact you didn't want the directors to know Mr. Shapiro was making an application for a loan? A No.

Q Weren't you very friendly with Mr. Shapiro? A Only in a business way and because he was counsel for the association.

Q Didn't you go out with Shapiro at all? A Except two or three times after the meeting we would play a little game of cards, but going to his home I did not.

By the Court.

Q Are you married? A Yes.

Q Didn't you and your wife visit him? A Only two times.

By Mr. Masucci.

Q Didn't you accompany him to the railroad station when he was sent to prison? A No.

Barney W. Plager, for Defendant, Re-cross.

By the Court.

Q Were you in court when he was arraigned? A No.

By Mr. Masucci.

Q If a member was not present before the meeting would you record him as present? A If he would come up and make a statement he was going to leave I would mark him present.

By the Court.

Q You heard him testify that he and his two adherents had a talk in the room and then he left? A Yes, I heard that.

By Mr. Masucci.

Q So if he wasn't there after the meeting was started you wouldn't record him as present? A If he was there for any length of time.

Q If he was not there at all after the meeting was started? A I might have made an exception.

By the Court.

Q Do you call the roll and look about to see who is present? A Yes, I call the roll.

Q Can you tell me whether that man Lomachinsky answered the roll on the 24th of July, 1928? A It is possible, as I said before—

Q I want to know the fact. If you can't say, say so. A The minutes show he was there. He may have come in and told me to mark him present.

Q Now, this check list which you referred to before, just refer to that again. Now, under the

month of July you have a lot of X marks there opposite the names. A That A's mean absent.

Q You had some mark opposite Shapiro's name and changed it at that meeting. What was the mark you had there originally? I am speaking about July. A That was his father.

Q At that meeting then of July, according to your check list, you have Samuel Wasserman marked as present; you have Max Lomachinsky marked as present, and Morris Loewenthal marked as present. A Yes.

Re-direct examination by Mr. Brogan.

Q Was that book examined by the banking department? A Yes, I think it was recently.

The Court: I think I will keep that minute book here until the next hearing.

HYMAN SMITH, a witness being sworn in behalf of defendant.

Direct examination by Mr. Brogan.

Q What's your business, Mr. Smith? A Supervisory examined Department of Banking and Insurance.

Q In charge of building and loans? A Yes, in charge of building and loan associations.

Q And you have been such official for how long? A I have been an examiner for a period of fourteen years.

Mr. Brogan: Mr. Masucci will admit this was sent out by the Department of Banking

and Insurance. I would like to have it marked in evidence.

The Court: Let it be marked. You are referring to Plan 2 marked with a pencil mark X?

Mr. Brogan: Yes.

(Paper marked Exhibit D. 10 in evidence.)

By Mr. Brogan.

Q Did you make an examination of this book of account of trustee account of the Ordway Building & Loan? A I did in co-operation with other examiners.

By the Court.

Q Did you actually make it or did some of the other examiners report to you their work? A I actually examined it.

By Mr. Brogan.

Q What did you find as to the regularity of the account?

The Court: I can't permit him to say that.

By Mr. Brogan.

Q Tell us what your examination and finding was?

The Court: I can't permit that.

Mr. Brogan: Nothing went into this account—

The Court: Which account?

Mr. Brogan: The trustee account except moneys that were checked out of the general fund of the Ordway and put in the trustee account for mortgage purposes.

The Court: And you expect to prove it by this witness?

Mr. Brogan: Yes.

The Court: All right, I will permit you to prove that.

By the Court.

Q I want to know what you did and what your associates did. A In this case, your Honor, I checked items to the credit of that account to the debit of the trust account of Morris W. Shapiro in the Ordway Building & Loan Association. Items to the credit were traced as coming from the building and loan fund. Items to the debit charged against the amount to others were traced to the check accounted for in the check book. I can testify to the fact that nothing except funds—

Mr. Masucci: I object to that.

The Court: I will have to strike that last part out.

Q In respect to any item you check you put a check mark on so you can identify the items you checked heretofore? A Against the bank statement.

Q When you check an item don't you usually put some mark on it? You mean you don't put your initials after items you check so they can't substitute? A Except I compare it on our working sheets.

Q These sheets which you have before you relate to the Weequahic Trust Company? A I said it for an illustration, your Honor. We haven't the working papers for the examination of this trust account.

The Court: That is what I have to confine the witness to. If you want time, Mr. Brogan, you can have time to produce them.

Mr. Brogan: I will withdraw this witness and call Mr. Goldberg. I want to by this witness prove the execution of the bond and mortgage which is involved in this litigation.

The Court: I think you had better put the witness on the stand.

MAX GOLDBERG, a witness being sworn in behalf of defendant.

Direct examination by Mr. Brogan.

Q Mr. Goldberg, you live in Newark, do you? A Yes, sir.

Q And you are the Max Goldberg who was associated or employed by Mr. Morris W. Shapiro? A Yes.

Q I show you a New Jersey building and loan mortgage form dated August 3, 1928, which appears to be signed by Max Goldberg, and ask you if you signed that? A I did.

Q That is your signature and you acknowledged the same before Mr. Shapiro, is that right? A That I don't know. Whether it was acknowledged before Mr. Shapiro I can't remember.

Q Do you remember him asking you whether you acknowledged that you signed, sealed and delivered it? A No.

Q I show you second a New Jersey building and loan form of bond which is signed by Max Goldberg in two places, one being the signature on the bond itself and the other being an assignment of thirty-five shares of stock as collateral security for a loan of seventy-five hundred. I ask you if that is your signature in each of those cases? A It is.

Mr. Brogan: May I offer in evidence the two papers respectively referred to, the first being a mortgage between Max Goldberg and the Ordway Building & Loan Association, dated August 3, 1928, in the amount of $7,000, and recorded August 6, 1928 in Book E 65 of Mortgage on pages 303-305.

Mr. Masucci: No objection. That covers 22 Gladstone avenue?

Mr. Brogan: I assume so, and the bond between the same parties on the same date in the sum of $7,000, the penal sum being double that amount, I suppose.

(Mortgage marked Exhibit D. 11 in evidence. Bond marked Exhibit D. 12 in evidence.)

Mr. Brogan: That's all.

Cross examination by Mr. Masucci.

Q You were a clerk in the office of Morris W. Shapiro, weren't you, Mr. Goldberg? A Yes.

Q Do you remember signing either Exhibit D. 11 or D. 12? A No, I don't recall.

Q Did you have any interest in the property 22 Gladstone avenue? A None whatsoever.

Q And did you know you had acquired title to the premises 22 Gladstone avenue? A No.

Q Did Morris W. Shapiro ever apprise you? A No.

Q Do you recall how you came to sign the bond and mortgage marked Exhibit D. 11 and D. 12? A I have no recollection of when I signed it. The only information I had that I signed it is when I looked at the signatures.

By the Court.

Q Just now? A I saw them before in Mr. Masucci's office.

Q How long ago? A It was a few weeks ago.

Q Up to that time you knew nothing about it? A Absolutely nothing.

By Mr. Masucci.

Q Did you make any application to the Ordway Building & Loan Association for a loan? A I did not.

Q Of seven thousand? A No.

Q I show you Exhibit D. 3, and ask if that is your signature on there? A That is my signature.

Q Do you recall signing Exhibit D. 3? A I do not.

By the Court.

Q In whose handwriting is that Exhibit D. 3? A It looks like Morris W. Shapiro's.

Max Goldberg, for Defendant, Cross.

By Mr. Masucci.

Q Did you pay any application fee of $9.00 to the Ordway Building & Loan Association for this loan? A No.

By the Court.

Q Did you have any business deals with the Ordway Building & Loan Association excepting as appears by that mortgage? A No.

Q Did you ever appear before any of the officers? A No.

Q Did you ever get any money from them? A No.

By Mr. Masucci.

Q I show you a check, Exhibit D. 7, a check of Morris W. Shapiro for $129.75. Did you ever receive that check of $129.75? A No.

Q Did you ever get any portion of the loan of $7,000 which is supposed to have been granted by the Ordway Building & Loan Association to Max Goldberg? A No.

Q Did you know anything about 22 Gladstone avenue, Newark, in the months of July or August? A I didn't know anything about that house on that street or anything about that property.

Q You didn't know anything about 22 Gladstone avenue? A No, I don't know where the street is.

Q Did you ever make any payments on the loan to the Ordway Building & Loan Association? A No.

Max Goldberg, for Defendant, Cross.

By the Court.

Q How about Exhibit C. 6? Is that your signature on that? It purports to be a deed from you to Lillian Clawans? A It looks like my handwriting.

Q Do you recall the transaction? A I don't recall it.

Q Do you recall knowingly having made a deed of any property to Lillian Clawans? A No.

The Court: This property mentioned in Exhibit C. 6 relates to 22 Gladstone avenue. That is conceded?

Mr. Masucci: Yes, by me.

By the Court.

Q And this deed is dated January 3, 1929. Where were you working in January 3, 1929? By whom were you employed? A On January 3, 1929, I was last employed by Morris W. Shapiro.

Q And that paper purports to have been acknowledged by you before Morris W. Shapiro under date of January 3, 1929? A That I don't recall.

By Mr. Masucci.

Q Did you know that Shapiro had any interest or claimed any interest in 22 Gladstone avenue? A No.

Q Did you know anything about the premises 22 Gladstone avenue until recently? A Nothing at all about it. I don't even know where the street is.

Q Did you ever authorize Morris W. Shapiro to use your name in connection with a loan affecting 22 Gladstone avenue? A No.

Mr. Brogan: I object to that.

The Court: I will let it stand. He has answered it.

By the Court.

Q I show you a paper marked contract for property which has been marked Exhibit C. 1, having written on the back of it "August 3, 1928. In consideration of one dollar and other good and valuable considerations I hereby transfer, set-over and assign all my right, title and interest in the within contract to Max Goldberg." Signed—Morris W. Shapiro. Did you obtain any interest in the contract from Morris W. Shapiro at the time mentioned? A No, sir.

Q Did you have any negotiation with Shapiro with reference to that transaction? A None whatever.

Q Did you know that that assignment on the back of that instrument was made to you? A No.

Q You say you don't know anything about the deed which is marked Exhibit C. 6? A No.

Q But the signature appears to be yours? A Yes.

Q Did you receive any money from any persons for that conveyance as indicated by that deed? A Not a penny.

Q Did Mr. Shapiro or anybody make known to you the contents of the papers I just called to your attention? A No, your Honor.

Q How long were you in the employ of Mr. Shapiro? A About ten months.

Q When did you enter his employ? A From May, 1928, the early part of the summer of 1928, until 1929.

Q What was your position there? A I was a clerk.

Q How old are you? A Twenty-eight.

Q Had you known Mr. Shapiro before you went into his employ? A I had never seen him before until I worked in his office.

Q While you were in the employ of Mr. Shapiro did you ever see Mr. Susskind or this man Plager in the office? A Yes, your Honor.

Q How often did you see Mr. Susskind there, the president of this building and loan association? A Mr. Susskind didn't come in very often; he wasn't there frequently—probably on building and loan meeting nights, but Mr. Plager was there quite often.

Q Mr. Plager was there quite often. He testified he was there about an hour a week? A I wouldn't say that.

Q What do you mean by that? A I seen him there at least two or three or four times a week.

Q And do you know any one of the men who appeared here on behalf of the building and loan association? A I don't know them very well, but I saw them come in once in a while in the office. They didn't speak to me and I didn't speak to them.

Q But you were employed in the office of Mr. Shapiro when they came there? A Yes.

By Mr. Masucci.

Q Do you recall signing any deeds at all affecting 22 Gladstone avenue? A No.

By the Court.

Q Did you in anywise negotiate for the purchase of 22 Gladstone avenue? A No, your Honor.

Q Did Shapiro ask you for the use of your name in connection with the deal? A No, your Honor.

Q Did you ever receive any shares of the building and loan association? A No.

Q Did you ever subscribe to any shares of the Ordway Building & Loan Association? A No.

Q Did you ever receive any moneys from that association? A No.

Q Did you ever receive from that association or any one in its behalf an offer to become a member as shareholder? A Absolutely not.

Q Did you ever pay any money by way of dues or otherwise to the Ordway Building & Loan Association? A No.

Q Did any member of the Ordway Building & Loan, or did Mr. Susskind or any of the men you see here today connected with them inquire of you as to what interest you had in the premises 22 Gladstone avenue? A No.

Q Was any inquiry made of you by any one as to your ownership of that property? A No.

Q Did you ever live on those premises? A No.

Q Where did you live in July 1928? A 84 Avon avenue.

Q How far is it from your home? A I don't know where Gladstone avenue is.

By Mr. Masucci.

Q Did you ever secure any loans on 22 Gladstone avenue? A No.

Q Did you ever know any of the tenants that were living there? A No.

Re-direct examination by Mr. Brogan.

Q Weren't you the president of Shapiro's real estate company? A Yes.

Q And as president you signed a great many papers, didn't you? A Yes, I did.

Q Didn't you ever make any inquiry what they were? A No.

Q Didn't you in fact realize you were a legal dummy? A No.

By the Court.

Q You know what that means? A An intermediary.

By Mr. Brogan.

Q A holder of a title for a moment? A To me it was an honorary position.

By the Court.

Q He means did you realize you were a so-called go-between having no particular interest in the transaction but acting as an intermediary through which the transaction was done. Did you realize that? A Not in the full sense.

By Mr. Brogan.

Q You didn't realize there was anything dishonest or sinister about the deals? A No, I didn't.

Q You knew how you were holding titles and passing titles just for the accommodation of Shapiro in his various deals, isn't that so? A Yes.

By the Court.

Q Did you hold titles to other property for Shapiro? A I don't know, your Honor.

Q You said *yes.* I want to find out what you are talking about. A I know sir, but I don't know.

By Mr. Brogan.

Q You don't know you held title to this? A I don't know.

Q Do you know now the legal significance of your having executed these papers? A I do.

By the Court.

Q What is it in your estimation? A The legal significance?

Q Yes. A I take that back.

Q Be careful now because Mr. Brogan does not want to mis-lead you. A Yes, sir.

By Mr. Brogan.

Q How long have you been president of the realty company? A That I don't know. He came up to me one day and said "I am making you an officer." When he did or what month I don't remember.

Q And you knew that was a position of confidence, trust and responsibility? A Right.

Q And you signed any and all things he put before you. He said "Sign here," and you signed it? A Yes.

Q And you signed these papers in that daze, is that right? A That's right.

Mr. Brogan: That's all.

SAMUEL GOLDBERG, a witness sworn in behalf of defendant.

Direct examination by Mr. Brogan.

Q You are the brother of the last witness, are you not? A Yes, sir.

Q What is your business? A Real estate broker.

Q I show you a check which is marked Exhibit D. 7, drawn to the order of Max Goldberg for $129.75, and I show you a second endorsement, and ask you if that is your signature? A Yes, sir.

Q Is that your brother's signature? A No, sir.

Q Who presented this check to you with Max Goldberg's endorsement? A Why, Morris Shapiro gave me that check.

Q What did you give him? A I returned him a check in exchange for that one. It was with reference to a loan I made to him some months previous. I loaned him twenty-five and about October 22nd I asked him for the money. He pulled a check out of his pocket and said "I haven't the cash but I have a check here for some work I have done and you can deduct your twenty-five and give me the remainder of it." So I took the check and saw it was made out for $129.75. I gave him my return check of $104.75, dated it the same day and deposited that check in my account.

Q So neither you nor your brother so far as you know got any of this $129.75? A No, sir.

Mr. Brogan: That's all.

Cross examination by Mr. Masucci.

Q Have you got the check of $104.75 with you that you gave to Mr. Shapiro when you got that check marked Exhibit D. 7? A Yes, sir, I have got it.

Q Is this the check dated October 22, 1928 for $104.75 the check you refer to? A Yes.

Mr. Masucci: I offer it in evidence.

Mr. Brogan: No objection.

(Check marked Exhibit C. 11 in evidence.)

Mr. Masucci: That's all.

The Court: We will now take a recess. I will continue this hearing to December 24th.

IN CHANCERY OF NEW JERSEY.

Between LILLIAN CLAWANS, *Complainant,* *and* ORDWAY BUILDING & LOAN ASSOCIATION, *Defendant.*	*On Bill, etc.* *Testimony.*

Continuation of Final Hearing before Hon. JOHN J. FALLON, Vice-Chancellor, Chancery Chambers, Jersey City, December 24, 1929.

Appearances:

Mr. F. D. Masucci, for complainant.

Mr. Joseph Susskind, for defendant.

MORRIS W. SHAPIRO, a witness being sworn in behalf of defendant.

Direct examination by Mr. Susskind.

Q Mr. Shapiro, you were the counsel for the Ordway Building & Loan Association in 1928 and part of 1929? A Yes, sir.

Q Was there an application made while you were counsel on the premises known as 22 Gladstone avenue, Newark? A Yes.

Q Who made that application?

The Court: Why not show him the application?

Mr. Susskind: Your Honor supposes I am talking about this witness' application.

I am talking about a general application for a loan.

Q Was there an application for a loan made? A Yes.

Q Who made that? A Max Goldberg.

By the Court.

Q Max Goldberg? A Yes, sir.

Q Would it interest you to know he has sworn that he knew nothing about the transaction? In view of that will you say that it was Max Goldberg? Is he in court?

Mr. Susskind: No, your Honor.

By Mr. Susskind.

Q When you mean Max Goldberg, do you mean acting for himself or—

The Court: I don't care what he means.

By Mr. Susskind.

Q Will you explain how that application came to be made to the Ordway Building & Loan?

The Court: How would he know? He was not secretary.

Mr. Susskind: He may have knowledge as to how the application came in. I think he has.

The Witness: It may be that Max Goldberg—

Mr. Masucci: I object to the guesswork.

By Mr. Susskind.

Q Tell us how it came about. A I applied for that loan myself in the name of Max Goldberg.

The Court: What he said now bears out what the president of the association said.

By Mr. Susskind.

Q Do you remember when you applied for the loan? A I don't remember when.

By the Court.

Q Did you apply in writing?

The Court: Show him the application. What is the exhibit number?

By Mr. Susskind.

Q I show you Exhibit D. 3. Was this the first application that was made—I am referring to a loan on 22 Gladstone avenue from the Ordway Building & Loan Association? A Yes, sir.

Q Your answer is yes? A Yes.

Q When is that application dated? A It is dated July 28th.

Q 1928? A Yes.

Q Do you recall the date of the meeting in July of the Ordway Building & Loan Association? A It was the fourth Tuesday in July.

Q If I inform you that the fourth Tuesday in July was July 24th will that refresh your recollection as to when the application was made? A I don't know when it was made. Of course it might have been made a few days before the meeting.

Q Was there an application made originally with or without a written paper? A We have these at the meeting.

Q What I am getting at is this, before the meeting did you tell anybody you wanted a loan? A Yes.

Q Who did you talk to? A To the president.

Q Did you have that paper written up at that time? A I don't know whether I did or not at that time.

Q It has been testified here before that a loan—

Mr. Masucci: I object.

The Court: I don't think you ought to tell him what was testified to before.

Mr. Susskind: I have got to base the question—

The Court: This is rebuttal.

Mr. Susskind: Here is what I want to say. Here is a witness that is brought here to testify. I won't say he is my witness or Masucci's. He is here for the benefit of the court to tell the truth. When I ordinarily bring a witness into court I know what he is going to testify to.

The Court: But don't direct his attention to—

Mr. Susskind: I won't, but your Honor must give me leave to inquire into this matter.

The Court: I will give you as much leave as you want but I don't want you to tell him what was testified to before. It may influence his answer.

Mr. Susskind: It is difficult for me to get out of this witness the facts as they are without drawing some conclusion—from what I know from the testimony before.

The Court: It may be difficult for you to have the facts brought out by this witness that you want.

By Mr. Susskind.

Q You say you did talk to the president about a loan? A Yes, I called him up and told him we have an application for a loan on this particular piece of property and they sent a committee out to look it up.

By the Court.

Q Just what did you tell him? He has already testified. A I told him we had an application for a loan of eight thousand on the property 22 Gladstone avenue and to have the committee appointed to inspect the property.

By Mr. Susskind.

Q Did you say who was borrowing the money or who was going to borrow it? A I told him I would vouch for the loan.

Q What do you mean by that?

The Court: I don't care about that.

By Mr. Susskind.

Q Did you say anything further? A I would sign the bond if necessary.

Q Did you say anything else? A Not that I remember.

Q Tell us what happened as a result of your conversation, if you know, with the president?

The Court: From your own knowledge, and don't be guessing at it.

By Mr. Susskind.

Q Tell us the facts in the case from your own knowledge. A The thing was brought before the committee. The president appointed a committee—I think it was about six of us. We went out to look at the property and two other pieces of property and we looked the property over.

By the Court.

Q Whom did he appoint as a committee to look over this property—the one that is referred to in the application before you? Don't look at the back of it. I want you to tell me if you know. If you don't know say so. You said he appointed six of you. A Six or seven went out on three applications and then subsequently at the meeting the president appointed a committee to report on that particular loan.

Q You say he appointed them? A He asked for a report.

Q You said he appointed six of you. That included you, did it? That is what you mean when you said six of us? A No, I wasn't on the committee. I went with them.

Q What do you mean by appointing six of us? A He told six men to go out and look at these three pieces of property. That was before the meeting. That's what the president did.

Q Before that meeting which you are alluding to he appointed six men as a committee to go out and look the several pieces of property over, is that right? A Yes.

Q When did those men report back the result of their investigation? A The same night.

Q Do you recall who the committee was that reported on the loan you were seeking? A I don't know which of the six which reported on that loan.

By Mr. Susskind.

Q When did you make that written application? Is it in your handwriting first may I ask you? A Yes.

By the Court.

Q All except the signature. Is the signature in your handwriting? A No, sir.

By Mr. Susskind.

Q When did you write that out? A I can't remember when I wrote it out.

Q Would the date help you any? A It was made before the meeting.

By the Court.

Q If the date is 7/28/28 would that indicate you wrote it on that date? A No, sir.

Q Did you ante-date it? A That date is not in my handwriting.

Q In whose handwriting is it do you know? A It don't look like mine.

Q It has been testified by the president it is all in your handwriting except the signature.

Does that refresh your recollection? A Everything but the signature and the date is mine.

Q It has been testified by Goldberg that everything on the paper Exhibit D. 3 other than the name Max Goldberg is in your handwriting? Does that refresh your recollection? A The date doesn't look like my handwriting.

Q Will you swear it is not your handwriting? A I can say yes. The committee—

Q Put down there in ink "7/28/28."

(Witness writes 7/28/28.)

Q Now these figures on the back of that paper under the heading "Committee Reports," those are your figures? A Yes, sir.

By Mr. Susskind.

Q Was the loan granted? A Granted for seven thousand.

By the Court.

Q How do you know what was done about it? A I was there at the meeting.

Q Tell us who was at the meeting?

By Mr. Susskind.

Q Do you know who were at the meeting? A Yes, the directors and officers.

Q Do you remember the individual names of the particular ones that were present? A I can remember most of them.

Q If you do remember tell us; if you don't say so. A There was the president. Louis Susskind, the secretary, Barney Plager, Harry Goldfarb was there and Max Lomachinsky, and the

vice-president, I can't think of his name. Loewenthal and several more. I can't think of their names.

Q I show you Exhibit C. 1, which is a contract between Mendel Gross and Jeanette Gross, his wife, and Morris W. Shapiro, and ask you if you ever saw that instrument before? A Yes.

Q Will you tell us how you became a party to that instrument? A I purchased that property for Lillian Clawans.

Q Tell us the story surrounding it. That's all there is to it.

Q You mean you were acting for Lillian Clawans? A She told me to buy the property.

The Court: He purchased it for her.

By Mr. Susskind.

Q How did you come to do that? A Well, she had some friend of her's who owned the property and it was foreclosed and Mendel Gross got hold of it and she was anxious to buy it.

Q Did she talk to you about it? A She told me—

Q What did she say to you about it? A She told me "Go out and buy it and use my judgment on the price and get the best price I could."

Q Did you make an arrangement with Gross about the price? A I think the price was arranged. The broker arranged that.

Q Who was the broker? Mr. Benninger was the broker? A Yes.

Q Do you remember the purchase price? A Nine thousand.

By the Court.

Q Wasn't there some negotiation before the sum of nine thousand was arrived at? A The negotiations were with the broker and Miss Clawans.

Q Did you hear the figure ninety-five hundred mentioned before the sum of nine thousand was agreed upon? A I heard something about ninety-five hundred. I think he was asking ninety-five hundred.

By Mr. Susskind.

Q Did Miss Clawans give you money to buy this property? A No.

By the Court.

Q None at all? A None.

By Mr. Susskind.

Q That contract called for $1,000 deposit? A I think she did give me one thousand as a deposit. I think so.

By the Court.

Q You had better jog your memory. I heard some testimony about it and there are checks in evidence. A I don't remember very distinctly. I am testifying as far as I can.

By Mr. Susskind.

Q I show you Exhibit C. 2, and ask you if that is the check of one thousand which you refer to? A Yes.

Q That check is dated July 10, 1928? A That's the thousand I advanced.

Q And this was returned to you after you advanced it? A That's right.

Q Did you get any more money from her for this property? A No, not for this property. We had some accounts together.

The Court: We are only concerned about this property now.

By Mr. Susskind.

Q I show you a check dated August 1, 1928, marked Exhibit C. 3, made by L. Clawans to your order for $2,000. Can you tell us what that check was for? A I don't remember.

By the Court.

Q Miss Clawans has testified it was for this transaction you are now discussing. Does that refresh your recollection? A I would have to refer to my books to find out. I can't remember offhand.

Q You have sworn she never gave you any more money than the thousand. What did that $2,000 check relate to? Let him see it, Mr. Susskind. A I can't say.

By Mr. Susskind.

Q You can't say what this check is for? It might have been on account of the purchase price? A I don't remember.

Q If she did give you that on account of the purchase price of this property did she ever give you any more money—more than the three thousand? A I don't remember. Unless I look at my books I wouldn't know.

Q I show you Exhibit C. 7, some sort of a statement between you and Miss Clawans. Do you recall what that is? A Yes, that is in my handwriting.

Q Does that refresh your recollection as to this Gladstone transaction? A That's the statement I made out.

By the Court.

Q That relates to the property mentioned in that contract for property you just identified? A Yes, sir.

Q Well, now having seen that does that refresh your recollection as to whether you received those two checks—one for one thousand and one for two thousand, from Miss Clawans? Turn it over on the other side. A I don't remember any facts or figures except what I see here.

Q This is all your handwriting you are looking at? A Yes, sir.

Q Can you explain for us on the record just what those items bring to your mind as to the transaction? It starts off by saying $10,000 on top. A Ten thousand.

Q Can you decipher it for us and tell us what those figures mean with reference to this transaction? Start off at the beginning.

By Mr. Susskind.

Q You know what that ten thousand was, Mr. Shapiro? A I don't recall what the ten thousand is.

By the Court.

Q Mr. Shapiro, it has been testified to by Miss Clawans there was a mortgage transaction be-

tween you and her, and at the time this paper was made up that you now have before you you were indebted to her in that mortgage transaction. Does that refresh your recollection in anywise as to this paper, and has that ten thousand item any relation to that transaction between you and Miss Clawans? A I don't remember any ten thousand transaction.

By Mr. Susskind.

Q Did you own property on Osborne Terrace? A The M. & M. Construction Company did.

Q And who is the M. & M. Construction Company? A Morris Karetnich.

Q And who else? A Myself.

Q What was that, a partnership or a corporation? A A corporation.

Q Now this corporation, did it have any business with Miss Clawans with reference to a $10,000 mortgage? A I think there was a mortgage.

By the Court.

Q Was there a mortgage transaction between you of $10,000? A I don't remember now.

Q Can you tell us what those figures on the back of that sheet relate to? You said it related to Gladstone avenue? A This part of it does (indicating).

Q You mean the typewritten part and some other figures? A This part here (indicating).

Q You mean the typewritten part? A The statement of closing.

Q Can you decipher for us that statement and tell us what it means? There are no words before the figures—just a row of figures. A I can't decipher that.

Q It is your handwriting? A Yes.

Q You are referring to the back of the sheet where there is some pencil writing? A Yes.

By Mr. Susskind.

Q Referring to the typewritten space on this sheet it is divided in half by a line. You say the upper part represents the closing of the title at 22 Gladstone avenue with Mendel Gross? A Yes.

Q What does the lower part represent—typewritten and pencil marks? A That represents the amount I paid out and what I received.

Q What do you mean the amount you paid out? A The amount I paid to Gross. The money I advanced.

Q You mean that is a statement of account between you and Miss Clawans? Is that what you mean? A It is what I expended.

Q For whom? A For Miss Clawans.

Q In other words it is an account between you and Miss Clawans on this particular transaction 22 Gladstone avenue? A Yes.

By the Court.

Q Do you mean that? A As far as it does.

Mr. Susskind: That is what it is your Honor.

The Court: If that is so then I want to know what the figures on the back are.

By Mr. Susskind.

Q In the typewritten statement you say "Advanced $37,868.67." How did you advance that? A By check.

Q Whose check? A Check of six thousand—six or seven thousand of the Ordway Building & Loan Association.

Q How did they figure in on this? A They granted the loan on that property.

Q You mean you made an application for a loan and got money from the Ordway with which to close this title? A Yes.

Q Did Miss Clawans know about it? A Yes, she did.

Q Who told her about it? A She told me to take title to the property for her and get the money for her.

Q Did she know about the Ordway loan? Tell us what you said to her and what she said to you about that? A I don't remember how the thing started—the exact conversation, but I told her I would get a loan of some money to take title to the property.

Q Did you tell her where? A Yes. I owed her some money and I told her I didn't have enough.

The Court: That is what she testified to.

By Mr. Susskind.

Q Tell us about that. A I told her I didn't have enough to take title to the property.

By the Court.

Q What did you owe her at that time? She has mentioned a considerable sum of money. What do you say about it? She mentioned it in connection with this mortgage transaction. I am anxious to hear what you have to say. A I don't remember how much I owed her.

Q What did you owe it to her for? A We had several transactions.

Q Did you owe her $10,000 on a mortgage transaction? A I think that refers to a mortgage made by the M. & M. Construction Company for ten thousand.

Q Made by the M. & M. Construction Company to who? A Lillian Clawans.

Q For ten thousand? A Yes.

Q Was that mortgage past due at the time you had this transaction with respect to the Gladstone avenue property? A I don't remember the terms of it.

Q My recollection is she testified it was past due and she was seeking the money from you. Does that refresh your recollection any? A No, sir.

By Mr. Susskind.

Q Does it refresh your recollection any if the ten thousand was the amount due on a mortgage on the Osborne Terrace property?

By the Court.

Q The item mentioned on the back of the sheet? A I think it was.

Q If Miss Clawans said that was so is that true? A I am testifying to what I know.

Q We are trying to get this thing straightened out. Just testify to what you remember. If this ten thousand was the ten thousand owing to Miss Clawans on the Osborne Terrace mortgage which you say was from the M. & M. Construction Company, would the rest of the statement then be clearer in your mind? A I don't remember

making the statement, but it is in my handwriting.

Q The first item is ten thousand? A Yes.

Q The next item is $150.00 interest to July? A Yes.

Q The next item is $100.00. Do you know what that is for? A I don't know.

Q And then another item below that of two hundred. Do you know what that is for? A No.

Q The total of your calculation is ten thousand four hundred and fifty? A Yes.

Q Then you have written under that the figures 58,094.69. That's your handwriting representing a total of $4,555.31 with the word "due" after it. Do you recall now what that means? A I don't recall the statement at all except it is in my handwriting.

By Mr. Susskind.

Q Mr. Shapiro, after looking at the face of this paper Exhibit C. 7, and then the pencil memorandum on the rear of it, does anything there recall to your memory the transaction that took place at that time of which this paper was written? A I don't remember any part of this transaction except from what I see here.

The Court: We are trying to refresh your recollection of it.

Mr. Susskind: We will leave it go for a while.

By Mr. Susskind.

Q I show you Exhibit D. 2, which is a check signed by you as trustee of the Ordway Building

& Loan Association to the order of Mendel Gross. Do you recall what that check was for? A It was given on the closing of the Gross title.

Q You mean part of the purchase price? A Yes.

Q How did you come to make that check on account of the Ordway Building & Loan transaction? A A check given to me by the association.

Q Pursuant to what? A Pursuant to the passing of that loan—the granting of the mortgage.

Q You mean it was in payment of the loan granted? A Yes.

Q Do you remember on what conditions the loan was granted? A Five hundred was withheld for repairs.

Q How much was the loan granted? A Seven thousand.

Q And five hundred withheld for repairs? A I think it was five hundred.

Q I show you Exhibit D. 5, which is a check of the Ordway Building & Loan Association in the sum of $6,254.75, and which is made to the order of the trustee account Ordway Building & Loan Association, and which is endorsed on the back for deposit trustee account Ordway Building & Loan Association—Morris W. Shapiro, Trustee, and ask you do you recall what that check was for? A A check made in payment of the mortgage loan?

Q You mean it is a check from the general funds of the association drawn to the general trustee account? A Yes.

Q And you drew this check on the funds represented by that? A Yes, sir.

Q I show you a check marked Exhibit D. 6, which is another check on the trustee account of the Ordway Building & Loan Association, made payable to the order of yourself in the sum of $125.00. Do you recall what that check was for? A I don't recall what that check was made for.

Q Mr. Shapiro, I show you a check book marked Exhibit D. 8, and ask you if you recall that book? A Yes.

Q And this book is what? A Trustee account of the Ordway Building & Loan Association.

Q And I refer you to the stub marked No. 57, and ask you if you can recall what that check was for? A That was for a search fee in the matter.

Q You mean a fee to you for examination of the title of 22 Gladstone avenue? A Yes.

By the Court.

Q Did you make the search on the property? A Yes, sir.

Q What did you do with it?

Mr. Susskind: Your Honor I will introduce it. I have it. I might as well introduce it now.

By the Court.

Q What did you do with the search? A It was turned over to the building and loan association.

Q You certified the title to it, did you? A Yes, sir.

By Mr. Susskind.

Q I show you what purports to be an abstract of title and ask you to examine it and tell us what it is? A An abstract of title to 22 Gladstone avenue.

Q Is that the abstract of title which you furnished the Ordway Building & Loan Association on this mortgage loan? A Yes, sir.

Mr. Susskind: I ask this be marked.

(Abstract marked Exhibit D. 13 in evidence.)

By the Court.

Q Was this abstract delivered to the Ordway Building & Loan Association before the mortgage transaction was made and the moneys paid out? A The search was made, but the search I don't know when the search was turned over to it. It might have been a few days subsequent.

Q You mean to say the building and loan association permitted you to pay out moneys on this mortgage transaction before you submitted an abstract of title showing what the conditions were? A Yes, sir.

Q They did permit you to do that? A Yes, sir.

By Mr. Susskind.

Q Mr. Shapiro, you were counsel for some other associations? A I was.

Q Did you ever deliver an abstract of title prior to the time the moneys were laid out?

The Court: I will overrule the question with respect to other associations.

By Mr. Susskind.

Q In this association did you in any case ever submit an abstract of title prior to the time the moneys were paid out? A No, sir.

Q I now show you Exhibit D. 7, which is check No. 58, and is on the trustee account of the Ordway Building & Loan Association, made to the order of Max Goldberg and signed by yourself as trustee, and ask you do you know what that check was for? A That was a check for the balance of the moneys pertaining to that loan.

By the Court.

Q And to whom paid? A The check is made to—

Q Don't depend upon the check. I am asking you if your recollection is clear on it. If it isn't you had better be careful. I am telling you that because we have a lot of testimony here about that check. A I don't remember where the money eventually went to. It hasn't any endorsement on it.

Q It is not Max Goldberg's endorsement either, is it? It is not his handwriting, is it? A I am not familiar with his handwriting.

Q You are not? You have seen him sign paper after paper for this real estate. If you can't say, say so. A I wouldn't swear.

Q He has sworn it is not.

(Witness does not answer.)

By Mr. Susskind.

Q Mr. Shapiro, the total of these three checks that I show you which are marked Exhibits D. 2,

D. 6 and D. 7, represents what sum? A It represents the amount of $6,254.75, the amount of the check.

Q The amount of the check advanced by the Ordway Building & Loan Association in payment of this loan or representing sixty-five hundred of the loan, which check is marked Exhibit D. 5? A Yes.

Q When did you close title Mr. Shapiro to the Gladstone avenue property? A I don't remember the exact date.

Q Did you close it on the date set in the contract? A I don't know.

Q If you look at the contract would it refresh your memory any? A The contract called for closing August 3rd.

Q Did you close it on August 3rd? A I don't remember.

Q If I informed you that the mortgage of the Ordway Building & Loan Association—the bond and mortgage are dated August 3rd, would that refresh your recollection any? A It would be dated the date of the deed.

The Court: It would if everything was regular.

By Mr. Susskind.

Q The deed introduced in evidence is dated August 3rd, the same date as the bond and mortgage? A I think it was closed on that date because time is of the essence of the contract. That is the reason I believe it was closed on that date.

Q I refer you to the bottom of the contract—"It is understood by and between the parties hereto that time is of the essence of this agreement"? A Yes, sir.

Q At the time this application was made to the Ordway Building & Loan Association did you inform any one there that Lillian Clawans was the person for whom you were buying this property? A I don't remember whether I did or not.

By the Court.

Q The president of the association said you wanted to buy this property in at the mortgage foreclosure sale, and you wanted to know if they would make a mortgage loan to Goldberg—to have the mortgage go through Goldberg. Do you remember that conversation? Will that refresh your recollection any? A I did say something to him at the time we were inspecting the property about some foreclosure. I don't remember what it was.

Q If you had made application to the Ordway Building & Loan Association for this loan why didn't you fill out a formal application and sign it in your own name? A I made the application in the name in which the title was going to go.

Q The president said you asked him if they would let you make a mortgage transaction through the association on a piece of property you were to buy at a foreclosure sale and have the transaction go through in the name of Max Goldberg. Do you remember that? A I might have said it. I don't remember.

Q But the contract for the purchase of the property is in the name of Morris Shapiro. That is you? A Yes.

Q That was the person to whom the title was to go? A I never intended it.

Q But so far as the building and loan association is concerned. That is a copy of the contract? A I didn't show them any contract.

Q On the back of the paper that is your handwriting, August 3rd, 1928, and that purports to be an assignment of that contract to Max Goldberg. Did you tell Max Goldberg you were assigning that contract to him? A I don't remember what I told him about the transaction. He wasn't interested.

Q You never handed this contract to Max Goldberg after that assignment, did you? You said he was not interested. He was an employee in your office—a clerk? A Yes.

Q Then you had the deed made out from Gross to the name of Max Goldberg, did you? A Yes, sir.

Q Why did you do that in view of your statement you told us you were buying the property in for Miss Clawans? A Well, I didn't want to take title to the property in my own name.

Q Why didn't you assign the contract to Miss Clawans? A She didn't want it.

Q How do you know? A She told me so.

Q What did she say to you? A She didn't want her name mentioned in the contract.

Q As a matter of fact, you made a new deed from Goldberg to her of this same property? A Quite some time after.

Q But you did it? A Yes, sir.

Q Did she say anything then about not wanting it in her name? A She didn't want the old lady to know she got her property.

Q The old lady testified she knew Miss Clawans was going to buy the property. Did you talk to the old lady about the transaction? A No, sir.

Q Now, the formal application, Exhibit D. 3, appears to be in the name of Max Goldberg. Do you notice that? A Yes.

Q When was that name Max Goldberg put on there and under what circumstances? A I can't remember that, your Honor.

Q Let me say to you that name was not on there the date you submitted the formal application Exhibit D. 3 to the president of the association and the board of directors, was it? A I don't remember.

Q Well, the president has sworn it was not on there at that time. Can you tell me when that name Max Goldberg was put on it with respect to the meeting on the fourth Tuesday in July? A I can't remember when it was put on.

Q Max Goldberg never got a dollar of that money, did he—the money paid by the Ordway Building & Loan Association? A Except that last check I don't remember where that money went to.

Q Max Goldberg's brother testified you owed him some money and he came to look for it and you told him you didn't have it but you had this check, and if he would give you the difference in cash you would give him the check. A I never owed him any money.

Q You never owed him any money? A No, sir.

Q Do you remember getting cash from Max Goldberg's brother Samuel Goldberg for that check? A I wouldn't say whether I did or not.

Q Now, if you bought this property in for Miss Clawans why didn't you have this deed made to her from Max Goldberg immediately after Max Goldberg acquired the title? A She didn't want it.

Q You mean to say she authorized you or told you after the deed was made to Max Goldberg you should make an application to the Ordway Building & Loan Association for a mortgage loan of $8,000? A She didn't mention Goldberg's name, but she told me to buy it in my name.

Q And then you took the precaution to transfer the contract to Goldberg? A Yes.

Q Nobody authorized you so far as Miss Clawans is concerned to make an application to the Ordway Building & Loan Association in her behalf for $8,000 after the title was placed in Goldberg?

Mr. Susskind: Your Honor is asking that under a false apprehension. The application wasn't made after Goldberg took title. It went through before. The money was used on the title.

The Court: You say that.

Mr. Susskind: I am all right so far as this, that six thousand of the Ordway was paid to Goldberg. The dates show that.

The Court: One check is dated July 26, 1928. This formal application is dated July 28, 1928.

Mr. Susskind: August 3rd.

The Court: Look at the one dated July 26th.

Mr. Susskind: July 26th is a check from the Ordway to Mr. Shapiro on the trustee account.

The Court: So if this application blank bears date July 28th the Ordway turned the money over two days before that is dated.

Mr. Susskind: That is one of the questions I want to clear up.

The Court: I will withdraw my question. You can go ahead.

By Mr. Susskind.

Q You spoke about a reason which Miss Clawans gave you for not wanting title taken in her name. When did she tell you that? A She didn't want the old lady to come around bothering her.

Q Who do you mean by the old lady? A The name I don't remember.

By the Court.

Q Is that what she said, she didn't want the old lady here or did she mention her name? A She mentioned old lady and she mentioned the name also.

By Mr. Susskind.

Q Do you remember the old lady's name?

The Court: You should have him tell what was said.

By Mr. Susskind.

Q Tell us what was said. A She said she didn't want the old lady to bother her and have some claims on the property after she took title.

Q Did you know who she referred to?

The Court: I will overrule that. That would be a guess.

The Witness: The old lady was in the office at the time she spoke to me.

By the Court.

Q You mean she said that to you in the presence of the old lady? A We were inside in the private office.

By Mr. Susskind.

Q You didn't know who she was referring to as the old lady? A Yes.

By the Court.

Q Do you know from what she said or are you guessing? A No, what she said.

Q Tell us what Miss Clawans said. A Well, she explained to me the situation.

Q Tell us what she said, not what she explained to you. A Well, there were several conversations.

Q The conversation in which she mentioned the old lady to you. A She told me that old lady—there was a lawsuit which dragged for a couple of years and she had expected to get a lot of money for the old lady and she would like to buy the property, but she didn't want the old lady to have any claims on it after she purchased it. Because also the old lady was going to lose it and she would like to have it herself.

Q Was that before or after the actual sale in foreclosure this conversation took place? A I think it was right around the time of the foreclosure.

Q Isn't it the fact it was after the foreclosure sale took place and the title was in Gross she asked you to go and negotiate the purchase of the property for her? A The first conversation she had with me was prior to the foreclosure sale.

Q You didn't go anything then, did you? A No, sir.

Q After the sale was there a negotiation between you and Gross or somebody in behalf of Gross? A Between the broker and Gross.

Q You mean a broker representing you? A Representing Miss Clawans.

Q Directly or through you? A Directly.

Q So that a broker representing Miss Clawans to your knowledge had negotiations with Gross? A Yes.

Q She had communicated that fact to you? A Yes.

Q How did you come to negotiate subsequently then? A Miss Clawans told me to get in touch with Gross' attorney and arrange a date for the drawing of a contract.

Q Hadn't she told you she would like to have you buy the property in for her? A Yes.

Q What did she say to you about that? A She told me to get in touch with Gross' attorney and arrange for the contract and arrange about the purchase of the property.

Q What did she say to you about purchasing the property for her? You were to purchase it for her you said? A She told me to purchase it in my name.

Q And you are after telling us you didn't want to have any property in your name, is that right? A Well, I didn't purchase much property in my name.

Q You told us you didn't want it in your name? A I didn't tell it to her at that time.

Q You said that was the reason you transferred it to Goldberg? A Yes.

Q Did you talk to her and tell her you were going to transfer it to Goldberg? A Yes.

Q When did you have that talk with her? A I don't know whether before the title closed or after.

Q What reason did you give her for transferring the contract to Goldberg? A I told her I didn't want to take it in my name.

Q Did you tell her you had made an application to the Ordway Building & Loan? A I told her I presented it.

Q Did you tell her you had presented it in the name of Goldberg? Did you tell her Goldberg was the one that applied in writing to the Ordway? A I didn't say so in so many words.

Q If your conduct was honest and aboveboard in this transaction why didn't you tell her what was going on? You don't answer. A I can't answer the question why.

By Mr. Susskind.

Q In your statement, Mr. Shapiro, you state here a check from Clawans 2000. That indicates does it not you received a $2,000 check from her in reference to this Gladstone avenue property? A Yes.

Q And it also represents a check for $1,000 from her which was a deposit? A It appears that way.

By the Court.

Q Mr. Shapiro, if that $2,000 item which you just referred to indicates you received that sum in that transaction, what did you mean before by saying you didn't receive any? A I didn't remember receiving any.

Q The statement refreshes your recollection? A The check appears with my endorsement.

By Mr. Susskind.

Q That makes $3,000, does it not? A Yes.

Q At the closing you paid for this property—How did you pay for this property on the closing of title? A I gave him the six thousand check.

Q What do you mean the six thousand check? A The trustee account of the Ordway Building & Loan.

Q You mean this check, Exhibit D. 2? A Yes.

Q Did you give that as part of the purchase price? A Yes.

Q How did you pay the balance of the purchase price which was $9,000? A By my own check I believe.

Q $1,000 was the deposit originally? A Yes.

Q You mean the balance represented by the $2,000 check Miss Clawans gave you? A No, I believe I gave my own check.

Q That check is dated August 1, 1928 and appears to have been deposited August 2, 1928 by you in the Franklin & Washington Trust Company. That was deposited in what account by you? A My personal account.

Q And you used the funds derived from this check as a balance to close this title, is that right? A I gave my check.

Q Yes, but drawn on funds deposited with this check? A I don't know whether that check was in that bank or a different check.

Q What I am trying to bring out the total moneys received by you from Miss Clawans is how much for this property I mean? A There are checks here for three thousand.

New Jersey State Library

By the Court.

Q You won't say that is all you got from her, will you? A I won't say whether it is.

By Mr. Susskind.

Q Where did you get more money from for this property? A There might have been other transactions which I don't recall.

Q Now the purchase price of this property was made up of $9,000 and you used $6,000 of the Ordway's money. How much did you use of her money in this transaction? That is simple mathematics, isn't it? A How much of her money?

Q Yes, did you use in this transaction.

By the Court.

Q You received two checks, one of one thousand and one of two thousand. Did you use that three thousand together with the six thousand from the Ordway? A Yes, sir.

By Mr. Susskind.

Q From what we have in evidence it appears on August 3rd you closed that title. Where did you close it? A In the office of Simon Fisch.

Q And he represented who? A Mendel Gross.

Q The vendor of this property? A Yes, sir.

Q And you received a deed that date from Gross and his wife to Max Goldberg for 22 Gladstone avenue? A Yes.

Q When did Goldberg sign the bond and mortgage to the Ordway Building & Loan Association? A I can't remember when he signed it.

Q Now, Mr. Shapiro, on August 3rd, after you received the deed from Gross in the name of Max Goldberg, did you see Miss Clawans? A I saw her after that but I don't remember how soon after it.

Q Did you see her the same day? A I don't remember whether I saw her the same day or not.

Q Did you go to Miss Clawans' office on August 3rd with the Goldberg deed—the deed from Mendel Gross to Goldberg which is marked Exhibit—I am talking about the deed from Mendel Gross to Max Goldberg which is Exhibit C. 5? Did you go to Miss Clawans' office that date with that deed together with any other instrument? A I don't remember whether I did or not.

Q I show you Exhibit C. 6, which is a deed from Max Goldberg to Lillian Clawans. Did you have that deed at her office on August 3rd? A No.

Q Did you have any deed from Max Goldberg to Lillian Clawans on August 3, 1928? A That deed is recorded August 6th.

Q You mean the deed from Gross to Goldberg? A Yes.

Q Recorded August 6th. Now I am talking about the deed from Max Goldberg to Lillian Clawans or any deed. Did you have any deed from Max Goldberg to Lillian Clawans with you on August 3rd which you showed to Lillian Clawans? A I don't remember whether I did or not.

Q Did you have any other deed besides this one drawn at any time—Exhibit C. 6 for 22 Gladstone avenue, from Max Goldberg to Lillian Clawans? A Besides this?

Q Yes. A No.

Q You never had another deed. Then if you did bring a deed to her office in August, is this the deed?

The Court: He does not remember whether he was there or not.

Mr. Susskind: I will withdraw it.

By the Court.

Q Is your handwriting on Exhibit C. 6 there? A Yes.

Q Why did you write it in ink? Why didn't you have it typewritten if it was done simultaneously with the other transaction? A When the stenographer made it out— It is customary in making out deeds by a stenographer to leave it in blank until it is used.

Q Look at the other deed and see if it was typewritten? A This was not prepared by me. It was prepared by Simon Fisch.

Q The contract Exhibit C. 1, was that prepared by you? A By Simon Fisch.

Q By Simon Fisch too? A This deed Exhibit 6, I don't remember when it was drawn.

Q Take a look at the date of record. It was recorded long after the other one. What is the date of record on that deed? A June 7th.

Q What year? A 1929.

Q How can you explain the keeping of that deed from record all that time, that is, from— A At the request of Miss Clawans.

By Mr. Susskind.

Q What did she say about it? A She told me when I purchased the property she didn't want her name in the property.

Q And why was the recording of this deed withheld? A For that reason.

Q This deed is dated January 3, 1929, and the date is written in in ink, and it is recorded on June 7, 1929. A When is it acknowledged?

Q It is acknowledged January 3, 1929, before yourself. Now was this deed recorded by you? A No, Miss Clawans recorded it.

Q How did Miss Clawans get this deed from you? A I gave it to her.

Q When did you give it to her? A To the best of my recollection in January at the time it is dated.

By the Court.

Q My recollection is she received it by mail. Does that refresh your recollection any? A By mail?

Q Yes. You say you delivered it to her? A I don't remember ever mailing any papers to her.

By Mr. Susskind.

Q Mr. Shapiro, Miss Clawans' testimony was that she received this in the mail I believe on June 4th—that is three days before it was recorded. Where were you on June 4th? A June 4th?

Q I will recall that question. Were you in Newark on June 4th? A No.

Q Isn't it so at that time that you left Newark and no one knew where you were? A That's right.

By the Court.

Q When did you leave Newark? A The third.

Q What time of the day or night? A About seven o'clock.

Q In the morning or evening? A In the evening.

By Mr. Susskind.

Q Before you left Newark did you mail this to Miss Clawans? A To the best of my recollection I never mailed her any papers.

The Court: Wasn't her testimony she received it in the mail on June 4th and took it to Mr. Masucci and had a talk with him, and as a result of the talk she took it for recording?

Mr. Susskind: I don't recall the testimony.

Mr. Masucci: Yes, sir.

The Court: She received it in the mail on June 4th and when she received it she took it to Mr. Masucci and talked to him and she recorded it.

Mr. Susskind: It wasn't recorded until June 7th.

Q Now, Mr. Shapiro, the Ordway Building & Loan Association received payments on account of this mortgage loan. Who made those payments, if you know? A I did.

Q From whose money? A My money.

By the Court.

Q Why did you do that if it was Miss Clawans' transaction? A Well, I expected to be reimbursed or have some additional statements made which would show all transactions.

Q This deed that has been referred to, the one dated January 3, 1929, explain to me if you will why you didn't make this deed from Goldberg to Lillian Clawans prior to that date, January 3, 1929? He received his deed by deed of August 3, 1928. A She didn't want the title.

Q Didn't you want to protect her? Didn't you appreciate that if Max Goldberg died with that title in his name his relatives might claim it? You didn't obtain any declaration of trust from Goldberg running to her or in her behalf? A No, sir.

Q Didn't it occur to you that leaving that title in Max Goldberg's name that you might do her a great injustice in the event of his death or in the event he had a judgment rendered against him whereby he might have the property taken from him? A He was in the office and I felt it was all right.

Q Didn't you want to protect Miss Clawans? Here five months elapsed before you took a deed from Goldberg to Miss Clawans. You knew what perils the title was susceptible to, didn't you? A She didn't want the deed recorded and it didn't make any difference if she had a deed.

Q What prompted you to take the deed on January 3rd? A I thought at that time Max Goldberg was going to leave me or would leave me.

Q Did you do it to protect Miss Clawans? A I took the deed at that time.

Q It was for the protection of Miss Clawans, was it? A Yes.

Q Why did you hold it off the record until six months after—until June 7, 1929? A She didn't want to record it.

Q So that is your explanation for holding it off record for six months and your explanation for getting the deed from him in January was that he was going to leave you. When did he leave you as a matter of fact if he did leave you? Wasn't Max Goldberg in your employ right up to the time you went away? A No, sir.

Q When did he sever his connection with you? A I think about a month or two before.

Q That would be perhaps April or May, 1929? A Yes.

By Mr. Susskind.

Q Mr. Shapiro, did you see the property before title was given by Gross to Goldberg? A Before when?

Q Before August 3, 1928, at the time of the closing of title. Did you see the property? A Yes.

Q How long before? A I went with the committee to inspect it.

By the Court.

Q That's what I am looking for. Tell me the names of the committee that went to inspect it. You said the president appointed "six of us to examine the property." A There was the president, Louis Susskind, Max Lomachinsky, Loewenthal—

Q And you? A And myself.

Q Where did you meet in order to go and visit the property? Did you meet at the building and loan association? A Yes.

Q That was your office? A Yes.

Q The four of you met in your office to go there, did you? A When they came to the meeting—before the meeting.

Q I am speaking about the time you visited the property. Did the four of you go from your office to visit the property? A Yes.

Q Sure of that? A Yes.

Q Did they go in your car or somebody else's car? A There were two cars.

Q There is no doubt in your mind that four of you went to visit that property for the purpose of inspection? A Yes.

Q When did you go, in the morning or evening? A In the evening just before dark.

Q Did you leave there together after inspection? A No, sir, we went to another inspection.

Q That is fresh in your mind, is it? A We had three inspections that evening—whether that was the first or the last.

Q But you are sure on that particular evening you made several inspections and the four of you were together? A There was more than four.

Q Well, those four and some others? A Yes.

Q And did you all return after making the inspections to your office together? A Yes.

Q And was it on that night the meeting was held of the building and loan association? A Yes.

Q And was that the same night the report was made by somebody? A Yes.

Q Who made the report, do you remember, in behalf of the committee as to the Gladstone avenue property? A I think the president. Every one of the three can report.

Q You are sure that was at the meeting. Were these three men at the meeting you spoke of? A Yes.

Q And what's the other man's name? A Lomachinski.

Q Was Lomachinsky at that meeting and did he make a report? A I believe he did—he signed it.

Q His name is now signed to it. Take a look at it. There are only two names signed to it—Wasserman and Loewenthal. A Sometimes they don't bother with the third because it only requires two signatures to an application.

Q Are you sure that Lomachinsky was at that meeting that night and made some statement in connection with it? A I am sure he was at the property. Whether he came back or not I don't know.

Q Was the president there at the property too at the inspection? A Yes.

The Court: I won't say anything more about what was testified to. The fact is it is patent to us that if this witness' testimony is correct then all the others are incorrect.

Mr. Susskind: All I have to say is that sometimes men differ.

By Mr. Susskind.

Q Mr. Shapiro, are you sure that you particularly remember the facts about this examination or are you confusing it with any other examination. I want to get that straight. A I testified to the best of my knowledge.

By the Court.

Q For your information I will say to you the minutes say there were three loans voted upon that night. A I know there were three loans we made to three different properties.

Q Do you remember the names of one of the others? A North 13th street I think it was.

Q Do you remember the name? A Some Italian name—an unfinished building.

The Court: What was that name?

Mr. Susskind: Divino.

The Witness: I don't remember the name but that was the property.

Mr. Susskind: The first one mentioned in the minutes is Centre street, Elizabeth.

By the Court.

Q Is that one of the properties you went to visit that night? A We didn't go to Elizabeth.

The Court: What is the next one?

Mr. Susskind: Ellington street, near Springdale avenue, East Orange.

The Witness: That is one of them.

By the Court.

Q And the last one? A Is 22 Gladstone avenue.

By Mr. Susskind.

Q There was an application for North 13th street? A Yes.

By the Court.

Q So the three properties you looked at were North 13th street, Gladstone avenue, and this East Orange one? A Yes.

Q And there were others besides those three? A Yes.

By Mr. Susskind.

Q When you went to Gladstone avenue property can you tell us when that was when you were first up there?

The Court: You mean for inspection?

By Mr. Susskind.

Q Did you see that property before the committee inspected it? A No.

Q Was that the first time you saw it when the committee inspected it? A Yes, sir.

Q Tell us what the property looked like—what you saw there. A It was a two and a half story stucco house—vacant.

Q All vacant? A Yes.

Q What else? Had the house been repaired recently? Did it appear that it had recently been repaired at the time you looked at it? A There was some painting in there. At the time we looked at it there was no repairs.

By the Court.

Q Was there any scaffolding on the building at that time? A No.

Q Did any of the committee go inside the house, or yourself? A No, we didn't have a key, but we looked through the windows.

By Mr. Susskind.

Q Were there any signs on the property at that time? A No, I didn't see any signs.

Q Weren't there any kind of signs "To Let," or anything else? A I don't remember.

Q Was there a sign on that building bearing the name Lillian Clawans? A I don't remember seeing any sign.

The Court: I think it was "L. Clawans."

(Witness continuing.) No, I don't think so.

By the Court.

Q You mean you didn't look for it? A I didn't see any upon the front of the property. We didn't see any.

Q Will you say there was no sign on the front of that building or in the window which said "Flat to Let. Inquire of Owner—L. Clawans, or 'phone 9909 Market"? A I don't remember.

By Mr. Susskind.

Q You say you looked in through the windows? A Yes, we looked in to see the general outline of the building.

Q What was the condition of the building at the time you looked at it? A Well, it was neglected.

Q What was wrong with it if there was anything wrong? A We didn't see much of the inside.

The Court: It is the exterior we are talking about.

(Witness continuing.) Some of the stucco was torn off.

By Mr. Susskind.

Q What else? A The cement walk was cracked.

By the Court.

Q What about the front porch? Did you notice its condition? A It needed painting.

Q Did you notice the gutters leading from the house? A One of the gutters was down.

Q You couldn't see the roof from where you were to see its condition? I mean the roof of the building? A No, I didn't see the roof.

By Mr. Susskind.

Q Did you look at the foundation? A No, I didn't.

Q Did you go around the building on the outside all the way around it? A I didn't, but some of the committee may have.

Q Did you notice anything wrong with the foundation if there was anything wrong? A I didn't look.

Q Now, getting back to this statement, Mr. Shapiro, or rather independent of this statement, did you have any conversation with Miss Clawans with reference as to how the six thousand necessary to close title to the property was going to be paid? A I don't remember much of the conversations after that.

Q You knew you had to get six thousand to close title to this property? Miss Clawans had given you three. Now how did you arrange with her about payment of the balance of the purchase price? How was she to get title to the property? A I don't understand that question.

Q I will put it in other words. The purchase price of this property was $9,000? A Yes.

Q And Miss Clawans made arrangements with you for three thousand of that. How were you going to make up the balance of the pur-

chase price in order to get a deed from Mendel Gross?

Mr. Masucci: I object to it.

The Court: I will sustain the objection.

By Mr. Susskind.

Q Did you have any conversation with Miss Clawans in reference to payment of the difference in the purchase price of this property between the three thousand she advanced and the purchase price of nine thousand?

Mr. Masucci: May I object to it, it is answered already?

The Court: I would be glad to have him state it.

A I told her I would have to raise some money to close the title.

By Mr. Susskind.

Q Tell us the full conversation. A That is as far as I remember.

By the Court.

Q She testified she talked to you about having you repay to her an amount of a mortgage —a considerable sum, nine or ten thousand, whatever the amount was. Do you remember such a conversation in connection with this transaction? A I don't remember.

Q Is it the fact as stated by her that you were to pay some moneys owing to her on some mortgage transaction, the sum of $5,894.69, which together with her three thousand was the amount

necessary to close the transaction? A I don't remember this sheet at all except for the figures.

Q You can't give me any idea about the figures? A No.

Q You can't tell us what the lower item $4,555.31 due is? A I don't remember this transaction.

Q Miss Clawans has testified, as I understand, that with the sum of $5,894.69 indicated by the statement coupled with the two checks she gave you, one of one thousand and one of two thousand, was the amount to be paid by you to close the title of this property. Do you recall whether that was so? A I don't remember that.

Q And she testified as I recall it that figure of $4,555.31 with the word due after it, that was the balance after the closing of the Gladstone avenue transaction that was still owing by you to her. Does that refresh your recollection? A It doesn't refresh my memory at the present time.

Q Can you tell us what this six thousand item is which is down here? It says "Mortgage 198 Clinton avenue." What does that refer to? A That's a mortgage given to her of $6,000.

Q What are the figures after it? A That was paid for a bonus.

Q What are the figures $4,555.31? That's the difference between the two.

Q That deducted from the other makes a difference of $5,894.69. Is that of any significance to you? A It doesn't refresh my memory of the transaction except from what I see here.

Mr. Susskind: I will turn the witness over.

Morris W. Shapiro, for Defendant, Cross.

Cross examination by Mr. Masucci.

Q You were counsel for the Ordway Building & Loan Association? A Yes.

Q And entrusted to make the search of all titles on which mortgage loans were made? A Yes.

Q And you were representing the Ordway Building & Loan Association at the time this loan of seven thousand was made by the Ordway Building & Loan Association? A Yes.

Q And you at that time informed the president or the board of directors that that loan was a loan of your own? A I told them I would vouch for the loan.

Q Did you tell them it was an application for a loan made by you in the name of Mr. Goldberg? A I don't remember that.

By the Court.

Q If you did make that representation, and it has been testified by the president you did, then you were practicing a deception on the building and loan that Miss Clawans was the real purchaser. You appreciate that? A The committee was satisfied with the security of the loan. It didn't make any difference to them who owned the property. They inspected it and were satisfied with the security.

By Mr. Masucci.

Q And on the night of the building and loan meeting when this loan was considered was the application marked Exhibit D. 3 present? A I don't remember whether it was or not.

Q Would the Ordway Building & Loan Association consider an application without having

a formal application before it? A It has been the custom of the president to have the committee sign it at the time they sign the resolution at the time the loan was passed.

Q Was that done in this case? A Well, I believe it was. I don't know personally.

By the Court.

Q Mr. Susskind, the president of the association, has testified that the exhibit which you referred to was filled out by you. That it was before the meeting at which the loan was considered on whatever date that meeting was, but that it was not signed by the name Max Goldberg at that time. Does that refresh your recollection? A I wouldn't contradict him. That might have been the fact.

By Mr. Masucci.

Q Do you know? A It is in my handwriting and I know it was the custom of Mr. Susskind to have the committee sign at the time it was passed.

Q If the application was made at the time indicated on the application Exhibit D. 3, was the loan considered by the building and loan thereafter?

Mr. Susskind: I object. The minutes of the association were produced here and your Honor saw what they indicated. This question is predicated on an improper statement.

The Court: Those minutes I don't mind telling you as I indicated were very suspicious, and the reason I say it is that the secretary said the name Max Goldberg, the

borrower, was not put in at the night of the meeting. He couldn't tell when. The other name Divino or whatever it was he made the same statement as to that. We ought not to be foreclosed by those minutes. The pen writing in that book is heavier in the name of Max Goldberg and the secretary's attention was called to it. He said it was not put in that night. He said he made rough notes and wrote the minutes up two days later and notwithstanding that he did not put in the name Max Goldberg as the borrower, but the name Max Goldberg was written in sometime thereafter. The impression I got from the testimony was that this transaction may have occurred at the fourth meeting of August, 1928, and if I recall one of the witnesses swore that was the fact and afterwards upon the questioning of whoever was questioning him he withdrew his statement and said it was the fourth Tuesday in July. I have a right to infer it was the truth in the first instance rather than the last.

Mr. Susskind: Mr. Masucci cross examined the secretary as to the minutes on this particular loan, they not being a loose-leaf system, and he positievly stated those minutes in July were written after the July meeting and before the August meeting.

The Court: He said so, but for some reason he left blank pages between several of those meetings.

Mr. Susskind: I want to call this to your Honor's attention. Your Honor said several. Not several but every one of them. Mr.

Masucci, you can look at the minute book yourself.

Mr. Masucci: That minute book is not binding upon us. That is the purpose of this questioning.

The Court: You say every one? I see pages 12 and 13. However I pointed out enough to show you were mistaken.

Mr. Susskind: Now I show your Honor that after this page which shows the attendances after that page 18 and page 19 begins the minutes of March, 1928. After that page 20 is blank. Page 21 has the minutes of April 21, 1928. Page 22 is blank and page 23 has the minutes of May 3, 1928. Page 24 is blank. Page 25 has the minutes of June, 1928. Page 26 is blank. Page 27 has the minutes of July, 1928 which are the minutes in this case, and those minutes run over to the following page, and the minutes of August 28 begin on page 29, which indicates that the minutes always begin on the right-hand side. If the minutes ran over then the balance of that page was left blank.

The Court: If the secretary was telling the truth that may be so. I have some doubt as to his testimony. That secretary is discredited by some of the statements of the witnesses. He said he was only in the office of Mr. Shapiro, which was also occupied by the building and loan association, one hour a week. Yet Mr. Goldberg, who was employed in Mr. Shapiro's office, said the secretary was wrong. The secretary ought to be regarded as a very intelligent man. He is not only secretary of this associ-

ation but several associations and he is an accountant. I was not fully informed of that until the last of his examination. He is a man who is voiced in sagacity and particularity. An accountant ought to be careful of what he is doing and not leave himself open to criticism. Any of you that know anything about bookkeeping know that a bookkeeper should not attempt to erase an item or put some writing in a book which leaves himself open to suspicion. Yet in this minute book this secretary-accountant when writing up the minutes left some blank spaces which he subsequently filled in by adding some names. I don't know how he did it or by whose order and under what circumstances. I am not very keen about the testimony of that secretary.

Mr. Masucci: I withdraw that question.

Q The application marked Exhibit D. 3 shows date of July 28, 1928. Now if the application was made on the date that it shows was it considered at the next meeting following that date? A It wasn't made on that date. That date wasn't on there. It is not my handwriting.

By the Court.

Q Do you know whose handwriting it is? Both the president and Goldberg have said that all the writing on there except the date and the name are your handwriting, and also the writing on the back. A It seems to me like the secretary's handwriting, Mr. Plager.

Re-direct examination by Mr. Susskind.

Q Do you recall how this application, Exhibit D. 3, was made at the meeting of July or August? A I don't remember.

By the Court.

Q Do you remember what time of the month the inspection of that property was made? Was it the beginning or the middle or the last? A The meeting was the fourth Tuesday of the month.

Q And that inspection was that same date according to your testimony? A Yes.

Q When was it you first made application for the loan to the president? Was it at or about the time of this fourth meeting? A I might have spoken to him before the meeting.

Q Do you recall when you did? A I don't remember.

Q He has testified it was the ninth of July you spoke to him. Does that refresh your recollection? A I might have spoke to him.

Q I am trying to jog your memory. He said it was about the ninth of July. A It is possible.

Q I know that, but does that help your recollection of it? A I don't remember.

Re-cross examination by Mr. Masucci.

Q Was this application marked Exhibit D. 3 filled in at the board of directors' meeting at the time that it was considered? A I don't remember that.

By the Court.

Q Didn't you write it out that very night? A It is possible I did but I can't say for sure.

By Mr. Masucci.

Q Were you present at the meeting of July 28th of the Ordway Building & Loan Association? A Yes, sir.

Q And were the three committeemen present —Wasserman, Loewenthal and Lomachinsky? A I think they were.

By the Court.

Q I am not concerned with your guesses. A I am sure of Wasserman. He was there, but Lomachinsky and Loewenthal I know they used to commute to the shore. Whether they went that night or not—

Q You have sworn they went with you to examine the property and after came back to the meeting. A They went back to the office.

Q But you don't remember whether they remained? A No, I don't remember.

Q The minute book checks them as being present at that meeting. Would that refresh your recollection? I don't want to be depending upon the secretary. A I know one of the summer meetings they went down to the shore early. I don't know whether it was this particular meeting.

Q Each one who made the inspection was paid for it, were they? What was it three or nine apiece? A Nine each.

Q Then twenty-seven was to be split up? A Yes.

Q Was that paid out by check that $27.00, do you know? What was the practice as to that? A That was in cash.

By Mr. Masucci.

Q Did you advise the board of directors then of the applicant for the loan of seven thousand?

The Court: You mean at that meeting?

By Mr. Masucci.

Q At that meeting of July or August, 1928? A I don't remember. I might have given them that information.

By the Court.

Q What is the fact? A I don't know.

By Mr. Masucci.

Q Did you advise the president before the application was considered that you were the applicant for this loan of seven thousand on 22 Gladstone avenue, Newark, New Jersey? A I don't think I told him in so many words.

Q Do you know whether you told him in any kind of words? A I told him I would guarantee the loan.

Q Did you advise any of the other committeemen you were the applicant of this loan for seven thousand? A I answered that question before. I said I don't know.

Q At the time that you went to inspect as you state that property 22 Gladstone avenue with the three committeemen—

The Court: There were more than three.

By Mr. Masucci.

Q With the various committmen, did you advise them you were the applicant on that loan? A I don't remember.

Q Did you discuss the consideration of this loan before you met at the board of directors' meeting in July or August, 1928? A Did I discuss it with who?

Q With the committeemen? A Well, the committeemen were discussing the matter among themselves before the meeting.

Q And you were present, were you? A I heard bits of the conversation.

By the Court.

Q Was it ever mentioned to the president or any of the committeemen in your presence that although the application for the loan was to be made in the name of Goldberg you were the real party in interest, or that Lillian Clawans was the real party in interest? A I don't think I mentioned that fact.

By Mr. Masucci.

Q Was the board of directors advised this was an application of Max Goldberg? A I don't remember whether his name was mentioned at that time or when it was mentioned.

Q Was it mentioned at the meeting when this loan was considered? A I don't remember whether the name was mentioned or not.

Q You stated you were willing to guarantee this loan of seven thousand. Did you state that to be the board of directors at the meeting when the loan was considered? A I told that to the

committee. Whether the loan was passed on that condition I don't remember.

By the Court.

Q You never signed any paper obligating yourself to make good the loan, did you? A I don't know whether I did or not.

By Mr. Masucci.

Q You don't remember? A No, I don't remember.

Q When you went with the committee to inspect the premises 22 Gladstone avenue the whole property, you looked all around the building and the ground? A I didn't go in the back.

Q Did you see the piazza or porch? A I don't remember whether I did or not.

By the Court.

Q Did any one drive up in an automobile and stop in the front of the house and join you people or any of the committeemen? A No, I don't remember anybody.

By Mr. Masucci.

Q You stated the house was vacant? A The house was vacated.

Q Did you look into the floors? A I could see it was vacant from the outside.

Q The first floor was vacant? A Both floors.

Q Are you certain the both floors were vacant? A Yes.

Q Didn't you know that Miss Lillian Clawans was living on the first floor of 22 Gladstone ave-

nue, Newark, New Jersey? A No, she was not living there and never lived there.

Q Do you know where she lived in 1928? A On Clinton avenue.

By the Court.

Q How do you know that? A I drove her home once or twice.

Q To Clinton avenue? A Yes.

Q When did you drive her home to Clinton avenue? A Around that time.

Q You know her sister Helen, too? A Yes.

Q Isn't that the place where you drove her sister Helen to? A I drove her also down.

Q The same address? A Yes.

Q That is the address of Miss Clawans' parents, isn't it? A I don't know whether her parents lived there or not.

By Mr. Masucci.

Q Did you look up at the windows of the second floor of 22 Gladstone avenue? A My recollection is that both floors were vacant at that time and I had been in the property several times after that and they were vacant.

Q On this first occasion of your inspection did you try the front door? A I didn't try the doors.

Q Did any member of your committee try the front door that you saw? A I don't know. There were several of them. I didn't pay attention to what each one was doing.

Q Did you notice any bell on the front door or alongside of the front door? A I didn't notice.

Q You didn't notice whether there were any names under the bells, did you? A No.

Q You said something about seeing signs in front of the building? A I don't remember seeing any signs.

By the Court.

Q Did you see any sign in a pane of glass in the first floor apartment about flat to let? A No. I put up some signs myself after that—to let signs.

Q I am speaking about the time when you and the committee were there? A No.

By Mr. Masucci.

Q After the loan was granted you undertook to make a search for the building and loan? A Yes.

Q And you in fact did make a search, is that right? A Not personally. I had it made for me.

Q And you read the title and passed it, is that right? A Yes.

Q When did you typewrite the search or certify to it? A I don't remember.

Q Was it on the date indicated in the search? A I couldn't say.

Q Was it made before or after the date that you certified in the search? A I can't remember that.

Q You certified to the search of 22 Gladstone avenue as of August 6, 1928, is that correct? A I certified on that particular date that this mortgage was the first lien on the property.

By the Court.

Q Is that the actual date the title closed? A It closed on August 3rd, I think.

Q Tell us what the date August 6th means on the closing statement Exhibit C. 6. That is the closing statement, isn't it? A This statement was made in my office.

Q You wouldn't date it other than what the date should be, would you? A The figures I had for the closing were marked on an envelope.

Q It is quite a coincidence that the certificate of search bears date August 6, 1928, and this closing statement bears date August 6, 1928? A The certificate is always dated on the date of the mortgage.

Q You wouldn't make up a closing statement subsequent to the transaction? Wouldn't you make it up in order to know the amount of moneys to be charged? A The statement didn't have to be exact.

Q Why did you have arrears of 1927 taxes computed and it is computed up to the date this statement bears date? A We took it subject to the taxes.

Q There is a computation of 209.40 for taxes? A That was a computation for the purpose of adjustment. Yes, that's right, it was to be one-half of that.

Q And the 1928 tax item below that is $115.73. That is likewise an adjustment of that date? A Yes.

Q And below that it says "One-half of same." In other words you were to bear one-half of those taxes making it 162.37? A That's right.

Q And the balance to be paid to Gross was 8738.63? A Yes.

Q And that would represent the total of nine thousand purchase price? A Yes.

Q And the other items up to the total of 5861.67 represent the figures above as part of the closing—for instance adjusted 7837.63? A Yes.

Q Search $5.00. Memo tax search $1.00. Chancery abstract $3.00. Check Clawans $2,000. That relates to the transaction with Miss Clawans, doesn't it? A I don't remember the transaction except from what I see here.

Q Below that in pencil writing the words "Insurance 139.38" and below that "Supreme Court search 3.64." That's all your writing? A Yes.

Q Do you write shorthand? A No.

Q That looks to me like shorthand writing. Is that your writing? A It looks like $600.00.

By Mr. Masucci.

Q Mr. Shapiro, do you know when you certified to the search and when you delivered it up to the Ordway Building & Loan Association? I am referring to Exhibit D. 13? A I don't remember when it was drawn.

By the Court.

Q Did you certify to it on the date it bears date or did you ante-date it? A I don't remember when it was signed.

By Mr. Masucci.

Q Did you sign it on August 6, 1929? A I don't remember.

Q Do you remember whether you signed it a year after or a year before? A I don't remember.

By the Court.

Q Do you remember you didn't give a search to the building and loan association at all about the time the transaction was closed? Did you withhold it for a year? A Sometimes it is withheld a month or two.

Q You knew, Mr. Shapiro, that when the bank examiners come in they want to see the search? A Yes, sir.

By Mr. Masucci.

Q I want to call your attention to two changes in the search. One is the date certifying to the mortgage which was formerly August 6, 1929. "M. W. S." changed to 1928. Then the date of the certificate originally August 6, 1929, was changed to 8 "M. W. S." When was that change made? A I don't know.

Q Was the change made by you? A No.

Q Was this typewritten on August 6, 1928 or 1929? A I don't remember.

Q You don't remember whether it was typewritten August 6, 1929? A I don't remember.

Q You wouldn't say it was not typewritten on August 6, 1929?

By the Court.

Q You weren't here then? A No. I had no access to the papers.

Q What do you mean by that? A To the building and loan papers.

Q Your office was in existence? A I had no access to the safe of the building and loan or the documents.

By Mr. Masucci.

Q Was this search typewritten in your office—marked Exhibit D. 13? A I guess so.

Q Do you know, Mr. Shapiro? A I never gave out any typewriting. It was all done in my office.

By the Court.

Q What kind of machines do you use—Smith, Remington, or what, and how many machines did you have in your office at that time? A Two machines.

Q What was the make? A One was L. C. Smith and I don't know what the other one was.

By Mr. Masucci.

Q And after Exhibit D. 13 was typewritten and turned over to one of the officers of the building and loan association did you have access to it? A Yes, I had access to the search.

Q And did you take this search and inspect it or did you change it in any way before you first delivered it to the officer of the building and loan association? A I would check up on my searches every three months to see they were complete.

Q Did you make any changes in the search Exhibit D. 13 before it was delivered to the officers of the building and loan? A I would never make deliveries of searches. I would just file it with the papers.

Q With what papers? A Each particular property had particulars of that particular property in an envelope.

The Court: Does the search show the inclusion of any papers after August 6, 1928?

Mr. Masucci: Yes.

Q I call your attention to the insertion in Exhibit D. 13 of deed from Mendel Gross and Jeanette Gross, his wife, to Max Goldberg. Was that inserted at the time you delivered the search to the building and loan association? A Yes, it had to be in.

Q Did you have the book and page number then on August 6, 1928? A No, I couldn't have it inserted at that time.

Q I call your attention to the fact the book and page numbers appears—Book P. 78, page 83. Would you say now this wasn't inserted after August 6, 1928? A From that it appears that the search was not probably made up at that time on August third.

Q I call your attention to a mortgage made by Max Goldberg to the Ordway Building & Loan Association which was inserted in this search. Was that inserted on August 6, 1928—on or before? A Well, it couldn't have been.

Q It wasn't? A No, it wasn't.

Q You have the book and page number of that mortgage—Book E 65, page 303? A Yes.

Q So these two instruments must have been inserted after the two instruments came back from the register's office? A It is possible the certificate wasn't made up until the papers were returned from the Court House.

Q Did you have an abstract of the foreclosure made? A Yes.

Q Did you order it from Trenton? A Yes.

Q May I call your attention to Exhibit D. 13, an abstract of the foreclosure of Mendel Gross against Mary Scholder, and show you that this was forewarded to Simon L. Fisch, solicitor? A

I was under the impression I ordered it. I know there was one in the file.

By the Court.

Q They charged $3.00 for it too? A I think I ordered one.

Q Chancery abstract on this Exhibit D. 13 $3.00. A I was under the impression I had one or had ordered one.

By Mr. Masucci.

Q Have you a tax search attached to this search D. 13? A It was a memorandum.

Q Is it attached to it? A It isn't attached to it.

Q Should it have been attached to it if it was made? A It should be.

Q Mr. Shapiro, will you state now this search wasn't in the records—

The Court: You mean the certificate.

By Mr. Masucci.

Q The search and certificate marked Exhibit D. 13 wasn't made and delivered months after August 6, 1928? A I can't tell when it was delivered or typewritten.

Q Can you tell when it was made? A By typewriting that is what I mean by made.

By the Court.

Q Was it made before the transaction closed? A Yes.

Q Was the certificate of yours delivered to the building and loan association or anybody on

or before August 6, 1928? A I don't remember whether it was or not. It might have been.

Q Isn't it patent it couldn't have been if the dates of the papers were written in or the dates of recording were subsequent to August 6, 1928? A It is possible we made new sheets in order to replace the old ones. It is possible the certificate was made after the mortgage was returned from the Court House. I don't recall. I checked up on my searches every three months.

By Mr. Masucci.

Q You stated you advised Miss Clawans you were getting a mortgage of seven thousand from the Ordway Building & Loan Association? A I don't remember the exact conversation.

Q Had you advised her you were getting a mortgage? A I don't remember.

Q Why did you so state then before? A I didn't state so.

Q Then as far as you know you had at no time informed or advised Miss Clawans you were getting a mortgage of seven thousand on 22 Gladstone avenue? A I wouldn't state it either way.

Q If you were getting a mortgage on 22 Gladstone avenue for Miss Clawans or with her knowledge you would charge her with the search fees for that, wouldn't you? A I don't know whether I would or not.

By the Court.

Q Who would you expect to charge if you were making the search for her? A The usual charge would be 2%.

Q Who would you charge? You would charge the person for whom you were making the search? A Yes.

Q And if that was Miss Clawans you would charge her, wouldn't you? A I don't know whether I would or not.

Q You mean you might have done it for nothing? A Yes.

Q But you didn't do this for nothing. You got paid for this one. You got one hundred and some odd dollars.

Q There was a check for it.

By Mr. Masucci.

Q You did make certain charges against Miss Clawans for search, one of which is a charge for $5.00. That is for a continuation search? A Probably what I paid out.

Q That charge of $129.00 that you made a check for was it charged to Miss Clawans for a search of the property? A I don't know.

Q Does it appear anywhere in this account between yourself and Miss Clawans on 22 Gladstone avenue? A I don't see it.

Q Therefore it wasn't, was it? A I wouldn't say that.

Q Now, as I recall, you stated Miss Clawans knew you were procuring a loan on this property to raise funds to purchase the property? A I haven't said that.

Q You sent a letter marked Exhibit C. 9 to Mr. Simon L. Fisch with reference to 22 Gladstone avenue? A Yes, at Miss Clawans' request.

Q Do you remember that? A Yes, I remember that matter.

Q Well, how is it you remember this so precisely when there are a lot of matters which you have no recollection about, Mr. Shapiro? A There are some things I can remember more easy.

By the Court.

Q This letter you sent at her request? A Miss Clawans asked Mr. Fisch for an extension of this sale—a postponement, and she told Mr. Fisch she would buy the property and she wanted a postponement and he wouldn't give it to her. She told him she had some money coming from me and she wanted Mr. Fisch to write a letter verifying that.

Q Do you want us to understand you as a lawyer deliberately deceived Mr. Fisch and wrote what was untrue? A I thought I could get her the money in a few days.

The Court (To stenographer): Read the last question.

(Last question read by stenographer.)

The Witness: I didn't know what Miss Clawans' intentions were.

Q Were you accustomed to deceiving people knowingly? A My intention was not to deceive Mr. Fisch.

Q Did you owe Miss Clawans at the time you wrote that letter? A Yes.

Q How much money did you owe her? A A mortgage of $12,000.

Q She has testified there was a mortgage past due she was trying to get from you and you were to use part of that money to close that Gladstone

avenue transaction. A That was what the check is 660.

Q I am coming back to the figures on the back of Exhibit C. 7. These items marked "adjusted 4555.31." Does that represent the amount of money you owed Miss Clawans at that time on a mortgage transaction? A I don't remember the transaction. There were other statements made at the time.

Q You don't seem to be able to explain the figures on Exhibit C. 7? A No.

Q You don't know what this means after deducting 5894.69 from a total of 10,450.00 leaving 4555.31. You don't know what the word *due* which you wrote after that means? A I don't remember the transaction.

Q The writing is yours, isn't it? A Yes.

Q And what I am calling your attention to is written on the back of Exhibit C. 7, which you say is a closing statement of the Gladstone avenue transaction, is that right? A Yes.

By Mr. Masucci.

Q This 10,000 written on the back of Exhibit C. 7, doesn't that represent a mortgage of ten thousand which the M. & M. Construction Company had executed to Miss Clawans which was past due? A Yes.

Q Isn't that the ten thousand? A I don't know.

Q You wouldn't say it isn't? A I wouldn't say.

Q You had no other mortgage indebted of ten thousand? A There might have been.

Q Do you know of any? A I don't know off-hand. There were several transactions in my ledger I could refresh my memory from.

Q This $150.00—the last item, is for interest on this ten thousand loan, isn't it? It says so in your own handwriting "Interest to July"? A That is what it says.

Q That is correct, otherwise it wouldn't be there? A I don't remember.

Q Do you mean to say you would put a notation on that sheet if it was not correct? A I don't remember the transaction except what I see.

Q Would you put an incorrect notation on the back of Exhibit C. 7? A How should I know.

The Court: What's the use of losing time on that? Miss Clawans testified to it, and in the absence of his denial—

By Mr. Masucci.

Q Did Miss Clawans ask you for the contract for the property 22 Gladstone avenue after it was executed—contract Exhibit C. 1? A She asked me several times for the contract but my recollection is I gave it to her.

By the Court.

Q Your recollection is you gave it to her? A She did, but she claimed she never received it.

By Mr. Masucci.

Q Didn't you write to her the letter Exhibit C. 4 that you couldn't find the contract? A She said she couldn't find the contract and I said I would look for it.

By the Court.

Q Just look at that letter. A This is the order for the tax search.

Morris W. Shapiro, for Defendant, Re-cross.

By Mr. Masucci.

Q Look at the bottom of it.

(Witness reads) "I couldn't find contract. Will look for same when I return."

The Court: What is the date of that?

Mr. Masucci: July — 1928.

Witness (continuing.) I couldn't find her in her office and I left it for her. I gave her the tax search showing the amount due.

By Mr. Masucci.

Q And she asked you for the contract? A Yes, and I couldn't find it and I left this word at her office.

Q Did you ever deliver the contract marked Exhibit C. 1 to Miss Clawans? A It was my impression she had the contract.

The Court: You are asked whether you ever delivered it to her.

Witness (continuing.) I thought I did deliver it to her. She denied ever having received it.

By Mr. Masucci.

Q You wouldn't make such a notation on Exhibit C. 4, would you, Mr. Shapiro? A No, I told her I would look for it and see if I could find it.

Q Did you ever apprise Miss Clawans you were taking the title in the name of Max Goldberg? A I told her after I took the title.

By the Court.

Q What did you tell her? A I told her the title was taken in the name of Max Goldberg

and she asked me who he was. I told her he was all right—he was in my employ.

Q What else did you tell her about that transaction? Did you tell her you were making an application for a mortgage loan to the Ordway Building & Loan in the name of Max Goldberg? A Not at that time. I told her previous to that I would have to get a mortgage to get some money to close it.

Q Did you ever tell her you were making an application for a mortgage loan in the name of Max Goldberg? A No.

By Mr. Masucci.

Q Did you ever tell her you were going to make an application for a mortgage loan on 22 Gladstone avenue? A I don't know.

Q And by the letter Exhibit C. 9 to Mr. Fisch it doesn't indicate you were to receive the money on 22 Gladstone avenue, does it? A No.

Q You say the application for loan of seven thousand to the Ordway Building & Loan Association was made shortly before its meeting in July, is that right? A I said I don't remember when it was made.

Q And you closed the title to 22 Gladstone avenue on August 3, 1928? A Yes.

Q The meeting in July was July 24th—the meeting of the board of directors of the Ordway Building & Loan Association? A On the fourth Tuesday.

Q So that within the period of six or seven days you made the search and got the check from the building and loan and closed the title?

Mr. Susskind: I object because it is not what he stated.

The Court: Ask him what the fact is.

A I had the search made before the meeting.

By the Court.

Q You had the search made before the meeting? A Yes.

Q Who asked to have it made before the meeting? A Miss Clawans asked me. She knew I was to take title to the property. I knew I had a contract to take title and time was of the essence.

By Mr. Masucci.

Q When did you start making the search on 22 Gladstone avenue? A I couldn't say.

By the Court.

Q Who made the search for you? You didn't make it yourself. Tell me the name of the party who actually made the search? A His first name is Morris. I can't think of his second name.

Q He submitted a report to you showing the result of his examination of the title? A Yes.

Q Have you that report? A It is in my office.

By Mr. Masucci.

Q The original notes—the personal notes of the searcher? A Yes.

Q On August 3, 1928, after closing title to the property 22 Gladstone avenue, you got a deed marked Exhibit C. 5 in Mr. Fisch's office, is that so? A I got that deed at the closing, yes.

By the Court.

Q In Mr. Fisch's office? A Yes.

By Mr. Masucci.

Q Did you go to see Miss Clawans to report on the title? A I don't remember.

Q Did you report to her you had closed the title to 22 Gladstone avenue? A I don't remember.

By the Court.

Q Did you write her a letter telling her what had gone on? A I don't remember how soon after I saw her and spoke to her.

By Mr. Masucci.

Q Didn't you in fact go back to your offiee and typewrite another deed from yourself to Miss Clawans? A I don't think I had a deed drawn at that time.

By the Court.

Q When did you have such a deed drawn if you did? A It was subsequent.

Q What would make you do that, to draw a deed from yourself to Miss Clawans when the deed was not in you? A The deed from Goldberg.

Q Not from you? A No, I didn't draw a deed from myself.

By Mr. Masucci.

Q Did you have a deed drawn up from you Morris W. Shapiro to Lillian Clawans affecting

the premises 22 Gladstone avenue between August 3rd and August 6th, 1928? A No.

Q You held the deed marked Exhibit C. 5 and the mortgage from Max Goldberg to the Ordway Building & Loan Association from August 3, 1928 to August 6, 1928, am I right, when you recorded them? A Yes.

Q Why didn't you record them the same day they were delivered to you? A I can't explain that excepting August 3rd might have been a Friday or a Saturday and I didn't take them down before Monday.

Q Didn't you retain the deed so as to make up another deed to Miss Clawans? A I didn't need a deed for that purpose.

Q Didn't you need it for the purpose of putting a recital in it? A I had an abstract of the description.

Q The abstract wouldn't give you an abstract of the deed from Max Goldberg? A I could make an abstract in a few minutes.

Q Did you do it in this case? A I don't know whether I did.

Q You wouldn't say you did? A No.

Q Will you say positively now you didn't draw up a deed from yourself and Mrs. Shapiro to Miss Clawans affecting the premises 22 Gladstone avenue, and with that deed and the deed Exhibit C. 5 go to Miss Clawans on the third or fourth of August and show her both deeds and tell her you were going to record both deeds? A I wouldn't see why I should draw a deed from myself to Lillian Clawans.

Q Did you do it?

Mr. Susskind: I object to it.

A To the best of my recollection I didn't do it.

By Mr. Masucci.

Q Did you at any time exhibit to Miss Clawans either on August 3, 1928, or thereafter, a deed to Miss Clawans of the property 22 Gladstone avenue? A From myself?

Q Either from yourself or from Max Goldberg? A The only deed I gave her was a deed from Max Goldberg.

Q Did you exhibit any deed to this property before it was recorded to Miss Clawans? A I gave her the deed from Max Goldberg to herself.

Q Did you give it to her in person? A Yes.

Q Do you recall when? A I don't recall when.

Q And is this the deed marked Exhibit C. 6 that you say you gave to Miss Clawans? A That's the deed.

The Court: That's the deed dated January 3, 1929.

Mr. Masucci: Yes.

By the Court.

Q When after January 3, 1929 did you give her that deed? A I think around that day, because it is the day I dated it. The deed had been in my office for some time without being dated.

By Mr. Masucci.

Q Had it been signed by Max Goldberg before that time? A I don't know.

By the Court.

Q Did you date it after Max Goldberg signed it? Did you write January 3, 1929 after Max

Goldberg executed it? A I don't remember that.

By Mr. Masucci.

Q You say you didn't give Miss Clawans a deed to this property because she had instructed you not to? A Yes.

Q And because she informed you she didn't want Mrs. Scholder or the old lady to know she was getting a deed to the property? A Yes, that's right.

Q When did she countermand that order? A Quite some time later.

Q Was it about January 3, 1929? A It was a few months at least.

By the Court.

Q What did she say to you? How did she countermand her previous order? A I think it was I that suggested it. I told her Mr. Goldberg was leaving or about to leave and was going to get a deed signed.

By Mr. Masucci.

Q And then you delivered the deed on or about January 3, 1929? A I don't remember what date.

Q Why did you deliver the deed to her from Max Goldberg at that time? A The deed belonged to her. I delivered it to her.

Q You had other papers of Miss Clawans, didn't you? A Not that I know of.

By the Court.

Q According to your statement it belonged to her after August 3, 1928. Why didn't you

have a deed made to her immediately after the deed was put in Goldberg? A I don't remember when the deed was made.

Q You mean to say you may have made the deed on August 3, 1928, and had it executed by Goldberg and no date put on it until January 3, 1929, and you did it as though acknowledging it that date? A I don't think it was signed before it was dated.

By Mr. Masucci.

Q At the time it was dated the property was then subject to a mortgage of record of the Ordway Building & Loan Association of seven thousand, is that right? A Yes.

Q And you had that in mind when you drew up the deed from Max Goldberg to Lillian Clawans marked Exhibit C. 6, is that right? A I don't know whether I did or not.

By the Court.

Q You mean to tell me you didn't have it in your mind? A I knew there was a mortgage on the property, yes.

By Mr. Masucci.

Q You had Max Goldberg execute a warranty deed with full covenants? I show it to you. A Yes.

Q And it doesn't recite it is subject to a mortgage of seven thousand, does it? A There is no recital in it.

Q There is a recital in there with reference to a deed, isn't there? A Yes.

Q But you didn't put in a recital with reference to the Ordway Building & Loan mortgage of

seven thousand, did you? A There is none in it.

Q And you didn't tell Miss Clawans then there was a mortgage of seven thousand held by the Ordway Building & Loan Association on before? A I don't know whether I did or not.

By the Court.

Q And you kept paying the interest payments and premiums to the Ordway Building & Loan Association until the time it was past due? A I don't know when it was past.

Q You seemed to be a favorite son with the building and loan. There were four months due and there were two months on account paid leaving two months still due? A I don't remember that.

Q You knew as counsel for the building and loan it was a rule to charge five cents per share for those who were in arrears? A Yes.

Q And you knew you were excused from the penalty. You never paid it? A At times I did.

Q In this transaction? A I don't know whether I did or not.

Q The secretary showed me his book. There were four months arrears and you didn't pay any penalty for the arrearage? A I don't know whether he had it charged up or not.

Q He didn't have it charged up on the books. I am wondering how you got out of paying for it unless you impressed upon them it was your personal transactions. A The secretary can answer that.

By Mr. Masucci.

Q As part of your search of the property in behalf of the building and loan or on behalf of

Miss Clawans as you stated, it was your duty to inquire of persons in possession of the property, wasn't it, Mr. Shapiro, to ascertain their respective rights in that property? A We never adopted that procedure.

By the Court.

Q The president said they looked to you as their lawyer to take care of that matter to satisfy them they were protected. You never did that in any case? A No.

Q For aught you knew a person against whom you were searching a title might have a ten-year or a twenty-year lease on that property unrecorded and you wouldn't know anything about it? A Except in the affidavit of title from the vendor.

Q The vendor you were buying from might be a subsequent vendor—a vendor that didn't make the lease. A The only thing I was concerned with was the title.

Q You were concerned to be informed it was free and clear of encumbrances, weren't you? A Only matters of record.

Q Then you didn't go to this property to inquire of any person who might be in possession what their rights were in the property? I am speaking about this particular property. A No, sir.

Q And you said you were sure that the house was entirely empty at the time you and the committee went there? A It appeared to me that way.

Q The other witneses have sworn the upper floor was occupied. Would that change your testimony any? A It seemed to me it was vacant. I didn't go inside.

Q Could you see any shades or curtains from where you were? A I don't remember.

Q What led you to believe the upper floor was vacant? A That's the impression I got from looking at the outside.

Q What impressed you from the outside the upper floor was vacant? Could you look right into the interior of the second floor? Was there no shade or curtain to mar your view? A The shades were in such poor condition. Some were up and some were down. I didn't see any furniture or anything.

By Mr. Masucci.

Q Mr. Shapiro, you knew that Miss Clawans had ownership in that property, didn't you, even though it may have been in the name of Max Goldberg?

Mr. Susskind: I object unless he indicates when her ownership began.

The Court: She was the equitable owner of that property from the very beginning.

Mr. Susskind: You mean from the date of the contract?

The Court: Yes.

By Mr. Masucci.

Q You knew that, Mr. Shapiro, didn't you? A Yes.

Q Did you report that to the building and loan? A I don't think so.

Q You kept it from the search, didn't you? A We report in the search only what is on the record.

Q Certificate from Exhibit D. 13—"I hereby certify for Ordway Building and Loan Association that I have examined the title to the premises described at the head of this abstract, and commonly known as 22 Gladstone avenue, Newark, New Jersey. My examination shows, and I hereby certify, that the title to said premises at the date hereof, is vested in Max Goldberg, and that the encumbrances affecting the same, and the order of priority of such encumbrances, are as follows: 1. Mortgage E. 65—303 Goldberg to Ordway Building and Loan Association in the sum of $7,000.00 recorded August 6th, 1928 MWS." There was a change from 1929 to 8. Signed Morris W. Shapiro. Dated August 6, 1929 in typewriting. The 9 changed to 8 MWS. You didn't make that qualification in your certificate to the building and loan, did you, Mr. Shapiro? A It doesn't appear in the search.

Q Did you report to the board of directors of the Ordway Building & Loan Association that the house was vacant and had no tenants at the time that the application for loan of seven thousand was under consideration? A I didn't make any report at all. The committee made the report.

Q You were present when the committee made the report, wasn't you? A Yes.

Q Did you hear them or any of them report? A I don't remember the actual report.

Q Do you remember it reported the house was vacant or tenanted? A I don't remember.

Q As counsel for the building and loan association didn't you think it was your duty to see they got a full report on the property they were making the loan on?

Mr. Susskind: I want to object as to what he thought his duty was. I don't think it is material here what he thought.

The Court: I think it is material. There are a lot of suspicious circumstances. I will overrule your objection and admit it.

By the Court.

Q In other words did you regard it as your duty as counsel for the building and loan association to report to them in the manner in which counsel just stated? A As to what?

By Mr. Masucci.

Q As to whether the house was vacant and unoccupied? A I had nothing to do with the security of the property. That was for the committee to look to that.

Q Why did you go with the committee to inspect the premises 22 Gladstone avenue if you had nothing to do with the security for the loan? A I had my car at that time and we all went in my machine.

Q Was it your car and who else's car? A Some other car—I don't remember.

Q What kind of a car was this other car? A I don't remember whose car it was.

Q Was it a coupe? Was it a six-passenger car or a five-passenger car, or a roadster? A I don't remember.

Q You don't know whether that was the reason you asked them to go up in your car? A I know I took two or three in my car.

Q And you don't know that the other two or three had rode in the other car? A I know we had two cars.

By the Court.

Q Were you on the inside of this house to examine it? A Yes, sir.

Q Before the loan or after? A After the loan.

Q What was your purpose in going in there after the loan to inspect it? A Miss Clawans asked me to see if I could rent the apartment.

Q Before the loan was granted you were in there to inspect the interior, were you? A No.

Q Why is this Exhibit D. 3 in your handwriting excepting the date and the signature Max Goldberg? In the application appears these questions — "Improvement: Heating—Yes. Range and Boiler for Hot Water—Yes. Bath and W. C.—Yes. Stationary Washtubs—Yes. Gas and fixtures—Yes." Where did you get that information from to warrant you in writing those answers? A I don't know except the fact it was in some lease of a modern house and they contain all those things.

Q Were you deceiving the building and loan association by putting those answers in there without any knowledge of it? A It was more or less form.

Q You knew the officers of the building and loan association were relying upon the representations made in that application, did you not? A They were not relying upon that. They were relying upon the inspection of the committee.

Q If they were not relying upon that what was the purpose of putting those questions there? A More or less of a form.

Q You knew the committee did not obtain entrance into the house when they went there? A Yes, sir.

Q So the information was not checked up that was in the application at that time? A They were satisfied from the outside of the house from what they could see through the windows there was enough security for that loan.

Re-direct examination by Mr. Susskind.

Q Mr. Shapiro, this memorandum on letter which is marked Exhibit C. 4 was shown you and you testified concerning the ink memorandum at the bottom of this letter. Isn't it a fact that memorandum was made later than July 24, 1928, the date of this letter? A Yes, it was.

Q This letter was a letter from you to the tax collector of Newark, N. J., asking for a memorandum tax search. Isn't it the fact what happened that this letter came back with the tax search and that is how you got repossession of it? A Yes.

By the Court.

Q You are sure of that? A Yes, the pencil marks are from the tax collector.

By Mr. Susskind.

Q And the name Scholder is from the tax office? A Yes.

Q So this memorandum about the contract wasn't made on July 24th, the date of the letter? A No, the letter was not in my office until after July 24th.

By the Court.

Q You don't know when the memorandum was made. There is nothing on that to indicate

when it was made. There is no date there? A No.

By Mr. Susskind.

Q Did you get this check from the association marked Exhibit D. 5, dated July 26, 1928, made by the Ordway Building & Loan Association to the trustee account of Ordway Building & Loan Association for loan on property 22 Gladstone avenue? Did you get that check before or after the loan was passed by the board of directors? A After it was passed.

By the Court.

Q Tell me when it was passed. I haven't been able to find that out yet. A It was passed at the meeting night in July.

Q July? Are you sure of that? A July.

Mr. Susskind: The minutes indicate July.

By the Court.

Q You say you are sure that loan was passed at the meeting in July, are you, Mr. Shapiro? A I am pretty sure.

Q Notwithstanding that the application is dated four days after the meeting? A That date was not on there when I made out the application.

By Mr. Susskind.

Q Mr. Shapiro, you are sure though that the loan was passed before you got this check? A Absolutely.

Q And this check was paid by the bank on what date as indicated on it—8/1/28, isn't it?

Mr. Masucci: Yes.

By Mr. Susskind.

Q So this check was paid into the trustee account of the building and loan association on August 1, 1928? A Yes.

Q The stamp of the bank shows it was August 1, 1928?

The Court: There is no testimony how that came to be paid to him.

By Mr. Susskind.

Q Will you tell us what the general practice was in this association after a loan was passed as to the payment of the loan?

Mr. Masucci: I object to it.

The Court: I will sustain the objection.

Mr. Susskind: Your Honor said there was no resolution. I want to show that no resolution was required and none such ever made in any loan.

The Court: I am only dealing with this one. If they blundered in preceding instances there is no reason why they should blunder in this one.

Mr. Susskind: The association might not consider that it blundered. There is nothing in the law to say they have to have a resolution as to a check issued.

The Court: You know a resolution of a board of directors of a corporation shall duly issue—

Mr. Susskind: If a corporation is in the business of selling suits it doesn't have to have a resolution to sell a suit.

The Court: When corporations are authorized to buy property they can't do it unless they are authorized by resolution.

Mr. Susskind: This was a corporation formed for the purpose of loaning money.

The Court: Show me anything in the minutes which gives any general authority for these officers to draw checks at their pleasure to their counsel to be used as they or the counsel see fit.

Mr. Susskind: I want to ask a question and if your Honor refuses I want it on the record.

The Court: Go ahead.

By Mr. Susskind.

Q Were you counsel for this association since it was organized? A Yes.

Q And was a resolution ever required by the board of directors for the drawing of a check by the officers for the disbursement from a fund on a loan unless that loan has been passed by the board of directors?

Mr. Masucci: I object.

The Court: I will sustain the objection.

Mr. Susskind: I ask your Honor to note my objection.

The Court: It will be noted.

By Mr. Susskind.

Q This trustee account of the Ordway Building & Loan Association, did you ever deposit any moneys to that account which were not moneys given by the general account of the association for disbursement of loans?

Mr. Masucci: I object. It is not material.

Mr. Susskind: It is very material. I want to get my reason on record. There has been an inference here that Shapiro might have deposited moneys there and withdrew it for his use.

Q Did you ever take any moneys from that account? A No.

Q So the six thousand check you drew was whose money? A The association's.

By the Court.

Q From that account you drew checks for your personal use, didn't you? That $120.00 check for search fee went to your personal use? A Yes.

Q And the other check which had the name Goldberg written on it that went to your personal use? A I don't know.

Q Can you tell me what use it went to for the benefit of the association? A I don't know.

By Mr. Susskind.

Q Did you always draw checks for search fees from this account in any loan? A Yes, sir.

Q Your certificate on the search which is marked Exhibit D. 13, there was a change in two places of the date August 6, 1929 to August 6, 1928. Can you tell us now whether or not that was a typographical error which was corrected by you.

Mr. Masucci: I object to that.

The Court: I will let him answer it.

A It was a typographical error because I wasn't there in August, 1929.

By Mr. Susskind.

Q As a matter of fact the mortgage from Goldberg to the Ordway Building & Loan was not recorded on August 6, 1929? A No.

Q So you were correcting a typographical error? A Yes.

By the Court.

Q You didn't put your initials on that when you were correcting it, did you?

Mr. Susskind: Yes.

By Mr. Susskind.

Q This deed Exhibit C. 5 from Mendel Gross and wife to Max Goldberg, who recorded that deed or who had it recorded? A I don't know. My name is on there and it is crossed off. I am pretty sure I recorded it. It is my practice to record deeds when I pass a mortgage.

Q Was this deed returned to you from the Register's Office after recording? A Yes, it was returned to me.

Q You are sure about that? A Yes.

Q Your name was crossed off. It was written in in pen and ink above the name of Simon L. Fisch and your name was X'd out in typewriting and the name Lillian Clawans typed in—1060 Broad street. Does that indicate to whom it was returned by the Register's Office. A To the best of my recollection I recorded that deed and it was returned to me.

Q It might have been otherwise? A I know I recorded it. I am sure of that.

Re-cross examination by Mr. Masucci.

Q Did you state, Mr. Shapiro, you didn't know when you made up this search marked Exhibit D. 13? A Correct.

Q And you didn't know when you made these changes in the search marked Exhibit D. 13? A That's right.

Q And you don't know whether you made them recently or in August, 1928? A I could have made them in August, 1928.

Q It might have been recently? A Not very likely.

By the Court.

Q You mean not while you were living where you are? A No, not within the last few months.

Re-direct examination by Mr. Susskind.

Q Mr. Shapiro, your certificate on the search is dated August 6th, which is the same date as the recording of the mortgage. You started to tell us what it was customary to do in taking a mortgage and some other question was asked and you stopped. Will you tell us what you did?

Mr. Masucci: I object.

The Court: I will let him state it.

A The building and loan department requires a certificate to be dated the date of the mortgage or when the mortgage is recorded. It is up to the date of the recording of that mortgage.

Morris W. Shapiro, for Defendant, Re-cross.

By the Court.

Q The department requires that you set forth a true statement of the title as you know it to be? A Only as it appears of record.

Q Only as it appears of record? A Yes, sir.

Q Are you qualifying that because you know that Miss Clawans was the equitable owner of that property? A That is my understanding of the requirements.

Re-cross examination by Mr. Masucci.

Q Doesn't the law require that a mortgage must be a first lien on the property and you must certify to that effect? A Yes.

Q And if there is a deed or any other interest of record which is a lien on that property wouldn't that be prior to the building and loan mortgage?

Mr. Susskind: I object.

The Court: I will overrule the question. He is stating rules of law.

(Further hearing continued to January 9, 1930.)

IN CHANCERY OF NEW JERSEY.

Between
LILLIAN CLAWANS,
Complainant,
and
ORDWAY BUILDING AND LOAN ASSOCIATION,
Defendant.

On Bill, etc.
Testimony.

Continuation of final hearing before Hon. John J. Fallon, Vice-Chancellor, Chancery Chambers, Jersey City, January 9, 1930.

Appearances:

Mr. F. W. Masucci for complainant.

Mr. Joseph Susskind for defendant (Mr. Thomas J. Brogan, of counsel).

MENDEL GROSS, a witness being sworn on behalf of defendant.

Direct examination by Mr. Brogan.

Q Mr. Gross, where do you live? A 118 Wickliffe street, Newark, New Jersey.

Q Were you ever the owner of this property on Gladstone avenue? A 22 Gladstone avenue?

Q Yes. A Yes, sir.

Q And how did you acquire title? A I come into possession of that through an estate of my brother that died.

Q Did you have a mortgage on the premises? A Yes, sir.

Q Was the mortgage foreclosed? A Yes, sir.

Q Who was the complainant in the foreclosure? A Mary Scholder.

Q Who foreclosed the mortgage? A I foreclosed the mortgage.

Q How long did you keep the title.

Mr. Masucci: I object to that.

Mr. Brogan: I want to show who he sold it to.

The Court: You mean after he acquired it through foreclosure.

Mr. Brogan: He was the complainant and bought it in at foreclosure from the sheriff.

The Witness: Yes.

By Mr. Brogan.

Q Who did you sell the property to? A Morris Shapiro.

By the Court.

Q You mean you signed the contract with Morris Shapiro? A Yes, sir, and he bought it.

The Court: I will strike out that he bought it. I have in mind some testimony that Shapiro bought it in for some other party. There is no doubt about a contract entered into between this witness and Morris Shapiro.

By Mr. Brogan.

Q Is that the contract that you entered into with Morris Shapiro? A Yes.

The Court: Is there any doubt about it?

Mr. Susskind: It is in evidence.

Mr. Brogan: I had forgotten it was in evidence.

Q Before you conveyed this property to Mr. Goldberg under that contract between you and Shapiro did you go and inspect the premises? A Yes, sir.

Q Did you find any signs on the premises? A Yes, sir.

Q What signs were on the premises?

Mr. Masucci: May I suggest he fix a time?

The Court: Fix the time.

By Mr. Brogan.

Q How long was it before you conveyed, Mr. Gross, that you made an inspection of these premises which you bought? A A few days previous.

By the Court.

Q What brought you there to make the inspection? A I wanted to see that the mortgage that we laid out on that house was worth that amount of money.

Q You had already bought the house? A Yes, but previous when Miss Clawans came to me—

The Court: Read the question.

(Last question read by stenographer.)

The Witness: You mean the time when I bought the property?

The Court: I will withdraw my question.

Mr. Brogan: I think it would be a little clearer if I took him over it piecemeal.

By Mr. Brogan.

Q Did you inspect the premises before you foreclosed the mortgage? A Before I foreclosed the mortgage?

Q Yes. A Yes, sir, I did.

Q And did you find any sign on the premises at that time? A Yes, I did.

Q What sign was on there? A There was one wooden sign about two and a half feet wide—that is up like this (indicating), and about four feet long.

Q Where was that sign? A Right on the front part of the porch.

Q What did that read if you know? A I know what it read—"Property for sale—Inquire Within."

By the Court.

Q Is that all it said? A That is all that was on that sign.

By Mr. Brogan.

Q Who lived in the premises then? A Mrs. Scholder lived there then.

By the Court.

Q Tell us what you did to make the inspection? What did you do? A When I went up there when we had the property bought in, that is, my counsel—

Q I am not concerned with that. You said you made an inspection. What did you do? A

I went around the place and saw how everything looked.

Q You went around the place? A And went inside the place.

Q Tell us everything you did in making the inspection. A I rang the bell and Mrs. Scholder came out. She was living on the first floor at that time.

Q The ground floor? A Yes.

Q When was that period of time you are speaking about? A That was in June, 1928.

Q She came out. Then what? A I told her that I am in possession of the property now, it is not in the estate any more; that I owned it myself and I came there to make an inspection and if I was allowed to go through the place, and she told me yes.

Q And you went through the place? A With her permission.

Q So you did go through it? A With her permission.

Q I appreciate that. Did she accompany you through the place? A Yes.

Q Did you go upstairs? A Yes.

Q What did you observe upstairs? A Well, I first had a look downstairs.

Q When you looked downstairs you saw Mrs. Scholder? A Yes, sir.

Q Tell us what you saw downstairs in addition to that? A I saw five rooms and bath.

Q Had you ever seen them before? A Not at that time.

Q Had you ever seen them before? A No, sir. Five rooms and bath and she took me on the second floor and there was five rooms and bath also.

Q Anybody occupying the second floor at that time? A No.

Q Sure of that? A No, because there was nothing in the rooms. Everything was empty.

Q I don't know anything to the contrary. I am asking you. A I am telling the truth.

Q I thought everybody was telling the truth. A If I am lying I am satisfied to go away for it.

Q Nobody is accusing you of lying. What did you find on the second floor? A I found five rooms and bath. She took me up in the attic. There are two rooms up there. Then I asked her about the cellar—was there any furnace down there. She said "Two separate furnaces." I says "Can I go down and look at them?" She says "Help yourself and do whatever you want."

Q And you did? A I did.

Q What else did you do? A I went down there and found two furnaces. They was in bad shape, and I went on the outside of the house and I saw where the stucco was scraped on the north side of the building. The pipe busted and the front porch was all broke—in bad shape.

Q That was clearly observable to you? You could see that readily? A Oh, a blind man could see it if he had any sight at all. I counted how many windows was in the front part of the house, on the side of the house, on the rear of the house and how large the windows was. I took note of all that. I took note of everything that was around the house to see what was to be done.

Q How long had you owned the house at that time? How long prior had you acquired

title to it? A I came into possession of that house—the mortgage, on the 16th of June, 1927.

Q So that from the time you came into possession of the mortgage up to the time you now speak of you never went near the house? A I had been there several times.

Q Not to inspect it? A No.

Q Just the same it was the first time you went into the rooms? A That is the first time I am alluding to, but I had been there several times before that.

Q Not in the rooms? A Only once more besides that after I sold the property.

Q But not before? A No.

By Mr. Brogan.

Q Was there more than one sign on the outside of the house? A There was a little paper sign on the window reading "Apartment to Rent—Inquire Within." That was on the window.

Q When did you sell? A When did I sell the property?

By the Court.

Q When did you sign the contract? A That was the third day of July, 1928.

By Mr. Brogan.

Q Did you go into the property subsequent to your selling? A After I sold it?

Q Yes. A I was coming from the graveyard—

By the Court.

Q Did you? A Yes, I did.

By Mr. Brogan.

Q Did you interview anybody at that time? A I interviewed the parties that was working there at that time.

By the Court.

Q For you? A No, not for me. I wanted to get an estimate—I mean on another house. I saw they were painting and I needed painting and paper-hanging. I thought it was a good opportunity for the man to give me a good estimate on what I wanted done.

By Mr. Brogan.

Q Is your own house which you speak of near there? A My house is about— It is down on 118 Wickliffe street. Oh, it is quite some distance from Gladstone avenue.

Q Did you see Mrs. Scholder at that time or Miss Clawans?

The Court: It is very leading.

By Mr. Brogan.

Q Was there anybody occupying the house? A You mean the second time? No, not a soul.

By the Court.

Q No furniture? A Not that I could see.

Q Were you in the inside? A I went in and saw the painter there. There is the painter right down there (indicating).

Q Some of the testimony, and particularly Mrs. Scholder's, was to the effect she was living there in the house. Is that at that time? A No, she was not living there.

Mendel Gross, for Defendant, Cross.

By Mr. Brogan.

Q How did the sale of the property arise, Mr. Gross? Did Shapiro seek you out or you seek him out? A I took Mr. Benninger, this gentleman down there (indicating). I gave it to him in his charge, and the house stood me—

The Court: That is not what you were asked.

Mr. Brogan: He answered it.

Q Was Benninger also the agent that brought about the sale to Shapiro or Goldberg? A No, to Shapiro. Mr. Benninger was the man who told me he could get a man to take the house off me for nine thousand cash. I was asking ten thousand.

Q He was the agent in the transaction? A Yes.

Cross examination by Mr. Masucci.

Q Did you know Benninger? A Only through the transaction I made with him.

Q Did you go to him or did he go to you? A He came to me direct.

Q Didn't you ask Mr. Benninger to go to Miss Clawans and try to interest her in purchasing this property on Gladstone avenue? A Not whatsoever.

Q Did you suggest Miss Clawans as a prospective or interested buyer? A Never mentioned her name in my life.

Q Did you know whether Mr. Benninger had a purchaser or a prospect for that property? A When I gave him the property I says to him "I will give you the property under one condi-

tion," and he says "What's that?" I said "I will give you no option on it. The property cost me ten thousand. If you can get ninety-five hundred I will lose five hundred myself. I need the money. While it is worth maybe twelve or fifteen, whatever you make outside of ninety-five hundred is yours." He took the proposition. He had it for a while. Do you want me to go ahead or stop?

Q I don't want you to go ahead. You say you sold the property through Mr. Benninger? A Through Mr. Benninger, that's right.

Q Did Mr. Benninger bring any prospects up to you? A In what way?

Q For the purchase of the property?

By the Court.

Q Did he bring to you any person who might be a prospective purchaser of the property? A I walked out of his office.

Q Can't you say yes or no? A I can't unless you listen to the rest of it.

The Court: Reframe the question.

The Witness: I have to finish the talk previous to that.

By Mr. Masucci.

Q Listen to the question. Did he bring any customer to see you who might be interested in purchasing the property 22 Gladstone avenue? A He told me he had a gentleman that was willing to buy it.

By the Court.

Q Did he bring him to you? A Yes, to his own office.

Q Who did he bring? A Mr. Morris Shapiro.

By Mr. Masucci.

Q In what office? A In his office—In Benninger's office.

Q Where did Benninger have his office? A In the Firemen's Building on Broad and Market street. It was the sixth or eighth floor. I don't know what floor it is now.

Q Did you bargain about the price? A I told him before I wanted ninety-five hundred, and he told me he had a man who would give nine thousand cash.

By the Court.

Q Did you close for the sale of that property at that first meeting which you are just mentioning, or was there some other negotiation and it was closed at some subsequent time? A After I made the arrangements and the thing went through I went to our attorney's office and we drew up the papers and he paid me one thousand down and thirty days to investigate.

By Mr. Masucci.

Q Your negotiations were with Mr. Benninger and not with anyone else? A I left it to Mr. Benninger to get the money for me.

Q And all your negotiations were with Mr. Benninger? A Yes, all through Mr. Benninger.

Q So as far as you knew you didn't know who was purchasing and you didn't care? A Yes, I did, after he told me.

Q Were you interested? A I didn't care you bought my property? He told me before.

Q He told you the name? A Yes, he told me the name.

Q You say you inspected the property in June, 1928, is that right.

The Court: He did say so.

By Mr. Masucci.

Q Are you sure it was the month of June that you first went inside and inspected this property—1928? A Did I inspect the property?

The Court: You are asked whether you are sure you went there and inspected that property in June, 1928?

The Witness: Yes, sir.

By Mr. Masucci.

Q And you say Mrs. Scholder was then living on the first floor, was she? A At that time.

Q In June of 1928? A Yes, June, 1928.

Q She was living on the second floor, wasn't she?

The Court: He said no one lived on the second floor.

A No one lived on the second floor at that time. That was in my statement I made before.

By Mr. Masucci.

Q This sign, there was absolutely no name as to who to apply to—this let sign that was in the front? A Not that I could see.

Mendel Gross, for Defendant, Cross.

By the Court.

Q What did the sign say? A "House for sale—Inquire Within."

Q What did the other sign in the window say? A "Apartment to Rent—Inquire Within."

Q And no name as to whom to inquire of? A I didn't see no name.

Q Do you know whether there was a name there? A There wasn't, because I looked at it.

Q And you remember it at this time? A I sure do.

Q Mr. Witness, there are quite a number of witnesses who have sworn there were other words on signs that were at both places. A Your Honor, I am not responsible for anybody else—only myself.

Q But you will swear there was nothing on the big sign only "House for Sale—Inquire Within"? A That's right.

Q And nothing on the other sign except "Apartment to Rent—Inquire Within"? A Yes, sir. Hold me responsible for it.

By Mr. Masucci.

Q That was a two-story house, wasn't it? A Two and a half.

Q When you went there the second time what time was that? A Well, the second time was when my attorney sent her a letter—that is Mrs. Mary Scholder.

By the Court.

Q Can't you tell us how it was? Is that the only way you can tell it? A Yes, that's the only way. My attorney sent Mrs. Scholder

a notice to pay— No, not to pay, but to vacate —to get out.

Q Let me ask you. How do you know your attorney did that? A Because I was in his presence when he dictated the letter.

Q But you don't know whether the notice went out? A Yes, I do.

Q How do you know? A Because he gave it to Mr. Solodar to take right up.

Q And did you accompany Mr. Solodar up to the house to see it was delivered? A No, not at that time. I also went with Mr. Solodar on the 19th or 20th of June. He sent her a notice and she wouldn't reply to it.

Q Produce the notice. A I went myself personally on a Sunday and wanted to find out why she wouldn't answer the lawyer's letter and I rang the bell.

The Court: Do you want this Mr. Masucci?

Mr. Masucci: No.

The Court: I will strike it out as not being responsive.

Mr. Brogan: Your Honor heard Mr. Solodar's testimony?

The Court: Yes, but this witness is too garrulous.

Mr. Brogan: I can't control him. He has no interest.

By Mr. Masucci.

Q How many weeks after June, 1928, did you inspect the property the second time or go to the property the second time? A Why, on the 19th I went with Mr. Solodar.

Q The 19th of what? A June of the year 1928, and also the next following day the 20th, and he served her with papers.

By the Court.

Q Who did you see there at that time? A Mrs. Scholder.

Q Where did you see her? A On the second floor.

Q You did see her on the second floor? A She moved.

Q Never mind that. On the 19th of June you saw her on the second floor? A Not on the 19th.

Q But you did on the 20th? A Yes.

Q What date in June was it you found her on the first floor? You didn't mention the date before. A No, I didn't mention any date.

Q Well, mention it for us. A It was the first Sunday in June. I don't know what date it fell on.

Q The 19th was a Sunday too? A I didn't say it was a Sunday. The 19th or 20th.

Q Did you see her the Sunday you went there? A By myself?

Q Yes. A By myself I did.

Q That was Sunday what date? A I couldn't say. It was the first Sunday in June. I went there myself. She was living on the first floor.

Q But on the 19th of June you went there with Mr. Solodar to service a notice? A Yes, but she wasn't in and we went there the following day on the 20th and found her in.

Q You don't know what day of the week the 19th was, or do you remember?

By Mr. Masucci.

Q What are you reading from? A I have a small memorandum. Can I look at it.

By the Court.

Q Not yet. I don't know what your purpose was. As a disinterested witness you were very active. A I went there on the 19th and she wasn't in, and we went there on the following day the 20th and served her with papers about half-past four or five o'clock.

By Mr. Masucci.

Q What date was it you went there and saw the painters working on the building? A In July, 1928.

Q What did you do in the month of July, 1928, when you went there? A In regards to what?

Q In regards to the building. A I had nothing to do with the building.

Q Why did you go there? A Why, I didn't say I went there on purpose. I was passing by. I was coming home from that direction from the graveyard. I was up to my mother's grave and I was passing by and saw them doing some work. It just came to me I needed my house painted and my walls papered and it was a good chance for me to get it done cheap and I gave him my card. He is sitting right back there (indicating).

By the Court.

Q Can you tell me what day of the week the 19th of June was? A It is twenty months ago.

Q I am only asking can you tell me that? A I wouldn't say I could or not.

Q Can you tell me what day of the week you found her there to serve the papers on her? A I know it was the 20th day of June, and Mr. Solodar gave her the papers.

Q Could you tell me what day of the week it was? A No, I could not tell you what day of the week it was.

By Mr. Masucci.

Q Where did you say you were coming from when you went to 22 Gladstone avenue? A I was coming from the graveyard. Not coming downtown but in a different direction.

By the Court.

Q What's the name of the graveyard? A I don't know the name of it, but it is a Jersey graveyard.

By Mr. Masucci.

Q Where is it located? A About three or four blocks from Gladstone avenue.

Q What street is it on? A I couldn't tell you what street.

Q Near what avenue? A Facing South Orange avenue.

Q Where did you intend to go to on that date in question? A Why, I wanted to see a fellow. There is a place right up there—an arena where they have boxing and stuff of that kind.

Q What arena? A Where they have boxing and stuff of that kind.

By the Court.

Q Is that on a Sunday? A No, that was not a Sunday.

Q That was a week day? A Yes.

Q What time of the day? A Well, that was in the afternoon about something like two or half past or maybe a quarter to three.

Q Did you see a boxing match that day? A I didn't say I was going to see a boxing match that day. There was an arena up there where they hold boxing matches.

By Mr. Masucci.

Q But you intended to go there? A No, I didn't go there. What are you trying to do, throw me off?

By the Court.

Q No one will throw you off. Counsel is asking you where you contemplated going when you left the graveyard. A If he wants to know I will tell him. There is a young gentleman up there that I know tends to the gate and I knew if I could see him up there and get a couple of tickets for the fight I might as well buy them from him instead of going downtown because I could get good seats.

Q How far is the graveyard from the arena? A About five blocks.

Q How far from 22 Gladstone avenue? A About two blocks or three.

Q When you got to the arena and got seats from them what was your purpose in going to Gladstone avenue? A I was coming back and I saw a fellow with a machine and I thought I would hail him to take me down home.

Q Your home was in a different direction? A No, I was going back home. When I am leaving the arena I am going back home.

Q You had to pass Gladstone avenue to go to your home? A Certainly I had to pass that way.

By Mr. Masucci.

Q Where is this arena—the Velodrome? A The Velodrome, yes.

Q Where is your home did you say? A My home is 118 Wickliffe street.

Q Near what avenue is that Wickliffe street? A Near Thirteenth. It runs from South Orange avenue to Thirteenth avenue.

Q And it is south of South Orange avenue, isn't it? I will withdraw that—it is north? A Yes, my house.

Q And the Velodrome is on South Orange avenue? A Way up there.

Q 22 Gladstone avenue is south of South Orange avenue? A Yes, sir.

Q So if you were at the Velodrome and intended to go home to your home on Wickliffe avenue— A Wickliffe street.

Q Which was north of South Orange avenue, why would you take a southerly course to Gladstone avenue? A That's what I was trying to explain to you.

The Court: That's what he wants to know.

Witness (continuing.) I walked from the Velodrome or whatever you call it to Wickliffe street.

By the Court.

Q To your own street? A I mean go Gladstone avenue, and when I got to Gladstone avenue there was a fellow about half ways down

the block and I hollered to him and I tried to catch him, and there was a little corner turning around Gladstone avenue and he was ahead of me and didn't hear me holler. I wanted to get to him because I knew he was going downtown.

Q How did you know he was going downtown? He wasn't going in your direction. Gladstone avenue was south of the Velodrome? A Yes. There is a little corner that turns around there. He was on Gladstone avenue and as I hollered to him he just turned the corner going down to the other block.

Q Is Gladstone avenue in the vicinity of this Velodrome? A Yes.

Q How far distant? A Let me see! It is I should judge three blocks.

Q So when you left this Velodrome you walked south until you reached Gladstone avenue and then you say this happened what you are describing, yet your destination was north? A No, right down straight South Orange avenue, and he turned the corner.

By Mr. Masucci.

Q When you first left the Velodrome you didn't see the automobile then, did you? A No, sir.

Q Did you intend to ride down or walk down South Orange avenue to your home? A It was immaterial to me whether I rode or walked.

Q What did you intend to do? A I hadn't made my mind up.

Q So you were walking at that time? A Yes.

Q From Gladstone avenue to the Velodrome is about ten blocks? A I wouldn't say.

Q About eight blocks? A I wouldn't say it was.

Q You wouldn't say it wasn't ten blocks? A No.

By the Court.

Q You have testified you walked three or four blocks? A Yes.

By Mr. Masucci.

Q So you walked the distance from the Velodrome to Gladstone avenue you say? A Yes.

Q And that was the first time you saw the car coming down?

The Court: When he walked three or four blocks.

By Mr. Masucci.

Q When you saw this car where was the car? A On Gladstone avenue.

Q How far away from South Orange avenue? A It must have been around 26 or 28.

Q How many feet? A Well, I should judge about—I should judge about 150 or 175 feet.

The Court: Can counsel concede how many blocks Gladstone avenue is away from the Velodrome?

Mr. Masucci: About ten or twelve blocks.

Mr. Susskind: That is absolutely wrong.

Mr. Masucci: How many blocks is it?

Mr. Susskind: It is not quite two blocks.

The Court: You say it is two blocks and he says it is eight. We will let it rest right

there. I will find out by looking up the directory.

By Mr. Masucci.

Q When you saw this car on Gladstone avenue it was driving away from you? A Going south on Gladstone avenue.

Q What kind of a car was it? A I don't know.

Q Who was driving the car? A Will Murray.

Q You wanted him to stop so you could take a ride with him? A He didn't hear me call.

Q He kept on going? A Yes.

Q Did you try to follow the car? A I only followed it as far as the house number 22 Gladstone avenue.

Q When you were following the car did you walk or did you run? A I ran.

Q And then you stopped? A Yes.

Q Have you ever been convicted of a crime? A Yes, sir, twenty long years ago.

Q Have you any personal interest in this case? A Not that I know.

Q Have you any prejudice against Miss Clawans? A None whatsoever.

By the Court.

Q Do you know Mr. Shapiro the man you testified about was convicted of a crime? A No, sir.

The Court: Will you gentlemen concede on the record that Mr. Shapiro the one that has been spoken of by this witness is now incarcerated because of a crime?

Mr. Susskind: I will concede it but I don't see the materiality of your Honor asking that question. I don't think your Honor is right in asking this witness that question.

The Court: You can put it on the record. This witness has shown he is a garrulous and doubtful witness. He is trying to get on the record and before the Court matters that don't concern what has been asked him. He has before him a paper which he is referring to in pencil writing and yet he tells counsel he is not interested in this case.

Mr. Susskind: That is the peculiarity of this witness.

The Court: A man that has been convicted of a crime is not entitled to the same credibility as one who has not been. If he knew he was dealing with another criminal, and I refer now to Shapiro; if he knew it then I am going to take that into consideration in dealing with the testimony of both men.

Mr. Susskind: At the time he dealt with this man Shapiro there is nothing to show Shapiro was a criminal.

The Court: You are after stipulating he was convicted of a crime.

Mr. Susskind: After this whole transaction.

The Court: I don't know when he was convicted. I am frank to say to you I am going to send some of this record to the Prosecutor's Office with a view of having him further prosecuted.

Mr. Susskind: I hold no brief for him.

The Court: He is a scoundrel. He perjured himself and straightened himself out and tells the truth when it is shown he is wrong.

Mr. Susskind: I hold no brief for him. I don't want to argue the law.

The Court: We will let the matter rest.

By Mr. Masucci.

Q You were so interested in this case you wanted to bet a thousand dollars on the outcome of this case, isn't that so? A When was that?

Q Didn't you come to me outside in the hall the first day the case came up and ask me if I represented Miss Clawans and say "I will bet you a thousand dollars on the outcome of this case"? A I don't recall.

The Court: Just tell the truth and nothing but the truth. I have been dissatisfied with you on the stand heretofore and you are getting perilously near trouble.

The Witness: What day was that?

The Court: Read the question.

(Last question read by stenographer.)

The Witness: Oh, yes, I recall that. You are right, attorney.

By the Court.

Q And yet you say you are not interested in this case? A No.

Q Why were you willing to bet a thousand dollars on the outcome? A I will tell you the reason why.

Q I am interested to know. A If you want to know this old gentleman back there what's

his name—Benninger, they found out and I found out—

Q You say they found out? A I found out and also the attorney has found out since—

Q Which attorney? A This attorney sitting here (indicating).

Q Mention the name. A Mr. Susskind.

Q You found out and the attorney found out something?

Mr. Susskind: I take exception to that. I am not his attorney.

The Witness: He is not my attorney.

The Court: All right.

A That Mr. Benninger has told me that Miss Lillian Clawans wanted him to say in court here as a witness that she bought the property instead of Shapiro, and I says to Mr. Benninger "You tell the truth. Don't perjure yourself or you will go to jail." I am telling the truth and if you think I am lying I will go to jail.

Q Why would that actuate you in betting Mr. Masucci a thousand dollars? A Because the woman was lying to him.

Q You never met her? A Yes, I did, in 1926, when she got me to sign a contract from Mary Scholder. That was the first time I became acquainted with her. When I found that out I knew the woman wasn't telling the man the truth.

Q That remains to be seen. A I wouldn't sell her the contract. I said to the attorney "I will bet you a thousand if the judge looks right at it in the proper way—

Q If I look at it in the right way I would put you in the county jail. I have tolerated a

whole lot from you. A I have been under a doctor's treatment.

By Mr. Masucci.

Q You prepared a statement in this case of what you intended to state? A Prepared a what?

Q A written statement as to what you intended to say to the Court. A I just made a few articles on here of what I did when I took possession of the house and I have it in my possession ever since. You can look at it. It is about how many windows. I don't hide nothing.

Q Let me see that statement you were trying to refer to. A I have nothing in pen and ink. It is all in lead pencil.

Q You had something in pen and ink? A No, you can go through my pockets. Here it is.

By the Court.

Q You say that was the paper you were looking at? A Yes.

By Mr. Masucci.

Q You took this down? A Yes.

By the Court.

Q When did you write that? A Yes.

Q Tell me when you wrote it. A I can't see without glasses. (Witness puts on his glasses.) I will read it out.

Q I want to know when you wrote it. Don't read it out. Tell me when you wrote it. A When I got into possession of the property.

Q When was that? You have used the word possession several times. So far as I know you

were not actually in possession. You were never in possession of that property personally? A No, not before the deed. You see it was an estate.

Q When was it you wrote that paper? A That's a good many months ago since I wrote it.

Q Years ago? A No, months.

Q When did you write it? A Well, I just can't simply say how many months ago.

By Mr. Masucci.

Q Was it twenty months ago? Was it June, 1928? A No, it wasn't then.

Q When was it you claim you went into possession? A Let me see! It was when it was Primary Election that last time May 15th. How long ago was that?

Q 1928 or 1929? A 1928, I think. Somewheres around there.

Q And you wrote everything that is on this paper at that time? A Yes.

Q Are you sure of that? A Yes.

By the Court.

Q Are you sure of it? A I wouldn't swear to it.

Q Take a look at it and see whether you will or not. A This is what I made here.

Q Take a look at it and tell me whether you wrote that at the time you say. A I think here your Honor— Here is where I made the mistake.

Q I am not asking you that. I am asking you when you wrote it. A I think right after the election.

By Mr. Masucci.

Q May, 1928? A Yes.

By the Court.

Q You wrote everything on that paper after May, 1928? A Yes.

Q Are you sure of it? A I am trying to get my memory together.

Q What was your purpose in bringing that paper here today? Have you been carrying that paper around with you from that time—since 1928? A No, I had it home.

Q Why did you bring it here today? A If you wanted to ask me anything about owning the property or when I came into possession of the mortgage, or when the lawyer brought it in I could do it.

Q You told us that without the paper. You told us you went there on a Sunday and didn't find her home, and told us you or this man Solodar went there on the 19th and didn't find her and went back on the 20th. A Yes, he served her with the papers on the 20th of June.

Q I am asking you why you wrote that paper down in the way you did? A So I would have some evidence if anything came up that anybody was trying to take the property away from me that I would have something to show.

The Court: Have that paper marked for identification.

Mr. Masucci: I ask it be marked for identification.

(Paper marked Masucci 1 for Identification.)

By Mr. Masucci.

Q Did you make all the notations on Masucci 1 for Identification? A I wrote that myself.

Q Did you make all these notations at one time? A At one time? No, I made them at several times.

Q From time to time? A Yes, from time to time.

Q At the time you made these notations they were contemporaneous with the happening of the incident. About the same time of the incident you mention here happened? A I believe it was.

Q And why did you write on the top here "If my memory serves me right"? I wanted to be sure when the estate of my brother Perry Gross was closed. On June 16th I wanted to be sure I came into possession of the Mary Scholder mortgage at that time.

Q Did you write "If my memory serves me right" on this document Masucci 1 for Identification before or after you looked at the premises? Did you write it in May, 1928? A No, that was the last thing I put down there.

Q And you put it down a few days before this case came up? A Yes.

By the Court.

Q Why did you put it down if you were disinterested? A I wanted to see whether my memory was right.

Q You didn't know you were to be subpoenaed? A I was subpoenaed three different times.

Mendel Gross, for Defendant, Cross.

By Mr. Masucci.

Q Do you know how to spell the word *memory?* A The way I spell it is *memrey.*

Q Is that the way you spell it? A *Memrey.*

Q That is the way you always spell it? A I am no very good hand on spelling.

The Court: Write down the word *memory* on this piece of paper.

(Witness writes *memory.)*

Mr. Masucci: Will you write the word *possession?*

(Witness writes *purshion.)*

Mr. Masucci: Will you write the word *Scholder* on that paper?

(Witness writes *Shoulders.)*

Mr. Masucci: Will you write the word *Gladstone?*

(Witness writes *Gladstone.)*

The Court: Now write the word *memory.*

(Witness writes *memrey.)*

Mr. Masucci: Will you write the word *acquainted?*

(Witness writes *aquained.)*

By Mr. Masucci.

Q Did anyone help you make up this memoradum marked Masucci 1 for Identification? A Those words you mean?

Q Yes. A I put them down myself.

By the Court.

Q You wrote that down yourself did you? A And when I wrote some words, for instance,

possession, I would look at the book to see if I had it right or wrong and copied it from the book.

By Mr. Masucci.

Q What book did you write it from? A From any magazine or newspaper I was reading. For instance, *Sholder* I could spell myself.

Q What book did you look at to see the spelling of the word *possession?*

By the Court.

Q Did you look at a book or did you know how to spell it without a book? A This here I did not take from a book. I figured that word *possession* out myself.

By Mr. Masucci.

Q Now each one of these notations were made at the time you made the visit or examination, that you wrote down here in Masucci 1 for Identification? A Yes.

Q So if you went to the property one time you would go home and make this notation you saw this property and make a note of the mortgage?

By the Court.

Q Did you do it at that time? A No.

Q How long after did you put this writing on this paper? A Oh, maybe a few months afterwards.

Q Did you put any date on the paper when you wrote down the particular occurrence? A No.

Q Why not? A I didn't think it was necessary. I just wanted to keep a memorandum.

Q Why did you write that first line recently, if you did write it, if your memory was all right? A I put that down the last time.

Q When did you put it down? A About a month and a half or two months ago.

Q Yet you wrote this paper in 1928? A 1929—1928, yes, that's right.

Q If you had written down at that time the events as you have them stated there what prompted you to put those words at the top of it? A I didn't know whether the words were spelled right or wrong.

Q Why did you put on that paper several months ago "If my memory serves me right"? A If that was a correct answer.

By Mr. Masucci.

Q Everything that was put on that paper was put on in the month of June, 1928? A Not all.

Q Did you put anything else on except "If my memory serves me right"? A Yes, I put down when the estate was closed.

By the Court.

Q When did you put that down? A On the following day. I took it home and put it on a sheet of paper. That's the time I came into possession of Mary Scholder's mortgage.

Q Is there any date there? A No, and I gave the house over for sale to Mr. Benninger in June, 1928, to sell for me. Then I put that down when I gave it to him to sell, and then

when the lawyer, Mr. Simon L. Fisch, bought the property in.

Q When you gave the property over to Mr. Benninger in June, 1928, did you make a note of it on the paper? A When I came home I did.

Q How is it you have the entry following that in May, 1928? A This is June, and this was made when the attorney bought it in—after he bought it in. I couldn't sell it before he bought it in, and then after that when Mr. Solodar went up—we went up to serve her with papers. We went up there on the 19th and 20th of June, 1928.

By Mr. Masucci.

Q You are certain you only went up there on the 19th and 20th? A With him alone, but I was up there a few times myself outside of him.

By the Court.

Q You said you were there alone the first Sunday in June, 1928? A Yes, alone.

Q And the next time you went there with this man Solodar on the 19th of June, 1928, isn't that so? A I went in June.

Q With Solodar on the 19th? A Yes, the 19th and 20th.

Q On the 19th you didn't see Mrs. Scholder and you came back again on the 20th? A Yes.

Q What other times did you go there if you did go again? A I went in July, I think it was around the third day of July.

Q Why did you go there again? A I said I was there.

Q Why? A That was the day I went up to the Velodrome that I was trying to catch the car—that I couldn't get the car, and passing by I saw some men doing the work and I thought I would go in and ask them how much they would charge.

Q That was the 3rd of July? A Either the 3rd or the 5th.

Q Which was it? A I would swear it was the third, your Honor.

Q Do you recall you have sworn differently already? You don't remember what you said before when you went to the Velodrome? When do you say you went to the Velodrome on the occasion you spoke of? A Why, in July. Did I say July?

By Mr. Masucci.

Q The only occasion in the month of June you went up to see this property on Gladstone avenue was the 19th and 20th of June? A I went with Mr. Solodar.

Q On the 20th you went with Mr. Solodar? A Yes.

Q On the 19th you went alone? A No, I was with Mr. Solodar also.

Q On the 19th and 20th? A Yes.

Q Did you go any other time alone in the month of June? A Yes.

Q When? A On the 17th and 18th, and I went on the 19th with Solodar and I went on the 20th.

Q You are certain of that, are you? A I am quite sure I went a couple of times.

By the Court.

Q You stated it as a certainty. Are you really quite sure? A I went twice again your Honor with Solodar.

Q You are after saying you went there the 17th, 18th, 19th and 20th? A Yes.

Q This is the first time you said you were there on the 17th and 18th? A Two days I went alone and two days with him. I thought you were asking how many days I went there with Mr. Solodar.

Q I asked you before when you went there alone and I understood you to say you went there alone on the first Sunday of June? A That was before the 17th I went there in June. I went there alone. That was the first Sunday in June. They after that I went on the 17th.

Q Why did you go on the 17th? A Because they wanted to serve her with papers.

Q You didn't have any papers? A No, they wanted to find out what time she comes home. They said to Mr. Solodar to go up and find out what hours she comes home.

Q Did you see her on the 17th? A No.

Q And you went there for the same purpose on the 18th? A No.

Q And not knowing what time she was going to be home, and going there on the 17th and 18th and not finding her home, you and Mr. Solodar went there with papers to serve on her? A Yes.

Q And you did not see her that day? A No.

Q You went back on the 20th? A We waited on the corner.

Q But you went back again on the 20th? A Yes, we saw her getting off the car about

half-past— Well, it was in the afternoon but I can't recall the exact time.

By Mr. Masucci.

Q Mr. Gross, you are certain you went with Mr. Solodar on the 19th, are you? A I am positive of that. I could swear to it.

Q Supposing I call your attention to the memorandum marked Masucci 1 for Identification? A Yes.

Q Mr. Solodar went first on the 19th and 20th of June, 1928? A That's what I say.

By the Court.

Q Point out any statement when you went there on the 17th and 18th.

Mr. Masucci: It is not there. It says "I myself went with Mr. Solodar on the 20th of June, 1928."

By Mr. Masucci.

Q Where is there a notation you went there on the 19th? That is Mr. Solodar went first. A I am including myself in it. I am no bookkeeper.

By the Court.

Q Did you make a bet with anybody on the outcome? A No.

Q You were willing to bet one thousand dollars? A I was only joking at the time. You can take a joke sometimes.

Q Not in a court of law. A He was trying to get my goat and I was trying to get his goat.

Mr. Masucci: I didn't talk to him.

The Witness: Yes, you did.

By Mr. Masucci.

Q "I became acquainted with Lillian Clawans the year of 1925." A I will show you why. I will explain it if you will give me a chance your Honor.

The Court: He is asking you why you put that on that paper.

The Witness: March 13, 1926. That's the first time I got acquainted when she drew the bill up in—

By Mr. Masucci.

Q What has that got to do with the notation of 1925? A I must have made a mistake in the year. Instead of putting 1926 I put 1925. There it is right there (indicating).

By the Court.

Q Why did you on a paper that you were writing out in May, 1928, at a time when you did not know you were having any business dealings with Lillian Clawans mention in that paper you became acquainted with her in 1925? A Because she was the lady that introduced me to Mrs. Mary Scholder to get her a eight thousand mortgage, and I told them myself the estate ain't cleared up at that time. My brother who died was the executor. I didn't know whether I was saying anything that would interfere with the executor.

Q I am asking you why you put it on the paper? A In case anything went wrong with

the business I had her writing and I put it down there just what date I received it from this lady.

Q You have testified when you entered into the contract with Mr. Shapiro to sell the Gladstone avenue property to him that you did not know Lillian Clawans at that time in connection with this transaction? A I knowed her from 1926.

Q Not in connection with the Gladstone avenue transaction? A No.

Q This paper that you have here which is marked Masucci 1 for Identification, relates entirely to the Gladstone avenue property, doesn't it? A Yes.

Q Well, why did you write on that paper anything about having first became acquainted with Miss Clawans in 1925? A I wanted to make sure in case the executor wanted to know when I signed that bill the lawyer has there. I wanted to make sure.

Q That is a paper bearing date 1926? A Yes, it is 1926. I have it down 1925. I must have made a mistake and put a 5 down your Honor. I was trying to keep a small memorandum, and my brother was in on this estate and I wanted to make sure when it was split up he would get his half and I would get mine.

Q If you wanted to make a memorandum about the Gladstone avenue property or the property that came to you through the will, why did you put on that paper the statement you first became acquainted with Miss Clawans in 1925? A Because I have something to show for it.

Q How did it concern you in connection with the paper? A Because my brother wouldn't be-

lieve me. If he don't want to believe me I have a record of it.

Q Which brother do you mean? A My brother Herman Gross. There is only he and me. The rest of them died.

By Mr. Masucci.

Q This memorandum Masucci 1 for Identification which says "I became acquainted with Lillian Clawans in the year 1925," was taken from this letter of March, 1926, is that right? A I wanted to put it down when I got that.

Q Yes, but it was taken from this letter of March, 1926? A So far as I can say.

Q Where is there mention of Miss Lillian Clawans in that letter of March, 1926? A That's what she gave me. She typewrote it here.

By the Court.

Q Is there anything in there indicating the name of Lillian Clawans? A She gave it to me.

By Mr. Brogan.

Q Did she give it to you? A Yes, she gave it to me in her office. It came to Al. Brown.

Q He got the original? A Yes, and this is a copy. All she wanted was my signature to that.

By Mr. Masucci.

Q I want to call your attention to the fact—

The Court: Why not offer it in evidence?

Mr. Masucci: I can't now.

Mr. Brogan: It is quite all right.

Mr. Masucci: I will offer both of them in evidence.

Mr. Brogan: You mean his writing and the spelling of the words?

Mr. Masucci: Yes.

Mr. Susskind: How is that material?

The Court: As to his credibility. He said he was a disinterested witness yet he wrote this paper in May, 1928, and within the last few months he wrote down on it "If my memory serves me right," and on top of that he offered to bet Mr. Masucci a thousand dollars in the hallway on the outcome of this case. I will let them be marked.

(Yellow sheets marked Exhibit C. 12 and Exhibit C. 13 in evidence.)

Re-direct examination by Mr. Brogan.

Q When you foreclosed your mortgage was there an answer put in? Was the foreclosure contested?

The Court: I suppose the record will show.

By Mr. Brogan.

Q Did Miss Clawans contest the foreclosure of your mortgage?

The Court: You mean as solicitor for Mrs. Scholder.

Mr. Brogan: Yes.

A Yes.

Q And you knew her from that connection?

A Yes.

By the Court.

Q She had talks with you? A Yes.

Q And there was a negotiation with you about the sale of the property. You didn't get what was asked by you? A No.

Q And you knocked off five hundred before you finally sold it? A I lost a thousand.

Q You wanted ten thousand? A Yes. I told Mr. Benninger if he could sell it for ninety-five hundred he could keep the rest. He told me he could get nine thousand. He calls up home I guess from a lawyer's. He says "How much do you want?" He says "If you will give me a hundred I will have him there." In a half an hour he had the man there.

Q Who was the man? A Shapiro. I took him to an attorney's office and he put down one thousand and thirty days to make a search. He came back after that and paid the rest. That's all I know about Shapiro, and never had a transaction with him.

The Court: Anything else?

Mr. Brogan: That's all.

DAVID BENNINGER, a witness being sworn in behalf of defendant.

Direct examination by Mr. Brogan.

Q Mr. Benninger, you live in Newark? A Yes.

Q What is your business? A Real estate.

Q And you have been a real estate man for a good many years? A For twenty years.

Q Did you negotiate the sale of the property 22 Gladstone avenue formerly owned by Mendel Gross? A I did.

Q What were the circumstances of that transaction? A Mr. Gross came and listed the property with me and he told me first he wanted ten thousand and couldn't get it, and he came down to ninety-five hundred. Through Mr. Gross I went out to look at the real estate. We tried to bring several people there and couldn't see it. He said he could have sold the property several month earlier—Miss Clawans wanted to buy it.

Q Who said that to you? A Mr. Gross. Then I went to Miss Clawans and told her I could get the property for ninety-five hundred —"Are you willing to buy it?" She said "No, not for ninety-five hundred, but for nine thousand I will take it." So Mr. Gross came up there and I told him. "Well," I says, "For nine thousand I can't ask you no more than one hundred dollars commission, and I will see it if you are satisfied." He said "Go ahead."

Q Did you go back to Mr. Gross and tell him Miss Clawans was interested in the property? A No.

Q Why? A Miss Clawans told me— She said "I will buy it, but I don't want my name to appear. I have a friend of mine who is a lawyer and he will buy it for me in his name, but don't mention my name—I don't want them to know I bought it."

By the Court.

Q Who did she mention as her friend? A Mr. Shapiro.

Q Did you bring Shapiro and Gross together then? A No. I went down to Mr. Fisch's office and told them and I says "I have a buyer, Mr. Shapiro. Miss Clawans told me not to mention her name and he should make out the papers," which he did.

By Mr. Brogan.

Q What if anything else did Miss Clawans say to you at the time you went to call on her? A She says she buys it in for the old lady. There was an old lady upstairs who put a lot of money in it and she lost it all "and when I make any money on it she will get it."

Cross examination by Mr. Masucci.

Q She told you when she makes any money on the property she will turn it over to Mrs. Scholder? A Yes.

Q And it was Mr. Gross who first mentioned Lillian Clawans' name to you? A I found out she was interested in the property before. He never told me I should go to her.

By the Court.

Q Did you meet Mr. Shapiro in connection with the property? A I did not.

Q You let Mr. Fisch take care of it? A Yes.

By Mr. Masucci.

Q Was Mr. Shapiro in your office when Mr. Gross came to your office? A No.

Q Did he ever meet Mr. Shapiro in your office? A No.

David Benninger, for Defendant, Cross.

By the Court.

Q Do you remember what that story was that Gross attributed to you? A Yes.

Q You heard what he said, did you? A Yes.

Q What did you hear him say which was attributable to you? A I said Miss Clawans bought this house. That is what it appeared to me.

Q I will have the stenographer go back and read what he said.

(Stenographer reads as follows:) "A That Mr. Benninger has told me that Miss Lillian Clawans wanted him to say in court here as a witness that she bought the property instead of Shapiro, and I says to Mr. Benninger 'You tell the truth. Don't perjure yourself or you will go to jail.' I am telling the truth and if you think I am lying I will go to jail."

Q You have heard what the stenographer has just read to you of testimony given by Mr. Gross. Was there any such conversation between you and Gross. Did Mr. Gross tell you to tell the truth and not to perjure yourself in court? A I know myself to tell the truth when I am under oath.

Q Did you tell Mr. Gross that Miss Clawans told you to say that somebody else bought the property or words to that effect? A I may have told him that Miss Clawans bought the property and not Shapiro.

Q Was there any talk between you and Mr. Gross wherein he said to you "You tell the truth and don't perjure yourself—I am going to tell the truth myself"? Do you remember any such conversation? A I do not.

David Benninger, for Defendant, Re-direct.

By Mr. Masucci.

Q Did you ever tell Mr. Mendel Gross that Miss Clawans had asked you to say that she was purchasing the property and not Mr. Shapro? A No.

By the Court.

Q Did you tell Mr. Gross that Miss Clawans asked you to give the court that impression? A No, I told the truth that Miss Clawans bought the property. That's was I said.

Q When was this talk? A I don't know.

Re-direct examination by Mr. Brogan.

Q As a matter of fact did Miss Clawans talk to you about how you should testify in this case? A How I should testify?

Q Yes.

By the Court.

Q Did Miss Clawans speak to you about how you should testify in this case? A She told me I should leave out the old lady. I shouldn't mention the old lady.

Q Did she ask you to tell an untruth in this case? A No.

Q Did she influence or try to influence you as to how you should testify? A No, she couldn't influence me.

By Mr. Brogan.

Q If I understand you correctly she did tell you to make no mention of the fact that she said she was buying it in the interest of the

old lady or for her after benefit? A That is what she said.

By the Court.

Q You are after saying to leave out the old lady? A Yes.

By Mr. Brogan.

Q I will put it this way. What did she say to you when she asked you about your testimony in this case? A Just what I said on the stand, to leave the old lady out—I shouldn't mention the old lady. I said "When I go on the stand I will tell the truth."

By the Court.

Q And you told her just what you testified to here? A Yes.

By Mr. Brogan.

Q And when you told her that she said "Don't mention the old lady"? A To leave the old lady out.

Q Were those her exact words or did she say to you "Don't make any mention of the old lady"? A That I can't say.

By the Court.

Q Did she say anything in addition to those words? A Don't mention the old lady—I can't remember.

Re-cross examination by Mr. Masucci.

Q Was this conversation with Miss Clawans in the hallway out here in my presence? A That I don't know.

Q Is that the time Miss Clawans introduced you to me as the person who was to try this case? A Yes.

Q And you told the story you were to testify to? A Yes.

Q She didn't make that remark in my presence, did she? A No.

Q She just told you to tell the truth didn't she, in my presence? A Yes.

Mr. Masucci: That's all.

JOSEPH SUSSKIND, a witness being sworn in behalf of defendant.

Direct examination by Mr. Brogan.

Q You came here this morning in a car—an automobile? A Yes.

Q Who was with you? A Mr. Benninger and Mr. Gross and Mr. Yawitz.

Q Now directing your attention to the testimony of the last witness as to the conversation he had with Mr. Gross, what did he in fact say in your presence and Mr. Gross' presence this morning?

Mr. Masucci: I object to it. He is contradicting his own witness on the stand. In the second place it is a statement to a witness in the case, Mr. Susskind, and is not chargeable to us.

Mr. Brogan: That witness on that point said he didn't remember. I am not contradicting him.

The Court: I will receive it subject to your objection, Mr. Masucci. It may lead to a continuance of the case to another day.

A He said that—

By the Court.

Q Who said? A Mr. Benninger told—

Q Tell us what the conversation was. A Mr. Gross said something about telling the truth.

Q What did he say? A Mr. Gross said "Now, when you get on the witness stand Mr. Benninger never mind what Lillian Clawans told you, but to tell the truth and the whole truth, that is what I am going to do," and Mr. Benninger said "That is what I will do. Of course she wanted me to leave out all reference to the fact that she was buying it for Mary Scholder, but I have to tell the truth. That is what she told me and that is what I am going to say."

By Mr. Brogan.

Q What is your relation at the present time to the defendant in this case? A I am at present counsel of the defendant.

Q You succeeded Mr. Shapiro? A That's right.

Q Did you visit the premises 22 Gladstone avenue at any time? A I did.

By the Court.

Q Are you the brother of the president who testified? A Yes.

By Mr. Brogan.

Q Did you ever visit the premises 22 Gladstone avenue, Newark? A I did visit it in the early part of August, 1929.

Q For what purpose? A I went there to look at the premises in view of the fact that I received notice from the secretary of the association that the loan of the Ordway Building & Loan Association on 22 Gladstone avenue was in arrears.

Q The mortgage loan? A Yes. And in accordance with that notice I send a letter addressed to Max Goldberg known on the records of the association as the borrower. I sent a letter to him informng him he was in arrears and wanted to talk to him about it. That was the substance of the letter. That letter came back from the Postoffice Department with a notation on it "House Unoccupied." In order to see what the situation was I went up and looked at the house.

Q Is that the letter? A Yes.

Q Is that the envelope in which you sent the letter to Mr. Max Goldberg? A Yes. I didn't know where he lived and I assumed that was his address.

Q Is the letter inside? A Yes.

Mr. Brogan: I would like to offer the letter and the envelope in evidence.

The Court: How is the letter material? The envelop is material.

Mr. Brogan: It is just a form letter.

The Court: Let the envelope be marked.

(Envelope marked Exhibit D. 14 in evidence.)

By Mr. Brogan.

Q When this letter was returned to you in the envelope what did you do then? A I went up to 22 Gladstone avenue. Someone went with me.

By the Court.

Q Who went with you? A Mr. Yawitz, who is associated with me in my office.

The Court: This envelope shows it was postmarked July 29th, 7 P. M.

By Mr. Brogan.

Q That isn't your writing? A No.

Mr. Brogan: It is an envelope about eight inches long and four inches wide. In the upper left-hand corner "Joseph Susskind, 972 Broad street, Newark, New Jersey," and addressed to Mr. Max Goldberg, 22 Gladstone avenue, Newark, New Jersey. There is a Postoffice stamp "Newark Jul 29—7 P. M. 1929 N. J." and then the figure 4 on the left-hand side of the circle. There is a red hand stamped on the face of the envelope on which is printed "Returned to writer from Newark, N. J. P. O.," and written in lead pencil is the following—"House unoccupied 1257 7-31-29."

Q Now you made a visit to 22 Gladstone avenue? A I did.

Q About what date? A I can't remember the exact date, but it was right after that letter was returned.

Q Within the week? A No, one or two days.

Q And what did you find on the premises? A I went up there and found that 22 Gladstone avenue was entirely vacant.

Q How did you know that? A I could see it. You could see both apartments were vacant from the street. Standing across the street you could look up above.

Q Did you ring the bell? A I did not ring the bell. There were no names in the bells or anything. I didn't take particular notice of what was there except this that the porch itself was in a very dangerous condition. It was undermined and sagging at that time.

Q Any sign in the window or on the porch? A Yes, there was a sign in the window and I made a note on an envelope of the name and telephone number of the sign in the window. The sign was really a "To Let" sign.

By the Court.

Q What did it say on it? A To the best of my recollection "Apartment to Let—Inquire I. Kalisky, 1060 Broad Street—Market 9909." The first thing I did was this. I examined the property to see what the situation was and I figured the association had to take it over. I thought it was abandoned. I found a driveway to the property but no garage. I found in the driveway a great number of parts of an automobile—motor, wheels, chassis, and I immediately made inquiry as to who owned it.

Q Who did you make your inquiry from? A A neighbor next door.

Q Tell us the name. A Baker. I found it was a party's who lived next door at 20 Gladstone avenue. I told him the building and

loan association had a mortgage on the property and we would take possession of it. I ordered him to remove his automobile parts from that driveway at once because it looked to me as if it was a detriment to the renting of the place. He told me someone else told him he had to take it away and he would take it away by Saturday. That was some day before Saturday. I then went back to my office and tried to get in touch with I. Kalisky, 1060 Broad street. I thought I would go over and speak with him. It is not very far from my office. My office is at 972 Broad. I went to 1060 and couldn't find that name on the bulletin board. I asked the elevator man and he looked up a book he had and he couldn't find that name. I went back to my office and called up Market 9909 and a woman's voice answered. She asked me what I wanted. I said "I am calling with reference to 22 Gladstone avenue." She said "What do you want to know about it?" I said "I am representing the building and loan association and there is a mortgage on it and you are in arrears." She said "You are crazy." I said "Who is this?" and she said "Miss Clawans." I knew Miss Clawans and she knew me and she started to tell me something about Morris Shapiro.

Q You had better give us the whole conversation. A What happened was that we didn't talk very much over the 'phone about it, but I made an appointment to call at her office and talk the matter over. Subsequently I think the following day. That was on a Saturday I believe, and in that telephone conversation she said "Are you sure you have a first mortgage on that property?" I said "I am positive be-

cause I searched the records immediately after I was retained by the association." I searched the records of that lot to see whether or not we had a first lien and to discover any possibility of defalcation upon the part of Shapiro. I told Miss Clawans that my preliminary search had disclosed we did have a first lien on this property. She said I must be crazy. I was used to hearing such things, so I said "Lillian, let's go up to the Court House and see what is on record again." So she said she would send someone up. So I immediately went up to the Court House to the Register's Office to search the records again and I there met Helen Clawans, Miss Clawans' sister, and we both searched it and disclosed the fact to be that the Ordway Building & Loan Association had its mortgage on record the same date that a deed was on record from Mendel Gross to Max Goldberg, and that a deed from Max Goldberg to Lillian Clawans was on record approximately a year later. Then during the early part of the following week I went to see Miss Clawans in her office. At that time she had her office split up, part in her regular office and part in another room which she was permitted to use by the owners of her building, and I went in there and spoke to her and she told me this story in this way. She said this property belonged to a client of her's, Mary Scholder. That the property was under foreclosure by one Mendel Gross and that she had made an effort to save the property for her client by trying to get a loan somewhere to replace Gross' mortgage but had been unsuccessful in getting it. That finally she decided to buy the property herself but she was anxious to keep that fact from Mary

Scholder for the reason that if Mary Scholder knew that she, Lillian Clawans, was buying this property in that she would refuse to move from the premises and would live there without paying her any rent, and that she couldn't get rid of the old lady. She also told me she gave Shapiro money with which to buy this property for her and that she said she did not know of the fact that the Ordway Building & Loan Association had a mortgage. I told her that I was sorry that she had been swindled by Shapiro, and that I would ask the association to do its utmost to try and help her in the situation by refraining from instituting a foreclosure suit and trying to help her so she could get whatever equity she had in the property out of it. She said she was very glad I was going to assist her, and then her sister came in and spoke about some other thing. I have known her sister Helen for quite a while. There was also another sister that I did not know that spoke about different things and about how Shapiro had robbed her of various sums of money. I asked her when she would let me know what she was going to do. She smiled and said "I have already filed a bill to cancel the mortgage." I then said "Well, there is nothing else to do. I will wait for your subpoena and filed an answer," and left.

By Mr. Brogan.

Q Is that the entire story so far as Miss Clawans and you are concerned in your negotiations? A That is preliminary to the suit, yes.

Cross examination by Mr. Masucci.

Q You don't know when the suit was started do you, Mr. Susskind? A I don't know the exact date. I have no recollection of it, but I do know that she said it was started.

Q It had been started? A Yes.

By the Court.

Q You said it was a few days after you sent that letter? A No, your Honor.

Q That you went to see her. A No. I said a few days after the letter came back I went to see the property. Then I tried to get in touch with her and spoke to her over the 'phone.

Q That was in July, 1929. You said within a few days after the letter was sent and the letter is dated July, 1929? A It came back on the 31st. I saw the property either the third or fourth of August.

Q The following Saturday is the time when you saw her? A I don't know whether it was or not. I do know this, that the day I spoke to Miss Clawans over the 'phone and searched the records again was a Saturday because I said we had to get up there before twelve o'clock.

The Court: For the purpose of the record the bill of complaint was filed August 15, 1929.

By Mr. Masucci.

Q When you got the information from the building and loan this particular loan on 22 Gladstone avenue was in arrears, did you try to get the address from the secretary of Mr. Goldberg? A Why, the secretary gave me a

list of properties with the names of the owners. I did not think at the time to ask whether the owners lived there or not. My presumption was they did live in the properties and therefore I sent the letter there.

By the Court.

Q Did you speak to your brother and ask him about the matter? A I did not.

Q Did you hear your brother testify that when Shapiro asked him about the loan as to whether the association would make the loan through a dummy—Mr. Goldberg? A I remember that, yes.

By Mr. Masucci.

Q Did you see the secretary before you wrote the letter to Mr. Goldberg? A No. What happened was at one of the meetings previous to the writing of the letter he was told to give me a list of those in arrears, and this was one out of three or four other letters.

Q Before you wrote the letters did you check up on the search? A That was immediately after I was retained after Shapiro had disappeared when I actually made a check-up on all loans.

Q What date was that about? A That was in June—about the middle of June. I don't recall the exact date.

Q And you made a check-up of this particular property? A In this respect, I made a check-up to see whether we had a first lien. I did not run the title down to date. I think I have the search here. I made a search only to see whether the mortgage was a first lien. I stopped

at the mortgage. I didn't go beyond it. Here is my memorandum I made at that time.

Q Didn't you think it was necessary to run your search down to date? A No, I didn't. We were interested to see if we had a first lien.

Q Didn't you think it was necessary to run the search down to date before you sent out the letter? A No, it would entail too much expense to the association.

By the Court.

Q How would you know who was the owner of record at that time? A The association was interested with the person they had on record—not with the owner. We were interested with the person listed on the records of the association.

Q You as a lawyer didn't think it was necessary to write to a subsequent grantee if there was one subsequent to the making of your mortgage? A As a lawyer having eight years' experience I know it wasn't necessary with building and loan associations.

Q So you look merely to the mortgagor and it makes no difference whether or not the property which is the subject of the mortgage has passed over to a subsequent grantee, that is, a grantee subsequent to the making of the mortgage, and which mortgage on conveyance the purchaser assumed and agreed to pay? A No, I don't mean that. When it comes to notifying anybody about arrears in payment I am only interested in the person whose name is on the account in arrears. If it later appears that person does not answer or isn't interested and I have to foreclose, then I have to ascertain who is the title owner.

Q Did you look at that application for loan to see the address of this man Goldberg? A No, I did not.

Q Did you speak to your brother about it after it was returned? A No, I did not. I spoke to the association at the next meeting and informed them a suit had been instituted.

Q Did you inquire of the secretary or any other person of the association as to who was paying the premiums and such moneys as were required to be paid on that mortgage? A I did not.

By Mr. Masucci.

Q As a matter of law—

The Court: Never mind the question of law.

By Mr. Masucci.

Q Is it necessary to send any notice at all? A No, it is a courtesy.

Q If you intended to do an act of courtesy to the person who owned the property wasn't it necessary to find out the owner? A I wouldn't do a courtesy which it cost me fifteen or twenty dollars for a continuation search, I would only send notice to the last person on the building and loan records.

Q You were making some kind of a continuation search in order to check up on the priority of your mortgage? A Yes, in order to determine the priority of the lien because of the Department of Banking & Insurance.

By the Court.

Q Did you look in the file of papers of the Ordway Building & Loan Association to find out some information in regard to the owner of the property and his interest? A No, your Honor. May I explain my reason?

Q You can if you wish. A My search is to see whether or not these mortgages were first liens independent of any records from Shapiro.

Q Didn't you think the file of papers would give you some enlightenment or information? A I didn't know what the situation was in this case until this letter came back and I spoke to Miss Clawans on the telephone.

Q When the letter came back why didn't you go to the file held by the building and loan association and examine the search and other papers there? A For this reason. I had from this property the name I. Kalisky, and I was interested in asking him whether he was the owner. I 'phoned for that purpose and Miss Clawans said: "He is a clerk—I am the party in interest."

By Mr. Masucci.

Q Did you make the check up search yourself? A I did with the assistance of a clerk in my office.

By the Court.

Q In whose handwriting is that memorandum? A That is in my clerk's handwriting.

By Mr. Masucci.

Q Then it wouldn't have cost you anything to continue the search? A My time is worth money.

By the Court.

Q Didn't you have confidence in your clerk? A Yes, but we weren't interested at that time in what happened to this title after the mortgage was on record. We were only interested as to whether we had a first lien.

Q Did you have confidence in your clerk as a competent searcher of records? Did he do this kind of work? A Yes, he did, under my supervision. I looked into this thing with him and read the description off as a matter of fact, and he wrote it on the paper.

Q Why didn't you rely on him to make it—a busy man that you were? A It was an important thing for the association.

Q To what? A To ascertain whether anything was wrong. That is why I went myself.

By Mr. Masucci.

Q Wasn't it important to ascertain the whole picture of the situation? A I don't agree with you, Mr. Masucci.

Q After you got this letter back you went to the property and examined the property, is that right? A Yes.

Q And you saw this sign? A Yes, in the window, which to my mind is "Apartment for Rent—I. Kalisky."

Q It might have been "I. Kovsky?" A That's the way I have it on my memorandum right here.

By the Court.

Q If the sign was in front of you why didn't you copy it correctly? A I am not perfect, your Honor. I make mistakes, too.

By Mr. Masucci.

Q Was it in printing or in handwriting? A I think it was in handwriting.

By the Court.

Q Your purpose was to get the name? A My purpose was to look for the owner.

Q Are you prepared to swear now that the name you wrote on that memorandum is the name that was on the signs? A If Miss Clawans will say it was Kovsky I will say it is. I am not sure I copied it right.

By Mr. Masucci.

Q Wasn't it printed? A My recollection is it was written.

Q Wasn't there some other information on the sign such as Room 202? A There was no other information. I am sure and I will say why I am sure. I went to the building to discover who the man was. There was no name in the building and door front and the man looked in the book and couldn't find it. I am a very poor writer. I am not sure whether I had Market or Mulberry. I was interested to see whether or not the automobile parts had been removed, so I went up again and found it was Market and wrote it over again Market.

Q But you couldn't get in the house? A No. I went around the back. There was an open part of the cellar, but I didn't go in.

Q How many days after did you go to the office at 1060 Broad street? A About six days.

Q By this time you were interested in knowing the owner, weren't you? A Yes, I was.

Q And wasn't this source more reliable than the record? A To a certain extent. I did determine I would go to the record when I was prepared to file a foreclosure bill. Up to that time I did try to determine it.

Q It took you to 22 Gladstone avenue and 1060 Broad street to check up on the owner. Didn't that take up your time? A Yes.

Q And probably less time than it would take to check up on the record? A I don't know.

Q The telephone number Marker 9909 is Miss Clawans', isn't it? A Since then I discovered it. I didn't know it at that time.

Q And 1060 Broad street is the office of Miss Clawans? A She has her office in that building.

Q When you went to see the property the first time after that letter was returned to you and you noticed that both floors were vacant, you weren't interested in the names under the door-bells? A I didn't notice. I didn't pay any attention.

Q You didn't know whether there were any names or not? A I think I said so on my direct examination.

Q This was in the year 1929? A Yes.

Q Almost a year after the mortgage was executed? A It was 1929, that's right.

Q How many times were you in Miss Clawans' office and spoke to Miss Clawans? A Once.

Q That was on a Saturday? A No, that wasn't on a Saturday. I spoke to her on Saturday. The reason I say that is that out of that telephone conversation arose the fact that I went to the search room again to check up this title from then on and I met Miss Helen Clawans. I remember that was Saturday because I remember saying the vaults close at twelve o'clock.

David Benninger, recalled, By the Court.

Q When you say Miss Clawans spoke about a mortgage of the building and loan didn't she say your building and loan had no mortgage on it? A Yes.

Q She didn't make any reference to a first, second or third mortgage? A No.

Q And when you say she informed you they didn't have any first mortgage you were not correct?

The Court: He has corrected it now.

Mr. Masucci: That's all.

DAVID BENNINGER, recalled by the Court.

By the Court.

Q Mr. Benninger, Mr. Susskind testified you rode to the court room here today with Mr. Mendel Gross? A Yes.

Q He has testified on that ride that you stated to Mendel Gross in the hearing of Mr. Susskind that Miss Clawans asked you to leave out of your testimony that she was buying the property for Mrs. Scholder. Was there any such conversation? Did you make that statement. A I think I did.

Q What prompted you to make it if you told the truth before? A I said it before, too.

Q No, you didn't. Will you tell us the truth of this matter between you and Miss Clawans whether or not Miss Clawans asked you to leave out of your testimony here as a witness anything at all? A She told me I should leave out the old lady—I shouldn't mention it at all.

David Benninger, recalled, By the Court.

Q Is that what she said to you what you have just detailed? A Yes.

Q Did she tell you what I asked before and what you are alleged to have said in the car to leave out that she was buying the property for Mary Scholder, or Mrs. Scholder? A No, the only thing I said—

Q Did you mention the name Scholder in that car on your way in? A That was the old lady.

Q I am not asking you that. I am asking you whether you mentioned the name Scholder in that conversation? A No.

Q I want to be fair with you. I am trying to elicit the truth. Mr. Susskind said he heard a conversation between you and Mr. Gross, and leaving out what Mr. Gross is alleged to have stated what he heard you say, she, meaning Miss Clawans now, asked you to leave out of your testimony that she, meaning Miss Clawans, was buying the property for Mrs. Scholder. Did you say that in that automobile? A Just what I said in the testimony. That's what I said.

Q You didn't say it in your testimony.

The Court: Read the last question.

(Last question read by stenographer.)

A Isn't it the same thing?

Q Did you say that or did you not?

The Court: Read that question again.

(Question read again by stenographer.)

A She didn't say she is buying it for Mrs. Scholder.

David Benninger, recalled, Cross.

Q Did you say that or did you not? A I don't think I said it or meant it in that way.

The Court: All right, as long as you say that.

Cross examination by Mr. Masucci.

Q You have a son Sidney Benninger, haven't you? A Yes.

Q And Miss Clawans had your son arrested shortly before these proceedings? A I don't know.

Q Do you know that your son was arrested as a result of the negotiation of a note made by Morris W. Shapiro with Miss Clawans? A I don't know he was arrested. I don't think he was arrested. What has that to do with it?

Q Just to show something. Don't you know your son is out on five thousand bail—eight thousand bail in an action instituted by Miss Clawans against your son? A Yes, sir, I do know.

By the Court.

Q Has that influenced your testimony here in any way? A No, sir, absolutely not.

(At this point the hearing was further continued to January 14, 1930.)

Continuation of final hearing before Hon. John J. Fallon, Vice-Chancellor, Chancery Chambers, Jersey City, January 14, 1930.

Appearances:

Mr. F. W. Masucci, for complainant.

Mr. Joseph Susskind, for defendant.

LILLIAN CLAWANS, a witness recalled in rebuttal, in behalf of complainant.

Direct examination by Mr. Masucci.

Q Miss Clawans, there is some question as to what date you lived at Gladstone avenue, number 22 Gladstone avenue. Can you state about what date you lived there? A I lived on Gladstone avenue, at 22 Gladstone avenue, Newark, New Jersey—Why, I lived there from February, 1927, up until July 31, 1927.

By the Court.

Q 1927? A Yes.

Q The same year? A The same year. Then I came back and lived there after my return from Europe.

Q When did you leave there? You went to Europe, you say? A Yes, I went to Europe, but I left all my things there. I continued living there. I left all my things there, and—and I paid rent.

Q You continued your residence there, do you mean? A Yes, that is right. And I returned from Europe in October of 1927, and I continued to live up there up until October of 1928, and then I left for San Francisco and returned on or about November of 1928, and I lived

there about—Oh, a few days, because the place was still in repair, and then I—

Q Yes, at 22 Gladstone avenue, do you mean? A Yes, but I left everything there. I continued there and left everything there, but it was too cold for me there. I returned there the latter part of March of 1929, and I lived there until on or about May 15, 1929.

Q Let us see what that was. You say you went there in March to live? A Yes, in March of 1929, it was too cold for me there, but I left everything there.

The Court: Read what she said about March and some other date there.

(Part of previous answer read by stenographer.)

Q What do you mean by leaving your things there? A Oh, I had everything there.

Q What does that mean? A I had my bedroom set—

Q It might be toothpicks or anything. Do you mean you left everything you own there? A I had my bedroom set and—

Q Do you mean your household furniture? Is that what you are talking about now? A Yes.

Q And your wearing apparel? What wearing apparel you did not have with you; is that what you are talking about? A Yes. And I still have my things up there.

The Court: Very well. Proceed.

By Mr. Masucci.

Q When you took this trip to San Francisco from October to November of 1928, you did not

intend to move out of the place, did you? A No.

Q You just left there temporarily to take a trip, is that a fact? A Yes, sir.

Q And the same thing applies to the time when you went to Europe? A Yes.

Q Your intention was still to remain in that place? A Yes, that is right.

By the Court.

Q What floor of the house did you occupy? A From February, 1927, up to July, 1927, the first floor. And, when I returned, I moved up to the second floor. That was in October of 1927.

By Mr. Masucci.

Q And from October, 1927, until May, 1929, did you live on the second floor? A That is right.

Q Do you know Mr. Susskind? A Yes.

Q Mr. Susskind testified that he called at your office and spoke to you about this mortgage loan of the Ordway Building & Loan Association. Did he call at your office? A No, he was never in my office.

Q Did he telephone you? A He 'phoned to me, yes.

Q When was that? A That was in—it was a Saturday. It was the—it was in August of 1929, the Saturday before I filed, or before you filed—my attorney filed a bill to have the mortgage cancelled off record.

Q Did you tell Mr. Susskind there, either in a telephone conversation or in person, that you had purchased this property in the name of Mr. Shapiro because you did not want Mrs.

Scholder to know that you were purchasing it? A Never!

Q Did you give him any reason why you had purchased the property in the name of Mr. Shapiro? A Never!

The Court: Don't be so emphatic now. Just hold yourself together.

By Mr. Masucci.

Q Did you have any conversation with Mr. Susskind, wherein you told him—as he told us, I believe—all your troubles, including the troubles with this property and other troubles with Mr. Shapiro? A Never.

Q What was the extent of your conversation with Mr. Susskind? A When he called me up on that Saturday and he asked for I. Kovsky, Market 9909, I asked him what he wanted him for. I said he was a law clerk in my office.

The Court: Go slower, please; and talk louder.

A He said, "I am about to take possession of 22 Gladstone avenue," and I told him he was crazy, that I owned the property, that I knew nothing at all of what he was talking about, and that he was crazy.

By the Court.

Q Did you tell him that you were the owner of the property? A Yes, sure, I told him that I was the owner of the property.

Lillian Clawans, in rebuttal, Direct.

By Mr. Masucci.

Q Did you tell him your name? A Yes, certainly. I was in my office, and he knew my name.

By the Court.

Q Did you tell him who you were? A Yes, certainly. I told him I was Lillian Clawans.

By Mr. Masucci.

Q Did you make any mention, Miss Clawans, of the mortage of the building and loan association being the first mortgage? A Do you mean the Ordway?

Q Of the Ordway Building & Loan Association being the first mortgage? A Never such a conversation.

Q Mr. Suskind stated that in August, 1928, he appeared at the premises 22 Gladstone avenue and found the premises in poor condition, that he was around the premises in August, 1928. A Yes. No, August, 1929.

Q Or 1929? A Yes.

Q You had had some repairs made to that property, had you not? A Yes, made long before that.

Q Long before that? A And the house was in good condition at that time. It had been renovated.

The Court: It was July, 1929, to which Mr. Susskind's testimony referred instead of 1928.

Mr. Masucci: Yes, your honor. I had 1928 here on my memorandum.

Lillian Clawans, in rebuttal, Direct.

By Mr. Masucci.

Q What was the condition of the porch? A The porch was—

Q Was there any sagging of the porch, as Mr. Susskind said there was? A The house had been renovated. Not at all. The house had been renovated and it was in tip-top shape.

By the Court.

Q Do you mean at that time? A At that time. In August of 1929.

By Mr. Masucci.

Q Did you state to Mr. Susskind that you had purchased the property and you did not want Mrs. Scholder to know; that you had intended to sell it, and that if there was any money left over after you got your money you would turn it over to Mrs. Scholder?

Mr. Susskind: I object to that because the question is based on a false premise. There was no testimony by me to that effect.

The Court: It is my recollection that there was no such testimony.

Mr. Masucci: Very well, I withdraw the question.

By Mr. Masucci.

Q Mr. Gross testified that you told Benninger to commit perjury and to forget Mrs. Scholder. Did you—

Mr. Susskind: Go ahead. Finish your question.

Q Did you tell Mr. Benninger to forget or leave out Mrs. Scholder? Or did you tell him to say anything but the truth?

Mr. Susskind: I was going to object to the original question because of the form of the first part, that he said she told Benninger to commit perjury.

The Court: Yes, the objection is sustained to the form of the question.

Mr. Susskind: That is not what Mr. Benninger said. He said, "She told me to leave out the old lady."

The Court: Mr. Gross testified, as I remember it, that Benninger told him that Miss Clawans said to him that he should leave out the old lady. He asked him what he thought he ought to do, and Gross said, "Well, if I were you, I would not commit perjury for anybody. Tell the truth and look out for yourself."

Mr. Susskind: That is right.

The Court: And you testified, then, that, coming in on the automobile trip, you heard a conversation between Gross and Benninger in which Benninger said that Miss Clawans had told him not to mention the old lady, and not to say—Well, I will withdraw that last myself. I think you gentlemen ought to put that question from the testimony and not be guessing at it, because I am a little bit in doubt as to the latter part of it now. The sense of it, of course, I have in my mind, so that, if counsel wants to make notes on these questions—

Mr. Susskind: I think Mr. Masucci can reframe that question and ask it in another form.

The Court: I will withdraw that I stated and let counsel put it in their own way.

By Mr. Masucci.

Q Did you tell Benninger to leave out Mrs. Scholder's name in any of his testimony? A Never.

Q Did you tell him to refrain from mentioning Mrs. Scholder's name in his testimony? A Never.

Q Or to forget Mrs. Scholder's name in his testimony. A Never.

Q Do you recall when you did speak to Mr. Benninger? A Yes.

Q About his testimony in this case? A Yes.

Q Where were you when you spoke to him about his testimony in this case? A The first time I spoke to him about his testimony in this case was when this case was put down for final hearing. I was out here in the corridor, and he came up to me, and he appeared very friendly, although I was not very friendly toward him. You spoke to me—by you, I mean Mr. Masucci—and said, "What is he going to testify to?" I said, "Tell it to Mr. Masucci, what you are going to testify."

By the Court.

Q So you and Mr. Benninger and Mr. Masucci were together? A Out in the corridor, right by that door.

Q Right out here by the door. Go ahead. A The next time I met him was after the first hearing, when he came—

Lillian Clawans, in rebuttal, Direct.

By Mr. Masucci.

Q Well, just a minute. Did you tell him at this first meeting, when I was present, to leave out Mrs. Scholder's name? A Never.

Q Or to forget her name? A Never.

Q What did you tell him? A I told him to tell the truth.

By the Court.

Q You told him to tell Mr. Masucci what he knew about it? A That is it.

Q Did he make a statement to Mr. Masucci then in your hearing? A Yes.

Q I do not want you to tell us what it was about, but I want to know if he made a statement. A He did.

Mr. Masucci: He testified to that effect.

A Then I met him during the recess downstairs, again that same day. Next door here there is a sandwich shop. He said to me, "Miss Clawans, I can tell you where you can locate forty thousand dollars of Morris W. Shapiro's, if you do not press this claim against my son."

Mr. Susskind: I object to that as immaterial in this case.

The Court: It is immaterial. I will have to strike it out.

By Mr. Masucci.

Q Did you, at that second meeting, ask Mr. Benninger not to mention Mrs. Scholder's name? A Never.

Q Did you at any meeting ask Mr. Benninger not to mention Mrs. Scholder's name? A Never.

Q Did you at any time tell Mr. Benninger that you did not want anybody to know that you had purchased this property, 22 Gladstone avenue? A Never.

Q Mr. Gross testified that he became acquainted with you at a time when you drew up a contract for him. Did you ever draw up any contract for Mr. Gross? A Never.

Q Were you ever connected, either as attorney or in a professional capacity otherwise, ever at any time with Mr. Gross previous to this transaction? A No.

Q By this transaction, I mean the transaction affecting 22 Gladstone avenue? A Never.

Mr. Masucci: That is all.

The Court: Just a moment. I think I had something in my mind a moment ago, and I thought counsel was going to touch on it. I guess it has slipped my mind now. I did not charge my mind particularly with it.

Mr. Masucci: About the sign?

The Court: No, about this woman, Mrs. Scholder, where she lived at the particular time, whether she lived up on the second floor herself. Several witnesses, as I recall it, testified that they saw her on the second floor. However, you may proceed.

Cross examination by Mr. Susskind.

Q Miss Clawans, are you ever subject to lapses of memory? A I think you have got a lot of nerve to ask me that.

The Court: Never mind. Do not be sarcastic.

A I would not answer that. I think he has got a lot of nerve to ask me that. I would not answer it.

The Court: Oh, yes, you answer that question.

A No.

The Court: Do not be sarcastic. Just try to be civil.

By Mr. Susskind.

Q Are you telling the truth when you say that I—

The Court: I overrule that question, the way it is framed. She has sworn to tell the truth.

Mr. Susskind: She may be sworn, your Honor, but there is no conclusive presumption that she does.

The Court: You can argue that afterwards, if you wish; but that is not a fair question to ask a witness.

By Mr. Susskind.

Q Do you mean to tell this court that I never was up in your office after the telephone conversation with you—the one, that is, in respect to that— A You are a liar. You were never in my office.

The Court: That is very reprehensible conduct, young lady. Do not do it again.

It would not be countenanced in any court of law, and you ought to know better.

By Mr. Susskind.

Q Is it not true, that, in the early part of August, 1929, you occupied a room immediately next door to your office, by the leave of your landlord while your office in the same building was being repaired, or because you needed more space, or for some other reason? A In August —July, 1929—

Q Yes, 1929, I am talking about. A No.

Q You never occupied the office next door which was formerly used by the telephone company? A That office was never used by the telephone company; but, up until July 22, 1929, I occupied the office adjacent to my present office —up until July 22, 1929.

Q Now, to attempt to refresh your memory, Miss Clawans, do you not recall that, when I called at your office you were in this office adjoining the one which you regularly occupied, and that there was then in that office numerous tables with machines on them, either typewriters or adding machines of some kind, and that we were together at the window directly opposite the entrance to that office? A Never, because the machines were not in that office.

Q And, during that time, do you not recall that a sister of yours who, to me, appears to be older than you, came in there and you left me standing there while you went out to the adjoining office? A Never.

Q You do not recall that? A It never happened. Not that I do not recall it, but it never happened.

Lillian Clawans, in rebuttal, Cross.

Q Do you not recall telling me that, after a lengthy conversation, when I said that I would like to hear from you as to what you were going to do, you had already filed a bill, or were going to file a bill, to cancel the mortgage of the Ordway Building & Loan Association? A I could never have stated that.

The Court: Well, just answer the question please.

A No.

Q Do you not recall telling me a story about how Morris Shapiro took you to Commercial street and showed you property on Commercial street upon which you were going to loan some money? A You got this story when you were in court the other day. I never told it to you.

Mr. Susskind: Well, now, your Honor, will you direct this witness to answer the question?

The Court: She said that you got this story when you were in court the other day, that she never told it to you. The first part, I suppose, is wrong. I will allow it to stand.

By Mr. Susskind.

Q Do you not recall telling me that you thought Morris W. Shapiro was a very cheap sort of person, because he did not even buy you any lunch that day, and you were out most of the day looking at the property? A Never.

Q You did not tell me that? A Never.

Mr. Susskind: That is all.

Mr. Masucci: That is all.

HELEN CLAWANS, a witness recalled in rebuttal in behalf of complainant.

Direct examination by Mr. Masucci.

Q Miss Clawans, were you in Lillian Clawans office in August, 1929, when Mr. Susskind says he called to see Lillian Clawans? A I was in Miss Clawans office in 1929, but I never saw Mr. Susskind.

Q Were you present at any time when Mr. Susskind says he was in Lillian Clawans office? A I was in that office all the time, but I never saw him in there.

Q Did you go there often? A Did I go there often? Yes, sir.

Q Do you work there? A I do.

Q In what capacity? A As a law clerk.

Q Do you do any comptometer work? A Well, I do not do any comptometer work now. I used to do it.

Q Were you doing it then? A I might have been helping my sister at the time, yes.

Q Was there any conversation in your presence in Lillian Clawans office between Mr. Susskind and Lillian Clawans?

Mr. Susskind: I object to that, because there is testimony that she did not see me there.

The Court: Yes, she says that she did not see him there, so she could not have heard any conversation by him.

Mr. Masucci: That is all.

Helen Clawans, in rebuttal, Cross.

Cross examination by Mr. Susskind.

Q You were not there every minute of the day in August, were you? A Oh, not every minute of the day, no.

Q I might have been there when you were absent, then? A I cannot say that, because I do not know.

Q You were absent from the office some of the time, were you not? A I might have been in and out.

By the Court.

Q You are very well acquainted with Mr. Susskind, are you not? A I do not know him very well.

Q He stated on the witness stand that you were well acquainted with him. A Well, you might have walked home many years ago with a girl friend of mine and me; but, no, Mr. Susskind, I do not know you very well.

By Mr. Susskind.

Q As a matter of fact, did I not take you out during the time that we both went to grammar school? A You never took me out, Mr. Susskind. Do not say that, because you never did.

Q Did I ever call at your home during the time that we were both going to grammar school? A You did not call at my home; but you called at the home of Isabella—at Isabella Carlin's home.

Q We were very well acquainted at that time, were we not? A Well, with Isabella Carlin, yes; but not with me so much.

Q Well, we will not bring up the dead past. A Well, I am bringing up the dead past.

Q You said you did not know me. A Well, I did not say you did not know me, but I said I did not known you so very much.

Q Well, then. I beg your pardon. Is this not what you said? You said that you did not know me so very well? A That is exactly what I said; but I do not know you from grammar school. You were in the class of Isabella Carlin at Central High School, if you recall.

Q Well, you do know a little bit about me, don't you?

By the Court.

Q You knew him; and you knew him, or you met him in the presence of Isabella Carlin? A Well, they were never very friendly from what he states. I don't know what—how he gets that.

Re-direct examination by Mr. Masucci.

Q Miss Clawans, do you know what office Lillian Clawans was occupying in August, 1929? A In August, 1929, she had already moved back to her own office, and she did not have any furniture in that office any more, because when this Mr. Susskind called up, he called at her own office.

By the Court.

Q When he called where? A He called at my sister's office, and we had by that time moved back.

Q Do you say he called at the office? A No, he called the office on the telephone.

Helen Clawans, in rebuttal, Re-cross.

By Mr. Masucci.

Q You had moved back all your furniture? A Yes.

By the Court.

Q How do you know he called on that 'phone on that particular Saturday morning? A Well, I heard the conversation, and she—

Q You did not hear his conversation, did you? A Well, I heard my sister speaking to him.

Q What did you hear her say? A She started talking, and she said "I don't know what you are talking about." She said "Kovsky!—why he is a clerk in my office." And then she said "Why, you are crazy. I won the property."

Q And afterwards she told you that that was Mr. Susskind she had been talking to? A She told me that that was Mr. Susskind, and she sent me up to make a search at the Hall of Records.

Re-cross examination by Mr. Susskind.

Q Miss Clawans, do you recall the Saturday morning after this telephone conversation, when you went to the Register's office to search the record of 22 Gladstone avenue? A Yes.

Q Do you recall meeting me up there? A First I met your clerk.

Q Did you see me there? A First I met your clerk. I saw your clerk there.

Q Did you see me there? A The clerk was there. The clerk saw me. The clerk from your office.

The Court: That is not the question. He is only asking you whether you met him. A Yes, I saw you there.

By Mr. Susskind.

Q And do you recall that you showed me some records—that we were looking at some records? A I remember the Halber matter.

Q Do you remember the Halber matter? A Yes.

Q Do you recall that we looked at a deed from Lillian Clawans to Max Halber together, do you not? A No, I do not. I looked at it with a fellow by the name of Katz.

Q I and you examined the record together, did we not? A Yes, with your clerk. And you said you would take me back to the office.

Q I took you back to your office in my car, did I not? A Yes.

By the Court.

Q So his clerk was present? A Yes.

Q You were not alone? A No, not alone.

Mr. Susskind: That's all.

IRVING E. KOVSKY, a witness sworn in behalf of complainant on rebuttal.

Direct examination by Mr. Masucci.

Q Were you a clerk in the office of Lillian Clawans? A Yes.

Q A law clerk? A Yes.

Q In July of 1929? A Yes.

The complainant: June, 1929.

Q In June, 1929? A Yes.

Q Did you take off the signs from 22 Gladstone avenue? A I did.

Q In June or July of 1929? A Yes.

Q And did you put up other signs? A Yes.

Q What other signs did you put up? A I put up a large sign. The reason I put that up was that at that time Miss Clawans was very much excited over the business of Shapiro's disappearance, and so on. She asked me to put up a sign and see that it is rented.

Q What kind of a sign? A A large sign.

Q You put up a large sign? A With my name on it.

Q What size sign was it? A Oh, I should judge about two feet long, and about two or three feet wide.

By the Court.

Q What was on the sign? A It gave my name, "Inquire of I. Kovsky, call Market 9909, Room 202 Industrial Building."

Q It had the room number, too, printed on the sign? A Yes.

Q What signs did you take down? A I took down two signs.

Q What were the two signs you took down? A There was one sign in the window where I put this large sign in, and there was one near the post.

Q What was said on the signs that you took down? A It said "Inquire Within. Call Market 9909."

Q That was on the one downstairs—I mean, within the glass? A Yes, they were both the same.

Q And one was in the window? A One was in the window and one was on the post, as you go in.

Q Was there any name on the signs you took off? A Yes, there was "L. Clawans."

Q Did it have any other word on it between the name and the telephone number? A "L. Clawans. Call Market 9909."

Q Both signs? A Yes.

Q You say you put up two signs? A No, sir; I put up one, and took off two.

By the Court.

Q Are you in the employ of Miss Clawans now? A Yes.

Mr. Masucci: That's all.

Cross examination by Mr. Susskind.

Q Why did you not say, in answer to the first question that was asked about what was on the sign—tell us all the words that were on it? Why was it necessary for counsel to ask you further questions? A Because I would have answered it if they had given me time to answer it.

Q You had plenty of time. You were asked to tell what was on the sign, and you said that they said "Apartment to Let—Inquire Within, or call Market 9909." A Because we mentioned the last sign, the large sign, and it recalled to me the last address, the number Market 9909.

Irving E. Kovsky, recalled, By the Court.

Q Why did you say then that it said on that sign "Apartment to Let—Inquire Within, or call Market 9909, L Clawans?" Why did you not say that before? A If he had given me time I probably would have finished it.

Q You had plenty of time, didn't you? A Probably I did not.

By the Court.

Q How old are you? A Twenty-five.

By Mr. Susskind.

Q You are clerking with Miss Clawans now? A Yes.

Q And her sister, Helen, is clerking with her? A Yes, sir.

Q Are there any other persons clerking there? A There is another gentleman clerking there.

Q She has three clerks? A Yes.

Mr. Susskind: That's all.

Mr. Masucci: That's all.

The Court: I will recall the last witness.

IRVING E. KOVSKY, recalled.

By the Court.

Q When was it that you removed those signs? Can you tell me? A It was around in June. It was right after I started to clerk. I started to clerk around the latter part of May.

Q June of what year? A 1929.

Q 1929. At that time was there anybody in possession of the house, occupying the floors?

Irving E. Kovsky, recalled, By the Court.

A There was furniture in the lower floor. There was furniture there, but I did not see any people there. I went up and put up the sign.

Q There was something in the house? A Oh, yes. I went inside.

Q You went on the first floor? A Yes.

Q But you did not go on any other floor? A No. I was just told to put up the sign, which I did. I put up a large sign, so that people who went by in automobiles could read it out in the road.

The Court: Is that all?

Mr. Masucci: That is all. We close our case.

The Court: Is there anything else?

Mr. Susskind: No.

BOTH SIDES REST.

The Court: Now, is that the entire case?

Mr. Masucci: That is the entire case.

The Court: Very well. Do you wish to be heard?

Mr. Susskind: I do not want to be heard now, your Honor, but I think it is best to present the argument in a memorandum. I believe there is a question of law involved in this case which is very important, and I think your Honor should require memoranda from both sides. Mr. Masucci having the affirmative in the case should serve his memorandum on us, and we should answer.

The Court: I see that Mrs. Scholder has just come into the court room. As I recall, somebody has made pretty strong state-

ments against Mrs. Scholder in this case which, as I said the last time, I feel should be inquired into. I do not mean to infer that there is any necessity for rebuttal, and I do not want you to be calling Mrs. Scholder and guessing at it. This is a peculiar case, and it is pretty much a fact case. Of course, there is a lot of law to be applied to the facts; but I would like to get all the enlightenment I can.

Mr. Masucci: Very well, I will recall Mrs. Scholder.

MARY SCHOLDER, a witness recalled in behalf of complainant.

Direct examination by Mr. Masucci.

Q Mrs. Scholder, you were living at 22 Gladstone avenue? A I was.

Q In Newark, New Jersey, in June of 1928? A Yes.

The Court: Talk out, lady, so that this gentleman can hear you.

A All right.

By Mr. Masucci.

Q Did Mr. Gross come to 22 Gladstone avenue? A He did.

Q In June 1928, and speak to you? A Yes, around this time.

Q Around that time? A Yes.

Q How many times all told did Mr. Gross come to see you in 22 Gladstone avenue? A In the beginning and when it was foreclosed. Just when it was foreclosed.

Q Twice? A Twice. That is all.

Q Were you at home every day during the month of June? A Oh, I was always home.

Q You were always home? A Always home.

Q During the months preceding it? A I was always busy with working. I can prove it by the neighbors.

Q And during the period from May to June and July, of 1928, he only called to see you twice? A Twice. That is all.

Mr. Masucci: That is all.

The Court: Let us see. He says he was there on the seventeenth, and what other dates?

Mr. Masucci: 17th, 18th, and 19th.

The Court: Let us see. He was there on the 15th, 16th, 17th, and 18th. What are those dates there?

Mr. Masucci: There were three days.

The Court: If you lawyers cannot keep it in your heads you cannot blame me for failing to remember it, because they are more important to you. He claims he was there on the 17th, 18th, 19th and 20th.

Mr. Masucci: Yes, that is correct.

The Court: The first three times he did not see her, and on the 20th he saw her with this man, whatever his name is.

Mr. Susskind: As a mater of fact, Mr. Solodar, who was a witness for the complainant, testified he went there.

Mary Scholder, recalled for Complainant, Cross.

The Court: That is all right. That ends it, I suppose. Have you anything else?

Mr. Masucci: That is all.

Cross examination by Mr. Susskind.

Q One minute. You say you were there all the time? A All the time, yes. I can even prove it with my neighbors. I was busy working.

Q Did you ever go out and do other work? A Not with the neighbors.

Q No, but you have a brother, have you not? A I have a brother, but he didn't live there.

Q You have a brother? A I have a brother.

The Court: Just answer the questions, please, madam.

By Mr. Susskind.

Q I am not trying to catch you. A No, I am not afraid. I do not say any lies. I say the truth.

Q Did you ever go to visit your brother? A No, very seldom.

By the Court.

Q Where does your brother live? A From away from me.

Q What is that? A He lives far away from me.

By Mr. Susskind.

Q Where is that? A Howard street.

Q On Howard street, around the Thirtieth block? A Yes.

Mary Scholder, recalled for Complainant, Cross.

Q Did you ever go down there and visit him? A Well, very seldom. He works, and he is not very much home.

Q So, once in a while, you did leave the place? A Once in a while. Only on Sunday night, because Sunday night nobody is coming.

By the Court.

Q You say that on Sunday night you left the place? A Only on Sunday night. Nobody comes on Sunday night.

By Mr. Susskind.

Q Did you ever go out shopping? A No.

Q You did not have to go shopping? A Next block to me where the grocery store is.

Q Well, you had to leave the house? You left the house, didn't you, to go to the grocery store? A Not all times. Very seldom. Only once in two or three weeks. I am most times alone. I don't need much stuff. All I need for a few weeks, I had it, everything in the house.

Q Did you have any neighbors? A No neighbors.

Q Do you remember the people who lived next door to 22 Gladstone avenue? A It don't interest me.

By the Court.

Q Do you know the names of the people who lived next door? A I don't know who lived there before.

By Mr. Susskind.

Q Do you know the number next door—I believe it is 20 Gladstone avenue? Do you remem-

ber the people there? A That people in 20 Gladstone avenue?

Q A Mr. Baker? A Becker?

Q Was there a man named Becker in 20 Gladstone avenue? A Yes.

Q This property at 22 Gladstone avenue has a cement driveway, has it not, on the north side?

Mr. Masucci: That is outside the scope of the examination.

The Court: Yes, I will allow it.

A My driveway—

By Mr. Susskind.

Q Did Mr. Baker ever speak to you about buying the property from you or renting the property from you? A Never.

Mr. Susskind: The reason I asked the question, Baker, your Honor, as I recall—

The Court: Baker testified that he went in there intending to rent the property.

Mr. Susskind: No. I testified that there was an automobile, or several of them, taken apart; and I found it belonged to a party by the name of Baker who lived next door.

The Court: Somebody testified that he went next door to find out whether he could rent the property. That is, there was some price named as to a purchase.

Mr. Susskind: But that was not the neighbor. That was a strange fellow.

Re-direct examination by Mr. Masucci.

Q You said there was a neighbor by the name of Baker? A Yes.

Q Border, is it not? A Baker on the second floor and Border on the first, yes.

Q You meant Border when you said Baker, is that it? A Yes.

Q There wasn't anybody by the name of Baker, was there? A Well, I haven't it a paper showing by my house. There was a Baker there. You could show by my house. She is a widow lady.

The Court: That is all, lady.

(The witness was excused.)

The Court: Is that all?

Mr. Masucci: That is all.

The Court: Do you wish to submit the case?

Mr. Susskind: What I wanted to suggest, your Honor, is this. Instead of making an oral argument, which I think would be quite lengthy—

The Court: Do you wish to submit it on briefs?

Mr. Masucci: I am willing to submit it on argument.

The Court: I will not listen to it both ways.

Mr. Susskind: No I do not think we should submit it on argument. I think we should submit it on briefs. It will save the time of the court, because I think it would take the rest of the day to argue this.

The Court: I think it is better for both of you to do it that way.

Mr. Masucci: Yes.

Mr. Susskind: I think we should have the opportunity to get that testimony written up, so we can properly brief the case.

The Court: Oh, yes; you ought to, because there are many contradictions in this matter.

Exhibit C. 1.

Exhibit C. 1.

ARTICLES OF AGREEMENT, made the third day of July, in the year of Our Lord One Thousand Nine Hundred and Twenty-eight.

BETWEEN MENDEL GROSS and JEANETTE GROSS, his wife, of the City of Newark, in the County of Essex and State of New Jersey, party of the first part;

AND MORRIS W. SHAPIRO, of the City of Newark, in the County of Essex and State of New Jersey, party of the second part;

WITNESSETH, That the said party of the first part, for and in consideration of the sum of NINE THOUSAND ($9,000.00).....DOLLARS to be paid and satisfied as hereinafter mentioned, and also in consideration of the covenants and agreements hereinafter mentioned, made and entered into by the said party of the second part, doth agree to and with the said party of the second part, that he, the said party of the first part, will well and sufficiently convey to the said party of the second part, his heirs and assigns, by Deed of Warranty free from all encumbrance, except as hereinafter set forth, on or before the third day of August, next ensuing the date hereof, all that lot , tract , or parcel , of land and premises, hereinafter particularly described situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey, known and designated as No. 22 Gladstone Avenue and described as follows:—

BEGINNING at a point in the Easterly line of Gladstone Avenue (formerly West Side Avenue), at a point therein distant two hundred and fifty feet Southerly from the Southerly line of South

Exhibit C. 1.

Orange Avenue; thence running along the line of Gladstone Avenue (formerly West Side Avenue) South twenty-seven degrees 59 minutes West thirty feet; thence South sixty-two degrees 1 minute East eighty-three feet and twenty-five hundredths of a foot; thence North 27 degrees 59 minutes East thirty feet; thence North sixty-two degrees one minute (West) eighty-three feet and twenty-five hundredths of a foot to the Easterly line of Gladstone Avenue and place of BEGINNING.

BEING the same premises conveyed to Mendel Gross, Party of the First Part by Conrad Deuchler, Sheriff, by deed bearing date March 3, 1928 and recorded in the Register's Office of Essex County in Book D-78 of Deeds for said County on pages 309-310.

It is understood by and between the Parties hereto that time is of the esesence of this agreement.

AND the said MORRIS W. SHAPIRO, for himself, his heirs, executors and administrators, doth covenant, promise, and agree to and with the said party of the first part, their heirs, executors, administrators and assigns, that he, the said party of the second part, will pay and satisfy, or cause to be paid and satisfied, unto the said party of the first part, the sum of NINE THOUSAND ($9,000.00).....DOLLARS as and for the purchase money of the foreoing described land and premises, in the following manner, that is to say:

Exhibit C. 1.

$1,000.00	ONE THOUSAND DOLLARS on the execution of this agreement, the receipt of which is hereby acknowledged.
8,000.00	EIGHT THOUSAND DOLLARS in cash on delivery of deed and passing of title.
$9,000.00	

It is understood and agreed by and between the Parties hereto that the said deed of conveyance shall be made subject to taxes for the years 1927 and 1928 and that the Party of the First Part will allow unto the Party of the Second Part to be deducted from the purchase price one-half of the taxes for the year 1927 and one-half of the apportioned amount of 1928 taxes on closing of title.

And the said party of the part hereby agrees to pay to a commission of % on the purchase price aforesaid, said commission to be paid in consideration of services rendered in consummating this sale; said commission to become due and payable upon the execution of

And it is further Agreed, by the parties to these presents, that the said party of the second part, his heirs and assigns, may enter into and upon the said land and premises on the third day of August next ensuing the date hereof, and from thence take the rents, issues and profits to his and their use.

And it is further Agreed, by the parties hereto, that the said Deed of Warranty shall be delivered and received at the office of SIMON L. FISCH, Room 917, #31 Clinton Street, Newark,

Exhibit C. 1.

N. J. between the hours of ten in the forenoon and four o'clock in the afternoon on the said third day of August, next ensuing the date hereof.

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

In Witness Whereof, the said parties have hereunto interchangeably set their hands and seals the day and year first above mentioned.

MENDEL GROSS L. S.
JEANETTE GROSS L. S.
MORRIS W SHAPIRO L. S.

Signed, Sealed and Delivered
in the presence of :

Simon L. Fisch

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

Witness our hands and seals this
day of A. D. 19

Exhibit C. 1.

STATE OF NEW JERSEY, }
COUNTY OF ESSEX. } SS.:

BE IT REMEMBERED, That on this third day of July, in the year of our Lord One Thousand Nine Hundred and Twenty-eight, before me, the subscriber, A MASTER IN CHANCERY OF NEW JERSEY, personally appeared MENDEL GROSS and JEANETTE GROSS, his wife, who, I am satisfied, are the grantors mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they then acknowledged that, they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said JEANETTE GROSS, wife, as aforesaid, being by me privately examined, separate and apart from her said husband , further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

SIMON L. FISCH
A Master in Chancery of New Jersey.

Aug 3, 1928.

In consideration of One Dollar and other good and valuable consideration, I hereby transfer set over and assign all my right, title and interest in the within contract to Max Goldberg.

MORRIS W SHAPIRO

Exhibit C. 2.

CONTRACT FOR PROPERTY.

Mendel Gross and Jeanette Gross, his wife,

TO

Morris W. Shapiro.

Dated July 3rd, 1928.

Exhibit C. 2.

Newark, N. J. July 10th 1928 No.....

FIDELITY UNION TRUST COMPANY

Pay to the Order of Morris W Shapiro

$1000 00/100

One Thousand .....no/100 Dollars

ADDING & CALCULATING CO.

Prop L. Clawans

Endorsement—Morris W Shapiro

Bank Stamp—

Received Payment through the Newark Clearing House prior endorsements guaranteed Jul 10 1928 Washington Trust Co. Weequahic Branch No. 15 2

Exhibits C. 3, C. 4.

Exhibit C. 3.

Newark, N. J. Aug. 1st 1928 No.....

FIDELITY UNION TRUST COMPANY

Pay to the Order of Morris Shapiro $2000 00/100

Two Thousand .....no/100 Dollars

ADDING & CALCULATING CO.

Prop. L. Clawans—

Endorsements—

Morris Shapiro, Morris W Shapiro

Bank Stamp—

Received Payment through the Newark Clearing House prior endorsements guaranteed Aug 2 1928 Franklin Washington Trust Co. Weequahic Branch or Washington Trust Co. Weequahic Branch No. 16 D

Exhibit C. 4.

Law Offices
MORRIS W. SHAPIRO
196 Clinton Avenue
(at Hayes Circle)
Newark, N. J.
Terrace 2601 2602

July 24, 1928.

Tax Collector,
Newark, N. J.

Dear Sir:

Kindly make a memorandum tax search on the following described property:

Premises in City of Newark, known and designated as No. 22 Gladstone Avenue, and described as follows:

Exhibit C. 5.

BEGINNING at a point in the easterly line of Gladstone Avenue (formerly West Side Avenue), at a point therein distant two hundred and fifty feet southerly from the southerly line of South Orange Avenue; thence running along the line of Gladstone Avenue (formerly West Side Avenue) south twenty-seven degrees fifty-nine minutes west thirty feet; thence south sixty-two degrees one minute east eighty-three feet and twenty-five hundredths of a foot; thence north twenty-seven degrees fifty-nine minutes East thirty feet; thence north sixty-two degrees one minute west eighty-three feet and twenty-five hundredths of a foot to the easterly line of Gladstone Avenue and place of BEGINNING.

Very truly yours,

MORRIS W SHAPIRO

MWS:RL

I couldn't find contract will look for same when I return

Exhibit C. 5.

THIS INDENTURE, Made the third day of August, in the year of our Lord One Thousand Nine Hundred and Twenty-eight.

BETWEEN MENDEL GROSS and JEANETTE GROSS, his wife, of the City of Newark, in the County of Essex and State of New Jersey, party of the first part;

AND MAX GOLDBERG, of the City of Newark, in the County of Essex and State of New Jersey, party of the second part:

WITNESSETH, That the said party of the first part, for and in consideration of ONE DOLLAR

Exhibit C. 5.

($1.00) and other good and valuable considerations lawful money of the United States of America, to them in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, have given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents do give, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to his heirs and assigns, forever, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey.

BEGINNING at a point in the Easterly line of Gladstone Avenue (formerly West Side Avenue), at a point therein distant two hundred and fifty feet Southerly from the Southerly line of South Orange Avenue; thence running along the line of Gladstone Avenue (formerly West Side Avenue) South twenty-seven degrees fifty-nine minutes West thirty feet; thence South sixty-two degrees one minute East eighty-three feet and twenty-five hundredths of a foot; thence North twenty-seven degrees fifty-nine minutes East thirty feet; thence North sixty-two degrees one minute West eighty-three feet and twenty-five hundredths of a foot to the Easterly line of Gladstone Avenue and the place of BEGINNING.

BEING the same premises conveyed to the said Mendel Gross, Party of the First Part, by deed of Conrad Deuchler, Sheriff of Essex County,

Exhibit C. 5.

which deed bears date May 28, 1928 and recorded in the Register's Office of Essex County in Book D-78 of Deeds for said County, pages 309-310.

It is expressly understood and agreed that this conveyance is made subject to taxes for the years 1927 and 1928.

TOGETHER with all and singular, the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with appurtenances to the same belonging or in anywise appertaining:

ALSO, all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, his heirs and assigns, to the only proper use, benefit, and behoof of the said party of the second part, his heirs and assigns forever:

AND the said MENDEL GROSS and JEANETTE GROSS, do for themselves, their heirs, executors and administrators covenant and agree to and with the said party of the second part, their heirs and assigns, that he, the said MENDEL GROSS, is the true, lawful and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby

Exhibit C. 5.

made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever; except as aforesaid.

And also that the said party of the first part now have good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid;

And also, that the said MENDEL GROSS and JEANETTE GROSS, will Warrant, secure, and forever defend the said land and premises unto the said MAX GOLDBERG, his heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever; except as aforesaid.

In Witness Whereof, the said party of the first part have hereunto set their hands and seals the day and year first above written.

MENDEL GROSS (seal)
JEANETTE GROSS (seal)

Signed, Sealed and Delivered
in the Presence of:

Simon L. Fisch

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

Be it Remembered, That on this third day of August, in the year of our Lord One Thousand Nine Hundred and Twenty-eight, before me, the subscriber, A MASTER IN CHANCERY OF NEW JERSEY, personally appeared MENDEL GROSS and JEANETTE GROSS, his wife,

Exhibit C. 5.

who, I am satisfied, are the grantors mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon they then acknowledged that, they signed, sealed and delivered the same as their voluntary act and deed, for the uses and purposes therein expressed.

And the said JEANETTE GROSS, wife, as aforesaid, being by me privately examined, separate and apart from her said husband , further acknowledged that she signed, sealed and delivered the same as her voluntary act and deed, FREELY, without any fear, threats or compulsion of her said husband.

SIMON L. FISCH
A Master in Chancery of New Jersey.

DEED.

Mendel Gross and Jeanette Gross, his wife,

TO

Max Goldberg.

Compared by 63 & 39
Dated, August 3rd, 1928.
Received in the Register's Office of the County of Essex, N. J. on the 6th day of August A. D., 1928, at 9:56 o'clock, in the forenoon, and Recorded in Book P 78 of Deeds for said County, on pages 83-84.

HOWARD S. DODD
Register

Lillian Clawans, 1060 Broad Street
Newark, N. J.

Received Registers Office Aug 6 1928 9:56 A M
Essex County Newark, N. J.

Exhibit C. 6.

Exhibit C. 6.

THIS INDENTURE Made the 3rd day of January in the year of Our Lord One Thousand Nine Hundred and Twenty-nine

BETWEEN MAX GOLDBERG, (unmarried) of the City of Newark in the County of Essex and State of New Jersey party of the first part;

AND LILLIAN CLAWANS of the City of Newark in the County of Essex and State of New Jersey party of the second part:

WITNESSETH: That the said party of the first part, for and in consideration of One Dollar and other good and valuable consideration lawful money of the United States of America, to him in hand well and truly paid by the said party of the second part, at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the first part being therewith fully satisfied, contented and paid, has given, granted, bargained, sold, aliened, released, enfeoffed, conveyed and confirmed, and by these presents does give, grant, bargain, sell, alien, release, enfeoff, convey and confirm unto the said party of the second part, and to her heirs and assigns, forever, ALL that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey.

BEGINNING at a point in the easterly line of Gladstone Avenue (formerly West Side Avenue), at a point therein distant two hundred and fifty feet southerly from the southerly line of South Orange Avenue, thence running along the

Exhibit C. 6.

line of Gladstone Avenue (formerly West Side Avenue) south twenty-seven degrees fifty-nine minutes west thirty feet; thence south sixty-two degrees one minute east eighty-three feet and twenty-five hundredths of a foot; thence north twenty-seven degrees fifty-nine minutes east thirty feet; thence north sixty-two degrees one minute west eighty-three feet and twenty-five hundredths of a foot to the easterly line of Gladstone Avenue and the place of BEGINNING.

Being the same premises conveyed to the said Max Goldberg by deed dated August 3, 1928 and recorded in the Register's Office of Essex County in Book P 78 of Deeds pages 83-84.

TOGETHER with all and singular the houses, buildings, trees, ways, waters, profits, privileges, and advantages, with the appurtenances to the same belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and the profits thereof, and of every part and parcel thereof;

ALSO all the estate, right, title, interest, property, claim and demand whatsoever, of the said party of the first part, of, in and to the same, and of, in and to every part and parcel thereof,

TO HAVE AND TO HOLD, all and singular the above described land and premises, with the appurtenances, unto the said party of the second part, her heirs and assigns, to the proper use, benefit and behoof of the said party of the second part, her heirs and assigns forever:

AND the said party of the first part does for himself, his heirs, executors and administrators covenant and agree to and with the party of the second part, her heirs and assigns, that he the said party of the first part is the true, lawful

Exhibit C. 6.

and right owner of all and singular the above described land and premises, and of every part and parcel thereof, with the appurtenances thereunto belonging; and that the said land and premises, or any part thereof, at the time of the sealing and delivery of these presents, are not encumbered by any mortgage, judgment, or limitation, or by any encumbrance whatsoever, by which the title of the said party of the second part, hereby made or intended to be made, for the above described land and premises, can or may be changed, charged, altered or defeated in any way whatsoever:

And also that the said party of the first part now has good right, full power and lawful authority, to grant, bargain, sell and convey the said land and premises in manner aforesaid;

And also that the said party of the first part will Warrant secure, and forever defend the said land and premises unto the said party of the second part, her heirs and assigns, forever, against the lawful claims and demands of all and every person or persons, freely and clearly freed and discharged of and from all manner of encumbrance whatsoever.

And the said party of the first part, his heirs and assigns shall and will at any time or times hereafter, upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part her heirs and assigns, make, do, and execute, or cause or procure to be made, done and executed, all and every such further or other lawful and reasonable acts, conveyances and assurances in the law for the better and more affectually vesting the premises hereby intended to be granted to the

Exhibit C. 6.

party of the second part her heirs and assigns forever, as shall be reasonably required.

In Witness Whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

MAX GOLDBERG L. S.

Signed, Sealed and Delivered
In the Presence of

Morris W Shapiro

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

Be it Remembered, that on this 3rd day of January in the year of our Lord One Thousand Nine Hundred and Twenty-nine before me the subscriber, AN ATTORNEY AT LAW OF NEW JERSEY personally appeared MAX GOLDBERG, (unmarried) who, I am satisfied, is the grantor mentioned in the within Instrument to whom I first made known the contents thereof, and thereupon he acknowledged that he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

MORRIS W SHAPIRO
An Attorney at Law of New Jersey

being by me privately examined separate and apart from said husband , further acknowledged that signed, sealed and delivered the same as voluntary act and deed, FREELY, without any fear, threats or compulsion of said husband.

Exhibit C. 6.

DEED.

Max Goldberg, (unmarried)
TO
Lillian Clawans

Compared by 41 & 72
Dated 19

Received in the Register's Office of the County of Essex, N. J. on the 7th day of June A. D., 1929, at 9:24 o'clock, in the forenoon, and Recorded in Book Q 79 of Deeds for said County, on pages 427-428.

HOWARD S. DODD
Register

Lillian Clawans, 1060 Broad Street, Newark, N. J.

Received Registers Office Jun 7 9:24 A M 29
Essex County Newark, N. J.

Exhibit C. 7.

Exhibits C. 8, C. 9.

Exhibit C. 8.

Newark, N. J. Nov. 1, 1927

FIDELITY UNION TRUST COMPANY

Pay to Order of Morris W. Shapiro $9500 00/100

Ninety-five Hundred.....00/100 Dollars

ADDING & CALCULATING CO.

Prop. L. Clawans.

Endorsed: Morris W. Shapiro—

Exhibit C. 9.

Law Offices
MORRIS W. SHAPIRO
196 Clinton Avenue
(At Hayes Circle)
Newark, N. J.
Terrace 2601—2602

June 22, 1928

Mr. Simon L. Fish,
Essex Bldg.,
Newark, N. J.

Dear Sir:

Miss Lillian Clawans has spoken to me in reference to calling one of her mortgages which she has placed with me.

I will not be able to get her the money for a few days.

Hoping this will be satisfactory, I am,

Very truly yours,

MORRIS W SHAPIRO

MWS:RL

Exhibit C. 10.

Exhibit C. 10.

To all Persons to whom these Presents shall come, or whom they may concern:

I, CONRAD DEUCHLER, Sheriff of the County of Essex, in the State of New Jersey, send Greeting:

Whereas, on the third day of March, in the year of our Lord, nineteen hundred and twenty-eight, a certain writ of Fieri Facias was issued out of the Court of Chancery of the State of New Jersey, directed and delivered to me, CONRAD DEUCHLER, then and still being Sheriff of the said County of Essex, and which said writ is in the words or to the effect following—THAT IS TO SAY:

New Jersey to wit: The State of New Jersey to the Sheriff of the County of Essex:

Greeting:

Whereas, on the fourth day of February, in the year of our Lord nine-
(L. S.) teen hundred and twenty-eight, by a certain decree made in our Court of Chancery before our Chancellor at Trenton, in a certain cause therein depending, wherein MENDEL GROSS is complainant and MARY SCHOLDER and JOSEPH SCHOLDER, her husband, and PATRICK M. HOGAN and BERTHA HOGAN, are Defendants, it was ordered, adjudged and decreed that the certain mortgaged premises with the appurtenances in the bill of complaint in the said cause particularly set forth and described—that is to say, All tract or parcel of lands and premises, situate, lying and being in the City of Newark, in the County of Essex and State of New Jersey.

Exhibit C. 10.

BEGINNING at a point in the Easterly line of Gladstone Avenue (formerly West Side Avenue), at a point therein distant two hundred and fifty feet Southerly from the Southerly line of South Orange Avenue; thence running along the line of Gladstone Avenue (formerly West Side Avenue) South twenty-seven degrees 59 minutes West thirty feet; thence South sixty-two degrees 1 minute East eighty-three feet and twenty-five hundredths of a foot; thence North 27 degrees 59 minutes East thirty feet; thence North sixty-two degrees one minute West eighty-three feet and twenty-five hundredths of a foot to the Easterly line of Gladstone and the place of BEGINNING.

Together with all and singular the rights, liberties, privileges, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversions and remainders, rents, issues, and profits thereto, and also all the estate, right, title, interest, use, property, claim and demand of the said Defendants, of, in, to and out of the same, be sold to pay and satisfy unto the said complainant, MENDEL GROSS, the sum of $8,620.40 the principal in the first place and interest secured by a certain mortgage recorded in the Register's Office of Essex County in Book Y-56 of Mortgages for said County, on pages 323-324, together with lawful interest thereon from December 9th, 1927 until the same be paid and satisfied; and also the costs of said complainant; and in the second place to pay unto defendants, PATRICK M. HOGAN and BERTHA HOGAN the sum of $518.30 with lawful interest thereon from December 9, 1927, until the same be paid and satisfied, and also costs of the defendants, PATRICK

Exhibit C. 10.

M. HOGAN and BERTHA HOGAN; and that for that purpose a writ of Fieri Facias should issue, directed to the Sheriff of the County of Essex, commanding him to make sale as aforesaid, and that the surplus money arising from such sale, if any there be, should be brought into the said Court, subject to the further order of the said Court, as by the said decree remaining as of record, in our said Court of Chancery, at Trenton, doth and may more fully appear.

And Whereas, the costs of the said complainant have been duly taxed at $270.26; and the costs of the defendants, PATRICK M. HOGAN and BERTHA HOGAN have been duly taxed at the sum of $9.06;

Therefore, you are hereby commanded, that you cause to be made of the premises aforesaid by selling the same the said sum of $8,620.40 with lawful interest thereon from December 9, 1927 on behalf of the complainant; and also the sum of $518.30, together with interest from December 9, 1927 on behalf of the defendants, PATRICK M. HOGAN and BERTHA HOGAN, and also the sums aforesaid of costs; and that you have those moneys before our said Chancellor, in our Court of Chancery, aforesaid, at Trenton, on the Second day of June, next, to render to the said complainant, and defendants aforesaid the said sums due them, and also the surplus money, if any there be, to abide the further order of our said Court, according to the decree aforesaid. And you are to make return at the time and place aforesaid, by certificate, under your hand, of the manner in which you shall have executed this our writ, together with this writ.

Witness, EDWIN ROBERT WALKER, Esquire, our Chancellor, at Trenton aforesaid, the

Exhibit C. 10.

Third day of March, in the year of our Lord, one thousand nine hundred and Twenty-eight. Simon L. Fisch, Solicitor for Thomas Barber, Clerk. and of Counsel with Complainant, 31 Clinton Street, Newark, N. J. As by the record of the said writ of Fieri Facias in the office of the Clerk of the said Court of Chancery, in Book Z-11, of Executions, page 165 &c., may more fully appear, AND WHEREAS I, the said CONRAD DEUCHLER, as such sheriff as aforesaid, did, in due form of law, advertise the said lot of land and premises to be sold under and by virtue of the said writ of Fieri Facias, at public vendue, to be held at the Hall of Records in the City of Newark, on Tuesday, the Twenty-fourth day of April, A. D., nineteen hundred and Twenty-eight, at two o'clock in the afternoon of that day.

By public advertisements signed by myself, and set up at five or more public places in the said County of Essex, one of which was in the Ward, where said real estate is situated, at the time and place appointed for such sale, for at least three weeks preceding the time appointed for said sale and publishing the same in the "Newark Sunday Call," and the "Jewish Chronicle," two of the newspapers printed and published in the said County, where the lands above described are situated, the same being designated for the publication of the Laws of this State, and circulating in the neighborhood of said real estate, for at least once a week during four consecutive calendar weeks, the last publication within seven days next preceding the time so appointed for selling the same, one of which said newspapers to wit:

Exhibit C. 10.

"Newark Sunday Call," is printed and published at Newark, the County seat of said County, at which time and place I did adjourn said sale regularly from week to week until Tuesday, the Fifteenth day of May, A. D., 1928, at the same hour and place, at which last mentioned time and place I did accordingly offer and expose the said lot of land and premises for sale at public vendue under and by virtue of the said writ of Fieri Facias. And thereupon Mendel Gross, of the City of Newark, County of Essex, and the State of New Jersey, did bid for the same the sum of Five Thousand Dollars, ($5000.00); and no other person bidding as much, I did then and there, openly and publicly, in due form of law, between the hours of twelve and five in the afternoon, strike off and sell the said lot of land and premises for the sum of Five Thousand Dollars, ($5000.00); to the said Mendel Gross, he being then and there the highest bidder, for the same, and the said sale having been confirmed by an order of the said Court of Chancery, dated the Twenty-eighth day of May, A. D., nineteen hundred and Twenty-eight.

Now, Therefore, Know Ye, That I, the said CONRAD DEUCHLER, as such Sheriff, as aforesaid, under, and by virtue of the said writ of Fieri Facias, and in execution of the power and trust in me reposed and also for, and in consideration of the said sum of Five Thousand Dollars, ($5000.00); to me in hand paid, the receipt whereof I do hereby acknowledge and, therefrom acquit, exonerate and forever discharge the said Mendel Gross, his Heirs, Executors, Administrators and assigns, have granted bargained, sold, assigned, transferred and con-

Exhibit C. 10.

veyed, and by these presents do grant, bargain, sell, assign, transfer and convey, unto the said Mendel Gross, his heirs and assigns, all and singular, the said lot of lands and premises, with the appurtenances, privileges, and hereditaments thereto belonging or in any way appertaining: TO HAVE AND TO HOLD the same unto the said Mendel Gross, his heirs and assigns, to his and their only proper use, benefit and behoof forever, in as full, ample and beneficial a manner as by virtue of the said writ of Fieri Facias I may, can or ought to convey the same

And I, the said CONRAD DEUCHLER, for myself, my heirs, executors and administrators, do hereby covenant, promise and agree to and with the said Mendel Gross, his heirs and assigns, that I have not, as such Sheriff as aforesaid, done or caused, suffered or procured to be done, any act, matter or thing, whereby the estate hereby intended to be conveyed in and to the said lot of land and premises, with the appurtenances, is, may or can be changed, charged, encumbered, or defeated in any matter whatever.

IN WITNESS WHEREOF, I, the said CONRAD DEUCHLER, as such Sheriff as aforesaid, have hereunto set my hand and seal this Twenty-eighth day of May, in the year of our Lord, nineteen hundred and twenty-eight.

CONRAD DEUCHLER Sheriff.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

THOMAS B. HEALY

Exhibit C. 10.

New Jersey, Essex County, *ss.*

I, Conrad Deuchler, Sheriff of the County aforesaid, do solemnly swear that the land and real estate described in this deed, made by me to Mendel Gross, of the City of Newark, County of Essex, and State of New Jersey, was by me sold by virtue of a good and subsisting execution, as is therein recited, that the money ordered to be made has not been, to my knowledge or belief, paid or satisfied, that the time and place of sale of the said land and real estate was by me duly advertised, as required by law, and that the same was cried off and sold to a bonafide purchaser for the best price that could be obtained.

CONRAD DEUCHLER Sheriff

Sworn before me, one of the Masters in Chancery of the State of New Jersey, on this 14th day of June in the year of our Lord nineteen hundred twenty eight and I having examined the Deed above mentioned, do approve the same and order it to be recorded as a good and sufficient conveyance of the land and real estate therein described.

THOMAS B HEALY
Master in Chancery of New Jersey.

Exhibit C. 10.

Chancery B-266.

DEED.

Conrad Deuchler, Sheriff

TO

Mendel Gross.

Compared by 41 & 57

Received in the Register's Office of the County of Essex, N. J. on the 15th day of June A. D. 1928, at 2:04 P. M. and recorded in book D-78 of Deeds for said County, pages 309-310.

HOWARD S. DODD
Register.

Consideration $5000.00.

Dated May 28th, A. D. 1928.

Return to:
Simon L. Fisch
31 Clinton Street
Newark, N. J.

Received Registers Office Jun 15 1928 2:04 P M Essex County Newark, N. J.

Exhibit C. 11.

Exhibit C. 11.

SAMUEL GOLDBERG No. 357
Real Estate

Newark, N. J. October 22 1928

Pay to the Order of Morris Shapiro $104 75/100
One Hundred four 75/100.....Dollars
Par in New York City

SAMUEL GOLDBERG #2

To Hawthorne Avenue Trust Co. of Newark, N. J.

Endorsements:
Morris Shapiro
Morris W Shapiro

Bank Stamp—
Received Payment through the Newark Clearing House prior endorsements guaranteed Oct 22 1928 Franklin Washington Co. Weequahic Branch or Washington Trust Co. Weequahic Branch No. 16 D

Exhibit C. 12.

iff My Memery Serves me Right.
The Estate of my Brother Perry Gross was Closed on June 16th 1927 (1)
Thats The time I came in Possesion of Mary Shoulders mortgage (2)
& I gave the House over for Sail to Mr Bendher in June 1928 to sell for me (3)
& my lawyer Simon L fish, Bought the house in for me tuesday May 15th 1928. That was on Primary Election day. (4)
me & lawyer Solordor. Served Mary Shoulder. with & order from Simon l fish. office. & I was there first at The 22 gladstone ave House on th 17th also 18th & mr. Solordor went first on the 19th & the 20 of June 1928 I myself went with Mr. Solordor. On the 20th of June 1928. (5)
I became a quainted with lillian Clas the year of 1925. (6)
I spoke To The two Painters That was working at 22 gladstone. ave during The month of July 1928 in regards to having some work done on my other House. Papered & Painted (7)

Exhibit C. 13.

Menrey
Purshison
Shoulders
Gladstone
Menrey
aquained

Exhibit D. 1.

Exhibit D. 1.

8/3/28

Gross to Shapiro gladstone Ave

10	P. Price		9,000.00
	Deposit	1000.—	
	½ 1927 taxes—209.40)	104.70	
	½ apptd 1928 tax	57.67	1162.37
			7837.63
	Check of Ordway B & L		6000.—
	" " M. W. Shapiro		1800
	" " " " "		37.63
20			7837.63

30

40

Exhibit D. 2.

Exhibit D. 2.

Trustee Account Ordway Building & Loan Assn.

No. 54

Newark, N. J. Aug 3 1928

Pay to the order of

Mendel Gross $6000 00/100

Six Thousand and 00/100.....Dollars

Trustee Account Ordway B/L Assn.

MORRIS W SHAPIRO

Trustee

Weequahic Trust Company
Newark, N. J.

Endorsements—

Mendel Gross—Simon L Fisch—Mendel Gross

Bank Stamps—

CERTIFIED Jul 31 1928 without liability for genuine except as to makers signature payable at Franklin Washington Trust Company Weequahic Branch Newark, N. J.—H Hermann #4769

Pay to the Order of National Newark & Essex Bank Newark, N. J. Aug 4 1928 Howard Savings Institution Frank E. Quinby, Treas.

Received Payment through the Newark Clearing House prior endorsements guaranteed Aug 4 1928 Nat'l Newark & Essex Banking Co. P M

Exhibit D. 3.

APPLICATION FOR LOAN

ORDWAY BUILDING & LOAN ASSOCIATION
of the City of Newark, N. J.

7/28/28

The undersigned desires to procure a loan of $8000 from Ordway Building & Loan Association secured by a first Mortgage at....% interest per annum on the Bond of the owner on the following Property:
Location: No. 22 on....side of Gladstone (Ave.) Near corner of So Orange Ave St. (Ave.) City or Town of Newark Dimensions of Ground 30 x 83 Dimensions of Building..... Building Materials frame Height 2½ Stories. When Built..... Stable on premises no how many stalls.... Store no No. of Rooms, 1st floor 6 2nd floor 6 3rd floor 3 4th floor.... City water in house.... Purpose of use 2 family Dwelling Occupied by..... Is Building in course of erection No Repairs in progress..... Improvements: Heating Yes Range and Boiler for Hot Water Yes Bath and W. C. Yes Stationary Washtubs Yes Gas and fixtures Yes Electric Lighting..... Sewer connection..... Cost of Ground $3000 Cost of Building $9000 Total $12000 Monthly Rent $..... Insured for $..... Mortgage at present for $..... By whom held..... Is any portion of this loan to be used in improving the Property?..... If married give name of Wife or Husband.....

N

W PLAT E

S

Exhibit D. 3.

I hereby agree and bind myself to accept loan and pay all fees for searches and drawing papers and a premium of.....% if granted.

..... Name MAX GOLDBERG
.....
..... Address.....
COMMITTEE

COMMITTEE REPORT

Value of Ground $ 2500
Value of Building $ 8000

Total $10500
Insurance required $.....

We the undersigned hereby report $7000 favorable on within named loan.

MORRIS LAVENTHAL
SAMUEL WASSERMAN
Committee

Date.....19....

Exhibit D. 4.

July 24, 1928.

Meeting of the Board was called to order at 9 P. M. with Mr. Louis Susskind presiding.

The minutes of the previous meeting were read and accepted as read.

Reports of officers were submitted and duly approved.

Counsel reported that Halpern loan was still in arrears and action deferred, whereupon Board instructed him to foreclose immediately.

Committee on application of Joseph Eckel property located at 317-319 Centre St., Elizabeth, reported loan had been approved during the month and met with the approval of the Board. Premium was fixed at 3%.

An application was submitted during the month, on property located at Ellington St., near Springdale Ave., E. Orange for $8000.00 by Thos Divino. (3 family brick bldg. 25x100).

The committee, comprising Mr. Laventhal, Mr. Lomachinsky & Mr. Wasserman reported in favor of $7000.00, $500.00 to be withheld for repairs, whereupon motion was made, seconded and duly carried, approving loan for $7,000.00 as recommended. Premium was fixed at 3%.

Another application was submitted for loan of 8000.00 on property located at #22 Gladstone Ave., City by Max Goldberg. (2 family stucco).

The committee, comprising Mr. Laventhal, Mr. Lomachivsky & Mr. Wasserman reported in favor of 7,000.00, 500.00 to be withheld for repairs. Upon motion duly made, seconded and carried, loan was approved for 7,000.00 as recommended. Premium was fixed at 3%.

Exhibit D. 5.

A third application was submitted during the month on property located at 330 No. 13th St., City. for 13,500.00 by Salvatore Carrara (2 family & 2 garages—50x100).

The committee, comprising Mr. Laventhal, Mr. Lomachinsky & Mr. Wasserman reported in favor of 12,500.00, whereupon motion was made, seconded & duly carried approving loan for 12,500.00. Premium was fixed at 3%.

Proper officers were authorized to borrow 18,000.00 on note of the association.

The meeting adjourned 10:10 P. M.

Plager, Sec'y.

Exhibit D. 5.

ACCEPTED

and payable at the

WASHINGTON TRUST COMPANY
Newark, N. J.

SAMUEL KURTZ
Treasurer

ORDWAY BUILDING & LOAN ASSOCIATION
No. 1205 Newark, N. J. July 26, 1928

Pay to the
Order of Trustee Account, Ordway B & L Assn
$6,254 75/

Sixty-two hundred fifty-four 75/100. ....Dollars

In Payment of a/c mtge loan on prop. 22 Gladstone Ave., City

LOUIS SUSSKIND. BARNEY PLAGER
President Secretary

Exhibit D. 6.

Endorsement:

For deposit Trustee Account Ordway B & L Assn. Morris W Shapiro Trustee

Bank Stamp—

Received Payment through the Newark Clearing House prior endorsement guaranteed Jul 30 1928

Exhibit D. 6.

Trustee Account Ordway Building & Loan Assn.

No. 57

Newark, N. J. Aug 28 1928

Pay to the Order of
Morris W Shapiro $125 00/100
One hundred Twenty-five 00/000.....Dollars

Trustee Account Ordway B/L Assn.
MORRIS W SHAPIRO
Trustee

Weequahic Trust Company
Newark, N. J.

Endorsement—Morris W Shapiro

Exhibit D. 7.

Exhibit D. 7.

Trustee Account Ordway Building & Loan Assn.

No. 58

Newark, N. J. Aug 28 1928

Pay to the Order of
Max Goldberg $129 75/100
One hundred Twenty-nine 75/100.....Dollars

Trustee Account Ordway B/L Assn.
MORRIS W SHAPIRO
Trustee

Weequahic Trust Company
Newark, N. J.

Endorsements:
Max Goldberg
Samuel Goldberg

Bank Stamp—
Pay to the order of National Newark & Essex Banking Co. Prior endorsements guaranteed Hawthorne Ave. Trust Co. Newark, N. J. Received Payment through the Newark Clearing House Prior endorsements guaranteed Oct 22 1928 National Newark & Essex Banking Co. Newark, N. J. No. 1

Exhibits D. 8, D. 10.

Exhibit D. 8.

(Stubs from Check book
Trustee Account Ordway Building & Loan Assn.)

No. 54
Aug 3 1928
Mendel Gross 6000 00
Goldberg

No. 57
Aug 28 1928
Morris W. Shapiro
Goldberg fee 125 00

No. 58
Aug 28 1928
Max Goldberg
Bal of loan 129 75

Exhibit D. 10.

STATE OF NEW JERSEY
Department of Banking and Insurance
TRENTON

November 24, 1925.

To the Officers and Directors of the Building and Loan Associations of New Jersey.

Gentlemen:

After a careful survey of a situation which has long been the source of trouble, annoyance and controversy, three plans are herewith presented, whereby disbursements covering mortgage loans may be made. Please give them

careful consideration, and having decided which is best suited to meet the needs of your Association, have it promptly adopted for future procedure in all cases, and notify this Department of your action.

This communication is intended to supersede all recommendations heretofore made by this Department, and is presented after consultation with the New Jersey League of Building and Loan Associations.

Plan 1.

Check or checks of Association to be drawn in favor of borrower as per schedule furnished by the attorney for the Association. Where there are prior liens, separate checks of the Association, to the order of borrower, and by him endorsed over to the holder or holders of such liens, or, direct to the order of the holder or holders of such liens.

Plan 2.

Check of Association to be drawn in favor of the attorney of the Association and deposited to the credit of the latter in a special bank account, which shall designate him as the attorney of that particular Building and Loan Association.

Prior liens to be covered by checks drawn on this bank account, signed by the attorney, and an account of his disbursements in conenction with each mortgage loan, to be kept by said attorney subject to the official examination by this Department.

Plan 3.

Check of Association to be drawn in favor of borrower and endorsed by him over to a Title

Exhibit D. 11.

Company which shall make all settlements in connection with the closing of the title.

Yours very truly,

EDW MAXSON.
Commissioner of Banking & Insurance.

Exhibit D. 11.

THIS INDENTURE, Made the Third day of August in the year of our Lord One Thousand Nine Hundred and Twenty-eight.

BETWEEN MAX GOLDBERG party of the first part and ORDWAY BUILDING AND LOAN ASSOCIATION a body corporate of the State of New Jersey, party of the second part:

WHEREAS, the said party of the first part is justly indebted to the said party of the second part, in the sum of Seven Thousand ($7,000.00) Dollars, lawful money of the United States of America, secured to be paid by his certain bond or obligation, bearing even date with these presents, in the penal sum of Fourteen Thousand ($14,000.00) Dollars, lawful money as aforesaid, conditioned for the payment of the said first mentioned sum of Seven Thousand ($7,000.00) Dollars, lawful money as aforesaid, to the said party of the second part, its successors or assigns, in the manner following, viz.: By the payment of One Dollar per month on each of 35 shares of the series of shares of the capital stock of said Association, owned by said party of the first part, and standing in his name on the books of said Association, and assigned to said party of the second part as col-

Exhibit D. 11.

lateral security for the payment hereof, and on which this loan is based, on the Fourth Tuesday of each and every month hereafter, or such other time as may hereafter be appointed for that purpose, until the said shares shall attain the par value of Two Hundred ($200.00) Dollars each, together with interest on said sum of Seven Thousand ($7,000.00) Dollars, to be computed from date hereof at the rate of six per cent. per annum, and payable monthly at the same time and in the same manner as the stock-payments aforesaid, and also all fines that may become due, as provided for by the Constitution and By-Laws of said Association, which have been duly assented to by said party of the first part and are made a part hereof.

AND IT IS THEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said installment or insurance premium or premium on said shares, or interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereinafter imposed or acquired upon the premises described in this mortgage, and become due and payable, and should the said installment or insurance premium or premium on said shares, or interest or any part of them, or either of them, remain unpaid and in arrear for the space of thirty days or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrear for the space of sixty days or should the said party of the first part refuse or neglect for sixty days after demand to produce and exhibit to the party of the

Exhibit D. 11.

second part the vouchers showing the payments of such tax, assessment, water rent or other lien due and payable, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid principal sum of Seven Thousand ($7,000.00) Dollars, or the residue thereof, with all arrearage of interest, premiums and fines, thereon, shall at the option of the said party of the second part, or its legal representatives, become and be due and payable immediately thereafter, although the period above limited for the payment thereof may not then have expired, anything herein before contained to the contrary thereof in anywise notwithstanding: and the said Mortgagee may, at its option, pay such tax, assessment, or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum secured by the said bond and by this mortgage, and shall be payable on demand with interest at six per centum per annum, as by the said bond or obligation, and the condition thereof, reference being thereunto had, may more fully appear.

Now this Indenture Witnesseth, That the said party of the first part, for the better securing the payment of the said sum of money mentioned in the condition of the said bond or obligation, with interest thereon, according to the true intent and meaning thereof, and also for and in consideration of the sum of one dollar, to HIM in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, has granted, bargained, sold, aliened, released, conveyed and confirmed, and by these presents does grant, bargain, sell, alien, release,

Exhibit D. 11.

convey and confirm, unto the said party of the second part, and to its successors and assigns, forever, All that certain tract or parcel of land and premises, hereinafter particularly described, situate, lying and being in the City of Newark in the County of Essex and State of New Jersey.

BEGINNING at a point in the easterly line of Gladstone Avenue, (formerly West Side Avenue), at a point therein distant two hundred and fifty feet southerly from the southerly line of South Orane Avenue; thence running along the line of Gladstone Avenue (formerly West Side Avenue) South twenty-seven degrees fifty-nine minutes West thirty feet; thence south sixty-two degrees one minute East eighty-three feet and twenty-five hundredths of a foot; thence North sixty-two degrees one minute West eighty-three feet and twenty-five hundredths of a foot to the Easterly line of Gladstone Avenue and the place of BEGINNING.

Being the same premises conveyed to the said party of the first part by Mendel Gross and Jeanette Gross, his wife, by deed of even date hereof and not yet recorded, this mortgage being a purchase money mortgage and given to pay part of the consideration thereof.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the revision and reversions, remainder and remainders, rents, issues and profits thereof, AND ALSO all the estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in and to the same, and every part and parcel thereof, with the appurtenances:

Exhibit D. 11.

To Have and hold the above granted and described premises, with the appurtenances, unto the said party of the second part, its successors and assigns, to its and their own proper use, benefit and behoof forever. And the said party of the first part, and his heirs will warrant and forever defend the above described and granted premises, and every part thereof, with the appurtenances, in the quiet and peaceable possession of the said party of the second part, its successors, legal representatives and assigns against every person whomsoever.

Provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, administrators, successors or assigns, shall well and truly pay unto the said party of the second part, its successors or assigns, the said sum of money mentioned in the condition of said bond or obligation, and the interest thereon, at the time and times, and in the manner mentioned in the said condition, according to the true intent and meaning thereof, that then these presents, and the estate hereby granted, shall cease, determine and be void.

And it is also agreed by and between the parties to these presents, that the said party of the second part shall have the right and is hereby authorized to keep the buildings erected, and to be erected upon the lands above conveyed, insured against loss or damage by fire, in some safe or responsible Insurance Company or Companies, in an amount sufficient in its judgment to protect its interests, and that the policy or policies procured by the party of the second part shall be assigned to it by the party of the first part, and the premium or premiums, charged

Exhibit D. 11.

by the Insurance Company, in effecting the same, shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation and secured by these presents payable on demand, with interest at the rate of six per cent. per annum from the time of payment of such premium or premiums, by the party of the second part, and that the party of the first part shall not have the right to procure insurance on the said premises covering the interests of the party of the second part, so long as it has any interest in said premises. And it is also agreed that should the party of the first part refuse to pay the premium for insurance effected by the party of the second part covering the buildings to be erected, or now erected, upon the lands above conveyed, within thirty days after demand for payment of same by the party of the second part, that then and in that event, the entire principal sum secured by this mortgage, and the accompanying bond shall immediately become due and payable anything herein to the contrary, notwithstanding.

IT IS FURTHER AGREED that if the party of the first part shall make default in the payment of any insurance, taxes or assessments that may be assessed or levied against the said premises, it shall be lawful for said party of the second part to pay such insurance, assessments or taxes, and the amount so paid shall be a lien on the said mortgaged premises, added to the amount of the said bond or obligation and secured by these presents, payable on demand, with interest at the rate of six per cent. per annum, from the time of payment of such insurance, taxes, or assessments.

Exhibit D. 11.

And the said party of the first part the owner of the lands above described for himself, his heirs and assigns, does further covenant and agree to and with the said party of the second part, its successors and assigns, that he will pay in full, all taxes, levied or to be levied, upon the lands embraced in this mortgage, and will not claim any credit on, or make any deduction from the interest or principal hereby secured by reason of the payment of any taxes so levied, or to levied, during the continuance of the lien of this mortgage, and upon the breach of this covenant or any part thereof, this mortgage may become and be due and payable immediately, at the option of the said party of the second part hereto

And said mortgagor, for his heirs, executors, administrators, successors and assigns, do further covenant and agree that in any action that may be taken by said mortgagee, its successors or assigns, to foreclose the within mortgage for any breach of any of the stipulations and agreements herein contained, or in the bond accompanying the same, that the mortgagee, its successors and assigns, shall be entitled to the appointment of a receiver of the above premises, and the rents, issues and profits thereof, without proof of insolvency, and that adequacy of security shall be no defence to the appointment of a receiver in each action.

That during the continuance of this mortgage the mortgagor will keep all buildings subject thereto in good substantial repair; and that if he shall neglect to do so, the mortgagee may at its discretion enter upon the said premises from time to time in order to repair and keep in repair the said buildings, without thereby becom-

Exhibit D. 11.

ing liable as a mortgagee in possession and that its expenses of so doing shall be repaid to said mortgagee by the mortgagor on demand, and until so repaid shall be added to the principal sum secured and bear interest accordingly.

It is further understood that all terms, conditions, covenants and agreements are binding upon the party of the first part his heirs, executors, administrators and assigns.

In Witness Whereof, the said party of the first part, has hereunto set his hand and seal the day and year first above written.

MAX GOLDBERG L. S.

Signed, Sealed and Delivered
In the Presence of
Morris W Shapiro

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

Be it Remembered, That on this 3rd day of August in the year of our Lord One Thousand Nine Hundred and Twenty-eight, before me, the subscriber, AN ATTORNEY AT LAW OF NEW JERSEY personally appeared MAX GOLDBERG who, I am satisfied, is the mortgagor mentioned in the within Instrument, to whom I first made known the contents thereof, and thereupon he acknowledged that, he signed, sealed and delivered the same as his voluntary act and deed, for the uses and purposes therein expressed.

MORRIS W SHAPIRO
An Attorney at Law of New Jersey

Exhibit D. 11.

being by me privately examined, separate and apart from said husband , further acknowledged that signed, sealed and delivered the same as voluntary act and deed, FREELY, without any fear, threats or compulsion of said husband

Compared by 12 & 57

MORTGAGE.

Max Goldberg

TO

Ordway Building and Loan Association

Dated, August 3rd, 1928
Interest Payable,
Principal due,
Amount, $7,000.00

Received in the Register's Office of the County of Essex, N. J., on the 6th day of August A. D., 1928, at 9:57 o'clock, in the forenoon, and Recorded in Book E 65 of Mortgages for said County, on pages 303-305.

HOWARD S. DODD
Register.

Received Register's Office Aug 6 1928 9 57 A M
Essex County Newark, N. J.

Exhibit D. 12.

Exhibit D. 12.

KNOW ALL MEN BY THESE PRESENTS That I, MAX GOLDBERG of the City of Newark in the County of Essex and State of New Jersey, am held and firmly bound unto ORDWAY BUILDING AND LOAN ASSOCIATION a corporation of the State of New Jersey, in the sum of Fourteen Thousand ($14,000.00) Dollars lawful money of the United States of America, to be paid to the said Association, its certain attorney, successors or assigns, FOR WHICH PAYMENT well and truly to be made I bind myself, my heirs, executors, administrators successors or assigns firmly by these presents.

Sealed with my seal , Dated the Third day of August One Thousand Nine Hundred and Twenty-eight.

THE CONDITION of the above obligation is such that if the above bounden MAX GOLDBERG, his heirs, executors, administrators, successors or assigns shall well and truly pay or cause to be paid, unto the above named Association, its certain attorney, successors or assigns, the just and full sum of Seven Thousand ($7,000.00) Dollars in the manner following, viz.: By the payment of One Dollar on each of thirty-five shares of the series of shares of the capital stock of said Association, owned by the said MAX GOLDBERG and standing in his name on the books of said Association, and assigned to it as collateral security for the payment hereof, and on which this loan is based, on the Fourth Tuesday of each and every month hereafter, or such other time as may hereafter be appointed for that purpose, until the said shares shall attain the par value of Two Hundred

Exhibit D. 12.

($200.00) Dollars each, together with interest on said sum of Seven Thousand ($7,000.00) Dollars to be computed from and after the day of the date hereof at the rate of six per cent. per annum, and payable monthly at the same time and in the same manner as the stock-payments aforesaid and all insurance premiums and charges for insurance placed by the party of the second part upon the property described in the mortgage, also all fines that may become due, as provided for by the Constitution and By-Laws of said Association, which have been duly assented to by said obligor and made a part hereof, without any fraud or other delay, then the above obligation to be void, otherwise to remain in full force and virtue.

AND IT IS HEREBY EXPRESSLY AGREED, that should any default be made in the payment of the said installments or insurance premium or premium on said shares, or interest, or of any part thereof, on any day whereon the same is made payable, as above expressed, or should any tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien be hereafter imposed or acquired upon the premises described in the mortgage accompanying this bond, and become due and payable; and should the said installment or insurance premium or premiums on said shares, or interest or any part thereof remain unpaid and in arrears for the space of thirty days, or said tax, assessment, water rent, or other municipal or governmental rate, charge, imposition or lien, or any or either of them, remain unpaid and in arrears for the space of thirty days or should the said obligor refuse or neglect for thirty days after demand to produce and exhibit to the obligee

Exhibit D. 12.

the vouchers showing the payments of such tax, assessment, water rent or other lien due and payable, then and from thenceforth, that is to say, after the lapse or expiration of either of the said periods, as the case may be, the aforesaid princpal sum of Seven Thousand ($7,000.00) Dollars or the balance thereof remaining unpaid with all arrearage of interest, premiums and fines, thereon, shall at the option of the said obligee become and be due and payable immediately thereafter, although the period first above limited for the payment thereof may not then have expired, anything hereinbefore contained to the contrary thereof in anywise notwithstanding: and the said Mortgagee may, at its option, pay such tax, assessment or water rent in arrear, and the amount so paid shall be added to and become part of the principal sum above mentioned, and shall be payable on demand with interest at six per centum per annum.

MAX GOLDBERG (L. S.)
(L. S.)

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

MORRIS W SHAPIRO

FOR VALUE RECEIVED, the within named obligor do hereby assign, transfer and set over unto MAX GOLDBERG 35 shares of the series of shares of the capital stock, held by him in said Association, as collateral security for the payment of the debt mentioned in the within bond. And in case of default in payment of the dues, interest, cost of insurance or taxes upon

Exhibit D. 12.

premises mortgaged to the Association, or fines for non-payment of same he hereby authorize the said Association or its attorney to make sale of said 35 shares of stock, at auction at any general meeting thereafter, or otherwise, and in his name to make and execute a transfer of said 35 shares of stock to the purchaser of same, applying the proceeds of said sale to the payment of said loan.

And further I do hereby elect to treat all past and future payments of dues on said stock as credits on the within bond and mortgage accompanying the same, and authorize and direct the officers of said Association to so appropriate and credit the same, in case it becomes necessary to foreclose said Mortgage.

WITNESS my hand and seal this Third day of August A. D., 1928.

MAX GOLDBERG (L. S.)
(L. S.)

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF

MORRIS W SHAPIRO

BOND.

Max Goldberg

TO

Ordway Building and Loan Association

Dated, August 3rd, 1928

Amount,.....$

Exhibit D. 13.

Exhibit D. 13.

TITLE PAGE

Premises 22 Gladstone Avenue,
Newark, New Jersey.

BEGINNING at a point in the Ely line of Gladstone Ave. (formerly West Side Ave.) at a point therein distant 250 ft Sly from the Sly line of So. Orange Ave; thence running along the line of Gladstone Ave. (formerly West Side Ave) S 27 deg. 59 minutes W 30 ft.; thence S 62 deg. 1 minute E 83.25 ft; thence N 62 Deg. 1 minute W 83.25 ft. to the Ely line of Gladstone Ave. and the place of BEGINNING.

Frances Berlin, single,	Deed B & S
to	Book O 74-507
Mary Scholder	Dated Aug. 7, 1924
	Ack. Aug. 7, 1924
	Rec. Aug. 9, 1924
	Cons. $1.00

Premises in Newark.

Same as premises in question.

Elizabeth E. Hogan,	ON BILL TO
Complainant.	FORECLOSE
vs.	LIS PENDENS
Mary Scholder and	L. P.—I 165
Joseph A. Scholder, her	Rec. Apr. 21, 1926
husband,	Lintel, Kahn & Young,
Defendants.	Solicitors for Complts.

Mortgage D 45—392

NOTE: Mtge. Canc. June 18, 1926.

Exhibit D. 13.

Mary Scholder and Joseph Scholder, her husband,	MORTGAGE 3 yrs.
To	Bk Y 56-323
Valentine Braun, Executor of and Trustee	Dated Apr. 14, 1926
under the L. W & T of	Ack. Apr. 14, 1926
Peny Gross deed.	Rec. Apr. 15, 1926
	Cons. $8,000 6% S. A.
	by Lillian Clawans,
	Solicitor in Chancery
	Due Apr. 14, 1929
	Assgt.
	189-555

Mortgages Premises in Newark.
Same as premises in question.
Recites deed C 70-507.

NOTE: Foreclosed by deed D 78—309.

NOTE: She signs Mory Selle
He signs *Josep A.* Scholder

Mary Scholder and Joseph A. Scholder, her husband,	MORTGAGE
to	Book Y 57-295
Elizabeth E. Hogan	Dated May 1, 1926
	Ack. June 14, 1926
	June 15, 1926
	Rec. June 16, 1926
	Cons. $500. 6% S. A.
	Due May 1, 1927
	Assgt.
	187-62

Premises in City of Newark.
Same as premises in Question.
Recites deed O 70-507.
30 and 60 day default clauses.

NOTE: FORECLOSED by Deed D 78-309

NOTE They sign as in other mtge.

Exhibit D. 13.

Valentine Hogan, Executor and Theresa Hogan, executrix of the L W & T of Elizabeth E. Hogan, Dec'd.	ASSIGNMENT Book 187-62 Dated Jan. 10, 1927 Ack. Jan. 13, 1927 Rec. Jan. 29, 1927 Cons. $1.00 etc.

Assigns mtge Y 57-295

Covenants $500 and accrued int. due and owing.

NOTE: This is an assignment by Executors and should show the true consideration. Chancery abstract does not answer this with exception of reference to same in Master's report.

Valentine Braun, Extr. of and Trustee under the L W & T of Peny Gross to Mendel Gross	ASSIGNMENT Book 189-555 Dated June 16, 1927 Ack. June 16, 1927 Rec. June 17, 1927 Cons. $8,000

Assigns mtge Y 56-323

Covenants $8,000 due and owing and int. from Sept. 18, 1926.

NOTE: Ack. defective in that it does not state in what capacity party of first part is acting "Who I am satisfied is mentioned, etc."

Exhibit D. 13.

Conrad Deuchler, Sheriff	DEED Sheriffs
To	Bk D 78-309
Mendel Gross	Dated May 28, 1928
	Ack. June 14, 1928
	Rec. June 15, 1928
	Cons. $5,000
	By Thomas B. Healy, M. C. C.

Mendel Gross, Complainant	In Chancery of N. J.
vs	Decree Feb. 4, 1928
	Fi Fa Mar. 3, 1928
Mary Scholder and Joseph Scholder, her husband & Patrick M. Hogan & Bertha Hogan	Ex. 211-165

Premises situated in City of Newark, Cty of Essex, N. J.

BEGINNING at a point in the Ely line of Gladstone Ave. (formerly West Side Ave.) at a point therein distant 250 ft, Sly from the Sly line of So. Orange Ave; thence Running along the line of Gladstone Ave. (formerly West Side Ave.) S 27 deg. 59′ W 30 ft; thence S 62 deg. 1′ E 83.25 ft; thence N 27 deg. 59′ E. 30 ft; thence N 62 deg. 1′ W 83.25 ft to the Ely line of Gladstone —and the point and place of BEGINNING.

Sold to satisfy the complainant in the sum of $8,620.40

P. & I. secured by mortgage Y 56-323 & int. from Dec. 9, 1927.

Also costs of said complainant.

And in the second place Defendants Patrick M. Hogan and Bertha Hogan the sum of $518.30 & int. from Dec. 9, 1927, also costs.

Exhibit D. 13.

Costs of Complt. $270.25, and Deft. $9.06 Recites due advertisement. Sold to Highest bidder.

Mendel Gross and Jeanette Gross, his wife, To Max Goldberg	DEED Book P 78-83 Dated Aug. 3, 1928 Ack. Aug. 3, 1928 Rec. Aug. 6, 1928 Cons. $1.00 Bef. Simon L. Fisch, M. C. C.
Max Goldberg to Ordway Building and Loan Association	MORTGAGE Bk E 65 page 303 Dated Aug. 3, 1928 Ackd. Aug. 3, 1928 Rec. Aug. 6, 1928 Secures $7,000.

Mortgages same premises as described on title page.

I, Hereby Certify for ORDWAY BUILDING AND LOAN ASSOCIATION that I have examined the title to the premises described at the head of this abstract, and commonly known as 22 Gladstone Avenue, Newark, New Jersey.

My examination shows, and I hereby certify, that the title to said premises at the date hereof, is vested in MAX GOLDBERG, and that the encumbrances affecting the same, and the order of priority of such encumbrances, are as follows:

Exhibit D. 13.

1. MORTGAGE E 65-303 GOLDBERG to ORDWAY BUILDING AND LOAN ASSOCIATION in the sum of $7,000.00 recorded August 6th, 1928. M. W. S.

MORRIS W SHAPIRO

DATED: August 6, 1928 M W S

NEW JERSEY SUPREME COURT AND U. S. DISTRICT COURT

The Certification in the United States District Court is Based on Official Searches Made By the Clerk Thereof.

The Supreme Title Company hereby certifies that it has searched the indices to the records of the Supreme Court of the State of New Jersey and of the United States District Court for the District of New Jersey and does not find remaining or unsatisfied of record or docketed therein, any Judgment, Attachment, Decree, Mandate, Recognizance, or other lien, nor any Proceedings in Bankruptcy against Mendel Gross For twenty years last past. Jeanette Gross For twenty years last past.

In Witness Whereof, the Supreme Title Company has caused these presents to be signed by its President, attested by its Secretary, and its corporate seal hereto affixed, this thirty-first day of July, Nineteen Hundred Twenty-eight. 9 a. m.

HERMAN WOLFF

(seal) President.

Attest:

(Signature illegible.)

Secretary

Fees Supreme Court 2.54

Fees District Court 1.10

Exhibit D. 13.

Bill filed July 14, 1927

Decree filed Feb. 4, 1928

Docket No. 64-641

Solicitor Simon L. Fisch

	Subpoena Issued to	Subpoena Served upon	Appearance	Answer	Decree Pro. Con.	Notice of Encumbrance	Master's Summons on Report	Decree for
Between								
Mendel Gross, *Compl't,*								√
and								
Mary Scholder and	√	√	√	√	√			
Joseph Scholder, her husband	√	√			√			
Patrick M. Hogan and	√	√				√	√	√
Bertha Hogan, his wife *Defendants.*	√	√				√	√	√

PREMISES

Known and designated as No. 22 Gladstone Avenue, in the City of Newark, Essex County, New Jersey, are described as follows:

BEGINNING at a point in the Easterly line of Gladstone Avenue (formerly West Side Avenue) at a point therein distant two hundred and fifty feet Southerly from the Southerly line of South Orange Avenue; thence running along the line of Gladstone Avenue (formerly West Side Avenue) South twenty-seven degrees 59 minutes West thirty feet; thence South sixty-two degrees 1 minute East eighty three feet and twenty-five hundredths of a foot; thence North 27 degrees 59 minutes East thurrty feet; thence North sixty-two degrees one minute West eighty-three feet and twenty five hundredths of a foot to the Easterly line of Gladstone Ave. and the place of BEGINNING.

Exhibit D. 13.

Being the same premises conveyed to Mary Scholder by Frances Berlin (single) by deed dated Aug. 7, 1924 and recorded in Book O-70 of Deeds, page 507, for Essex County.
Bill to foreclose

Filed July 14, 1927

Bill filed to foreclose a mortgage made and executed by Mary Scholder and Joseph, her husband to Valentine Braun, executor and trustee under the last will and testament of Perry Gross, deceased, bears date April 14, 1926 given to secure the payment $8,000. Mortgage recorded in Book Y-56 page 323.

MORTGAGE COVERS
The above described premises.

May 1, 1926
Mary Scholder and Joseph A. Scholder, her husband mortgaged said premises to Elizabeth E. Hogan to secure $500.
Rec in Book Y-57 page 295.

May 15, 1926
Elizabeth E. Hogan died leaving a will wherein she appointed Valentine Hogan and Theresa Hogan executors of her said last will and testament. No specific bequest of said mortgage made. Will duly probated and recorded in Book T-7 page 54, Essex County.

Jan. 10, 1927
Valentine Hogan and Theresa Hogan executors aforesaid assigned said mortgage to Patrick M. Hogan and Bertha Hogan, his wife.
Rec in Book 187 page 62.

Exhibit D. 13.

June 16, 1927
Valentine Braun executor and trustee of Perry Gross deceased, assigned said mortgage to Mendel Gross, complainant,
Rec as No. 13 of Assignments for June 17, 1927.

Oct 14, 1926
One-half years interest amounting to $240. fell due on complainant's bond and mortgage and only one half thereof amounting to $120. has been paid leaving a balance unpaid of $120.

On April 14, 1927 an additional one-half interest amounting to $240. fell due and no part thereof has been paid.

Complainant elects that the whole principal with unpaid interest shall now be due.
Mary Scholder or Joseph her husband, have always been in possession of the mortgaged premises.

Usual prayer.

The bill is signed,

Simon L. Fisch, Solicitor and counsel.

Subpoa ad resp Tested July 28, 1927
Retble Aug 28, 1927
Duly served on all defendants.

Notice to report encumbrance of Patrick M. and Bertha Hogan

Filed Aug 13, 1927, Lintott, Kahrs, Young, Solrs.

Exhibit D. 13.

Answer of Mary Scholder
Filed Aug 29, 1927

Application having been made therefor, such proceedings were had that by an order dated Oct 26, 1927 the answer of Mary Scholder was stricken out and the bill of complaint taken as confessed as against her.

Decree Pro confesso
Filed Nov 3, 1927

Bill taken as confessed as against Joseph Scholder.

Order of Reference to Samuel Herman, Master to report.

Filed Nov 3, 1927

Application having been made by the defendant Mary Scholder, for leave to file answer such proceedings were had that by an order dated Nov. 15, 1927, said motion was denied.

Searches
Filed Jan 30, 1928.

Masters Report.
Filed Jan 30, 1928

The Master reports that he was attended by solicitors for complainant and defendant, Patrick M. and Bertha Hogan, who produced before him the bonds, mortgages and assignments, all as referred to in the bill of complaint.

Due Complainant $8,620.40
Patrick M. and Bertha Hogan $518.30.
Masters Summons with service duly acknowledged and proofs of amounts due annexed.

Exhibit D. 13.

Final Decree
Filed Feb 4, 1928

The report is confirmed.
Ordered that execution issue directed to the Sheriff of Essex County commanding him to made sale of the mortgaged premises to raise and pay and in the order of priority the sums heretofore reported due.
Surplus money if any to be paid into court.
Defendants stand absolutely debarred and foreclosed of and from all equity of redemption.

Costs
Filed Feb 24, 1928

Complainant $270.26.
Patrick M. and Bertha Bogan $9.06.

Execution issued March 5, 1928

Not returnable into Court.

Application having been made to open final decree such proceedings were had that by an order dated April 10, 1928 said motion was denied.

Report of Sale
Filed May 21, 1928

The Sheriff reports that he sold the mortgaged premises May 15, 1928 to complainant for $5,000. Affidavit of highest and best price annexed.

Order Confirming Sale.
Filed May 28, 1928

The sale is confirmed.
Ordered that the sheriff execute a deed to the purchaser or his assigns for the mortgaged premises so sold.

Exhibit D. 13.

Application having been made, for possession of said premises such proceedings were had that by an order dated June 26, 1928 it was ordered that a writ of assistance issue directed to the sheriff of Essex County commanding him to enter upon said premises and remove therefrom the said Mary Scholder or any one claiming under her.

Writ of Assistance issued July 2, 1928
(Not returned into Court by the Sheriff)

I have examined the foregoing proceedings and report the same regular in form.

JOS. A. DELATE

IN CHANCERY OF NEW JERSEY

Between

Mendel Gross,

Complainant

and

Mary Shcolder, et als.

Defendants.

ABSTRACT

Exhibit D. 14.

Exhibit D. 14.

Envelope Front—

JOSEPH SUSSKIND,
972 Broad Street,
NEWARK, NEW JERSEY.

Mr. Max Goldberg,
22 Gladstone Ave.,
Newark, N. J.

Post Office Stamps—
Hand—Returned to Writer from Newark, N. J.
P. O.
Newark Jul 29 7 P. M. 1929 N. J.

Back Stamp—
Newark Jul 31 8 P M 1929 N. J.

Exhibit D. 14.

Law Offices
JOSEPH SUSSKIND
972 Broad Street
Newark, N. J.

Telephones
Mitchell
4620
4621

File No. OBL
In your reply please refer to file number

July 29, 1929.

Mr. Max Goldberg,
22 Gladstone Ave.,
Newark, N. J.

Dear Sir: Re: Ordway B & L Ass'n.

Your loan with the above named Association is now over five months in arrears and as counsel of the Association, I have been instructed to foreclose its mortgage. If you will call upon me at once I may be able to make an arrangement with you to enable you to continue the loan.

Yours sincerely,

JS/1 JOSEPH SUSSKIND

#21

#21 October Term, 1932

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

Between LILLIAN CLAWANS, *Complainant-Respondent,* *and* ORDWAY BUILDING & LOAN ASSOCIATION, a corporation, *Defendant-Appellant.*	*On Appeal from the Court of Chancery.*

BRIEF FOR APPELLANT.

Abstract of Case.

In the beginning of 1928, Mary Scholder was the owner of premises #22 Gladstone avenue, Newark, New Jersey, which premises were being foreclosed by one Mendel Gross, the mortgagee of said premises. The complainant-respondent in this cause was the solicitor for Mary Scholder in that foreclosure proceeding. It was alleged at the hearing that the complainant-respondent, as Mary Scholder's solicitor, attempted to raise money in various ways so as to pay off the mortgage of Mendel Gross, and thereby forestall the foreclosure. She did not succeed. The premises were sold to satisfy the decree obtained by Gross and he, Gross, was the purchaser at the Sheriff's sale, obtaining title to said premises by virtue of a deed from Conrad Deuchler, Sheriff, dated May 28, 1928, and recorded in the Register's Office of Essex County in Book D-78 of Deeds for said County, page 309, on June 15, 1928.

The complainant-respondent, notwithstanding her position as solicitor of Mary Scholder, the

former owner of the premises, was desirous of purchasing the property from Gross for herself. Complainant-respondent alleges that Mary Scholder had knowledge of that fact and was agreeable that she purchase the property for herself from Gross. Defendant-appellant alleges that as to Mary Scholder, complainant-respondent did not act in good faith and that she took means to gain advantage of the value of the property by purchasing the same without the knowledge of Mary Scholder. (See State of Case, page 153, line 25.) To gain this end, purchase of the property without the knowledge of Mary Scholder, her client, complainant-respondent engaged one Morris W. Shapiro, an attorney-at-law of New Jersey, to approach Gross and contract with him for the purchase of the property, secretly, for her. Shapiro was commissioned by the complainant-respondent to make a contract for the purchase of the property, not in her name, but in the name of Shapiro. (See State of Case, page 47, line 21.) Her excuse for this was that she did not want Gross to know that she was buying the property, as Gross, she alleged, was a very bad man and disliked her. Before instituting this suit, however, she told defendant-appellant's present solicitor, who had called at her office in response to her invitation, that she did not want Mary Scholder to know that she was purchasing the property, so she hired Shapiro to act for her; for if Mary Scholder, who was an old woman, knew of it, she, Mary Scholder, would not want to quit the premises in view of the relationship existing between complainant-respondent and Mary Scholder, which was not only that of attorney and client, but also one of friendship. (State of Case, page 490, line 30, etc.)

On July 3, 1928, Morris W. Shapiro made a contract for the purchase of the property #22 Gladstone avenue, Newark, with Mendel Gross and the contract was in the name of Shapiro himself. (Exhibit C. 1. State of Case, page 532.) The contract price was $9,000.00 and provided for settlement on August 3, 1928. The settlment actually took place on August 3, 1928, but there was no indication, either in the contract or at the closing of title, that Lillian Clawans, the complainant-respondent herein, had any interest in the subject matter of the contract. The original contract was produced and marked in evidence. It was produced by Mr. Simon L. Fisch, then First Assistant Prosecutor of the Pleas of Essex County, the attorney for Mendel Gross in the matter of the contract and closing of title of said premises. At the closing of title, Shapiro suggested that the deed be drawn from Gross to Max Goldberg, his law clerk. Mr. Fisch required him to make an assignment of the contract to Goldberg on the contract itself, and the deed was accordingly drawn to Goldberg. (State of Case, page 107, line 5.) It is most significant to note here how the consideration for the deed to said premises was paid by Shapiro to Gross and what the complainant-respondent's testimony was as to what moneys she gave to Shapiro with which to make up the consideration. First as to complainant-respondent's testimony. Shapiro paid a deposit at the signing of the agreement of $1,000.00. Complainant-respondent testified that she later reimbursed him by delivering a check to him in that amount and she produced a check drawn on her account to the order of Shapiro. (State of Case, page 49, line 10, etc.) Next she testified that before the time for closing of title she delivered to

Shapiro her check drawn on her account for $2,000.00. (State of Case, page 51, line 21.) As to the balance of the purchase price, to wit, $6,000.00, she testified that Shapiro was indebted to her on a mortgage held by her on Osborne Terrace property in the sum of $10,000.00, which was past due and that she arranged with him for the payment of said mortgage by his applying said sum of $10,000.00 to various purposes. One of these purposes was to apply $6,000.00 of that mortgage debt to the balance of the purchase price of the Gladstone avenue property in the purchase from Gross. (State of Case, page 51, line 12, etc.) *The real undisputed evidence in this case, however, the cancelled voucher from defendant-appellant's bank account, shows that the balance of $6,000.00 of the purchase price was paid by Shapiro to Gross out of the proceeds of the mortgage loan made by defendant-appellant on the Gladstone avenue premises* and for which it took back from Max Goldberg, the grantee in the deed from Mendel Gross, a purchase money mortgage on the same day and at the same time that title to said premises passed to Goldberg. (State of Case, page 105, line 30.) It is this mortgage that complainant-respondent in this suit sought to have cancelled by this Court of Chancery.

At no time did complainant-respondent show that Shapiro actually applied any moneys due from said mortgage that complainant-respondent held on the Osborne Terrace property to the purchase price of the Gladstone avenue property. As a matter of fact, she could not, under any circumstances show this, for the truth is that Shapiro did not apply any money to the purchase price of the Gladstone avenue property other than that paid to him by the complainant-respondent, the $1,000.00 deposit and later

$2,000.00, and the money advanced by the defendant-appellant under its purchase money mortgage, to wit, $6,000.00.

Morris W. Shapiro, brought from the State Prison at Trenton to testify for the defendant-appellant, said (State of Case, page 361, line 10) that he procured the money with which to close title for the premises in question, at the time of the conveyance from Mendel Gross to Max Goldberg, from the Ordway Building & Loan Association, the defendant-appellant in this cause, which had granted a loan on the property. He was asked a question, "Did Miss Clawans (the complainant-respondent) know about it?" and his answer was, "Yes, she did." (Referring to his application for a loan from appellant.) He further testified that she told him to take title to the property for her and get the money for her. He also testified that he told her he would get a loan of some money to take title to the property. He testified that he owed her money, but told her that he did not have enough, meaning thereby that he did not have money with which to close title to the Gladstone property.

So the undisputed testimony in the case discloses that the title to said premises was received by Goldberg through Gross, by the payment of $6,000.00 of money advanced by the defendant-appellant and the $3,000.00 of money delivered by the complainant to Shapiro with which to carry out the purpose for which he was commissioned by the complainant-respondent. The deed from Mendel Gross and wife to Max Goldberg is dated August 3, 1928, and was recorded on August 6, 1928 in Book P-78 of Deeds for Essex County, page 83. (Exhibit C. 5, State of Case, page 539.) The purchase money mortgage given by Goldberg to Ordway Building

& Loan Association, the defendant-appellant, is dated August 3, 1928, and was on August 6, 1928 recorded in the Register's Office of Essex County in Book E-65 of Mortgages, page 303. (Exhibit D. 11, State of Case, page 570.)

It is important to note that complainant-respondent claims title to said premises by virtue of a deed from said Max Goldberg, which deed is dated January 3, 1929, acknowledged January 3, 1929, and recorded *June 7, 1929.* (Exhibit C. 6, State of Case, page 544.) It might be noted here that Shapiro later absconded with moneys belonging to both the complainant-respondent and the defendant-appellant in this cause and that the date he absconded was *June 4, 1929.*

Morris W. Shapiro, at the time he was commissioned by the complainant-respondent to contract for the purchase of the Gladstone avenue property, was an attorney-at-law of this State and the attorney for the defendant Building & Loan Association. He had been the attorney for the association since its incorporation in 1921. It subsequently developed that on June 4, 1929, Shapiro absconded from Newark, after having embezzled funds belonging to the defendant-appellant and two other building and loan associations of which he was counsel and also from individuals, of which complainant was one. Up to the time of the disappearance of Shapiro no reason then known existed for defendant-appellant to question his honesty.

At the monthly meeting of the defendant association held on July 24, 1928, Shapiro made application for a loan of $8,000.00 on premises #22 Gladstone avenue, Newark. He had previously made verbal application to the president of the association who appointed a committee

of the directors of the association to appraise the property. (State of Case, page 189.) The committee did appraise the property and at the meeting recommended the granting of a loan in the sum of $7,000.00, with the provision that $500.00 be withheld until the building was painted. (State of Case, page 188.) The loan was granted according to the report and recommendation of the committee and the amount of the loan, less the proper deductions and said sum of $500.00 withheld for painting, was turned over into the trustee account of the association for disbursement by the attorney for the association, for the purposes of the said loan, which procedure was one recommended by the Department of Banking and Insurance of New Jersey, which department has supervisory power over building and loan associations in this State. (Exhibit D. 10, State of Case, page 568.) The trustee account check book which was placed in evidence shows that on July 30, 1928, a deposit was made into the defendant-appellant's trustee account for loan of #22 Gladstone avenue, in the sum of $6,254.75. (Exhibit D. 5, State of Case, page 565.) That sum is the proceeds of the payment of $6,500.00, advanced for the purpose of the loan, the total loan being $7,000.00, but $500.00 having been withheld as above stated on recommendation of the committee. The analysis of the deductions from the $6,500.00 payment is as follows: Deduction for premium for granting loan, $210.00, representing a premium of 3%; deduction for one month's dues, $35.00; deduction of $.25 for pass book, making a total deduction of $245.25. So that, for the purpose of the loan of #22 Gladstone avenue, Shapiro had the sum of $6,254.75 to disburse. He disbursed that sum as follows: By check

#54 of the trustee account, dated August 3, 1928, made to the order of Mendel Gross, in the sum of $6,000.00 (Exhibit D. 2, State of Case, page 561); by check #57 of the trustee account, dated August 28, 1928, made to the order of Morris W. Shapiro, in the sum of $125.00 and marked "Goldberg fee" (Exhibit D. 6, State of Case, page 566); by check #58 of the trustee account, dated August 28, 1928, made to the order of Max Goldberg, in the sum of $129.75 and marked "balance of loan." (Exhibit D. 7, State of Case, page 567.) The total of the disbursements equals the amount of the check deposited in the trustee account for the said loan. It is interesting to note that the said check #58, made to Max Goldberg, was endorsed by Goldberg's name, though he denies the signature as his, and was deposited in the account of Goldberg's brother, Sam Goldberg, who testified that he cashed the check for Shapiro.

The bill filed in this cause prayed for the cancellation of the mortgage of defendant, a lien on the Gladstone avenue premises, and the theory of the complainant, as set forth in the bill, that the defendant paid no consideration whatsoever for the said bond and mortgage and that there is no money due or owing on said bond and mortgage.

Defendant-appellant filed a counter-claim for foreclosure of its mortgage, making third parties defendant to same against whom a decree *pro confesso* had been entered.

The Vice-Chancellor advised a decree ordering the defendant-appellant's mortgage to be cancelled and the defendant-appellant's counter-claim to be dismissed.

Specification of Errors.

One. The decree is erroneous in that it recites that no consideration was ever paid by the defendant-appellant, Ordway Building & Loan Association to complainant-respondent for the mortgage which was decreed to be cancelled, when, in fact, said defendant-appellant did pay a valuable, good and sufficient consideration for the same.

Two. The decree is erroneous in that it adjudged that the complainant-respondent was in open and notorious possession of the mortgaged premises and that defendant-appellant, Ordway Building & Loan Association, had knowledge of the complainant-respondent's ownership and title to said premises.

Three. The decree is erroneous in that it adjudged that the defendant-appellant, Ordway Building & Loan Association, failed to make inquiry of complainant-respondent as to her alleged possession of the mortgaged premises.

Four. The decree is erroneous in that it adjudged that the defendant-appellant, Ordway Building & Loan Association, was negligent in entrusting the search of the title to the said mortgaged premises and other legal matters in connection with the granting of its mortgage loan on said premises to Morris W. Shapiro, its attorney.

Five. The decree is erroneous in that it adjudged that the defendant-appellant, Ordway Building & Loan Association, was negligent in placing Morris W. Shapiro in a position to perpetuate a fraud upon complainant when, in fact, the complainant-respondent placed said Morris W. Shapiro in a position to perpetrate a fraud

upon the defendant-appellant, Ordway Building & Loan Association, and the complainant-respondent, Lillian Clawans.

Six. The decree is further erroneous in that it adjudged that the mortgage of the defendant-appellant, Ordway Building & Loan Association, the lien on the complainant-respondent's premises, is to be cancelled, notwithstanding that the proof showed that the said mortgage was a good, valid and subsisting lien on the premises described therein, and that said Ordway Building & Loan Association, the defendant-appellant, did pay a good and valuable consideration therefor, and that said mortgage was executed to the said defendant pursuant to a proper transaction without fraud on the part of the said defendant-appellant and that if any fraud were perpetrated, it was a fraud of Morris W. Shapiro, who, at the time of the perpetration of said fraud, was acting not as the agent of the defendant-appellant, but as the agent of the complainant-respondent.

Seven. The decree is further erroneous for the reason that the proof showed that the complainant-respondent, Lillian Clawans, did place said Morris W. Shapiro in a position to commit a fraud in the execution and delivery of said mortgage, which fraud was perpetrated on both the said defendant-appellant, Ordway Building & Loan Association, and the complainant-respondent, Lillian Clawans.

ARGUMENT.

As to the failure of consideration of the defendant-appellant, Ordway Building & Loan Association's mortgage.

The undisputed evidence in the case showed that the complainant-respondent made Morris W. Shapiro, who at the time happened to be attorney for the defendant-appellant, Ordway Building & Loan Association, her agent to purchase the mortgaged premises #22 Gladstone avenue, Newark, New Jersey, from Mendel Gross, secretly without disclosing that said complainant-respondent was interested in said premises and that said Morris W. Shapiro was authorized to purchase said property by contracting in his own name for the same.

The complainant-respondent accounted for $3,000.00 of the purchase price of said premises, which was $9,000.00, but she failed to account for the payment of $6,000.00, the balance of the purchase price. Her testimony was that Shapiro owed her $10,000.00 and that he promised to pay the $6,000.00 balance of the purchase price from the said debt of $10,000.00 which he owed her, which debt was a mortgage debt on some other piece of property.

The undisputed evidence showed that Shapiro did not apply any of his own moneys to the balance of the purchase price of the Gladstone property, but that he did pay the said balance of the purchase price by procuring a mortgage loan on the premises from the defendant-appellant, Ordway Building & Loan Association. The actual fact was that of the $9,000.00 purchase price paid to Mendel Gross, the grantor of said premises, $3,000.00 apparently was paid by the complainant-respondent and $6,000.00 was paid

by the defendant-appellant. Notwithstanding this state of facts, the Court below found as a matter of fact that the defendant-appellant paid no consideration for its mortgage.

As to the possession of the mortgaged premises by complainant-respondent and the doctrine of notice in relation thereto.

Most of the bulk of testimony offered for the complainant-respondent was to the effect that she was a tenant in the premises in question, occupying one of the flats of the building together with Mary Scholder, and paying Mary Scholder $65.00 a month for rent; that up to the time of the deed from Gross to Goldberg and the mortgage from Goldberg to the defendant, there was a sign displayed on the outside of the building as follows: "Flat to let, Inquire within, L. Clawans, Owner or Phone Market 9909." (State of Case, page 85, etc.)

Defendant contends that at the time in question, complainant was a roomer with Mary Scholder and not a tenant. That as a roomer, her possession, if any, is no notice of any rights she may have had in said premises at the time defendant received its mortgage. Furthermore, even the possession claimed by the complainant, if true, does not amount to such possession as is constructive notice of any rights the complainant-respondent may have had in said premises on August 3, 1928.

While the general principle that possession of land which is open, notorious and unequivocal, constitutes notice of the right or claim under which the party in possession occupies it, is correctly set forth by the complainant-respondent, consideration must be given to Chancellor

Runyon's qualification of that rule which the learned Chancellor enunciated in *Groton Savings Bank* v. *Batty,* 30 N. J. Eq. 126. At page 131 of the opinion in that case he said as follows: "The principle (that the possession of land is notice to others of the possessor's title) which the Lathrops invoke, is intended for a shield to protect the equitable rights of those who are entitled to the consideration of equity. It will not be available to cover a fraud; *nor will it be applied against equity.* (Italics are mine.) Said the Court in *Cook* v. *Travis,* 22 Barb. 338, 359: 'It is a general rule that the possession of land is notice to others of the possessor's title. But it is not universally true; it is merely an inference; it may arise in some cases, it may be repelled in others, and in others it may be restricted to some particular claim. The rule, like all rules of circumstantial evidence, must be governed by the particular circumstances of each case, and have a reasonable operation.' "

At page 133 of *Groton Savings Bank* v. *Batty, supra,* the following principle is set forth: "A vendor, who, after conveyance of land, remains in possession, will not be protected by his possession in a secret trust existing in his favor in the property in the hands of the grantee; for, by his deed he has declared to the public that he has no right to the possession. * * * So, too, one who gives out to the public for the purposes of concealment of his interest in the land, that another person is the absolute, unconditional owner of it, in order that it may be believed that he himself has no title or interest therein, will be held, in equity, to the consequences of his action as against innocent purchasers for value." Further at page 135 Chancellor Runyon says as follows: "The Lathrops,

for purposes of their own, clothed the Batties with the garb of absolute, unconditional ownership, and, as between them and an innocent party induced to act on this representation, the loss occasioned thereby must, under the circumstances, fall on them."

In the instant case the possession, as made out by the testimony on behalf of the complainant, was not such a possession as constitutes notice. To constitute notice the possession must have all of the three elements, which are open, notorious and unequivocal possession. The possession of the complainant-respondent was an equivocal possession, for the testimony of the complainant-respondent herself was that she occupied one of the apartments of the building on the premises in question, *together with Mary Scholder.* (State of Case, page 79.) Mary Scholder was, prior to the foreclosure of the mortgage by Mendel Gross, the owner and in actual possession of the said premises. Her possession (Mary Scholder's) continued until such time as she received a notice from Shapiro (after he had taken title to said premises in Max Goldberg's name) to vacate the premises. The complainant's own testimony was that she moved in with Mrs. Scholder in February 1927, paid Mrs. Scholder $65.00 a month for rent and lived together with Mrs. Scholder (Mrs. Scholder testified the rent was $50.00) in the same apartment until October, 1928; that at first they occupied the lower flat in said premises and later the upper flat. During all the time complainant-respondent lived in said premises, she lived together with Mary Scholder. Certainly a possession together in one apartment with the person who was the owner of said premises and mortgagor on a mortgage which was subse-

quently foreclosed, is an equivocal possession under circumstances where the person claiming possession as notice, engaged another person to contract with the purchaser at the foreclosure sale for the purchase of said premises, permitted that person to make a contract secretly in his own name, for her own purpose, and thereby permitted the person she engaged to contract for her in his own name, to take title to said premises in the name of his clerk and to borrow money from the defendant on purchase money bond and mortgage on said premises, on representation that he was the real party in interest.

It has been argued above that complainant-respondent's possession of said premises was not notice to defendant-appellant of the rights of complainant-respondent by virtue of the contract made by Shapiro, secretly in her behalf, with Gross, because her possession was not unequivocal. This point is further substantiated by the determination in *Rankin* v. *Coar,* 46 N. J. Eq. 566. In that case a widow, who occupied part of a house in which she was entitled to dower, while her son, the sole heir at law, occupied the rest of the house, released her dower therein to the son by a deed duly recorded. It was held that her continued occupation thereafter will not give notice to one who takes a mortgage from the son, of a title in her to the part of the house acquired by an unrecorded deed from the son contemporaneous with her release of dower. It was further held that when a house is not so constructed as to indicate its use in separate apartments, the fact that a mother occupied a part, while her son (who appeared by the record to be the owner) and his family occupied the same house, is not suffi-

cient to put an intending mortgagee on inquiry as to the mother's rights; it may well be assumed that she was a guest or inmate of her son's family. Speaking of the situation in the case of *Rankin* v. *Coar,* Justice Magie for the Court of Errors and Appeals stated the following to be the rule: "The true rule is, that when the occupation by one is not exclusive but in connection with another, with respect to whom there exists a relationship sufficient to account for the situation, and the circumstances do not suggest an inconsistent claim, then such possession will not give notice of a right by unrecorded grant. It will be neither open, notorious, nor unequivocal."

In the case under consideration, complainant-respondent occupied one of the flats of the said building together with Mary Scholder, who was the record title holder up to the time the sheriff's deed to Gross was recorded. Mary Scholder continued in possession of the premises, notwithstanding the deed from the sheriff to Gross. Lillian Clawans, the complainant-respondent, continued with her in the possession of the apartment occupied by Mrs. Scholder. It must be remembered that complainant-respondent and Mary Scholder were living in the house, occupying one of the apartments, not each occupying certain rooms of the apartment, but using the apartment in its entirety, jointly and together since February, 1928, and until after the making of the mortgage to the defendant-appellant. That a close friendship and confidential relationship existed between complainant-respondent and Mary Scholder; that complainant-respondent was the solicitor of Mary Scholder in the foreclosure proceedings of Gross; that Mary Scholder was a close friend of the complainant-respondent's family and knew complainant-respondent from

babyhood on. (State of Case, page 148.) The only inference that can be drawn from the possession of the premises in question by complainant-respondent is that her possession was not exclusive but in connection with another, that other being Mary Scholder; that there existed a relationship between complainant-respondent and Mary Scholder sufficient to account for the situation that they were living together and the circumstances did not suggest an inconsistent claim on the part of the complainant-respondent. As stated by Justice Magie in the *Coar* case, the possession of the complainant was neither open, notorious nor unequivocal. To a stranger dealing with the property, the record disclosed that Mary Scholder had been the owner of the property, that a mortgage was foreclosed, and by virtue of a decree in the Court of Chancery, the premises were sold and Gross purchased the same at a sheriff's sale. Persons dealing with property at that time discovered Mary Scholder still in possession, a writ of assistance had not as yet been procured against her. Complainant-respondent was living in the same apartment with Mary Scholder. The fact that she so lived there did not amount to a possession which would put an intending *bona fide* purchaser or mortgagee on notice. To the contrary, her possession was not exclusive, nor notorious, nor open and neither was it unequivocal. If anything, her possession was one of grave doubt.

As to that part of the decree adjudging that the defendant-appellant was negligent in placing said Morris W. Shapiro in a position to perpetrate a fraud upon complainant-respondent.

The Court below in adjudging that the defendant-appellant was guilty of negligence in placing

Morris W. Shapiro in a position to perpetrate a fraud upon the complainant-respondent, applied the principle of law involved, contrary to the proof. It should have been applied against the complainant-respondent and relief should have been denied her for the reason that she, complainant-respondent, was the one who placed Shapiro in a position to perpetrate the fraud, which was practiced by him on both the defendant-appellant and the complainant-respondent herself.

Furthermore the complainant is estopped from claiming that her possession was notice to the defendant-appellant for the reason that by arranging with Shapiro to have him purchase the property for her from Gross by contract in his own name, so that the public would not know that she was the real purchaser, she clothed Shapiro with the garb of a principal to said contract of purchase and not as her agent, which he secretly was. She thereby put Shapiro in a position to commit a fraud. She placed him in a position whereby he could deceive an innocent third party as to his real status in relation to said premises. That, he actually did, by procuring a mortgage on said premises at the time he took title to said premises. In *Moor* v. *Riddle,* 82 N. J. Eq. 197, 201, the learned *V.-C.* Backes said: "There is no principle of equity better settled nor more uniformly enforced that 'whenever one of two innocent persons must suffer a loss by the acts of a third, he who has enabled such third person to occasion the loss must sustain it.' Or, as it is sometimes expressed, 'that as between two persons equally innocent, a loss resulting from the fraudulent acts of another shall rest upon him by whose act or omissions the fraud was made possible.'

Mr. Chief Justice Holt puts it: 'For, seeing that somebody must be the loser by this deceit, it is more reason that he who employed and put trust and confidence in the deceiver should be the loser than a stranger.' *Halsted* v. *Colvin,* 51 N. J. Eq. 387."

The facts of *Moore* v. *Riddle, supra,* are very similar to the facts in the instant case. In that case complainant conveyed land to R who agreed to find a purchaser for complainant's property, under an agreement with R that the title should be placed in his name so that he could mislead an alleged friend of R into believing that R owned the property, so as to in that way enable R to borrow money from his friend to purchase from complainant, or as complainant also testified so as to enable R to sell to such friend for complainant's price, and the deeds were recorded, and R sold the property to defendant, an innocent purchaser, and did not pay complainant the price according to his agreement to do so or return the deed within a week, but complainant waited three months after conveying to R before taking any action. It was held that complainant was estopped as against defendant from claiming that the deeds to R were void. The facts of the instant case are analogous to the facts in the above case, except that in the instant case the position of the defendant-appellant is much stronger than that of the defendant in the Riddle case, for the money paid out by the defendant-appellant in this case was actually used as part of the purchase price by which the wrongdoer acquired title to said premises and through which title complainant-respondent makes her claim. Commenting on the situation in the Riddle case, *V-C.* Backes said, "The complainant

has suffered a grievious wrong, but her predicament is due to her own folly and gross negligence while participating with her wrongdoer in an effort, as she supposed, to mislead and deceive the latter's New York friend. Whatever may have been the guile of Riddle, it is apparent that the complainant proposed clothing him with the *indicia* of ownership, with the design that the 'Friend' should believe the title of the property to be in Riddle. Obsessed by this, she cast aside precaution and, in disregard of the dictates of common prudence, signed and delivered to him what she knew to be deed, the legal effect of which she undoubtedly fully comprehended, trusting to his assurance that they would not be binding, and would be returned if he were unsuccessful in borrowing money on their credit, or unable to make sale. She made it possible for Riddle to place the deeds of record and hold himself out to those who dealt with him as the rightful owner with power to sell and convey. The defendants—innocent purchasers—parted with their money relying on the representations of Riddle and the public records. Had the complainant exercised common sense and ordinary diligence even after the delivery of the deeds, she could have protected herself against the conveyances and mortgages made in July. Riddle had promised to pay her the consideration price or return the deeds within a week after he got them, but she waited supinely for three months while he trafficked with the property.'' The above statement of *V.-C.* Backes in the Riddle case applies in all its force to the facts in the instant case. Notwithstanding the fact that complainant-respondent is an attorney-at-law of this State, admitted in 1923, when dealing with Shapiro in this transaction, she

cast aside all the dictates of common prudence and common sense and clothed him with the apparent status of the principal to the contract of purchase for the Gladstone avenue property. Notwithstanding that Shapiro came to her on August 3, 1928, after the closing of the title with Gross, and showed her a deed from Gross to Goldberg, his law clerk, and she expressed surprise that title was taken in Goldberg's name, she was gullible enough to take Shapiro's explanation that he was having trouble with his wife and that he therefore was using Goldberg as a dummy to take title. (State of Case, page 58, line 28.) Complainant-respondent further cast aside all prudence and caution after Shapiro came to her with the deed to Goldberg, for though, she testified, at that time Shapiro also brought with him a deed for said premises executed by Goldberg to complainant-respondent, she took no steps to see that the deeds were recorded, but permitted Shapiro to deal with the property as though it were his own, and she did not see to it that a deed for said premises from Goldberg to herself be placed on record until June 7, 1929, several days after Shapiro had absconded and a year after the title to said premises had been closed with Gross.

In *Lawson* v. *Carson,* 50 N. J. Eq. 370, 378, *V.-C.* Green states the following rule: "It is a hard case, as before stated, but the recognized rule is where one or the other of two innocent parties, must suffer by the fraud of a third, the loss should be sustained by the one whose conduct has made the fraud possible." The rule is applicable to the facts in the instant case. Complainant-respondent, by her conduct, in permitting Shapiro to contract for the purchase of the property from Gross in his own

name, made it possible for Shapiro to commit a fraud, whereby defendant-appellant was induced to grant a loan on said premises and advance its money on the bond and mortgage made by Goldberg.

It might be well at this point to analyze the acts of Shapiro to determine from whom he stole the $6,000.00 involved in this suit. Did he steal the money from the complainant-respondent or from the defendant-appellant? The necessary purchase price to close the title with Gross was $9,000.00. Of this sum complainant-respondent paid to Shapiro $3,000.00. She testified that Shapiro had agreed to pay to her a mortgage which she held on property of M. & M. Construction Co. The mortgage was $10,000.00 and she reached an arrangement with Shapiro whereby he was to apply $4,000.00 of the mortgage debt to certain other business they had together and $6,000.00 of the mortgage debt was to be used for the balance of the purchase price of the Gladstone avenue property. Complainant-respondent, after reaching this arrangement with Shapiro, gave him a cancellation of the said mortgage. Did Shapiro actually keep his end of the agreement with complainant-respondent as to the payment of the said mortgage debt of $10,000.00? If he had, this case would have never existed. As to the application of the $4,000.00 of that mortgage debt, we are not here interested, but as to the $6,000.00 of said mortgage debt, which complainant-respondent claims to be her contribution to the purchase price of the Gladstone property, we are vitally interested. *The truth is, and the evidence plainly shows it in such a manner that no man can deny it, that Shapiro never repaid to complainant said sum of $6,000.00 of said mortgage*

debt due from the company in which he was interested. That the theft of Shapiro involved in this case was committed when he by fraud obtained from complainant-respondent the cancellation of the mortgage on the Osborne Terrace property by his false promise to apply the money to the purchase price of the Gladstone property.

The Court should not lose sight of the fact that the defendant-appellant has traced the $6,000.00 of the money it advanced on the bond and mortgage on the Gladstone avenue property directly from its general bank account to its trustee account and then into the hands of the vendor of the property, Mendel Gross, thereby making its mortgage a purchase money mortgage. Without defendant-appellant's money, it is doubtful if Shapiro would ever have been successful in taking title to said premises from Gross. By declaring that the complainant-respondent's equity in the Gladstone avenue property is paramount to the defendant-appellant's mortgage and that the defendant-appellant's mortgage is void, creates the anomalous situation of one person being declared the owner of property purchased with another's money.

Pertinent to the present argument is the case of *Fountain* v. *Carlton,* 88 N. J. Eq. 593. Complainants in that case employed a lawyer named Kehoe to foreclose a mortgage. After the decree was entered, the owners of the equity of redemption sold the premises to a Mr. Bullis. Bullis was to have a clear title and he also employed Kehoe to look after his interests. After paying the vendor the difference between the purchase price and the liens, Bullis entrusted Kehoe with $5,000.00 to pay off the liens. Kehoe failed to pay complainants. The Court of Chancery, which

was affirmed on the opinion below, speaking through Vice-Chancellor Backes, said:

"* * * and the question is 'Is Bullis, or are the complainants to lose this amount of the theft? Was it Bullis' money or the complainants' that Kehoe stole?' It seems to me that it must be held that the thief stole the money when and as it was given to him—that is, Bullis' money. I cannot suppose, and there is nothing in the case to indicate, that Kehoe first applied the sum to the complainants' debt and then stole it." The case of *Fountain* v. *Carlton* is followed by *V.-C.* Church in *Wilson* v. *Walsh,* 105 N. J. Eq. 396, wherein is also enunciated the doctrine that when one of two innocent persons must suffer a loss, it is to be borne by the one who first rendered the injury possible.

In the case under consideration, the complainant-respondent made the injury possible when she gave Shapiro the cancellation of the Osborne Terrace mortgage in return for his promise to use the money for the Gladstone purchase price.

In her attempt to place the loss involved in this case on the defendant-appellant instead of herself, the complainant-respondent alleged that Shapiro, the wrongdoer, was the agent of the defendant-appellant in all the matters pertaining to the wrongdoing involved here. Complainant makes that allegation in paragraph three of the bill of complaint. But the proofs showed, and no question can exist as to the fact, that he was the agent, as to the various matters involved in this action, of both the complainant-respondent and the defendant-appellant. He was the agent of the complainant-respondent, so far as the purchase of the Gladstone avenue premises from Gross was concerned, and he was the

agent of the defendant-appellant for the purpose of examination of title of the said premises for its proposed loan and later, the disbursement of the moneys for said loan.

Shapiro was a special agent of the defendant-appellant association. His authority was to exchange the funds of the association entrusted to him for a first lien bond and mortgage on real estate. *Scherer* v. *Post Office B. & L. Association,* 91 N. J. L. 666.

The funds of the defendant-appellant association in this case were disbursed by Shapiro from a trustee account, the check book of that account being in evidence in this case. In the case of *Ordway Building & Loan Association* v. *Moeck,* 106 N. J. Eq. 425, recently decided by Vice-Chancellor Berry, it was said, concerning Shapiro's agency as relating to the defendant in this case, as follows: "Undoubtedly Shapiro in his capacity as trustee, was, in effect, a special agent for the complainant, and the Orient association was chargeable with the knowledge of the extent of his authority. Persons dealing with one who is known to be a special agent are chargeable with knowledge of the extent of his authority."

It was Shapiro's duty, as agent of the defendant-appellant as aforesaid, to examine the titles for loans granted by the defendant association and that duty included the one to make inquiry of persons in possession of premises about to be mortgaged to the defendant-appellant. It is common knowledge that when one hires an attorney-at-law to make a search of the title to real estate for the purpose of a conveyance or a mortgage, that that search should include an inquiry as to the rights of persons in possession of the land intended to be con-

veyed or mortgaged. *Jacobsen* v. *Peterson,* 91 N. J. L. 404. Ordinarily, in a case involving no fraud, it would have been Shapiro's duty, in the examination of the title to the Gladstone avenue premises for the purposes of the loan granted by the defendant-appellant, to make inquiry on behalf of the defendant-appellant as to the rights of the persons occupying said premises. But in this case, Shapiro was engaged in perpetrating a fraud on the complainant-respondent. To further his scheme of fraud he procured the loan granted by the defendant. Would it be natural for him, while engaged in this fraud, to disclose to defendant-appellant the facts within his knowledge as to the rights of complainant-respondent by virtue of the fact that she was his undisclosed principal to the contract of purchase made with Gross?

The answer to this question is in the opinion in the case of *Camden Safe Deposit & Trust Co.* v. *Lord,* 67 N. J. Eq. 489. There *V.-C.* Bergen held as follows: "The knowledge of an agent is imputable to his principal when it relates to the business which the agent is carrying on for the principal but if the agent, in the course of business in which he is employed, commits an independent fraud, for his own benefit, designedly against his principal, the presumption of constructive notice is destroyed." The quotation above is from the syllabus of the case, and further in the opinion it is said, "* * * the presumption of constructive notice is destroyed, and the inference is, rather, that no communication was made." And the opinion in the last stated case quotes from *Barnes* v. *Trenton Gas Co.,* 27 N. J. Eq. 33, where the Court said that "when the agent's interests are opposed to those of his principal the presumption is, not that he will

communicate his knowledge, but that he will conceal it."

And in *Barnes* v. *Trenton Gas Co., supra,* Chancellor Runyon stated the proposition as follows: "The general proposition is undoubtedly true, that notice of facts to an agent is constructive notice thereof to the principal himself, where it arises from, or is at the time connected with the subject matter of his agency. The rule is based on the presumption that the agent has communicated such facts to the principal. *Story on Agency*, par. 140. On principles of public policy the knowledge of the agent is imputed to the principal. But the rule does not apply to a transaction such as that under consideration, for, in such a transaction, the officer, in making the sale and conveyance, stands as a stranger to the company. *Straton* v. *Allen*, 1 C. E. Green, 229. His interest is opposed to theirs, and the presumption is, not that he will communicate his knowledge of any secret infirmity of the title to the corporation, but that he will conceal it. Where an officer of a corporation is thus dealing with them, in his own interest opposed to theirs, he must be held not to represent them in the transaction, so as to charge them with the knowledge he may possess, but which he has not communicated to them, and which they do not otherwise possess, of facts derogatory to the title he conveys."

The defendant-appellant had no reason to believe, when Shapiro informed it that the title to said premises was satisfactory for the purpose of the loan, that someone in possession of said premises claimed any rights in and to said premises. The complainant-respondent, by her act, gave Shapiro the power to practice a fraud upon the defendant-appellant, who is an inno-

cent party, and the Court below should not have interfered in her behalf at the expense of those who have been deceived and misled by such fraud. *Halsted* v. *Colvin*, 51 N. J. Eq. 387.

The proper equitable maxim applicable to the present case, assuming that the equities are equal, and herein defendant-appellant agrees with the complainant-respondent in that it does not admit that the equities are equal, but alleges that its equity is greater than that of the complainant-respondent, is that BETWEEN EQUAL EQUITIES THE LAW WILL PREVAIL. If two persons have each an equally good equitable right, and but one of them has the legal title to the subject of the dispute, equity will not interfere, but leave them to the courts of law, when, of course, the holder of the legal title will prevail. Thus, if a purchaser for a valuable consideration, without notice of a prior equitable right, obtains the legal estate at the time of his purchase, he will be entitled to priority in equity as well as at law. *Bispham's Principles of Equity,* fifth edition, paragraph 40, page 66. If admitting, for the purposes of this argument, that the complainant-respondent's and the defendant-appellant's equities are equal, the defendant-appellant must prevail, for it is a bona fide mortgagee for a valuable consideration of said premises prior in time of law to the title of the complainant-respondent—for the mortgage of the defendant-appellant is of record on August 3, 1928, while the deed to said premises of complainant-respondent, and through which she claims, is of record June 7, 1929.

It should be remembered that this is not the case of one doing business with one known to be a special agent in so far as the agency of Shapiro to the complainant-respondent is concerned.

There was absolutely no proof whatsoever to show that defendant-appellant had any knowledge of the relationship of Shapiro to complainant-respondent. The law, as to the authority of a special agent, does not therefore apply to charge the defendant-appellant with notice as to Shapiro's authority to mortgage the property.

It is submitted that from a consideration of the entire transaction in this case, beginning with the foreclosure of the premises by Gross and running through the complainant's engagement of Shapiro to purchase the property secretly for her, and her neglect later to see that the premises were property conveyed to her, the complainant-respondent was guilty of gross negligence. The complainant slept on whatever rights to the said premises that she may have had. She was not diligent in the protection of her rights. The defendant was vigilant and is prior at law. EQUITY FAVORS THE VIGILANT AND NOT THE INDOLENT.

As to the credibility of testimony of both complainant-respondent's witnesses and the defendant-appellant's witnesses.

The Court will note that when testimony was given by the complainant-respondent's witnesses, that the Court below gave much credence to the testimony of the witnesses who recited the exact wording and telephone number of a sign which was supposed to have been on the mortgaged premises one and one-half years prior to the date of the hearing. It is also to be noted that from the large number of witnesses who testified as to the sign, none differed as to the phraseology of the sign nor the telephone number, which all seemed to remember exactly alike. The Court below seemed to place value on this testimony.

When the defendant-appellant's witnesses testified, the Court below did not hesitate to characterize the testimony of each witness as unbelievable, notwithstanding that it was ordinary, every-day testimony of average men, such as compose the directorate of the average building and loan association. While it is true that the testimony of the defendant-appellant's witnesses, as to the appearance and examination of the mortgaged premises, while they acted as an appraisal committee for the defendant-appellant building and loan association, differed somewhat in detail, still it was not testimony which should have been characterized as it was by the Court below, as untruthful.

The truth of the situation was that the testimony of the complainant-respondent's witnesses was highly colored, so as to make out a possible case on her bill of complaint.

On direct examination of the complainant-respondent, the solicitor of the complainant-respondent produced the deed from Gross to Goldberg and the deed from Goldberg to complainant-respondent, which deeds are marked Exhibits C. 5 and C. 6 respectively. She testified as set forth in State of Case, page 58, line 26 to page 63, line 20, etc.

This testimony of the complainant-respondent is a good example of the kind of testimony her whole case is made of. It shows a deliberate attempt to change the truth. It is the kind of testimony made up of a little truth and a large portion of fiction and which is dangerous to combat, but the truth will out; and in this case, like all cases of untruthful testimony, certain slips are made which are indicative as to where the truth lies. First complainant-respondent stated

that the deed proffered is the one Shapiro showed her on August 3, 1928, unrecorded; when she listened to Mr. Brogan's objection to it going into evidence, she later shrewdly stated that it is not the deed Shapiro showed her on August 3, 1928, but that another deed was shown her by Shapiro. After questioning by the Court, she states she knows that is not the deed, there was nothing in the deed about recording and the deed Shapiro had shown her had a "deeper print." Is it not strange that suddenly, during the course of her testimony, complainant-respondent discovers that the deed referred to is not the deed Shapiro had shown her and that she remembers the nature of the print on the deed she claims Shapiro showed her? The testimony set forth above certainly tests the credibility of the complainant-respondent to the point where her entire testimony must be considered with great caution, for with a witness such as the complainant-respondent, giving testimony as above set forth and there can be little doubt but that her testimony is a mixture of both truth and fiction.

Notwithstanding the fact that complainant is a practicing attorney of the State of New Jersey, she made no effort to discover, after August 3, 1928, whether or not she had a clear record title to the premises she had commissioned Shapiro to purchase for her. She did not even make an effort to ascertain whether or not a deed to her for the premises, such as she claimed Shapiro showed her unrecorded on August 3, 1928, was later placed on record. Is it not significant that she does not succeed having a deed on record until June 7, 1929, after Shapiro had absconded, and even then that deed bears date and is acknowledged January 3, 1929?

It is respectfully submitted that the entire decree should be reversed and a decree rendered for the defendant-appellant on its counter-claim.

JOSEPH SUSSKIND,
Solicitor for and of Counsel
with Defendant-Appellant.

New Jersey Court of Errors and Appeals

Between LILLIAN CLAWANS, Complainant-Appellee, vs. ORDWAY BUILDING & LOAN ASSN., Defendant-Appellant.	On Appeal from Court of Chancery.

BRIEF FOR COMPLAINANT-APPELLEE.

(Italics ours except where otherwise noted.)

Facts.

The complainant-appellee, being desirous of purchasing the premises described in the bill of complaint, from the owner (with whom she was not on good terms and of whom she stood in bodily fear) (State of Case, page 47, lines 24 to 28 and page 81, lines 26 to 32) employed Morris W. Shapiro, a lawyer who, at that time stood in good repute, to negotiate the purchase for her of said premises. A broker, who negotiated the deal transacted the details and the terms of the purchase directly with complainant-appellee (State of Case, page 356, lines 1 to 10 and page 375, lines 6 to 26.)

After the terms were all agreed upon by complainant-appellee through said broker, a contract was entered into between Mendel Gross, the owner of record, and the said Morris W. Shapiro, for the purchase of said premises for the sum of

$9000.00. Morris W. Shapiro was, in making said contract, acting for and on behalf of the complainant-appellee, (page 355, lines 11 to 17) with authority only to purchase said premises for cash. (State of Case, pages 68-69). The sum of $1,000.00 was paid on account of the purchase price, receipt of which sum was acknowledged in said contract. Said $1000.00 was received by Morris W. Shapiro from complainant-appellee for the purpose of paying said deposit. The contract provided for the closing of title on August 3rd A. D. 1928, exactly one month after the date thereof.

Prior to the date of closing title, complainant-appellee turned over to Mr. Shapiro the further sum of $2000 in cash, to be applied on account of the purchase price of said premises and further sum of $6000.00 by way of *credit* on account of a mortgage held by complainant-appellee, which was past due and owing from the said Morris W. Shapiro, for which the said Morris W. Shapiro had actually received the sum of $9,500.00 which was secured by said mortgage and a check of Miss Clawans to the order of the said Morris W. Shapiro was received in evidence to prove the actual payment of said sum of $9500.00. (State of Case, page 69, lines 16 to 17).

On August 3rd A. D. 1928, the said Morris W. Shapiro, without the knowledge or consent of complainant-appellee transferred and assigned the aforesaid contract to Max Goldberg, a law clerk in his office and one who was acting as a dummy for the said Morris W. Shapiro. At the same time, the title to said premises was transferred from Mendel Gross to Max Goldberg, the dummy aforesaid, and the balance of the purchase

price of $6000.00 was paid to the said Mendel Gross.

Prior to, during the course of and after the said transactions, the said Morris W. Shapiro was *counsel* for the defendant-appellant. (Page 192, lines 19 to 25 and page 393, lines 1 to 14). He applied, in his own name and behalf, to the said association for a loan of $8000.00 and was granted by said association a loan of $7000.00. A committee of the Board of Directors of said Building & Loan Association inspected the exterior of said premises. (State of Case, page 192, lines 1 to 14.) The Board of Directors immediately caused to be issued a check for $6254.75 (Exhibit D-5, State of Case, page 565); said amount being the net proceeds of said loan after retaining the sum of $500.00 for repairs, $210.00 for premiums, one month's dues of $35.00, and 25c for pass-book. The said Max Goldberg executed a mortgage to the defendant-appellant covering the aforesaid premises in the sum of $7000, to secure the loan aforesaid from the defendant-appellant to the said Morris W. Shapiro. At the time that the loan was granted by the defendant-appellant, the members of the committee and the members of the Board of Directors of said Association knew that Morris W. Shapiro was the person who, in fact, was borrowing the money from said defendant-appellant through his dummy, Max Goldberg. (State of Case, page 188, lines 21 to 22 and page 192, lines 19 to 25). Nevertheless, with such knowledge, said defendant-appellant permitted the said Morris W. Shapiro to represent it in the search of the title of said premises and in other legal matters in connection with said loan. It employed no other counsel to protect its interests and its loan. (State of Case, page 393, lines 8 to 14).

Prior to and during all of said transactions, including the purchase of said property, by contract and deed, the granting of said loan by the defendant-appellant and the execution and recording of all papers in connection therewith, complainant-appellee was, at all times, in possession of a flat in said premises and had two signs prominently displayed on said building, each of which contained the following wording, "Flat to let, Inquire within, L. Clawans, owner, or call Market 9909." In addition thereto, during the times aforesaid, complainant-appellee was having performed substantial and material repairs and improvements to the building on the premises aforesaid, at a cost of $3100.00 which work was being done at the time of the inspection by the committee of defendant-appellant. (State of Case, page 78, lines 26 to 28 and page 140, lines 11 to 22).

Before going to the discussion of the law applicable, I would like to call the court's attention to various discrepancies and omissions in the statement of facts in the brief of defendant-appellant.

On page 2, of defendant-appellant's brief, it states that complainant-appellee took pains to gain advantage of the value of the property by purchasing same without the knowledge of Mary Scholder when, in fact Mary Scholder had knowledge of and was agreeable to the purchase of the property by her from Gross. She so states in her testimony. (State of Case, page 149, lines 20 to 30).

On page 2, of appellant's brief, it states that complainant-appellee had informed defendant-appellant's present solicitor that she did not want Mary Scholder to know that she was purchasing

the porperty, etc. This is expressly denied by said complainant-appellee. (State of Case, page 505, lines 36 to 40 and page 506, lines 1 to 5).

The statement on page 3, of defendant-appellant's brief, that there was no indication, either in the contract or at the closing of title, that Lillian Clawans, the complainant-appellee, had any interest in the subject matter of the contract, is entirely without any basis of fact. On the contrary, the testimony shows that Mendel Gross, the vendor, knew that Miss Clawans was the actual purchaser. (State of Case, page 448, lines 33 to 40 and page 375, lines 6 to 20). Also that Simon L. Fisch, the attorney for Mendel Gross knew that Miss Clawans was the actual purchaser. (State of Case, page 103, lines 1 to 11). And certainly the broker and Morris W. Shapiro knew that he, (Morris W. Shapiro) was purchasing the property for Miss Clawans.

The statement, in the brief of defendant-appellant, on page 5 by Morris W. Shapiro "that Miss Clawans knew about the loan", does not bring out the true situation. In the first place it is merely a statement of a conclusion on the part of Mr. Shapiro that Miss Clawans knew about the loan. In the second place he later qualifies the statement by admitting he did not recite the mortgage loan in the deed to Mrs. Clawans and also stated that he did not know whether or not he had advised Miss Clawans of the loan. Complainant-appellee absolutely denies authorizing said loan or any knowledge until advised by present counsel of defendant-appellant. (State of the Case, page 423, lines 31 to 40, page 424, lines 1 to 9, page 411, lines 16 to 29 and page 70, lines 12 to 30).

ARGUMENT OF LAW.

POINT I.

The Court was justified in finding that, in so far as the complainant was concerned, there was no consideration for the mortgage of the Ordway Building & Loan Association.

The undisputed evidence in the case shows that the defendant-appellant did not pay, either directly or indirectly, any money whatsoever to the complainant-appellee as a consideration for the said mortgage of $7000.00 covering premises, 22 Gladstone Ave., Newark, N. J. The only consideration paid by it was to its agent, Morris W. Shapiro, and that consideration was given to him and the mortgage executed by the said Morris W. Shapiro, through his dummy, without the knowledge or consent of complainant-appellee. (State of Case, page 412, lines 31 to 34 and previous references).

POINT II.

Open, notorious, and unequivocal possession of land, constitutes notice of all of the rights and claims of the parties in possession.

That the complainant-appellee was in open, notorious and unequivocal possession of the premises in question can hardly be disputed or questioned by the defendant-appellant. (State of Case, pages 73, lines 11 to 40 and 74 to line 22, page 92, lines 1 to 10, page 115, lines 1 to 30, page 126, lines 37 to 40, page 147, lines 21 to 23, page 155 and page 156, lines 1 to 15).

The complainant-appellee produced virtually a parade of witnesses, each of whom testified to the possession of complainant-appellee, to the display of the two signs on the exterior of the building with the words, "Flat to let. Inquire within. L. Clawans, owner, or phone Market 9909", to the extensive alterations and repairs being made on the building by the complainant-appellee, and to the name "L. Clawans" under the doorbell to the second floor of the flat of said premises. (State of Case, page 170, lines 1 to 10, page 178, lines 8 to 15, page 181, lines 1 to 10) and testimony of practically every witness produced by complainant-appellee with no testimony to contradict the same.

The telephone mentioned on each of the signs, aforesaid, was complainant's telephone number.

Some of the witnesses were acquaintances, some friends, some neighbors, some persons who, at complainant-appellee's request, did repairing, decorating, and alterations to said premises and others, persons who inquired about renting one

of the flats of said premises. (State of Case, page 184, lines 10 to 40 and page 185, lines 1 to 20).

Each testified to the open, notorious and unequivocal possession of said premises by complainant-appellee. None of them had any difficulty in ascertaining the ownership in complainant-appellee and none appeared to be in doubt as to said ownership and claim of ownership of said premises.

Complainant made extensive repairs and alterations, expending the sum of over $3100.00, all of which was done immediately after the signing of the contract of purchase and during the course of the transactions aforesaid. (State of Case, page 78, lines 26 to 28).

The Court was, therefore, irresistibly drawn to the conclusion that complainant-appellee was in open, notorious and unequivocal possession of the premises in question.

Starting with the *early* and leading case of *Holmes* vs. *Stout,* 10 N. J. Eq. 419, to the most recent cases on the subject, with the exception of *Feld* vs. *Kantrowitz,* 130 Atl. Rep. 36, which is distinguishable from the instant case, the principle that "Open, notorious, and unequivocal possession of premises is notice to the world of all of the rights of the person in possession", has been consistently followed by our courts.

In the case of *Holmes* vs. *Stout,* above, the Court of Errors and Appeals stated the rule as follows:

> "The rule in equity seems to be, that when a tenant or other person is in possession of the estate at the time of the purchase, the purchaser is put upon inquiry as to his title; if he does not inquire he is

> bound in the same manner as if he had inquired and had positive notice of the title of the party in possession.
>
> This will be found to be the recognized and well settled doctrine of Courts of Equity."

And the Court then continues to state that the registration laws do not protect against the rights of one in possession because the said registration laws only protect bona fide purchasers without notice and "possession" *IS CONSTRUCTIVE NOTICE.*

Chief Justice Green further continues, in the above case, as follows:

> "*Every* possession will not amount to implied notice. It must be (1) actual, and (2) exclusive possession, manifested by notorious acts of ownership and such as would naturally be observed and known to others."

Can it be stated that the possession of the ~~defendant~~ PLAINTIFF APPELLEE was not easily observable and known by the others, in view of all the witnesses produced by complainant-appellee and the kind and character of testimony given by them? The complainant-appellee was in actual and exclusive possession at the time of the execution of the mortgage by Morris W. Shapiro to defendant-appellant. She gave notice of her interest and ownership in the premises in the clearest and most express manner that action could indicate. She displayed the aforesaid "To let" signs which were conspicuous and visible to all who cared to see them; she made extensive and expensive repairs and alterations; she had general charge and management of said premises and the renting thereof;

and she inserted advertisements in the Newark Evening News for the renting of said premises, giving her residence and telephone number. (State of Case, page 130, lines 30 to 35). Could any other acts of ownership have been exercised?

In the case of *Haven* vs. *Bliss,* 26 N. J. Eq. 363, page 370, it was urged that the purchasers of the record title were bona fide purchasers for a valuable consideration, without notice. The Chancellor said:

> "The occupancy of land is equivalent to notice to all persons, dealing with the title, of the claim of the occupant."

And later, in the case, quoting, with approbation, the language of *Lord Rosslin* in *Taylor* vs. *Stibbert,* 1 Ves. Jr. 440, the Chancellor continues:

> "Every man purchases at his peril and is bound to use some reasonable diligence in looking to the title and competency of the seller. It will not answer to rest upon mere reputation or belief, unless the party intends to rely on his covenants alone."

Therefore, in the instant case, it was the duty of the defendant-appellant to make inquiry of the complainant-appellee, who was in possession, as to her rights and interest in the premises and had they done so, they would have been informed of complainant-appellee's title.

In the case of *Parker* vs. *Parker,* 56 Atl. 1094, Samuel M. Parker, the owner of a certain farm, executed a deed of conveyance for said farm to his son, Albertus Parker and received back a purchase money mortgage of $5087.47. Later it was agreed to cancel the conveyance and the mortgage, neither of which had been recorded. There-

after, Albertus surrendered the deed to his father but continued in possession, as tenant, paying rent. On June 27, 1899, Samuel M. Parker died, leaving a last will and testament, whereby he devised said farm to his son, Albertus, subject to an annuity to his widow. At a final accounting of the executors, it was agreed that the title of Albertus in the farm was derived under his father's will and not by virtue of the unrecorded deed. The mortgage was thereupon destroyed and Albertus promised to destroy the deed. Albertus then executed on said farm a mortgage of $1000.00 to his sister, and another mortgage of $2000.00. Later, Albertus being desirous of purchasing another property, was obliged to borrow a large sum of money. Having the deed in his possession, which he had failed to destroy, as he had promised, and intending to cheat the complainant of her annuity, he recorded the deed and claimed title thereunder free from any annuity and purchased the other property, borrowed $6000.00 by mortgage on said farm. Thereafter, Albertus, becoming financially embarrassed, absconded. By bill, complainant prays that her annuity may be established as a lien upon said farm, prior to the lien of the mortgage of $6000.00. Grey, *V. C.*, held that the record of said will and the recitals in the mortgage were sufficient to put the $6000.00 mortgagee upon inquiry, and having failed to make inquiry, "he is chargeable, constructively, with knowledge of such facts which reasonable investigation would have disclosed to him."

With reference to the knowledge of the attorney involved in the transactions, the court states, as follows:

"Mr. Allan (the attorney for the defend-

> ant) received enough information of the outstanding equity of which complainant's annuity depends, to put him on further inquiry, which, if made in a reasonable way, of persons known to Mr. Allan and Mr. Fogg to have been acquainted with the facts, would have given Mr. Allan full notice of the complainant's rights. He is charged with constructive knowledge of these facts."

The facts in the above case are analogous to the instant case. In both cases the wrong doer was entrusted with deeds of the premises; in the case cited, the deed was to have been destroyed, in the instant case a deed of conveyance to complainant was to have been executed and recorded; in both cases the wrong doer failed to carry out the promises and instructions but instead borrowed money on the premises covered by the deed; in the cited case, notice was obtained by the recitals in two certain mortgages effecting said premises and by the knowledge of the attorney who represented the mortgagee, in the instant case, knowledge was acquired or should have been acquired by the possession of the complainant-appellee, the knowledge of Morris W. Shapiro, the attorney of the defendant-appellant and all the other acts of ownership of complainant-appellee.

Again in the case of *Wood* vs. *Price*, 79 N. J. Eq. 620, 81 Atl. 983, Voorhees, *J.*, speaking for the Court of Errors and Appeals, says:

> "All authorities are agreed that the general rule is that possession of *real estate which is actual,* open and *visible occupation,* inconsistent with the title of the appellant owner of record and not equivocal, occasional, or for a temporary or special pur-

> pose, is constructive notice to all the world of the rights of the party in possession.
>
> "If a tenant has even changed his character by having agreed to purchase this estate, his possession amounts to notice of his equitable title as purchaser. Now, it is the duty of a purchaser to inquire of a person in possession of the premises and ascertain the rights under which he holds and, if this duty of inquiry be disregarded, the purchaser is chargeable with notice of such facts as the inquiry, if it had been in fact made, would have revealed."

In the later case of *Zurich* vs. *Perlmutter,* 110 Atl. 826, Swayze, *J.,* says:

> "If the purchaser, grantee of the reversion, escapes liability to pay the tax (claimed by a tenant in possession but not provided for in the lease) it can only be by reason of the failure of the record to disclose the contract and because he is a bona fide purchaser without notice. Assuming he is within the *language* of the statute (C. S. Page 1553, Section 54) he is not entitled to its benefit unless he took the title without notice. It is well settled that the possession of the tenant amounts to notice of his rights, not merely under the lease, but also under collateral agreements, *such as a contract for the purchase of the estate.*"

In the case of *La Combe* vs. *Headley,* 108 Atl. 185 (E. & A.) Gummere, *C. J.,* referring to one who purchased without making inquiry of occupant, said:

> "She is not a bona fide purchaser without Notice of the existence of the La Combe deed" (Referring to an unrecorded deed).

Many other cases could be called to the Court's

attention, sustaining the same principle of law, but it would serve no useful purpose.

In a few of the cases, it might appear that the rule, above stated, has not been followed, but a careful examination of them will show that they expressly confirm the rule but decide against the one in possession on some exception to or distinction from the aforesaid rule.

To that effect is the case of *Feld* vs. *Kantrowitz,* 130 Atl. 7, decided by our late bereaved *V. C.* Bentley, in which the unrecorded rights of a tenant of an office or commercial building were involved, and the Vice Chancellor said:

> "In the case at bar, there is not a simple transaction of the purchase of a dwelling house or a farm or a piece of woodland with some one in visible occupancy or possession thereof."
>
> "Of course it must be borne in mind that it is considered that the *different character of the premises in question* distinguished this case from the properties involved in any of the other cases upon this subject."

In the instant case, it involves a dwelling house having two separate and distinct apartments, one of which was occupied by complainant-appellee. It does not involve an office building. Complainant-appellee was in possession by virtue of an equitable ownership and not under an existing lease.

The Vice Chancellor, in the above case, further stated that the purchaser

> "Was fully justified in supposing that one who undertakes to preserve his rights in a formal instrument will always be presumed to have protected all of his rights and certainly has not been at pains to safe-

guard the lesser and leave the entire world in ignorance of the more valuable right.''

Again, the instant case is distinguishable from the last above-quoted case in that complainant-appellee was in possession under and by virtue of her contract to purchase, which contract expressed all her title and interest in said premises and she had no formal contract expressing any lesser interest in the property.

The defendant-appellant states in his brief that complainant-appellee was, in effect, a tenant occupying one of the flats of the building together with Mary Scholder. He is construing only one sentence without taking in consideration the rest of the testimony. The fact is that complainant-appellee occupied the flat as a tenant up to the time of the date of the contract between Mendel Gross and the said Morris W. Shapiro, marked Exhibit ''C-1''. After the date of said contract, she remained in possession as the equitable owner without paying any rent either to Mary Scholder or to Mendel Gross or any other person. Even during the time prior to the date of said contract, complainant-appellee was not a roomer of the said Mary Scholder. She was a tenant in said premises, occupying a separate and distinct flat and paying rent at the rate of sixty-five ($65.-00) dollars per month. (Page 85, lines 30 to 32, page 86, lines 35 to 40 and page 87, lines 1 to 8).

In the case of *Groton Savings Bank* vs. *Batty,* 30 N. J. Eq. 126, cited by defendant-appellant, there was fraud alleged and proved against the complainant and it was because of the complainant's fraud that the Court refused to aid the complainant. The case, however, goes further than that stated by the defendant-appellant and lays down the following principles:

> "Possession out of vendor and actually in another person only suggests an inquiry into the claim of the latter."
>
> Ordinarily that inquiry should be made because it *evinces bad faith or gross neglect not to make it.*"

Isn't there sufficient in the evidence of this case to warrant the Court in finding, as it did, that the defendant-appellant, through its officers acted both in bad faith and with gross neglect in not making the inquiry, in employing Morris W. Shapiro, in changes of date in search and certificate (State of Case, page 407, lines 16 to 27) and in the suspicious circumstances surrounding the making of the loan.

The said case of *Groton Savings Bank* vs. *Batty,* above, is also distinguishable from the instant case in that complainant was not, at any time prior to her possession, the owner of said premises and does not come within the rule laid down in said case, that a vendor who, after conveyance of land, remains in possession (page 407, lines 16 to 21) will not be protected by his possession in a secret trust existing in his favor in the property in the hands of the grantee for, by his said deed, he has declared to the public that he has no right to the possession.

At no time does it appear that complainant-appellee was in possession of said premises other than as tenant of a distinct and separate flat of said premises or as owner of said premises. Although the said *Mary Scholder* was, prior to the foreclosure, the owner of the legal title to said premises, she was not in possession of said premises in the legal sense or meaning of the word "possession". She was merely a housekeeper for complainant-appellee. (State of Case, page

148, lines 22 to 37.) It was complainant-appellee's flat for which she paid *Mary Scholder* monthly rental.

Defendant-appellant cites the case of *Rankin* vs. *Coar,* 46 N. J. Eq. 566. The widow, in that case, retained possession of a part of the house in which she was entitled to dower, and which dower she had released to her son by a deed duly recorded. The part retained by the widow was not separate or distinguishable from the part her son had possession of. There was nothing in the construction of the house to indicate separate possession by its inmates. Two principles were invoked to defeat the complainant's action. First, the principle that where the possession of the person whom the record describes to be the owner, is shared by one connected in close relationship and there is nothing in the construction of the premises to indicate separate and distinct possession of the parts each possess, such possession would not constitute notice. The other rule is that where one in possession of premises is the owner of record and he conveys to one out of possession, his conveyance acts to estop him from claiming his interest in said premises which does not appear of record.

Neither of the above principles are applicable in the instant case. Complainant-appellee, at no time prior to her purchase, had any record title to said premises, nor was her possession equivocal and in conjunction with any other person in close relationship to her. Complainant had a distinct and separate apartment, open and unequivocal and to the knowledge of all her neighbors, friends and tradesmen, and easily ascertainable to any person making inquiry in said premises.

At the time defendant's loan was granted to

Morris W. Shapiro, complainant-appellee was a vendee in possession and had exercised and was exercising all the indications of ownership which were clearly manifest to all the witnesses produced by complainant-appellee, as is indicated by their testimony. Certainly such possession was inconsistent with possession as a mere occupant or roomer, as defendant-appellant would classify the complainant-appellee. The least that can be said is that it was more than sufficient to put the defendant-appellant upon its guard and require it to make the inquiry of complainant-appellee and others in possession, which inquiry the defendant-appellant completely failed to make.

The other principle of said case is certainly not applicable because complainant-appellee at no time had any interest or title in said premises which she conveyed out, while she still continued to remain in possession.

POINT III.

The Court will not interfere to the aid of one, through whose negligence and carelessness, an innocent and bona fide person is likely to suffer.

It was admitted by the president and the other officers of the defendant-appellant that they knew that *Morris W. Shapiro* was the person who "was making" the application for the loan of $8000.00 in the name of Max Goldberg. The president received a telephone from *Morris W. Shapiro* about said loan. The committee was immediately selected to inspect the premises and, without formal application, the following day inspected the property and must have seen the "to let" no-

tices on the dwelling house, with the name of the complainant, as owner and her telephone number. On July 26, 1928, two days after the night of the defendant-appellant's meeting, a check was issued to the said *Morris W. Shapiro* for the amount of the loan, minus certain deductions. The minutes of the granting of said loan were irregular. (State of Case, page 299, lines 12 to 14). They were entered on the reverse side of the paging, the name of the dummy (*Max Goldberg*) was left in blank (State of Case, page 330, lines 16 to 18) and according to the secretary of the defendant-appellant, inserted sometime afterwards. The defendant-appellant, although knowing that *Morris W. Shapiro* was the actual borrower, permitted the said *Morris W. Shapiro* to represent it, in connection with the legal work necessary to protect it on said loan. It immediately acted on said application, issued its check for said loan to the said *Morris W. Shapiro* without any safeguards whatsoever and without taking separate counsel to protect it against any dishonesty and against the adverse interests of the said *Morris W. Shapiro.*

In the case of *Heyder* vs. *Excelsior Building & Loan Assn.,* 42 N. J. Eq. 403; 8 Atl. 310, the complainant purchased premises upon which there had been a mortgage held by the defendant Building & Loan Assn., which had been fraudulently and dishonestly cancelled of record by the attorney of the said Building & Loan Assn. without its authority or knowledge and previous to the purchase thereof by complainant. The loan represented by said mortgage had been made to the attorney of said Building and Loan Assn., and said association had taken the precaution to engage other counsel to search said property but

had permitted the mortgage to remain in the hands of its attorney without, at any time, having been returned to it after receipt from the Register's office. The master found that the purchaser and not the mortgagee should bear the loss incident to the fraudulent cancellation. On appeal, Knapp, *J.*, says:

> "After a careful review of the cases, I am led to an opposite result. The security afforded by registry should remain undisturbed by a cancellation effected through mistake, accident or fraud of third persons, even if by such cancellation subsequent mortgages or purchasers are made to suffer loss. If, through his negligence, the record is permitted to give notice to the world that his claim is satisfied, he cannot, in the face of his own carelessness have his mortgage enforced against a bona fide purchaser." * * *
>
> "That it is negligence in the owner of a mortgage to permit it to be in the custody and control of the mortgager or owner of the property."

With regard to the theory that the mortgagor had fraudulently substituted a copy of the mortgage, the court said:

> "I am still forced to the conclusion that the officers were culpably negligent in permitting themselves to be thus imposed upon. The fact that he was the law officer of this "body" did not justify so implicit a trust in him in the matter of a loan to himself." * * *

Again referring to the spurious copy of the mortgage in said case, the court said:

> "They submitted it to no legal advisor; they gave it no examination * * * the decep-

> tion was directly traceable to the culpable negligence of the mortgage owner and the loss should fall upon the party chargeable with the fault.''

The informality with which the application was made by the said Morris W. Shapiro and accepted by the defendant-appellant, the haste with which said loan was put through, the failure to engage other counsel to protect its interest in the said loan to its counsel, the fact that the alleged search of title was dated subsequent to the closing, the fact that the minutes of said meeting were completed with the name of the applicant left in blank until the loan was actually transacted and all the other surrounding and suspicious circumstances indicated a gross negligence on the part of the defendant-appellant, warranting the trial court in finding said defendant-appellant negligent in placing the said Morris W. Shapiro in a position to perpetrate the fraud aforesaid. The defendant-appellant cannot justify so implicit a trust in Morris W. Shapiro as to permit him to safeguard the rights and interest of said Association, in a loan made to him, the said Morris W. Shapiro.

In its brief, the defendant-appellant states that complainant-appellee is estopped from claiming her possession was notice to the defendant-appellant because she permitted Shapiro to have him purchase the property for her in his own name, and thereby clothed Shapiro with the garb of a principle to said contract of purchase and not as her agent, which he secretly was. There is nothing in the testimony to indicate that Morris W. Shapiro was her secret agent. The only testimony on the subject of agency is that complainant-appellee did not desire to negotiate with the

said Mendel Gross because of her fear of him and, therefore, engaged the said Morris W. Shapiro as special agent, which was known to all the parties concerned even, including the said Mendel Gross and probably some of the directors of the defendant-appellant. The complainant-appellee had a right to assume that any purchaser or mortgagee would take the necessary precautions and make the required inquiry to ascertain her rights in said premises and, therefore, her permitting the said Morris W. Shapiro to take the contract and, even the deed, in his name or the name of the dummy selected by the said Morris W. Shapiro, did not and should not have misled any person, purchaser, or mortgagee, who wasn't negligent in protecting his interests.

The case of *Moore* vs. *Riddle,* 87 Atl. 227, 82 N. J. Eq. 197, cited by defendant-appellant, involved a transfer of title by the complainant to the wrong-doer to aid the wrong-doer in the commission of a fraud and there, the Court stated, that:

> "There is no principle of equity better settled nor more uniformly enforced than, "whenever one of two innocent persons must suffer a loss by the acts of a third, he who has enabled such third person to occasion the loss must sustain it."

The complainant-appellee did not aid or enable or put the said Morris W. Shapiro in a position to have committed any fraud against any person, mortgagee or purchaser, who properly protected his interests by doing what the law requires of him, that is, "to inquire of the person in possession of his interest and title in said property." In said last quoted case, the complainant was not

an innocent party while in the instant case this complainant-appellee is an innocent party.

The defendant-appellant contends, in its brief, that it is an innocent party and that as between two persons equally innocent, the loss should fall upon the complainant-appellee who permitted the title to be placed in the name of the wrong-doer. Assuming but not admitting, that the defendant-appellant is an innocent party, equally with complainant-appellee, then, in such case, the law must prevail and, in the instant case, the law imputed upon the defendant-appellant the duty of making inquiry and the defendant-appellant failed in said duty. Had it made such inquiry, it would have found complainant-appellee in possession and ready to inform it of her ownership of said property.

Defendant-appellant cites the case of *Halstead* vs. *Calvin,* 51 N. J. Eq. 387, 26 Atl. 928. Chief Justice Holt, in that case, says:

"For, seeing that somebody must be the loser by this deceit, it is more reason that he who employed and put trust and confidence in the deceiver should be the loser, than a stranger." And to the same effect, cites the case of *Lawson* vs. *Carson,* 15 N. J. Eq. 370.

The defendant-appellant employed Morris W. Shapiro to search said title and take care of its interests in the matter of the loan to said Morris W. Shapiro. Had Morris W. Shapiro faithfully carried out his trust to the said defendant-appellant and advised it of the ownership of complainant-appellee, said defendant-appellant would not have accepted the security of said mortgage and said Morris W. Shapiro would have been

compelled to have given other security and probably, the fraud prevented.

The unwarranted trust and implicit confidence, which defendant-appellant placed in the said Morris W. Shapiro, the person who committed the fraud, was the actual and direct cause of the loss sustained. Had defendant-appellant engaged other counsel, as it should have, the other counsel would have ascertained her interest in said property and prevented the perpetration of the fraud.

The defendant-appellant, quoting Vice-Chancellor Backes case of *Moore* vs. *Riddle,* above, states that complainant-appellee threw aside all dictates of common prudence and precaution and clothed the wrong-doer with the apparent status of a principle. The language of the learned Vice-Chancellor applies to the action of the defendant-appellant in entrusting the said wrong-doer with the legal duty of safeguarding the interests of the defendant-appellant on a loan made to the wrong-doer. On the other hand, the complainant-appellee had a right to rely on the notice of her rights, which her possession gave and to assume that intending purchasers and mortgagees would make the required inquiry and ascertain her title in said premises.

Where the equities are balanced, the rights in the order of time must prevail.

Assuming, but not admitting, that equities of complainant-appellee and the defendant-appellant are equal, still the complainant-appellee, having acquired an equitable interest and title in the property in question on July 3, A. D., 1928, the date of the contract of purchase, and the defendant-appellant's mortgage being executed on Aug-

ust 3, A. D. 1928, subsequent in time to the complainant-appellee's equitable estate and possession, the rights of complainant-appellee must prevail. *Heyder* v., *Excelsior Building & Loan Assn.*, above. *Trust funds can be traced and enforced only against persons who had actual knowledge of the violation of the trust and no others.*

In the case of *Hanford* v., *Duchastel* (E&A) 87 N. J. L. 205, the plaintiff entrusted Butts and Vining, her attorneys, with $14,000 to be invested by them in a specific bond and mortgage, which they failed to do but on the same day Butts, of said firm, endorsed the firm's name on said check and deposited it in his individual account, collected said check and, out of said identical moneys, sent $12,000. to the defendant. At the time of sending said $12,000.00, Butts was the agent and attorney in fact of said defendant, holding her written power of attorney, authorizing him to invest, collect, receive and remit moneys belonging to said defendant, proceeds of securities owned by said defendant, income upon investments and proceeds of sale of real and personal property belonging to the said defendant, in the hands of Butts, as agent and attorney. It was contended, for the plaintiff, seeking to recover from the defendant the $12,000.00 which she had received, as above, that the defendant had knowledge and notice that said moneys were held in trust by said Butts for a specific purpose because Butts, being her agent, his knowledge was imputed to her, also because there was no money, security or other property constituting a proper consideration for the receipt of the $12,000.00 and because she did not otherwise change her position. Justice Trenchard, speaking for the Court of Errors and Appeals, said:

> "I think that it is well settled that where trust moneys can be traced into the hands of a party who *had knowledge* of the violation of the trust, they can be recovered in an action at law for moneys had and received as well as by a bill of equity to enforce a constructive trust, where, in fact, the defendant had actually received the moneys. * * * But it is equally well settled that although an agent transfers to a third person moneys held in trust for his principal, they cannot be recoverd by the principal if (1) they were received by a third person in due course of business and (2) for a valid consideration and (3) without notice of the breach of trust."

On the question of the consideration, the Justice says:

> "For all that appears she may have received it for a consideration which was perfectly adequate, *such as in payment of a pre-existing indebtedness.*"

On the imputation of the knowledge of Butts to the defendant, the Justice says:

> "But this theory is not well founded. It completely overlooks the elementary rule that in order that the principal may be effected with a constructive notice of matters of fact known to the agent, the information constituting the notice must be obtained by or imparted to the agent while he is in fact, acting as agent, while he is actually engaged in doing his principal's business in pursuance of his authority and in his character as agent. Here, however, the affidavit makes it quite clear that Butts received the money as agent not for the defendant but as agent for the plaintiff and the transmission of it by him to the de-

> fendant was palpably not in the course of his agency for her, for the power * * * was limited to a collection and remission of money belonging to the defendant.''

In the instant case, Morris W. Shapiro was only a special agent for complainant-appellee with the express and limited powers to purchase for cash said premises for and immediately reconvey to complainant-appellee.

The case of *Coolbauch* vs. *Atlantic Motor Finance Co.,* 128 Atl. p. 595, is authority for the proposition that an agency to sell does not authorize the agent to mortgage the property. By the same process of reasoning, an agent authorized to purchase is limited to purchase for cash.

The consideration for said purchase was paid by complainant-appellee. That part of the same was by way of payment of a pre-existing mortgage debt did not make the consideration less valuable or adequate.

That the said Morris W. Shapiro breached his trust and used $6000.00, a trust fund of defendant-appellant, in payment to complainant-appellee of her mortgage indebtedness cannot be chargeable to complainant-appellee or against her property unless it can be shown that she had knowledge of the misappropriation of said money by the said Morris W. Shapiro.

Certainly it is not claimed and it cannot be claimed that complainant-appellee had any knowledge that Morris W. Shapiro was using any trust funds of defendant-appellant in the purchase of said property.

If defendant-appellant had not been negligent in engaging Morris W. Shapiro to represent it in its loan, aforesaid, said Morris W. Shapiro

would have procured the money elsewhere, as, at the time, his financial and legal standing were good. In fact, the complainant-appellee had no knowledge whatsoever as to where or how the said Morris W. Shapiro was raising the $6000.00 for which re received a credit on account of said mortgage loan due complainant-appellee. All that complainant-appellee knew was that the said Morris W. Shapiro would pay said amount to Mendel Gross for and on her account.

Moreover, the Act Concerning Liability for Participation in Breach of Fiduciary Obligations, 1927 P. L. page 65, Chapter 30, Section 5, provides that to impress a trust upon funds received through the breach of a trust, there must be proof of actual knowledge of such breach. The act, at page 67, reads as follows:

> "If a check or other bill of exchange is drawn by a fiduciary empowered to draw such instrument in the name of his principal, the payee is not bound to inquire whether the fiduciary is committing a breach of his obligation as fiduciary in drawing or delivering the instrument and is not chargeable with notice that the fiduciary is committing a breach of his obligation as fiduciary unless he takes the instrument with *actual knowledge of such breach or with knowledge of such facts that such action in taking the instrument amounts to bad faith.*"

The complainant-appellee, having parted with a good and valuable consideration for the $6,000.00 which said Morris W. Shapiro used as part of the purchase price of said premises and having had no knowledge of the breach of the trust on the part of the said Morris W. Shapiro

in the use of the said $6000.00 toward the purchase of said premises, said property should not be charged or impressed with a trust for said sum, nor the said mortgage enforced to secure said trust.

The defendant-appellant cites the cases of *Fountain* vs. *Carlton,* 88 N. J. Eq. 593, 103 Atl. 387 and *Wilson* vs. *Walsh,* 105 N. J. Eq. 396, 148 Atl. 7, where it was held that the thefts by the wrong-doer took place when the money was diverted from its proper function. In the instant case, the money was diverted from its proper function when it was applied by Morris W. Shapiro toward the purchase of the property for cash, as he had agreed and arranged with complainant-appellee. The execution of the said mortgage was merely a blind for the defendant-appellant, because it could not have received a valid mortgage lien against said premises unless and until the owner in possession had executed said mortgage. So far as the complainant-appellee was concerned, the said Morris W. Shapiro was merely performing his obligation and carrying out his previous arrangements by paying complainant-appellee the said sum of $6000.00 on account of the pre-existing mortgage debt and applying the same toward the purchase of the premises in question.

Defendant-appellant contends that the said Morris W. Shapiro was its special agent with authority to exchange the funds of the Association, entrusted to him for a first lien bond and mortgage on the real estate. As such special agent, the said Morris W. Shapiro was employed to search the title to the said premises and make inquiry of the persons in possession thereof to ascertain the owner of said premises and, in the

performance of said duty, knew of complainant-appellee's ownership of said premises and the ascertainment of said knowledge being within the scope of his employment, the same is imputable to the defendant-appellant.

Aside from the knowledge imputed by reason of its agent's knowledge, it must be borne in mind that it is the duty of an intending purchaser or mortgagee to make the inquiry of persons in possession to ascertain their interest therein. If defendant-appellant saw fit to delegate that duty to another, who failed to make the proper inquiry, it does not excuse the defendant-appellant from the natural result of such failure.

Assuming that complainant-appellee had had the title of record in her own name and that defendant-appellant had engaged Morris W. Shapiro to search the title for it and that said Morris W. Shapiro, because he intended to defraud said defendant-appellant and appropriate the money to a wrongful purpose, failed to disclose his knowledge of the record title of complainant-appellee and gave defendant-appellant a mortgage executed by a person other than the owner of the fee, could it be said that because the said Morris W. Shapiro was engaged in committing a fraud, that the record was not constructive notice to defendant-appellant?

The case of *Ordway Building & Loan Assn.* vs. *Moeck,* 106 N. J. Eq. 425, recently decided by Vice Chancellor Berry, is distinguishable from the instant case because the learned Vice-Chancellor found, as a fact, that the Oraton Building & Loan Assn., to whom the funds were paid over, had knowledge either of the misappropriation or of sufficient facts to have put it upon inquiry that the funds used by the said Morris W. Shapiro were trust funds of the Ordway Building

& Loan Assn. and were being misapplied. In the instant case, complainant-appellee had no knowledge that the said Morris W. Shapiro was using trust funds of said defendant-appellant nor did she have knowledge that any trust funds were being used.

The defendant-appellant further urges the principle that knowledge of an agent, gained while he was engaged in the perpetration of a fraud upon the principal, cannot be imputed to the principal. Said principle of law is correct and applies with equal force to complainant-appellee as to the defendant-appellant. However said principle, insofar as the defendant-appellant is concerned, is not applicable, in the instant case, as stated before, because the defendant-appellant had the personal duty of making the inquiry, aforesaid and it saw fit to delegate its duty to someone else, it assumes the responsibility for the failure of such agent to make such inquiry.

The case of *Jacobs* vs. *Peterson*, 91 N. J. L. 404, cited by defendant-appellant, merely states the duty of an attorney in searching a title, as to which there is no dispute.

The defendant-appellant makes some lengthly comments on the question of the credibility of the witnesses, which is a matter for the trial court to pass upon and not the proper subject of appeal except for abuse of discretion, which defendant-appellant does not contend.

In summary, the complainant-appellee respectfully urges that the decree of the Court of Chancery should be affirmed because:

1. She was the owner in possession of said premises at the time of the execution of mortgage of defendant-appellant and by reason of her

possession defendant-appellant had actual knowledge of her interest and title in said premises.

2. Because said defendant-appellant was, to say the least, grossly negligent in the protection of its interest in said loan and as against a bona fide purchaser, who has paid the full and adequate consideration, must bear the loss occasioned by its negligence.

3. Because the interest and title of complainant-appellee is prior in order of time to that of defendant-appellant and even if the equities are equal, complainant-appellee's title should prevail, by reason thereof.

4. Because Morris W. Shapiro was the agent of defendant-appellant and his knowledge of complainant-appellee's title was acquired in the course and within the scope of said agency and while engaged in the business of defendant-appellant in securing said mortgage loan on said property.

5. Because complainant-appellee cannot be charged with the breach of trust on the part of the said Morris W. Shapiro, not having had any knowledge of such breach.

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