

# INDEX

	PAGE
Bill of Complaint.....	1
Answer of Defendant, Murray Apfelbaum, Inc. ....	4
Answer of Defendant, Samuel Garfinkel....	5
Replication .....	6
Deposition of Murray Apfelbaum.....	7

## TESTIMONY.

### *For Complainant.*

Frederick T. Cramer, direct examination .....	25
Samuel Garfinkel, direct examination .....	28
cross " .....	51, 53
re-direct " .....	54
Murray Apfelbaum, direct examination .....	58

### *For Defendant.*

Murray Apfelbaum, direct examination .....	55
cross " .....	56
Decision of Vice-Chancellor.....	68
Final Decree .....	70
Notice of Appeal of Defendant—Murray Ap- felbaum, Inc. ....	72
Samuel Garfinkel .....	75
Petition of Appeal of Defendant—Murray Apfelbaum, Inc. ....	73
Samuel Garfinkel .....	76
Answer to Petition of Appeal—Murray Ap- felbaum, Inc. ....	78
Samuel Garfinkel .....	79

EXHIBITS.

	Offd.
C. 1. Financial Statement of Samuel Gar- finkel .....	26
C. 2. Financial Statement of Samuel Gar- finkel .....	26
C. 3. Financial Statement of Samuel Gar- finkel .....	27
C. 4. Note for \$4,000.....	27
C. 5. Execution issued out of Essex Circuit Court .....	28
C. 6. Page 131 of Ledger.....	33
C. 7. Certificate of Stock.....	33
C. 8. Page 741 of Ledger.....	36
C. 9. Pages 110 and 111 of Ledger.....	37

**BILL OF COMPLAINT.**

Filed May 21, 1929.

**In Chancery of New Jersey**

To the Honorable Edwin Robert Walker, Chancellor of the State of New Jersey. 10

The complainant, The Trust Company of Orange, a corporation of the State of New Jersey, having its principal office in the City of Orange, Essex County, New Jersey, respectfully shows that:

1. On or about May 20, 1927, Samuel Garfinkel requested a loan of Five thousand dollars from complainant and upon being told that it would be necessary for him to make a financial statement of his assets, liabilities and net worth before complainant could consider the application for said loan, the said Samuel Garfinkel stated in writing that he had cash on hand and in the bank amounting to Four hundred and fifty dollars, that he was the owner of ten shares of stock of the Market Street Corporation of the value of Thirty-seven thousand five hundred dollars and was the lease holder of certain premises of the value of Twenty thousand dollars making a total amount of his assets, fifty-seven thousand, nine hundred and fifty dollars and that he had a total of liabilities of One thousand dollars making a net worth of fifty-six thousand, nine hundred and fifty dollars. A copy of said statement is attached hereto and is made a part of this bill of complaint. 20  
30

2. By reason of the above statement made by the said Samuel Garfinkel, complainant loaned him the sum of Five thousand dollars taking his 40

*Bill of Complaint.*

note for the same, payable in four months from date. Upon its maturity the said Samuel Garfinkel paid the sum of Five hundred dollars, gave complainant a renewal note of Four thousand, five hundred dollars and for which when due a renewal note was again given for Four thousand, five hundred dollars, which matured on May 21, 1928, at which time the said Samuel Garfinkel paid complainant the sum of Five hundred dollars on account of said note and gave a renewal note for Four thousand dollars, which would become due September 21, 1928.

3. On June 15, 1928, the said Samuel Garfinkel assigned the said ten shares of stock of the Market Street Corporation to Murray Apfelbaum, Inc. for an alleged indebtedness of Eleven thousand dollars.

4. The said assignment was made for the purpose of defrauding complainant.

5. On September 21, 1928, when the last-mentioned note of Four thousand dollars became due and payable the said Samuel Garfinkel having neglected and refused to pay the same, suit was brought against him in the Essex County Circuit Court and on November 13, 1928, judgment was entered in said court for \$4,110.48 damages and \$75.13 costs. Execution was issued on account of said judgment and returned unsatisfied.

6. After the said writ of execution was returned unsatisfied complainant first learned of the assignment of the said ten shares of stock as above set forth.

*Bill of Complaint.*

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

1. That the said defendants, Samuel Garfinkel and Murray Apfelbaum, Inc., who are the defendants to this suit may answer this bill of complaint and each statement therein made. 10

2. That the said Murray Apfelbaum, Inc. be declared to hold the said ten shares of stock of the Market Street Corporation as trustee for the benefit of the said complainant the defendant Samuel Garfinkel and other creditors of the said Samuel Garfinkel.

3. That complainant's judgment be impressed as a lien on said stock and all other assets of said Samuel Garfinkel. 20

4. That an account be taken of the alleged indebtedness of the said defendant, Samuel Garfinkel to the said defendant Murray Apfelbaum, Inc. 30

5. That this court may order the said defendant Samuel Garfinkel to pay the amount of said judgment with interest thereon and sheriff's fees, and the costs of this suit, and to apply for that purpose any property or things in action belonging, due to, or held in trust for said Samuel Garfinkel. 40

6. That this court may make an order directing the said defendants, Samuel Garfinkel and Murray Apfelbaum, Inc. to appear and make discovery on oath concerning the property of the said Samuel Garfinkel, or property held in trust for him before a Master of this court to be designated in said order, at a time and place in said order to be specified. 40

*Answer of Murray Apfelbaum, Inc.*

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

RICHARD J. FITZ MAURICE,  
Solicitor and Counsel with Complainant.

10

**ANSWER OF DEFENDANT, MURRAY APFEL-  
BAUM, INC.**

Filed June 4, 1929.

The defendant, Murray Apfelbaum, Inc., a corporation having its principal office in the City of Newark, County of Essex and State of New Jersey, answering the complaint filed herein, says:

20

1. This defendant has no knowledge or information to form a belief as to paragraph 1 of the complaint filed in this cause and therefore leaves the complainant to its proof thereof.

2. This defendant has no knowledge or information to form a belief as to paragraph 2 of the complaint filed in this cause and therefore leaves the complainant to its proof thereof.

30

3. This defendant denies paragraph 3 in the manner and form alleged, and in fact says that the other defendant, Samuel Garfinkel, owed it upwards of eleven thousand dollars (\$11,000.00) for money advanced to him.

4. This defendant denies paragraph 4 of the complaint filed herein.

5. This defendant has no knowledge or information to form a belief as to paragraph 5 of

40

*Answer of Samuel Garfinkel.*

the complaint filed in this cause, and therefore leaves the complainant to its proof thereof.

6. This defendant has no knowledge or information to form a belief as to paragraph 6 of the complaint filed in this cause, and therefore leaves the complainant to its proof thereof.

10

SAUL & JOSEPH E. COHN,  
Solicitors for and of Counsel with  
defendant, Murray Apfelbaum, Inc.

**ANSWER OF DEFENDANT, SAMUEL GARFINKEL.**

Filed June 20, 1929.

The defendant Samuel Garfinkel, answering the complaint filed herein, says:

20

1. He admits the contents of paragraph 1.
2. He admits the contents of paragraph 2.
3. He denies the contents of paragraph 3.
4. He denies the contents of paragraph 4.
5. He admits the contents of paragraph 5.
6. He has no knowledge or information sufficient to form a belief as to the contents of paragraph 6.

30

JOHN J. CLANCY,  
Solicitor for and of Counsel with  
defendant Samuel Garfinkel.

40

**REPLICATION TO ANSWER OF DEFENDANT, MURRAY APFELBAUM, INC.**

Complainant, replying to answer of defendant, Murray Apfelbaum, Inc., says:

- 10      1. Complainant joins issue with the defendant, Murray Apfelbaum, Inc., on said answer.

**RICHARD J. FITZ MAURICE,**  
Solicitor for Complainant.

20

30

40

*Deposition of Murray Apfelbaum.*

**DEPOSITION.**

NEW JERSEY SUPREME COURT.

ESSEX COUNTY.

<p>TRUST COMPANY OF ORANGE,  <i>Plaintiff,</i></p> <p style="text-align: center;"><i>vs.</i></p> <p>SAMUEL GARFINKEL,  <i>Defendant.</i></p>	}	<p><i>Action at Law.</i></p> <p><i>On Petition and Order for Discovery.</i></p> <p><i>Deposition.</i></p>	<p>10</p>
--	---	---	-----------

Deposition taken in the above entitled cause (continued) under an order of Hon. Nelson Y. Dungan, Judge of Essex Circuit Court, dated 4th day of March, 1929, in Room 402, Hall of Records, Newark, New Jersey, in the presence of Richard J. Fitzmaurice, counsel for plaintiff, Saul and Joseph E. Cohn (by Michael Silver), and before Joachim Wichmann, Supreme Court Examiner.

MURRAY APFELBAUM, being duly sworn, testified as follows:

*By Mr. Fitzmaurice.*

Q Are you acquainted with the defendant in this case, Samuel Garfinkel? A Very much so.

Q How long have you known him? A I know him probably fifteen years.

Q Is he associated with Murray Apfelbaum, Inc., in any way? A Yes.

Q In what capacity? A As a salesman.

Q He is employed as a salesman? A Yes. 40

*Deposition of Murray Apfelbaum.*

Q How long has he been employed as a salesman by Murray Apfelbaum, Inc.? A Oh, about four or five years.

Q Does he draw a salary from that concern? A No, sir.

10 Q Does he have any earnings at all from Murray Apfelbaum, Inc.? A No, sir.

Q You say he is a salesman for the concern. What does he do there? A Works on real estate deals and on commission.

Q Then, do I understand that he receives nothing from Murray Apfelbaum, Inc., excepting he makes deals in which event he receives a certain part of the commission? A Yes.

20 Q What part of the commission does he receive? A Well, sometimes twenty-five per cent., sometimes fifty per cent.

Q Have you any definite contract or arrangement with Garfinkel about his earnings from your concern? A No, sir.

Q You have with you the books of Murray Apfelbaum, Inc.? Have you? A Yes.

Q Can you tell us briefly what he has earned from Murray Apfelbaum, Inc., in the way of commissions since his contract with the concern? A We have the books here.

30 Q Have you an account with Samuel Garfinkel? A A drawing account with him.

Q What do you mean by "drawing account?" A Well, whatever they generally need I advance them on a commission.

Q When you say "advance them," you mean the company advances them? A Yes, sir.

40 Q Just how does that work out? I asked you before if you had any arrangement with Garfinkel or what moneys he received from your concern and my understanding of your answer was

*Deposition of Murray Apfelbaum.*

that he received twenty-five per cent. or fifty per cent. of any deals he made? A That he consummates, yes.

Q I asked you after that if there were any other moneys paid to Garfinkel and you said "none." A No, there is not, only unless he earns it. 10

Q What is this drawing account you refer to? A Well, they live on it and pay their expenses and I let them draw.

Q What does he draw? A He has been drawing sometimes as high as—I have it here in the book.

Q What does the book show? It begins in 1926, according to the books, is that correct? A In 1926 he owed \$10,235.

Q Owed Murray Apfelbaum, Inc., ten thousand what? A Wait a minute. On January 21, 1927, it seems to be \$292 according to the books here. 20

Q He owed Murray Apfelbaum, Inc.? A Yes.

Q During the year 1927 what withdrawals did he make from Murray Apfelbaum, Inc.? A In that year.

Q Drawing account? A Something like \$9,259. 30

Q 1927? A 1927.

Q Now, is that exclusively his drawing account, or does that include commissions paid him that year? A That is the amount of money I advanced to him.

Q May I see that book a minute? A Yes.

Q I call your attention to page 187. Do you know what that erasure was? A Puder and Puder does that.

Q What do you mean by that? A What? 40

*Deposition of Murray Apfelbaum.*

Q I am asking you what that erasure is? A I don't know what it is, I never kept the books. Here are the accounts from 1924 (indicating).

Q In 1924 your books show withdrawals by him during that year? A From July to December.

10 Q He had been working for you for four or five years. This is 1929. \$3,894, is that correct? A That is what she has here; it must be correct.

Q What does this amount mean on the right hand side? A That is the commissions he has earned.

Q They total \$3,894, do they not? A I don't know. Here is what she has here (indicating). I don't know what these checks are here, P. L.,  
20 I don't know what that is, I don't understand it.

Q Now, in 1927, calling your attention to books beginning in January, down to and including December 30, 1927, the items appear to indicate an average weekly withdrawal of \$100, do they not? A Not weekly, sometimes a couple of times a week.

Q Look at it and see. It is about every seven days? A Well, I'll show you. Total the whole thing up and that is how you get it.

30 Q May 6th, 12th, 20th and 27. June 3rd, 10th and 17th. June 22nd. July 1st, 8th, 15th, 22nd and 30th. August 5th, 12th, 19th and 26th. All for \$100, with the average through the year 1927, which indicates an average withdrawal of \$100 a week, doesn't it? A About that, I would say, some weeks he had more there.

Q Now, does your concern owe him any money for commission? A No, sir, not a cent.

Q Are there any deals pending with your concern, to which he is entitled to a commission?  
40 A Yes.

*Deposition of Murray Apfelbaum.*

Q What deals are they? A The Leber deal.

Q Where is that property? A On Halsey street.

Q Is that a leasehold? A Yes, sir.

Q 199 Halsey street? A I don't know the exact number.

10

Q What do you owe Mr. Garfinkel for commission on that deal? A I don't owe him anything.

Q I don't understand you? A He owes me.

Q What does your concern owe him? A Not a five cent piece.

Q What is this leasehold on Halsey street? A He made a deal. Murray Apfelbaum, Inc., made a deal in which he was the salesman in it.

Q Who rented the property, did he? A I did. I and my company and he did, he is interested.

20

Q What commission did he receive? A He didn't receive anything.

Q I call your attention to the fact that on April 5, 1929, Samuel Garfinkel testified under oath in this court before the examiner and in response to my question concerning that, as follows, he gave the following answers, that he has an agreement with your concern whereby he receives fifty per cent. of any deals negotiated by him as his commission? A Yes.

30

Q He was asked when the last sale had been made by him and he said about two or three months ago. "To whom was that made? A That was a leasehold. Q Where was the property? A Halsey street, Newark, I think it was 199. Q You rented the property? A Yes. Q For the owner of the building? A Yes. Q Who is the owner of the building? A Leber & Ruback. Q What was the term of the lease?

40

*Deposition of Murray Apfelbaum.*

A Forty-two years. Q What commission did you receive? A The commission was \$5,000.

Q Have you been paid then? A Commissions was received by Mr. Apfelbaum in the form of notes credited to the account that I owed to Mr. Apfelbaum. Q So that Murray Apfelbaum,

10 Inc., had at this time \$5,000 worth of notes in which you have a \$2,500 interest? A No. \$2,500 was credited to the account that I owed them.

Q You have a \$2,500 interest? I am not interested in the money you owe Apfelbaum, etc., etc. Now—

Mr. Silver: Do you want an answer to all this?

20 Q No. I am calling his attention to all this. With that testimony in mind, do you still say that Garfinkel was not entitled to any commissions of \$5,000 for his services rendered? A He did not get \$5,000.

Q Or \$2,500? A When I receive the money he applies it to his drawing account, to me.

Q Has Murray Apfelbaum, Inc., received the \$5,000 commission from the Halsey street transaction? A No, sir.

30 Q Have they received anything to indicate the \$5,000 in commissions? A I have a commission agreement.

Q Between you and Leber & Ruback? A Between Murray Apfelbaum, Inc., and Leber & Ruback.

Q It is in the shape of notes, isn't it? A No, just an agreement.

40 Q What does the agreement provide? A To pay him \$5,000 commission when the tenant, that is when the building has been erected and the

*Deposition of Murray Apfelbaum.*

rent paid to Leber & Ruback, I am to get \$200 a month for two years.

Q Does that mean that Garfinkel out of that amount is entitled to \$2,500? Is he not? A He is not entitled to anything. Murray Apfelbaum, Inc., is entitled to that.

Q Isn't Garfinkel entitled to any of those commissions? A He is entitled to it if he has any money coming to him.

Q Answer the question. A I will tell you something if you want to know it, I will give it to you short and sweet. He is a salesman—

Q Wait a minute. A I don't want you to feel that I am trying to do anything to shield him.

Q Garfinkel testified on April 5th, that he was entitled to \$2,500 of that commission; that he had turned it over to you personally for a debt he owed you. Is that correct? A That is not correct.

Q Garfinkel was the agent acting for your concern in the negotiation of that lease? A He was not the actual agent. I was most the actual agent. He is a salesman employed by Murray Apfelbaum, Inc.

Q Do you say that Garfinkel is not entitled to \$2,500 of those commissions? A Yes. He will be entitled to them if he doesn't owe the concern any money; in other words that money is mortgaged—

Mr. Silver: Wait a minute.

Q What do you mean "that money is mortgaged? A Until his account is cleaned up with me, that is with Murray Apfelbaum, Inc., the company.

*Deposition of Murray Apfelbaum.*

Q In other words you say he owes Murray Apfelbaum, Inc., some money for moneys advanced? A Yes, charged to commissions earned.

Q And that Murray Apfelbaum proposes to pay himself out of the \$2,500 commissions that he is entitled to under that lease? A No, I  
10 didn't say it that way. He hasn't anything coming to him as long as he owes Murray Apfelbaum, Inc., any money.

Q That is your idea of it? A Yes.

Q Now, what I am asking you is—that is your idea? A Yes, because I am advancing him \$100, \$200, as he needs the money.

Q That is a transaction between Garfinkel and your company whereby you willingly advance him money? A The same way with the other  
20 concern.

Q We are not concerned with others. You advance moneys weekly or as he wants it? A Yes.

Q Now then, Murray Apfelbaum, Inc., proposes to reimburse itself out of the \$2,500 coming to it as commissions in this deal? A If at the time when I collect this money he does not owe Murray Apfelbaum, Inc., anything, he will  
30 get \$2,500.

Q Are there any deals pending whereby Garfinkel is entitled to any money from your concern? A No, sir. He has got about half a dozen deals on, pending.

Q This Garfinkel, in the year 1928, assigned to you personally ten shares of stock in the corporation known as the 105-107 Market Street Corporation? A Not to me personally.

Q To whom was it assigned? A Murray  
40 Apfelbaum, Inc.

*Deposition of Murray Apfelbaum.*

Q Are you sure of that? A Yes, because I have the stock.

Q Have you it with you? A Yes. (Witness produces paper).

Q You show me certificate No. 2 for ten shares of 105-107 Market Street Corporation dated July 26, 1926, which bears the assignment dated June 15, 1928, by Samuel Garfinkel to Murray Apfelbaum, Inc., witnessed by Michael Silver. Has that ever been transferred on the books of the corporation? Of the 107 Market Street Corporation? A I don't know if it has or not. 10

Q Do you know why that assignment was made to your company by Garfinkel? A Yes.

Q Why? A Because at that time he owed me, that is, I am talking for the company, he owed the company about thirteen or fourteen thousand dollars. 20

Q In June, 1928, at the time this assignment was made up? A Yes.

Q What was the value of the shares of stock in 1928 at the time of the assignment? A That is problematical. I don't know what it is worth.

Q You took the stock at that time? A I took it because I am interested in that company.

Q What company? A 105-107 Market Street Corporation. 30

Q Are you a stockholder in that company? A Yes.

Q Are you an office holder? A Yes.

Q What office do you hold in the 105-107 Market Street Corporation? A Secretary and Treasurer.

Q Now, can't you tell us the value of that stock? You are the Secretary and Treasurer of that company and were in June, 1928, at the time you took the assignment? A No, sir. 40

*Deposition of Murray Apfelbaum.*

Q Was it worth \$37,500? A Absolutely not.

Q What does the company own? A It owns a leasehold on Market street.

Q 105-107 Market street? A Yes.

Q How long a leasehold has it got? A I think thirty years.

10 Q What is the value of the leasehold? A Why, it all depends on what you can make out of it. I don't know what it was worth. I will sell you the stock, if you want it.

Q You are the Secretary and Treasurer of the 105-107 Market Street Corporation and you say in June, 1928, you took an assignment from Garfinkel of ten shares of stock of that company and you say now that you do not know the value of that stock as of the time when you took the assignment? A No, sir.

20 Q If I advise you that Garfinkel, in pledging that stock with the Trust Company of Orange, placed a value of \$37,500 on it, what would you say as to its value? A I wouldn't think it was worth that.

Q How many shares of stock do you own? A Ten shares.

Q Personally? A Ten.

30 Q You own ten shares personally? A No. Wait a minute, I think it is the corporation that owns the shares.

Q You are the secretary and treasurer? A I think Mr. Silver knows.

Q Wait a minute? A I don't know if I own it personally or not. There were some shares of a man named Faulk and he assigned them to me.

Q You own ten shares personally in this corporation? A Yes.

40 Q What did you pay for them? A We formed a company and I think I put in \$12,500.

*Deposition of Murray Apfelbaum.*

Q You got ten shares of stock? A Yes.

Q When was that? A About 1926, I think.

Q Then, subsequently, that company took over the lease-hold of 105-107 Market street, is that correct? A Yes.

Q What is the value of that leasehold? A Well, when we bought it we thought we had a very sweet thing. We had to erect a new building on there and the building cost around \$75,000 to \$80,000. 10

Q Look at your books please, June, 1928, and show me the account of Garfinkel wherein he owed you money at that time? A I think it would be better to have Mr. Puder here; he knows the books better than I do.

Q Puder isn't the one to testify. What did he owe in June, 1928, from your books? A Sixteen thousand dollars, less commissions coming in there, I don't know what that amounts to. 20

Q You will have to give me an answer. A You will have to get the accountant to give it to you exactly. You can look at the book and figure it out for yourself.

Q I am asking you? A As to whether or not I can give you dollars and cents?

Mr. Silver: Approximately. 30

Mr. Fitzmaurice: I do not want it approximately.

Mr. Silver: Then, take the answer for what it is worth.

Mr. Fitzmaurice: Who is conducting this examination, you or I?

Mr. Silver: You are conducting it, but I will advise my client what to do.

Mr. Fitzmaurice: You are interrupting me in my examination of this witness. 40

*Deposition of Murray Apfelbaum.*

Mr. Silver: Mr. Apfelbaum, if you cannot answer the question, say you do not know. The books will speak for themselves.

Mr. Fitzmaurice: Mr. Stenographer, are you taking these comments down?

10 (The stenographer replies in the affirmative.)

Mr. Fitzmaurice: I want these remarks on the record.

Q I am going to ask the question again. You have produced your books here, in response to a subpoena duces tecum. You stated that at the time this stock was assigned to your company by Garfinkel, he owed you money, and I asked you what the value of the stock was and you said  
20 you did not know, and I ask you now what your books show he owed you? A I will only take what figures are here.

Q Don't you stand in back of the figures on your books? A Do you stand in back of the figures on your books?

Q Absolutely? A I don't keep the books.

Mr. Silver: Counsel wants an answer on the record. Give him an answer and don't  
30 argue.

A According to these books here, he owed on June 1st, \$16, 415.61, that is, on June 1st.

Q What does that amount represent? A The drawings he has drawn up to that time.

Q Did he have any credit against that? A He has some credit against that.

Q How much? A He has here \$979.17.

Q Then, you want us to understand that your  
40 arrangement with Garfinkel permits him to draw

*Deposition of Murray Apfelbaum.*

from your concern a sum of money exceeding sixteen thousand, depending on reimbursement, on his ability to earn commission from which you receive fifty per cent., is that correct? A Yes.

Q I am going to ask you again the value of the stock on June 15, 1928, when you took it over from Garfinkel? A I don't know. 10

Q Would you say it did not have a value of \$37,500? A Yes.

Q On what do you base that, if you do not know? A Because I would sell mine for a great deal less.

Q How much? A Twenty-five thousand dollars today.

Q What does Garfinkel owe you now? A \$20,253.50. 20

Q Calling your attention again to the books, you do not appear to have given him any credit on the books for the ten shares of stock he turned over to you in June, 1928. Do you? A No, sir. I took that stock from him for his drawing account, to be secured by his drawing account given to him. I took it.

Q You simply took that as collateral, did you? A On assignment. I made him assign the stock to me. 30

Q As collateral security for what he owed your company? A What he owed and one year further.

Q Then, it was not an outright sale to Murray Apfelbaum, Inc., but simply as collateral to secure your company? A I don't know if you call it that, but I made him give me an assignment for money he owed the company.

Q You did not give him any credit on your account for that stock? A No, sir. 40

*Deposition of Murray Apfelbaum.*

Q Is that what fortifies your supposition that you took it as collateral because you haven't given him credit for it. You are simply holding it as collateral security for the money he owed you? A I made him assign it to me for a year from last June, because I had to cut out his drawing account.

10 Q You had given him all the credits on your books that he is entitled to? A Yes, sir.

Q Has he given you any other collateral? A No, sir.

Q Did he tell you at the time he made this assignment that he had given the Trust Company of Orange a financial statement including that stock among his assets as having a value of \$37,500? A No, sir.

20 Q Did he make any reference whatever to it? A No, sir.

Q Did you know at that time, of your own knowledge, that he had given this statement to the bank, concerning this stock? A No, sir.

Q Or that he had borrowed \$5,000 from the bank? A No, sir.

Q Or that a month previous to that he had renewed the note, giving the same statement? A No, sir.

30 Q And that subsequently the note was renewed and he gave the same statement? A No, sir.

Q You knew nothing at all about that? A No, sir.

Q I presume that you have a copy of the Leber & Ruback agreement about the payment of the five thousand dollars commission? A Yes, sir.

40 Q And Leber & Ruback have a copy? A Yes.

*Deposition of Murray Apfelbaum.*

Q Mr. Apfelbaum, Mr. Garfinkel testified under examination that his arrangement with you is that he has a drawing account, that is, if he makes any deals he is entitled to fifty per cent. of the commissions. That he has an agreement with you that any time he desires to quit your employ he owes you nothing. Is that correct? A No, sir. I will say not. 10

Q I am just giving you what he has testified to? A Fine business.

Q Can you tell me from your books what Garfinkel owed your concern on May 20, 1927? A Approximately forty-seven hundred dollars.

Q He owed you approximately, from your books on May 20, 1927, the sum of forty-seven hundred dollars? A I guess that's right. 20

Q Approximately that? A Yes. I don't give him any credit for any deals until the money comes in. Some of these deals do not materialize for six months or a year afterward. Probably at that time he had some deals.

Q Have you received any commission from Leber & Ruback under this lease? A No, sir.

Q You have received none to date? A No, sir.

Q When are they to start? A I think they are supposed to start this coming July. Only in the event the building is completed and the man lives up to the lease and pays his rent. 30

Q You are to receive two hundred dollars a month? A Yes, until five thousand dollars is paid.

Q Two hundred dollars a month? A Yes.

Q Has Garfinkel's account received any credit for the twenty-five hundred dollars under the lease? A No, sir. 40

*Deposition of Murray Apfelbaum.*

Q You are simply holding that lease as further security of the moneys owed you, is that correct? A No.

Q In other words, it is your idea to apply the twenty-five hundred dollars he is entitled to under that lease to the account owed you? A  
10 As the money comes in it will be two hundred dollars a month and I am going to apply one hundred dollars of that towards his credit.

Q Until it is exhausted? A Yes.

Adjourned without date.

20

30

40



*Opening.*

Mr. Clancy: Your Honor please, the stock—there was a judgment recovered at law, a bill filed in the nature of a bill for discovery to find out what this man has and what he did with his stock that the bank knew about.

10 Mr. Silver: I represent the corporation defendant, the holders of the stock. I might say that, after the judgment law was obtained, an examination was had before a Supreme Court Commissioner, testimony was taken. Mr. Fitzmaurice has that testimony also. Now, he comes in the Court of Chancery and desires another examination in the form of a bill for discovery.

The Court: Decided one forum after the other?

20 Mr. Fitzmaurice: I don't think that is quite the correct statement. After execution was issued and returned unsatisfied by the sheriff, we had discovery proceedings of the defendant, and based on the information and based on the testimony supplied by both Garfinkel and Apfelbaum as his trustee of this stock, which he sets forth in his statement to the bank and upon which the bank loaned this money; before the maturity of the note, Garfinkel assigned the stock, he says, to Apfelbaum. We discovered that in our discovery proceedings. That was the first intimation we had of it. Now, then, this bill seeks, as  
30 I said, in my opening to have that conveyance set aside as fraudulent or to impress our judgment on the stock, which Apfelbaum testified, in this testimony here, he was holding as trustee, holding as collateral for the moneys owed him and to be owed him in the future by Garfinkel.

The Court: All right. I will hear you.

*Frederick T. Cramer, direct.*

FREDERICK T. CRAMER, sworn for complainant.

*Direct examination* by Mr. Fitz Maurice.

Q Mr. Cramer, you are connected with the complainant, The Trust Company of Orange? A I am.

Q In what capacity? A As vice president and treasurer. 10

Q Are you acquainted with the defendant, Garfinkel? A I am.

Q Samuel Garfinkel? A I am, yes.

Q Did The Trust Company of Orange loan to the defendant Garfinkel some moneys in May, 1927? A We did, the sum of \$5,000.

Q And did Garfinkel furnish the Trust Company of Orange with a financial statement, a signed statement, showing his assets at the time the loan was applied for? A He did. 20

Q I show you a paper and ask you if that is the statement.

Mr. Silver: At this time I want to enter a general objection of any conversations or signatures on any documents that might have been had between the complainant and the defendant Garfinkel so far as binding the defendant, Murray Apfelbaum, Inc., unless a representative or an officer of that company was present at the conversations. 30

Mr. Fitz Maurice: I am not attempting to bind Apfelbaum by what defendant said. There are two defendants. I have got to proceed against one at a time.

The Court: I will allow the testimony. Your objection is on the record.

A Yes, the statement was presented us about that time. 40

*Frederick T. Cramer, direct.*

Q All right. A On May the nineteenth, according to my notation onto it.

Q And that statement shows a net worth of what? A \$56,000.

10 Mr. Clancy: I object to the statement.  
The Witness: \$56,950.  
Mr. Fitz Maurice: I offer this.  
(Statement marked Exhibit C. 1)

Q Now, I show you another paper and ask you what that is. A Statement of Samuel Garfinkel as of May the twentieth.

Q What year? A Setting forth the same items as appear on the previous statement, which I just had in my hand.

20 Q May twentieth what year? A May 20, 1927.

Q And is that signed? A It is.

Q By whom? A On one of our regular statement forms.

Q By whom? A Samuel Garfinkel.

Q Was that signed in your presence? A It was.

Q And that shows a net worth— A As repeated on the other \$56,950.

30 Mr. Fitz Maurice: I offer that.  
(Statement marked Exhibit C. 2.)

Q I show you another paper and ask you what that is? A That was a detail as to the leases on the Market Street Corporation which he listed in his statement as practically all of his assets.

Q And that was furnished you by the defendant Garfinkel with his financial statement? A It was, at the same time.

40

*Frederick T. Cramer, direct.*

Mr. Fitz Maurice: I offer that and ask it be marked as part of the first exhibit.

(Paper marked Exhibit C. 3.)

Q Now I show you a note for four thousand dollars, dated May 21, Trust Company of Orange, signed Samuel Garfinkel. That note was signed by the defendant in your presence? A I won't say whether it was signed in my presence or not. 10

Q Is that a renewal note? A Yes, it was the renewal, that one, and the amount of five hundred dollars more which fell due at the same time.

Q What was the first loan Garfinkel based on this statement? A \$5,000.

Q For how long a period of time? A Four months. 20

Q Four months note? A Yes, sir.

Q That is four months. And at its maturity was that paid? A A renewal was taken for \$500 less.

Q A new note given for \$4,500? A Right.

Q For how long? A A period of four months.

Q And at its maturity was that paid? A No, it was not. And another note was taken for an additional \$500 less. 30

Q So that \$4,000 was then owed? A Right.

Q And is this the note that was then given for the balance of \$4,000 due the bank? A It is.

Mr. Fitz Maurice: I offer this in evidence.

(Note marked Exhibit C. 4.)

Q Was the \$4,000 note paid at its maturity?

A It was not. 40

*Samuel Garfinkel, direct.*

Q And what was done? A Protested for non-payment, suit instigated and judgment recovered.

Q And was the judgment paid? A It was not.

10 The Court: Now, I understand that counsel consent to have this execution from the sheriff's office, which was returned unsatisfied, offered?

Mr. Silver: I have no objection.

Mr. Fitz Maurice: I offer the execution issued out of the Essex Circuit Court on this judgment and returned with the return of the sheriff unsatisfied.

(Paper marked Exhibit C. 5.)

20 Mr. Silver: No questions.

Mr. Clancy: No questions.

The Court: That is all.

Mr. Fitz Maurice: Mr. Garfinkel.

---

SAMUEL GARFINKEL, sworn for complainant.

30 *Direct examination* by Mr. Fitz Maurice.

Q You are one of the defendants in this case? A I am.

Q I show you exhibit C. 1 and C. 3 and ask you if that is your signature? A Yes, sir.

Q Did you furnish those to the Trust Company of Orange in applying for a \$5,000 loan? A I did.

40 Q And did you at that time own cash in bank of \$450? A I did.

*Samuel Garfinkel, direct.*

Q What bank? A The Fidelity Trust Company.

Q And did you own ten shares of stock in 105-107 Market street Corporation? A I did.

Q You valued at \$37,500? A I did.

Q Did you own a leasehold of 200 Washington street, corner of 2nd street, Hoboken, having a value of \$20,000? A I did. 10

Q And you stated at that time that the only obligations you owed were various small outstanding obligations, totalling \$1,000, is that correct? A That is correct.

Q Leaving you a net worth at the date of your application for this loan of \$56,950? A That is right.

Q And you were subsequently granted that loan of \$5,000? A Yes. 20

Q Based on this statement, were you not? A Yes.

Q Now, I show you Exhibit C. 2. Is that your signature? A Yes, sir.

Q You furnished the information on that statement? A That was taken off of that statement there at the time at the bank.

Q It is the same information? A It is the same information.

Q Yes. And at the time that you executed this financial statement, Exhibit C. 2, you were familiar with the fact the statement contained this information, were you not: "For the purpose of procuring credit from time to time with you for my negotiable paper or otherwise"— 30

Mr. Clancy: I object, because the statement is signed by him and he knew the contents of it when he signed it.

Mr. Fitz Maurice: I want to know whether he did. 40

*Samuel Garfinkel, direct.*

The Court: Ask him if he did.

Q Did you know all of the contents of this statement at the time you signed it? A I did.

Q And were fully aware of everything that was on here, were you? A (Witness nods yes.)

10 Q All right. Now I show you Exhibit C. 4. Do you recall executing that note for four thousand dollars? A I do.

Q The \$5,000 note was subsequently reduced by two \$500 payments, so that \$4,000 was the amount due? A I don't know how they were reduced, but the original was five thousand and this one was four.

Q And you gave renewal notes? A Yes.

20 Q Now, Mr. Garfinkel, are you the owner now of the ten shares of Market street Corporation included in your statement? A No, sir.

Q Are you the owner of the leasehold at 200 Washington street in Hoboken? A No.

Q Included in your statement? A No.

30 Q What did you do with the ten shares of stock? A I assigned them to Mr.—to Murray Apfelbaum, Inc., for moneys that I owed them and additional drawings that I would receive from them, and he was told to hold them—(interrupted).

Q Now, wait a minute. I don't want what he was to do with it. I asked you what you did with it. You assigned it to Murray Apfelbaum? A Inc.

Q When? A I don't remember the exact date.

Mr. Fitz Maurice: Have you got the date?

40

Mr. Clancy: June 15, 1928.

*Samuel Garfinkel, direct.*

Q I show you Certification 102, Market street Corporation. Is that the stock certificate you included in your statement? A Yes.

Q Then that is the one you say you assigned to Apfelbaum? A Yes.

The Court: When was the assignment? 10

Mr. Fitz Maurice: June 15, 1928.

The Witness: That is right.

The Court: When was the statement made?

Mr. Fitz Maurice: In May 20, 1927, and the last note given—

Mr. Clancy: May 21, 1928.

Mr. Fitz Maurice: May 21, 1928, due September 21, 1928.

20

Q So that before the maturity of this note, this stock included in your statement you assigned to Murray Apfelbaum, is that correct? A Yes, sir.

Q And where was this stock certificate at the time? A In—

Q In whose possession was it at the time you included it in your statement at the bank?

A In my possession.

Q And what were the circumstances of the assignment on June 15, 1928? A I owed Mr. Apfelbaum quite a sum of money and he—I was drawing—had a drawing account that he was advancing me moneys every once in a while, and Mr. Apfelbaum came to me and he said, “Here, Garfinkel, you owe me a lot of money and I am going to cut out giving you any money unless I am secured for it or you pay off what you owe.” And I said to him, “Now, things are quiet now and when they pick up I will be

30

40

*Samuel Garfinkel, direct.*

able to pay you back." Well, he wanted some sort of security for it and I agreed to assign this note to him—this stock to him in lieu of what I owed him and the additional moneys that he would advance me while I was working.

Q Well, now, how much did you owe him?

10 A Approximately—roughly—I couldn't say—from eleven—anywheres from eleven to fourteen thousand dollars at that time.

Q You were assigning him \$37,500 worth of stock. Don't you know what you owed him? A I say—it was at that time around eleven to twelve—eleven to fourteen thousand dollars I owed him at that time.

Q Where did you get that information from?

A From the book.

20 Q What book? A The Murray Apfelbaum, Inc. books.

Q You examined them yourself? A I did.

Q To see how much you owed on June, 1928? A I did.

Q And it was \$14,000? A I don't know the exact amount now. I could tell you if I saw the books. I don't recall the exact amount.

30 Mr. Fitz Maurice: All right, have you got the books?

Q How long have you been employed by Murray Apfelbaum? A Five or six years.

Q All right. Now, show us in the book there where in June, 1928, June 15th, you owed twelve or fourteen thousand dollars. A On June I owed him \$16,600.

40 Q Now, you are referring to page 131? A 131, yes. Now, there was credit against that in June of \$1,164.

*Samuel Garfinkel, direct.*

Q Now you are referring to page 131 of a book called "Ledger;" is that correct? A That is right.

The Court: Do you want it marked?

Mr. Fitz Maurice: Yes.

The Court: Any objection?

10

Mr. Clancy: No. If just the sheet is marked.

The Court: Just that one page.

(Page marked Exhibit C. 6.)

Mr. Fitz Maurice: I want to offer this certificate, too, before I forget it.

(Certificate marked Exhibit C. 7.)

The Court: That seems to show he owed \$6,000 and then paid \$1,100 something?

20

The Witness: Yes.

Mr. Fitz Maurice: Yes. That is his statement up to now.

The Court: That is what the books show. Your own exhibit shows that.

Q Now, what did you owe Murray Apfelbaum, Inc.? \$16,000 in June, 1928. A For drawings advanced to me, moneys advanced to me.

30

Q As what? A For expenses for my living and expenses and trying to make deals through real estate.

Q Well, over what period of time did you run up a sum of \$16,000 that you owed your employer for advancements? A During the entire period of time that I have been with Mr. Apfelbaum, most of that, I imagine, in the last year.

Q 1928. When did you go with him? A I am with him about six years.

40

*Samuel Garfinkel, direct.*

Q And what arrangement did you have with him? A I was to work on a commission basis.

Q Yes. A And that he would—he would advance me every once in a while moneys as I needed them towards my future earnings.

Q And that sum was run up to \$16,000? A  
10 Yes, sir.

Mr. Silver: Just answer, Mr. Garfinkel.

The Witness: I said "Yes."

Q Had you given him any security during the years that you had been running this amount up? A No, sir.

Q None whatever? A No, sir.

Q And suddenly, in June, 1928, you say  
20 Apfelbaum wanted security for the moneys that you owed him? A That is right.

Q Now, what were these amounts that were advanced you? How frequently were they advanced? A Whenever I would need them, once or twice a week, or a couple of times a month, just whenever I wanted them I would get them.

Q And they were all charged against you in these books? A They were all charged against me in these books.

Q Now, have you examined these books re-  
30 cently? A No, sir.

Q When is the last time you did examine them? A Oh, quite a while ago, I guess.

Mr. Fitz Maurice: Is this the only book produced?

The Court: No, there are other books.

Mr. Clancy: There are three books there.

Q Now, I show you a book marked "Ledger,"  
40 "Samuel Garfinkel," beginning with "January

*Samuel Garfinkel, direct.*

31, 1925." Is that when you first became employed—over here? A No, prior to that.

Q By Murray Apfelbaum? What is that?

A Prior to January.

Q Prior to that? A It was in May when I went with him.

Q Now, when was it? July 31, 1924. Is that when you first started? I am referring to a larger book, which has no identification mark on it. Is that correct? A I think it was prior to July. It was some time in May or July of that year.

10

Q All right. Now, referring to these larger books, that indicates the account as to balance, does it not; the \$3,894 was advanced to you? A That is right.

Q And that \$3,894 was repaid to Apfelbaum?

20

A Not balancing the account, no. There is \$2,600 repaid Apfelbaum.

Q What is that? A \$2,600 repaid to Apfelbaum according to those books.

Q According to those. What does P. and L. represent? A That would show a balance due him of 1224, I suppose "posting ledger," or something like that, I imagine it would mean.

Q Wouldn't it be "Profit and Loss?" A No. You can tell by the journal under 1928—on the journal, 1928.

20

Q Journal, 1928. All right. Have you got the book there? A No, I don't know what that journal is. I don't keep the books. But that would show the balance of the year what difference I owed him and would be carried on to the end of next year. I think you will find—that is the end of that year.

The Court: 1924.

40

*Samuel Garfinkel, direct.*

Mr. Fitz Maurice: 1924.

The Witness: Well, you will find the beginning of 1925, that would be carried along.

Q Just a minute. Look at this book, referring to this book, in 1924, the drawing account is on the average of \$100 a week. A That is right.

Q And there is no amount on that 1924 greater than \$100 a week; is that right? A No.

Q Is that right? A That is right.

Q Yes. Now, referring to the next book, starting in 1925—

The Court: Are you going to mark these books?

Mr. Fitz Maurice: I have had—(interrupted.)

The Court: You only have one book marked.

Mr. Fitz Maurice: All right. I will ask this larger book be marked, that has no identification on it. The other two are marked "Ledgers."

(Page 741 of ledger marked Exhibit C. 8.)

Q Now, referring to page 111, Ledger for 1925 and 1926, I will call your attention to each item all through 1925 and all through 1926 and ask you the average weekly allowance to you. Isn't that \$100? A There is other sums there. I wouldn't say their average. They run \$185, \$250, \$200.

Q Yes. Then \$50, then \$20, then \$25, \$100 again. A Yes.

Q So the average is \$100 a week, is it not?  
A I have not figured up the average. The

*Samuel Garfinkel, direct.*

books here show for themselves exactly what the figures are.

Q Look at them. A On this page it averages 100. On this I don't know just what it averages.

Q Look at it. A I have. I cannot add it up. I cannot figure it roughly that way.

Q Well, there are a dozen amounts there for \$50, are there not? A There are. 10

Q And a dozen amounts for \$100. A I can tell you better if I had it and divide it; I can tell you just what they average per week.

Q Approximately? A No, I cannot state approximately.

The Court: No, I don't think that is fair. You cannot ask him to add up and divide that way. 20

Mr. Fitz Maurice: All right. I want to get—(interrupted.)

The Court: If you want to, you can take it and do it yourself.

Mr. Fitz Maurice: All right. I didn't want to take the time where it is patent right on the face of this book.

The Court: Well, it is not patent until you get him to do it, or you could do it yourself. All you have to do is to introduce that in evidence and then tell the Court that the mathematics are so and so. 30

Mr. Fitz Maurice: I will do that.

I offer pages 110 and 111 of this ledger for the years 1925 and 1926, and also page 187.

(Pages of ledger marked Exhibit C. 9.)

Q Now, Mr. Garfinkel, bringing it more to date, referring to page 187 of Exhibit C. 7, the 40

*Samuel Garfinkel, direct.*

books of Murray Apfelbaum as of January 1st, 1927, show you owing it how much? A \$11,843.

Q What does it say opposite the word "balance," Mr. Garfinkel, that \$292.57? A 57 cents.

Q Yes, now just a minute. A Just a second.

10 Q \$292.57 isn't it? A There on that page, yes.

Q Now, then, from January, 1927, to January, 1928, according to the books, what were you advanced? A From what dates did you say?

Q January 1st when you owed him \$292? A To what date?

Q To January 1st, 1928. It is over here, isn't it (indicating). A On these books there.

Q Well, these are the books, aren't they? A Yes, they are the books. Now, let me get this. 20 \$9,259 on that.

Q Yes. And what credit had you received down to that date? A \$3,921.

Q Leaving a net balance, according to that, owing Garfinkel by you of how much, January 1st, 1928?

The Court: Owing who?

Q Owing Apfelbaum. A \$5,338.

30 Q \$5,338. A A balance 1924 of \$1,224, \$6,563 on that.

Q Your balance is indicated here in red ink, isn't it? A Right here, your balance is indicated here too. I don't know. I am not a book-keeper, I am just trying to get figures that is down here and I am reading them from there.

Q Now, referring to the book and these figures it indicates a balance owing Apfelbaum by you in red ink of \$5,500? A And then it goes 40 on over there, balance, 1924, \$1,224.

*Samuel Garfinkel, direct.*

Q Yes. For a total amount of what? According to your figures? A \$6,563.

Q All right. \$6,563 as of January 1st, 1928. Now, you want us to understand, do you, that from January 1st, 1928, down to June 15th, a matter of six months, you were advanced a sum running the total up to \$16,000? Is that correct? 10  
A That is right.

Q Now, I show you Exhibit C. 6 to your account, Samuel Garfinkel, beginning with January 1st, 1928, and running through 1928, particularly down to June, starting off with a balance owed by you to Apfelbaum of how much? A \$6,563.28.

Q \$6,563.28? A That is right.

Q From January. A That is right.

Q Now, then, in addition to that, there is each week \$100? A That is right. 20

Q Through January, isn't that a fact? A That is right.

Q And in the month of January you repaid Apfelbaum how much? A \$430.

Q \$430. Now, the next item looks to be how much? A \$7,500.

Q What was that for? A That was for moneys advanced me.

Q For what? \$7,500 advanced to you and you still owe Apfelbaum— A That is right. 30

Q \$6,500. A That is right.

Q What was the \$7,500 advanced you for?  
A The money was advanced to me for my use. I used that.

Q What did you do with that?

The Court: No, I don't think that is right. If they were advanced to him it doesn't seem to me it makes any difference what he did with them. 40

*Samuel Garfinkel, direct.*

Mr. Fitz Maurice: Well, your Honor please, here is a set of books, here is an employe, the books will show drafts of \$100 right on through here and of a sudden there is an item of \$7,500 that we question and I think that we are entitled to know—

10 The Court: All right.

Mr. Fitz Maurice: Something about it.

The Court: Very well. I will allow—did he keep these books himself?

Mr. Fitz Maurice: No, he says not.

The Court: All right. I will allow you to ask him the question. However, it does not seem to me it is material. Go on.

Q What was the \$7,500 advanced to you for?

20 A I used it up in different forms there, used it in my livelihood and used it for pleasure purposes.

Q For pleasure purposes? A And business purposes.

Q You just asked Apfelbaum for \$7,500 and he gave you \$7,500? A (Continuing.) And other forms of investment I went into.

The Court: I cannot hear you.

30 The Witness: Forms and investments I went into.

The Court: Wait a minute. All right.

Q And that was simply charged against you in the hope that some day you would rent a piece of property and you could repay Apfelbaum? A I could pay him personally.

The Court: I did not hear what he did with the \$7,500. What did you do with the \$7,500?

40

*Samuel Garfinkel, direct.*

The Witness: Why, I used it in my living and I went into a few investments there, played the market.

The Court: Is that all?

Q What happened to the stocks that you played the market with? A Well, I didn't meet margins. 10

Q What is that? A I didn't meet margins and they were wiped out.

Q I see. And you continued on according to the books the same old \$100 a week again; is that right? A Yes, sir.

Q Until you come down to the month of March—

Mr. Fitz Maurice: I will withdrawn that question. 20

Q From the time you first entered the employ of Mr. Apfelbaum in 1924 down to January 31, 1925—1928, there was never any sum advanced to you greater than \$200 until you hit this date and then it became \$7,500, is that correct? A I don't know. I would have to look at the books.

Q Well, look at the books. They are right in front of you, every one of them? A That is right. 30

Q Yes. Now, referring to Exhibit C. 7, the stock certificate that was issued you July, 26, 1926? A That is right.

Q Yes. And therefore in January, 1928, when you got this \$7,500 from Mr. Apfelbaum, why was there any demand made then by him for collateral? A Not at that moment.

Q Or security? A No, not at that time.

Q You still owned this stock? A He knew I owned stock. 40

*Samuel Garfinkel, direct.*

Q Yes. He is secretary-treasurer of this company you people formed? A That is right.

Q He knew you had ten shares, didn't he?

A Yes, sir.

10 Q He didn't ask you for the stock at that time? A Not at that time.

Q Any collateral at all? A No.

Q And just exactly five months after that he suddenly said to you he wants some collateral and he is not going to extend you any more credit? A That is right.

Q You were still working for him? A I was.

Q Still drawing your hundred a week? A Still had a drawing account, yes.

20 Q Yes. And this was the only time, in June, 1928, that he ever asked you for any collateral?

A That is right.

Q And then, in June, 1928, you owed him according to those books, \$16,000? A That is right.

Q And you gave him \$37,500 worth of stock; is that right? A That is right.

30 Q And what was your understanding when you turned the stock over to him? A That he would hold that stock for one year and I—if my earnings were sufficient for that there, then he would return me back the stock and when the year was up I asked him to extend that for another year, which he did.

Q When was the year up, in June, 1929? A That is right.

Q Now, it is extended for another year until June 30th; is that right? A That is right.

Q Well, wasn't there any definite sum mentioned when you turned the stock over to him?

40 A No.

*Samuel Garfinkel, direct.*

Q What is that? A What do you mean by a "definite sum?"

Q Now, do you recall testifying before a Supreme Court Examiner on March 4, 1929? A I do.

Q In the Hall of Records? Do you recall this question being asked you, referring to page 5: 10  
 "Did you on May, 1927, own ten shares of the Market Street Corporation stock? Answer: Yes, sir, I did." "Where is the stock now?" "I couldn't tell you now." "Question: What? Answer: I can't tell you now. Question: What did you do with it? Answer: I sold it. Question: To whom? Answer: To Murray Apfelbaum." "For how much?" "Eleven thousand dollars." "What was the value of the stock, etc." Do you recall testifying to that? A I 20  
 testified that—at that examination I had no books in front of me at the time and I stated at that time that it was approximately around a thousand dollars that was turned over to him at that time.

Q But you did not say then in answer to a direct question what you did with it, that you sold it? A Well, I considered it sold, but I had the right of taking it back, it was in the form of collateral. 30

Q What did you mean by answering the direct question "For how much?" "Eleven thousand dollars." What did you mean by that? A I said "Approximately eleven thousand."

Q You said "Approximately" although the answer here is "Eleven," you recall having said "Approximately?" A I don't know. Maybe you will find prior questions followed up there.

Q Do you recall my asking you this question, on the same page in the same examination: 40

*Samuel Garfinkel, direct.*

“What did you do with the eleven thousand dollars?” And you answered: “I used it to pay debts that I owed.” Do you recall that question and answer? A That is right.

10 Q And then the next question: “Did Murray Apfelbaum actually pay you eleven thousand dollars in cash for ten shares?” “No.” “How did he pay you?” Answer: “I owed the moneys and credited to that account; the difference he paid me in cash.” Now, do you remember all of that? A Well, I guess if it is down.

Q You guess it was so, what you said then. Well, now, as a matter of fact, what did Apfelbaum give you for \$37,500 worth of stock, Mr. Garfinkel? A He gave me credit.

20 Q How much? A The \$16,000 that I owed him.

Q How much? A The \$16,000 that I owed him.

30 Q Gave you credit for \$16,000. Will you show us on those books where you received credit for \$16,000 on June 15, 1928? There isn't any, is there? A No, there is no credit on the books to show that, because if there was credit on the books to show that, he would give me back the stock.

Q But you did give him the stock, in your opinion, cancelling your indebtedness? A No.

Q No? A I was to get that back whenever I paid him that; he was to hold it for one year.

Q What was that \$11,000 you talked about? A I didn't have the books there and I didn't have the exact figures, and I figured at that time it was approximately \$11,000.

40 Q What was the \$11,000? A The amount I owed him at the time it was transferred.

*Samuel Garfinkel, direct.*

Q What did you mean by saying, "I owed the interest and credited to that amount the difference he paid me in cash?" What difference? A I don't know what difference you mean there.

Q I don't know what you mean. I am asking you the question? A I don't know. 10

Q You don't know. Now, I want to refresh your memory on it. On page 5, "Question: When did you sell it to Murray Apfelbaum?" Referring to the stock. "Oh, some time in 1928, I should imagine around June." "Question: In June, 1928, you sold the ten shares of stock to Murray Apfelbaum, is that correct? Answer: Yes." "What did you do with the \$11,000? Answer: Used it to pay debts that I owed." Now, what debts did you owe that you used the \$11,000 that Apfelbaum gave you? A Well, I was paying bills right along that I owed, different—when I got that \$7,500 I paid bills I owed, playing the market and done things that I used it up for. 20

Q I see. So now you don't know what you meant when you said in this examination that you got \$11,000 from Apfelbaum for your stock? A I did know what I meant, that I owed Murray Apfelbaum, Inc., moneys and that I credited him for that. 30

Q All right. I am showing you Exhibit C. 2, the bank statement of May 20, 1927, when you list your assets including this stock at \$56,000. What liabilities do you show on that statement? A A thousand dollars.

Q A thousand dollars. That is May, 1927? A That is right.

Q Now, from these books that are produced here, what did you owe Murray Apfelbaum in 40

*Samuel Garfinkel, direct.*

May, 1927, at the time you got this loan from the bank? A I owed Murray Apfelbaum at that time on the books \$4,300, but had coming to me from the Caruso Spaghetti —(interrupted).

The Court: No.

10 The Witness: (Continuing.) On the books—(interrupted).

Q I didn't ask you that.

The Court: What did you owe him at that time?

The Witness: Well, I had credit coming to me at that time of \$4,300.

20 Q How much? \$4,300? You did not include that in your statement, did you? A No, sir.

Q No; as a matter of fact, you explained the thousand dollars in your statement with no thought in mind at all of the obligation to Apfelbaum? A No, sir.

Q You said "various small outstanding obligations, \$1,000?" A (Witness nods yes.)

30 Q Now, referring to your testimony on page 7 do you recall this question and answer: "Question: I want to get this straight on the record. Mr. Garfinkel, you want us to understand that you assigned, in June, 1928, to Murray Apfelbaum, \$37,500 worth of stock in the Market Street Corporation for \$11,000, is that correct? Answer: Correct." Do you recall that? A If it is down there, yes.

40 Q Now, in this statement to the bank you also included among your assets having a value of \$20,000 a leasehold on Washington street, Hoboken? A That is right.

*Samuel Garfinkel, direct.*

Q When did you get rid of that, after you got the loan or before? A After the loan.

Q After the loan. And what did you get for the \$20,000 lease you had in Washington street? A I just don't recall the amount now.

Q Oh, you don't remember. This was when, when did you get rid of that? A In the early part of 1928. 10

Q Early part of 1928? A Either 1928 or— (interrupted).

Q Do you remember that? A I don't remember.

Q Do you remember testifying in this previous examination that you got rid of that about the same time that you got rid of this stock to Apfelbaum? A I don't recall that. Prior to that time there, yes. 20

Q And how much did you get for the \$20,000 lease? A I owed them some money.

Q Take your finger out of your mouth and then maybe we can hear you? A Yes. It totalled up with what I owed these folks, money and all, I think, approximately \$6,000.

Q You received \$6,000 for it? A Yes, over a period of time.

Q Is that correct? A I think so. I think that is about the figure. 30

Q We don't want your figuring? A I don't remember. I would have to look it up.

Q You knew you were coming here to testify? A I had figured at that time.

Q You had figures at that time so that what you said in this examination in March, was correct? A That is right.

Q Now, then, do you recall then this question and answer with respect to the lease: "You still own 200 Washington street, Hoboken?" Re- 40

*Samuel Garfinkel, direct.*

- ferring again to page 7. "Answer: I don't now, no. Question: When did you dispose of that?" "About the latter part of 1928." "Question: What do you mean by that? Answer: Some time, I couldn't just exactly say the month, it was between June and August, I should judge.
- 10 This assignment was in June 15, 1928." "To whom did you sell that? Answer: A fellow by the name of Morris. I can't think of his last name. I think the company was the M. and K. Company or something like that, of Hempstead, Long Island. Question: The M. and K. Company of Hempstead, Long Island are now the owners of this leasehold? Answer: I don't know if it is positive now. Question: Don't you know to whom you sold this lease? Answer: I
- 20 don't recall the name that the title was taken in. Question: How much did you receive for it? Answer: Two thousand dollars. Question: What was the value of it? Answer: At the approximate value at some time," etc., "twenty to twenty-five thousand dollars." Don't you remember testifying to that? A Yes, but I owed them moneys besides that.

- Q Now you tell us that you had records with you at the time of this testimony and what you said then was correct. Two thousand is correct?
- 30 A Two thousand, correct.

Q And you sold this \$20,000 lease for \$2,000?

A No, I did not. I got \$2,000 cash from them plus what I owed them.

Q You owed whom? A These men that I was doing business with, this company they were, of course—(interrupted).

The Court: What company?

- The Witness: I can look it up and give
- 40 you their names. I can't just think of their

*Samuel Garfinkel, direct.*

names. Fellow by the name of Beir and Krieger.

Q Now, referring to Exhibit C. 1, the statement that you gave the bank when you applied for this loan, "leasehold on 200 Washington street, corner of Second street, Hoboken, rental of this lease to me \$6,000 gross, I subletted \$8,500 gross, leaving a net yearly profit of \$2,500. This leasehold expires May 1, 1935. Estimated profit \$20,000." Now, that is the lease that you sold for— A That is right. 10

Q —\$2,000. Is that right? A Right.

Q And you sold that some time in June or July, 1928, to a man named Morris, whose last name you don't know? A That is Beir, I just gave it to you; Beir, Morris Beir. 20

Q You rented a building for Leber & Ruback on Washington street, didn't you? A That is right.

Q And you have an agreement with them whereby you are to receive \$5,000 commissions over a period of time? A That is right.

Q Do you recall testifying that you have an arrangement with Apfelbaum, that your agreement with him is that you are to receive fifty per cent. of the commissions for deals that you closed? A That is right. 30

Q Yes. Well, you closed this deal for Leber & Ruback, didn't you? A That is right.

Q So that you are entitled to \$2,500 in this agreement, are you not? A When Mr. Apfelbaum collects the money, yes.

Q When he collects it? A That is right.

Q You did the job, didn't you? A That is right, but he is collecting the money.

Q The commissions are \$5,000? A That is right. 40

*Samuel Garfinkel, direct.*

Q And you are entitled to half of them? A That is right.

Q And the agreement is made with Apfelbaum, isn't it? A That is right.

10 Q Leber & Ruback and Murray Apfelbaum, Inc.? A That is right.

Q And you are entitled to \$2,500 of that amount? A That is right.

Q Now, do you recall—referring to page 12 of the testimony of March 4—April 5, 1929: “Now I am calling your attention again to the statement of May 20, 1927, that is the bank statement wherein you stated the only amount of obligation that you owed ‘account due by me \$1,000,’ to whom did you owe that? Answer: All the people, they are around. Question: Including Murray Apfelbaum? Answer: No, sir. Murray Apfelbaum was a drawing account. If I left Murray Apfelbaum tomorrow, I wouldn't owe him any money. Question: How is that? Answer: Because the drawing account is not subject to—after you leave them—you are obligated to them while you are there. Question: You have an agreement with them? Answer: No, sir. Question: A written agreement? Answer: No.”

20 “So, if Murray Apfelbaum permitted you to draw fifty thousand dollars and the next day you decided to quit the firm, you wouldn't owe them anything? Answer: Under the law I wouldn't be liable to them.” Now, you knew then, didn't you, according to your understanding that if you had borrowed—if Apfelbaum was foolish enough to loan you thirty, forty or fifty thousand dollars, you felt the next day you could have walked out and quit him and you wouldn't owe him anything? A If I had nothing he could take from

30 me, he would be out that money.

40

*Samuel Garfinkel, cross.*

Q Is that what you mean by "under the law I wouldn't be liable to them"? Why did you give him this stock in June 25, 1928? A So he could keep on advancing me moneys and I could continue working with him.

Mr. Fitz Maurice: All right. That is all. 10

*Cross examination by Mr. Silver.*

Q At the time you made these statements to the bank, were they true? A They were.

Q \$20,000 leasehold—that you place a value of \$20,000 on in Hoboken, what was that, a real estate valuation? A Why, it was the total amount of profit that that lease would bring if it was continually rented.

Q Was it a real estate valuation? A Real estate valuation. 20

Q If the market, real estate market was high, that was a real estate valuation; is that right? A Yes.

Q This \$37,000 valuation that you put on the ten shares of stock, isn't it a fact—is that a real estate valuation? A That is.

Q When the market was high it was worth that? A That is right. 30

Q Is it worth \$37,000 today? A No, sir.

Q In your estimation, what is it worth today? A As the property is standing rented today?

Q Yes. A It worth nothing.

Q Worth nothing. So the real estate equity of \$37,000 in May, 1927, is today worth nothing?

A Carrying the property at a loss today.

Q Carrying it at a loss today. Now, this so-called agent agreement, or what you term as the Leber & Ruback sale, the commissions were 40

*Samuel Garfinkel, cross.*

never paid on that sale by Leber & Ruback, were they?

Mr. Fitz Maurice: I object to that. The agreement is with Murray Apfelbaum. He said he didn't know.

10

Q Do you know—

The Court: Apfelbaum was to collect the money.

Q Do you know whether Mr. Apfelbaum ever collected the money? A Not yet, no.

Q You know all about this deal, don't you? A I do.

20 Q You were the prime mover in it, together with Mr. Apfelbaum? A That is right.

Q For the Murray Apfelbaum Company? A That is right.

Q Now you say that you were entitled to \$2,500 of that commission? A That is right.

Q What did you do with your rights in that \$2,500? A Well, we haven't got the money yet; we are getting it in monthly.

30 Q Well, what did you do with that share of it which you are nominally entitled to receive?

A That is credited to what I owe Mr. Apfelbaum.

Q That is credited to what you owe Mr. Apfelbaum? A Murray Apfelbaum, Inc., rather.

Q Yes. Now, in June, 1928, when this certificate was assigned, I just want to refresh your memory a little. Do you remember being in my office at that time? A I do.

40 Q And do you remember Mr. Apfelbaum being there? A I do.

*Samuel Garfinkel, cross.*

Q Do you remember Mr. Apfelbaum saying to you in my presence—

Mr. Fitz Maurice: Just a minute. I object to any conversations between Mr. Apfelbaum and Mr. Garfinkel in the presence of Mr. Silver or otherwise. How are we interested in that. 10

The Court: I will sustain the objection.

Q How did it come about that this stock certificate was assigned—

Mr. Fitz Maurice: I object to that.

The Court: I think I will allow that.

Q How did it come about? A Mr. Apfelbaum wanted to stop my—advancing me any more moneys, and I owed him this money and he insisted that he wanted collateral of some kind to show that he would be paid for it, and I agreed to sign it for him. 20

Q Now, by the way, Mr. Apfelbaum didn't know anything about your borrowing that money from the bank, did he? A No, sir.

Mr. Fitz Maurice: I object to that. How would he know that? 30

The Court: Strike that out.

Q Did you assign this stock to Murray Apfelbaum, Inc. for the purpose of defrauding the bank? A No, sir.

*Cross examination by Mr. Clancy.*

Q In— (interrupted). 40

*Samuel Garfinkel, re-direct.*

The Court: Are there two counsel in this?

Q In May— (interrupted).

10 The Court: Wait a minute, Mr. Clancy.

Mr. Silver: I represent the defendant, Apfelbaum Company. Mr. Clancy represents Mr. Garfinkel.

Mr. Clancy: A separate defendant.

Mr. Silver: A separate defendant. There are two defendants.

The Court: Well, it is practically the same.

20 Mr. Clancy: Yes, practically the same. I only want to ask a question or two.

The Court: I only want one counsel to cross examine.

Mr. Clancy: I represent a separate defendant, sir.

The Court: All right. Your defense is practically the same. I will let you cross examine this witness, but no other.

30 Q You testified, Mr. Garfinkel, that in May, 1927, you owed Murray Apfelbaum \$4,300. Do you know what credit you were entitled to at that time? A I was entitled at that time to a little over \$5,000 in credit.

Mr. Clancy: That is all.

*Re-direct examination* by Mr. Fitz Maurice.

40 Q In answer to Mr. Silver, you said this \$20,000 value you put on the lease in Hoboken

*Murray Apfelbaum, for Defendant, direct.*

was based on real estate values of the building?

A Yes.

Q Now, how long have you been in this real estate business? A Six years.

Q Is that all? A That is all.

Q Well, you have been in it long enough to know that this statement in Exhibit C. 1, when you say you have this lease in your name and that it cost you \$6,000 a year gross and that you sublet it at \$8,500 a year gross and that leaves you a net profit a year of \$2,500 and that it expires in May, 1935, when you say estimated profits \$20,000 you are talking about the estimated profit to you under this lease and that has nothing to do with the building, has it? A If the premises are rented. Now, at the present time it is carried at a loss. 10

Q Now it has nothing to do with the value of the property, has it? A It is the value of the leasehold as property, as real estate, property; when it is rented it has got its value. 20

Mr. Fitz Maurice: All right; that is all.

The Court: Anything further?

Mr. Fitz Maurice: The complainant rests.

The Court: What?

Mr. Silver: Mr. Apfelbaum. 30

MURRAY APFELBAUM, sworn for defendant.

*Direct examination by Mr. Silver.*

Q You are an officer of Murray Apfelbaum, Inc.? A Yes, sir.

Q And have full charge of this office? A Yes, sir. 40

*Murray Apfelbaum, for Defendant, cross.*

Q Did you know that Mr. Garfinkel the other defendant in this action borrowed money from the complainant, the Trust Company, known as The Trust Company of Orange? A No, sir.

10 Q When was the first time that you became acquainted and knew that he had borrowed money from the complainant? A When the notice came to the office.

Q What notice do you refer to? A A note that was due of four thousand dollars.

Q Did you take an assignment of this stock certificate for the purpose of defrauding the complainant? A No, sir.

Mr. Silver: That is all. Cross examine.

20 *Cross examination by Mr. Fitz Maurice.*

Q Mr. Apfelbaum, why did you take the stock? A Because it had a little value to it.

Q What value did it have? A At that time I thought it was worth about what he owed me.

Q What was that? A About fourteen to fifteen thousand dollars.

30 Q I see. And you took it then, so as to cancel his indebtedness to you? A No. He had—he had been drawing money and I wanted to stop his drawing account, and I told him I thought he was into me pretty heavy and I thought that I should be secured, and I knew that he had this stock and I asked him, I wanted to have this assigned to me as collateral for drawings, I said, “I won’t give you any more drawing account until I get collateral.”

40 Q Now, from the time he first went to work for you over a period of six years— A Yes.

*Murray Apfelbaum, for Defendant, cross.*

Q —your books indicate, Mr. Apfelbaum, that at no time did you advance him more than \$100 a week excepting on three occasions.

Mr. Silver: I object to that as not proper cross examination.

The Court: I will allow it. 10

Mr. Silver: There is no direct about books, may it please your Honor.

The Court: Not with this witness. I think Mr. Silver is right about that.

Mr. Fitz Maurice: Well, this—(interrupted).

The Court: The examination was very short and simple.

Mr. Fitz Maurice: True, but this is the defendant. He is charged in this bill with assisting in a fraudulent assignment to him of stock to defraud the complainant. Now, I believe I am entitled to cross examine him as to all of the facts surrounding the transaction of this stock and his connection with the other defendant. 20

The Court: No, not unless you make him your own witness.

Mr. Fitz Maurice: All right. I will do that to bring out the information. I simply want to bring this out to the Court, that is all. 30

Mr. Silver: I want it noted on the record—

Mr. Fitz Maurice: Yes, from now on he is my witness.

Mr. Silver: (Continuing.) Mr. Apfelbaum is now testifying solely for the com- 40

*Murray Apfelbaum, for Complainant, direct.*

plainant, being the witness of the complainant.

The Court: All right.

*Direct examination by Mr. Fitz Maurice.*

10 Q Your books, Mr. Apfelbaum, you produced these here in court in answer to a demand, haven't you? A Yes.

Q And these are the books showing all of your transactions with Garfinkel from the time he entered your employ down to now? A Yes.

Q And in looking at those books other than on two or three occasions when you advanced as much as \$200, all of the other amounts advanced by you do not exceed \$100 a week; is that correct? A No, sir; I think you are wrong.

20 Q Are you referring to the item of \$7,500 appearing in that book just shortly before—(interrupted). A I can refer to quite a few items where he got more than \$100.

Q All right. Show them to me. A There is an item there of \$687.

Q Let me see it. You are referring to Exhibit C. 6 now, of July, 1928. That is after this transaction, after the assignment of the stock to you. I am referring to any transaction prior to the transfer of this stock. A Well, all right; I will show you some more.

30 Q All right. A Several items of \$250.

Q What is that? Yes, I said several items. A Here is an item on May 3rd, 1926, \$350; \$350 February 17th, \$200, \$500 on January 4th.

Q What year? A 1926.

Q Yes. Now, in—(interrupted.) A He drew from January the 1st to May 13th, \$7,000.

40 Q I didn't ask you that. Now, refer to 1927 and 1928— A Well, I—

*Murray Apfelbaum, for Complainant, direct.*

Q You have them there, 1927 and 1928— A I can't—I haven't got the books.

Q —and show me one item other than the \$7,500 which is in just prior to this assignment, where you advanced any more than \$200. A I cannot find it. On November 1st, 1926, \$12,500.

Q How much? A \$12,500. 10

Q What date? A On November the 1st, 1926.

The Court: Now, this is directed to 1927, 1928, excepting \$7,500, is that right?

Mr. Fitz Maurice: Yes, sir.

The Court: All right. Now, Mr.—

Q Now, Mr.— 20

The Court: No. Wait a minute. Let him answer the question. You asked him to find a single item in those two years.

The Witness: I found one item of \$12,500, yes, sir.

The Court: Eh?

The Witness: \$12,500.

Q That was page 61. I want you to explain that. A Page 61, \$12,500. 30

Q What does it say? That is not in his account, is it? That is another page altogether, isn't it? A Well, that is—he got from me \$12,500.

Q What does it show he got it for? A It shows that balance \$7,500 that you got posted on the other record there and it says \$7,500; it is charged up to him.

Q Yes, plus what? A Eh? 40

*Murray Apfelbaum, for Complainant, direct.*

Q Plus what? You say the \$7,500 we are just talking about is in that. We know about the \$7,500. I am asking you about any other item.

A I am trying to explain. I cannot more than— I know I paid out the money, that is all I know I did, I gave him \$12,500. I paid it out.  
10 Did you ask me for what?

Q \$12,500 includes the \$7,500 we are talking about, doesn't it? A Includes it?

Q Didn't you just say so that it includes this \$7,500 item? A That \$7,500 item that you see on that page there is not posted from this sheet here.

Q Right. So the \$12,500 you are talking about includes the \$7,500 we are talking about? A Yes.

20 Q Yes. Now, all the way through those books with the exception of this item you referred to, the average weekly drawing account is \$100, isn't it? A No, sir; you are wrong. I gave him sometimes twice a week and other times three times a week.

Q You would put it on your books, wouldn't you? A Absolutely; it is in here; it must be in here.

30 Q Show it to us. I have gone over it carefully and I couldn't find it. A I am not a book-keeper. I didn't keep the books.

Q Oh, it is marked here, Mr. Apfelbaum, in each book; it is not long. A If you take from the top of the page to the bottom and take the date, then you can find exactly how much he has got between that time.

Q All right. We will pass it. A He got \$100, \$250, \$100, \$687. That is interest.

40 Q Now, what is the value of this stock of the Market Street Corporation? A The value? I paid \$12,500 for my shares.

*Murray Apfelbaum, for Complainant, direct.*

Q Well, when was that? A That was at the time when it was started.

Q How many of you started? A Myself and Mr. Sandusky and Mr. Garfinkel.

Q And Mr. Garfinkel. You put in twelve-five and got ten shares, didn't you? A Yes.

Q And each of the others put in twelve-five and got ten shares. A No, sir; Mr. Sandusky put in more than that. 10

Q More than that? A Yes, sir.

Q Now, will you answer the question: How much the value of the stock is? A It is pretty hard to judge the value of that piece of property.

Q Well, now, you are— A I know it.

Q —pretty well qualified to testify as to the corner of Washington and Market street, aren't you? A Yes, sir. 20

Q All right. What is the value of the stock?

A I believe if I could get my money back on the stock, I would sell it for what—(interrupted).

Q If you could get your twelve thousand—

A If I could get my twelve thousand five hundred back.

Q Do you recall testifying on April 26, 1929?

A Yes, sir.

Q Do you recall the question on page 16 of that record as to the value of the stock: "How much?" "Answer: Twenty-five thousand dollars." A No, sir; I didn't say that; I said I would take \$25,000. 30

Q Do you recall the direct question "How much?" referring to the value of this stock? "Answer: Twenty-five thousand dollars today." Do you recall that answer? A Yes, sir; I said "today" I think twenty-five thousand.

Q Well, then, you don't mean that if you could get your money back, twelve thousand five hundred you would take it, do you? A Yes, sir. 40

*Murray Apfelbaum, for Complainant, direct.*

Q Still it is worth \$25,000. A No, sir; I wouldn't say it is worth today—it is worth less today than it was worth.

Q What was it worth at the time it was assigned to you? A When assigned to me it was worth about \$12,500.

10 Q What did you base that on? A On what? The amount he put in. That was a year ago.

Q What did this company own? A Just a leasehold.

Q And how long was the leasehold to run?

A It has got about twenty-seven years to go.

Q Yes? The entire building at the corner of Washington and Market street? A Yes, sir.

Q Yes. Now, you are simply holding this stock, then, as collateral for what he owes you and for a year in the future? A Yes, sir.

20 Q And on May 20, 1927, he owed you \$4,700? A On May—

Q 20th, 1927? A I don't know (witness looks at book), according to the book on May the 20th, you say?

Q Yes, 1927. A May the 20th he owed me about \$2,864 and, of course, he gets more credit on the other side. I don't know what they are.

Q Now, Murray Apfelbaum, Inc., has an agreement with Leber & Ruback? A Yes.

30 Q For \$5,000 worth of commissions?

Mr. Silver: I object to that; that is not cross examination. Nothing like that was asked.

Mr. Fitz Maurice: He is my witness.

Mr. Silver: Pardon me. Now he is, yes.

Q Murray Apfelbaum, Inc., has an agreement with Leber & Ruback? A Yes, sir.

40

*Argument.*

Q Providing for the payment of \$5,000, the service rendered in a deal with Garfinkel? A Yes—not by Garfinkel. I was interested in that deal myself.

Q Garfinkel is to receive \$2,500 of the commissions, isn't he? A No, sir.

Q Why isn't he? A I—he has pledged all the money that is coming in, he has pledged it to Murray Apfelbaum, Inc., for the amount of drawings that he has been getting right along. 10

Q In other words— A As fast as that money comes in, yes.

Q He is entitled to \$2,500, but in your opinion he is not going to get it? A No, sir; he is not entitled to it. I don't take it that way. As long as I have advanced him the money on that deal, that money does not belong to him, that belongs to Inc. 20

Q And as it comes in you are going to apply it to the credit of his account? A As it comes in, I am going to apply it to the credit of his account, part of it.

Q And as a matter of fact, he is entitled to fifty per cent. of the commissions of five thousand dollars? A No, sir.

Q Well, now, if he didn't owe you any money, wouldn't he be entitled to \$2,500? A If he didn't owe me any other money, he could get it all, yes. 30

Mr. Fitz Maurice: That is all.

Mr. Silver: That is the case.

Mr. Clancy: I rest.

The Court: Now, what am I to decide now?

Mr. Fitz Maurice: If the Court please, from several angles it has been rather de- 40

*Argument.*

finitely brought out, particularly under the uniform fraudulent conveyance act. I think the case is somewhat parallel to one that your Honor recently decided, the First National Bank of Belleville against Merrick.

10 I think we have established here that certainly Garfinkel was not justified in approaching the bank in May, 1927, with a written statement in which he shows his assets to be \$56,000 between this lease and this stock, relying on that, securing the sum of \$5,000, which he subsequently reduced to \$4,000 by renewal and that within a month after the last renewal, and while that note still had three months to run, to divest himself to his employer of that security, particularly where the statement over his own signature states that he will immediately notify the bank of any change in his financial situation, and, in the absence of such notification, the bank will rely on it as being a continuing statement. That is practically the exact language in that statement, the usual bank statement. Then, to further divest himself of it, as both testified here, in their own opinion, divesting themselves of any interest he may have in this \$2,500; in other words, turning over his assets to his employer for some amount that is owed to his employer.

20

30

Now, then, the employer testifies that he did not take this stock unto himself to satisfy the debt, that he is taking it and holding it for security for the repayment of anything that he owes or may owe him a year in the future.

40 Now, if that is not holding it as a trustee, then I don't know what one is, and, under the

*Argument.*

uniform fraudulent sales act, as I read it, where a debtor such as Garfinkel is insolvent and at the time of such insolvency—and I think we have definitely established here he was quite insolvent at the time he made this transfer—he divested himself of what property he may have, and in this particular case, owing to the peculiar status here of an employer and an employee, turns it over, suddenly, to an employer with whom he is working for years; he has not demanded any security up to this time and suddenly grabs this, that rule of establishing his insolvency, I will have established some doubt as to the fair consideration of this transfer, that the Court of Chancery may either cancel the assignment, revoke it or impress upon it on this stock the lien of this judgment to the extent of the amount presently due. And the line of reasoning is what—I have it—your Honor decided in this First National Bank against Merrick, and, taking the exact language from that: “Existing creditors are, as the words imply, persons having subsisting obligations against the debtor at the time the fraudulent alienation was made or the secret trust created, although their claims may not have matured or even been reduced to judgment until after such conveyance. The indebtedness will relate back to its original inception as regards the question constituting the claimant an existing creditor.”

Now, it is true the bank has reduced its claim to judgment although the note was not due for several months from date of the assignment. We knew nothing about this secret trust that has been recorded here

10

20

30

40

*Argument.*

10 until after the sheriff attempted to levy on Mr. Garfinkel at the registered agent, Mr. Silver, that several months prior to that, Mr. Garfinkel had assigned the stock to his employer. We then bring both of them up on discovery proceedings and for the first time learn of this secret trust, of this assignment, whereby Apfelbaum holds it for moneys that may be due now and may be due a year in the future from now.

20 Now, I think that the complainant is entitled if not to have this set aside—the assignment, as in fraud of it a creditor and most certainly to have the lien of this judgment impressed as a credit upon this stock in the hands of Apfelbaum and let the complainant then worry about what is the value of this stock as distinguished from this rather confused testimony of Mr. Apfelbaum as to its present value, one time \$25,000 on one examination, and another time it was something else; I say, let the complainant worry about the value of the stock, but respectfully request that, at least, this judgment lien be impressed upon this stock now in the hands of Apfelbaum and that he  
30 frankly admits he is holding in trust as pledged collateral for this money which he claims was given him.

Mr. Silver: Now, it please your Honor, I think the statements set forth in the complaint are quite serious. They make a general allegation here, charging the defendant, Murray Apfelbaum, Inc., a real estate firm of years' standing and a responsible real estate firm of this city, with a statement that  
40 it did for the purpose of defrauding com-

*Argument.*

plainant connive, and so forth, with the other defendant in obtaining the stock certificates.

Now, there is not one fact it advanced in all the evidence that has been taken to sustain the contention. The first witness of complainant is silent about that statement in the complaint entirely. The other two witnesses, who were witnesses for the complainant, most emphatically deny that this assignment was made for the purpose of defrauding this complainant. Now, I say, if that statement is false and cannot be corroborated by any testimony, surely there is nothing in this case which can in any way help this complainant. 10

I dare say, and I may be a little forward in saying, that this complainant is out on a fishing expedition. I don't blame him; he is trying to get his money, but where one goes out on a fishing expedition, whether or not he has the right to do it or not, is his look-out and whether he catches anything is his look-out. As in this instance there is a judgment at law. There was a criminal action, which is not before this Court and the Court is not interested, and now they come in the Court of Chancery endeavoring to obtain this so-called stock from our defendant, whether there was \$16,000 coming to him, and there is no denial of that; why it was given he says, "I won't advance any more." The evidence is absolutely clear, straight and forward; there is no question about it or quibbling about it. It is true they have a claim against Garfinkel, but that surely should not interfere in any way with the other defendant in this case, the 20 30 40

*Decision of Vice-Chancellor.*

10 Murray Apfelbaum, Inc. They advanced money and they had a right to take collateral, as any bank has a right to take collateral. When you come in to renew a note they say, "We won't renew it unless you give us additional collateral." Now, I say we are in the same condition in this case. There should be a judgment, without any argument on my part, in favor of the defendant, Murray Apfelbaum, Inc.

The Court: I don't think that I should go as far as to say that Mr. Apfelbaum participated in any way in this effort.

20 It is perfectly apparent to me that this man did get his money out from under this note at the bank, but I do think that these shares of stock should be impressed in a trust for the benefit of the complainant, and I will advise a decree along those lines.

Mr. Silver: May it please your Honor, what about the \$16,000 that was put up first?

The Court: I think this straight \$1,000 note should be the first payment out of the stock.

30 Mr. Silver: The \$4,000 note?

The Court: Yes. The note at the bank, or whatever it is, should come first out of the stock.

I am not criticizing Mr. Apfelbaum. Perhaps he did not realize the situation that he was getting into, but it is perfectly apparent to me that Garfinkel made every possible endeavor to defeat this bank.

40 Mr. Silver: That may be true, but how can your Honor impute that to an innocent party?

*Decision of Vice-Chancellor.*

The Court: I am not imputing anything to him, but I am imposing a trust on this stock in favor of the bank.

Mr. Silver: Of course, I can see your Honor's theory where you impose a trust on this stock after the amount to Murray Apfelbaum, Inc., is paid. 10

The Court: No, it will be a first lien on the stock.

20

30

40

**FINAL DECREE.**

Filed November 12, 1929.

10 This cause coming on to be heard in the presence of Richard J. Fitz Maurice, solicitor of the complainant, Saul and Joseph E. Cohn, solicitors of the defendant Murray Apfelbaum, Inc., and John J. Clancy, solicitor of the defendant Samuel Garfinkel;

And the Court having read and considered the pleadings, and having taken testimony orally and in open court, and having heard and considered the arguments of counsel thereon, and being satisfied that the complainant is entitled to the relief prayed for in its bill of complaint;

20 It is, on this 12th day of November, 1929, ORDERED, ADJUDGED and DECREED that the judgment recovered in the Essex County Circuit Court by the said complainant, The Trust Company of Orange, against the said defendant Samuel Garfinkel, on November 13, 1928, amounting to \$4,110.48, damages and costs, together with interest thereon at six per cent. per annum from November 13, 1928, to the date of payment of said judgment, be, and the same hereby is impressed as a lien upon the ten  
30 shares of stock owned by the said Samuel Garfinkel in the 105-107 Market Street Corporation, a corporation of the State of New Jersey, and which said stock was transferred by the said Samuel Garfinkel to the said defendant, Murray Apfelbaum, Inc., on June 15, 1928;

40 And it is further ORDERED that the amount of the said judgment, costs and interests, due the said complainant by the said Samuel Garfinkel, be a first and paramount lien against the said ten shares of stock;

*Final Decree.*

And it is further ORDERED, ADJUDGED and DECREED that the said defendants do pay to the solicitor of the complainant a counsel fee of Three Hundred Dollars (\$300.00) together with the costs of these proceedings to be taxed.

Respectfully advised,

10

ALONZO CHURCH,  
V.-C.

I consent to the form of the within decree,  
November 12, 1929.

JOHN J. CLANCY,  
Of Counsel with Defendant, Samuel Garfinkel.

A true copy.

20

RICHARD FITZ MAURICE,  
Sol'r for Compl't.

30

40

**NOTICE OF APPEAL OF DEFENDANT,  
MURRAY APFELBAUM, INC.**

Filed December 5, 1929.

10 The defendant, Murray Apfelbaum, Inc., a corporation of New Jersey, one of the defendants, hereby appeals from the Final Decree made in the above entitled cause by his Honor, Edwin Robert Walker, Chancellor, on the advice of his Honor, Alonzo Church, Vice-Chancellor, on November 12, 1929, and from the whole and every part thereof, to the Court of Errors and Appeals, the last resort in all causes.

Dated November 20, 1929.

20 SAUL and JOSEPH E. COHN,  
Solicitors for Defendant,  
Murray Apfelbaum, Inc.

I conceive there is a good cause for appealing the above entitled cause.

IRWIN R. HELLER,  
Of Counsel.

30

40

**PETITION OF APPEAL OF DEFENDANT,  
MURRAY APFELBAUM, INC.**

Filed December 21, 1929.

*To the Honorable, the Court of Errors and Appeals in the last resort in all causes.*

10

The petition of Murray Apfelbaum, Inc., the appellant in the above-stated cause, respectfully shows that your 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, upon the advice of the Hon. Alonzo Church, Vice-Chancellor, upon the 12th day of November, 1929, wherein the Trust Company of Orange, a corporation, was complainant and the said Murray Apfelbaum, Inc. and Samuel Garfinkel were defendants, in this respect, to wit: that the said decree adjudges and decrees that the judgment recovered in the Essex County Circuit Court by the complainant, The Trust Company of Orange, against the defendant, Samuel Garfinkel, on November 13, 1928, with interest, be impressed as a lien upon the ten shares of stock owned by the said Samuel Garfinkel in the 105-107 Market Street Corporation and which said stock was transferred by the said Samuel Garfinkel to the said defendant, Murray Apfelbaum, Inc. on June 15, 1928, and that the amount of such judgment, costs and interest due to the said complainant by the said Samuel Garfinkel be a first and paramount lien against the said ten shares of stock; and in this respect, to wit, that said decree orders and adjudges that the defendant pay to the solicitor of the complainant a counsel fee of \$300, together with the costs of this proceeding to be taxed. And your petitioner humbly appeals from those portions of the de-

20

30

40

*Petition of Appeal of Murray Apfelbaum, Inc.*

10 decree of the said Chancellor which decree as aforesaid upon the ground that the same is erroneous for that it appeared by the evidence in said cause that the said stock referred to in said decree was transferred to the said Murray Apfelbaum, Inc. by the said Samuel Garfinkel as  
10 security for moneys advanced or to be advanced by the said Murray Apfelbaum, Inc. and the stock properly endorsed by the said Samuel Garfinkel was delivered to the said Murray Apfelbaum, Inc. on or about the 15th day of June, 1928, and without any knowledge on the part of the said Murray Apfelbaum, Inc. of any right or interest of the said complainant in said stock, and said stock was at that time transferred upon the books of the company to the said defendant, Murray Apfelbaum, Inc.; and because the evidence did not  
20 disclose that the said complainant had any interest in said stock prior to the transfer to the defendant, Murray Apfelbaum, Inc. as aforesaid, and for that upon the record there was no evidence to support the decree appealed from in favor of complainant, and for that the said court should have granted a decree either dismissing the bill of the complainant with costs to Murray Apfelbaum, Inc. or have adjudged and decreed  
30 that any right or interest of the said complainant in said stock was subject and subordinate to the right and interest of this defendant, Murray Apfelbaum, Inc.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

40

MERRITT LANE,  
Solicitor and of Counsel with Appellant.

**NOTICE OF APPEAL OF DEFENDANT,  
SAMUEL GARFINKEL.**

Filed.

The defendant, Samuel Garfinkel, one of the defendants herein, appeals from the final decree made in the above-entitled cause by his Honor, Edwin Robert Walker, Chancellor, on the advice of his Honor, Alonzo Church, Vice-Chancellor, on November 12, 1929, and from the whole and every part thereof to the Court of Errors and Appeals the last resort in all causes. 10

JOHN J. CLANCY,  
Solicitor for Defendant, Samuel Garfinkel.

Dated December 20, 1929. 20

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

JOHN J. CLANCY,  
Of Counsel.

To

RICHARD J. FITZMAURICE, Esq.,  
Solicitor for Complainant.

MERRITT LANE, Esq., 30  
Solicitor for Defendant-Appellant,  
Murray Apfelbaum.

**PETITION OF APPEAL OF DEFENDANT,  
SAMUEL GARFINKEL.**

Filed January 15, 1930.

*To the Honorable, the Court of Errors and Appeals in the last resort in all causes:*

10

The petition of Samuel Garfinkel, the appellant in the above-stated cause, respectfully shows that your petitioner finds himself aggrieved by a final decree made in the Court of Chancery, by his Honor, Edwin Robert Walker, Chancellor of the State of New Jersey, upon the advice of the Hon. Alonzo Church, Vice-Chancellor, upon the 12th day of November, 1929, wherein The Trust Company of Orange, a corporation, was complainant and the said Samuel Garfinkel and Murray Apfelbaum, Inc. were defendants, in this respect, to wit: that the said decree adjudges and decrees that the judgment recovered in the Essex County Circuit Court by the complainant, The Trust Company of Orange, against the defendant, Samuel Garfinkel, on November 13, 1928, with interest, be impressed as a lien upon the ten shares of stock owned by the said Samuel Garfinkel in the 105-107 Market Street Corporation and which said stock was transferred by the said Samuel Garfinkel to the said defendant, Murray Apfelbaum, Inc., on June 15, 1928, and that the amount of such judgment, costs and interest due to the said complainant by the said Samuel Garfinkel be a first and paramount lien against the said ten shares of stock; and in this respect, to wit, that said decree orders and adjudges that the defendant pay to the solicitor of the complainant a counsel fee of \$300, together with the costs of this proceeding to be taxed. And your petitioner humbly

20

30

40

*Petition of Appeal of Samuel Garfinkel.*

appeals from those portions of the decree of the said Chancellor which decree as aforesaid upon the ground that the same is erroneous for that it appeared by the evidence in said cause that the said stock referred to in said decree was transferred to the said Murray Apfelbaum, Inc., by the said Samuel Garfinkel as security for moneys advanced or to be advanced by the said Murray Apfelbaum, Inc. and the stock properly endorsed by the said Samuel Garfinkel was delivered to the Murray Apfelbaum, Inc. on or about the 15th day of June, 1928, and without any knowledge on the part of the said Murray Apfelbaum, Inc. of any right or interest of the said complainant in said stock, and said stock was at that time transferred upon the books of the company to the said defendant, Murray Apfelbaum, Inc.; and because the evidence did not disclose that the said complainant had any interest in said stock prior to the transfer to the defendant, Murray Apfelbaum, Inc. as aforesaid, and for that upon the record there was no evidence to support the decree appealed from in favor of complainant; and for that the said court did not permit counsel for defendant Samuel Garfinkel to cross examine the witnesses with the exception of one witness; and for that the said court should have granted a decree either dismissing the bill of the complainant with costs to Samuel Garfinkel or have adjudged and decreed that any right or interest of the said complainant in said stock was subject and subordinate to the right and interest of this defendant, Samuel Garfinkel.

Your petitioner therefore prays that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for

*Answer to Petition of Appeal.*

nothing holden. And that your petitioner may have such relief in the premises as to this Honorable Court shall seem meet.

JOHN J. CLANCY,  
Solicitor for and of Counsel with  
Appellant, Samuel Garfinkel.

10

**ANSWER TO PETITION OF APPEAL OF  
MURRAY APFELBAUM, INC.**

Filed January 15, 1930.

The answer of The Trust Company of Orange, a corporation, the above named appellee, to the Petition of Appeal of Murray Apfelbaum, Inc., the above named appellant.

20

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless, admits that a Final Decree was upon the twelfth day of November, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said Decree this appellee begs leave to refer thereto when the same shall be produced.

30

This appellee is advised and believes that the said Decree is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this appellee.

RICHARD J. FITZ MAURICE,  
Solicitor for and of Counsel with Appellee,  
The Trust Company of Orange, a corporation.

40

**ANSWER TO PETITION OF APPEAL OF  
SAMUEL GARFINKEL.**

Filed January 15, 1930.

The answer of The Trust Company of Orange, a corporation, the above named appellee, to the Petition of Appeal of Samuel Garfinkel, the above named appellant. 10

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto, nevertheless, admits that a Final Decree was upon the twelfth day of November, 1929, made and entered in the Court of Chancery of New Jersey in the above entitled cause for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said Decree this appellee begs leave to refer thereto when the same shall be produced. 20

This appellee is advised and believes that the said Decree is agreeable to equity; and it prays that the same may be affirmed with costs to be taxed in favor of this appellee.

RICHARD J. FITZ MAURICE,  
Solicitor for and of Counsel with Appellee,  
The Trust Company of Orange, a corporation. 30

THE UNIVERSITY OF CHICAGO  
LIBRARY

1911

THE UNIVERSITY OF CHICAGO

LIBRARY

Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

## New Jersey Court of Errors and Appeals

THE TRUST COMPANY OF ORANGE,  
a corporation,  
*Complainant-Respondent,*

*and*

SAMUEL GARFINKEL,  
*Defendant-Appellant,*

*and*

MURRAY APFELBAUM, INC.,  
*Defendant-Appellant.*

*On Appeal  
from Chan-  
cery.*

*Sat Below:  
CHURCH, V.-C.*

*Bill to Im-  
press a Lien.*

*Defendant  
Apfelbaum's  
Appeal.*

### BRIEF FOR APPELLANT, MURRAY APFEL- BAUM, INC.

(Italics, etc., mine except where otherwise noted.)

On May 20, 1927, Garfinkel obtained a loan of \$5,000 from complainant bank on the faith of a written statement in which he represented that he was the owner of ten shares of stock of the Market Street Corporation of the value of \$37,500 and was the holder of a lease on certain premises of the value of \$20,000; various amounts were paid on the note; it was renewed from time to time, and, on September 21, 1928, the last renewal for \$4,000 became due; it was not paid; suit was brought and on November 13, 1928, complainant obtained a judgment against Garfinkel for \$4,110.48 damages and \$75.13 costs; execution was issued and returned unsatisfied.

The bill charged that on June 15, 1928, Garfinkel had assigned the ten shares of stock of the Market Street Corporation to Murray Apfelbaum, Inc., for an alleged indebtedness of \$11,000

and that the assignment was made for the purpose of defrauding complainant; the answer of Murray Apfelbaum, Inc., denied knowledge of the indebtedness of Garfinkel to complainant, admitted the assignment and alleged that it was for good consideration.

The case came on before Vice-Chancellor Church. Murray Apfelbaum, president of Murray Apfelbaum, Inc., was called by *complainant* and testified: in 1926 Murray Apfelbaum, Inc., commenced to advance moneys to Garfinkel and on January 21, 1927, according to the books of the company which were produced, Garfinkel owed Murray Apfelbaum, Inc., \$292; during the year 1927 the company advanced him approximately \$9,259 (p. 9); the company owes Garfinkel nothing (p. 10); on June 15, 1928, Garfinkel assigned the ten shares of stock to Murray Apfelbaum, Inc. (p. 14), at which time he owed it between thirteen and fourteen thousand dollars (p. 15); the value of the stock is problematical; it was not worth anything like \$37,500; the amount due from Garfinkel to Murray Apfelbaum, Inc., was proven by the books; from the record (p. 18), it would appear that the amount due, June, 1928, was \$15,436; Murray Apfelbaum, Inc., continued to advance moneys to Garfinkel after taking the assignment; the assignment was made by Garfinkel on the demand of Murray Apfelbaum, Inc., for collateral (p. 19); it has no other collateral. Murray Apfelbaum was fully corroborated by Garfinkel who told precisely the same story (p. 30). He said, with reference to the ten shares of stock, "I assigned them to Mr. — to Murray Apfelbaum, Inc., for moneys that I owed them and additional drawings that I would receive from them, and he was to hold them—(Interrupted)" (p. 30); this act was on the demand of

Murray Apfelbaum, Inc.; "Q And what was your understanding when you turned the stock over to him? A That he would hold that stock for one year and I—if my earnings were sufficient for that there, then he would return me back the stock and when the year was up I asked him to extend that for another year, which he did. Q When was the year up, in June, 1929? A That is right. Q Now, it is extended for another year until June 30th; is that right? A That is right."

Murray Apfelbaum denied any knowledge that Garfinkel had borrowed any money from the bank (p. 56).

This was all of the testimony in the case.

The learned Vice-Chancellor held on the facts that: Murray Apfelbaum, Inc., *did not participate in any way in any fraud*; it was apparent that Garfinkel made every possible effort to defeat the bank (p. 68); *nothing was to be imputed against Murray Apfelbaum, Inc.*

The Vice-Chancellor then proceeded to adjudge that the bank was entitled to a lien on the stock prior to any right or interest of Murray Apfelbaum, Inc.

A decree was entered (p. 70) impressing the claim of the bank as a lien upon the ten shares of stock prior to any right of Murray Apfelbaum, Inc., and from that decree Murray Apfelbaum, Inc., appeals.

### ARGUMENT.

The decree of the Court below can only be sustained, I submit, if it be the law that whenever a borrower of money, in making an application for the loan, represents that he is the owner of certain property and the loan is made upon that representation, the loanor of the money becomes possessed of some kind of a lien or interest *in the property*. The effect of the decree is to permit the assertion of such a "lien or interest" as to a species of property which is in the class of negotiable paper and as against a person who has become possessed of that paper for a fair consideration without fraud and without knowledge of the supposed lien or interest and even without knowledge of the debt.

I submit that this never was the law, but to indicate that, if it ever was, it is not now, it is only necessary to refer to the Uniform Fraudulent Conveyance Act, 1 Cum. Supp. to C. S. of N. J. 1911-1924, sec. 44-142, etc. p. 647, and to the Uniform Stock Transfer Act, 1 Cum. Supp. to C. S. of N. J. 1911-1924, sec. 47-150, etc.

The Uniform Fraudulent Conveyance Act, 1 Cum. Supp. to C. S. of N. J. 1911-1924, p. 647 provides:

"3. Fair consideration is given for property, or obligation \* \* \*

(b) When such property, or obligation is received in good faith to secure a present advance or *antecedent debt* in amount not disproportionately small as compared with the value of the property, or obligation obtained."

Section 44-150 provides, page 648:

"(1) Where a conveyance or obligation is fraudulent as to a creditor, such creditor, when his claim has matured, may, as against

any person except a purchaser for fair consideration without knowledge of the fraud at the time of the purchase \* \* \* have (the conveyance set aside, etc).

2. A purchaser who without actual fraudulent intent has given less than a fair consideration for the conveyance or obligation, may retain the property or obligation as security for repayment."

This act has been held by this court to completely supersede the Fraudulent Conveyance Act, 2 C. S. of N. J. p. 2619, sec. 11, etc. and to make wholly inapplicable cases such as

*Severs v. Dodson*, 53 N. J. E. 633.

See *Conover v. Raphael*, in this court, 6 N. J. A. R. 812.

*Morrisville Trust Co. v. Moon*, Circuit Court of Appeals, for 3rd Circuit, 21 Federal (2nd) 716.

The Vice-Chancellor found that Murray Apfelbaum, Inc., did *not* participate in any fraud and the testimony is that it had no knowledge of the existence of the debt of complainant and, even if the subject matter had been real property or chattels, there was no ground shown for the imposition of a lien or claim upon the property prior to the claim of Murray Apfelbaum, Inc., and Murray Apfelbaum, Inc., did not claim to hold the property other than as collateral.

By the express terms of the statute it was entitled to hold it as collateral and to have its claim paid prior to any claim of the bank.

While the Vice-Chancellor says that it was the intent of Garfinkel, if he could, to get out of the obligation to pay complainant, the only evidence of this, so far as I can discover in the record, is that, in fact, when he obtained the loan from complainant in May, 1927, he represented that

he owned this stock, which was true, and that on June 15, 1928, *a year later*, he assigned the stock to Murray Apfelbaum, Inc. There is no evidence that, at the time he made the representation and at the time he received the proceeds of the loan, he intended to dispose of the stock. I submit that the mere fact that he *did* dispose of the stock *a year* subsequent to his making the representation *is no evidence of fraud*. If it were, then any person obtaining credit upon a representation that he owns specific property would be obliged to hold that specific property until he had paid the debt. There is no such rule. If complainant had intended to obtain a lien or interest in the stock there was a ready means at hand for obtaining it. The stock could have been assigned to complainant as collateral as, in fact, it was subsequently assigned to Murray Apfelbaum, Inc.

The subject matter of this litigation is stock and under the Uniform Transfer Act, 1 Cum. Supplement to C. S. of N. J. 1911-1924, sec. 47-150, p. 690, it is provided:

“Title to a certificate and to the shares represented thereby can be transferred *only*

(a) By delivery of the certificate indorsed either in blank or to a specified person by the person appearing by the certificate to be the owner of the shares represented thereby, or

(b) By delivery of the certificate and a separate document containing a written assignment of the certificate or a power of attorney to sell, assign or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby. Such assignment or power of attorney may be either in blank or to a specified person.”

Under the act a certificate of stock is given the quality of negotiable paper. An interest in

certificates of shares of stock can only be obtained in the manner specified by the statute.

*Besson v. Stevens*, 94 N. J. E. 549, at p. 563.

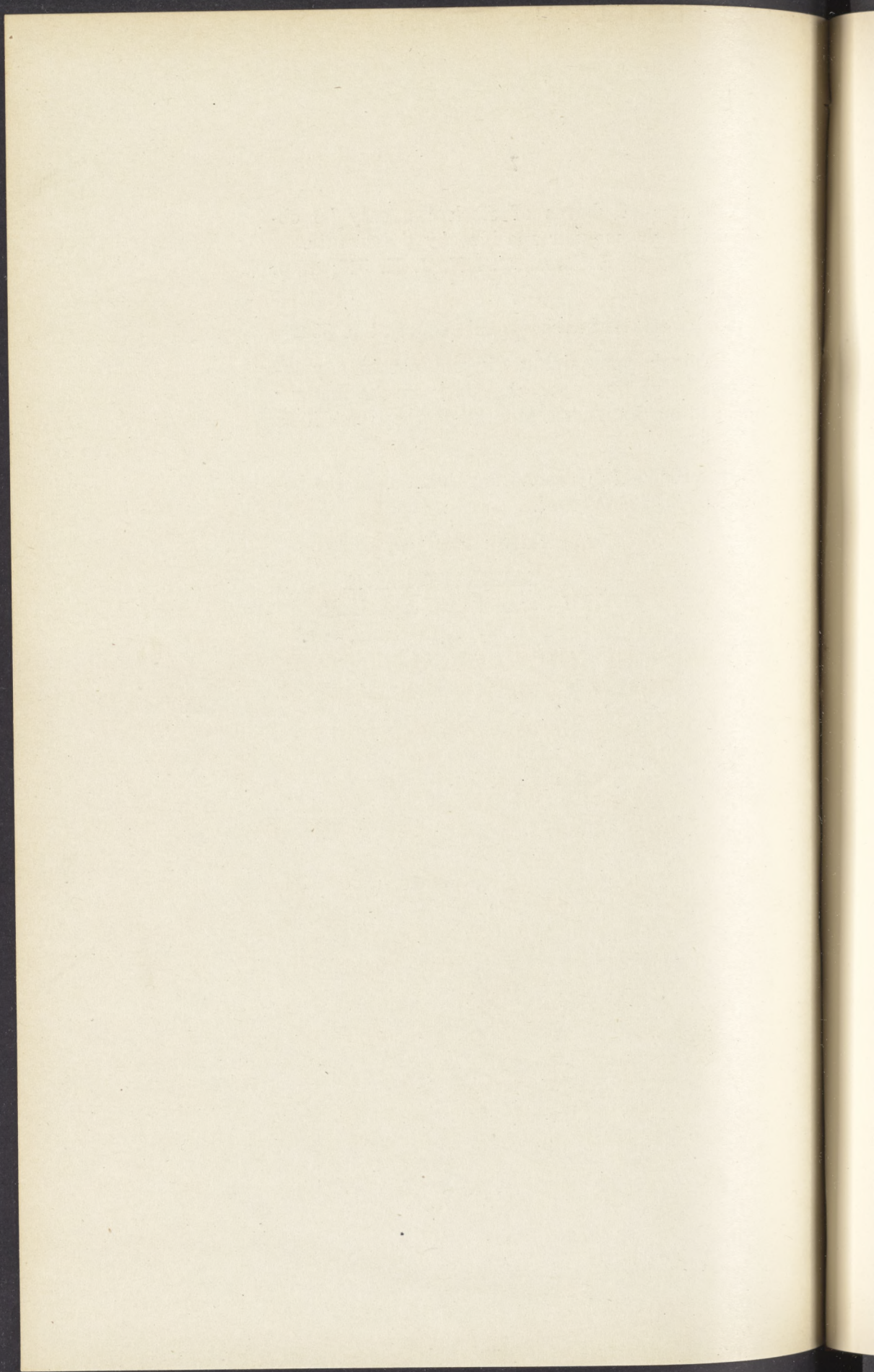
And see the remarks of this court at p. 569.

Although complainant did not obtain any interest in or lien upon the stock in the manner pointed out by the statute, the decree treats it as if it had.

It is respectfully submitted that the decree below should be reversed.

Respectfully submitted,

MERRITT LANE,  
Of Counsel with Appellant  
Murray Apfelbaum, Inc.



## New Jersey Court of Errors and Appeals

THE TRUST COMPANY OF ORANGE,  
a corporation,  
*Complainant-Respondent,*

and

SAMUEL GARFINKLE,  
*Defendant-Appellant,*

and

MURRAY APFELBAUM, INC.,  
*Defendant-Appellant.*

On Appeal from  
Chancery.  
Sat Below:  
CHURCH, V.C.  
Bill to Impress  
a Lien.  
Defendant  
Apfelbaum's  
Appeal.

### BRIEF OF COMPLAINANT-RESPONDENT, TRUST COMPANY OF ORANGE.

The facts presented in the brief of the appellant, Apfelbaum, Inc., are correct to an extent. For the purpose of sustaining the decree below, the respondent reviews the factual situation as it was presented in Chancery, *attaching significance to various turns in the case.*

The case was heard November 7, 1929. The defendant below, Samuel Garfinkle, it appeared, secured a loan of \$5,000 from the complainant below, Trust Company of Orange, the respondent on appeal. Before this loan was made, Garfinkle signed a statement distinctly setting forth that in the absence of a notice to the contrary, the bank was to assume that there was no change in the financial status of Garfinkle.

The State of the Case fails to set forth the statement, although the statement was part of the com-

plaint. The respondent herewith supplies as much of it as is pertinent.

“For the purpose of procuring credit from time to time with you, for my negotiable paper, or otherwise, I furnish the following as a true and correct statement of my financial condition on the date named below, and hereby agree to notify you immediately in writing of any materially unfavorable change in my financial condition. *In the absence of such notice, or a new and full written statement, this is to be considered as a continuing statement, and that my pecuniary responsibility has not fallen below the condition herein set forth.*”

The statement is signed by Garfinkle after listing assets and liabilities, giving a balance of \$56,950, net worth. The only item set forth that is relevant to this issue is that of ten shares of the Market Street Corporation, valued at \$37,500.

It is admitted by the brief of the appellant, Apfelbaum, Inc., that this statement was made (p. 1 of Brief) and that the ten shares of stock were valued at approximately \$37,500 under that statement.

The note by which this loan was secured was renewed from time to time, upon Garfinkle's payments on account, until September 21, 1928, when \$4,000 was due and owing. It was not paid and a judgment by default was taken on November 13, 1928, in the sum of \$4,110.48 damages and \$75.13 costs. Complainant issued an execution which was returned unsatisfied. A discovery proceeding ensued, during the course of which Murray Apfelbaum was called to testify as to the credits due Garfinkle by him or his concern, Murray Apfelbaum, Inc. (State of Case, p. 7 to p. 22).

Despite the fact that three renewals of the note signed by Garfinkle were given and under the

terms of the statement made and referred to above the Trust Company was to be given notification of any change in Garfinkle's financial status, on June 15, 1928 Garfinkle made an assignment of the ten shares of stock to Murray Apfelbaum, Inc. This, despite the further fact that on September 21, 1928, the \$4,000 was to become due and owing. Thus, while anticipating three months hence the maturity of a substantial indebtedness, Garfinkle alienated himself of virtually all his assets to the defendant-appellant, Apfelbaum, Inc.

Of this transaction, transfer, alienation, assignment or conveyance (whatever the defendants may wish to term it), the complainant below had absolutely no notice and there is no contention that it did. The bill charged that this transfer or assignment was made for the purpose of defrauding the Trust Company of Orange. Under the Uniform Fraudulent Conveyances Act (*1 Cum. Supp. to C. S. of N. J., 1911-1924, secs. 44-142, et seq.*), this assignment frustrated the legitimate claim of a *bona fide* creditor.

An impartial observation of all facts in the case leads to the primary conclusion that Garfinkle's every action was designed to defeat the bank. This conclusion was made as a finding of fact by Vice-Chancellor CHURCH, who remarked that this situation was quite apparent (State of Case, p. 68, line 6).

For the purpose of showing the "fairness of consideration" of this assignment, the following references are made: In the first place, Apfelbaum is "very much acquainted" with Samuel Garfinkle (p. 7) and has known him for fifteen years and has employed him for four or five years as a salesman (p. 8).

In the second place, Apfelbaum testified that Garfinkle while in the employ of the corporation

received no salary and had no earnings from his employer! (p. 8, lines 4 and 10). When we reach line 21 of the same page we find there may have been a more definite employer-employee relationship, but "there was no definite contract." When we reach page ten of the State of the Case, line 34, the nebula is a bit cloudier when we hear that Garfinkle was able to make a living from this relationship with Garfinkle, Inc., receiving one hundred dollars weekly "withdrawals." The corporation doesn't *owe* Garfinkle anything, however (p. 10, line 38).

One begins to wonder as to what kind of a status existed between Garfinkle and Apfelbaum, Inc. (see p. 13, line 31). The wonderment grows to perplexity when we read that any moneys that Garfinkle *might* make in the future are already "mortgaged."

With this relationship existing nicely *for a few years*, Apfelbaum, Inc., suddenly secured *three months before the note was due* an assignment of the ten shares of stock. The assignment was dated June 15, 1928 (p. 15, line 10), Garfinkle, employee, "owing" his company in withdrawals about thirteen or fourteen thousand dollars (p. 15, line 20). This would appear to be quite a high figure with which to entrust an employee or by which an employee might "bind" himself by virtue of what his earnings *might* be in the future. Lest that be surprising, we further learn at page 18, line 30, that Garfinkle "owed" on June 1, 1928, \$16,450.61. In answer to what the sixteen thousand dollar figure represented, Apfelbaum testified it was "drawings he had drawn up to that time."

With this course of vaccillating testimony, giving rise to an unheard of legal relationship between employer and employee by which the latter might consistently secure \$100 a week and run up

an indebtedness to sixteen thousand dollars, we mustn't be alarmed to hear of no security for the debt until three months before the Trust Company debt was due.

Mr. Apfelbaum, as secretary and treasurer of the 105-107 Market Street Corporation (p. 15, line 36), estimates his own *ten* shares of stock (p. 17, line 1) to be worth about \$25,000 (p. 19, line 19). The bank's credit is a little more than \$4,000. The credit of Apfelbaum, Inc., is a little more than \$16,000. It would appear, if Apfelbaum's testimony is correct and that the stock wasn't worth \$37,500 as Garfinkle estimated, that still in all both claims might be satisfied out of the security, the stock. Yet a vigorous effort has been made to defeat the bank's claim by the defendants-appellants, Apfelbaum, Inc., and Garfinkle.

It might be remarked, in attacking the consideration advanced for this assignment, if any, that the employer-employee relationship has another peculiar aspect in that no matter what Garfinkle earned, Apfelbaum, Inc., always received fifty per cent. thereof (p. 18, line 40, and p. 19, lines 1 to 5), although Garfinkle had "no earnings" (*supra*).

Thus, the defendant-appellant, Apfelbaum, Inc., has failed to show a clear, subsisting status and a concurrent clear indebtedness by Garfinkle to it. It is apparent that the Vice-Chancellor below, while "not imputing anything to Murray Apfelbaum, Inc.," failed to find a consideration for the assignment but rendered a decision in concord with the broad powers of equity, as well as with the act. That finding of fact, while tacit, should not be disturbed on appeal, under well-recognized decisions.

### Argument.

As stated by this Court in *Cartan v. Phelps*, 91 N. J. Eq. 312:

“On appeal from a decree of the court of chancery great weight is given to a finding upon a question of fact, because the chancellor, who hears the case in the court below and sees the witnesses and hears them testify, has better opportunities to judge their credibility than the reviewing court. \* \* \*”

These facts, more clearly presented by the party Apfelbaum himself at the discovery proceeding, are brought out in the case of the complainant in Chancery to the last detail (p. 25 to p. 55 of State of Case). Apfelbaum, Inc., at pages 56 to 63, presents virtually the same story as presented in the deposition. As an instance, at pages 58 and 59, the same kind of testimony as to this indebtedness is given as in the discovery matter.

It will be noted that the complete argument of the complainant below was aired by its solicitor (pp. 63 to 66) just before the learned Vice-Chancellor reached his recommendation.

That argument, in its pith, shows these facts:

- I. Garfinkle was insolvent.
- II. He was in a relationship with Apfelbaum, Inc.
- III. That relationship was a peculiar one whereby *large sums of money had been advanced for a long period without a security.*
- IV. Garfinkle had secured a loan from the Trust Company and failed to notify it of a change in his financial condition.
- V. An assignment of the ten shares of stock was made for moneys advanced or “to be ad-

vanced.” (See Petition of Appeal by Apfelbaum, Inc., p. 74, line 10.)

These five facts, not seriously disputed, bring to this Court the query of whether a man may divest himself of his assets on the eve of maturity of a large indebtedness—divest himself to a friend of fifteen years’ standing for a matter *that required NO CONSIDERATION for four or five years up to that time*—and still in all say that he is now insolvent, incapable of paying off the recovered judgment while his friend holds the security for moneys to be advanced.

A factual question presented below was whether or not a *consideration*, “fair or less than fair,” had been given for the assignment. With the facts adduced, it is manifest, the complainant-respondent respectfully states, that there was absolutely none.

The brief of the defendant-appellant, Murray Apfelbaum, Inc. (p. 4), tenuously suggests that a new proposition of law has been decided by the learned Chancellor. No claim was made that the bank secured an interest in the stock, one item of security. But the divestiture of that stock happens in this case to render the party insolvent. In the light of *that fact*, we clearly come within the terms of the Act for there is no question but that the Trust Company was a creditor.

*First National Bank of Belleville v. Mer-  
rick*, 142 Atl. Rep. 243.

If the bank was a creditor and Garfinkle was insolvent, the next query is whether or not Garfinkle’s act was fraudulent. “\* \* \* It is perfectly apparent to me that Garfinkle made every possible endeavor to defeat this bank” was the observation made by the Vice-Chancellor (p. 68, line 36). It is submitted that in the light of the

facts, this was a logical observation.

With this the legal situation, the appellant, Apfelbaum, Inc., endeavors to broaden its position by averring that "fair consideration" was given. Under the very definition given in the brief of our adversary (p. 4), and coupling that with facts, we fail to find such consideration.

It is only "when such \* \* \* obligation is received in good faith to secure a present advance or antecedent debt in *amount not disproportionately small* as compared with the value of the \* \* \* obligation incurred," fair consideration is given. The amount in this case was not only disproportionately small but, it is respectfully submitted, didn't even exist. Whatever this indebtedness, if it can be termed that, it was a peculiar feature of a peculiar *relationship that had gone along passively for a substantial period without any obligation being required to secure either a present advance or antecedent debt.*

Consequently, we repeat that it was not necessary to find Apfelbaum, Inc., guilty of fraud. The facts thus far adduced were sufficient, it is offered, to take the case within the fair terms of the statute and the fact that the Court below stated, "I am not criticizing Mr. Apfelbaum" (p. 68, line 34) by no means weaves a different legal fabric. This, in further view of the fact that the decision was inherently equitable.

To all of this argument, the solicitor below answered that "the statements set forth in the complaint are quite serious" (p. 66, line 34) and stressed the fact that a firm of the reputation of Murray Apfelbaum, Inc., was entitled to grave consideration. Obviously, this argument is unavailing.

Counsel on appeal for Apfelbaum, Inc., passes lightly over the consideration advanced by this

party for the ten shares of stock and assumes throughout the argument that such was given.

Over and above the observation of the Court below, with the facts at hand, it is clear that Garfinkle's act was fraudulent. As the Act states (*Pamphlet Laws of 1919, c. 213, p. 502*) (*1 Cum. Supp. to C. S., p. 648, sec. 147*):

"Every conveyance made and every obligation incurred without fair consideration when the party making the conveyance or entering into the obligation intends or believes that he will incur debts *beyond his ability to pay as they mature*, is fraudulent as to both present and future creditors."

As stated in the fourth paragraph in the syllabus of *Knight v. Parker*, 12 N. J. Eq. 214:

"A debtor, who, believing himself solvent, places his property beyond the reach of the law, *whatever may be the pretense* under which he cloaked the acts, 'hinders,' 'delays' and 'defrauds' his creditors."

It will be noted that there is nothing in the instant case to lead one to the conclusion that Garfinkle even believed he was solvent.

Much stress is placed upon the Act in this case. Viewing the matter from the standpoint of pure equity, jurisdiction concerning fraudulent conveyances is exercised by courts of equity in this state upon the theory of inherent equitable powers, *IRRESPECTIVE OF ANY STATUTE*. (12th par. of syllabus, *Horton v. Bamford*, 79 N. J. Eq. 356. See p. 378 and cases cited.)

The bill of complaint, it might be added, is not brought within the terms of the statute.

As expressed by Vice-Chancellor LEAMING in *Gross v. Pennsylvania Mortgage & Loan Company*, 101 N. J. Eq. 51, "I am unable to discern in the Act of 1919 (P. L. 1919, p. 500) any substantial change

in the law as theretofore recognized and administered in this court in aid of creditors as against acts of debtors designed to hinder, delay or defraud them, etc.”

The stressing of individual words in the 1919 Act with a technical purpose is unmindful of the broad powers of equity.

It is thus argued that the decree below should be sustained.

Respectfully submitted,

RICHARD J. FITZ MAURICE,  
Solicitor for and of Counsel with  
Appellee, The Trust Company of  
Orange, a corporation.

ANARD W. LITTMAN,  
On the Brief.

85 FEB.T.1930

99 FEB.T.1930

**New Jersey Court of Errors and Appeals**

THE TRUST COMPANY OF ORANGE,  
a corporation,  
Complainant-Respondent,

*and*

SAMUEL GARFINKEL,  
Defendant-Appellant,

*and*

MURRAY APFELBAUM, INC.,  
Defendant-Appellant.

**REPLY BRIEF  
OF MURRAY APFELBAUM, INC.**

**I.**

The language in the statement delivered by Garfinkel at the time he obtained the loan from the bank to the effect that he would notify the bank immediately in writing of any materially unfavorable change in his financial condition and in the absence of such notice, or a new and full written statement, it was to be considered as a continuing statement, and that his pecuniary responsibility had not fallen below the condition set forth in the statement (p. 2 of respondent's brief), is without force or effect so far as the determination of this case is concerned, because the only evidence in the case is that Murray Apfelbaum, Inc., had no knowledge whatever either of the statement or the existence of the loan.

## II.

On pp. 4 and 5 of respondent's brief it speaks of the peculiarity of the relationship between Garfinkel and Murray Apfelbaum, Inc., and, on p. 6, it summarizes five facts which it says indicates that there was absolutely no consideration for the assignment to Murray Apfelbaum, Inc.

Assuming all of these facts to be true, the Court cannot *guess* that there was no consideration as against the specific testimony of Murray Apfelbaum and Samuel Garfinkel, supported as it was by the books of Murray Apfelbaum, Inc., which were not impeached.

I concede the rule stated on p. 5 of respondent's brief that a finding of fact, even if tacit, should not be disturbed on appeal under well recognized decisions unless clearly erroneous.

But not only the tacit but the express finding of fact of the Court below was that there *was* a consideration for the assignment to Murray Apfelbaum, Inc.

Even in argument before the Vice Chancellor, counsel for respondent went only so far as to say that if he showed certain facts "I will have established *some doubt as to the fair consideration of this transfer*". A *doubt* of a consideration is not sufficient to hold a person guilty of fraud.

The Court said: "I don't think that I should go as far as to say that Mr. Apfelbaum participated in any way in this effort", that is, to defeat the bank.

And it further said: "I think this straight \$1,000. (\$4000) note should be the first payment out of the stock." And p. 69: "I am not imputing *anything* to him, but I am imposing a *trust* on this stock in favor of the bank."

The finding of fact below, therefore, was that Murray Apfelbaum, Inc., gave consideration for the assignment and did not, in any wise, participate in any fraud. And the uncontradicted evidence was that Murray Apfelbaum, Inc., had no knowledge of the bank loan.

Of course, if Murray Apfelbaum, Inc., *had* knowledge of the bank loan and then took this assignment without consideration it was guilty of actual fraud. The Court, by holding that it was *not* guilty of actual fraud, must have held that it had no knowledge of the bank loan and that it gave consideration.

It is quite immaterial that Murray Apfelbaum was a friend of Garfinkel's. There is nothing to prevent a debtor from preferring a friend so long as the friend does not participate in an actual fraud.

### III.

Respondent speaks on p. 5 of his brief of the "broad powers of equity". I know of no power of equity, broad or narrow, which will permit the Court to impose a trust in favor of a creditor on stock which has not been assigned to the creditor as against a person who, for consideration, takes a subsequent assignment.

### IV.

Respondent insists, on p. 9, in referring to cases as to fraudulent transfers decided prior to the adoption of the Uniform Fraudulent Conveyance Act, 2 C. S. of N. J., p. 2617, sec. 11, etc. (p. 9 of its brief), and to the opinion of Vice Chancellor Leaming in *Gross v. Pennsylvania Mortgage & Loan Company*, 101 N. J. E. 51, to the effect that the Vice Chancellor was unable to discern in the

act any substantial change in the law, wholly disregarding the language of this Court in *Conway v. Raphel*, 6 N. J. Advance Reports, p. 812:

“The case was heard by Vice Chancellor Church; he advised a decree dismissing the bill of complaint on the ground that no fraud had been shown. This decree of the court of chancery we think must be affirmed.

The cases, such as *Severs v. Dodson*, 53 N. J. E. 633; *National State Bank of Elizabeth v. Foster*, 91 N. J. E. 334; and *Vail v. Diamond*, 135 Atl. Rep. 791, are *not applicable to this case*. Those cases were decided under the Fraudulent Conveyances Act (2 Comp. Stat. p. 2619, sec. 11 *et seq.*), where a long list of cases are collected, which were decided under that statute.

This case, it is argued, is brought within the act of P. L. 1919, p. 500. That act is an entirely separate piece of legislation. The object and scope of the act is indicated by the title: ‘An act concerning fraudulent conveyances and to make uniform the laws relating thereto.’ It may be cited as the Uniform Fraudulent Conveyance Act. *It created an entirely new situation and a new set of conditions*, to the extent that the two statutes are inconsistent. It repeals the old law. *Anderson v. City of Camden*, 58 N. J. L. 515, 521; *Hotel Registry Corp. v. Stafford*, 70 N. J. L. 537; *Terrone v. Harrison*, 87 N. J. L. 541, 544. A comparison of the two acts will reveal the differences. It defines certain terms, such as a ‘creditor’, by section 1, is a person having any claim, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent; thus, making it much broader in scope than the old act, as applied in such cases as *Severs v. Dodson*, *supra*.”

## V.

It is stated on p. 10 of respondent’s brief that particular stress is laid by appellant on individ-

ual words in the 1919 act. Words in a statute are entitled to *some* consideration and the statute provides that *even if the consideration was not fair*, but there *was* a consideration, the purchaser, or assignee in the case at bar, "may retain the property or obligation as security for repayment." Secs. 44-150, p. 648, 1 Cum. Supp. to C. S. of N. J. 1911-1924, p. 4 of appellant's brief.

That there *was* a consideration in the case at bar has been found in the Court below and is proven beyond peradventure. Even if it was not "fair", Murray Apfelbaum, Inc., is entitled to be first paid.

## VI.

It is suggested in the brief of respondent that both debts may be made out of the stock. If *that* is so, respondent should have no objection to permitting the legal priorities to remain as they are, *i. e.*, Murray Apfelbaum, Inc., first and the bank second.

## VII.

The exhibits are not printed for the reason that it was conceived that they are sufficiently identified in the testimony and there is no question as to this. The statement referred to on p. 2 of respondent's brief should, perhaps, have been printed, or a summary of it. I concede that the language stated in respondent's brief, p. 2, appears in it.

**It is respectfully submitted that the decree should be reversed.**

Respectfully submitted,

MERRITT LANE,  
Of Counsel with Appellant  
Murray Apfelbaum, Inc.

